

Readings for American Government

Theodore J. Lowi,
Benjamin Ginsberg,
David T. Canon,
Anne Khademian, and
Kenneth R. Mayer



Brief 4th

Readings for

AMERICAN
GOVERNMENT

Freedom and Power

BRIEF 4TH EDITION

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Preface

The readings contained in this volume are intended to enrich students' comprehension of the structure and operation of American government by providing a number of materials—articles, essays, and court cases—that illustrate the key concepts presented in the parallel chapter of the textbook. A headnote introducing each reading explains its significance and its precise relationship to the major concept presented in the core text.

The readings include classic pieces such as selections from major Federalist and Antifederalist writings and Tocqueville's *Democracy in America*, contemporary essays from important newspapers and magazines, excerpts from major Supreme Court cases and federal statutes. By reprinting classic works in American government, we hope to acquaint students with some of the most profound thinking and writing on politics—thereby reinforcing the theoretical issues raised in the text. The contemporary essays are designed to provide students with lively and current illustrations of the phenomena and institutions discussed in the text; the court cases are selected for their importance in establishing the legal and institutional framework of American government. In every instance, we strongly urge students to read the headnote introducing each reading to gain an understanding of the significance of each piece and its relationship to the text, and to use the questions following each set of readings as an aid to studying the materials in both this reader and the text.

Also included in this edition are “Debating the Issues: Opposing Views” essays, which appear in each chapter. The essays center on the topics introduced in the “Debating the Issues” boxes in the corresponding chapter in the text. Offering opposing views, the essays will help students think critically about important issues in American politics.

In preparing the second edition of this reader, we benefitted from the comments of a number of reviewers: Lydia Andrade, San Jose State University; Peri Arnold, University of Notre Dame; Cal Jillson, University of Colorado; Wayne MacIntosh, University of Maryland; Evan McKenzie, Albright College; and Mark Silverstein, Boston University. Their insights helped guide us in selecting updated materials and making this reader more responsive to the needs of students using it.

We encourage students to review and ponder the readings and cases in conjunction with the text and to utilize them as a learning tool. We are confident that these materials will assist students in learning more about issues of freedom and power in American government.

Theodore J. Lowi
Benjamin Ginsberg
David T. Canon
Anne Khademian
Kenneth R. Mayer

July 1995

READINGS

Freedom and Power

DEBATING THE ISSUES: FREEDOM AND POWER—THE ENDURING DEBATE

See text pp. 10–11

As the text notes, all governments must have, at the very least, the power to enforce public order and to collect public revenues. In the debates preceding the ratification of the United States Constitution, which creates the framework for the operation of the national government, the scope of these powers was directly at issue as the Federalists and Antifederalists battled over whether to create a strong central government or retain the confederated structure under which the country had operated since the Revolution. The arguments were advanced against the backdrop of state sovereignty: under the Articles of Confederation, states maintained their own militias and controlled the means by which revenues were generated for public purposes. Alexander Hamilton, a leading Federalist, argued that this structure left the federal government “in a kind of tutelage to the State governments,” sapped of the energy and creativity required to sustain a union.

The following excerpts present the Federalist and Antifederalist positions on the potential gains and problems that would result from the emergence of a strong national government. The Federalist paper authored by Hamilton argues in favor of creating a strong central government with power to raise an army.

The author of the second selection is not known for certain: The Antifederalist writer styled himself “Brutus” and was responding to Hamilton’s arguments in The Federalist No. 23. The Antifederalist writer warns against the aggregation of power in the national government that is certain to result from the delegation of such authority from the states to the national government.

The principle argument is over which level of government, state or national, should exercise military and fiscal power. Antifederalists warned that the remoteness of the national government would lead to abuses of power, and the only way to prevent this was to keep power with the states and close to the people who had consented to be governed. The enduring debate over the shape of our federal system has most recently emerged in the Republican party’s plan to “devolve” power to the states in a variety of programs including health care, welfare, and crime control.

Alexander Hamilton *The Federalist No. 23**

The necessity of a Constitution, at least equally energetic with the one proposed, to the preservation of the Union is the point at the examination of which we are now arrived.

This inquiry will naturally divide itself into three branches—the objects to be provided for by a federal government, the quantity of power necessary to the accomplishment of those objects, the persons upon whom that power ought to operate. Its distribution and organization will more properly claim our attention under the succeeding head.

The principal purposes to be answered by union are these—the common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these—to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. This power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils which are appointed to preside over the common defense. . . .

Whether there ought to be a federal government intrusted with the care of the common defense is a question in the first instance open to discussion; but the moment it is decided in the affirmative, it will follow that that government ought to be clothed with all the powers requisite to complete execution of its trust. And unless it can be shown that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted as a necessary consequence that there can be no limitation of that authority which is to provide for the defense and protection of the community in any matter essential to its efficacy—that is, in any matter essential to the *formation, direction, or support* of the NATIONAL FORCES.

Defective as the present Confederation has been proved to be, this principle appears to have been fully recognized by the framers of it; though they have not made proper or adequate provision for its exercise. Congress have an unlimited discretion to make requisitions of men and money; to govern the army and navy; to direct their operations. As their requisitions are made constitutionally binding upon the States, who are in fact under the most

*Alexander Hamilton, *The Federalist No. 23*, ed. Clinton Rossiter (New York: NAL, 1961).

solemn obligations to furnish the supplies required of them, the intention evidently was that the United States should command whatever resources were by them judged requisite to the “common defense and general welfare.” It was presumed that a sense of their true interests, and a regard to the dictates of good faith, would be found sufficient pledges for the punctual performance of the duty of the members to the federal head.

The experiment has, however, demonstrated that this expectation was ill-founded and illusory; and the observations made under the last head will, I imagine, have sufficed to convince the impartial and discerning that there is an absolute necessity for an entire change in the first principles of the system; that if we are in earnest about giving the Union energy and duration we must abandon the vain project of legislating upon the States in their collective capacities; we must extend the laws of the federal government to the individual citizens of America; we must discard the fallacious scheme of quotas and requisitions as equally impracticable and unjust. The result from all this is that the Union ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy in the customary and ordinary modes practiced in other governments.

If the circumstances of our country are such as to demand a compound instead of a simple, a confederate instead of a sole, government, the essential point which will remain to be adjusted will be to discriminate the OBJECTS, as far as it can be done, which shall appertain to the different provinces or departments of power; allowing to each the most ample authority for fulfilling the objects committed to its charge. Shall the Union be constituted the guardian of the common safety? Are fleets and armies and revenues necessary to this purpose? The government of the Union must be empowered to pass all laws, and to make all regulations which have relation to them. The same must be the case in respect to commerce, and to every other matter to which its jurisdiction is permitted to extend. Is the administration of justice between the citizens of the same State the proper department of the local governments? These must possess all the authorities which are connected with this object, and with every other that may be allotted to their particular cognizance and direction. Not to confer in each case a degree of power commensurate to the end would be to violate the most obvious rules of prudence and propriety, and improvidently to trust the great interests of the nation to hands which are disabled from managing them with vigor and success.

Who so likely to make suitable provisions for the public defense as that body to which the guardianship of the public safety is confided; which, as the center of information, will best understand the extent and urgency of the dangers that threaten; as the representative of the WHOLE, will feel itself most deeply interested in the preservation of every part; which, from the responsibility implied in the duty assigned to it, will be most sensibly impressed with the necessity of proper exertions; and which, by the extension of its authority throughout the States, can alone establish uniformity and concert in the plans and measures by which the common safety is to be secured? Is there

not a manifest inconsistency in devolving upon the federal government the care of the general defense and leaving in the State governments the *effective* powers by which it is to be provided for? Is not a want of co-operation the infallible consequence of such a system? And will not weakness, disorder, an undue distribution of the burdens and calamities of war, an unnecessary and intolerable increase of expense, be its natural and inevitable concomitants? Have we not had unequivocal experience of its effects in the course of the revolution which we have just achieved?

Every view we may take of the subject, as candid inquirers after truth, will serve to convince us that it is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are intrusted to its management. It will indeed deserve the most vigilant and careful attention of the people to see that it be modeled in such a manner as to admit of its being safely vested with the requisite powers. If any plan which has been, or may be, offered to our consideration should not, upon a dispassionate inspection, be found to answer this description, it ought to be rejected. A government, the constitution of which renders it unfit to be trusted with all the powers which a free people *ought to delegate to any government*, would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident powers may safely accompany them. This is the true result of all just reasoning upon the subject. And the adversaries of the plan promulgated by the convention would have given a better impression of their candor if they had confined themselves to showing that the internal structure of the proposed government was such as to render it unworthy of the confidence of the people. They ought not to have wandered into inflammatory declamations and unmeaning cavils about the extent of the powers. The POWERS are not too extensive for the OBJECTS of federal administration, or, in other words, for the management of our NATIONAL INTERESTS; nor can any satisfactory argument be framed to show that they are chargeable with such an excess. If it be true, as has been insinuated by some of the writers on the other side, that the difficulty arises from the nature of the thing, and that the extent of the country will not permit us to form a government in which such ample powers can safely be reposed, it would prove that we ought to contract our views, and resort to the expedient of separate confederacies, which will move within more practicable spheres. For the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust to it the authorities which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative. . . . I trust, however, that the impracticability of one general system cannot be shown. I am greatly mistaken if anything of weight has yet been advanced of this tendency; and I flatter myself that the observations which have been made in the course of these papers have served to place the reverse of that position in as clear a light as any matter still in the womb of time and experience is susceptible of. This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the

strongest argument in favor of an energetic government; for any other can certainly never preserve the Union of so large an empire. If we embrace the tenets of those who oppose the adoption of the proposed Constitution as the standard of our political creed we cannot fail to verify the gloomy doctrines which predict the impracticability of a national system pervading the entire limits of the present Confederacy.

PUBLIUS

“Brutus” *The Antifederalist*

In a confederated government, where the powers are divided between the general and the state government, it is essential . . . that the revenues of the country, without which no government can exist, should be divided between them, and so apportioned to each, as to answer their respective exigencies, as far as human wisdom can effect such a division and apportionment. . . .

No such allotment is made in this constitution, but every source of revenue is under the control of Congress; it therefore follows, that if this system is intended to be a complex and not a simple, a confederate and not an entire consolidated government, it contains in it the sure seeds of its own dissolution. One of two things must happen. Either the new constitution will become a mere *nudum pactum*, and all the authority of the rulers under it be cried down, as has happened to the present confederacy. Or the authority of the individual states will be totally supplanted, and they will retain the mere form without any of the powers of government. To one or the other of these issues, I think, this new government, if it is adopted, will advance with great celerity.

It is said, I know, that such a separation of the sources of revenue, cannot be made without endangering the public safety—“unless (says a writer) it can be shown that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed, it must be admitted, as a necessary consequence, that there can be no limitation of that authority which is to provide for the defense and protection of the community, etc.”¹

The pretended demonstration of this writer will instantly vanish, when it is considered, that the *protection and defense* of the community is not intended to be entrusted *solely* into the hands of the general government, and by his own confession it ought not to be. It is true this system commits to the general government the protection and defense of the community against foreign force and invasion, against piracies and felonies on the high seas, and against insurrection among ourselves. They are also authorized to pro-

¹*Federalist*, No. 23.

vide for the administration of justice in certain matters of a general concern, and in some that I think are not so. But it ought to be left to the state governments to provide for the protection and defense of the citizen against the hand of private violence, and the wrongs done or attempted by individuals to each other. Protection and defense against the murderer, the robber, the thief, the cheat, and the unjust person, is to be derived from the respective state governments. The just way of reasoning therefore on this subject is this, the general government is to provide for the protection and defense of the community against foreign attacks, etc. They therefore ought to have authority sufficient to effect this, so far as is consistent with the providing for our internal protection and defense. The state governments are entrusted with the care of administering justice among its citizens, and the management of other internal concerns; they ought therefore to retain power adequate to that end. The preservation of internal peace and good order, and the due administration of law and justice, ought to be the first care of every government. The happiness of a people depends infinitely more on this than it does upon all that glory and respect which nations acquire by the most brilliant martial achievements. And I believe history will furnish but few examples of nations who have duly attended to these, who have been subdued by foreign invaders. If a proper respect and submission to the laws prevailed over all orders of men in our country; and if a spirit of public and private justice, economy, and industry influenced the people, we need not be under any apprehensions but what they would be ready to repel any invasion that might be made on the country. And more than this, I would not wish from them. A defensive war is the only one I think justifiable. I do not make these observations to prove, that a government ought not to be authorised to provide for the protection and defense of a country against external enemies, but to show that this is not the most important, much less the only object of their care.

The European governments are almost all of them framed, and administered with a view to arms, and war, as that in which their chief glory consists. They mistake the end of government. It was designed to save men's lives, not to destroy them. We ought to furnish the world with an example of a great people, who in their civil institutions hold chiefly in view, the attainment of virtue, and happiness among ourselves. . . . The most important end of government then, is the proper direction of its internal police, and economy; this is the province of the state governments, and it is evident, and is indeed admitted, that these ought to be under their control. Is it not then preposterous, and in the highest degree absurd, when the state governments are vested with powers so essential to the peace and good order of society, to take from them the means of their own preservation?

The idea that the powers of Congress in respect to revenue ought to be unlimited, because 'the circumstances which may affect the public safety are not reducible to certain determinate limits' is novel, as it relates to the government of the United States. The inconveniences which resulted from the feebleness of the present confederation was discerned, and felt soon after its adoption. It was soon discovered, that a power to require money, without