

POWER and AUTHORITY (Part two)
"PILLARS"
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Social power is superior to all Others must be placed somewhere; but I think that liberty is endangered when this power finds no obstacle which can retard its course. Tocqueville,- Democracy in America

Liberty is protected when government must have authority before it exercises power. Our more perfect union "was and is revolutionary because we have woven into our national fabric specific processes of authority that must be utilized before our federal government exercises power.

SEPERATION OF POWERS

Basic to our nation is the separation of the legislative, executive and judicial powers. Concentration of power leads to corruption as the popular maxim declares, "power corrupts, absolute power corrupts absolutely."

The accumulation of all power, legislative, executive and judiciary in the same hands, whether one, a few or many... may justly be pronounced the very definition of Tyranny. Federalist 47.

In order to maximize the separation of powers, each branch is not only separated from the others but each is compelled to cooperate with the others. What we have come to call "checks and balances," is the compelled cooperation among the separated branches.

Although Congress may pass a law, the president may veto it. Congress can override the vote if it can muster a two-thirds majority. This in effect gives the President a one-sixth share of the legislative power - the difference between the two-thirds and the ordinary majority. Additionally, the President is required to purpose legislation. The judicial system determines the constitutionality of law, and interprets and applies the law.

Independence of each branch is maintained in this legislative example above when each branch shares legislative powers.

Separation of powers preserves liberty because each branch is elevated to power by a different process, each branch has a distinctly different function, and each branch has its own distinct reasons to maintain its own power.

FEDERALISM

Although Separation of Powers was conceived and even practiced before the nation was established Federalism, the dividing of powers between the nation and the state, was unprecedented. The 10th amendment expressly limits the national government to the powers delegated to it by the constitution or to those powers the state is prohibited from exercising. The states or the people retain all other powers.

Sometimes Federalism is referred to as "States Rights," but would be better expressed as "State Sovereignty." It means in application that the national government should not act in a way that would limit state discretion unless, 1) the constitutional authority to act is clear and certain, and 2) the target of federal action cannot be effectively dealt with by individual states. For example, interstate commerce, war, foreign relations, disputes between states etc., meet both criteria - they are authorized and individual states could not effectively deal with them.

Federalism preserves liberty by ensuring that power does not concentrate in the national government, that the national government does not exercise power unless it is clearly authorized and the natural tendency to both centralize power and to put too much confidence in centralized power is resisted by encouraging reliance on local power for solutions to local situations.

REPRESENTATIVE DEMOCRACY

It was probably Alexander Hamilton who coined the term "representative democracy." "Republic" comes from the Latin word meaning "the thing is public." The question then is what kind of republic; our answer, of course, is democratic. We believe the majority should rule. That belief carries with it some inherent problems, not the least of which are governmental incompetence and the possibility that the majority may act oppressively toward minority views.

James Madison, said a republic differs from a pure democracy in that "the scheme of representation takes place." The principle of representation makes it possible to practice democracy in a very large nation.

In a large nation, said Madison, there would exist so many different interest and points of view that it would be impossible for any one interest to oppress another. In fact, to form a majority, a coalition of interests must be formed. In forming a coalition, the extreme views of each would have to be modified. Thus representative democracy strengthens liberty by allowing for a very large nation to practice democratic processes and by softening extremes through the necessity of forming coalitions in order to gain a majority.

POPULAR SOVEREIGNTY

The people are the source of all governmental power. The people are superior to the government they form and sustain. As the document states, "we the people." As Lincoln said, "government of the people, by the people and for the people." Inherent in this principle is the idea of equality - "All men are created equal." Each citizen is sovereign and each must respect the sovereignty of the other. Popular sovereignty requires the same application of the law, with the same results given the same circumstance.

Although popular sovereignty was part of the political philosophy of the day, it found its first implementation in our Constitution.

Popular sovereignty protects liberty because it declares that power is derived from the people, because it focuses on the individual and his relationship to other individuals and because it focuses our attention on those things inherent in each person and to whom we must look for that heritage.

RULE OF LAW

Rule of law is the foundation of freedom. Our loyalty is not to individuals but to the Constitution. We believe all men are subject to law and that no one is above the law, including those who make and administer the law. "In absolute governments the King [dictator, totalitarian regimes etc.], is the law therefore, in a free country law ought to be King." (Thomas Paine)

Rule of law preserves liberty because it prevents oppressive exercise of capricious or arbitrary power.

These five "pillars" of authority, when honored, allow government to exercise sufficient power to be competent and yet preserve liberty and democratic process.