



States' Rights in Mercy Otis Warren (1727-1814)

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Mercy Otis Warren's legal philosophy as applied to American Constitutionalism is dependent on her belief that human rights of freedom and equality are God given. For human rights to flourish necessitates a republican form of government. A republican government gives rights to state governments as well as to federal government because power in a republic inheres in the people; it is the community of people in states that create the federal government. Hence resources should be distributed to states as well as to the Federal government. Although Warren noted that a federal government that is too strong tends to be autocratic and too far from its constituents as in its overreach with the Alien and Sedition Acts of 1790, she did, however, believe in a strong federal government with term limits and frequent elections, a position taken by the Anti-Federalists.

Feeling betrayed by Federalist Massachusetts and by the first two presidents, Washington and Adams, Warren expressed the situation thus, "we have a republican form of government with the principles of monarchy, the freedom of democracy with the servility of despotism, the extravagance of nobility, with the poverty of peasantry." The results of an imperial federalist government were inequalities in wealth and power, and the condemning of opposition as unpatriotic. While the sacred trust of a republican government should be the freedom and equality of the people, the U.S. constitution failed to spell out the rights of the people. So, as a conscience of the American Revolution, Warren spelled them out in her *Observations*. Most of her fifteen recommendations became known as the Bill of Rights, the first ten amendments to the Constitution. With Thomas Jefferson, Warren believed in the power of a democratic republic, a simple agrarian society that was yet increasingly turning toward advancing the interests of an undemocratic commercial culture rather than those of the people.

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Keywords:

anti-federalism, Bill of Rights, federalism, resources, human rights, states' rights, Constitutionalism, philosophy of law, Thomas Jefferson, John Adams, George Washington