

Title: Nature of the American State:

By: James Bryce in *The American Commonwealth* (1888)

From the study of the national government, we may go on to examine that of the several states which make up the Union. This is the part of the American political system which has received least attention both from foreign and from native writers. Finding in the federal president, cabinet, and Congress a government superficially resembling those of their own countries, and seeing the federal authority alone active in international relations, Europeans have forgotten and practically ignored the state governments to which their own experience supplies few parallels, and on whose workings the intelligence published on their side of the ocean seldom throws light. Even the European traveller who makes the six or seven days' run across the American continent, from New York or Philadelphia via Chicago to San Francisco, though he passes in his journey of three thousand miles over the territories of eleven self-governing commonwealths, hardly notices the fact. He uses one coinage and one post office; he is stopped by no customhouses; he sees no officials in a state livery; he thinks no more of the difference of jurisdictions than the passenger from London to Liverpool does of the counties traversed by the line of the Northwestern Railway.

American publicists, on the other hand, have been too much absorbed in the study of the federal system to bestow much thought on the state governments. The latter seem to them the most simple and obvious things in the world, while the former, which has been the battleground of their political parties for a century, excites the keenest interest, and is indeed regarded as a sort of mystery, on which all the resources of their metaphysical subtlety and legal knowledge may well be expended. Thus while the dogmas of state sovereignty and states' rights, made practical by the great struggle over slavery, were discussed with extraordinary zeal and acumen by three generations of men, the character, power, and working of the states as separate self-governing bodies have received little attention or illustration. Yet they are full of interest; and he who would understand the changes that have passed on the American democracy will find far more instruction in a study of the state governments than of the federal Constitution.

The American state is a peculiar organism, unlike anything in modern Europe, or in the ancient world. Let me attempt to sketch the American states as separate political entities, forgetting for the moment that they are also parts of a federation.

The admission, under a statute of 1910, of two new states brought the number of states in the American Union up to forty-eight, varying in size from Texas, with an area of 265,780 square miles, to Rhode Island, with an area of 1,250 square miles; and in population from New York, with over 9,000,000 inhabitants, to Nevada, with 81,000. That is to say, the largest state is much larger than either France or the Germanic Empire; the most populous much more populous than Sweden, or Portugal, or Denmark, while the smallest is smaller than Warwickshire or Corsica, and the least populous less populous than the city of York, or the town of Reading in Berks. Considering not only these differences of size, but the differences in the density of population (which in Nevada is .7 and in Wyoming 1.5 to the square mile, while in Rhode Island it is 508.5 and in Massachusetts 418.8 to the square mile); in its character (in South Carolina the blacks are 835,843 against 679,161 whites, in Mississippi 1,009,487 against 786,111 whites); in its birthplace (in North Carolina the foreign-born persons are less than 1/400 of the population, in California, nearly one-third, in North Dakota more than one-half); in the occupations of the

people, in the amount of accumulated wealth, in the proportion of educated persons to the rest of the community—it is plain that immense differences might be looked for between the aspects of politics and conduct of government in one state and in another.

Be it also remembered that the older colonies had different historical origins. Virginia and North Carolina were unlike Massachusetts and Connecticut; New York, Pennsylvania, and Maryland different from both; while in recent times the stream of European immigration has filled some states with Irishmen, others with Germans or Italians, others with Scandinavians or Poles, and has left most of the Southern states wholly untouched.^[11]

Nevertheless, the form of government is in its main outlines, and to a large extent even in its actual working, the same in all these forty-eight republics, and the differences, instructive as they are, relate to the points of secondary consequence.

Let us pass on to consider the circumstances which work for uniformity among the states, and work more powerfully as time goes on.^[12]

He who looks at a map of the Union will be struck by the fact that so many of the boundary lines of the states are straight lines. Those lines tell the same tale as the geometrical plans of cities like St. Petersburg or Washington, where every street runs at the same angle to every other. The states are not areas set off by nature. Their boundaries are for the most part not natural boundaries fixed by mountain ranges, nor even historical boundaries due to a series of events, but boundaries, purely artificial, determined by an authority which carved the national territory into strips of convenient size, as a building company lays out its suburban lots. Of the states subsequent to the original thirteen, California is the only one with a genuine natural frontier, finding it in the chain of the Sierra Nevada on the east and the Pacific Ocean on the west. No one of these later states can be regarded as a naturally developed political organism. They are trees planted by the forester, not self-sown with the help of the seed-scattering wind. This absence of physical lines of demarcation has tended and must tend to prevent the growth of local distinctions. Nature herself seems to have designed the Mississippi basin, as she has designed the unbroken levels of Russia, to be the dwelling place of one people.

Each state makes its own constitution; that is, the people agree on their form of government for themselves, with no interference from the other states or from the Union. This form is subject to one condition only: it must be republican. But in each state the people who make the constitution have lately come from other states, where they have lived under and worked constitutions which are to their eyes the natural and almost necessary model for their new state to follow; and in the absence of an inventive spirit among the citizens, it was the obvious course for the newer states to copy the organizations of the older states, especially as these agreed with certain familiar features of the federal Constitution. Hence the outlines, and even the phrases of the elder constitutions reappear in those of the more recently formed states. The precedents set by Virginia, for instance, had much influence on Tennessee, Alabama, Mississippi, and Florida, when they were engaged in making or amending their constitutions during the early part of this century.

Nowhere is population in such constant movement as in America. In some states more than one-fourth of the inhabitants are foreign-born. Many of the townfolk, not a few even of the farmers, have been till lately citizens of some other state, and will, perhaps, soon move on farther west.

The Western states are like a chain of lakes through which there flows a stream which mingles the waters of the higher with those of the lower. In such a constant flux of population local peculiarities are not readily developed, or if they have grown up when the district was still isolated, they disappear as the country becomes filled. Each state takes from its neighbours and gives to its neighbours, so that the process of assimilation is always going on over the whole wide area.

Still more important is the influence of railway communication, of newspapers, of the telegraph. A Greek city like Samos or Mitylene, holding her own island, preserved a distinctive character in spite of commercial intercourse and the sway of Athens. A Swiss canton like Uri or Appenzell, entrenched behind its mountain ramparts, remains, even now under the strengthened central government of the Swiss nation, unlike its neighbours of the lower country. But an American state traversed by great trunk lines of railway, and depending on the markets of the Atlantic cities and of Europe for the sale of its grain, cattle, bacon, and minerals, is attached by a hundred always tightening ties to other states, and touched by their weal or woe as nearly as by what befalls within its own limits. The leading newspapers are read over a vast area. The inhabitants of each state know every morning the events of yesterday over the whole Union.

Finally the political parties are the same in all the states. The tenets (if any) of each party are (with some slight exceptions) the same everywhere, their methods the same, their leaders the same, although of course a prominent man enjoys especial influence in his own state. Hence, state politics are largely swayed by forces and motives external to the particular state, and common to the whole country, or to great sections of it; and the growth of local parties, the emergence of local issues and development of local political schemes, are correspondingly restrained.

These considerations explain why the states, notwithstanding the original diversities between some of them, and the wide scope for political divergence which they all enjoy under the federal Constitution, are so much less dissimilar and less peculiar than might have been expected. European statesmen have of late years been accustomed to think of federalism and local autonomy as convenient methods either for recognizing and giving free scope to the sentiment of nationality which may exist in any part of an empire, or for meeting the need for local institutions and distinct legislation which may arise from differences between such a part and the rest of the empire.^[3]

But the final causes, so to speak, of the recognition of the states of the American Union as autonomous commonwealths, have been different. Their self-government is not the consequence of differences which can be made harmless to the whole body politic only by being allowed free course. It has been due primarily to the historical fact that they existed as commonwealths before the Union came into being; secondarily, to the belief that localized government is the best guarantee for civic freedom, and to a sense of the difficulty of administering a vast territory and population from one centre and by one government.

I return to indicate the points in which the legal independence and right of self-government of the several states appears. Each has its own:

- Constitution (whereof more anon)

- Executive, consisting of a governor, and various other officials
- Legislature of two houses
- System of local government in counties, cities, townships, and school districts
- System of state and local taxation
- Debts, which it may (and sometimes does) repudiate at its own pleasure
- Body of private law, including the whole law of real and personal property, of contracts, of torts, and of family relations
- System of procedure, civil and criminal
- Courts, from which no appeal lies (except in cases touching federal legislation or the federal Constitution) to any federal court
- Citizenship, which may admit persons (e.g., recent immigrants) to certain privileges of citizens at times, or on conditions, wholly different from those prescribed by other states

Three points deserve to be noted as illustrating what these attributes include.

- I. A man gains active citizenship of the United States (i.e., a share in the government of the Union) only by becoming a citizen of some particular state. Being such, he is forthwith entitled to the national franchise. That is to say, voting power in the state carries voting power in federal elections, and however lax a state may be in its grant of such power, e.g., to foreigners just landed or to persons convicted of crime, these state voters will have the right of voting in congressional and presidential elections. The only restriction on the states in this matter is that of the Fourteenth and Fifteenth Constitutional Amendments, which have already been discussed. They were intended to secure equal treatment to the Negroes, and incidentally they declare the protection given to all citizens of the United States.
- II. The power of a state over all communities within its limits is absolute. It may grant or refuse local government as it pleases. The population of the city of Providence is nearly one-half of that of the state of Rhode Island, and that of New York City about one-half of that of the state of New York. But the state might in either case extinguish the municipality, and govern the city by a single state commissioner appointed for the purpose, or leave it without any government whatever. The city would have no right of complaint to the federal president or Congress against such a measure.
- III. A state commands the allegiance of its citizens, and may punish them for treason against it. The power has rarely been exercised, but its undoubted legal existence had much to do with inducing the citizens of the Southern states to follow their governments into secession in 1861. They conceived themselves to owe allegiance to the state as well as to the Union, and when it became impossible to preserve both, because the state had declared its secession from the Union, they might hold the earlier and nearer authority to be paramount. Allegiance to the state must now, since

the war, be taken to be subordinate to allegiance to the Union. But allegiance to the state still exists; treason against the state is still possible. One cannot think of treason against Warwickshire or the department of the Rhône.

These are illustrations of the doctrine which Europeans often fail to grasp, that the American states were originally in a certain sense, and still for certain purposes remain, sovereign states. Each of the original thirteen became sovereign (so far as its domestic affairs were concerned, though not as respects international relations) when it revolted from the mother country in 1776. By entering the Confederation of 1781–88 it parted with one or two of the attributes of sovereignty; by accepting the federal Constitution in 1788–91 it subjected itself for certain specified purposes to a central government, but claimed to retain its sovereignty for all other purposes. That is to say, the authority of a state is an inherent, not a delegated, authority. It has all the powers which any independent government can have, except such as it can be affirmatively shown to have stripped itself of, while the federal government has only such powers as it can be affirmatively shown to have received. To use the legal expression, the presumption is always for a state, and the burden of proof lies upon anyone who denies its authority in a particular matter.

What, then, do the rights of a state now include? Every right or power of a government except:

- The right of secession (not abrogated in terms, but admitted since the war to be no longer claimable. It is expressly negated in the recent constitutions of several Southern states.);
- Powers which the Constitution withholds from the states (including that of intercourse with foreign governments);
- Powers which the Constitution expressly confers on the federal government.

A reference to the preceding list of what each state may create in the way of distinct institutions will show that these rights practically cover nearly all the ordinary relations of citizens to one another and to their government, nearly all the questions which have been most agitated in England and France of recent years. An American may, through a long life, never be reminded of the federal government, except when he votes at presidential and congressional elections, buys a package of tobacco bearing the government stamp, lodges a complaint against the post office, and opens his trunks for a customhouse officer on the pier at New York when he returns from a tour in Europe. His direct taxes are paid to officials acting under state laws. The state, or a local authority constituted by state statutes, registers his birth, appoints his guardian, pays for his schooling, gives him a share in the estate of his father deceased, licenses him when he enters a trade (if it be one needing a licence), marries him, divorces him, entertains civil actions against him, fines him for overspeeding his automobile, declares him a bankrupt, hangs him for murder. The police that guard his house, the local boards which look after the poor, control highways, impose water rates, manage schools—all these derive their legal powers from his state alone. Looking at this immense compass of state functions, Jefferson would seem to have been not far wrong when he said that the federal government was nothing more than the American department of foreign affairs. But although the national government touches the direct interests of the citizen less than does the state government, it touches his sentiment more. Hence the strength of his attachment to the former and his interest in it must not be measured by the frequency of his dealings with it. In the partitionment of governmental functions between nation

and state, the state gets the most but the nation the highest, so the balance between the two is preserved.

Thus every American citizen lives in a duality of which Europeans have no experience. He lives under two governments and two sets of laws; he is animated by two patriotisms and owes two allegiances. That these should both be strong and rarely be in conflict is most fortunate. It is the result of skilful adjustment and long habit, of the fact that those whose votes control the two sets of governments are the same persons, but above all of that harmony of each set of institutions with the other set, a harmony due to the identity of the principles whereon both are founded, which makes each appear necessary to the stability of the other, the states to the nation as its basis, the national government to the states as their protector.

Questions: 1. How does James Bryce, writing in 1888, describe the state of federalism in the United States? What evidence suggests that the states were still the dominant actors? What evidence was there of growing national power?

^[1] Professor's note: Consider how the picture of states impacted by immigration would appear quite different to the modern day James Bryce.

^[2] The student reader should note that in the following passages Bryce makes a list of factors which lead to uniformity among the different states.

^[3] Bryce argues here and below that, while federalism elsewhere is a way of recognizing distinct differences in culture, in America federalism is more of a historical phenomenon reflecting that the American union began with the uniting of the thirteen autonomous states. As a consequence, despite the uniformity that exists among all Americans, the states retain their character as autonomous sovereigns.