

LESSON 2

How Does Government Secure Natural Rights?

Purpose of Lesson

This lesson introduces you to some basic ideas the Framers used in creating the kind of government they thought would best protect the natural rights of each individual and promote the good of all.

When you finish this lesson you should understand the difference between limited and unlimited government, the difference between written and unwritten constitutions, and how Americans have used the term constitutional government. You should be able to explain why a government with a constitution is not necessarily a constitutional government, and be able to identify alternative models of government that the Founders had to choose from.

Terms to Know

autocracy	equal protection
canton	higher law
checks and balances	limited government
city-state	private domain
common good	republic
constitution	separation of powers
constitutional government	totalitarianism
delegate	tyranny
delegated powers	unwritten constitution
democracy	written constitution
dictatorship	

Critical Thinking Exercise

EXAMINING GOVERNMENT PROTECTION OF THE BASIC RIGHTS OF THE PEOPLE

Suppose you are not satisfied with living in a state of nature. You and others agree to enter into a social contract and a government to protect your natural rights. You must decide what kind of government you want and then establish it. Locke, Jefferson, and others knew that this is not an easy task. Throughout history governments

have deprived people of their rights more often than they have protected them. Your problem is to design and establish the kind of government that will do what you want it to do, that is, protect your natural rights. This also means providing **equal protection** for the rights of everyone.

You and everyone else in your imaginary state of nature have agreed to live under a government. There are questions you must answer in deciding what kind of government to create. Your teacher will divide the class into small groups to discuss your answers. Then compare your answers with those of John Locke and explain why you agree or disagree with Locke.

1. What in your opinion is the main purpose of government?
2. How should government get the authority or right to make laws telling people what they can and cannot do?
3. What should the people have the right to do if their government does not serve the purposes for which it was created? Why should they have this right?

How do your answers compare with those of John Locke?

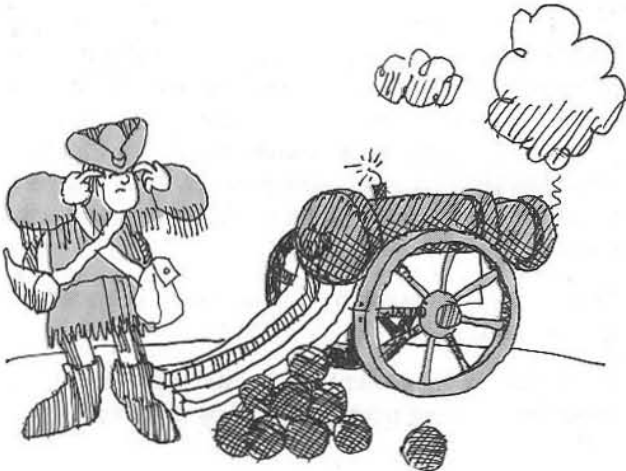
1. Locke and other natural rights philosophers said that the purpose of government is to protect natural rights. Thomas Jefferson agreed and in the Declaration of Independence argued that the protection of rights is the main purpose of government.
2. Another of Locke's ideas that Jefferson stated in the Declaration of Independence is that government gets its right to govern from the consent of the people. Its powers are delegated to it by the governed.

People give their consent in several ways. People can give **explicit** consent by

- agreeing to the contract that establishes the society whose members then establish the government and choose its officers
- joining a society that already is established

People give **implicit** consent, also called tacit consent, by accepting the laws and services of the government and nation of their birth.

3. Locke believed that since the people give the power to the government, they have the right to take it away if the government is not serving the purposes for which it was established. They can then create a new government. Locke argued and the Founders agreed that if a government fails to protect the people's rights, the people have a **right of revolution**.



Under what circumstances would Locke agree that people have the right to take up arms against an established government?

Who is to judge if a government has failed? Locke and the Founders said that the people have the right to make that decision. This position is in the following words from the Declaration of Independence: "Whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or abolish it, and to institute new Government..."

Revolution, however, is an extreme way in which to deal with bad government. Government should be designed or organized to limit its powers in order to protect individual rights and thus reduce the need for such extreme measures.

How do Americans express consent to their government?

The Americans who ratified our Constitution in 1787 gave explicit consent to their new government. So did the many immigrants who came to America to seek a better life. Those who are born here have implied their consent by remaining in this country and living under its laws.

Every native-born American, as he or she grows up, has the choice of seeking the citizenship of another country. By remaining in this country, accepting its laws, and enjoying its benefits, you imply your consent to be

governed by your federal, state, and local governments. You also affirm your consent every time you take the Pledge of Allegiance, participate in an election, or engage in other civic actions.

What is constitutional government?

Limited governments have established and respected restraints on their powers, restraints such as laws and free and periodic elections. The opposite is **unlimited government**, in which those who govern are free to use their power as they choose, unrestrained by laws or elections. Tyranny, autocracy, dictatorship, and totalitarianism are other words to describe unlimited government.

What form of government was best suited to prevent the abuse of power in the newly independent states of America? From their reading of both history and the natural rights philosophers, the Founders believed that any government that served its proper ends would have to be a limited or constitutional government.

In a **constitutional government**, the powers of the person or group controlling the government are limited by a set of laws and customs called a **constitution**.

What is a constitution?

A constitution is a set of customs, traditions, rules, and laws that sets forth the basic way a government is organized and operated. Most constitutions are in writing, some are partly written and partly unwritten, and some are not written at all.

Notice that according to this definition of the word, every nation has a constitution. Good governments and bad governments may have constitutions. Some of the worst governments have constitutions that include lists of the basic rights of their citizens. The former Soviet Union had one of the longest and most elaborate constitutions in history, but in reality its citizens enjoyed few of the rights guaranteed by it.



Are all governments with written constitutions, constitutional governments? Why?

If you study the constitution of a government, you will be able to answer the following questions about the relationship between the government and its citizens:

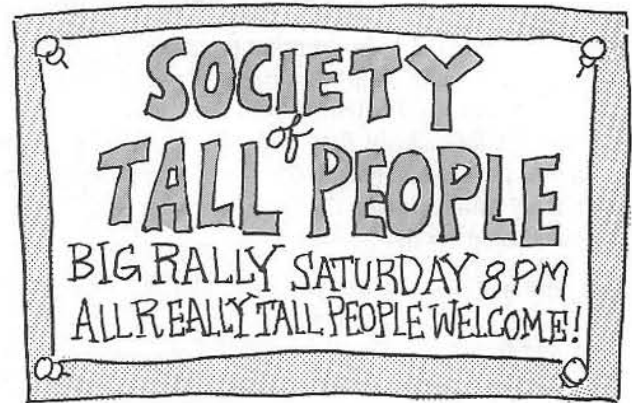
- What are the purposes of government?
- How is the government organized?
- How is the government supposed to go about doing its business?
- Who is considered to be a citizen?
- Are the citizens supposed to have any power or control over their government? If so, how is it to be exercised?
- What rights and responsibilities, if any, are the citizens supposed to have?

It is very important to understand that having a constitution does not mean that a nation has a constitutional government. If a constitution provides for the unlimited exercise of political power—by one, few, or even many—such a constitution would not be the basis of a constitutional government. If a constitution provides that the government's power is to be limited, but it does not include ways to enforce those limitations, it is not the basis of a constitutional government. In a constitutional government the constitution is a form of **higher or fundamental law** that must be obeyed by everyone, including those in power.

How did the Founders characterize higher law?

According to the Founders, a constitution or higher law should have the following characteristics:

- It sets forth the basic rights of citizens to life, liberty, and property.
- It establishes the responsibility of the government to protect those rights.
- It establishes the principle of a **private domain**—which means that there are areas of citizens' lives that are no business of the government and in which the government cannot interfere.
- It establishes limitations on how those in government may use their powers with regard to
 - citizens' rights and responsibilities
 - the distribution of resources
 - the control of conflict



How does the principle of private domain protect you from government interference?

- It can only be changed with the widespread consent of the citizens, and according to established and well-known procedures. This distinguishes the higher law from the ordinary law that governments regularly create and enforce.

What do you think?

1. One of the purposes of the limitations imposed by constitutional government is to check the power of the majority. How can this be justified in a political system that is supposed to be democratic?
2. What are the major advantages, in your judgment, of limited government? What are the most serious disadvantages?
3. Are there advantages to unlimited government? If so, what are they?

How does a constitutional government protect natural rights?

Constitutional government assures the rights of its citizens in two ways:

- It establishes limits on the power of the government to prevent it from violating natural rights.
- It states that the government should be organized and its power distributed in such a way as to increase the possibility that those limitations will be effective.

The first is a purely **legal protection** of a citizen's freedom. The next is an **organizational protection**, having to do with the way in which government operates.

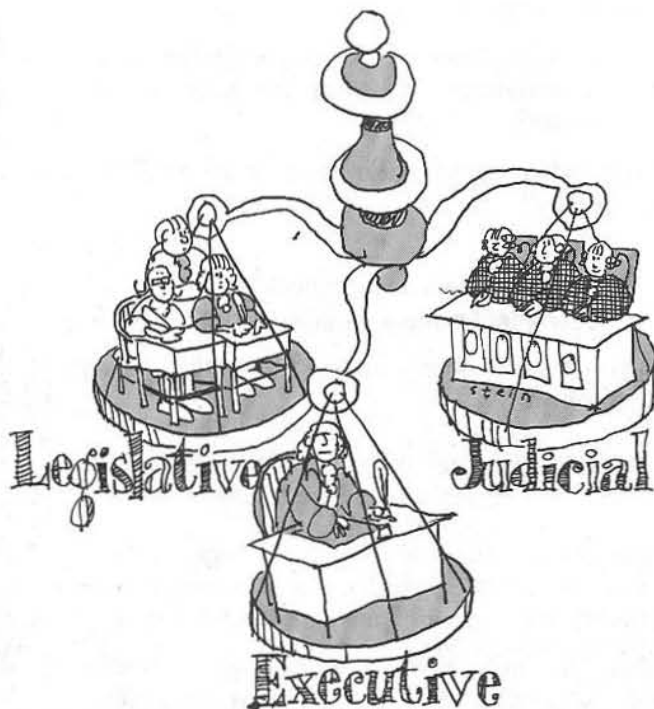
How can constitutional governments be organized to prevent the abuse of power?

In constitutional governments powers are usually distributed and shared among several branches of government. This distribution and sharing of power makes it less likely that any one branch can abuse or misuse its powers. It is also less likely that any group will gain so much power that it can ignore the limitations placed on it by the constitution.

To prevent our government from abusing its powers, the Framers provided for distribution and sharing of powers among three branches of the national government. Each branch has primary responsibility for certain functions, but each branch also shares these functions and powers with the other branches. For example,

- The Congress may pass laws, but the president may veto them.
- The president nominates certain government officials, but the Senate must approve them.
- The Congress may pass laws, but the Supreme Court may declare them unconstitutional.

It is this system of distributed and shared powers that provides the basis for **checks and balances**. Although each branch of the government has its own special powers, many of these powers are “checked” because they are shared with the other groups.



Does a system of checks and balances guarantee that power will not be abused?

The complicated ways in which constitutional governments are organized often mean that it takes them a long time to get things done. It may seem strange, but this “inefficiency” was seen by the Framers as an advantage. They thought that these difficulties would help to prevent the abuse of power and make it more likely that when a decision was finally made, it would be a good one.

Critical Thinking Exercise

EXAMINING WHY THE FOUNDERS FEARED THE ABUSE OF POWER BY GOVERNMENT

Given their knowledge of history and their experiences with the British government, it is not surprising that the Founders greatly feared the possible abuse of the powers of government. For example, read the following selections from some of their writings. Then discuss with the class your answers to the questions that follow.

Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many.

Alexander Hamilton, 1787

There are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power and the love of money.

Benjamin Franklin, 1787

From the nature of man, we may be sure that those who have power in their hands...will always, when they can...increase it.

George Mason, 1787

1. Explain the view of human nature expressed in each of these quotations.
2. If you agreed with the views of human nature expressed in the quotations, what kind of safeguards to prevent the abuse of power would you include in your government?
3. Do you think the Founders' fear of government is as valid today as it was in the 1700s? Explain your answer.

What kinds of governments may be constitutional governments?

The Founders knew that constitutional government can take many forms. It is possible to have a constitutional government with one ruler, a group of rulers, or rule by the people as a whole, so long as those in power obey the limitations placed on them by the “higher law” of the constitution. Historically, constitutional governments

have included monarchies, republics, democracies, and various combinations of these forms of government.

History has shown, however, that problems inevitably arise when a constitutional government is ruled by one person or a small group of people. If all power is given to a select few, it is difficult to ensure that they will obey the limitations placed on them by a constitution. The rulers in such nations would control the armed forces and law enforcement agencies. How could citizens force the rulers to obey their constitution?

Monarchy—rule by a king or queen—was by far the most common form of government in the eighteenth century. The Founders preferred a form of government more broadly representative of the interests of the whole nation.

What alternative models of government could the Founders choose from?

The most obvious alternative to monarchy was a **republic**, a model of government with which the Founders were familiar through their knowledge of ancient history. The Founders admired the republics of

ancient Greece and Rome. They also had studied more recent examples of **republican governments**, such as the Italian **city-states** of the Renaissance and the **cantons** of Switzerland.

The Founders differed among themselves about exactly what a republican government was. In general it meant a form of government

- devoted to promoting the public good, the *res publicae*, which is Latin for “thing of the people”
- in which political authority was shared by all or most of the citizens rather than held by a hereditary monarch
- whose political authority was exercised through the community’s chosen representatives in government

Today we view republican and democratic government as almost the same thing. The United States, we believe, is both a republic and a democracy. The Founders, however, drew a sharp distinction between the two forms of government.

Democracy had traditionally meant a form of government in which ultimate authority was based on the will of the majority.



How did the Founders' knowledge of ancient Rome shape their views about government?

This majority usually consisted of those classes in the community that had the greatest number of people—it came from the Greek *demos*, meaning people. These classes tended to be the poorer people.

In its purest form, democracy also meant a government in which members participated directly in their own governance instead of through representatives.

The Founders were familiar with democratic institutions. For generations, local government in many of the colonies tended to be democratic in nature. The New England “town meeting” is one example. Based on their reading of history and their own experience, however, the Founders were concerned about democracy as a model for state or national government. Their preference for the republican as opposed to the democratic model of government influenced the framing of the Constitution.

What do *you* think?

1. How would you organize a government so it would be fairly easy to remove and replace officials who were not doing a good job?
2. What might happen in a government where there was no agreed-on or peaceful means for removing officials? Give a recent example to support your answer.
3. How did the Founders describe the difference between republican and democratic forms of government? Why do you think the Framers of the Constitution favored the former rather than the latter?

Reviewing and Using the Lesson

1. How would you explain the difference between a limited government and an unlimited government? Do you think the difference is important? Why or why not?
2. In theory, the government of the United States gets its authority from the consent of the people. What evidence can you identify to show that people actually do consent to be governed by the United States government?
3. What is meant by the claim that the people have a “right of revolution”? What arguments can you make to support the claim that such a right does or does not exist?
4. What is a constitution? What is the difference between a constitution that establishes a constitutional government, and a constitution that does not?
5. Why did the Framers organize the government into separate branches with shared and divided powers? What are some examples of the ways in which governmental power is divided and shared? Why is this sometimes called a system of “checks and balances”?
6. Do research to find out about a country whose written constitution failed to protect the rights of the people. Why did the written constitution fail to establish a constitutional government in that country? What essential things were missing?