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"COOPERATION BETWEEN THE STATES AND THE NATION"

ADDRESS

BY

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About 165 years ago, our founding fathers were engaged in baptizing a new form of government. They intended it to endure for ages. Experience has shown they were not cloudy, political theorists, but clearheaded, practical realists. So successful was their experiment, that other countries have adopted it as a model to guide the affairs of free men everywhere.

As you know, our Constitution was a great compromise between those who favored States' rights and those who felt that the country's future would be secure only under a strong central government. As part of this compromise, two major concepts of political thought were adopted. One was the principle of checks and balances which would prevent any one branch of the federal government from becoming too autocratic. The other was the principle of dual sovereignty which created out of the thirteen states a federated republic. This structure tended to minimize the risk of despotism from the central government as a whole and to maximize the prospect of political freedom for all the people.

This was a unique system of government. It had no monarch; it had no subjects. No single church dominated any part of it. The territories were to be admitted into the partnership as equals. And the people were expressly protected by a charter of human rights--the Bill of Rights. But perhaps most important of all was the concept of local self-government which is the very essence of our way of life.

Under these favorable auspices liberty was bound to flourish. As a free federation, there was room for diversity of opinion and flexibility of action--there was no room for totalitarian conformity. It was a legal philosophy whose soil encouraged national unity and the free development of the various states. It was a political philosophy whose roots stood firm for local autonomy, self-expression and independence.

Throughout our experience as a nation, we have been faced with the problem of striking a fair balance between the diverse forces set up by our dual federalism. There have been times when it has been claimed that the central government was asserting more than its fair measure of constitutional authority. There have been times when it has been claimed that the States have gone too far in encroaching upon the essential powers of the central government. There have been other times when we have enjoyed a happy reconciliation of competing interests--where state and federal governments were combining their huge resources for the common good.

I shall speak of this cooperative phase today. For, more than ever, it is necessary that we resolve our internal problems harmoniously if we are to sustain our strength for the peaceful resolution of the world's problems.

How was cooperation between states and federal governments manifested in early days? What has been the course of its development? What is its current position? What does the future hold in store for it?

Almost immediately after adoption of the Constitution, the state and national governments began to engage in cooperative practices. At first it involved bringing state and national laws into alignment in many respects; working out a fair division of revenue resources; giving relief to the states through assumption of their debts; and grants-in-aid. For example, in regulating navigable waters, the First Congress required that all pilots in the waters of the United States must conform to state laws; and violation was punishable by state action.

There was also considerable cooperation by state and national officials in judicial and administrative areas, informally, under contractual arrangements and under statutory authority. In some cases the national government paid state officers, and in other cases the reverse was true. State tribunals and other institutions were employed as federal agents. Thus, an early Act of Congress delegated to a tribunal created under state laws, the power to fix and determine the amount of compensation to be paid by the United States in exercise of its right of eminent domain. This was held not to be violative of any legal principle, or in derogation of sovereign authority, but solely in aid of good government as a matter of convenience and saving in expense.

There was an early amendment to the Constitution which contributed to the cooperative spirit. In 1798 the Eleventh Amendment prohibited the federal courts from taking cognizance of suits against a state by citizens of another state or of a foreign state. It thereby removed a bitter source of friction and acrimony between the States and federal government.

There was another early impediment to harmonious federal-state relationships. This was disharmony between the states themselves and the federal government caused by territorial disputes, loose banking practices and trade barriers. In landmark decisions by the Supreme Court, our dual system of government was saved from the fate of the old Confederation with its internal bickering, discord and disunity. The states accepted as binding the decisions of the Supreme Court which adjudicated differences between them. Missouri and Iowa had such a fierce controversy over territory that troops on either side were called out. But the Supreme Court helped adjust the disputed limits satisfactorily to

both sides. In one case Virginia sued West Virginia. It was claimed that when West Virginia was created as a state, it had assumed part of the public debt of Virginia. After lengthy litigation, West Virginia satisfied the Court's decree.

Our country was being run by law and order--not by force of arms--in controversies between federal and state governments. In McCullough v. Maryland, the court, headed by Chief Justice Marshall, gave impetus to more conservative banking and to stabilization of the national currency. This was an essential step to sounder trade and exchange practices among the states throughout the country. In Gibbons v. Ogden, the "Commerce Clause" received an expanding construction leaving our vast interstate and foreign commerce free to grow. It gave great momentum to the development of interstate transportation and communication, and to effective economic and social planning. These and other decisions tended to bind the states into one united, harmonious, cooperative nation.

Our unity was further abetted by expanding grants-in-aid. They were made by Congress in exercise of its powers to dispose of property of the United States, to collect taxes and devote them to the general welfare.

To begin with, the grants were made to the states relatively free of restriction. As the programs grew in size, complexity and in number, Congress began to realize that only through coordinated efforts could programs essential to national interests be achieved. For example, in federal aid construction projects reliance is generally placed on states for the acquisition of all necessary rights of way. State authority is also invoked to police and protect the federal highways. State regulation is often cooperatively welcomed in the protection of national forests

from negligent and wilful conduct of visitors. And in other instances also, we find similar coordination made possible through welding of state police powers and the great financial resources of the Nation.

In this century, grants-in-aid have moved to their highest stage of development, attended by greater flexibility, administrative efficiency and social productivity. Included among the recent grant-in-aid programs are broader agricultural programs; vast highway projects; vocational education and rehabilitation; public health; social security; employment offices; school lunch programs; airports, and other projects.

State-federal cooperation did not stop with jointly financed projects under grants-in-aid. It extended to many non-grant fields, set in motion by legislation. State officers implemented various national laws, such as the National Prohibition Act, the Selective Service Act, the Public Health Administration, the Plant Quarantine Act and others too numerous to mention. This has been a two-way street for reciprocal service. Congress has used its broad powers over interstate commerce to support local policies of the states in coping with organized crime, big-time racketeers and vice lords. Through joint efforts, a greater measure of success has been obtained in curbing illicit traffic in narcotics, liquor, gambling devices and other unlawful enterprises.

In addition, cooperation has taken root in regulatory fields. Together with state agencies the Interstate Commerce Commission has perfected uniform legislation and regulation concerning the supervision of railroads. State accounting examiners have been appointed and a state bureau of statistics and accounts established to regulate carriers' books. The Food and Drug Administration has had a Division of State Cooperation.

Almost every state has modeled its Food and Drug Laws after the Federal Act. State officers have been commissioned as national examiners and inspection agents to collect, examine and analyze samples of foods and drugs in interstate shipments. In many cases, local men acting as national agents have uncovered many violations which would otherwise have escaped the attention of a small staff of federal field men. The Federal Power Commission has required applicants for a license to present satisfactory evidence of compliance with state laws, and national and state accounting procedures are uniform. Similar forms of cooperation have existed among other federal agencies, and included cooperative techniques in procedural matters also, such as joint hearings, joint conferences and joint investigations.

As a result of increased mutual trust and confidence, police cooperation between state and federal systems has developed remarkably on an informal basis in the fight against crime. National technical facilities, publications, fingerprint files, detection instruction and other resources developed by the Federal Bureau of Investigation of the Department of Justice have been made available to local officials, and the latter in turn cooperate in many ways with the FBI. The Motor Vehicle Theft Act receives the combined attention of state and local police. Under game conservation laws, state game wardens are appointed deputies to enforce federal law. The Treasury Department through its agents works together with local police in coping with the narcotic traffic, and its Bureau of Narcotics has also cooperated with the states in drafting uniform narcotics legislation.

A well known example of cooperation in judicial decisions has occurred as a result of court decisions holding that state and federal governments must avoid crippling taxes which discriminate against each other or which impose oppressive burdens. And more and more, the courts in construing the commerce clause are exercising greater restraint in interfering with state laws which are chiefly of local concern and enacted out of unique local experience.

There are also familiar examples of coordination on the procedural side of the Courts. One is the diversity of citizenship jurisdiction in the federal courts. Here, a cause of action resting on state law is adjudicated in a federal tribunal according to federal procedure. So too, state courts entertain causes of action under federal law, as for example under the Federal Employers Liability Act or under the Emergency Price and Rent Control Acts. And as a result of the Supreme Court's decision in Erie v. Tompkins, the federal courts follow, on a plainly substantive question, the interpretations and decisions of the courts of the state whose law is applicable.

In these and other ways, we find our federal and state court co-operating to eliminate inconsistent systems of procedural and substantive law. In this way also, we are making headway in eradicating a large part of the confusion and chaos which would otherwise obstruct our citizens in their search for justice.

Federal-state relationships in the past have not been entirely free of friction. We are all mindful of the difficulty in determining, in a given case, whether a matter is one for state or federal action. The jurisdictional lines are not always marked off in black and white. There

are often the gray or doubtful areas in which an arguable case can be made both ways. For example, some years ago the Supreme Court was faced with the problem as to whether the business of insurance was "commerce", and as such subject to regulation under the Sherman Anti-Trust Act. Five justices concluded it was; four took the other view. More recently in the Nelson case, the Pennsylvania Anti-Sedition Law presented another thorny problem to the Supreme Court. It was whether the Smith Act enacted by Congress was intended to preempt the field of internal security. In these and other situations, our sole interest should be what is the best solution for the nation. Once federal and state governments recognize each other's legitimate interests, they will have no trouble in getting together to accomplish common objectives. This is the way to avoid head-on collision.

Today there are some encouraging signs of increasing cooperation between the Nation and the States. An illustration is the recent work done by the Interdepartmental Committee for the Study of Jurisdiction over Federal areas within the States. In view of its importance, I should like to speak of this comprehensive Study to the extent that time permits.

It was undertaken by leading members of eight federal agencies and there was further participation by twenty-five others. Its Chairman was Perry W. Morton, Assistant Attorney General in charge of the Lands Division, Department of Justice. It had the cooperation of the National Association of Attorneys General and the Association's members, the Attorneys General of the several States. Assistance was also rendered by the Council of State Governments and the National Association of Tax Administrators. At this time I want to express my sincere gratitude to Mr. Morton and to all the participants in this difficult task.

In commenting editorially on the results of the study, the Dallas Morning News had this to say:

"Most Texans, it is safe to say, will join President Eisenhower in warmly approving the Morton Report.

"This is the work of a committee of the government that has just found that state and local laws should have full force on such federally owned properties as post offices, national parks and military bases and reservations.

"Uncle Sam now owns approximately 25 percent of the areas within the 48 states. It would be a notable victory for home rule if this vast territory were made subject to local and state laws and law enforcement.

"Congress will be asked to make clear by statute that the laws of the several states on such matters as alcoholic beverage control, hunting and fishing regulations, traffic and other state laws will prevail on such 'islands of federal ownership.' In addition to state enforcement of criminal laws, the Morton Report would allow civilian employees of the Federal Government stationed in such areas to qualify as residents of the states. State civil courts would be open to them, the same as to other residents of the states, for divorce suits and other proceedings.

"This is a just and considered series of recommendations by the committee set up by Attorney General Brownell. They are fully in line with spirit of the Eisenhower administration, which has done more to restore States' rights than any other since the time of Grover Cleveland."

Article 1, Section 8, Clause 17 of the Constitution lies at the foundation of this Study. There is an interesting historical background to this Clause. When the Continental Congress met at Philadelphia in

1783, the members of the convention were subjected to many indignities at the hands of unruly mobs. This incident impressed the delegates with the need of having areas under Federal jurisdiction, in which the Federal government could function free from state control. Clause 17 was adopted for that purpose. In sum, it grants permission to the Federal Government to exercise at the seat of government all governmental powers ordinarily reserved to the states and generally not possessed by the United States. This includes legislative, executive and judicial functions.

Under Clause 17, in areas acquired by the United States for various Federal purposes with the consent of the state involved, the government exercises almost the same pervasive authority as it does in the District of Columbia.

We now have thousands of these Clause 17 Federal areas called "enclaves" located in all the 48 states governed by federal laws, in the midst of surrounding state territory governed by state laws. These range all the way from small town Post Offices to large-scale military reservations. In areas of exclusive federal jurisdiction, the states are disabled from exercising their sovereign powers except for minor affairs such as imposing certain State income, sales, use and gasoline taxes. This has been a matter of mounting concern to the people.

One major problem arises because the federal government has failed to legislate for these federal areas respecting many matters usually of local interest. For example, there is no federal law of inheritance, probate, guardianship, marriage or divorce. This adds a further complication to fields of law which are already much too fertile for litigation. Moreover, residents of such areas are in many instances denied vital civil

rights and privileges. They are often disenfranchised of their right to vote; deprived of the right to attend public schools; fenced-off from public office; unable to obtain public assistance; and barred from the courts for many purposes. This is "second class" citizenship at best and should be eliminated as soon as possible.

There are other inequities created by the existing situation. A criminal may escape the demands of justice because of the difficulty in determining whether the state or federal courts should try him. This governmental vacuum tends to create a no-man's land of enforcement--a grave threat in any civilized society. Confusion is confounded in other law enforcement fields. For example, the Washington-Baltimore expressway in five places has segments running through areas under exclusive Federal jurisdiction with the balance held in concurrent jurisdiction with the State of Maryland. This legal deadlock has made it difficult for Maryland authorities to administer their criminal laws on any part of this highway. There are similar problems all over the country. The purpose of this Study was to find a fair and workable solution for these problems. As Mr. Justice Holmes once said: "Some play must be allowed for the joints of the machine."

The Committee engaged in this Study has recommended among other things, enactment of a federal statute authorizing Department and agency heads to relinquish unnecessary, self-defeating federal jurisdiction to the States. It is contemplated that appropriate state legislation will also be adopted to permit acceptance of the jurisdiction surrendered. Uniform state laws have been suggested for the protection of fundamental rights.

In my opinion, this Study and the recommendations contained in it will furnish the groundwork for federal-state cooperation on a scale never before realized or anticipated. With your continued participation in this work, with full public knowledge and understanding of its purposes, with the assistance of the Congress and the cooperation of the state legislatures, I cannot help but be confident of its successful outcome.

Within 20 years our population is estimated to reach 225 million. As we approach this era, it is obvious that the questions of human welfare, health and education will have to be carefully reviewed and resolved by Federal and State Governments in the light of the needs of our people.

Both the Federal Government and the States should constantly be engaged in defrosting and modernizing legislative processes, administrative procedures and judicial machinery so that no part of the government ever becomes inflexible, obsolete or irresponsive to the public's needs.

Many conflicts between the Federal and State Governments can be reconciled only if their representatives sit down together to find the right solution. Experience has shown that these difficulties may be settled if each government recognizes its proper area of authority as well as its limitations.

Looking back over our history, we can find one group after another in this country which has complained bitterly of some decision of the Supreme Court. But we as the chief law officers of our respective governments can appreciate most fully the great blessing of a high court in our governmental system which has power to resolve these vital controversies.

We know only too well that attacks upon any branch of the government sooner or later breed disrespect for every other branch. As responsible officers, our duty to the people is to support each branch of government in the performance of its functions. We must continue to discharge this duty if we are to avoid anarchy in all government.

Intelligent teamwork with wise and patient cooperation within the framework of our Constitution is certain to produce a much richer and satisfying way of life for all our people.

By such common action, we can assure what the Constitution has always looked to - "an indestructible Union composed of indestructible States."