

PANEL IV: THE ANTI-FEDERALISTS AFTER 200 YEARS: PUNDITS OR PROPHETS?

INTRODUCTION

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In addressing this panel topic, “The Anti-Federalists After 200 Years: Pundits or Prophets?,” we attempt to assess the accuracy of the predictions made by the Anti-Federalists two centuries ago. In particular, we examine the claim that implementing a federalist system of government would necessarily lead to a loss of individual rights.

The ratification of the Constitution was an occasion for a spirited, and at times partisan, debate. Partisan not in the sense of one political party versus another, but partisan as to the particular viewpoints that the various contenders represented. The Anti-Federalists claimed (in sometimes exaggerated terms) that the Federalists endorsed the creation of a leviathan—a monster state—that would swallow up individual liberties and self-governance. They cautioned that this usurpation of power by the central government would not stop at individual rights, but would engulf state sovereignty as well.

The Federalist Papers were drafted in response to these alarmist claims, and were intended to encourage support of the ratification of the proposed federalist system.¹ Publius emphasized the need for a structure that divided power and positioned governmental institutions against one another, in order to protect individual rights.

In retrospect, perhaps the Anti-Federalists’ prophecies may not have been so unrealistic. Today, federal executive branch agencies intrude further than ever into individuals’ decisions regarding how to use the land on which they have homes and businesses. Congress has assumed the role of a “super city council” and delves into issues of local concern with impunity. The Supreme Court dictates the appropriate scope of an

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1. See, e.g., Clinton Rossiter, *Introduction to THE FEDERALIST PAPERS* at vii (Clinton Rossiter ed., 1961).

individual's right to purchase condoms,² right to procure an abortion,³ and degree to which he will be subject to wetlands regulation.⁴ At the same time, the powers of the States have been significantly eroded. For example, one monumental Supreme Court decision precludes States from setting the salaries of their own employees without federal interference.⁵ On the pages that follow, we consider whether the Federalists or Anti-Federalists had the better of the original debate. In short, how prophetic were the Anti-Federalists' criticisms and to what extent have their fears materialized? If the Anti-Federalists were correct, what went wrong with the Federalist design?

2. See *Eisenstadt v. Baird*, 405 U.S. 438 (1972)(finding a privacy right, founded on *Griswold*, of unmarried persons to purchase contraceptives); *Griswold v. Connecticut*, 381 U.S. 479 (1965)(holding unconstitutional a state prohibition on the purchase of contraceptives by married persons).

3. See *Roe v. Wade*, 410 U.S. 113 (1973)(applying *Griswold* and *Eisenstadt* to determine the existence and scope of an individual's right to procure an abortion); see also *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S.Ct. 2791 (1992)(examining in detail certain state regulations concerning abortions).

4. See, e.g., *Lucas v. South Carolina Coastal Commission*, 112 S.Ct. 2886 (1992)(examining in detail the application of a state law on the use of designated wetlands).

5. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).