FEDERALISM 101

THE BIRTH OF FEDERALISM

James Madison is often given credit for being one of the strongest supporters of the idea of federalism, the defined separation of federal and state powers. The Federalist Papers were a series of papers he co-authored with Alexander Hamilton in 1787-88 to address concerns about the United States’ new Constitution, which was being ratified by the states. Madison argues in Federalist 39 that the new government follows the republican ideal rather than the country being a confederation of states. In that letter, Madison plainly states the new federal government’s power is limited. “Its jurisdiction extends to enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty. “Its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects,” he wrote. “It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality.”

The division of power was enshrined in the Bill of Rights, also written by Madison, and took effect after it was ratified by the states. Madison argues in Federalist 10 that “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.”

THE 10TH AMENDMENT

“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.”

During the first 100 years of the nation’s history, dual federalism was the primary form practiced. Dual federalism is where states handled most of the daily affairs of life and the federal government primarily handled international relations. It was during this time that the fight over who had sovereignty began to arise. Dual federalism essentially ended after the Great Depression because states couldn’t cope with the massive economic upheavals. President Franklin Delano Roosevelt’s New Deal marked the start of a new era called cooperative federalism. Some political commentators are now referring to today’s climate of acrimony between the states and the federal government as competitive federalism.

THE VALUE OF FEDERALISM

Robert P. Inman of the National Bureau of Economic Research, listed some reasons a federalist government works best in a 2008 paper, “Federalism’s Values and the Value of Federalism.” Among the benefits:

» Government inefficiency is lower and output per worker is significantly higher in federal governments than in dictatorships or even in unitary democracies.

» Democratic participation and the likelihood of an orderly transition between governments are both higher in federal governments, particularly so as an improvement over unitary dictatorships.

» Economic property rights and political and civil rights are higher too in federal democracies.

“By each of our value measures federal governance appears to deliver on its promised federal outcome,” he wrote. “Even on those dimensions where federal governance is typically thought to be counterproductive—educational opportunities, health outcomes, and economic opportunities as measured by income equality—federal democracies do best on average.”

GOING OUT ON THEIR OWN

States and even local governments are passing or attempting to pass legislation either challenging federal laws or attempting to redraw the states themselves. In addition to bills aimed at nullifying federal marijuana laws and the Affordable Care Act, here are some laws that have been passed or introduced recently.

Arizona: Senate Concurrent Resolution 1016, which will be on the 2014 ballot, would allow the governor, the legislature or voters to refuse to use state resources or personnel on any federal law or action they deem to be unconstitutional.

California: Supervisors in one northern California county voted in September to break away from the state. Maryland: The Western Maryland Initiative is a new effort to break off five western counties to form its own state government.

Missouri: Gov. Jay Nixon in July vetoed a bill that would have put the state from enforcing federal gun laws.

Wyoming: House Bill 104, called the Firearms Protection Act, passed the House in February. It would have made it illegal for state police officers to enforce specific federal gun legislation passed after Jan. 1, 2013.

Federal government: Even Congress is getting in on the act. One version of the Farm Bill working its way through Congress would nullify state laws that impose additional standards on agricultural products shipped in from another state.