



The Gilder Lehrman Institute & Annenberg Public Policy Center:

## The Civic Mission of the Nation

### Federalism

by Kermit Roosevelt

Federalism is probably the most distinctive feature of the American constitutional system. Eighteenth-century political thinkers generally believed that ultimate power had to be given to one actor in a political system. America's constitution arguably does have one such authority—We the People—but in practical terms it divides power between the states and the national government. Where the national government has authority to act, its power is supreme. But large areas of authority are left to the states.

The historical reason for our federalism is that the people who wrote and ratified the US Constitution were wary of giving the national government too much power. The lesson of the American Revolution was that a national government—King George and Parliament—might become tyrannical. Preserving state power to resist, as the colonies had resisted the British, was essential. In 1787, when the Constitution was written, most people believed that the states were more important than the national government, and that people would feel a stronger attachment to the states. James Madison even suggested that if the national government tried to interfere with state authority, the states would defeat it in a war.

Arguably, Madison's vision came to pass in the Civil War, but the national government won. After the Civil War, the Reconstruction amendments—the Thirteenth, Fourteenth, and Fifteenth Amendments—gave the national government much more power and fundamentally restructured its relationship to the states and the people. Rather than a threat to individual rights, as the Founders thought, the national government became their protector. Through the Progressive era, the New Deal, and the Civil Rights era, the trend toward increased national power continued, sometimes through constitutional amendments and sometimes through new Supreme Court interpretations of the original text of the Constitution. The modern power and significance of the national government far exceed anything that the Framers would have expected.

Today, federalism matters in a different way than the Framers planned. First, it allows states to pursue different policies, which might be more or less suited to them based on their circumstances and culture. Rather than a single one-size-fits-all solution, states can experiment with different ideas and learn from each other's experiences.

Second, federalism allows groups that cannot constitute a majority at the national level to exercise control at the state level, in some states. One result of this aspect of federalism is that opponents of successful movements for social change often end up arguing for states' rights. With race, sex, and sexual orientation, the three major civil rights movements of the twentieth century, opponents who lost the debate at the national level turned to federalism as a means of retaining some authority. Federalism, you might think, is anti-progressive.

But the story works the other way, too. Supporters of social movements who cannot win a national majority often start at the state level and use success in one state to make their case to people in others. With same-sex marriage, for instance, supporters began by winning in one state—Massachusetts—and then expanding their reach by showing that no harmful consequences followed. Arguments in favor of “states’ rights” tend to be neither consistently liberal nor consistently conservative. They simply support whichever side is not in control of the national government. Federalism is not only the last resort of those who resist social movements. It also provides the soil in which such movements can grow.

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