

# A New Age of Federalism?

Thomas W. Merrill

FEDERALISM HAS BEEN in the news a lot over the past few years. The Republican-controlled Congress has enacted restrictions on the imposition of unfunded federal mandates on state governments and has passed significant welfare reform, one of the keys to which is greater state freedom in the implementation of welfare programs. The President, although often seen as resisting the more extreme Republican proposals for devolution, is himself something of an advocate for states' rights. Clinton was a governor before he was President, and in that capacity he experienced a number of frustrations with federal red tape. Perhaps as a result, the Clinton Administration has been generous in granting waivers to States under federal entitlement programs – far more so than were the Reagan and Bush Administrations.<sup>1</sup>

Perhaps the biggest news on the federalism

front in recent years, however, has come from the Supreme Court. The Court has rendered a series of dramatic decisions shifting power from the federal government to the States. In *United States v. Lopez*,<sup>2</sup> the Court held that Congress has no power under the Constitution to make it a federal crime to possess a gun within 1000 feet of a school yard. The federal government defended the statute as a permissible exercise of Congress's power to regulate interstate commerce, but the Court said it could not see how the mere possession of a gun near a school yard, not itself a form a commercial activity, would have a substantial affect on the movement of goods and services in interstate commerce. So for the first time since 1937, the Supreme Court struck down a federal law as being beyond the powers of the federal government to regulate interstate commerce.

The next year, in *Seminole Tribe v. Florida*,<sup>3</sup>

---

*Thomas W. Merrill is the John Paul Stevens Professor of Law at Northwestern University School of Law. This essay is based on the Charles Robison Lecture delivered at Knox College, May 23, 1996.*

1 President Reagan of course was also a governor. But for whatever reason federalism initiatives during his Administration tended to be more symbolic than those coming out of Washington recently.

2 514 U.S. 549 (1995).

3 116 S. Ct. 1114 (1996).

the Court held that Congress has no power to pass laws subjecting the States to suits in federal court brought by private parties. The Court said such a law would offend the “sovereign immunity” of the States, recognized in the Eleventh Amendment, and that Congress has no power to override this immunity – at least when it is exercising one of its powers enumerated in Article I of the Constitution. Most recently, the Court curtailed Congress’s power to legislate under the authority of Section 5 of the Fourteenth Amendment,<sup>4</sup> and it ruled that Congress may not directly compel state officers to administer federal programs.<sup>5</sup>

The practical impact of these decisions is debatable. Congress may be able to get around the new restrictions on its commerce power and its Section 5 power by using its spending power. And Congress should be able to get around *Seminole Tribe* and subject the States to suits so long as the federal government, rather than private parties, does the suing. Nevertheless, these decisions are extremely important as symbolic statements. Together with all the movement on the legislative and administrative fronts, they tend to support the notion that the federal government has gotten too big relative to the state and local governments, and has usurped functions that rightly should be located at governmental levels closer to the people.

When we look around the world the news on federalism appears more mixed. Within the last twenty-five years, constitutional revision has led to major devolutions of power – and therefore greater vertical divisions – in Belgium, Spain, Canada, and now even Great Britain. And the last twenty-five years have witnessed one very dramatic example of the

creation of a new federal system through integration – the emergence of the European Union. Although the German Supreme Court recently insisted that the Single European Act and the Maastricht Treaty do not make the European Union a true federal system,<sup>6</sup> the political reality is that the community government has evolved to a point where nearly all impartial observers agree it is at least headed in that direction.<sup>7</sup> The community not only rules on issues of trade among the member states and with states outside the union, it also has a great deal to say about policy in areas like agriculture, the environment, labor, and product safety and design. Clearly, the community government has greater powers than did the Congress of the United States under the Articles of Confederation, although it still has some distance to go before it enjoys the powers that the federal government in the United States does today.

On the other hand, by no means all the news in the past twenty-five years has been encouraging for the future of the federalism idea. Our neighbor to the north has narrowly averted two attempted break-ups of its federal system by the separatists in Quebec. A number of former communist states that were nominally federal in nature split apart after the communists fell from power in 1989. Czechoslovakia split into two nation states peacefully, but in Yugoslavia the break-up led to a brutal civil war within the Bosnian territories. And although the dissolution of the Soviet Union – another nominal federal system – was peaceful, the Russian federation that succeeded to the lion’s share of the Soviet Union is itself strained by violent upheavals in the perimeter of its own federal system.

4 *City of Boerne v. Flores*, 117 S. Ct. 2157 (1997).

5 *Printz v. United States*, 117 S. Ct. 2365 (1997).

6 Federal Constitutional Court decision concerning the Maastricht Treaty, October 13, 1993, reprinted in 33 I.L.M. 388, 423-26 (1994).

7 See, e.g., Koen Lenaerts, *Constitutionalism and the Many Faces of Federalism*, 78 AM. J. COMP. L. 205 (1990).

Perhaps the former communist states are not true barometers of the future of federalism, since in reality these states were held together by the monopoly of power enjoyed by the communist party. True federal systems, by their very nature, rest on a kind of delicate equilibrium of consensus. Whether created by devolution or integration, they are based on a consensus among different contiguous peoples that they want a common government for some purposes, and separate governments for other purposes. What happens when unions that are held together not by consensus but by force break apart does not tell us much about the future of genuine federal systems.

The question I will address here is whether we are in fact entering into a new age of federalism. That is, are we entering an age where the idea of nationalism – of the single, all powerful unitary state – is in eclipse, and the idea of federalism – of power divided vertically among different layers of government – will be in ascendancy? As an American, I am of course particularly interested in the future of the federal idea in the United States. Most of our history – from the centralizing decisions of the Marshall Court, to the Civil War and the post-Civil War constitutional amendments, to the progressive era with its Interstate Commerce Commission and federal antitrust laws, to the New Deal, to the Great Society – reflects a long march of gradually expanding central governmental power and a seemingly inexorable retreat of state autonomy. Does all of the recent din coming out of Washington about devolution and states' rights represent a genuine turning point – a reversal of this process? Or is it just a blip on the time chart, a small "correction" in the Dow Jones Index of Central Governmental Power that will soon be eclipsed as that index re-

sumes its upward trend? Considering recent developments, it seems to me that Americans (and others) may well be entering a new age of federalism. But the new federalism that is likely to emerge will exist on an entirely different plane from that suggested by the publicity generated by Congress, the President's, and the Supreme Court's recent initiatives.



Perhaps the first part of this inquiry is to ask what we mean by a federal system of government. How does a federal system differ from a unitary system of government, like that of, say, France? And how does a federal system differ from a league or an alliance, such as the North American Treaty Organization or the Organization of American States? Wilfred McClay has remarked that "It would ... be hard to imagine a political concept more poorly understood than federalism."<sup>8</sup> Indeed, he adds, most Americans "no longer have the slightest idea what federalism is." However, most scholars of federalism – and as McClay also noted, this is not a very large group – would agree on the following minimal definition: A federal system is one in which political power is divided vertically between central and regional authorities, and the leaders at each level do not depend on the other level for their political authority.<sup>9</sup> In addition, it is probably also an essential feature of federalism that both levels of government enjoy some non-negligible governmental powers. If the leaders of either the central or the regional units are separately elected, but their only governmental function is to choose the flag or the official flower of that unit, this would not qualify as a genuine federal system.

Others would go further, and insist that in a

8 Wilfred M. McClay, *A More Perfect Union? Toward a New Federalism*, 100 COMMENTARY 28 (Sept. 1995).

9 See Larry Kramer, *Understanding Federalism*, 47 VAND. L. REV. 1485, 1488 n. 5 (1994).

federal system there must also be some agreed boundary between the powers of the central government and the powers of the regional governments, some consensus about their respective “spheres” of power. I concede that this feature appears in most federal systems. But whether it is a necessary condition or not I cannot say. Many constitutional law scholars in the United States have argued that our federal system could continue to function for quite some time without any bright line understanding of the boundaries between the powers of the federal government and the States, and they may be right. Indeed, some would even go so far as to say that it is a defining feature of the U.S. system that the lines are anything but clear. So for purposes of my inquiry here, I will stick to the minimal definition.

One interesting implication of this definition is that a federal system does not differ from a unitary system like that of France because unitary systems are “centralized” and federal systems are “decentralized.” All systems of government – at least in complex societies – contain elements of centralization and decentralization. France has departments and municipal authorities as well as its central government. But France is not a federal system, because the leaders in these regional units are dependent on the central government for their political authority. The central government could expand or contract their powers at will, and could abolish their offices in a governmental reorganization overnight.

Because one can have decentralization without federalism, some commentators have insisted that the American preoccupation with federalism is simply a “national neurosis.”<sup>10</sup> Most of the advantages commonly cited for federalism – bringing government closer to

the people, permitting experimentation with different types of government programs, and so forth – could be realized in a unitary system with an appropriate degree of decentralization among its administrative units. In order to identify the functions of a federal system, therefore, one must take care to identify functions that are served by a system of government in which both the central authority and the regional authorities have independent bases of sovereign power, and not simply functions that could be achieved by administrative decentralization.

What are the functions of a federal system, properly defined? Why do federal systems – that is, systems with two separate sovereignties – exist? If there is a trend of sorts toward federal systems around the world in the past twenty-five years, what is it about federal systems that makes them attractive in many circumstances, relative to unitary nation-states?

There are a number of healthy, functioning federal systems around the world. In addition to those previously mentioned, I would include within this group Australia, Germany, India, and Switzerland. We can examine the constitutions of these federal systems, to see what sorts of functions they allocate to the central government and what they leave to the regional units. When we do so, we discover a rather remarkable degree of commonality in the allocation of certain powers.<sup>11</sup>

Questions about internal commerce among the regional units – the movement of goods, people and capital between those units – are without fail given to the central government. At a minimum, it seems, one reason to create a federal system is to adopt a “free trade zone” among contiguous regions. This of course was a major motivation for the adoption of the

---

<sup>10</sup> Edwin L. Rubin and Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 U.C.L.A. L. REV. 903 (1994).

<sup>11</sup> A valuable study that undertakes this kind of survey, although unfortunately quite dated, is William H. Riker, *FEDERALISM: ORIGIN, OPERATION, SIGNIFICANCE* (1964).

American constitution. It is also the primary rationale for the creation of the European Union, and comes through loud and clear in the constitutions of Germany, Switzerland, Canada, Australia, India, Spain and Belgium.

A second function almost always given to the central government is control over external relations – defense and foreign policy. This is characteristic of the United States, Canada, Switzerland, Germany, Australia, India, Belgium and Spain. The European Union – which is a kind of emerging federal system – represents a partial exception to this generalization. Even here, however, control over foreign trade policy is given collectively to the Union, and an overlapping multinational organization – NATO, which is expanding to include more of Europe – has long held responsibility for external defense. Moreover, it is clear that one of the central motivations for creating the European Union was to bring about a kind of commercial and political union among the most powerful nations in Europe, so that another European war of the sort that plagued the first half of this century would be unthinkable.

A third function commonly given to the central government is what we might crudely call the regulation of large business firms. Antitrust laws, laws regulating the issuance of securities, intellectual property laws, labor laws, social security laws, and product safety laws all tend to be located in the central authority. And finally, control over the money system is centrally located. Nearly all federal systems have a single currency and a single central bank; even the European Union is committed to developing a common European currency under the Maastricht Treaty.

What about the other side of the ledger?

Are there functions that are almost uniformly given to the regional units of government? Interestingly, the answer is yes. All of the surveyed federal systems allocate basic control over public education up through the equivalent of what we call high school to the regional units of government. This is different from unitary governmental systems, like Britain and France, where public education is typically controlled at the central governmental level. Apparently there is something about the rationale for creating a federal system that points strongly to allocating control over basic public education to the regional units.<sup>12</sup>

Other issues that tend to be given to the regional units can be described as cultural in nature. Family law – questions of marriage, divorce, child custody and the like – is generally given to the regional units. Similarly, if there is a state religion or if governmental support for particular religions is permitted, this function also is given to the regional units. Likewise, the same is true for governmental control over designation of an official language, a function that appears to be especially important in multi-lingual federal systems like Switzerland, Belgium and Canada, and to a degree in Spain, where regional dialects are important.

A common pattern of sorts emerges. Control over external relations, over commerce among regional units and the outside world, and over business regulation and economic policy is almost always given to the central government; control over education, family law, and cultural issues is almost always given to the regional units. In between, it is difficult to detect any clear patterns. For example, the law of contracts and personal injury law are sometimes given to the central government,

---

<sup>12</sup> This is confirmed by the recent referenda in Scotland and Wales, approving greater autonomy for these regions. Education is prominent among the powers to be given to the new regional governments, while the central government will continue to be responsible for the national economy, employment, and defense.

sometimes to the regional governments.

What might account for this pattern? I would suggest the following: Federal systems are adopted when two driving forces among contiguous groups of people are in rough equilibrium. One force is the desire to achieve certain economies of scale through the merger of separate governmental systems into a single larger system. The other force is the desire, on the part of at least some of these groups, to assure that their separate cultural identities will not be submerged into a new synthetic identity dictated by a majority of the larger system.

Federalism therefore requires some sense of commonality among contiguous peoples – but not too much commonality. Obviously, there must be a certain minimal sense of commonality, or these contiguous groups will be too mistrustful to enter into any kind of joint governmental enterprise. On the other hand, there cannot be too much commonality, or the contiguous groups will simply form a unitary state. Federalism thus comes about when the sense of commonality is sufficiently strong to allow partial integration to achieve economies of scale, but where the sense of commonality is sufficiently tenuous that locally dominant groups are not willing to put their separate cultural identity at risk by submitting to rule by the majority of the whole.

Switzerland, which has been a stable federal system for almost as long as the United States, provides a textbook illustration of the equilibrium between these two driving forces. The Swiss cantons were traditionally fiercely independent, and they remain today culturally very diverse. Some are German speaking, some are French speaking, and a few speak Italian. Some are Protestant, some are Catholic. Some are mostly rural, others entirely urban. After

the independent cantons were conquered by Napoleon, they decided it would be to their mutual advantage to enter into a confederation for the purpose of a common defense. This was followed in 1848 by the realization that eliminating trade barriers among the cantons would be to everyone's advantage – both the predominantly agricultural cantons and those with significant manufacturing and commercial activities. In 1874 these decisions were incorporated into a new federal constitution, which survives to this day. While the Swiss constitution has been amended over 100 times – often to give new, carefully-defined, functions to the central government reflecting a more and more economically interdependent society – control over education, language, and religious issues has remained at the canton level, providing assurance to each canton that it can maintain its unique cultural identity.

Other multi-lingual federal systems, including Canada, Belgium, Spain, and of course the European Union, also fit this model fairly well. Germany fits the model too, insofar as Bavaria and the south are predominately Catholic and the northern states are historically predominately Protestant. In each case there is sufficient commonality among the states to permit integration in the performance of relatively impersonal governmental functions, leading to potential economies of scale. But in each, there is not enough commonality to permit complete integration into a unitary state.<sup>13</sup>



What about the United States? Can the persistence of federalism in this country be explained by the two driving forces I have

---

13 The recent history of Canada also suggests that the sense of commonality does not necessarily grow over time, resulting in closer and closer integration. If one geographically based group, like the Francophone Quebecois, feels sufficiently estranged from the larger society, then the very existence of a federal system may come to be threatened by secession.

described? I think the answer is yes, although the critical aspect of separate cultural identity is not one that is especially pleasant to contemplate. When the thirteen colonies separated from Great Britain, they shared much in common culturally speaking. All were predominantly English speaking, all had voting majorities who were descendants of immigrants from Britain, and all had legal and political systems based on English traditions. To be sure there were religious differences – Catholics in Maryland, Quakers in Pennsylvania, and so forth. But with high rates of immigration and population turnover, these differences were rapidly breaking down, as suggested by the fact that by the early 19th century no state had an official religion.

One would expect, based on these facts alone, a very high degree of commonality. And indeed, upon independence the thirteen former colonies very quickly entered into a military alliance to prosecute the Revolutionary War. After the war's successful conclusion, however, Congress had trouble establishing an effective foreign policy, trade frictions broke out among some of the States, and liberal insolvency rules in some states threatened to dry up new investment. The Constitution was proposed and adopted in an effort to achieve a more effective central government that would overcome these problems.

The question is why, given the common heritage and language, didn't the original States go further and establish a unitary nation state? One very important reason, I would submit, was the cultural division created by slavery. Slavery was essentially a regional phenomenon. This "peculiar institution," as it has been called, kept hundreds of thousands of Americans of African descent in bondage in the southern states, and formed a vital prop to the southern plantation economy. It also became, over time, an important element in establishing a distinctive southern cultural identity. Although not unknown in the north-

ern states, slavery was opposed by many in the north on moral grounds, and was thoroughly dispensable there as an economic institution. It played virtually no role in the northern cultural identity, except insofar as opposition to slavery became part of that identity.

Although the Constitution is rather circumspect about this, it seems very likely that slavery and the uniqueness of the southern culture that depended on slavery is a key reason why the furthest the thirteen regional States would go was the adoption of a federal system of government. The south as much as the north was attracted by the economies of scale that could be achieved by political integration: a common defense against Great Britain and other potential enemies, a common and coordinated foreign policy apparatus, free access to ports and free trade in goods among the thirteen states. But the southern States would never agree to complete political union because that would mean that the fate of slavery would be decided by future national political majorities.

The original Constitution was thus designed to give the central government limited and circumscribed powers, and certainly nothing that would permit it to legislate on the subject of slavery. Indeed, Congress was specifically prohibited from legislating on the subject of the importation of slaves for twenty years, a fugitive slave clause was included, and Congress was required to pay just compensation for any seizures of "property," including, presumably, property in slaves. The Constitution, in short, was designed to protect slavery in the south from interference by any future majority hostile to its continued existence.

Slavery and the fate of black Americans was also the issue that dominated interpretations of American federalism for the following 150 years. This was the issue that led, of course, to the Civil War. The victory of the north in that war, in turn, produced far reaching constitutional amendments that expanded the power

of the central government at the expense of the States – all in the interest of ending slavery and protecting the newly liberated African Americans. But the subsequent enforcement, or rather lack of enforcement, of those amendments allowed the south to maintain a system of racial segregation and subordination for almost another 100 years. The key issue during this struggle was, not surprisingly, schools – in this case the right of the southern states to maintain schools segregated by race. Because education in the United States was, as in other federal systems, confined to the state and local governments, the south was able to maintain its system of segregated schools, and hence racial subordination of African Americans, essentially until the early 1970s. Southern distinctiveness in this regard ended only when the federal government finally intruded and shifted control over this one aspect of educational policy from the states to the federal government.

It is often said that the cause of federalism and states' rights in the United States has been given a bum rap because of its historical association with slavery and the race issue. If the foregoing analysis is right, however, this connection is no fortuitous accident. Absent slavery and the race issue, it is not clear that the United States would have been founded as a federal system in the first place. Or at the very least, it is not clear that it would have remained a federal system for as long as it has.

As the United States experience suggests, there is an ugly side to federalism. Preserving the cultural identity of groups that represent a geographically concentrated majority can mean suppressing the cultural aspirations of minorities within that geographic area. Confirmation of this proposition can be supplied by examining the recent experience regarding separatists' efforts to have Quebec secede from the Canadian federation. The groups most adamantly opposed to secession are the Inuit and Cree Indian tribes of Que-

bec. These tribes perceive that an independent Quebec would spell greater oppression for them, as a numeric minority within the geographic boundaries of Quebec. Likewise, Quebec's 10 percent immigrant population overwhelmingly opposes secession, including even French-speaking Haitian and Lebanese immigrants. In short, many of those within Quebec opposing independence fear that an independent Quebec would be less tolerant of racial, ethnic, and religious minorities within Quebec than is the case while Quebec remains part of a larger Canadian federation, with Canada's Charter of Rights and Freedoms protecting the linguistic and educational rights of minorities throughout Quebec and Canada as a whole.

Thus, the example of the southern States in the U.S. reflects only a more extreme version of a general phenomenon. Federalism is good for minorities that are majorities within defined geographic areas, but it is bad for sub-minorities within these areas. For minorities too small or too dispersed to make up a majority in any state, a strong central government appears to be preferable to federalism.



What does the simple model of two dynamic forces suggest about the future of federalism in the United States more generally? First of all, I do not mean to imply by the foregoing analysis that the recent interest in federalism in the U.S. is a mere cover for racism. Perhaps in the minds of some this is the case. But I don't think it is the primary motivating factor for the Republican leadership, President Clinton, or the Supreme Court. Rather, I think the resurgence of interest in federalism is symptomatic of a more general frustration with government, and in particular with the size and inefficiencies of the federal government. If the resurgence of interest in federalism is a cover for anything, it is a cover for an interest



in decentralization of government. But as I explained earlier, decentralization can take place with or without federalism. So the call for stricter enforcement of federalism can probably best be explained on grounds of expediency: federalism has a basis in the Constitution, and stricter enforcement of federalism limits in the Constitution is thought to be the most plausible way to achieve greater decentralization of government.

Looking at longer term trends, however, the dual driving force model of federalism suggests that the current calls for a return to a stricter enforcement of federalism limitations is probably just a brief pause on the path of increasing centralization and nationalism, rather than the beginnings of a new era of weaker central government and stronger states. The basic reason for this is that America is becoming less and less a country with distinctive minorities that are geographically based majorities. To be sure, America is becoming more and more a nation of minorities – racial, ethnic, religious, sexual preference, life style, you-name-it minorities. But the critical point is that these minorities are less and less likely to be geographically concentrated. As historian Daniel Boorstin observed many years ago, America has always been a nation of communities – but increasingly this means a nation of communities based on shared interests and identities, not communities based on geography.<sup>14</sup>

I do not deny that there remain detectable differences among the regions of the United States. Relative to the Midwest, the Northeast is more secular, more Catholic, more ethnic, and more likely to favor redistributive government programs. The South is more religious, more culturally conservative, less Catholic, and more racially polarized in its voting. The West, especially in the Rocky Mountain re-

gions, is more libertarian, more hostile to federal landholding and environmental policies.<sup>15</sup> But these are nuances, subject to many exceptions, and subject to continual change as people move about and sort themselves into communities or regions based on their individual preferences. None of these differences approaches the historically rooted and relatively unchanging differences among the Swiss cantons that sustain Swiss federalism, or the sharp regional differences over slavery and race that sustained American federalism for so many decades.

Close observance of the political actors who quote the Tenth Amendment and sing the praises of federalism also suggests that their commitment to federalism is largely opportunistic. President Clinton, on this as well as other questions, tends to be opportunistic, and will support centralization of traditional state functions – as with the ill-fated health care reforms – as easily as he will support state experimentation. The Republicans who clamored for an end to unfunded mandates and returning welfare to the States are quick to endorse new federal crimes that bear no relationship to the original conception of the appropriate scope of federal government power. For example, they enthusiastically supported the so-called “Megan’s Law,” which compels governments to inform individuals when former sex offenders are released into their communities, and they have called for a federal statute prohibiting “partial live birth” abortions. Both these laws, however, represent a further centralization of political authority in the U.S., not a return to greater state power and autonomy. Even the Supreme Court Justices most strongly attached to federalism are guilty of inconsistencies, as when they come down hard on States that adopt ag-

---

<sup>14</sup> Daniel J. Boorstin, *THE DECLINE OF RADICALISM* (1964).

<sup>15</sup> Steven G. Calabresi, “A Government of Limited and Enumerated Powers”: *In Defense of United States v. Lopez*, 94 MICH. L. REV. 752, 767-68 (1995).

gressive affirmative action plans, or expand federal limitations on state regulation of private property.

In short, the conditions for a genuine federalist counterrevolution appear to be lacking in the United States. And there is little evidence of clear and consistent behavior on the part of executive, legislative, or judicial elites pointing toward a principled return of governmental authority to the States.

This does not mean, however, that federalism and the federal idea will not play an important role in America's future. That role is not likely to come about, however, because of a shift in power from the federal government to the States. It is more likely to come about because of a shift in power from the federal government *and* the States to new transnational entities like NAFTA and GATT. The General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA) are significant integrative developments that, while they do not themselves come close to creating true federal systems, perhaps contain the germ of future federal systems. Both GATT and NAFTA require signatory nation states to commit to undertake future modifications in their domestic policies to promote free trade among signatory states. These modifications will be ordered by transnational institutions – bodies like the World Trade Organization established by the Uruguay Round of GATT – not by the political institutions of the member states.

This upward integration meets the general characteristics I have defined for federalism, although of course in a nascent form. So far, these integrative efforts are mostly economic, designed to implement a consensus on the benefits of international free trade. And, although the members of the new transnational bodies are chosen by the governments of the member states and do not have a strictly separate source of political authority, they increasingly partake of the features of governments, such as decision making by majority rule and compulsory dispute settlement by adjudication subject to appellate review.

If the rudimentary common market established in Europe by the Common Market Treaty of 1957 can eventually grow into something approaching a true federal system of government, it does not take too much of a visionary to see the possibility, down the road, of transnational organizations like GATT and NAFTA evolving into genuine, and perhaps overlapping, federal systems. If this happens, federalism will return to the American scene because America itself – increasingly a unitary nation state – will become a kind of regional governmental unit in one or more larger federations. Such a new age of federalism will feature very different institutions from the ones with which we are familiar. But the underlying dynamic – produced by opposing aspirations for economies of scale through integration and cultural autonomy through separation – will remain the same. *✻*