

VI. Congressional Power under the 14th and 15th Amendments

Federalism is the great puzzle of American government. Since the beginning of our national identity there has been an ongoing struggle between those who would consolidate power nationally, and those who sought to have power preserved to the states.

In the minds of many, the Civil War and Reconstruction altered pre-existing understandings of federalism. This was true as a matter of theory and true as a matter of fact. In the many years prior to the war, the role of the federal government had been rather limited. The country could not even reach consensus on the question of whether the national government had the power to engage in a broad program of internal improvements. The war changed all that: the very mustering of national resources required to fight America's greatest conflict spelled growth of the federal bureaucracy and the centrality of the national government.

The Civil War amendments spelled out broad new vistas of national authority. In particular, questions of individual rights and racial equality moved to the fore, and the expectation was that here national standards would prevail. At the least, the federal constitution provided a floor for treatment by the states of individuals within their borders. Frequently, speakers in and outside of Congress alluded to how the War and Reconstruction changed the relative roles of national and state governments.

Yet, in remarkably short order the country and the Supreme Court turned its back on Reconstruction. When it did so, preserving the basic nature of the antebellum federal structure often was given as a reason. *The Slaughterhouse Cases* provide just one example of pre-existing notions of federalism guiding interpretation of the post-Reconstruction Constitution.

How are we to interpret the impact of the Civil War and Reconstruction on American federalism? Surely the Civil War amendments altered pre-existing understandings – but how precisely? And has the jurisprudence of the Court been faithful to the significance of the Reconstruction amendments? In the decisions of the latter Rehnquist Court, the Justices in the majority often relied on a vision of federalism that seems oddly in tension with Reconstruction understandings, and the events of the latter half of the 19th century played little or no role in the Court's thinking. Is this an appropriate, or even acceptable, way to interpret the role of federalism? And how should we think about the country's own mixed feelings on the subject, in the years following Reconstruction. What does it even mean to suggest "original understandings" should govern here? Should federalism play any role in interpretation? What role?