

THE VALUE OF FEDERALISM

When the Federal Convention of the United States, charged "to render the constitution of the federal government more adequate to the exigencies of the Union," met at Philadelphia in May, 1787, the leaders of the federalist movement found themselves confronted by two problems. While everybody agreed that the powers of the [former] Confederation were insufficient and must be strengthened, the main concern was still to limit the powers of government as such, and not the least motive in seeking reform was to curb the arrogation of powers by the state legislatures. The experience of the first decade of independence had merely somewhat shifted the emphasis from protection against arbitrary government to the creation of one effective common government. But it had also provided new grounds for suspecting the use of power by the state legislatures.

It was scarcely foreseen that the solution of the first problem would also provide the answer to the second and that the transference of some essential powers to a central government, while leaving the rest to the separate states, would also set an effective limit on all government. Apparently it was from Madison that "came the idea that the problem of producing adequate safeguards for private rights and adequate powers for national government was in the end the same problem, inasmuch as a strengthened national government could be a make-weight against the swollen prerogatives of state legislatures." Thus the great discovery was made of which Lord Acton later said: "Of all checks on democracy, federalism has been the most efficacious and the most congenial . . . The Federal system limits and restrains sovereign power by dividing it, and by assigning to Govern-

ment only certain defined rights. It is the only method of curbing not only the majority but the power of the whole people, and it affords the strongest basis for a second chamber, which has been found essential security for freedom in every genuine democracy."

The reason why a division of powers between different authorities always reduces the power that anybody can exercise is not always understood. It is not merely that the separate authorities will, through mutual jealousy, prevent one another from exceeding their authority. More important is the fact that certain kinds of coercion require the joint and coordinated use of different powers or the employment of several means, and, if these means are in separate hands, nobody can exercise those kinds of coercion. The most

familiar illustration is provided by many kinds of economic control which can be effective only if the authority exercising them can also control the movement of men and goods across the frontiers of its territory. If it lacks that power, though it has the power to control internal events, it cannot pursue policies which require the joint use of both. Federal government is thus in a very definite sense limited government.

The other chief feature of the Constitution relevant here is its provision guaranteeing individual rights. The reasons why it was at first decided not to include a Bill of Rights in the Constitution and the considerations which later persuaded even those who had at first opposed the decision are equally significant. — *F. A. Hayek in The Constitution of Liberty.*