

# IV. The Anti-Federalist : Still With Us Today

## **The Anti-Federalists: Still With Us Today**

Robert Maranto

The political life of the community continues to be a dialogue, in which the Anti-Federalist concerns and principles still play an important part. The Anti-Federalists are entitled, then, to be counted among the Founding Fathers...and to share in the honor and the study devoted to the founding.

Herbert J. Storing<sup>86</sup>

I thought about it, and I realized that if I took a strong public position asserting opposition to the proposed factory, it would become a local v. federal issue. You aren't likely to win in a situation like that.

A modern Federal manager

The tensions between states rights and Federal powers reflect the original battles between the Federalists and the Anti-Federalists. These conflicts are not tangential to but rather are at the heart of public administration under our Constitution. In the original Constitution, each of seven articles and 16 of 24 sections dealt explicitly with the rights and obligations of the states. Twenty-one of 27 amendments mention or primarily address the states. Even today, effective Federal executives must work with state and local officials and interests in ways foreign to most other public sector administrators around the globe. These concerns are not abstract. They are central to the work you do. Arguably, for most policies and through most of our history the system has done a good job fragmenting political power and keeping it close to the people. This brief paper will outline the arguments of the Federalists and Anti-Federalists and follow with modern examples of state v. Federal controversies from education and environmental policy.

### **The Early Arguments: Federalists v. Anti-Federalists in Philadelphia and After**

---

<sup>86</sup> Storing, Herbert, J., What the Anti-Federalists Were For, University of Chicago Press, 1981, p. 3.

Fundamentally, the Anti-Federalists and Federalists disagreed about whether freedom is best safeguarded in a small polity such as a county or state, or in a larger nation. Second, they disagreed over whether freedom could be best safeguarded through the best possible structure of government to regulate conduct, or through the cultivation of a virtuous and active public.

In Federalist Paper #10, James Madison argued that in any free political system, factions would form which would seek to dominate others.

The latent causes of faction are ...sown in the nature of man.

\* \* \*

A zeal for different opinions concerning religion, concerning government and many other points ... an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have in turn divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to cooperate for the common good.<sup>87</sup>

Sounds familiar! Accordingly, Madison designed a structure of government in which ambition would be made to counteract ambition. In part this would work through the separation of powers. Since none of the three branches of the Federal government could dominate, none could impose a dictatorship. Secondly, tyranny would be avoided because America would be a large, or "extended" republic. In a large nation, the variety of factions would be so diverse that none could come to dominate.

Not all Federalist arguments were so pessimistic. For example, some argued that a large nation would have a greater pool of talent from which to draw in choosing leaders. With more and better leaders, there would be less corruption (in part since there would be too many officeholders to bribe) and government would be more effective. An effective government would protect the nation from foreign invasion, deliver the mail, administer justice, issue a stable currency to facilitate commerce, and build roads, canals, and other internal improvements. As Hamilton argued before the New York constitutional convention, "The confidence of the people will be easily gained by good administration. That is the true touchstone."<sup>88</sup> The security and

---

<sup>87</sup> Hamilton, Madison, and Jay, The Federalist, #10, NY: The Modern Library, p. 55.

<sup>88</sup> Quoted in Storing, p. 42. See also p. 44. Storing presents a good summary of the Federalist arguments on pp. 38-47. See also David F. Epstein, The Political Theory of the Federalist, Chicago:

infrastructure provided by such a government would assure America's place as a global trading nation, and would assure that Americans would be relatively cosmopolitan in outlook.<sup>89</sup>

The Anti-Federalists disagreed. Regarding the separation of powers, Patrick Henry warned that the proposed government would be too complex for citizens to understand:

A constitution ought to be like a beacon, held up to the public eye, so as to be understood by every man. This government is of such an intricate and complicated nature that no man on this earth can know its real operation.<sup>90</sup>

(What he think about the tax code or campaign finance laws?) Similarly, other Anti-Federalists derided the proposed Constitution as a "spurious brat," "this bantling," "this 13 homed monster," and "this heterogeneous phantom." Anti-Federalists felt that only a simple government was conducive to freedom. A complicated government might be used against the public interest.<sup>91</sup> The American government may be the most complex in the world, and two hundred years later our people still have trouble understanding it.<sup>92</sup> Further, the Anti-Federalists doubted that a separation of powers could be stable. Some Anti-Federalists feared that the presidency would be too weak to counter Congress. More typically, however, they feared that the president would be a "foetus of monarchy," as Edmund Randolph put it at the Constitutional Convention.

With a powerful presidency and great size, the Federal government could become so strong as to threaten the states and the people. As James Monroe warned in a suppressed pamphlet, the powers of the Federal government could easily grow to usurp the states. For example, a Federal government able to tax the citizens directly would weaken the ability of the states to tax. Replying to those who saw the power to tax as the soul of a new American national government, Patrick Henry boldly replied that "they shall not have the soul of Virginia."<sup>93</sup> In

---

University of Chicago Press; 1984; Forrest McDonald, Novus Ordo, Seclorum: the Intellectual Origins of the Constitution, Lawrence: University Press of Kansas, 1985.

<sup>89</sup> Forrest McDonald, E Pluribus Unum: The Formation of the American Republic, 1776-1790, 1965, Boston: Houghton Mifflin.

<sup>90</sup> Quoted in Storing, p. 54. Luckily, Patrick Henry refused to attend the Constitutional Convention even though he was chosen to, saying that he "smelled a rat in Philadelphia, tending toward monarchy."

<sup>91</sup> Storing, pp. 54, 58. See also Forrest McDonald, Novus Ordo Seclorum: the Intellectual Origins of the Constitution, Lawrence: University Press of Kansas, 1985.

<sup>92</sup> Modern political scientists find that Americans love the Constitution and understand that the Constitution divides power to prevent tyranny. At the same time, the public does not like the molasses pace and frequent conflict inherent to our constitutional system. See Hibbing, John R. and Elizabeth Theiss-Morse, Congress as Public Enemy: Public Attitudes Toward American Political Institution. New York: Cambridge University Press, 1995. Hibbing and Theiss-Morse argue that we need to do a better job informing the public that the separation of powers was not designed for efficiency and seems to work quite well *in the long run*.

<sup>93</sup> Storing, pp. 34-35.

general, the Anti-Federalists favored weak governments with low taxes. They felt that American government must not be well supported, lest it come to *rule over* rather than *be ruled by* the people. As one wrote, "the poverty of publick bodies, whether sole or aggregate, prevents tyranny." The Anti-Federalists feared that Federalists wanted American "to be like other

nations," whose governments had stately palaces and large, expensive standing armies waging bloody wars to satisfy the glory of monarchs and generals.<sup>94</sup>

Most importantly, the Anti-Federalists felt that freedom and virtue were best cultivated in small, homogeneous polities where the leaders and led knew each other and had a common culture and common beliefs; thus the states should have far more power than the national government. As "Brutus" (many writers used such pen names) writes:

In a Republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and will prevent such conclusions as will promote the public good.<sup>95</sup>

Anti-Federalists noted that Pennsylvania grew rapidly through open immigration. This made the state large and powerful, but also led to bitter divisions between the English and German communities. In the view of "Agrippa," diverse Pennsylvania and New York were not well governed, while the New England states "have, by keeping separate from the foreign mixtures, acquired their present greatness in the course of a century and a half, and have preserved their religion and morales."<sup>96</sup> Americans still argue about the tradeoffs between diversity and commonality. Thus, what Madison regarded as positive, a diversity that could retard tyranny, the Anti-Federalists saw as a fatal flaw. Indeed, they feared that only a large standing army could keep a large, diverse nation together, since people's natural sentiments for each other could not suffice. Those watching politics in the former Yugoslavia and the former Soviet Union might find reasons to agree with the Anti-Federalists.

---

<sup>94</sup> Storing, pp. 30-31. Hamilton and other Federalists thought it vital to have an army and navy to defend against European incursions. Anti-Federalists did not think these threats likely. They feared that building an army would cause war rather than deter it, and eschewed the expense of a large military (pp. 27, 31). Of course, these same arguments still take place.

<sup>95</sup> Storing, Herbet, J., What the Anti-Federalists Were For, University of Chicago Press, 1981, p. 31.

<sup>96</sup> Each quoted in Storing, pp. 19-20. Elazar finds that politics in the New England and Midwestern states have traditionally been dominated by moral concerns about what constitutes the good society. In contrast, in the more diverse middle Atlantic states, from the Founding politics has been based on materialist struggles between competing individuals and communities. See Elazar, Daniel J. 1972. Federalism: A View From the States, 2<sup>nd</sup> ed. New York: Harper & Row, pp. 90-104.

Concordant with their support for community, the Anti-Federalists wanted state governments to be much more powerful than the national government. Since the capital of a large nation would be far distant from, and share little with, those in local communities, the national government could not represent the people. Those in government would look to their own interests first, and only then to those of the people. In turn, the people could not be expected to give the government their support.<sup>97</sup> In contrast, citizens would probably have more in common with their state and local governments, and could participate directly in them. Anti-Federalists believed that such participation could build civic virtue, a view also held by many modern political scientists.<sup>98</sup> Finally, the Anti-Federalists pointed out that there was little evidence that citizens wanted so strong a Federal government as provided by the Constitution. Indeed, in some states the ratification of the Constitution was met with riots.<sup>99</sup>

In short, the Anti-Federalists made immense contributions to American government. Their arguments helped assure that states and localities would play a large, and in many policy areas, preeminent, role in policy-making. Anti-Federalist warnings that the federal government might become too powerful led to the passage of the Bill of Rights, the first ten amendments to the Constitution designed to protect the liberties of individuals. Notably, the 10th amendment reserves those powers not specified as belonging to the national government to the states or to the people. (It was often quoted by Senator Bob Dole in 1996 while he was seeking the presidency.) In short, the arguments of Anti-Federalists helped assure that America would have limited government.<sup>100</sup> Further, in some respects the Anti-Federalists have proven prophetic. As James Q. Wilson writes:

[The Anti-Federalists] argued that a strong national government would be distant from the people, and would use its powers to annihilate or absorb the functions that properly belong to the states. Congress would tax heavily, the Supreme Court would overrule state courts, and the president would come to head a large standing army. Since all these things have occurred, we cannot dismiss the Anti-Federalists as cranky obstructionists who opposed without justification the plans of the framers.<sup>101</sup>

## **The Changing Tensions Between State and Nation.**

---

<sup>97</sup> Storing, pp. 15-23.

<sup>98</sup> See, for example, Robert L. Bish and Vincent Ostrom. 1979 Understanding Urban Government. Washington: American Enterprise Institute; Amy Gutmann. 1987. Democratic Education. Princeton University Press.

<sup>99</sup> Storing, pp. 7-14; see also Forrest McDonald. 1994. The Presidency: An Intellectual History. Lawrence: University Press of Kansas, pp. 186-87.

<sup>100</sup> Though the Anti-Federalists opposed a strong national government, predictably, once Anti-Federalist Thomas Jefferson was elected president, he used his power even more aggressively than his Federalist predecessors. See James Sterling Young (1966). The Washington Community. New York: Columbia University Press.

<sup>101</sup> Wilson, James Q. 1992. American Government: Institutions and Policies, fifth edition. Lexington, MA: D.C. Heath and Company, pp. 30-31.

Through the 1800s, the most important cleavages in American politics were geographic. In appointments to federal positions, presidents were careful to enforce geographic quotas to hold their party and nation together. (Lincoln was a notable exception. For understandable reasons he purged southerners from the civil service.)<sup>102</sup> Many Americans were more loyal to their states than to the nation. As Shelby Foote points out, before the Civil War Americans would say "the United States are" rather than "the United States is" as we do today.<sup>103</sup> The nation was thought of as a federation of states rather than a single nation, particularly in the South and West. Just as southern and western Republicans today argue for more state and local power and reduced Federal power, through the 19th and early 20th centuries southern and western Democrats argued that states should be preeminent. In some sense, each descended from Anti-Federalists.

The Civil War settled the matter of Federal preeminence, not through argument but by force of arms. From 1865 to the 1950s, states would not seriously claim the ability to "nullify" Federal laws they disagreed with. To free the slaves and assure African-Americans the basic rights of citizenship, even in the South, the 14th and 15th amendments were passed and the Federal government for the first time became involved in state and local elections. Federal involvement ended after the disputed 1876 presidential election. The election was probably won by Democrat Samuel J. Tilden, but Republican Benjamin Harrison won enough southern electoral votes to take office after agreeing to remove troops from the South. Without Federal "interference," from the 1870s to the 1960s, southern whites used such means as the poll tax and "literacy tests" (often in foreign languages) to keep African-Americans from exercising their rights to vote and hold office. (The requirements were waived for whites.) African Americans who attempted to exercise the basic rights of citizenship often lost their jobs and occasionally their lives. State and local governments often refused business permits to African Americans. From Reconstruction until the Great Depression, few thought that the Federal government could intervene. In the Progressive Era and to a much greater degree during the New Deal, however, the inability of state and local governments to cope with economic calamity led to unprecedented Federal involvement, which provided job and entitlement programs and assured the rights of workers to join unions. When the Federal government began to intervene to assure the basic rights of citizenship for all Americans in the 1950s and 1960s, some sought to resurrect the old nullification doctrine. Eventually, through Federal court decisions, but even more through changes in public opinion and the passage of the 1964 and 1965 Civil Rights Acts, voting rights and integration came to the South.<sup>104</sup>

---

<sup>102</sup> See Maranto, Robert and Schultz, David (1991). A Short History of the U.S. Civil Service. Lanham: University Press of America. In the Civil War, many who supported the union nonetheless fought for the Confederacy out of loyalty to their states and communities. Those who did not fight risked ostracism.

<sup>103</sup> Bums, Ken, "The Civil War" , NY: Public Broadcasting Service, 1991.

<sup>104</sup> For examples of techniques used to disenfranchise black voters, see Jack Bass's Unlikely Heroes (New York: Simon and Schuster, 1981). For a detailed discussion of how integration resulted from changes in public opinion and Federal laws (rather than court cases, which had little impact), see Gerald Rosenberg's The Hollow Hope (University of Chicago Press, 1991). For examples of how state and local

For some, the long history of racial segregation and oppression by state governments delegitimized federalism. As political scientist William H. Riker wrote, "the main effect of federalism since the Civil War has been to perpetuate racism."<sup>105</sup> Those who support a more unitary government, with more Federal government involvement in state and local affairs, argue that state and local governments lack the resources and technical capacity to solve problems, that those governments are often insensitive to the rights of those of low income and minorities, that it is unfair for low income states and localities to provide inferior services to their citizens, that problems such as pollution cross state boundaries and thus must be controlled by the national government, and that in a global economy, the Federal government must assure common standards in education, health care, and worker protection. Finally, as Federalist #10 suggests, in a small community it may be possible for a single faction to dominate politics, to the detriment of others. For example, in some counties a single mining or timber company owns most of the land.

On the other hand, former Brookings Institution scholar and OMB Director Alice Rivlin points out that today's state governments are much less biased and also have far more capacity than in the past, in part due to Federal grants and mandates which forced the states to modernize. Others supporting strong states and localities argue that competition between states is healthy, that the Federal government lacks the capacity to manage all domestic programs, that the existence of state and local governments gives citizens more control over policy implementation, and that not allowing local variations in public policy would increase political conflict to unacceptable levels. For example, should San Francisco and Birmingham be forced to have exactly the same policies regarding abortion or gay marriage?<sup>106</sup>

### **Contemporary Examples.**

Though the Federal government has far more power today than through most of our history, the battles between the Federalists and Anti-Federalists are still with us. On most issues, we call Federalists Democrats and Anti-Federalists Republicans. While the tensions between modern Federalists and Anti-Federalists complicate the roles of American public managers, the long term impacts may be healthy. Innovative Federal leaders can often work in ways which

---

governments kept African Americans from opening businesses, see Walter E. Williams [The State Against Blacks](#). (New York: McGrawHill, 1982).

<sup>105</sup> "Federalism," in Fred I. Greenstein and Nelson W. Polsby ed. [Handbook of Political Science](#) (Reading, Mass.: Addison-Wesley, 1975), vol. 5, 101. Notably, until the 1960s the Federal government often acted to restrict the rights of African Americans, and many state governments actually had a better record. See Desmond King's [Separate and Unequal: Black Americans and the US Federal Government](#). (New York: Oxford University Press, 1995).

<sup>106</sup> For summaries of arguments in favor of and opposed to federalism, see Wilson [op.cit.](#) P. 51; Dye and Zeigler, [op.cit.](#), pp. 366-72. On the history of federalism and how the states have recently improved, see Alice M. Rivlin, [Reviving the American Dream](#), Washington: Brookings Institution, 1992, particularly pp. 102-08. Also see David Osborne, [Laboratories of Democracies: A New Breed of Governor Creates Models for National Growth](#), Boston: Harvard Business School Press, 1988.

make use of our divided powers, in part by recognizing the legitimate roles of state and local governments, and of the citizens.<sup>107</sup>

For example, regarding the Federal role in education, traditionally a state and local concern, modern Democrats point out that:

... if the United States has fifty different systems, teachers will never be sure what newcomers in the class have studied, so they will do exactly what they do now--which is to spend about 30 percent of the class time reviewing the materials from the previous year before moving ahead with the current year's work ... I strongly support the Goals 2000 legislation because it gets people talking about and debating [national] standards and assessments.<sup>108</sup>

The Federalists would probably agree. On the other hand, Republicans take an Anti-Federalist view, fearing that Federal standards will take power away from states and localities:

New national tests could lead to a national curriculum. In developing new assessments the tendency is to create a new curriculum to match those assessments. But like new national tests, a national curriculum is something Americans don't want and don't need. Local control is a hallmark of American education.

Representative Bill Goodling, Chair of the House Committee on Education and the Workforce.<sup>109</sup>

Notably, the Federal government has had enormous impacts on state and local provision of education even without national standards as such. The Nation At Risk Report issued by the U.S. Department of Education in 1983 (and with annual supplements since), reported student achievement levels on standardized tests by state. As Secretary of Education Terrel Bell recalled:

[Governors] said they had no information that told them where their states stood educationally in comparison to others. Lacking this, they were defenseless when their state superintendents and commissioners of education insisted that students in *their* state were above the national average in academic achievement. If you believed these top-level state school officers, just about every state in the country was above the national average! Though many of the seriously

---

<sup>107</sup> Robert Reich, Mark Moore, and others have developed this theme. The most succinct explanation of it is developed by Marc K. Landy, Marc J. Roberts, and Stephen R. Thomas in The Environmental Protection Agency: Asking the Wrong Questions (New York: Oxford University Press, 1994), pp. 6-9.

<sup>108</sup> Shanker, Albert, "The Case For High Stakes and Real Consequences," pp. 145-53 In Diane Ravitch ed. Debating the Future of American Education. Brookings Institution: Washington, 1995, p. 149.

<sup>109</sup> "More Testing Is No Solution," Washington Post, August 13, 1997, A21.

concerned governors knew this was far from true, there was little they could do without data to support their efforts for change.<sup>110</sup>

The Nation At Risk Report gave governors *and voters* the ability to check up on their state level student achievement compared to that in other states and over time. This empowered governors vis a vis state school bureaucracies, led state level education bureaucracies to emphasize and to some degree standardize output measures, and led to fifteen years of near constant education reform.<sup>111</sup>

Thus the Federal government influences state level policies not merely by issuing grants and mandates, but also by providing information which state governments and their citizens can act on. To the degree the public is better informed of the choices facing government, public opinion will be more reasoned and perhaps more supportive of policy decisions. In this way the Federal government increases its capacity and strengthens civic education.

This is hardly the only example of such impacts. For example, in 1983 EPA Administrator William Ruckelshaus led a series of public meetings in Tacoma to discuss his options regarding the implementation of new clean air standards. If interpreted strictly, the standards could save as many as 18 Tacoma cancer cases a year-by closing a plant which provided 500 high paying jobs. Ruckelshaus wanted to inform the public of the value conflict and hear public feedback. (The plant closed for unrelated reasons before the proposed new standards could take effect.)<sup>112</sup>

Such controversies do not only face high level political appointees. As Superintendent of Shenandoah National Park, career executive Doug Morris faced an important political decision in his first weeks on the job. The Cardinal Glass company proposed to open a plant in Front Royal, only a few miles outside Park boundaries. The company was reputable, and would provide the community with 300 high-wage jobs. On the other hand, air pollution from the plant could harm visibility on Skyline Drive, Virginia's ninth leading tourist attraction with 1.9 million visitors annually. On his third day on the job, a local environmental group demanded that Superintendent Morris join their effort to stop the plant.

Complicating Morris' dilemma was the difficult history of Shenandoah National Park. In response to national calls for the establishment of a national park in the eastern U.S., in the 1920s Virginia used eminent domain to take the land of hundreds of farmers living in the mountains, often without adequate compensation. While Virginia took their land, residents saw the Federal government as the ultimate cause of their distress. Their descendants formed Children of Shenandoah, a group which opposed extensions of the National Park and complained that Park

---

110 The Thirteenth Man: A Reagan Cabinet Memoir.(1988). New York: Free Press, p. 136.

111 Bell, opcit., pp. 139-40; phone interview with former Education Department official, November 23, 1998; "CSSO Center on Assessment and Evaluation," Council of Chief State School Officers, October 17, 1985.

112 Landy et at, opcit. 252-54.

displays and the introductory film in the visitors center made only short, condescending references to the area's previous inhabitants.<sup>113</sup> Morris recalls:

I thought about that, and I realized that if I took a strong public position asserting opposition to the proposed factory, it would become a local v. federal issue. You aren't likely to win in a situation like that. It would have diverted attention from considering local quality of life issues, which seemed the most promising forum to protect both local and Park values. So, I remained off the public stage, but did assert our obligation to provide scientific information regarding potential impact of the proposed factory on Park resources, and maintained private communication with all parties.<sup>114</sup>

Perhaps since the local economy was healthy and because the controversy remained local rather than one involving Washington, large numbers of area residents themselves organized to oppose the plant. In the face of widespread opposition at public hearings, county supervisors postponed their decision and Cardinal Glass eventually decided to locate elsewhere.

In short, as many Federal executives know, 200 years after the original debates between the Federalists and Anti-Federalists, we still live under an ever evolving power sharing arrangement that tests the patience and creativity of American public leaders. Yet with the notable exception of racial discrimination, one can argue that the system has served well in supplying a strong but limited national government, while still allowing communities to thrive by allowing significant local power over affairs.

---

113 When Morris became the first Shenandoah Superintendent to meet with Children of Shenandoah, a local paper compared the meeting to the Pope's visit to Communist Cuba! Daily Progress (Charlottesville), February 8, 1998, B 1.

114 Personal communication, October 13, 1998.