



Charles S. Hyneman

State and Local Authority vs. Federal Domination

I believe that the question of where to put the power to govern this nation is of great importance and calls for a most serious re-examination right now. I have been asking questions about it, reading about it, and thinking about it for some time and I shall tell you as simply as I can what I think we are up against and what are some alternatives available to us.

But first, you should know something about the presumptions which guide my thought and the prejudices which may limit what I see and shape my conclusions.

One: I am 100 percent committed to popular self-government. I believe that elected officials ought to be firmly in charge of all important business of government in which there are significantly different judgments as to what ought to be the main lines of public policy. This does not mean that I think judges of the U.S. Supreme Court and superintendents of Army Hospitals ought to be elected, but it does mean that I think we now let administrative bureaucracies fix a lot of policies that ought to be debated and voted on in Congress.

Two: I am a strong believer in variety, in a diversity of policies and opportunities that provide for you to go your way and me to go my way. This means that I want to preserve the autonomy of businessmen and business firms and encourage free association in social organizations, and so insist that there must be mighty good reason for propelling government into some new area of American life. It means also that I think all government business that can be handled satisfactorily in the state house, city hall, or county courthouse ought to be put there and kept out of Washington.

Three: I think the national government now has more business than the elected officials (Congress and president) can adequately look into and look after, and I have no doubt that they will succumb to public demands that result in their taking on additional burdens. Unless the

American mind takes a turn which I do not foresee, this assumption of new business will not be balanced by returning an equal amount of old business back to the private sector. Government in the United States is destined to reach further and further into our lives, unless I am a much worse prophet now than I have been in the past.

So we have come to the first question that I want to ask you and express a few opinions of my own about. What can we do to make sure that the persisting and enlarging volume of public business is attended to intelligently, with minimum costs and maximum gains to the American people? It seems to me that our present answer, a policy of continuously delegating power to national bureaucracies, is unacceptable. We have more administrative organizations now than Congress or the president can effectively oversee. Several of them are too big to be manageable even if Congress and the president did try to subject them to strict control. And finally, in my opinion, we are embracing a poor instrument for attaining the answerability to the people which the Founding Fathers had in mind — when we lodge a wide range of choices to fix public policy in officials whose names and reputations for prior achievements are unknown to the people they govern.

So I approach this question with two conclusions and a prophesy. A conclusion of principle — that elected officials ought to be firmly in charge of the government; a conclusion of fact — that the men and women we put in charge of the national government are not now maintaining that measure of direction and control; and a prediction — that this unacceptable condition is bound to get worse unless we reverse a long-developing trend.

What can be done, either to improve the ability of Congress and president to do well what they undertake, or to relieve them — more responsibly — of lesser business that hinders their addressing matters that ought to have first priority? Three possible alternative

courses of action must be considered. Stated as questions they are: 1. Can we make the White House and Congress more efficient? 2. Can the congressmen allocate the public business among themselves in some way so that no congressman has to divide his attention among as many things as he does now? 3. Can we raise our state and local officials to a new level of importance by handing over to them sectors of public policy which up to now we have been entrusting to administrative departments of the national government?

I see little promise indeed in the first course of action — increased efficiency. As for greater efficiency in the White House, I think we can dismiss that from our minds altogether. The White House is one of our most revered national monuments. It must be visited by a few hundred thousand persons each year, and I suspect that a full third of the persons who go there are experts from the Bureau of the Budget who are trying to show the president how to use his staff more efficiently.

The Budget Bureau's experts stay away from Congress and no doubt a great deal more inefficiency abounds at that pole of the political planet. Congress took a magnificent step to improve the conduct of its affairs by restructuring committees and making better provision for research aids in 1946, and many congressmen think the time is ripe for another overhaul. But improvements of this order, desirable as they are, offer little promise, in my opinion, of freeing Congress for sufficient time to apply their wisdom to public policies. Far more would be gained if we could capture for more important uses the countless hours of time that congressmen give to constituents who insist on bringing little problems to the mightiest official to whom they have access. I am conservative in estimating promise of improvements in that sector, however, for I am one of those who believe that it is a good thing for a congressman to look a constituent in the face pretty often and be reminded that he was elected to serve

the people and that he ought to know what the people are thinking.

The second suggested course of action, relocating within Congress the power to take final action, is one that I have not studied. The members of the lower house are relieved of a considerable amount of study and time in debate by not being required to approve treaties and advise and consent to the president's appointments. The Senate's time is conserved by the fact that it leaves most of the work on appropriation bills to the House of Representatives. It may be that there are other areas that can be turned over entirely to one or the other of the two legislative chambers without loss of wisdom or risk of injustice to any sector of the population.

There may also be some kinds of business that can be turned over entirely to a joint committee of one of the two houses, as I believe was the case with claims against the government at a time when it was thought that the claims ought to be adjudicated by elected officials rather than a court. If public policies of signal importance are to be decided finally within a committee, it will of course be necessary to make sure that the members of the committee are representative of the people whose interests are affected by the committee's decisions. The difficulties I see in identifying publics that need to be represented and apportioning committee memberships among the different publics strips me of any hope that much can be gained by this course of action.

So we are led up to the third course of action I mentioned: putting a larger share of governing in our state and local governments. I am convinced that we can do this with rewarding consequences if we make up our minds that we ought to and must. I am well aware that many people are fully convinced that this is not a feasible course of action. I am acquainted with the arguments they offer to support their point of view. I think they are influenced by two great errors in judgment. They put too high a value on equality of condition and uniformity in the application of public policy. And they have too low a regard for the ability of the American people to construct responsible governments, elect honest and intelligent officials, and put brakes on the excesses to which elected officials too often succumb.

It is a fact, and I attach great importance to it, that we are already engaged in a conscientious and persistent effort to improve our state and local governments. And with salutary if indeed not exemplary results in many places. Further, we have at hand a large body of thinking packaged and available for widespread distribution. Much of it comes to a head with precise proposals: formulae for replacing inefficient and haphazard government with efficient and responsible government, redrawing state boundaries, UNI-GOV for every metropolitan area, full-time state legislatures, and so on.

Personally, perhaps more as an incident of temperament than as a consequence of overpowering proof, I distrust formulae that are made to fit unexamined situ-

ations. The conditions that give a political jurisdiction its prominent characteristics and its most troublesome problems are various, not uniform and constant. The lesson I think I have learned is that every community presents its own set of problems, its own set of highly developed or underdeveloped resources of leadership and civic virtue, its own strengths upon which it can build and its own weaknesses against which it must guard. The needs of each place and the options available to it are not so peculiar, however, that nothing can



be learned from the experience of people in other places. I am a great believer in models as a stimulant to thought and a guide to learning. Surely one of the first things to do in preparing ourselves for more vigorous, more costly, more important government at state and local levels is to spread across the nation succinct but reliable accounts of successes and failures in governmental improvement containing lessons from which people in other places may profit.

Hand in hand with the contention that state and local governments are not fit for further governing responsibilities goes the assertion that they cannot meet the costs involved in a bigger scale of operations. We encounter some difficulties in fitting income to costs, but I think they have been exaggerated. Possibly it will cost the American people more, but I do not see why it should cost them much more to regulate themselves and provide needed services through state and local authority rather than through the great national bureaucracies we now employ. We must make certain that when governmental responsibilities are moved to another level, the money necessary for the operation is part of the transfer. Congress now delegates enormous areas of authority to the administrative departments and it annually appropriates billions of dollars to pay for their work. It can turn that same delegating and appropriating machinery in another direction. It can devolute governing authority to state and local governments as readily as it can delegate to administrative organizations, and it can allocate the money it controls to state and local governments as easily as it appropriates to the bureaucracies it nourishes in Washington.

But there is a hitch here — more than a hitch, a positive danger — and I hope not to underestimate it. Congress can hold the federal administrative department to some measure of accountability for its operations and its per-

formance, and it does so in its annual budgetary review. I do not believe that Congress can hold the state governments accountable for the use of money with any comparable degree of success. The Washington administrative department is expected to have a rationalized program. Each sector of its operations seeks a high measure of uniformity in its impact on people wherever in the nation they happen to live. A veteran of the House Appropriations Committee learns enough about the program to ask sharp questions about the execution. But if we turn a billion dollar operation over to the state and local governments, the uniformity and the homogeneous character of the program ceases. The operation explodes. Diversity becomes the rule rather than the exception. Variation in styles of administration replaces the consistency in style which marked the administration when it was seated in Washington. This transformation from uniformity to diversity is inevitable because this is what we wanted to happen when we said: Get this business out of Washington and put it in the state house or city hall.

Some of Congress' concern to hold the spenders responsible for their use of money can be satisfied by setting up officials in Washington to maintain a watch, but that encourages a prospect that the small reviewing office will transform itself into a bureaucracy that insists on imposing uniformity on the local administrators just so that the bureaucrats can be sure they understand what is going on well enough to report it to Congress. Surely this is just what we are trying to get away from when we endorse devolution to the states and localities where the people live.

Shall we then instruct Congress to give the money to the states without strings attached, to give it without requiring those who spend the money to answer effectively for the way they use it? Or shall we require Congress to limit the amount it extracts from the taxpayers and tell the state and local governments to go directly to the taxpayers for the increased amounts they are bound to need. And if we do the latter, open up the personal if not the corporate income tax as a main source of state and local revenue, will the people back home impose any more or any less accountability upon the legislatures and city councils than they would impose upon Congress if Congress did all the taxing and made gifts to the states.

Judgments differ as to how we can best handle this problem of moving public revenues hand in glove with the transfer of government functions. Good minds are at work on the problem and I am impressed that we are advancing toward a full comprehension of what is involved in assuring that state and local officials will be provided with the money they actually need under conditions that require them to justify the things they do with what they get.

One further point must be made about the obstacles which must be surmounted in bringing about a dispersion of government to the state and local capitals. I speak of a state of mind that has taken

hold of the American people with increasing intensity during recent years. Not just our talk but our behavior makes it clear that we have a compelling commitment to equality, and that leads to a fixation on uniformity in the impact of government on individuals. Determined that individuals living side by side as well as far apart who are caught up in competition for something of value shall enjoy equal protection of the law, we leap to the conclusion that Americans living anywhere within the national boundaries must be subjected to identical law. The only way to guarantee that one rule of law will extend over the whole nation is for Congress to enact the legislation, for a monolithic bureaucracy to enforce it, and for a national Supreme Court to review and revise the variant interpretations of each statute.

Local self-government was invented so that each community could have its own preferred services and its own preferred regulations. The glory of the American federal system has been its provision that the people of each state should live under their own code of laws. I recognize the necessity of calling national authority into action when any lesser political jurisdiction withholds elementary justice from any part of the population. If it becomes evident that the only way a black man can be assured of the right to vote in Mississippi is for federal agents to register voters and sit at the polls on election day — if that is the only way they can be assured the right to vote—then I agree that local regis-

tration and election officials will have to move over and let the federal officers take charge. The assurance of elementary justice is not what I am talking about when I say we have an over-developed attachment to uniformity in the application of law. I am not talking about the need for the federal government to come into a state or community to make sure that a minority group gets the fair deal in public services which is denied to them by state or local public authorities. I think that redress of local injustice by the national government is imperative.

What I have in mind when I warn against an exaggerated affection for uniform application of laws is a supposition that the surest way to prevent injustice is to have one government govern everybody. What I deplore is the supposition that national rules and regulations must cover, say, the growing of tobacco in order to escape the disadvantage someone might suffer if the rules governing measurement of tobacco fields in Kentucky differ a little bit from the rules governing measurement of tobacco fields across the state line in North Carolina.

The issue now before the Supreme Court relating to the financing of public education invites inspection in this connection. It seems to me to be a sound principle that some of the money stripped off of the wealthier communities of the state by taxation ought to be invested in the improvement of education in the poorer communities of the state. If this is a good rule for education, then it seems to me to be a good rule for

health services, care for the aged and the crippled, and a good many other services we expect government to provide. If the judges conclude that the equalizing of services is mandated by the Constitution, inherent in the laws' equal protection requirement, how can the judges escape concluding that the quality of essential services in poverty-ridden West Virginia must be brought up to the level of the same public services in the far wealthier states of Ohio and Pennsylvania? If all the communities of the nation must be brought to the same quality of service, how would you guarantee that result except by a mass of ever-changing regulations of nationwide application enforced by a number of ever-enlarging federal bureaucracies? And if the great swarm of regulators bring all parts of the nation to the same level of public service, who will run ahead of the rest and set models for the less imaginative communities to imitate?

I do not predict that the Supreme Court will immediately project us upon this course of all plains and no mountains, all lock step and no pace setting. I do say that there is a mood hovering over the nation, a sentiment settling heavily upon great numbers of American people, which favors equality of condition and uniformity in the application of law. It is a mood and a sentiment which, if it persists and dominates our political philosophy, will negate any hope you or I may have of returning government of the American people back to the states and the communities where the people live. □

R. Emmett Tyrrell, Jr.

Truman and the Maelstrom of History

At no time are complex historical events more neatly comprehensible than during a reign of ideology, and today in America, ideology is clearly in the ascendant. In some circles it goes under the rubric New Left; in other circles it is more ambiguously described as revisionist. Whatever it is called, it always manages to round the ragged edges off history's complicated events. That is precisely what it has attempted to do with the cold war. In its haste it has sheared off a great deal of the glory that a tough little man earned for himself and his naive countrymen right after the conclusion of the Second World War. I speak of Harry S. Truman, an authentic image of the American democratic ideal, an ideal still celebrated in the American heartland, and an ideal which holds that everyone counts — even a commoner from the remote state of Missouri. According to this ideal, any American citizen can become president, and working within the scheme of the American Constitution he should be able to do tolerably well.

As if to demonstrate the validity of his democratic ideal, fate kicked Mr. Truman into the presidency at one of the most inopportune times imaginable. The Second World War was drawing to a close, leaving half the civilized world

heaped in a shambles. During the reign of Franklin Roosevelt, President for the past twelve years, America had undergone one of the most profound changes in domestic policy in its history. Mr. Roosevelt was a magisterial leader, considered to be one of the greatest in American history. He was idolized for his dramatic accomplishments, his break with the past, his powerful personality, and his fabulous entourage. When he died so suddenly and mysteriously on the afternoon of April 12, 1945, a shocked nation found it hard to envision the puny figure of Vice-President Harry S. Truman as inheriting Roosevelt's magnificent position. Had they realized the depth of Mr. Truman's condition, their fractured confidence would have been all the more shattered. Truman had hardly had a word with President Roosevelt in the few months he had been in the administration. He knew little about the intricate diplomacy Mr. Roosevelt had been weaving throughout the turbulent world. And he knew less of the military situation. When Truman was suddenly made President, he actually knew nothing of the revolutionary new bomb being hatched in the desert of New Mexico.

And his predicament was aggravated by the fact that most of Roosevelt's ad-

visers had been positing their diplomacy with the Russians on notions that were utterly incompatible with Soviet designs. The Russians thought only of security. They desired to ring their vast nation with a *cordon sanitaire*, protecting them from any future foreign invasions, and Mr. Stalin intended that this *cordon* be as thick as possible. Meanwhile Roosevelt and his advisers implacably pursued a policy of unconditional surrender in the field and high-minded idealism at the diplomatic table. They dreamed of a postwar world characterized by self-determination under the irenic suzerainty of some sort of international government, welded together by international trade. It is hard to confect a dream more antithetical to the insular obsessions of the suspicious Russians. Yet these were the ideas of the leaderless administration when Truman became the thirty-third American president. And of course Roosevelt's misguided advisers now became Truman's advisers.

Outside the government American political discourse was not much better informed. America has always been a land visited by men of enthusiasms. The enthusiasms whistling through America at this time were not very intelligent or useful to a man in Truman's awesome position. Sober-minded leaders were