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Author(s): Martin Diamond

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THE ENDS OF FEDERALISM

Martin Diamond

The specific questions regarding the future of American federalism, which have come to concern contemporary Americans point us to two related underlying questions. Namely: What is federalism? What do we want from federalism?

To preserve federalism or to modify it or to make it effective and equitable are considerations that obviously raise the question of what precisely federalism is. But to ask what federalism is should raise instantly also the question of what human purposes or ends we seek to have it serve. Indeed it is only in the light of the ends of federalism that the nature of federalism becomes visible. All political institutions and processes are intelligible only in the light of the purposes or ends for which men devise them or which, unintentionally, they come to serve. They have no nature or meaningful pattern, nothing worth human attention, save with regard to such purposes or ends. So to speak, political things *are* the way they serve or fail to serve the ends sought from them.

Serve or fail to serve—there's the rub. Institutions are subtle and recalcitrant things. They are not neutral with respect to human purposes; rather each institution and process has its peculiar propensity to produce certain outcomes and not others. But it is not easy to know these propensities, to know which institutions and processes are best suited for what ends. Accordingly, human beings often do not do their political work well. They seek more than a given institution can supply, or they seek from it contradictory ends, or they blend processes which work at cross-purposes, etc. Thus deliberate purposes often give way to or become blended with unintended purposes, which institutions generate from their natures. What men want and, as it were, what their institutions want, blend and blur in the practical unfolding of affairs. From this mixture of human intention and institutional nature arises much of the frustration of political life, its confusions, tensions, failures, and partial successes.

This is the perspective within which federalism must be understood—as a political arrangement made intelligible only by the ends men seek to make it serve, and by the amenability or recalcitrance of federalism to those ends. At various times, men have sought varying

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ends from federalism, and the variety of federal systems has resulted from that variety of ends; each actual federal system differs from all others, as we shall see, by the peculiar blend of ends sought from the particular federal system. But the nature of federalism as such reveals itself in the ways federalism has served and failed to serve those varying ends.

I

The distinguishing characteristic of federalism is the peculiar ambivalence of the ends men seek to make it serve. Quite literally an ambivalence: Federalism is always an arrangement pointed in two contrary directions or aimed at securing two contrary ends. One end is always found in the reason why the member units do not simply consolidate themselves into one large unitary country; the other end is always found in the reason why the member units do not choose to remain simply small wholly autonomous countries. The natural tendency of any political community, whether large or small, is to completeness, to the perfection of its autonomy. Federalism is the effort deliberately to modify that tendency. Hence any given federal structure is always the institutional expression of the contradiction or tension between the particular reasons the member units have for remaining small and autonomous but not wholly, and large and consolidated but not quite. The differences among federal systems result from the differences of these pairs of reasons for wanting federalism.

This view of federalism is fully borne out in the first federalism of which we have any knowledge. Unfortunately, a proper understanding of ancient Greek federalism, and hence of federalism as such, has been hindered by the parochial tendency of contemporary observers who take American federalism as the very model of federalism as such. From this parochial perspective, they regard Greek federalism as so peculiarly the inept and dated product of Greek political incapacity as hardly to be worthy of notice. The classic and profound expression of this condemnatory view is to be found in the first paragraph of Hamilton's *Federalist* 9. The "petty republics" of Greece, glorious as they were in other respects, were politically contemptible. They were wracked by "domestic faction and insurrection" and perpetually vibrated "between the extremes of tyranny and anarchy." The reason for this political imbecility, according to Hamilton, was their failure to achieve "a firm Union," that is, their failure to develop a satisfactory form of federalism.

But this seems unjust to the Greeks and does not see the problem of federalism with sufficient regard for their perspective. The ancient reasoning regarding federalism gave rise to what I have termed *polis-*

federalism.¹ This term conveys of itself everything necessary to explain why the Greeks did not move forward to "a firm Union." Their approach to federalism rested upon the Greek view that the worthwhile life could be lived only in very small political communities. The term for these communities—polis—is usually translated as city-state; but, as Professor Leo Strauss has made clear in other connections, this translation blurs an essential point. These were not cities in our modern sense, that is, subdivisions of some larger whole, and hence readily capable of absorption or partial absorption into that whole. Rather, they were autonomous (literally: self-lawgiving) small countries. The Greeks believed that only in such an autonomous polis—no larger, say, than Athens—could men come to know each other, truly govern themselves, share a vision of a good life, and create the conditions in which the highest human potential could be actualized. This was their deepest political "value." Thus the Greeks had a profoundly important reason to preserve the autonomy of each small country; that preservation was *the* precondition of the good life.

It followed then that any effort truly to enlarge the political community—to create government on a larger scale—necessarily made life less worthwhile. Nonetheless, they recognized the utility of union and invented federalism as a way of achieving some of the advantages of consolidation. But they could not agree with the familiar modern federal idea that the governing power of a people should be divided between a central government and a group of local governments. Because of the profound importance they attached to the polis as the complete political community, the Greeks could not agree that *any* of the governing power of the polis should be shared with a larger federal government. Typically, then, they saw in federalism only a way to have certain minimal common functions performed among a group of otherwise quite autonomous small countries, especially functions related to problems of war and common defense. That is, they saw federalism chiefly as an aspect of the foreign policy of the polis, an exercise of what Locke and Burke two thousand years later could still call the "federative power" or the foreign policy function of government.

¹ The first two parts of this paper draw heavily on some work I have previously published. See "On the Relationship of Federalism and Decentralization," in D. J. Elazar *et al.*, eds., *Cooperation and Conflict* (F. E. Peacock Publishers, 1969); with W. M. Fisk and H. Garfinkel, *The Democratic Republic* (Rand McNally, 1970), pp. 133 ff.; "The Federalist's View of Federalism," in G. C. S. Benson *et al.*, *Essays on Federalism* (Institute for Studies in Federalism, 1961). (In the last named essay Hamilton's contemptuous treatment of Greek federalism, mentioned above, is considered more thoroughly.)

This minimal view of federalism explains why federalism figures so little in Greek political writing (e.g., there is no serious reference to it in all of Aristotle's *Politics*) and, for that matter, in all political writing until quite modern times. Classical or pre-modern federalism was not conceived as an essential aspect of government; it had nothing to do with the nature of the polis or polity, but was only something that polities did to protect themselves or to participate in certain religious observances.

The very word federalism—"Federal . . . from foedus [faith] . . . Relating to a league or contract"²—suggests its essential characteristics as they were understood by perhaps all writers up until the modern era. Instead of the modern federal principle of dividing power over the same population between member states and a national government, the pre-modern theory of federalism developed three operating principles for federal systems:

1. The central federal body does not govern individual citizens; it deals only with the member governments. Indeed, it does not *govern* anyone, citizens or member states, but operates rather by the voluntary consent of the member states to central decision.

2. The central federal body does not deal with the fundamental political problems of the population; these are considered internal matters and remain with the member governments. The central authority (if authority is not indeed too strong a term) is confined narrowly to certain external tasks of mutual interest to the member states.

3. Each member government has an equal vote in the central federal body. This equality of suffrage derives from the equality of sovereignty possessed by the individual governments. With respect to their individual citizenries, each was equally an autonomous polis or, in later times, a sovereign government. Hence, no matter what their differing sizes or strengths, the individual governments are the equal citizens of the federal system, the equal parties to its federal compact.

The voluntary association of equal political communities for minimal central purposes—this is what federalism typically meant for more than two thousand years, from the Greek experience to the framing of the Constitution in 1787.³ Indeed, federalism had this traditional meaning in the framing period as well. As can be seen, this

² Samuel Johnson, *Dictionary of the English Language*.

³ But see Patrick Riley, *Historical Development of the Theory of Federalism, 16th-19th Centuries* (unpublished doctoral dissertation, Harvard University, 1968) for a serious examination of important federal developments in the period preceding the American Founding.

list of three characteristics is precisely what the AntiFederalists contended was required for a system to be federal. Now, interestingly, most of the leading Federalists held the identical view of the characteristics requisite to federalism. But what, then, of the fact that the Constitution manifestly went beyond or violated these operating principles of federalism? The Constitution created a government which governed citizens directly, dealt with important "internal" domestic problems, and which did not rest wholly or even primarily on the equal suffrage of the states. Is this not proof that the meaning of federalism was undergoing a change at the time and that a new, a modern, form of federalism was being created? Not at all. The simple fact is that no one during the framing period seriously held that the Constitution created a purely federal form of government, or that the proposed government would be merely a new variety of federalism. The most accurate, and at the same time most widely held, view was that expressed by James Madison at the end of *Federalist* 39: "The proposed Constitution . . . is, in strictness, neither a national nor a federal Constitution, but a composition of both." This is, of course, also precisely the view of Tocqueville. "Evidently this is no longer a federal government, but an incomplete national government, which is neither exactly national nor exactly federal."⁴

Now this "composition," or compoundly federal and national government, emerged from the compromises of the Convention. But to understand those compromises and the kind of "federalism" that was created, it is necessary to consider briefly an important development in the history of federalism that anteceded the American Constitution. The great formulator of this new stage in federalism was Montesquieu and the federalism he discussed may be termed *small republic-federalism*. This new small republic-federalism is similar in many respects to polis-federalism, but a vital change occurs in the end or purpose of federalism. The smallness of the country is no longer conceived as the precondition to living the good life, but only as the precondition of republicanism and republican liberty; the small and intimate character of a country is no longer the precondition of all the virtues, but now only of republican citizenliness. The reason for preserving the autonomy of the small country is thus somewhat diminished, and hence the argument against enlarging the federal authority or even against complete consolidation with others into a single large country is somewhat less formidable.

To acquiesce to substantial consolidation, the Greeks would have had to revise their thinking on the entire question of politics and human existence. But now to accept such consolidation, the small

⁴ *Democracy in America* (Vintage Books, n.d.), I, 164.

republic-federalist, as taught by Montesquieu, would have to be convinced only that the republican form of government could somehow be made secure in a large country. And that is precisely what came to pass in America in 1787. Madison developed a theory in which republican government was shown to be not only compatible with a large extent of territory and quantity of population but indeed to require them. Persuaded by Madison's argument that his republicanism was safe, the small republic-federalist was now prepared to abandon or at least qualify his federalism. Thus the shift in reasoning regarding the ends of federalism—from an emphasis on the good life to an emphasis on republicanism—was a decisive step in the development of what is called modern or American federalism.

Now Montesquieu's argument reducing the end of federalism to the preservation of republicanism influenced American thinking on federalism; but in the American understanding the argument for federalism was reduced further and made even less stringent. Montesquieu's reason why republics had to be small, and hence could unite only federally and not nationally, had two strands—so to speak, a positive and a negative argument. On the positive side, republics had to be small because only in a small country (which was also egalitarian and frugal) could patriotic virtue, the "spring" or "principle" of republicanism, be engendered in the citizenry. The negative argument was based on the conviction that "a large empire supposes despotic authority in the person who governs," that is, a degree of authority incompatible with the preservation of republican liberty. This latter became the American truncated version of Montesquieu. The concern with citizenly virtue, although it obviously entered American thought and mores, received far less attention than the fear of inevitable "despotic authority" in the central government of a large country. In this truncated or attenuated small republic-federalism argument, then, the reasons for preserving the autonomy of the small member republics became still less profound than those Montesquieu gave, and far less profound than the polis-federalism reasons for preserving the autonomy of the polis. Consequently, the reasons became much less profound for limiting the functions of the central authority or for not forming a consolidated large republic under an authentic government. AntiFederalists and others who maintained this attenuated small republic argument still thought in terms of federalism, but it was now a devitalized federalism, a transformed federalism, no longer fully insistent on the priority of the member republics, but one now capable of treating them merely as parts of a larger political whole.

This transformation in the reason for federalism merely to a defense against despotism in a large republic made possible the compromises from which the Constitution resulted; it explains both the great victory of the nationalists at Philadelphia in 1787 and also their partial defeat. The continued belief in federalism, although thus attenuated, obliged the leading Framers, all nationalists, to consent to the grafting on to the Constitution of some authentically federal features. And their opponents, seeing in federalism, no longer the full-blown traditional reasons for autonomous republics, but only one among many possible means for securing liberty, were contented with the modest degree of federalism they achieved. The compromise over federalism created "an incomplete national government, which is neither exactly national nor exactly federal."

II

To understand Tocqueville's judgment one must carefully distinguish what is "exactly federal." Now this caused very little difficulty in political thought until the invention of American federalism. Federalism was from the beginning understood to be a political arrangement by means of which small countries, with profound reasons for remaining so, could nonetheless voluntarily as equals try to provide for certain minimum common needs. Nor was this a merely historically conditioned federalism, subject to profound alteration as historical circumstances might change. Rather, the very nature of federalism derived from the ends which generated it, namely, the premium placed on preserving autonomy as against the serving of the common needs. Thus, when in America the reasons for preserving autonomy were drastically narrowed, the reasons for founding a federal system were likewise narrowed or eliminated. Hence, the men who framed the Constitution quite naturally went beyond federalism toward a national republic and, moreover, were perfectly aware that they had done so. They carefully defined their system as a "composition" of federal and national elements. Unfortunately, the political observers who have come after them have not been so careful. The federal and national features of the compound have been lumped together under the label of American federalism or "modern federalism." But this lumping together has obscured the most novel and important consequence of the American compound, namely, the remarkable degree of decentralization which characterizes the American political order.

American federalism is not, strictly speaking, a federal system, but is rather a *national system* that is profoundly (and valuably) titled toward decentralization by its unique admixture of elements of

authentic federalism. If then it is to be considered a federal system at all, we may term it decentralist-federalism, a pallid successor to polis-federalism and small republic-federalism. It is a federalism the end, and hence the nature, of which is no longer properly federal, but rather the end of which is to generate new modes of decentralization.

To understand this novel and important feature of the American system, it is obviously necessary to distinguish carefully between federalism and decentralization. Unfortunately, the two terms are all too often confused or used synonymously, although usually with some uneasy indications that the two phenomena differ significantly. Now the very word decentralization implies the existence of a real center from which things are to be *decentralized*, and not only the existence of that center, but also its priority or supremacy. That is, to decentralize implies a government which is the whole, of which some functions are devolved to the parts, but which devolution does not challenge the priority or primacy of the political whole. Strictly understood, federalism does not and cannot acknowledge the larger body as primary; the federating units necessarily regard themselves as the decisive political wholes. As we have seen, the essence of federalism lies in the fact that it rests upon arguments as to why a group of polities ought, despite certain common interests, to remain decisively themselves and ought not to form a nation. Decentralization, on the contrary, presupposes a nation and rests upon arguments merely as to how the nation ought to be organized so as to achieve liberty or other desired qualities.

On this view of the distinction between decentralization and federalism, it is obvious that the aim and rationale of "modern federalism," as manifested in the American system, is the same as that of decentralization. In short, American "federalism" is a species of the genus decentralization. But the American "compound," produced almost accidentally by the play of ideas and forces at the Constitutional Convention, became a most ingenious variation on decentralization. It differs from all other species of decentralization in that it rests upon some authentically federal elements. The American system does not leave something so vital as decentralization to the prudence and volition of government. Like so much else in that system, decentralization is constitutionalized. The authentic federal elements in the Constitution permanently incline American government in the direction of decentralization. The Constitution establishes a government which embodies authentic federal elements in two different ways: first, by the constitutional division of the governing power between the central government and the states; and, second, by certain federal aspects of the organization of the central government itself.

As to the first, the devolution of functions to the states is not prudentially decided upon by the central government, from time to time as circumstances dictate, as would be the case in an ordinary system of decentralization. Rather, in America, the powers of the central government are constitutionally enumerated, while other powers are constitutionally reserved to the states. This is a significant residue of authentic federalism, in which all governing power would remain with the federating members. Second, the organization of the central government, while primarily national, is authentically federal in several respects. The most massive example is, of course, the equality of the states in the Senate. This follows exactly the tradition of authentic federalism in which each state, as an equally autonomous community, enjoys equality or near equality in the central body of the federation. On the other hand, the *per capita* voting procedure of the Senate,⁵ and the fixed and non-revocable six-year term of the Senators, depart from the federal principle, insofar as these lessen the influence of states as states in the Senate. This is not the place for an exhaustive analysis of the federal and national elements in the organization of the American central government.⁶ The important point here is simply to show the indispensability to an analysis of that government of the Madisonian view which sees it as a "composition" of both national and federal elements.

The formal federal elements in the "composition" permanently commit American government to decentralization and generate the informal political processes and behavior which keep the commitment a reality. It is this decentralist-federalism—decentralization constitutionalized by means of vestigial authentic federalism—which in my judgment creates what Morton Grodzins called "decentralization by mild chaos." It is this decentralist-federalism which generates most of the peculiar and exasperating complexities of American decentralization. It generates the complex system of collaboration and conflict between the national government and the states; it makes Congress at once parochial and national in outlook; it helps shape our peculiar brand of political parties and national elections; and it gives the Supreme Court incredible difficulties (and opportunities) in trying to expound as an intelligible whole what is in fact

⁵ Mr. Gerry . . . [favored] providing that the States should vote per capita, which he said would . . . give a national aspect & Spirit to the management of business." "Mr. L. Martin was opposed to voting per Capita, as departing from the idea of the States being represented in the 2d. branch." See the discussions of July 14 and July 23 in *The Records of the Federal Convention of 1787*, ed. Max Farrand (Yale University Press, 1966), II, 5 and 94.

⁶ Cf. *Federalist* 39 for the care and clarity of James Madison's analysis of the Constitution as a composite of federal and national elements.

a compound of contradictory federal and national tendencies. But the American federal and national compound, our decentralist-federalism, with all its inevitable inconsistencies and difficulties, may well be indispensable as the means of constitutionally undergirding decentralization and its advantages in an age when the tendencies to centralization are so powerful.

III

The advantages or ends of decentralization—what precisely are they? The classical source for a discussion of decentralization is, of course, Tocqueville. His idea of *administrative decentralization* is familiar to all political scientists. Yet there is something elusive about this Tocquevillian idea; indeed, I submit that the common understanding of Tocqueville's meaning misses the mark. A careful explication of what Tocqueville means by administrative decentralization, and what he thinks are its advantages, is extremely helpful for an understanding of American decentralist-federalism.

Tocqueville, it should be noted at the outset, speaks chiefly of decentralization and not federalism. He regarded federalism in the traditional way discussed earlier in this paper; accordingly, as we shall see, he regarded federalism as a species of *governmental*, not administrative, decentralization and, hence, as indefensible in itself. What Tocqueville was interested in was decentralization, or, more precisely, administrative decentralization. Now Tocqueville himself warned that it is easy to misunderstand the idea of administrative decentralization.

"Centralization" is now a word constantly repeated but is one that, generally speaking, no one tries to define accurately.

There are, however, two very distinct types of centralization, which need to be well understood.

Certain interests, such as the enactment of general laws and the nation's relations with foreigners, are common to all parts of the nation.

There are other interests of special concern to certain parts of the nation, such, for instance, as local enterprises.

To concentrate all the former in the same place or under the same directing power is to establish what I call governmental centralization.

To concentrate control of the latter in the same way is to establish what I call administrative centralization.⁷

⁷ *Democracy in America* (Harper & Row, 1966), p. 78; cited hereafter as *Mayer-Lerner*.

The most common understanding of Tocqueville's distinction is, I believe, the following. "Governmental centralization" means that policy should be made centrally, the power of *legislation* belongs to the central government. "Administrative decentralization" requires that central policies be locally administered; the power of *execution* belongs to the localities. For example, Professor G. W. Pierson summarizes Tocqueville's recommendation this way: "Let the *laws* continue to be national, but let the *administration of those laws* be decentralized."⁸

We can prepare to free ourselves from this common misconception of Tocqueville's distinction between governmental and administrative decentralization by considering three reasons why the misconception so easily took hold. First, because our language simply equates administration and execution, we find it hard to think that to decentralize administration can mean anything other than to decentralize the execution of the laws. (Despite the habit of our language, entertain for the moment the possibility that he has something quite different in mind. Begin to think of administrative as an adjective indicating a class of *things or objects* rather than as a *process* like execution.) Second, the widely-used Reeves translation is extremely careless with Tocqueville's use of the key words administrative and governmental and thus makes it extremely difficult to see what Tocqueville actually has in mind. For example, Reeves has Tocqueville say, "the state governs but does not *execute* the laws."⁹ Tocqueville in fact wrote, "l'État gouverne et n'*administre* pas."¹⁰ Here, as in many passages, Tocqueville carefully and clearly states the opposition between governing and administering; but the distinction is arbitrarily replaced in the translation by a false emphasis on the local execution of the laws. The third reason for the common confusion is quite a different one, however. The local execution of centrally made policy is indeed a legitimate supplement to the principle of administrative decentralization proper, and one which Tocqueville himself became interested in sometime after writing the *Democracy in America*. Accordingly, the idea of administrative decentralization as local execution did not do such violence to Tocqueville's meaning as to make the error manifestly absurd; and this contributed to the extent and persistence of the misconception.

Whatever the reasons for the common misunderstanding, Tocqueville did not have in mind the central policymaking-local execution distinction. Rather, his two kinds of centralization rest upon a

⁸ *Tocqueville in America* (Doubleday Anchor Book), p. 470. Italics supplied here and throughout unless otherwise indicated.

⁹ Vintage edition, I, 84.

¹⁰ *De La Démocratie en Amérique* (Gallimard, 1961), I, 81.

distinction between the kind of things or subject-matters appropriate to different levels of government, rather than the different kinds of political processes appropriate to those levels. Tocqueville's teaching on administrative decentralization turns on this distinction between kinds of things or subject matters. But it is not easy to understand what he means by things governmental and things administrative. Indeed, Tocqueville himself admits that there "are some points where these two sorts of centralization become confused." But by broadly classifying the matters [objets] that fall more particularly within the province of each, the distinction can easily be made."¹¹ A full clarification of Tocqueville's distinction would require a more lengthy excursion into his works, especially the *Ancien Régime*, than is appropriate here. A few examples will have to suffice.

"England was administered as well as *governed*" by its great landed proprietors;¹² but, while the French lords "watched over and *governed*" their villagers, the villagers themselves "elected their own officials and *administered* themselves on democratic lines."¹³ Similarly Tocqueville carefully distinguished between things administrative and things governmental in rebutting the argument that the failure of feudalism proved the necessity of centralization in general. That failure, he said, had nothing to do with administrative decentralization, but resulted rather from the governmental decentralization of feudalism; "the cause of all the miseries of feudal society was that the power, not just of *administration*, but of *government*, was . . . broken up in a thousand ways."¹⁴

What these examples suggest is confirmed by John Stuart Mill's authoritative understanding of Tocqueville. Mill knew how carefully Tocqueville made the distinction between governmental and administrative decentralization, and he knew perfectly well that administrative decentralization could not be understood merely as the local execution of centrally made policy. Thus, when recapitulating Tocqueville's account of the American township, Mill wrote that the people directly control

the *administrative* part of the local business. . . . While the *deliberative part of the administration* is thus conducted directly by the people, the *executive part* is in the hands of a variety of officers, annually elected by the people.¹⁵

¹¹ Mayer-Lerner, p. 78.

¹² *The Old Regime and the French Revolution* (Doubleday Anchor Book, 1963), p. 27. Hereafter cited as *Old Regime*.

¹³ *Old Regime*, p. 47.

¹⁴ Mayer-Lerner, pp. 79-80.

¹⁵ *Essays on Politics and Culture*, ed. Gertrude Himmelfarb (Doubleday Anchor Books, 1963), p. 185. Hereafter cited as *Essays*.

The people, thus, deliberate on administration (that is, they “vote all local taxes, and decide on all new and important undertakings”) and they also control the executive part of administration. So far is Tocqueville’s sense of administration from being synonymous with execution that there is both a policymaking (deliberative) and executive aspect to “administration.” All of which makes sense only on the understanding advanced here—namely, that the terms governmental and administrative refer to different kinds of things or subject matters, rather than to policy and its execution. And what Tocqueville wants, as Mill well understood, is not just the devolution of execution to the localities, but the devolution of the entire process of forming and carrying out policy regarding administrative things.

One final quotation and we may generalize regarding the nature of the two kinds of centralization. Studying the conflicts between the French Crown and the parliament, Tocqueville says that their conflicts were “almost always in the field of *politics*, not that of administration.”¹⁶ Tocqueville here uses the word political in place of governmental; he does this in many places and it helps clarify what he means by governmental. Those matters are governmental which affect the whole political order. Hence, the power to enact “general laws” regarding interests “common to all parts of the nation” rightly belong to the central government. Now things become governmental in two ways; which is to say that individuals and localities can affect the whole political order in two ways. The first is obvious: Localities must not be allowed to use their “provincial liberties” so as to affect adversely the physical well-being of the rest of the country. But, more subtly, localities must also not be allowed to act so as to affect decisively the nature of the political order; the part must not be allowed to determine the character of the political whole. Hence, for example, responsibility for education may ordinarily be devolved to the localities; according to Tocqueville’s teaching, education is a merely administrative matter, provided it is conducted in a way compatible with the political character of the whole. However, when localities act regarding education in a manner contrary to the general character of the regime, education becomes by force of that contrarieness a governmental matter. Hence the state should have final authority for education and is entitled when necessary to establish a general plan of education for the localities. Although actions by localities in all such matters might leave wholly unaffected the physical well-being of the rest of the country, what the locality does could have

¹⁶ *Old Regime*, p. 59.

profound "social," or "political," or *governmental* effects upon the rest of the country. Regarding these governmental matters, Tocqueville is emphatically a centralist, which is to say no more than that he believes in government. "For my part," he says, "I cannot conceive that a nation can live, much less prosper, without a high degree of centralization of government."¹⁷

Once governmental things are understood as the matters which affect either the physical well-being or the very nature of the political whole, administrative things are then readily understood. They are the daily things, the intra-regime things, that make up the vast bulk of a government's business—the little things, immensely interesting to most men, as we shall see—which may be done safely and salutarily by the locality in whatever way it chooses, because the doing of them affects the whole not at all or only insignificantly. Regarding things administrative, Tocqueville is emphatically a decentralist. "I think that provincial institutions [meaning administrative decentralization] are useful for all peoples, but none have a more real need of them than those whose society is democratic."¹⁸

IV

We cannot fully understand what Tocqueville means by administrative decentralization unless we consider why he values it. That is, following the principle employed in the case of federalism, we must understand decentralization in terms of its purposes. As always, it is the ends to which political things are addressed or which they come to serve that make them intelligible.

Administrative decentralization is one of Tocqueville's chief prescriptions for the new democratic age; its purpose is to guard against or mitigate some of the gravest dangers and defects of the age. Tocqueville's analysis of the ills and dangers peculiar to democracy is familiar to us and can be stated here briefly. According to Tocqueville, the new democratic age must be seen in contrast to the predecessor age of inequality. The millennia of inequality had two outstanding characteristics: while most men lived wretchedly, there were occasional peaks of achievement in art, philosophy, heroism, and manners; and above all, for our purposes here, the age of inequality was a time when despotism was relatively limited in scope and intensity. In contrast, "it is easier to establish an absolute and despotic government among a people whose social conditions are equal than

¹⁷ *Mayer-Lerner*, p. 79.

¹⁸ *Mayer-Lerner*, p. 86.

among any other.”¹⁹ Indeed, democratic despotism will not only be easier to establish but will be more terrible and enduring than any despotism hitherto.

It becomes of the utmost importance, then, to discover why the aristocratic societies of the age of inequality were relatively immune to despotism. The surprising answer is that aristocratic society limited despotism because by its very nature that society tended to achieve the proper division between governing and administering, that is, it tended to insure the widespread practice of administrative decentralization. The excessive centralization which results in despotism could not be fastened upon an aristocratic society because of its patchwork structure of natural associations—municipalities with their immunities, church domains, guilds, nobles with their retainers, dependents, and vassals; above all the last, because in aristocratic communities “every rich and powerful citizen is in practice the head of a permanent and enforced association composed of all those whom he makes help in the execution of his designs.”²⁰ The strength and vigor of the parts of aristocratic society drew power down into themselves and hence naturally prevented the excess power of the whole. By its very nature, then, aristocratic society safely devolved authority over administrative matters to the mosaic of associations and localities which composed that society. If anything, aristocratic society tended dangerously to an excess of decentralization, that is, to both governmental and administrative decentralization.

Democracy in the new age of equality has precisely the opposite tendency. By its very nature, democracy destroys the variety and strength of associations, localities, and individuals. Where authority in aristocratic society flowed naturally into the powerful parts, authority in democracy easily escapes the powerless and isolated equals of whom the society is composed and flows upward to the central government of the whole. Tocqueville therefore concludes that dangerous “centralization will be the natural government” of the democratic age and that a new and more terrible despotism its natural tendency. But this natural democratic propensity can be overcome. Centralized democratic despotism can be averted by means of Tocqueville’s new science of politics for the new democratic age. The new science cannot and will not seek to reinstate the aristocratic mode of administrative decentralization; it is folly to seek to graft aristocratic institutions upon the new democratic

¹⁹ Mayer-Lerner, p. 670.

²⁰ Mayer-Lerner, p. 486.

society. Rather, Tocqueville seeks and devises:

democratic procedures to replace [the aristocratic institutions]. Instead of entrusting all the administrative powers taken away from corporations and from the nobility to the government alone, some of them could be handed over to secondary bodies temporarily composed of private citizens.²¹

In short, the principle of administrative decentralization, adapted to the new age of equality, leaves the power of government unimpaired, the while supplying a "democratic expedient" for solving the problem of democracy, namely, that new and more terrible despotism of which democracy is uniquely capable.

Indeed, the problem of democracy is graver still than the threat of a new despotism. By its deepest tendency, the tendency to "individualism" (in the special pejorative sense in which Tocqueville uses the word), democracy threatens quite literally to dehumanize mankind, utterly to isolate men from one another, to render them "alike and equal, constantly circling around in pursuit of the petty and banal pleasures with which they glut their souls," apathetically sunk below the level of citizenship, indeed, below the level of man, "forever thrown back on himself alone . . . shut up in the solitude of his own heart."²²

No one has understood better than Professor Marvin Zetterbaum how gravely Tocqueville viewed the problem of democracy and, accordingly, how vast was the task he set himself. The purpose of Tocqueville's expedients

is nothing less than the transformation of the atoms of democratic society into citizens, into men whose first thought is not of their private interest, but of the common good. . . .

He begins with the familiar call for administrative decentralization, to foster individual activity on matters important to the local community or township By learning to care about and cooperate on political matters that affect him directly, each citizen is to acquire the rudiments of public responsibility. The township is thus the locus of the transformation of self-interest into a species of patriotism.²³

To transform solipsizing individualism into public-spirited citizenship by means of self-interest, that is the task. And the overarching principle and key instrument is the *association*—the artifi-

²¹ For Tocqueville, "the problem of democracy must be resolved . . . on the level of democracy; that is to say, its resolution must be perfectly consonant with equality, the principle of democracy." Marvin Zetterbaum, *Tocqueville and the Problem of Democracy* (Stanford University Press, 1967), pp. 85-86.

²² *Mayer-Lerner*, p. 478.

²³ Zetterbaum, *Tocqueville*, pp. 89-92.

cially created analogue of the powerful aristocratic personages and institutions that flourished naturally in the age of inequality. And of all associations, the local governments arising from administrative decentralization are the most important. As John Stuart Mill put it,

In this system of municipal self-government . . . our author beholds the principal instrument of that political education, which alone enables a popular government to maintain itself, or renders it desirable that it should.²⁴

Thus, in Tocqueville's new political science, administrative decentralization has immensely important ends to accomplish.

When modern readers give thought to Tocqueville, they tend to conceive his ends narrowly—to reduce them, in a word, to liberty, liberty against government. He is usually thought of as having provided safeguards against tyranny in a negative sense; and administrative decentralization is thus usually conceived as having primarily the end of frustrating positive government by the central authority. That is, modern readers often give Tocqueville the same short shrift they give the framers of the Constitution, who, like Tocqueville, are also too narrowly conceived as merely jealous defenders of a negative liberty. I emphasize here, on the contrary, the larger and more positive results for society that Tocqueville intends from administrative decentralization. He intends nothing less than to make solitaries into social men, subjects into citizens, grubby comfort-seekers into bearers of rights and hence of virtue in the only form amenable to modern politics, and, finally, the unleashing of the natural store of human energy. These grand ends of administrative decentralization may be considered under four headings: combatting the effects of individualism; generating patriotism; imbuing democratic men with the idea of rights; and infusing society with unparalleled human energy.

1. For Tocqueville, the first line of defense against the "effects of individualism" is "free institutions," of which local self-government is the chief. By devolving administrative matters to the local citizenry, or at least that relatively large number who can take an active part in local affairs, administrative decentralization helps draw democratic man out of private, individualist isolation into political life. An ordinary man, absorbed in his private affairs, is not likely to take much interest in grand politics or

in the affairs of the whole. . . . But if it is a question of taking a road past his property, he sees at once that this small public matter has a bearing on his greatest private interests.²⁵

²⁴ *Essays*, p. 185.

²⁵ *Mayer-Lerner*, p. 482.

Notice that mere local execution of central policy regarding such a road will not suffice. What interests the local man is the policy itself—whether there shall be such a road at all, where it will go, what kind of road it will be—and not just the execution of the policy; that is what touches his purse and his passions, and hence generates his interest, which is the decisive point for Tocqueville. Drawn into public life by cupidity, as it were, men become aware of their dependency upon their fellows, and learn that they must share and help in order to receive cooperation in return. And what begins as cupidity and calculation can gradually become elevated.

At first it is of necessity that men attend to the public interest, afterward by choice. What had been calculation becomes instinct. By dint of working for the good of his fellow citizens, he, in the end acquires a habit and taste for serving them.²⁶

But none of this would result if American democracy were manifested only in national elections. It was necessary

to give each part of the land its own political life so that there should be an infinite number of occasions for the citizens to act together and so that every day they should feel that they depended on one another. . . . Far more may be done by entrusting citizens with the *administration* of minor affairs than by handing over to [them] the *government* of great ones.²⁷

Others may lament the confusions and overlappings of American political jurisdictions and the multiplication of offices and elections, because they weary the voter, or befuddle him and obscure the democratic mandates of elections, or complicate the enforcement of policies. But not Tocqueville. He sees the confusion and multiplication as the worthwhile cost of a system of administrative decentralization, a system that devolves decision to localities so as to draw into citizenship millions whom a more “rational” system would leave to their private devices.

2. Thus, free institutions, generated and sustained by administrative decentralization, draw men at first into interested cooperation and then, Tocqueville hopes, by habituation into an authentic sympathy with their fellow men. But Tocqueville hopes for even more than this “combatting the effects of individualism.” He hopes further for a restoration of patriotism which the democratic age will otherwise destroy. “Disinterested” patriotism, “instinctive” patrio-

²⁶ Mayer-Lerner, p. 484.

²⁷ Mayer-Lerner, pp. 482-483.

tism—the natural love of one's own place and past—is disappearing along with the old order that democracy is replacing. However, a new kind of patriotism, a more calculating and less ardent patriotism, is possible; but it must be artfully generated and nurtured. Administrative decentralization is the leading artifice for the creation of that new kind of patriotism. With one omission, Mill excellently summarizes Tocqueville on this point.

As the state of society becomes more democratic it is more and more necessary to nourish patriotism by artificial means; and of these none are so efficacious as free institutions—a large and frequent intervention of the citizens in the management of public business.²⁸

To complete the summary, however, one must add a harsh note that Mill omitted. Tocqueville emphasizes here, as throughout, that men must be taught to see the union of private and public interest so that they will work patriotically “for the good of the state, not only from duty or from pride, but, I dare to say, from greed.”²⁹ In short, the necessary “large and frequent intervention of the citizens in the management of public business” will not occur unless the public business appeals, one must dare to say, to the greed of the citizens. But this is precisely what administrative decentralization does, by bringing down within the reach of ordinary men that portion of the public business that appeals palpably to the immediate interests of the citizenry.

3. The same point—the exploitation of private interest as a new basis of public good—emerges on an even grander scale in Tocqueville's passage on “the idea of rights in the United States.” The idea of rights, Tocqueville says, is nothing less than the idea of “virtue introduced into the political world.”³⁰ Without the idea of rights, only coercion would prevail, men could not even define anarchy and tyranny, and they would not know “how to be independent without arrogance and to obey without servility.” But this indispensable “idea of rights” is withering away in the modern world. Like patriotism of the instinctive kind, and all the old things that belonged to the age of inequality, the old idea of rights is no longer viable. Its two indispensable supports, religion and morality, are disintegrating.

If, in the midst of this general disruption, you do not succeed in connecting the notion of rights with that of private interest, which is the only immutable

²⁸ *Essays*, pp. 245-246.

²⁹ *Mayer-Lerner*, p. 218.

³⁰ All quotations in this section on rights are from the Vintage edition, I, 254-256. Cf. *Mayer-Lerner*, pp. 219-221. Slight emendations of the translation have been made.

point in the human heart, what means will you have of governing the world except by fear?

Tocqueville was persuaded

that the only means which we possess at the present time of inculcating the idea of rights and of rendering it, as it were, palpable to the sense is to endow all with the peaceful exercise of certain rights.

Palpable to the sense—that is, connected with private passion and interest, but turned, via administrative decentralization and the other devices of Tocqueville's new science of politics, toward public-spiritedness and the public good. And thus the idea of virtue, on a lower but surer foundation, is to be re-established in the political world.

4. Finally, Tocqueville repeatedly comments on the fact that in a free country "all is activity and bustle,"³¹ especially political activity and bustle. This is true of free monarchies and aristocracies, but it is especially and wholly true of democratic republics, and it was staggeringly true of the American republic. He warns his French readers that, while they might be able to imagine America's freedoms and even its extreme equality, "the political activity prevailing in the United States is something one could never understand unless one had seen it."³²

Moreover, the immense political activity spilled over into civil life, energized it, and drew forth an immense outpouring of energy from the American people. "Perhaps," Tocqueville concludes, "taking everything into consideration, that is the greatest advantage of democratic government."³³

The political life that achieves this extraordinary result is above all the local political life made possible by administrative decentralization. Tocqueville gives six examples of the "sort of tumult" one finds in America. The list is instructive. Two examples are non-political associations, a church group and a temperance society; one is of groups dealing with national policy; one is of citizens electing a representative (whether local or national is not specified); and the two central examples are of local government at work on things administrative, consulting "about some local improvements," and

³¹ *Mayer-Lerner*, p. 223.

³² *Mayer-Lerner*, p. 223.

³³ *Mayer-Lerner*, p. 225.

planning "a road or a school." Administrative decentralization is thus a vital part of that political activity which infuses the entire society with energy.

Now within the political sphere alone, administrative decentralization works wonders. "A central power, however enlightened and wise . . . can never alone see to all the details of the life of a great nation."³⁴ Only thousands of local governments, drawing upon the interests and skills, if not of the bulk of the people, still of millions of citizens, can do that. True, when administration is decentralized,

the force of the state is much less well regulated, less enlightened, and less wise, but it is a hundred times more powerful than in Europe. . . . [One finds] a picture of power, somewhat wild perhaps, but robust, and a life liable to mishaps but full of striving and animation.³⁵

Moreover, to this abundance of public energy, one must add the vast private efforts which are the fruit of "free political institutions." The political is architectonic with respect to the private realm; administrative decentralization generates a vast amount of private enterprises useful to the society. Indeed, "in the long run the sum of all private undertakings far surpasses anything the government might have done."³⁶

Democracy does not provide a people with the most skillful of governments, but it does that which the most skillful government often cannot do; it spreads throughout the body social a restless activity, superabundant force, and energy never found elsewhere Those are its true advantages.³⁷

The closing words of Mill's *On Liberty* echo Tocqueville's thoughts and, incidentally, make intelligible the friendship and mutual admiration of these two men.

The worth of a State, in the long run, is the worth of individuals composing it . . . a State which dwarfs its men in order that they may be more docile instruments in its hands even for beneficial purposes, will find that with small men no great thing can be accomplished.³⁸

³⁴ Mayer-Lerner, p. 82.

³⁵ Mayer-Lerner, p. 83.

³⁶ Mayer-Lerner, p. 86.

³⁷ Mayer-Lerner, p. 225.

³⁸ *Essays*, p. 360. I am indebted to my wife, Ann Stuart Diamond, for emphasizing to me the significance of the relationship of Mill and Tocqueville, and for pointing out the appositeness of this passage.

Small men. That was the danger of the new democratic age. Tocqueville's remedy was to seize hold of the private interests of such men and turn them outward into the political community, and thereby enlarge them as men and citizens.

We can deepen our appreciation of these four ends Tocqueville intended administrative decentralization to serve, and at the same time get the feeling in our bones as to how to work within such a system, by recurring to an argument made earlier in this paper. By administrative decentralization, I argued against what I think is the prevailing conception, Tocqueville did not and could not have meant merely local execution of central policy. For three reasons mere local execution could not possibly achieve what Tocqueville had in mind. In the first place, men will not be drawn out of "apathetic individualism" into citizenly activity unless their efforts can sufficiently influence outcomes sufficiently important to them to make their efforts worthwhile. Tocqueville mocks, in effect, the notion that men will respond to the opportunity merely to execute central policies. He has the state, in an imaginary address, ask its citizens to do just that. "'You must do what I want, as much as I want, and in precisely the way I require. You must look after the details without aspiring to direct the whole.'" Tocqueville concludes that "it is not on such terms that one wins the concurrence of human wills."³⁹ Second, even if the opportunity to execute could beguile citizens into participation, those who merely carry out policy cannot greatly be enlarged by that experience; and that enlargement is the deepest reason for administrative decentralization. Executing is a relatively solitary experience of commanding and obeying, whereas it is deliberating together that makes men thoughtful. Choosing and deciding together is the sobering and instructive citizenly experience. Like the jury system and political associations, municipal institutions are to be a "school for citizenship." What is wanted is not a handful of mere local executive agents but, rather, in innumerable communities, hundreds of thousands who "quit their plows to deliberate upon the project of a road or a public school."⁴⁰

Finally, Tocqueville wants not only the training of citizens, but of politicians and statesmen. What has been said about the inadequacy of local execution as political education for citizens applies all the more strongly to the education of politicians and statesmen. Only full responsibility for policy, for deliberation, for winning consent, as well as for execution, produces that education. Moreover, Tocque-

³⁹ *Mayer-Lerner*, p. 82.

⁴⁰ *Vintage edition*, I 259.

ville adds in a characteristically wry manner, the active political life generated by administrative decentralization is therapeutic and precautionary for the national body politic.

It is in the township, the center of the ordinary business of life, that the desire for esteem, the pursuit of substantial interests, and the taste for power and self-advertisement are concentrated; these passions, so often troublesome elements in society, take on a different character when exercised so close to home and, in a sense, within the family circle.⁴¹

But all this requires that the localities have the right to make policy and are thus genuinely independent and powerful, albeit only in those limited matters of an administrative nature. Tocqueville states it eloquently.

The township combines two advantages which . . . keenly excite men's interest; they are independence and power. It acts, it is true, within a sphere beyond which it cannot pass, but within that domain its movements are free. . . . The New Englander is attached to his township not so much because he was born there as because he sees the township as a free, strong corporation of which he is a part and which is worth the trouble of trying to direct.⁴²

V

Clarity regarding the ends of federalism and decentralization is indispensable to answering the questions raised for this conference. Whether federalism can survive, how it can be adapted and modified so as to deal with contemporary problems, etc., all require knowing what it is we want from federalism and what federalism, by its nature, can supply. An inquiry into the ends and nature of classic federalism discloses that American federalism is better understood as its Founders strictly understood it—namely, as a “composition” of both federal and national elements. Further reflection leads us to understand that American “federalism” became an extraordinary species of decentralization, what we may call decentralist-federalism. The genius of this system is that, by its retention of elements of classic federalism, our governments are constitutionally inclined in the direction of decentralization. What we have come to want, and what we can get, from American federalism, are the advantages of decentralization.

⁴¹ *Mayer-Lerner*, p. 61.

⁴² *Mayer-Lerner*, p. 61.

The source of profound instruction on the decentralization is Tocqueville, whose idea of administrative decentralization has been narrowly and incorrectly conceived. When we are properly instructed by Tocqueville regarding the rich and varied advantages of administrative decentralization, we conceive a new appreciation of the American federal system which nurtures that decentralization. And when we understand the peculiar genius of American decentralist-federalism, we can begin to achieve wisdom as to its preservation and use. We can also begin to understand better why and how it is so deeply rooted in the opinions, mores, passion, and interests of the American people. Millions of state and local employees and legislators and officials, and hundreds of thousands of lawyers, contractors, consultants, and other private suppliers of services to localities, are veritable engines of interest devoted to the preservation of the decentralist-federal system. And millions more of private citizens are energized and trained in political capacity by their involvement with the work of the states and localities, by their pressuring them and serving them.

Finally, the American people as a whole understand in their bones that decentralist-federalism is the constitutional matrix of the American political way of life—the school of their citizenship, a preserver of their liberties, a vehicle for flexible response to their problems—petty to others, perhaps, but profound to them—and the source of the distinctive energies of American life. They will not lightly abandon so protean an institution. Nor should they. What they want is a political science, sympathetic to that political way of life, that can improve it and make it its best self.