

Is the Federal Government Supreme?

Posted by [Bob Greenslade](#)

While observing the proceedings in a federal District Court, I was taken-back by the blatant arrogance of the judge masquerading as a constitutional officer. The case involved a civil dispute between two corporations. After setting a briefing schedule and reading the opposing attorneys the riot act concerning the conduct of his courtroom, the judge did something that illustrates the extent of the usurpation of power being perpetrated by the federal government. When one of attorneys told the judge he was unavailable for a motion hearing because he was scheduled to be in state court for a murder trial that same day, the judge came out of his chair and told the attorney to remind the state judge of the “supremacy clause” of the United States Constitution. He went on to state that since the federal government is supreme and above the States, the judge in murder case would have to change the date of the trial to accommodate the federal proceedings in his courtroom. If this federal judge had not been a constitutional renegade, he would have never asserted that the federal government is supreme and above the States.

The so-called “supremacy” clause is found at Article VI, Clause 1 and states in part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or shall be made, under the Authority of the United States, shall be the supreme law of the land – any thing in the constitution or laws of any state to the contrary notwithstanding. Nowhere in this provision does it state the federal government is supreme and above the States. It simply states that the Constitution and the laws made in pursuance thereof are supreme.

Alexander Hamilton addressed the extent of this clause in Federalist Essay No. 33:

[I]t is said that the laws of the Union are to be the supreme law of the land – It will not, I presume, have escaped observation, that it expressly confines this supremacy to laws made pursuant to the Constitution -[Bold not added]

In the New York Convention of 1788 considering ratification of the proposed constitution, Hamilton responded to the criticisms being leveled against this provision:

I maintain that the word supreme imports no more than this $\frac{3}{4}$ that the Constitution, and laws made in pursuance thereof, cannot be controlled or defeated by any other law. The acts of the United States, therefore, will be absolutely obligatory as to all the proper objects and powers of the general government. The states, as well as individuals, are bound by these laws: but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding. In the same manner the states have certain independent powers, in which they are supreme.

In Hamilton’s words we see the principles of limited government and enumerated powers. This clause does not expand federal power; it restricts federal power because that government only exists within the confines of its limited enumerated powers. When the federal government departs from the

Constitution and enacts laws outside the scope of its delegated powers, those laws are not “*supreme or binding*” because the federal government does not exist outside of its limited enumerated powers.

In order for the federal government to be supreme and above the States, it would first have to have the constitutional power to modify or abolish the powers of the States. No such power was granted to the federal government by the Constitution. In fact, since the States created the federal government, they have the power to abolish or amend the powers of their federal government any time they wish.

The amendment process is found at Article V and provides two methods for proposing amendments. Two-thirds of the States [34] can request a Constitutional Convention or Congress [two-thirds of both Houses] can propose amendments. When a proposed amendment is adopted by Congress and submitted to the States for consideration, the States have the exclusive power to accept or reject the proposal and neither Congress, nor a majority of the American people, have the constitutional authority to over-ride their decision. In addition, if the States call a Constitutional Convention to amend the powers of the federal government, Congress is constitutionally powerless to stop them.

When a proposed amendment is under consideration by the States, it takes a vote of three-fourths of the States [38] to ratify any proposed change. Neither Congress nor a majority of the American people has a vote in this process. Likewise, neither the federal government nor the whole people can override a three-fourths vote of the States. The 38 smallest States, with a minority of the population, can bind the remaining 12 States with a majority of the population. This proves conclusively that federal government is not supreme and above the States.

There is another way to read this clause. The Constitution is a compact or contract between the several States. If this clause is read in that context, it reads as follows: the contract between the several States, the Constitution, and all laws and treaties passed pursuant to the contract between the States shall be the supreme law of the land. It is the contract between the several States that is supreme, not the federal government. That government is simply the entity designated by the States to execute the limited functions entrusted to it by the terms of the contract.

Unfortunately, the federal government is using the illusion of supremacy to awe the States and the American people into undue obedience to its unconstitutional dictates. One example is the theft of land within the several States. The federal government cannot constitutionally acquire or exercise any legislative jurisdiction over land within one of the United States unless it complies with the consent requirement enumerated in Article I, Section 8, Clause 17. To get around this lack of authority, the federal government has used the supremacy clause to invoke condemnation or eminent domain power to take control of the land.

It should be remembered that eminent domain is an attribute of sovereignty. The term “sovereignty” is interchangeable with the word “supremacy.” Before the federal government could claim a general power of supremacy within the several States, it would first have to establish that the States surrendered their sovereignty to the federal government when they adopted the Constitution.

In Federalist essay No. 32, Alexander Hamilton reiterated the principle that the States, under the Constitution, would retain every pre-existing right [power] that was not *exclusively delegated* to the federal government:

An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all rights of sovereignty which they before had, and which were not, by that act, exclusively delegated to the United States. [Emphasis not added]

Hamilton noted that the Constitution would establish a “*partial union*” between the several States. If the States were being consolidated into one nation they would not be delegating powers, they would be surrendering powers. That would include their sovereignty. In reality, the States did not surrender their sovereignty; they only delegated a portion of their sovereign powers to the federal government for the limited purposes enumerated in the Constitution. Thus, since the Constitution established a “*partial union*” between the several States, and the federal government was granted its powers from the States via the Constitution, the federal government cannot be supreme and above the States.

The failure of the States to control their federal government will have dire consequences if it is allowed to continue asserting supremacy over the States. In the New York Ratifying Convention referenced above, Hamilton warned of the consequences if the States ever lost their powers:

The states can never lose their powers till the whole people of America are robbed of their liberties. These must go together; they must support each other, or meet one common fate.

If the States and the American people do not awaken and assert their supremacy over the federal government, that government will ultimately turn Hamilton’s warning into reality.

Bob Greenslade [send him email] has been writing for www.thepriceofliberty.org since 2003. Bob focuses his writing on issues surrounding the federal government and the Constitution. He believes politicians at the federal level, through ignorance or design, are systematically dismantling the Constitution in an effort to expand their power and consolidate control over the American people. He has dedicated himself to resurrecting the true intent of the Constitution in the hope that the information will contribute, in some small way, to restoring the system of limited government established by the Constitution.