

AMERICAN GOVERNMENT

**Brief
2006
Edition**



LOWI | GINSBERG | SHEPSLE



AMERICAN GOVERNMENT

Freedom and Power

BRIEF 2006 EDITION

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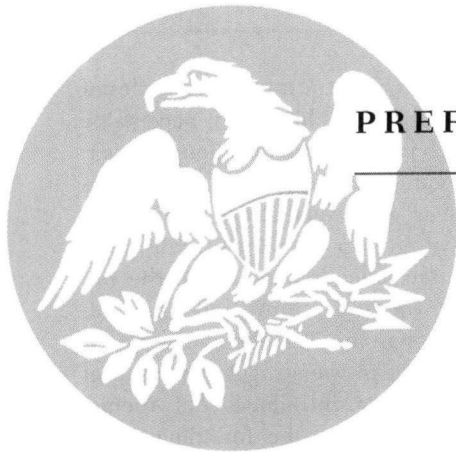
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PREFACE TO THE BRIEF 2006 EDITION

This Brief Edition of *American Government: Freedom and Power* is designed specifically for use in courses whose length or format requires 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.

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 been determined not to lose sight of the second level, yet we have tried to avoid making it so prominent as to define us as preachers rather than teachers.

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. And 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.

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 narrative level of the book, avoiding abstract concepts and professional language (jargon). Reaching beyond the commonplaces to the second, deeper level of development also identifies what is to us the single most important task of the teacher of political science—to confront a million facts and to choose from among them the small number of really significant ones.

We have tried to provide a framework to help teachers make choices among facts and to help 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 political reality.

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: laboratories, 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 approach them scientifically. 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 historical process by which freedom and governmental power are (or are not) kept in balance. Part 1, “Foundations,” comprises 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 2, “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. 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, does a strong presidency do to the conduct and the consequences of representative government?

Chapter 7 treats the executive branch as an entity separate from the presidency, but ultimately it has to be brought back into the general process

of representative government. That, indeed, is the overwhelming problem of what we call “bureaucracy in a democracy.” After spelling out the organization and workings of “the bureaucracy” in detail, we then turn to an evaluation of the role of Congress and the president in imposing some political accountability on an executive branch composed of roughly five million civilian and military personnel.

Chapter 8 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 3 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 Revolution and how politics works today: Chapter 9, “Public Opinion and the Media”; Chapter 10, “Elections”; Chapter 11, “Political Parties”; and Chapter 12, “Groups and Interests.” But we recognize that, although there may be a pattern to American politics, it is not readily predictable.

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 13 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 14, “Foreign Policy and Democracy,” turns to the international realm and America’s place in it. Our concern here is to understand American for-

eign 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. We conclude by assessing government’s ability to govern.

ACKNOWLEDGMENTS

Our students at Cornell, Johns Hopkins, and Harvard 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 that the field is too scientific or 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 in government and politics that we have chronicled in our book.

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. We have relied heavily on the thoughtful manuscript reviews we received from David Canon, University of Wisconsin; Russell Hanson, Indiana University; William Keech, University of North Carolina; Donald Kettl, University of Wisconsin; Anne Khademian, University of Wisconsin; William McLaughlan, Purdue University; J. Roger Baker, Wittenburg University; James Lennertz, Lafayette College; Allan McBride, Grambling State University; and Joseph Peek, Jr., Georgia State University. The advice we received from these colleagues was especially welcome because all had used the book in their own classrooms. Other colleagues who offered helpful comments based upon their own experience with the text include Douglas Costain, University of Colorado; Robert Hofert, Colorado State University; David Marcum, University of Wyoming; Mark Silverstein, Boston University; and Norman Thomas, University of Cincinnati.

We are also extremely grateful to a number of colleagues who were kind enough to lend us their classrooms. During the past eight years, we had the opportunity to lecture at a number of colleges and universities around the country and to benefit from discussing our book with those who know it best—colleagues and students who used it. We appreciate the gracious welcome we received at Austin Community College, Cal State-Fullerton, University of Central Oklahoma, Emory University, Gainesville College, Georgia Southern University, Georgia State University, Golden West College, Grambling State, University of Houston—University Park, University of Illinois—Chicago, University of Illinois—Urbana—Champaign, University of Maryland—College Park, University of Massachusetts—Amherst, Morgan State University, University of North Carolina—Chapel Hill, University of North Texas, University of Oklahoma, Oklahoma State University, Pasadena City College, University of Richmond, Sam Houston State, San Bernadino Valley College, Santa Barbara City College, Santa Monica College, University of

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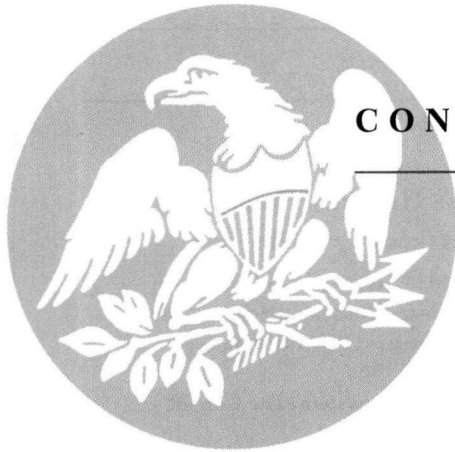
Perhaps above all, we wish to thank those who kept the production and all the loose ends of the book coherent and in focus. Steve Dunn has been an extremely talented editor, continuing to offer numerous suggestions for each new edition. Aaron Javicas helped keep track of the many details. Sarah Mann has been a superb project editor, following the great tradition of her predecessors. We are grateful for the painstaking care and close reading of copy editors Andy Saff and Patterson Lamb and proofreader Maura Burnett. Diane O'Connor has been an efficient production manager.

We are more than happy, however, to absolve all these contributors from any flaws, errors, and misjudgments that will inevitably be discovered. 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 sound bite and the thirty-page technical briefing. Every person can be knowledgeable

because everything about politics is accessible. One does not have to be a television anchor 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
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PART I

Foundations





CHAPTER 1

Freedom and Power: An Introduction to the Problem

HOW DOES AMERICAN GOVERNMENT WORK?

*M*ost Americans find government and politics to be quite confusing. As we shall see in Chapter 9, on public opinion and the media, many individuals have difficulty making sense of major political issues and know very little about the nation's basic political institutions. But perhaps it is no wonder that Americans are bewildered. American government and politics are confusing!

To begin with, America's institutional arrangements are extraordinarily complex. America has many levels of government—federal, state, county, town and city, to say nothing of a host of special and regional authorities. Each of these levels of government operates under its own rules and statutory authority and is related to the others in complex ways. In many nations, regional and local governments are largely appendages of the national government. This is not true in the United States. America's fifty states possess a considerable measure of sovereign authority. The American Constitution, as it has been interpreted by the courts, protects the states from becoming mere vassals of the federal government. In recent years, as Chapter 3 will illustrate, the U.S. Supreme Court has placed strict limits on the federal government's powers vis-à-vis the states.

CORE OF THE ANALYSIS

- Government has become a powerful and pervasive force in the United States.
- American government is based on democratic electoral institutions and popular representative bodies.
- Once citizens perceive that government can respond to their demands, they become increasingly willing to support its expansion.
- The growth of governmental power can pose a threat because it reduces popular influence over policy making and diminishes the need for citizen cooperation.

Each level of government, moreover, consists of a complex array of departments, agencies, offices, and bureaus, all undertaking what often seems to be overlapping tasks. The framers of the Constitution created a complex national government, apportioning governmental powers among three different sets of institutions (see Chapters 2 and 3). In the more than two centuries since the Constitution's ratification, Congress has added to the national government's complexity by creating fifteen Cabinet Departments, such as Treasury, Defense, and Agriculture, a host of bureaus and agencies in the executive branch (Chapter 7), hundreds of general purpose and

specialized courts (Chapter 8), and a staff system and staff agencies within the national legislature (Chapter 5).

Each of the cabinet departments is a gigantic enterprise consisting of hundreds of thousands of workers (the government's civilian employees are colloquially known as "feds") engaged in a myriad of activities. America's oldest cabinet departments, created in 1789, are the departments of State, Treasury, Justice, and Defense, which was originally called the War Department. America's newest cabinet department is the Department of Homeland Security (DHS), which was established in 2002 to coordinate the nation's defenses against terrorism. DHS consists of 22 agencies and 170,000 employees; it is responsible for 2,800 power plants, 800,000 bridges, 190,000 miles of natural gas pipelines, and 20,000 miles of border. To create DHS, Congress and the president combined a number of existing agencies such as the Coast Guard, the Customs Service, and the Federal Emergency Management Agency (FEMA). Many of these agencies have a long history of professional antagonism and are not eager to cooperate with one another—something tragically demonstrated in the fall of 2005 when Hurricane Katrina struck New Orleans and other parts of the Gulf Coast. Bureaucratic rivalries add to the difficulties the government faces in carrying out its tasks and the difficulties the citizen faces in trying to understand what the government is doing.

If America's government seems complex, its politics can be utterly bewildering. Like the nation's governmental structure, its political processes have numerous components. For most Americans, the focal point of the politics is the electoral process. As we will see in Chapter 10, tens of millions of Americans participate in a host of national, state, and local elections in which they listen to thousands of candidates debate what may seem to be a perplexing array of issues. Candidates fill the air with promises, charges, and countercharges while an army of pundits and journalists, which we will discuss in Chapter 9, adds its own clamor to the din.

Politics, however, does not end on Election Day. Indeed, given the growing tendency of losers to

challenge election results in the courts, even elections do not end on Election Day. Long after the voters have spoken, political struggles continue in the Congress, the executive branch, and the courts (Chapters 5, 6, 7, and 8) and embroil political parties, interest groups, and the mass media (Chapters 9, 10, 11, and 12). In some instances, the participants in political struggles and their goals seem fairly obvious. For example, it is no secret that business and upper-income wage earners strongly support programs of tax reduction; farmers support maintenance of agricultural price supports; labor unions oppose "outsourcing" of production. Each of these forces has created or joined organized groups to advance its cause. We will examine some of these groups in Chapter 12.

In other instances, though, the participants in political struggles and their goals are not so clear. Sometimes corporate groups hide behind environmental causes to surreptitiously promote economic interests. Sometimes groups claiming to want to help the poor and downtrodden seek only to help themselves. And to make matters worse, many of the government's policies are made behind closed doors, away from the light of publicity. For example, as we will see in Chapter 6, after Congress refused to enact his environmental agenda, President Bill Clinton implemented his goals through executive orders and an obscure technique known as "regulatory review." Recent presidents, including Reagan, Clinton, and Bush, have used regulatory review to circumvent the Congress and achieve their objectives through the bureaucratic rule-making process, a process whose importance we will address in Chapter 7.

Government is a powerful force in the United States.

Ordinary citizens can hardly be blamed for failing to understand bureaucratic rule making and regulatory review. For the most part, these are topics that even experienced journalists fail to fully comprehend. Take, for example, a presidential office called OIRA, the Office of Information and Regu-