

# **Roots of American Government**

## **Functions of Government**

### **Preserve Order**

Recall Thomas Hobbes' grim view of humans when ungoverned by a central authority. Maintaining social peace is perhaps the fundamental purpose of government. The US Constitution's preamble refers to this function specifically when it declares its intent to "ensure domestic tranquility," an elegant phrase to describe the government's role as society's policeman.

### **Defend Against External Enemies**

While anthropologists continue to debate whether or not humans are an inherently warlike species, war has been a constant in the human condition since the dawn of recorded civilization. In fact, a growing body of scholarship suggests that the state evolved into its present, modern form because of its superior capacity for waging war vis-à-vis competing forms of political organization. While the development of nuclear weapons in the mid-20th century makes outright conflict between powerful states less likely but more dangerous, one of government's chief functions is still the protection of societies against outside aggression.

### **Manage Economic Conditions**

Modern governments are expected to create the conditions for economic growth and material prosperity. While not all governments do this successfully, it is a function assumed in modern democracies. In the United States, economic policy leaves most decisions to the private markets where individual choice, competition and exchange are presumed to lead to a growing economy. But even free markets need government regulation in the form of enforceable property rights, consumer protection, enforcement of contracts, and health and safety laws to work fairly and efficiently.

## **Redistribute Income and Resources**

Governments in economically developed countries are expected to not only make the economic pie grow larger but to distribute the fruits of prosperity. Governments tax wealthier citizens and transfer income and services to certain categories of individuals who are thought to need them. Thus all modern governments can be characterized as welfare states. Welfare states don't just redistribute money from wealthier individuals to poorer ones, they redistribute resources from the young to the old, the disabled, and the socially challenged. Wealthier governments provide subsidized housing, food, and health care to the poor, as well as providing pensions for the elderly.

## **Provide Collective (Public) Goods**

Public goods are resources that governments play a crucial role in providing. These are usually services that typically private markets cannot provide, or they can provide but only in a way that is inefficient or unfair. National security is a good example. Can private markets provide military security? Sure, military security can be outsourced. Wealthy individuals and governments could hire private mercenaries. But history proves that reliance on mercenaries is a risky strategy for protecting populations because mercenaries may turn on the governments that hired them. They may threaten the very people they are hired to protect. For this reason effective governments tend to monopolize national security. Once provided, everyone shares in its benefits. The same is true of clean air, the postal service, and the interstate highway system. Certain goods are best provided by government, though individuals often disagree over what those are.

## **Prevent Externalities**

Externalities are indirect costs or benefits produced by an activity which impacts society. Externalities affect those who are not direct participants or beneficiaries in the activity, and they may be negative or positive. Factories can produce air pollution that individuals living nearby must breathe, or they may contaminate a city's water supply. Obviously, these are negative externalities. Those suffering from pollution do not share in the profits the polluting factory earns by its activity. Education is an example of a positive externality when members of society other than students benefit from a more educated population. Governments regulate activities that

impose harmful or undesirable externalities. Externalities are not always physical, as in the case of pollution. They may also be psychological or aesthetic. A pornographic book store located next to a church or a liquor store located next to a school would both be examples of externalities that city governments prevent through zoning.

## **Functions of Government**

In trying to "form a more perfect Union," the Framers of the Constitution spelled out several key functions government must perform. This activity tests your knowledge about the functions of government.

### **Interactive Activity: Functions of Government**

Describes the functions of government. Functions include defend against ex enemies; manage economic conditions: provide collective goods; preserve order; and prevent externalities.

## **Civil Liberties in a Post-9/11 World**

Government serves many vital functions, including national security and protecting civil liberties, from freedom of speech to freedom from unreasonable search and detention. But what happens when these two basic functions of government collide? This video explores the conflict facing the United States government in the post-9/11 world—securing the safety of its citizens without infringing on individual rights.

### **Video Focus Points**

Look for answers to these questions when watching the video:

- What is the balance between individual freedom and national security?
- Is the Constitution restricted to American citizens or should it be applied to all people, including enemies of the United States?
- How much power should be delegated to the president during peace time considering the on-going war on terrorism?

## **Video script:**

Music introduction

Narrator: We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, 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.

Since these words were first put to paper in 1789, a debate has engaged all three branches of government – how best to balance the often contradictory values of liberty and security. The Preamble to the Constitution charges the federal government with upholding both.

For all their wisdom and foresight, the Framers of the Constitution could never have envisioned an attack quite like 9/11.

Jet engines screaming and crash

Narrator: In a cataclysm of fiery destruction, the question was posed again, perhaps more dramatically than ever before – what happens when vital functions of government collide?

Emergency sirens

Joseph Nye, Harvard University: I think it's understandable that when a country is attacked, it feels insecure and it tends to trade off liberty versus security. The closer we are to 9/11, the more they are going to tolerate intrusions into liberties. As we get more distant from 9/11, there is a greater concern about the liberties.

Pres. George W. Bush: I can hear you. The rest of the world hears you. And the people who knocked these buildings down will hear all of us soon.

Narrator: In the days after 9/11, the government passed the U.S.A. Patriot Act. Its goal was to strengthen homeland security and increase intelligence operations, to prevent future attacks. But the Patriot Act also greatly expanded the government's reach into personal privacy.

Jeff Rosen, George Washington University Law School: The most troubling provisions included Section 215, which allowed the government to get a secret warrant to follow any individual, not just a suspected spy or terrorist, who might have evidence that's relevant to a terrorism

investigation. And the government, merely by certifying that your data is relevant to a terrorism investigation, can seize it. And that can include bookstore receipts, credit card records, personal diaries, any tangible item can be seized, sometimes in secret.

Bob Barr, Former Member (1995-2003) U.S. House of Representatives: The problem, obviously, with this sort of notice less search is the fact that the person whose premises have been searched or whose items have been taken has no way to contest the constitutionality of that search or that seizure. So the Constitution means nothing; they have no way to assert their Fourth Amendment rights, for example, against an unreasonable search and seizure.

Narrator: But supporters of the Patriot Act felt the measures were necessary.

Richard Perle, U.S. Assistant Secretary of Defense (1981-1987), Defense Policy Board Advisory Committee (1987-2004): They were appropriately approved by the Congress and, for the most part, the critics are worried not so much about what has already been done, but about the idea of a slippery slope. That is, you have some additional government authority now and they worry about whether that's the beginning of still further government authority later.

Music and marching sounds

Narrator: Threats to national security have historically resulted in challenges to individual liberty. During World War I, President Woodrow Wilson signed the Espionage Act in 1917 and the Sedition Act in 1918. Each made it a prison offense simply to speak out against the war. Both laws later came under great scrutiny for violating the First Amendment and the right to free speech.

When the United States entered World War II, after the Japanese bombed the U.S. Navy base at Pearl Harbor, Franklin Roosevelt interned Japanese-American citizens, an act for which the U.S. Senate and Presidents Ronald Reagan and George H.W. Bush later issued formal apologies and reparations.

After 9/11, President George W. Bush declared some captured fighters "enemy combatants" and detained them at a military prison in Guantanamo Bay, Cuba, outside the reach and protections of the military or civilian judicial systems.

Richard Perle: Americans, I think, are entitled to the full array of constitutional protections, even if the charge against them is terrorism – the right to counsel, habeas corpus, the right at trial to

cross-examine the witnesses against them, everything. But an enemy combatant, someone taken on the battlefield, is certainly not entitled to the rights that you and I are entitled to as American citizens. They haven't subscribed to our Constitution. They haven't participated in the social contract among us and indeed in many cases they're out to destroy it and us.

Narrator: Not everyone agreed, and the Bush administration came under intense criticism at home and abroad for their justifications. Barack Obama campaigned on a pledge to close Guantanamo, but as president found it difficult to fulfill the promise.

Michael Macleod-Ball, Chief Legislative & Policy Council, ACLU, Washington, D.C.: Detainees at Guantanamo can be processed through the federal criminal justice system perfectly well. You should try them in the federal criminal courts and if you convict them, you put them in jail; and if you don't, you let them go. That's the way the American justice system works and that's what we ought to do with the folks that are not going to be released.

Bob Barr: People, whether they are called enemy combatants or terrorists or bad guys or whatever it is, they do have the right to go before a judge and have that judge determine that the government has a reasonable basis to detain them. Does that mean they have the whole range of guarantees available to them? Not necessarily. But it certainly means, and should mean, and this should be written into law to prevent any administration from having the power to unilaterally decide that an individual has no right to judicial review.

Narrator: Accusations of torture at Guantanamo Bay and the highly publicized abuse at Abu Ghraib prison in Iraq are potent reminders of the difficulty of striking a balance between civil liberties and national defense.

Richard Perle: What do you do if you've captured someone who you have solid information is in possession of knowledge, the location of a nuclear weapon that is on a timer.

Nuclear Explosion

Richard Perle: Can you use enhanced interrogation techniques to try to get them to divulge the location of that nuclear weapon? My view is you could.

Bob Barr: Torture is not allowed in this country. It is illegal. It is...we have both the provision and the Constitution against cruel and unusual punishment, which has been held to include

torture, that is, physical abuse of a person being detained or incarcerated by the government. And it is also not permitted by the Geneva Conventions, which our government has adopted.

Music

Chief Justice: You, John Fitzgerald Kennedy, do solemnly swear...

Pres. John F. Kennedy: I, John Fitzgerald Kennedy, do solemnly swear...

Pres. Richard Nixon: ..that I will faithfully execute the office...

Pres. Ronald Reagan: ...the office of President of the United States ...

Pres. Bill Clinton: ...and will to the best of my ability...

Pres. George W. Bush: ...preserve, protect, and defend the Constitution of the United States...

Pres. Barack Obama: ...so help me God.

Chief Justice: Congratulations, Mr. President.

Narrator: Issues of free speech, judicial review, and treatment of prisoners during wartime, eventually all end in one central question – how much power does the President wield?

Richard Perle: There's a great deal the president can do, but he can't do anything he wishes. There are limitations on presidential power. There are statutory limitations. There are the limitations that flow from requiring appropriations to support his action. So no, I wouldn't say that the president can do anything he likes.

Bob Barr: This notion of a super powerful president as the commander-in-chief, the so-called unitary executive theory that the neo-cons, the neo-conservatives, talk about, if that's allowed to take hold and become institutionalized, then basically what we're saying is we are not a nation of laws.

Narrator: Throughout America's history, when threats to national security have subsided, governmental restrictions on civil liberties have been relaxed. But how long will the War on Terrorism last? Is it realistic to expect that U.S. citizens will enjoy the same level of civil liberties in a post 9/11 world, given the destructive power of modern terrorism?

Michael Macleod-Ball: Modern terrorism didn't change the United States Constitution. If there's one thing that defines the United States, it's its commitment to individual rights. So we have the right against unreasonable search and seizure...you know. We have the right to privacy. We have the right to free speech.

Richard Perle: I think we enjoy civil liberty in this country on a scale that mankind has never known. I mean the rights of individuals are very solid, deeply entrenched in the thinking of Americans and the Constitution that guides us and the system of checks and balances within the government, in the courts, and so forth. I don't believe those civil liberties are in jeopardy and I don't think they have been diminished by the things that have been done to protect us in the aftermath of 9/11.

Bob Barr: So this notion that simply because we're facing a serious threat from terrorism which was not contemplated by our Framers and therefore, the guarantees of individual liberty that they placed in the Constitution as a limit on government power has to go by the wayside, clearly is wrong.

Narrator: The tension between civil liberties and national defense will persist. It will evolve. And the balance it strikes at any given moment will, in many ways, define who we are as a nation.

Music

End of video.

## **Virtual Roundtable**

In the post-9/11 era, it is urgent that government defend its citizens from deadly attacks. But government must still protect the fundamental freedoms of individual citizens, as defined in the Constitution. Should individual civil liberties be redefined to recognize modern terrorism's threat to national security?

**Video: Jeffery Rosen, Professor of Law, George Washington University Law School**

**Video script:**

There were aspects of the U.S.A. Patriot act that are troubling. The most troubling provisions included section 215 which allowed the government to get a secret warrant to follow any individual, not just a suspected spy or terrorist, who might have evidence that's relevant to a terrorism investigation and that's a huge increase in government authority. Before the Patriot Act, the government could only get these secret warrants if they could prove in advance that a particular individual was a suspected spy or a terrorist. They had to be a really bad guy. Now anyone who has information relevant to a terrorism investigation can be followed without his knowledge and it can even be a crime to disclose the existence of the warrant even if your lawyer finds out about it. So this is a huge and troubling increase in federal authority. By several bipartisan studies, the authority has not actually caught suspected terrorists, but instead has been used to go after low-level offenders, immigration offenses, things that have nothing to do with terrorism and therefore, it seems to me an example of a vast expansion in surveillance power that has not adequately stopped terrorism.

End of video.

**Video: Richard Perle, US Assistant Secretary of Defense (1981-1987), Defense Policy Board Advisory Committee (1987-2004)**

**Video script:**

I think we enjoy civil liberty in this country on a scale that mankind has never known. I mean the rights of individuals are very solid, deeply entrenched in the thinking of Americans and the Constitution that guides us and the system of checks and balances within the government, in the courts and so forth. I don't believe those civil liberties are in jeopardy and I don't think they have been diminished by the things that have been done to protect us in the aftermath of 9/11. Will there from time to time be bureaucratic, administrative excesses? Of course, we're human beings and somebody's going to make a bad decision every once in a while to violate someone's rights in an entirely inappropriate manner and when that happens and is found out, it's corrected. Do I think that the tendency to abuse people's rights has increased since 9/11? I don't and I think that we have enough of a free press, enough of a system of checks and balances, and a watchful judiciary, so it isn't going to happen.

End of video.

**Video: Joseph S. Nye, Professor of International Relations, John F. Kennedy School of Government, Harvard University**

**Video script:**

People are always torn between liberty and security. And the closer we are to 9/11, the more they are going to tolerate intrusions into liberties. As we get more distant from 9/11, there is a greater concern about the liberties. So I think there's a self-righting tendency in the system. I think some of the steps that were taken; in particular, those related to torture and arbitrary arrest were excessive. Other steps, you can mention things as trivial as wanting better identification before you get on an airplane. I think are entirely appropriate and there are a spectrum of issues in between.

End of video.

**Video: Michael W. Macleod-Ball, Chief Legislative & Policy Council, ACLU, Washington, DC**

**Video script:**

Modern terrorism didn't change the United States Constitution, so we have these principles that have served the country well since our founding and will continue to serve us well into the future. You know the question is, how do you achieve this other battle? How do you have success in this other battle while preserving your core traditions? If there's one thing that defines the United States, it's its commitment to individual rights. So we have the right against unreasonable search and seizure. You know we have the right to privacy. We have the right to free speech. We have all of these rights that are assured to us under these foundational documents and the fact that we're facing a challenge of terrorism now is no different than the fact that we were facing a challenge of the Korean War or a challenge of World War Two. We have these core principles that must be upheld by government at the same time as government attempts to guide us in this other battle.

End of video.

**Video: Bob Barr, Former Member (1995-2003) US House of Representatives, 2008  
Presidential Candidate, Libertarian Party**

**Video script:**

Our framers, our founding fathers when they crafted the Fourth Amendment, for example, and when it was adopted in 1791 as part of our Constitution, they were facing threats that were far more dire than a few suspected terrorist cells to be to be honest. They were at the time still facing and within just a few years after the adoption of the Bill of Rights , for example, we were invaded by Great Britain. We were invaded by a foreign power, not just any foreign power, the greatest naval and armed military power on the face of the Earth, Great Britain. Yet in the face of knowing that we faced those kinds of threats, our Framers far more smarter than current people serving in our government apparently, understood that if we're going to protect the whole, the basic notion of rights and powers residing in the people and limited, very limited enumerated powers to the government, was to enshrine those guarantees in the Constitution. So this notion that simply because we're facing a serious threat from terrorism which was not contemplated by our Framers and therefore, the guarantees of individual liberty that they placed in the Constitution as a limit on government power has to go by the wayside clearly is wrong and it reflects either a complete lack of understanding of the situation that faced our Framers and what those uh provisions in the Bill of Rights means or deliberately ignoring them.

End of video.

**Additional Resources**

**Websites**

[USA.gov](http://www.usa.gov/)

<http://www.usa.gov/>

The US government's official web portal offers access to governmental services, links to government information by topic, and an index of US government departments and agencies.

## **Books**

### **Why Americans Hate Politics, by E.J. Dionne.**

A journalist explores the question of why many Americans are uncomfortable with the current political climate. Dionne argues that politics since the 1960s have been characterized by increased “ideological polarization” which makes it difficult to adopt middle ground positions.

### **American National Security & Civil Liberties in an Era of Terrorism, ed. Cohen and Wells.**

Explores the challenges of maintaining an open society in the face of terrorism. Includes essays on civil liberties, privacy rights, and constitutional limitations in a post-9/11 world.

### **Civil Disobedience and Other Essays, by Henry David Thoreau.**

Philosopher, naturalist, and rugged individualist, Thoreau has inspired generations of readers to think for themselves and question the role of government in society.

## **Films/Videos**

### **9/11 (2002), d. by Jules and Gedeon Naudet.**

The Naudet brothers were originally filming a documentary on the life of firefighters in the New York City Fire Department, but on the morning of 9/11, they were on the scene with the FDNY as they reached the twin towers. An emotionally charged account of the first response to the attacks.