Table of Contents

The First Principle of American Government

Chapter 1

The protection of innocent human life is a paramount goal and obligation of government. Religious freedom is utterly essential. Freedom of speech and of the press are critical in the ongoing battle against tyranny. And a good case can be made for the proposition that without the right to keep and bear arms, none of these other principles can be sustained over time.

But none of these principles are the most important principle of American government—at least not in a structural sense. Nor were any of these principles the direct cause of the American War for Independence. The core issue behind our break with England was the desire to preserve the right of self-government. The essence of this right is this: Only the people themselves or their elected legislative representatives have the moral authority to make law. Stated a bit more simply: *Only elected legislators should be allowed to make law.*

Everyone should be familiar with the phrase "No taxation without representation" that arose out of our dispute with Great Britain. But the key to understanding America is that the principal dispute was over representation, not taxation. In 1766, the British **Parliament** repealed the hated Stamp Act that had imposed an unwanted internal tax on the colonies—a tax that had been imposed without the consent of the people. However, simultaneously, Parliament passed the "Declaratory Act," which claimed that the British Parliament had the right to legislate for the American colonies in "all cases whatsoever."

Notes

Parliament: *The legislature of England.*

The Declaratory Act

March 18, 1766
An Act for the Better Securing the Dependency of His Majesty's Dominions in America Upon the Crown and Parliament of Great Britain.

Whereas several of the houses of representatives in His Majesty's colonies and plantations in America, have of late, against law, claimed to themselves, or to the general assemblies of the same, the sole and exclusive right of imposing duties and taxes upon His Majesty's subjects in the said colonies and plantations; and have, in pursuance of such claim, passed certain votes, resolutions, and orders derogatory to the legislative authority of Parliament, and inconsistent with the dependency of the said colonies and plantations upon the crown of Great Britain: may it therefore please Your Most Excellent Majesty that it may be declared, and be it declared by the king's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said colonies and plantations in *America* have been, are, and of right ought to be, subordinate unto, and dependent upon the imperial crown and Parliament of *Great Britain*; and that the king's Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, of *Great Britain*, in Parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of *America*, subjects of the crown of *Great Britain*, in all cases whatsoever.

Enact:
To pass a law.

II. And be it further declared and **enacted** by the authority aforesaid, That all resolutions, votes, orders, and proceedings, in any of the said colonies or plantations, whereby the power and authority of the Parliament of *Great Britain* to make laws and statutes as aforesaid is denied, or drawn into question, are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever.[1]

[1] Declaratory Act, 1766, *The Statutes at Large*, ed. Danby Pickering (London, 1767), 27:19–20, 6 Geo. 3, c. 12, http://www.constitution.org/bcp/decl_act.htm.

Although it took ten years to finalize the break with Britain, it was this act that drew the final "line in the sand." Our forefathers believed that the only proper response to the subjugation of our own system of representative government was to fight such an act of tyranny.

In fact, the fundamental belief that drove the American people toward independence was a conviction that it was a violation of basic human dignity for anyone other than the people or their own elected legislative representatives to decide the rules that everyone must obey.

Modern authors sometimes contend that the freedoms contained in our First Amendment were the most important to the Founders. After all, they argue, it wasn't the *First* Amendment for nothing. But this line of thinking overlooks some key history as well as fundamental logic. Rather than focusing on the word "First," it would be wiser to look at the implications of the word "Amendment." An amendment is a *change* to the **Constitution**. The Constitution was ratified in 1789; the First Amendment was ratified two years later in 1791. Moreover, when the Bill of Rights was originally proposed, there were twelve recommended amendments. Only ten of the twelve were ratified by 1791.

Constitution:
A document setting out a system of fundamental laws and principles governing the nature, functions, and limits of a government.

The two that were not ratified were actually the first and second amendments in the proposed Bill of Rights. They read as follows:

Article I.

> After the first enumeration required by the first article of the Constitution, there shall be one representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred representatives, nor less than one representative for every forty thousand persons, until the number of representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall be not less than two hundred representatives, nor more than one representative for every fifty thousand persons.

Article II.

> No law varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.[2]

[2] *The Laws of the United States of America* (Philadelphia: Printed by Richard Folwell, 1796), 4:23–24, http://www.earlyamerica.com/earlyamerica/freedom/bill/text.html.

In 1992, this second proposed amendment was ratified and became the Twenty-seventh Amendment to the Constitution. What we call the "First Amendment" was actually proposed as the third amendment. Thus, it is erroneous to place a lot of emphasis on the fact that the First Amendment is the most important because it was listed first. In the famous Virginia Bill of Rights of 1776, which is clearly seen as a forerunner of the **federal** version, religious freedom was listed as the sixteenth article, although it was clearly one of the most important principles contained therein.

We can, however, look at the original text of the Constitution to determine the principle that the Founders believed to be the most important. The portion of the Constitution that can justifiably be called the first principle of the Constitution is Article I, Section 1: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."[3]

This section answers the question: "Who can make law?" All legislative power—all power to make laws—shall be vested in Congress. The President cannot make laws. The Supreme Court cannot make laws. The executive agencies such as the Environmental Protection Agency cannot make laws. The United Nations cannot make laws. No government official acting alone can make laws. The United States Constitution gives all legislative power to Congress.

Now, it is very important to remember that drafters and ratifiers of the Constitution of the United States gave only a limited amount of **domestic** legislative power to Congress. The states retained most of the legislative authority on domestic matters. (All legislative power over international matters was given to Congress.) But 100 percent of the legislative power distributed by the U.S. Constitution was given to Congress—none was given to any other branch of the federal government.

The remaining legislative powers were kept by the states. At the state level, legislative power can be exercised by the state **legislature**, by the people themselves in direct elections, and by city or county legislative bodies. The direct elections by the people take the form of **ballot initiatives** or **referenda** which allow the people to directly decide whether certain measures become law.

Federal:
Pertaining to the national government, as opposed to state or local governments. The United States has a federal system of government: the national government is limited in its powers, and most power is retained by the state governments or by the people.

Domestic:
Pertaining to issues within this country; the opposite of foreign.

Legislature:
A group of elected people who make laws for a political unit (either state or federal).

[3] U.S. Constitution, art. 1, sec. 1, http://www.house.gov/Constitution/Constitution.html.

When you blend all of these sources of legislative power together, only the following bodies have the power to make laws:

- The Congress has all legislative power for international issues; additionally, it has power over certain domestic issues that are specifically listed in the U.S. Constitution.
- The state legislatures have all remaining legislative power over domestic issues unless specifically limited by their state constitutions.
- Local government legislative bodies (county or city councils) have whatever power is authorized by either state constitutions or statutes.
- The people themselves have legislative power through initiatives and referenda on state or local issues as authorized by either state constitutions or statutes.

These are the exclusive groups which have the power to pass ordinary laws. At the risk of being redundant, it is worth repeating the following: Under the Constitution, the President can make no laws, no executive agency can make law, and no federal court can make law.

The Constitution also allocates the power to make "higher law"—that is, the power to amend the Constitution of the United States. Article V breaks this power into two phases. There are two methods of *proposing* amendments and two methods for **ratifying** amendments.

Amendments to the Constitution can be proposed by either of the following methods:

1. Two-thirds of each house of Congress can vote to propose an amendment; or
2. Two-thirds of the state legislatures can call for a constitutional convention for the purpose of proposing amendments.

Amendments can be ratified by either of the following methods:

1. Three-fourths of the state legislatures vote to approve a proposed amendment; or

Ballot initiative:
A law proposed by the people. Citizens must gather enough signatures by petition to submit the law for a popular vote.

Referendum, Referenda:
A law proposed by the legislature which is submitted to a vote of the people.

Ratify:
To formally approve. Amendments to the United States Constitution must be ratified by at least three-fourths of the states before being adopted.