

SOVEREIGNTY: WHERE DOES THE POWER LIE?

BY DANIEL MARTINEZ

Who really runs the show here in America? Who actually has the power when it comes right down to these United States? It's a good question but it is important to remember, that like most things dealing with our "laws of the land," the Constitution spells it out for all of us. And much of what it says is supported in the Declaration of Independence. Consider this, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." Consider also the following from Bouvier's Law Dictionary – a book with a long tradition in the United States legal community since the late 1800s – and its definition of where the power lies, "Strictly speaking, in our republican form of government, the absolute sovereignty of the nation is in the people of the nation; and the residuary sovereignty of each state, not granted to any of its public functionaries, is in the people of the state." (2 Dall. 471)

Simply put, it means we, the people, have certain unalienable rights and it is we that *choose* to create a Government to protect our rights – not the other way around. That Governments are "allowed" to govern because we, the people, grant that permission.

When one really considers that, it can be quite humbling and yet quite empowering. Where does the power rest in the United States? It's resting in our hands. Sometimes we may forget that. But we mustn't – ever.

Still want more? We have assembled some case law rulings that probably will give you more information than you will ever need. But information is the key to proper decision-making. And the decisions we all as Americans are making now, this election year, are more important than ever.

United States v. Cruikshank, 92 U.S. 542 (1875):

Government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people." [United States v. Cruikshank, 92 U.S. 542 (1875)]

Baltimore & Ohio Railroad Co. v. Chambers, 73 Ohio St. 16; 76 N.E. 91; 11 L.R.A., N.S., 1012 (1905)

"Judge Story, in his treatise on the Conflicts of Laws, lays down, as the basis upon which all reasonings on the law of comity must necessarily rest, the following maxims: First, 'that every nation possesses an exclusive sovereignty and jurisdiction within its own territory'; secondly, 'that no state or nation can by its laws directly affect or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects or others.' The learned judge then adds: 'From these two maxims or propositions there follows a third, and that is that whatever force and obligation the laws of one country have in another depend solely upon the laws and municipal regulation of the latter; that is to say, upon its own proper jurisdiction and polity, and upon its own express or tacit consent.'" Story on Conflict of Laws §23."

Individual Sovereignty

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbor to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing there from, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights." *Hale v. Henkel* 201 U.S. 43, 74 (1906)

Bouvier's Law Dictionary, Third Revision (8th Edition)(1914), Volume 3, pages 3096 & 3097.

SOVEREIGNTY. The union and exercise of all human power possessed in a state: It is a combination of all power; it is the power to do everything in a state without accountability, —to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like. Story, Const. § 207.

The artificial soul of that artificial body, the state. Spencer.

As long as it is accurately employed...it is a merely legal conception and means simply the power of law-making unrestricted by any legal limit. But it is sometimes employed in a political rather than a legal sense. Dicey, Eng. Constitution.

Abstractly, sovereignty resides in the body of the nation and belongs to the people. But these powers are generally exercised by delegation.

When analyzed, sovereignty is naturally divided into three great powers: namely, the legislative, the executive, and the judiciary; the first is the power to make new laws and to collect and repeal the old; the second is the power to execute the laws, both at home and abroad; and the last is the power to apply the laws to particular facts, to judge the disputes which arise among the citizens, and to punish crimes.

Strictly speaking, in our republican forms of government the absolute sovereignty of the nation is in the people of the nation and the residuary sovereignty of each state, not granted to any of its public functionaries, is in the people of the state; *Chisholm v. Georgia*, 2 Dall. (U. S.) 471, 1 L. Ed. 440.

In international law a state is considered sovereign when it is organized for political purposes and permanently occupies a fixed territory. It must have an organized government capable of enforcing law and be free from all external control. A wandering tribe of savages, or nomads, or people united merely for commercial purposes or under control of another state cannot be considered as a sovereign state. Until a state becomes sovereign in the sense above described. It is not subject to international law. The states of the American Union are each, in a certain sense, sovereign in their domestic concerns, but not in international law, and Norway is an instance of a community not



sovereign in International law because bound in a union with Sweden. The fact of sovereignty is usually established by general recognition of other states, and, until such recognition is universal, no community can be considered as sovereign; Snow, Int. Law 19. See International Law.

Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. *Underhill v. Hernandez*, 168 U. S. 250, 18 Sup. Ct. 83, 42 L. Ed. 456.

"The transactions of independent states between each other are governed by other laws than those which municipal courts administer; such courts have neither the means of deciding what is right, nor the power of enforcing any decision which they may make." 13 Moore, P. C. 75. And the same is the case with their dealings with the subjects of other states; Pollock, Torts 105.

Sovereignty means that the decree of the sovereign makes law; and foreign courts can not condemn the influences persuading the sovereign to make the decree; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 29 Sup. Ct. 511, 53 L. Ed. 826, 16 Ann. Cas 1047.

The idea of sovereignty was not associated in the Teutonic mind with dominion over a particular portion of the earth's surface; it was distinctly personal or tribal; and so was their conception of law. Taylor, Science of Jurispr. 133.

Black's Law Dictionary 4th Edition (1951) page 1568.

Sovereignty. The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; paramount control of the constitution and frame of government and its administration; self sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.

Chisholm v. Georgia, 2 Dall. 455, 1 L. Ed. 440; *Union Bank v. Hill*, 3 Cold., Tenn 325; *Moore v. Shaw*, 17 Cal. 218, 79 Am. Dec. 123; *State v. Dixon*, 66 Mont. 76, 213 P. 227.

(Reference: John Bouvier, A Law Dictionary Adapted to the Constitution and Laws of the United States of America and the Several States of the American Union, Childs & Peterson, c1856.)

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2. Abstractedly, sovereignty resides in the body of the nation and belongs to the people. But these powers are generally exercised by delegation.
3. When analyzed, sovereignty is naturally divided into three great powers; namely, the legislative, the executive, and the judiciary; the first is the power to make new laws, and to correct and repeal the old; the second is the power to execute the laws both at home and abroad; and the last is the power to apply the laws to particular facts; to judge the disputes which arise among the citizens, and to punish crimes.
4. Strictly speaking, in our republican forms of government, the absolute sovereignty of the nation is in the people of the nation; (q.v.) and the residuary sovereignty of each state, not granted to any of its public functionaries, is in the people of the state. (q.v.) 2 Dall. 471; and vide, generally, 2 Dall. 433, 455; 3 Dall. 93; 1 Story, Const. Sec. 208; 1 Toull. n. 20 Merl. Repert. h.t.

Chisholm, Ex'r. v. Georgia, 2 Dall. (U.S.) 419, 1 L. ed. 454, 457, 471, 472) (1794):

"It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the sovereign, and the people as his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a

Court of Justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and privileges..." at 471.

"From the differences existing between feudal sovereignties and Government founded on compacts, it necessarily follows that their respective prerogatives must differ. **Sovereignty is the right to govern; a nation or State-sovereign is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the Prince; here it rests with the people; there, the sovereign actually administers the Government; here, never in a single instance; our Governors are the agents of the people, and at most stand in the same relation to their sovereign, in which regents in Europe stand to their sovereigns.** Their Princes have personal powers, dignities, and pre-eminences, our rulers have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens." at 472. [Justice Wilson]

In the United States the people are sovereign over their civil servants:

Romans 6:16 (NIV): "Don't you know that when you offer yourselves to someone to obey him as slaves, you are slaves to the one whom you obey..."

Spoooner v. McConnell, 22 F. 939 @ 943:

"The sovereignty of a state does not reside in the persons who fill the different departments of its government, but in the People, from whom the government emanated; and they may change it at their discretion. Sovereignty, then in this country, abides with the constituency, and not with the agent; and this remark is true, both in reference to the federal and state government."

US Supreme Court in Chisholm v. Georgia, 2 Dall. (U.S.) 419, 454, 1 L. Ed. 440, 455 @DALL 1793 pp. 471-472:

"...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty."

US Supreme Court in Luther v. Borden, 48 US 1, 12 LEd 581 (1841):

"... The governments are but trustees acting under derived authority and have no power to delegate what is not delegated to them. But the people, as the original fountain might take away what they have delegated and entrust to whom they please. ...The sovereignty in every state resides in the people of the state and they may alter and change their form of government at their own pleasure."

US Supreme Court in Yick Wo v. Hopkins, 118 U.S. 356 (1886), page 370:

"While sovereign powers are delegated to...the government, sovereignty itself remains with the people."

Yick Wo is a powerful anti-discrimination case. You might get the impression that the legislature can write perfectly legal laws, yet the laws cannot be enforced contrary to the intent of the people. It's as if servants do not make rules for their masters. It's as if the Citizens who created government were their masters. It's as if civil servants were to obey the higher authority. You are the higher authority of **Romans 13:1**. You as ruler are not a terror to good works per Romans 13:3. Imagine that! Isn't it a shame that your government was surrendered to those who are a terror to good works? Isn't it a shame that you enlisted to obey them?

Julliard v. Greenman: 110 U.S. 421, (1884):

"There is no such thing as a power of inherent sovereignty in the government of the United States In this country sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution entrusted to it: All else is withheld."

US Supreme Court in U.S. v. Cooper, 312 U.S. 600, 604, 61 SCt 742 (1941):

"Since in common usage the term 'person' does not include the sovereign, statutes employing that term are ordinarily construed to exclude it." **US Supreme Court in U.S. v. United Mine Workers of America**, 330 U.S. 258, 67 SCt 677 (1947):

"In common usage, the term 'person' does not include the sovereign and statutes employing it will ordinarily not be construed to do so."

