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RANDOM THOUGHTS ON GOVERNMENT*

COLGATE W. DARDEN, JR.†

I. STATES AND THE NATIONAL GOVERNMENT

This is a rash venture upon which I am embarking. It has been many years since I have engaged in the practice of law, and I do not have that comprehensive knowledge of the subject which, by right and custom, is expected of one selected to appear under the auspices of the Foundation which bears so distinguished a name. I doubt Mr. Tucker would approve. But then constitutional law now is far removed from what it was in his day. For one thing it has a chaotic quality he would find, as do many of us, disturbing and baffling. I was encouraged to accept Dean Light's generous invitation in the belief I could not add measurably to the confusion that presently exists.

I remember and took heart from the fact that The Right Hon. L. S. Amery, Fellow of All Souls, Oxford, when asked shortly after the Second World War to deliver a series of lectures at All Souls on the English Constitution, had hesitated, saying he felt inadequately equipped because it had been fifty years since he had scraped through the constitutional law part of his bar examination "on two days reading of Dicey," and "had not looked at the subject since." All of which is as much commentary on the part played by constitutional law in the English bar examination of that period as it is on Mr. Amery's memory. He was persuaded to give the talks by being reminded that the English Constitution was in a continuous state of evolution, and therefore could be dealt with in an interesting fashion by one whose

*These are the John Randolph Tucker Lectures, delivered at the School of Law, Washington and Lee University, on May 3-4, 1963. A few minor editorial changes have been made in adapting the lectures for publication.

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entire adult life had been bound up with English politics. It is our good fortune that he agreed to do so. The Chichele Lectures which he gave were published later in a small volume entitled "Thoughts on the Constitution." They are as interesting to the layman and the scholar as to the lawyer.

I must confess, too, I was buoyed up and sustained by the knowledge that my audience was to be drawn, in the main, from the student body and faculty of this old and respected university. Having not long ago ended some twelve years in administrative work at Mr. Jefferson's institution across the mountains, I am not unacquainted with the rather modest estimate of administrative people held, as a rule, by students and faculty. Knowing this, and realizing not too much would be expected, I was persuaded, or rather I persuaded myself, and I might say I did it quite easily, to fall in with the Dean's suggestion.

While my stay in politics was far shorter than was Mr. Amery's, it was long enough to set me thinking about the changes going on in the structure of our government. Some of them have been good; others, I believe, are of very doubtful value. But good or bad they mirror great movements in our history and in reviewing some of them we may be able to turn up something of interest. I must warn you, however, not to expect any well laid out plan for the ordering of our affairs. I have none; only a few suggestions occur to me and these I leave with you for whatever they may be worth.

There is in government, as there is in life, much that is a reflection of the violent and sudden gusts of opinion, probably emotion is a better word, that frequently sweep across the land and tend to pull us off course. Because of this I have never been able to achieve that certainty which makes me envious of some of my friends. I never cease to wonder at the fact that the government runs—not that it runs poorly or loose-jointedly, but that it runs at all.

The most significant happening in American government during my lifetime has been the drastic decline in the role of the states. The relationship between the states and the federal government has been changing continuously since the Constitution was adopted, but the pace has greatly quickened in the last thirty years. In a general way it can be said that constitutional history with us is the history of the establishment and the growth of the national government. To me it now appears to be growing too rapidly. And surely it is already too large. It is about this I want to talk for it is time we started doing something about it.

It is not my purpose to examine what has happened so much with

an eye as to whether what has been done has been in keeping with the provisions of the Constitution of the United States, as to raise some questions of policy. As law abiding citizens we may feel bound by a decision of the Supreme Court of the United States or by an Act of the Congress, but this does not mean we are compelled to regard either the one or the other as a wise exercise of the awesome power wielded. As the national government gathers to itself those activities and functions which always in the past we have associated with the states, it is well for us to question the prudence of the course being followed over and beyond the legality of it.

Prudence and legality do not always go hand in hand, and the former is much more important than the latter because in the long run, if society is to prosper, it is the law which must conform or reflect that which is wise. In finding our way along safe and firm ground we should bear in mind what Edmund Burke said of the development of the English Constitution in his memorable speech of 1782 on the Representation of the Commons in Parliament: "[T]his is a choice not of one day or one set of people, not a tumultuary or giddy choice; it is a deliberate election of ages and of generations; it is a constitution made by what is ten thousand times better than choice; it is made by the peculiar circumstances, accessions, tempers, dispositions and moral, civic and social habitudes of the people, which disclose themselves only in a long space of time." Thus is the basic law developed by the Constitution written or unwritten, because, as Burke goes on to say, "man is a most unwise and a most wise being. The individual is foolish; the multitude, for the moment is foolish, when they act without deliberation, but the species is wise, and, when time is given to it, as a species, it almost always acts right."

It is my belief, as Jefferson said in 1811 in a letter to Destutt Tracy, that: "The true barriers of our liberty are our state governments." Consequently any impairment of them regardless of the constitutional basis on which it rests, disturbs me. I also believe we shall profit by keeping in mind this statement of his in the *Notes on Virginia*. "The time to guard against corruption and tyranny is before they shall have gotten hold of us. It is better to keep the wolf out of the fold, than to trust to drawing his teeth and talons after he shall have entered." This cannot be done in a more effective way than by following the admonition contained in a letter which he sent his old friend, Joseph C. Cabell, in 1816. "The way to have good and safe government, is not to trust it all to one, but to divide it among the many, distributing to every one exactly the functions he is competent to. It is by divid-

ing and sub-dividing these republics from the great national one down through all its subordinations until it ends in the administration of every man's farm by himself by placing under every one what his own eye may superintend that all will be done for the best."

It would be difficult, I think, to find a wiser statement than this. It is the distilled essence of a long and varied experience in public affairs. Jefferson was nearing seventy-five when he wrote it. Experience had served to confirm a conclusion which he had arrived at many years before. It was just over a quarter of a century earlier that we find him writing his son-in-law, Thomas Mann Randolph, along these lines, telling him how highly he regarded Locke's "little book" and the *Federalist*. The passing years have brought profound changes in the structure of our government but they have not, I think, impaired the validity of Jefferson's basic political principle. Therefore it is not inappropriate for us to inquire into what can be done to avail ourselves of it. You will note that he says "good and safe government," which means, I take it, the form of government thought by him most likely to give liberty, prosperity and happiness.

The attempt at cooperation under the Articles of Confederation was a failure. It was apparent to all within a few years after the end of the struggle with the mother country that the loose association resting upon the free will of thirteen independent and separate governments, put together for the purpose of waging war and at times jealous and suspicious of each other, was wholly unequal to the needs of peace. Consequently those who assembled in Philadelphia for the purpose of revising the Articles of Confederation knew, or certainly most of them knew, that nothing short of a revision so radical and so drastic as to amount to a new charter would save the day.

The dual system brought into being by the work of the Convention of 1787 has worked remarkably well, if we except the violence into which we plunged in the 1860's. It has not been perfect by any means, but all in all it has served us satisfactorily. It has not been without its critics. Among them, and one of the ablest, was the distinguished Canadian, John A. Macdonald, who labored so long and so effectively to bring about the unification of Canada in 1867. Macdonald, according to his biographer, Donald Creighton, never missed an opportunity to urge the Canadians to strive for a strong federal union: "A plan that will avoid the mistakes of our neighbors." The British North America Act embodies his thinking on this point. I have no doubt the civil strife which was tearing our nation asunder while Macdonald was in the midst of his planning for Canada convinced

him of the wisdom of his position. However, it is fair to observe that such a determination on the part of the Philadelphia Convention would have meant no union at all because the states would not have ceded the authority. And, too, events in recent years have raised some doubts, at least, as to the superiority of his plan. French Canada has grown restive in a centralized government which it regards as dominated by the English speaking provinces.

However, as I have just suggested, it seems to me that we have reached the point where the machinery of government, dominated as it is by the federal establishment, is less effective than otherwise might be the case. The slow, persistent, though erratic march of the federal government has brought it to such a commanding position face to face with the states as to cause one to wonder whether the end may not be the obliteration of the states entirely or their relegation to the role of administrative districts in a great national government. Were this to happen it would be, I think, a catastrophe.

The decline of the states has been, of course, the subject of discussion in recent years by no end of people. No one, I think, has put it more succinctly than Leonard P. White, of the University of Chicago, a first rate scholar, with whom until his death in 1958, I had the good fortune to be associated, in the collection and publication of the Papers of James Madison. In his *The States and the Nation*, which appeared about ten years ago, he makes this penetrating observation: "If present trends continue for another quarter century, the states may be left hollow shells, operating primarily as field districts of federal departments and dependent upon the federal treasury for their support."

Lest it be thought I am about to embark upon an assault on the federal government, it might be well for me to say at the outset that such is not my intention. I regard the federal government as my government, just as I regard the government of Virginia as mine. My concern is that they act in harmony and, insofar as it is possible for them to do so, that they leave me alone. I regard all government as tending toward tyranny and quite apt to end there unless the most careful eye is kept upon those who govern by those who are governed. However, I am not unmindful of the obligations placed upon us all by the amazing growth of population and industry. I know well these have brought the need for machinery and legislation quite different from anything considered by our forefathers who were charged with devising plans for an agrarian society. And I wish to do whatever I am able to do to meet the changing conditions which are upon us.

My view as to the machinery to be employed in government I take from Mr. Madison. Though it has been many years now since he wrote an address to the people of New York, then actively considering the proposed Federal Constitution, his words are, to me, compelling. In the article which came to be known as No. 45 of the *Federalist Papers*, Mr. Madison wrote: "Was, then, The American Revolution effected, . . . not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual states, . . . might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty? . . . It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the people, is the supreme object to be pursued; and that no form of government whatever has any other value then as it may be fitted for the attainment of this object. Were the plan of the convention adverse to public happiness my voice would be, Reject the plan. Were the Union itself inconsistent with the public happiness, it would be, Abolish the Union. In like manner, as far as the sovereignty of the states cannot be reconciled to the happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the latter."

Of course it is not so easy to resolve conflicts now as it appeared to be in the time of Mr. Madison. However, insofar as his admonition to fit the machinery of government to the needs of the people is concerned, he drew on time honored practice, for it was the method used from very ancient times by our forefathers. In this way they created the unwritten English Constitution. And in like manner, since the separation from England, we have found our way through amendments to our Constitution and through judicial interpretation. His observations, therefore are as meaningful today as they were when they proved so persuasive with the people of New York and so helpful to Alexander Hamilton. Our continuing and pressing need is to fit the machinery of government to the innumerable tasks that press for attention in a land which is feeling the deep tremors of revolutionary change.

Interestingly enough the present position of the states is quite different from what was envisaged by Madison and others, who urged the acceptance of the new Constitution in 1788. Addressing himself to this point in the article referred to above, he said: "Thus, each of the principal branches of the federal government will owe its existence more or less to the favor the State governments, and must consequently feel a dependence, which is much more likely to beget a

disposition too obsequious than too overbearing towards them." Also the number of persons employed by the states would exercise, he thought, a decisive influence. "Compare," he writes, "the members of the three great departments of the thirteen States, excluding from the judiciary department the justices of the peace, with the members of the corresponding departments of the single government of the Union; compare the militia officers of three millions of people with the military and marine officers of any establishment which is within the compass of probability, or, I may add, of possibility, and in this view alone, we may pronounce the advantage of the States to be decisive."

It is well to bear in mind that this assurance was given by Madison, as well as others, pressing for the adoption of the Constitution, to quiet the fears of independent states that were most reluctant to surrender to the central government any power whatsoever. At best the states were willing to cede only that power regarded as absolutely requisite for ordering the affairs of the former colonies which could not be administered satisfactorily, or at all, by each separate state. While I am sure Madison was of this opinion, the political climate might have influenced his judgment. However, he was not alone in this view. Writing at this time and in the same cause, Hamilton said in *Federalist Paper No. 17*: "It will always be far more easy for the State governments to encroach upon the national authorities than for the national government to encroach upon the State authorities."

The Constitutional Convention which sat at Philadelphia was not a body called into being to organize the best government for some several million people stretched along the Atlantic Coast. It was not a body empowered to allocate power and responsibilities to that government, state or national, which was deemed best suited to discharge the obligations attending the allocation. The Convention worked within much narrower limits. It proposed for the federal establishment the very minimum of authority, for it well knew the states would give no more. It was proposed by one of the tired and discouraged delegates, when it seemed impossible to agree on representation and taxation, that the states might all be merged into one great whole and then cut into equal slices. Fortunately this unique suggestion got nowhere. The wonder is the Convention was able to accomplish as much as it did. That the balance of power would shift toward the national government was inevitable if the Federal Union was to live, because it could not function with less than that with which it started. In truth many able observers thought it doomed to failure owing to the severe limi-

tations placed upon it. But none, so far as I know, ever dreamed of the dominant position now occupied by the central establishment.

Those who insisted the federal government was without inherent strength of its own and was but an anemic creation of the several states were certainly mistaken. Madison was not of this group, although as I have shown he was uneasy about the ability of the national government to hold its own against the states. It was his view that: "The federal and state governments are in fact but different agents and trustees of the people, constituted with different powers, and designed for different purposes. The adversaries of the Constitution seem to have lost sight of the people altogether in their reasonings on this subject; and to have viewed these different establishments, not only as mutual rivals and enemies, but as uncontrolled . . . in their efforts to usurp the authorities of each other." He saw quite clearly the inherent strength in the dual relationship which was being created even though he was not able to forecast the imbalance that was to develop over the years. It is this dual relationship which it is so much in our interest to maintain.

That our situation today is quite the reverse of that which Madison thought likely is no reason to doubt his political wisdom—a trait that early set him apart even in the singularly able company which gathered in Philadelphia to organize the new government. That the states are falling victim to the federal government, and that is what is presently happening, is by no means conclusive evidence, in truth it is to me not even persuasive evidence, that the people of the United States are the gainers as a result of what is happening.

As we know, changes in our system of government have gone on from the beginning. Until recently they have been gradual. It has been during the past thirty years that we have moved into what appears to be an area where the returns are diminishing and where the results are apt to be less beneficial than we hope. If I may borrow a miserable little expression that found currency in Washington during the fifties, and for all I know may still be in good repute there, it is possible that our present efforts are "counter productive."

The first great controversy over the authority of the national government arose out of the enactment of the Alien and Sedition Laws of 1798. Whether they were as Miss Adrienne Koch has declared in her *Jefferson and Madison*, "the most dictatorial measures of the Nation's history" they certainly tended to be destructive of personal liberty and in violation of the guarantees placed in the Constitution by virtue of the efforts of many who feared centralized power. They merit our

attention for they set the stage for a long and bitter struggle. They became, in truth, the testing ground for two great philosophies of government and they have a lesson for us—a lesson probably more meaningful today than when the great debate started a hundred and sixty-five years ago.

The century was closing under bleak skies. John Adams, naturally impatient and suspicious, was utterly weary of the wrangling both in and out of the government. He was satisfied that war with France was likely, and, what was even more disturbing, he feared that much of America had become infected with the virus of the French Revolution. In anger he had recalled Monroe from Paris because he deemed him too friendly with the Directory. Nor was his short temper helped by the fact that the French government refused to receive the respected Federalist, Charles C. Pinckney, whom he sent to fill Monroe's place. To add to these troubles the Republicans, covertly encouraged from within the government, showed evidence of becoming unduly and to his mind, at least, unreasonably aggressive.

Orators were orating and pamphleteers were pamphleteering and editors were scribbling away furiously and uninhibitedly. They were careless of the truth; in fact they not infrequently ignored it altogether. Adams was in no mood to grant the wisdom of the general principle which was embodied by Madison over a year later in his convincing statement to the Virginia General Assembly in support of the Virginia Resolutions when he said: "To the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression." In fairness to Adams it must be stated that though his drastic actions have not been emulated by his successors in office, his general feeling toward certain segments of the press has been shared fully by many of them.

The Federalist Party moved to meet what it deemed a challenge to the very safety of the nation by securing the passage by the Congress of the laws to which I have referred—the Alien and Sedition Acts. Of the several laws having to do with aliens the most offensive was that empowering the President to order out of the country any aliens thought to be dangerous or engaged in conspiracies. The determination was to be his, which meant of course that nonconforming aliens could be harried and harassed by agents of the government. The sedition legislation authorized among other things, heavy penalties against those criticizing federal officials, many of whom richly deserved

castigation. It also imposed penalties upon those who defamed the United States—whatever that might be taken to mean.

The Republicans reacted with vigor and speed. To Jefferson, to Madison and to others the drastic laws were not only an invasion of the rights of the individual citizen, they were a trespass upon the states by the federal government. Moreover, they thought them weapons forged especially for the destruction of the Republican Party.

While it is true that some saw in the acts a means of crushing the Republicans, it would be unwise to give too much credit to this as a reason for the legislation. President Adams and many other Federalists, including a very substantial number of influential Virginians, were prompted, I believe, not so much by political partisanship in the action which they took as by deep apprehension concerning the strength of the young government. The legislation was oppressive, and politically it was disastrous for the Federalists, but the motives were not as vicious as was charged by the Republicans. As Page Smith in his *John Adams* observes in defense of the action taken, the violence in Pennsylvania during the whiskey rebellion was a frightening experience for many who were not strong political partisans. When we add to this the worsening of our relations with the revolutionary government of France, the legislation is understandable. It does teach us that good legislation and good intentions do not always go hand in hand. Or rather it should teach us that, but, of course, it hasn't, and if experience means anything it will not.

It is worth noting in this connection as Miss Koch does so pointedly that, "Apart from purely political considerations, it should not be forgotten that Jefferson saw in the Sedition Act a denial of one of the philosophical principles he held most sacred. Knowledge and freedom of inquiry—the submission of man-made truths to man-made confirmations or disproofs—were valued by him not only as a means but also as a noble human end. The independent dignity of mankind and of the individual were derived from the searching human mind."

The great collaboration between Jefferson and Madison on the Kentucky Resolutions and the Virginia Resolutions quickly took form. It was the counter offensive. It was aimed at rallying the Republicans for an assault on the offensive legislation. The ghosts of these remarkable documents stalk the land still. They were used to support nullification and in them many people of our day find justification for an extreme interpretation of the doctrine of interposition as a counterpoise to federal authority.

Deeply imbedded in them is sound political philosophy which is

in danger of being lost sight of. The Resolutions, more especially the Virginia Resolutions, when read with Madison's report to the General Assembly justifying the position taken, embody principles that must be sustained if the states are to remain of consequence in the federal system. And without vigorous and independent states such as the resolutions contemplate we shall have, in my opinion, a system of government far less flexible and amenable to the wishes of the governed than otherwise would be the case. An examination of the Kentucky and Virginia Resolutions is well worthwhile. This is true because the use of them to support nullification in 1830, the identification of slavery with state rights, the intemperate and bitter assaults of the abolitionists between 1835 and 1861, and more recently the confusion which has arisen as a result of the doctrine of interposition as applied to our school problems, have tended to obscure a very wholesome and vital principle of government which was enunciated in defense of individual liberty and in restraint of concentrated power long before the tariff, slavery or integrated schools were claiming the attention of our people.

Nowhere is the salutary influence of Madison on the political theorizing of Jefferson seen to better advantage than in this joint effort. For many years the authors were unknown. This is not difficult to understand. Jefferson as vice president, although leader of the Republicans and lacking sympathy for the political views held by President Adams, did not desire to engage in open controversy with him. Madison, his close friend and trusted adviser, could not enter the arena without involving the vice president; hence the secrecy. In this connection it should be borne in mind that no breach of faith was involved since under the method then in use for choosing the president and vice president no party or political obligation, such as we know today, was owed by either to the other. The secrecy reflected, I think, Jefferson's deep aversion to controversy and quarreling and also his personal attachment to John Adams. Yet he felt compelled to resist what he believed to be legislation hostile to his whole concept of government.

It is now generally agreed that Jefferson was responsible for the resolutions which passed the Kentucky Assembly several weeks ahead of the resolutions adopted by the Virginia Assembly. It was Madison who was responsible for the latter. It is not known who took the lead in preparing the papers for it appears that no letters were exchanged between the two during the period from June 21 to October 26, 1798, when most of the work was done. There are two known meetings. Jef-

person visited Orange in early July and Madison was at Monticello in October. But it is evident that as late as October there was substantial disagreement between the two as to the extent of the challenge which might be offered the federal government by an individual state. Jefferson appeared to be prepared to go much further than was Madison, so it may be that the two worked separately although this is most unlikely. There is no question as to their complete agreement on the necessity of checking the federal government in the course on which it had set out.

Early in October William C. Nicholas acknowledged receipt of a set of resolutions sent by Jefferson to be used in another state. Nicholas was a distant relative of Jefferson, one completely in his confidence and a prominent member of the Virginia General Assembly. Nicholas gave the papers to John Breckenridge of Kentucky who in due time, early in November, secured the adoption of the proposal by the Kentucky Assembly. Jefferson had suggested North Carolina. The Kentucky Resolutions, as they came to be known, asserted the doctrine that each state had the right to judge for itself as to infractions of the Constitution and the method to be used to obtain redress. As introduced the Resolutions claimed for each state the right "To nullify of their own authority" any assumption of undelegated power. While this was stricken before passage, it shows the extreme position of the drafter.

Madison was unwilling to assert such power on the part of any single state. His resolutions, also turned over to Nicholas, who in turn arranged to have them sponsored by John Taylor of Caroline in the Virginia Assembly, declared the Alien and Sedition Acts unconstitutional and asserted the power of the states to correct the situation and invited the other states to join Virginia in such an effort. About the soundness of this position there can be, I assume, no doubt.

Interestingly enough, the resolutions, when introduced by Taylor, declared the acts "unconstitutional, null, void and of no effect." It is thought this language was added at the suggestion of Jefferson, since he had written Nicholas after seeing Madison's draft that he thought it not strong enough. However, it may well be that Jefferson's view happened to be the same as that arrived at entirely independently by Taylor, who if anything, took a larger view of the power of the states than did either Jefferson or Madison. You will remember Taylor had opposed the adoption of the Constitution. Be that as it may, this language was stricken before passage and there is little or no doubt it was done at the insistence of Madison who was close at hand in Hanover County early in December, 1798, when the Assembly acted.

The resolutions were not well received by other states. The five New England states, New York and Delaware declined the invitation to join in the protest. In the first place, in these areas the Alien and Sedition Acts had strong supporters. Then too, the tide was still running for the Federalists as a party and there was, I think, in the background a distrust of the ambitions of Virginia, the strongest and wealthiest of the states. It was thought of many that she wished to dominate completely the central government and this the other states were determined to prevent.

There was in 1799 another set of resolutions passed by the Kentucky Legislature stating in strong language the right of the states to oppose in a "constitutional manner" encroachments by the federal government. The resolutions were in the nature of a reply to the sharp criticism of sister states of the 1798 protests. They show the moderating influence of Madison and fall short of the extreme views expressed by Jefferson in a letter to Madison dated August 23, 1799, in which Jefferson suggests that Madison ride over to Monticello for a meeting with him and W. C. Nicholas on the subject of the resolutions passed by Kentucky and by Virginia. In this letter cited by Miss Koch to show the advanced position taken by Jefferson, we find him suggesting a new declaration containing this language: "Express in affectionate and conciliatory language our warm attachment to union with our sister states, and to the instrument and principles by which we are united; that we are willing to sacrifice to this everything except those rights of self government the securing of which was the object of that compact; that not at all disposed to make every measure of error or wrong a cause of scission, we are willing to view with indulgence, to wait with patience till those passions and delusions shall have passed over which the federal government have artfully and successfully excited to cover its own abuses and to conceal its designs; fully confident that the good sense of the American people and their attachment to those very rights which we are now vindicating will, before it shall be too late, rally with us round the true principles of our federal compact. But determined, were we to be disappointed in this, to sever ourselves from that union which we so much value, rather than give up the rights of self government which we have reserved and in which alone we see liberty, safety and happiness." Here we find ample support for the views of John C. Calhoun—although according to Miss Koch there is no evidence he ever saw this part of the August letter.

While the author of the second Kentucky Resolutions (1799) is not

known, there can be little doubt but that he had before him suggestions from Virginia and also it is likely that they were from the pen of Madison. Certainly they do not appear to have been the extreme views expressed by Jefferson. Apparently Madison never wavered in his view of the role of the states. He must have found himself in an uncomfortable position in 1830 if he remembered Jefferson's letter when in his article published in the *North American Review* in October he disavowed the views attributed to Jefferson by Governor Giles, General Hayne and others supporting nullification. For though nullification and secession rested upon totally different foundations in Madison's mind, it would not be easy to associate Jefferson with this position. However, this is merely by way of interesting background since the Resolutions must speak for themselves and be read as passed by the Kentucky and Virginia Assemblies.

The refusal of certain other states to align themselves with the position taken in the Virginia Resolutions apparently was not due to disagreement with the political theory advanced by Madison, namely that it was incumbent upon the states to exercise a restraining influence upon the activities of the federal government. Within a few years after Virginia's invitation was declined we find the same states engaged in asserting a like theory when their own interests were involved.

The embargo on shipping imposed at the close of 1807 by Jefferson, then in his second term as President, in an effort to save the American Merchant Marine from destruction by the warring navies of England and France, fell with devastating results upon the shipping industry and merchants of New England. And within a short time, so great was the dislocation, there was talk of breaking up the Union. Governor Trumbull of Connecticut in addressing a session of the legislature considering the plight of the ship owners and merchants took the position that in time of great emergencies when the national government oversteps its power it is incumbent on the state legislatures to "interpose their protecting shield" between the rights and liberties of the people and the assumed power. The repeal of the offensive provisions a few days before Jefferson left office quieted the controversy.

Much of the same view was put forward by some of the delegates to the Hartford Convention in 1814, when dissatisfaction in New England over the war of 1812 came dangerously close to disrupting the Union. In both of these instances the authority claimed for the states exceeded that suggested by Madison in the Virginia Resolutions and

approximated the position taken by Jefferson in the first Kentucky Resolutions and in his letter to Madison from which I have quoted.

As we review this period of stress and uneasiness, it requires little imagination to understand that we are examining one of the serious challenges to the new system of government. It is certainly not surprising that the states which had surrendered, somewhat reluctantly, to a central government some of the power which belonged to them as separate sovereignties should have been quick to resent action they thought damaging to their own interest and that they should have cast around for some means of resistance. The issues raised were vital issues and dealing with them was as much a part of the organization of the new government as was the Constitutional Convention of 1787.

The Virginia Resolutions in this respect served a useful purpose. Nor did they lend themselves to anarchy and chaos as has been so often charged. They were aimed at legislation that was dangerously oppressive. Not only was it beyond the power of the federal government under the Constitution, it was reckless and unrestrained action by a majority which should have been resisted wherever encountered—locally or nationally.

It is unfortunate the issue should have been clouded by the suggestion that a single state had the right to invalidate federal legislation to which it was opposed. However, no one reading Madison's report of 1800 can be in doubt as to the position which the Virginia General Assembly wished to take and did take. And his well-reasoned exposition of the rights and responsibilities of the states acting together in holding check on the federal establishment is wholesome political theory. Concentration and centralization have gone on apace but the theory lives and the vigorous reassertion of it now could offer both promise and hope. We shall consider this in the next lecture.

II. COOPERATION AND ITS PROBLEMS

I have reviewed Madison's theory of the relationship of the states to the federal government. And I have spent considerable time on the Virginia Resolutions of 1798 and the Report of 1800 which Madison submitted to the Virginia Assembly in defense of the position taken in the Resolutions. It will be recalled that the Resolutions had not been well received by a number of states to which they had been sent, and it was thought important to have the Assembly elaborate the position taken. Of course Madison, who had prepared them, was the person best qualified to undertake the task. He was persuaded to stand for the Assembly for this purpose. He was influenced by another reason

too. He was the most effective counterweight to Patrick Henry, who was offering as a stout Federalist and supporter of the Alien and Sedition Acts. Henry was elected but died before he could take office, so Madison as a member of the General Assembly was saved from the torrential eloquence which so often in Virginia had swept everything before it.

I have discussed this, not so much to record Madison's belief, a belief shared fully by Jefferson, that the states were in position to act as censors of the federal power, as to make the point that the states are under a duty to act in this capacity, and that they must act with some dispatch, if we are to cope effectively with the forces presently pushing us toward centralization and inflexibility. We are all pretty much agreed upon what is happening, I think. The real question is how are we to meet the perplexing and apparently endless problems which attend the great industrial and urban growth which for some years now has been underway and which shows little sign of abating.

Much preliminary work has been done and as I shall attempt to show in this paper, even though I must do so in a cursory fashion, we have a substantial foundation upon which to build. However, if anything of substantial worth is to be accomplished we must move from planning and the preparation of resolutions, important though they be, into the realm of action. I am convinced that only the states can save themselves. To this task they must bring unflagging persistence and relentless determination if they are to succeed. Power once acquired by men is never surrendered without a struggle, and our national government is no exception to this time honored rule. The federal giant will not be easy to come to terms with, notwithstanding Presidential messages and reports by a number of able commissions, composed of high ranking state and federal officials, urging action to safeguard the states.

The vast sums of money at the disposal of the national government as a result of the operation of the sixteenth amendment, the income tax amendment, have been used, and are being used, to support a large number of programs, some of them good, which by reason of the manner of their administration have impaired seriously the authority of the states. The Supreme Court in a series of sweeping decisions, especially since 1937, has placed its stamp of approval on these activities. Lest it be thought I am about to advocate repeal of the income tax amendment, I hasten to say I have no such plan in mind. I regard the amendment as sound—simply badly abused in practical administration.

I do not regard the federal government as without responsibility for certain obligations, and the expenditures incident to them, which have come as a result of the profound changes wrought in our social order by the growth of industry and the greatly increased mobility of our population. These obligations the national government shares with the states. My concern is to see the states remain viable and strong, being able thereby to discharge in full their obligations and to participate fully and effectively in the government of the country.

We have made some headway in identifying the difficulties which confront us. Most important of all we are beginning to comprehend the threat to the states of a highly centralized national government. Several first rate studies of this subject have been made during the past ten or twelve years. To some of these I shall refer. However, no government in history has organized as many committees and financed as many studies as has our national government during the past fifteen years, and time is now running out for the states. They must act if they are to survive. And the federal government must cooperate if it is not to fall victim of elephantiasis. One example will serve to make the point. In 1940 the federal government appropriated \$573,658,000 to the states and localities as grants-in-aid. According to the twelfth edition of Ogg and Ray, *Introduction to American Government* at page 70, in 1954 it appropriated \$2,539,277,000, and in 1960, \$6,089,378,000.

The appropriation for 1960 exceeds the amount of the entire federal budget at the time I entered the House of Representatives thirty years ago. If this continues, under the administrative organization which presently obtains, the states will sink beneath these federal programs. They will end by coming under the complete domination, indirect but no less complete, of federal officials distributing funds collected from the citizens of the states being destroyed.

It is important that we recognize the dual aspects of this spending program both of which are of consequence to the states. The first is the fact that federal spending has reached the point where it seriously endangers the economic health of the nation. There is no surer way to bring down in ruins the economic and social structure than by the destruction of the currency. The American people have become so accustomed to deficit spending, which has been going on, with few interruptions, for many years, that they are beginning to believe there is little merit in the warnings that have been given. They will find to their great distress they are mistaken. The mounting deficits which attend our operations today foreshadow deep trouble. It is not a question whether the troubles will come, if these practices are continued; it is merely a question of when.

Mr. Per Jacobsson who is the Managing Director of the International Monetary Fund dealt with this in an address last year before the Conference on Legal Aspects of International Financing held at the Yale Law School. Here is what he said: "It seems to be a lesson of history that without stable money neither justice nor progress can be assured and that the human spirit cannot give of its best if it is harassed by all the uncertainties to which rapidly changing money values give rise. Nations too must have their self respect . . . but this cannot be obtained without the benefits of a sound currency."

However, it is to the second aspect of the problem that I wish presently to call attention because it will remain to plague us even though we are able to put an end to excessive federal spending. We may balance the federal budget and we may bring spending by the national government down to a point where it does not impose the very heavy burden which presently obtains, but if we continue the administrative organizations which now control the federal spending programs we will so cripple the states that they will cease to be useful and effective parts of our system of government. In other words, we may curb the federal government in its excessive spending and still see the states destroyed by a national government entering upon and financing undertakings which can be better organized and better managed by the several states.

It might be useful before going further in urging a strengthening of the states to examine the charge of inherent instability which has been made by able critics of the structure of our federal system. One of these, John A. Macdonald, Canadian leader and Canada's first Prime Minister, observed us at first hand and, as I have said, was most dubious of the strength of our system; so dubious in fact that he was careful to see that the British North America Act provided for the new Dominion of Canada a much stronger national government than that which obtained with us. Another, Lord Acton, held like views. He had little or no practical experience in the political arena in which Macdonald spent his entire life, but his standing as a student of government and as a writer on political subjects is well established. He was Regius Professor of Modern History at Cambridge University in the latter part of his life. In a penetrating article which appeared in *The Rambler* in May of 1861 under the title "Political Causes of the American Revolution," he makes the point, and much substance it has too, that the American Revolution came in 1861 and not 1776. Concerning the lack of stability in the American structure he makes this observation: "Viewed in the light of recent events, the

history of the American Republic is intelligible and singularly instructive. For the dissolution of the Union is no accidental or hasty or violent proceeding, but the normal and inevitable result of a long course of events, which trace their origin to the constitution itself. There we find the germs of the disunion that have taken seventy years to ripen, the beginning of an antagonism which constantly asserted itself and could never be reconciled, until the differences widened into a breach."

It is fair to say that Lord Acton never trusted the American experiment. He was much more partial to constitutional monarchy as the form of government most likely to combine stability, the widest area of freedom for the individual and protection for minorities. However, his conclusion that the struggle between the states which was in its earliest stages, as he wrote, came as a result of a defective form of government seems hardly warranted. The violence which erupted in 1861 was due in a great part, at least, to an unusual situation, the geographical separation of the contending forces. Lord Acton recognizes the hazards involved in their separation when he says in the course of his paper: "But when the opposite interests [referring to the protectionists and free trade groups] are grouped together so as to be separated not only politically but geographically, there will ensue a territorial disruption of the states, developed with a rapidity and certainty proportioned to the degree of local corporate organization that exists in the community." But for this circumstance, the separate geographical grouping of the contending forces, it is likely war between the states could have been avoided. However, given the conditions which did obtain it is likely war would have come, whatever the form of government.

Unfortunately the situation was aggravated by the fact that in addition to the tariff and anti-tariff forces occupying separate areas, the fearfully inflammatory issue of slavery was superimposed upon the trade issue and here again the contending forces were separated geographically. Without the baleful specter of forced labor, manufacturing would have grown up along the Atlantic Coast in the early days. As it was, a start had been made when imports were shut off by the war of 1812, and there was substantial tariff sentiment to be found in the Southern States even during the nullification controversy. It was for the protection of industry in the South that Calhoun cast his vote for the tariff legislation of 1816. But between forced labor and manufacturing there was not the affinity found between forced labor and large scale agriculture, and manufacturing did not prosper in the South.

Separated as the contending forces were by grave issues, issues so charged with emotion as to make temperate discussion impossible, and inhabiting separate areas of a rich and growing country, the stresses were too great to be contained. However, it is a mistake, I think, to attribute the breakdown to our form of government.

The part that geography and the distribution of the opposing factions play in such circumstances can be illustrated by the manner in which similar difficulties were met in England at approximately the same time. Lord Acton touches this briefly in this observation which he makes while discussing the violence which occurred in England at the time nullification was creating such a disturbance here. "Whilst in England protection benefited one class of the population at the expense of another—in America it was for the advantage of one part of the country at the expense of another." It might be well for us to examine this a little more closely.

The rise of industry the first half of the last century brought increased demands from the industrial population of England for a change in the basis of representation which for some years had served as a bulwark for the great landed interests which exercised a dominant influence upon English politics. It was this highly restricted electorate which supported the Corn Laws and protection. The Corn Laws in one form or another had been in existence since the time of the Norman Conquest. They had served in the early centuries to maintain a food supply for the English people by preventing the export of grain when its export imposed a hardship upon English consumers. As time went on duties were imposed upon imports and bounties were paid on exports to maintain the price of grain in the English market. As the industrial population grew this protected market afforded the British landlords, Tory and Whig alike, substantial returns at the expense of the English workers for whom the cost of food rose. This situation aggravated the acute distress caused by the heavy unemployment which followed the Napoleonic Wars, and England was brought to the brink of revolution. The industrial workers were determined to vote and they were determined to lower the price of food. The situation was more acute than that which faced us at the same time.

Revolt swept the land. Lord David Cecil in his *Life of Melbourne*, who at the time had the unenviable task of being Home Secretary in Gray's government, gives us the description of what occurred upon the defeat of the Reform Bill in 1830, a Bill making modest concessions to the industrial population. "The effect of this news on the country

seemed to justify Melbourne's reading of the public mind—and his belief in the danger of revolution as well. Riot and outrage broke out even more violently than the year before; and this was not only in the country, but also in the great centers of population. Towns blazed as well as ricks. In Derby the jail was broken into and several people killed; Nottingham Castle was destroyed; Bristol was a scene of spectacular destruction, with red-coated soldiers firing on the crowd and the Bishop's palace in flames against the dim November dawn.... Civil war looked close." Had the rebellious element occupied a separate area of England rather than finding itself scattered indiscriminately through the population, civil war might well have grown out of the widespread acts of violence.

So we may discard, I believe, any fears we may have as to the stability of our system of government. It is in truth a very remarkable piece of machinery which, by permitting a wide distribution of authority and responsibility, offers both stability and flexibility. These are of first importance in governing large areas inhabited by people of different interests and occupations.

We have moved with giant strides during the past thirty years toward a highly centralized state. It has taken a long time to make the journey from *M'Culloch v. Maryland*, 4 Wheat. 316 (1819), to *NLRB v. Jones and Laughlin Steel Corporation*, 301 U.S. 1 (1937), and *Wickard v. Filburn* 317 U.S. 111 (1942), to mention only two of the sweeping decisions which followed the reversal of the position of the Supreme Court in 1937. However, the journey has been made and the only thing remaining to us is to decide whether the point at which we have arrived is really a happy and desirable point at which to settle for the future. I think not, but before I go into that let me illustrate very briefly the extent to which federal control has been pushed.

In the examples which I shall give I am indebted to an old colleague whom I greatly respect, Dean F. D. G. Ribble, of the University of Virginia Law School, who appeared under the auspices of this Foundation in 1957. Writing me a few weeks back concerning the control asserted by the federal government in the case against *Jones and Laughlin*, a position which the United States Supreme Court approved, Dean Ribble had this to say: "The hours a man may work, the conditions under which he shall work, the price which is to be paid for his services are, practically speaking, in the hands of Congress. It may still be possible to employ a yard man to rake up the leaves or a cook to cook a meal a day without congressional clearance. There is not much more than that." And in illustrating the lengths

to which the national government has gone in controlling farm operations, the details of which are spelled out in *Wickard v. Filburn*, he told me the story of the filling station operator in South Carolina, about whom I heard at the time but I must confess I had forgotten. It happened, according to Dean Ribble, that the filling station operator "had a little piece of land around his filling station which he planted in cotton. In the spring the persons who stopped for gas would be given a cotton blossom. In the fall the persons who stopped for gas would be given a cotton boll. This added a bit to his business and he was happy about it. It appeared, as I recall, that he had planted about $1/20$ of an acre. This was above the allotment to which he was entitled. Accordingly the long arm of the federal government reached out and imposed a penalty." That is all there is to the story—certainly it is enough. Interestingly enough it did not create the furor it might have created. The farm program has not been distasteful to the farm states. It is not customary for voters to become greatly excited about the violation of the doctrine of states rights by measures they favor. But to return to Chief Justice Marshall and the *M'Culloch* case, you will remember he laid down the rule—a rule thought outrageous by the strict constructionists of his day—"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited—are constitutional." Today we stand at a much more advanced position. The Supreme Court has made the general welfare of the nation, as conceived by the Congress, the limit of federal power. In the words of The Commission on Intergovernmental Relations, at page 29 of their final report, published in 1955, "The Court has accepted a reading of the general welfare clause that places no discernible judicial limits on the amounts or purposes of Federal spending."

It is this power to spend which is at the bottom of many of the acute difficulties being experienced by the states. The federal government now has entered upon fields heretofore unknown to it. However, federal grants-in-aid have been known for many years. They go back in fact to the land grants authorized by the Congress of the Confederation. Then there are the land grant institutions, organized under the Morrill Act which Congress passed and the President signed in July 1862, probably one of the most beneficial pieces of legislation ever passed by the Congress. After World War I, there was legislation making substantial grants for highway construction and there were also certain appropriations for the aid of agriculture in the 1920's. But these were not great—moreover, because of the manner in which

the grants were administered, they did not constitute a threat to the states. It is in the past twenty years that the phenomenal growth has taken place and it has been due to the initiation of programs providing for social and economic security.

In the main this legislation recognized the fact that the United States was no longer simply the home of agrarians. Industry had reached a dominant place in American life, and great urban populations had to be provided for. The legislation came as a result of another thing. The states had failed to provide the services required by their citizens. In some instances this was due to the fact they were financially unable to do so. In others it arose out of a lack of comprehension of the infinite complexities and requirements of a great industrial society. The national government was thrust into the vacuum which was created.

As a rule radical or great changes in government are the result of war, revolution or prolonged periods of internal stress so acute and so oppressive as to force drastic revisions in the accepted order of things. The sweeping adjustments which we have witnessed during the past thirty years have come out of the dislocations which followed World War I. These dislocations reached catastrophic proportions in the severe economic depression of which the stock market crash of 1929 was an important phase.

Evidences of trouble were apparent in the farming areas at the start of the 1920's. Farm prices, especially wheat, had risen sharply under the war inspired demands. As wheat growing areas came into production again in other parts of the world following the Armistice, there was a world wide depression in wheat prices. The prices of other farm crops were also under pressure. In our own country cotton, corn and peanuts joined the decline with results that were quite painful to large areas.

Experiments with farm relief bills were not much help. The Federal Farm Loan Bank system and the Joint Stock Banks, which had been organized to make credit available for farmers, were of little value since the government in the early twenties adopted a policy of stern deflation. Loans had been made on the basis of high farm prices, and since repayment could be made only from the sale of farm products, there were widespread defaults as prices plummeted. Nor was there relief until the extensive refinancing in the early thirties, both of farm and urban properties, by the government. Although this refinancing was of incalculable value to many, it came, for the farm population at least, after a great many farms had been lost to the owners. The dis-

truss engendered by this found expression in our political parties, because it was to the federal government that appeals for help were made, since the states found themselves, in most instances, unable to cope with the demands for help.

It is almost impossible to convey to you a picture of the utter distress which the nation presented as the effects of the fearful crash of 1929 unfolded. After the first shock there was a period of disbelief that the economic condition of the country was such, or had been such, as to warrant the convulsion which had taken place. There were assurances from leaders in business and in government that the situation was not so bad as it appeared; that there would be in due time a resumption of good business, and due time was taken to mean, as in truth it was intended to mean, a short time.

Unfortunately the resumption did not take place, and as 1929 gave way to 1930, there was rising unemployment and a very sharp increase in business failures. There was a heartening rise in prices in the forepart of 1930, but this harbinger of better times proved to be a will-o-the-wisp. At mid-1930 the remorseless and frightening deterioration resumed. One difficulty followed another and to add to these there were acute economic dislocations in Europe. These, as you remember, brought Hitler to power in 1933.

In Virginia, as in other states, farm prices reached a point where the returns from a crop were not sufficient to cover harvesting costs. In some areas the schools closed before a full term had been completed because local revenues were not sufficient, even after the most drastic salary cuts, to meet the payrolls.

We moved on to the national elections of 1932 in a state of almost complete disorganization and frustration. The campaign of that year was concerned to a considerable extent with getting rid of prohibition and a castigation of the Republicans by the Democrats, for what was alleged to have been their utter wastefulness. There was a strange failure by both of the great parties to recognize the extent of the damage which had been wrought by the economic collapse and there were during the campaign at least no substantial proposals made for safeguarding the future. I think the answer lies in the fact that all our attention and all our energies were concentrated on repairing the immediate damage which was so apparent on every side. Mr. Roosevelt led the Democrats in denouncing the unwillingness of the Republicans to balance the budget and live within the income of the country. We did not, and I use we advisedly for I was then a candidate for the House of Representatives, make allowances for the fact that though

the Republicans were making frantic efforts to reduce expenses, income was declining even more rapidly.

I blush when I think of the charges which we made, more especially is this true when I reflect upon our own activities within four months after assuming office in 1933. It has been long ago and about many of the details my memory is hazy, but one haunting recollection, and a thoroughly disreputable one it is too, of the campaign remains with me. It gives you some idea of the distortions of the time. One of the evidences of Republican extravagance which we would parade at our meetings, large and small alike, was the fact, or alleged fact, that Mr. Hoover used four secretaries in discharging his duties as President, while Mr. Wilson had fought a World War with only one, Joe Tumulty. It has been said, and it is likely true, that Mr. Hoover took no salary while President. This we did not know. Apparently he thought it not worth reporting. I hope he never heard of our petty and squalid charges. How many secretaries Mr. Roosevelt had as things got rolling I do not know. I suspect he had some difficulty keeping track of them at times.

As I have said, it was out of the economic collapse of the 1930's that the startling enlargement of national power came. Upon it rests the sweeping federal legislation which now threatens to engulf the states. It did not come all at once; it came over a period of some years. But the change in direction took place in the early thirties when most of the drastic measures were justified as emergency measures—as in truth they were. But emergencies have a habit of never ending. And the alarming thing is that the extension of federal power is accelerating rather than slowing down.

The extension of the activities of the national government was the result of desperate efforts to stem the tide of deflation, to help the unemployed and to set the wheels of industry in motion again. Among the welter of "emergency" legislation some of it ineffective, some of it actually self-defeating, one far-seeing undertaking of the federal government comes to mind—the guarantee of bank deposits. It is a pity it could not have been done earlier for it would have averted measureless woe. It certainly would have turned back the forces which brought complete collapse.

Those of you who remember the bitter days of 1933 will recall that one of the first acts of the new administration was to close all the banks of the nation. They were opened again within a matter of a few days and those permitted to reopen, and almost all of them were permitted to reopen, were vouched for by the United States. Out of

this came Federal Deposit Insurance Corporation. This bold move—the commitment of the financial strength of the national government—served to restore courage and hope. The talk of bank failures ended, the panic which had swept the nation during the winter of 1933 subsided over night, and the nation turned its attention to other pressing problems. Only the federal government could have taken this effective action. It alone had the financial strength to counter the forces of destruction by reaching across state lines and mobilizing the financial strength of the nation.

This action represented a break with the past. It was, in truth, an entry by the national government into an area heretofore served by the states. But it was, I think, an understandable and desirable enlargement of federal responsibility. It was a move which met with almost universal approval. To this hour, thirty years later, I have yet to hear a responsible person advocate a return to the uninsured bank of 1933. I mention the bank legislation to show the effect of economic pressure upon state-federal relationship and to illustrate the fact that, in certain instances at least, the change in relationship can be quite advantageous.

This legislation reflects faithfully the situation which is referred to in the opening chapter of the final report of the Commission on Intergovernmental Affairs, issued in 1955, when it says, "But the depression of the 1930's drove home the lesson that the industrial economy is a national economy whose main instruments, whether of money, credit, prices, or labor relations, are often beyond the effective reach of the States acting separately." This brief and simple declaration records, so far as government is concerned, a stubborn fact of the twentieth century. No workable plan for effective cooperation between the states and the national government can be devised unless it is taken into account. Our task is not to attempt to return to the eighteenth century. It is to apply the salutary political philosophy of the late eighteenth century as to the necessity of preventing centralization of power to the times in which we live.

Few Presidents, or for that matter few people, have concerned themselves with the problems of the states and the national government to the extent shown by President Eisenhower. His unflagging interest brought about the passage of Public Law 109 of the 83rd Congress, which created the Commission from whose Report I have just quoted. The work of this Commission, and that of another which followed it, again at the suggestion of President Eisenhower, offer much

promise if we can follow it up. The widespread interest in the subject is mentioned by the Commission in the Preface of its 1955 report:

"During the past several decades demands for a reappraisal of our federal system have become increasingly insistent. They have come from Governors Conferences, National and State Legislators, the first Hoover Commission, civic groups, and many others. In 1953 they culminated in the establishment of the Commission on Intergovernmental Relations. To conduct an intensive study of national-state-local relationships, the first official undertaking of its kind since the Constitutional Convention in 1787."

As so often happens in such cases, the Report was given lavish praise and very modest support. To borrow President Eisenhower's words, "theory and action are not always the same." This led him to return to the subject in his speech before the Governors of the States, when in 1957 they met at Williamsburg, Virginia. So eloquently does the President state the problem that I shall quote at some length from his address. He told the governors that "from man's experience throughout the ages" one principle had emerged which is beyond doubt. "That principle is this: Those who would be and who would stay free must stand eternal watch against excessive concentration of power in government." Continuing he says, "In faithful application of that principle, governmental power in our newborn nation was diffused—counter-balanced—checked, hedged about, and restrained to preclude even the possibility of its abuse. Ever since, that principle and those precautions have been, in our system, the anchor of freedom."

The President, after reviewing the oppressive conditions existing in the Soviet Union and in the countries of Eastern Europe, goes on to say, "Thinking on these things, we in America, gain renewed determination to hold to the principle of diffusion of power, knowing that only thus will we ourselves forever avoid drifting irretrievably into the grasp of some form of centralized government." Elaborating the theme he touches upon a point which is especially pertinent. "The tendency of bureaucracy to grow in size and power does not bear the whole of the blame for the march of political power toward Washington. Never under our constitutional system, could the National Government have syphoned away state authority without the neglect, acquiescence or unthinking cooperation of the states themselves."

This last statement by the President is the key to our difficulty. The present drift cannot be countered save by vigorous and determined action by the states themselves. The President proposed "a task force for action" for he said: "Not in a speech—not by collective

resolution, no matter how powerfully worded—can we turn back long established trends. But we can start searching examinations and together lay out, promptly and clearly, a common course toward the ends we seek.”

The Conference of Governors readily joined in the President's proposal. There was organized the Joint Federal-State Action Committee. It was composed of distinguished men who addressed themselves to the problems uncovered by the Commission on Intergovernmental Affairs and it explored new ones. These were dealt with in its 1957 and 1958 progress reports. In 1959 its functions were transferred to the permanent Advisory Commission on Intergovernmental Relations created by Public Law 86-380, and the final report of the Joint Federal-State Action Committee was sent to the President February 26, 1960. The permanent Advisory Commission is presently charged with pursuing the task.

It would appear, from what I can gather, that the effort is slowly losing headway. This cannot be charged, I think, to lack of interest on the part of the federal establishment. However, it is useless to believe the national government single handed will press on with plans to curb or diminish its own activities. Experience teaches us that governments do not function this way. They are never inclined, and so far as I know there is no exception to this rule, to put limits upon their own power and prerogatives. Only the people can do that and with us the one real opportunity lies in the people acting though the several states. Unless the initiative is seized and held by the states they will continue to decline until, as Leonard White suggests, they become mere shells, administrative units in the federal establishment.

The states are in position, moving together, to secure the necessary support in the Congress for a plan that will insure their integrity and strength. Acting through the Council of State Governments, an organization admirably suited to the purpose, they can insist, and continue to insist, upon a more effective role for themselves. But they must cast away, once and for all, the idea now so widely held, that they can transfer to the national government their financial responsibilities and retain their independence and greatness. If the states are to flourish they must be prepared and willing, to the extent of their ability, to shoulder the heavy obligations that industrialization, and the urbanization incident to it, forces upon government. And they must have the vision and boldness to meet the new problems that clamor for attention.

The studies which have been made of late have been given over, in large part, to the consideration of the feasibility of transferring certain tax sources from the national government to the states as a substitution for grants-in-aid. Some first rate suggestions have been made. However, we need to pursue further the grants-in-aid themselves. It is idle, I think, to assume the principle will be abandoned, given the present tax structure. The real task is to place far more effective controls on them insofar as the states are concerned.

The overall task, of course, is to see that frugality and honesty attend public administration. Our chances of accomplishing this are improved though by no means assured by decentralization. The states should undertake the administration of all joint programs. And the programs should be, in fact, joint undertakings. Federal funds should not be used unless there is also a substantial contribution by the state. If the states will exert themselves to see that the programs for which they assume responsibility are well organized and well run they will not only greatly strengthen themselves, they will also help bring federal expenditures within manageable limits.

We all have a stake in this being done. It will mean better government. It will result in government closer to the people which means less waste and a closer rein on tendencies apt to end in corruption. And it will mean a government more responsive to the needs of the widely differing areas of our country, a government that is much more flexible than is a highly centralized system. We must remember it is a long way from Alaska and the Hawaiian Islands to Washington. Moreover, by encouraging people to participate in the management of their government, and by making it possible for them to take part in its operation, we are carrying on a continuing and an effective program of education in the science of government. This instruction is of vital consequence; in truth it is indispensable for those who seek to govern themselves.

I started out by quoting Madison. I should like to close by citing him again, because he deals admirably with what I hold to be the most important reason of all, and certainly there are many, for strengthening the states. This is what he says in Federalist Paper No. 51:

“In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, power surrendered by the people is first divided between two dis-

tinct governments and then the portions allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself."

Those wise words were written over one hundred and seventy-five years ago. It would be well for us to bear them in mind.