

On my understanding, what Beer means by "the national theory of federalism" (aka "the national idea." or "the national perspective" [viii, 1]) is that "although we are one people who enjoy a common life as one nation, we have set up not a unitary but a dual system of government. In establishing this system, the American people authorized and empowered two sets of government: a general government for the whole, and state governments for the parts. The constitutional authority for the two sets of government is therefore coordinate. Neither created the other, and both are subject to the same legitimating power, the sovereign people. And periodically the people in this constituent capacity amend these institutions, by which in their governing capacity they direct the day-to-day affairs of the nation" (1 f.).

But, then, I have a question about Beer's statement that Lincoln's justification of his use of the war power of the federal government to put down the rebellion (in his message to Congress of 4 July 1861) is "a lucid and uncompromising version of the nationalist view of the origins of the Republic." According to the crucial sentence in this statement, "the Union is older than any of the States, and, in fact, it created them as States." But what, exactly, is meant by the distinction between "the Union" and "the States" in this sentence?

Assuming the distinction that Beer makes in the passage quoted above between the two sets of government—general for the whole, and state for the parts—one might not unreasonably think that Lincoln's terms refer respectively to these two levels of government. In that case, however, Lincoln's statement could hardly be a version of the nationalist view, as I understand Beer to define it. For in that case, the authority of the two sets of government would not be "coordinate," because the general government would have created the state governments.

Therefore, so far as I can see, Beer's claim about Lincoln's statement can be valid only if "the Union" means something other than the general government as distinct from the other set of governments belonging to "the States." Specifically, "the Union" must mean something like *the American people as a whole* acting in their "constituent sovereignty" through the

Continental Congress to make a nation comprised of states that would accordingly require "not a unitary but a dual system of government."

That something like this is indeed what Lincoln means may possibly depend on how one understands his other sentence, "Originally some dependent colonies made the Union, and, in turn, the Union threw off their old dependence for them, and made them States." In what sense, exactly, did the colonies first make the union? Did they make it by electing a Continental Congress through which the American people as a whole could exercise their constituent sovereignty? This seems plausible, since it was, in fact, the Continental Congress, speaking for "one people," who made the colonies states in declaring their independence.

I could wish I were clearer about all this than I am.

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