

The Hell with Federalism

Tag: Republicans claim to be the party of principles, but more and more they ignore one of their most cherished principles, federalism.

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Supposedly the difference between Republicans and Democrats is that Republicans believe in things, and Democrats will say anything to get elected. Sound familiar? It was a major theme of the past election. Throughout the campaign President Bush frequently said, “at all times, whether you agree with me or not, you know where I stand, what I believe.” He contrasted himself with his opponent, John Kerry, who Bush called a “flip-flopper” who took positions based on policies expediency, not deeply held beliefs.

Kerry became the poster boy for the Democrat’s fecklessness. And most election post mortems contended that the public felt that the Democrats really didn’t stand for anything, and voted for Bush and the Republicans because of it.

If voters are convinced that the Democrats have no core convictions, and the Republicans do, it raises a question: What do Republicans believe?

Republicans claim to adhere to a number of core principles, chief among them are the belief in limited government and trust in the free market. There are a number of doctrines that Republicans claim help ensure limited government, and one of the most popular, particularly since the Reagan era, is the principle of ‘Federalism.’

To modern ears the term ‘federalism’ suggests a strong role for the federal government, but it is actually the exact opposite. This nation was ostensibly founded as a federation of states, and those states were arguably supposed to dominate the weaker federal government. The Tenth Amendment to the Constitution purportedly enshrines this principle, stating that the “powers not

delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States....”

Federalism is the idea that government operates best on the state level and not the national level. Federalism means that those things that states have traditionally done, and those policies or programs that require local variations based on the needs and desires of the states, should be left to the states.

Not long after he took office, President Bush praised federalism in a speech to the National Governors Association Meeting.

When the history of this administration is written, it will be said the nation's governors had a faithful friend in the White House. I've sat where you're sitting and I know what it's like to have a good idea, and then to wait on the federal government to tell you whether you can try it or not.

So let me make this pledge to you all. I'm going to make respect for federalism a priority in this administration. Respect for federalism begins with an understanding of its philosophy. The framers of the Constitution did not believe in an all-knowing, all-powerful federal government. They believed that our freedom is best preserved when power is dispersed. That is why they limited and enumerated the federal government's powers, and reserved the remaining functions of government to the states.

Bush and his Republican allies in Congress, are currently pushing a number of bills to reform the legal system, particularly the tort system. Torts are civil wrongs that include everything from car wrecks, to defamation, to medical malpractice. Republicans have proposed a variety of bills affecting the tort system, ranging from limiting punitive damages and putting caps on pain and suffering awards to restricting court jurisdiction in asbestos litigation. Congress recently passed and Bush signed the so called “Class Action Fairness Act,” which sends certain class action suits (those involving large numbers of plaintiffs) to Federal Court.

Most legal matters have been the sole province of the state since this nations founding. Torts have always been matters of state law. Each state has its own tort system, created over the

years to best meet the needs of that states' residents. For example, the ability to recoup pain and suffering or punitive damages varies from state to state, and except in rare cases, class actions are based on state law, and heard in state courts.

The recently passed legislation nationalizing class actions imposes a national solution on a state problem, directly violating the principle of federalism. The numerous proposed laws altering the tort system are the most direct attacks on federalism since, well since President Bush's No Child Left Behind education reform law.

Republicans say there are valid arguments for nationalizing class actions (and medical malpractice and asbestos litigation, not to mention educational standards). But the fact that they say there are reasons to create national solutions seems to disprove the idea of federalism. Reasons to nationalize disprove the underlying logic of federalism.

What does it mean to have core principles? Doesn't it mean that if you believe that federalism is the way to structure our nation, with strong states and a weak national government, then you should assume that a law that takes power away from the state and gives it to the federal government is probably wrong? But if you blithely vote for bill after bill that strips the state of power and gives it to the federal government, then you can't believe in federalism. So much for core principles.

So what is it exactly that Republicans believe?