

Analysis of the madisonian system



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The separation of powers within the United States government heavily relies on checks and balances to restrain the amount of power each branch wields. This model of government, known as the Madisonian System, is outlined in both the United States Constitution and the Federalist Papers. In this system, Madison recognized the flaws of humans and the natural want for more power and urged that “ambition must be made to counteract ambition” (Madison, 1788b). Congressional gridlock, caused in part by the Madisonian System, is merely the checks and balances system successfully counteracting ambition. However, the recent expansion of executive power can be considered a failure of the Madisonian System.

Lice, root canals, and traffic jams are all examples of things Americans prefer to Congress (Tran, 2013). Since June of 2011, in a monthly Gallup poll, Congress approval rating has only risen above 21% on three occasions: February 2017 showed 28% approval rating, March 2017 showed 24% approval rating, and March 2019 showed 26% approval rating (Gallup, 2019). While the public’s opinion of Congress may deem it as dysfunctional and not what the Framers intended, Madison himself predicted the problem of party animosity. Factions have “divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good” (Madison, 1787). Unable to remove the causes of factions, Madison instead argues for a government that can control its effects—a representative government. He was aware of the potential for the legislative branch to be impacted by factions and parties and therefore advocated for the many checks and balances needed for a majority to enact policy.

In order for a bill to become law, it must be passed by a majority in the House of Representatives, a majority in the Senate, and approved by the President. If the President vetoes the bill, it is sent back to Congress where it can still be made law through two-thirds approval of both the House of Representatives and the Senate. According to Madison, “ this complicated check on legislation may in some instances be injurious as well as beneficial... as the faculty and excess of law-making seem to be the diseases to which our governments are most liable” (Madison, 1788c). Madison argues here that gridlock is a sign that the system of checks and balances is working.

However, congressional gridlock is often used as evidence in arguing that American democracy and Congress are broken or dysfunctional. But the process of enacting legislation was meant to be difficult and should not be amended just because of recent public opinion. Scholars are in disagreement over not only the causes of this period of legislative inactivity and distrust in Congress, but also whether it is a recent symptom of modern politics or just a phase in fluctuating levels of Congress productivity. Many scholars blame not the Madisonian System for Congress’s stalemates, but rather increased party polarization. Party compromise is especially elusive concerning issues with a small ideological center, such as gun control and abortion (Binder, 2015). Republicans have moved further to the right with the rise of Trump and the Tea Party than Democrats have to the left, and time will tell if the unusually high levels of polarization will subside (Binder, 2015). If so, one would assume that the legislative branch of government will eventually self-

correct itself, or at least regress to the mean of legislative output (Binder, 2015).

One of the main goals of the Madisonian System was to prevent “ tyranny of the majority” while still upholding American democratic values. Factions were primarily caused by the inequality of property distribution, and the tendency of people to act in self-interest would cause political conflict. Madison and the other framers, who were wealthy property-owners, were afraid of a poorer majority gaining control of the government and advocating for an equal division of property (Madison, 1787). Since it is impossible to eliminate factions without also eliminating liberty, Madison’s legislative branch is a representative body that includes factions and their interests while also protecting minority interests. While Congressional gridlock is frustrating and often favors the status quo, it is not a failure, but rather a success of the Madisonian System.

The many checks and balances in the legislative branch are also due to the Framers’ concern over the legislative branch acquiring too much power against the weaker executive and judicial branches—as such, the executive is granted the power of veto to counterbalance the strength of the legislative branch. Madison deemed the legislative branch “ everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex” (Madison, 1788a). However, while the executive branch was not given very many formal powers in the Constitution, the role of the President today relies heavily on implied power. Indeed, Congress has made many attempts at curbing executive power (Howell & Brent, 2013). Examples of other branches’ attempts at restraining presidential power include the 1954

Bricker Amendment, the 1973 War Powers Resolution, and the 1976 National Emergencies Act (Howell & Brent, 2013; Goitein, 2019).

The Constitution's outline of the presidency was left vague—as such, most presidents have used their time in office to attempt to extend presidential powers (Howell & Brent, 2013). The Constitution enumerates the executive's main powers as control of the military, ability to make treaties, and power to appoint officials and veto bills. However, the President is also charged with ensuring that “ the Laws be faithfully executed,” a clause used to defend overreaches of executive power. Today, presidents rely on executive orders and public engagement to advance their agendas (Howell & Brent, 2013). And, as gridlock and party polarization increases, “ presidential power may involve, and frequently does involve, the exercise of direct unilateral action” (Howell & Brent, 2013).

This use of executive power without relying on the judicial or legislative branch can be clearly seen in the beginning of Donald Trump's presidency. Trump himself wants the public aware of the benefits of expanded executive power, saying “ never has there been a president...who's passed more legislation, who's done more things than what we've done...I think we've been about as active as you can possibly be at a just about record-setting pace” (Zoppo, Santos, & Hudgins, 2017). However, others argue that most executive orders have little to no effect on policy and are mostly ceremonial (Bierman, 2019).

The breadth of executive power can be best seen during times of emergency. It is the within the president's discretion to declare a ‘ national

emergency,' which then grants them immediate access to over 100 special provisions, including making decisions regarding military, controlling wire communication, and blocking financial transactions (Goitein, 2019). The use of these additional powers during times of emergency are both praised and criticized. Franklin Roosevelt's reaction to the Great Depression and George Bush's reaction to the September 11th attacks each harbored them praise for their swift defense of country, but have also elicited criticism over minority discrimination and unfair use of power. Compared to Donald Trump, who has signed 120 executive orders thus far in his presidency, Roosevelt issued 3, 721 (" Executive Orders," 2019; " Executive Order," 2017).

As both members of Congress and presidents remain steadfastly loyal to their parties, Madison's system of checks and balances between branches loses its effectiveness. Trump has shown that he is willing to use his executive power to advance his agenda, regardless of Congress. However, this trend is not exclusive to Donald Trump or the Republican Party; in fact, " the move of party taking precedence over institutional prerogative is part of a long-term trend that activists on the right and the left have seen as a means of enacting their favored policies" (Allen, 2019). It is not only a president's thirst for power that allowed them to achieve it; additionally, Congress as a branch responsible for checks and balances has failed to play its role and has instead prioritized party agendas.

In addition, the executive branch's structure of being led by one dominant figure intensifies the president's determination to impose their leadership on the country. Presidents, largely public figures, have the incentive of their political legacy to expand the executive's power as much as possible. The

legislative and judicial branches are responsible for checking and balancing the executive's power, though the process is difficult. Gridlock and collective action issues in Congress, as discussed above, make it unable for them to "fashion a timely, coherent response to presidential action, or even to respond at all" (Moe & Howell, 1999). Congressional responses to presidential actions must also face a likely presidential veto, which decreases motivation to regulate executive power (Bradley & Morrison, 2012). Additionally, the Supreme Court relies on the executive to enforce the laws and is "profoundly dependent on the executive" (Krehbiel, 1996).

Though the meticulous checks and balances of the legislative system in the United States draw complaints about their adverse effects, the lack of specificity concerning the executive branch has proved more dangerous than the Framers could have intended. While having a stronger executive branch does protect from the legislative branch gaining too much power, it has resulted in the executive branch using the ambiguity of the Constitution to its advantage. Congress and the judicial branch do not have the same implied power, too constrained by checks and balances, to effectively control the influence of the executive. This imbalance of power between branches can be considered a failure of the Madisonian System.

In Federalist 51, Madison (1788b) writes that "the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified." The division and regulation of Congress has achieved its goal of restraining the legislative branch's power, even if this results in frustration among those who oppose gridlock. However, the lack of similar limitations of the executive

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branch has allowed for the augmentation of the president's power. Madison himself argued for restricting presidential power by eliminating vagueness regarding their role, however the ambiguous language that ended up in the Constitution has allowed presidents to transform their executive role into a symbol of American politics (Moe & Howell, 1999). Today, Americans have high expectations of the President—regardless of whether or not the President actually has the power to achieve these expectations. These expectations prompt the President to capitalize on the Constitutional ambiguity of the role of the executive in order to meet these expectations. Conversely, Congress has a strict set of checks and balances within the legislative branch that they must abide by. This asymmetry suggested by the Madisonian System is perfectly summed up by Moe and Howell (1999): “presidents have both the will and the capacity to promote the power of their own institution, but individual legislators have neither and cannot be expected to promote the power of Congress as a whole in any coherent, forceful way.”

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