

THE LAST CENTRIFUGAL FORCE

*Robert F. Nagel**

The Constitution of 1787 was debated against a backdrop of rebellion, defiance, and factionalism. Disintegration seemed almost a law of nature:

. . . [I]n every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties, there will be found a kind of eccentric tendency in the subordinate . . . orbs by the operation of which there will be a perpetual effort in each to fly off from the common center.¹

Proponents of the Constitution appealed to this centrifugal principle not only in explaining the need for a stronger national government but also in minimizing the risks of centralization.

Thus the authors of *The Federalist* argued that there was a greater likelihood that the states would encroach on national authority than that the central government would usurp state authority. Again invoking the laws of physics, they repeatedly urged that human affection is “weak in proportion to the distance or diffusiveness of the object.” While “the strong propensities of the human heart would find powerful auxiliaries in the objects of State regulation,” the operations of the national government would be less tangible and therefore “less likely to inspire an habitual sense of obligation . . .” Supported by the loyalty of their citizens, states would be “at all times a complete counterpoise, and, not infrequently, dangerous rivals to the power of the Union.”

Not only would the natural affinities of the people provide pressure against nationalistic excesses, but state governments themselves would stand ready “to mark the innovation, to sound the alarm to the people. . . .” Indeed, once alerted, the people would be able—through their state governments—to create “plans of resistance,” which ultimately would be backed by “trial

* Ira C. Rothgerber, Jr. Professor of Constitutional Law. University of Colorado.

1. *Federalist* No. 15 in Roy P. Fairfield, ed., *The Federalist Papers* 34 (Johns Hopkins, 1981). Other quotations in this essay are from Nos. 17, 44, 45 and 46.

of force.” To modern ears, of course, this reference to armed resistance sounds odd and unserious, but the argument is pursued doggedly. *The Federalist* contains projections of the likely maximum number of soldiers in a national army (not more than “twenty-five or thirty thousand men”) and envisions an encounter between that army and state militias “amounting to near half a million of citizens with arms in their hands. . . .”

All this ferocious talk of conflict is easily ignored today; we are more inclined to notice the legal and institutional assurances than the arguments based on the psychology of loyalty and the methods of popular resistance. The more primitive bases for decentralization, however, must have seemed plausible to a people who had fought a war for independence and then lived through a period of political chaos.

In any event, the authors of *The Federalist* turned out to be right, at least for much of our history. The centrifugal tendency was dramatically manifested in the great armed struggle over slavery and in the violent resistance to school desegregation. Less dramatically (and more appealingly), it can be seen in the continuing vitality of state and local governments.

Nevertheless, it is now obvious that the federalists vastly underestimated the forces that favor centralization. Their claim that the operations of the national government would involve relatively abstract matters unlikely to generate “affection, esteem, and reverence towards the government” ignores two of the most visible and potent powers of government, the power to make war and the power to spend public funds. Moreover, it is absurd to insist, as *The Federalist* does, that the tangible concerns of local government are a source of popular allegiance *and* that these concerns will hold only “slender allurements” for the ambitions of national leaders. Even putting aside the obvious political incentives for invading areas of state regulation, there remains the great driving force of idealism. If the twentieth century holds no other lessons, it has emphatically taught that the rationalistic passion for engineered progress demands uniformity. Finally, when the Constitution was being debated, the logistics of the proposed national government were in doubt. Indeed, *The Federalist* contains a detailed calculation of that distance “which will . . . allow the representatives of the people to meet as often as may be necessary for the administration of public affairs.” It goes without saying that many of the centrifugal forces that existed in that world simply do not exist in a country linked by airplane, television, and computer.

It is not surprising, then, that it has been impossible to confine a strong national government to specific enumerated powers. Control over all that "variety of more minute interests" that the federalists assumed would remain local is now shared between the states and nation. So complete is the nationalization of our political culture that most modern scholars, confronted by this claim that the basic theory of power allocation in the Constitution has been proven wrong, can be expected to ask only why anyone would care.

Our present circumstance is this: At the same time that thousands of citizens routinely communicate their various opinions to their representatives by fax or telephone or postcard, a large segment of the population does not feel sufficiently connected with government to vote, let alone to participate in more sophisticated and costly ways. At the same time a presidential candidate thinks it appropriate to answer questions about his underwear, government is seen as distant. At the same time that an endless supply of official standards, rules, and exceptions is routinely issued, government is seen as unresponsive. At the same time that decisionmaking authority has been shifted from the shadowy doorways of local legislatures to the elevated sanctums of Washington, the influence of special interests is believed to be pervasive and inexorable.

The federalists told us this would not happen. Under their theory national representatives would be deliberative while state governments would keep policies aligned with "local circumstances." The Constitution would combine public spiritedness with responsiveness. But that theory assumed that the natural operation of centrifugal political forces would ensure that the objectives of national policy remained defined and limited. Now that the welfare of ordinary life is a concern of Washington, D.C., faction is combined with distance. Government can be both personal and remote, solicitous but unsatisfying.

Given the powerful forces that have produced centralization, it is doubtful that tinkering with constitutional text could significantly change our present circumstance. Adding the word "expressly" to the tenth amendment or narrowly defining "commerce among the states" would not alter any of the underlying realities. Institutional checks, such as the recurrent proposal to give state legislatures a veto over certain classes of federal legislation, hold more promise. But the federalists were right that the people in the states will act as a counterpoise to federal power only if the popular will exists to utilize mechanisms of resistance.

By invoking the centrifugal principle, the proponents of the Constitution largely presumed such a culture, but as a fallback they also argued that local resolve might be fortified if national policies were ineffective. This suggests the depressing conclusion that today even a modest movement toward a constitutional distribution of powers depends upon sustained ineptitude at the top.