

Handout A: Background Essay - What is a Federal Republic?

The Founders were always wary of government power. They wrote the Constitution to make a strong government, but to limit its authority. One way they did this was to create a federal republic. The national government was given specific powers, and others remained with the states or the people. These two separate powers – the national government and state governments – could co-exist because the national government was given only those powers specified in the Constitution. Among these were the powers to regulate commerce between states, to coin money, to raise armies, and to collect taxes. This type of political system is defined as federalism. The states have their laws, but they are also subject to the laws of the federal government. This separation gives the states greater autonomy to create laws based on the will of their citizenry.

Another way the principle of federalism was applied in the Constitution was in the structure of the U.S. Congress. The people would be represented in the House of Representatives. States would be equally represented in the Senate, with each state legislature selecting two Senators. In this manner, both the states and the people would have a say in federal laws.

The Federalist/Anti-Federalist Debate

The two major political groups at the time of the Founding were the Federalists and the Anti-Federalists. They disagreed about the new distribution of power. Many Anti-Federalists had been happy with the Articles of Confederation and feared that the new central government

created by the Constitution would take over the states. They believed that the states should retain more power, and they argued that the new Constitution should not be ratified. They were especially alarmed by vague phrases in the listing of Congress's powers, such as "necessary and proper," and "general welfare." They worried these words might be interpreted as broad grants of power to allow the federal government to interfere with the powers of the states and the liberties of the people. They also believed the people needed a bill of rights to protect themselves from the national government.

Federalists favored the Constitution as written. They supported a strong but constrained central government and weaker state governments. They believed that state powers and individuals' rights were secure under the Constitution because the central government's role was limited by the list of enumerated powers (Article I, Section 8), as well as by the list of denied powers (Article I, Section 9). The Constitution did not list powers of states because it was assumed the states kept all the powers given to them by their state constitutions except those given to the federal government and those powers denied to states in Article I, Section 10.

The Tenth Amendment

The Federalists eventually won the debate when the Constitution was ratified (approved) in 1789 by the required number of states, but calls for a bill of rights continued. In fact, eight states submitted lists of proposed amendments along

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with their ratifications. The one amendment proposed by all was the principle now contained in the Tenth Amendment.

The Tenth Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” The Founders included the Tenth Amendment to support the constitutionally-limited nature of the federal government. It highlights the fact that the states and the people keep all powers not given by the Constitution to the federal government. If a power is not given to the federal government, it remains with the states or the people.

Changes to Our Federal System

The Seventeenth Amendment further changed the balance of federalism when it was added to the Constitution in 1913. The Seventeenth Amendment provided for the direct election of Senators to U.S. Congress by the people of each state. State governments would no longer be represented in one house of Congress. Supporters of this change believed it resulted in a more democratic society. Critics argued that the change resulted in more federal laws that infringed on the powers of states or that carried mandates with no funding attached.

The Fourteenth Amendment, ratified after the Civil War in 1868, dramatically altered the federal republic created by the Founders. By limiting the types of laws states could pass, the amendment struck a blow to state sovereignty. About sixty years after it was passed, the Supreme Court began using the Fourteenth Amendment to apply Bill of Rights limits to the states. Until the 1920s, the Bill of Rights only applied to the federal

government. This expansion of the Fourteenth Amendment became the cornerstone for equal protection under federal law for all individuals in the states, too.

Legislation also altered the balance of power between the national government and the states. After the Civil War, a majority of states enacted Jim Crow laws requiring racial segregation. By September 1949, only fifteen U.S. states had no segregation laws. The U.S. armed forces and much of the federal government were also segregated. In response to state segregation laws, many argued for increased federal power. They pointed to the legal inequality and violation of natural rights caused by such laws. They claimed a strong federal government could correct such wrongs. They made the case that states often commit wrongful acts, and that the federal government is an important force to correct these wrongs. Others disagreed, pointing out that the federal government did nothing to protect citizens’ rights over decades of segregation. The 1954 Supreme Court case *Brown v. Board of Education* marked the beginning of the Civil Rights Movement toward equal treatment in public life and the end of the Jim Crow period. Later federal legislation intended to correct civil rights violations by states included the Civil Rights Act (1964) and the Voting Rights Act (1965). These laws and the enforcement of them came almost a century after the passage of the Fourteenth Amendment.

The Debate over Federalism

Debates over federalism often turn to other topics. Critics of federalism argue that a strong national government is needed to address unequal treatment by states. A patchwork of

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laws across the country makes it difficult for individuals and families who travel or move. Supporters of federalism argue that state power allows the states to make policies that meet the needs of their citizens, or to adopt successful policies from other states. What is acceptable for the people in some states—casinos and gambling, for example—may not be welcome in others. Finally, some supporters of federalism ask: why would the people elected to federal offices do any better at protecting rights than people in states offices would? The answer to these questions, they say, is not to trust certain leaders more than

others, but to hold all officials accountable to the requirements set by the Constitution.

The Founders believed, like many political philosophers, that the desire for power was a natural human tendency. This power could be used to do bad things as easily as it could be used to do good things. The American federal system was designed to prevent abuses of power and protect freedom. Neither a very strong federal system nor complete state independence has been shown to be perfect. Finding the right balance of power has been vital to liberty—as well as controversial—throughout our history.

Critical Thinking Questions

1. What is the principle of federalism?
2. What does the Tenth Amendment state?
3. How did the Fourteenth and Seventeenth Amendments alter the system of federalism originally established in the Constitution?
4. To what extent should the national government make laws concerning the controversial topics listed below? Use the following sources to frame your response: Article I, Section 8; Article I, Section 9; Article IV; Article VI; the Tenth Amendment; the Fourteenth Amendment.
 - a. Health insurance
 - b. Education standards
 - c. Marriage and family law
 - d. Medical marijuana
 - e. Assisted suicide