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On the Limits of Government, Part 1

by Scott McPherson

Where reason cannot instruct, custom may be permitted to guide; and every nation seems to consult the dictates of prudence, by a faithful attachment to those rites and opinions which have received the sanction of ages.

— Edward Gibbon, *The Decline and Fall of the Roman Empire*

A pillar of American constitutional government is undoubtedly the concept of representation. Citizens enjoying the voting franchise cast ballots for potential representatives; those winning a majority (or even a plurality) of votes take seats in legislative assemblies and executive offices from the federal level down to the local level. These officials then enact and enforce laws that, at least in theory, people must abide by and live under.

This concept has a long and noble history in the Anglo-American model of government. The Saxons, who were very likely influenced by the Roman Britons they had conquered from the fifth through the seventh centuries, were regularly consulted in some fashion by their leaders for wisdom and guidance on the passage of laws. In time, the people at large gained greater and greater control over that process, which ultimately culminated in the foundation of the American Republic.

Sad to say, the principle upon which this power rests — discovered, confirmed, and fought for over centuries — has been greatly subverted by a statist ideology. It is taken for granted today that the political party currently holding power can and should pass any laws it wishes. In short, the power to pass laws — to exercise power over others — goes virtually unchecked, with virtually no regard to the ethical and historical foundation upon which just and legitimate government is based.

The evolution of representative government

In A.D. 411 the Emperor Honorius could answer the pleas of the besieged Romans of England only by saying that they “should take steps to defend themselves.” The power of Rome was gone; in volume I of his *History of the English-Speaking Peoples*, Winston Churchill speaks of this time as one where “the darkness closes in.”

Yet from that time forward the institutions that would later define the brilliance of the English — and by extension, the American — government began to form. The ancient *Witan*, a gathering of wise and religious elders who advised the kings of Saxon England, has been referred to by at least one historian as a “national council” (see *The Anglo-Saxons*, James Campbell, ed.) and by another as “the body from which our Parliament has by slow degrees developed” (see *The Groundwork of British History*, by George Townsend Warner and C.H.K. Marten). The eighth-century historian Bede spoke of “[King] Edwin consulting his *amici, principes, and consilarii* [friends or relations, great men, and counselors] on the adoption of Christianity.”

After William of Normandy took the throne of England from Harold (A.D. 1066) he called together the nobility at Sarum (Salisbury) in England, who swore fealty to him and became his vassals. John Remington Graham, in his *Constitutional History of Secession*, calls this the starting point from which the “power of the Crown was actually used to create and write, by the King’s hand and seal, a proper constitution for England.”

By A.D. 1265 a parliament was meeting regularly; first it was made up of noblemen and their knights, but later it included burgesses representing commercial interests. Eventually widespread use of the franchise would create the largest representative and legislative assembly in the world, the House of Commons.

Through a series of constitutional crises Parliament would steadily take from the Crown and vest in itself many legislative prerogatives; likewise many prerogatives would stay with the monarch. But always there remained a tension between these two repositories over who truly governed England. This struggle reached a climax late in the 17th century, when England’s bloodless “Glorious Revolution” of 1688 settled the matter once and for all.

A body calling itself “The House of Commons” — acting in session but without having been summoned by the king — offered the Crown to William and Mary, who then formed an army and forced the abdication of King James II.

From that point forward no doubt remained that it was the *people* who were sovereign, and that all legitimate power rested with them. Their king, like their Parliament, was a *representative* of that sovereignty.

None of this of course was lost on our own Founding Fathers, who less than a century later would revolt against their king and their Parliament and establish 13 “Free and Independent States.”

Sovereignty and government

To be sure, all power to pass laws does, and should, lie with elected representatives of “the people.” The Constitution of 1787 — “the law of the land” — opens with the line, “We the People ... do ordain and establish this Constitution for the United States of America.” This was done “in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, [and] promote the General Welfare.”

That the men of that era understood sovereignty as residing in “the people” is made clear from the very manner in which the various colonial governments separated themselves from the British Empire (see Graham’s *Constitutional History*, pages 89–97). Likewise, the Framers went about creating the Constitution through the “Philadelphia Convention,” much as the “Convention Parliament” of 1688 had peacefully overthrown James II — through elected delegates acting as representatives of “the *people*” rather than the *legislature*. Finally, Article VII of the Constitution required “The Ratification of the *Conventions* of nine States” before the Constitution became binding [emphasis added].

Mere statutory approval was insufficient; “the people” needed to form a “constitutional convention” to voice consent for their government. Thereafter their elected representatives would craft, pass, and enforce laws consistent with the goals and powers stated in that Constitution.

This principle is also enshrined in the constitutions of some states. My own state of New Hampshire, for example, promises in the opening lines of its constitution, Part First, Article 1, that “[All] government of *right* originates *from the people*, is founded in consent, and instituted for the general good.” [Emphasis added.]

Such constitutional articles are an articulation of an ideal that has passed through centuries of struggle between individuals and their governments. Several years earlier the Second Continental Congress had issued the Declaration of Independence. While the Constitution of 1787 is the binding *legal* document of the U.S. republic, the Declaration of Independence provides the *philosophical* context in which that document — and the constitutions of *all* of the states of the United States — should be understood.

The Founding Fathers revolted against their king and their legislature. Twenty-seven abuses were listed by the colonists to justify their rebellion; some indeed pertained to usurpations by the Crown and Parliament of the rightful powers of the colonial legislative *assemblies*. For example,

He [King George III] has refused his Assent to Laws, the most wholesome and necessary for the public Good.

He has forbidden his Governors to pass Laws of immediate and pressing Importance....

He has refused to pass other Laws for the Accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature....

He has called together Legislative Bodies at Places unusual, uncomfortable, and distant from the Depository of their Public Records, for the sole Purpose of fatiguing them into Compliance with his Measures.

He has dissolved Representative Houses repeatedly....

He has refused for a long Time, after such Dissolutions, to cause others to be elected....

But many more abuses pertained to violations of the *natural rights of the people themselves*, such as the right to immigrate (or emigrate), to be tried by a jury, to be secure from arbitrary search and seizure, and to not be unnecessarily saddled with a standing army. The right of free trade had been denied or interfered with for a century, and monopoly privileges granted to the king's favorites. A "multitude" of bureaucrats had been unleashed on the people. The king's soldiers patrolled the countryside, and had attacked the Lexington militia on April 19, 1775. The manufacture of gunpowder within the colonies was abolished: "He has plundered our Seas, ravaged our Coasts, burnt our Towns, and destroyed the lives of our People" and ignored repeated pleas for redress of grievances.

The great lie of the statist ideology is that power exercised by representatives is and ought to be considered just and legitimate simply by virtue of the fact that the representatives are typically elected or appointed to their positions, presumably by an all-powerful and all-knowing majority. While citizen participation in the electoral process is an important part of our political system, it should not be misconstrued as legitimizing government's exercising arbitrary power over the life, liberty, or property of the people.

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