

The Constitution Unites Us: Popular Sovereignty and Why We Have Government

By W. West Allen



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In my Presidential Installation remarks offered on Constitution Day, September 17, 2020, I reminded all judges and lawyers that we are the *Guardians of the Constitution* and emphasized *five* foundational principles of the U.S. Constitution: popular sovereignty, federalism, separation of powers, the Bill of Rights, and the rule of law.¹ In the months ahead, I would like to further discuss these foundational principles.

We begin with *popular sovereignty*.

The American experiment is unlike any in the world. "In Europe, charters of liberty have been granted by power," James Madison explained. "America has set the example ... of charters of power granted by liberty[;] ... [government] derived not from the usurped power of kings, but from the legitimate authority of the people[.]"²

Said another way, the "Father of our Constitution," in expounding upon the significance of his work and advocating for the Constitution and its new form of government, provided us with this wisdom:

"[T]he people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived[.]"³

The justification for such a bold political arrangement arises directly from the truths America declared to the world in 1776. In that year, the Founders of America proclaimed liberty throughout all the land with these "self-evident" verities: (1) *all* are created equal; (2) *all* are endowed by their Creator with certain unalienable rights; (3) among these rights are Life, Liberty, and the Pursuit of Happiness; (4) to secure these rights, governments are instituted among people, deriving their just power from the consent of the governed; and (5) whenever any form of government becomes destructive to these ends, it is the right of the people to alter or abolish it.

The Declaration of Independence and its proclamation of these truths concerning the essential state of all humanity set firmly in place the *first* foundational cornerstone of the Constitution: popular sovereignty. The *people* are the *only* true and lawful source of governmental power. Rights and freedoms of individual citizens do not exist because of government. Government exists because individual citizens are free to protect their freedoms and rights as they choose. Moreover, the freedom of every individual exists apart from and is superior to any form of political government. This "natural" freedom predates any government on earth. All rights appertaining to freedom are therefore equal to *every* man and woman. No people, no nation had ever spoken as this before: We are free; thus, we are sovereign.

This fundamental principle of self-government is the lodestar of all constitutional jurisprudence. It illuminates every aspect of it—our Constitution's creation, interpretation, and implementation. It was just as true in 1787 as it is today and will be tomorrow. For America, government is charted by limited, enumerated powers to be exercised only as authorized by the people according to their *written* law, which is the U.S. Constitution. Indeed, the very purpose of the U.S. Constitution, or of any government, is to protect and preserve the people's unalienable rights and their eternal freedom.

To this end, the American people resolved to form a new constitutional government, unlike any other, to advance the cause of freedom and protect individual, unalienable rights. They created a democratic republic—one established by the consent of the governed, and fixed in writing to guarantee liberty for future generations. This new written constitutionalism, properly understood and practiced, would become the greatest political creation in the history of the world for the cause of freedom.

It is with this elevated understanding of *why* people institute government that we also begin to see *how* the principle of popular sovereignty provides the proper metes and bounds of good government. Because America's government is *of* the people, *by* the people and *for* the people, it must operate within the boundaries expressly enjoined *from* the people. Therefore, before any proposed government action is taken, a proper inquiry concordant with the foundational principle of popular sovereignty would be this: "Is this what *We the People* told government to do?"

And to answer that question, we need look no further than the Preamble of the U.S. Constitution and the *six* reasons *We the People* instituted and empowered our government in the first place. America's self-government is ordained and established for these express purposes:

1. To form a *more perfect Union*,
2. To establish *Justice*,
3. To insure *domestic Tranquility*,
4. To provide for the *common defense*,
5. To promote the *general Welfare*, and
6. To secure the *Blessings of Liberty* to ourselves and our Posterity.⁴

If government action is not doing these things, it's likely acting outside the people's granted authority. Similarly, if we as citizens, civic leaders, politicians, or corporate institutions are engaging in action that compromises these fundamental six purposes, then we, too, are acting contrary to our ultimate best interest, and, in the end, endanger the very political system that sustains us. Madison warned us against this as well: "liberty may be endangered by the abuses of liberty as well as by the abuses of power[.]"⁵

Regarding the just scope of government, Alexander Hamilton explained that "[t]he propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded."⁶ The opening words of the U.S. Constitution, in a remarkably clear and guiding way, do precisely this. Quite simply, the Preamble of the U.S. Constitution is the document's great enacting clause that both embodies and crystalizes the principle of popular sovereignty. It expounds upon the nature, extent, and basis for which people empower government at all. It also clarifies the limit of authority that must restrain those entrusted to serve within government.⁷

By properly understanding the first foundational constitutional principle of popular sovereignty, we can better implement and interpret the Constitution itself. We can better understand how to administer our government and govern ourselves. In time, we begin to appreciate the document's magnitude and depth to advance the rights and protection of all people. The U.S. Constitution elucidates the proper political relationship between governor and the governed, the protectorate and the people, the Caesar and the Citizen. It is the single greatest achievement in the science of government. And yet, it is still more.

Built upon the sure foundation of popular sovereignty, the U.S. Constitution emanates hope to a captive world. Like the declaration of eternal truths penned by Thomas Jefferson from a portable writing desk of his own design, the constitutional work composed by our American founders from the Pennsylvania State House in 1787 proclaims the way of freedom to all the world. The Constitution's foundational principles, properly understood, unceasingly teach us.

Most remarkably, they have the ability to unify our nation and its people. I would invite everyone to give that insight further reflection. The U.S. Constitution and its enduring principles of truth, especially that of popular sovereignty, bind disparate people together as one national family. This is perhaps one of the least understood, grandest achievements of the U.S. Constitution: It at once liberates and unites.

America indeed has raised a standard to the world to which the wise and honest can repair. We have established a charter of power granted by liberty. Our Constitution confirms that just government is not derived from the usurped power of kings, but from the legitimate authority of the people. Our written law created in sovereignty both governs and unites us. In so many ways, the U.S. Constitution is a political marvelous work and a wonder.

May we remember that we are *one* nation, *one* people, united by the cause of freedom. Our Constitution is written to preserve freedom for us, our children, and for all people who understand its principles. Loyalty to law instituted under principles of popular sovereignty creates unity in diversity. By and through the people's charter, *our* Constitution, we are sovereign citizens linked together for a greater good, and we have strength. *E Pluribus, Unum*. Out of many, one. ☺

Endnotes

¹While many foundational principles are taught by the U.S. Constitution—including those I refer to as "unspoken" constitutional principles, such as hope, faith, knowledge, fortitude, respect, resolution, patience, humility, diligence, order, justice, and gratitude—I've chosen to examine these critical five.

²James Madison *Charters*, NAT'L GAZETTE, Jan. 18, 1792.

³THE FEDERALIST NO. 49 (James Madison). Benjamin Franklin similarly expressed that in free government, the rulers are the servants, and the people their superiors and sovereigns. This principle is expressly set forth in the U.S. Constitution's Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." See also, *McCulloch v. Maryland*, 17 U.S. 316 (1819) (reaffirming that state governments did not form the United States, the People did: "The government proceeds directly from the people; is 'ordained and established' in the name of the people.")

⁴U.S. CONST. pmb.

⁵THE FEDERALIST NO. 63 (James Madison).

⁶THE FEDERALIST NO. 33 (Alexander Hamilton).

⁷The Preamble of the Constitution, along with its leitmotif of popular sovereignty, are worthy of independent study. The intentional placement and content of the Preamble within the U.S. Constitution, like many of the most significant writings in history, establish order and precision. First, the Preamble declares *who* is acting: the sovereign people. Next, it defines the express purposes *why* the people are acting by their authority. And finally, it states *what* the people are doing to achieve these specific purposes; namely, enacting a new government through a written constitution. The Preamble establishes the people's purpose in enacting the American government, its limitations, and who rightly wields its power.