

### Divided Government: Federalism's Tension Between Nation And States Produced Sectional Enmity

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#### Recommended Citation

Kantor, Myles (2001) "Divided Government: Federalism's Tension Between Nation And States Produced Sectional Enmity," *Civil War Book Review*. Vol. 3 : Iss. 2 .

Available at: <https://digitalcommons.lsu.edu/cwbr/vol3/iss2/10>

## Review

### DIVIDED GOVERNMENT

#### Federalism's tension between nation and states produced sectional enmity

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Spring 2001

**McDonald, Forrest** *States' Rights and the Union: Imperium in Imperio, 1776-1876*. University Press of Kansas, 2000-10-01. ISBN 700610405

States' rights have been an American leitmotif since colonial withdrawal from Great Britain. Forrest McDonald, Distinguished Research Professor of History at the University of Alabama, appreciates this tradition, as **States' Rights and the Union** attests.

McDonald examines the evolution of states' rights vis-a-vis the problem of divided sovereignty, as indicated by his subtitle. The Constitution elated neither nationalists nor Antifederalists with its mixed republican design, begetting philosophic rivalry that developed into sectional enmity. Viewed in this context, the Civil War was the culmination of a foundational tension. Since divided sovereignty and states' rights are intertwined, it is therefore parochial to dismiss states' rights as a contrivance of the slavocracy.

The analysis McDonald presents is refreshing in several respects. He treats the organic law that emerged from the 1861 Montgomery convention as a serious exercise in constitutionalism, rather than as a Rebel appropriation of the United States Constitution that differed only with regard to slavery. Noted is the Confederate Constitution's strengthening of state sovereignty, including the modified amendment and impeachment processes. McDonald also calls attention to substantive executive and legislative alterations. Thus, while slavery occasioned secession, the Confederate polity did not derive its premises solely from a tyrannical social order.

Another valuable feature is McDonald's examination of how states' rights fared during the war, especially within the Union government. While Jefferson Davis's centralizing policies (conscription, habeas corpus suspension, etc.) are

often cited to invalidate the Confederacy, Lincoln's cultivation of federal-executive primacy is relatively overlooked. McDonald gives an excellent account of how Lincoln achieved astonishing centralization through an elastic interpretation of his powers as commander in chief.

The pages on Reconstruction present congressional emasculation of states' rights and their partial reinvigoration by the Supreme Court. McDonald notably discusses the problematic underpinnings of the Fourteenth Amendment, the legitimacy of which goes all but unquestioned in our day. Given the historical and jurisprudential prestige of the Reconstruction amendments, this part of **States' Rights and the Union** will likely prove to be its most provocative content.

Even this superb study could have been enhanced. For instance, a consideration of Jefferson Davis's antebellum invocation of the Tenth Amendment to legitimate secession would have been germane. Notwithstanding such omission, Forrest McDonald once again shows himself to be the premier constitutional historian of our era in this much-needed and lucid book.

*A columnist for the news site LewRockwell.com, Myles Kantor (mbkantor@aol.com) writes from Boynton Beach, Florida.*