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FEDERALISM AND DEMOCRATIC THEORY

by

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## PREFACE

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Federalism and democracy are the two most fundamental dimensions of government in many western countries, including Canada. Yet the relationship between these two ideals has been often neglected in contemporary political theory. Studies in federalism regularly investigate the details of institutions and practice, without broadening the discussion to include their impact on the nature and quality of democratic government. Similarly, the study of democratic theory often proceeds with minimal reference to the implications of adopting federal forms.

In this Discussion Paper, Reg Whitaker seeks to bridge this gap. He argues vigorously that democracy and federalism have been intertwined since their origins in 18th Century thought and practice, and that they continue to illuminate one another. In exploring some of the problems raised by the relationship between the two, he surveys a wide range of issues and writers, and concludes with general observations which have a special relevance in contemporary debate over Canadian government.

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Associate Director  
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A century and a half ago, Alexis de Tocqueville set out to examine the "great democratic revolution" which was sweeping the New and Old Worlds alike, and affirmed that the rise of the democratic principle was universal and lasting, that "it constantly eludes all human interference, and all events as well as all men contribute to its progress."<sup>1</sup> Yet Tocqueville himself was examining the United States as a system which was not only democratic, but federal as well: the first modern political democracy and the first modern federal state.

Today, when 'democracy' has become the formal banner under which almost all nations march, to whatever tunes, there is a vast literature on democratic political theory. There is also a more restricted and specialized, but still large, literature on federalism, its meaning and its functioning. There is, however, surprisingly little reference to federalism among democratic theorists, and perhaps even less consideration of democratic theory among students of federalism.<sup>2</sup> This is, on the face of it, odd. After all, a number of leading liberal democracies are themselves federations, and this latter form has been replicated in a number of new Third World nations opting for Western models. Even the Soviet Union, which claims to be an economic democracy, is a formal federation of republics. Moreover, when Tocqueville investigated the

United States as a prototype of the coming democratic state, he was very well aware that American federalism was equally as innovative as its democracy, and that the two were inextricably interconnected.

I advance the hypothesis that democratic theory and federalist theory are not only intertwined at the point of origin of the modern science of politics, but continue to offer illumination one to the other, and that neglect of the relationship between these two theories has tended to blur an important dialectic at work in the development of modern democratic politics. However irresistible the rise of the democratic principle, it is a curious observation that democratic theorists have expended much heat, and some light, on justifying limitations on that very principle. The tyranny of the majority, the iron law of oligarchy, polyarchy, elite theory, the administrative state, checks and balances -- all these concepts and more have been advanced to rationalize the necessity of popular sovereignty being limited, constrained or even reduced to a mere rhetorical formality. Some democratic theorists rather regret this, while many seem content to view democracy as a kind of instructive theoretical principle which tends to self-destruct in practice.<sup>3</sup>

Modern federalism is an institutionalisation of the formal limitation of the national majority will as the legitimate ground for legislation. Any functioning federal system denies by its very processes that the national majority is the efficient expression of the sovereignty of the people: a federation replaces this majority with a more diffuse definition of sovereignty. It does this not by denying the democratic principle, as such, but by advancing a more complex definition of democratic citizenship. As a result, individuals find political expression and representation in dual (sometimes even multiple) manifestations which may even be contradictory and antagonistic. This poses some severe theoretical challenges to democratic theory. At the same time, I would argue that it casts light on what may be inherent weaknesses in democratic practice.

I propose in this paper to explore some of the problems raised by the relationship between federalism and democracy. I look to the history of

political thought to clarify some of the crucial concepts involved in this exploration. First there is the concept of sovereignty, examined with an eye to its possible meaning in a federal state. There follows a discussion of the emergence of the idea of democratic sovereignty, with particular attention paid to Rousseau's direct democracy as counterposed to the model of representative democracy operative in western societies. It is argued that many of the limitations of democratic sovereignty sometimes ascribed to federalism are in fact inherent in the representative form itself, as indicated by Rousseau. I then proceed to examine some historical attempts to theorise democratic federalism, beginning with the American Constitution, the Federalists, Calhoun, and Proudhon, and suggest some lasting conclusions which can draw from these sources. In the final section, I conclude with some reflections on federalism as a form of democratic polity, and offer a qualified defence of this form.

## II

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One of the oldest controversies surrounding the theory of federalism has to do with the question of sovereignty. Indeed it is no exaggeration to suggest that the rise and persistence of federations has been a leading factor in the decline of the concept of sovereignty from the height of its prestige in the 16th to 18th centuries. Functioning federations seem a kind of standing reproach to the notion that a sovereign power, absolute, indivisible and inalienable, separate from and supreme over the society, is a necessary element of any polity.

What is less well known is that at the very period when Jean Bodin was developing the concept of monarchical sovereignty to oppose the chaos of decaying federalism, another theorist, Johannes Althusius, was developing a very different approach which may, with little violence, be called proto-federalist. Twenty-seven years after the publication of Bodin's *Six livres de la République* in 1576, Althusius published his *Politica Methodice Digesta* (or *Politics*), which, instead of seeking a theoretical justification for absolutism, attempted to constitutionalize the existing political fragmentation of Europe in a multilayered combination of functional and territorial jurisdictions within a commonwealth where sovereignty rested in the whole, rather than in a supreme authority.<sup>4</sup>

It is instructive, in light of future federalist thought, to note that at the basis of his politics were "symbiotics," or consensual associations

(voluntary private associations based on functionalism such as guilds or corporations; and public associations based on territorial jurisdictions, from the cities and provinces to the commonwealth as a whole). Sovereignty is the symbiotic life of the commonwealth taking form in the *jus regni*, or fundamental law of the realm.

The universal power of ruling is called that which recognizes no ally, nor any equal or superior to itself. And this supreme right of universal jurisdiction is the form and substantial essence of sovereignty.... When this right is taken away, sovereignty perishes....The people, or the associated members of the realm, have the power of establishing this right of the realm and of binding themselves to it....This right of sovereignty does not belong to individual members, but to all members joined together and to the entire associated body of the realm ....And what they once set in order is to be maintained and followed, unless something else pleases the common will. For as the whole body is related to the individual citizens, and can rule, restrain, and direct each member, so the people rules each citizen.

In one sense Althusius was not challenging Bodin's idea of sovereignty: "The power of the realm is always one power and never many, just as one soul and not many rules in the body." But he goes on to assert that since the administration of this power may be divided, citizens can individually share in the function of governing, while the plenitude of the power rests with the commonwealth or realm as a whole, which is to say, the people in association.<sup>5</sup> And this associative commonwealth moves from the particular through the local to what we would call the 'national.' It is not exactly what we mean by federalism (post-1787) but some of the basic elements are there. Nor is Althusius strictly speaking a democratic theorist. Yet there is in his thought an attempt at sketching an alternative view of sovereignty which rests as an attempt to build the universal on the existing particularities, and on an idea of sovereignty resting with the people in proto-federal association.

In the English-speaking world it was Hobbes' enunciation of absolutist sovereignty which set the tone for the 17th century. Even in Locke's majoritarian restatement, the Hobbesian insistence on sovereignty resting in a single ultimate and supreme location remains. To Hobbes, the



sovereign power must be indivisible since overlapping jurisdictions automatically return the commonwealth to a state of war. The ideologists of the Whig constitution post-1688 got around this difficulty not by denying it, but by claiming that sovereignty was seated in the supremacy of Parliament, understood as an institutional unity of the leading elements or estates of English society: monarchy (the Crown), aristocracy (the House of Lords), and property (the Commons). Even if less awesome than Hobbes' "mortal God," the Crown-in-Parliament was a formidable enough embodiment of the idea that sovereignty was a power supreme over all others, located in a single synthetic institution, although not in a single person, or even an assembly acting as a single person.

As Althusius already hinted, however, there is a deep, probably fatal flaw in the absolutist idea of sovereignty. A critique of this idea, with reference to Hobbes, has recently been put brilliantly and devastatingly by M.M. Goldsmith:<sup>6</sup>

The argument is persuasive, but fallacious. If it were correct, then constitutions which divide, separate, or distribute the powers of sovereignty would not merely be tricky to operate, requiring adherence to constitutional rules and acceptance of the separate jurisdictions of the officers empowered by the constitution in various spheres, they would be impossible. The fallacy is contained in holding that the logically necessary characteristics of an independent system of authority must be possessed by some identifiable part of the system. It is as simple an error as holding that because clocks tell time, the power of telling the time must be a characteristic possessed by some identifiable part of a clock. For a system to be an independent and absolute one, it is only necessary that there be no appeal outside it - that it should not be (normatively) dependent, derivative or subordinate. In other words, to be an independent, closed, complete and conclusive system merely requires that there should be a final decider (set by the rules of the system - its constitution) in any sphere, for any issue or controversy that may arise....

We may conclude that sovereignty can be, and is in fact, divided among different holders of the attribute, under the authority of a set of rules which is supreme, without calling into question the external sovereignty of the polity as a whole, or necessarily raising the spectre of a

reversion internally to a state of war. This recalls the legal positivist view of sovereignty developed in this century by Hans Kelsen. Legal norms can only be derived from legal norms, but since infinite regress is not logically permissible, Kelsen posited a Grundnorm which is subordinate to no other but to which all others are subordinate. The Grundnorm which names the sovereign (be it an autocrat or the people) cannot be challenged from within the system in which it occurs, although it is testable outside the system. In the case of a federal state, Kelsen argued that a two-level theory identifying, *faute de mieux*, the national government with the whole, was inadequate. Instead he posited a total federal state or *Gesamtstaat*, a summation of the other levels of government, including the national, which was the ultimate ground of the legal norms of the federation.<sup>7</sup> The *Gesamtstaat* concept has, it is true, a weak record of legal recognition in actual federations, but it contains a theoretical distinction which is intuitively satisfying, one given a plain spoken expression in a Canadian constitutional decision regarding federal-provincial distribution of powers: "The constitution of Canada does not belong either to Parliament, or to the legislatures; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled."<sup>8</sup>

Harold Laski argued that the 'pure theory' of sovereignty is inherently statist and, in his early writings at least, expressed himself as a "frank medievalist" in harking back to a pluralist/federalist matrix of particularist sovereignties.<sup>9</sup> The pessimism of the early Laski that federalism was only a step on the road to unity and that the future lay with centralist statism might have been tempered by a somewhat subtler understanding of sovereignty. As one contemporary writer has put it, all sovereigns have claimed some higher justification, thus sovereignty must be seen as a right according to law. In a liberal society, the real principle is that there be no legal subordination to persons. Persons holding or wielding sovereign authority can be many: all that really matters is that in each case there is some authority, prescribed by law, whose decision is final, but in accordance with law. Thus the state as an institution cannot be sovereign, but the state understood as the whole

political community can be.<sup>10</sup> A further refinement is offered by W.J. Ree who restates the concept to extract three distinct "expressions" (I would prefer to interpolate the word "moments") of sovereignty: the "legal," the "coercive," and the "influential." The belief that sovereignty is indivisible is correct in that only one ultimate decision is made in each case, but different questions may be settled by different sovereigns. For example, in a representative democracy, the popular majority is the "influential" sovereign, whose influence is exercised over the "legal/coercive" sovereign (Parliament and the judiciary), but which does not itself possess the legal or coercive moments or expressions of sovereignty,<sup>11</sup> a point to which I will return presently.

The reason for traversing this chequered field of debate on sovereignty is not to stir up once again the embers of the old quarrel over divided sovereignty in federalism. Dicey long ago laid that question to rest with a straightforward formulation: "Unitarianism...means the concentration of the strength of the state in the hands of one visible sovereign power, be that power Parliament or Czar. Federalism means the distribution of the force of the State among a number of co-ordinate bodies each originating in and controlled by the constitution."<sup>12</sup> This simple but clear statement may serve as a summary of our previous discussion. However, my real interest is to discuss, not sovereignty in general, but democratic sovereignty in particular. It is when the ultimate, or "influential" moment of sovereignty, (to revert to Ree's terms) shifts away from either "Parliament or Czar" and comes to rest in the people, constituted as a voting body, that very real, and intriguing, questions arise in relation to federalism. Succinctly, if federalism divides sovereignty under a constitutional arrangement of powers, what are the implications when the sovereignty so divided is in fact the sovereignty of the people?

The historical transformation of sovereignty into popular sovereignty has about it the aspect of an optical illusion. There is an ambiguity about the very idea of popular sovereignty, as embodied in any form of representative institutions. As Bertrand de Jouvenel explains, "it is no

matter for surprise that the transition to democratic legitimacy required... so long a time. This was especially true as the new principle settled the attribution of sovereignty only to outward view, the lawful owner being merely a fictive character who must entrust to others his right of government" - such delegation can be to a Bonaparte, an "elected aristocracy," or it may be fragmented.<sup>13</sup> Yves Simon suggests substituting a 'coach-driver theory' for 'popular sovereignty.' Power is transmitted to a government for limited purposes: "What characterizes the democratic condition of sovereignty is that, in a democracy, sovereignty is never completely transmitted."<sup>14</sup> What is retained is only latent, embodied in public opinion, except when referenda call the people into a semblance of a deliberating assembly. Dicey, grappling with the particularly vexed problem of the sovereignty of Parliament in a democracy, admitted that electors are a part, indeed, the "predominant part of the politically sovereign power." Thus, if Parliament remains *de jure* sovereign, it is certainly the case that the people retain an indirect, *de facto*, sovereignty, given that Parliament's formal sovereignty is "limited on every side by the possibility of popular resistance."<sup>15</sup>

Every discussion of the ambiguities of popular sovereignty in Western thought is haunted by a spectre -- the direct democracy of Rousseau. The theory of democratic sovereignty in fact presents itself to us in a contradictory dual form. Let us look more closely at this two-headed theory.

At the risk of some oversimplification, let us assume two polar models of popular sovereignty. The first is a direct democracy, or a Rousseauian community of equals constituted under conditions which allow the determination of the 'general will.' Here the sovereign is united, indivisible and the attribute of sovereignty is inalienable; by the same token, the community is small and decisions are taken in a face-to-face setting. The second is representative democracy, where adult citizens exercise their sovereignty only by choosing their rulers in an election, that is to say, by a 'collective' decision constituted by the statistical result of individual voter choices between rival organized groups of

candidates. Here sovereignty is delegated or mandated from the people to a group (party) which constitutes itself as a government - either directly through a national presidential election, or indirectly through a parliamentary majority. Such a system may be based on a very wide territory and large population. The former model exists nowhere, although perhaps glimmerings of some of its elements may have been present in those brief and transitory phenomena of workers councils or soviets which have from time to time emerged in periods of great crisis and collapse of government. The latter model serves as a general description of the wide variety of specific governmental forms which exist throughout the western world.

It may reasonably be questioned what theoretical value is to be found in juxtaposing two polar models, one of which is a kind of Platonic construct of the imagination, and the other an empirical description of elements common to existing states. This methodological problem should not be ignored, but keeping both models in mind has manifest advantages. Rousseauian direct democracy offers a persistent theoretical critique of the limitations of representative democracy in actually embodying popular sovereignty. Representative democratic practice offers a concrete reminder of the severe practical limitations to direct democracy which Rousseau himself admitted. Above all, the two models serve to clarify some ambiguities in the relationship between federalism and democracy. 'Democracy' must be first specified before being put into play.

Jean-Paul Sartre in 1973 was led to argue that

Universal suffrage is an institution, and therefore a collective which atomizes or serializes individual men. It addresses the abstract entities within them -- the citizens, who are defined by a set of political rights and duties, or in other words by their relation to the state and its institutions. The state makes citizens out of them by giving them, for example, the right to vote once every four years, on condition that they meet very general requirements -- to be French, to be over twenty-one -- which do not really characterize any of them.

Sartre offers a further perspective on public opinion as serial: "They are serial ideas which are expressed through my vote, but they are not my ideas. The institutions of bourgeois democracy have split me apart: There is me and there are all the Others they tell me I am (a Frenchman, a soldier, a worker, a taxpayer, a citizen, and so on)... Who am I, in the end? An Other identical with all the others, inhabited by these important thoughts which come into being everywhere and are not actually thought anywhere? Or am I myself? And who is voting? I do not recognize myself any more."<sup>16</sup>

Sartre's critique of representative democracy is squarely Rousseauian (although not acknowledged as such), in the same spirit in which Rousseau wrote that sovereignty cannot be represented: "The English people thinks itself free. It greatly deceives itself; it is so only during the election of members of Parliament. As soon as they are elected, it is a slave, it is nothing. Given the use it has made of its brief moments of freedom, the people certainly deserves to lose it."<sup>17</sup> Robert Paul Wolff echoes this argument in a cogent present-day attack on the legitimacy of representative democracy.<sup>18</sup> The Rousseauian argument ultimately rests on two assumptions: first, that the irreducible unit of political legitimacy is the autonomous individual; and, second, that only the total and equal alienation of the rights of all citizens to the whole community can guarantee a sovereignty in which the subjects, in obeying all, obey themselves. The consequent oscillations of focus between the individual and the collective present considerable difficulties for Rousseauian theory. One finds Sartre, for instance, arguing at one moment that elections are a fraud because they force him to think thoughts not his own, and in the next breath stating that the only legitimate political unit is the spontaneous association in which the individual subsumes his autonomy in a collective solidarity. Rousseau's notorious paradox of forcing men to be free sums up the conundrum: the ends of autonomy can only be gained at the price of the surrender of autonomy. Or again, Rousseau's rules for the conduct of voting in a community capable of generating a general will specify that each citizen must be kept in rigorous isolation from other citizens organized to debate and persuade on

behalf of particular legislation, that any mediation between the individual citizen and the collective sovereign is illegitimate and subversive: in short, autonomy is enforced to create a general will against which no individual may legitimately dissent.

This is not the place to pursue the paradoxes of Rousseauian sovereignty; I make no claims to refute the argument, only to point to some of its difficulties. It is important to point to these difficulties at this stage simply to indicate that the Rousseauian critique of representative democracy perhaps stands more usefully as a negative, rather than a positive argument. What it does tell us incisively is that voting for representatives is a means of both retaining and giving away sovereignty, or in a word, delegating sovereignty.

The mechanism of this delegation is the majority, or the plurality. But if the formation of the general will creates difficulties for direct democracy, so too the formation, and reformation, of majorities is no less fraught with problems for representative democracy. Indeed, it is one of the habitual arguments for federalism, that a federation tempers that 'tyranny of the majority' of which Tocqueville and Mill warned so insistently.

The problem with arguments concerning the 'tyranny of the majority' in representative democracies is the mythical quality of majorities. Majorities are really only statistical constructs of the electoral process. The majorities which voted, say, for Ronald Reagan in 1980 or for François Mitterand in 1981 constitute only a statistical category describing millions of person who, individually, and for a wide variety of reasons, many of which were contradictory (as any opinion survey discloses) all carried out on a given day the similar act of marking a ballot for Reagan or Mitterand. This act constitutes the sole bond with all other individuals making up the 'majority,' and since the act of voting is solitary from the individual point of view, and from the social point of view, serialized rather than collective, this bond can scarcely be termed one of solidarity. Nothing else necessarily links the millions

of the 'majority' but this minimal, solitary, serialized act of voting for a limited choice of parties or candidates imposed upon the voter. Direct democratic theory, then, paradoxically discloses through its negative critique that one of the leading 'problems' of representative democratic theory rests on flimsy foundations.

Of course, majorities do exist concretely in legislative bodies, if not in the people. And legislative majorities may believe themselves 'mandated' by their electoral pluralities to do certain things. If the 'tyranny of the majority' is redefined to focus on the majoritarian mechanism in the representative institutions, then constitutional limitations on the scope of governmental activity become highly relevant. Liberal freedoms (of thought, speech, association, the press, etc.) are not merely guarantees for minorities, but are the sine qua non of a functioning representative democracy, the very procedural basis upon which legislative majorities can be formed by the collective decision of free individual choice (however confined by seriality and atomization). Thus all liberal democracies maintain checks on the scope of activity of legislative majorities, of varying quality and effectiveness. With regard to federal democracies, the question of checks becomes rather complex, given that national legislative majorities may be provincial legislative minorities, and vice versa. So too the nature of democratic sovereignty becomes complex in a federation. Yet this complexity is more apparent than real. The most incisive contributions to unravelling these complexities came at the moment of birth of the first modern (democratic) federation with the writing of the American constitution in 1787 and the debate which surrounded its ratification. It is to this debate which I now turn.



### III

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The prerevolutionary demands of the American colonists on Britain had been confronted by the 18th Century doctrine of the absolute sovereignty of Parliament. Thus, colonists wishing to restrict Parliament's power were compelled to argue that sovereignty was divisible, and to grope their way toward a new political order in which powers might be distributed among governments, each with a distinct sphere of activity. Conflicts between Parliament, through the Governors, and the local assemblies, led to a growing view that because sovereignty ultimately rested with the people, the attributes of governmental sovereignty could be divided and distributed. Bernard Bailyn concludes that the federalist tradition was "born in the colonists' efforts to state in constitutional language the qualification of Parliament's authority," so that the central government be kept from amassing a "degree of energy, to sustain itself, dangerous to the liberties of the people."<sup>19</sup>

The democratic and liberal thrust of revolutionary ideology, 'radicalized' by British intransigence, is well known. The ideas of Jefferson's Declaration of Independence, although still a matter of interpretive controversy, are firmly on the side of the consent of the governed and the right of the people to alter or abolish a form of government destructive of the inalienable rights of individuals created

equal - but this was in the form of a unanimous declaration of thirteen separate states, and sought to establish their right to be free and independent states, with full powers to do what "Independent States may of right do."<sup>20</sup> And in the Articles of Confederation, signed in 1781, it was explicitly affirmed that "each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right" which was not expressly "delegated" to the Congress of the United States, and that the states were entering no more than a "firm league of friendship" for the common defence of their several liberties.<sup>21</sup> In other words, the first American constitution called for a classic confederacy of sovereign states, not unlike European federal leagues, and not incompatible with Rousseau's idea that sovereign communities could enter into limited, 'international' agreements for mutual benefit<sup>22</sup> -- although it should be noted that even the union of the Articles was "perpetual," and no right of secession was explicitly included.

This was a false start, and the real breakthrough in political innovation came at the constitutional convention of 1787. Some have denied that the federal system which emerged from this convention should be given the status of political theory, since it was the more or less accidental result of a patchwork of compromises: in the words of one critic, federalism was a "pis aller,...the furthest point the delegates felt they could go in the destruction of the states without themselves inviting repudiation."<sup>23</sup> It is true that some of the most eloquent defenders of the final settlement had gone into the convention opposed in principle to the federal system which emerged from the deliberations (Alexander Hamilton is a leading example), and that the much-praised theory of *The Federalist* was an intellectual rationalization of saw-offs and logrolling among delegates. But this is in no way a diminution of the achievement of the convention, nor of its public defenders. On the contrary. Out of political compromise, they fashioned an innovative, effective, and persistent set of political institutions and a powerful, persuasive and lasting theoretical defence of those institutions.

Among the problems of theoretical significance to democratic federalism with which the delegates grappled, two stand out: the question of size in

a republic, and the question of checks and balances in a wholly popular sovereignty; the two questions were interrelated, and the answer was essentially the same for both.

The ancient wisdom had been that when republics became too large, they became imperial, leading to the corruption of their original republican virtue (e.g., Machiavelli's *Discourses on Rome*). Secondly, democracies were held to be inherently limited in size (from the Athenian polis to Rousseau's idealized Geneva). A large territory could only be governed imperialistically, and an empire demanded an emperor. Moreover, a democratic republic required a high degree of homogeneity in the citizenry or it would break down in factionalism. "In 1787," writes Douglas Adair, "the authority of scholars, philosophers, and statesmen was all but unanimous in arguing (from the experience of history) that no republic could ever be established in a territory as extended as the United States -- that even if established for a moment, class war must eventually destroy every democratic republic."<sup>24</sup> How then did the founders manage to pull the rabbit out of the hat?

A hint could be found in David Hume's 1752 essay, "The idea of a perfect commonwealth,"<sup>25</sup> where a kind of proto-federalism had been suggested for an indirect democracy (beginning at the county, successive levels of representatives voting for those at the next level). "Every county," Hume wrote, "is a kind of republic in itself," but the many levels beyond the county guarded against the dangers of excessive democracy: "Divide the people into many separate bodies; and then they may debate with safety, and every inconvenience seems to be prevented" (emphasis added). The "turbulence" of democracies, the dangers of the poor majority oppressing the wealthy few, of which philosophers since Aristotle had warned, could be contained or "refined" in a nation whose "parts are so distant and remote, that it is very difficult, either by intrigue, prejudice, or passion, to hurry them into any measure against the public interest." Thus large size is transformed from being a barrier to stable republicanism to a positive precondition. Although they were rather loath to admit an intellectual debt to Hume, who was in bad odour in late

eighteenth century American circles, it seems that some of the founders, James Madison in particular, were influenced by Hume's solution.<sup>26</sup>

The Constitution did not follow Hume's outline, as such. But it did something quite unprecedented: it created a "compound republic," neither national nor federal in the sense then understood and which had been embodied in the Articles of Confederation (what we now call a confederacy). Authorized in the name of "we the people," who desired "a more perfect union," it proceeded to specify two levels of government both elected by the people. What we now understand by the term 'federalism' was, in effect, invented in 1787. This refinement of representative democracy into a federal principle was a key to unlocking the dual dilemma facing the founders.

There are some scholars who question the extent of the commitment to democracy in late eighteenth century America. While 'republic' was a term favoured over 'democracy,' it is important to recognize that 'pure democracy' was taken to be a Rousseauian direct democracy. As Madison put it in *The Federalist* No. 10, a "pure democracy, by which I mean a society consisting of small number of citizens, who assemble and administer the government in person, can admit of no use for the mischiefs of faction," since "a common passion or interest" will quickly turn on the minority. The problem with these regimes, which, when implemented, are "as short in their lives as they have been violent in their deaths," is that they are a merely political solution to a problem which is more than political: "theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would at the same time be perfectly equalized and assimilated in their possessions, their opinions, and their passions." Madison then counterposes to this "a republic, by which I mean a government in which the scheme of representation takes place" -- and adds that the other great distinction of a republic, besides representation, is that it allows for a greater size.<sup>27</sup>

James Wilson told the Pennsylvania convention called to ratify the constitution that a sovereign power had to be located somewhere. Blackstone had located it in Parliament, the anti-Federalists wanted it to remain with the legislatures of the states. But as the American Revolution demonstrated, sovereignty ultimately "remains and flourishes with the people" who are "the fountain of government." Or, as Hamilton put it in No. 22 of *The Federalist*, locating sovereignty in the state legislatures suggests a "compact" which further implied a unilateral right to repeal national laws or to revoke the compact itself. This possibility alone indicated "the necessity of laying the foundations of our national government deeper than in the mere sanctions of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority." Wilson argued that without the idea of popular sovereignty, "we shall never be able to understand the principle on which this system was constructed:" both levels of government derive their authority as emanations of the power of the people. And even within one level, this principle had momentous consequences for the forms of government, "new and rich discoveries in jurisprudence." The Constitution stipulated a division of powers between the executive and legislative branches, and a division of the latter into an upper and lower chamber. But this in no way implied a reflection of British constitutional theory, in which the leading orders, or estates, of civil society were directly embodied in Parliament. In a distinct break from political thinking since Aristotle, the "democratic principle is carried into every part of the government," for as Wilson argued, "it is not necessary to intermix the different species of government. We have discovered that one of them - the best and purest, in which the supreme power remains with the people at large, is capable of being formed, arranged, proportioned, and organized in such a manner, as to exclude the inconveniences, and to secure the advantages of all three."<sup>28</sup>

This solution was intimately related to the question of faction and the tyranny of the majority. Madison saw that majorities were concrete threats

to order in a "pure democracy," but that in a republic or a representative democracy, the causes of factionalism (the interests and the passions) would remain, but that their effects could be controlled. The extension of population and territory means a greater variety of parties and interests: "you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with one another....The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States." Thus, in a federal republic, "whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority."<sup>29</sup> Specifically, a large nation devoted to commercial pursuits fosters a host of divisive interests which are manageable, in that majorities can only be formed out of coalitions of particular wills; coalitions are forms of self-management of competitive interests. Yet more specifically, and here Madison made no effort to hide his own class perspective, divisions among the many would be fostered so as to protect the rich minority. In short, a federal representative democracy renders the very idea of a tyrannous majority doubtful, by serializing and atomizing the people into overlapping, competitive, and thus self-cancelling congeries of interests.

Federalism -- as well as the separation of powers -- was thus based rather paradoxically on the ground of democratic sovereignty. It was all too apparent that a copy of the British style of constitution by, say, setting aside an upper chamber to represent an 'aristocratic' principle in government, would only present a target for popular agitation which might become radically democratic. The genius of the American constitution, and of its defenders, was to banish all notions of sovereignty which were not popular, and then to erect a complex of representative institutions, dividing and sub-dividing jurisdictions and responsibilities, so that the 'people' would be divided against itself, so that each citizen could only

represent his interests through voting for a multiplicity of offices in separate jurisdictions, which would, as governments, develop their own sets of interests, often in contradiction with those of other jurisdictions. The American federation then, was not a 'mixed regime' in the ancient sense: it was a democracy, refined and filtered through an artful maze of governmental institutions so designed as to powerfully discourage the formation and expression of a general or majority will. Thus the dangers of direct democracy and the problems of large size were thought to be greatly diminished, and democracy and federalism/separation of powers reconciled in the 'compound republic.'

Two other points should be made about this theoretical justification of the Constitution. First, federalism could be seen not only as a means of dividing the people against itself, and thus reducing the dangers of majoritarianism, but it could also be a means of limiting the dangers of government oppressing the people, by dividing the state against itself. This was a not unexpected argument from a people which had just fought a war of independence against abuses of power by the British state. The liberal antistatist argument has been a more common defence of federalism than the argument from self-limiting democracy, perhaps because the rapid triumph of democratic ideology rendered the latter argument suspect. Of course, the two arguments are interconnected, through the mechanism of the electoral process: majorities of voters elect legislative majorities which control governments. The point is that in either version, the original theoretical justification of democratic federalism rests heavily on liberalism, and is ambivalent about democratic legitimacy.

The observation is strengthened by the second, and more general, point about early American political theory. Gordon Wood, in his *Creation of the American Republic*, speaks of an 'American science of politics' which broke with classical teaching in its detachment of leading social forces from institutional seats in the state. This meant that "institutional or governmental politics was thus abstracted in a curious way from its former associations with the society." At the same time, the society became less differentiated and more competitive. Political equality set people free to

compete economically with one another, with widely varying results. Economic inequality could now be judged an effect of natural inequality, when conventional inequality was limited. The disembodiment of government from society was reflected in a decline of the ancient republican idea of a civic virtue. "America would remain free not because of any quality in its citizens of spartan self-sacrifice to some nebulous public good, but in the last analysis because of the concern each individual would have in his own self-interest and personal freedom."<sup>30</sup> Democratic federalism which divided the loyalties of citizens, could only come to birth in a liberal, competitive society which no longer demanded a unique civic loyalty. The end of formal hierarchy and its static orders meant that competitive individuals could be compartmentalized according to particular interests and passions which found different channels of expression in a competitive society. Federalism was one constitutional and institutional formalization of this process.



#### IV

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There was an unresolved ambiguity in American federalism which over the course of the nineteenth century deepened into a near-fatal contradiction. Dividing the people against itself was all very clever, but the federal form of division was territorial, and historically determined. The states were the colonial jurisdictions which had gone to war against Britain, replete with their own traditions, identities and, as it turned out, their own regional modes of production. As well as territorially-based representation, modern states also admit of functionally-based representation (as in corporatism). Federalism does not deny the latter, but it formally gives institutional primacy to territorial divisions. In doing so, it fosters an inevitable tension between the claims of the national government to represent the citizens of the component states or provinces, and the claims of the provincial governments to be the primary voice representing the people of that particular territorial jurisdiction. When the national legislative majority has weak representation from a particular province or region, and when issues which divide the regions over fundamental interests are at stake, the legitimacy question becomes acute -- sometimes dangerously acute.

It is here that the newer democratic federalism begins to lose some of its distinctiveness in relation to the older, predemocratic confederalism.

Hence the potential, apparently inherent, in democratic federalism for provincial governments to redefine the federation as a compact between provinces. There are good reasons to expect that the democratic mandate of a national government could not in itself be proof against provincialism. As Hamilton presciently suggested in *The Federalist* No. 15, the very existence of government being premised upon the fact that "The passions of men will not conform to the dictates of reason and justice without constraint," governments themselves can be no exception:<sup>31</sup>

...in 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 or inferior orbs by the operation of which there will be a perpetual effort in each to fly off from the centre. This tendency is not difficult to be accounted for. It has its origin in the love of power. Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged.

Writing a half century later, from a less partisan centralist position, Tocqueville noted with some surprise the relative weakness of the national government and the strength of the state governments. In part, he ascribed this to the closeness of the state governments to their citizens, and the remoteness of Washington and the feebleness of its administrative instruments<sup>32</sup> (no small impediment for a large federation in the pre-industrial age of communications, and one which the authors of *The Federalist* failed signally to grasp).

The ambiguity in democratic legitimacy between the people of the provinces as national electors, and the provincial governments which they directly elect, may lead to an elision in the perception of mandated governmental authority, in which the national government loses its claim to representativeness to the provincial governments. The older image of a confederation as an alliance of pre-existing sovereign bodies carries over into dual-mandated democratic federations. Montesquieu had written of a "république fédérative" as a "société de sociétés," which was appropriate enough for what he was describing. Yet Hamilton in *The Federalist* No. 9 quoted Montesquieu approvingly, and at length, as if he had been referring

to a federal government based on individual citizens, when in fact Montesquieu had specifically indicated that he understood a "convention par laquelle plusieurs corps politiques consentent à devenir citoyens d'un état plus grand."<sup>33</sup> Yet even after the innovation of 1787, a host of observers of democratic federations has persisted in formulations of the genre of a "community of States" (Calhoun), a "commonwealth of commonwealths, a republic of republics" (Bryce); a "federation of federations" (Proudhon), a "community of communities" (Laski).<sup>34</sup> This way of conceptualizing democratic federalism entails serious analytical difficulties inasmuch as focus is shifted away from the representative democratic mandate of both levels of government, and towards intergovernmental relations, in which the provincial level is implicitly -- or sometimes explicitly -- assumed to have a closer hold on the

democratic mandate. As an American scholar has written, the Federalists may have believed that the popular basis of the Constitution undermined compact theories of federalism (since it was individuals grouped in states, rather than state governments, who ratified the agreement), but after 1800, the dominant view was that the ratification had been by sovereign states (the people under state governments) and the legal parties to the agreement were the states possessed of the democratic authority of their citizens.<sup>35</sup> The ambiguous consequences of this doctrine became more and more apparent as sectional conflict in the United States increased.

The American conflict between North and South is perhaps not a very useful paradigm for the internal contradictions of federations. Even divisions on linguistic, religious, and cultural lines are, in a sense, less serious and less profound than those which rent the American Union. In the American case, it was a division between two incompatible modes of production, capitalist and slave, and between two irreconcilable superstructures of political, legal and social values. Lincoln was right: America could not live half slave and half free, the conflict was irrepressible. Yet, even with these caveats, the sectional confrontation generated some original political theory of continuing interest to democratic federations.

The problem was a national one above all because of the contention over the settlement of the West, and the growing tendency of the capitalist North to rely on its greater demographic weight to use the national government as its instrument under the banner of national majoritarianism. As one writer has put it, this was a "drastic modification of the federal system. It involved taking an idea considered applicable to small groups and applying it to large ones," to the nation as a whole. To the South, this not only gave substance to the ancient fears about the tyranny of the majority, but the electoral mathematics of Northern majoritarianism led to a rethinking of minority rights along sectional, rather than state, lines.<sup>36</sup>

The theorist of Southern resistance to national majoritarianism was John C. Calhoun. That Calhoun was in fact defending slavery might seem to put him out of court at the outset as a theorist relevant to democratic federalism, but this would be, in effect, an *ad hominem* argument. Calhoun's theorizing of the 'numerical' and 'concurrent' majorities transcends, to a degree at least, the special interests he set out to defend. To call Calhoun the "Marx of the Master Class" may be hyperbolic, but his ideas are well worth examination.<sup>37</sup>

The framers of American federalism had not foreseen that the country could divide into "two great sections strongly distinguished by their institutions, geographical character, productions and pursuits," and federalism, as it was practiced, provided no answer to the sectional conflict.<sup>38</sup> Calhoun went back to first principles, which in his case turned out to be socialized Hobbesian assumptions about the basis of government. Man is self-interested, competitive and seeks self-preservation. But however nasty, he is not solitary. Rather man is by nature social and associative. This assumption allowed Calhoun to postulate the existence of communities as irreducible human units. Communities were givens, and within communities a simple, or 'numerical' majority would be the principle of rule. But if government is necessary to contain and manage social conflict, it is itself a danger - even when it

rests on the sovereignty of the people: "...the right of suffrage, by placing the control of the government in the community, must, from the same constitution of our nation which makes government necessary to preserve society, lead to conflict among its different interests." The answer to the abuse of government was itself Hobbesian: his intention was "...to explain on what principles government must be formed in order to resist by its own interior structure...the tendency to the abuse of power....Power can only be resisted by power -- and tendency by tendency."<sup>39</sup>

The American republic had to be reshaped as its institutions could not any longer offer the checks and balances promised in the Constitution. The *Federalist* had worried about factionalism and the tyranny of the majority, but had erroneously believed that it had a solution. What was not foreseen was the role of parties in controlling legislative majorities on a numerical vote basis in defiance of minority sectional interests. All rulers oppressively aggrandize their power at the expense of their subjects, and the 'people' embodied in the form of a national legislative majority was a despot in relation to minority communities or sections. A federal republican government could thus, through the mechanism of party and legislative majority, realize all the vices of a pure or direct democracy. Calhoun believed it necessary, not to repudiate democracy, but to refine it yet further so that not only numbers, but community interests should find representation. Thus the concurrent majority, which "regards interests as well as numbers -- considering the community as made up of different and conflicting interests, as far as the action of the government is concerned - and takes the sense of each through its majority or appropriate organ, and the united sense of all as the sense of the entire community."<sup>40</sup> It is clear that Calhoun's use of "interest" differs from Madison's earlier usage in that the latter saw interests as essentially individual, while the former saw them as socially defined and territorially located. If Madison gave a federalist answer to a problem defined in liberal theory, Calhoun was beginning with a 'federalist' problem and redefining federalist theory to encompass it.<sup>41</sup>

I said earlier that Calhoun's ideas transcend, to a degree, the interests of the slave South he was addressing. There is a hard class content to his argument, which he made no effort to hide. An advantage of the concurrent majority model is that it encourages the subordination of the poor to the leadership of the rich in the name of sectional interest, and secondly, it suggests cross-sectional accommodations between the wealthy elites in defence of their respective properties.<sup>42</sup> (Concretely, Calhoun was urging a double alliance - first, of rich and poor Southern whites in defence of slavery, and second, of Southern plantation owners and Northern capitalists against the poor in both sections.) Calhoun thus anticipated by a century the model of 'consociational democracy' or 'elite accommodation,' with this significant modification -- unlike twentieth century theorists, he was blunt about the class interests which were to be served.

Whether or not one shares Calhoun's enthusiasm for the preservation of wealth and privilege, his theoretical contribution to federalism is considerable. The dangers of the partiality of the national numerical majority in regard to regional interests must be recognized in any functioning federation -- at the peril of escalating conflict and the loss of legitimacy of the national institutions of government. And the counter-position of concurrent to numerical majorities serves to point out an inherent contradiction in dual-mandate democratic federations: national majorities may be provincial minorities and vice versa, but both national and provincial legislative majorities have equally legitimate popular mandates. Continually to override provincial majorities by the national majority is effectively to have a unitary state. To allow the national majority to be continually defied by provincial majorities is to have a confederacy, not a federation. Calhoun's prescription raises many questions, but his concept of the concurrent majority is valuable. I shall return to it later in an attempt to redefine it more usefully for democratic federations.

## V

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The final theorist of federalism to be examined is from a different continent and an entirely different ideological tradition. P.-J. Proudhon, anarchist antagonist of Marx, became in later life a messianic enthusiast of federalism. In Proudhon's *Du principe fédératif* there is a marriage of federalism with radical social and political thought quite unlike the more conservative views of the American defenders of the concept.<sup>43</sup>

France, in the nineteenth as well as the twentieth century, was an unexpected terrain to give birth to a celebration of federalism. Centralist and absolutist monarchy had given way at the French Revolution to Jacobin centralism, unitary nationalism, and finally Bonapartism. The Girondins opposed a vague 'federalism' to centralizing Jacobinism, but this was easily dismissed as class opposition to Paris and its revolutionary masses; the 'federalist revolt' of 1793 raised the spectre of secession in the service of reaction. Federalism became associated with the political Right while centralism and national majoritarianism became deeply identified with the Left.<sup>44</sup> Proudhon took a different tack altogether: the Jacobins may have been cleverer than their opponents, but they had betrayed the revolution with their 'one and indivisible republic' and made "liberty impossible in France."<sup>45</sup>

Proudhon is not modest in his claims for federalism. All the divisions, conflicts and hostilities which bedevil political systems "will instantly find a definitive solution in the theory of federal government."<sup>46</sup> The reason for this messianism lies in his belief that federalism offers a unique synthetic solution to a dialectical contradiction between liberty and authority which underlies all politics. It is this contradiction which leads Proudhon to severe criticism of democracy, and of the masses. On the one hand, the masses by themselves are incapable of creative activity, and democracy might lead to decline, if not checked; on the other hand, the "people, too, form one of the powers of the state, one whose eruptions are the most terrifying."<sup>47</sup> His main objection, it seems, is to the mass democratic state, in which authority has made a particularly pernicious return and liberty is in decline: in different language he describes a Tocquevillean critique of "democratic despotism." Like Tocqueville, he is not against popular sovereignty, since there is no viable alternative, and instead strives only to limit its self-destructive effects. With universal suffrage there is a constant pull toward unity, uniformity. The trick is to insert diversity into the very best seat of sovereignty itself. "Federation is thus the salvation of the people, for by dividing them it saves them at once from the tyranny of their leaders and from their own folly." As Vernon aptly comments: socialist decentralism thus joins hands with the federalism of Madison.<sup>48</sup>

It would, however, be misleading to simply draw this analogy without further explication. Although Proudhon is much less an economic determinist than Marx, his federalism does have an economic base which distinguishes it sharply from that of Madison. Political federation is to be mirrored by "agro-industrial federation," the old anarchist mutualism within a quasi-market of producers' co-operatives. This is functional federation, while territorial federation reigns in the political sphere. Together they form a society which Proudhon characterizes as "progressive federation," a corollary of the first two.<sup>49</sup> The important point here is that while Madison's federalism was designed to protect property against the majority, Proudhon's federalism protects a different kind of property against the democratic despot -- property decentralized into the hands of



the people as producers. The people in their fictive but dangerous guise as sovereign of the mass democratic state cannot be trusted to recognize their own best interests as individuals. Political federation divides the sovereign people, thus allowing the federal principle to flourish in economic life. There is an ironic hidden kinship with Madison, although Proudhon perhaps more importantly offers a political critique of Marx. In either event, Proudhon's creative use of the concept of federation demonstrates both the durability and the continuity of the idea, as well as its adaptability to quite different ideological usages.

Not that Proudhon's argument is without difficulties. His central idea itself remains vague and problematic in its institutional form. Whether he was thinking of a dual-mandate democratic federation, or a confederal arrangement remains a mystery,<sup>50</sup> which his language does nothing to clarify. And the Marx of *The Poverty of Philosophy* would have had little difficulty in demonstrating the lack of any coherent programme for destroying the power of capital and building an agro-industrial federation as an economic base. There is about Proudhon's project an ineradicable aura of petty-bourgeois nostalgia and delusive romanticism, reflected in the vagueness of its concrete prescriptions. And yet, such a dismissal would miss much.

As Vernon suggests, Proudhon represents a return to a tradition which was older than modern federalism, and which American federalist thought denigrated: the concept of 'civic humanism,' as against the atomized competitiveness of a liberal society.<sup>51</sup> Proudhon emphasized the value of what a later generation would call 'participatory democracy' and saw the value of federalism in offering a wider range of offices and activities for the involvement of citizens. In the tradition of civic humanists, Proudhon addressed himself to the problem of the corruption of the civic spirit, and the tendency of democratic republics to decline into centralized, bureaucratic authority. As Vernon suggests, "what corrupts virtue is passivity, lack of responsibility, dependence, all of which undermine the engaged concern for a common good which the democratic citizen is required to have."<sup>52</sup> Federalism is posited as a means of

encouraging involvement. Proudhon is, in effect, attempting to rescue the individual from the atomization and serialization of mass representative democracy, without returning to the tyranny of direct democracy, by developing a politics in which the individuals begin in solitary social groups or associations and come together under the federative principle -- this time not as unmediated subjects of the people-at-large, but as members of definite groups with social identities. Such politics pose an audacious challenge to democratic principles: citizens will have multiple, competitive loyalties. Proudhon adds an even more disturbing corollary: it is in the nurturing and cultivation of these multiple, competitive loyalties that true civic virtue lies. Finally, Proudhon poses a challenge to the entire tradition of political thought obsessed with sovereignty and authority: there can be no free society in which the 'community' is already defined and holds priority. Instead the question of community (or communities) is open-ended and should be the result of the spontaneous strivings of associated individuals to define their community loyalties. All this, and a political centre of the federation as well -- Proudhon, as we have said, is not modest in his claims. But neither is he without interest for the theory of federalism. Especially in his emphasis on participation, multiple loyalties and the open-endedness of the question of community, Proudhon elucidates some critical elements in any theory of federal democracy.

## VI

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We have traversed a number of themes and a number of thinkers in the history of political thought in clarifying the relationship between federalism and democracy. It is obvious that this relationship is ambiguous, but I have argued that much of the ambiguity is inherent in the representative form of democracy itself. Federalism was justified on grounds of liberal checks against the tyranny of the many, as were checks and balances between branches of government and other forms of limitations on the majority developed within representative systems. If democratic federalism divided the people against themselves, it did not challenge the democratic principle itself, merely its form of expression. This led to a specific science of federalist politics, concerned with the relationship between the different majorities, national and provincial. This further raises the question of the definition of the democratic community. Lessons can be drawn from *The Federalist*, Calhoun, and Proudhon which may be incorporated in a contemporary theory of democratic federalism, despite the contextual limitations of all of these theorists. In this last section, I propose to look at contemporary federalism in the light of these historical theories, and to draw some tentative conclusions by way of a qualified defence of the concept.

I rest my reflections largely upon eighteenth and nineteenth century thinkers because in truth the twentieth century has not produced political theory of federalism of much significance. There have been, to be sure, a political science of federalism, with empirical study of federal constitutions, institutions and practices in comparative perspective. But this neo-Aristotelian literature has shown a marked disinterest in broader theoretical and philosophical issues. There has been some not very sophisticated attempts at linking federalism with 'freedom' or 'democracy,' and some equally unsophisticated attempts at debunking these linkages. What is interesting is that this debate has been carried out almost exclusively in the content of the liberal side of democracy, to draw on C.B. Macpherson's terms. Franz Neumann's critique of federalism's relation to democracy, implicitly defines democracy in terms of the liberal freedoms alone. And he is not alone.<sup>53</sup>

Instead of asking what federalism does for liberal freedoms, we might start the other way around, and ask what liberal freedoms do for federalism. Here, I believe the answer is decisive. It is impossible to imagine a functioning federalism in an illiberal polity. One might see the forms of federalism, but they could not be operated in a one-party state which has no free press, denies voluntary association and assembly, and prevents free expression. Indeed, the Union of Soviet Socialist Republics offers just such an example. Constitutionally, the USSR is a federation in which even the right to secession exists. Functionally, as one observer has recently written, "only a humorist" could call the actual situation "propitious to federalism."<sup>54</sup> The reason is not to be found in the constitutional provisions, but in the centralization of power through the mechanism of one-party rule. It is not possible to have co-ordinate jurisdictions without autonomy of power at each level. And it is difficult to conceive of the dispersal of power in an orderly, constitutional fashion without a foundation of liberal freedoms which allows competition of political elites.

If it is granted that liberalism is a precondition of functioning federalism, can the logic of the relationship be reversed? I believe that

it can, to a limited extent. Democratic federalism involves elite competition to mobilize support from overlapping electorates. Moreover, governmental elites competitively seek support from organized economic interests. Finally, power is defended against intrusions by other jurisdictions, and power-holders seek to maximize the security of their possession of power by extending their reach, where possible, into areas held by other, competitive elites. These are Hobbesian and Weberian assumptions which can, I believe, be supported empirically. But the implication is that competitive political elites in a federal system of divided jurisdiction have a shared stake in maintaining liberal freedoms, to the extent that a liberal framework is in their own self-interest. This would seem to be particularly the case for provincial elites who have a great deal to fear from tendencies to authoritarian centralism. Authoritarian centralist tendencies may, of course, exist within provincial jurisdictions, directed against sections of the provincial populations. But a federation does create a system with at least some vested governmental interest in the maintenance of the minimum of liberalism necessary to sustain the power to compete freely with other governments.

This indeed may be one rationale for the creation of the German Federal Republic following World War Two - and here a linkage may be drawn between liberalism and a problem of democratic sovereignty. In 1933 the fall of the Weimar Republic was accomplished to the accompaniment of a 'democratic mandate' to establish a fascist state. This 'mandate' is not factually unambiguous under the circumstances of Nazi intimidation of the voters, but it does highlight a theoretical paradox: what if the sovereign people vote out representative democracy and vote in a totalitarian state? The sovereign by this act alienates its sovereignty to a leader, party, vanguard or whatever, in a manner much more definite than in merely voting for representatives. A democratic federation, by dividing the people into overlapping electorates and dispersing governmental power into different jurisdictions, offers a barrier (clearly not a guarantee) against such an act.

It would, of course, be absurd to argue that federations are inherently more liberal than unitary states. Obviously, unitary liberal-democratic states have powerful internal reasons for organizing themselves in the way they do, a logic in which democratic federations normally share, without regard to federal arrangements, as such. But it is possible to suggest that democratic federalism may be a positive factor contributing to the survival of liberal practices in a liberal democratic policy. This is a modest claim, it is true, but not an entirely inconsiderable one. And in the way the argument has been put, the claim requires no appeal to the values and civic spiritedness of individuals operating the system, merely their interest as political actors. Values follow, in the usual fashion in which virtue is made out of necessity. If this was not exactly a question to which Madison addressed himself, the claim is made in a Madisonian spirit.

There is another kind of argument advanced against federalism which does not distinguish between levels of government but suggests that federalism in general is inherently conservative, in that it makes change difficult and puts a premium on inertia. One might well pose a counter-question to this: where is the abstract model of innovation and efficiency which is assumed in the argument? Unitary liberal democracies display many barriers to change. One ought not to fall into the trap of formalism. Intergovernmental conflict is a highly visible institutionalisation of something that goes on in other forms in unitary states, as intragovernmental conflict and as pressures brought to bear by organized economic interests. As Sydney Tarrow suggests, even in unitary states there are regional and local administrative institutions, and "functional interests...range themselves around both poles of the political system -- centre and periphery -- and use their territorial leverage to fight out their conflicts of interest."<sup>55</sup> Federalism formalises this process, but does not invent it.

Yet the conclusion to be drawn from the eighteenth and nineteenth century theorizing of federalism is that the critics may be correct after all, even if federalism blurs into unitary states in practice. The

separation of powers, checks and balances, and the division of the sovereign people into overlapping territorial jurisdictions were predicated upon the notion of creating lasting barriers to the capacity of national majorities to legislate against minority (wealthy) interests. Even if it is true that federalism cannot be singled out as a unique cause of governmental inaction and conservatism, it is the case that federalist institutions do act as brakes on both national and provincial legislative majorities. If they did not do so, one could only surmise that there was no longer a functioning federalism in operation. From Madison to Proudhon, federal theorists were in agreement at least on that point. Moreover, federations do create relatively autonomous bureaucratic-political concentrations of power which become, in an age of complex legislation and pervasive interaction between state and economy, vested interests in themselves, often of formidable weight. In their emphasis on intergovernmental relations at or near the centre of things, federations add a further dimension to the transformation of democratic politics into bureaucratic forms of elite accommodation, and the attenuation of the ideal of popular sovereignty. This happens everywhere, but the characteristic complexity, induced by federalism, of a maze of intergovernmental and interbureaucratic forums for federal-provincial co-operation removed by many stages from electoral responsibility to the voters, reduces democratic input even further than in unitary states.

The earlier theorists of federalism did not anticipate that federalism would not merely multiply the number of governments, but would actually compound the growth of the state through proliferating mechanisms for co-operation and for conflict between levels of government. But then these same theorists did not anticipate the growth of the capitalist state. Proudhonian federalism in particular, seems to suffer in comparison with late twentieth century reality. Conservatives may be relatively content with federalism's fostering of big government, because it is government divided against itself, and because it may seem to give more space to private economic interests to play off levels of government against each other. Left-wing observers may be less complacent, and even tempted to become partisans either of national majoritarianism or, where strong

provincial communities exist, of provincial autonomy or of secessionist movements.

Many of the objections of democratic socialists to federalism are, in reality, objections either to the liberal capitalist state or to representative democracy. It is a basic characteristic of representative democracy that citizens are separated from the decision-making political elite in all but the most generalized sense of the mass electoral mandate as a mechanism of responsibility. It is true that federalism further dissipates this already weak and doubtful control by diffusing the popular mandate into different jurisdictions. But the essential separation between citizen and government is created by the act of representation; the forms of representation are merely secondary. Only a romantic could believe that provincial jurisdictions in a federation represent communities in which the Rousseauian direct democratic ideals prevail<sup>56</sup> (of course, provincial jurisdictions may represent communities in a linguistic, cultural or ethnic sense of nationalist identity but that is a different matter). All jurisdictions are organized on representative democratic lines, and share in the same characteristics. The question to be addressed squarely is: should one's response to the limitations of representative democracy be modified in a federal state? My answer to this is a qualified 'yes,' but it is necessary to approach it in a somewhat roundabout way.

The essential organizational principle of federalism is territoriality. There are other conceivable ways of dividing the popular electorate, the most obvious being functionalism, probably taking the form of corporatist organization of the people into functional or economic sub-divisions. Federalism as a system of representation remains formally silent about the economic and class content of the nation, but is predicated along the axis of space and its political organization. The provincial units thus always subsume within their jurisdictions a range of economic interests, and a particular mix of classes and class fractions. If this mix (constituting, along with other factors, a culture) were in all cases an exact replication of that of the nation as a whole, one would have to assume that federalism was unnecessary and its institutions a mere shell to be



readily sloughed off. Federalism must assume a certain reality in the provinces' separate identities. Whether or not these identities are cultural/ethnic/linguistic or essentially economic, whether or not they are pre-existent or a historical construct of the federal arrangement itself, remains a matter of indifference. What is essential is that multiple territorial identities coexist within the same nation, and within the same citizenry. At the same time federalism also involves multiple governments, multiple bureaucracies and multiple, autonomously-based, political elites. These latter phenomena are partially, but not entirely linked to the former. They can never be identical, for the same reason that representative democracy always involves a separation between sovereign and legislator, between voters and their representatives. The danger is that in federalism, even the thinly democratic elements of representative government will be further diluted by a progressive substitution of intergovernmental relations for direct responsibility (however limited this may be) to the voters. Succinctly, federations have a tendency to emphasize the government of governments, rather than the government of people.

Two ways out of this dilemma are either to centralize and turn the provincial units into mere delegated administrations, or to actively seek the balkanization of the federation into small, loosely associated sovereign entities. Such options are more likely the result of historical forces, than of philosophic choice -- although this should not prevent us from judging the results and developing standards for such judgements. Politically, both the centralist and decentralist opinions simply avoid the essential problem, which is that humanity inhabits space, in communities necessarily discontinuous and overlapping in organization. Political units of large territorial extent pose inherent difficulties, as the transition from the polis to the Alexandrine empire demonstrated in its undermining of the social base of classical political philosophy, and its posing of a whole new set of political questions. The centralist solution in a large nation must, in one way or another, suppress the communitarian discontinuities, or at least limit their political expression. The balkanization option is equally evasive: first, because

short of regress to the individual or the family, no territorial unit, however local, can avoid being inclusive of communitarian difference; second, because economic and security considerations dictate that states cannot be too small, or that if they are, they must seek some form of association with other states, which will again raise some of the same questions as federalism. My point here is not that everyone should be federalist. It is simply that non-federalist states do not solve the problems to which federalism is addressed, by virtue of not being federalist.<sup>57</sup>

Let us assume that the federalist answer is worth exploring as a possible avenue. If it is, the intergovernmental bias of federal states, posed above, must be tackled. Can federalism be democratised, or can its elitist and statist tendencies be minimised?

Democracy in a federation must be defined differently than democracy in a unitary state. Democracy's mechanism of expression is the majority, and representative government, effectively the legislative majority. In a democratic federation, the sovereign people are divided into different but overlapping electorates, and there can be, by definition, no single majority voice, or single legislative majority, but rather an overlapping plurality of majorities. Here Calhoun's argument for 'concurrent majorities' is highly relevant. Yet Calhoun's theory was distinctly elitist and antidemocratic in practice. Can the expression of regional majorities be rescued, in a post-Calhoun age of the capitalist state, from simply being another argument for intergovernmental, interbureaucratic barriers to change? It must be admitted that intergovernmental elitism cannot be banished. The impossibility of drawing watertight constitutional compartments and the complexity of modern legislation and administration ensure that national-provincial governmental interaction will account for the expenditure of considerable political resources. Concurrent majorities, if governments are substituted for people, can simply become a reinforcement of intergovernmental elitism: provincial governments hold veto power over national governments with deadlock the result or, in a more extreme version, a 'compact theory' of federalism is advanced in

which the national government is reduced to a mere creature of the provincial governments and federalism is transformed into a confederacy or league of sovereign states. Federalism is undermined if only the legislative majorities of the provinces are considered. Democratic federations operate on national majorities, as well as on provincial majorities. Without the grounding of national institutions of government in the majority of the people, as people, rather than provincial states, sovereign power concentrates in the provincial units. Yet if the division of the nation into territorial sub-units reflects a reality of national life, that is to say, federation is not an empty superstructure, but reflects a federal society, the concurrent majority must be recognized as well.

Is this but a version of squaring the circle? Perhaps federalism is a Sisyphean epic of squaring the circle. As Dicey wrote long ago, the essential condition of federalism is the existence of a "very peculiar state of sentiment" among a people: "They must desire union, and must not desire unity."<sup>58</sup> Beginning with such a condition, it is certain only that federalist institutions and processes will be messy, and the despair of those seeking geometric, Platonic solutions to political problems. Even amid the untidiness, however, some guidelines can be suggested. To base national government solely on national majoritarianism is to pit two levels of government against one another in a manner highly unsafe for the future of the federation. In a regionally divided society, national legislative majorities are drawn from electoral coalitions which will likely, for the same reasons which differentiate regions, be based on regional concentrations. Ruling parties tend to reflect regional groupings with varying degrees of unevenness. The more this is the case, and it is always a danger, the regions concentrated in the legislative minority will tend to view the majority as not a democratic national majority but as an instrument of the domination of one group of regions by another, and therefore as lacking in legitimacy. One way of dealing with this problem is to attempt to harness together at the national level both majorities, the national and the concurrent. In the American Congress, this is done by basing the lower house on population, and the upper on equal

representation from each state. While the President is representative of a simple national majority, the congressional system allows considerable input from senators. Parliamentary systems present more difficulties, but an upper chamber based on region or province rather than population, and holding effective veto power over any legislation entered by the cabinet in the lower house with federal-provincial implications, would in theory wed the two majorities. One proviso is that this upper house be directly elected, and not a body appointed by provincial governments, as in the West German upper house. In the latter case, intergovernmental elitism is simply extended into the internal structures of the national government, which is to erode further direct responsibility to voters, and to lengthen the reach of one set of vested governmental interests at the expense of others.

Another way of maximizing electoral responsibility is to have recourse to referenda for constitutional amendments, so long as such referenda are themselves based on the concurrent majority, that is, on a regional veto. Again, leaving amendment to elected officials is to leave the federal system itself as simply a creature of intergovernmental elites.

There is a paradox in advising a maximization of electoral responsibility at the national level. The wider the electorate, the greater the atomization and serialization of individual electors. However, there seems no way out of this dilemma when federal structures are superimposed on representative democracy. The concrete alternative, after all, is not directly democracy, but elite domination and elite conflict at levels well removed from popular responsibility. Moreover, in a federal system, people also are voters in the smaller provincial units, where the communitarian fragmentation and diversity may be less.

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Lurking behind this entire discussion of federalism in the twentieth century is the question of community and of citizenship. What are we to make, after all, of this notion of dividing the people against themselves?

There was no doubt about the political point which The Federalist was making in this regard, although Proudhon does bring quite a different perspective to bear on this arrangement. But is it not inherently undemocratic to raise a constitutional structure which systematically divides the people into separate bodies and moreover divides each citizen between membership in at least two political communities?

Such a system would be undemocratic were the question of community inherently self-evident. That the claims of community are manifestly not self-evident is apparent from the political turmoil of nationalism in this century. Or, again, the claims of community in the abstract may be accepted while the question of the embodiment of these claims in concrete political manifestations as sovereign states with power over individuals is always an open-ended matter of controversy and division. The artificiality of nationalism, the manipulation of symbols of nationality by great states as a substitution for face-to-face community, when subjects are spread out over vast territorial expanses, is matched by the persistence of movements of cultural separatism and mass alienation from governmental institutions. The development of the democratic nation-state with its powerful mutual reinforcements of nationalism and popular sovereignty may have suppressed counter-tendencies at particular moments, but the resurgence of minority nationalist movements, the renewal of cultural enclaves, and apparently increasing individual political alienation in the late twentieth century, all suggest limitations to the solvent of national 'self-determination.' At some point in the argument for the priority of community there has to be an arbitrary decision: this is the community which will cover this territory and this is its definition; dissenters must submit or leave (although leaving generally means as individuals, not as a territory). Yet if such decisions - like the act of violence which is at the foundation of democratic republics - may be necessary, they can never be definitive.

This suggests another dimension of the arbitrary in democratic politics: the definition of citizenship. Who are the 'people' which constitute the sovereign? The most decisive answer to this question lies in the arbitrary

drawing of the borders of states. Such boundaries are invariably the result of past acts of violence and the culmination of historical accidents. True, those born into a particular state are taught to identify themselves with it, but this is merely to say that the nation-state has to work at recreating the conditions of consent in each generation, which only underlines the arbitrary nature of the definition of citizenship. Moreover, democracy, whether direct or representative, has always been pragmatic as to the exclusions of categories of persons resident within the national territory from full participation as voting citizens. All democratic states exclude children, which is no doubt noncontroversial, although the age cut-off point is not. Not all residents are citizens, and in many western countries it is possible to be a long-term resident and taxpayer without ever being able to become a naturalized citizen. These and others might be considered as exclusions marginal to any fundamental theoretical point about democracy, but they are symptomatic of something deeper. America in the nineteenth century was a democratic federation in the sense that most of those qualified to be citizens, i.e., white adult males, could vote. That women and blacks were excluded (indeed, that slavery was the economic base of an entire region) did not prevent Tocqueville from distilling his penetrating observations about democracy from his American experience. Ancient Athens was a democracy, even though women, slaves and the foreign-born were excluded - indeed, within the confines of the definition of the free adult male, Athens was more democratic, in the sense of a direct democracy, than any representative democracy today. And we ought not to forget that even the greatest theorist of direct democracy, Rousseau, founded his sovereign on a number of exclusions, among which one could cite exclusion by narrowly restricted boundaries and the rigorous exclusion of half the population (women) within these narrow boundaries not only from participation in the general will but from all public presence.

A possible objection to this line of argument is that such exclusions are merely transitional stages on the road to a definitive democratic citizenship. I think not. The theory of the sovereignty of the people must rest on a definition of the term 'people.' All definitions are, ipso

facto, exclusionary; they define by excluding what is 'not-X' from what is 'X.' The very notion of a sovereign people is that of a community of people capable of exercising collective political choice. As Rousseau says, "before examining the act by which a people elects a King, it would be well to examine the act by which a people is people."<sup>59</sup> It is a democratic paradox that the more exclusionary the definition of the people, the less heterodox, diverse and conflictual the people become and the better democracy works. The wider the definition, the fewer the exclusions, the weaker the putative community constituted by the people, and the more problematic the presence of the people in the politics of the state.

Federalism does not offer a solution to this paradox, but it does suggest a way of evading the horns of the dilemma. It does this by being agnostic about community. Of course, it is true that federations simply multiply the arbitrary decisions about community and citizenship. One is told in France that one is French; one is told in Alberta that one is a Canadian and an Albertan - yet the boundaries of the Albertan 'community' are as arbitrarily drawn as the boundaries of the Canadian or French 'communities.' But a double arbitrary division creates the basis of doubt. Is one acting as an Albertan or as a Canadian? If the answer is 'both,' as it usually will be in a functioning federal society, the question of community has, in effect, been opened up again. If federalism is to be a more than institutional formalism, it must keep that question open. That may be very untidy and the bane of rationalists, it may make federations difficult to operate, but it demonstrates that federalism is not merely compatible with (representative) democracy, but may offer one of the better institutional frameworks for coping with some of the inherent problems of democracy. As Rousseau continued in a very different context: "it is the very vices that make social institutions necessary that make their abuse inevitable."<sup>60</sup>

## NOTES

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1. Alexis de Toqueville, *Democracy in America* (Henry Reeve text, edited by Phillips Bradley) vol.1 (New York, 1954) 6.
2. From amongst many examples of democratic theorists who pay little attention to federalism, I might cite two. C.B. Macpherson, although a Canadian and an author of a classic study of a provincial political movement in Canada (*Democracy in Alberta* (Toronto, 1953)), makes no reference whatever to federalism in his theoretical works on democracy. J. Roland Pennock, in a recently published justification of American-style democratic politics, just passes 500 pages when he remarks, "Of the federal system little need be said," noting merely that federalism contributes to "dispersed leadership" and "loose, weak" parties, which he believes are conducive to the most satisfactory operation of democratic institutions. J.R. Pennock, *Democratic Political Theory* (Princeton, 1979), 503.

A notable recent exception to this disinterest among democratic theorists are the contributions of Robert Dahl ("Federalism and the democratic process") and David Braybrooke ("Can democracy be combined with federalism or with liberalism?") to J.R. Pennock and J.W. Chapman, eds., *Liberal Democracy* (New York, 1983), the 25th number of the NOMOS series. Unfortunately, these pieces only appeared as I was revising the final version of this paper, but Dahl in particular makes a number of succinct points with which my own argument here is in substantial agreement.

Among writers on federalism, a corresponding disinterest in democratic theory is easy to discern. The classic institutional work on federalism, K.C. Wheare's *Federal Government* (London, 1945) sees no need to cite democracy as even a qualifying condition of a functioning federalism. Gilles Lalonde's *Pourquoi le fédéralisme* (Montreal, 1972) lists ten arguments against federalism, which he



then proceeds to refute. None of these arguments have anything to do with democratic theory.

3. For arguments indicating how descriptive analysis of democracy turns into functionalist justification of restrictions on democracy see, *inter alia*, Carole Pateman, *Participation and Democratic Theory* (Cambridge, 1970), and Quentin Skinner, "The Empirical theorists of democracy and their critics: a plague on both their houses," *Political Theory* 1 (1973).
4. *The Politics of Johannes Althusius*, translated by F.S. Carney (Boston, 1964) is incomplete, but the only English translation presently available. An excellent modern source on Althusius' federalism is Thomas Hueglin, "Johannes Althusius: medieval constitutionalist or modern federalist?" *Publius* 9:4 (1979) 9-42. Less useful is Patrick Riley, "Three 17th century German Theorists of federalism: Althusius, Hug and Leibnitz," *Publius* 6:3 (1976).
5. *The Politics*, *op. cit.*, 64-7.
6. M.M. Goldsmith, "Hobbes's 'Mortall God': is there a fallacy in Hobbes's Theory of sovereignty?" *History of Political Thought* 1:1 (1980) 40-1.
7. Hans Kelsen, *General Theory of Law and State* (New York, 1945) and *Pure Theory of Law and State* (Berkeley, 1967).
8. *Attorney-General of Nova Scotia v. Attorney-General of Canada* (1951) SCR 31, Rinfret CJ at 34.
9. Harold Laski, *Studies in the Problem of Sovereignty* (Yale, 1917) 283.
10. K.W.B. Middleton, "Sovereignty in theory and practice," in W.J. Stankiewicz, ed., *In Defence of Sovereignty* (Toronto, 1969).
11. W.J. Ree, "The Theory of sovereignty restated," in Stankiewicz, *op.cit.*, 209-40.
12. A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (London, 1908) 157.
13. Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Chicago, 1957).
14. Yves Simon, 'Sovereignty in democracy' in Stankiewicz, *op. cit.*, 260-4.
15. Dicey, *op. cit.*, 76, 79.

16. Jean-Paul Sartre, "Elections: a trap for fools," in Sartre, *Life/Situations: Essays Written and Spoken* (New York, 1977) 202, 207-8.
17. Du contrat social 111:xv, in J.J. Rousseau, *Oeuvres complètes* (Pléiade ed., Paris, 1964) v. 3, 428.
18. Robert Paul Wolff, *In Defence of Anarchism* (New York, 1970), especially 27-34.
19. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass., 1967) 209-228, quoted at 229.
20. See Bailyn, *op. cit.*, 160-319; Carl Becker, *The Declaration of Independence: a Study in the History of Ideas* (New York, 1942); Gary Wills, *Inventing America: Jefferson's Declaration of Independence* (New York, 1978).
21. R.B. Morris, ed., *Basic Documents in American History* (New York, 1956) 32.
22. "Extrait du projet de paix perpetuelle de monsieur l'abbé de Saint Pierre" and "Jugement sur le projet de paix perpetuelle," J.-J. Rousseau, *Oeuvres complètes*, v.111 563-600; Patrick Riley, 'Rousseau as a theorist of national and international federalism' *Publius* 3:1 (1973) 5-17. As Carl Friedrich has pointed out, Rousseau discussed 'national' federalism in his "Considerations sur le gouvernement de Pologne," but that due to his rejection of representative democracy, he was caught by the problem of size, and could have "no searching insight...into the real functioning of a democratic federal order." C.J. Friedrich, *Trends of Federalism in Theory and Practice* (New York 1968) 24.
23. John P. Roche, "Republicanism and democratic politics at the Constitutional convention," *American Political Science Review*, 55 (1961) 816.
24. Douglas Adair, *Fame and the Founding Fathers* (New York, 1974) 116.
25. David Hume, *Essays Moral, Political and Literary*, T.H. Green and T.H. Grose, eds. (London, 1882) v.1, 480-93.
26. Adair, *op. cit.*, was the first to note this. Garry Wills, *Explaining America: the Federalist* (Garden City, N.Y., 1981) makes the most of the connection. James Moore, "Hume's political science and the classical republican tradition," *Canadian Journal of Political Science* 10:4 (1977) 833-9 discusses the connection. Theodore Draper, "Hume and Madison: the secrets of federalist paper No. 10," *Encounter* LV111:2 (February, 1982), 34-47, explores the reluctance to admit a Humean influence.

27. *The Federalist Papers*, Rossiter edition (New York, 1961), No. 10, 81-2. The late Martin Diamond has done most to elucidate the degree to which *The Federalist* is, in fact, democratic: "Democracy and *The Federalist*: a reconsideration of the framer's intent," *American Political Science Review* 53 (1959) 52-68; "The Federalist" in Leo Strauss and Joseph Cropsey, eds., *The History of Political Philosophy*, 2nd. ed (Chicago, 1972) 631-657; "The separation of powers and the mixed regime," *Publius* 8:3 (1978) 33-43. Diamond's most vociferous critic is Paul Eidelberg. *The Philosophy of the American Constitution* (New York, 1968) and *A Discourse on Statesmanship* (Urbana, Ill., 1974), but this reader, for one, does not find Eidelberg's criticisms very compelling. Nor does Paul Peterson, "The meaning of republicanism in *The Federalist*," *Publius* 9:2 (1979) 43-75, who supports Diamond.
28. Gordon S. Wood, *The Creation of the American Republic 1776-1787* (Williamsburg, Va., 1969) 530-1, 603-4; James Wilson, "Lectures on Law," in R. Green McCloskey, ed., *The Works of James Wilson* (Cambridge, Mass., 1967) I, 303; *The Federalist*, No. 22, 152.
29. *The Federalist* No 10, 83-4; No 52, 324. This idea was later picked up by Lord Durham in his report on the British North American colonies. In recommending the establishment of elective municipal offices, he remarked that the "True principle of limiting popular power is the apportionment of it in many different depositories." Lord Durham's Report, Lucas edition (Oxford, 1912) v.11, 287.
30. Wood, 606, 612; See also J. Pocock, *The Machiavellian Moment* (Princeton, 1975) 519-526.
31. *The Federalist* No. 15, 111.
32. Tocqueville I, 398-433.
33. De l'Esprit des Lois IX:1 in Montesquieu, *Oeuvres complètes*, v. 11 (Pléiade edition, Paris, 1951) 369; *The Federalist*, No. 9, 73-6; Martin Diamond, "The Federalist's view of federalism" in G.C.S. Benson, ed., *Essays in Federalism* (Claremont, Calif., 1962) 31-2.
34. J.C. Calhoun, *A Disquisition on Government and selections from the Discourse*, C.G. Post, ed. (Indianapolis, 1953); James Bryce, *The American Commonwealth* (New York, 3rd ed. 1870) v.1, 15; P.-J. Proudhon, *The Principle of Federation*, translated by Richard Vernon (Toronto, 1979) 57; Harold Laski, *Studies in the Problem of Sovereignty* (Yale, 1917). Aficionados of Canadian political rhetoric may note that Laski's "community of communities" formulation predated that of a former prime minister by over sixty years.
35. W.H. Bennett, *American Theories of Federalism* (Alabama, 1964), 124. Such an interpretation was strengthened by the amendment procedures which stipulated ratification by three quarters of the

state legislatures or by conventions convened by the state governments for that purpose.

36. Roy F. Nichols, "Federalism vs. democracy," in Roscoe Pound et. al., *Federalism as a Democratic Process* (New Brunswick, N.J., 1942).
37. This was Richard Hofstadter's famous characterization of Calhoun in *The American Political Tradition* (New York, 1948) 68-92, where tribute was paid to his "arresting defence of reaction, a sort of intellectual Black Mass" (69). On Calhoun's theory more specifically, see Ralph Lerner, "Calhoun's new science of politics," *American Political Science Review* 57 (1963) 918-32.
38. Calhoun, *Disquisition*, 100.
39. *Disquisition*, 14, 10-11.
40. *Disquisition*, 23.
41. Lerner, 'Calhoun's new science,' points out that in the end, Calhoun can be considered a liberal theorist after all, since he assumes that the only common good is the process of government. There are no ends, only an "agreement to continue the game."
42. *Disquisition*, 36-43.
43. On Proudhon, I have found the best source to be Richard Vernon's introduction to his translation of *The Principle*, op.cit., ixlvii, and his "Freedom and corruption: Proudhon's federal principle," *Canadian Journal of Political Science* 14:4 (1981) 775-96; this account follows Vernon closely. See also Bernard Vuyenne, *Le fédéralisme de P.J. Proudhon* (Paris, 1973); J.-J. Chevallier, "Le fédéralisme de Proudhon et ses disciples" in G. Berger, et. al., eds., *Le Fédéralisme*, (Paris, 1956) 87-128; and, less usefully, Preston King, *Fear of Power: an Analysis of Anti-Statism in Three French Writers* (London, 1967) 43-68.
44. G. Vedel, "Les grands courants de la pensée politique et le fédéralisme" in Berger et. al. *Le Fédéralisme*, op. cit., 50-1; Ralph Nelson, "The federal idea in French political thought," *Publius* 5:3 (1975). 7-62; Albert Soboul, *The French Revolution 1787-1799 v. 2. From the Jacobin Dictatorship to Napoleon* (London, 1974) 317-9.
45. Proudhon, *Principle*, op. cit., 78-81.
46. *Principle*, 7.
47. *Principle*, 28, 61.
48. *Principle*, 62, Vernon, "Freedom and corruption," 785.
49. *Principle*, 74.

50. Vernon, Introduction, xxii-xxiii.
51. Introduction, xxv-xxvi; "Freedom and corruption," 781-78.
52. "Freedom and corruption," 781.
53. Felix Morley, *Freedom and Federalism* (Chicago, 1959). Franz Neumann, "Federalism and freedom: a critique" in A.W. MacMahon, ed., *Federalism, Mature and Emergent* (N.Y., 1962), is rather uncharacteristically one-dimensional in his attack on the federalist case.
54. Hélène Carrère d'Encausse, *Decline of an Empire: The Soviet Socialist Republics in Revolt* (New York, 1979) 124, and in general, 121-55.
55. 'Introduction,' S. Tarrow et. al., *Territorial Politics in Industrial Nations* (New York, 1978).
56. A contemporary Proudhonian federalist who appears to fall into this romantic category is George Woodcock. See his interventions in Canadian federalist politics: 'Political horizons,' *Canadian Forum* (April, 1972) 15-47 and *Confederation Betrayed!* (Vancouver, 1981).
57. See Robert A. Dahl and Edward R. Tufte, *Size and Democracy* (Stanford, 1973) for an extended empirical discussion of the relationship between size and the viability of representative democracy. They conclude that neither the classic city-state nor the modern nation-state ought to be seen as an 'optimum' size. "Rather than conceiving of democracy as located in a particular kind of inclusive, sovereign unit, we must learn to conceive of democracy spreading through a series of interrelated political systems, sometimes though not always arranged like Chinese boxes, the smaller nesting in the larger. The central theoretical problem is no longer to find suitable rules, like the majority principle, to apply within a sovereign unit, but to find suitable rules to apply among a variety of units, none of which is sovereign." (135).
58. Dicey, 141.
59. *Du contrat social*, I:v, 359.
60. *Discours sur l'origine de l'inégalité*, 187.

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