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Symposium: Federalism's Future

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SYMPOSIUM

Federalism's Future

Two years have passed since my predecessor, Mike Smith, sat in Professor Barry Friedman's office to begin choosing a topic for the Symposium that now sits before you. Although choosing a topic for a symposium two years in advance of its occurrence can be a difficult task, the topic they agreed upon, Federalism's Future, transcends the risk of becoming outdated. If the Supreme Court's struggle to articulate a "reasoned principle" in balancing the powers and responsibilities of our state and federal governments in *Garcia v. San Antonio Metropolitan Transit Authority*,¹ and later in *New York v. United States*,² is any indication, the problems of modern federalism will remain with us for quite some time.

Perhaps the Court's concession in *New York*—that the struggle to protect judicially the states' role in "Our Federalism" is too large a task for it to administer—was inevitable. After all, designating the proper governmental unit to respond to diverse problems such as the environment, civil rights, and health care is no small feat, and the task is made perhaps even more difficult by the Court's intradynamics and personality conflicts. A federal response to these problems seems natural, at least in the post-New Deal era, and the increasing globalization of society and its problems appears to further necessitate a federal solution.

1. 469 U.S. 528 (1985).

2. 112 S. Ct. 2408 (1992).

The Court's abdication, however, leaves one unsatisfied. If the Court has abandoned the search for a "reasoned principle" as not worth the effort, perhaps one should explore more fully what motivated the search in the first place. Some may choose to explore the impact the Court's decision will have on the states as "laboratories of experimentation," asking whether unfunded mandates will affect the states' ability to adopt innovative solutions in response to unique problems. Others may examine the impact unfunded mandates will have on political accountability. Yet others may wish to explore federalism's future for geographically defined minorities, who have been successful in enacting policies on a state or local level that would not command a national majority.

It is with these concerns in mind that the *Vanderbilt Law Review* has gathered a group of prominent legal scholars and political scientists to debate the future of "Our Federalism." Our purpose is far-reaching: not only do we wish to explore federalism's future in the areas discussed above, we wish further to examine how globalization and global regulation will affect this future. Much also can be learned by tracing the history of our governmental system, including how the Court's interpretation of the Commerce Clause has shaped that history. Similarly, a wealth of information can be discovered by comparing other countries' responses to extraterritorial problems to our own, and by clarifying the distinctions between federalism and localism. Finally, we attempt to define a "reasoned principle" for the Court to apply in determining whether the federal government has overstepped its bounds, and we continue to search for new roles for the states in this principled system.

We realize the enormity of these issues, and do not profess to have addressed all of the nuances. We invite you, however, to participate in the ongoing debate in the pages that follow, and to develop additional visions to ensure Federalism's Future.

Jeffrey Ralph Pettit
Symposium Editor 1993-94