

## ISSUE BRIEF

### *“Information to Action”*

**Topic:** Federalism

**Title:** *THE MOST REVOLUTIONARY FEATURE OF THE CONSTITUTION* by Joshua Charles

Many people think the most revolutionary feature of the American Constitution are things like separation of powers, or the various rights enumerated in the Bill of Rights.

While those are certainly vitally important, they are not the most important, or the most revolutionary. In fact, separation of powers, while it had never been applied as thoroughly as the Founders achieved, had been discussed and in some ways attempted before. While the Founders did so at a level never before seen, they were drawing from the observations of political philosophers like Baron de Montesquieu, and the political experience of polities like the Roman Republic, in which a proto-separation of powers was already at work in the distribution of sovereignty between the Senate (the aristocrats), the Consuls (the executive), and the Tribunes (the common people).

As innovative as separation of powers was, it was not what the Founders themselves considered the most important. For them, the most important feature of the Constitution was *federalism*, which James Madison described this way:

The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the state. The operations of the federal government will be most extensive and important in times of war and danger; those of the state governments in times of peace and security.

Thomas Jefferson articulated the same basic idea:

The true theory of our Constitution is surely the wisest and best, that the states are independent as to everything within themselves, and united as to everything respecting foreign nations.

Likewise, in his classic *Democracy in America*, Tocqueville described the American experiment as one “in which several peoples are fused into one nation with regard to certain shared interests, while remaining as separate confederates for all else.”

The idea of federalism has sometimes been described as “dual sovereignty.” Perhaps the better way of articulating it would be the same sovereignty—that of “We the People”—exercised at two distinct levels, namely Federal and state.

Founders such as Jefferson considered federalism to be the most conservative element of the Constitution. “But the true barriers of our liberty in this country are our State governments,” he wrote, describing this as “the wisest conservative power ever contrived by man.”

So, the next time you are among liberty-friendly friends and colleagues, ask them what they think the Founders considered to be the most “conservative” element of the Constitution. And when they most likely (and understandably) identify it with the Bill of Rights or separation of powers, be ready to give them the right answer: no, it’s *federalism*.