

UNDERSTANDING AMERICA



How Must America Balance Security and Liberty?



Charles Stimson
and Andrew Grossman

The *Understanding America* series is founded on the belief that **America is an exceptional nation**. America is exceptional, not for what it has achieved or accomplished, but because, unlike any other nation, it is dedicated to the principles of human liberty, grounded on the truths expressed in the Declaration of Independence that all men are created equal and endowed with equal rights. As Abraham Lincoln once said, these permanent truths are “applicable to all men and all times.” The series explores these principles and explains how they must govern America’s policies, at home and abroad.

About This Cover

Throughout history, nations have traded their freedom for promises of security, and ultimately attained neither. The Founding Fathers recognized that liberty and security are closely linked, and that neither can exist without the other. They believed that the Constitution would “secure the Blessings of Liberty to ourselves and our Posterity” by creating a government that would effectively ensure both liberty and security.

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How Must America Balance Security and Liberty?

The United States was born into war with the Declaration of Independence, the most important statement of liberty and natural rights ever made. Since then, America has been the world's freest country and has become its most secure, with a military equal to any threat. America has avoided the fate of nations that have traded freedoms for promises of security, or security for unlimited freedom, and achieved neither. Yet the healthy fear that one or the other will disappear has been present in every era since the Founding. How must America balance security and civil liberties?



The terrorist attacks of September 11, 2011, threatened America's security. Protecting the United States is how the government fulfills the responsibility outlined in the Constitution, to "secure the Blessing of Liberty to ourselves and our Posterity."



“Among the many objects to which a wise and free people find it necessary to direct their attention, that of providing for their safety seems to be first.”¹ So wrote John Jay in *The Federalist*, in which the Constitution’s leading Framers explained the government on which they hoped to build America.

The founding generation knew firsthand the oppression of tyranny. The litany of British abuses and usurpations is cited in the Declaration of Independence: lawless decrees, the quartering of troops, wholesale plunder, and deprivation of liberty and life according to whim, not law. To the Founders, these were violations of both man’s natural rights and of the security that a sovereign is obliged to provide the people. In such circumstances, “it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.”

And so they did, and the nation was thrust into war. From the first, Americans saw liberty and security as one and the same, and not in opposition.

Although we often speak of the proper “balance” between security and liberty, the two need not be in tension. Policies that make

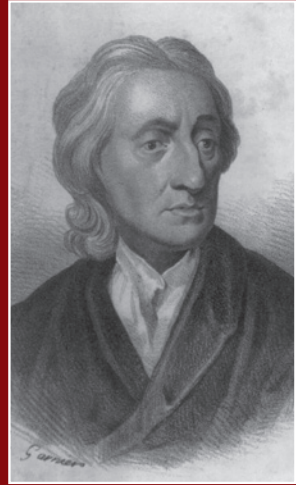
the nation more secure, particularly against foreign threats, do not necessarily undermine its people's liberty. Protecting individual liberty does not invariably hobble the nation's defense. Rather, as the Constitution recognizes, the two are reinforcing: we "secure the Blessings of Liberty to ourselves and our Posterity." A threat to America's security is also a threat to Americans' liberties.



"In framing a government which is to be administered by men over men," observed James Madison, "the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."² Almost all nations achieve control of the governed, though more often by force than by consent. Limits on the power of governments are rarer, and more complex. Yet they are essential to preserving both security and liberty. This problem was the Framers' chief concern in drafting the Constitution, and their solution was radical and brilliant.

The problem they faced was the one identified deftly by Ronald Reagan: "The kind of government that is strong enough to give you

**“[L]iberty is to be
free from
restraint and
violence
from others.”**



—John Locke
1690



The ballot box has always been a vital check on the American government. Through regular elections, citizens respond with their votes if they believe their liberties or the security of the nation have not been properly protected.

everything you need is also strong enough to take away everything that you have.” Any power delegated by the people to their government may be abused and used against them. History is replete with examples of such oppression, and it remains common today.

But it has not happened in America. The Constitution’s Framers placed their faith not in specific guarantees of rights—those came later—but in an elegant system of checks on government. Foremost is the separation of power between the three branches of the federal government, as well as between the federal government and the states. These arrangements provide the flexibility necessary to ensure security and the restraint essential to safeguard liberties.

A dramatic example came with President Truman’s attempt to seize private property to further the Korean War effort. Claiming his actions were justified by national security, Truman authorized the Commerce Secretary to take control of the nation’s steel industry. Within weeks, the matter was before the Supreme Court, which rebuffed Truman’s claim that he had the power to act without, and even contrary to, any law enacted by Congress.

Justice Jackson’s famous concurrence hit on the danger of the President’s position: “Presidential claim to a power at once so

conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.”³ By contrast, “When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum.” When the political branches are in agreement, Jackson recognized, security and liberty are most likely to go hand in hand.

The government is also checked by the ballot. When the branches of the federal government have conspired to abrogate the people’s liberties, the people have responded. In 1798, President John Adams and his Federalist allies in Congress passed the Sedition Act, which criminalized “false, scandalous and malicious” speech concerning the government, Congress, or the President. The Act was intended to suppress criticism of naval warfare with France, and it was a clear violation of Americans’ rights to speak freely and to question their government’s actions.

Instead of suppressing dissent, the Act ignited a political firestorm, as states passed resolutions denouncing the law and candidates ran on their opposition to it. The Federalists, including Adams, were swept out of office, and President Thomas Jefferson, who succeeded Adams, pardoned those serving sentences under the Act.



The protections codified in the Bill of Rights are the final firewall against any intrusions on liberty that would unravel the checks in the Constitution. For example, without the First Amendment's guarantee of the right to free speech, to assemble, and to petition government, the political branches would be less responsive to citizens' concerns, and voters would be less informed of the significance of their choices. The Fourth Amendment's prohibition on unreasonable searches and seizures ensures that the government may not arbitrarily harass those who oppose its policies. The Fifth Amendment's Takings Clause requires the burden of government policies to be shared broadly.

While they are important, these enumerated rights are also narrow and specific. They are only an infinitesimal portion of the rights retained by the states and the people. For example, you have the right to provide for your family, to direct the upbringing of your children, to make contracts, and to own a house. These rights, which are too numerous to list and too changing to set forth in a constitution, are subject not to specific guarantees but to the Constitution's structural protections. Thus, most matters

of national security and liberty are fit not for adjudication by the courts, but for the exercise of the judgment of the people through the political branches.

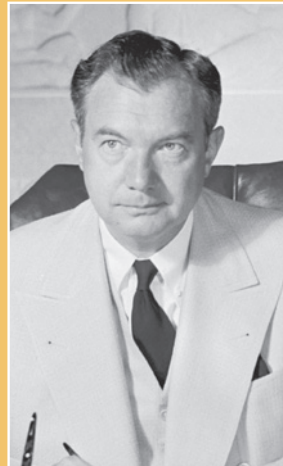


By and large, the United States has succeeded in preserving security and civil liberties by adopting policies that reinforce both. When it has departed from that course, both liberty and security have suffered.

Military strength under firm civilian control is the best guarantor of liberty. Thomas Jefferson observed “Whatever enables us to go to war, secures our peace.”⁴ So it was in the Cold War, when U.S. strength and the system of government that underpinned it led to an American victory without a great war, and brought the greatest expansion in liberty in the history of the world.

By contrast, America’s Cold War enemies sought to achieve military supremacy by planning and central control, organizing their people and their economies around the needs of the state, and denying their citizens’ most basic freedoms. But their ostentatious

“The choice is not between order and liberty. It is between liberty with order and anarchy without either.”



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—Robert H. Jackson
*Chief Prosecutor at the
Nuremberg Trials, 1949*



The United States has used military tribunals to try enemy combatants since the American Revolution. In 1942, President Franklin D. Roosevelt ordered military tribunals for eight German spies accused of plotting to carry out acts of sabotage in the United States. The use of tribunals was upheld by the Supreme Court and created the precedent for trying enemy combatants in the War on Terror.

displays of strength—parades, flyovers, fleets—were hollow. They were the products of governments that were at war with the security and liberties of their peoples.

The United States today faces the opposite risk. Maintaining a strong national defense secures liberty against threats known and unknown, from rogue states to terrorist organizations. This is the paramount and vital responsibility of the federal government.

Intelligence-gathering, when effectively performed in ways consistent with Americans' rights and expectations, is similarly essential. Such intelligence programs help to secure our liberties against those who seek to destroy them. The better these programs work, the more they protect our security and liberty.

A perfect example is the use of military tribunals for terrorists. The use of tribunals in the United States dates back to the Revolutionary War, and has always been viewed as providing necessary flexibility in military operations, especially compared to the customary alternative, summary execution. Today, tribunals serve an additional function as a wall between our civilian justice system and the lawful compromises that must be made in trying violations of the laws of war.



At times, the United States has made decisions that were counterproductive. While imprisoning those who actively conspire with the enemy in a time of war is sound policy, the internment of Japanese citizens because of their ethnicity during World War II was both unconstitutional and highly destructive of liberty. It was also counterproductive, diverting resources and attention, costing valuable manpower, and directly harming the war effort. The Sedition Act of 1798 was an abomination that, if anything, harmed America's political system and made the nation less safe. But America has learned well from these mistakes, and is unlikely to repeat them.

In Benjamin Franklin's memorable saying, "They that can give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety." To this could be added that those willing to sacrifice liberty for security will, in the end, achieve neither. The proper way to balance security and liberty is not to balance them at all; it is to insist on policies that maximize both to the extent practicable.



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Enduring Truths

For links to these titles, go to heritage.org/UnderstandingAmerica.

- **Alexander Hamilton, “The Consequences of Hostilities Between the States,”** *The Federalist* No. 8.

While arguing for a strong union of states under the Constitution, Hamilton warns against the dangers to liberty posed by excessive militarism bred by a sense of vulnerability. In a weak nation, people feel threatened by external threats and may be tempted to accept less freedom in exchange for more security. In strength, there is both safety and freedom.

- **Alexander Hamilton, “The Powers Necessary to the Common Defense Further Considered,”** *The Federalist* No. 25.

Hamilton refutes claims that state militias can keep the nation safe and shows why a strong national military is necessary for the preservation of “our property and liberty,” in both peacetime and wartime. Liberty requires security, and security can be assured only by a strong military under civilian control.

- **The Honorable Frank J. Williams, “Abraham Lincoln and Civil Liberties in Wartime,” Heritage Foundation *Lecture* No. 834, May 5, 2004.**

In this lecture vindicating Lincoln’s conduct of the Civil War, Williams emphasizes the distinction between the laws of war and the laws in times of peace. Unlawful enemy combatants are not entitled to the legal rights of citizens, nor are they entitled to protection under the Geneva Convention, which applies to lawful combatants.

Current Issues

For links to these reports, go to [heritage.org/UnderstandingAmerica](https://www.heritage.org/UnderstandingAmerica).

- **NATIONAL SECURITY. Charles Stimson and James Jay Carafano, “Treating Terrorism Solely as a Law Enforcement Matter—Not Miranda—Is the Problem,” Heritage Foundation *WebMemo* No. 2898, May 13, 2010.**

The authors point out that terrorism is not primarily a law

enforcement problem. It is an act of war against the United States. It is more important to stop terrorists before they attack than to ensure that we can prosecute them afterwards. Therefore, we should treat terrorists as enemy combatants, not as ordinary criminals.

- **WAR ON TERROR.** Thomas F. Powers, “Can We Be Secure and Free?,” *The Public Interest*, Spring 2003.

Powers argues that security and liberty are not in conflict. Rather, security is necessary for the enjoyment of liberty. The challenge before America in the War on Terror is to balance liberty from terrorism with liberty from unnecessary state power.

- **HOMELAND SECURITY.** Paul Rosenzweig, “Principles for Safeguarding Civil Liberties in an Age of Terrorism,” Heritage Foundation *Executive Memorandum* No. 854, January 31, 2003.

The War on Terror requires the United States to find effective ways to limit the ability of the government to intrude into Americans’ lives while increasing security. Rosenzweig concludes that America can and must adhere to the fundamental principle of limited government, while also answering the terrorist threat.

Endnotes

- 1 John Jay, “Concerning Dangers From Foreign Force and Influence (cont’d),” *Federalist* No. 3, at <http://www.foundingfathers.info/federalistpapers/fed03.htm>
- 2 James Madison, “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments,” *Federalist* No. 51, at <http://www.foundingfathers.info/federalistpapers/fed51.htm>
- 3 *Youngstown Sheet & Tube Co. v. Sawyer*. 343 U.S. 579 U.S. Supreme Court, 1952.
- 4 Thomas Jefferson, letter to James Monroe, October 24, 1823.

About *Understanding America*

AMERICANS HAVE ALWAYS BELIEVED that this nation, founded on the idea of freedom, has a vital responsibility to the rest of the world. As George Washington first recognized, the “preservation of the sacred fire of liberty” depended on the American people. These words remain true today.

Understanding America explores how the United States’ commitment to the universal truths of human equality and the right to self-government—as proclaimed in the Declaration of Independence—requires a vigilant defense of the cause of liberty, both at home and abroad.

Other volumes in the series:

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Rule of Law

How Must America Balance Security and Liberty?

“The proper way to balance security and liberty is not actually to balance them at all; it is to insist on policies that maximize both to the extent practicable.”

America’s Founders recognized that the nation’s security and its peoples’ liberty are not opposed. Rather, security is necessary for the flourishing of liberty. Since its founding, America has promoted security and protected liberty by pursuing policies that strengthen both.

This volume in the *Understanding America* series explores the ways in which the Constitution’s Framers sought to protect liberty, and shows that the goals of ensuring security and respecting liberty can and must be reconciled.

