

PS
668
.B6

FOR RELEASE IN MORNING PAPERS
SATURDAY, DECEMBER 11, 1954

ADDRESS

BY

HONORABLE HERBERT BROWNELL, JR.
ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

before the

National Association of Attorneys General

The Greenbriar
White Sulphur Springs, West Virginia
Friday, December 10, 1954

The relationship of the states of the Union to the Federal government has long presented a primary problem for our constitutional system. The Constitution assumes that there will be coordination and cooperation between Federal and State governments. Indeed, much of our strength as a nation has been derived from this dual system of government. In the course of this relationship, it was inevitable that many sharp disputes and differences should arise. It has been essential to the harmonious working of the federal-state system that these differences be properly reconciled.

Striking a fair balance between the legitimate interests and rights of each government has not been easy. It will always be difficult. The sensitive federal-state balance will not remain stationary so long as the country continues to grow. Every stage of development will create new problems of adjustment and accommodation. We will need to draw on our experience for reviewing and evaluating the role which each government must play within the framework of the Constitution.

In two fields of great current public interest, there are unresolved problems of federal-state relationships which I would like to discuss tonight - antitrust laws and control of narcotics addiction. By way of background, it may be well to consider these questions:

What is the proper area reserved for the exercise of authority by the States? What is the proper area assigned for exercise of authority by the Federal government? What are the proper areas that remain for concurrent exercise of authority by both State and Federal governments?

First, let us turn to the exercise of the important powers reserved to the States.

Despite claims of federal encroachment -- some of which have considerable validity -- the States today not only possess a vast reservoir of power but as a whole they are actively exercising these powers. The words of Elihu Root uttered years ago were never more true: "If the powers of the States are to be preserved and their authority is to continue, the States must exercise their powers. The only way to maintain the powers of Government is to govern." At no time have the States been so mindful of their responsibility to the people as they are today.

What are some of the powers being currently exercised by States without interference by the Federal government?

One need only refer to the journal "State Government" published by your able and public spirited Council of State Governments to appreciate the great number and variety of worthwhile projects sponsored and laws enacted by the States in recent years.

These laws and actions encompass in one State or another almost the entire gamut of the needs for justice, progress, and more efficient state and local government. In many ways the States have set a precedent for the Federal government to follow. Their accomplishments recall what Mr. Justice Brandeis once said: "It is one of the happy incidents of the federal system that a single courageous State may, if the citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

The trend has been to revamp obsolete State constitutions; to stimulate more extensive home rule for municipalities; to attract more

competent men to State legislatures by increasing salaries; to simplify and modernize State court systems; and to streamline State executive agencies.

The public school systems have been greatly extended, enlarged and improved in many States. Funds have been made available for more modern school facilities, higher teacher salaries, and liberalized retirements.

Legislation for improving mental health stands out - bond issues to build mental hospitals and facilities; new training-research programs and child guidance clinics; new alcoholic rehabilitation centers; mobile psychiatric clinical services for children.

The highway systems of many States also benefited greatly by increase appropriations this year.

There were numerous measures for conservation and development of natural resources. There was legislation to further the needs of agriculture, to increase workmen's and unemployment compensation, to help veterans, and many other matters in the field of public utilities, civil service, housing and health services, elections and judicial reform.

The trend away from dependence upon the Federal government has also been manifested by the numerous compacts among States for joint cooperation on many projects.

During the last year, for example, the State of Michigan was authorized to compact with other Great Lakes States for control and supervision of water resources. Kentucky and South Carolina ratified the Southeast Interstate Forest Fire Protection Compact. Arizona entered into a reciprocal agreement with California on fishing in the Colorado River. New York and

New Jersey entered a compact to weed out the criminal elements who had taken over the docks.

A significant example of joint State action by agreement is the Southern Regional Education Compact. This compact set up a program of higher education in 14 States from Maryland to Texas. Its purpose was to avoid the unnecessary expense of duplicating higher educational facilities in many of these States. Cooperative use was made of existing institutions in such expensive areas of professional training as medicine, dentistry, and veterinary science. Each State agreed to pay a fixed amount a year per student for training of its citizens admitted to a school in another of the compact States. After four years of cooperation the experiment has proved itself worthy of highest commendation.

In a recent decision, the Supreme Court has held that a compact, consistent with a State constitution, is binding on successive legislatures. This decision, involving a compact for pollution control, should provide further impetus to the extension of this technique into many other unexplored areas of State activity.

Considerable strides in State cooperation have also been made through enactment and adoption of uniform laws. Widespread use of these laws has served to discourage the tendency of local governments to turn to Washington for help.

These workable agreements and compacts for cooperation among States stem from our living Constitution and are made possible under it. Unlike the system which prevails elsewhere in the world, each State in our country does not have a mentry and customhouse at its border. A traveler is not

required to stop and pay a duty before proceeding further. He is not obliged to obtain a passport or obtain permission of a State to reside or work in it.

Absence of a Balkanized system has permitted the unobstructed exchange and movement of ideas, culture, enterprise and capital between the East and West, the South and North.

To be sure, we have different climates, people, industry, agriculture -- and I am glad to add, different opinions -- but we also have a common striving for liberty, justice, progress and amity. These are the priceless things we cherish. They must be protected from discriminatory laws such as impaired our strength and caused disunity in colonial days.

There is a practical purpose served in securing local regulation for local matters. It permits the individual to play an important role in the Government. Centralization of power deprives him of the opportunity to the detriment of the nation. As Chief Justice Hughes once said: "* * * Proper national concerns will be better directed and the accountability of national officers and legislators will be more intelligently enforced by a people whose sense of responsibility is sharpened by their participation in the control of their local affairs."

What is then the proper area carved out for federal regulation?

To be effective, the Federal government should continue to act in the fields of interstate commerce and communication. It should also be free of any interference in its development of atomic weapons.

It should not be limited in dealing with deportation of alien subversives; it should have authority to bar their immigration and

naturalization; to deny passports to members of Communist organizations; to regulate the use of mails by suspected groups; and to take other necessary measures for the Nation's safety.

These are merely a few of the areas, in addition to foreign and military affairs, which the national government must retain if it is to protect the security of the Nation from the Communists or any other hostile foreign powers.

Another important function which must continue to be exercised by the Federal government is that of averting and relieving nationwide economic depressions and crises.

In addition, the Government must use and make the country's great natural resources owned by it available in such a way as to prevent their waste, diversion or exploitation for a few persons to the detriment of society. It must moreover continue to control the navigable rivers to provide for flood protection and watershed development. For floods, we know, do not respect State lines. They destroy commerce on the rivers, and interstate land transportation and communication in flooded areas.

The Federal government has a duty also in maintaining high standards for the nation in the field of social security laws and old age assistance.

And in fields which involve fundamental rights and human obligations in a civilized society, it is the Federal government's cardinal duty to assure the equal protection of the laws to all its citizens.

We turn now to those areas of action in which the State and Federal governments may work together as a team.

Of the many techniques employed for federal-state cooperation, federal grants-in-aid have been the most important.

The principle of grants-in-aid has been extended to slum clearance, social security, civil defense, old-age pensions, public health, education, aid to dependent children, the blind, the disabled and for other worthwhile purposes too numerous to mention. Presently the amount of federal grants-in-aid exceeds two billion dollars.

Federal grants-in-aid have greatly stimulated the development of many State activities. They have provided needed standards of public service that many States would otherwise be unable to furnish. They have improved the administration of many State functions.

Federal grants-in-aid have also been the subject of criticism. It is charged that they convert the States to the status of regional offices for the Federal government; that they make it difficult for the States to provide funds for other important services; and that they retard and repress State initiative.

It is true that the grants-in-aid program is open to considerable improvement. Lack of flexibility in the application of funds is a glaring weakness. One example will suffice. Congress has appropriated money for a variety of health projects, but each has been a separate and independent grant restricted to a specific purpose. A State may not require the money for heart disease. These funds could serve a more useful purpose if devoted to child health, crippled children or tuberculosis. Yet the State

is deprived of discretion in allocating the fund to its own particular needs. Education and other State requirements suffer in the same way.

It has been suggested that these straitjackets be removed from the States and that block grants be made to them with greater latitude in using the funds. Provision for review by Federal authorities of annual State plans, it is said, would assure the reasonable and appropriate application of the grants.

This and other problems inherent in federal grants-in-aid convinced President Eisenhower who recommended a Commission to study the means by which to achieve a sounder relationship between Federal, State and local governments. The States concurred in this recommendation. Congress acted on it promptly in establishing the Commission on Intergovernmental Relations in 1953. Its progress has been marked by excellent cooperation of the States.

Only this week, Governor Robert F. Kennon of Louisiana, Chairman of the National Governors Conference, stated that there has been "more real achievement" in Governmental problems under the present administration than under any prior one. And he said that President Eisenhower "has arrested the progress of 'too much government in Washington' and has given us real hope that it will continue." Governor Kennon cited the Administration's 50-billion-dollar road program as a prime example of the President's "helpful and healthful" cooperation with State government, and said:

"We are getting a maximum of cooperation from the President and he is getting 100 percent cooperation from both Republican and Democratic Governors on this program."

Governor Kennon has appointed a liaison committee, headed by Governor Thomas Stanley of Virginia, to work with Congress for passage of the Administration's highway program.

By continuing to work together in these and many other kindred projects, the States and Federal government will achieve their worthy aims and objectives for every American.

There remain for discussion two fields of utmost and direct concern to the Department of Justice - in fact to all of us here.

The first is one of the most serious problems posed by organized crime -- the unlawful sale of narcotics.

Here is a crime against society -- as heinous as subversion -- and in many respects a form of it. The battle against it can succeed only by close coordination among local, state and federal law enforcement agencies.

Testimony recently presented to the Senate Subcommittee on Juvenile Delinquency indicated that heroin -- the drug that has enslaved thousands of young, innocent Americans -- is being produced and poured into the world's markets by Red China. It is finding its way into the United States. Marijuana and other drugs are also responsible for thousands of wrecked lives in our country. These drugs are claiming not only juveniles and adults in urban centers but, also an alarming percentage of victims in agricultural areas. Neither the poor nor the rich are spared. And the use of these drugs inevitably leads them to commit theft, murder and other crimes in order to obtain money to buy the drug.

The Council of State Governments has been keenly aware of the problem and has already taken action to counteract it. It has recommended important amendments to the Uniform Narcotics Drug Act -- broadening the definition of narcotic drugs -- extending narcotic drug control to all potentially dangerous

parts of the marijuana plant -- making prison sentences more drastic against convicted traffickers, with the severity of the sentence increased for repeat offenders. Surely, the scoundrels who sell narcotics to children deserve no mercy -- the "tap-on-the-wrist" sentence merely invites further violation.

Catching and convicting the drug peddlers are only a part of the larger problem. We are equally concerned with furnishing adequate facilities for treatment and rehabilitation of narcotic victims. These must be cared for as any sick or diseased persons in our society if the rest of the community is not to be contaminated.

As you know, only two major public institutions are devoted primarily to care and treatment of narcotic addicts -- the United States Public Health Hospitals at Lexington, Kentucky and at Ft. Worth, Texas. Obviously, these two limited facilities are wholly inadequate to handle a caseload of national proportions. It has been recommended that the States explore the possibilities of developing such facilities regionally. This could be done in cooperation with other States through interstate compacts, as well as with federal and local funds, agencies and facilities.

Last year the National Drug Control Committee of the National Association of Attorneys General drafted another proposal joining Federal and State facilities for the compulsory treatment of narcotic addicts. Under it, State courts would be permitted to order addicts to go to federal hospitals. The United States Surgeon General would be vested with discretion to accept as many of these addicts as he deemed curable and as Federal facilities could accommodate. After treatment the patients would be returned to the State for post-custodial care, supervision and useful jobs. Last year Congress enacted

a similar plan for narcotic addicts committed by the United States District Court for the District of Columbia. It remains to extend this plan to all the States.

The third prong in the attack for control of the narcotic drug problem is to establish additional State, local and narcotic squads of experts who will augment the work of the Federal Bureau of Narcotics and present State activities.

Fourth, the practice of prescribing and dispensing narcotic drugs has grown lax, and requires closer supervision by States.

A fifth course of action is to make the growth of marijuana illegal. Some States have already taken this step. It has been recommended that the States now make the offense the equivalent of a felony instead of a misdemeanor, and permit the public authorities to destroy the plants.

The Federal Government must be equally alert in discharging its grave responsibility to the public.

Its attention is now being given to the following measures:

1. Strengthening the federal narcotic laws;
2. Enlarging the federal narcotic staff;
3. Expanding federal facilities for treatment and care;
4. Increasing federal grants-in-aid for more effective State narcotic control and rehabilitation; and
5. Cutting down by agreement or other more drastic means the importation of narcotics from other countries.

Here again, the common aims of both State and Federal governments would be more readily achieved by pooling resources and working together on the same team. Any investment that is made in law, order and sound health --

in short, in good and effective government -- will pay premium dividends for all the people for all time.

This is one problem that we cannot afford merely to philosophize about and then forget. President Eisenhower and Members of the Congress have an intense, personal concern and interest in it. The President seeks a positive plan of action which will be as successful in the war against narcotics as we have been in the wars against aggression. The President has already spearheaded the attack by appointment of a Special Cabinet Committee to deal with the problem. The President knows, as I do, that the States stand ready to do their share in this fight to rid ourselves forever of this ugly blot upon civilization.

The second field for close cooperation between the States and the National Government in a matter of direct concern to the Justice Department is the field of enforcement of the antitrust laws prohibiting monopolization and restraints of trade.

This is a theoretically non-controversial area because almost everyone, including the monopolist, is against monopoly and restraint of trade, although many appear to be against these economic aggressions only when carried on by someone else. Moreover, the State enforcement problems are almost nation-wide because, in 45 of the 48 States, there are specific State statutes prohibiting monopoly or restraints of trade, or imposing various penalties and forfeitures for specific unfair competitive acts.

Most of you, accordingly, are required to come to grips with restraints and monopolies which affect commerce within the borders of your own States. Similarly, Judge Stanley N. Barnes, head of the Antitrust

Division of the Department of Justice, and I must deal with those same problems when they arise on an interstate scale.

Judge Barnes and Chairman Howrey of the Federal Trade Commission both tell me that at least occasional complaints of restraints are addressed to Federal authorities which they cannot prosecute because the situations lack the essential jurisdictional element of interstate commerce. In one metropolitan area, for instance, it appeared to the staff of our field office that there was a recurring pattern of local restraints evident in a number of unconnected consumer-goods trades. This pattern took the form of a grouping of members of a trade into local associations, plus the use of force to make the members of the trade join and conform to various customer allocation and price-tampering schemes. Some of these in their intrastate phases had been investigated and prosecuted by the States' Attorney General while others had apparently not come to his attention.

I was surprised to learn that, while the Department frequently refers complainants to State authorities in appropriate instances, it has no established uniform procedure for insuring that all apparent violations of State antitrust laws of which it becomes aware are routinely drawn to the attention of State prosecutors. I believe that a regional office of the Antitrust Division in possession of information incriminating under State law, which it cannot use to ground a Federal prosecution, should promptly inform the State Attorney General. On the other hand, a State Attorney General who knew of a Federal antitrust violation should just as promptly tell the Antitrust Division about it.

From now on it will be the Department's policy, in cases where we determine that the trade restraining practices involved are exclusively local,

to forward to your respective offices confidential summaries of information developed by our inquiries. In most instances, these summaries will not constitute complete cases ready for the courts because we will cease investigative activity as soon as it appears that the matters are not within our jurisdiction. Under no circumstances will we make a specific request that you prosecute, since we have no ambition to interfere in your affairs. However, we feel that the regular reference of such information will be worthwhile because it may sometimes supply evidence that you might not otherwise receive. Moreover, it will aid the complainant who has a real grievance, but who has come to the wrong prosecutor.

In addition to this transmission of summaries of information from time to time, I shall instruct each of the field offices of the Antitrust Division to establish contact with the States' Attorneys General within its area and to offer the Department's cooperation.

The Department, in turn, would welcome the receipt of any information that you may have which suggests the probable existence of restraints of trade affecting interstate commerce or monopolies of national scope. If each of you could also designate one of your assistants to act in liaison with the nearest of our field offices, we believe that much could be accomplished. Antitrust Division Field Offices are located in Chicago, Illinois; Cleveland, Ohio; Detroit, Michigan; Los Angeles, California; New York, New York; Philadelphia, Pennsylvania; San Francisco, California; and Seattle, Washington.

Once a two-way flow of communication is set in motion, the further details of our cooperation could be worked out in such conferences as may be necessary. I shall welcome any procedural suggestions that you may have in

this connection and I ask your support so that, by working together, we may all try harder to stamp out the evils of trade restraint and monopoly. I am sure that you agree that whatever we may jointly accomplish in protecting free and fair competition will help to stem the growing trend toward concentration in our economic life and preserve our system of free enterprise.

In joining together to solve these two law enforcement problems of common interest, the States and Federal government will also be joining together in protecting the liberties of our people. You who are honored to represent the States as chief legal officers have a special opportunity in this regard. It is a joint duty and privilege of all of us wisely and fairly to use our authority to safeguard our Republic from those who seek to destroy it by lawless action. In these two fields, as in others where federal-state cooperation has been so fruitful, we can together make a significant contribution to our country's welfare.