

Opinion: Battle between states rights, federal authority

By Andrés Martínez

I don't drink Champagne, but if the Supreme Court strikes down state bans on gay marriages this month, I might pop open a bottle in celebration. As a newspaper editorial writer and editor, I've been waiting a long time for this one, having fought two publisher bosses in two different cities, going back to the mid-1990s, to editorialize in favor of gay marriage. I won the second fight, but barely, at the *Los Angeles Times*, about nine years ago.

A court decision that relies on our federal constitution to legalize gay marriage across the country would be a triumph for individual liberty, common sense, and human decency. It would also amount to a blow against that most persistent of villains throughout American history: the destructive creed of state rights and state sovereignty.

That same creed is at issue in the Obamacare case, *King v. Burwell*, to be decided by the court this month. The law allows the federal government to provide subsidies to lower-income insurance customers who sign up for coverage on the new exchanges "established by the state." Trouble is, pursuant to other sections of the law, it was the federal government that ended up establishing an exchange for those states that refused to establish their own – and no one involved in drafting the law intended for its patients to be denied the same subsidies available to people signing up for coverage on a state-created exchange. Now, in their feverish desire to interfere with the relationship between American citizens and their national government, opponents of the law are hoping the

Supreme Court will cut off 8 million people from the support and coverage they are receiving.

As we await these landmark decisions, it's worth reading Joseph J. Ellis's new book, "The Quartet: Orchestrating the Second American Revolution 1783-1789." It's a masterful reminder of the timeless tension between the concept of the United States as a singular nation and the United States as merely a confederation of sovereign states.

Ellis chronicles how four of our Founding Fathers – George Washington, John Jay, Alexander Hamilton, and James Madison – recognized from the earliest days after independence that the individual states, and the excessive power retained by them under the loose Articles of Confederation, were a serious threat to the promise of the American Revolution.

Hence this influential "quartet" pushed for the 1787 Constitutional Convention in Philadelphia. Washington wrote at the time: "We are either a United people or we are not. If the former, let us, in all matters of general concern act as a nation... If we are not, let us no longer act a farce by pretending to it."

Madison, often cited as the father of the Constitution, disagreed vehemently with Thomas Jefferson over whether it was state governments or the new federal government that would be the biggest threat to individual liberty and rights, and history has proven Jefferson spectacularly wrong in that debate. It's hard to blame him: Madison's (and Hamilton's) belief that the larger, more distant national government could be a more representative embodiment of "We the People" was a very modern concept.

But being so ahead of their time limited the Quartet's contemporary success. Their new Constitution, by political necessity, was riddled with fraught compromises – such as the electoral college and the equal vote of each state in the

Senate – that would define much of American history.

Abraham Lincoln ratified and reinvigorated the Quartet's accomplishment to the point where he deserves to join Ellis' crew, and make it a Quintet. The Civil War and its aftermath delivered on the Madisonian concept of a federal government empowered to protect citizens – especially minorities – from the bullying of local and state authorities (i.e., majorities). But that doesn't mean the fight is over.

Nowadays we don't often think about these federalist debates that have haunted our history, because we are too busy – and this goes for both conservatives and liberals – gaming the tension between Washington and state capitals. Even within the gay marriage legal fights over the last decade, both sides have taken turns, depending on the prevailing winds, arguing in favor of a state's right to define marriage for itself, damned what the rest of the country thinks.

Too rarely do we ask ourselves the more fundamental question of whether we are citizens of California or Texas – or the United States? If the Quartet had invented a time machine and paid us a visit, they'd be astonished at the resilience of the state sovereignty creed. Too many Americans cling to the belief that the United States is a confederation in which citizens' fundamental rights can and should vary across state lines, to accommodate local biases.

Let's hope in the coming days and weeks that five such Americans aren't sitting on the Supreme Court.

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