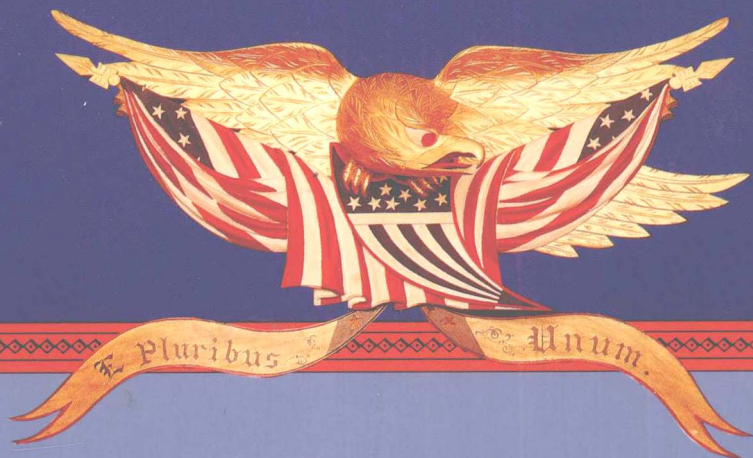


SAMUEL H. BEER

TO MAKE
A NATION

THE REDISCOVERY OF
AMERICAN
FEDERALISM



TO MAKE A NATION
The Rediscovery of
American Federalism

SAMUEL H. BEER



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Preface

I HAVE NEVER ENJOYED writing as much as while working on this book. Working is not the right word. It was more like carrying on a series of conversations with a number of brilliant colleagues. To call these eminent thinkers colleagues may seem impertinent. I use that term because I found myself questioning and cross-questioning each of them much as I would another student of politics today, seeking not simply to reconstruct his thought, but rather to see how he would react to an idea of mine. I framed the initial questions and they spoke to me through what they had written at various times in the past. I was not content with mere summaries. I pressed each reply for explanation when it was vague or ambiguous or suggestive of further meaning related to my inquiry. If, for instance, my respondent said that the people were sovereign, I wanted to know how he dealt with the implication that such a power must in some manner speak with one voice.

My inquiry started from a certain view of federalism, a rough approximation of what I have called the national theory, and it turned to the history of ideas in order to test, to clarify, to amplify, and to put into a larger theoretical context this rudimentary conception. I could not resist the true historian's temptation to become interested in the past for its own sake. The beauty of the Thomistic universe, for instance, must excite the admiration, indeed the envy, of the modern mind. Nor was I indifferent to the historian's concern with the influence of one thinker upon another. In my account the ideas which inspired the American Revolution and which informed the Constitution descend largely from the failed democratic revolu-

tion of the English seventeenth century, the Commonwealth. As with most political scientists, however, my primary interests have been contemporary and theoretical. I have used the history of ideas to state as fully and accurately as possible that element of American political culture which I have called the national theory of federalism. Hence, the book begins with the confrontation of the “new federalism” of Ronald Reagan with the “new federalism” of Lyndon Johnson.

In the quest for a usable past, I believe I have been faithful to that past as it actually was. No one, however, will mistake this book for “value-free political science.” My commitment to the national idea is passionate and personal and goes back to my earliest years. I can still hear my parents tell the story of how, as we crossed the state border on our return from a trip to New England by motor car in 1915, I proclaimed loudly from the back seat, “Thank God for Ohio!” In those years my pride in my home state was focused on the belief, fostered by family and friends, that Ohio had mustered more troops in defense of the Union than any other state. I am not surprised to find that my conception of the role of the states in the nation as set forth in this book is congruent with those sentiments.

In short, I did not escape the immense formative influence of the Civil War upon the American political mind. That influence took a very specific shape in the persons of my grandfathers. Since my paternal grandmother, having been widowed, married again, there were three, all of whom had served in the Northern armies. In my memory a certain military aura surrounded her second husband, who continued to be addressed as “Colonel” long after his service. The connection had operational effects: my maternal grandfather, for instance, would not permit my father to court his daughter until he had been assured that my father’s father had done his military service, and on the right side. In my Ohio hometown what that generation had done to preserve the Union was richly commemorated on Memorial Day and the Fourth of July. The authority of their achievement was greater still because it was not explained, let alone denied or disputed. The reader will, therefore, understand my amazement when I learned, while finishing high school in Virginia at Staunton Military Academy, that, in the opinion of teachers whom I greatly respected as men and citizens, there was another view of the War

between the States. My confusion was given an opportunity for expression by an essay contest on "Patriotism" sponsored by the Colonial Dames of Virginia. In response I attempted what I took to be a comparative study of the internecine wars of the ancient Greek republics with the unification of England under its medieval parliament. I had been reading John Richard Green's *History of the English People* and was sufficiently taken in by its Radical slant to suppose that I was examining the fate of popular government under two different constitutions. The essay, while not explicitly about federalism, was emphatic in its evaluation of Union and the sentiments necessary for its survival.

In themselves these events cannot be of much interest to anyone but myself. Their recall reveals for me the ultimate source of the pleasure I have taken in writing this book and the seriousness with which I have applied myself to it. The reader also deserves a glimpse of this motivation. In that perspective, the book is an act of piety. I want to state as honestly, clearly, and amply as I can the case for what my grandfathers did in the War. And by so stating it to honor them.

So much for the influence of that highly personalized past on this book. When many years later I took up political science as a professional study, my interests were in political theory and comparative government, especially the government and politics of Great Britain. Any interest in federalism was slight, only to be aroused unexpectedly in the early 1960s. Two events combined to bring this about. One was an encounter with a student in a course on American government that I was teaching in a summer school program at Harvard. This program brought together from other countries a number of young men of post-college age who were already making careers in politics, journalism, and other professions. As a survey, my course was obliged to give some attention to federalism, which, frankly, I treated as a boring and unimportant topic. A vigorous and intelligent member of the class from Yugoslavia took quite the opposite view. He was dismayed by what Americans made of federalism in contrast with its role in his own country. Summarizing his objections, he said in effect, "In federal America you try to make everyone alike. By contrast in Yugoslavia our federal scheme height-

ens the diversity of its separate peoples, encouraging the cultivation of their different languages, religions, and cultures.”

At about the same time, the Republican candidate for President, Barry Goldwater, was attacking the centralization of government under the Great Society, one of his main arguments being the old Southern heresy that the Union was nothing more than a compact among the separate states. Goldwater, who incidentally had been a classmate of mine at Staunton, was the first Republican candidate for President to call himself explicitly a “conservative.” While I had admired and liked him as a fellow cadet, his ideological position fired up the liberalism I had acquired when working in Washington in the early days of the New Deal.

This double stimulus, scholarly and partisan, caused me to take federalism seriously, asking what was the American doctrine and whether it had any relevance to contemporary problems. For some time I wrote mainly about present-day intergovernmental relations, but the historical questions that kept coming up finally led to this book. To prompt my thinking I had turned to Herbert Croly’s *Promise of American Life*, first published in 1909, which in my opinion is the best single work on American political thought and which, moreover, is the one book with the greatest influence on this present volume. For Croly, the two governing ideas of American politics have been “the principle of nationality” and “the principle of democracy,” given expression at the time of the founding by Alexander Hamilton and Thomas Jefferson, respectively. From that time, according to Croly, the two wings of the American party system have usually been distinguished by their emphasis on one or the other of these principles. At our best, the two were combined, supremely by Abraham Lincoln, as Croly hoped they would again be by Theodore Roosevelt. This did not mean merely, as some have thought, that the Hamiltonian means of a strong federal government would be used to promote the Jeffersonian ends of self-government and equal rights. Croly’s emphasis was on the Hamiltonian purpose of nation-building as a goal different from, but complementary to, Jeffersonian democracy. Following this line of thought, he conceived the Constitution as made not only by but also for the democratic nation. Its authority came not from a compact among the states but from being ordained

by the sovereign people. Its purpose accordingly was to promote their excellence both as individuals and as a nation.

I recall the difficulty I had convincing a colleague who, although agreeing with my general line of argument, doubted that one can identify a distinct Hamiltonian end. Yet surely our experience in recent years shows that simply to protect and to extend “rights” is not enough. For one thing, the political consequence is to fragment and divide the electorate among the various claimant groups. The public interest also requires that these guarantees be directed toward bringing their beneficiaries into the common life of the nation. A policy of integration aims not only at the equalization of rights but also at the civic inclusion of persons.

Croly’s insights have been pretty well confirmed by my reading of how the leading minds among the framers conceived the Constitution in general and its federal arrangements in particular. I do not anticipate universal agreement with what I say. Some students of these subjects will surely take issue with my conclusion that you can find a single coherent viewpoint which makes sense of the federal arrangements of the Constitution. The best comparable work on this question is a series of brilliant essays by the late Martin Diamond. He and I agree on much, but are seriously divided by his conclusion that the federalism of the framers, far from having a coherent rationale, combined two incompatible forms, one state-centered, the other nation-centered. In his opinion, this was not just a compromise but rather the choice of a people who could not decide whether they were one community or many. *A fortiori*, I differ not only with Diamond on federalism but also with the common opinion that the Constitution as a whole was the outcome of compromises so great as to prevent it from having any overall rationale.

Those are not unreasonable views. For a time, while trying to square my Crolyesque presumptions with the record, I shared them. But as I dug into the background of the thinking of the advocates of the Constitution during its framing and ratification, I was more and more struck by the powerful logic of their federal design and the extent to which, despite much compromise, they were able to embody it in our fundamental law. The state-centered view expressed in the compact theory put forward by the opponents of the Consti-

tution survived their defeat. The national theory, however, went on to exercise the dominating influence on intergovernmental relations. We can therefore recapture its meaning for today from its formulation in that distant yesterday.

Scholarly specialists will be interested in the question of the coherence or incoherence of the original principles of the Constitution and its federal system. But this book should attract a wider audience because of its participation in that old and serious controversy in American politics and American scholarship between the national and the compact approaches. In the Introduction I have sketched the history of that controversy, which has divided public opinion from the anti-Federalist attack on the Constitution to the Reaganite championship of states' rights and which today threatens to resurface in the acrimonious debate over multiculturalism. On the scholarly plane, federalism, which as a matter of law centers on the division of authority between the federal and the state governments, may seem to be a humdrum question of public administration. The conflicting premises from which the different views are derived and their implications for institutions and policies, however, embody sharply different views of liberty, democracy, community, the economy, and political development.

This connection with the great issues of politics is illustrated by the big switch in the attitudes of the political parties toward federalism, marked especially by the opposing positions they adopted during the New Deal. The conservatives, who under the names of Federalist, Whig, and Republican, had been partisans of the national position, took up the cause of the old Democrats, who from the days of Jefferson had espoused states' rights. Similarly, the opposition to the national view today will be found among the neoconservatives. I trust I am not merely displaying my political bias if I express my irritation at these Republican partisans when I see them not only exhibiting their usual elitism but also deserting the most admirable of their traditions. It is too much to burden the Democrats with the task of standing for both the democratic and the national ideals, although to be sure Franklin Roosevelt did it.

In their antinational stance, the neoconservatives have much in common with the militant multiculturalists, from whom in most other respects they greatly differ. The former are strongly against, the

latter strongly for, action by the federal government. And needless to say, on questions of redistribution of wealth and power the two sides are sharply opposed. Yet neither has much sympathy for, or grasp of, that prime object of the republic which George Washington termed "the consolidation of the union." For the nationalists that meant that government generally, and the federal government especially, had the obligation to use their best powers to make the nation freer, wealthier, more powerful, and more virtuous; in short, to make it more of a nation.

For neoconservatives like Ronald Reagan, on the other hand, whether or not there is a national community, the responsibility for perfecting any such union does not reside with government. In his memorable phrase, "Government is not the solution to our problem; government is the problem," he therefore sought to shed the responsibilities of the federal government, not because he thought that the states would assume them but because he felt sure the states would not. The premise of this antigovernmental imperative is individualism. It is, however, a brand of individualism which, as F. H. Bradley said of certain nineteenth-century philosophers, conceived each member of society as being as morally self-contained and self-sufficient as if he were enclosed in "an impervious globe."

For the nationalists, diversity among the people is to be welcomed and promoted. In the most obvious example, the diversity consisting in the division of labor increases the productivity of the economy as a whole. Similarly, in the political process the mutual enlightenment resulting from the confrontation of different ideas and interests fosters decisions closer to the needs of the people and to the circumstances in which they live. The same holds for moral and social relations. A diversity of ethnic identities, for instance, can be a source of cultural enrichment. All such happy instances of *e pluribus unum*, however, depend in no small measure upon the context of law and policy maintained by government. Multiculturalism, therefore, as the recognition of this potential of ethnic diversity is basic to the national outlook.

The advocacy of cultural diversity, however, can take a contrary turn. The ethnic group may be so committed to its identity that it rejects anything more than a narrow and external relation to the rest of society. Economic relations instrumental to the material well-being

of the group will be accepted, as well as provisions for the physical security afforded by a legal system and a force for external defense. But social relationships that affect the moral and cultural outlook of members of the group are excluded. The ideal is not the melting pot in which group identities are complementary to one another in a larger national identity but the mosaic society in which the rationale is not integration but self-imposed segregation. As vigorously as the neoconservative, the militant multiculturalist rejects government that is national in scope or purpose. Although armed with radically opposed political values, the two camps assail national federalism from left and right.

The controversy, scholarly and partisan, which this book joins goes back to the founding of the republic. My historical treatment has a much further reach. The start from Aquinas may seem odd. But I found myself driven to go back that far if I was going to get a firm grasp on the premises and implications of national federalism. Federalism in this form was shaped by the Western world's rejection of and escape from the Middle Ages. The conclusion of Chapter 1 develops the connection. It is indirect but important. Considering the ideal and material strength of the ancient hierarchic and corporatist philosophy, it is something of a miracle that we ever escaped. At any rate, to put the matter briefly, this prolonged and hard-fought revolution, springing from a new and radical individualism, was directed by the republican thrust for government by the many against government by the few and, inseparably, by the assertion of the nation as the unit of authority and the focus of purpose.* Government by the few can do with few rules. Government by the many requires a

*A word on the use of certain terms. Usually I have referred to the doctrine of government by the many as "republican" rather than "democratic." In the 1780s the two terms were often treated as synonymous, although there was some preference, as in Madison's usage, for "republican," in order to distinguish representative from direct democracy. Today the term democracy has come to be associated with standards of participation and rights so much wider than those prevailing then that it makes for clarity to use the less demanding term republican. Nor do I mean to give that term the special meaning which identifies the republican cause of those days with the idea of "civic humanism." In recent years this concept has been used to distinguish "republicanism" from "liberalism," the latter term being taken to mean conduct governed by self-interest, while the former, presumably echoing classical thought, refers to a higher standard which leads the citizenry to reject self-interest in favor of the common interest. The framers of the Constitution did value altruism, but they took a more relaxed and realistic view of the motivation necessary for the success of popular government.

system of institutions, preferably made explicit in a written constitution, which will protect it against self-destructive chaos and which will elicit its intrinsic excellence. Along with such institutions as representation, separation of powers, and bicameralism, national federalism took its place in the advance toward orderly and effective self-government.

When it comes to identifying the source of this break from the Western tradition of many centuries, I find it not in the Renaissance but in the Reformation. That was the Americans' view of the origin of their political ideas and attitudes from John Adams's *Dissertation on the Canon and Feudal Law* (1765) to George Bancroft's *History of the United States* (1882-1886). I make Milton the foremost spokesman of the central process of popular government, "rational deliberation" as philosophers call it today, or "government by discussion" to use Walter Bagehot's term. If I were to claim any originality in matters of historical scholarship, I would cite my depiction of James Harrington as the advocate of not only the constitutional republic but also national federalism. Many historians of the idea of federalism see it as emerging only in the compact model. From that historical perspective national federalism must appear as an invention of the Americans. Recognizing its earlier formulation by Harrington does not detract from the ingenuity and vision of our founders. It does, however, strengthen our perception of the relation of federalism and democracy. Along with other elements of constitutionalism, federal arrangements are often regarded as essentially a means of checking the democratic process and setting limits on the sphere of government action. In Harrington's writing we see national federalism in its earliest incarnation as part of a scheme of "rational deliberation" designed not to restrain popular government but to elicit its superior capacities. In the later American view, on which Harrington had a good deal of influence, constitutionalism also appears not as a barrier to but an instrument of self-government.

I cannot put my account of this earlier history and theory in context without paying tribute to another influence, hardly less in the long run than that of Croly. I am thinking of Alexander Dunlop Lindsay, my tutor in political theory at Balliol College, at that time also the master of the college. Lindsay was the last of the Oxford idealists, more a Kantian than a Hegelian and more a Calvinist than

a Kantian. What I learned from him came from what he said rather than from what he wrote, although his little gem of a book, *The Modern Democratic State*, has served to prompt my recollections in later years. It was from him that I first learned to think seriously about "government by discussion" as a method of democratic decision making. I had some notion of other models, such as majority rule in class politics and the brokering of interests in distributive politics. Lindsay sought to show how the mutual enlightenment of different points of view could lead toward conclusions worthy of general assent. In the American manner, he traced this model of the democratic process back to the liberal wing of the Reformation, specifically in England the congregational practice of the Puritan sects.

A second contribution was his notion of the purpose of the state as being "to make the community more of a community." In this conception, which he owed more to his idealism than to his Calvinism, he was arguing in the idealist manner that the relations of individuals can be not only, as in economic exchange, instrumental but also, as in an integrated society, constitutive of the minds and characters of its members. What Lindsay's teaching led me to read in idealist sociology and philosophy gave me a larger framework into which I could fit the institutional and historical analysis to which Croly had directed me. I have adapted one of Lindsay's more important terms when I refer to the Hamiltonian purpose as being "to make the nation more of a nation." By that I do not intend to attribute the idealist meaning to the American founder. Later on American thought did move in this direction in the writing of our great Romantics, Emerson, Thoreau, and Whitman. Without diminishing his radical individualism, Thoreau succinctly expressed the idea of social communion when, referring to a conversation with his neighbor, Hosmer, he concluded: "And then we parted, each of us taking something of the other with him." To elaborate that topic would take me well beyond the limits of this book. Such a mode of thought, however, is strongly suggested by James Wilson's discussion of "social union," with which I conclude the third and last part.

Samuel H. Beer
Greensboro, Vermont
July 28, 1992

Acknowledgments

IN THE WRITING of this book I have had a good deal of help from others. Not the least has come from the clash of opinion with positions radically different from my own. For the most part, I have found these helpful contrasts in the published work of other scholars, living and dead. Where the elaboration of such disagreements entails reference to specific works, I have tried to confine my discussion to the Notes. All such antagonists, whether or not specifically mentioned, I hereby thank.

The Notes and References also include contributions from sources in general agreement with my argument. The References are not a bibliography of all works I have consulted but only a list of the citations which have been given in shorter and less cumbersome form in the Notes. Indeed, I have been so parsimonious as to omit most of my own previous writings on federalism.

In a more personal way I am indebted to a number of scholars and friends who have put their learning and good sense at my service by criticizing what I have said in many earnest conversations and what I have written in hardly fewer letters and drafts. For such help I wish to thank Timothy Conlan, Stephen Conrad, Martha Derthick, Ernest Fortin, Robert Faulkner, Peter Hall, Hugh Heclo, Harvey Mansfield, Jr., Richard Nathan, Melvin Richter, and Michael Walzer. I owe a special debt of gratitude to Shannon Stimson and Stephen Holmes, who helped bring this book to completion, thanks to their superb professional criticism and their unfailing friendship and encouragement.

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Contents

Introduction: The National Idea in American Politics	I
<i>The Promise of Nationhood</i>	4
<i>The Trial of Sectionalism</i>	8
<i>The Impact of Industrialism</i>	15
<i>The Challenge of Racism</i>	18
<i>Federalism and Political Theory</i>	20

PART ONE

From Hierarchy to Republicanism	27
1. The Rule of the Wise and the Holy: Thomas Aquinas	31
<i>The Ontology of Inequality</i>	32
<i>Value, Utility, and Authority</i>	35
<i>Hierarchies of Virtue and Grace</i>	39
<i>Federalism from the Top Down</i>	45
<i>The Enchanted World</i>	50
<i>Deference to the Divine Likeness</i>	53
<i>Old Tory Politics</i>	56
2. The Idea of the National Republic: John Milton	66
<i>The Masterless Man</i>	68
<i>Government by Discussion</i>	74
<i>Elite and People</i>	77
<i>Nation and Purpose</i>	81

3. A Constitution for the National Republic: James Harrington 84
 - The Dilemma of Scale: Machiavelli* 86
 - Constitutionalism and the Public Interest* 92
 - Representation from the Bottom Up* 101
 - The Machinery of Rational Deliberation* 108
 - Federalism for Utility or for Liberty?* 119
 - A Commonwealth for Increase* 128

PART TWO

- The National and Republican Revolution 133
4. The Conflict of Ideas 139
 - Edmund Burke and the Old Whig Constitution* 140
 - Blackstone and Sovereignty* 146
 - Benjamin Franklin and National Purpose* 153
5. The Decade of Agitation 163
 - Actual vs. Virtual Representation* 164
 - The Parliamentary Option* 168
 - The Federal Option* 177
 - Imperial Federalism* 185
 - Liberty vs. Union* 190
6. The Discovery of the Nation 195
 - How the Congress Was Chosen* 196
 - How the Congress Governed* 199
 - How the States Were Created* 200
 - Tom Paine's National and Federal Republic* 206

PART THREE

- The National and Republican Constitution 215
7. Montesquieu's Confederate Republic 219
 - The Structure* 220
 - The Mechanics* 224
 - The Confederate Republic in America* 231
 - The Anti-Federalist Case* 237