

Sutton Quotes on FederalismSutton Is Not Just An Advocate But A Believer Who Has Embarked On a Crusade To Make the States Untouchable

- It doesn't get me invited to cocktail parties... But **I love these issues. I believe in this federalism stuff.**¹
- First, the public has to understand that the charges of judicial activism that have been raised, particularly in the most recent term, are simply inaccurate. The charge goes like this: how is it that Justices who believe in judicial restraint are now striking down all these federal laws? The argument, however, rests on a false premise. **In a federalism case, there is invariably a battle between the states and the federal government over a legislative prerogative. The result is a zero-sum game—in which one, or the other law-making power must fall.**²
- In controversies over the constitutional lines of authority between one politically-accountable branch and another, the Court customarily engages in zero-sum decision making. One side's loss invariably becomes the other's gain.³
- **The public needs to understand that federalism is ultimately a neutral principle. Federalism merely determines the allocation of power; it says nothing about what particular policies should be adopted by those who have power.** Too often, however, states and localities sacrifice federalist principles in order to obtain near-term politically-favored results. The public debate occurs not on the grounds of structural guarantees of the Constitution, but on the grounds of the substantive legislation at issue – are you a supporter of religious liberties or are you not a supporter of religious liberties?⁴
- I think it's a positive attribute of this system of divided government that when 51 different sovereigns, 51 different legislatures tackle a different social problem, they all arrive at different approaches, and **the ultimate idea and really the transcendent purpose of federalism is to have them compete for the best solution.**⁵
- In discussing *Morrison*: "Unexamined deference to the VAWA fact findings would have created another problem as well. **It would give to any congressional staffer with a laptop the ultimate *Marbury* power – to have final say over what amounts to interstate commerce and thus to what represents the limits on Congress's Commerce Clause powers.**⁶

¹ Tony Mauro, An Unlikely High Court Specialist, Legal Times, Nov. 2, 1998 at 8.

² Jeffrey S. Sutton, *Federalism Revived? The Printz and City of Boerne Decisions* at <http://www.federalistsociety.org/Publications/practicegroupnewsletters/federalism/fd020103.htm> (last visited January 13, 2003).

³ Jeffrey S. Sutton, *Federalism 2000: A Review of the Supreme Court's Federalism Decisions*, Review of Federalism and Separation of Powers Law Newsletter (Fall 2000) at 2.

⁴ Sutton, *supra*, *Federalism Revived? The Printz and City of Boerne Decisions*.

⁵ Jonathon Ringel, *High Court Invalidates Portions of Disabilities Act*, The Recorder, Feb. 22, 2001, at 3.

⁶ Sutton, *supra*, *Federalism 2000: A Review of the Supreme Court's Federalism Decisions* (Fall 2000) at 2.

- If federalism is going to continue to be relevant, and there is going to continue to be a movement in the direction of delegating more authority to the states, a lot of that is going to have to come from Congress. Even though many of our congressional leaders started out as State Attorneys General, as state legislators, or as state governors, many of them seem to forget the state role in our system. **I would hate to think that the way federalism works in this country is that good government leaders are trained at the state level, only to then to move Washington in order to exercise as much power as is possible.**⁷
- The doctrine of a limited federal government was designed to enhance individual liberty, not to give state judges something to do when they go to work in the morning.⁸
- [W]e did not adopt the doctrine of enumerated powers as a favor to the States; it was a favor to ourselves.⁹

⁷ Sutton, *supra*, *Federalism Revived? The Printz and City of Boerne Decisions*.

⁸ Sutton, *supra*, *Federalism 2000: A Review of the Supreme Court's Federalism Decisions (Fall 2000)* at 2.

⁹ *Id.* at 12.

Sutton Quotes On Stare Decisis

- No doubt there is a legitimate tension on when *stare decisis* should, and should not, govern a dispute. On the one hand, adherence to precedent is an ostensible conservative notion, one consistent with protecting reliance interests in particular and furthering judicial restraint in general. But, on the other hand, **it can't be that all liberal victories become insulated by *stare decisis* while all conservative ones remain open to question. Nor can it be that bright-line decisions, which engender substantial reliance, and misty balancing tests, which engender virtually none, deserve the same level of reliance protection.** Until now, however, few strides have been made in reconciling these tensions: Some precedents simply make the Court's blood boil, others do not.¹⁰
- Which takes me back to Justice Thomas's concurrence in *Holder v. Hall*. His opinion goes a long way to **developing a conservative legal theory for doing an unconservative thing – overruling precedent.**¹¹

¹⁰ Jeffrey S. Sutton, Supreme Court Highlights, The Federalist Paper (November 1994) at 21.

¹¹ *Id.*