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## Can Federalism Solve America's Culture War?

By [Richard Samuelson](#)

Can states' rights end the culture war? Commentators from David Brooks to Andrew Sullivan to David Gelernter believe that it can. According to Sullivan, in an essay in *The New Republic*, "The whole point of federalism is that different states can have different public policies on matters of burning controversy--and that this is okay."

Similarly, David Brooks argued in his *New York Times* column that each state should regulate abortion as it sees fit. According to him, *Roe v. Wade* was political poison. By taking the issue away from state legislatures, the Court "set off a cycle of political viciousness and counter-viciousness that has poisoned public life." Overturning *Roe*, he thinks, would end that cycle. Writing in the *Weekly Standard*, Gelernter adds: "An era where deep and fundamental moral questions divide the nation is in need of a revival of federalism. Federalism supplies the expansion joints that make America supple rather than brittle; make it a bridge that can ride out hurricanes without falling to pieces, that can sustain enormous twisting, turning, and tearing forces without cracking."

Gelernter, Brooks, and Sullivan are right in theory. Our federal system can allow for a certain degree of legal and cultural diversity in the Union. What we need to keep in mind, however, is that since the Progressive era, and particularly since the New Deal, Americans have forgotten the not just the virtues of federalism, but also the practice of federalism. A workable federal system requires forbearance on the part of the political class. It might take us a while to re-learn that virtue. Until then, I'm okay, you're okay might not be a workable political program.

A federal approach to cultural issues might worsen things, at least in the near term. As we saw in the Terry Schiavo case, separating state from national issues won't be easy. Federalism works when jurisdiction is clear, but cultural issues create murky and contentious jurisdictional controversies. That has allowed our advocacy groups to make federal cases of them.

Consider abortion. If *Roe v. Wade* were overturned, the states could pass a rainbow of regulations, reflecting the different shades of opinion. Abortion might be legal for nine months in New York, two months in Michigan, and not at all in South Dakota. States might adopt various informed consent laws, parental consent laws, and waiting periods. That might release a certain amount of cultural steam. It could also make the cultural pot boil over. State choice might bring local troops to the culture war by forcing us all to pick sides.

Whatever happens in the states, Washington will still weigh in. Last year, the House of Representatives passed a law making it illegal to take a minor across state lines to have an abortion without her parents'

