

POLITICS & STRUCTURE

Fifth Edition

ESSENTIALS OF AMERICAN NATIONAL GOVERNMENT

Robert E. O'Connor

Thomas G. Ingersoll

Robert F. Pecorella



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*To Charley and Betty O'Connor, Ed and Jane Ingersoll, and
Joseph and Charlotte Pecorella. 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 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, the 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
- an Introduction and Addendum that highlight the larger constitutional, socioeconomic, and political contexts of American national government
- a case study, cross-referenced to the text, that illustrates by a specific example how the text’s core material applies to the resolution of issues and the making of policies
- marginal notations that help students to follow the main arguments and to review
- an authoritative reference with a complete index

This book arose, more than a decade ago, from our dissatisfaction with the large, expensive hardbound texts. We found that our students shared this dissatisfaction (particularly with the expense). From a pedagogical angle, each of us 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 and 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.

We are also dissatisfied 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. We (and our students) would have preferred to spend that time 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 also served as a useful reference tool 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. The order in which the principal chapters are placed—presidency, Congress, the courts, bureaucracy—does not lessen this adaptability. Each chapter, while referencing the others, is designed to "stand on its own" and therefore can be assigned in any order the instructor prefers.

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. New to the fifth edition are a brief Introduction and Addendum outlining the constitutional, socioeconomic, and political frameworks within which these institutions operate. Because of our awareness that the policy decisions made in Washington affect the lives of all Americans, we feel that all of us should 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. Mere organization charts and lists of authority cannot completely describe these institutions. 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 possibilities involved in the actual operation of those otherwise "static" structures. We continually emphasize that none of these structures operates in a vacuum; accordingly, we 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 limited the focus of the book’s coverage. For example, we do not deal in great detail with levels of government other than the national level, nor do we treat political parties or interest groups in separate chapters. However, we have made an effort in the fifth edition to address the concerns of those reviewers who have argued that the text requires some discussion of these issues. We have included an Introduction outlining the influence of federalism, the separation of institutions sharing powers, and the two-party system on policymakers in the United States. Furthermore, a new Addendum to the text analyzes the relationship between politics and economics in the United States. These sections have been added to complement the four basic chapters, and the focused coverage of previous editions remains undisturbed.

Our reason for this focused coverage 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 the way 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 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, we 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 of the four main chapters. Because of the importance of the hazardous-waste disposal problem in the United States in the 1990s, we have selected the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and 1986 (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 to integrate material in the way that the single-topic case study can do. 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 understand the interactions of those four institutions better. 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 any of the authors. We have, in fact, changed the order with each edition to emphasize the shared nature of our responsibilities.

We remain, of course, deeply indebted to many people who assisted us in this and earlier editions. Particularly helpful were the reviews of Curt Beck, University of Connecticut; Justin Green, Virginia Polytechnic Institute and State University; James Knauer, Lock Haven University; Robert Locander, North Harris County College; Gary London, Everett Community College; Joseph Melusky, St. Francis College; Bradley Rice, Clayton Junior College; Sandra W. Thornton, Georgia Institute of Technology; and Thomas Yantek, Kent State University.

We have benefited greatly from the excellent editorial guidance of Cindy Stormer and the sharp copy editing of David Hoyt. Bob O'Connor appreciates the warm support of Mon Petit Baby, Molly Maguire, and Janice Hensyl O'Connor. Tom Ingersoll continues to be grateful for all that Barbara has done. Bob Pecorella is ever grateful to his three M's—Melody, Moshannon, and 'Mica. Yet, with all the assistance, all errors and weaknesses that remain in the book are solely our own.

*Robert E. O'Connor
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In American society, policy making is constrained by constitutional history, which reflects a fundamental yet dynamic consensus on basic social values. Moreover, an extraconstitutional two-party system emerged early in American history and became the basic mechanism for conflict resolution. Before dealing with the specific politics and structure of American government, it is useful to explore how each of these elements, alone and in unison, constrains policy makers in the United States. This introduction starts with an analysis of the most fundamental

codification of American political values—the Constitution, reviews the American political consensus, and concludes with an analysis of the two-party system.

CONSTITUTIONAL PREROGATIVES AND LIMITATIONS

The Constitution of the United States resulted from an inherently political process of debate and compromise. After achieving independence from England, the thirteen original states had been bound loosely together by the Articles of Confederation. The Articles had established a league of independent states with little central authority to enforce national policies. Under the Articles, the rules of the political game were heavily weighted toward the state governments at the expense of the national government. Indeed, Congress under the Articles had no independent taxing power, no real authority to regulate interstate commerce, and no capacity to fashion a coherent foreign policy. The Constitutional convention that met in Philadelphia in the summer of 1787 had been charged by the state legislatures with the task of revising the Articles of Confederation. However, the Philadelphia convention went well beyond its mandate, making the reformers of the Articles the framers of the new Constitution.

Meeting secretly in Philadelphia, the fifty-five delegates present at the convention produced a document that has served as the legal framework for American government for more than 200 years. Because the Constitution's framers had lived first under the British crown and later under the Articles of Confederation, they were well aware of the problems associated with both unaccountable central power and with fragmented, decentralized governance. Nevertheless, despite their shared political experiences, the framers represented diverse interests and philosophies, which were very much in evidence during the convention's debates. Some represented the commercial interests of New York and Massachusetts, while others were from agricultural areas. Some, such as Alexander Hamilton of New York, believed in a strong central government with a powerful president; others, like William Paterson of New Jersey, wanted guarantees of state sovereignty and restricted national power.

By compromising on a number of issues and addressing others in ambiguous terms, the framers fashioned a document that incorporated this variety of viewpoints and managed to hold the diverse interests together. For example, the disagreements between representatives of small states, who wanted a legislature based on "one state, one vote," and those from larger states, who wanted representation based on population, were resolved by establishing a bicameral (two-house) Congress. In the House of Representatives, state representation would be based upon population; in the Senate, each state would have two repre-

sentatives. The disagreements between those who wanted the president chosen by the Congress and those who wanted a popular election for president were resolved by creating an electoral college, whose members would be chosen by each state's legislature to select the president. The debates between those who wanted a strong president and those who wanted the executive to be tightly constrained by Congress were glossed over by defining the president's powers only in general terms.

The Constitution established a political system of shared responsibilities and divided powers and placed limitations on government in the United States. The loose confederation of states under the Articles became the federalism of the Constitution, and the absence of national power under the Articles gave way to the separate national institutions that shared powers under the Constitution. The constitutional convention of 1787 dramatically altered the rules under which the United States would operate. In order to understand politics and structure in the United States today, it is necessary to examine the constitutional notions of limited government, federalism, and the separation of institutions sharing powers—as well as the evolution of these concepts in the years since 1787.

Limiting Government's Powers

To many Americans, the idea of limited government is synonymous with the Bill of Rights, the first ten amendments to the Constitution. These amendments begin with the powerful five-word prohibition, "Congress shall make no law." They place restrictions on the national government by securing certain rights for individuals, including freedom of religion, speech, and the press (Amendment I); the right to be secure from unreasonable searches and seizures (Amendment IV); the right to avoid self-incrimination (Amendment V); the right to a speedy trial (Amendment VI); the right to a trial by jury (Amendment VII); and the right to be protected from cruel and unusual punishment (Amendment VIII). Over the years, these rights have been the focus of a great deal of judicial interpretation, which has defined and redefined them in light of changing circumstances that could not have been foreseen by the framers. For example, the development of electronic surveillance techniques required updating the Fourth Amendment protections from unreasonable searches. Also, the development of the radio and television industries made it necessary to update the First Amendment press protections. With the passage of the Fourteenth Amendment in 1869, the slow process of extending the protections of the Bill of Rights to citizens in their dealings with state governments began.

However, the Bill of Rights is not the only component of the constitution that limits government powers. The seven articles that make up the main body of the document also contain restrictions on government. Foremost among these are the sections involving federalism and the separation of powers, which function to limit the power of the national

government. The Constitution also constrains government by formalizing accountability through elections. Aside from these general limitations, the Constitution contains other, more specific prohibitions. Article I, Section 9 prohibits Congress from suspending the requirement for a writ of habeas corpus (the right to be brought before a judge and charged upon arrest); from passing bills of attainder (laws declaring an individual or group guilty of a crime without benefit of a trial) or *ex post facto* laws (laws that make past acts a crime); and from conferring titles of nobility.

The net effect of these constitutional codifications of individual rights and limitations on government is to institutionalize a libertarian philosophy in American government. Libertarian thought supports minimal government involvement in the private sector. It should come as no surprise that such a philosophy has effects on political decision makers and the policies they pursue. Among all industrialized nations, the United States is the most reliant on private-sector production; state-run enterprises are anathema. The United States was one of the last industrialized nations to adopt social programs for those needing assistance and did so only because of the upheavals associated with the Great Depression of the 1930s. Basic welfare grants in the United States are less generous and public housing less available than in other Western countries, and the United States is the world's only industrialized nation, except for South Africa, that lacks national health insurance.

The emphasis on individual rights and limited government touches almost all segments of American society. Certainly the frequent use of the expression, "I know my rights," reflects just how embedded a general notion of civil liberties is. In the abstract, Americans support individual rights against government actions that might violate constitutional rights. In concrete terms, however, many appear troubled by the emphasis on civil liberties in criminal prosecutions. It remains to be seen whether further increases in the social problems associated with drug abuse, for example, will result in demands for more intrusive police actions, fewer protections from invasions of privacy, and less emphasis on the rights of the accused. However, the current level of resistance to proposals for widespread drug testing is one more affirmation of the principle of individual rights and limited government.

From Federalism to Intergovernmental Relations

Federalism and the Constitution. At the heart of many of the debates at the constitutional convention in Philadelphia was the issue of state versus national responsibility. For the Constitution to be accepted by state conventions, it had to ensure that the states would have a formally guaranteed role in the new government. For the Constitution to be an effective blueprint for nationhood, it had to establish a strong, responsible national government capable of providing "for the common defense" and ensuring "domestic Tranquility."

Through federalism, a system guaranteeing the jurisdiction of two governments over the same territory and population, the U.S. Constitution provided both a strong central government and a permanent political role for the states. From the perspective of the framers, federalism had three benefits. First, it allowed both proponents of states rights and advocates of national power to support the Constitution. Second, by dividing responsibility between the national and state governments, federalism helped limit the power of government generally. Finally, federalism permitted the wide-ranging diversity of American society to be fully represented in state capitals and, through state representatives, in the national government.

The Constitution established a viable central government. Article 1, Section 8 gives the Congress many powers not granted to the legislature under the Articles of Confederation, including the powers to levy taxes, to borrow money, to regulate interstate commerce, to coin money, to declare war, to raise armies, and "to make all Laws . . . necessary and proper" to accomplish its functions. Article II vests executive power in a president, an office neglected in the Articles of Confederation. Furthermore, Article VI provides that the Constitution and all national laws and treaties made pursuant to its power "shall be the supreme Law of the Land." This means that when state laws conflict with national legislation, the latter must be obeyed. Moreover, Article I, Section 10 prohibits the states from engaging in numerous activities, including entering into treaties, coining money, passing bills of attainder or *ex post facto* laws, impairing the obligation of contracts, and levying taxes on imports or exports.

While creating a strong central government, the Constitution provides a number of protections to the states. Article IV guarantees each state its territorial integrity, "a Republican Form of Government," protection from foreign invasion and, upon a state's request, national assistance in dealing with domestic violence. Article V guarantees that "no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." Article V also provides a role for the states in the amendment process: Upon petition of two-thirds of state legislatures, the Congress "shall call a Convention for proposing Amendments." Furthermore, all constitutional amendments must be ratified by three-quarters of either state legislatures or special state conventions.

In the early years of the American republic, the general and sometimes vague precepts of the Constitution needed to be defined. A number of issues were resolved early on by Supreme Court decisions—which, for the most part, established a relatively broad sweep of national powers. For example, in *Martin v. Hunter's Lessee* (1 Wheaton 304 [1816]), the Court assumed for itself the authority to review state court decisions involving national laws. In *McCulloch v. Maryland* (4 Wheaton 316 [1819]), the Court provided Congress and the national government with wide legislative discretion by interpreting the "necessary and proper clause" quite broadly. In *Gibbons v. Ogden* (9 Wheaton 1 [1824]),

the Court struck down a state law because it infringed on the national government's power to regulate interstate commerce. Nevertheless, and court decisions notwithstanding, it took the Civil War to decide the most fundamental issue of federalism. Following the North's victory, it was clear that the United States was a sovereign nation composed of states, rather than a collection of sovereign states making up a nation.

Modern Intergovernmental relations. Since the Civil War, federalism has been redefined in the United States. Governments at all levels have grown in size and importance, and the relationships among levels of government have changed. The use of the phrase *intergovernmental relations* to characterize national-state interactions in recent years represents more than a semantic choice. Because the term implies extensive interaction and numerous cooperative undertakings between the national and state governments, it suggests the evolution of federalism from a demarcated to a more interactive system.

In the early years of the republic, there had been federal grants to the states for education or for maintaining local militias, but such grants had been sporadic, and there was no larger policy of direct federal aid. With the enactment of the Federal Highway Act in 1916, however, the federal government formalized the process of allocating federal grants to the states. Before the passage of the Highway Act, national-state relations had been characterized by *dual federalism*, whereby each level of government had its own unique responsibilities. By establishing an ongoing system of grants-in-aid, the federal government changed national-state relationships dramatically. In place of the separate spheres of activity that characterized dual federalism, federal grant programs provided for policy cooperation between the national and state governments and helped usher in an era of *cooperative federalism*. In subsequent years, first with Franklin Roosevelt's attempts (known as the New Deal) to cope with the Great Depression in the 1930s and then with Lyndon Johnson's efforts (known as the Great Society) to eliminate poverty in the 1960s, cooperative federalism grew in importance.

Funds allocated by Democratic administrations were generally in the form of categorical grants-in-aid. Such categorical grants were given to state governments with requirements as to how the money was to be spent and therefore constituted an indirect method of implementing national policy priorities. During the Nixon and Reagan years, there were attempts to reestablish more distinct spheres of policy responsibilities (a modern dual federalism) by substituting block grants for categorical grants-in-aid. Block grants give local governments wider discretion over the use of federal funds than do categorical grants-in-aid. Targeted programs of aid, reflecting national policies, were also modified by the growth of formula grants, which allocated funds more broadly, again resulting in increased local policy control. Nevertheless, despite Republican efforts to broaden grant programs and reinstitute a

form of dual federalism, cooperative federalism remains a mainstay of intergovernmental relations in the 1990s and probably for the foreseeable future.

Federalism and intergovernmental relations have had marked effects on the politics and structures of American government. Federalism reinforces American pluralism. The United States is composed of diverse groups with many different interests. Because of federalism, these interests have a variety of access points at which to make policy demands. For example, education, police protection, and land-use planning are still considered primarily state and local responsibilities, while Aid to Families with Dependent Children (AFDC) unites federal, state, and county jurisdictions in the nation's primary welfare program. Federalism also encourages pluralism because states and regions develop their own political subcultures. In the early part of this century, some states opted for progressive legislation limiting child labor and improving work conditions for their citizens, often in the face of Supreme Court resistance. These state laws became the models for subsequent federal social legislation. Of course, the development and protection of subcultures can also be socially destructive, as when Southern states attempted to maintain their systems of racial segregation in the 1950s and 1960s.

Cooperative federalism has resulted in extensive lobbying efforts in Washington on the part of states and localities. As these levels of government began to rely on federal aid money, they organized in much the same way as any other interest groups, to defend programs beneficial to them. Some states and localities maintain individual offices in Washington, while others have joined organizations like the National League of Cities, the National Association of Counties, and the National Association of State Legislatures to protect their interests. By the same token, members of Congress have the dual role of deciding on the appropriation of federal funds and of representing constituencies and local governments that demand federal money. Such local pressures often result in the practice of *logrolling*, whereby members of Congress trade votes on programs for their local constituents. This keeps constituents happy but may result in substantial pressure on budgets.

The Separation of Institutions Sharing Powers

In Federalist #51, James Madison wrote:¹

In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is no doubt, the primary control on government; but experience has taught mankind the necessity of auxiliary precautions.

¹James Madison, "Federalist #51," in *The Federalist Papers* (New York: Mentor Books, 1961), pp 320-325.