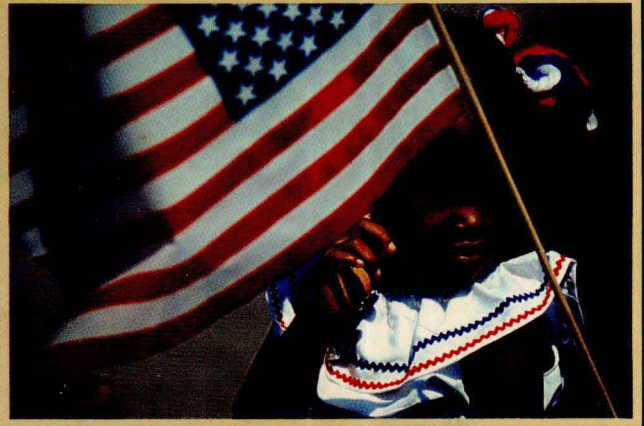
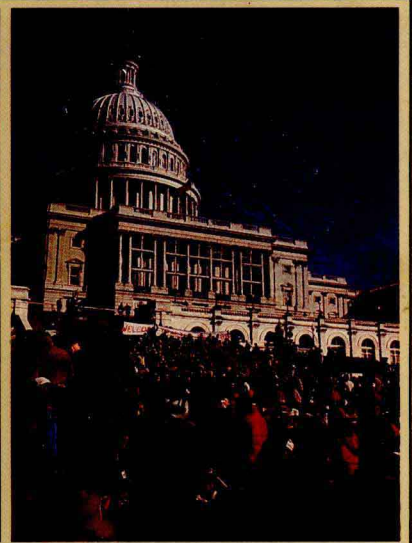


We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.



GOVERNMENT BY THE PEOPLE

BURNS PELTASON CRONIN
BICENTENNIAL EDITION 1987-19

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, on such Motion, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of each House on any question shall be entered on the Journal.

Neither House, during the Session, shall adjourn for more than three days, nor to any other Place than that in which the two Houses shall first meet.

Section 6. The Senators and Representatives shall receive Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.

No Senator or Representative shall, any time in which he was elected, be appointed to any civil office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate shall, before it becomes a Law, be presented to the President of the United States; if he approve, he shall sign it, and the same shall become a Law; if he disapprove, he shall return it, with his Objections to the House of Representatives, by which it shall be reconsidered, and if approved by two thirds of both Houses, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, it shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a Question of Adjournment)

National Edition

GOVERNMENT BY THE PEOPLE

Bicentennial Edition 1987–1989

Thirteenth Edition

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Williams College

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University of California, Irvine

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The Colorado College

Prentice-Hall, Inc., Englewood Cliffs, New Jersey 07632

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We call to your attention the fine *Guide to Government By The People* by Raymond L. Lee and Dorothy A. Palmer, designed to provide students an opportunity to participate more directly in the learning process. A software *Interactive Guide to Government by the People* also provides review material in a modified video game format. This *Interactive Guide to Government By The People* is available for the IBM-PC and Apple-II series microcomputers and is provided without charge to instructors using this text.

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January 1987

P.S. Please point out errors and send comments, suggestions, and advice to us at our addresses above or addressed to us c/o Political Science Editor, Prentice-Hall, Inc., Englewood Cliffs, New Jersey 07632.

Prologue

to the Bicentennial Edition

A Personal Message from the Authors

Dear Reader:

You will be reading this book during an era of birthdays—of the drafting of the Constitution in Philadelphia in 1787, the adoption of the Constitution by twelve states during 1787 and 1788, and the beginning of the new national government in Manhattan (before it moved to Philadelphia and then to Washington) in the spring of 1789.

The “bicentennial edition” of *Government by the People* pays full attention to these key events and their significance today. But we authors recognize that you may expect more from these birthdays than speeches, parades, and fireworks. Indeed, you may well have had your fill of birthdays if the bicentennial events are mindless celebrations of the American system of government.

We have placed the text of the Constitution of the United States of America itself near the start of this book (directly after Chapter 1) because that Constitution still governs us today. The framers of the Constitution were political and intellectual giants. Nonetheless, just as the Constitution’s birthday cake may be sagging under the weight of its 200 candles, perhaps our constitutional system is sagging under the weight of its two centuries as well.

In short, we invite you to *celebrate* our constitutional system as citizens but at the same time to *cerebrate* the system—study it, understand it, evaluate it—as political scientists.

The authors are political scientists, or, more simply, students of politics. *Politics* is the method by which people live together, decide how to meet their basic needs, solve common problems, protect themselves against threats both foreign and domestic, even seek to realize the “good life.” Briefly, politics is the process of “who gets what, when, and how.” Clearly, this process involves conflict as people compete for what they can “get.” *Government* seeks to resolve these conflicts in a way that enhances a nation’s values and purposes.

In the broader sense *political science* is the study of politics and government. Political scientists seek to answer such questions as: What are the fundamental rules by which conflicts are settled? How are the rules changed? How do people think and behave politically? Who votes, who fails to vote, and why? What, if anything, do elections decide? Who has “clout” in government, and why? How does all this shape the final outcome—the policies that take money from us, give some of it back in a different form, shape our daily lives?

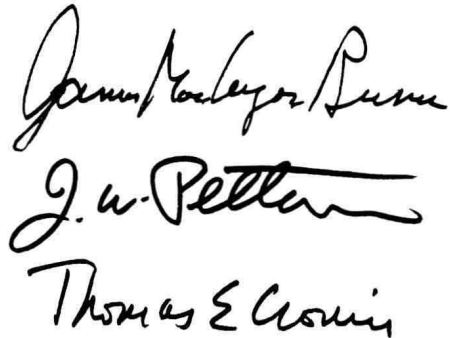
What can you learn from political science that you cannot learn from carefully reading the daily paper and news magazines? Political scientists seek to understand the *whole system* of government by analyzing how the interconnected elements relate to one another. We take up the Constitution in one chapter, Congress in another, the media in still another, and so on. But we are determined to understand how the parts interlock in a dynamic and changing system. Just as a skilled auto mechanic may understand how one part of a car works but perhaps not fully comprehend the physics and chemistry of the vehicle as a whole, so may a casual observer

of American politics miss the ongoing interplay of the whole system. This kind of understanding is the job of the political scientist.

Political scientists, then, want to formulate theories about the why and the how of political life. They also want to ask, "So what?" Aristotle called the study of politics the "queen of sciences." Machiavelli, another political theorist, examined political systems and advised princes on how to secure and keep power, and on how to govern. St. Thomas Aquinas, John Locke, and Thomas Hobbes were grand political philosophers who also influenced the framers of the Constitution. So were Americans John Adams and James Madison.

In this bicentennial edition we invite you to undertake a great voyage of discovery of one of the supreme intellectual achievements in the history of the West—our Constitution. But as you study, keep in mind that not everything the founders invented or created was right. And certain parts of the Constitution worked less well than others. Today, as a result, we need students to become modern-day framers, persons who are committed to liberty but who also realize that after 200 years the problems and opportunities of government may have changed.

So welcome to the bicentennial era and to this bicentennial edition. Please serve as a "framer" yourself, as you seek to understand the system and assess it.



James M. Boyer
J. W. Peltan
Thomas E. Cronin

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The Making of a Republic—1787

Late in 1786 messengers rode into George Washington's plantation at Mt. Vernon with alarming news. Some farmers in western Massachusetts, crushed by debts and taxes, were rebelling against foreclosures, forcing judges out of their courtrooms, and freeing debtors from their jails. Washington was appalled. Ten years before, he had been leading Americans in a patriots' war against British redcoats. Now Americans were fighting Americans!

"What, gracious God, is man!" Washington exclaimed, that he should be so fickle. "It is but the other day, that we were shedding our blood to obtain the Constitution of our choice." If government cannot check these disorders, he wrote to his friend James Madison, "what security has a man for life, liberty, or property?" It was obvious that without a stronger constitution, "thirteen Sovereignities pulling against each other, and all tugging at the federal head will soon bring ruin on the whole."

Not all Americans reacted as Washington did to the farmers' uprising, which came to be known as **Shays's Rebellion**.^{*} Some sided with the rebels. When Abigail Adams, wife of the American minister in London, John Adams, sent the news to Thomas Jefferson, the minister in Paris, the Virginian replied: "I like a little rebellion now and then." Later Jefferson added, "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."

At the time most informed Americans probably agreed much more with Washington than with Jefferson. They knew that their struggling little republic was surrounded by the big and hungry powers of Europe—Spanish to the south, in Florida; the French to the west, in the Mississippi Valley; and the British to the north, in Canada. These Americans remembered that in 1776 the Declaration of Independence had proclaimed the unalienable rights of life, liberty, and the pursuit of happiness. But how, they asked, could these rights be protected in a small nation vulnerable to attack from outside, divided into thirteen independent states, and wracked by internal disorder?

Shays's Rebellion petered out after the farmers attacked an arsenal and were

^{*} Words in boldface type throughout this text are defined in the Glossary at the end of the book.

cut down by cannon fire. It was not much of a rebellion, but it sent a stab of fear into the established leadership. It also acted as a catalyst, precipitating the decision to call a convention to meet in Philadelphia in the summer of 1787. Its purpose: to build a stronger national government that would be truly able to protect “life, liberty, and property.”

WHAT KIND OF CONSTITUTION?

In 1986 we celebrated a very special Fourth of July: The refurbished and glittering Statue of Liberty was re-presented to the American people and to lovers of liberty around the world. Once again we had a grand spectacle of fireworks over southern Manhattan, magnificent ships parading up and down the lower Hudson River, and fine television oratory by President Reagan and other notables. But did Americans learn anything about *liberty* itself—its slow development over the centuries, its many dimensions, its protection and enhancement, its relationship to government and politics, its applicability to the rest of the world, especially to the impoverished Third World?

Our current commemoration of the bicentennial era of the Constitution calls for hard thought and analysis, and not merely fireworks. The great charter of 1787 is a “living constitution” that centrally influences “who gets what, when, and how” in American society today; hence, it is still a subject of controversy. Too, the Constitution—and our whole constitutional system—is a most complex affair, and we ought to understand what we celebrate. It might also be helpful for younger persons today, who may live until the mid-twenty-first century, to evaluate how a great instrument of government invented for the eighteenth century can meet the enormous pressures and crises we can expect to arise in the future.

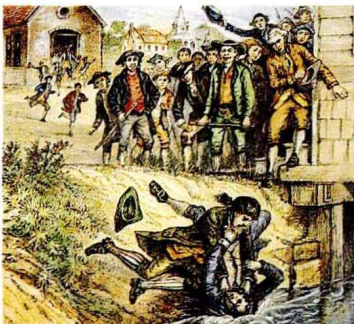
This, and virtually all the following chapters, deal with key aspects of these problems, because a constitutional system embraces the whole range of laws, institutions, politics, and procedures that make up our political universe today. But two elements of the Constitution of 1787 are so crucial that they need to be highlighted at the very start: the division of powers between the national and state governments, and the separation of powers among the legislative, executive, and judicial branches.

Division of powers means federalism. Virtually all nations divide power between the central and regional governments. Federalism is unique because power is not granted by the central government to the states, and hence cannot be withdrawn from them. Rather, a constitution divides the powers—delegating some to the national government and reserving others to the states. This arrangement seems to work most of the time. But will it hold up during the twenty-first century under intense pressures to centralize authority in the national government?

Separation of powers means more than allocating legislative powers to the Congress, executive powers to the president, and judicial powers to the Supreme Court and other federal courts. It also means giving each branch constitutional and political independence, and checks and balances that allow the various branches to delay or block the actions of the other branches. This was the supreme creation of the framers in 1787. Although the concept was not new, the framers built the idea into a system of government so ingeniously that it has become a lasting and central part of our system. But again the question arises: Can a governmental system so divided cope with the challenges that lie ahead?

Most other democracies operate on a principle quite different from checks and balances—that of majority rule, through a parliamentary system. Typically, if one party or a coalition of parties wins a majority of seats in parliament, that majority wins control of the government. This has been true, for example, of the

Under the leadership of Daniel Shays, a group of farmers forcibly restrained the Massachusetts courts from foreclosing their mortgages. The uprising was known as Shays's Rebellion. (The Granger Collection)



Constitutional Checks on Public Officials

Written Constitution
 Regular elections
 Separation of powers
 Federalism
 Judicial review
 Minority rights
 Right to petition for redress of grievances
 Impeachment process
 Rule of law, making public officials subject to criminal prosecution
 Freedom of the press to criticize public officials

(conservative) Thatcher government in Britain and the (socialist) Mitterand government in France. The victorious party, the majority party in the parliament, the cabinet, and the prime minister are fused together for joint decision and action, though of course there are many variations in practice.

Contrast the American system. It was carefully designed to delay or block majority action, for even though the framers wanted energetic and competent government, they did not want the “masses”—people like those led by Daniel Shays—to take control of the government. Thus, they fixed it so that a majority **faction** cannot just win control of the House of Representatives. Rather, such a faction must, in a series of elections, win control of the Senate and of the presidency—and perhaps ultimately of the Supreme Court. Further, countless antimajoritarian devices have subsequently been built into the system—for example, the right to **filibuster** bills to death in the Senate.

Is this the “government of the people, by the people, and for the people” that Lincoln celebrated in his Gettysburg address? Some critics contend that our constitutional system is fundamentally undemocratic, antimajoritarian, and antipopular—that the framers were elitists who deliberately designed a system to protect their property. Defenders of the system reply that in the long run the people do control their government. Congress, the presidency, and even the judiciary—in fact all the checks and balances—merely cushion the impact of popular demands and passions; they cannot ultimately prevent the public will from being carried out. Moreover, they claim, the system protects minority rights—and minority rights are just as important as majority rule.¹

Obviously some crucial questions are involved in celebrating the 200th birthday of the Constitution. As we note, these questions involve some of our most basic goals and values, including liberty, equality, and justice. We can hardly hope today to match the wisdom of the framers, one of the most talented groups in Western history. But perhaps we can match their commitment to rigorous study and reasoned analysis. The first step is to define relevant terms with care.

A Republic or a Democracy?

The American political system can be called either a constitutional republic or a constitutional democracy. Is there any real difference? The term democracy comes from two Greek roots: demos, the people, and kratis, authority. The word was used by the Athenians to mean government by the many, as contrasted with government by the few (oligarchy) or by one (autocracy). At one time democracy meant only the kind of *direct* or *pure* democracy used in some Greek city-states, or in New England town meetings today, in which all citizens may take part in making laws. Today democracy is more likely to mean a representative democracy—or, in Plato’s term, a republic—in which all the people do not actually make the laws or administer them but choose the ones who do.

The framers preferred to use the term *republic* to avoid any confusion with pure democracy. For them democracy meant mob rule, and demagogues’ appealing to the “masses.”

Here we define **democracy** or **republic** to mean a system of government in which those who have the authority to make decisions (that have the force of law) acquire and retain this authority either directly or indirectly as the result of winning free elections in which the great majority of adult citizens are allowed to participate.

¹ For treatments of this question, see John Patrick Diggins, “Power and Authority in American History: The Case of Charles A. Beard and his Critics,” *American Historical Review* (October 1981), pp. 701–30; James MacGregor Burns, *The Vineyard of Liberty* (Knopf, 1982), chaps. 1 and 2; and Robert A. Goldwin and William A. Schambra, eds., *How Democratic is the Constitution?* (American Enterprise Institute, 1981).

Creating the Republic

April 1775	American Revolution begins at Lexington and Concord (Mass.)
June 1775	George Washington assumes command of Continental forces
July 1776	Declaration of Independence approved
Nov. 1777	Articles of Confederation adopted by Continental Congress
March 1781	Articles of Confederation ratified by the states
Oct. 1781	British defeated at Yorktown
Nov. 1782	Preliminary peace treaty signed
Late 1783	British forces leave; General Washington retires
April 1784	Congress ratifies Peace Treaty with British
Late 1786	Shays's Rebellion in western Massachusetts
May 1787	Constitutional Convention begins in Philadelphia
Sept. 1787	Constitution for United States adopted by Convention

Constitutional Government

Ours is not only a democratic system; it is a *constitutional* one as well. Although these two concepts are related, they are also different. Democracy refers to how power is acquired and retained. Constitutionalism refers to how power is granted, dispersed, and limited. A government can be constitutional without being democratic, as it was in seventeenth-century England. It can also be democratic without being constitutional, as it was in Athens at the time of Pericles. All governments have constitutions in the sense of agreed-upon ways by which they proceed. But the term **constitutional government** now has a more restricted meaning: government which enforces clearly recognized and regularly applied limits on the powers of those who govern. By this definition Great Britain, Canada, and the United States are constitutional democracies, but the Soviet Union is not, for there are few popular checks on the powers of Soviet rulers.

Our founders created a system in which the first great safeguard against abuse of authority was to be reliance on the *people*—the democratic principle. But they also established a variety of checks on the power of officeholders, recognized and routinely enforced limits on what public officials—even those elected by the people—may do.

In the chapters that follow we look at our constitutional republic in greater detail. It is a complex system, difficult to describe and even harder to operate. Constitutional republics such as ours exist in only a few nations. Yet to democrats—or, if you prefer—to republicans, our system is precious because it is committed to protecting and expanding liberty. That commitment rests on certain fundamental convictions.

Basic Premises of Democracy

First, democrats recognize the fundamental dignity and importance of the *individual*. Individuals, democrats insist, have important rights, and, collectively, are the root source of legitimate governmental authority and power. These notions pervade all of democratic thought. They are woven into the writings of Thomas Jefferson, especially in the Declaration of Independence: *All men are endowed by their Creator with certain unalienable rights*. Individualism makes the person—rich or poor, black or white, male or female—the *central* measure of value. The state, the union, and the corporation are measured in terms of their usefulness to individuals. Not everyone, of course, believes in putting the individual first. Some believe in **statism**, considering the state supreme. Democrats, however, believe that the state, or even the community, is less important than the individuals who compose it.

Second, democrats recognize the right of each individual to be treated as a unique and inviolable human being. They do not insist that all are equal in talents or virtues; they do insist that one person's claim to life, liberty, and property must be recognized as much as another's. Although this right raises difficult questions about how equal rights can be secured, the *principle* of equality of right is clear.

Third, democrats are convinced that freedom is good in itself. *Liberty* or *freedom* (used interchangeably here) means that all individuals must have the opportunity to realize their own goals. The core of liberty is *self-determination*. Liberty is not simply the absence of external restraint on a person; it is the individual's power to act positively to reach his or her goals. Moreover, both history and reason suggest that individual liberty is the key to *social progress*. The greater people's freedom, the greater the chance of discovering better ways of life.

The basic values of democracy do not necessarily coexist happily in a particular society. The concept of individualism may conflict with the older tradition of public virtue and collective welfare—of the citizen as a participant in the general welfare. Freedom as the *liberation* of the individual may conflict with freedom as the *alienation*

Creating the Republic, *cont.*

June 1788	Constitution for United States ratified by nine states
Early 1789	First national elections
March 1789	United States Congress meets for the first time in New York
April 1789	George Washington inaugurated as first president
Sept. 1789	John Jay becomes first chief justice of the United States
Sept. 1789	Congress proposes Bill of Rights
Dec. 1791	Bill of Rights (first 10 amendments) ratified and becomes part of the U.S. Constitution

Note: It took about 15 years to win independence, form an interim government that tried to govern, fashion a "more perfect union," and actually get a three-branched government functioning.

of people from friends or communities. Individual self-determination may conflict with collective decision making for the national welfare or the public good. The right of mill owners to run their factories as they please, as compared to the right of millhands in those factories to join unions or even to share in the running of the plants, illustrates this type of conflict in everyday life.

Liberty and Equality: Democratic Goals

Probably the single most powerful idea in American history has been that of liberty. It was for life, liberty, and the pursuit of happiness that independence was declared; it was to secure the blessings of liberty that the Constitution was drawn up and adopted. Consider our patriotic anthems: It is to the "sweet land of liberty" that we sing. Or take a coin out of your pocket; that penny, nickel, dime, quarter, or half dollar proclaims not authority, security, or brotherhood, but *liberty*.

Liberty is a fuzzy as well as a compelling concept; much depends on how Americans define it as they make practical decisions. During the early decades of the republic, the American concept of liberty was essentially negative. The main aim of Jeffersonian democracy was to throw off the burdens of established governments, churches, and other institutions. These negative liberties were made explicit in the Bill of Rights of the Constitution, which granted free speech, free press, freedom of religion, and freedom of assembly. The main role of the Bill of Rights was to remove governmental constraints on individual liberties.

During most of the nineteenth century, liberty as "freedom *from*" meshed with the dominant economic and social doctrine of *laissez faire*. Under this doctrine individuals must be free of governments that might stop them from reaching maximum efficiency and productivity. The state, it was argued, must intervene no more than is absolutely necessary to protect life and property. Further intervention, in the form of minimum wages, health protection, or even compulsory vaccination, it was contended, is both immoral in theory and improper in fact. The idea is simple: The less governmental power, the more individual liberty.

The signing of the Declaration of Independence, 1776. (CIGNA Museum and Art Collection)



But what did liberty (or freedom) mean when not governments but other individuals—employers, lynch mobs, plantation owners—deprived persons of this right? Slavery forced Americans to rethink their ideas. “The world has never had a good definition of the word liberty,” Abraham Lincoln said during the Civil War, “and the American people, just now, are in want of one. We all declare for liberty; but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself, and the product of his labor; while with others the same word may mean for some men to do as they please with other men. . . .”²

With the coming of industrialization, urbanization, and agrarian and labor discontent; of unions, depressions, and social protest; and of leaders like William Jennings Bryan, Theodore Roosevelt, Robert La Follette, Eugene Debs, and Woodrow Wilson, liberty came to have far more positive meanings. Americans slowly came to understand that men and women, crowded more and more together, lived amid webs of all kinds: personal and private, institutional and psychological. To abolish one type of restraint (such as black slavery) might mean increasing another type of restraint (such as wage slavery). To cut down on governmental restraint of liberty might simply mean increasing private economic and social power. The question was not simply how to liberate people from *government*; it was how to use government to free people from *nongovernmental* curbs on liberty as well.

But what about the idea of *equality*, next to liberty probably the most vital concept in American thought. “All men are created equal and from that equal creation they derive rights inherent and unalienable, among which are the preservation of liberty and the pursuit of happiness.” So read Jefferson’s first draft of the Declaration, and the words indicate the primacy of the concept. Alexis de Tocqueville, James Bryce, Harold Laski, and other foreigners who investigated American democracy were struck by the strength of egalitarian thought and practice in both our political and social lives.

What did equality mean? What *kind* of equality? Economic, political, legal, social, or something else? Equality for *whom*? For blacks as well as whites? For children and teenagers as well as adults? Equality of *opportunity*—almost all Americans said they wanted that—but also of *condition*? This last question was the toughest. Did equality of opportunity simply mean that everyone should have the *same place at the starting line*? Or did it mean that an effort should be made to equalize most or all the factors that during the course of a person’s life might determine how well he or she would fare socially or economically? (See also Chapter 5.)

Herbert Hoover posed the issue when he said: “We, through free and universal education, provide the training of the runners; we give to them an equal start; we provide in government the umpire of fairness in the race. . . .”³ Franklin D. Roosevelt sought to answer the question when he proclaimed first the **Four Freedoms**—freedom from *want* and *fear* as well as freedom of speech and religion—and later a “second Bill of Rights.” Under this second Bill of Rights, he said, Americans accepted the idea that a new basis of security and prosperity could be established for all, regardless of position, race, or creed. This meant good housing, health, jobs, and social security for all. The New Deal and its successor programs, in both their achievements and failures, have tried to advance the egalitarian intentions of the second Bill of Rights.

Thus, two concepts once considered opposites have coalesced into a philosophy that calls for government to help broaden people’s *social* and *economic* liberties while it prevents other institutions (corporations or unions or landlords) from infringing

What Are Our Basic American Values?

Goals*

Liberty
Personal freedom
Dignity of the individual
Property rights
Equality before the law
Equality of opportunity
An open society
Justice

Means

Constitutionalism
Representative processes
Free and frequent elections
Majority rule, minority rights
Checks and balances
Bill of Rights
Federalism
Separation of powers
Due process
Judicial review

* Not everyone agrees on these goals, and people naturally weigh them differently according to their own values. How would you rank these goals? Would you elevate some of what we label as “means” to “goals”? A nation’s values plainly have much to do with what kinds of processes, institutions, and political practices are encouraged and sustained.

² Speech at Sanitary Fair, 1864.

³ Herbert Hoover, *American Individualism* (Doubleday, Page, 1922), p. 9. This ancient debate continues: See also John Rawls, *A Theory of Justice* (Harvard University Press, 1971), and Robert Nozick, *Anarchy, State and Utopia* (Basic Books, 1974). See also Michael Walzer, *Spheres of Justice* (Basic, 1983).