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American Government and Politics

By **CHARLES A. BEARD**

WITH THE COLLABORATION OF WILLIAM BEARD

TENTH EDITION



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PREFACE

This edition of my *American Government and Politics* appears at what is in many respects a revolutionary time in the history of our nation. The United States is playing a more active role in international affairs. It is committed by the law of the land to membership in the United Nations and takes part in the councils of that organization before which come for consideration and adjustment the conflicts and interests of the governments of the world. Through cooperation with particular countries and by unilateral actions, it is seeking to cope with the unsettled issues of World War II. Its foreign commitments, coupled with the strains in domestic economy created by war and preparedness, impose on the American system of government and liberty burdens which will test to the uttermost the endurance of the historic principles to which our nation is pledged.

During this revision I have kept constantly in mind the primary question: What knowledge is now most useful to American citizens in upholding, operating, and developing the American system amid present challenges and perils? In formulating answers to the question, I have emphasized (1) the enduring principles of American government and liberty to which our Republic is dedicated; (2) the institutions, or machinery, of government—federal, state, and local—for carrying these principles into effect; (3) the conflicts of interests, within the borders of accepted principles, which are reflected in the conduct of the party system; (4) the testing of principles, ideas, and theories by references to concrete practices, which appears in the discussion of public affairs; (5) the persistent trends, amid many fluctuations, in activities of government—federal, state, and local; (6) the living interrelations of the constituent parts of the American system; and (7) the manifold influences of foreign affairs on domestic institutions and civilian life.

In keeping with this emphasis on fundamentals and trends, I have avoided many details where they tend to obscure first principles or are likely to become entirely obsolete before students have left college halls and gone far in active life, if not indeed before the day of publication. In

the bibliographies, however, I have referred to many continuously revised manuals and other sources to which students may readily turn for the latest information on details of government, now and in the years to come.

From the beginning to the end of this revision, I have had the assistance of my son, William Beard, who has helped me immeasurably in giving form, consistency of substance, and precision to this edition.

CHARLES A. BEARD

*New Milford, Connecticut,
June 1, 1948*

COLLABORATOR'S NOTE

The death of my father, Charles A. Beard, between the delivery of the manuscript for this volume and the arrival of proof, left me with the responsibility for putting it through the press. Out of a feeling of deep obligation to my father to see that this, his last completed volume, is as truly representative of him as possible, I have made only such alterations as, through my experience in reading proof with him on previous occasions, I am confident he would have accepted had he had the opportunity. For example, I have added to his manuscript references to certain major events that took place while the volume was being put into type, developments which would have attracted his attention, such as the publication of the terms of the proposed North Atlantic Treaty. My labors have been reviewed by my mother, Mary R. Beard, who, through many years of collaboration with my father in writing enterprises, is thoroughly familiar with his standards. It is my firm belief, therefore, that the manuscript as here presented is a close approximation to the volume my father would have offered had he been able to go over the proof himself.

WILLIAM BEARD

*Altadena, California,
April 30, 1949*

CONTENTS

PART I. THE AMERICAN SYSTEM: ESSENTIAL FEATURES

1. Government and Liberty in Check Under Supreme Law 3
2. Flexibility of the American System 20

PART II. THE DOMAIN OF LIBERTY

3. Personal Liberty 39
4. Liberty in Relation to Occupations and Property 60

PART III. THE POPULAR BASIS OF GOVERNMENT

5. People, Citizens, and Voters 75
6. Popular Rule through Elections 85
7. Popular Parties as Agencies of Popular Will 94

PART IV. THE NATIONAL GOVERNMENT

8. Congress: Over-all Structure and Elections 123
9. Congress: Internal Organization and Work 145
10. Nomination and Election of the President 179
11. The Office of President 200
12. The Federal Judiciary 226
13. Stresses and Strains in the Balancing of Powers 246
14. The Fourth Department—The Administration 268
15. Taxation and Finance 297
16. Control and Direction of Foreign Relations 315
17. American Foreign Policies 341
18. The War Power 367
19. The Federal Government and the Nation's Economy 387
20. Natural Resources and the National Domain 402
21. Business Enterprise and Agriculture 420

22.	Communication and Transportation	447
23.	Labor and Immigration	467
24.	General Welfare and Social Security	488

PART V. STATE GOVERNMENT

25.	Position of the States in the Federal System	509
26.	The State and Its Constitution	535
27.	Methods of Popular Control in the States	553
28.	Regulation of Party Machines and Operations	570
29.	The State Legislature	587
30.	The Governor	614
31.	The Judiciary and the Law	633
32.	State Administrative Organization	658
33.	State Finances and Financial Management	679
34.	State Promotion and Regulation of Special Interests	695
35.	State Promotion of General Welfare	709

PART VI. LOCAL GOVERNMENT

36.	Organization and Financing of Urban Government	731
37.	Functions of Urban Governments	759
38.	Rural Local Government	785
	Appendix, Constitution of the United States	805
	Index	821

PART I

THE AMERICAN SYSTEM: ESSENTIAL FEATURES



CHAPTER 1

Government and Liberty in Check Under Supreme Law

The Nature of Government. The very essence of government, everywhere and always, is power—the power of persons called officials to make and enforce laws affecting the life, liberty, and property of the people. Such power is necessary in any great society to prevent it from dissolving into warring elements or utter chaos. If vested in a moderate and competent government held responsible to the people under supreme law, power may be so wielded in the public interest as to promote domestic tranquillity, measured liberty, and the general welfare. If it becomes unrestrained in the hands of ruthless leaders, power may be employed to arouse violent hatreds and destroy cherished liberties; through the launching of extravagant wars of conquest, such power may produce disaster at home and devastation abroad.

The American View of Government. In every democratic society, therefore, the primary political issue is how to maintain a government strong enough to govern effectively in the public interest and at the same time how to prevent it from becoming, in crucial situations, both dictatorial and oppressive. As Abraham Lincoln posed the problem in 1864: “It has long been a question whether any government, not too strong for the liberties of the people, can be strong enough to maintain its own existence in great emergencies.”

To this eternal riddle the founders of the United States sought an answer after the Revolution of 1776. Leaders among them surveyed the lessons of history bearing on the question; and, taking advantage of their studies and their own experiences, they created a system of government and liberty, so framed in terms of power and so checked by concrete devices as to avoid, at least up to the present, both the extremes of anarchy or despotism. The outcome of hard thinking and bold experimenting, this system is still regarded by the American people as better adapted to serving the common interest, and upholding liberty in the United States, than any known alternative.

The American Answer Challenged. For a long time, particularly after the opening of the twentieth century, it was cheerfully assumed by American citizens that this system of liberty and government was destined to endure by virtue of its strength and merits. Encouragement in this hope came from other countries. Political struggles in Europe and Asia seemed to indicate that despotism would be finally overthrown everywhere and constitutional government substituted for it. But in our own day, the assumption has been rudely challenged by momentous events.

Before World War I came to an end in 1918, the Tsarist regime in Russia collapsed and at length a dictatorship in the name of the proletariat was founded on its ruins. Within a few years a political adventurer, Benito Mussolini, overturned the limited government of Italy and brought that country under the iron rule of his dictatorship, called Fascism. A few more years passed and a political adventurer, Adolf Hitler, smashed constitutional government in Germany and set up there a Nazi dictatorship. In Spain, with the aid of Italy and Germany, a similar system of tyranny was soon established under General Francisco Franco. In Japan, where beginnings had been made in popular government, military leaders seized the real power and relegated civilians to a position of political bondage.

Although in World War II despotic governments in Germany, Italy, and Japan were crushed, the dictatorship in Russia remained entrenched in power. By annexations of neighboring territories and peoples, the military occupation of other regions, and the support of puppet states, the sway of its authority was extended. In 1948, Russia dominated all Eastern Europe and was in possession of strategic posts in Eastern Asia. Not only this. Through the agency of communist parties in other countries, including the United States, the masters of Russia continued to carry on propaganda designed to overthrow by intrigue or violence moderate, constitutional democracies everywhere and then establish on the wreckage a dictatorship fashioned after the Russian model. Meanwhile the democracies of Europe, badly shaken by the devastations of war, were finding it hard to offer resistance to the communist march and were seeking outside aid, including the financial assistance of the United States.

The Task of Preserving the American System. Alarmed by the blows struck at liberty in other lands in recent years, the overwhelming majority of the American people have resolved that their system for achieving moderate government through constitutional means shall be honored and strengthened so that it can survive in a world beset by hostile designs and ideologies. Unlike the situation under a dictatorship,

where obedience, not independent thinking, is the mark of citizenship, the American plan can survive and operate effectively only if there exist an intelligent appreciation of its essentials and active participation in its management.

What, then, are these essentials? They may be briefly summarized in six statements. (1) Written constitutions are the established sources of all the powers which may be wielded by public officials. (2) Under a federal plan official authority is widely dispersed by division between the National Government and the states. (3) Within each of these governments, the lawful power conferred upon it is distributed among three branches—legislative, executive, and judicial—each having some protection against the others. (4) By constitutional affirmations a domain of individual liberty is marked out and safeguarded against encroachment by public agents. (5) In order that this elaborate system of government and liberty may be responsive to the changing conditions of American life and economy, it is made flexible by provisions for adjustments to new circumstances and for amendments. (6) All governments are conducted by agents or representatives of the people, chosen directly or indirectly by the people, who are at one and the same time the recognized masters and beneficiaries of government.

AMERICAN GOVERNMENT IS CONSTITUTIONAL

Prime Considerations. The idea of constitutional government in the United States embraces certain fundamentals. A constitution in the American sense of the term is a general law, a written document, prepared in a special way by representatives and ratified by the people or their agents. This document sets up the frame of government, prescribes its powers, and defines the liberties of persons and citizens. It institutes the high authorities of government. It states what kinds of, and how many, such authorities there shall be; how they shall be chosen; the length of their terms; how they may be removed; what powers they may exercise and in what manner; and how they may create, fill, and control the subordinate places in government deemed necessary to the discharge of official duties. Within the domain to which it applies, a constitution is supreme over all other laws.

All the people of the United States and its possessions live under the Constitution of the United States. This instrument was drafted by a convention of state delegates at Philadelphia in 1787, ratified by state conventions, and put into effect in 1789; it now stands as amended by twenty-one articles adopted since that year. To its provisions are subject all officials, high and low, from village constables to the President in Washington, from the town council to the Congress at the national

capital. Everything done by every agent of government comes within the purview of this Constitution. It is "the supreme law of the land"—supreme over all other laws and all agencies of government (for text, see Appendix).

Besides living under the National Constitution, the people of every state also live under a state constitution. For them the latter document is supreme over all state and local laws in their own commonwealth. Yet, as already indicated, it is subordinate to the Constitution of the United States and to the national laws made in pursuance thereof; in other words, its provisions must conform to the limitations imposed by that higher law.

The Constitutional Way of Resolving Disputes. Under the American system, the people and their governmental agents are morally bound to observe the rules laid down in written constitutions. In practice, both the people and the public authorities have, on the whole, displayed remarkable willingness to obey these principles and, by orderly debate and action, carry on the work of government. Only once since the formation of the Constitution has a conflict of ideas and interests burst the bounds of argument and of respect for the results of popular elections; namely, the controversy that culminated in the Civil War of 1861–1865. Few students of this long conflict, however, now regard the outcome of the war as either better or nobler than a settlement that might have been effected within the terms of the Constitution. The power of reason in human affairs, to be sure, may easily be overestimated but as W. Y. Elliott puts the case: "If reason is permitted by the party system to operate, and the facts of economic necessity are recognized, constitutionalism offers a basis of moral strength that is lacking to shortcuts by the route of direct action."¹

The Alternative of Government by Violence. A resort to "direct action" means the use of violence in establishing government, changing government, and carrying on political disputes. This method has been so commonly employed in ancient, mediaeval, and modern times that many political theorists have reduced political history to irrational rhythms of despotism, revolt, assassination, reformation, and despotism again, in endless repetition. Differences of opinion become quarrels; quarrels develop into fights; fights end in bloodshed; and out of civil war conquerors rise to power, only to be overthrown by new uprisings. "All history up to the present time" declared Karl Marx in the Communist Manifesto of 1848, "is the history of class struggles." Occasionally in history, these conflicts have resulted in settlements of some kind, frequently despotic in nature—but often they have ended in what Marx

¹ *The Pragmatic Revolt in Politics*, p. 497.

called "the common ruin of the contending classes." It was to prevent the occurrence of such rhythms in the United States that the founders of the American system substituted constitutional government for government by "direct action." "Happily for us," said Thomas Jefferson in speaking of the American way, "that when we find our constitutions defective and insufficient to secure the happiness of our people, we can assemble with all the coolness of philosophers, and set it to rights, while every other nation on earth must have recourse to arms."

THE AMERICAN SYSTEM IS FEDERAL

Principle of Federalism. A federal system is marked by unity, in that to one common government are granted limited powers; and by diversity, in that to each of several states, or semi-autonomous areas, composing the union is reserved the independent power of managing its own internal affairs as if in this respect it stood alone. Thus the system prevents extreme centralization, such as exists in France, for example, where all local governments are creatures of and at the mercy of the national government. By dispersing power, federalism renders its concentration in the hands of a would-be dictator correspondingly difficult.

American Devotion to Federalism. Federalism is deeply rooted in American history and life. It was in origin no offspring of a paper plan designed by cloistered philosophers for the ordering of the American people. When the Constitution was framed at Philadelphia in 1787, few if any Americans advocated consolidating all the states "in one mass," to use a phrase of the time. The draftsmen of that document were aware that such a revolution was neither desirable nor possible. They knew how stoutly the people of the thirteen states clung to their rights of local self-government and how anxiously they feared the overshadowing power of one strong government at a national capital. It was also apparent to the draftsmen that such a government, if established, would encounter almost insuperable difficulties in trying to manage everybody and everything in the whole country from a single center of power. As a result of experience, necessity, and reflection, accordingly, they left the states well endowed with many powers for local purposes, and they based upon this foundation a general government possessing limited powers for handling affairs common to the union.

Federal Law Is Supreme in Case of Conflict. In exercising the powers assigned to it, the National Government makes laws which are supreme over all state laws. "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land." So runs the Federal Constitution; and the

Supreme Court at Washington is the tribunal of last resort for deciding controversies between federal and state authorities in cases at law involving the provision.

An Illustration of Supremacy. The application of the principle may be illustrated by a noted example. Long ago Congress provided by law that when any civil suit or criminal prosecution is begun against a federal revenue officer in any court of a state in connection with some official act on his part, the case shall be immediately removed into the federal courts. Such an officer, in the discharge of his duty, killed a man in Tennessee, and his trial, against the protest of the state, was transferred to a federal court in due form.

In discussing the constitutionality of the transfer, Mr. Justice Strong said of the Federal Government: "It can act only through its officers and agents, and they must act within the states. If, when thus acting, and within the scope of their authority, these officers can be arrested and brought to trial in a state court for an alleged offense against the law of the state, yet warranted by the federal authority they possess, and if the General Government is powerless to interfere at once for their protection—if their protection must be left to the action of the state courts—the operations of the General Government may at any time be arrested at the will of one of its members. . . . No state government can exclude it from the exercise of any authority conferred upon the Federal Government by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it."²

The National Government Assumes the Existence of States. Though independent in its functions the National Government can only operate with state assistance. Senators are elected by the voters of the states and Representatives by voters of districts wholly within state boundaries, subject to state election laws and under the supervision of state election officials. No federal officer presides at local polling booths or takes part in the counting of ballots. The President is chosen by electors assigned to the states on the basis of their representation in Congress, and the electors themselves are chosen by the voters of the states at large. In no case are state boundaries crossed by any federal election districts. Only when a dispute arises between candidates over election returns and is carried to Washington does Congress normally intervene in the process of deciding contests. In the exercise of its functions also the Federal Government must rely upon the states to discharge the duties which belong to them under the Constitution. The United States mails roll over roads and streets built, at least in part, by state and local govern-

² *Tennessee v. Davis*, 100 U.S. 257.

ments, and the armed forces of the Union are augmented in emergencies by calling out the state militia.

A Republican Form Guaranteed to the States. So vital is the state to the perpetuity of the Union that the Constitution specially recognizes federal responsibility for defending its integrity. Congress cannot erect a new state within the jurisdiction of another state or form one by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned. Furthermore the Constitution guarantees to every state in the Union "a republican form of government," protection against invasion, and, on application by the proper state authority, assistance against domestic insurrection. There is still meaning in the old saying: "An indestructible Union of indestructible states."

The function of deciding when the government of a state is republican in form belongs to Congress. This maxim the Supreme Court declared long ago in a case involving a contest between two political factions in Rhode Island for supremacy.³ "When the Senators and Representatives of a state are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the Government and could not be questioned in a judicial tribunal."

In respect of insurrections in states, the power to answer a call for help is vested by act of Congress in the President. "By this act, the power of deciding whether the exigency has arisen upon which the Government of the United States is bound to interfere is given to the President . . . and must therefore be respected and enforced by its judicial tribunals." When the legislature of a state, or the executive, if the legislature cannot be convened, invokes his aid, the President may at his discretion call out troops to protect the state against domestic violence.

States Depend upon the Union. Besides relying upon the Union in upholding the republican form of government, the states depend upon it for the discharge of many functions necessary to their existence. The Union defends them against foreign invasion, conducts foreign affairs, carries the mail used in conducting their operations, controls their relations with one another, decides disputes between them, and regulates commerce among them. By assuring to the citizens of each state the privileges and immunities of citizens in the several states, by guaranteeing the return of fugitives from justice, by requiring all states to give full faith and credit to the acts, records, and judicial proceedings of

³ *Luther v. Border*, 7 Howard, 1 (1848). Reaffirmed in our own time by *Coleman v. Miller*, 307 U.S. 433.

each state, by opening wide channels of trade, travel, intercourse, and migration, the Constitution enlarges the rights and privileges of citizens in every state, adding to their prosperity, convenience, and welfare. By imagining a condition of affairs in which all such privileges of traveling and doing business throughout the Union were cut off or seriously limited, the dependence of the state upon the Union for its safety and well-being can be readily comprehended.

SEPARATION OF LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWERS

Statement of the Doctrine. The American system goes beyond the division of powers between the Federal Government and the states, and beyond imposing definite limits on both. Squarely planted within the government of each state and the Federal Government is a positive check on despotism and arbitrary action. This check is called "the separation of powers"; that is to say, the making, enforcing, and interpretation of laws are assigned respectively to the legislative, executive, and judicial branches of government. It is based on two axioms of political science derived from long and bitter experience in the struggle for liberty against despotic rulers.

The first axiom is that the concentration of all governmental powers in the hands of one person or group is "the very definition of tyranny." The second is that such tyranny is not apt to be benevolent—that no person or group can be safely entrusted with unlimited power over life, liberty, property, and personal interest. The framers of the Federal Constitution were experienced statesmen. They believed, and had reason for believing that, whatever qualities of goodness human beings have, there are in every society power-hungry, ambitious, and even rapacious persons eager to raise themselves into power and dominate others. They felt certain that such passion could not be eradicated; so they sought to restrain power, for the protection of the public, by pitting the three departments of government against one another, while allowing them to cooperate according to prescribed methods and the dictates of prudence.

Application of the Doctrine in the States. The principle that the powers of government must be separated is expressly set forth in some form by every state constitution. A classic statement of the doctrine appears in the constitution of Massachusetts: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or