

## INTRODUCTION

“In framing a government which is to be administered by men over men,” James Madison wrote, “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.” The task of a constitution is to solve this difficulty by setting out the structure of the government and establishing its powers and limits. But how extensive should those powers be, and where should their limits lie? What are the legitimate functions of government, and what is their proper justification? Should a nation’s constitution aim at securing the general welfare of its citizens, and, if so, how is the general welfare to be defined? What protections should a constitution afford to individual rights, and how should these rights be specified?

The essays in this volume —written by prominent philosophers, political scientists, and legal scholars—address these questions and explore related issues. Some essays examine the basic purposes of constitutions and their status as fundamental law. Some deal with specific constitutional provisions: they ask, for example, which branches of government should have the authority to conduct foreign policy, or how the judiciary should be organized, or what role a preamble should play in a nation’s founding document. Other essays explore questions of constitutional design: they consider the advantages of a federal system of government, or the challenges of designing a constitution for a pluralistic society —or they ask what form of constitution best promotes personal liberty and economic prosperity.

The collection opens with several essays on the functions of a constitution and the relationship between constitutional law and ordinary law. In “What Are Constitutions, and What Should (and Can) They Do?” Larry Alexander begins with the observation that the principal function of law is to settle questions about what people are obligated to do: that is, to determine which of our moral obligations are enforceable through coercion. By establishing a system of determinate legal rules, we are able to peacefully resolve disagreements and coordinate our actions with the actions of others. Likewise, Alexander argues, the function of constitutional law is to settle the most basic questions about how to organize our society and our government. Constitutional law is more fundamental than ordinary law in two senses: first, ordinary law must conform to constitutional law; and second, constitutional law is more firmly entrenched and more difficult to change than ordinary law. In addition to establishing the powers and responsibilities of the various branches of government, constitutions usually contain provisions that safeguard the rights of citizens, and Alexander goes on to discuss how these rights should be understood. He argues that the incorporation of moral rights within a constitution poses a danger: given that people disagree about the exact nature of moral rights, their incorporation in a constitution will likely undermine the law’s aim of settling questions about what enforceable obligations we have. In light of this, Alexander contends, moral rights should be subordinated to constitutional structures, which can provide procedures for determining the content of those rights. He concludes with a discussion of the role of courts in providing authoritative interpretations of the meaning of constitutional provisions.