

The Federated System of Republics in America

The Federal government is a Republic and this form of government is guaranteed to each of the States, under the Constitution (Article IV, Section 4). This Republic (the central Republic) is, however, different in a most important respect from the State Republics. To lose sight of this fact, of this difference between them, is to overlook the deep significance of America's federated system--a federation of Republics featuring decentralized power. (See also pages [45](#), [55](#), *ante*).

The principal difference, for present purposes, is as to quantity of power. The central Republic is a delegated-power government which possesses only the comparatively few and limited powers granted to it by the people as enumerated in the United States Constitution, as amended. These include chiefly the powers concerned with "war, peace, negotiation, and foreign commerce" (quoting *The Federalist*, number 45 by Madison). Each State Republic is a full-power government which possesses the vastly varied powers needed to administer intra-State affairs--"all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement and prosperity of the State" (again quoting *The Federalist* number 45). The full-power government of each State is, nevertheless, subject to the State Constitution as well as to the United States Constitution's grant of power to the Federal government and its limitations which are expressly specified as applying to the State governments. A State government, therefore, does not possess the unlimited power of legal sovereignty--that is, total power over all persons and things within its jurisdiction. The central and the State Republics are constitutionally limited governments, in keeping with the American formula: Limited for Liberty.

Governments of such limited-power character as these Republics are to be distinguished from the type possessing sovereign power, unlimited or total power as mentioned above,

such as Great Britain's Representative Democracy, previously discussed. This clear and precise definition of the term "sovereign power" is different from, and preferable to, the more general and loose use of the word "sovereign" as meaning merely a government exercising the usual powers of self-government, and of declaring war and peace, without outside control. Under the American philosophy and system, the people alone possess *political* sovereignty and as the creators of their tools--the Federal and State governments--they do not permit any of these governments to possess the total powers of *legal* sovereignty. This political sovereignty of the people, moreover, is limited by the traditional American philosophy in favor of protection of The Individual's God-given, unalienable rights. As Supreme Court Justice James Wilson, one of The Framers, stated in his separate opinion in the 1793 *Chisholm* case, in discussing at length the concept of sovereignty in relation to the American philosophy and system of constitutionally limited government, they bar from the American governmental scene every pretense of sovereign power governmentally (emphasis per original):

"To the Constitution of the *United States* the term SOVEREIGN, is totally unknown. There is but one place where it could have been used with propriety. But, even in that place it would not, perhaps, have comported with the delicacy of those, who *ordained* and *established* the Constitution. They *might* have announced themselves "SOVEREIGN" people of the *United States*: But serenely conscious of the *fact*, they avoided the *ostentatious declaration*."

Here he referred to two entirely different things: *legal* sovereignty of government---entirely lacking in the limited-power government of the United States--and *political* sovereignty of the people. The legislative body (the General Court) of Massachusetts, in its Proclamation of January 23, 1776, also meant *legal* power (legal sovereignty) of

government in contrast to *political* power (political sovereignty) of the people, in stating (and in effect defining "sovereign power"):

"It is a maxim that in every government, there must exist, somewhere, a supreme, sovereign, absolute, and uncontrollable power; but this power resides always in the body of the people; and it never was, or can be delegated to one man, or a few; the great Creator has never given to men a right to vest others with authority over them, unlimited either in duration or degree."

To repeat, no government in the United States--least of all the limited-power, delegated-power, central government--possesses *legal* power of sovereignty: sovereign power. (See also [page 132](#), *ante.*)

The difference between the Federal government's power and that of the government of each of the States is more easily understood in the light of the situation existing in 1787-1788 when the Constitution was being framed and ratified, in order to bring into existence the Federal government. At that time, the original thirteen States were already in existence. They ante-dated the creation of the Federal government by the Constitution, which supplanted the Articles of Confederation by consent of the people expressed through the State Ratifying Conventions. Under those Articles, there had been no central government with any power over the individual citizen or over the State governments. The Confederation was a mere treaty arrangement between the independent governments of the several States--by approval of their legislatures only and not by any direct authorization by the people of each State. The Confederation had no Executive Department and no Judicial Department--nothing but a legislative body, the Congress, which was completely powerless and could only request the States to provide money for it, or to do other things. The Confederation was, in truth, not a real government; and the State governments freely flouted with impunity the

Articles of Confederation whenever this suited the pleasure of any of them. By 1787, the collapse of any pretense that the Confederation Congress possessed any governmental power, or authority, or any effectiveness governmentally, was complete--a topic to be discussed in detail in Part III.

Each of the State governments was, therefore, actually exercising without any check virtually full governmental power whenever, and to the extent that, it chose so to do by the time the proposed, new Constitution, as framed in 1787, was submitted to the States for ratification. By action of the State Ratifying Conventions in 1787-1788, the sovereign people of each ratifying State exercised their indubitably reserved right and power by completely ignoring the Confederation and consenting to the creation of the new government--granting to it only that comparatively small part of the State government's powers which was specified in the Constitution as being so delegated. This is how the Federal government came into being as a delegated-power Republic possessed of only a few, limited powers as enumerated in the Constitution. All of the remaining powers of each State government and its people were reserved by them--as later expressly stated in the Ninth and Tenth Amendments, which merely confirmed the already-existing fact of this reservation, or retention, of power by them; subject only to the few limitations expressly specified in the Constitution as applying against the States. This is made clear beyond possibility of doubt by the writings of the leaders of that period, including especially various signers of the Constitution. The clearest and most comprehensive exposition is contained in *The Federalist*, particularly numbers 17, 32, 33 and 83 by Hamilton and numbers 39, 40, 41 and 45 by Madison. Before 1789, Americans were unified in spirit and philosophy but not as to governmental system.

The foregoing exposes the unsoundness of any claim that the central government possesses inherent powers amounting to sovereign power--or any power whatever other than, or in excess of the limits of, those enumerated in the Constitution,

as amended, as being delegated to it expressly or related to such express powers by necessary implication. If such a claim were true, the Federal government would be a government not of definitely limited powers but of powers without definable limits. Nothing could be more antithetical to the truth, as proved by all pertinent historical records, notably *The Federalist*. Nothing could be more violative of the controlling intent of those who framed and adopted the Constitution in 1787-1788, in keeping with the principle of the Declaration of Independence--that government is permitted to possess only "just powers" (limited powers). Any use of the term "sovereign," or "sovereignty," in seeking to define the limited, delegated, power of the central government is unsound.

As the Supreme Court stated in 1936--for perhaps the thousandth time since 1789--(*Butler* case, at its page 63), each State possesses full governmental powers except such as the people, by the Constitution, either conferred on the Federal government, denied to the States, or reserved to themselves. This is true according to the original intent of those who framed and ratified the Constitution and, therefore, of the people for whom they acted; and this intent is forever controlling, subject only to the people's changing the Constitution, by amendment.

The Federal government thus started out with nothing like the full powers of one of the State governments, much less the unlimited power of a sovereign government. Under the Constitution, as amended, the Federal government still retains its original, strictly limited-power character--limited to the relatively few enumerated powers which have been delegated to it as discussed above. All of the amendments to the Constitution combined have not altered this fundamental of its character. On the contrary, each amendment which granted to this government any additional, specific and limited power only served to confirm its limited power character and the underlying principle of constitutionally limited government.

A main aspect of the federated system of republics, as

contemplated by those who framed and adopted the Constitution, was the system of political checks by the States upon the central government--as explained, in part, by Madison in a 1787 letter to Jefferson (then in Paris), soon after the Framing Convention adjourned:

"In the American Constitution The general authority [of the central government] will be derived entirely from the subordinate authorities. The Senate will represent the States in their political capacity; the other House will represent the people of the States in their individual capac'y [capacity]. The former will be accountable to their constituents at moderate, the latter at short periods. The President also derives his appointment from the States, and is periodically accountable to them. This dependence of the General [central] on the local authorities, seems effectually to guard the latter against any dangerous encroachments of the former; whilst the latter, within their respective limits, will be continually sensible of the abridgement of their power, and be stimulated by ambition to resume the surrendered portion of it."

By the words "the subordinate authorities" Madison meant the States--through the people and the government of each of the separate States. The original system provided that the Senators from each State would be chosen by its Legislature (changed by the 17th Amendment); while the system of Electors of each of the States choosing the President is provided for in Section 1 of Article II, as modified by the 12th Amendment.