

# American GOVERNMENT

Origins, Institutions and Public Policy

James W. Ceaser

Joseph M. Bessette

Laurence J. O'Toole, Jr.

Glen Thurow

Sixth Edition

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**Sixth Edition**

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# Preface

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This textbook combines the traditional and the modern approaches to the study of American politics. The traditional approach emphasizes constitutional law, the formal characteristics of political institutions, and American political thought; the modern approach focuses on political culture, the policymaking process, and political behavior. Few teachers of American politics hold that the distinction between these two approaches is absolute, and almost all would say that students should receive extensive exposure to both. Yet all too often materials available for classroom use reflect the research interests of scholars who concentrate their work in one of these areas. Our aim in this textbook has been to integrate these two approaches so that students can understand the interconnections between political thought and the formal structures of politics on the one hand, and the policymaking process and political behavior on the other.

We employ a mode of analysis that begins by looking at politics from the perspective of the constitution maker or legislator—that is, one who consciously and rationally considers how to found and maintain the basic structure of a political system. We use the term “constitution” in its original and general sense to refer to the constituent elements that define a political order. In the United States, the Constitution (that is, the written document) is obviously one of these elements, but others include fundamental political beliefs, major laws, and the evolutionary development of institutions. The focus of this book is therefore as much cultural and behavioral as it is

legal. The reader is placed in the position of a constitution maker or founder who is called on to analyze past changes from a constitutional perspective and who is asked to apply this same mode of thinking to major contemporary issues. By this method we seek to avoid a passive presentation of the mere facts of American politics and challenge the reader to consider the significance of these facts for efforts to adapt and maintain the constitutional system.

Political development in the United States has never, of course, been solely the product of conscious and rational efforts by constitution makers. Accordingly, we present other factors that have shaped the system’s development, including influences deriving from sociological, economic, and technological causes. Where possible, however, we view these factors from the standpoint of the legislator having responsibility for constitutional maintenance. For example, in treating the increasing influence of the mass media on the electoral process, we not only describe the developments that have taken place but also ask the reader to consider what changes (if any) legislators can and should adopt in response. This approach, we believe, encourages readers to think in terms of political alternatives and to assess the consequences of contemplated reforms.

Learning about politics involves expanding one’s capacity to distinguish momentary influences from those that shape the character of a constitution over the long term. Throughout the text, we make use of political theory, com-

parative politics, and historical development in an effort to escape viewing yesterday's political crisis as the sole basis for political analysis. Our goal is to train readers to perform the mental act of checking day-to-day events against larger forces influencing constitutional change. Thus, although we have made every effort to include the most up-to-date materials, we have deliberately avoided faddish attempts to "peg" the book to the latest political crisis or problem.

Books with a traditional emphasis often glorify the founding generation and engage in the stale exercise of measuring the present system against the standards of the original authors of the Constitution. We have naturally assigned an important place to the nation's founders, both because the founding itself presents the clearest instance of a conscious and full-blown experiment in constitution making and because the founders have included many of America's best political thinkers. Nonetheless, our theme of constitution making implies that a constitution must be adapted to fit the requirements of each generation. No system can be maintained without being reformed to meet new needs and challenges. We have viewed the development of the American system as a process and a dialogue, bounded in large measure by the original principles but constantly facing new questions that the founders either could not have resolved or did not resolve. It is precisely because the task of maintaining the political order falls in some measure to every generation, including our own, that we believe it is essential to think about politics from a constitutional perspective.

While the theme we have adopted may seem distinctive, it lends itself readily to a standard arrangement of the material. Part One presents the overall approach of the book, analyzes the origins of the republic, traces the broad outlines of constitutional development from 1789 to the present, and treats the division of power between the central government and states.

Part Two deals with public opinion and with the various links between the public and the formal institutions of government. Much of the material in this section falls into the area of political behavior, but readers will quickly see how political behavior is shaped by constitutional influences. Part Three treats the institutions of the federal government. It includes a chapter on the separation of powers between the president and Congress, an addition made to help students understand the interaction between these two branches. Part Four looks at the policymaking process and analyzes the major substantive areas of public policy. Basic choices in the realm of policy are dealt with in terms of their constitutional significance, and each chapter in this section considers not only what policy choices have been made but also how and by whom they are made. This section enables the reader to consider the effects of the allocation of power on governmental decisions.

A good companion for this text is *Readings in American Government*, edited by Mary P. Nichols and David K. Nichols, published by Kendall/Hunt in 1990. Their selection of readings follows closely the ideas discussed in this book and provides excellent primary source materials for a constitutional perspective on American politics.

The current edition of this text, prepared by James Ceaser, is the fourth revision of the original book that was published in 1984. In the original edition, James Ceaser wrote what are currently chapters 1, 2, 5, 6, 7, and 8 and directed the preparation of chapters 9, 13, and 17, which were drafted, respectively, by William Connelly, Alan Tarr, and David Clinton. Joseph Bessette wrote chapters 10, 11, and 12; Laurence O'Toole wrote chapters 4, 14, and 15; and Glenn Thurow wrote chapters 3 and 16. Several persons helped in researching materials for the second and third editions: Randall Strahan, Andrew Busch, John Young, John Dinan, Andrew Hall, Brian Menard, Jason Robinson, Scott Fischer, Glenn Ellmers,

Brad Watson, Cary Federman, Bruce Larson, and James Yoho. In preparing the fifth edition, Professor John Young of Andrews University assisted in revising chapters 6 and 10. Research assistance was provided by Patrick

McGuinn, Richard Skinner, Michael Cairo, Joshua Johnson, Joshua Dunn, Ben Bogardus, Richard Drew, Robert Hume, and Kathleen Grammatico.

# Contents

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<b>Preface</b>	<b>v</b>	<b>Chapter 12</b> Congress and the Presidency: Conflict and Cooperation	<b>429</b>
<b>Part One</b>		<b>Chapter 13</b> The Judiciary	<b>461</b>
<b>The Fundamental Principles</b>		<b>Chapter 14</b> The Bureaucracy	<b>505</b>
Chapter 1 The Study of American Politics	3		
Chapter 2 The Founding	35	<b>Part Four</b>	
Chapter 3 Constitutional Development	73	<b>The Policy Process</b>	
Chapter 4 Federalism	109	Chapter 15 The Public Policy Process	541
		Chapter 16 Civil Liberties and Civil Rights	565
<b>Part Two</b>		Chapter 17 Foreign Policy	593
<b>The Public and the Government: Intermediary Institutions and Electoral Politics</b>			
Chapter 5 Public Opinion	143	<b>Appendixes</b>	
Chapter 6 Political Parties	181	Appendix 1 The Declaration of Independence	625
Chapter 7 Campaigns and Elections	229	Appendix 2 The Constitution of the United States of America	629
Chapter 8 Voting Behavior and Political Participation	273	Appendix 3 The Federalist: Number 10 and Number 51	653
Chapter 9 Interest Groups	313	Appendix 4 Presidents and Congress	661
		Appendix 5 Chief Justices of the Supreme Court	669
<b>Part Three</b>			
<b>The Institutions of Government</b>		<b>Index</b>	<b>671</b>
Chapter 10 The Congress	339		
Chapter 11 The Presidency	383		

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# **Part One**

## **The Fundamental Principles**

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# 1

## The Study of American Politics

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### CHAPTER CONTENTS

#### THINKING AS A CONSTITUTION MAKER

#### THE ENDS OF SOCIETY

- Liberty
- Self-Government
- Equality
  - Political Equality
  - Economic Equality
  - Enforcing Equality
- Citizenship

#### THE ROLE OF GOVERNMENT IN SOCIETY

- The Concept of Power Under a  
Limited Government
- Perspectives on the Role of Modern  
Government

#### THE ORGANIZATION OF INSTITUTIONS AND THE

#### DISTRIBUTION OF POLITICAL POWER

- A Written Constitution
- Representative Government and  
Separation of Powers
- Who Governs?
- Four Models of Political Analysis
  - Elitism
  - Bureaucratic Rule
  - Pluralism
  - Majoritarianism

#### SECURITY AND THE PROMOTION OF PURPOSE IN THE WORLD

- “Necessity” in Constitution Making
- Purposes in Foreign Affairs

#### CONCLUSION

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America's political tradition is a blend of continuity and change. Since the founding of the republic over two centuries ago, Americans have looked for guidance in their fundamental political beliefs to the great founding documents of the Declaration of Independence (1776), the Constitution (1789), and the Bill of Rights (1791). On the occasion of almost every inauguration, presidents draw from the principles of the founding. The great struggles for equality in American history—the anti-slavery movement, the civil rights movement, and the women's rights movement—have all invoked the “self-evident truths” of the Declaration. In the conflicts over the rightful powers and the proper arrangement of the government, from the great battles over states' rights in the nineteenth century to recent struggles between the president and Congress over authority in budget-making foreign policy, Americans continually return to the words of the Constitution and the ideas of the founders.

Yet in looking to their origins, Americans do not always find the same answers. Contending parties claim fidelity to the same documents and principles, but they may understand and interpret them differently. The documents that provide the foundation for continuity sometimes serve as grounds for controversy. New circumstances may also require that the original principles be expressed in new ways. Abraham Lincoln, who began the Gettysburg Address in 1863 by looking back “four score and seven years ago” to the Declaration of Independence, ended by calling for a “new birth of freedom.” Franklin Roosevelt, who opened his state of the union address in 1944 by speaking of the Declaration and the Bill of Rights, concluded by calling for a “second Bill of Rights” and a “new basis of security.”

A recurrence to original principles is an enduring feature of American politics. As one political scientist observed: “Other nations often see constitutions come and go every generation . . . [but] the United States has still

had only one Constitution and one system of government based on one set of political ideas.”<sup>1</sup> Change has taken place in large part through reinterpreting the original elements. The founding generation, amid profound disputes of its own, struck a balance among the nation's fundamental principles. Within the basic framework established by the founders, each succeeding generation has faced the responsibility of maintaining those principles and adjusting that balance anew. It is a responsibility that cannot be escaped. Today is no exception. Beneath the daily contests for influence among our politicians and the struggle for advantage by interest groups, choices must often be made about the meaning of liberty and equality, the role of government in society, the relations among the institutions of the government, and the place and purpose of the United States in the world. These choices in turn alter the character of the nation's political system and profoundly shape the future course of American politics.

The significance of the original principles in America's political development suggests the need to study American politics by beginning with the founding and by observing how the founding principles have been interpreted and perhaps modified by successive generations. The main purpose of such an inquiry is not to retrace American history, but to introduce a way of thinking about politics that can help citizens meet the ongoing challenges of preserving the political system.

## THINKING AS A CONSTITUTION MAKER

Imagine, then, that you were asked to create a new form of government for the United States. Where would you begin? What questions would you ask, and what standards would you apply? Founding a government is clearly a daunting assignment. But it was one Americans had to confront in the critical period from

the days before the Revolution through the ratification of the Constitution.

Fortunately, the major elements of the founding are not lost in the mists of time, like King Arthur's legends, but remain surprisingly accessible to us. America originated with certain deliberate acts of constitution making. When the leaders of the American Revolution declared independence from Great Britain in 1776, they presented an official document, The Declaration of Independence, which sets out the reasons for the break and states the principles of legitimate government. Eleven years later, faced with the failure of the nation's first government under the Articles of Confederation, the founders assembled in Philadelphia to devise a new government. We have today an extensive record of their deliberations at the Constitutional Convention published in James Madison's *Notes*, as well as a famous commentary on the Constitution, *The Federalist*, which was written during the debate over the ratification to explain the purposes of the proposed government.\*

The frame of mind of many of the founders is also known to us. The leading proponents of the new government, among whom were George Washington, James Madison, and Alexander Hamilton, were keenly aware of the importance of the moment and of the unique opportunity it presented. They saw themselves as constitution makers engaged in an undertaking that was potentially no less momentous than the founding of the great ancient governments of Athens, Sparta, or Rome. The stakes were high. To fail might spell the doom for the cause of self-government not just in the United States, but everywhere. As Alexander Hamilton noted at the Convention, "we

were now to decide forever the fate of Republican Government."<sup>2</sup>

The way the founders went about the task of proposing the government provides us further instruction. Most governments in the world until then had been established by leaders who took power by force and justified their rule by appeals to myths or supernatural accounts. The American founding relied to a remarkable extent on reason, in which the various arguments for and against the proposed form of government were debated and discussed. The founding provided a kind of test of whether a group of political leaders, taking into account both political theory and practical interests, could devise and agree on a form of government and then win consent for it from the public in an open contest. The *Federalist* begins by observing that it was for Americans "to decide the important question whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force." (*Federalist* 1)

Finally, we know much about the reasoning that the founders relied on in crafting the new government. Some founders studied in depth previous political systems, beginning with those of ancient Greece and ending with the recent state constitutions. The question of how to form and maintain governments was a central concern of a body of knowledge they called "political science" or the "science of politics." ("Science" in this case, incidentally, did not refer to knowledge in which every proposition could be tested and confirmed with mathematical certainty, but a systematic body of thought that sought to establish important relationships.) Yet existing political

\* The delegates at the Constitutional Convention decided that their deliberations would be kept secret. James Madison, who took notes of the speeches, waited until his death to have them published. *The Federalist* was written in 1787 and 1788 by Alexander Hamilton, James Madison, and John Jay. It consists of eighty-five separate essays, and the references in this text will give the number of the essay from which the quotation is taken (for example, *Federalist* 10).

science could provide them no more than general guidance. Each case had its unique features that derive from the special qualities of its people and history. Creating a government is always a matter of judgment that must fit a government to the particular character or “genius” of a people. In addition, the founders were innovating. The form of government they proposed—a republican government in a large nation—was something that had never been attempted before. Like doctors performing a pioneering operation, they were developing new ideas in political science, even as they relied on its basic categories to guide them. To critics who dismissed their plan as visionary, the founders replied: “why is the experiment of an extended republic to be rejected merely because it may comprise what is new?” (*Federalist* 14)

The document the nation adopted in 1789, known as the “Constitution of the United States of America,” serves as the basis of our government today and is the world’s oldest written constitution still in use. Yet our form of government today differs in many respects from the one created in 1789. Through amendment, interpretation, and the accretion of practice and precedent, the original system has been modified. If the founders were miraculously to return today, they would certainly recognize the outline of their handiwork, but they would no doubt also be surprised at some of its features.

The government of the United States has changed and will continue to change. The question therefore is not whether we become constitution makers—we must—but whether we base our own decisions on “reflection or choice” or allow change to occur by “accident,” without the benefit of the kind of systematic thought that went into creating the government. Although we in this generation do not face the same responsibility of establishing a framework of government, the task of preserving and maintaining a political order, though perhaps a less glorious task than

founding a new one, requires no less attention and understanding. The need to think like constitution makers therefore is nearly as important today as it was at the founding. As Daniel Webster once said, preserving the government demands that we not only value the “importance of the achievements of our ancestors,” but also learn how “to keep alive similar sentiments and to foster a constant regard for the principles of the Revolution.”<sup>3</sup>

To think like a constitution maker means to ask four basic questions that America’s founders confronted:

1. What are the ends or purposes of society as a whole?
2. What role should government play in society?
3. Who governs, and how are the institutions of government to be organized and power distributed?
4. How can the nation provide for its security and promote its interests in the world?

These four questions help us not only to understand the task of constitution making, but also to analyze the character of any political system or constitution. By a *constitution* (with a small c), we mean the basic form of government, also referred to as a “political order” or “political system.” But we prefer “constitution” because it recalls at least the possibility of making or constituting something. As defined by the *Oxford English Dictionary*, a “constitution” in its political sense is the “mode in which a state is constituted or organized . . . the arrangement of its parts or elements, as determining its nature and character.” Analysis of the four questions stated above provides a key for describing any given constitution. Once we have set forth the ends of society, the role of government, who governs and the way power is distributed, and the nation’s basic posture toward security and for-

eign affairs, we have characterized the essentials of that constitution.

Using the term constitution as the basic unit of analysis risks creating confusion, because Americans identify the word with our written legal document. The issues raised by the four questions posed above, however, go beyond matters that are addressed or fully answered by our Constitution. There is, therefore, a crucial distinction to be made between our constitution (with a small c) and our Constitution (with a capital C). Our constitution is made up of a set of dominant beliefs, key laws, and established practices that are more than our Constitution and that may on occasion even deviate from it. Our constitution includes the driving force of certain ideas, the interpretation of these ideas in the context of changing circumstances, and the development of major institutions that are not directly provided for by the Constitution. The Constitution, for example, says nothing about political parties, even though parties have become integral parts of the current framework of government.

Calling attention to the significance of extra-Constitutional developments, far from minimizing the influence of the Constitution, allows us to understand its importance in shaping American politics. Those who wrote and amended the Constitution sought to influence decisively the character of the political order. And they succeeded. (By contrast, the written constitutions of some nations are merely public relations documents that have no bearing on how these nations are actually governed.) Because the Constitution establishes the basic outline of our governmental structure, and because Americans believe that it should, the Constitution must be taken very seriously. But no written document can fully contain or define a constitution. The founders themselves were well aware of this fact, and all the more so because the Constitution left much of the job of governing to the states (which had their own written constitutions).

Thinking constitutionally, therefore, requires going beyond a legal analysis to consider the fundamental factors that structure a political order.

In this chapter, we shall look at the four basic questions a constitution maker must ask and explore how they have been approached in the United States. The concepts discussed will all be examined in more detail later in the book. The object for the moment is less to master a body of facts than to get a sense of what these questions mean in the context of American politics.

## THE ENDS OF SOCIETY

A constitution maker must first consider the broad purposes to which society as a whole is devoted and the kinds of human beings it develops. Politics is so important as a human activity because constitutions help shape what people value and how they lead their lives.

This formative dimension of politics can best be seen by looking at a few examples from outside of American politics. Consider, for example, the constitutional changes in Eastern Europe that occurred in the late 1980s. Before then the communist governments in these states allowed only one official view to be heard on the state-owned television; only one political party was permitted; ownership of almost all property was by the government; the teaching of history and social science was based exclusively on Marxist-Leninist principles; and the practice of religion was either discouraged or forbidden. The whole structure of these societies was transformed by the revolutions that toppled these governments. Suddenly, the airwaves opened up to different views; opposition parties organized and openly expressed their ideas; elements of private enterprise began to develop; religious services were held publicly for the first time; and old textbooks in history and social studies were abandoned. When these constitutions changed, there were changes in

how people led their daily lives and developed as human beings.

Iran, over the past generation, offers another instructive example. Until its revolution in 1979, Iran was governed by an authoritarian ruler (the shah), who, while placing strict limits on the range of permissible political activity, sought to modernize the nation's economy and to introduce many western customs. The daily life of an Iranian urban middle-class person thus began to resemble that of someone similarly situated in London or New York: people could purchase what they wanted, dress as they pleased, and entertain themselves by going to a nightclub, the movies, or the theater. All this changed abruptly in 1979 after a revolution brought to power a group of Islamic fundamentalists led by a religious figure, the Ayatollah Khomeini, whose view of the ends of society was based on establishing a version of the Islamic way of life. Through propaganda and repression, often with popular support, the government imposed some striking new laws that banned many forms of music, closed movie theaters, and required women to appear in public with long dresses covering their entire body and much of the head and face. The curriculum of all courses in school in history, government, and law were completely changed to reflect Islamic principles. Almost no major aspect of the daily lives of Iranians was left untouched by the new government.

Efforts to use political authority directly to form or mold a people, even against its will, are not unusual. History is filled with attempts by constitution makers to shape a particular kind of human being. Indeed, this understanding of government's role was once the predominant view. A model for this way of thinking was the constitution of the ancient Greek city state of Sparta, which has been widely discussed by political theorists. Established by one of the most renowned of all founders, Lycurgus, the Spartan constitution was designed to create the ideal citizen-soldier.

To encourage more perfect physical specimens, Spartan practices carefully regulated the training of youth, prescribed the diet of the citizens, and even established rules for sexual relations and breeding. To prevent any corruption of the people's morals, contacts with foreigners were strictly limited and economic activity was tightly regulated. All of society was organized to encourage a sense of duty and of devotion to the state. The Spartan constitution was in one sense a great success, as Sparta was able to maintain its independence for hundreds of years and to remain one of the most powerful states of ancient Greece.

This general understanding of the role of government prevailed in many areas of America before the founding. (America, recall, began to be settled by Europeans in the 1500s, and even though these colonies were part of Great Britain they often exercised extensive control over their own domestic laws.) In the seventeenth and eighteenth centuries, some of the New England colonial settlements used public authority to promote Christian virtue and ideals. Connecticut and Massachusetts defined what was orthodox religious belief, required church attendance, forbade premarital sexual relations, and even regulated the length of people's hair. Nathaniel Hawthorne's classic novel *The Scarlet Letter* provides a striking picture of the rigid code of behavior that these theocratic republics required of their citizens.

Some contemporary political scientists define politics as "who gets what, when, and how," that is, as a competition over physical resources and economic goods.<sup>4</sup> Although much ordinary political activity and debate revolves around economic issues, such as the levels of taxation and the amounts of public subsidies for housing or for college tuition, these concerns should not make us forget the more fundamental role of politics as a way of influencing the overall character and quality of life in society. Indeed, far more than many suppose, many of these so-called economic



**BOX 1.1****THE DEBATE OVER LAWS BANNING OBSCENITY**

The continuing differences over the meaning of liberalism are illustrated in the following arguments about the legality and wisdom of laws that would limit materials deemed to be obscene:

Governmental control of ideas or personal preferences is alien to a democracy. . . . The only completely democratic way to control publications which arouse mere thoughts or feelings is through nongovernmental censorship by public opinion (Judge Jerome Frank, concurring in *U.S. v. Roth*, 1956).

The ultimate evils include influences upon the cultural and moral environment of a people and, hence, upon mind and character. . . . By means of laws against the more extreme forms of obscenity, we are reminded, and we remind ourselves, that “We, the People” have an ethical order and moral limits (Harry Clor, *Censorship and Freedom of Expression*.)

contests in fact are not about economics alone, but involve concerns over the way of life of society. It is this aspect that a constitutional perspective always keeps in sight.

Where do we turn to find a statement of America’s fundamental ends? It is here that Americans look back to the Declaration and the Constitution and find the basic goals of liberty, self-government, equality, and citizenship. These form a large part of the “core” or “creed” of the American constitution—the beliefs that have united Americans, in the Declaration’s words, as “one people” despite the size and diversity of the population. It is to these ends that we now turn.

**Liberty**

Modern-day Americans no doubt find the idea of using political authority directly to form a people, in the fashion that existed in Sparta, not only unacceptable but difficult even to comprehend. Government, they believe, should not dictate the goals or aims of individuals. The Declaration establishes the le-

gitimate end of society: to secure certain “unalienable rights,” which include “life, liberty, and the pursuit of happiness.” By making the protection of individual rights central to the role of government, the Declaration implies that public authority should for the most part remove itself from imposing a specific end or way of life on its citizens. Citizens may pursue their happiness as they see fit, which leaves the determination of many questions of the best way of life chiefly to the private sphere—to the influence of the family, religious institutions, the “culture” as it develops, and ultimately to each person’s individual choice.

Although liberty is clearly a fundamental end of society, the founders did not interpret it as a generalized right to “do one’s own thing” that exempts all individual behavior from government regulation. Nor did they think that a whole theory of government can be constructed from the idea of rights, according to which government may only act when the exercise of rights by some directly conflicts with the exercise of rights by others.



Some may prefer a minimalist government of this sort, but it is not the kind of government required by the founders' understanding of liberty. Government—meaning here not just the federal government, but government on all levels—could do more than ban actions involving a physical interference with the practice of others' rights. Government may act in many areas to secure general benefits, from building highways, to assisting the poor, to providing public education. It can protect basic community values, as in laws that outlaw prostitution, ban obscenity, and in certain cases even prevent individuals from practices deemed harmful to their own well-being, such as the use of certain drugs.

What then does protecting liberty and securing rights mean? The answer, as we shall see throughout this book, is not simple. For the moment we can say that it has meant, in the first place, strong protection for a core of fundamental rights. These rights consist of rights specified in the Constitution and many state constitutions—included generally are the rights of free speech, free press, and the free exercise of religion—and some rights that have been recognized as inherent, such as a freedom of movement. Disputes of course arise about the precise meaning of these rights as well as which are in fact fundamental or inherent, as, for example, in the current debate over a proclaimed right of abortion. Second, a government that secures liberty also protects many other matters that involve claims of right, such as a right of privacy and a right to acquire and dispose of property. These rights, however, cannot be protected by simple or absolute injunctions. They need to be put into effect by various laws and also weighed in relationship to other rights claims and to other ends.

A government that secures rights thus does not mean a government that recognizes a legal claim to “do one's own thing.” There is no doubt a presumption that government should not usually intervene in areas of personal

choice or in spheres being handled well enough by the interaction of individuals and private groups. But for the founders—and still for most Americans today—a government that protects rights possesses broad powers to act at its discretion in a large number of areas.

The task of protecting rights does, however, place important restraints on the authority of government relative to what governments had claimed before. Government now gets out of the business of imposing orthodox views in the moral and philosophic realms. Public authority, whatever its other obligations, secures the setting in which the pursuit of happiness takes place, but it does not seek directly to define the content of happiness.

This understanding of the role of government is known as *liberalism* or *liberal* government, as that word is used in the term *liberal democracy*. Liberal here means government that aims to protect rights and which, in that sense, is limited. (The word liberal, as we shall see, is often used in a different sense in contemporary politics.<sup>5</sup>) Some of the important premises of liberalism were set out in the seventeenth and eighteenth centuries by several political theorists who had a great influence on America's founders, among them John Locke (1632–1704), Charles de Montesquieu (1689–1775), and Adam Smith (1723–1790). These theorists argued that government should relinquish the responsibility of saving souls—a responsibility, incidentally, that many governments had used to pursue tyrannical ends. Government should also withdraw from directly controlling large parts of the economy, a role it had often exercised not just to try to promote economic activity but to increase political control. Instead, modern government should act to ensure a sphere of free action for the individual.

The implications for government of securing liberty was well-stated by a famous nineteenth-century historian of liberty, Lord Acton: