Module 4: Constitutional Structure

**Paul D. Moreno:** If you go article by article through the Constitution, every part of the Constitution has a federal aspect to it.

**Robert Nagel:** The specific relationships are multiple and complex and they are treated in detail in the Constitution but there's a broader sort of set of principles embedded in the constitutional text. Those broader principles I think have to do with the fundamental idea that both the states and the national government have assigned roles under our Constitution.

**Jonathan Turley:** Often we talk about constitutional structure but we rarely talk about the meaning of structure. I think that people like James Madison believe strongly that the structure of government influence conduct. It was a behavioristic model. You know an architecture, particularly Modern architects, define space and structures 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. 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.

**Paul D. Moreno:** In article won the division of power between the Congress and the states through the enumeration of powers in article 1 section 8. The implication being that, if the power isn't granted to Congress in article 1 section 8 and if it's not withheld from the states in article 1 section 10, our assumption is Congress doesn't have the power unless explicitly granted and the states do have the power unless it's explicitly withheld. That's not airtight because there are parts of the Constitution that withhold powers from the Congress. But that was the basic understanding of the way that enumerated powers works. And the Bill of Rights and 10th amendment simply reiterate that as further making more explicit limitations on the power of the national government. James Madison made the argument that Hamilton did especially in Federalist 84 that bill of rights was not necessary. Because it would be making exceptions to powers that Congress doesn't have in the first place. And they had to give up on that argument because the popular demand, the anti-federalists for Bill of Rights was so great. Madison especially felt obliged to offer some amendments that would quell some of the concerns about this. The Tenth Amendment is in some sense a reiteration of the whole theory of the structure of the Constitution.

**Colleen Sheehan:** The Tenth Amendment is a reminder in the Constitution of the very nature of the American social compact. And the nature of the American social compact is essentially this; the people are sovereign. Why the people sovereign? Because all men are created equal. And because all men are created equal no man has the right to rule another man. Except with his consent. And therefore consent of the governed is necessary to the just powers of government.

**Alan Tarr:** We've become a more centralized system as a result of the amendments. The thirteenth, fourteenth, and fifteenth amendments which were adopted in the aftermath of the Civil War, gave more power to the national government to protect rights, right to vote, equality rights, and the ban on slavery. The 16th amendment likewise very important. The 16th amendment is an amendment establishing the federal income tax for allowing government Congress to establish a federal income tax. And that provided resources to the federal government before more funds were raised by the states and localities. Now the main revenue raiser is the federal government and it can use the funds that it's raised, distribute them back to states localities, but do so with as if strings attached and we will give you money to do particular things that we think are important.
Robert Nagel: If the question is, which amendments are most important for creating a certain governmental structure in particular for giving expression to the concept of federalism, I think the first amendment that you would have to mention is the 10th amendment, which says that all powers not delegated to the United States are reserved to the states or the people. It's odd that this is such a fundamental expression of federalism because in a way it's as a Supreme Court has said a number of times it's a truism or tautology. Because to say if the federal government doesn't have it, it doesn't have it in it. The power resides somewhere else seems too obvious to be stated. But in fact it's an exceedingly important principle because it's a direct affirmation of the principle that the federal government, the national government's legislative powers are limited.