BRIEF SECOND EDITION

AMERICAN GOVERNMENT

LOWI
GINSBERG

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FREEDOM AND POWER

BRIEF SECOND EDITION

THEODORE J. LOWI
CORNELL UNIVERSITY

AND

BENJAMIN GINSBERG
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PREFACE TO THE BRIEF EDITION

In the two years since the publication of the first edition of *American Government: Freedom and Power* the world has changed in a number of surprising ways. The collapse of the Berlin Wall was followed by the collapse of the Soviet satellite empire, and then by the Soviet Union itself. The Cold War, once a threat to world civilization, seemed to have ended of itself. The war against Iraq, though far from being decisive, nevertheless opened up possibilities for a non-violent Middle East unimaginable two years ago. Even the hated apartheid system in South Africa was confronting a very probable transformation. The new world is filled with new nations, built on nationalities reborn. Conflicts among them are very probable, but no more probable than peaceful relationships, as for example, the giant steps toward a Western European union. World war seems more remote now than at any time this century.

Against this backdrop of political change throughout the world, American domestic politics seems almost to be frozen in time. When we wrote the first edition, the United States was plagued by divided government, huge budget deficits, and lack of popular political participation. Today, as we shall see in the second edition, government is more divided than ever, budget deficits are larger than ever (despite the 1990 budget crisis and deficit-reduction plan), and Americans participate less than ever before.

But, in a changing world it is more important than ever to understand the politics of the United States. More than at any time since the Second World War, the world is looking to America for leadership and for an example of popular government in action. Throughout the world, America—despite its problems and faults—symbolizes the combination of freedom and power to which so many now aspire. This makes the task of our book all the more important.

This *Brief Edition of American Government: Freedom and Power* is designed specifically for use in courses whose length or format require a more concise text. We preserved as much as possible of the narrative style and historic and comparative analysis of the larger text. Though this is a *Brief Edition,* we have sought to provide a full and detailed discussion of every topic that, in our view, is central to understanding American government and politics. We hope that we have written a book that is physically brief but is not intellectually sketchy.

The collaboration on this book began nearly ten years before its publication, and the book is in every way a product of collaboration in teaching, research, and writing. Each author has taught other courses—for thirty-three and nineteen years respectively—and has written other books; but we agree that no course has been more challenging than the introductory course, and no book has been more difficult to write. Someone once asked if it is difficult for scholars to "write down" to introductory students. No. It is difficult to "write up" to them. Introductory students, of whatever age or reading level, need more, require more, and expect more of a book.

A good teaching book, like a good novel or play, is written on two levels. One is the level of the narrative, the story line, the characters in action. The second is the level of character development, of the argument of the book or play. We would not be the first to assert that there is much of the theatrical about politics today, but our book may be unusual to the extent that we took that assertion as a guide. We have packed it full of narrative—with characters and with the facts about the complex situations in which they find themselves. We have at the same time been determined not to lose sight of the second level, yet we have tried to avoid making the second level so prominent as to define us as preachers rather than teachers.

The book is only one product of our collaboration. The other important product is about 4,000 Cornell students who took the course out of which this book grew. There is no way to convey adequately our appreciation to those students. Their raw intelligence was not satisfied until the second level could provide a logic linking the disparate parts of what we were asserting was a single system of government. And these linkages had to be made in ordinary language. We hope we brought this to the book.

We hope also that we brought over from our teaching experience a full measure of sympathy for all who teach the introductory course, most particularly those who are obliged to teach the course from departmental necessity rather than voluntarily as a desired part of their career. We hope our book will help them appreciate the course as we do—as an opportunity to make sense of a whole political system. Much can be learned about the system from a reexamination of the innumerable familiar facts, under the still more challenging condition that the facts be somehow interesting, significant, and, above all, linked.

This points to what must be the most troublesome, sometimes the most embar-

rassing, problem for this course, for this book, and for political science in general: All Americans are to a great extent familiar with the politics and government of their own country. No fact is intrinsically difficult to grasp, and in such an open society, facts abound. In America, many facts are commonplace that are suppressed elsewhere. The ubiquity of political commonplaces is indeed a problem, but it can be turned into a virtue. These very commonplaces give us a vocabulary that is widely shared, and such a vocabulary enables us to communicate effectively at the first level of the book, avoiding abstract concepts and professional language (jargon). Reaching beyond the commonplaces to the second level also identifies what is to us the single most important task of the teacher of political science—to confront the million facts and to choose from among them the small number of really significant ones.

We have tried to provide a framework to help the teacher make choices among facts and to help the students make some of the choices for themselves. This is good political science, and it is good citizenship, which means more than mere obedience and voting; it means participation through constructive criticism, being able to pierce through the information explosion to the core of enduring political reality.

Our framework is freedom and power. To most Americans that means freedom *versus* governmental power, because Americans have been raised to believe that every expansion of the government's power involves a contraction of personal freedom. Up to a point we agree with this traditional view. The institutions of American government are in fact built on a contradiction: popular freedom and governmental power *are* contradictory, and it is the purpose of our Constitution to build a means of coping with that contradiction. But as Supreme Court justices sometimes say to their colleagues, "We concur, dissenting in part." For in truth, freedom and power are related to each other as husband and wife—each with some conflicting requirements, but neither able to produce, as a family, without the other.

Just as freedom and power are in conflict, so are they complementary. *There can be little freedom, if any, without governmental power.* Freedom of any one individual depends fundamentally on the restraints of everyone else in their vicinity. Most of these restraints are self-imposed. We call that *civility,* respect for others borne of our awareness that it is a condition of their respect for us. Other restraints vital to personal freedom are imposed spontaneously by society. Europeans call those restraints *civil society,* sociologists call them *institutions.* Institutions exist as society's means of maintaining order and predictability through routines, customs, shared values. But even in the most stable society, the restraints of civility and of civil society are incomplete and insufficient; there remains a sphere of deliberate restraint that calls for the exercise of public control (public power). Where society falls down, or where new events and new technologies produce new stresses, or where even the most civil of human beings find their basic needs in conflict with others, there will be an exercise of public control, or public power. Private property, that great bastion of personal freedom in the Western world, would disappear without elaborate government controls.

If freedom were only a matter of the absence of control, there would be no need for a book like ours. In fact, there would be little need for political science at all. But politics, however far away in the national or

the state capital, is a matter of life and death. It can be as fascinating as any good novel or adventure film if the key political question is one's own survival or the survival of one's society. We have tried to write each chapter of this book in such a way that the reader is tempted to ask what that government institution, that agency, this committee or that election, this group or that amendment has to do with *me* and *us*, and how has it come to be that way? That's what freedom and power are all about—my freedom and your restraint, my restraint and your freedom.

Having chosen a framework for the book there was also a need for a method. The method must be loyal to the framework; it must facilitate the effort to choose which facts are essential, and it must assist in evaluating those facts in ways that not only enlighten students but enable them to engage in analysis and evaluation for themselves. Although we are not bound exclusively to a single method in any scientific or philosophic sense, the method most consistently employed is one of history, or history-as-development: First, we present the state of affairs, describing the legislature, the party, the agency, or policy, with as many of the facts as are necessary to tell the story and to enable us to reach the broader question of freedom versus governmental power. Next, we ask how we have gotten to where we are. By what series of steps, and when by choice, and when by accident? To what extent was the history of Congress or of the parties or the presidency a fulfillment of constitutional principle, and when were the developments a series of dogged responses to economic necessity? History is our method because it helps choose which facts are significant. History also helps those who would like to try to explain why we are where we are. But more important even than explanation, history helps us make judgments. In other words, we look less to causes and more to consequences. Political science cannot be satisfied with objective description, analysis, and explanation. Political science would be a failure if it did not have a vision about the ideal as well as the real. What is a good and proper balance between freedom and governmental power? What can a constitution do about it? What can enlightened people do about it?

Evaluation makes political science worth doing but also more difficult to do. Academics make a distinction between the hard sciences and the soft sciences, implying that hard science is the only real science: laboratory, people in white coats, precision instruments making measurements to several decimal points, testing hypotheses with "hard data." But as medical scientist Jared Diamond observes, that is a recent and narrow view, considering that science in Latin means knowledge and careful observation. Diamond suggests, and we agree, that a better distinction is between hard (i.e., difficult) science and easy science, with political science fitting into the hard category, precisely because many of the most significant phenomena in the world cannot be put in a test tube and measured to several decimal points. We must nevertheless be scientific about them. And more: unlike physical scientists, social scientists have an obligation to judge whether the reality could be better. In trying to meet that obligation, we hope to demonstrate how interesting and challenging political science can be.

The Design of the Book

The objective we have taken upon ourselves in writing this book is thus to advance our understanding of freedom and

power by exploring in the fullest possible detail the way Americans have tried to balance the two through careful crafting of the rules, through constructing balanced institutions, and by maintaining moderate forms of organized politics. The book is divided into four parts, reflecting the historic process by which freedom and governmental power are (or are not) kept in balance. Part I, "Foundations," is comprised of the chapters concerned with the writing of the rules of the contract. The founding of 1787–1789 put it all together, but that was actually a second effort after a first failure. The original contract, the Articles of Confederation, did not achieve an acceptable balance—too much freedom, and not enough power. The second founding, the Constitution ratified in 1789, was itself an imperfect effort to establish the rules, and within two years new terms were added—the first ten amendments, called the Bill of Rights. And for the next century and a half following their ratification in 1791, the courts played umpire and translator in the struggle to interpret those terms. Chapter 1 introduces our theme. Chapter 2 concentrates on the founding itself. Chapters 3 and 4 chronicle the long struggle to establish what was meant by the three great principles of limited government, *federalism, separation of powers,* and *individual liberties and rights.*

Part II, "Institutions," includes the chapters sometimes referred to as the "nuts and bolts." But none of these particles of government mean anything except in the larger context of the goals governments must meet and the limits that have been imposed upon them. Chapter 5 is an introduction to the fundamental problem of *representative government* as this has been institutionalized in Congress. Congress, with all its problems, is the most creative legislative body in the world. But how well does Congress provide a meeting ground between consent and governing? How are society's demands taken into account in debates on the floor of Congress and deliberations by its committees? What interests turn out to be most effectively "represented" in Congress? What is the modern Congress's constituency?

Chapter 6 explores the same questions for the presidency and the government bureaucracy. Although Article II of the Constitution provides that the president should see that the laws made by Congress are "faithfully executed," the presidency was always part of our theory of representative government, and the modern presidency has increasingly become a law *maker* rather than merely a law implementor. What, then, do a strong presidency and executive branch do to the conduct and the consequences of representative government?

Chapter 7 on the judiciary should not be lost in the shuffle. Referred to by Hamilton as "the least dangerous branch," the judiciary truly has become a co-equal branch, to such an extent that if Hamilton were alive today he would probably eat his words.

Part III we entitle "Politics and Policy." Politics encompasses all the efforts by any and all individuals and groups inside as well as outside the government to determine what government will do and on whose behalf it will be done. Our chapters take the order of our conception of how politics developed since the Age of Revolution and how politics works today: Chapter 8, "Public Opinion and the Media"; Chapter 9, "Elections"; Chapter 10, "Political Parties"; and Chapter 11, "Groups and Interests." But we recognize that, although there may be a pattern to American politics, it is not readily predictable. One need only

contemplate the year-long nomination of presidential candidates to recognize how much confusion, downright disorder, there is in what we political scientists blithely call "political process."

The last chapters are primarily about public policies, which are the most deliberate and goal-oriented aspects of the still-larger phenomenon of "government in action." Chapter 12 is virtually a handbook of public policy. Since most Americans know far less about policies than they do about institutions and politics, we felt it was necessary to provide a usable, common vocabulary of public policy. Since public policies are most often defined by the goals that the government establishes in broad rhetorical terms and since there can be an uncountable number of goals, we have tried to get beyond and behind goals by looking at the "techniques of control" that any public policy goal must embody if the goal is even partially to be fulfilled. Chapter 13, "Foreign Policy," turns to the international realm and America's place in it. Our concern here is to understand American foreign policies and why we have adopted the policies that we have. Given the traditional American fear of "the state" and the genuine danger of international involvements to domestic democracy, a chapter on foreign policies is essential to a book on American government and also reveals a great deal about America as a culture.

Chapter 14 is a summation. We are not debaters, and we are not lawyers writing a brief for the defense of freedom or power. Our brief is for the balance. It is not, as some popular authors would put it, "that delicate balance." It is for us a very "*in*delicate balance." Nearly 160 years ago, Alexis de Tocqueville wrote that Americans would eventually permit their government to become so powerful that elections and representative processes would come to be ironic interludes providing citizens with little more than the opportunity to wave the chains by which the government had bound them. Can we have both popular freedom and governmental power in a nation of 250 million people making up a nation-state with historic obligations and historic vulnerabilities to 200 other nation-states? To what extent can we continue to depend upon and benefit from governmental power while retaining our liberties? These are the questions every generation must ask for itself—if it is fortunate enough to be able to do so.

Acknowledgments

Our students at Cornell have already been identified as an essential factor in the writing of this book. They have been our most immediate intellectual community, a hospitable one indeed. Another part of our community, perhaps a large suburb, is the discipline of political science itself. Our debt to the scholarship of our colleagues is scientifically measurable, probably to several decimal points, in the footnotes of each chapter. Despite many complaints about the field being too scientific and not scientific enough, political science is alive and well in the United States. It is an aspect of democracy itself, and it has grown and changed in response to the developments of government and politics that we have chronicled in our book. If we did a "time line" on the history of political science as we have done for each chapter of the book (see pp. A3-A30 in the Appendix), it would show a close association with developments in "the American state." Sometimes the discipline has been out of phase and critical; at other times, it has been in phase

and perhaps apologetic. But political science has never been at a loss for relevant literature, and without it, our job would have been impossible.

There have of course been individuals on whom we have relied in particular. Of all writers, living and dead, we find ourselves most in debt to the writing of two—James Madison and Alexis de Tocqueville. Many other great authors have shaped us as they have shaped all political scientists. But Madison and Tocqueville have stood for us not only as the bridge to all timeless political problems; they represent the ideal of political science itself—that political science must be steadfastly scientific in the search for what is, yet must keep alive a strong sense of what ought to be, recognizing that democracy is neither natural nor invariably good, and must be fiercely dedicated to constant critical analysis of all political institutions in order to contribute to the maintenance of a favorable balance between individual freedom and public power.

We are pleased to acknowledge our debt to the many colleagues who had a direct and active role in criticism and preparation of the manuscript. The first edition was read and reviewed by: Gary Bryner, Brigham Young University; James F. Herndon, Virginia Polytechnic Institute and State University; James W. Riddlesperger, Jr., Texas Christian University; John Schwarz, University of Arizona; Toni-Michelle Travis, George Mason University; and Lois Vietri, University of Maryland. Their comments were enormously helpful.

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We also want to reiterate our thanks to the four colleagues who allowed us the privilege of testing a trial edition of our book by using it as the major text in their introductory American Government courses. Their reactions, and those of their students, played an important role in our first edition. We are very grateful to Gary Bryner, Brigham Young University; Allan J. Cigler, University of Kansas; Burnet V. Davis, Albion College; and Erwin A. Jaffe, California State University-Stanislaus.

We owe a special debt to Robert J. Spitzer, State University of New York–College at Cortland, for preparing most of the essays profiling important individuals that appear throughout both editions of the book. By linking concepts and events to real people, these essays help to make this a more lively and interesting book and thus one that students will be more likely to read and remember.

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hard work of several research assistants, whose contribution can never be adequately compensated: Alice Hearst had a hand in virtually every part of the book and frequently saved us from disaster despite the competing demands of graduate school and motherhood. Gil Merom prepared the test bank. Brenda Holzinger helped to develop the study questions. Steve McGovern prepared the film guide and the annotated bibliographies. Others who gave us significant help with the book are Rebecca Fisher, Michael Harvey, David Lytell, Dennis Merryfield, Rachel Reiss, Nandini Sathe, Rob Speel, Jennifer Waterston, and Daniel Wirls (now a member of the Politics faculty at the University of California, Santa Cruz).

Jacqueline Discenza not only typed several drafts of the manuscript, but also helped to hold the project together. We thank her for her hard work and dedication.

Theodore Lowi would like to express his gratitude to the French-American Foundation and the Gaunett Foundation whose timely invitations helped him prepare for his part of this enterprise.

Perhaps above all, we wish to thank all those who kept the production and all the loose ends of the book coherent and in focus. Roby Harrington has been an extremely talented editor. Through two editions, Roby has kept careful track of all the details while maintaining a clear vision of the text as a whole. Jean Yelovich devoted the better part of a year to the second and brief editions. She prepared many of the photo essays and wonderful "In Brief" boxes that present concise outlines of important political processes. Margie Brassil, as our project editor, kept us from making too many mistakes. Libby Miles prepared a number of excellent photo essays and outstanding "In Brief" boxes. Ruth Dworkin was our efficient production manager. We also want to reiterate our thanks to Amy Cherry and Sandy Lifland for their marvelous work on the first edition. Finally, our thanks to Donald Lamm, Norton's president, for his continuing commitment to the project.

We are, however, more than happy to absolve all of these contributors from any flaws, errors, and misjudgments that will inevitably be discovered. We wish the book could be free of all production errors, grammatical errors, misspellings, misquotes, missed citations, etc. From that standpoint, a book ought to try to be perfect. But substantively we have not tried to write a flawless book; we have not tried to write a book to please everyone. We have again tried to write an effective book, a book that cannot be taken lightly. Our goal was not to make every reader a political scientist. Our goal was to restore politics as a subject matter of vigorous and enjoyable discourse, recapturing it from the bondage of the thirty-second news bite and the thirty-page technical briefing. Every person can be knowledgeable because everything about politics is accessible. One does not have to be an anchor person to profit from political events. One does not have to be a philosopher to argue about the requisites of democracy, a lawyer to dispute constitutional interpretations, an economist to debate a public policy. We would be very proud if our book contributes in a small way to the restoration of the ancient art of political controversy.

Theodore J. Lowi
Benjamin Ginsberg
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PART 1

FOUNDATIONS