

# Does Anybody Believe in Federalism?



If conservatives don't want federalism any more, will liberals pick up the banner? Federalism has always been a key element of American conservatism. In 1960 the founding document of Young Americans for Freedom declared that "the genius of the Constitution—the division of powers—is summed up in the clause that reserves primacy to the several states, or to the people, in those spheres not specifically delegated to the Federal government." Ronald Reagan ran for president promising to send 25 percent of federal

taxes and spending back to the states. As Republicans took control of Congress in 1995, Newt Gingrich stressed that "we are committed to getting power back to the states."

Lately, though, conservatives—at last in control of both the White House and both houses of Congress—seem to have forgotten their longstanding commitment to reduce federal power and intrusiveness. Instead, they have taken to using their newfound power to impose their own ideas on the whole country.

Conservatives once opposed the creation of a federal education department. Congressional Republicans wrote: "Decisions which are now made in the local school or school district will slowly but surely be transferred to Washington. . . . The Department of Education will end up being the Nation's super schoolboard. That is something we can all do without." But President Bush's No Child Left Behind Act makes every local school district accountable to federal bureaucrats in Washington.

The 2002 election law imposed national standards on the states in such areas as registration and provisional balloting. A 2004 law established federal standards for state-issued drivers' licenses and personal identification cards. President Bush's Project Safe Neighborhoods transfers the prosecution of gun crimes from states to the federal government. The administration is trying to persuade federal courts to block implementation of state initiatives on medical marijuana in California and assisted suicide in Oregon.

Perhaps most notoriously, President Bush and conservatives are pushing for a constitutional amendment to ban gay marriage in all 50 states. They talk about runaway judges and democratic decision-making, but their amendment would forbid the people of Massachusetts, Connecticut, California, or any other state from deciding to allow same-sex marriage. Marriage law has always been a matter for the states, and it is strikingly centralist to impose one uniform marriage law on what conservatives used to call "the sovereign states."

Most recently we have the specter of the Republican Congress seeking to override six Florida court decisions in the tragic case

of Terri Schiavo, intruding the federal government into yet another place it doesn't belong. Asked on Fox News about the oddity of conservatives seeking to override states' rights, *Weekly Standard* editor Fred Barnes responded passionately: "Please! States' rights? Look, this is a moral issue."

Which is what liberal Democrats always said, of course, as they spent 50 years eroding federalism and expanding the power of the federal government at every turn. They had a point when it came to the civil rights laws; Southern states were violating the constitutional rights of black citizens. But that was no excuse for federalizing everything from the minimum wage to the speed limit to environmental regulations. For decades liberals scoffed at federalist arguments that the people of Wisconsin or Wyoming understood their own needs better than a distant Congress. They brought more and more power to Washington, overriding state legislatures and imposing mandates on every nook and cranny of governance.

Now those chickens have come home to roost. Republicans run Washington, and they're using the federal power that liberals built in ways that liberals never envisioned.

Some liberals are rediscovering the virtues of federalism. They dimly recall that Justice Louis Brandeis called the states "laboratories of democracy" and are seeking to pursue their own policies at the state level when they fail in Washington. The prospect of a constitutional amendment banning gay marriage has made some liberals appreciate the virtues of having 50 states, each free to make its own marriage law. Some have even come to appreciate the value of diversity: Virginia and Vermont may have different marriage laws, and that's OK. Maybe it would even be OK for Los Angeles and Louisiana to have different environmental regulations.

But most liberals can't give up their addiction to centralism. Even as they rail against federal intervention in the Schiavo case—arch-liberal Eleanor Holmes Norton, the District of Columbia's delegate in Congress, discovers for the first time in her life that "the bedrock of who we are" is the "Founders' limited vision of the federal government"—they push for stricter regulations on painkillers, a higher national minimum wage, and federal gun control laws.

No one really supports federalism these days except libertarians. And the American people, who oppose the congressional intervention in the Schiavo case by 82 percent and believe by 78 percent that the federal government has too much power.

Only one modern political party has a history of taking federalism seriously, but Republicans have decided to abandon this principle to pander to small but vocal constituencies. The nation will be poorer for it.

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—David Boaz