

# Federalism and the separation of powers in the united states critical thinking ex...

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The United States is often referred to as a “ democracy,” but this is not a strictly true statement. In reality, the United States is a democratic republic that operates under federalist principles; though these two ideas may seem to be the same, in reality they are quite different. In a democracy, every individual has a vote on every issue, but in a democratic republic, individuals vote on representatives who then vote on the issues in their stead (Sutton 18). Because America is a compilation of states that make up one unified government, it can be referred to as a federalist nation (“ Separation of Powers and Checks and Balances”). Federalism is an accepted part of the American democratic republic structure for most people, but few know the struggles and contemplation that went into deciding just how much power the federal government should have.

After the American Revolutionary War, the men who would go on to found the American nation formed the Articles of Confederation, a document that very loosely tied the states of the Union together (Sutton 28). They were concerned about the possibility of creating an overarching federal government that had too much power; to do this, they felt, would be the equivalent of inviting the monarchy back into power (Sutton 28). The federal government proposed in the Articles of Confederation was too weak, however, and the country began to devolve into chaos. This is when the Constitution was written to give the federal government more overarching power and a stronger hold over the states (Sutton 29).

Some of the founding fathers of the American nation were still concerned about the issue of too much federal power, however. This is one of the main reasons the Bill of Rights was created and appended to the Constitution-- to

ensure that any rights not explicitly granted to the federal government (or granted later) would be reserved for the States (“Separation of Powers and Checks and Balances”). The Tenth Amendment of the Bill of Rights 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” (“Separation of Powers and Checks and Balances”). This seems to be a very clear statement, but like so many things that seem simple on the surface, it has long been a topic of contention between politicians, lawyers, and others who study the intricacies of the American political and judicial system.

The American Federal government has three separate branches, each of which retains a specific set of powers. These three branches are the legislative branch, the judicial branch, and the executive branch. When looking closely at the American governmental system, it is clear to see that those who designed it were very fearful of creating a government that wielded too much power in one particular place (“Separation of Powers--An Overview”). The separation of powers within the federal government is very carefully balanced: the executive branch can check the legislative branch via veto power, while the legislative branch can check the executive branch via military control; similarly, the judicial branch can check the legislative branch via court decision, while the legislative branch can enact new laws and change the Constitution, both of which bind the judicial branch.

Today, law has evolved to the point where the federal government-- the combination of these three branches-- control international relationships, interstate commerce, federal taxes, and other similar issues (“Separation of

Powers--An Overview"). States are given the opportunity to create laws within their own borders, so long as they do not conflict with federal statutes, regulations, or the Constitution of the United States.

Again, this seems to be relatively straightforward, but in reality, the interaction between the local government, the state government, and the federal government are incredibly complex. While some things, such as interstate commerce or the sole ability to engage in international treaties are very clearly powers designated to the federal government, some issues remain much cloudier (" Separation of Powers--An Overview").

When states disagree with the federal government on a principle or a method of governance, states may enact laws that conflict with the laws of the federal government; when this happens, the only recourse is for someone to take the case before the Supreme Court of the United States (" Separation of Powers--An Overview"). The Supreme Court will hear the arguments and issue a decision regarding the policy and whether or not it violates the Constitution.

The changing face of the world also changed the way the state and federal governments interact with each other. When the world was much more insular, international interactions were somewhat simpler and perhaps more limited; today, with the growth of technology and the ease of travel, international issues are much more common. For this reason, issues like immigration and international cooperation-- even on a small scale-- may sometimes fall to specific states, particularly border states. To this day, there is frequent discussion about who is responsible for issues like illegal immigration, border control, and other particularly sticky topics of discussion.

The idea of “ states’ rights” is one that goes hand-in-hand with the discussion of federalism. When states are the victim of a federal policy-- whether the slight is real or perceived-- the topic of “ states’ rights” becomes a hot-button issue for the media. Many people, particularly conservatives, feel that the federal government has been growing at an alarming rate, and it is all-too-frequently imparting its will on the states, with no check to its power.

This attitude is seen particularly starkly when issues like gun control, health care, women’s reproductive rights, same-sex marriage, and marijuana legalization are being discussed. Because different states may have vastly different types of constituents, and those constituents may have vastly different opinions on these hot-button issues, federal policymaking on these issues can often cause activists to yowl about how the federal government has become too large and is infringing upon the rights of the states to be relatively autonomous.

One of the biggest issues in the most recent election was the issue of women’s reproductive rights. In the landmark Supreme Court decision *Roe v. Wade*, the Supreme Court decided that having an abortion was a woman’s right, due to the fact that her privacy would be invaded if the government took this right away (Hull and Hoffer). The *Roe* decision was not, as many people assume, decided on the basis of the morality of abortion; instead, the Supreme Court looked at the due process clause of the Constitution and declared that under this clause, an individual has a right to expect privacy in his or her own body and personal life (Hull and Hoffer).

This was one of the first decisions that granted an individual autonomy over his or her body, and it has caused many a debate over the years. People who oppose the Roe decision claim that an individual cannot do something illegal (murder) in private, just because they have the right to privacy; on the other hand, those who support Roe claim that it is disingenuous to define an unborn fetus as a person, and thus, it cannot be murder (Hull and Hoffer). Understanding the nature of the debate as it stands today is fundamental to understanding why this particular debate has become important in regards to states' rights and federal power. Because Roe v. Wade is a Supreme Court decision, it stands as the law of the land; when states enact laws that infringe upon this decision, they are automatically illegal and illegitimate, and can be overturned with ease when someone brings them as a question before the courts. However, because the issue of abortion and reproductive rights is so divisive, many states have been looking for ways to work around the ban and curtail the access that women have to reproductive services and abortion.

Many pundits like to frame the debate over reproductive services as a black and white issue, with people who support reproductive rights as being pro-abortion, and those who oppose abortion on the other side of the table. However, there is much more to reproductive rights-- for men and women-- than merely abortion. The Roe decision, and the subsequent Planned Parenthood v. Casey decision solidified the right of individuals to make their own reproductive choices in their private lives (Hull and Hoffer).

These reproductive rights-- not solidified into law until the 1960s-- incorporate the right to have an abortion up until a certain point in the

pregnancy, but they also protect the right of individuals to acquire and use birth control freely (Hull and Hoffer). The right to have and use birth control outside of marriage is one that is taken for granted today, but it is a right that had to be fought for and decided upon by the Supreme Court of the United States. It seems strange to most people's modern sensibilities, but until recently (and still, in some places) the issue of birth control is a very contentious one.

The question is, then, how are reproductive rights a state issue if the federal government, via the Supreme Court, has issued a decision on the reproductive rights of individuals? The answer lies in the vague nature of the Supreme Court decisions that guarantee these rights to individuals.

The Supreme Court must walk a fine line between being too restrictive in its language and being too permissive; the Roe decision contains some vague wording that allows states to curtail certain reproductive rights in their jurisdictions. The Supreme Court has no power to overturn state laws unless someone brings a question before the Court in the form of a lawsuit, so some illegitimate or questionably legitimate laws go unquestioned for many years before they are addressed (Hull and Hoffer).

Texas, for instance, is quite a conservative state, and has a variety of rules in place that make it more difficult for women to obtain abortions and birth control. In Texas, there is mandatory counseling for women seeking abortions, and this counseling is often biased towards adoption ("Who Decides? The Status of Women's Reproductive Rights in the United States"). In California, conversely, is more liberal, with a pro-choice legislature; these mandatory counseling rules do not exist in California ("Who Decides? The

Status of Women's Reproductive Rights in the United States").

It is easy to see, then, why such an important and divisive issue is complicated when left to the states to decide; rather than creating an overarching policy governing all American citizens within all states, the states are left to decide for themselves what is the most important way to legislate rights within their borders. While this can be practical at times, it is certainly problematic when it comes to rights as fundamentally important as the right to access to reproductive services.

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