

The Constitution Empowers Us: Federalism and Protecting Civil Rights Through Diffused Government

By W. West Allen



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The first constitutional principle of popular sovereignty necessitates that the people who charter government have a voice in the decisions that impact their lives.¹ Yet within large nations are people with diverse voices, differing opinions, and the constant concern that consensus is unavailable. This can lead to a concentration of power and disunity that, in time, threatens the rights of all people. The founders understood that a successful republic must be vigilant against a large country's natural tendency to either splinter into disharmonious factions or centralize governmental power to control disparate groups from afar. How would America secure freedom that protects minority voices through orderly self-government on the one hand, and, on the other hand, avoid tyranny?

The answer brings us to the second foundational principle of the U.S. Constitution: *Federalism*.

The precept of federalism as a system of government is a strategic compromise that divides political power and responsibilities between a centralized national authority and dispersed regional ones. Federalism links people and institutions by mutual consent, without sacrificing individual identities. As a form of social organization, federalism has come to mean an arrangement in which two or more governing bodies share power to achieve mutual benefits. But federalism is more than this.

To truly understand federalism, it is helpful to begin with the original meaning of the term. "Federalism" derives from the Latin word, *foedus*, meaning an "alliance," "treaty," "compact," or, more specifically, a "covenant." *Foedus* comes itself from an older Latin word, *fides*, meaning "trust," "faith," "honor," or "reliability." The concept reflects a mutual relationship with privileges and responsibilities on both sides. "Federalism," therefore, implies a collective political covenant.

What is the covenant between people and government? Why bifurcate the authority of the state? The first answer is in the Constitution. The people are the

legitimate wellspring of power, and it is from them that government is charted. In America, government is charted by *The People* for the express purpose set forth at the beginning of the U.S. Constitution—namely, "to secure the Blessing of Liberty to ourselves and our Posterity."² The people have entrusted their government with their collective sovereign authority based on the express understanding and promise that government will accomplish this purpose. As to the second question, the people have divided their delegated sovereign authority between dual governments, national and state, because of the paradoxical and cyclical nature of government itself. Preservation of liberty requires law. Law, not honored, requires enforcement. Enforcement of law requires power. And power entrusted to individuals, wielded unwisely, leads to tyranny and loss of liberty.

James Madison understood America's dilemma all too well. "If men were angels, no government would be necessary," Madison remarked, and "[i]f angels were to govern men, neither external nor internal controls on government would be necessary."³ Madison knew the difficulties of self-government and the perils future generations would face to hold on to liberty. Consequently, he and the founders developed a political system that would consecrate and fix this trust—this covenant—between the American people and their government in perpetuity. The people would grant power to a new dual government premised upon that government's promise to safeguard and defend the people's liberty and civil rights from all enemies, including all future governments themselves.

When the United States cut ties with Britain, the founders wanted nothing to do with the British form of "unitary" government. Under a unitary regime, all power originates from a centralized national government (i.e., Parliament) and is delegated to local governments. The founders initially chose the opposite form of government, a confederation where all power was held regionally. In time, the U.S. Constitution and

its Bill of Rights became the political balance in self-government to preserve liberty through orderly national government but with safeguards against overreaching national power that could naturally devolve into tyranny.

The U.S. Constitution—with its structural framework, enacting preamble, seven articles, and original 10 amendments—is as elegant as it is brilliant. It both empowers people and protects their civil rights. The covenant contemplated in federalism makes this possible. Federalism as a system of governance is found throughout the U.S. Constitution and is expressly stated in its Tenth Amendment:

*“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.”*⁴

In their attempt to balance order with liberty, the founders identified several additional reasons for creating this form of *dual federalism* in government, or division of power between national and state governments. First, it disperses access to power and political authority, thereby establishing a bulwark against centralized government and self-serving individuals who might seek to consolidate and control it. Second, it provides local citizens a meaningful stake in government by affording greater participation and control in their politics, including the ability to direct resources based on the specific needs and beliefs of their local communities. Third, it permits state democracies to become laboratories for new ideas in governance and the resolution of regional problems. Fourth, in allowing regional autonomy and local allocation of government resources, it eases political tensions and protects against succession. Fifth, it promotes state and national unity by requiring multiple levels of state and national government to adhere to shared principles of mutual respect and civil rights.

Thus, federalism is not merely a means to diffuse power; it is a principle to elevate and preserve self-government, thereby protecting the rights and privileges of all citizens. Federalism preserves and encourages the voices of both majorities and minorities, regardless of race, religion, or region, and unifies a vast, diverse republic. It accomplishes this best when our elected leaders deliver on the original promise of government to protect the civil rights and individual liberties of all citizens uprightly and equally at all levels of government. America’s elected leaders must wield the people’s authority not to usurp power, but to fight for freedom.

Thomas Jefferson believed and taught this:

*“I consider the foundation of the Constitution as laid on this ground: that ‘all powers not delegated to the United States, by the Constitution, nor prohibited by it to the states, are reserved to the states or to the people.’ To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.”*⁵

America’s Constitution circumscribes government from taking boundless fields of power. Our nation is strengthened and unified as its leaders remember and honor their original covenant to safeguard freedom and the civil rights of all citizens. This is the promise of federalism. ☉

Endnotes

¹The 2020-2021 FBA presidential messages will focus on five foundational principles of the U.S. Constitution: popular sovereignty, federalism, separation of powers, the Bill of Rights, and the rule of law.

²U.S. CONST. pmb1.

³THE FEDERALIST NO. 51 (James Madison).

⁴U.S. CONST., amend. X.

⁵Thomas Jefferson Letter to George Washington, Feb. 15, 1791, Opinion on Bill for Establishing a National Bank. Jefferson later famously wrote to Dr. Benjamin Rush, on Sept. 23, 1800: “I have sworn upon the alter of God eternal hostility against every form of tyranny over the mind of man.”

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