Module 2: Principles of Federalism

Robert Nagel: I think that the part of federalism that is underneath these temporary sort of expedient positions is that just about everybody believes that government should be limited. They differ about how it should be limited but at least in the United States we have a long history of recognizing that unlimited government at least has the risk of tyranny.

Colleen Sheehan: In the American system of the fundamental principles of federalism are based on the idea that this is the authority that the people have given the national government and then the remaining authority is reserved to the States or to the people respectively which is exactly course with the Tenth Amendment says, and the reason for this is because in a large territory the national government can't do everything and if it tries to it becomes tyrannical. So it's incredibly important that the states retain the authority over it things like police powers, health, welfare, education.

Sotirios A Barber: Decentralization is certainly a principle of federalism that both the left and the right can accept and as a matter of fact do accept.

Jonathan Turley: The concept of a limited federal government, unfortunately that's a principle that has almost been honored in the breach. From the very beginning we were uneasy about a federal centralized system and even people like Madison who believed that we needed to recognize, correctly so, greater power in the federal government. They did so by carefully delineating, enumerating those powers.

Robert Nagel: The American system is a is a system of limited government to the extent that federalism serves that purpose, and it does serve that purpose, people differ about how each government should be limited but on the basic concept that governments need to be limited and they need to be limited by competition, because ambition has to check ambition as the framers said. I think there is widespread agreement across the political spectrum on that.

Jonathan Turley: The United States is different in how we structured our system. We don't have a confederation system, we don't have a unified system and we don't actually have a sovereign system in the sense that the United States shattered the concept of sovereignty. We don't have this single all powerful sovereign on the state or federal level and that's because we view the sovereign as the people. That's a radically different idea and people often brush over it. We have a system in which the states are left with all those powers not given to the federal government for two reasons. One, is it's the ultimate protection of liberty. Rights are most protected they're most safe when they're held closest and by that it means they're held by the states. People have much more direct involvement in their state governments than they do in the federal government. So, our federal system rests on this, you can call it quasi sovereignty of the states, the states are really exercising the people's power.

Colleen Sheehan: In the United States Constitution the people give power to the government, the government does not give rights to the people. This is entirely different than the British system of government, which is the reverse. And that's why, for example, in the Magna Carta, that you see King John signing something. He's giving something over to the people. That could never happen in America, or let me say, I hope that never happens in America because we are based on a system of enumerated powers. Why? Because it's the people who are sovereign, not the government.

Paul D. Moreno: The fundamental principles of federalism would have to be that there were certain spheres of power that one government had and another government didn't. The big argument of conservatives and liberals historically or between federalist anti-federalists, or whigs and Democrats, or
or whoever are exactly what are the limits of those spheres. As John Marshall put it that the power of the federal government what we call the federal government, the national government are limited by the Constitution but within that sphere they are supreme. That was Marshall’s great defense of the national government in its limited sphere. Jackson and Taney sort of changed the emphasis and talked instead about the powers, the sovereign powers, of the states the police powers, that they were immune from federal encroachment. So it's a matter of where the line or division of powers is between these two governments.

**John Dinan:** Liberals and conservatives they talk past one another, they disagree about their conceptions of federalism in important ways. In some very key ways though they talk about federalism in the same way and there's common ground. Most important I would say, would be Tocquevillian understandings of federalism. That's a touchstone on which liberals, conservatives, people of all stripes can oftentimes see an advantage for federalism. That is Tocqueville when he comes to America, Writes "Democracy in America, he writes extensively about the virtues of the American federal system as a school for democracy, an opportunity for learning the Republican traits of citizenship. He says how else are you going to learn to participate in self-governance other than on a local scale where you can rule and be ruled, where you can have the opportunity for give and take, the opportunity for compromise. That's simply not possible in a unitary system to the same degree that it is when you have thriving local and state governments.

**Sotirios Barber**: I think yes, most certainly, there are some principles of federalism, the idea, for example, that by letting people do it themselves you strengthen their character. You strengthen their skills. They get to practice the arts of taking care of themselves. And therefore it's a good idea to decentralize privileges. It's a good idea to decentralize responsibilities. Where decentralizing decisions will get you where you want to go, where it will actually work to strengthen people's character, where it will actually work to ameliorate some of the problems that causes you to consider centralizing in the first place.

**Jonathan Turley**: The American constitutional system is based on checks and balances and other structural guarantees. But particularly the separation of powers and federalism are the core structural guarantees within our system. I don't think it is political and I believe that down that road lies incredible instability and danger. I think its structural. Much of my work has looked at the concept of structure and form. Often we talk about constitutional structure but we rarely talk about the meaning of structure. I think that people like James Madison believed strongly that the structure of government influenced conduct. It was a behavioristic model. You know, in architecture, particularly Modern architects, define space and structure as a way of directing behavior, of getting people to operate, to move in certain ways. Constitutional structure is the same way. By cabining certain areas we influence how they react to each other. I believe the most important touchstone of American federalism is the concept of states being allowed to experiment, to go their own way. It's one of the great strengths of the United States. While other governments sought a unified system so that you spoke with a single voice. The United States went a different direction. We wanted a chorus of voices, we wanted experimentation. That meant that states would go different ways and you know it's funny that de Tocqueville often said that the United States is an odd place because it seems to go in so many different directions yet it seems to go from "A" to "B" faster than any other country. The reason is that we have a system that encourages creativity it has a certain kinetic energy associated with all these different systems trying to come up with their own solutions, and we see that today, both medical marijuana and suicide, and other questions that divide States. This concept of a garden where 50 different states can bloom really goes to the heart of the United States. After all, federalism isn't about income tax and it's certainly not about the direct election of senators. It's about these very basic concepts of the protection of liberty to guarantee state experimentation and to control the growth of the federal government. None of that has changed, and if
anything I think modern history shows the brilliance of those that wanted those principles to be protected
the federal government has done great good, there's no question about it. It has been there in critical
moments but I'm not too sure that the rise of the federal government, pound for pound, is worth what we
have lost.