

JOEL SAMAHA

Criminal Justice

SECOND EDITION



AMERICAN GOVERNMENT

AMERICAN GOVERNMENT

INSTITUTIONS AND POLICIES

Fourth Edition

James Q. Wilson

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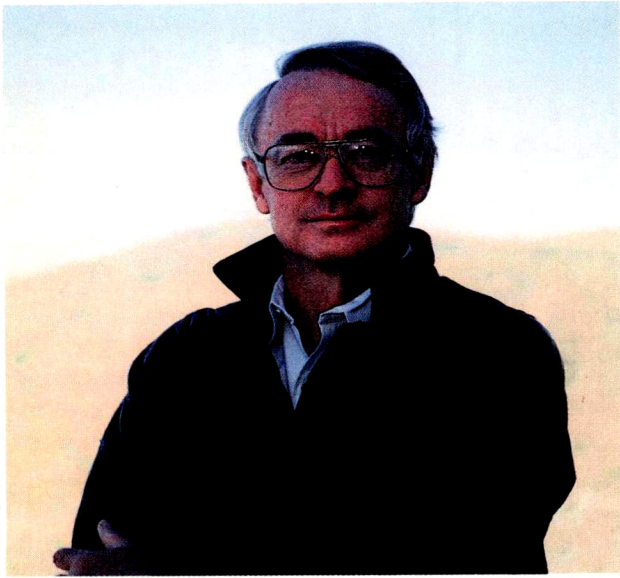
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*For Roberta, Matthew, Rebecca, Annie, and Bob.
And, of course, Annabelle.*



James Q. Wilson is the Collins Professor of Management and Political Science at the University of California, Los Angeles. He was previously the Shattuck Professor of Government at Harvard University. Raised in California, Wilson received a B.A. degree from the University of Redlands and a Ph.D. degree from the University of Chicago. He is the author or coauthor of ten books, including *Negro Politics*, *The Amateur Democrat*, *City Politics* (with Edward C. Banfield), *Varieties of Police Behavior*, *Political Organizations*, *Thinking about Crime*, *The Investigators*, *Watching Fishes: Life and Behavior on Coral Reefs* (with Roberta Wilson), and *Crime and Human Nature* (with Richard J. Herrnstein).

Wilson has served in a number of advisory posts in the federal government. He was chairman of the White House Task Force on Crime in 1967, chairman of the National Advisory Council on Drug Abuse Prevention in 1972–1973, and a member of the Attorney General's Task Force on Violent Crime in 1981. Since 1986 he has served on the President's Foreign Intelligence Advisory Board.

In 1977 the American Political Science Association conferred on him the Charles E. Merriam Award for advancing the art of government through the application of social science knowledge.

He is a Fellow of the American Academy of Arts and Sciences and a member of the American Philosophical Society. When not writing, teaching, or advising, he goes scuba diving. He says that it clears the brain.

Preface

I wrote this text in the conviction that students want to know not only who governs but also what difference it makes who governs. In teaching an introductory course in American government, I have found that student interest is most fully engaged when the instructor can show how our government institutions and political processes help explain why some policies, and not others, are adopted.

Explaining both who governs, and to what ends, cannot be done without treating the politics of policy-making in some detail. For this reason I have examined several policy areas in the light of a simple—but I think useful—conceptual scheme that helps students understand why some groups or individuals exert more power on certain issues than on others. Unless the instructor links institutions and policies in a systematic way, the student is likely to judge the worth or power of the institutions by resorting to such familiar but misleading catch phrases as the “imperial presidency,” a “do-nothing Congress,” or the “biased media.”

Perspectives

Merely attending to politics and policies is not enough, however. Many students, understandably, have very little historical perspective, know next to nothing about how other democratic governments behave, and believe that the Constitution is largely of antiquarian interest. To impress upon students what is distinctive about our government, I have tried to write each chapter with three perspectives in mind. First, contemporary American politics has been profoundly shaped by historical forces. Some important aspects of politics are of recent origin, but others—I think most—are the result of long-standing

arrangements and past experiences. Second, the Constitution is one of those arrangements that color almost every aspect of politics and the underlying political culture. I try to give special attention to the way in which the Founding created a distinctive regime. Third, that regime differs from the governing arrangements of most other democratic nations. If we want to know why things happen as they do here, it is often helpful to know how they might happen if we were in Britain, France, or Sweden. Because of these beliefs, I try to set the institutions and policies of American government into the context of historical change, constitutional procedures, and comparative perspectives.

The Fourth Edition

This is the most extensively revised edition of the text yet to appear. An entirely new chapter on state and local government has been added. The material on public opinion and elections, once presented in two chapters, has been expanded to three chapters (on opinion, political participation, and elections) so as to permit a more orderly, systematic treatment of a rapidly developing field of knowledge. I have rewritten these three chapters almost entirely.

The chapter on political culture has been rewritten to show the different ways in which people evaluate the economic and political systems. The material on the presidency has been expanded to include a discussion of presidential personality and character.

The chapters on economic policy, foreign policy, and military policy have been completely rewritten to clarify and update the treatment of these important subjects. The chapters on civil liberties and civil rights have been greatly revised

in order to abbreviate a bit the long historical sections and focus attention more clearly on contemporary issues.

Throughout I have tried to make the writing brisker, clearer, and more direct. It was always my conceit that the book was pretty well written to begin with, but when readers pointed out countless ways in which the writing could be improved, I listened and learned.

The fourth edition is current through the 1988 elections.

Instructor's Options for Using This Book

This text can be used in a variety of ways. It can be assigned to be read in its present sequence. Or one can assign a chapter on a particular institution (say, Congress) and then follow that immediately with a chapter about a policy with which that institution has been extensively involved (say, civil rights). In the same way, the chapter on the presidency could be followed by the chapter on foreign policy, and the chapter on the judiciary by the one on civil liberties. Alternatively, the chapters on civil liberties and civil rights could be assigned immediately after the chapter on the Constitution.

Most instructors will want to assign all the chapters in Part 1 (The American System), Part 2 (Opinions, Interests, and Organizations), and Part 3 (Institutions of Government). If they wish their students to be familiar with the politics of policy-making, they should assign at least Chapter 15 of Part 4 (The Politics of Public Policy). Additional policy chapters can be used as the instructor's preferences suggest. In any case, the main themes of Part 4 are summarized in Chapter 22.

Illustrative and Reference Material

I have added several features to the book that will, I hope, stimulate thinking about political issues. The first is a series of boxes headed "What would you do?" These pose hypothetical problems confronting a decision maker, such as a

candidate, a president, a senator, or a Supreme Court justice. Should we send in troops? Take money from a political-action committee? Vote for or against the constitutionality of a state law banning contraception? Each dilemma comes in the form of a brief memo, similar to ones that presidents and others actually receive. The issues on both sides are summarized, and the student is asked to come to a decision as if he or she were the decision maker. These boxes can be used for class discussions, as a springboard for class debates, or as the basis of student papers.

The "Politically Speaking" boxes constitute another new feature. Two dozen or so bits of political jargon—including *litmus test*, *logrolling*, *lame duck*, *muckraker*, *coattails*, *boycott*, *Third World*—are defined, and the history of these terms is briefly stated. Politics is about words and symbols, and I have found that when students know how some of these words came into political use, they remember not only the words, but the meaning, context, and issues.

The lists of political trivia and of the popular maxims of politics have been retained, as has been the box containing some Supreme Court cases that the student is asked to decide.

Since I believe that politics is fascinating and ought to be memorable, I hope that these materials not only will provide a refreshing pause in the text but also will help fix certain events in the reader's mind.

At the end of the book the Declaration of Independence, the Constitution, and *Federalist* papers 10 and 51 are included, along with a complete listing of presidents and Congresses showing the partisan composition of each.

Personal Views

The study of politics is not a value-free science, but admitting that point ought not to entitle an author to pontificate at will. The author of a textbook is under a special obligation to handle matters of evidence and inference in a systematic and evenhanded manner. Major controversies ought to be clearly described and the opposing positions fairly presented. I have tried to avoid making snap judgments, using loaded

language, and describing politics as a struggle between good and bad guys. I do not claim that I have succeeded or that I am “objective”—I doubt that any writer can ever be—but I have labored mightily to avoid sloganeering or indoctrination. I hope that colleagues will not hesitate to point out where I have failed.

Supplements

An outstanding supplementary program is offered in connection with the fourth edition, including the *Student Handbook*, the *Instructor's Guide*, a *Computerized Testing Program* by Engineering Software Associates, Inc., the *Test Item File*, and, new to this edition, full-color overhead transparencies.

The *Student Handbook* is designed to help the student master the text as well as prepare for examinations. Each *Handbook* chapter offers a “Chapter Focus,” illuminating the chapter's main points and listing learning objectives for the student; a “Study Outline” of the major topical areas covered; “Key Terms” to understand, including the significant names and concepts introduced; a “Did You Think That . . . ?” section, treating some of the possible misconceptions about material in the chapter; a “Data Check” section, clarifying the points made in the chapter's quantitative tables, graphs, and diagrams; a “Practicing for Exams” section, with sample true/false, multiple-choice, and essay questions; and “Applying What You've Learned,” detailing special projects to help develop mastery of key text concepts. An all-new *Handbook* feature is a selection of primary-source readings—“Classic Statements”—providing provocative excerpts from significant documents in American government.

The *Instructor's Guide* offers a wealth of valuable resources designed to help instructors plan their course and to prepare for and implement lectures and discussions. Featured as introductory materials are “Resources and References in American Government,” a comprehensive bibliography; a Film Guide; and, new to this edition, a Videotape Guide. A “What's New Here, and Why?” section for the six parts of the text

spells out the major changes in the fourth edition of *American Government*; this unique feature greatly streamlines the transition from the third to the fourth edition. Each *Instructor's Guide* chapter furnishes an “Overview and Objectives” outline; a “Lecture Outline with Keyed-in Resources”; a list of “New Terms” introduced; and a “Themes” section, focusing on the general themes or topics around which the *Guide's* resource materials are organized. Then follow the resources themselves: a descriptive “Summary” of the theme; “Discussion Questions”; “Data and Perspectives for Analysis,” offering exercises that center on investigation of data, events, and theoretical perspectives; an “Abstracts” section, synthesizing an article or book relevant to the theme; an “Additional Lecture Topics” section for many of the themes selected; and listings of “Suggested Student Reading.”

The greatly expanded *Computerized Testing Program* and the *Test Item File* now offer about 3500 true/false, multiple-choice, and essay questions. Quizzes and examinations may be constructed from either the *Computerized Testing Program* or the *Test Item File*. The *Computerized Program* provides access to all questions in the *Test Item File* and allows instructors to tailor tests for their own classes. Instructors may also use software to delete, add, or even change questions, as well as to print an answer key with page references for each question.

Finally, to help the instructor improve students' analytical skills, we have produced a package of full-color overhead transparencies. The text's key maps, graphs, and diagrams are included, and text-page references are provided to facilitate use.

Instructors may wish to take full advantage of these valuable teaching and learning resources in planning their courses.

The Help of Others—Now and in the Future

I have drawn on the help of scores of people in writing this book. I would particularly like to thank those who wrote me on their own initiative with suggestions and criticisms, including

Crime, Criminals, and Victims



CHAPTER 1
***Law and
Discretion:
Formal and
Informal
Criminal
Justice***

CHAPTER 2
***Criminal Law
and
Procedure:
Formal
Criminal
Justice***

CHAPTER 3
***Crime,
Criminals,
and Victims:
Informal
Criminal Law***

CHAPTER 1

Law and Discretion: Formal and Informal Criminal Justice

CHAPTER OUTLINE

- **CRIMINAL JUSTICE HISTORY**
 - Informal Government Power and Formal Restraints
 - Ideology and Social Science
 - Formal and Informal Balance
- **THE CRIMINAL JUSTICE SYSTEM**
- **FORMAL CRIMINAL JUSTICE**
- **INFORMAL CRIMINAL JUSTICE**
- **THE TENSION BETWEEN LAW AND DISCRETION**
- **THE FUNNEL EFFECT IN CRIMINAL JUSTICE**
- **SUMMARY**



MAIN POINTS

- Criminal justice consists of a complex balance between formal law and rules and informal discretion.
- Beliefs that society faces a crisis in crime, that the government needs more power to fight it, and that criminals ought to receive harsher punishment represent a deep historical trend.
- The history of criminal justice represents a pendulum-like swing between the fear of governmental abuse of power and demands to control it and public fear of crime and demands for more government power to eliminate it.
- The effort to shift criminal justice policy and practice from its foundation in ideology and to place it instead on theoretical and empirical grounds represents a prominent feature in twentieth century criminal justice.
- The criminal justice system consists of a loose confederation of independently funded, managed, and operated police, court, and correctional agencies.
- American criminal justice operates within the American constitutional system at federal, state, and local levels.
- Formal criminal justice operates according to written legal and bureaucratic rules.
- The formal aims of due process and crime control frequently conflict.
- Informal criminal justice consists of judgments determined by a range of extra-legal and extra-bureaucratic rules.
- Personnel shape rules to meet professional and personal needs.
- Criminal justice agencies mirror the larger society of which they form an integral part.
- Societal values, socioeconomic status, race, and gender influence decisions in criminal justice.
- Effective, fair, just, and efficient criminal justice administration requires balancing the law, bureaucratic rules, and discretion.
- Sorting according to both law and discretion contributes to the *funnel effect* in criminal justice—releasing increasing numbers of persons as the criminal process progresses.

One evening police officers see a man and woman running down a street. The police pursue them. The woman has a bag of money in her hand and a bulge in her jacket. They pat her down and find a gun. Then they pat down her companion; they find nothing. They take both to the station, book them, and arrest them for armed robbery. Back on patrol later

that night they see a group of rowdy college students celebrating a football victory. The group is in a quiet neighborhood. The two officers tell the youths to “keep quiet.” Still later, they see a drunk stumble and fall down; they take him to a nearby shelter.

A few days later, a prosecutor charges the two armed robbery suspects with robbery, according to the state’s criminal code. The woman goes to trial; the jury acquits her because the only eyewitness died of a heart attack the morning of the trial. After charging her companion, the prosecutor offers the male suspect a “deal.” In exchange for a plea of guilty, the prosecutor will reduce the charge to simple theft and ask the judge for a sentence to a newly instituted home confinement program instead of to prison. The man accepts the deal and pleads guilty, but the judge rejects the request for home confinement. She sentences the man to prison for two years. Because of good behavior and a court order declaring the overcrowded prison to be in violation of the Constitution, prison officials release the man after six months, judging that he will not seriously endanger the community.

These hypothetical but typical events depict a central theme in this book—the integral and essential balance between formal and informal criminal justice. The arrest of the suspects, and the subsequent trial of one represents **formal criminal justice**, the side operating according to laws and rules. Maintaining order by quieting the group of youths and providing the service of escorting the man to a shelter illustrate **informal criminal justice**, the side drawing on **discretion**, or the judgment of professionals and their decision-making abilities. Going to trial represents the high point of formal criminal justice according to the rules of law, while plea bargaining represents the far more common informal side in which compromise and judgment modify the rules and laws to reach a result acceptable to society, the government, and the

formal criminal justice the side of criminal justice operating according to laws and rules
informal criminal justice

decision-making according to judgments determined by social values and other influences

discretion freedom to make judgments; decisions are not made mechanically according to written rules

