Module 1: Definition of Federalism

Andrew Bibby: Can you define it? Can you help us define Federalism?

Jonathan Turley: Well, it's a funny thing to define federalism because it is something that defines the Constitutional system. Yet people disagree as to whether it is a practical policy or an underlying principle. What is clear is that when we first formed the union that became the United States, it was based on state sovereignty. In fact, Article 2 of the Articles of Confederation made very clear that the states would be true sovereigns. That obviously proved to be something of a disaster as States exercise powers that are usually associated with nations including: power over trade and even printing their own currency. That had to be changed, and what changed is that the states were no longer considered sovereigns in the technical sense. But you did have the reaffirmation that we had a limited government, and by limited it meant that the power would rest in the people and secondarily in the state's.

Colleen Sheehan: A hard-and-fast definition of Federalism would be something like: the in-between between a unitary or national system on the one hand and a confederal system on the other. Now that sounds like that it would be a government that has some but not too much power which is essentially true. In the American system, essentially what it means is a division of power that the people have given two different levels of government.

Paul D. Moreno: What is federalism? It is the division of power within polity. The roots of the term are from the Latin word fetus, meaning covenants or contract. So it always had this history of the relationship of governmental entities one to another.

Jack Rakove: It's a great question to ask, what do we mean when we talk about a federal system? And if you approach this in the way that I think James Madison would have done it, you want to start with a preliminary definition, but then you have to look at specific cases in order to know what a Federal system really looks like. So I would start by saying that federalism is a system of government which effectively divides the sovereign powers of ruling between two levels of government. Some sovereign powers, let's say take obvious cases born diplomacy, will belong to the national level. Other sovereign powers will probably vest within the states or provinces whatever you want to call the smaller or lesser units. In the 18th century you would have said these involve matters of what was then called internal police. So I think that's the simplest way to think about it. I think the key thing here is to recognize that federal systems in many ways destroy the whole concept of sovereignty. We hold onto the word, the word has a kind of hallowed history of its own. We like to talk about sovereignty, we like to say that the states are sovereign, the national governments are sovereign. I think the reality is federalism, particularly American federalism, really messes that up. It takes a bunch of particular powers, each of which could be characterized as an aspect of sovereignty, and it divides them or allocates them to different levels of government. So the original concept of sovereignty, that there should be some absolute, final, ultimate, irresistible source of authority within the state. That really disappears in lots of ways. And to make sense of how a federal system operates, you have to start by looking very specifically at what the division of powers is.

Paul D. Moreno: Madison talked in the Federalist Papers about there being a double security to the rights of the people, because we're dividing powers between national government and the states, and we're dividing powers among the federal government between the legislative, the judicial, and the executive. And if you look even closer at that, you can see federalism within and not only among these various parts of the Constitution.
**Alan Tarr:** Usually what a constitution does is it determines which power is sovereign in a country. And so in a unitary state, the sovereign government, the one that has ultimate authority, is the national government. And a confederation: the sovereign governments are the governments of the component unit states or whatever they're called. In a federal system, there's no one single government that is sovereign over all things. There's a division of labor, a division of responsibility. And in that sense, the people are sovereign. They decide where they want to distribute the power between the federal government or national government and the state or component units.

**Ernest A. Young:** There are a lot of definitions of federalism in the academic literature, in popular culture. And I think it's more useful to take a broad definition and then just try to be specific about the system you're talking about. So I would say a federal system is a system that divides power between two or more levels of government. It's for a lot of definitions important that that division be at least somewhat entrenched as a matter of constitutional laws so it's not easy to change by ordinary legislation. Some people define federalism as requiring some sort of umpire to decide disputes between the Constituent units about the boundaries of powers to a court of some kind. But I'm not sure that's a necessary requirement. It's important to recognize that there's a lot of different ways to do federal systems. We have our system that we've had for a long time. The Canadians have theirs, the Germans have theirs, India has a federal system; maybe the largest federal system in the world, probably. The EU in Europe is arguably a federal system. There's a lot of debate among theorists about whether it really counts as a federal system. But I think it has the important elements of having it two or more levels of government that divide power among them.

**Robert Nagel:** So I think all of these are federal systems. The basic meaning of federalism is the constitutional division of authority between the state and federal governments. And more particularly, the American system of federalism is quite unusual in the world; in that it involves counter intuitive idea that both the states and the national government have a kind of sovereign power or a limited kind of sovereign power. The idea of limited sovereign power is itself unusual. To divide up sovereign power between two governments is doubly unusual if you look at the ideas of sovereignty throughout history. But the American idea of federalism is basically, there's one ultimate sovereign: that's the people. The people delegate their partial part of their sovereignty to two governments; the federal government, the national government, and the state government's. The purpose of this system, the overall purpose of this complex division of authority, is to set up a political competition between the two levels of government for a number of reasons. But the basic reason is to try to keep each government within its assigned roles through political competition.

**Michael Greve:** Most federal systems in the world are calculated to bring together or harmonize or different political identities that differ by race or religion or ethnicity. Iraq is an example, a dramatic example, but there are other examples. Spain, the Catalan problem. Canada, to our north. That's an example of that type of federalism. Switzerland is a very prominent example. To four different languages in a single country. American federalism is unique because it's never had that. It was from the get-go. From the beginning. From the founding. About State's interests' and citizens interests'. And that's a huge huge difference between American federalism than any other federalism in the world. Federalism means that there's some range of activities over which states are actually autonomous. That the federal government cannot tell them what to do. So the be-all and end-all of American federalism in that sense is the rule that the federal government may not come into your state officials and tell them to do anything at all. It can incentivize them to do it by giving the money or it can say, "look, we'll give you a choice between either regulating on your own or we will do it for you," but it can never step in and say you must now do this. And unitary systems, even very decentralized systems, can do that.
Jonathan Turley: It was in fact the Constitution that reaffirmed the power would rest with people. And I think that people misunderstand that. Many academics misunderstand it. Some say, well you know the change from the Articles of Confederation to the Constitution meant that there was an abandonment of state sovereignty. I don't believe that's true. And many others will argue that the fact that people like James Madison referred to power resting, but the people meant it didn't rest with the state. That is also, in my view, untrue. I think where the truth is found is that the Constitution views the state is the vehicle of the power exercised by the public. It is where the public expresses its views and also corrects the powers of the government. Rights are most protected, they're most safe when they're held closest. And by that it means they're held by the state's. People have much more direct involvement in their state governments then they do in the federal government.