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Felix Morley on Freedom and Federalism

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Federalism was central to Felix Morley's political thought because he regarded federalism as being essential to the protection of individual freedom in the United States. Federalism protects freedom, argued Morley, by limiting government, constraining the potential tyranny of a national majority, and reserving control over local affairs to local citizens. In turn, he believed that freedom is necessary for the maintenance of federalism. Freedom, however, was being threatened by the rise of the social-welfare state and a militaristic foreign policy, both justified in the name of a centralizing Jacobin democracy destructive of American federalism.

Felix Morley was a prominent mid-twentieth-century conservative who belonged to what might be regarded as the Old Right compared to the New Right that emerged in the late 1960s. Morley also was one of the few conservatives, then and now, for whom federalism was central to his political thought and conception of freedom. His book, *Freedom and Federalism*, first published in 1959,¹ is the most thorough exposition of his political thought. Essentially, Morley argued that America's constitutionally non-centralized federal republic, with its expectations of vigorous Jeffersonian local self-government, was being assaulted and subverted by national forces of democracy and imperialism that produce centralization. Jacobin democracy and militaristic empire were, in his view, set against republicanism and federalism—an apposition that, for Morley, has characterized American political history since the Revolution.

Morley's political thought ultimately foundered, however, on the major fault lines of his era, especially the rise of the New Deal social-welfare state, the entry of the United States into World War II, the militaristic Cold-War battle against communism, and the U.S. Supreme Court's anti-states' rights *Brown v. Board of Education* decisions.² Morley was opposed to, and alarmed by, all of these developments. If one takes Reaganism as the preeminent political expression of post-Morley conservatism, then one must conclude that Morley's ideas were eclipsed by a new conservatism that is less enamored of federalism compared to the marketplace and more militarily aggressive in foreign policy. Ironically, though, many contemporary liberals embrace ideas championed by Morley, such as distrust of government authority, opposition to perceived militarism and imperialism, support for international organizations (e.g., the United Nations), concern about excesses and failures of capitalism, and support for states' rights in certain respects.

¹Felix Morley, *Freedom and Federalism* (Indianapolis: Liberty Press, [1959] 1981).

²347 U.S. 483 (1954) and 349 U.S. 294 (1955).

PERSONAL HISTORY

Felix Morley was born to English parents in Haverford, Pennsylvania, in 1894. His father, Frank Morley, was a mathematician and a Quaker who had immigrated to the United States and taught at Haverford College. His Anglican mother, who had immigrated to the United States with her father, was an accomplished violinist. Morley's older brother, Christopher Morley, became a well-known poet and romantic novelist. His younger brother, Frank, became a prominent mathematician. They were the only three U.S. brothers to win Rhodes Scholarships. Felix Morley attended Haverford College, graduating in 1915. Thereafter, studying at Oxford University during the early part of World War I, he volunteered briefly for service with the Red Cross in the Western Front's British sector. He returned home to join a U.S. Army ROTC unit but was soon honorably discharged, apparently for publicly expressing contrary views of the war and U.S. participation in it. He then performed alternative war-service with the U.S. Department of Labor.

Morley was, essentially, a journalist with a philosophical bent. He built a career in print journalism, engaged in radio commentary for NBC, and wrote books on government, politics, and foreign policy. He worked as a reporter for the *Philadelphia Public Ledger* and then for the *Baltimore Sun*, where he met H. L. Mencken. He obtained a Guggenheim Fellowship to study the League of Nations, served on the staff of The Brookings Institution, earned a Ph.D., and then served as editor of the editorial page of the *Washington Post* from 1933 to 1940, in which position he won the first Pulitzer Prize for the *Post*. Morley frequently criticized President Franklin D. Roosevelt's policies, and he especially generated fierce editorial opposition to Roosevelt's Supreme Court packing-plan in 1937. During his years at the *Post*, Morley enhanced the newspaper into one having a prominent national and international reputation. However, he resigned from his *Post* position in 1940 because of growing conflict with the newspaper's publisher, Eugene Meyer. The conflict arose mostly from Morley's opposition to Roosevelt's build up for an anticipated U.S. entry into World War II.³

His conscience-driven decision to resign and thus leave "the mainstream of journalism at a most critical time"⁴ apparently retarded his career and reduced his potential influence. Morley then served as president of Haverford College (1940-1945). While at Haverford, he and Frank C. Hanighan co-founded, and Morley served as an editor for, a weekly newsletter entitled *Human Events* through which he worked with Frank

³See also Justin Raimondo, *Reclaiming the American Right: The Lost Legacy of the Conservative Movement* (Burlingame, CA: Center for Libertarian Studies, 1993) for a discussion of conservatives who opposed United States participation in the Second World War. Raimondo argues that the movement of such ex-communists and anti-Stalinists as James Burnham, Max Eastman, and Irving Kristol into the ranks of conservatism gave rise to a neoconservatism supportive of foreign interventionism as well as a safety-net social-welfare state.

⁴Merlo J. Pusey, "Vigorous, Unlabeled Young Man," *Washington Post*, 21 March 1982, p. D7. Today, the Institute for Humane Studies conducts an annual Felix Morley Journalism Competition.

Chodorov, who served as associate editor. Morley later contributed essays to the conservative quarterly, *Modern Age*, as well as to *Barron's Weekly* and the *Nation's Business*. He died of cancer in 1982 after a long career and a marriage that produced four children.

FEDERALISM AND FREEDOM

Morley's *Freedom and Federalism* is a defense of non-centralized federalism and states' rights and an attack on national majoritarian democracy, interventionist foreign policies, and war-making—all of which promote centralization and degrade federalism and freedom. Morley saw American history as a well-nigh relentless march toward centralization, a march led by all of the nation's leading political parties. During the twentieth century, for example, centralization was fostered by “the Republicans through almost unlimited military spending” and by “the Democrats through continuation of lavish welfare expenditure.”⁵ In Morley's view, the erosion of federalism by centralization produces a socially interventionist national government that corrupts society, diminishes freedom, and undermines individual liberty.⁶ This also is why “[s]ocialism and federalism are necessarily political opposites, . . . the former demands that centralized concentration of power which the latter by definition denies.”⁷

Federalism as a Protector of Freedom

One of Morley's major concerns was that the United States was being transformed from a federal republic into a centralized empire under a false banner of democracy. Centralization would debilitate both individual and community self-government and give rise to “a self-perpetuating managerial elite.” This elite would act in the name of a huge national majority that would be only mythical because the will of such a majority would be impossible to determine in any direct and valid way. This managerial elite, moreover, would rely on the natural apathy of such a majority to perpetuate its rule in the name of the majority. For Morley, therefore, a defense of federalism is a defense of freedom. “The great overriding advantage of the federal system,” he wrote,

is that it operates to avert the dangers inherent in government by remote control. The essence of federalism is reservation of control over local affairs to the localities themselves, the argument for which becomes stronger if the federation embraces a large area, with strong climatic or cultural differences among the various states therein. One justifying assumption for such a loose-knit system is that citizens as a body are both interested in, and for the most part, competent to handle, local problems. When that assumption is valid, there is little doubt that federalism, despite

⁵Morley, *Freedom and Federalism*, pp. xviii-xix.

⁶*Ibid.*, 40.

⁷*Ibid.*, 3-4.

its disadvantages, serves admirably to foster freedom without the sacrifice of order.⁸

Federalism is not necessary for freedom, according to Morley. “People in countries where sovereignty is not divided can be as free as those where major political control is reserved for constituent parts.”⁹ However, he regarded federalism as necessary for the diverse, energetic, and sprawling United States of America. Although there was certainly a substantial pragmatic element in the founding of American federalism—namely, the need to accommodate the interests of 13 powerful, sovereign states—“behind the determination to keep the rights of the several States inviolate was the even deeper determination to protect the citizens of these states from centralized governmental oppression.”¹⁰ As such, the U.S. Constitution is much more than a peace pact.¹¹ It is a plan for government designed to protect freedom and liberty. The great challenge of government, for Morley, is to establish order while preserving freedom. In his view, “the outstanding virtue of federalism . . . is its facility in combining these naturally antagonistic conditions.”¹²

For Morley, federalism can provide protection for freedom primarily because it serves to limit government, and it limits government mainly by frustrating the purely national majoritarian rule characteristic of Jean Jacques Rousseau’s General Will associated with Jacobin democracy. The United States is not a democracy, in the national or Jacobin sense, but rather a federal republic in which there is a “dispersion of political power”¹³ among multiple centers of power, chiefly the states and the national government, each of which is republican in its own right. In 1949, Morley had published *The Power in the People*, which was dedicated to James Madison and which made a traditional case for the United States as a republic through an analysis of the Preamble to the United States Constitution. Morley took issue with the self-interested economic analyses of the founders put forth by Charles Beard and Albert Jay Nock, holding instead that the republic was founded on ethical principles that transcend self-interest and that the American republican form of government is the best suited to “secure the Blessings of Liberty to ourselves and our Posterity.” Morley believed that Americans are instinctively democratic, but, like Madison and other founders, he believed that they also are given to excessive democratic passion and, thus, to democratic tyranny; therefore, the *demos* must be restrained by certain mechanisms so as to maintain a republican form of federal governance respectful of freedom and individual liberty.

⁸Ibid., 5.

⁹Ibid., xiii-xiv.

¹⁰Ibid., 10.

¹¹For a view of the U.S. Constitution as such a pact, see David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence: University Press of Kansas, 2003).

¹²Morley, *Freedom and Federalism*, p. xxiv.

¹³Ibid., 2.

Morley regarded a written constitution that delineates national and state powers as being necessary for federalism and freedom, along with an ability to amend the constitution so as to adapt the federal system to historical circumstances and restore a balance of state-federal power when necessary. Writing in the late 1950s, Morley agreed with the bipartisan Kestnbaum Commission on Intergovernmental Relations¹⁴ appointed by President Dwight D. Eisenhower that one reason for the expansion of federal power was that state governments were “both ill-designed and ill-equipped to cope with the problems which a dynamic society cannot, or will not, solve for itself.”¹⁵ Like the commission, many Republicans, and some liberal Democrats of the day, Morley believed that state governments needed to be reformed and strengthened so as to counterbalance the enhanced power of the federal government.

There also “must be,” for effective federalism, “a supreme court, empowered to decide just where the division of sovereignty lies in any contested case, at any particular time.”¹⁶ In addition, Morley regarded a bill of rights as an essential element of limited government. Hence, he noted:

The word “no,” used as a direct restraint on government, occurs twenty-six times in the original seven Articles of Constitution [sic], five times more in the Bill of Rights. Had President Truman been living in 1787 he could quite reasonably have called it a “Do-Nothing” Constitution. But to do so would be to forget that the founding fathers put restraints on government so that the governed might be free.¹⁷

Another structural protection for freedom built into the U.S. Constitution is the separation of powers, which further disperses power within the general government as well as within each state government. In this respect, Morley echoed, but did not quote, Madison’s words in *Federalist* 51 that “a double security arises to the rights of the people”¹⁸ from the combination of federalism and the separation of powers.

“Protection is also afforded by the Common Law,” wrote Morley, which, as Friedrich A. Hayek argued, reflects the evolution from social interactions of unwritten law “that was not conceived as the product of anyone’s will but rather as a barrier to all power”¹⁹ and thus stood in opposition to Thomas Hobbes’ Leviathan and to the emergence in England of a highly centralized monarchy. Like Hayek and some conservatives,²⁰ Morley saw “the tremendous growth of statutory and administrative law, progressively cutting

¹⁴The Commission on Intergovernmental Relations, *A Report to the President for Transmittal to the Congress* (Washington, DC: U.S. Government Printing Office, June 1955).

¹⁵Morley, *Freedom and Federalism*, p. 267.

¹⁶*Ibid.*, 2.

¹⁷*Ibid.*, 306.

¹⁸Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed., Jacob E. Cook (Middletown, CT: Wesleyan University Press, 1961), p. 351.

¹⁹Friedrich A. Hayek, *Law, Legislation, and Liberty: Rules and Order* (Chicago: University of Chicago Press, 1973), Vol. 1, p. 85.

²⁰Hayek cannot necessarily be classified as a conservative, and he denied he was a conservative.

into the discretion of Common-Law judges,²¹ as steadily increasing the power of the centralized administrative state.

Interestingly, in terms of contemporary federalism internationally, Morley saw “flexibility” as another

outstanding asset of the federal form of government. By the device of keeping certain governmental powers under strictly local control, people with great diversities may be encouraged to unite under one flag. Thus the Swiss Confederation has successfully joined together German-speaking, French-speaking and Italian-speaking cantons. In Canada, federation has united communities which are distinctly English and French . . . The German Empire, from 1871 to 1918, was a federation of monarchies. A mixed federation, of both republics and monarchies, could now conceivably be developed by those Western European nations which have subscribed to both the Common Market and Euratom treaties.²²

However, this flexibility did not extend to the former Union of Soviet Socialist Republics because all of its republics “are subjected to a centralized, socialistic regimentation which in practice confines their autonomy to cultural matters and makes the claim to federal form extremely shadowy.”²³

Morley, who is characterized by one writer as “a Roundhead, Commonwealthman or Independent,”²⁴ was thus steeped in the covenantal tradition that helped to give rise to modern federalism.²⁵ Although Morley did not explicitly evoke the Reformed Protestant tradition of federal or covenant theology, and thus the roots of the word “federal” in the Latin *foedus*, meaning covenant, he saw the principal origins of American freedom and federalism as lying in England’s Puritan Revolution of the seventeenth century, and he saw the strength of individual and local self-government in the United States as being linked to the idea of covenants, compacts, and contracts freely created by free human beings. Morley regarded federalism as an “extraordinary” and “revolutionary”²⁶ American invention and “contribution to political art”²⁷ that had roots, in part, in the covenantal and compactual practices of Americans during the colonial era and the brief post-independence and pre-Constitution period. Indeed, he criticized social-contract theorists for overlooking American history’s panoply of actual social covenants, compacts, and contracts.²⁸ This covenantal history was important, in Morley’s view, because:

²¹Morley, *Freedom and Federalism*, p. 295.

²²*Ibid.*, 3.

²³*Ibid.*

²⁴Leonard P. Liggio, “Felix Morley and the Commonwealthman Tradition: The Country Party, Centralization, and the American Empire,” *Journal of Libertarian Studies* 2 (Fall 1978): 279.

²⁵Daniel J. Elazar and John Kincaid, eds., *The Covenantal Connection: From Federal Theology to Modern Federalism* (Lanham, MD: Lexington Books, 2000).

²⁶Morley, *Freedom and Federalism*, p. 1.

²⁷*Ibid.*, xxiv.

²⁸Felix Morley, *The Power in the People*, 3d ed. (Los Angeles: Nash Publishing Co., 1949) and Liggio, “Felix Morley and the Commonwealthman Tradition,” 280.

Up to and including the Constitution, . . . American social contracts have always been of limited scope. It has been generally believed, for instance, that man-made rules must not intervene between the individual and his God. Thus the social contract drawn up by Roger Williams in 1636, for settlers in the then new town of Providence, specified that it should apply 'only in civil things.' The difference, and the danger, in Rousseau's *Contrat Social* was in its all-inclusive, totalitarian nature. No aspect of human life is excluded from the control of the general will which Rousseau called 'the essence' of the social contract.²⁹

In turn, then, Morley regarded John Locke's distinction between state and society as being extremely important, and he emphasized, like Alexis de Tocqueville, the value of a robust society in tandem with a limited government. Thus, protection for freedom is provided, as well, in the United States

by the clear distinction Americans make between society and state. Rousseau's refusal to admit any such distinction has been widely accepted in Europe, and is indeed a tenet of European socialistic as well as communistic thought. But American political thinking has preferred to follow the lead of John Locke, who in some respects anticipated Rousseau's idea of the social contract, but pointed out that it operates on both a private and a public level—a differentiation which Rousseau denied.³⁰

Morley might have observed, but did not note, that the word "state" as understood in Europe is not a part of common American parlance³¹ because it is alien to the American conception of government and is used only by the average American to refer to a constituent polity of the union, such as the state of Colorado.

The word society, from the Latin *socius*, refers to voluntary companionship in contrast to the "state," which implies an involuntary association and is the result of conquest. Society precedes the state. Although society does need the state, the state should not overwhelm or overpower society. Instead, government should be limited to the minimum necessary for the rule of law in an ordered society. For Morley, then, society is more likely to be a guarantor of freedom than is government because society is the realm of spontaneous and voluntary self-government and self-organization.

Freedom as a Protector of Federalism

Freedom, in Morley's view, is a generalized social condition, while its sibling, liberty, is more of "an individual aspiration."³² "Political government can certainly discourage or encourage the condition of freedom," he argued, "[b]ut, in the deeper sense, men are not free unless they make their own

²⁹Morley, *Freedom and Federalism*, pp. 35-36.

³⁰*Ibid.*, 39.

³¹Carl J. Friedrich, *The New Belief in the Common Man* (Boston: Little, Brown, 1942), pp. 44 and 47.

³²Morley, *Freedom and Federalism*, p. 37.

decisions, for themselves,”³³ a proposition central to classical liberalism and most of American conservatism. Freedom “is essentially an absence of external restraint,” whereas “liberty stands forth as a more positive condition, involving a measure of personal choice which is less inherent in freedom”³⁴ such that one can have liberty, even in a dungeon. “Alternatively, one may be largely free from any physical coercion—as Patrick Henry certainly was when he declaimed ‘give me liberty, or give me death!’—and still feel deeply that some quality essential to a desirable life is lacking.”³⁵ As such, then, a free people is one governed by a limited republican government in which there is an absence of excessive, and especially arbitrary, external restraints. Individuals, in this setting, are not only at liberty, but also believe themselves to be at liberty, to govern themselves both individually and collectively in ways that, unlike a dungeon or a colony, have actual consequences for themselves and for which they take responsibility.

Morley’s conception of freedom stands in opposition to what he regarded as emerging Orwellian conceptions of freedom as security, freedom as work, and freedom as slavery. Consequently, he detested Franklin Roosevelt’s concept of the “Four Freedoms,” namely, the freedoms of speech and worship and the freedoms from want and from fear. He also abhorred the positive rights to work, food, clothing, shelter, medical care, education, and the like proposed in FDR’s 1944 Economic Bill of Rights. While certainly not opposed to the freedoms of speech and worship, Morley objected to Roosevelt’s formulation of these pre-existing natural rights as things provided by government rather than respected by government. However, the second two freedoms—from want and from fear—plus the list of economic rights, “are not by any possible stretch of the imagination definable as natural rights.”³⁶ These are perversions of the idea of freedom and must necessarily lead to reductions in freedom as government expands its power in Sisyphean efforts to realize these “freedoms” and “dissenters must be terrorized if egalitarianism is to be enforced.”³⁷

Morley cited an incident with the Amish who, brought within the system of “enforced collection of social security taxes, designed to provide the elderly with ‘freedom from want,’”³⁸ refused to pay the tax because their religion prohibits them from accepting money they have not earned. “The riposte of Washington . . . has been to seize the livestock of these trouble makers and sell it at public auction.”³⁹ At one auction, a dissenter who hoisted a sign reading, “If Government can take these horses today it could take yours tomorrow—Don’t Bid!” was dragged away by sheriff’s deputies.

³³Ibid., 290.

³⁴Ibid., 292.

³⁵Ibid., 292.

³⁶Ibid., 167.

³⁷Ibid., 168.

³⁸Ibid.

³⁹Ibid.

Similarly, Morley was opposed to federal aid to states and localities, viewing it as a kind of fiscal shell game in which the federal government sucks tax money out of the pockets of state and local taxpayers and then returns portions of it to state and local governments in the form of grants-in-aid with strings attached. Such redistribution schemes serve to undermine local self-government as well as corrupt the citizenry.

These New Deal views of freedom as being security and prosperity for all undermine federalism because they require a centralization of power in the hands of what Morley called the “Service State” and others have called the Welfare State or Nanny State. Like Tocqueville, Morley believed that people in democratic societies generally prefer equality over liberty and will, therefore, support restrictions on freedom and individual liberty for the sake of the equalities promised by such appeals to prosperity and security as Roosevelt’s Four Freedoms. Morley was alarmed, therefore, by Roosevelt’s pronouncements, such as:

‘A free nation has the right to expect full cooperation from all groups.’
 ‘We must especially beware of that small group of selfish men who would clip the wings of the American eagle in order to feather their own nests.’
 And ‘the best way of dealing with the few slackers and trouble makers in our midst is, first, to shame them by patriotic example, and, if that fails, to use the sovereignty of government to save government.’⁴⁰

In short, the New Deal brought with it the dangerous political idea that a centralized national government is the best guarantor of freedom. As a result, wrote Morley, “consideration of federal theory and structure has greatly diminished” and the popular historians, Samuel Eliot Morison and Henry Steele Commager, “were telling undergraduate readers that ‘State rights are now an historical exhibit maintained by the Republican party.’”⁴¹

In the final analysis, for Morley, the maintenance of federalism requires a virtuous citizenry that understands and treasures freedom and exercises liberty responsibly because, ultimately, it is not government but God who is the source of human freedom. The rise of the centralized Service State, however, weakens this connection between God and freedom because, “as Lenin argued, it is necessary first to weaken faith in God in order later to establish faith in government as the authentic source of freedom.”⁴² It is this belief that government is the source of freedom that is the most damaging to freedom and liberty, and thus to federalism as well.

Although Morley does not explicitly evoke John Winthrop’s distinction between natural liberty and federal liberty, he makes the same distinction by noting that liberty is not license but rather, “as Daniel Webster put it, ‘Liberty exists in proportion to a wholesome restraint.’ The most wholesome

⁴⁰Ibid., 165.

⁴¹Ibid., 174-175.

⁴²Ibid., 167.

restraint, from any ethical point of view, is that which the individual applies to himself."⁴³ Such wholesome restraint comes from "faith in values which are not of this earth"⁴⁴ and from a voluntary willingness to exercise liberty in accordance with the laws of nature and nature's God. Ultimately, then, federalism itself depends upon the maintenance of the values that undergird freedom and liberty because the "mechanical perfection of a political system cannot compensate for the loss of spiritual values among those whom it governs."⁴⁵ It "is clear that faith is inextricably associated with those 'blessings of liberty' which our federal form of government originally set itself to secure."⁴⁶ "Without faith, the Constitution falls," concluded Morley.⁴⁷

As such, federalism is "a distinctly experimental system, especially vulnerable in periods of upheaval,"⁴⁸ and one cannot be sanguine about its future in the United States or elsewhere because "[w]hether or not our Federal Republic will be maintained is . . . at bottom a moral issue."⁴⁹ The "political validity of federalism has been under constant test," wrote Morley,

and for its advocates the results are certainly not entirely satisfactory. The formula has failed to take root in Central America, in the Caribbean, among Moslem states and between new nations evolved from colonial Africa. It has been openly repudiated where people have accepted military dictatorships, as in countries so disparate as Brazil, Chile, South Korea, and Turkey. On the other hand, provincial autonomy has been emphasized in Canada even to the point where national unity is threatened. And for most of Western Europe the Common Market . . . has become an embryonic political federation.⁵⁰

Although Morley did not believe that Americans had yet abandoned federalism, he believed that the survival of American federalism was certainly in doubt.

JACOBIN DEMOCRACY AND CENTRALIZATION

For Morley, one major threat to federalism and limited, constitutional, republican government is Jacobin democracy. In Morley's view, Jacobin democracy has had a strong presence in America since the founding era when Jacobin Clubs sympathetic to revolutionary France were organized throughout the states. During this early period, the Jacobins supported Jeffersonian ward democracy in opposition to the nationalism of the Federalists. However, when these clubs were accused of "semi-treasurable activities," they "changed their names to Democratic Clubs."⁵¹ With

⁴³Ibid., 292.

⁴⁴Ibid., 293.

⁴⁵Ibid., 298.

⁴⁶Ibid., 302-303.

⁴⁷Ibid., 308.

⁴⁸Ibid., xxiv.

⁴⁹Ibid., 308.

⁵⁰Ibid., xxi.

⁵¹Ibid., 50-51.

Jefferson's victory in the presidential election of 1800, the Jacobins became more disposed to support the notion of a national democracy governed by an unbridled national majority, a disposition considerably strengthened during Andrew Jackson's presidency. The Democratic Clubs evolved into "the urban Democratic organizations like Tammany Hall,"⁵² which became key pillars of Roosevelt's New Deal coalition, which, for Morley, represented the then apogee of Jacobin democracy in America.

For Morley, the abolitionists and supporters of the Union during the Civil War were advocates of Jacobin democracy, as were the Radical Republicans in Congress after the Civil War who, among other things, forced the centralizing Fourteenth Amendment on the defeated southern states. Likewise, following Reconstruction, the Republicans were "little interested in the maintenance of the federal system."⁵³ Instead, they were enamored with *laissez-faire* capitalism freed from impediments of federalism. However, a consequence of this era was the rise of Robber Barons and the widespread belief that plutocracy was subverting democracy. The behavior of the Republican party during this era "was certainly in part responsible for" creating "a swelling demand for that nationalized political democracy which conforms so poorly to the federal structure of our government."⁵⁴ Consequently, Jacobin democracy reared its head again and, among other things, fostered adoption of the Sixteenth Amendment of 1913 giving the national government authority to levy an income tax. This amendment was a "frontal attack" on federalism and "an attack on the remnants of State sovereignty" because "it openly bypassed the entire structure of the States to bring the full coercive power of central government to bear continuously on their citizens."⁵⁵ The amendment, wrote Morley,

has not only given the central government access to virtually unlimited funds, with all the power, prestige and extravagance resulting therefrom. It has also served to make the financing of State and local government more onerous, and therefore to encourage the acceptance of 'federal' aid for all sorts of services which in both theory and practice were formerly regarded as the clear and full responsibility of local government. It is supremely ironical that this agency of centralization, invidious in every respect to the health of federalism, should nevertheless be known as the 'federal' income tax.⁵⁶

America's strong reform tradition, especially the impatience of reformers, produces a penchant to centralize power in order to implement reforms. "In any government," wrote Morley, "but especially in one with a structure as delicate as that of federalism, it is far easier to initiate a major reform

⁵²Ibid., 51.

⁵³Ibid., 105.

⁵⁴Ibid., 106.

⁵⁵Ibid., 102.

⁵⁶Ibid., 102.

than to conclude it.⁵⁷ Thus, centralizing power is one way to expedite reform rather than coping with the separate sovereignties of 50 states.

Reformers, argued Morley, advance Rousseau's *volunté générale* as a justification for carrying out reform in the name of the common good, but being unable to ascertain the true wishes of a heterogeneous national majority, the reformers identify their own preferred will with the mythical General Will and then enlarge and strengthen the national bureaucracy in order to execute their will. This Jacobin view of democracy holds that a powerful government will not do harm so long as the people rule. But the Jacobin tradition of the virtuous unitary state can do harm by way of a tyranny of the majority and is thus repugnant to the constitutional principles of republican federalism, which are intended to restrain pure national majority-rule. Presumably then, Morley would have been satisfied with the outcome of the 2000 presidential election in which the anti-majoritarian electoral college prevailed over the popular vote.

Democracy unbounded, wrote Morley, will not only centralize power and ride roughshod over individual rights and states' rights domestically but also seek international outlets for its righteous energy where it will necessarily engage in empire-building and justify it "in grandiose terms about the blessings for mankind."⁵⁸ Such imperialism, however, will be counterproductive because:

An extremely large number of people all over the globe are more disposed to dislike than to admire our much-vaunted 'American Way.' As problems of every sort increase at home we realize that what happens to Israel or Ethiopia is not our first concern. And this is not to be called a rebirth of 'isolationism,' but rather a recognition that federalism, even if we misname it democracy, is not adapted or adaptable to the path of empire.⁵⁹

WAR AND CENTRALIZATION

Morley saw in war, and in an interventionist foreign policy more generally, the second set of major threats to federalism and limited, constitutional, republican government. In this, he shared the view expressed by Charles Pinckney of South Carolina at the Constitutional Convention: "We mistake the object of our Government if we hope that it is to make us respectable abroad. Conquest or superiority among other powers is not, or ought not ever to be, the object of republican government."⁶⁰ In contrast, democracy and war are connected because a key "characteristic of modern war is the lip service that must be paid to democracy. Precisely because both civil and military operations in wartime are necessarily arbitrary, and affect everyone,

⁵⁷Ibid., 101.

⁵⁸Ibid., 125.

⁵⁹Ibid., 128.

⁶⁰Quoted in *ibid.*, 133.

it is vital to rally the people with glittering assurances. Woodrow Wilson's slogan in 1917, a war 'to make the world safe for democracy,' is a classic example."⁶¹ Indeed, according to Morley, "every war in which the United States has been engaged was both immediately preceded by a political flowering of democratic theory and immediately productive of centralization."⁶²

In war and foreign policy, the national government is less restrained by the constitutional and statutory rules of law that prevail in domestic policy fields and is also enabled to conduct more business behind veils of secrecy. In Morley's view, the huge military commitments and foreign interventions undertaken by the United States during and after World War II were (1) centralizing power in Washington, D.C., and, even further, in the hands of the executive branch; (2) draining monies from taxpayers, states and localities, and the private sector to finance foreign interventions that were often harmful to the liberties of people abroad; and (3) producing government propaganda and lies that threatened the freedom of the press and misled the public in order to maintain domestic political support for foreign interventionism.

He especially feared unrestrained executive power and viewed President Roosevelt's foreign-policy behavior before and during World War II as being an extension of his domestic policy behavior. Increasing presidential power was eroding congressional control over the presidency and over war-making. Congress was fast becoming a rubber stamp, thought Morley. He frequently criticized the barbaric conduct of the war; for example, he endorsed the left-pacifist Fellowship of Reconciliation's efforts to generate public opposition to the mass killings of civilians by the deadly bombings of German cities. Morley also criticized justification of President Harry Truman's use of atomic bombs on Japan as a "miserable farce put on by those who try to reconcile mass murder of 'enemy children' with lip service to the doctrine that God created all men in his image."⁶³ These bombings, thought Morley, were "cold-blooded atrocities" that set the United States adrift from its historic moral and ethical moorings. Morley later felt vindicated by liberal scholars, such as Arthur M. Schlesinger, who warned of the rise since the New Deal of "the imperial presidency,"⁶⁴ which they linked to such developments as the Vietnam War and its offspring, such as the Watergate scandal.⁶⁵

Each U.S. war produced more centralization, according to Morley. The War of 1812, opposed the most by the "undemocratic Federalists," produced

⁶¹Ibid., 103-104.

⁶²Ibid., 115.

⁶³Quoted in Joseph R. Stromberg, "The Old Cause," 7 December 1999 at <http://www.antiwar.com.stromberg/pf/p-s120799.html>. See also Jefferson Morley, "Free for All," *Washington Post*, 12 August 1995, p. A19.

⁶⁴Arthur M. Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1973).

⁶⁵Felix Morley, "Preface," *Watershed of Empire: Essays on New Deal Foreign Policy* (Colorado Springs: Ralph Miles, Publisher, 1976), p. viii.

“a national debt, a national bank, a high protective tariff and certainly a great impetus for the strongly centralizing Supreme Court decisions of Chief Justice John Marshall.”⁶⁶ The Mexican War of 1848 opened the way for the expansion of slavery and permitted military rule and “government of the conquered areas as dependent territories.”⁶⁷ The Civil War encouraged the belief that a majority can employ the powers of the federal government to execute its will on minorities and, in turn, fostered a considerably expanded bureaucracy as well as a national army employed after the Civil War to conquer the Indians. The Spanish-American War (1898) established the United States as a colonial power and resulted in U.S. suppression of Filipino freedom and independence after the liberation of Cuba. “Every war in which the United States has engaged since 1815 was waged in the name of democracy,” wrote Morley. “Each has contributed to that centralization of power which tends to destroy that local self-government which is what most Americans have in mind when they acclaim democracy.”⁶⁸ Consequently, Morley also opposed preventive or preemptive wars.

The price of a militarized and interventionist foreign policy is a weakening of the constitutional restraints and checks and balances that were intended by the founders to (1) protect individual liberty, private property, and personal wealth, (2) secure a separation of powers, and (3) maintain a non-centralized structure of federal governance. Government authority and the public sector grow at the expense of both individual autonomy and the private sector to the point where American imperialism will ultimately trump American freedom. Morley regarded military conscription as a violation of individual rights and believed that private wealth was increasingly being transferred to the public sector through confiscatory taxation for massive defense spending under the guise of fighting communism. At the same time, the federal government was exerting more and more regulatory control over private enterprise.

By the 1950s, the United States had developed a permanent war economy because national elites had a vested interest in preparing for war, the justification for which required an external threat. Mass belief in an external threat stimulated Congress to vote huge appropriations for defense which, in Morley’s view, also served the purpose of fulfilling the federal government’s postwar commitment to a key element of the New Deal welfare state, namely, full employment. This was reflected in the Employment Act of 1946, which authorized deficit spending, public-works spending, and economic controls of any levels necessary to maintain full employment and avoid another depression. The public had come to expect continuing prosperity guaranteed by the federal government, and in order to maintain that prosperity, it was necessary for the federal government to keep the

⁶⁶Morley, *Freedom and Federalism*, p. 115.

⁶⁷*Ibid.*, 115.

⁶⁸*Ibid.*, 121.

country on a permanent war footing marked by high levels of pump-priming defense spending.

In the 1950s, these views were controversial, and many conservatives criticized Morley for being an unrealistic isolationist in the face of the grave threat posed by international communism. “What will happen to American freedoms and America’s republican form of government if communism triumphs?” asked many conservatives. Consequently, quite a number of conservatives who had criticized United States entry into World War I and World War II nevertheless supported U.S. activism and interventionism in the battle against communism.⁶⁹ Hence, Morley was an oddball conservative by the 1950s insofar as he was a non-interventionist anti-communist.

Although Morley emphasized isolationist ideas rooted in President George Washington’s Farewell Address, he supported the League of Nations and the United Nations, though he wanted such organizations sufficiently constrained so as not to become a powerful world regulator or government. He endorsed these organizations, in part, because he believed that modern technology and inventions, such as the airplane, automobile, radio, telephone, and television, would, and should, erode both nationalism and national boundaries, thus requiring mechanisms of broader political integration. He also argued that a post-World War II “America First” attitude and U.S. bullying in the international arena would alienate friends abroad and undermine efforts to develop international law. Fundamentally, then, Morley was a federalist in his approach to international relations. Later, critics would argue that such complexities of modern life require the automatic controls of the marketplace and spontaneous social action rather than political action because political institutions cannot cope with such awesome complexity. Morley simply erred, wrote one critic, in his support of the League and the United Nations.⁷⁰

MORLEY’S ECLIPSE

Morley’s view of life was not deterministic. He devoted his life to improving the human condition and enhancing individual liberty and dignity. As such, he also placed a great emphasis on such Quaker virtues as charity, humility, modesty, patience, and self-denial. It is, in part, the undermining of these virtues by capitalism, he thought, that makes socialism attractive, especially to the young. As he wrote in his memoirs:

We know that it is not easy to escape the temporal trap and that the individual’s chance of making any real alteration in circumstances . . . is negligible. Yet in millions of ways, over millennial years, men and women have been striving to lessen the fetters of their mortality. And in so doing,

⁶⁹See, for example, Rene A. Wormser, *The Myth of Good and Bad Nations* (Chicago: H. Regnery Co., 1954).

⁷⁰Oscar B. Johannsen, “Felix Morley: The Journalist Philosopher,” *Fragments* (July-December 1985): http://www.cooperativeindividualism.org/johannsen_morley_bio.html.

they have demonstrably begun to unfetter the race from the clutch of time, thus modifying the work of God himself.⁷¹

Although Morley made his mark on history during his day, by the time of his death in 1982, his brand of conservative political philosophy had been eclipsed by the New Right, especially the conservatism associated with Ronald Reagan and his election to the presidency in 1980. There are, of course, varieties of conservatism today as well as diverse conservative intellectuals, but it is appropriate to take Reaganism and its progeny as a standard of conservatism against which to consider the fate of Morley's ideas because Morley was a public intellectual who wished to influence the course of government and politics.

Perhaps the leading difference between contemporary conservatism and Morley's conservatism is contemporary conservatism's emphasis on the virtues of the marketplace rather than federalism as a guarantor of freedom and liberty and as a counterbalance to, and often substitute for, government. Although Morley certainly supported free enterprise and opposed much of the regulation promulgated by the New Deal, the marketplace and its virtues did not loom large in his political thought. Indeed, his criticisms of the late-nineteenth-century era of *laissez-faire* capitalism suggest that Morley was fearful of too large and unrestrained a role for market forces in human life. Perhaps as a Quaker and latter-day Puritan, the materialism of the marketplace was repellant to him. Likewise, in terms of establishing international peace and good order, contemporary conservatives generally emphasize the benefits of free trade and global markets in contrast to Morley's emphasis on federal-like international institutions of governance such as the European Community and the United Nations. Neither of these are favorites of contemporary conservatives, though both are generally supported by contemporary liberals.

Similarly, Morley did not envision the contemporary public-choice conceptualization of federalism as a competitive system in which intergovernmental and interjurisdictional competition are key protectors of individual rights and liberty.⁷² This is a post-Morley concept rooted in economics and quite different from Morley's emphasis on the constitutional, legal, and political dynamics of federalism as guarantors of federalism. Morley might have endorsed the idea of competitive federalism in principle, but would likely have pointed out that all the forces he identified as favoring centralization also serve to suppress intergovernmental and interjurisdictional competition.

The contemporary conservative emphasis on the marketplace has three degrading implications for the federalism so beloved by Morley. For one,

⁷¹Quoted in Pusey, "Vigorous, Unlabeled Young Man," p. D7.

⁷²See, for instance, James M. Buchanan, "Federalism as an Ideal Political Order and an Objective for Constitutional Reform," *Publius: The Journal of Federalism* 25 (Spring 1995): 19-27; Daphne A. Kenyon and John Kincaid, eds., *Competition among States and Local Governments: Efficiency and Equity in American Federalism* (Washington, DC: Urban Institute Press, 1991).

deregulating and freeing up the national and global marketplaces require substantial federal preemption of state powers. Indeed, the very enhancements of the governing capacities of the states that were endorsed by Morley as a way of rebalancing the federal system now stand as targets for destruction by advocates of an unfettered national marketplace or a marketplace which, if it must be regulated, should be regulated only by the federal government. Hence, as business advocates of federal preemption of state powers have put it, they would rather be regulated by one 500-pound gorilla in Washington than by 50 monkeys on steroids. Consequently, even on the U.S. Supreme Court, the Federalism Five who have supported the states in some key commerce-clause and Tenth and Eleventh Amendment cases have, at the same time, supported federal preemptions of state powers more than the Court's four presumably liberal justices. Second, the enhancement of state and local governments has produced in many conservative quarters a reaction against these governments as having become too big and too tyrannical as well.⁷³ Conservatives may have succeeded in driving the Great Society out of Washington, D.C., but it found refuge in many of the nation's state capitals. This is one reason why, for example, many conservatives opposed a no-strings block-grant to the states for welfare reform in 1996.⁷⁴ They did not trust liberal state officials and bureaucrats to implement welfare-reform's new work-oriented values. Third, the emphasis on the marketplace has created a movement to privatize many public services and functions. Consequently, instead of returning certain powers and functions to state and local governments, as Morley advocated, various federal powers and functions can be transferred to the private sector and, in turn, through mandates, preemptions, and conditions attached to grants-in-aid, the federal government can require or induce state and local governments to transfer various of their own powers and functions to the private sector.

These are among the principal reasons why the Reagan Revolution was so centralizing. Although Reagan came into office under the banner of a New Federalism and a promise to restore substantial powers to the states, his New Federalism did not last beyond 1983, and he signed more preemption bills than any other president in U.S. history. Reagan did reduce federal aid to state and local governments and slow its rate of growth during his tenure, but federal aid skyrocketed after 1988.⁷⁵

Many contemporary conservatives, especially in the political arena, also have come to terms with the federal government's predominant role in civil rights. In contrast to Morley, who was horrified by the Supreme Court's

⁷³See, for example, Clint Bolick, *Grassroots Tyranny: The Limits of Federalism* (Washington, DC: Cato Institute, 1993).

⁷⁴John Kincaid, "De Facto Devolution and Urban Defunding: The Priority of Persons Over Places," *Journal of Urban Affairs* 21 (Summer 1999): 135-167.

⁷⁵John Kincaid, "From Cooperation to Coercion in American Federalism: Housing, Fragmentation, and Preemption, 1780-1992," *Journal of Law and Politics* 9 (Winter 1993): 333-433.

Brown v. Board of Education decisions and by President Eisenhower's military intervention into Little Rock, Arkansas, in 1957, and who saw the *Brown* decisions as a legitimate occasion to revive the doctrine of interposition,⁷⁶ William F. Buckley commented recently, "I once believed we could evolve our way up from Jim Crow. I was wrong: federal intervention was necessary."⁷⁷ Indeed, Morley's states' rights position on racial segregation, which did not offer an alternative remedy for the plight of black Americans, contributed greatly to the eclipse and even discrediting of his ideas within only a few years of the publication of *Freedom and Federalism*. Thus, William H. Riker countered in 1964, "if one approves of Southern white racists, then one should approve of American federalism."⁷⁸

Likewise, many contemporary conservatives, unlike Morley, prefer the federal courts over state courts, in part because the Reagan Revolution placed many conservatives on federal benches. Conservatives thus often view the federal courts as being more sympathetic than state courts to property rights, religious rights, and various other rights valued by conservatives. As a result, conservative Republicans in Congress have made repeated efforts (e.g., tort reform) to preempt state courts and remove certain matters from state-court to federal-court jurisdiction. In turn, most conservative Republicans have defended racial gerrymandering of election districts.

In addition, compared to Morley's strong opposition to the Service State, President Richard M. Nixon presided over a tremendous expansion of the welfare state, and the Reagan Revolution accommodated itself politically to the need to maintain the Service State. Reagan readily acquiesced to coercive social-policy mandates and conditions of aid, such as the 21-year-old drinking age, attached to federal highway grants to state and local governments. Reagan also initiated a major shift of federal aid from places to persons such that, today, nearly two-thirds (in contrast to one-third in 1978) of all federal aid to states and localities is dedicated to social-welfare payments to individuals rather than to state and local functions such as education, economic development, and transportation. This shift in federal aid weakens state and local governments by making them conduits for federal dollars and also tying state and local budgets to the escalating costs of programs, such as Medicaid, which are driven largely by unilateral federal decision-making.

Finally, in stark contrast to Morley's steadfast opposition to war, military interventionism, defense spending, and what Eisenhower dubbed the "military-industrial complex,"⁷⁹ Reagan advocated a substantial increase in

⁷⁶Morley, *Freedom and Federalism*, pp. 229-250.

⁷⁷Anon, "10 Questions for William F. Buckley," *Time* 163 (12 April 2004): 8.

⁷⁸William H. Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964), p. 153. Chapter 6, Part I of this book is entitled "Federalism and Freedom" and is a direct effort to refute Morley without ever mentioning Morley.

⁷⁹*Public Papers of the Presidents, Dwight D. Eisenhower, 1960-1961* (Washington, DC: U.S. Government Printing Office, 1961), pp. 1037-1040.

defense spending, an interventionist foreign policy, and more aggressive uses of U.S. military forces abroad. Although a few conservatives, such as Patrick Buchanan, have anti-interventionist views akin to Morley's views,⁸⁰ it is inconceivable that views like Morley's would have any currency or credibility outside of the extreme margins of contemporary conservatism and liberalism. Many contemporary conservatives have civil-liberties concerns about the PATRIOT Act and other anti-terrorism policies, views that would certainly be shared by Morley, but few, if any, conservatives would otherwise join Morley's pacifist camp.

Indeed, more generally, conservative Republicans, having captured the levers of power in Washington, D.C., have become, in effect, Jacobin democrats themselves, seeing in this federal power the opportunity to institutionalize their values nationwide in the name of what they regard as a new majority. In this respect, Morley was correct and prescient; the march toward centralization in U.S. history has been a bipartisan one.

⁸⁰See, for example, Patrick J. Buchanan, *Where the Right Went Wrong: How Neoconservatives Subverted the Reagan Revolution and Hijacked the Bush Presidency* (New York: St. Martin's Press, 2004).