



Marie-Laure Even, Ketchikan, Alaska, 23 May 2008, flickr.

Taking Back the Constitution - Part 14 - Why does divided sovereignty matter?

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14 January 2014

What does sovereignty mean?

Our Constitution does not use the word “sovereign” but instead delegates the powers associated with a sovereign government among the people, the states, or various portions of the federal government.

But when we talk about sovereignty what do we mean? My dictionary¹ has as its closest definitions:

- “3. Supreme and independent political authority; as, state sovereignty.
- “4. a sovereign state or governmental unit.”

These depend strongly on the definition of sovereign which includes:

- “1. above or superior to all others; chief; greatest; supreme.
- “2. supreme in power; rank; authority.
- “3. of or holding the position of ruler;

“4. independent of all others; as sovereign state.”

All these definitions revolve around who has the ultimate authority.

However, none of the above dictionary definitions comes close to the sense in which power is delegated in our unique Constitution.

The Federalistⁱⁱ tells us what Alexander Hamilton thought about the disposition of sovereign power in the Constitution. Hamilton was arguably one of the strongest proponents of national power, but he definitely limits the portion of state sovereignty that was ceded to the new national government:

In federalist #31 he wrote, *“The state governments by their original constitutions are vested with complete sovereignty.”*

In federalist #32, he adds, *“A entire consolidation of the states into one complete national sovereignty would imply a subordination of the parts, and whatever powers that remain in them would be all together dependent on the general will. But as the plan of the Convention aimed at only a partial union or consolidation, the states would clearly retain all the rights of sovereignty which they before had and which were not by that act exclusively delegated to the United States. This exclusive delegation or rather alienation of state sovereignty would only exist in three cases: where the constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union and in another prohibited the states from exercising the like authority; and where it granted an authority to which a similar authority in the states would be absolutely and totally contradictory and repugnant.”*

Why did our founders try to establish divided sovereignty

Our founders were citizens of 13 individual nations who had cooperated to win their freedom from King George. They were extremely reluctant to again be dependent on some distant government for their laws, security, and taxation. They had, however, experimented with a confederation that had insufficient authority to provide a good defense or prevent interstate conflict over trade. It had no power of taxation and so was dependent on the individual states for contributions that seldom were sufficient for even paying Congress’s revolutionary war debts.

They felt that the states must give the central government some power or the moderately chaotic system would degenerate into internal war. The majority of them, however, strongly felt that the State governments should continue to be the power base that citizens looked to as their primary government.

They were deeply suspicious of democracy, because it had proven itself a short-lived form of government, degenerating into a tyrannical despotism or oligarchy. They were profoundly influenced by the early success of the Roman republic and used some of its features. The colonist’s colonial legislatures, had been fairly successful as long as the King did not interfere.

Therefore they wished to keep most of their government local, while forming a compact that delegated certain critical powers to a government that worked for all of the states.

If government were closer to people, our founders felt it would be more responsive to people's needs. Also they were convinced that government could not attempt to govern too many people. There were nearly four million people in the colonies and most felt that was too large a population to be governed by a single law making body. If citizens lost personal contact with their lawmakers, they feared legislators could not be sufficiently restrained and would trample their rights. The colonists considered themselves free men having rights which no man or government could abrogate.

There was also the feeling that national laws could not accommodate regional differences in climate or culture.

Also, having each state create most its own laws permitted experiments in governance that could be reviewed, and, if successful, applied in other states. If not successful, other states would be spared the expense and agony.

The federal welfare reform act of 1996 was based on the successes of Governor Tommy Thompson who experimented with welfare reduction in Wisconsin.

The founders chose to give some powers to a federal government

Our founders chose to retain most sovereign powers in the states or with individuals. After all, King George in the Treaty of Paris (1783) had relinquished all his sovereign powers to the people of his former colonies and the governments of the new states were the direct representatives of these new sovereigns.

They did, however, assign certain powers to a new federal government to accomplish those tasks they felt were the necessary minimum to:

- assure an adequate defense,
- collect taxes and pay debts,
- establish a free trade zone encompassing all the states,
- maintain relations with foreign nations,
- coin money,
- set standard weights and measures,
- establish post offices and roads,
- grant patents and copyrights,
- provide courts to judge violations of federal law,
- provide for organizing, arming and disciplining and calling of the state militias,
- serve as sovereign government in a federal district (not exceeding 10 miles square),
- exercise authority over places purchased with the consent of the state legislature to erect forts, magazines, arsenals, dock-yards and other useful buildings,

and “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”ⁱⁱⁱ

This government to whom the states ceded these rights and duties was given a specific structure which the founders felt had the best chance of producing a stable republic. With the exception of the members of House of Representatives who were elected directly by the people, the other branches were selected using more indirect means and for different terms. They hoped in this way to counteract the most pernicious effects of democracy and still afford the people ultimate control.

But most powers were retained by the states or the people

Individual people still retained many sovereign powers which they exercised through their state governments. Most criminal activity was unlawful only under state law with the exception of treason, counterfeiting, or bribery of federal officials and a few other offences. Economic affairs were state matters until they crossed state line. In fact most of the ordinary activities that citizens engaged in were only of interest to themselves, or their state government.

Divided Sovereignty works if enforced

This division of sovereignty has eroded over the 227 years since the writing of our Constitution. None the less, some division of powers between state and federal governments still exists. Judging by the United States unique success, divided sovereignty can work and provide a functional form of government closer to the people than a colossally inclusive national sovereignty.

Our Constitution can only survive if each generation understands, supports, and protects it. For over a hundred years an erosion of the original understanding has occurred. This erosion occurs particularly during emergencies or wars, but it seldom completely returns to constitutional compliance after the emergency is over.

Some also feel that American civic education has been dumbed down; either to accommodate the less capable or to allow legal specialists free reign to interpret the Constitution. Subtle reinterpretations of our Constitution’s meaning by the Supreme Court avoids the messy inconvenience public debate.

The advocates of “socialist,” “liberal,” or “progressive” positions have found it politically useful to consider democracy the highest political value in our country. This elevation of the technique we use in various direct and indirect ways to select our temporary leaders would cause our founders to turn over in their graves. They rightly feared democracy since the envious could use the ballot box to steal and dissipate the substance of the productive. Our founders tried to establish a republic which honored the natural law before the temporary enthusiasms of democracy.

One of the ways, our founders tried to prevent a decline into a government that could steal individual citizens substance was to disperse power into separate sovereignties with citizens able to move freely to the one they found most congenial. Thus the states with different laws and taxes would be forced to compete for the allegiance of their citizens. As federal taxes overwhelm those of the states that competition has been reduced to the detriment of all citizens.

In the following columns of this series, I will suggest a series of debatable amendments that attempt to reclaim the intent of our original Constitution by minimizing the opportunity for centralization of power while preserving essential federal functions.

ⁱ Webster's New Twentieth Century Dictionary Unabridged, Simon and Schuster, 1983

ⁱⁱ <http://www.foundingfathers.info/federalistpapers/>

ⁱⁱⁱ For the full language see Article I, Section 8 of *The Constitution of the United States of America*.