Politics & Structure

Essentials of American National Government

4th Edition

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To Betty and Charley O'Connor and Ed and Jane Ingersoll. They taught us a long time ago the value of understanding, which we hope is reflected in this treatment of the politics and structure of the American national government.

Preface

Politics and Structure provides

- a description of how politics combines with the structures of government to produce public policy;
- an in-depth description of the four essential institutions—the Presidency, Congress, Federal Courts, and the Federal Bureaucracy;
- a demonstration of the interactions of the four institutions through a single case study—the multibillion dollar "Superfund" hazardous waste cleanup program;
- a case study, cross-referenced to the text, that illustrates for students by a specific example that the text's core material applies to how issues are resolved and policies made;
- marginal notations throughout to assist students in following main arguments and in review; and
- an authoritative reference with a complete index.

This book arose, more than a decade ago, with our dissatisfaction with the large, expensive hardbound texts. We found that our students shared this dissatisfaction (particularly with the expense). From a pedagogical angle, we each preferred to use one of the popular point-of-view texts or a series of topical paperbacks. New texts appeared every year, and we liked the idea of being able to use those that contained new insights or viewed the problems of American politics from challenging, indeed unorthodox, perspectives. When one discards the use of the large hardbound text, however, one also discards the treatment of the essentials of the operations of American political institutions. The point-of-view texts (and we are not faulting them for this) simply cannot give adequate coverage to the essential operating functions of government and remain relatively concise points of view.

We were dissatisfied as well with the few short paperback texts on the market that purported to give the student the "essentials" while trying to cover everything from the Constitutional Convention to political parties to civil/military relations. The result was very superficial treatment of the many topics covered. Finding no adequate description of this basic material to supplement our other assigned readings, we were forced to spend considerable lecture time

simply presenting the essentials—time we (and our students) would have preferred to spend on more interesting topics and discussion. One afternoon, around a pitcher of beer, we discovered that others shared our conviction that a true "essentials" text was needed but unavailable. We determined then to undertake the first edition of the project you hold in your hands.

In the ensuing years, our colleagues around the country encouraged us to improve and expand our first effort and reinforced our perception that this text not only was helpful from a pedagogical standpoint but served as a useful reference tool as well for faculty and students alike. The detailed index, the marginal notations, and the use of a single case study throughout to demonstrate the otherwise "theoretical" treatment of American politics combined to produce a book that has proven to be consistent and yet flexible enough to be adapted to many different teaching styles. Even the order in which the chapters are placed—Presidency, Congress, the Courts, Bureaucracy—does not hinder this adaptability. Each chapter, while referencing the others, is designed to "stand on its own," and, therefore, can be assigned in any order (adaptive to the teaching style of the instructor).

The text provides a straightforward description of the operation of the four essential institutions of the American national government: the presidency, Congress, the courts, and the bureaucracy. Because of our awareness that the policy decisions made in Washington affect the lives of all of us, we feel that it is important that all of us understand *how* these decisions are made. Gaining such an understanding entails learning about two interrelated elements of the American national government: politics and structure—neither of which can be understood in isolation.

Our national institutions cannot be understood apart from the *political* context in which they exist and have their purpose. These institutions are more than mere organization charts and lists of authority. They are an intricate network of interconnected bargaining points in the political process, and the personnel who staff these institutions act "politically." Therefore, we have sought to describe the *politics* of the institutional structures under consideration—the personal interactions, the human elements, the personal and organizational influences, and the leadership potentials involved in the actual operation of those otherwise "static" structures. We continually emphasize that none of these structures operates in a vacuum, and we accordingly have attempted to delineate the milieu in which they actually function—the decidedly political atmosphere in which decisions are made.

Because of the nature of our original assumption—that political decisions affect our lives—we have adopted a political-policy criterion of selection by which policy-relevant elements have been included in the text and others have been omitted. This criterion arises from our understanding that politics is, in essence, about public policy—the choice of one policy instead of others. It is our judgment that certain elements have a bearing on the nature of policy, and

we have attempted to delineate those elements within the scope of the American national government.

In keeping with our original intent to produce a "corollary" text—one that could be used with virtually any instructor's selection of point-of-view texts or annotated collection of readings—we have consistently resisted the temptation to expand the book by adding chapters on additional topics in American national government. Our intransigence in this regard is not meant to imply that these other topics are unimportant—quite the contrary. We do not deal, for example, with levels of government other than the national level; nor do we treat the crucial element of federalism—the complex set of relationships between the national level and state and local levels of government. Our reason for noninclusion is twofold. In the first place, each instructor of American politics chooses different subjects to cover beyond the essentials. Even instructors who agree on what should be covered treat those subjects in quite different ways. Indeed, the decision to adopt a particular point-of-view text is influenced by both the selection of subjects and how they are treated. It would have been inconsistent with the purpose of *Politics and Structure* if we had selected topics beyond the generally agreed-upon essentials and then provided our own point of view on those topics.

The second reason for our refusal to further expand the topical coverage of this book rests with our original intent in writing it: we wanted to offer a basis for a thorough appreciation of the American national government, which is the first step toward an understanding of these other topics. By presenting here the essential features of the national governmental structure, it is our hope that students will be better able to understand the context in which policies are formulated and executed at the national level. Such an understanding ultimately entails the realization that (1) similar influences operate at other governmental levels and (2) each level, in turn, influences the others. Thus, *Politics and Structure* is the prelude, rather than the conclusion, to related topics such as American federalism.

In order to emphasize the interrelatedness of political reality, we have chosen to demonstrate politics and structure with a single case study, presented in four sections, as a conclusion to each chapter. Because of the importance of the hazardous waste disposal problem in the United States in the 1980s, we have selected a new case for this edition: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (popularly known as the Superfund Law). We use this case to demonstrate the pervasive nature of politics and to delineate the separate structures within which politics operates. All too often, authors of introductory texts illustrate their points with a variety of case studies. This method ignores the opportunity for integrating material that the single-topic case study provides. We hope that by employing the Superfund Law as a means of illustrating the activities of the presidency, Congress, the courts, and the bureaucracy, we have offered

our readers the opportunity to better understand the interactions of those four institutions. To assist the student in relating the case study to the substantive material, we have also included marginal references to those pages in the text in which the relevant powers or interactions are discussed in detail.

Finally, a few personal notes. This book is truly a shared endeavor in every sense. The order of our names on the cover is not meant to imply that a disproportionate portion of credit (or blame) for the book should go to either author. We have, in fact, reversed that order with each edition just to emphasize the shared nature of our responsibilities—not to confuse Library of Congress catalogers.

We remain, of course, deeply indebted to many people who assisted us in this and earlier editions. Particularly helpful were the reviews of Justin Green, Virginia Polytechnic Institute and State University; James Knauer, Lock Haven University; Robert Locander, North Harris County College; Gary London, Everett Community College; and Bradley Rice, Clayton Junior College.

We benefited from the editorship of Marie Kent and the sharp copy editing of Betty Seaver. Student assistant Lisa Rowley resourcefully provided accurate documentation of obscure or questionable information. Bob appreciates the warm support of—in alphabetical order—Mon Petit Baby, Molly MaGuire, and Janice Hensyl O'Connor. Tom continues to be grateful for all that Barbara has done. Yet, with all of this assistance, all errors and weaknesses that remain in the book are solely our own.

Thomas G. Ingersoll
Robert E. O'Connor

Contents

The Presidency

The Constitutional Convention of 1787 created political institutions that have evolved so dramatically that there is little current resemblance to the institutions as they existed in the 1790s. For example, the early presidents scheduled a weekly open house in the White House; today, citizens touring the White House very rarely even glimpse a government official. The early Congresses met for only a couple of months; today, Congress is almost constantly in session. And in 1802 the federal bureaucracy numbered only 2,875 nonmilitary employees; at last count just under three million nonmilitary employees received paychecks from the national government. However, all three institutions—the presidency, Congress, and the bureaucracy—have evolved within a framework of stability provided by the Constitution.

Article II, Section 1 of the Constitution reads the same today as it did in 1789; it simply states that "the executive Power shall be vested in a President of the United States." What has changed since 1789 is not the Constitution but accepted definitions of what Article II, Section 1 entails as proper presidential behavior. For nearly 200 years lawyers, justices, members of Congress, presidents, journalists, and ordinary citizens have debated the nature and extent of the "executive power" granted in that short sentence. Similarly, the thirteen other powers granted to the President in Article II have been discussed, often heatedly, as presidents have attempted to act in the "best interest" of their country. Thus, the prerogatives provided to the president by the Constitution are a logical starting point for a description of the modern presidency.

Constitutional Prerogatives

The president's constitutional prerogatives can be conveniently grouped under five presidential roles: commander in chief of the armed forces, director of foreign relations, executor of the nation's laws, administrator of domestic affairs, and head of state (table 1-1).

The President as Commander in Chief

The president's power as head of the armed forces. Article II, Section 2 of the Constitution declares that the president "shall be Commander in Chief

Table 1-1
The President: Constitutional Prerogatives and Powers

1. Commander in Chief
   - Power as head of armed forces (Art. II, Sec. 2)
2. Director of U.S. Foreign Relations
   - Power to negotiate treaties and executive agreements (Art. II, Sec. 2)
   - Power to nominate ambassadors (Art. II, Sec. 2)
   - Power to receive ambassadors (Art. II, Sec. 3)
3. Chief Executor
   - Power to execute the nation's laws (Art. II, Sec. 3)
4. Administrator of Domestic Affairs
   - Power to convene and adjourn Congress (Art. II, Sec. 3)
   - Power to address Congress on the state of the Union (Art. II, Sec. 3)
   - Power to recommend legislation (Art. II, Sec. 3)
   - Power to veto legislation (Art. I, Sec. 7)
   - Power to nominate judges (Art. II, Sec. 2)
   - Power to command the executive branch (Art. II, Sec. 2)
   - Power to appoint top administrators (Art. II, Sec. 2)
5. Head of State
   - Power to grant reprieves and pardons (Art. II, Sec. 2)
   - Power to commission officers (Art. II, Sec. 3)

of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual service of the United States." The Constitution makes no attempt to define his duties as commander in chief or to establish any sort of guidelines. Ordinarily presidents have delegated their authority in this area to career military officials while retaining the ultimate responsibility for all military actions to ensure civilian control over the military. There are no constitutional provisions, however, that require a president to delegate this or any other executive authority. For example, George Washington personally commanded the forces that crushed the Whiskey Rebellion in 1794.

The president is not required to delegate any of his powers. He may exercise them himself, even when he has no previous experience.

Succeeding presidents, some with little or no previous military experience, have assumed the role of ultimate military strategist, in addition to peforming their function of assuring civilian control over the military. During the war between the states, for example, Lincoln, who had no previous military experience at all, often visited the Army of the Potomac to instruct the generals on military strategy. Similarly, Jimmy Carter, whose experience had been in the U.S. Navy, took personal command of the ill-fated attempt to rescue the American hostages in Iran in 1980.

As this power has evolved, the president can never forget the enormity of the responsibility entailed. He is constantly shadowed by a military aide who carries the "black box" that contains the cryptographic orders the president would have to issue to initiate a nuclear attack. Although U.S. nuclear-strike capability has been used only once (during World War II), the threat of its use was made by Dwight D. Eisenhower in 1953 and by John F. Kennedy in 1962.

Presidential authority in military affairs is less specific, and therefore broader, than congressional powers.

The undefined constitutional provision for presidential authority in the area of military affairs has placed few limitations on presidents. In contrast, the constitutional provision for congressional authority in this area is quite specific. Congress has constitutional authority to tax for the common defense, declare war, make rules concerning capture on land and water, raise and support armies, provide and maintain a navy, make rules governing the armed forces, and call out the state militia and provide for its training and discipline. Congress cannot send an army anywhere, however, and its decision *not* to declare war has not inhibited presidents from engaging U.S. troops in armed conflicts.

Extensions and limitations of commander-in-chief powers. By using his power as commander in chief, the president is able to authorize the mobilization and use of United States forces anywhere in the world. Although only Congress can declare war and has done so five times—the War of 1812 against Britain, the Mexican War, the Spanish-American War, and the two world wars—the president has always requested such declarations. In the absence of such a request, presidents have initiated military conflicts on more occasions than those authorized by Congress. For instance, no declaration of war accompanied United States involvement in the naval war with France (1798–1800), the first and second Barbary wars (1801–1805 and 1815), the Mexican-American disputes (1914–1917), the Korean War (1949–1953), or the Indochina War (1960–1973).

Caution must be exercised in "interpreting" the meaning of constitutionally granted powers because their scope has changed considerably over time.

The Founding Fathers did not intend that the power to wage war should reside with the president, but the evolution of the meaning ascribed to the term *commander in chief* has resulted in this acquired constitutional power. This is a particularly good example of the caution one must exercise in attempting to interpret phrases of the Constitution. The title *commander in chief* was initially intended to confer upon the president the authority to act as the military commander in the event of an internal insurrection or a congressionally declared war with a foreign power. Over the past 200 years, however, *commander in chief* has come to mean that the president of the United States can order troops into combat in any area of the world. This is far from the original intent of the Constitutional Convention, and it underscores the point that in order to understand the manner in which any political system operates, we must look beyond the title of public officials to the meaning those titles have acquired over the years. The British monarch, for example, is also the

Although the declaration of war is a congressional prerogative, the president may dispatch troops anywhere in the world without the consent of Congress.

commander in chief of the United Kingdom's armed forces, but the queen holds that title for ceremonial reasons only—it carries with it no actual military power. Clearly, it would be unwarranted to apply a uniform meaning of the term *commander in chief* to the British monarch and the American president. The title may be employed in both political systems, but the powers it confers are dramatically different.

We do not mean to imply that the president's power as commander in chief is unlimited. Although he certainly has the power to commit troops to combat anywhere in the world, his actions are more likely to go unchallenged if the conflict is over quickly. No one challenged Ronald Reagan's authority to send troops into Granada in 1983, for example, but that military excursion was clearly of limited duration. If the conflict to which troops are committed promises to become prolonged, the political tenor of the times influences the extent to which Congress tolerates the use of military power. In 1973, after the unpopular Indochina War, Congress passed the War Powers Act, which forbade the president to commit troops for an extended period without congressional consent. This accounted for Reagan's close consultation with Congress when he committed troops to Lebanon in 1983; he acted only after passage of a joint resolution by Congress permitting commitment of troops for no more than eighteen months.

The extent to which Congress scrutinizes presidential actions in the area of military affairs often varies, even within a single presidential term of office. In 1981, for example, Congress offered little resistance to President Reagan's plans for massive increases in military spending. The takeover of the U.S. embassy in Iran combined with Soviet interference in Afghanistan and Poland produced both popular and congressional support for an enormous military buildup. By 1985, the pendulum had swung back and Congress treated Reagan's requests for additional military spending with skepticism and, in some cases, outright rejection.

The President as Director of U.S. Foreign Relations

A second crucial area of presidential authority relates to foreign policy. The Constitution gives the president three specific powers in this area: (1) "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur"; (2) "he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls"; and (3) "he shall receive Ambassadors and other public Ministers." As with his power as commander in chief, the importance of this area of his authority rests *not* with the specificity of the grant but rather with its evolution, by which the president has become the nation's principal spokesman in foreign affairs. George Washington set the tone for this evolution of power as early as 1793, when, in the face of heated congressional and popular criticism, he declared American neutrality during a war between France and England.

The president speaks for the nation in foreign affairs.

Power to negotiate treaties and executive agreements. Although the Constitution requires senatorial consent to treaties, the initiative in treaty making is the president's. Only the president or his representatives are entitled by law to negotiate with other nations. The president decides the kinds of treaties he wants to negotiate.

Treaties have the force of law, even overriding previously passed legislation.

Once approved by the Senate and ratified by the president, treaties have the force of law. If a treaty conflicts with a state law, the latter is null and void; if the conflict is with a federal law, whichever was enacted or ratified last prevails.

The Senate's deference to presidential initiative in foreign affairs is suggested by the Senate's having rejected only about 1 percent of all treaties proposed. Another 15 percent have been conditioned or passed with specific reservations, and the rest have been consented to without alteration. The most notable exception to this generalization was the Senate's refusal in 1920 to follow Woodrow Wilson's lead by its rejection of the Treaty of Versailles and U.S. participation in the League of Nations. With this in mind, Franklin D. Roosevelt was careful to include key members of the Senate Foreign Relations Committee in crucial negotiations during World War II. The inclusion of senators in those negotiations was not dictated by constitutional or legal necessity but by political wisdom. Although Presidents Nixon, Ford, and Carter did not directly involve senators in the negotiations concerning the Panama Canal, all three kept key senators well informed and sought their advice to ensure future Senate approval. When Reagan sent negotiators to Geneva in March 1985 to resume arms control talks with the Soviet Union, an official delegation from both houses of Congress accompanied them. Again, the president is not required to involve Congress in this manner, but political expediency indicates that its inclusion early in the process makes Congress more receptive to the outcomes of negotiations.

Presidents keep the Senate informed of important treaty negotiations to build support for approval.

Congressional-executive international agreements. In addition to formal treaties, the United States has entered into numerous compacts with foreign governments that have never been presented to the Senate for ratification. Known popularly as *executive agreements,* these compacts are referred to by the State Department as *international agreements other than treaties* and are really of two distinct types. The first type, which is known as a *congressional-executive international agreement,* concerns matters over which Congress has been granted specific powers by the Constitution. An example of such powers, which will be discussed in chapter 2, is Congress's constitutional responsibility "to regulate Commerce with foreign Nations" (Article I, Section 8). As a result of this constitutional stipulation, any matter dealing with the regulation of foreign trade falls under the power of Congress, not the president. However, the power to *negotiate* with foreign nations lies with the president alone. Therefore, in matters of trade with foreign governments, both the president and Congress have constitutional powers, and

Congressional–executive international agreements require the approval of Congress as well as the president.

agreements dealing with such matters constitute congressional-executive international agreements.

A specific grant of power to Congress by the Constitution is the basis of congressional involvement in these agreements.

Such agreements must be ratified by a simple majority vote of *both* houses of Congress, even though this ratification may sometimes precede the actual negotiation. In 1934, for example, Congress gave advance ratification when it passed the Reciprocal Trade Agreements Act, which *authorized* the president to conclude certain types of trade agreements with foreign nations. Under this act, presidents have negotiated many such agreements, which have the same force of law as treaties. It is also possible, of course, to invert the procedure, so that the president negotiates first and then presents the agreement to Congress for its ratification. Such was the case with the congressional-executive international agreements by which Texas (in 1845) and Hawaii (in 1889) were annexed to the Union. The case of the annexation of Texas is interesting because it illustrates that a president may use the congressional-executive international agreement as a means of avoiding the two-thirds vote of the Senate that would be necessary to ratify a treaty. During the presidency of John Tyler, the United States negotiated a treaty with Texas for its annexation as a state, but the Senate, on January 8, 1844, refused to ratify the treaty by the necessary two-thirds vote. Yet, barely one year later, when President James Polk presented the annexation of Texas to both houses as a congressional-executive international agreement (requiring only a simple majority vote in each house), it was approved in the Senate by a vote of twenty-seven to twenty-five. By presenting the proposal in this way, Polk accomplished what Tyler had been unable to do. The decision to present a proposed agreement as a treaty (thereby requiring two-thirds consent of the Senate) or as a congressional-executive international agreement (necessitating only majority concurrence in each house) is, with one exception, merely a matter of political receptivity and is determined by the number of votes the president expects to have in the Senate.

Congressional-executive international agreements are "easier" to move through Congress because they do not require a two-thirds majority in the Senate.

Treaties may cover matters that are reserved to the states by the Constitution; international agreements other than treaties may not.

The one exception to this general rule is that certain matters can be dealt with *only* by treaty. The Tenth Amendment stipulates that powers that have not been granted by the Constitution to the federal government are "reserved to the States respectively or to the people." Under this amendment, certain matters (although none is specifically mentioned) are not within the jurisdiction of the federal government. If a proposed compact with a foreign government includes such matters, the act of ratifying the compact as a congressional-executive international agreement would be unconstitutional because neither the president nor Congress has been granted constitutional authority in those matters. The same proposed compact could be ratified, however, as a treaty, because the treaty power has been specifically granted, without limitations of any kind, by Article II, Section 2 of the Constitution. For example, the very first treaty negotiated by the United States after ratification of the Constitution (the Jay Treaty of 1794 with Great Britain) contained provisions that dealt with the ownership of private property by

British subjects in the United States, even though the Constitution does not give either Congress or the president the power to deal with matters of private property. This agreement with Great Britain was presented to the Senate and was ratified as a treaty with the necessary two-thirds vote. It could not have been presented to both houses for a simple majority vote because although treaties may deal with matters that are reserved to the states, congressional-executive international agreements may not (table 1-2). Thus, any matter that might be handled as a congressional-executive international agreement could also be handled as a treaty, but the opposite is not true.

"Pure" executive agreements. We noted that there are two types of international agreements other than treaties, and the second of these is known as the *"pure" executive* (or presidential) *agreement.* Whereas the congressional-executive international agreement relies on powers granted to both Congress and the president, the pure executive agreement stems from constitutional powers that have been granted solely to the president. We have seen, for example, that the president is the commander in chief of the armed forces. In his role as commander in chief he may, therefore, negotiate with foreign governments on military matters without submitting the results of these negotiations to Congress for ratification. It was a pure executive agreement that ended both world wars, even though Congress had declared those wars. The president, in these instances, was acting as commander in chief, and Congress was powerless to intervene.

Executive agreements rely for their authority on powers granted exclusively to the president.

Table 1-2
Differences between Treaties and International Agreements Other Than Treaties

Treaties	International Agreements Other Than Treaties	
	Congressional-Executive International Agreements	"Pure" or True Executive Agreements
Specified in the Constitution (Art. II, Sec. 2)	Not specified in the Constitution but based on congressional and presidential powers	Not specified in the Constitution but based on presidential powers
Two-thirds Senate approval required	Simple majority vote of each house required	No congressional action required
Binding on succeeding presidents	Binding on succeeding presidents	Not binding on succeeding presidents
May include matters reserved to the states	May not include matters reserved to the states	May not include matters reserved to the states
May include congressional, presidential, and judicial prerogatives	May include congressional and presidential prerogatives	May include only presidential prerogatives
Used extensively before 1900	Used extensively since 1900	Used extensively since 1900