



Department of Justice

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ADDRESS

OF

THE HONORABLE EDWIN MEESE III
ATTORNEY GENERAL OF THE UNITED STATES

TO

THE CONSERVATIVE POLITICAL ACTION CONFERENCE

JANUARY 30, 1986
WASHINGTON HILTON HOTEL
WASHINGTON, D.C.

NOTE: Because Mr. Meese often speaks from notes, the speech as delivered may vary from this text. However, he stands behind this text as printed.

It is a pleasure to be with you during your annual convention. Let me say at the outset that you have every reason to be proud. Your organization -- and, most important, the individual enthusiasm of each of you -- has been a crucial part of the success of this Administration. You have, in many ways, given political form to the substance of conservatism. American politics, I think it is safe to say, will never be the same. For your role in effecting this historic change, I applaud you.

At this important historical juncture, it is crucial that we pause and reflect on where we are headed during the next decade -- and beyond. For in a very real sense it is far less important that we have seized the moment than that we are able to perpetuate our principled stands on the issues. Our success as a political movement in future years will depend upon the degree to which we now think through clearly what conservatism both demands and allows.

Today, I wish to speak to you about what I consider to be the necessary theoretical bedrock of our political movement. Underlying the various policy efforts we have undertaken in this administration is a critical political principle. Our social policy initiatives presuppose its importance. So do our economic policy initiatives. This is both a political principle and a fundamental constitutional value that has helped shape us into what we are as a people. It lies at the heart of President Reagan's new public philosophy.

I am referring to federalism.

Just this past weekend, we at the Department of Justice held a Conference on Federalism. The topics we discussed ran from how the Federal Courts have regarded -- perhaps more precisely, "disregarded" -- federalism, to the impact federalism has on our system of criminal justice, to the importance of federalism in encouraging a sense of community and patriotism among the people. Scholars from around the nation joined us in a robust and uninhibited debate over the problems and prospects of federalism.

During the conference, one thing was made very clear to me. And that is that our federal system is one of remarkable complexity. The system we have is not characterized by a neat and clean division of sovereignty.

When we left the conference, we carried with us two lessons. First, that governing in a federal system is not easy. Second, and most important, learning to govern well in that system is vital to our political liberty. But how do we put our principles into practice?

What we must seek is not some old-fashioned notion of states' rights. Rather, we must seek to generate a belief in states' responsibilities and confidence in the states' ability to govern. In the end, the objective is not simply less government overall, although that may happen, but less government at the national level. The happy result will be better government at the state and local levels, levels where the government is closer

to the people. By being closer to the people, those governments are far more likely to be accountable and responsive to the people. And that is what popular government is all about.

Federalism, as our Founding Fathers knew, is an important means to promoting good popular government. At its deepest level, as I have said elsewhere, popular government means a structure of government that not only rests upon the consent of the governed, but more importantly a structure of government wherein public opinion can be expressed and translated into public law and public policy. This is the deepest level precisely because public opinion over important public issues ultimately is a public debate over justice. It is naive to think that people only base their opinions on their conceptions of their narrow self-interest. Very often public opinion and political debates reflect far deeper concerns -- if you will, moral concerns.

It is this venting of the moral concerns of a people that is the very essence of political life. Indeed, this is the very essence of political liberty. In a popular form of government it is not only legitimate but essential that the people have the opportunity to give full vent to their moral sentiments. Through deliberation, debate, and compromise a public consensus can be formed as to what constitutes the public good. It is precisely this consensus over fundamental values that knits individuals into a community of citizens. And it is this liberty to debate and determine the morality of a community that is an important part of our liberty protected by the Constitution.

The toughest political problems deserve to have full and open public debate. Whether the issue is abortion, pornography, or aid to parochial schools, there is no constitutionally explicit reason why the people within the several states may not deliberate over them and reach a consensual judgment. A proper understanding of federalism, I submit, would surely permit such a state of affairs.

I do not think the Tenth Amendment is a dead letter. Nor do I think the Fourteenth Amendment was intended to obliterate completely the principle of federalism. Nor, further, do I accept the misguided notion that the Ninth Amendment is a constitutional blank check for the courts to deny the principle of federalism in the name of new rights some judges and justices believe are implicitly embedded in the cracks and crevices of the Constitution. No, the Constitution takes account of the fact that -- indeed, makes provision for the proposition that -- there are certain areas best left to the states.

Substantive public issues -- such as abortion -- are matters of public or civic morality. They should be decided upon through a free and robust discussion at the level most appropriate to their determination. Such sensitive issues arouse the strands of public sentiment that must be allowed to be woven into a communal fabric of political liberty.

By allowing our democracy a forum within which to operate, the federal structure of the Constitution was designed to allow us to be self-governing in the truest, the deepest sense. That is not to say that majorities rule without restraint. Certainly

the Constitution prohibits states from making certain kinds of substantive choices. For example, states cannot have slavery; they cannot invalidate contracts; they cannot coin money; nor can they discriminate on the basis of race. But to deny the right of the people to choose certain substantive ends is not to deny them the right to choose any substantive ends. Self-government means that within certain limits we the people are able to determine the substance of our politics.

To argue for federalism as one of our most basic constitutional principles surely will not please everyone. Not even all conservatives. But true conservatism, I suggest, must be dedicated to the principle of federalism precisely because conservatism properly understood embraces as much a dedication to the processes of constitutional government as to substantive policy choices that government may make.

What this means, to put it bluntly, is that federalism would allow states the freedom to make choices with which we, as conservatives, may very well disagree. For example, federalism properly understood means that states or localities may ban handguns. Also, they may seek to ban pornography, as Minneapolis recently tried to do. Or they may seek to enact liberal abortion laws that even go beyond Roe v. Wade. The point is that at the policy level federalism may not always serve to achieve the conservative agenda.

But in the deeper sense, at the level of principle, federalism serves to promote one of the most important ideals of conservatism. That is the belief in constitutionalism and popular government.

Constitutionalism transcends in political importance the economic and social agendas of conservatives and libertarians as well as liberals. Our belief in federalism is as much an obstacle to courts that would seek to impose the liberal agenda as it is to courts that would seek to impose the conservative or libertarian agenda. For both efforts undermine the very foundations of free constitutional government.

This necessary dedication to the ideal of constitutionalism reflects our basic political belief that the only sovereign in our country is the people. We need always to remember that whatever power or jurisdiction any government has derives from the sovereign people. This is the very core of constitutional democracy.

Under our federal system, we then face two questions. First, where should the decision-making power be located? Second, what decisions should be made? In my view, where you locate the decision-making power influences what decisions will be made. This is so because the closer that the people are to the decision-making process, the more opportunity there is for the people themselves to influence the decisions.

This is why in order to understand federalism we must first understand our more basic dedication to constitutionalism. And our constitutionalism is a theory of politics that believes that the government is and must be limited by the variety of means set forth in our written Constitution.

One of the most important institutional features of our Constitution is its design to make certain that government at all levels has certain limitations imposed upon it. The Constitution thus creates a procedural structure that specifies where decisions should be made about certain types of things that the government is expected to do. The result is a government that is at once limited and energetic. This is what James Madison meant when he remarked in The Federalist that in "the compound republic of America [federalism provides] a double security ... to the rights of the people."

Recently, there has come to be a growing confidence in states to govern well. And that confidence is not misplaced. Our modern states are, in many respects, models of efficient government. As a result, this view holds, there are now a lot of good reasons to restore more power and authority to the states because the states are now capable of handling it. But to me, this is not the best reason for returning power and authority to the states.

Frankly, my view is that we ought to restore power and authority whether the states are capable of handling it or not. The reason for restoring federalism is not because the states have somehow now proved themselves under the watchful parental

eye of Congress and the Supreme Court. Federalism must be restored because it is a basic constitutional principle. Under our Constitution we have a political obligation to allow the states to govern themselves, hopefully to govern themselves well, but to govern themselves in any event.

This leads to four basic propositions we need to keep in mind as we go forward in the years ahead.

First, to paraphrase Mark Twain, the reports of the death of federalism have been greatly exaggerated.

Second, if we are to protect our most important constitutional values, then federalism must be preserved.

Third, with a little innovation and a little creativity, federalism can be revitalized.

Fourth, with your enthusiasm and efforts it is inevitable that federalism will be revived and ultimately will be protected and preserved.

In closing, I would like to share with you an observation by the man many consider to be the foremost teacher of the virtues of federalism, Alexis de Tocqueville. Writing in Democracy in America, Tocqueville noted that:

Men are affected by the sovereignty of the Union only in connection with a few great interests; it represents a huge and distant motherland and a vague, ill-defined sentiment. But state sovereignty enfolds every citizen and in one way or another affects every detail

of daily life. To it falls the duty of guaranteeing his property, liberty, and life; it has a constant influence on his well-being or the reverse. State sovereignty is supported by memories, customs, local prejudices, and provincial and family selfishness; in a word, it is supported by all those things which make the instinct of patriotism so powerful in the hearts of men.

How can one question its advantages?

Thank you.