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“An Identity-Based Theory of Federalism”

Federalism isn't necessary for many social goals. Democracy may flourish, economies may grow, and nations secure their borders without it. So why bother with it? Rubin and Feeley diagnose federalism as a product of an incomplete melding of identities. Unified government is preferred; federalism is an unhappy middle ground, a "tragic compromise."

Rubin and Feeley's diagnosis suggests two claims: first that federalism is a matter of political identity and second that federalism is misfortune. Rubin and Feeley take an indirect tack while developing these claims. Much of their essay is dedicated to a secondary mission: to debunk positive analyses of federalism. The authors take positive theory to task for failing to do something that it simply cannot do, as they point out: it cannot explain the origins of federal preferences. Because a federal arrangement is prior to other decisions of government, such as foreign policy or welfare schemes, it cannot arise as a product of other governing forces set in motion. Because it antecedes other decisions, and because it implies some fixed naming of governing agents, it must arise because of preexisting preferences for the existence of both state and federal governments. As most conventional

positive theory takes preferences as a given, it cannot explain the source of federalism.

Positive theory can, however, offer an explanation for the establishment of a federal union.

One oft-cited example comes from William Riker.<sup>1</sup> The federal structure is a bargain struck between a strong state and a weak state when both fear some external force even more than one another, and when the strong is not quite strong enough to overawe the weak. The federal system preserves local sovereignty when a weaker state will not completely forego its independence. Federation is an expedient solution. It has nothing to do with identity, and if federalism is equated with identity then Riker has not explained the origins of federalism. Riker has, however, offered a plausible explanation for why a federal system, distinct from federalism, might exist.

In both the book manuscript and the précis offered here, Rubin and Feeley offer an account of federalism's origins that feels very much like what William Riker posited in 1964. They write: federalism results when “in an emerging nation state the strong are not strong enough to vanquish the weak, and the weak are not strong enough to go their separate ways.” Their argument is indistinguishable from Riker’s. There is nothing about this account that draws on identity, particularly, and nothing about it in conflict with conventional positive theory.

The Rikerian theory (and Rubin and Feeley’s), draws a line between *federation* and

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<sup>1</sup> Riker, William H. 1964. *Federalism: Origin, Operation, Significance*. Boston: Little, Brown.

*federalism*. In my forthcoming book<sup>2</sup> I define three criteria for a federation: (1) geopolitical division, (2) independence between the units, and (3) direct governance by each level of government. Authority is divided between these units, forming the contours of government.

A federal structure, as I remarked at the start, is not, strictly speaking, necessary for governments to make great achievements, just as a copper bowl is not necessary to whip egg whites. But as bakers know well, the reaction between the copper and the proteins in the egg whites makes it much easier to bring the whites to a robust foam. In some circumstances, the federal structure will make attaining society's goals easier. Certainly one can see that the fragmentation created by the federal structure impedes tyranny, with its prerequisite consolidation of power. Mere decentralization cannot claim any structural defense against tyranny--be it by an autocrat or a democratic majority. Any objectives that depend upon competitive governments require a true federal system, not decentralization. For example, the engine for growth created by the combination of property rights secured by competitive governments and a centrally-facilitated common market requires a federal structure to make the commitments to both credible.

Governments must respect the distribution of authority for a society to realize its goals, but simply establishing the federal system is not sufficient for rules to be followed.

Governments may find themselves tempted to violate the boundaries of their authority,

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<sup>2</sup> Bednar, Jenna. Forthcoming. *The Robust Federation: Principles for Design*. Cambridge: Cambridge University Press.

leading to an inherent problem of opportunism. At the same time, these boundaries will need to be adjusted to fit the polity's changing needs. Federal safeguards include those with mild effects, such as structural fragmentation, the judiciary, and an integrated party system, as well as those with more severe effects, such as intergovernmental retaliation, which can escalate to threats of secession and civil war. A system of safeguards serves the dual purpose of maintaining compliance while adjusting the boundaries through limited experimentation. Each safeguard is flawed, and the theory also describes how the system overcomes the imperfection of its components.<sup>3</sup> Nowhere in this definition or theory is a requirement of public identification. The existence of a federal system does not imply anything about political identity.

Let's consider how a theory of federalism might depend upon identity, for this is the true challenge of Rubin and Feeley's work, and they are right to raise it. What is federalism, then, if it is not describable by the three criteria above, or the system of safeguards that upholds them? Rubin and Feeley characterize it as the existence of multiple political identities, and so we should think carefully about what that implies. First, identity is different from preferences. Preferences are an expression of an individual's tastes; formally, they are an ordering over possible outcomes, or they may be a ranking of policies, if policies have welfare implications. Preference diversity exists in every government, even in a dictatorship; it is not confined to federal systems.

Identity, by contrast, is a perspective. Rubin and Feeley define political identity as "people's

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<sup>3</sup> Bednar, *ibid.*

individual commitments in the political realm, their sense of who they are and where they belong...”. A political identity is the citizen’s beliefs about her relationship to government; it is an understanding about the limits of one’s individual autonomy and the extent of government’s responsibilities and authorities in relation to its citizens. It is an identity not determined by birth or physical characteristics, but instead by cognitive perception.

Federalism, or a federal political identity, is special. Within the federal system there are multiple governments, so the federal political identity is based upon an individual’s beliefs about her relationship to each government, and also—because it defines the extent of governmental authority—it characterizes the relationship of one government to another. That is, with federalism, the political identity includes a sense of the boundaries of authority between federal and state governments.

Does federalism imply multiple political identities? To answer this question it is useful to think in terms of possible categories. Because the federal system creates multiple governments, individuals are assigned labels denoting a geographical classification: Virginian, Iowan, and Californian. Are these political identities in a federal system? If so, then by default federalism does imply multiple political identities. However, because I call myself a Michigander and you call yourself a Californian does not mean that we necessarily have different federal political identities. We are quite likely to have distinct political preferences, particularly with any policy having asymmetric distributional consequences. But about the similarity of our political identity we can infer nothing. Living in different

states, and having different political preferences, does not mean that we have different perspectives about the extent and limit of government's authority, both with respect to us as individuals and between the state governments and the national government.

Alternatively, categories of federal political identity might be federalist, anti-federalist, states' rights, and nationalist. Although these categories may have immediate policy implications, they are shorthand referents to principles rather than preferences. They describe an individual's beliefs about governance. James Madison and Patrick Henry were both Virginians, but they had distinct conceptions of federal governance; they had different political identities. The federal system merely divides the public into geographic categories; this division does not create (or reflect) distinct federal political identities. In fact, a single one may emerge.

To understand the emergence of the public conception of their federation, formal theory may provide some guidance. Typically in formal analyses, beliefs change in response to some informational stimulus—new data that changes an individual's perception of the environment or the relationship between action and outcome. Learning models are beginning to explore a second input that may alter beliefs: practice. As an individual plays a game, she gains experience with it. Those experiences may cause her to update her preconceptions. We can lean on this insight to think about the emergence of federal political identities.

As the definition of the federation makes clear, federalism, the existence of federal identities, is not necessary to the existence of the federation. But given that a federal political identity includes beliefs about the boundaries between state and federal authority, the federation is necessary for a federal identity. So a federal political identity is something that may or may not emerge after the establishment of the federation. The federal system may be a product of diverse, geographically clustered preferences, or simply the preexistence of states of varying military strengths (in the Riker and Rubin/Feeley theses), or may be prescribed because of the potential benefits of competition between independent states.

With the practice of a political system—for us, a federation—people gain experience. They watch different safeguards argue over the boundaries, and form opinions about them. They see what the federal structure accomplishes, and where it needs to be tweaked. In short, through experience the people may come to see the federal system as a tool to serve them, a tool that may be adjusted when useful. This experience with the federal system shapes the public conception of government. Through experience, federal political identities may converge.

A common federal identity, if it emerges, has powerful implications for the robustness of the federal union because popular safeguards may develop. Through experience with the federal system the people may arrive at a consensus about the boundaries of federal authority—particularly about what would constitute a major transgression on those

boundaries. The public may defend these boundaries, reacting against the offending government if it steps well beyond its authority. For minor transgressions we can expect some lingering disagreement, but the federal political identity includes a faith in the institutional remedies to these disagreements. This supplement to the set of safeguards defending the boundaries of federal authority is a filter, stepping in when more mild safeguards are insufficient, but often eliminating the need for hard-to-control intergovernmental retaliation.

The emergence of a common federal political identity does not erase diverse preferences, but it may encourage tolerance of our diversity. The federal system gives us a way to respect diversity formally without needing to become impossibly good people: we don't need to overcome our human tendency toward bias and discrimination. With a system that in some sterile way divides the country formally, we can acknowledge the right of Florida or Alberta to form policies distinct from the national norm. The federal system lets us respect different policy choices without necessitating that we overcome our biases. We can capture the benefits of diversity without altering our political preferences. Federalism is present when the population accepts distinct policies. It cannot be present at the founding; it is a product of a population's experience with their federal system.

I'd like to conclude by returning to Feeley and Rubin's characterization of federalism. Given the perspective I've developed in this essay, I disagree that federalism is misfortune, a tragic compromise. Distinct preferences are a reality, and may offer advantages. The



world's most thriving economies have diverse populations: diversity drives innovation and competition. When federalism congeals--when a diverse population comes to believe in a system that facilitates their diversity--this is fortunate.