

# THE CONSCIENCE OF A CONSERVATIVE

*by*

**BARRY GOLDWATER**

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*P.O. Box 913,*

*Eastford, CT 06242 USA*

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## FOREWORD

**T**HIS BOOK is not written with the idea of adding to or improving on the Conservative philosophy. Or of "bringing it up to date." The ancient and tested truths that guided our Republic through its early days will do equally well for us. The challenge to Conservatives today is quite simply to demonstrate the bearing of a proven philosophy on the problems of our own time.

I should explain the considerations that led me to join in this effort. I am a politician, a United States Senator. As such, I have had an opportunity to learn something about the political instincts of the American people, I have crossed the length and breadth of this great land hundreds of times and talked with tens of thousands of people, with Democrats and Republicans, with farmers and laborers and businessmen. I find that America is fundamentally a Conservative nation. The preponderant judgment of the American people, especially of the young people, is that the radical, or Liberal, approach has not worked and is not working. They yearn for a return to Conservative principles.

At the same time, I have been in a position to observe first hand how Conservatism is faring in Washington. And it is all too clear that in spite of a Conservative revival among the people the radical ideas that were promoted by the New and Fair Deals under the guise of Liberalism still dominate the councils of our national government.

In a country where it is now generally understood and proclaimed that the people's welfare depends on individual self reliance rather than on state paternalism, Congress annually deliberates over whether the increase in government welfareism should be small or large.

In a country where it is now generally understood and proclaimed that the federal government spends too much, Congress annually deliberates over whether to raise the federal budget by a few billion dollars or by many billion.

In a country where it is now generally understood and proclaimed that individual liberty depends on decentralized government, Congress annually deliberates over whether vigorous or halting steps should be taken to bring state government into line with federal policy.

In a country where it is now generally understood and proclaimed that Communism is an enemy bound to destroy us, Congress annually deliberates over means of "co-existing" with the Soviet Union.

And so the question arises: Why have American people been unable to translate their views into appropriate political action? Why should the nation's underlying allegiance to Conservative principles have failed to produce corresponding deeds in Washington?

I do not blame my brethren in government, all of whom work hard and conscientiously at their jobs. I blame Conservatives—ourselves—myself. Our failure, as one Conservative writer has put it, is the failure of the Conservative demonstration. Though we Conservatives are deeply persuaded that our society is ailing, and know that Conservatism holds the key to national salvation—and feel sure the country agrees with us—we seem unable to demonstrate the practical relevance of Conservative principles to the needs of the day. We sit by impotently while Congress seeks to improve solutions to problems that are not the real problems facing the country, while the government attempts to assuage imagined concerns and ignores the real concerns and real needs of the people.

Perhaps we suffer from an over-sensitivity to the judg-

ments of those who rule the mass communications media. We are daily consigned by "enlightened" commentators to political oblivion: Conservatism, we are told, is out-of-date. The charge is preposterous and we ought boldly to say so. The laws of God, and of nature, have no date-line. The principles on which the Conservative political position is based have been established by a process that has nothing to do with the social, economic and political landscape that changes from decade to decade and from century to century. These principles are derived from the nature of man, and from the truths that God has revealed about His creation. Circumstances do change. So do the problems that are shaped by circumstances. But the principles that govern the solution of the problems do not. To suggest that the Conservative philosophy is out of date is akin to saying that the Golden Rule, or the Ten Commandments or Aristotle's *Politics* are out of date. The Conservative approach is nothing more or less than an attempt to apply the wisdom and experience and the revealed truths of the past to the problems of today. The challenge is not to find new or different truths, but to learn how to apply established truths to the problems of the contemporary world. My hope is that one more Conservative voice will be helpful in meeting this challenge.

This book is an attempt to bridge the gap between theory and practice. I shall draw upon my speeches, the radio and television broadcasts and the notes I have made over the years in the hope of doing what one is often unable to do in the course of a harried day's work on the Senate floor: to show the connection between Conservative principles so widely espoused, and Conservative action, so generally neglected.

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## The Conscience of a Conservative

I HAVE BEEN much concerned that so many people today with Conservative instincts feel compelled to apologize for them. Or if not to apologize directly, to qualify their commitment in a way that amounts to breast-beating. "Republican candidates," Vice President Nixon has said, "should be economic conservatives, but conservatives with a heart." President Eisenhower announced during his first term, "I am conservative when it comes to economic problems but liberal when it comes to human problems." Still other Republican leaders have insisted on calling themselves "progressive" Conservatives.\* These formulations are tantamount<sup>4</sup> to an admission that Conservatism is a narrow, mechanistic economic theory that may work very well as a book-

\*This is a strange label indeed: it implies that "ordinary" Conservatism is opposed to progress. Have we forgotten that America made its greatest progress when Conservative principles were honored and preserved.

keeper's guide, but cannot be relied upon as a comprehensive political philosophy.

The same judgment, though in the form of an attack rather than an admission, is advanced by the radical camp. "We liberals," they say, "are interested in *people*. Our concern is with human beings, while you Conservatives are preoccupied with the preservation of economic privilege and status." Take them a step further, and the Liberals will turn the accusations into a class argument: it is the little people that concern us, not the "malefactors of great wealth."

Such statements, from friend and foe alike, do great injustice to the Conservative point of view. Conservatism is *not* an economic theory, though it has economic implications. The shoe is precisely on the other foot: it is Socialism that subordinates all other considerations to man's material well-being. It is Conservatism that puts material things in their proper place—that has a structured view of the human being and of human society, in which economics plays only a subsidiary role.

The root difference between the Conservatives and the Liberals of today is that Conservatives take account of the *whole* man, while the Liberals tend to look only at the material side of man's nature. The Conservative believes that man is, in part, an economic, an animal creature; but that he is also a spiritual creature with spiritual needs and spiritual de-

sires. What is more, these needs and desires reflect the *superior* side of man's nature, and thus take precedence over his economic wants. Conservatism therefore looks upon the enhancement of man's spiritual nature as the primary concern of political philosophy. Liberals, on the other hand,—in the name of a concern for "human beings"—regard the satisfaction of economic wants as the dominant mission of society. They are, moreover, in a hurry. So that their characteristic approach is to harness the society's political and economic forces into a collective effort to compel "progress." In this approach, I believe they fight against Nature.

Surely the first obligation of a political thinker is to understand the nature of man. The Conservative does not claim special powers of perception on this point, but he does claim a familiarity with the accumulated wisdom and experience of history, and he is not too proud to learn from the great minds of the past.

The first thing he has learned about man is that each member of the species is a unique creature. Man's most sacred possession is his individual soul—which has an immortal side, but also a mortal one. The mortal side establishes his absolute differentness from every other human being. *Only a philosophy that takes into account the essential differences between men, and, accordingly, makes provision for developing the different potentialities of each man can claim*



to be in accord with *Nature*. We have heard much in our time about "the common man." It is a concept that pays little attention to the history of a nation that grew great through the initiative and ambition of uncommon men. The Conservative knows that to regard man as part of an undifferentiated mass is to consign him to ultimate slavery.

Secondly, the Conservative has learned that the economic and spiritual aspects of man's nature are inextricably intertwined. He cannot be economically free, or even economically efficient, if he is enslaved politically; conversely, man's political freedom is illusory if he is dependent for his economic needs on the State.

The Conservative realizes, thirdly, that man's development, in both its spiritual and material aspects, is not something that can be directed by outside forces. Every man, for his individual good and for the good of his society, is responsible for his *own* development. The choices that govern his life are choices that he must make: they cannot be made by any other human being, or by a collectivity of human beings. If the Conservative is less anxious than his Liberal brethren to increase Social Security "benefits," it is because he is more anxious than his Liberal brethren that people be free throughout their lives to spend their earnings when and as they see fit.

So it is that Conservatism, throughout history, has

regarded man neither as a potential pawn of other men, nor as a part of a general collectivity in which the sacredness and the separate identity of individual human beings are ignored. Throughout history, true Conservatism has been at war equally with autocrats and with "democratic" Jacobins. The true Conservative was sympathetic with the plight of the hapless peasant under the tyranny of the French monarchy. And he was equally revolted at the attempt to solve that problem by a mob tyranny that paraded under the banner of egalitarianism. The conscience of the Conservative is pricked by *anyone* who would debase the dignity of the individual human being. Today, therefore, he is at odds with dictators who rule by terror, and equally with those gentler collectivists who ask our permission to play God with the human race.

With this view of the nature of man, it is understandable that the Conservative looks upon politics as the art of achieving the maximum amount of freedom for individuals that is consistent with the maintenance of social order. The Conservative is the first to understand that the practice of freedom requires the establishment of order: it is impossible for one man to be free if another is able to deny him the exercise of his freedom. But the Conservative also recognizes that the political power on which order is based is a self-aggrandizing force; that its appetite grows with eating. He knows that the utmost vigilance and care are required to keep political power

within its proper bounds.

In our day, order is pretty well taken care of. The delicate balance that ideally exists between freedom and order has long since tipped against freedom practically everywhere on earth. In some countries, freedom is altogether down and order holds absolute sway. In our country the trend is less far advanced, but it is well along and gathering momentum every day. Thus, for the American Conservative, there is no difficulty in identifying the day's overriding political challenge: it is to *preserve and extend freedom*. As he surveys the various attitudes and institutions and laws that currently prevail in America, many questions will occur to him, but the Conservative's first concern will always be: *Are we maximizing freedom?* I suggest we examine some of the critical issues facing us today with this question in mind.

## The Perils of Power

THE NEW DEAL, Dean Acheson wrote approvingly in a book called *A Democrat Looks At His Party*, "conceived of the federal government as the whole people organized to do what had to be done." A year later Mr. Larson wrote *A Republican Looks At His Party*, and made much the same claim in his book for Modern Republicans. The "underlying philosophy" of the New Republicanism, said Mr. Larson, is that "if a job has to be done to meet the needs of the people, and no one else can do it, then it is the proper function of the federal government."

Here we have, by prominent spokesmen of both political parties, an unqualified repudiation of the principle of limited government. There is no reference by either of them to the Constitution, or any attempt to define the legitimate functions of government. The government can do whatever *needs* to be done; note, too, the implicit but necessary assumption that it is the government itself that determines *what* needs to



be done. We must not, I think underrate the importance of these statements. They reflect the view of a majority of the leaders of one of our parties, and of a strong minority among the leaders of the other, and they propound the first principle of totalitarianism: that the State is competent to do all things and is limited in what it actually does only by the will of those who control the State.

It is clear that this view is in direct conflict with the Constitution which is an instrument, above all, for *limiting* the functions of government, and which is as binding today as when it was written. But we are advised to go a step further and ask why the Constitution's framers restricted the scope of government. Conservatives are often charged, and in a sense rightly so, with having an overly mechanistic view of the Constitution: "It is America's enabling document; we are American citizens; therefore," the Conservatives' theme runs, "we are morally and legally obliged to comply with the document." All true. But the Constitution has a broader claim on our loyalty than that. The founding fathers had a *reason* for endorsing the principle of limited government; and this reason recommends defense of the constitutional scheme even to those who take their citizenship obligations lightly. The reason is simple, and it lies at the heart of the Conservative philosophy.

Throughout history, government has proved to be the chief instrument for thwarting man's liberty. Gov-

ernment represents power in the hands of some men to control and regulate the lives of other men. And power, as Lord Acton said, *corrupts* men. "Absolute power," he added, "corrupts absolutely."

State power, considered in the abstract, need not restrict freedom: but absolute state power always does. The *legitimate* functions of government are actually conducive to freedom. Maintaining internal order, keeping foreign foes at bay, administering justice, removing obstacles to the free interchange of goods — the exercise of these powers makes it possible for men to follow their chosen pursuits with maximum freedom. But note that the very instrument by which these desirable ends are achieved *can* be the instrument for achieving undesirable ends—that government can, instead of extending freedom, restrict freedom. And note, secondly, that the "can" quickly becomes "will" the moment the holders of government power are left to their own devices. This is because of the corrupting influence of power, the natural tendency of men who possess *some* power to take unto themselves *more* power. The tendency leads eventually to the acquisition of *all* power — whether in the hands of one or many makes little difference to the freedom of those left on the outside.

Such, then, is history's lesson, which Messrs. Acton and Larson evidently did not read: release the holders of state power from any restraints other than those they wish to impose upon themselves, and you

are swinging down the well-travelled road to absolutism.

The framers of the Constitution had learned the lesson. They were not only students of history, but victims of it; they knew from vivid, personal experience that freedom depends on effective restraints against the accumulation of power in a single authority. And that is what the Constitution is: *a system of restraints against the natural tendency of government to expand in the direction of absolutism*. We all know the main components of the system. The first is the limitation of the federal government's authority to specific, delegated powers. The second, a corollary of the first, is the reservation to the States and the people of all power not delegated to the federal government. The third is a careful division of the federal government's power among three separate branches. The fourth is a prohibition against impetuous alteration of the system — namely, Article V's tortuous, but wise, amendment procedures.

Was it then a *Democracy* the framers created? Hardly. The system of restraints, on the face of it, was directed not only against individual tyrants, but also against a tyranny of the masses. The framers were well aware of the danger posed by self-seeking demagogues — that they might persuade a majority of the people to confer on government vast powers in return for deceptive promises of economic gain. And so they forbade such a transfer of power — first

by declaring, in effect, that certain activities are outside the natural and legitimate scope of the public authority, and secondly by dispersing public authority among several levels and branches of government in the hope that each seat of authority, jealous of its own prerogatives, would have a natural incentive to resist aggression by the others.

But the framers were not visionaries. They knew that rules of government, however brilliantly calculated to cope with the imperfect nature of man, however carefully designed to avoid the pitfalls of power, would be no match for men who were determined to disregard them. In the last analysis their system of government would prosper only if the governed were sufficiently determined that it should. "What have you given us?" a woman asked Ben Franklin toward the close of the Constitutional Convention. "A Republic," he said, "*if you can keep it*."

We have not kept it. The Achesons and Larsons have had their way. The system of restraints has fallen into disrepair. The federal government has moved into every field in which it believes its services are needed. The state governments are either excluded from their rightful functions by federal preemption, or they are allowed to act at the sufferance of the federal government. Inside the federal government both the executive and judicial branches have roamed far outside their constitutional boundary lines. And all of these things have come to pass without



regard to the amendment procedures prescribed by Article V. The result is a Leviathan, a vast national authority out of touch with the people, and out of their control. This monolith of power is bounded only by the will of those who sit in high places.

There are a number of ways in which the power of government can be measured.

One is the size of its financial operations. Federal spending is now approaching a hundred billion dollars a year (compared with three and one-half billion less than three decades ago.)

Another is the scope of its activities. A study recently conducted by the *Chicago Tribune* showed that the federal government is now the "biggest land owner, property manager, renter, mover and hauler, medical clinician, lender, insurer, mortgage broker, employer, debtor, taxpayer and spender in all history."

Still another is the portion of the peoples' earnings government appropriates for its own use: nearly a third of earnings are taken every year in the form of taxes.

A fourth is the extent of government interference in the daily lives of individuals. The farmer is told how much wheat he can grow. The wage earner is at the mercy of national union leaders whose great power is a direct consequence of federal labor legis-

lation. The businessman is hampered by a maze of government regulations, and often by direct government competition. The government takes six per cent of most payrolls in Social Security Taxes and thus compels millions of individuals to postpone until later years the enjoyment of wealth they might otherwise enjoy today. Increasingly, the federal government sets standards of education, health and safety.

How did it happen? How did our national government grow from a servant with sharply limited powers into a master with virtually unlimited power?

In part, we were swindled. There are occasions when we have elevated men and political parties to power that promised to restore limited government and then proceeded, after their election, to expand the activities of government. But let us be honest with ourselves. Broken promises are not the major causes of our trouble. *Kept* promises are. All too often we have put men in office who have suggested spending a little more on this, a little more on that, who have proposed a new welfare program, who have thought of another variety of "security." We have taken the bait, preferring to put off to another day the recapture of freedom and the restoration of our constitutional system. We have gone the way of many a democratic society that has lost its freedom by persuading itself that if "the people" rule, all is well.

The Frenchman, Alexis de Tocqueville, probably



the most clairvoyant political observer of modern times, saw the danger when he visited this country in the 1830's. Even then he foresaw decay for a society that tended to put more emphasis on its democracy than on its republicanism. He predicted that America would produce, not tyrants but "guardians." And that the American people would "console themselves for being in tutelage by the reflection that they have chosen their own guardians. Every man allows himself to be put in lead-strings, because he sees that it is not a person nor a class of persons, but the people at large that hold the end of his chain."

Our tendency to concentrate power in the hands of a few men deeply concerns me. We can be conquered by bombs or by subversion; but we can also be conquered by neglect — by ignoring the Constitution and disregarding the principles of limited government. Our defenses against the accumulation of unlimited power in Washington are in poorer shape, I fear, than our defenses against the aggressive designs of Moscow. Like so many other nations before us, we may succumb through internal weakness rather than fall before a foreign foe.

I am convinced that most Americans now want to reverse the trend. I think that concern for our vanishing freedoms is genuine. I think that the people's uneasiness in the stifling omnipresence of government has turned into something approaching alarm. But bemoaning the evil will not drive it back, and accus-

ing fingers will not shrink government.

*The turn will come when we entrust the conduct of our affairs to men who understand that their first duty as public officials is to divest themselves of the power they have been given. It will come when Americans, in hundreds of communities throughout the nation, decide to put the man in office who is pledged to enforce the Constitution and restore the Republic. Who will proclaim in a campaign speech: "I have little interest in streamlining government or in making it more efficient, for I mean to reduce its size. I do not undertake to promote welfare, for I propose to extend freedom. My aim is not to pass laws, but to repeal them. It is not to inaugurate new programs, but to cancel old ones that do violence to the Constitution, or that have failed in their purpose, or that impose on the people an unwarranted financial burden. I will not attempt to discover whether legislation is 'needed' before I have first determined whether it is constitutionally permissible. And if I should later be attacked for neglecting my constituents' 'interests,' I shall reply that I was informed their main interest is liberty and that in that cause I am doing the very best I can."*

## States' Rights

The Governor of New York, in 1930, pointed out that the Constitution does not empower the Congress to deal with "a great number of . . . vital problems of government, such as the conduct of public utilities, of banks, of insurance, of business, of agriculture, of education, of social welfare, and a dozen other important features." And he added that "Washington must not be encouraged to interfere" in these areas.

Franklin Roosevelt's rapid conversion from Constitutionalism to the doctrine of unlimited government, is an oft-told story. But I am here concerned not so much by the abandonment of States' Rights by the national Democratic Party—an event that occurred some years ago when that party was captured by the Socialist ideologues in and about the labor movement—as by the unmistakable tendency of the Republican Party to adopt the same course. The result is that today *neither* of our two parties maintains a meaningful commitment to the principle of States' Rights. Thus, the cornerstone of the Republic, our chief bul-

wark against the encroachment of individual freedom by Big Government, is fast disappearing under the piling sands of absolutism.

The Republican Party, to be sure, gives lip-service to States' Rights. We often talk about "returning to the States their rightful powers"; the Administration has even gone so far as to sponsor a federal-state conference on the problem. But deeds are what count, and I regret to say that in actual practice, the Republican Party, like the Democratic Party, summons the coercive power of the federal government whenever national leaders conclude that the States are not performing satisfactorily.

Let us focus attention on one method of federal interference—one that tends to be neglected in much of the public discussion of the problem. In recent years the federal government has continued, and in many cases has increased, federal "grants-in-aid" to the States in a number of areas in which the Constitution recognizes the exclusive jurisdiction<sup>a</sup> of the States. These grants are called "matching funds" and are designed to "stimulate" state spending in health, education, welfare, conservation or any other area in which the federal government decides there is a need for national action. If the States agree to put up money for these purposes, the federal government undertakes to match the appropriation according to a ratio prescribed by Congress. Sometimes the ratio is fifty-



fifty; often the federal government contributes over half the cost.

There are two things to note about these programs. The first is that they are *federal* programs—they are conceived by the federal government both as to purpose and as to extent. The second is that the "stimulative" grants are, in effect, a mixture of blackmail and bribery. The States are told to go along with the program "or else." Once the federal government has offered matching funds, it is unlikely, as a practical matter, that a member of a State Legislature will turn down his State's fair share of revenue collected from all of the States. Understandably, many legislators feel that to refuse aid would be political suicide. This is an indirect form of coercion, but it is effective nonetheless.

A more direct method of coercion is for the federal government to *threaten* to move in unless state governments take action that Washington deems appropriate. Not so long ago, for example, the Secretary of Labor gave the States a lecture on the wisdom of enacting "up-to-date" unemployment compensation laws. He made no effort to disguise the alternative: if the States failed to act, the federal government would.

Here are some examples of the "stimulative" approach. Late in 1957 a "Joint Federal-State Action Committee" recommended that certain matching

funds programs be "returned" to the States on the scarcely disguised grounds that the States, in the view of the Committee, had learned to live up to their responsibilities. These are the areas in which the States were learning to behave: "vocational education" programs in agriculture, home economics, practical nursing, and the fisheries trade; local sewage projects; slum clearance and urban renewal; and enforcement of health and safety standards in connection with the atomic energy program.

Now the point is not that Congress failed to act on these recommendations, or that the Administration gave them only half-hearted support; but rather that the federal government had no business entering these fields in the first place, and thus had no business taking upon itself the prerogative of judging the States' performance. The Republican Party should have said this plainly and forthrightly and demanded the immediate withdrawal of the federal government.

We can best understand our error, I think, by examining the theory behind it. I have already alluded to the book, *A Republican Looks at His Party*,<sup>4</sup> which is an elaborate rationalization of the "Modern Republican" approach to current problems. (It does the job just as well, I might add, for the Democrats' approach.) Mr. Larson devotes a good deal of space to the question of States' Rights. He contends that while there is "a general presumption" in favor of States' Rights, thanks to the Tenth Amendment, this pre-



sumption must give way whenever it appears to the federal authorities that the States are not responding satisfactorily to "the needs of the people." This is a paraphrase of his position but not, I think, an unjust one. And if this approach appears to be a high-handed way of dealing with an explicit constitutional provision, Mr. Larson justifies the argument by summoning the concept that "for every right there is a corresponding duty." "When we speak of States' Rights," he writes, "we should never forget to add that there go with those rights the corresponding States' responsibilities." Therefore, he concludes, if the States fail to do their duty, they have only themselves to blame when the federal government intervenes.

The trouble with this argument is that it treats the Constitution of the United States as a kind of handbook in political theory, to be heeded or ignored depending on how it fits the plans of contemporary federal officials. The Tenth Amendment is not "a general assumption," but a prohibitory rule of law. The Tenth Amendment recognizes the States' *jurisdiction* in certain areas. States' Rights means that the States have a right to act or *not to act*, as they see fit, in the areas reserved to them. The States may have duties corresponding to these rights, but the duties are owed to the people of the States, not to the federal government. Therefore, the recourse lies not with the federal government, which is not sovereign, but with the people who are, and who have full power to take disciplinary action. If the people are unhappy with

say, their State's disability insurance program, they can bring pressure to bear on their state officials and, if that fails, they can elect a new set of officials. And if, in the unhappy event they should wish to divest themselves of this responsibility, they can amend the Constitution. The Constitution, I repeat, draws a sharp and clear line between federal jurisdiction and state jurisdiction. The federal government's failure to recognize that line has been a crushing blow to the principle of limited government.

But again, I caution against a defensive, or apologetic, appeal to the Constitution. There is a reason for its reservation of States' Rights. Not only does it prevent the accumulation of power in a central government that is remote from the people and relatively immune from popular restraints; it also recognizes the principle that essentially local problems are best dealt with by the people most directly concerned. Who knows better than New Yorkers how much and what kind of publicly-financed slum clearance in New York City is needed and can be afforded? Who knows better than Nebraskans whether that State has an adequate nursing program? Who knows better than Arizonans the kind of school program that is needed to educate their children? The people of my own State — and I am confident that I speak for the majority of them — have long since seen through the spurious suggestion that federal aid comes "free." They know that the money comes out of their own pockets, and that it is returned to them minus a

broker's fee taken by the federal bureaucracy. They know, too, that the power to decide how that money shall be spent is withdrawn from them and exercised by some planning board deep in the caverns of one of the federal agencies. They understand this represents a great and perhaps irreparable loss—not only in their wealth, but in their priceless liberty.

Nothing could so far advance the cause of freedom as for state officials throughout the land to assert their rightful claims to lost state power; and for the federal government to withdraw promptly and totally from every jurisdiction which the Constitution reserved to the states.

## And Civil Rights

**A**N ATTEMPT has been made in recent years to disparage the principle of States' Rights by equating it with defense of the South's position on racial integration. I have already indicated that the reach of States' Rights is much broader than that—that it affects Northerners as well as Southerners, and concerns many matters that have nothing to do with the race question. Still, it is quite true that the integration issue is affected by the States' Rights principle, and that the South's position on the issue is, today, the most conspicuous expression of the principle. So much so that the country is now in the grips of a spirited and sometimes ugly controversy over an imagined conflict between States' Rights, on the one hand, and what are called "civil rights" on the other.

I say an imagined conflict because I deny that there can be a conflict between States' Rights, properly defined—and civil rights, properly defined. If States' "Rights" are so asserted as to encroach upon individ-



ual rights that are protected by valid federal laws, then the exercise of state power is a nullity. Conversely, if individual "rights" are so asserted as to infringe upon valid state power, then the assertion of those "rights" is a nullity. The rights themselves do not clash. The conflict arises from a failure to define the two categories of rights correctly, and to assert them lawfully.

States' Rights are easy enough to define. The Tenth Amendment does it succinctly: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively, or to the people."

Civil rights should be no harder. In fact, however—thanks to extravagant and shameless misuse by people who ought to know better—it is one of the most badly understood concepts in modern political usage. Civil rights is frequently used synonymously with "human rights"—or with "natural rights." As often as not, it is simply a name for describing an activity that someone deems politically or socially desirable. A sociologist writes a paper proposing to abolish some inequity, or a politician makes a speech about it—and, behold, a new "civil right" is born! The Supreme Court has displayed the same creative powers.

A civil right is a right that is asserted and is therefore protected by some valid law. It may be asserted by the common law, or by local or federal statutes, or

by the Constitution; but unless a right is incorporated in the law, it is not a civil right and is not enforceable by the instruments of the civil law. There may be some rights—"natural," "human," or otherwise—that should also be civil rights. But if we desire to give such rights the protection of the law, our recourse is to a legislature or to the amendment procedures of the Constitution. We must not look to politicians, or sociologists—or the courts—to correct the deficiency.

In the field of racial relations, there are some rights that are clearly protected by valid laws and are therefore "civil" rights. One of them is the right to vote. The Fifteenth Amendment provides that no one shall be denied the franchise on account of race, color or previous condition of servitude. Similarly with certain legal privileges enforced by the Fourteenth Amendment. The legislative history of that amendment makes it clear (I quote from the Civil Rights Act of 1866 which the Amendment was designed to legitimize) that people of all races shall be equally entitled "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, to purchase, lease, sell, hold and convey real and personal property and to full and equal benefit of all laws and proceedings for the security of persons and property." After the passage of that Act and the Amendment, all persons, Negroes included, had a "civil" right to these protections.

It is otherwise let us note, with education. For the federal Constitution does not require the States to



maintain racially mixed schools. Despite the recent holding of the Supreme Court, I am firmly convinced—not only that integrated schools are not required—but that the Constitution does not permit any interference whatsoever by the federal government in the field of education. It may be just or wise or expedient for negro children to attend the same schools as white children, but they do not have a civil right to do so which is protected by the federal constitution, or which is enforceable by the federal government.

The intentions of the founding fathers in this matter are beyond any doubt: *no powers regarding education were given the federal government*. Consequently, under the Tenth Amendment, jurisdiction over the entire field was reserved to the States. The remaining question is whether the Fourteenth Amendment—concretely, that amendment's "equal protection" clause—modified the original prohibition against federal intervention.

To my knowledge it has never been seriously argued—the argument certainly was not made by the Supreme Court—that the authors of the Fourteenth Amendment intended to alter the Constitutional scheme with regard to education. Indeed, in the famous school integration decision, *Brown v. Board of Education* (1954), the Supreme Court justices expressly acknowledged that they were not being guided by the intentions of the amendment's authors. "*In approaching this problem*," Chief Justice Warren said

"*we cannot turn the clock back to 1868 when the amendment was adopted . . . We must consider public education in the light of its full development and in its present place in American life throughout the nation.*" In effect, the Court said that what matters is not the ideas of the men who wrote the Constitution, but the Court's ideas. It was only by engrafting its own views onto the established law of the land that the Court was able to reach the decision it did.

The intentions of the Fourteenth Amendment's authors are perfectly clear. Consider these facts. 1. During the entire congressional debate on the Fourteenth Amendment it was never once suggested by any proponent of the amendment that it would outlaw segregated schools. 2. At the same time that it approved the Fourteenth Amendment, Congress established schools in Washington in Georgetown "for the sole use of . . . colored children." 3. In all the debates on the amendment by the State Legislatures there was only one legislator, a man in Indiana, who thought the amendment would affect schools. 4. The great majority of the States that approved the amendment permitted or required segregated schools at the very time they approved the amendment. There is not room here for exhaustive treatment of this evidence, but the facts are well documented, and they are all we have to know about the Fourteenth Amendment's bearing on this problem. The amendment was not intended to, and therefore it did not outlaw racially separate schools. It was not intended to, and therefore it did not, author-

ize *any* federal intervention in the field of education.

I am therefore not impressed by the claim that the Supreme Court's decision on school integration is the law of the land. *The Constitution, and the laws "made in pursuance thereof," are the "supreme law of the land."* The Constitution is what its authors intended it to be and said it was—not what the Supreme Court says it is. If we condone the practice of substituting our own intentions for those of the Constitution's framers, we reject, in effect, the principle of Constitutional Government: we endorse a rule of men, not of laws.

I have great respect for the Supreme Court as an institution, but I cannot believe that I display that respect by submitting abjectly to abuses of power by the Court, and by condoning its unconstitutional trespass into the legislative sphere of government. The Congress and the States, equally with the Supreme Court, are obliged to interpret and comply with the Constitution according to their own lights. I therefore support all efforts by the States, excluding violence of course, to preserve their rightful powers over education.

As for the Congress, I would hope that the national legislature would help clarify the problem by proposing to the States a Constitutional amendment that would reaffirm the States' exclusive jurisdiction in the field of education. This amendment would, in my

judgment, assert what is already provided unmistakably by the Constitution; but it would put the matter beyond any further question.

It so happens that I am in agreement with the objectives of the Supreme Court as stated in the *Brown* decision. I believe that it is both wise and just for negro children to attend the same schools as whites, and that to deny them this opportunity carries with it strong implications of inferiority. I am not prepared, however, to impose that judgment of mine on the people of Mississippi or South Carolina, or to tell them what methods should be adopted and what pace should be kept in striving toward that goal. That is their business, not mine. I believe that the problem of race relations, like all social and cultural problems, is best handled by the people directly concerned. Social and cultural change, however desirable, should not be effected by the engines of national power. Let us, through persuasion and education, seek to improve institutions we deem defective. But let us, in doing so, respect the orderly processes of the law. Any other course enthrones tyrants and dooms freedom.<sup>45</sup>



## The Welfare State

Washington—The President estimated that the expenditures of the Department of Health, Education and Welfare in the fiscal year 1961 (including Social Security payments) would exceed \$15,000,000,000. Thus the current results of New Deal legislation are Federal disbursements for human welfare in this country second only to national defense.

*The New York Times*, January 18, 1960, p. 1.

**F**OR MANY YEARS it appeared that the principal domestic threat to our freedom was contained in the doctrines of Karl Marx. The collectivists—non-Communists as well as Communists—had adopted the Marxist objective of "socializing the means of production." And so it seemed that if collectivization were imposed, it would take the form of a State owned and operated economy. I doubt whether this is the main threat any longer.

The collectivists have found, both in this country and in other industrialized nations of the West, that

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free enterprise has removed the economic and social conditions that might have made a class struggle possible. Mammoth productivity, wide distribution of wealth, high standards of living, the trade union movement—these and other factors have eliminated whatever incentive there might have been for the "proletariat" to rise up, peaceably or otherwise, and assume direct ownership of productive property. Significantly, the bankruptcy of doctrinaire Marxism has been expressly acknowledged by the Socialist Party of West Germany, and by the dominant faction of the Socialist Party of Great Britain. In this country the abandonment of the Marxist approach (outside the Communist Party, of course) is attested to by the negligible strength of the Socialist Party, and more tellingly perhaps, by the content of left wing literature and by the programs of left wing political organizations such as the Americans For Democratic Action.

The currently favored instrument of collectivization is the Welfare State. The collectivists have not abandoned their ultimate goal—to subordinate the individual to the State—but their strategy has changed. They have learned that Socialism can be achieved through Welfareism quite as well as through Nationalization. They understand that private property can be confiscated as effectively by taxation as by expropriating it. They understand that the individual can be put at the mercy of the State—not only by making the State his employer—but by divesting him of the means to provide for his personal needs and by giving the State the



responsibility of caring for those needs from cradle to grave. Moreover, they have discovered—and here is the critical point—that *Welfarism is much more compatible with the political processes of a democratic society*. Nationalization ran into popular opposition, but the collectivists feel sure the Welfare State can be erected by the simple expedient of buying votes with promises of “free” federal benefits—“free” housing, “free” school aid, “free” hospitalization, “free” retirement pay and so on . . . The correctness of this estimate can be seen from the portion of the federal budget that is now allocated to welfare, an amount second only to the cost of national defense.\*

I do not welcome this shift of strategy. Socialism-through-Welfarism poses a far greater danger to freedom than Socialism-through-Nationalization precisely because it is more difficult to combat. The evils of Nationalization are self-evident and immediate. Those of Welfarism are veiled and tend to be postponed. People can understand the consequences of turning over ownership of the steel industry, say, to the State; and they can be counted on to oppose such a proposal. But let the government increase its contribution to the “Public Assistance” program and we will, at most, grumble about excessive government spending. The effect of Welfarism on freedom will be felt later on—after its beneficiaries have become its victims, after dependence on

\*The total figure is substantially higher than the \$15,000,000,000 noted above if we take into account welfare expenditures outside the Department of Health, Education and Welfare—for federal housing projects, for example.

government has turned into bondage and it is too late to unlock the jail.

But a far more important factor is Welfarism's strong emotional appeal to many voters, and the consequent temptations it presents the average politician. It is hard, as we have seen, to make out a case for State ownership. It is very different with the rhetoric of humanitarianism. How easy it is to reach the voters with earnest importunities for helping the needy. And how difficult for Conservatives to resist these demands without appearing to be callous and contemptuous of the plight of less fortunate citizens. Here, perhaps, is the best illustration of the failure of the Conservative demonstration.

I know, for I have heard the questions often. Have you no sense of social obligation? the Liberals ask. Have you no concern for people who are out of work? for sick people who lack medical care? for children in overcrowded schools? Are you unmoved by the problems of the aged and disabled? Are you *against* human welfare?

The answer to all of these questions is, of course, no. But a simple “no” is not enough. I feel certain that Conservatism is through unless Conservatives can demonstrate and communicate the difference between being concerned with these problems and believing that the federal government is the proper agent for their solution.

The long range political consequences of Welfarism are plain enough: as we have seen, the State that is able to deal with its citizens as wards and dependents has gathered unto itself unlimited political and economic power and is thus able to rule as absolutely as any oriental despot.

Let us, however, weigh the consequences of Welfarism on the individual citizen.

Consider, first, the effect of Welfarism on the donors of government welfare—not only those who pay for it but also the voters and their elected representatives who decide that the benefits shall be conferred. Does some credit redound on them for trying to care for the needs of their fellow citizens? Are they to be commended and rewarded, at some moment in eternity, for their “charity?” I think not. Suppose I should vote for a measure providing for free medical care: I am unaware of any moral virtue that is attached to my decision to confiscate the earnings of X and give them to Y.

Suppose, however, that X approves of the program—that he has voted for welfarist politicians with the idea of helping his fellow man. Surely the wholeness of his act is diluted by the fact that he is voting not only to have his own money taken but also that of his fellow citizens who may have different ideas about their social obligations. Why does not such a man, instead, contribute what he regards as his just share of human welfare to a private charity?

Consider the consequences to the recipient of welfarism. For one thing, he mortgages himself to the federal government. In return for benefits—which, in the majority of cases, he pays for—he concedes to the government the ultimate in political power—the power to grant or withhold from him the necessities of life as the government sees fit. Even more important, however, is the effect on him—the elimination of any feeling of responsibility for his own welfare and that of his family and neighbors. A man may not immediately, or ever, comprehend the harm thus done to his character. Indeed, this is one of the great evils of Welfarism—that it transforms the individual from a dignified, industrious, self-reliant *spiritual* being into a dependent animal creature without his knowing it. There is no avoiding this damage to character under the Welfare State. Welfare programs cannot help but promote the idea that the government *owes* the benefits it confers on the individual, and that the individual is entitled, by right, to receive them. Such programs are sold to the country precisely on the argument that government has an *obligation* to care for the needs of its citizens. Is it possible that the message will reach those who vote for the benefits, but not those who receive them? How different it is with private charity where both the giver and the receiver understand that charity is the product of the humanitarian impulses of the giver, not the due of the receiver.

Let us, then, not blunt the noble impulses of mankind by reducing charity to a mechanical operation of



the federal government. Let us, by all means, encourage, those who are fortunate and able to care for the needs of those who are unfortunate and disabled. But let us do this in a way that is conducive to the spiritual as well as the material well-being of our citizens—and in a way that will preserve their freedom. Let welfare be a private concern. Let it be promoted by individuals and families, by churches, private hospitals, religious service organizations, community charities and other institutions that have been established for this purpose. If the objection is raised that private institutions lack sufficient funds, let us remember that every penny the federal government does *not* appropriate for welfare is potentially available for private use—and without the overhead charge for processing the money through the federal bureaucracy. Indeed, high taxes, for which government Welfareism is so largely responsible, is the biggest obstacle to fund raising by private charities.

Finally, if we deem public intervention necessary, let the job be done by local and state authorities that are incapable of accumulating the vast political power that is so inimical to our liberties.

The Welfare State is *not* inevitable, as its proponents are so fond of telling us. There is nothing inherent in an industrialized economy, or in democratic processes of government that *must* produce de Tocqueville's "guardian society." Our future, like our past, will be what we make it. And we can shatter the col-

lectivists' designs on individual freedom if we will impress upon the men who conduct our affairs this one truth: that the material and spiritual sides of man are intertwined; that it is impossible for the State to assume responsibility for one without intruding on the essential nature of the other; that if we take from a man the personal responsibility for caring for his material needs, we take from him also the will and the opportunity to be free.

## Some Notes On Education

I agree with lobbyists for federal school aid that education is one of the great problems of our day. I am afraid, however, that their views and mine regarding the nature of the problem are many miles apart. They tend to see the problem in *quantitative* terms — not enough schools, not enough teachers, not enough equipment. I think it has to do with *quality*: How good are the schools we have? Their solution is to spend more money. Mine is to raise standards. Their recourse is to the federal government. Mine is to the local public school board, the private school, the individual citizen—as far away from the federal government as one can possibly go. And I suspect that if we knew which of these two views on education will eventually prevail, we would know also whether Western civilization is due to survive, or will pass away.

To put this somewhat differently, I believe that our ability to cope with the great crises that lie ahead will be enhanced in direct ratio as we recapture the lost art of learning, and will diminish in direct ratio as we give

responsibility for training our children's minds to the federal bureaucracy.

But let us put these differences aside for the moment and note four reasons why federal aid to education is objectionable even if we grant that the problem is primarily quantitative.

The first is that federal intervention in education is unconstitutional. It is the fashion these days to say that responsibility for education "traditionally" rests with the local community—as a prelude to proposing an exception to the tradition in the form of federal aid. This "tradition," let us remember, is also the *law*. It is sanctioned by the Constitution of the United States, for education is one of the powers reserved to the States by the Tenth Amendment. Therefore, any federal aid program, however desirable it might appear, must be regarded as illegal until such time as the Constitution is amended.

The second objection is that the alleged need for federal funds has never been convincingly demonstrated. It all depends, of course, on how the question is put. If you ask, Does State X need additional educational facilities? the answer may be yes. But if you ask, Does State X require additional facilities that are beyond the reach of its own financial means? the answer is invariably no. The White House Conference on Education in 1955 was, most of us will remember, an elaborate effort to demonstrate popular support for



federal aid. As expected, the "consensus" of the conference was that more federal aid was needed. However, the conferees reached another conclusion that was hardly noticed by the press. "No state represented," the Conference report stated, "has a demonstrated financial incapacity to build the schools they will need during the next five years." What is lacking, the report went on, is *not money*, but a "political determination powerful enough to overcome all the obstacles."

Through the succeeding five years, congressional committees have listened to hundreds of hours of testimony in favor of federal aid, but they have never heard that 1955 finding successfully contradicted. What the White House conferees were saying in 1955, and what proponents of federal aid to education have been saying ever since, is that because a few States have not seen fit to take care of their school needs, it is incumbent upon the federal government to take up the slack. My view is that if State X possesses the wealth to educate its children adequately, but has failed to utilize its wealth for that purpose, it is up to the people of State X to take remedial action through their local and state governments. The federal government has neither the right nor the duty to intervene.

Let us, moreover, keep the problem in proper perspective. The national school system is *not* in distress. Shortly before the Senate debate this year on increased federal aid, I asked Mr. Arthur Flemming the Sec-

retary of Health, Education and Welfare, how many of the Nation's school districts were in actual trouble—how many, that is, had reached their bonded limit. His answer was approximately 230. Now there are roughly 42,000 school districts in America. Thus, proponents of federal aid are talking about a problem that affects only one-half of one per cent of our school districts! I cannot believe that the state governments responsible for those areas are incapable of making up whatever deficiencies exist. It so happens that the same deficiency figure—one-half of one per cent—applies to my own state of Arizona. And Arizona proudly turned down federal funds under the 1958 National Defense Education Act on the grounds that Arizonans, themselves, were quite capable of closing the gap.

This may be the place, while we are speaking of need, to lay to rest the notion that the American people have been niggardly in support of their schools. Since the end of World War II, Americans have built 550,000 classrooms at a cost of approximately \$19 billion—almost all of which was raised at the local level. This new construction provided space for over 15 million pupils during a period when the school population increased by only 10 million pupils. It is evident, therefore, that increased school expenditures have more than kept pace with increased school needs.

Here are some of the figures. In the school year 1949-50 there were 25 million students enrolled in various education institutions in the United States. In the

year 1959-60 there were 34.7 million—an increase of 38%. During the same period revenues for school use, raised largely at the local level, increased from 5.4 billion to 12.1 billion—an increase of 124%. When school expenditures increase three and a half times as fast as the school population, I do not think that the adequacy of America's "traditional" approach to education is open to serious question.

The third objection to federal aid is that it promotes the idea that federal school money is "free" money, and thus gives the people a distorted picture of the cost of education. I was distressed to find that five out of six high school and junior college students recently interviewed in Phoenix said they favored federal aid because it would mean more money for local schools and ease the financial burden on Arizona taxpayers.

The truth, of course, is that the federal government has no funds except those it extracts from the taxpayers who reside in the various States. The money that the federal government pays to State X for education has been taken from the citizens of State X in federal taxes and comes back to them, minus the Washington brokerage fee. The less wealthy States, to be sure, receive slightly more than they give, just as the more wealthy States receive somewhat less. But the differences are negligible. For the most part, federal aid simply substitutes the tax-collecting facilities of the federal government for those of local governments. This fact cannot be stressed often enough, for stripped

of the idea that federal money is free money, federal aid to education is exposed as an act of naked compulsion—a decision by the federal government to force the people of the States to spend more money than they choose to spend for this purpose voluntarily.

The fourth objection is that federal aid to education inevitably means federal control of education. For many years, advocates of federal aid denied that aid implies control, but in the light of the National Defense Education Act of 1958 they cannot very well maintain their position. Federal aid under the act is conditioned upon compliance by the States and local educational institutions with various standards and specifications laid down by the Department of Health, Education and Welfare. *There are no less than twelve direct controls of this kind in the act.* Moreover, the acknowledged purpose of the act is to persuade local educational institutions to put greater emphasis on the physical sciences and other subjects directly related to national defense. I do not question the desirability of encouraging increased proficiency in the physical sciences, but when the federal government does the encouraging through the withholding and granting of funds, I do not see how it can be denied that the federal government is helping to determine the *content* of education; and influencing content is the last, not the first, stage of control.

Nobody should be surprised that aid has led to controls. It could, and *should not* be otherwise. Congress



cannot be expected to appropriate the people's money and make no provision for how it will be spent. Congress would be shirking its responsibilities to the taxpayer if it distributed his money willy-nilly, without regard to its use. Should Congress permit the use of federal funds to subsidize Communist schools and thus promote the cause of our enemies? Of course not. But a prohibition of such use is clearly an exercise of federal control. Congress will always feel impelled to establish conditions under which people's money is to be spent, and while some controls may be wise we are not guaranteed against unwise controls any more than we are guaranteed against unwise Congressmen. The mistake is not the controls but appropriating the money that requires controls.

So much for the evils and dangers of federal aid. Note that I have not denied that many of our children are being inadequately educated, or that the problem is nation-wide. I have only denied that it is the kind of problem that requires a solution at the national level. To the extent the problem is quantitative—to the extent we have too few classrooms and pay some of our teachers too little money—the shortages can be taken care of by the localities concerned. But more: to the extent the problem is qualitative—which in my opinion it mainly is—it is manifestly one that lends itself to correction at the local level. There is no place where deficiencies in the *content* of an educational system can be better understood than locally where a com-

munity has the opportunity to view and judge the product of its own school system.

In the main, the trouble with American education is that we have put into practice the educational philosophy expounded by John Dewey and his disciples. In varying degrees we have adopted what has been called "progressive education."

Subscribing to the egalitarian notion that every child must have the same education, we have neglected to provide an educational system which will tax the talents and stir the ambitions of our best students and which will thus insure us the kind of leaders we will need in the future.

In our desire to make sure that our children learn to "adjust" to their environment, we have given them insufficient opportunity to acquire the knowledge that will enable them to *master* their environment.

In our attempt to make education "fun," we have neglected the academic disciplines that develop sound minds and are conducive to sound characters.

Responding to the Deweyite attack on methods of teaching, we have encouraged the teaching profession to be more concerned with *how* a subject is taught than with *what* is taught. Most important of all: in our anxiety to "improve" the world and insure "progress" we have permitted our schools to become laboratories

for social and economic change according to the predictions of the professional educators. We have forgotten that the proper function of the school is to transmit the cultural heritage of one generation to the next generation, and to so train the minds of the new generation as to make them capable of absorbing ancient learning and applying it to the problem of its own day.

The fundamental explanation of this distortion of values is that we have forgotten that purpose of education. Or better: we have forgotten for *whom* education is intended. The function of our schools is not to educate, or elevate, *society*; but rather to educate *individuals* and to equip them with the knowledge that will enable them to take care of society's needs. We have forgotten that a society progresses only to the extent that it produces leaders that are capable of guiding and inspiring progress. And we cannot develop such leaders unless our standards of education are geared to excellence instead of mediocrity. We must give full rein to individual talents, and we must encourage our schools to enforce the academic disciplines—to put preponderant emphasis on English, mathematics, history, literature, foreign languages and the natural sciences. We should look upon our schools—not as a place to train the “whole character” of the child—a responsibility that properly belongs to his family and church—but to train his *mind*.

Our country's past progress has been the result, not of the mass mind applying average intelligence to the

problems of the day, but of the brilliance and dedication of wise individuals who applied their wisdom to advance the freedom and the material well-being of all of our people. And so if we would improve education in America—and advance the fortunes of freedom—we will not rush to the federal treasury with requests for money. We will focus attention on our local community, and make sure that our schools, private and public, are performing the job the Nation has the right to expect of them.