

Power and Authority (Part 1)

By Gregory P. Hawkins

Government is about power - the power to get things done. Nonetheless, America has for over 200 years celebrated not just competency, the power to get things done, but democracy and freedom, as well.

Those who met in 1787 had an ambitious challenge: give birth to a nation that would achieve all three great aspirations - competency, democracy and freedom. Their original purpose for meeting was to simply add the element of competency to the struggling government already existing. Nevertheless, under the combined inspiration of wise men, not only was a new nation born, but also one unlike any before it.

What they created was not just radical it was revolutionary. Sometimes we lose sight of the fact that there had never been a system of government like ours. It was revolutionary in the processes created, which provided a competent government yet secured liberty and maintained a democratic process. Reducing this government to a written constitution was a radical departure from any nation previous to ours.

The very idea of a constitution is the notion of limiting government, a government of law not of men. As Jefferson said, "In questions of power...let no more be heard of confidence in man, but bind him down from mischief by the chains of the constitution." Thus the tendency toward arbitrary rule based upon men's desire or power is replaced by a government of law, rational and regular where all, even those who govern, are subject to law.

As stated by Thomas Paine in his famous essay Common Sense:

Let a crown be placed [on the Constitution], by which all the world may know, that so far we approve of monarchy, that in America THE LAW IS KING. For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other.

The great objective was to give government enough power to get things done and yet protect against abuse of that power. Even today, the question asked by most governments is "ought" they do something. The question of whether or not a particular government act is good or acceptable turns on whether or not it will accomplish the thing intended.

For example, let's suppose that it is determined that there is too much violence and too many unlawful drugs in a particular neighborhood. It is proposed that the police make regular searches of persons and property in that neighborhood. The question for most governments is simply, will these searches reduce the problem.

In our system a second question must be answered. "May" we do the thing proposed? Is it authorized by the Constitution? The questions of power and authority must be addressed together. It is not just about power, it is also about authority. Just because something is

effective does not mean we are permitted to do it. Cutting off the hands of a thief may be a very effective deterrent but it shocks the sensibility of most Americans and is prohibited by the eighth amendment to the Constitution.

Simply stated, power under our system of government, may not be exercised unless it is authorized. Authority is the revolutionary aspect of the Constitution.

The requirement of authority is manifest in the many unique elements in the Constitution - separation of powers, federalism, representative democracy, popular sovereignty, individual rights and rule of law. When these elements are neglected liberty is compromised.

Today, 200 years after this radical and revolutionary creation, our modern mantra is "there ought to be a law." In other words, government ought to use its power to solve our problems. The last two generations have seen us collectively look the other way as solutions of power have incrementally been introduced without the full benefit of the various processes of authority.

Allowing the government to sidestep the processes of authority in order to solve problems has created our modern irony. Our problems are not really being solved, in other words, government's competency has not improved and the other two components of democracy and freedom have been challenged. We, the people, have allowed ourselves to get off track. Nevertheless, we can get back on track. But we must first understand where we got off. We must have the courage to do what it takes to get back on and we must care whether or not we get back on track