Module 3: Madisonian Federalism

Jack Rakove: It's very hard to make sense of American constitutional development if we don't pay a lot of attention to what the framers of the Constitution were thinking and what I think, in particular, what James Madison was up to.

Colleen Sheehan: When the United States was falling apart under the Articles of Confederation a number of the founders, particularly Madison, actually went and did his homework, and he researched for months ancient and modern Confederacies trying to find out what were their strengths and what were their weaknesses. Because he knew a unitary kind of government, a consolidated kind of government, would lead to despotism. On the other hand he knew that we needed to be a Republican, a large territory, even an empire. Madison imagined us being really a very large country, possibly sea to shining sea, and to do that he knew we had to be broken down into states. Otherwise the people would not be able to govern themselves.

Paul D. Moreno: If you look at the founding period itself and Maddison, in the Federalist Papers, uses the term federal it was equivalent to or the same as, synonymous with confederal which meant a government where the states were sovereign and the national government had no independent power. And before the Federalists changed the meaning of that term that was the only alternative. Either you had a unitary government or the parts were sovereign there was no sharing there was no compound. Madison and the federalists gave a new definition to federalism, as something new, something unprecedented, this compound republic where you had the government was neither fully one nor fully the other.

Jonathan Turley: We have a system that Madison foresaw not just as a tripartite branch system but Madison actually often talked about the system in Newtonian terms that, he was fascinated by Newton, and he talked about the branches much in the same way as we talk about planets caught in an orbit. He created a system in which they would be locked by their countermeasures, their counter ambitions in a fixed orbit.

Jack Rakove: You know important to know that Madison was an active political thinker, that he was actively engaged in politics from the 1775-1776 for the next 40 years down his retirement from the presidency, and then he had almost 20 years in retirement to reflect on American politics. And he was a very empirical thinker. It wasn't just that he was a smart guy who had read a lot of books. He was actually engaged in decision-making. He was actually engaged in political activity. He helped to form a government but then he also helped to form the first opposition party within that government. And he was open to new data he was an empirical thinker.

Colleen Sheehan: Why is federalism important to Madison and why do we need to remember it today? Madison said that for free government to work we need to have a large territory, we need to have a United States not one state but 13 or maybe eventually say 50 states or more. And the idea would be that in that way we could control majority factions, so that the majority could rule but not trample on the rights of the minority. For that to be effective we need to have divisions of authority and power and dispersal of power and that's important because for the people to check the government they have to be able to form and communicate and organize their voice in such a way that it's heard.

Jonathan Turley: Even though many claim to James Madison was a great supporter of federal government, he wrote extensively about the danger of an all-powerful executive branch, an all-powerful president. But both federalism and separation of powers has this underlying purpose to avoid the concentration of power.
Paul D. Moreno: Madison talked in the Federalist Papers about there being a double security to the rights of the people. The compound Republic idea is that certain parts of the government are going to deal with national questions and international questions that would be what today we call the federal government. Foreign affairs, commerce among the states, those sorts of things that the states and localities can't deal with very effectively. But most of the ordinary affairs of life, of the agriculture, manufacturing, family issues, education, health, welfare, what came to be called legally, the police powers, those are going to be left to the states. This wasn't a unitary government where you had one government that was responsible for everything and it wasn't a confederate government where the national government didn't have any sovereign powers but it was Madison said neither one nor the other but a compound of both of them.

Jack Rakove: It's really worth the asking the question, is there, not so much what would Madison think about A, B, or C but was there Madisonian way of thinking about problems. I think there was a Madisonian way of thinking about federalism. He says at a couple points in his correspondence, when you look at the American federal system, he says it's it was a real nondescript. If we use the word nondescript we just being, we mean it in kind of disparaging way, Madison gave it a more literal meaning. What he meant was there was no adequate antecedent or precedent for the American federal system it was a genuine novelty. And there are a couple different ways in which you could think about how that system would work. So, one thing that concerned Madison was he lives long enough to see the evolution, this kind of simple-minded argument, about the nature of the federal system, and in a lot of ways it's an argument about what was the original source of the union. Was it the, "we the people," the preamble, was there an American people out there creating a government de novo and therefore justifying authorizing a powerful national government. Or was it really still we the states and the states being the prior sovereign entities they can never fully renounce their original sovereignty. That's an idea that pulls, in some ways, on the Virginia / Kentucky resolutions of 1798. Which had affirmed the idea of a compact among the states. The problem with those positions, I think Madison understood, was those were absolutist positions. It was either one or the other. It's kind of binary mode of reasoning. So I think for Madison the challenge of doing federalism, you could only make the system work if you were patient enough to try to puzzle it out and so that required a good faith effort from both sides. You know we had to go into it in the spirit of accommodation, not confrontation but accommodation. You had to show a kind of patience, and kind of willingness to kind of work the problems out, I think in a sense on a case-by-case issue by issue basis. Now, I think that's not a bad way, you know I'm essentially a historian of the 18th century, but I think it was something about the government operates today. That's not a bad way to think about American federalism today.

Colleen Sheehan: Well, I do think Madison matters to us today. I think he matters to us today because he tried to think through the questions of free government, of constitutional government. Not only for himself and his generation but, as he said, for posterity. He tried to create a government that could last through the ages and one of the most important parts of that kind of government was the idea of federalism.