



Federalism and the Dynamism of American Politics

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Arguments about states' rights are everywhere in American political debates. Tea Party activists assert state sovereignty. Many conservatives argue that President Obama's health reform intrudes on state authority, even as they call for states to strengthen immigration enforcement, roll back abortion rights, and prohibit gay marriage. Liberals often point to functions such as regulation of immigration and commerce they say are reserved for the national government. Combatants on all sides imply that the U.S. Constitution sets clear lines to separate federal and state authority.

But in fact, the U.S. version of federalism has never fixed national and state functions in stone. Federalism is better understood as a set of moving battles raging across ever-changing frontiers. Today and throughout U.S. history, partisans have invoked versions of federalism selectively and expediently, depending on balances of power and the political goals of the moment.

The Ambiguity of State and National Powers in the Constitution

The framers of the U.S. Constitution designed a republican government and expected national leaders to use it. They intended to move away from the decentralized Articles of Confederation, which had hampered the fledgling nation's capacities prior to the ratification of the Constitution. Delegates to the Constitutional Convention were themselves politicians sent by states whose people had diverse values and economic interests. After fierce power struggles, the framers arrived at intricate compromises that used deliberately ambiguous wording about divisions of functions and authority between the states and the strengthened national government.

- **The framers deliberately agreed to elastic national powers.** From the very start of the Constitutional Convention, leading delegates admitted it was impossible to draw a bright line separating federal and state authority. The shrewd Roger Sherman, who fought against the expansion of national power at nearly every turn, conceded that "it would be hard to define" all the necessary national powers. When he tried to do so, his own list was very general and imprecise. Sherman acknowledged that the national power to raise revenues "would involve many other powers." James Madison also insisted that it was impractical to define the boundary between national and state powers as he fought for enhanced federal power throughout the Convention.
- **The framers knowingly made federal power broad.** As many framers realized, the "necessary and proper" clause authorized the U.S. federal government to do much more than carry out listed responsibilities. Three delegates refused to sign the Constitution because, in their view, it did not sufficiently protect state authority. The Convention majority accepted a broadly defined clause authorizing Congress to "provide for the common defense and general welfare of the United States," and delegates did not challenge the removal of words qualifying this power. The Convention explicitly rejected a motion to prohibit federal interference with the states' internal police powers or with areas of state and local competence. The Preamble to the Constitution underscored its warrant to promote the "general welfare," and no amendment has changed that wording.
- **The framers rejected efforts to set a clear boundary for national authority.** The Convention explicitly rejected many proposals to explicitly limit federal power. Sherman proposed to make it impossible for a Constitutional amendment to affect any state's police powers, but the Convention handily defeated the motion. The Constitution is silent on state police powers, and delegates also refused several proposals to limit the national government's power to tax. At the same time, when some delegates proposed provisions to spell out federal authority to collect revenue and regulate commerce and finances, other delegates argued that new provisions were unnecessary because the Constitution's broad language already did the job.

Politics Sets the Shifting Boundaries of Federal and State Power

Deliberate ambiguities in the U.S. Constitution have invited Americans to argue and battle ever since ratification. Politicians have contested the meaning of federalism throughout American history, pushing at various times to expand, limit, and contract national government power. The boundary between national and state authority is determined by politics and by the public's acceptance of practical divisions. Ongoing struggles and disagreements about state and national authority have helped shape the nation – and will continue to do so.

- **Political adversaries interpret federalism selectively.** Conservatives and liberals alike seek to bolster the authority of the federal government to settle issues they consider truly important, because an effective nationwide law is the best way to achieve desired results. But when it is impossible to enact national measures, each side turns to states as policy laboratories and defends the states' authority to act distinctively.
- **Conservatives at times favor national authority.** Although many of today's conservatives present themselves as champions of state prerogatives, conservatives have frequently used national laws and rulings to prevent the states from regulating businesses. Conservatives in both political parties have touted key Supreme Court rulings promoting a national market by restricting the authority of state legislatures to regulate railroads, insurance companies, and other private enterprises. Very recently, conservatives have used federalism selectively to trim social spending and remove restrictions on business.
- **Political liberals often turn to the states.** Modern liberals may prefer national reforms, but every historical phase of liberal reform started with policy initiatives in states like Massachusetts, New York, California and Wisconsin. When conservatives control or limit the federal government, liberals have turned to states to launch innovations in race relations, labor policy, business regulation, environmental protection, and health care. This will happen again in coming years – in environmental regulation, certainly, and also if Supreme Court rules that the federal government cannot ensure affordable health coverage for all Americans.

Read more in Dave Robertson, *Federalism and the Making of America* (Routledge, 2011).

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