Federalism

In recent years the Supreme Court has shown a special solicitude to claims that federal legislation or federal courts have encroached on the prerogatives of the states or interfered with state processes. This special concern for preserving what Justice Black termed “Our Federalism” has emerged as a dominant theme of the Burger Court. It is therefore appropriate at this time to examine the Burger Court’s labors in the name of “Our Federalism”—to probe the underlying premises and to critique the doctrinal implications. It is also an appropriate time to reflect generally on what federalism means and what values it should serve.

In his foreword to the symposium, Judge Friendly provides a historical sketch of the shifting allocation of authority between the states and the federal government. Each of the four articles that follow explores the role of a different actor in the federal system. Professor Cover and Mr. Aleinikoff attempt to define the function of state courts in the determination of constitutional rights. They offer an interesting new perspective on the function of the writ of habeas corpus in a federal system. Professor Fiss focuses on the equitable powers of federal courts to protect constitutional rights from the encroachments of state and local governments. He traces the evolving judicial doctrines through the important series of Supreme Court cases that began with Dombrowski v. Pfister.

Analyzing one of the most dramatic and certainly most perplexing decisions of the last two Terms, National League of Cities v. Usery, Professor Michelman discusses the role of state governments in the federal system. He asks if the rights of states found in Usery to be guaranteed by the Tenth Amendment imply concomitant constitutional responsibilities. Finally, Professor Stewart analyzes the constitutional power of Congress to force state participation in federal programs.

The symposium closes with a return to the source of modern conceptions of federalism, The Federalist. The late Martin Diamond argues that the perspective of Publius has much to offer contemporary political theory. Professor Shklar exposes the assumptions about political sociology that underlay the thinking of federalists and anti-federalists.