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Laboratories of Democracy? Brandeis, Federalism, and Scientific Management

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Although Louis Brandeis is rightly regarded as a champion of federalism, this article suggests that his famous depiction of the American states as “laboratories” of democracy in fact has little to do with federalism and in fact rests on an understanding of public policy inimical to federal diversity. More specifically, it argues that Brandeis’s choice of metaphor largely reflects his hope for scientifically based public policy, which in turn reflected the influence of Scientific Management upon his thought. The article concludes that abandoning Brandeis’s metaphor would be useful in rethinking the relations among states in the diffusion of innovations.

In 1973, Daniel Elazar published “Cursed by Bigness or Toward a Post-Technocratic Federalism,” a trenchant analysis of how the centralization of economic and social institutions was complicating efforts to maintain federal arrangements.¹ Economic consolidation, he argued, severs the connection between economic entities and the localities they had served in the past. Even more important, consolidation encourages the belief that hierarchy and centralization are essential for organizational efficiency, a view inimical to federalism. Elazar questioned whether the size of economic and governmental entities actually reflect the demands of efficiency. He also emphasized that what promotes efficiency in the economic sphere might not promote it in the political sphere. Even if it does, a single-minded pursuit of efficiency would impose unacceptable costs, undermining other cherished values, such as “democracy, liberty, equality, and self-government.”²

In the title of his essay, Elazar alluded to Louis Brandeis’s *The Curse of Bigness*, published almost a half century previously.³ This is altogether appropriate, for the parallels between the problems that Elazar addressed and those that Brandeis confronted are striking. Like Elazar, Brandeis was a committed federalist who rejected the deterministic view that social and economic changes demand governmental centralization. He insisted that large institutions, whether public or private, “inevitably lost their

¹Daniel J. Elazar, “Cursed by Bigness or Toward a Post-Technocratic Federalism,” *Publius: The Journal of Federalism* 3 (Fall 1973): 239-298.

²Elazar, “Cursed by Bigness,” 261.

³Louis Dembitz Brandeis, *The Curse of Bigness*, ed. Osmond K. Fraenkel (New York: Viking Press, 1934).

ability to think in terms of individuals and to respond to their needs. Worse, they tended to be beyond the intellectual understanding and control of any individual."⁴

Brandeis focused his attacks on the leading corporations of his day, contending that their large size was dictated not by economic efficiency but by a desire to wield political power. However, his concern about "the curse of bigness" extended to the political sphere as well. He rejected President Theodore Roosevelt's "New Nationalism" because it relied on big government to control concentrated economic power. As a policy adviser to President Woodrow Wilson, Brandeis championed the prerogatives of state and local governments and succeeded in moving Wilson's "New Freedom" in a decidedly more federalist direction.⁵ Once on the U.S. Supreme Court (the first Jewish justice to sit on the Court), he regularly defended state efforts to deal with social and economic problems, albeit often in dissent.⁶ Even during the Great Depression, he remained skeptical of a powerful federal government and opposed in correspondence, in action, and, occasionally, in judicial opinions the New Deal's centralization of political power.⁷ Indeed, scholars who criticize Brandeis typically claim that his thought reflected a romantic attachment to a Jeffersonian diffusion of power to states and communities.⁸

I emphasize Brandeis's impeccable federalist credentials at the outset because in this article, I challenge the main foundation of his reputation as a federalist. That foundation is a single sentence drawn from his famous dissenting opinion in *New State Ice Co. v. Liebmann*, "It is one of the happy accidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country."⁹ Brandeis's depiction of the states as laboratories of democracy has spawned a rich literature in political science documenting the diffusion of innovations among the American states.¹⁰ His metaphor has also, it is fair to say, achieved the status of "received wisdom" among most proponents

⁴Philippa Strum, *Brandeis: Beyond Progressivism* (Lawrence: University Press of Kansas, 1993), p. 4.

⁵Arthur S. Link, *Wilson: The Road to the White House* (Princeton, NJ: Princeton University Press, 1947), p. 489.

⁶See, for example, *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 289 (1922); *Liggett v. Lee*, 288 U.S. 517 (1933); and *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).

⁷On Brandeis's correspondence during this era, see Stephen W. Baskerville, *Of Laws and Limitations: An Intellectual Portrait of Louis Dembitz Brandeis* (Rutherford, NJ: Fairleigh Dickinson University Press, 1994), pp. 317-323. Brandeis voted with the Court majority to strike down provisions of the National Industrial Recovery Act of 1935 in *Schechter Poultry Corporation v. United States*, 295 U.S. 495 (1935) and in *Panama Refining Company v. Ryan*, 298 U.S. 388 (1935).

⁸See, for example, Thomas K. McGraw, *Prophets of Regulation: Charles Francis Adams, Louis D. Brandeis, James M. Landis, Alfred E. Kahn* (Cambridge, MA: Belknap Press, 1984), ch. 3; and G. Edward White, "Allocating Power Between Agencies and Courts: The Legacy of Justice Brandeis," *Duke Law Journal* 23 (April 1974): 195, 233.

⁹*New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

¹⁰The seminal work in this field is Jack L. Walker, "The Diffusion of Innovations Among the American States," *American Political Science Review* 63 (September 1969): 880-889. Useful surveys of diffusion research include Robert L. Savage, "Diffusion Research Traditions and the Spread of Policy Innovations in a Federal System," *Publius: The Journal of Federalism* 15 (Fall 1985): 1-27; and Virginia Gray, "Competition, Emulation, and Policy Innovation," *Perspectives in American Politics*, eds. Lawrence C. Dodd and Calvin Jillson (Washington, DC: CQ Press, 1994).

of federalism, ritually invoked in judicial opinions, in textbooks, and in social science and legal research.¹¹

Invoked, yes, but rarely analyzed. This is unfortunate because, even though Brandeis was a committed federalist, his statement in fact has little to do with federalism. The metaphor he employs misconstrues the process of interstate borrowing and emulation and is implicitly at odds with federal diversity. In this article, I seek to document these claims through a contextual analysis of Brandeis's famous statement and its implications, and to propose an alternative source for Brandeis's metaphor.

SCIENTIFIC LABORATORIES?

To understand Brandeis's "laboratories" statement, one must understand the political and legal context of *New State Ice Co. v. Liebmann*, the case in which it appeared, and the role that it played in his dissenting opinion in that case. When it came before the Supreme Court, *Liebmann* represented only the most recent of a series of "substantive due process" cases in which state regulations of business were challenged as being in violation of due process rights guaranteed by the Fourteenth Amendment to the U.S. Constitution. The statute at issue in *Liebmann* required those seeking to manufacture, sell, or commercially distribute ice in Oklahoma to obtain a license from the state's Corporation Commission before doing so. By regulating entry into this field, Oklahoma sought to reduce competition, stabilize prices, and prevent over-production. However, Oklahoma's regulation accomplished these aims by limiting the economic liberty of those who sought to enter the ice business. Thus, as in earlier substantive due process cases, the Supreme Court was called upon to determine whether the challenged state regulation served valid "police power" purposes and could therefore be upheld, or whether it represented an "arbitrary" interference with economic liberty and so should be struck down as

¹¹The most recent judicial invocation of Brandeis's metaphor occurred in *Boy Scouts of America v. Dale*, 99-699 (2000), 25 September 2000; <http://supct.law.cornell.edu/supct/html/99-699.ZS.html>. Dale involved the constitutionality of a New Jersey statute requiring the Boy Scouts of America to admit gays as scoutmasters. In dissent, Justice John Paul Stevens defended the state statute as an experiment, citing Brandeis's dissent in *Liebmann*. Chief Justice William Rehnquist, speaking for the Court, rejected Stevens's invocation of Brandeis as inappropriate, arguing that Brandeis had never intended to allow states to experiment with fundamental liberties. This exchange echoes the exchange between Brandeis and the Court majority in *Liebmann* (discussed below) on the scope of permissible state experimentation. For a listing of other recent judicial invocations of Brandeis's laboratories metaphor, see James A. Gardner, "The 'States-as-Laboratories' Metaphor in State Constitutional Law," *Valparaiso University Law Review* 30 (Summer 1996): 483-490.

A leading textbook on state politics—Virginia Gray and Herbert Jacob, *Politics in the States: A Comparative Analysis*, 6th ed. (Washington, DC: CQ Press, 1996)—highlights Brandeis's quote almost immediately (page 5) in beginning its discussion of state politics. Virtually every monograph on federalism quotes Brandeis. See, for example, A. E. Dick Howard, "Does Federalism Secure or Undermine Rights?" *Federalism and Rights*, eds. Ellis Katz and G. Alan Tarr (Lanham, MD: Rowman & Littlefield, 1996), p. 17. Articles in social science journals and law reviews quoting Brandeis are too numerous to list. Illustrative examples include Charles Fried, "Federalism—Why Should We Care?" *Harvard Journal of Law and Public Policy* 6 (Special Issue, 1982): 2; and Deborah Jones Merritt, "The Guarantee Clause and State Autonomy: Federalism for a Third Century," *Columbia Law Review* 88 (January 1988): 9.

unconstitutional. Put differently, the outcome of the case depended on the answer not only to a question of law-for what ends can a state exercise its police powers?-but also to a question of fact-how effectively did Oklahoma's law advance its professed aims?

In *Liebmann*, the Court majority ruled that Oklahoma's law was an arbitrary interference with economic liberty in violation of the due process clause. In response, Brandeis sought to demonstrate that the law in fact served valid purposes. Most of his 31-page dissenting opinion therefore is devoted to a description of the problem that the Oklahoma Legislature was attempting to address and of the way in which the law it had enacted might have served to address that problem. To bolster his case, Brandeis amassed a wealth of factual information, drawn from a vast array of non-legal sources, to demonstrate possible justifications for the policy adopted by Oklahoma.¹² The famous "laboratories" statement appears toward the end of his dissent. The passage in which it appears deserves extended quotation:

Whether [the State's] view is sound nobody knows . . . The economic and social sciences are largely uncharted seas . . . Yet the advances in the exact sciences and the achievements in invention remind us that the seemingly impossible sometimes happens . . . The discoveries in physical science, the triumphs in invention, attest the value of the process of trial and error. In large measure, these advances have been due to experimentation. In those fields experimentation has, for two centuries been not only free but encouraged. Some people assert that our present plight is due, in part, to the limitations set by courts upon experimentation in the fields of social and economic science . . . To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country.¹³

Although Brandeis defended the right of states to experiment, he did not claim that this power exists without limit. Toward the conclusion of the opinion of the Court, Justice George Sutherland responded to Brandeis's plea for experimentation. Although acknowledging the authority of the states to enact "experimental legislation," Sutherland insisted that the federal Constitution limits these experiments, particularly when they infringe on fundamental liberties. "The principle is imbedded in our constitutional system," he wrote, "that there are

¹²See Daniel A. Farber, "Reinventing Brandeis: Legal Pragmatism for the Twenty-First Century," *University of Illinois Law Review* (1:1995): 175: "In an era in which footnotes were rare in judicial opinions, Brandeis's dissent contains fifty-seven footnotes, and it cites a mix of [non-legal] sources that would still be unusual today." Brandeis himself had reservations about the wisdom of Oklahoma's policy, though he did not allow them to affect his judgment about its constitutionality.

¹³*Liebmann*, 309-311.

certain essentials of liberty with which the state is not entitled to dispense in the interest of experimentation.”¹⁴ Brandeis’s dissent implicitly accepts Sutherland’s limitation, championing “social and economic experiments,” not experiments in the realm of individual rights. His disagreement with the Court thus relates not to the governing principle but to its application. For Brandeis, the Oklahoma statute was an experiment “in things social and economic.”

Even so confined, Brandeis’s metaphor remains problematic. One recent critic, James Gardner, has charged that Brandeis’s analogy to scientific experimentation is seriously misleading because scientific experiments and policy experiments differ fundamentally in their aims.¹⁵ According to Gardner, scientific experiments are designed to produce knowledge, whereas policy experiments are undertaken to achieve a public good. Thus, the one is concerned with theory, the other with practice. The metaphor also downplays crucial differences between scientific experimentation and policy experimentation. Scientific experiments are systematic, utilizing procedures and controls “designed to enhance the generalizability and usefulness of the information obtained.”¹⁶ In contrast, policy experiments tend to be “haphazard and inherently subjective.” Gardner therefore concludes that the results of such policy experiments can offer little guidance to policymakers in other jurisdictions.

Gardner’s identification of differences between scientific and policy experiments is valuable, although his claim that the one pursues theory and the other advantage seems somewhat overdrawn; most scientists are concerned with the practical “payoffs” of their research. What is striking in *Liebmann*, however, is that Brandeis does not merely ignore the differences between scientific experiments and policy experiments but rather makes a point of emphasizing the similarities between them, in a way that suggests the possibility of a science of policy comparable to the natural sciences. He begins by praising scientific experimentation: “The discoveries in physical science, the triumphs in invention, attest the value of trial and error. In large measure, these advances have been due to experimentation.”¹⁷ What is noteworthy about this statement—particularly in light of Gardner’s critique—is how quickly Brandeis moves from a focus on the discovery of knowledge to the use (“triumphs of invention”) to which knowledge may be put.

¹⁴Ibid., 279-280. Sutherland’s argument resembles but anticipates Justice Robert Jackson’s famous statement, much beloved by civil libertarians, in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 638 (1943): “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.” This may not be altogether surprising. Although Sutherland may have sought to protect property rights in *Liebmann*, he would likely have been comfortable with its extension to civil liberties as well. See Hadley Arkes, *The Return of George Sutherland: Restoring a Jurisprudence of Natural Rights* (Princeton, NJ: Princeton University Press, 1994).

¹⁵Gardner, “States-as-Laboratories’ Metaphor,” 480-482.

¹⁶Ibid., 481.

¹⁷*Liebmann*, 310.

Brandeis then seeks to connect experimentation in the social and economic spheres to experimentation in the natural sciences by stressing its scientific character, "Some people assert that our present plight is due, in part, to the limitations set by courts upon experiments in the fields of social and economic *science*."¹⁸ As in the natural sciences, Brandeis asserts, the results of experiments in the fields of social and economic science must lead to "triumphs of invention." "There must," he asserts, "be power in the States and the Nation to remold, through experimentation, our economic practices and institutions to meet changing social and economic needs."¹⁹ This, in turn, leads to his oft-quoted conclusion that federal arrangements enable courageous states to engage in such experimentation, at least if the courts do not intervene to deny this right.

Brandeis's insistence on the similarities between scientific and policy experiments is particularly pertinent when one considers the anticipated outcomes of policy experiments in the "laboratories" of the states. Brandeis recognizes that the initiation of experiments within a single jurisdiction reduces the risk of undertaking them; if an experiment fails, the damage is limited because it is confined to that single jurisdiction. What this prudential argument leaves unspoken is what will-or should-occur if an experiment succeeds. As Gardner notes, when scientists conduct an experiment, they do so in order to obtain generalizable knowledge. If the experiment succeeds, the conclusions reached in their laboratory become part of the body of scientific knowledge and, thus, are authoritative for scientists in all other laboratories. Following the logic of the metaphor chosen by Brandeis, one would expect that, analogously, the outcome of a successful policy experiment in one state laboratory should be generalizable and should lead to adoption of the same policy in all other state laboratories. Thus, although the short-term outcome of policy experimentation in the states would be a diversity of policies, over the longer term, the tendency would be toward policy uniformity, as states emulated the successful policies of sister states. Although one might hesitate to draw this conclusion, given Brandeis's stalwart federalist credentials, I shall suggest that it is consistent with his enthusiasm for scientifically based public policy.

Other critics, such as Edward Rubin and Malcolm Feeley, have sought to detach Brandeis's support for policy experimentation from his attachment to federalism.²⁰ They note that the logic of his argument for policy experimentation does not require federal arrangements because it has application even beyond the political realm. (Brandeis

¹⁸Ibid., 310.

¹⁹Ibid., 311.

²⁰Edward L. Rubin and Malcolm M. Feeley, "Federalism: Some Notes on a National Neurosis," *U.C.L.A. Law Review* 41 (April 1994): 923-926; Malcolm M. Feeley and Edward L. Rubin, *Judicial Policy Making and the Modern State; How the Courts Reformed America's Prisons* (Cambridge: Cambridge University Press, 1998), pp. 185-186.

himself recognized this, championing policy experimentation in industry and agriculture, as well as in public policy.²¹) In addition, Rubin and Feeley argue that even within the public sphere, federalism is neither a necessary nor a sufficient condition for policy experimentation. The argument for the states as laboratories rests on the assumption that multiple truth-seekers, acting independently, are more likely to uncover the truth than is a single truth-seeker. From this, proponents of federalism have drawn the conclusion that federalism, because it establishes a multiplicity of decision-makers, encourages policy experimentation. Yet, as Rubin and Feeley point out, the crucial factor is that there be a multiplicity of distinct policymakers pursuing common goals, not that these policymakers have constitutional autonomy.²² A unitary government may stimulate policy experimentation by managerial decentralization, that is, by mandating that various sub-units implement different policies. Conversely, the existence of autonomous component units within a federal system does not guarantee policy experimentation. Indeed, studies of policy diffusion have documented several instances in which policy innovation has depended on policy leadership at the center.²³

Yet, if Brandeis's commitment to federalism cannot explain his enthusiasm for policy experimentation, what can? James Gardner has suggested that Brandeis's metaphor should be read not as a general endorsement of state policy experimentation but as part of a rhetorical effort to justify the sort of economic policies under attack in *Liebmann*. "Brandeis, then, uses the experimentation metaphor not to undergird a conclusion that states must have a power to experiment—a position he never asserts—but to support his conclusion that the challenged policy is rational and therefore constitutional."²⁴ Although Gardner is correct in linking Brandeis's statement to the particular outcome he favored in *Liebmann*, Brandeis's choice of metaphor is itself revealing. To understand Brandeis's enthusiasm for policy experimentation, one must look not to his attachment to federalism but rather to his interest in the development of scientifically based public policy and, in particular, his enthusiasm for Scientific Management.

²¹Strum, *Brandeis*, p. 85, and Baskerville, *Of Laws and Limitations*, p. 315.

²²Rubin and Feeley, "Federalism," 924. In their book, Rubin and Feeley insist that "the effect of federalism, to the extent that it is still operative, has not been to encourage experimental state programs or state-sponsored coordinating agencies, but simply to keep some truly innovative national efforts limited, tentative, and vaguely apologetic." (*Judicial Policy Making*, p. 187) However, this statement reflects an animus against federalism rather than analysis. For a more careful analytic approach, see Susan Rose Ackerman, "Risk Taking and Relection: Does Federalism Promote Innovation?" *Journal of Legal Studies* 9 (June 1980): 593.

²³See, for example, William R. Lowry, *The Dimensions of Federalism* (Durham, NC: Duke University Press, 1992); Robert Eyestone, "Confusion, Diffusion, and Innovation," *American Political Science Review* 71 (June 1977): 441.

²⁴Gardner, "'States-as-Laboratories,'" 479.

SCIENTIFIC MANAGEMENT

The Scientific Management movement emerged in the late nineteenth century, the brainchild of Frederick Winslow Taylor.²⁵ Taylor maintained that economic competition did not, and could not, produce efficiency in business enterprises. Inefficiencies would persist, he argued, until the production process was organized and orchestrated scientifically. He therefore called for “the development of a science to replace the rule-of-thumb knowledge of the workmen.”²⁶ An engineer by training, Taylor “fashioned [his new science’s] methods after the exact sciences-experiment, measurement, generalization-in the hope of discovering laws of management which, like laws of nature, would be impartial and above class prejudice.”²⁷ More specifically, Taylor and other proponents of Scientific Management immersed themselves in the systematic analysis of work, seeking to determine through time-and-motion studies how jobs could best be done. Later proponents of Scientific Management, such as Frank and Lillian Gilbreth, would christen this the search for “the One Best Way.”

Although the Scientific Management movement originated in the factory, Taylor recognized that its emphasis on systemization and efficiency potentially had much broader application. He argued that government in particular would benefit from an infusion of the principles of Scientific Management and proposed the appointment of an expert in the field to the president’s Cabinet. Indeed, during his later years, Taylor contemplated extending the principles of Scientific Management to all human endeavors.

It is not difficult to understand why Scientific Management attracted broad support during the Progressive Era. Its rejection of *laissez faire* in favor of expert planning struck a responsive chord in a populace distrustful of the effects of unbridled economic competition. Its promise that reform could benefit both management and labor comforted those concerned about class conflict.²⁸ Its grounding in empirical analysis dovetailed nicely with the prevailing distrust of *a priori* systems-witness John Dewey’s pragmatism-and its emphasis on specialized knowledge appealed to the Progressive infatuation with nonpartisan technical expertise. Finally, its scientific aura fit well with the broader intellectual climate of the era.

All of these considerations made Louis Brandeis an early and vocal advocate of Scientific Management. In the *Eastern Rate Case* (1910), for example, he successfully opposed a rate increase for railroads by parading

²⁵Taylor comprehensively elaborates his system in Frederick W. Taylor, *Scientific Management* (New York: Harper, 1947). The best study of Scientific Management and its impact is Samuel Haber, *Efficiency and Uplift: Scientific Management in the Progressive Era, 1890-1920* (Chicago: University of Chicago Press, 1964). Most of the background of my account relies on Haber’s volume.

²⁶Frederick W. Taylor, Testimony Before the U.S. House of Representatives, January 25, 1912, excerpted in Jay M. Shafritz and Albert C. Hyde, *Classics of Public Administration*, 4th ed. (Fort Worth, TX: Harcourt Brace 1997), p. 30.

²⁷Haber, *Efficiency and Uplift*, p. x.

²⁸Organized labor, however, remained skeptical of Scientific Management. See Paul D. Carrington, *Stewards of Democracy: Law as a Public Profession* (Boulder, CO: Westview Press, 1999), p. 125.

before the Interstate Commerce Commission the leading proponents of Scientific Management, all of whom testified that the railroads' financial difficulties stemmed from inefficiencies in management.²⁹ Scientific Management also had particular appeal for Brandeis because he believed that law and policy should be based on facts—one recalls the use of sociological data in the famous “Brandeis brief” in *Muller v. Oregon* (1908)—and Scientific Management developed its recommendations through painstaking empirical analysis, through immersion in the facts of situations.³⁰ It may also have appealed to him because it promised efficiency and offered a scientific, and hence presumably nonpartisan, means of achieving that end. Whatever the bases for Brandeis's enthusiastic endorsement of Scientific Management, that enthusiasm continued unabated throughout his life, even after Scientific Management had ceased to be fashionable, and offers the most likely explanation for the argument he offered in *Liebmann*.

Like Taylor, Brandeis in *Liebmann* denied that economic competition would lead to the best possible outcome. The business of supplying ice, he noted, lends itself to monopoly—“in only six or seven localities in the state . . . was there a semblance of competition”—and the industry had steadfastly resisted the introduction of competition. This was hardly surprising, for competition tended to be “destructive” and “ruinous” for producers. It also led to a duplication of facilities and delivery services that was “wasteful and ultimately burdensome to consumers.” Brandeis concluded that neither unregulated monopoly nor unregulated competition served the public good. The achievement of the common good for Brandeis, as for Taylor, required the infusion of human ingenuity.

Put differently, Brandeis shared Taylor's faith in the ability of science, “the triumphs of invention,” to solve human woes. Equally important, he rested his argument in *Liebmann* on a distinctive understanding of science that echoes Taylor's account. For Brandeis, as for Taylor, science is not a quest to discover the laws of nature or to elaborate theories with broad explanatory power. Indeed, Brandeis distrusted theories; he called philosophy “the cyclone cellar for finer souls.”³¹ Rather, what distinguishes science are its method, which both Taylor and Brandeis describe as trial-and-error experimentation, and its rootedness in facts, in empirical reality.

²⁹The legal brief submitted by Brandeis in this case waxes eloquent on the promise of Scientific Management. “Under scientific management nothing is left to chance. All is carefully prepared in advance. Every operation is to be performed according to a predetermined schedule under definite instructions, and the execution under this plan is inspected and supervised at every point. Errors are prevented instead of being corrected. The terrible waste of delays and accidents is avoided. Calculation is substituted for guess; demonstration for opinion.” Quoted in McGraw, *Prophets of Regulation*, pp. 92-93.

³⁰*Muller v. Oregon*, 208 U.S. 412 (1908). Philippa Strum attributes Brandeis's enthusiasm for Scientific Management (wrongly, I believe) to an atypical love of theory in contradiction of facts. See Strum, *Brandeis: Beyond Progressivism*, pp. 43-45.

³¹Quoted in Philippa Strum, *Louis D. Brandeis: Justice for the People* (Cambridge: Harvard University Press, 1984), p. 310. Brandeis's anti-foundationalism may explain why John Dewey praised Brandeis, noting his “strict adherence to this policy of reference to factual context.” Quoted in Strum, *Brandeis: Beyond Progressivism*, p. 6.

Moreover, the aim of science is intensely practical, to solve specific concrete problems, whether in business or in the broader social and economic spheres, by the application of the correct method to the particular situation.³² Insofar as the results of these experiments have implications beyond the particular problems they are designed to solve, these implications are likewise practical rather than theoretical. If the concrete problems within one jurisdiction resemble those in others, then the same *practical* solutions should be appropriate.

CONCLUSION

Of course, even assuming that the preceding analysis is correct, then “so what?” What does it matter that a former Supreme Court justice once based his plea for state policy experimentation on an enthusiasm for Scientific Management rather than on support for federalism? To this, our reply is three-fold. First, Brandeis remains a revered and influential figure in American political thought; therefore, a more accurate understanding of the roots of his thought is intrinsically valuable. Second, our analysis cautions against a continuing invocation of “the states as laboratories” by showing that the slogan is not rooted in a concern for federalism, has no necessary connection to federal arrangements, and has implications that undermine federal diversity. Of course, it is possible to invoke Brandeis’s metaphor without endorsing Scientific Management or John Dewey’s pragmatism. However, the metaphors we employ affect the way we think about politics; thus, an inaccurate metaphor has a distorting effect. In this case, the metaphor is tied to the notion of a science of public policy. Third, rejection of this convenient metaphor seems a necessary condition for seriously reconsidering the character of interjurisdictional relationships in federal systems. Such a consideration would go beyond the “diffusion of innovations” literature, which seems based, implicitly or explicitly, on the laboratories metaphor, and address the political and social factors that influence the interaction among the component units of federal systems.

³²For Taylor, this conception of science seems to reflect his training as an engineer.