



## Obamacare and the Demise of Federalism

By the time of the founding, the definition of federalism was already so firmly settled and so deeply imbedded in the American understanding of good government that James Madison, in his defense of the proposed constitution, felt it necessary to assuage worries of some Americans that the state would surrender sovereignty under the new federal system. "Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act," he wrote in *The Federalist*, No. 39.



If one values the written words of the framers of our Constitution, then, he believes that there are few principles of good government as inviolable and fundamental to the preservation and protection of republican government as that of federalism. In the United States this division is additionally enhanced by the fact that the states are not mere confederate subordinates to the central authority. They are historically, perpetually, and unalterably self-governing and empowered specifically to promulgate and execute laws according to their own wisdom and volition. It is no exaggeration to say that federalism is the *sine qua non* of the stability and balance that infuse American liberty with the vitality and flexibility that have made it the envy and example of freedom to the world for over 200 years.

The uniquely American expression of federalism is crystallized in the Tenth Amendment to the Constitution: "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."

And to understand that principle, one must read it in tandem with Article I, Section 8 of the Constitution that delegates to the Congress its specific powers. When placed side by side as complementary lenses through which all bills and other proposals of the national government must be viewed, these two sections of the Constitution clarify whether or not acts of the Congress conform to the powers delegated to it by our founding document.

### **The Obamacratic Oath**

In the reasoned evaluation of President Obama's healthcare proposals or any other "federal" scheme potentially to be ham-fistedly foisted onto the states, the first and most important consideration is that if we are to be governed by the Constitution as written in 1787 then we must steadfastly adhere to its four corners, whether it be in the granting or the restricting of power. In the present case, the primary concern must be with the systematic, bipartisan, and unrepentant disdain and disregard for that sacred document manifested daily by those elected to represent us in Congress. We, the people, have the duty to protect the states from constant encroachment from Washington, D.C. Fortunately, there are those state legislatures that are aware of the assault and are prone to fight back. Heroically, several states recently have stiffened themselves against the attack from the national government: Alabama, Tennessee, South Dakota, North Dakota, and Louisiana, for example. Specifically, Alabama's legislature has passed legislation declaring that it will not enforce any federal scheme to foist upon the states a



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“cap and trade” global-warming tax. Additionally, Arizona, Florida, and Texas are among the states safeguarding their sovereignty by informing Congress that categorically and without exception they will refuse to implement any federal healthcare scheme.

The New Deal, the Great Society, and the War on Poverty were all euphemisms for the planned and purposeful demolition of the barricades erected by our Founders for the defense of the constitutional boundaries of state sovereignty. The healthcare “crisis” and the “necessary” reforms proposed to address it are but the latest attempt to weaken the states and make them dependent on the largesse of the national government. The members of the band may change, but the tune remains the same. There are some groups and individuals, however, that have recognized this power play and have called attention to it.

### **Gutting State Authority**

The Heritage Foundation, in a Fact Sheet released October 16, 2009, identified several ways in which “Obamacare” and all its attendant dictates, requirements, and regimes will burden states to the point of absolute and irretrievable annihilation of the critical bright-line borders of the distinct spheres of state and national influence and jurisdiction. The report specifically cataloged three broad arenas of attack on the principles of federalism: “More Medicaid”; “Gutting State Authority”; and “A Better Approach to Health Care Reform.” Under each of these large points are smaller, related subheadings all chronicling the dismantling of their constitutional prerogative to govern their citizens according to their will as manifested by the republican election of representatives.

Every bill under the noxious rubric of “Obamacare” would oblige the states to encompass a greater percentage (ranging from an additional 30 to 50 percent) of their populations within their respective Medicaid coverage areas. This would overburden 50 systems whose bureaucratic budgets are already strained in terms of both fiscal and human resources.

With regard to the costs associated with this realignment, the Heritage Foundation’s analysis reports that all additional funding needed to sustain a nationalized healthcare system would come from state coffers, regardless of hollow promises of reimbursement and economic incentives and stimuli made by President Obama and leaders in Congress. In fact, Governor Phil Bredesen of Tennessee worries that the cost to his state alone would top \$3 billion!

Furthermore, apart from forcing states to enroll and treat thousands of additional Medicaid recipients, the bills now under consideration by Congress would impede the states by restricting their power to administer and regulate their own schemes. Without exception, all of the currently proposed healthcare “fixes” disregard our Constitution’s explicit federal scheme of separated and sovereign powers, and they improvidently relegate the statehouses to the role of mere far-flung outposts of the centralized national government. This is precisely the arrangement our Founding Fathers sought to obviate in their framing of our Constitution.

These unconstitutional healthcare bills would empower the Secretary of Health and Human Services to enact and execute rules and regulations to be followed by local administrators. The White House and the Congress would sponsor this usurpation, and given that support, it seems unlikely any state would be powerful enough to resist. This sort of centrifugal assumption of power will put another bullet in the gun the national government has aimed right at the heart of federalism and the Tenth Amendment. If one shot misses the mark, there’s always another in the chamber.

In what is perhaps the ultimate act of disrespect, the enactment of any of the proposed bills would put



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the states in their place and serve as a resounding estimation of the states' ability to develop and institute their own solutions to problems of uninsured citizens (assuming they even accept the premise). States will be commanded and reprimanded as a child by a stern nanny. There will be no accommodations allowed for the unique political and social differences that exist from one state to the next. Congress will insist that one size fits all, and if it happens not to, then history indicates that without delay or precision it will amputate any part of the local body politic not covered by the federal blanket.

### **A Better Approach to Healthcare Reform**

In addressing the foregoing issues, the Heritage Foundation proffers three solutions to the problem of the national government's destruction of states' sovereignty through the implementation of a national healthcare scheme.

First, they suggest that the national government "embrace the principles of federalism and allow states to develop innovative ways to address their unique challenges to health care reform." There are several red flags in that statement. To start off with, the national government is not constitutionally placed in a position to "allow" the states to do anything or forbid them from it. The states are sovereign and with the exception of a few enumerated areas of national jurisdiction, the federal government is not empowered to meddle in state or local affairs. Second, as stated above, it is up to the citizens of the several states as manifested through their elected representatives to decide whether or not there is a healthcare challenge. That is to say, a healthcare crisis in New York or California should not be transformed through some sort of socialist alchemy into a crisis in Texas or Maine. The states do not need to be permitted by the national government to address or ignore any situation that falls outside of the explicitly and narrowly defined realm of national interests. Furthermore, each state has its own healthcare program that must pass state-constitutional muster.

The second solution proposed by the Heritage Foundation suffers from the same malady as the first. In this point, the author of the report suggests that the federal government allow the states "greater flexibility" in the management of healthcare programs such as Medicaid. As stated above, first, the national government is nowhere authorized by the Constitution to create a healthcare system, neither for the states nor for the country as a whole. Second, the state governments do not need permission or "flexibility" granted to them by the national government in order to handle their own local affairs. The Tenth Amendment is clear, and when read together with Article I, it is clear that this proposal is a solution to a problem that does not legally exist.

The final piece of advice offered by the Heritage Foundation in its report is to "reform Medicaid." The only reformation valid according to the Constitution is the complete dismantling of any federal mandates regarding healthcare for citizens of the states. If one or more of the individual states decide to address healthcare issues of its citizens, then the debate will center on the legitimacy of such a plan according to the respective state constitution. There is no delegation of authority in such an arena to the federal government in the Constitution, and that is the standard, finally, by which all such proposals must be measured.

All of these offers of compromise must be put away, and constitutionalists must remember that arguments over a "public option" or any other such considerations are but misdirection by professional magicians determined to make our constitutional republic disappear. We must not allow ourselves to be distracted by these red herrings. The only salient issue in this debate is whether or not the national government is empowered to create a healthcare system. To put a finer point on it, we will either



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steadfastly guard the metes and bounds of the Constitution or we will continue to dance a jig of compromise and complacency to a tune being played by those who, for their own narrow self-interest and the equally repugnant interest of globalism, prefer to see the Constitution once and for all disposed of on the rubbish heap of history.

## The Alternative

If Americans and the several states do not oppose this unparalleled assumption of power and diminution of states' rights, then we will become, as Alexis de Tocqueville warned, mere "minions of an omnipotent government." This is not the federal system established by our Founding Fathers. Those men were wise and well schooled in the lessons of history specifically in the rise and fall of so many republics, and they sought to inoculate our new experiment from contracting the fatal disease of too weak or too strong a national government by wisely dividing political power between the central government and the state governments. In the words of Alexander Hamilton in *The Federalist*, No. 32:

I affirm that (with the sole exception of duties on imports and exports) they [the states] would, under the plan of the convention, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the national government to abridge them in the exercise of it, would be a violent assumption of power, unwarranted by any article or clause of its Constitution. An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, *exclusively* delegated to the United States.

The entirety of this letter written by Hamilton in defense of the Constitution is a condemnation of the attempts being made presently to subordinate the states to the will of the national government. This time the vehicle carrying the banner of consolidation is healthcare reform, but it is the same strategy that has been in place since the New Deal.

This article is meant to re-illuminate a part of the Constitution that is growing darker and darker under the imposing and ever-lengthening penumbra of the national government. The time has come for We, the people, to reassert our sovereignty in this mighty republic and ride to its defense armed with the double-edged sword of the sacred Constitution in our hands. We need to cut through all the superfluous flank debates designed to distract us from the frontal charge on our liberties. One edge of the sword is Article I that enumerates congressional power, and we will use this weapon to disarm the legislative power grab; the other edge of the sword is the Tenth Amendment, which we will use in defense of the inviolable rights of states to handle all matters of government that are not specifically granted to Congress by Article I.

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