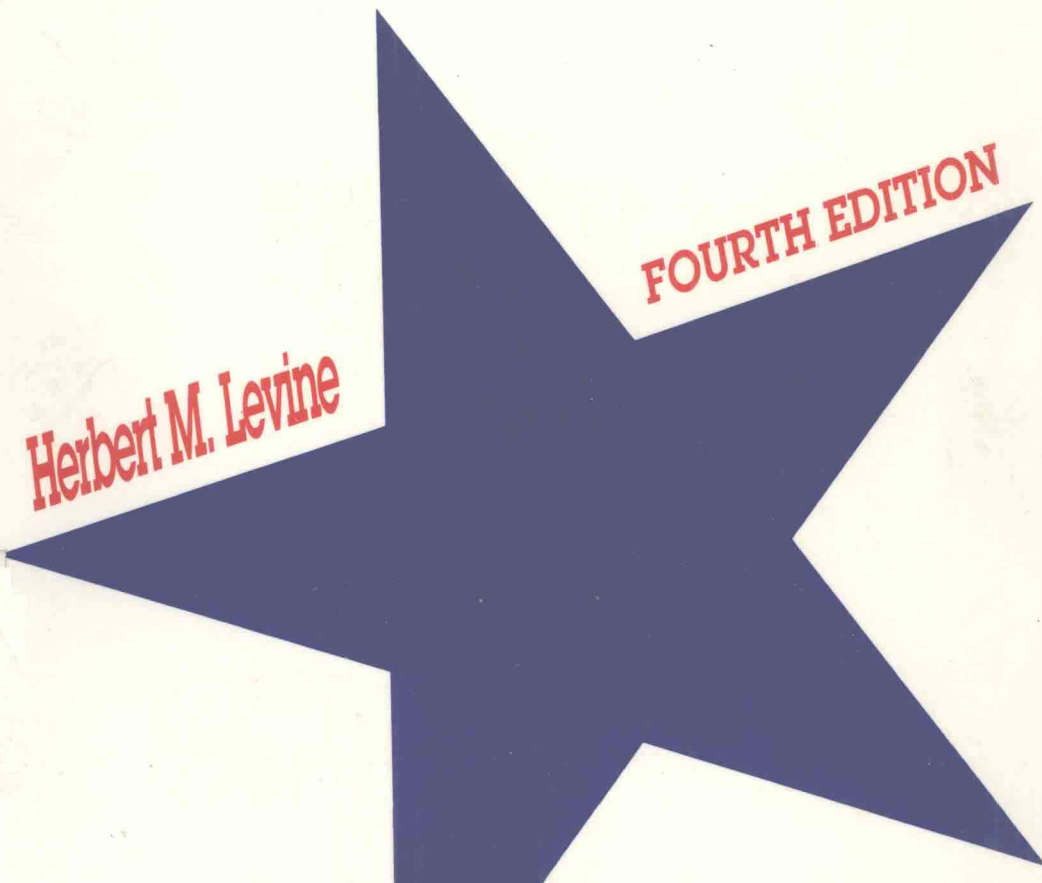


POINT- *Counter* TWO

Readings in American Government

Herbert M. Levine

FOURTH EDITION



POINT-COUNTERPOINT

Readings in American Government

Fourth Edition

Herbert M. Levine

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"A Bicentennial Analysis of the American Political Structure," by the Committee on the Constitutional System. *A Bicentennial Analysis of the American Political Structure: Reports and Recommendations of the Committee on the Constitutional System*. (Washington, D.C.: Committee on the Constitutional System, 1987). Reprinted with the permission of the Committee. Requests for further reading should be addressed to the Committee at 1755 Massachusetts Avenue, NW, Washington, D.C. 20036 (Phone: 202/387-8787).

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Preface

The debate tradition in the United States is as old as the Republic itself. Soon after the colonists achieved independence from British rule, they debated issues as fundamental as slavery, tariffs, and the policy of the United States toward the French Revolution. Some debates in U.S. history—Lincoln-Douglas and Kennedy-Nixon—have become part of the national memory, even if misremembered or embellished.

It is with this tradition in mind that *Point-Counterpoint* has been developed. The text is a collection of readings that present contending sides of important issues in U.S. government. It is designed to contribute to a democratic tradition where vigorous controversy is regarded as both proper and desirable.

The selections deal with the basic structure of the U.S. political system, political participation, civil liberties and civil rights, the power of government policy makers, and the direction of public policy. The format of the book encourages critical thinking. Part and chapter introductions provide important background information and a synopsis of the major points in each selection. For each debate question, one "Yes" response and one "No" response are given. "Questions for Discussion" follow each debate to help students formulate their own answers to the debate question. If both conflicting views on an issue seem convincing, students can then turn to the "Suggested Readings," which provide general background information as well as pro and con arguments.

Three cautionary points are in order. First, issues can rarely be broken down into a neat classification such as liberal or conservative. In this regard, it is often the case that some of the most meaningful controversy goes on among advocates of the same political philosophy.

Second, space limitations and the format of the book dictate that only two views—"Yes" and "No"—are given for each question. More often than not, other answers could be presented, such as "Yes, but . . .," "No, but . . .," or even "Maybe." In the process of debate, refinements can be developed. The yes-no approach, however, should provide a start toward understanding problems of U.S. government.

Third, the book does not present a single ideological perspective. As a whole, it does not take a side on the issues but presents, instead, many views. If there is an ideological commitment, it is implicit in the nature

of the format: a commitment to vigorous debate as befits the democratic tradition.

NEW TO THE FOURTH EDITION

The fourth edition of *Point-Counterpoint* includes a number of revisions to the third edition. There is a new section on civil liberties and civil rights, and there are new debate topics focusing on currently contested issues, such as fetal rights, racist speech, congressional term limitations, legalization of drugs, homelessness, direct government support to artists and writers, statehood for Puerto Rico, and U.S. foreign policy in the post-cold war era.

The fourth edition also retains some of the debates of the previous edition. These topics include the Constitution, separation of powers, campaign finance reform, and the president and foreign policy.

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I am indebted to numerous people in the academic and publishing communities who helped me at various stages in the writing and production of this edition of *Point-Counterpoint*. The editorial consultants for the book offered superb suggestions and insights, including proposals for different debate topics and stylistic changes. Specifically, I want to acknowledge the following consultants for St. Martin's Press: Donald Buzinkai, King's College; Alan Clem, University of South Dakota; Jeffrey Colbert, University of North Carolina—Greensboro; Larry Elowitz, Georgia College; David H. Fozz, University of Tennessee—Knoxville; Chris J. Froke, Arkansas State University; John Geer, Arizona State University; Gerard Gryski, Auburn University; William B. Gwyn, Tulane University; Willie Hamilton, California State University—Long Beach; Valerie S. Hartman, William Paterson College; Robert Langran, Villanova University; William R. Lowry, Washington University in St. Louis; Charles Noble, California State University—Long Beach; William J. Parente, University of Scranton; Stephen L. Percy, University of Wisconsin—Milwaukee; James Perkins, San Antonio College; Wesley Phelan, Glenville State College; David Robinson, University of Houston—Downtown; Lois T. Vietri, University of Maryland at College Park; Herbert Waltzer, Miami University; Judi Ward, Coastal Carolina Community College; Laura R. Woliver, University of South Carolina; Mary D. Young, Southwestern Michigan College.

Ryan J. Barilleaux and Daniel P. Franklin, who wrote articles for the third edition, have updated their contributions. I am appreciative of their professionalism, flexibility, attention to detail, adherence to deadlines,

and good will. As in the past, I thoroughly enjoyed working with both of them.

I am also indebted to Ann Hofstra Grogg, who copyedited the manuscript with her usual extraordinary skill. The St. Martin's Press staff offered expert professional guidance, and I want to thank specifically Don Reisman, senior editor; his assistant Frances Jones; and Cheryl Friedman, the project editor.

Herbert M. Levine

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Foundations of the

United States Political System

- 1. Has the Wisdom of the Framers of the Constitution in Promoting a “More Perfect Union” Been Overrated?*
- 2. Does the Separation of Powers Need to Be Changed?*
- 3. Does Federalism Encourage Good Government?*

In 1987 the United States celebrated the two hundredth anniversary of the Constitution by drawing attention to the basic institutions and practices of the nation's political system. Political officials, leaders of private associations, and writers assessed anew the fundamental assumptions under which the U.S. political system was established; they examined how a system designed for a largely agrarian society consisting of thirteen eastern seaboard states had evolved over two centuries to meet the needs of a postindustrial society that spans a continent.

These observers often evaluated how well or how poorly the United States was living up to the ideas professed by the Framers of the Constitution. Whether positive or negative in their assessments, they focused on social, economic, and political institutions.

Those who looked favorably at the development of the past two centuries often drew attention to a number of features: the rise in the nation's standard of living; the integration of groups from diverse ethnic, religious, and racial backgrounds into a "melting pot" in which these groups could live in peace; the resilience of the Constitution in adapting to change; the expansion of democratic practices to include ever larger numbers of people; the competition of political parties for electoral success; the freedoms accorded to U.S. citizens in expressing ideas, protesting peacefully, and responding to accusations in the criminal justice system; and the promotion of the common defense.

Those who were critical of the developments of the past two centuries pointed to different facts to justify their negative conclusions: the great disparity in assets, in which less than 10 percent of the U.S. population controls 90 percent of the nation's wealth; the long history of discrimination against blacks, Hispanics, and native Americans; the use of the Constitution by the dominant economic groups to prevent or delay social or economic change; the practical means used by government to prevent or slow down the participation of lower-income groups in the political process; the limitation of choice resulting from a two-party rather than a multiparty political system; the use by government of infiltration and disruption tactics to undermine groups holding unpopular ideas; the failure of the criminal justice system to give all defendants an equal chance regardless of wealth and background; and the use of military force and secret operations in influencing nations abroad, such as in Indochina in the 1960s and 1970s and in Nicaragua in the 1980s.

The views of contending sides assessing the U.S. political system raise the most fundamental issues underlying that system. This part considers three of these issues: the role of the Framers in creating a “more perfect Union”—and how perfect was and is that Union; the efficacy of the separation of powers; and the value of federalism.

Has the Wisdom of the Framers of the Constitution in Promoting a "More Perfect Union" Been Overrated?

The Constitution establishes the ground rules governing the political system of the United States. What the Framers believed and how they acted at the Constitutional Convention at Philadelphia in 1787 raise questions about the effect these rules may have had on political behavior thereafter.

Historians disagree sharply about the Framers of the Constitution. Characterizations of delegates to the Constitutional Convention range from self-serving men of prominence seeking to promote the interests of their own economic class to pragmatic leaders encompassing profound differences of economic interest and political philosophy.

The basic facts about the Constitution, however, are generally accepted. The Articles of Confederation, presented in Congress in 1776 but not finally ratified by all the states until 1781, established a league of friendship among the states rather than a national government. The period under the Articles was marked by widespread debt, Shays's Rebellion (a revolt of poor Massachusetts farmers), economic decay, and an inability to negotiate commercial treaties. In 1786 a Constitutional Convention was called to revise the Articles; it met in Philadelphia from May through September 1787. Most of the delegates were young, politically experienced, financially comfortable, and afraid of the common people, whom they called the "mob." Although they shared some assumptions about government and society, they disagreed profoundly about what should and should not be included in the document they were drafting.

Despite the celebration of the Framers at many civic occasions during the Constitution's bicentennial year, some observers, like Supreme Court Justice Thurgood Marshall, think the wisdom of the Framers of the Constitution has been overrated. Marshall was the first black person appointed to the Supreme Court. Earlier in his career, he was an attorney with the National Association for the Advancement of Colored People (NAACP), and he argued major civil rights cases in the courts.

In a speech sparked by commemorations of the bicentennial, Marshall faults the Framers for producing a defective document that allowed for the perpetuation of slavery and denied black people and women the right to vote. He contends that developments *after* the writing of the Constitution created a more promising basis for justice and equality than did the accomplishments of the Framers. He emphasizes the adoption of the Fourteenth Amendment ensuring protection of life, liberty, and property of all persons against deprivations without due process and guaranteeing the equal protection of the laws. Credit for change, Marshall says, should go

to the people who passed amendments and laws that sought to promote liberty for *all* the people of the United States. Marshall celebrates the Constitution as a living document, evolving through amendments and judicial interpretation.

Marshall's speech prompted a direct response by William Bradford Reynolds, at that time the assistant attorney general in the Civil Rights Division of the Justice Department. Reynolds was a controversial figure in the Reagan administration because of his actions on civil rights matters. A number of civil rights leaders criticized him for his opposition to affirmative action and voting rights legislation. Reynolds's supporters defended him as a proponent of real racial equality.

In a speech delivered at Vanderbilt University, Reynolds argues that the Framers deserve the respect accorded to them in the bicentennial celebrations. Accepting Marshall's evaluation that the original Constitution was flawed, Reynolds still asserts that the Constitution marked "the greatest advance for human liberty in the entire history of mankind, then or since." Indeed, Reynolds continues, the constitutional system of divided governmental authority and separated government power eventually allowed for blacks to secure liberty. He notes that much blame for the low status of blacks in the United States should go not to the Framers but rather to those justices who failed to follow the terms of the Constitution and the laws of the land.

☒ YES

Has the Wisdom of the Framers of the Constitution in Promoting a "More Perfect Union" Been Overrated?

THURGOOD MARSHALL

The Constitution: Past and Present

Nineteen eighty-seven marks the 200th anniversary of the United States Constitution. A Commission has been established to coordinate the celebration. The official meetings, essay contests, and festivities have begun.

The planned commemoration will span three years, and I am told 1987 is "dedicated to the memory of the Founders and the document they drafted in Philadelphia." We are to "recall the achievements of our Founders and the knowledge and experience that inspired them, the nature of the government they established, its origins, its character, and its ends, and the rights and privileges of citizenship, as well as its attendant responsibilities."

Like many anniversary celebrations, the plan for 1987 takes particular events