Our Federalism

Live Free or Die.

"Our Federalism" is a catchphrase for the system of jurisprudence belonging to the people of the United States. The term is meant to describe the country's unique governmental arrangement, "a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it."[1]

Today the phrase is closely associated with the so-called Younger abstention doctrine, though its broader constitutional explanation involves the Declaration of Independence and those "Free and Independent States" advanced by the successful termination of the Revolutionary War. The slogan "does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses."[2] Instead, ratification of the United States Constitution established that the individual States were to be "no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere."[3] This combination of incomplete governments yielded one complete system of American jurisprudence, where "separation of the two spheres is one of the Constitution's structural protections of liberty."[4]

In this way our federalism overcame the age-old monopoly of government and provided a significant legal mechanism to increase individual freedom, the ultimate aim back of the expression. Early on, the Supreme Court made it clear that the people had a right "to reserve to themselves those sovereign authorities which they might not choose to delegate to either" government, explaining that "[t]he constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by 'the people of the United States.'"[5] More recently the high court deemed likewise that the "sovereignty of the States" was put in place exclusively "for the protection of individuals," not for the benefit of the States or state governments, or even the public officials governing the States.[6] Accounting for the built-in tension between state power and national authority, the court held that "State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.'"[7]

Mainly, the authors of the Constitution "split the atom of sovereignty"[8] on the premise that "in division there is not only strength but freedom from tyranny."[9] Principal framer James Madison described the result as a *compound* republic[10] designed to divide government power and maximize the freedom reserved to the people.

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[1] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring).
[2] *Younger v. Harris*, 401 U.S. 37, 44-45 (1971).
[3] *The Federalist* No. 39, at 245 (James Madison) (Clinton Rossiter ed., 1961).
[4] *Printz v. United States*, 521 U.S. 898, 921 (1997).
[5] *Martin v. Hunter's Lessee*, 14 U.S. 304, 324-325 (1816).
[6] *New York v. United States*, 505 U.S. 144, 181 (1992).
[7] *New York v. United States*, 505 U.S. 144, 181 (1992) (quoting *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) (Blackmun, J., dissenting)).
[8] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring).
[9] *Reid v. Covert*, 354 U.S. 1, 40 (1957).
[10] *The Federalist* No. 51, at 323 (James Madison) (Clinton Rossiter ed., 1961).

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