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Frank Meyer: The Fusionist as Federalist

Jonathan H. Adler

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Frank S. Meyer played a central role in defining the post-war American conservative movement by defining and defending an ideological “fusion” of traditional conservative principles and libertarian political beliefs. While concerned with maintenance of an objective moral order and the pursuit of virtue in the individual, Meyer argued that the freedom of the person is the central and primary end of political society. The American system of government, with its horizontal and vertical separations of power, came closer than any political system in history to providing the protection for individual liberties necessary for the effective pursuit of virtue. Federalism was particularly important as it could forestall the centralization of government power. Virtue, to have any meaning, had to be chosen freely, but providing for individual freedom provided no guarantee that individuals would pursue virtuous ends. By the same token, federalism and the separation of powers did not guarantee that state governments would adopt wise or moral policies, as the history of the civil rights struggle attests. Nonetheless, Meyer believed federalism was essential if individual freedom was to endure.

Frank Straus Meyer (1909-1972) was a central figure in the post-World-War II American conservative movement. A prominent writer, thinker, and political activist, Meyer was among those conservative intellectuals who defined the American right in the decades following the Second World War. Through essays, books, and commentary—as well as through his involvement in politics and the shaping of political organizations—Meyer helped shape a growing political and intellectual movement.

Meyer’s intellectual efforts focused on forging a consensus on what it meant to be an American conservative. As part of this endeavor, he sought to delineate the proper scope of government power in accordance with conservative principles. Although his work did not offer detailed nuances on the ideal constitutional design or balance of power among the various levels and branches of American government, his work showed a broad appreciation for the importance of federalism in constraining the growth of government. Meyer believed that the separation and distribution of government power, along with a firm recognition of residual state sovereignty, serves to protect individual liberty, which is itself essential to the pursuit of virtue. Although he never articulated a precise formulation of federalism, there is a parallel between Meyer’s appreciation of the importance of freedom for human flourishing and the importance of federalism for safeguarding individual freedom.

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FRANK S. MEYER

Frank Meyer was not always a conservative. Through the 1940s, he was an active member of the Communist party in both England and the United States. After World War II, he began to break from the party and embarked on a gradual pilgrimage that led him to the right. Given Meyer's individualist brand of conservatism, it is appropriate that libertarian-oriented thinkers played a key role in his move from left to right. Meyer wrote that F. A. Hayek's *The Road to Serfdom* "played a decisive part in helping me free myself from Marxist ideology."¹ Reading the book triggered an "agonizing reappraisal" of his Marxist beliefs.² Meyer's ideological transformation was also furthered by Richard Weaver, to whom Meyer would later dedicate one edition of *What Is Conservatism?* Meyer was heavily influenced by Weaver's *Ideas Have Consequences*, particularly Weaver's arguments for transcendent, universal truth and his stalwart defense of private property.³ Indeed, this combination of ideas—objective moral truth and individual freedom grounded in private property—would form the foundation of Meyer's later thought.⁴

By the early 1950s, Meyer was a regular contributor to conservative periodicals, including *The Freeman* and *American Mercury*. When William F. Buckley launched *National Review* in 1955, Meyer was among the initial contributors.⁵ Later Meyer would become a senior editor, oversee the magazine's book section, and contribute a regular column "Principles and Heresies." For his first book, *The Moulding of Communists: The Training of the Communist Cadre*, Meyer recounted his experiences as a Communist party regular and detailed the party's methods and inner workings. Later books, including *In Defense of Freedom*, *The Conservative Mainstream*, and *What Is Conservatism?* focused on defining the post-War American conservative consensus. But Meyer did not leave his political activities behind. He was intimately involved in both the creation of the American Conservative Union as well as the Conservative party of New York.

While at *National Review*, Meyer was arguably the leading conservative proponent of a conservative "fusion" of libertarianism and traditionalism. He was often fiercely critical of other conservatives, particularly those who resisted grounding their ideology on abstract principle or appeared sympathetic to collectivism. Meyer nonetheless believed that there was a genuine consensus within the post-war conservative movement. As formulated by Meyer, the "American conservative position" contained several

¹Frank S. Meyer, "Champion of Freedom," *National Review*, 7 May 1960, reprinted in *The Conservative Mainstream* (New Rochelle, NY: Arlington House, 1969), p. 76. See also Kevin J. Smant, *Principles and Heresies: Frank S. Meyer and the Shaping of the American Conservative Movement* (Wilmington, DE: ISI Books, 2002), pp. 21-23. Smant argues that Meyer's thought had already begun to evolve by the time he read *The Road to Serfdom* and that the book simply "gave [Meyer's] impulses concrete form." *Ibid.*, 22.

²William C. Dennis, "Foreword," *In Defense of Freedom and Related Essays* (Indianapolis: Liberty Fund, 1996), p. xii.

³Smant, *Principles and Heresies*, pp. 22-23.

⁴*Ibid.*, 23.

⁵This history is recounted in Smant, *Principles and Heresies*, pp. 35-48.

essential elements: (1) belief in an objective moral order; (2) political individualism in opposition to collectivist ideologies; (3) anti-utopianism; (4) strict limitation of government power; (5) support for the U.S. Constitution; and (6) anti-Communism.⁶ While different conservative thinkers placed different emphases in different places, Meyer believed these elements constituted the core of post-war conservative principles in America.

Meyer's political beliefs were a blend of political libertarianism and traditionalist conservatism—what would later be dubbed “fusionism.” Meyer advocated a minimal state, but also stressed the importance of virtue in one's individual life. His most important book, *In Defense of Freedom: A Conservative Credo*, was written “to vindicate the freedom of the person as the central and primary end of political society.”⁷ Meyer argued that “A social order is a good social order to the degree that men live as free persons under conditions in which virtue can be freely realized, advanced, and perpetuated.”⁸ A good society requires *both* a political order in which men may freely choose, as well as a social order that emphasizes tradition, reason, and the objective moral order.⁹

Meyer's articulation of conservative principles was not universally accepted. Many prominent conservative thinkers were critical of *In Defense of Freedom* as being too libertarian and individualistic.¹⁰ Nonetheless, Meyer touched a chord within late-1950s conservatism. By the mid-1960s, it was generally accepted that Meyer's “fusion” had become “the de facto consensus” within the conservative movement.¹¹

“FUSIONISM”

Unlike many conservatives before and since, Meyer saw no contradiction between an individualistic political philosophy grounded in reason¹² and a more traditional conservative emphasis on objective morality, social order, and the pursuit of virtue. Labeled “fusionism” by Brent Bozell,¹³ Meyer's philosophy simultaneously accepts “The existence of an objective moral and spiritual order, which places as man's end the pursuit of virtue, *and* the freedom of the individual person as a decisive necessity for a good political order.”¹⁴

⁶Meyer, “Conservatism and Republican Candidates,” *National Review*, 12 December 1967, reprinted in *The Conservative Mainstream*, pp. 14-16. Meyer provided a slightly different, but substantively similar, formulation of the conservative consensus in his concluding essay to *What Is Conservatism?* See Meyer, “Summing Up,” *What Is Conservatism?*, ed. Frank Meyer (New York: Holt, 1964), pp. 229-232.

⁷Meyer, “In Defense of Freedom: A Conservative Credo,” *In Defense of Freedom and Related Essays*, p. 33.

⁸*Ibid.*, 147-148.

⁹*Ibid.*, 80.

¹⁰See George H. Nash, *The Conservative Intellectual Movement in America: Since 1945* (New York: Basic Books, 1976), p. 175-176.

¹¹*Ibid.*, 178. Of course, it is arguable whether Meyer's formulation remains the consensus within the conservative movement, de facto or otherwise.

¹²Meyer would only add the qualification that it was “reason operating within tradition.” Meyer, “Freedom Tradition, Conservatism,” p. 19.

¹³Dennis, “Foreword,” p. xii.

¹⁴Meyer, “Why Freedom,” *National Review*, 25 September 1962, reprinted in *In Defense of Freedom and Related Essays*, p. 155.

Meyer saw freedom as the central political value, as “freedom is essential to the being of man.”¹⁵ For Meyer, man is “a free being who lives between good and evil, beauty and ugliness, truth and error, and fulfills his destiny in the choices he makes.”¹⁶ Allowing for such individual choice is the primary purpose of political institutions. Anything less would render individuals something less than human. The underlying purpose of a free society is to facilitate the individual pursuit of virtue; “freedom, though it is the end of political theory and political action, is not the end of men’s existence.”¹⁷ An individualist at heart, Meyer argued that “*all* value resides in the individual,” and contrary to some “new conservatives,” Meyer argued that “*all* social institutions derive their value and, in fact, their very being from individuals and are justified only to the extent that they serve the needs of individuals.”¹⁸ To hold otherwise was to embrace “the collectivist spirit of the age,”¹⁹ and Meyer had no difficulty labeling other conservatives, such as Russell Kirk, collectivists. On this basis, some libertarians believed Meyer was “squarely in the libertarian camp.”²⁰

Unlike some who adopted a similarly minimal view of the state, Meyer embraced the traditional conservative concern for the state of the human soul. Meyer accepted that “the achievement of virtue is a just concern.”²¹ He saw it as the “most important of problems.” Nonetheless, Meyer insisted that the pursuit of virtue was “not a *political* problem,” and certainly “not the concern of the state.”²² For Meyer, “in the *moral* realm freedom is only a means whereby men can pursue their proper end, which is virtue,” while at the same time “in the *political* realm freedom is the primary end.”²³

Contrary to some traditionalist conservatives, Meyer did not define freedom in terms of the pursuit of virtue or a particular conception of the good. To the contrary, he wrote “freedom cannot be defined in terms of the ends that a free person ought to choose, . . . freedom, which is the power to choose, cannot be identified with what is chosen.”²⁴ Virtue, to have any meaning, has to be chosen freely, but providing for individual freedom offers no guarantee that individuals will pursue virtue. To the contrary, Meyer frankly acknowledged that protecting freedom to do right necessarily requires protecting the freedom to do grievous wrong;

¹⁵Meyer, “In Defense of Freedom,” p. 176.

¹⁶Ibid., 47.

¹⁷Ibid., 127.

¹⁸Meyer, “Collectivism Reborn,” *Freeman*, July 1955, reprinted in *In Defense of Freedom and Related Essays*, p. 8.

¹⁹Ibid., 13.

²⁰Murray N. Rothbard, “Frank S. Meyer: The Fusionist as Libertarian *Manqu*,” *Freedom and Virtue: The Conservative/Libertarian Debate*, ed. George W. Carey (Wilmington, DE: ISI, 1998), p. 137. Despite this apparent embrace of Meyer, Rothbard, like some other libertarians, became severely critical of Meyer and other libertarian-oriented conservatives for their support of aggressive anti-Communist measures during the Cold War, particularly in the context of foreign policy.

²¹Meyer, “In Defense of Freedom,” p. 127.

²²Ibid.

²³Meyer, “Freedom, Tradition, Conservatism,” *In Defense of Freedom and Related Essays*, p. 24.

²⁴Meyer, “In Defense of Freedom,” p. 69.

freedom can exist at no lesser price than the danger of damnation; and if freedom is indeed the essence of man's being, that which distinguishes him from the beasts, he must be free to choose his worst as well as his best end. Unless he can choose his worst, he cannot *choose* his best.²⁵

Virtue is important, indeed it is essential for any good society, but it is not a concern of political institutions, nor can it be imposed by the state from above.

The only 'virtue' that can be enforced would be a virtue that consisted in conforming one's behavior to external dictation. Truly to be able to choose good and truth requires a freedom which, unfortunately, also makes it possible for men to choose evil and error. In a word, good and truth cannot be enforced, because by their essential nature they cannot be made real in men unless they are freely chosen.²⁶

If freedom were not an essential condition for the exercise of virtue, "then moral and spiritual perfection could be taught by rote and enforced by discipline—and every man of good will would be a saint."²⁷ Freedom is a necessary condition for the attainment of virtue, however, and to constrain freedom is to constrain the pursuit of virtue; "The political enforcement of the good is only possible if the freedom which men must have to seek the good is destroyed."²⁸

Virtue was important to Meyer because he believed in an objective moral order. Yet virtue was also of practical importance. A society in which individuals were largely free to do as they please, but lacked virtue, would be unlikely to sustain itself for long. As Meyer saw things, "the only possible basis of respect for the integrity of the individual person and for the overriding value of his freedom is belief in an organic moral order. Without such a belief, no doctrine of political and economic liberty can stand."²⁹ A free society in which individuals no longer sought virtue would not last. For this reason, it is essential to have institutions—albeit non-governmental institutions—to promote the virtuous life.

The Fusionist View of Government

In designing a suitable political order, Meyer believed "the key is the limitation of the power of the state—that is, of the power of some men to impose their beliefs on other men."³⁰ The aim of politics is to provide for "a state capable of maintaining order while at the same time guaranteeing to each person in its area of government the maximum liberty possible to him short of his interference with the liberty of other persons."³¹ For Meyer,

²⁵Ibid., 67.

²⁶Ibid., 121.

²⁷Ibid., 71.

²⁸Ibid., 78.

²⁹Meyer, "Freedom, Tradition, Conservatism," *What Is Conservatism?*, reprinted in *In Defense of Freedom and Related Essays*, p. 23.

³⁰Meyer, "Conservatism and Crisis: A Reply to Father Parry," *Modern Age*, Winter 1962-1963, reprinted in *In Defense of Freedom and Related Essays*, p. 180.

³¹Meyer, "In Defense of Freedom," p. 98.

this was a prescription for a minimalist state. Meyer believed the state only need perform three essential functions: (1) protect citizens from violent or fraudulent assaults (the police power), (2) adjudicate disputes in which the rights of individuals conflict (the judicial power), and (3) protect citizens from external threats (the military power).³² To exercise these powers effectively requires a state with “a monopoly of legal physical force.”³³ Yet such a monopoly is dangerous. A state with a monopoly on the legitimate initiation of force has substantial power to suppress freedom. Therefore, Meyer believed that confining a state to these three essential functions is necessary even if it seems that additional state responsibilities could enhance social welfare: “Any activity not absolutely vital to the operation of the state in its functional capacity can only add further power to what is always a dangerous, if necessary, measure of power.”³⁴ Unlike some nineteenth-century classical liberals, upon whose thought Meyer explicitly drew, Meyer firmly rejected any utilitarian formulation of the proper role of government and denied any such calculus could justify the state’s adoption of additional responsibilities.³⁵

Meyer insisted that political institutions be structured so as to check the natural tendency of state power to increase. Like many conservatives, he recognized the state’s natural tendency to expand at the expense of individual liberty: “There is in power an impulsion to more power, which can only be limited by countermeasures.”³⁶ To address this concern, Meyer endorsed the application of “practical political thinking and action” to design and maintain a political order with a “just balance, which limits government to its legitimate functions while allowing it strength enough to carry out those functions effectively.”³⁷ This requires the division and separation of government power.

Since power is the instrumentality of control by men and groups of men over other men and since in this imperfect world, in the end, the only check upon power is power, the division of power (both within the political sphere and between the political sphere and other spheres) and unceasing vigilance to keep it divided are the essential safeguards of freedom.³⁸

On these grounds, Meyer staunchly defended federalism and the horizontal separation of powers within the federal government.

To entrust the state with the power of enforcing virtue would be to empower individuals to enforce their particular vision of virtue. “If the state is endowed

³²Ibid., 99-100.

³³Ibid., 100.

³⁴Ibid.

³⁵In an essay largely defending the work of John Stuart Mill, Meyer wrote, “I am myself prepared to defend a position more absolute than Mill’s, because I assert the right of individual freedom not on the grounds of utility but on the grounds of the very nature of man and the nature of the drama of his existence.” Meyer, “In Defense of John Stuart Mill,” *In Defense of Freedom*, p. 168.

³⁶Meyer, “In Defense of Freedom,” p. 101.

³⁷Ibid.

³⁸Meyer, “Collectivism Rebaptized,” p. 8.

with the power to enforce virtue, the men who hold that power will enforce their own concepts as virtuous.³⁹ Yet there would be no guarantee that truly virtuous individuals would long hold the reigns of power. Indeed, there would be ample reason to suspect otherwise. To hope that those in power would be prudent and virtuous themselves is “a slender reed on which to base the defense of freedom integrally necessary to a virtuous society.”⁴⁰

In a similar vein, Meyer opposed government efforts to restrict speech, even speech that advocates vicious views, as he recognized the inherent danger of giving the state the power to act as censor. A demagogue may perpetuate error, but without the power of the state, he or she cannot suppress truth. Meyer was not so naive as to believe that truth would always triumph in the marketplace of ideas. But, he averred, “given a society free of the power of a totalizing state, truth will survive alongside all the errors and will outlive each of them.”⁴¹

In questions of economics, Meyer was ardently *laissez faire*, “the entire sphere of economic activity must remain free of political control.”⁴² Meyer rejected the idea that economic freedom was separable from political freedom; rather the former was an aspect of the latter.⁴³ To grant the government power to regulate in the economic sphere is to grant it the power to suppress human freedom in many dimensions. For Meyer, “an economic system cannot itself be a source of virtue; it can only either inhibit the possibility of virtue by suppressing the freedom of men or indirectly conduce to virtue by helping to make men free.”⁴⁴ The ultimate question in identifying the extent of government intervention in the economy is “not whether an economic system ‘works,’ but, working, what end it subserves.”⁴⁵

Unlike some conservative thinkers, Meyer was not a “democrat.” That is, he believed freedom consisted in having the ability to make choices and control one’s own life, but not necessarily the ability to participate in the political process. As he wrote in 1962, “Political freedom can be defined as freedom from coercion in life, limb, liberty, or property by force or fraud; it has nothing to do with the ideas, the persuasions, the customs which go into forming every human person.”⁴⁶ Putting this in starker terms, Meyer wrote: “Political freedom emphatically has nothing to do with who governs or who chooses the governors, but only with the strict limitation of the powers of the governors, whoever they may be.”⁴⁷ Democracy and representative government may serve to limit government power, and

³⁹Meyer, “Why Freedom,” p. 158.

⁴⁰Ibid.

⁴¹Meyer, “In Defense of Freedom,” p. 120.

⁴²Meyer, “Collectivism Revisited,” p. 8.

⁴³Meyer, “Why Freedom,” pp. 160-161.

⁴⁴Meyer, “In Defense of Freedom,” p. 140.

⁴⁵Ibid.

⁴⁶Meyer, “Why Freedom,” p. 160.

⁴⁷Ibid.

thereby safeguard freedom, but to Meyer they were not goods in and of themselves.

FEDERALISM AND CONSTITUTIONAL TENSION

Meyer believed that support for the Constitution, and the governmental framework it established, was a central component of post-war American conservatism. In Meyer's view, the story of Western civilization was, in no small part, about the effort both to provide for individual liberty and advance to a Judeo-Christian notion of objective moral truth. In this regard, the American system of government devised by the framers represented the pinnacle of Western civilization.

America's founders "established the highest political form the West has yet created to express the tension of transcendent truth and human freedom," Meyer wrote.⁴⁸ America was not perfect—Meyer was no utopian—but it came closer than any society before or since. In America "for the first time a polity was established based upon the freedom of the person as its end and upon firm limitation of the powers of the state as the means to achieve that end."⁴⁹ At the same time, America's founders were aware that liberty alone was insufficient for human flourishing. Virtue was also necessary for a successful polity. The American Constitution, as originally written, "was the closest that human beings have come to establishing a polity which gives the possibility of maintaining at one and the same time individual liberty, underlying norms of law, and necessary public order."⁵⁰

While he did not often write about constitutional law, as such—let alone federalism as a doctrine—Meyer repeatedly celebrated the Constitution's "fundamental guarantee" of individual liberty "established by a compact between sovereign states in a Constitution of divided powers."⁵¹ For Meyer, American political history "is the history of the exalted attempt, through the Constitution in its original form, to establish for the first time in human experience political mechanisms to guarantee the liberty of the individual person by limiting the power of government."⁵² Meyer proclaimed "American freedom has been based not upon abstract precepts enforced without regard to circumstance, but upon a constitutional structure, created to limit power and *thus* preserve and extend liberty."⁵³

⁴⁸Meyer, "The Separation of Powers," *National Review*, 30 January 1962, reprinted in *The Conservative Mainstream*, p. 56.

⁴⁹Meyer, "In Defense of Freedom," p. 149. Meyer also wrote, "The principle that the political order must be a free order if men are to have maximum possibilities of achieving virtue is, I maintain, inextricably linked, in the tradition of the West and the tradition of the American Republic, with the principle that the goal of men is virtue." Meyer, "Why Freedom," p. 162.

⁵⁰Meyer, "Conservatism," *Left, Right and Center: Essays on Liberalism and Conservatism in the United States*, ed. Robert A. Goldwin (Chicago: Rand McNally, 1967) reprinted in *In Defense of Freedom and Related Essays*, p. 195.

⁵¹Meyer, "Other-Directed Champion of Other-Directed Court," *National Review*, 24 August 1957, reprinted in *The Conservative Mainstream*, p. 176.

⁵²Meyer, "Lincoln Without Rhetoric," *National Review*, 24 August 1965, reprinted in *The Conservative Mainstream*, p. 471.

⁵³Meyer, "Other-Directed Champion," p. 177.

He saw the structural provisions of the Constitution as the most important guarantors of individual liberty, insofar as they served to divide and separate government power, and set branches of government against each other. Echoing James Madison's description of the "double security" afforded by a "compound republic,"⁵⁴ Meyer saw that the Constitution created "a state of tension between all the political centers of power so that effective final power rests in none of them."⁵⁵ Meyer also echoed Alexander Hamilton's observation that power is "almost always the rival of power," and therefore each level of government will "check the usurpations" of the others.⁵⁶ The tension inherent in the constitutional design would ensure "no political body in the constitutional structure could accrete to itself sovereign power."⁵⁷ Liberty was not to be protected by an overweening federal government, let alone the federal judiciary, but by the preservation of this "tension" between various divisions and levels of government. Federalism, in particular, would limit the accumulation of power. Even as the federal government expanded well beyond its original limits, "local centers of power" would "maintain a large measure of independence."⁵⁸

Meyer celebrated the founders, and often appealed to their writings for support. Yet his view of federalism went beyond the conception articulated in *The Federalist* and other contemporary writings to embrace a more radical endorsement of state sovereignty as against federal power. To Meyer, "The genius of the American Constitution rests in the institutionalization of the limitation of power, in the division of power so that it is held by a number of separate and distinct organs."⁵⁹ This was particularly important to Meyer as, in its essential form, conservatism "resists the growth of monopoly power, usually exercised by the state, which suppresses or distorts the exercise of free will by individual persons."⁶⁰ Yet the division of power was not simply a matter of institutional design. Meyer believed sovereignty itself was divided among the federal and state governments, insofar as sovereignty existed at all. This division of authority, in Meyer's view, necessarily entailed the distribution of "authority to interpret the Constitution itself."⁶¹ In other words, all three branches of the federal government, as well as the state governments, had the authority—if not a responsibility—to interpret the Constitution.

Alas, Meyer lamented, the political order established at the founding was not "self-enforcing"⁶² and did not last. Within several decades, "a process

⁵⁴*The Federalist*, No. 51.

⁵⁵Meyer, "Lincoln Without Rhetoric," p. 471.

⁵⁶*The Federalist*, No. 28.

⁵⁷Meyer, "Lincoln Without Rhetoric," p. 471.

⁵⁸Meyer, "The Attack on the Congress," *National Review*, 11 February 1964, reprinted in *The Conservative Mainstream*, p. 158.

⁵⁹Meyer, "The Constitutional Crisis," *National Review*, 26 October 1957, reprinted in *The Conservative Mainstream*, pp. 178-79.

⁶⁰Meyer, "The Separation of Powers," p. 55.

⁶¹Meyer, "The Constitutional Crisis," *National Review*, 26 October 1957, reprinted in *The Conservative Mainstream*, p. 179.

⁶²Meyer, "The Court Challenges the Congress," *National Review*, 24 March 1964, reprinted in *The Conservative Mainstream*, p. 164.

of retrogression set in” whereby political power became centralized and state control over individual activity expanded.⁶³ Meyer saw a federal government increasing its power and authority at the expense of the states. At the same time, unlike some contemporary conservatives, Meyer was concerned that the judiciary and the executive were seizing power that properly belonged in the hands of Congress.⁶⁴ Meyer identified several events that contributed to this trend, including the advent of mass democracy by Andrew Jackson, Abraham Lincoln’s assault on “the sovereignty of the several states,” and, most significantly, the explosion of collectivism under Franklin D. Roosevelt:⁶⁵

The calamitous socialization which has descended upon these United States in the years since 1932 is grounded in the very situation against which the framers of our Constitution sought to guard: the use of government to impose upon men positive rules of action.⁶⁶

Meyer was harshly critical of the expansion of federal power under FDR, but not apocalyptic. Even after the New Deal, Meyer wrote, some constitutional limits on federal power “stand firm, if battered.”⁶⁷

STATES’ RIGHTS AND CIVIL RIGHTS

During Meyer’s career, one issue brought issues of federalism and the balance of power between the state and federal governments to the fore more than any other: civil rights. Like many conservatives of this era, Meyer was not particularly sympathetic to calls for federal intervention in southern states to protect African-Americans from state-sponsored discrimination and Jim Crow. While more explicitly critical of the southern position than some conservatives, Meyer’s devotion to federalist principles was unwavering. He would not countenance an abandonment of his underlying political philosophy for even the most noble goals. Meyer argued that “to maintain that hardships, deprivations, social imbalances are not properly or effectively solved by state action is not to deny their existence.”⁶⁸ To the contrary, Meyer could acknowledge a social injustice, such as state-sponsored racial segregation, and nonetheless oppose federal efforts to address it. As historian George Nash observed in another context, “When it came to matters of principle, Meyer would not yield an inch.”⁶⁹

⁶³Meyer, “In Defense of Freedom,” p. 149.

⁶⁴There is some irony in Meyer’s solicitude of Congress for, as already noted, he was tepid in his endorsement of democracy. This is likely explained, at least in part, by the historical context. At the time Meyer wrote, the judiciary and executive could have appeared to be a greater threat to federalism and divided powers than the Congress. Today, the judiciary is more solicitous of the states (at least in some contexts), while Congress is more likely to aggrandize federal power.

⁶⁵Meyer, “In Defense of Freedom,” p. 149.

⁶⁶Meyer, “Freedom, Virtue, and Government,” *National Review*, 12 October 1957, reprinted in *The Conservative Mainstream*, p. 52.

⁶⁷Meyer, “The Attack on the Congress,” p. 158.

⁶⁸Meyer, “Conservatism,” p. 203.

⁶⁹Nash, p. 172.

Meyer praised U.S. Senator Barry Goldwater for distinguishing “the problem of states’ rights from the problem of civil rights, vindicating the classical constitutional doctrine of state sovereignty while simultaneously supporting the enforcement of specifically asserted constitutional rights, such as the right to vote.”⁷⁰ He criticized civil rights activists for advocating “federal enforcement of special group privileges” over the “equal treatment and dignity before the law” to which all groups are entitled.⁷¹ The Civil Rights Act of 1964, in particular, threatened to “destroy the constitutional balance of power and center control over the lives of citizens in the hands of the chosen instruments of Liberalism, the Executive and a subservient Supreme Judiciary.”⁷² Meyer believed the federal government had a legitimate role in protecting federal constitutional rights, but could not legitimately impose just outcomes on state governments. The federal government was not justified in ending racial discrimination through legislative fiat, even if it could.⁷³ Not all of the commands of morality and justice authorized federal power.⁷⁴

Meyer was also critical of *Brown v. Board of Education*.⁷⁵ For him, the problem with *Brown* was less the result—Meyer held no brief for forced segregation—than the method used to achieve it. Meyer was concerned about the Supreme Court’s assertion of federal power over state authorities and local school districts, as well as what he viewed as the Court’s reliance on social science and other unprincipled modes of judicial reasoning. In *Brown*, Meyer wrote, the Court “boldly usurped the legislative powers reserved by the Constitution to the Congress and the legislatures of the several states, and promulgated a dictate affecting the lives of individual citizens, the sovereignty of the states, and the prerogatives of the Congress.”⁷⁶ To its detriment, the Court “based its decision not on moral truth and constitutional prescription” but “largely upon the expertism of half a dozen sociologists and psychologists.”⁷⁷ Writing in 1956, Meyer trained his sights on the basis for the Court’s unanimous holding, and the “sociological jurisprudence” he believed it represented, rather than on the Court’s specific answer to “the complex problem of desegregation.”⁷⁸ To Meyer, *Brown* was emblematic of a series of judicial “usurpations,” as was *Baker v. Carr*,⁷⁹ in

⁷⁰Meyer, “A Man of Principle,” *National Review*, 23 April 1960, reprinted in *The Conservative Mainstream*, p. 72.

⁷¹Meyer, “The Attack on the Congress,” p. 160.

⁷²Ibid.

⁷³Like other conservatives, Meyer was skeptical of the federal government’s ability to remedy racial injustice through fiat.

⁷⁴It is worth noting that, to Meyer, school desegregation was not a “civil right . . . protected by the federal constitution or which is enforceable by the federal government.” Meyer, “A Man of Principle,” p. 72 (emphasis in original).

⁷⁵347 U.S. 483 (1954).

⁷⁶Meyer, “The Court Challenges the Congress,” p. 163.

⁷⁷Meyer, “Confusion in the Court,” *National Review*, 11 January 1956, reprinted in *The Conservative Mainstream*, p. 170.

⁷⁸Meyer, “Confusion in the Court,” p. 170.

⁷⁹369 U.S. 186 (1962).

which the Court “tore from the states their control over their own legislative processes” by holding that a challenge to disproportionate legislative districts was a justiciable equal-protection claim.⁸⁰

Yet *Brown* was only the beginning. Meyer believed President Dwight D. Eisenhower’s decision to enforce the Supreme Court’s decision in *Cooper v. Aaron*⁸¹ ordering school desegregation in Little Rock, Arkansas, created an actual “constitutional crisis.”⁸² Both the Court and the executive astounded Meyer with their assertions of federal power. First the Supreme Court declared that it, and it alone, was the supreme expositor of constitutional interpretation. Then President Eisenhower forced the states—and by extension the people—to conform to the Court’s will at the point of a bayonet. This action, in Meyer’s view, threatened the entire constitutional order. “With this *Diktat* the laws of the State of Arkansas and the prerogatives of the Congress go crashing to the ground, together with all constitutional limitations upon centralized and concentrated governmental power.”⁸³

Challenging judicial supremacy was more important to Meyer than a prompt end to state-sponsored school segregation. Meyer did not challenge the idea of judicial review, but he rejected the notion that the Supreme Court has a monopoly on constitutional interpretation. The executive’s embrace of the Court’s determination that it, and it alone, has the final word on constitutional interpretation and is the supreme expositor of the Constitution challenged the “settled tradition of the Constitution” that the branches of the federal government, as well as state governments, are equally “vested” with the right of constitutional interpretation.⁸⁴ Where there are “profound differences” of interpretation, in Meyer’s view, “the Constitution clearly envisages a suspension of decision, since no member of the complexly articulated series of constitutional sovereignties can legitimately be forced by another member to accept its version of the Constitution.”⁸⁵ It was not that Meyer sought to defend segregation—his writings avoided any defense of such policies—but he did not believe such injustice could justify such an assertion of federal power.

Like John C. Calhoun, Meyer defended the states’ resort to interposition or nullification to reassert their constitutional prerogatives, and suggested that states reassert control over their militias so as to prevent “‘federalization’ on Presidential whim.”⁸⁶ Meyer embraced the constitutional views of his *National Review* colleague James J. Kilpatrick,⁸⁷ and his articulation of the “simple rational and moral truth that the Constitution is a compact between

⁸⁰Meyer, “The Court Challenges the Congress,” p. 164.

⁸¹358 US 1 (1958).

⁸²Meyer, “The Constitutional Crisis,” p.178.

⁸³*Ibid.*

⁸⁴*Ibid.*,179.

⁸⁵*Ibid.*

⁸⁶*Ibid.*,180.

⁸⁷See James J. Kilpatrick, *The Sovereign States: Notes of a Citizen of Virginia* (Chicago: H. Regnery Co., 1957).

the states.”⁸⁸ To reassert the federalist balance, Meyer claimed, it was necessary for the states to “meet the federal government as an equal.”⁸⁹ To those who thought such a position might be viewed as radical or extreme, Meyer appealed to Thomas Jefferson and the power of nullification asserted in the Virginia and Kentucky Resolutions. To Meyer, asserting a state’s power to nullify an unconstitutional federal act was no more radical than the Supreme Court’s assertion of superior interpretive power and abandonment of constitutional principle.

While Meyer was no doubt opposed to most federal efforts to overcome segregation in the South, he did not turn a blind eye to the injustices of segregation and Jim Crow. Unlike some conservatives of the time, Meyer acknowledged the “undoubted wrong suffered by American Negroes and the undoubted justice of their aspirations.”⁹⁰ At the same time, he was harshly critical of the civil rights movement’s efforts to induce federal action to end public and private segregation. The “profound wrongs” suffered by African Americans throughout American history, injustices that Meyer acknowledged continued to the then-present time, did not justify such actions; “these wrongs cannot be righted by destroying the foundations of a free constitutional society, which is indeed the only basis upon which a joint and lasting solution of their problems is possible.”⁹¹ While affirming the “innate value of every created human being,” and each American’s constitutional right to equal treatment under the law, Meyer sternly objected to measures that diminished state sovereignty or produced new expansions of federal power.

Meyer was particularly concerned that the push for civil rights would result in the further centralization of political power and in the disruption of long-standing political and social institutions that help to maintain order, including federalism. Not only did Meyer express skepticism that the civil rights movement would achieve its stated policy goals, he also feared they could have “revolutionary” implications for societal institutions and disastrous long-term consequences. “A free constitutional order is a precarious civilizational growth,” he warned. “Once riven asunder, it is not easily attained again.”⁹² Meyer feared that the “revolutionary methods” of the civil rights movement, including the use of nonviolent protest and broad calls to action, threatened that constitutional order.

It was one thing to defend the principle of state sovereignty and the decentralization of government power. It was quite another to defend segregation, as such, or even to “cloak racial segregation in the language of

⁸⁸Meyer, “In the Great Tradition,” *National Review*, 1 June 1957, p. 527. See also, Nash, *The Conservative Intellectual Movement in America*, pp. 201-202.

⁸⁹Meyer, “The Constitutional Crisis,” p.180.

⁹⁰Meyer, “The Negro Revolution,” *National Review*, 18 June 1963, reprinted in *The Conservative Mainstream*, p. 204.

⁹¹*Ibid.*, 205.

⁹²Meyer, “Showdown with Insurrection,” *National Review*, 16 June 1968, reprinted in *The Conservative Mainstream*, p. 214.

constitutionalism,"⁹³ as Meyer and the editors of *National Review* believed George Wallace did in his 1968 presidential campaign. Although no great fan of Richard Nixon, Meyer did not view Wallace as an acceptable alternative.⁹⁴ Meyer labeled Wallace a "populist demagogue," whose policy positions were "alien to the spirit of conservatism."⁹⁵ That Wallace attacked the "naked elitism of the liberals" and appeared to espouse a states' rights philosophy did not make him a conservative in Meyer's eyes.⁹⁶ He had no more of a place in *National Review's* conservative movement than the John Birch Society or the followers of Ayn Rand.⁹⁷

Meyer was not always opposed to federal intervention on behalf of individual liberties. Where the Constitution explicitly guarantees certain rights, such as the protection against unreasonable searches and seizures, Meyer believed it appropriate for federal courts to enforce those rights against the states. Meyer recognized that the protections enumerated in the Bill of Rights were "affirmed against the states" with the ratification of the Fourteenth Amendment.⁹⁸ He also was critical of Supreme Court decisions that failed to apply such protections consistently, such as in *Frank v. Maryland*,⁹⁹ in which the Court held 5-4 that health inspectors could investigate allegedly dilapidated housing without first obtaining a warrant. Such decisions were devoid of principle in Meyer's eyes, and undermined the constitutional structure. Indeed, Meyer saw the Court's occasional willingness to "void" the protections enumerated in the Bill of Rights for "bureaucratic convenience" as resulting from the same "kind of sociological generalization and majoritarian expediency" that produced *Brown*.¹⁰⁰ The problem was a positivist legal doctrine not rooted in enduring principles.

"Lincoln Without Rhetoric"

Like many conservatives of his time who focused on the growth of government power, Meyer disparaged the legacy of Abraham Lincoln. While some conservatives, such as Harry Jaffa, celebrated Lincoln's emancipation of slaves and embrace of the natural law principles embodied in the Declaration of Independence, others, including Meyer, saw Lincoln as the forerunner of the American leviathan. In Meyer's view, Lincoln nationalized and centralized in the name of union during the Civil War, paving the way for further accretion of federal power in the decades thereafter. Without Lincoln, Meyer believed, there would have been no New Deal. Lincoln's "authoritarianism" during the Civil War "was, in terms of civil liberties, the

⁹³Smant, *Principles and Heresies*, p. 254.

⁹⁴*Ibid.*, 256.

⁹⁵Meyer, "The Populism of George Wallace," *National Review*, 16 May 1967, reprinted in *The Conservative Mainstream*, p. 285.

⁹⁶*Ibid.*

⁹⁷Smant, *Principles and Heresies*, p. 256.

⁹⁸Meyer, "Frank v. Maryland: The Knock on the Door," *National Review*, 6 June 1959, reprinted in *The Conservative Mainstream*, p. 181.

⁹⁹359 U.S. 360 (1959).

¹⁰⁰*Ibid.*, 182.

most ruthless in American history," Meyer wrote, provoking a debate with Jaffa, among others, in the pages of *National Review*.¹⁰¹

Lincoln "vigorously . . . attack[ed]" the Founder's conception of government, and thereby threatened American liberty. He "shatter[ed] the subtle tension of state and national powers" essential to the preservation of individual liberty and limited government.¹⁰² His obsession with preservation of the Union above all else served "to consolidate central power and render nugatory the autonomy of the states."¹⁰³ In this way, Meyer argued, Lincoln paved the way for the New Deal Revolution.

Were it not for the wounds that Lincoln inflicted upon the Constitution, it would have been infinitely more difficult for Franklin Roosevelt to carry through his revolution, for the coercive welfare state to come into being and bring about the conditions against which we are fighting today. Lincoln, I would maintain, undermined the constitutional safeguards of freedom as he opened the way to centralized government with all its attendant political evils.¹⁰⁴

In Meyer's view, the sovereignty of each individual state was an essential component of the constitutional design, creating the potential for secession.¹⁰⁵ Prior to the Civil War, and Lincoln's war for union, "no one knew whether a state could secede as its last sanction, and this was of the utmost necessity if the federal government were not to grow so strong as to destroy the tension that guaranteed liberty."¹⁰⁶ This ambiguity discouraged the exercise of federal power over the states.

The Constitution was silent on this issue precisely in order to maintain the tension between federal and state power—a tension which could be broken only by shattering the federal union or by so concentrating power at the center that separation of powers was fundamentally undermined—and with it the genius of the Constitution in its defense of liberty.¹⁰⁷

The very threat of secession itself represented a potential check on federal power.¹⁰⁸ This tension served to restrain the assertion of federal power, and thereby protected individual liberty.

Though Lincoln may have been responsible for ending the profound injustice of chattel slavery, Meyer noted that Lincoln's Civil War aim was the preservation of the Union, not abolition. In that regard, the centralization of federal power was more intricately tied to Lincoln's aims than freeing African-American slaves. Allowing several southern states to

¹⁰¹Meyer, "Books in Brief," *National Review*, 15 June 1965, p. 520. See also, Smant, *Principles and Heresies*, p. 193.

¹⁰²Meyer, "Lincoln Without Rhetoric," p. 471.

¹⁰³Ibid.

¹⁰⁴Ibid., 472.

¹⁰⁵According to Meyer, "sovereignty . . . implies the right to secede." Frank S. Meyer, "Again on Lincoln," *National Review*, 25 January 1966, reprinted in *The Conservative Mainstream*, p. 474.

¹⁰⁶Meyer, "Lincoln Without Rhetoric," p. 471.

¹⁰⁷Meyer, "Again on Lincoln," p. 474.

¹⁰⁸Meyer, "Lincoln Without Rhetoric," p. 471.

secede would have preserved the essential elements of the federalist structure and the dual security it afforded individual liberty—albeit at the cost, at least temporarily, of a shrunken nation and slavery’s perseverance in the South. In Meyer’s view, Lincoln erected a “repressive dictatorship” and “wage[d] the war” pursuing “the permanent destruction of the autonomy of the states.”¹⁰⁹ Worse, Lincoln was “the creator of concentrated power, the President who shattered the constitutional tension.”¹¹⁰ This was anything but a consensus view within the conservative movement, however. After *National Review* ran Meyer’s first Lincoln critique, none other than the magazine’s founder and editor, William F. Buckley Jr., wrote a letter to the editor defending Lincoln and suggesting Meyer’s attacks were “close to blasphemy.”¹¹¹

CONCLUSION: FUSIONISM & FEDERALISM

For Meyer, the freedom to do right—to pursue the virtuous life and live according to the moral commands of the Judeo-Christian religion—must also entail the freedom to do wrong. “Unless men are free to be vicious, they cannot be virtuous.”¹¹² While freedom is no guarantee of virtuous conduct, to Meyer it was a necessary precondition for virtue. Freedom, even the freedom to do wrong, serves to facilitate the pursuit of virtue.

In much the same fashion, Meyer viewed federalism, in particular the division of government authority between the federal and state governments, as a necessary precondition for limited government. Creating an institutional structure that ensures tension, and perhaps even conflict, between different orders of government does not ensure that government power will be constrained, but without such an institutional structure, the expansion of government at the expense of individual liberty is certain. Thus, the virtue of federalism for Meyer is not that it ensures sound policy. Just as individual freedom to do right encompasses the freedom to do wrong, the freedom afforded states by a decentralized institutional structure includes the freedom to do wrong, even grievous wrong as in the case of segregation and Jim Crow. Yet there is little reason to believe that a unified federal government will, on the whole, adopt superior policy measures. The argument for federalism is that it provides an institutional structure that limits the growth of government power and facilitates the adoption of efficient policies.

This argument for federalism is congruent with Meyer’s argument for individual liberty. Maximizing individual freedom within a state does not guarantee virtuous conduct. To the contrary, it may allow many individuals to lead barbarous and venal lives. Yet the state which provides for the

¹⁰⁹Ibid., 472.

¹¹⁰Meyer, “Again on Lincoln,” p. 475.

¹¹¹Smant, p.193.

¹¹²Meyer, “In Defense of Freedom,” p. 148.

maximum degree of individual liberty is also providing the greatest opportunity for individuals to pursue and attain virtue in their lives.

Frank Meyer did not have a particularly detailed, sophisticated, or nuanced view of American federalism. His positions were based on his appreciation of the federal Constitution's structure and the Founders' design. Yet his brand of federalism was neither fully grounded nor wholly consistent. Meyer's view of state sovereignty, including his embrace of nullification and interposition, owed more to the thought of Calhoun than to Madison or Hamilton. Whatever its other merits, the view that states could nullify purportedly unconstitutional federal acts is a marginal view in the American constitutional tradition. It also conflicts with Meyer's acceptance of incorporation. If states could resist those federal acts, the constitutional basis of which they reject, then it would be quite difficult for the federal government to protect constitutional rights from state action.

Meyer's views of federalism also seem to be a product of his time. Beyond the struggles over civil rights, he had little cause to explicate the details of federalism at any length. As a result, Meyer was extremely sensitive to federal encroachments initiated by the executive or the judiciary. On the other hand, he expressed little concern about Congress' power to expand federal authority at the expense of the states. To the contrary, Meyer thought defending congressional power would protect the autonomy of the states. Several decades after Meyer's passing, this view seems quaint, if not naive. Few conservatives today would neglect the federal legislature's role in expanding federal power over matters traditionally left in state hands.

Despite the incompleteness and inconsistency of Meyer's articulation of federalist principles, he recognized the importance of divided and separated power for the protection of individual freedom and the maintenance of limited government. The constitutional structure of federalism, and the tensions it produced, served Meyer's preeminent goal of facilitating the pursuit of virtue through the preservation of freedom in a minimalist state. In this sense, federalism and fusionism fit together. Federalism is one part of the institutional structure that can allow for—but will not guarantee—the implementation of the ideal state, and provide the context for a society of free and responsible individuals. It is thus understandable why Frank Meyer the fusionist would also be Frank Meyer the federalist.