

The First Challenge

Separation of Powers

We Americans tend to equate democracy with our particular constitutional structure. When I ask students to define *democracy*, several always respond, “Democracy means a separation of powers—checks and balances between the branches of government.” Like many Americans, these students identify democracy with government as it is practiced in the United States, and it is only a short leap then to define democracy in terms of the central feature of our constitutional structure: the separation of powers. This tendency is reinforced in the news media, in schools, and in statements by government officials, all of whom treat the Constitution reverentially, including the ideas of separation of powers and checks and balances.¹ In fact, whenever there is a crisis in American government, the standard solution proposed is to seek a restoration of “proper governmental checks and balances.”

The thesis of this chapter is that Americans are mistaken to equate the separation of governmental powers with democracy. In practice, especially in recent years, the constitutional separation between branches of government, particularly that between Congress and the presidency, has undermined the capacity of Americans to control their government. In their zeal to protect individual liberty—the central value of the Protective Democracy model—the authors of the Constitution erected barriers to majority rule that have always impeded democracy and now, after more than two hundred years, have produced perpetually stalemated government.

For most of our history, we managed to overcome the antimajoritarian bias of the Constitution through a combination of presidential leadership and political party organization. This system offered a temporary and partial solution to governmental deadlock, but over the past few decades, even this partial system has no longer worked. Divided government, in which different political parties control Congress and the presidency, has compounded the defects of the separation of powers in making the government inefficient, unresponsive, and unaccountable. Even during periods of unified government in recent years, separation of powers tends to lead to gridlock.

Opposite: *The president's annual State of the Union message brings together in one room the two governmental branches that share the power to make laws.*

Aaron P. Bernstein/Bloomberg via Getty Image

Our eighteenth-century Constitution has become a major obstacle to achieving democratic government in the twenty-first century.

The Founders' Work

Both the signers of the Declaration of Independence and the drafters of the Constitution can be classified, in the terminology of the democracy models, as Protective democrats. They believed that the purpose of a democracy—or a *republic*, their term for representative democracy—was the protection of individual liberty. Their great fear was a tyrannical government that ignored individual rights and ruled without the consent of the governed. For the revolutionaries, however, the danger of tyranny emanated from a very different source than the tyranny the Constitution's authors feared. In 1776, a tyrannical executive, specifically King George III and his royal governors in the colonies, motivated the movement for independence. Only eleven years later, in 1787, the men who gathered to draft a new constitution worried mainly about the tyranny of popularly elected legislatures. What in the experience of the new American Republic had caused this shift in concern?

During and after the Revolutionary War, most states enacted constitutions reflecting the popular spirit and republican enthusiasm that the Revolution had produced. Because the revolutionaries distrusted political executives, the new state constitutions lodged most power in the legislatures. These institutions were structured to permit maximum responsiveness to popular majorities. State legislators were typically chosen in annual elections so that their constituents would have plenty of opportunity to hold them accountable. Accountability through annual elections was carried furthest in the radical Pennsylvania constitution, which required that before it could become law, legislation had to be passed twice, with an election between the two votes, permitting voters an opportunity to ratify directly the actions of their representatives. Although all states required voters to own some property, property qualifications were modest enough in most states so that suffrage was widespread (at least among White males). Voters also tended to elect representatives very much like themselves, producing state legislatures dominated by farmers and tradesmen, most with minimal education but with personal interests and concerns reflective of those who elected them.² Given the weakness of the national government under the Articles of Confederation, the democratic majorities in the state legislatures were the centers of power in the new American nation.

Fear of and dissatisfaction with these state legislatures—particularly their democratic character—are what brought the founders to Philadelphia for the purpose of revising the Articles during that hot summer in 1787.³

As Governor Edmund Randolph of Virginia put it, “Our chief danger arises from the democratic parts of our [state] constitutions. . . . None of the constitutions have provided sufficient checks against democracy.”⁴ The founders had two major complaints against the state legislatures. First, they considered state government too chaotic, with annual elections producing frequent turnover and legislators too prone to enacting the transitory passions of their constituents into law. Second, and more serious, the founders were dismayed at the sorts of laws being enacted in the states, particularly laws to inflate currency and abolish debts. Most of the convention delegates regarded those laws as a despotic attack on fundamental rights of property—the consequence of debtor majorities in the states taking over state governments and promoting their interests at the expense of the propertied minority. Even where a propertyless majority did not control state government, such a majority might resort to violent acts to support their interests—acts that the inept and overresponsive legislatures were ill equipped to control. When, just a year before the convention, a revolt by debtors in western Massachusetts (called *Shays’ Rebellion*) was put down with great difficulty by the state militia, the worst fears of the critics of state constitutions seemed to have been confirmed.

Historians debate vigorously the motives and purposes of the men who wrote the Constitution. Was the Constitutional Convention an antidemocratic counterrevolution of wealthy and propertied Americans seeking to preserve their wealth and power from a democratic citizenry? Or was it simply an attempt by prudent statesmen, concerned that the new nation would dissolve into violence and chaos, to establish the structure of a stable representative democracy?⁵ Whichever characterization of the founders’ motives is true, the record of the convention provides much evidence that controlling tyrannical majorities was the major agenda item. The result of the convention’s work, the U.S. Constitution, reflects that concern, for it is a masterly creation whose central purpose is preventing the “tyranny” of a majority.

The new Constitution restricted majority tyranny in two principal ways. First, it established a strong national government that would be capable of countering any tyrannical majority in a state. The central government gained new powers, such as the power to coin money and regulate commerce, and new instruments, such as a standing army, to enable it to overcome any state government that fell under the control of a factional interest. Even though the convention did not go as far as James Madison wanted it to in giving the national government a veto over state legislation, it did replace the weak government under the Articles with a national government with muscle. But what prevented the national government from being subjected to a tyrannical majority? The answer was the second principal feature of the Constitution: the structure of governmental institutions that we now call the “separation of powers.”

The central impetus of the separation of powers was to give the individuals controlling each of the government branches only partial control over the enactment of law, but control they could exercise independently of those controlling the other branches. The separate political base of each branch was the guarantee that the occupants of the different branches would be politically independent of one another and capable of acting autonomously. For example, the president was to be chosen by a special Electoral College that was completely independent of Congress. Likewise, the president had no role in the election of members of Congress. This logic was carried further in the separate election processes for the two houses of Congress: members of the House of Representatives elected directly every two years in congressional districts, and senators chosen by state legislatures, with only one-third of the Senate picked at any one time. And these politically independent actors, a president and the two houses of the bicameral Congress, all had to agree before any laws were enacted.

Although the Electoral College never operated in the way intended in choosing the president, and although we now elect senators directly, the separation of powers structure remains an excellent means of preventing a political majority from easily controlling government. A president elected to office with a massive popular majority in a national constituency cannot count on enacting into law the political platform he campaigned on because a majority of members of Congress, selected in a separate election process in their individual constituencies, may oppose the president's programs. Because of the separation of powers, the electorate is able to vote simultaneously for a president who favors one set of policies and for a congressional majority that oppose those same policies. In such a case, each branch can claim a legitimate democratic mandate for its preferences no matter how different they might be. Even if, in a given election, a majority of voters choose both a president and a majority of members of Congress who agree on a set of policies, the two-thirds of senators who are not chosen in that election can block those policies. If in the midterm congressional elections that come in the middle of a president's term voters choose to send to Washington a decisive majority of representatives to enact a particular policy, that policy can be blocked by a presidential veto that needs the votes of only thirty-four senators to avoid being overridden. Add to this series of crosschecks a judiciary made up of members with life tenure and the power to strike down what they consider unconstitutional legislation, and one has an excellent mechanism for frustrating majority rule.

The author of this system, James Madison, understood its political logic quite well. In *Federalist* No. 51, he argues that succeeding occupants of the various government branches will jealously protect the constitutional prerogatives of their particular branch and seek to prevent the other branches from accumulating too much power. For the separation of powers

to work, “the interest of the man must be connected with the constitutional rights of the place.”⁶ In this way, “ambition” would “counteract ambition,” as wary presidents would check the powers of Congress, and members of Congress would keep a watchful eye on power-hungry presidents. With their political independence from one another lodged in their independent electoral bases, the practical ability of the occupants of the different branches to check the power of the other branches was secured. In such a system, Madison and the other founders believed, no tyrannical majority could simultaneously control all the relevant policy makers, and thus the rights of minorities were secure.

The Jeffersonian Model

The separation-of-powers structure erected formidable barriers in the way of forming a coherent governing majority in the United States, but it did not take long after the ratification of the Constitution for the ingenious politicians of the period to develop a means of uniting the branches of government behind a popular government. The key to uniting the branches was the political party, and the first practitioner of the method was the third U.S. president, Thomas Jefferson.

The founders abhorred the idea of political parties; their prevention had been one of the goals of the Constitution. For James Madison in 1787, parties were “factions,” groups united by a common “passion” or “interest” adverse to the interests of other citizens. But in the first decade of the new republic, its leaders, including Madison, came to find the political party an indispensable institution for organizing voters and their representatives. By the end of the century, two vigorous political parties contested for power throughout the nation: the Federalists and the Democratic-Republicans.

In a hard-fought election in 1800, the Democratic-Republican Party led by Thomas Jefferson decisively defeated the Federalists and captured the presidency and large majorities in both the Senate and the House of Representatives. As president, Jefferson, to a much greater extent than his Federalist predecessor, John Adams, used his position as national party leader to organize Congress on behalf of his political program and policies.⁷ He devised a new model of government that could mobilize the country on behalf of an electoral majority in spite of the separation of powers. This model of government, which political scientist James MacGregor Burns labeled the “Jeffersonian model,” has been the strategy for organizing coherent and responsible democratic government since Jefferson’s presidency.

In the past two hundred years of American history, there have been frequent punctuations of creative democratic leadership producing policy innovation. During each of these creative periods, a dynamic president has

used the Jeffersonian model to build an electoral majority and then, with the support of party majorities in Congress, to bridge the separation of powers to enact new policies. These periods, with which we associate the names of our greatest presidents—Jackson, Lincoln, Theodore Roosevelt, Wilson, Franklin Roosevelt, and Lyndon Baines Johnson—all had in common the Jeffersonian model. In contrast, periods of divided government, when different parties control Congress and the presidency, have allowed the separation-of-powers structure to impede the development of coherent policies. These have been periods of stalemate and deadlock, when no one seems to be in charge of government. Our history seems to show that, given the constitutional structure, the Jeffersonian model of leadership is a requisite for democratic change to occur.

Although the Jeffersonian model has been the historical strategy for successful democratic politics in the United States, it does not overcome completely the antimajoritarian bias of the separation of powers. First, it permits only episodic periods of majority rule. Divided government remains a continuing possibility as long as the presidency and the two houses of Congress are elected independently. This is why we have come to associate democratic change in the United States with short periods of policy innovation followed by long periods of stasis. In addition, presidents are usually under tremendous pressure to enact their programs swiftly (in the first two years of office) for fear that the midterm congressional elections will bring a hostile majority into Congress. The result is incompletely enacted programs and a muddled record of presidential performance.

Second, because of the separation-of-powers structure, the president has only limited control over the members of his own party in Congress. Members of Congress are dependent on electoral majorities in their individual constituencies, not on the national party organization or on the president's national majority. Sometimes the support of an individual constituency requires defying the president and the national majority, as both recent Republican and Democratic presidents have learned when their own party followers in Congress failed to support their policies. Consequently, even with a partisan majority in Congress, a president sometimes cannot employ the Jeffersonian model because of the recalcitrance of a minority within his own party.

And third, bicameralism continues to impede unified governmental action even when the same political party controls both houses of Congress. The different electoral constituencies of the Senate and House thwart their ability to craft common policies.⁸ The unrepresentative character of the Senate—in which each state, regardless of population, has the same voice—presents additional obstacles to majority rule. The 450,000 residents of Wyoming, for example, have the same representation in the Senate as the thirty-two million residents in California, giving the vote of a lucky Wyoming citizen sixty-six times the weight of a fellow citizen who

happens to live in California.⁹ And the Senate's tradition of the filibuster, which allows a minority of forty senators to block legislation, presents an additional barrier to majority rule.

Although the Jeffersonian model has been a partial solution to the bias toward governmental stalemate inherent in the separation of powers, a critical requisite of its operation—one-party control of both the presidency and Congress—has been a rarity in recent years. Since 1956, one-half of presidential elections—eight of sixteen—have returned to office a president of one party and a Congress controlled by the other.¹⁰ Because this situation is now so common, most Americans do not realize that divided government produced as a result of a presidential election was once extremely rare. Between 1832 and 1952, it occurred only three times. As Table 1.1 shows, prior to 1952 divided government was almost exclusively a product of midterm congressional elections, when voters sometimes voted in a congressional majority opposed to the sitting president. The recent midterm elections seemed to follow that older pattern, with Republicans gaining control of one or both Houses of Congress while a Democrat was in the White House in 1994, 2010, and 2014, while Democrats took control of both Houses in 2006 and the House in 2018 with a Republican in the White House. In the 1996, 2000, and 2012 presidential elections, voters once again opted for divided government, as Presidents Clinton, Bush, and Obama assumed office facing at least one congressional house controlled by the opposing party. Bush's reelection in 2004, Barack Obama's victory in 2008, and Trump's 2016 election were more in line with the traditional pattern, as a one-party triumph produced a partisan sweep and unified government. Following both these partisan sweeps, the hand-wringing of some political commentators about the dangers to checks and balances that partisan control of both ends of Pennsylvania Avenue represented underscored the novelty of unified government in the modern era. Many Americans do not recognize that the historical tradition had been unified partisan control after a presidential election.

Table 1.1 Divided Government by Type of Election, 1832–2014

	Presidential	Midterm
1832–1898	3	11
1900–1952	0	4
1954–2018	8	13

Source: Adapted from Morris P. Fiorina, "An Era of Divided Government," *Political Science Quarterly* 107 (Fall 1992): 390. Data updated to reflect elections after 1992.

Why has divided government become more common in the past half century? As political scientists began to first notice the phenomenon in the early 1970s and 1980s, many examined factors such as the greater reelection resources of congressional incumbents or a less partisan and more educated electorate more inclined to split their tickets between a presidential candidate of one party and a congressional candidate of another—perhaps even in a conscious effort to divide government.¹¹ A voter would choose a Republican president to hold the line on taxes and a Democratic member of Congress to protect valued social programs. The decline of split-ticket voting and the growing partisan polarization of voters over the past thirty years have called into question such explanations. Rather, divided government seems to be an artifact of the evolution of party alignments since the 1950s.

Beginning as early as the Eisenhower years, Republicans were able to muster national majorities to win the presidency, but the Democrats maintained the solid advantage in Congress forged during the 1930s. In response to the civil rights revolution—perceived as a Democratic endeavor—conservative southern voters gradually shifted their partisan allegiance from the Democrats to the Republicans. This occurred first in presidential elections, as many southerners cast votes for Eisenhower, Nixon, and Reagan while continuing to support their conservative incumbent Democratic congressman or senator. This phenomenon was responsible for the divided governments of the 1950s through the 1980s as southern conservatives split their ballots between Republican presidential candidates and Democratic members of Congress. Over time and by the late 1980s as incumbent Democrats retired from Congress, conservative southern voters shifted their congressional votes to Republican candidates. Similarly, during this same period, northern liberals who previously often supported liberal Republicans for Congress began to prefer liberal Democrats. The result has manifested as the ideological polarized parties and Congress of the present era.

The ideological sorting of the parties has a geographic aspect, as individual congressional districts and states tend to have a distinct partisan bias. Since the 1980s, fewer congressional districts are competitive, as one party's voters tend to dominate. The same is true of states, which have sorted themselves into the familiar red and blue states seen on today's electoral maps. At the same time, the seeming Republican advantage at the presidential level of the 1970s and 1980s (from 1968 to 1988, Republicans won five of six presidential elections) has shifted to the Democrats, who won popular pluralities in six of the past seven presidential elections, although the Electoral College awarded the presidency to the Republican with fewer popular votes in both 2000 and 2016.

With Republicans dominating more districts and states since 1994, control of Congress has become quite competitive, with most seats safe for each party and partisan control dependent on victories in a small number

of competitive districts.¹² Consequently, party control of the House and Senate has shifted back and forth, irrespective of the party of the incumbent president, resulting often in divided government. This back and forth in partisan control also reduces the incentive for a party in the minority to cooperate with the majority. A more attractive strategy simply is to be as obstructive as possible in hopes of capturing the majority in the next election. In most recent elections, Republicans have tended to have the edge in the number of safe districts, with majorities in large numbers of more rural and exurban districts, while Democratic voters tend to cluster in large and medium-sized cities.¹³ Due to the malapportionment of the Senate described earlier, Republicans also are advantaged in many more rural and low population states. Furthermore, lower voter turnout in midterm congressional elections has tended to favor Republican candidates because older, wealthier, White, and more conservative voters are more likely to vote than the younger, less wealthy, minority, and more liberal voters who support the Democrats in presidential election years.

The last few election cycles have produced two distinct electorates: a more youthful and more diverse electorate in higher turnout presidential elections and an older, less diverse one for the midterms. Even if Democrats can win the White House in higher turnout presidential elections, the midterm electorate will tend to hand control of Congress to the Republicans. With a Republican congressional edge and a Democratic presidential one, the conditions exist for continued periods of divided government for some time to come.

The Separation of Powers and Democratic Values

The founders' preoccupation with the democratic value *liberty* (the central concern of the Protective model) caused them to construct an institutional structure that interfered with achieving two other key democratic values. First, in their zeal to prevent majority tyranny, they created a structure insufficiently *responsive* to political majorities. Responsiveness to citizens is an underlying concern of all the models discussed in the introduction, but it is of special concern to proponents of the Participatory and Developmental models. Second, the separation-of-powers design has so fragmented and divided responsibility for government policy that it has become impossible to hold elected officials *accountable* for their actions. Accountability is also an assumed attribute of all the models, including the Pluralist model, which defines the democratic citizen's key role as passing judgment on the performance of officials at election time. Such a judgment cannot be made effectively when the separation of powers obscures who is responsible for governmental conduct.

Responsiveness

Although democrats can sympathize with the founders' concern for protecting minority rights and preventing majority tyranny (objectives all democrats share), the separation of powers creates a problem for responsive democratic politics. The system is incapable of distinguishing between majorities that are tyrannical and those that are not tyrannical; it frustrates all majorities, regardless of their objectives. The system creates a series of roadblocks at which a minority interest can prevent change that a democratic majority supports. An electoral majority may send to Washington a House of Representatives prepared to enact policies they favor only to have those policies voted down in the Senate, in which less populated states are overrepresented, and two-thirds of the senators have not faced the electorate in the most recent election. Alternatively, the president may be a minority instrument, employing the veto to prevent enactment of legislation—a veto that can be made override-proof with the cooperation of only thirty-four senators. Or a president elected to office with a majority mandate for change may face opposition from elected majorities in either house of Congress that are committed to a very different mandate. Separation of powers provides a constitutional structure that is inherently biased against change, even when change has the support of an overwhelming majority of citizens.

The separation-of-powers system was *intended* to reduce the responsiveness of government. Because of their fear of majority tyranny, the founders wanted to “cool” democratic passions by passing them through several independent institutions.¹⁴ In addition, they believed in the classical liberal ideal of limited government. Separation of powers served this ideal by providing a permanent conservative bias to government; a minority could easily block the passage of new policies. Or competing institutions claiming responsiveness to different electoral majorities would check each other's ability to pass any measure. Even large popular majorities in favor of a policy had to fight through numerous barriers before innovative laws could be passed. As a result, government could act in response to democratic majorities only slowly and in a limited way. Defenders of the separation of powers, including the founders themselves, usually have justified this blanket frustration of all majorities by arguing that enduring majorities backing wise and useful policies will eventually succeed. They believe that the system will stop wrongheaded proposals passionately backed by a transitory majority but that, if a proposal has genuine merit, it will succeed through several election cycles in bringing to power supporters in all branches and then be enacted into law. As one defender puts it, the separation of powers was intended “to protect liberty from an immoderate majority while permitting a moderate majority to prevail.”¹⁵

Separation of powers in a democratic political system, then, is based on a proposition about its consequences for democratic majorities: Tyrannical, immoderate, and unwise majorities will be blocked; nontyrannical, moderate, and wise majorities will eventually succeed. Does our two-hundred-year experience with the separation of powers confirm this proposition?

In my view, the separation of powers has impeded the enactment of numerous moderate, just, and wise policies. Over the past two hundred years, this system has worked repeatedly to frustrate and divide popular majorities. Even with the partial amelioration of the Jeffersonian model, our constitutional system has made the enactment of every policy innovation a protracted struggle. As a result, many popular programs and policies have failed to be enacted or have been put into place only after years of debate, discussion, and compromise, which dilute their effects. Because of this bias against policy innovation, government is smaller in the United States than in other industrialized nations, but our government also provides fewer and less generous social programs even though public opinion supports more expansive ones.

For example, the United States is the only industrialized, democratic nation in the world that does not guarantee all its citizens access to health care. Even the passage of Obama's Affordable Care Act, which expanded insurance coverage, still left many Americans uninsured. In contrast, by the middle of the last century, in other democratic countries citizen demand for access to health care produced a variety of government policies to provide either universal health insurance or government-subsidized health care services. In these countries, citizens access health services without the kinds of financial burdens, such as co-pays and deductibles, that even Americans with health insurance face. The popularity of calls for Medicare for All during the 2020 presidential election campaign, a promise for truly universal coverage, showed how Americans yearn for the kind of health care coverage available in other industrialized nations. This yearning is not new. Public opinion polls have shown majority preferences for universal health care coverage in the United States for over half a century.¹⁶ But since the administration of President Franklin Roosevelt in the 1930s, minority special interests have been able to manipulate the separation-of-powers system to block numerous attempts to enact universal health insurance, even resist expansions of coverage such as the introduction of Medicare and Medicaid in 1965 and the adoption of the Affordable Care Act in 2010.¹⁷ Although separation of powers is supposed to impede only unwise policies, in the case of health insurance it has helped to produce the most complex and expensive system in the world, one that left about fifty million Americans without health care coverage and many others inadequately covered.¹⁸ More than just health insurance, separation of powers has impeded provision of many other social benefits taken for granted in

most other developed nations like affordable housing, paid family leave, child care, free higher education, and efficient public transit systems. Moreover, the system has a long track record in preventing needed reform such as the blockage of civil rights legislation by a minority of southern congressmen in the 1940s, 1950s, and 1960s; reasonable gun control legislation; meaningful campaign finance reform; the continuing failure to control greenhouse gas emissions that produce global warming; the failure of immigration reform; and the inability to resolve the problem of a growing national debt.

The inherent bias of the separation-of-powers structure against majorities supporting change inhibits governmental responsiveness to serious problems, citizen concerns, and substantive policy innovation.¹⁹ In a recent comparative study, political scientists Alfred Stepan and Juan J. Linz find that the high number of veto points in the American separation of powers structure impedes enactment of programs to mitigate economic inequality, giving the United States the highest level of inequality of any established democracy.²⁰ Given this system, it is not surprising that most Americans have less and less confidence in governmental institutions. The perception that “those politicians in Washington can’t seem to get anything done” reflects an awareness of the inherent unresponsiveness of government. What Americans need to understand is that the unresponsiveness is built into the separation-of-powers structure.

Governmental unresponsiveness is most often associated with periods of divided government, but the separation-of-powers system places roadblocks in the way of policy innovation even when a single party controls both Congress and the presidency. In the past, the Jeffersonian model was a means of sometimes overcoming institutional division to enact progressive policies, but the political autonomy of members of Congress—their ability to gain election in their districts independently of the president—means that even a congressional majority of his own party does not guarantee support for the president’s program. And the Senate’s filibuster rule usually gives the opposition party a potential veto over presidential initiatives if the Senate majority numbers less than sixty.

President Barack Obama’s first two years in office seemed to mark a revival of the Jeffersonian model and its capacity to bring about substantial change despite the separation of powers. Obama gained office through a decisive electoral victory with about 53 percent of the popular vote and an overwhelming electoral vote margin.²¹ Democrats also expanded their control of Congress to a seventy-eight-seat majority in the House and, eventually, the magic sixty-vote, filibuster-proof majority in the Senate. Coming to power at the height of the most severe economic downturn since the Great Depression, the challenge facing the new president and Congress was to revive the moribund economy and relieve the distress of the Great

Recession. Democrats were able to use their control of both branches to enact major new legislative initiatives.

Among these, the passage of the Affordable Care Act of 2010, which greatly expanded access to health insurance, was the signature achievement. In addition, Obama signed into law a major economic stimulus package; financial regulatory reform; student loan reform; new regulation of credit cards, tobacco, and food safety; the right of gays to serve in the armed services; and extensions of unemployment, food stamp, and Medicaid assistance to ease the effects of the recession. Several key reforms passed the House, including climate change mitigation through cap and trade, immigration reform, and new campaign finance reforms, but they failed to pass the Senate.²² The impact of the separation of powers in requiring overcoming multiple veto points made even legislative successes, like the passage the Affordable Care Act, as tainted due to the convoluted, lengthy, and rancorous process required for their enactment. This messy legislative process made both Obama and Congress immensely unpopular after two years, despite the overall legislative success, leading to the Republicans recapturing control of the House after 2010 and reducing the Democrats' Senate majority.

Obama's 2008 campaign promise to bring change to Washington meant not only accomplishing new legislative achievements, such as reform of health care, but also altering the atmosphere of partisan conflict. Not content to follow solely the partisan logic of the Jeffersonian model, Obama hoped he could gain Republican backing for parts of his agenda. Obama seemed to want to renew the kind of bipartisan cooperation of fifty years earlier, before the partisan sorting and polarization of the 1980s, when both Republicans and Democrats "reached across the aisle" to enact significant initiatives such as the Interstate Highway Act of the 1950s, the Civil Rights legislation of the 1960s, and the environmental legislation of the early 1970s. Obama's hope proved naïve. What it ignored was the manner in which the Republican Party had weaponized the separation of powers as an instrument to advance its partisan agenda. In response to Obama's gestures toward bipartisanship, Senate Republican leader Mitch McConnell responded with a stance of obstruction saying, "The single most important thing we want to achieve is for President Obaman to be a one-term president."²³ In the face of such partisan gridlock and Republican obstruction, Obama soon discovered that the complications of the legislative process in the separation-of-powers system undermined his policy initiatives, forcing him to water down their effectiveness and enact them through a prolonged and drawn-out process that undermined their popularity. We can see these factors at work in the enactment of the two most prominent legislative achievements of the first two years: the economic stimulus and the Affordable Care Act.

In his first few weeks in office, Obama's first priority was enacting a substantial economic stimulus package. Even as it designed its initial proposal, the administration had to consider the potential roadblocks of the separation of powers that might derail any stimulus. Because it would need two or perhaps three Republican votes to overcome a potential filibuster in the Senate, tax cuts constituted about 40 percent of the administration's initial stimulus proposal, even though most economists considered direct government spending more effective than tax cuts in stimulating the economy.²⁴ Obama and his advisers also hoped the tax cuts would help gain the votes of "Blue Dog Democrats"—Democratic House members elected in conservative districts (many of which Republican candidate John McCain had won in 2008). The logic of separation of powers meant that these members perceived their reelection prospects in terms of individual voting records that attract support in their conservative districts rather than the overall success of the Obama presidency. To court these Blue Dogs, the overall size of the stimulus (\$787 billion) also was kept lower than economists recommended to cover what was a \$2 trillion drop in gross domestic product (GDP).²⁵ In the end, this smaller, less robust stimulus did bring an end to the recession and the decline in jobs, but it did not prove strong enough to bring about forceful economic growth. Unemployment remained mired at about 9 percent for Obama's entire first term and left the perception of ineffectual economic leadership. In 2010 as the economy seemed to stagnate, several of Obama's advisers advocated a second stimulus package, yet enacting one was impossible given congressional roadblocks.²⁶ The public's central demand for action on job creation could not be met because of legislative gridlock.

Obama's signature legislative achievement, the Affordable Care Act, also emerged from the legislative process in a distorted form because of roadblocks inherent in the separation of powers. As with the stimulus bill, the initial design of the health care proposal reflected the administration's calculation of what was needed to overcome legislative barriers rather than what would most effectively and efficiently provide universal health care. Rejecting at the outset any consideration of a single-payer universal insurance plan favored by liberal Democrats, the administration opted for an approach it hoped might attract some Republican support.²⁷ It took as its model a Massachusetts health care program enacted a few years earlier by Republican governor Mitt Romney that expanded health care coverage for those without employer-based coverage through subsidies for individuals to buy insurance, regulations mandating a minimum package of coverage (including a requirement that no one could be denied coverage due to a pre-existing health condition), and a mandate that everyone purchase insurance. The combination of these elements was intended to keep insurance premiums low while guaranteeing access to most people. In addition, Obama's plan mandated that states expand Medicaid eligibility.

In proposing a plan with a conservative Republican pedigree, the administration hoped for some bipartisan support for health reform, but in the end, this was not to be. Despite a plan with bipartisan roots and support from the health care industry, passing the Affordable Care Act proved an arduous and drawn-out process, stymied repeatedly by the veto points in the separation-of-powers system. This complex and, to most of the public, baffling process alienated the public and undermined public support for the eventual legislation. Over several months, three House committees debated several versions of the bill and Max Baucus of Montana, chair of the Senate Finance committee, engaged in a fruitless attempt to attract Republican votes for the measure. In the meantime, opponents of the legislation, particularly on right-wing talk radio and FOX cable TV, were filling the airwaves with hysterical and distorted denunciations of the legislation, claiming imminent “government takeover” of health care and “death panels” that would force euthanizing of senior citizens. When members of Congress returned to their districts in August 2009, they were met at town meetings with crowds of “tea party” supporters screaming their opposition to health care reform, based largely on these false claims. Intense media coverage of these events, including the false claims, significantly undermined public support. While a strong majority of the public had favored health care reform in the spring, by August support had fallen below 50 percent, where it would remain for the balance of legislative consideration.²⁸ When the legislation finally passed in January 2010 through a parliamentary maneuver to attach the bill to budget reconciliation measure not subject to Senate filibuster, it did not receive a single Republican vote.

As noted before, in terms of purely passing legislation, the first two years of the Obama presidency ought to be heralded a success. Not only were significant initiatives enacted, but most, such as credit card reform, banking regulatory reform, and student loan reform, were quite popular with the public. Yet despite legislative success, positive perception of Obama’s performance declined steadily throughout his first two years. Much of the decline was tied to the stagnant economy.²⁹ Here, the roadblocks of the separation of powers that impeded a more effective policy response directly contributed to public perception of Obama’s presidency. These same roadblocks required accepting modifications that reduced policy effectiveness in response to special-interest pressures. Some of the decline in popular support for the Affordable Care Act, for example, came from health care reform supporters who perceived the elimination of the public option as fatally undermining reform. In the end, Obama’s muddled legislative record, necessitated by the need to overcome institutional barriers, failed to achieve a clear response to the demands for political change that had propelled him to office.

The continuing weak economy fueled the Republican surge in the 2010 midterms, bringing a Republican majority in the House and a smaller

Democratic majority in the Senate. For the balance of Obama's presidency, Republican opposition in the legislative branch would create absolute gridlock, making responsiveness to serious public policy problems impossible. Now with divided government, response to public demand for government action on the economy proved impossible. In the fall of 2011, a new jobs proposal from the Obama administration met solid rejection from House and Senate Republicans. The 112th Congress (2011–2012) and the 113th (2013–2014) proved the least productive in history in terms of action on pressing public problems.³⁰ In her analysis of congressional action or inaction on salient policy issues over time, Brookings Institution fellow Sarah Binder found the 112th Congress to be the most gridlocked in the post-war era.³¹ Responding to pressure from its radical tea party members, the House Republican leadership blocked action on a multitude of issues with strong public support, including immigration reform, modest gun control measures, greenhouse gas emissions, job creation, transportation funding, unemployment insurance extension, and many others. Instead, Republicans staged numerous symbolic (but meaningless) votes to repeal "ObamaCare" and set up confrontations with the administration on the budget (which will be described in the next section). Not surprisingly, in light of this dismal performance, public confidence in Congress fell to an all-time low as only 7 percent of Americans approved of its performance four years after divided government returned in 2010.³² With Republican recapture of a Senate majority in 2014, prospects for action on pressing national problems for the balance of Obama's presidency declined even more.

Accountability

The accountability of elected officials to those they represent is crucial to *representative* democracy. The famous democratic theorist Jean-Jacques Rousseau did not believe that people could rule themselves through representatives because he did not trust representatives to make laws in their constituents' best interests rather than in their own. Proponents of representative democracy, however, held that the problem Rousseau raised could be overcome if the representatives were required to face the electorate at regular intervals. At election time, the represented would be able to review the governmental record of their representatives and decide whether they had been well served. Between elections, elected officials would exercise their duties responsibly because they knew their constituents would hold them accountable for their actions at the next election. This system of accountability of representatives to the represented means that citizens must be able to evaluate the performance of elected officials: Those who have performed well should be reelected; those who have done poorly should be rejected.

The American separation-of-powers system hopelessly muddles the ability of citizens to hold their representatives accountable. Under this system, the president and Congress share responsibility for public policy and governmental performance, but they are held accountable separately. At election time, not only must citizens form a judgment about governmental performance (already a challenging task for most of us), but they must also sort out responsibility for that performance between the president and Congress (and between the House of Representatives and the Senate!). Determining this responsibility would be in itself a monumental task—requiring hours of research on separate issues—but it is made impossible by the way incumbents of both branches distort their records. The president and members of Congress routinely take credit for governmental successes while blaming the other branch for any failures.

The politics surrounding Obama's first term illustrate well the challenge voters face in holding government accountable in a separation-of-powers system. As was explained earlier, the failure of the president to successfully address the country's sluggish economy and continuing high unemployment—with the perception of unresponsiveness thus created—led to an electoral swing toward the Republicans in the 2010 midterm election. This swing demonstrated the electorate's discontent with Washington policy makers and a desire that action be taken to revive the economy and address other issues such as rising government debt. Republicans also benefitted from the smaller, very different midterm electorate of 2010 from that of the larger, more diverse presidential electorate of 2008. In 2010, with many core Obama supporters staying home, a smaller, more conservative electorate gave their votes to Republican candidates. Although 2010 voters seemed to want to hold Washington politicians accountable for failure to address the nation's problems, given separation of powers, the election outcome only served to heighten partisan conflict, produce more dysfunctional politics, and diminish the chance for constructive policy making.

In the months following the Republican House takeover, the public witnessed a depressing spectacle of vituperative partisanship, political brinkmanship, and failure to pass constructive policy measures. Despite continued high joblessness during most of 2011, the parties deadlocked over the issues of deficits and debt, while pushing any effort to promote job growth to the background. Upon taking office, House Republicans decided to use their new leverage of control of one congressional chamber to force their agenda of smaller government and lower taxes.³³ This strategy culminated in a showdown over lifting the federal debt ceiling during the summer of 2011. Normally, raising the debt ceiling is a routine vote that authorizes the U.S. Treasury to issue additional treasury bonds to cover debt that already has been incurred. Raising the debt ceiling itself does not increase the debt, nor does it authorize any additional indebtedness. If the debt ceiling is not raised, the consequences are momentous—the country



In 2018, Republican Senate Majority Leader Mitch McConnell took the unprecedented step of refusing to consider President Obama's nomination of Merrick Garland to the Supreme Court.

would be in default and unable to pay its debts, something that has never happened in U.S. history. Nevertheless, House Republicans seized on the symbolism of the debt ceiling to demand that either Obama and congressional Democrats agree to their position on taxes and spending or they would not vote to raise the debt ceiling. The Democrats, for their part, viewed the Republican spending cut proposals as too draconian and refused to consider cuts without also increasing taxes on wealthy Americans, something the Republicans refused to entertain. The result was deadlock.

As the deadline approached for either the ceiling to be raised or America to be in default, Republicans, in control of the House, and Democrats, in control of the Senate and presidency, faced off like gunfighters at the OK Corral. Each party claimed to represent majority will, having come to control their institutions through electoral victories in separate elections; neither was about to accede to the other's demands.³⁴ In the end, at the eleventh hour, a compromise was reached to raise the debt ceiling while deferring decisions on deficit reduction to a twelve-member congressional "super committee," evenly divided between the two parties, that would produce a proposal by the following November. Although a large faction of House Republicans to the end advocated default rather than raising the debt ceiling, the fears of the financial turmoil that would result led the Republican leadership to support raising the ceiling, with the help of Democratic votes in the House. The political maneuvering over the debt

ceiling and the near default dismayed both the financial markets and the American public.

In the weeks following, Standard and Poor's, a major bond-rating agency, downgraded the United States' AAA bond rating, citing deficiencies in America's governance structure as the reason.³⁵ At the same time, job approval ratings for both the president and Congress plummeted. By the fall of 2011, only 9 percent of the public, a historic low, approved of the job Congress was doing, and 89 percent of the public expressed distrust of government to do the right thing.³⁶

As the 2012 elections approached, the electorate seemed in the mood to hold governmental leaders accountable for poor performance. Not only was the public dissatisfied with inaction on the deficit, but also it continued to want decisive action to spur job growth as the economy continued to sputter. Throughout 2011 and early 2012, Obama and congressional Republicans were unable to agree on effective job creation measures. Each party pointed the finger at the other for the deadlock over both deficits and economic performance—a muddying of accountability made easy in the separation-of-powers system.³⁷

In light of this dissatisfaction with government, who and how could voters hold their elected representatives accountable? Vote against all incumbents? This strategy, given divided government, would produce a Republican in the White House and a Democratic House—hardly a formula to end partisan gridlock. Return unified control to the Democrats? This strategy works only if one concludes policy deadlock is primarily the fault of Republicans. Give unified control to Republicans? Again, a good strategy only if Democrats alone could be blamed. Placing blame squarely on one or the other, however, cannot be done, based solely on overall government performance, since separation of powers and divided government give the parties joint control of outcomes.

In its evaluation of elected representatives, the public senses this conundrum as it disapproves by a similar margin the performance of both congressional Republicans and Democrats. Given the division of responsibility and accountability under separation of powers, assigning clear credit and blame to either party for what government does is an impossible task.

The dilemma voters faced in 2012 is inherent in the separation-of-powers structure. If both branches of government share responsibility for policy, why shouldn't a citizen avoid the nearly impossible task of sorting out responsibility for policy failures and hold officials accountable by simply voting against incumbents in both branches at once? Such a solution might be reasonable if members of the same political party controlled both Congress and the presidency, but when control is divided between the parties, it places a dissatisfied citizen in an absurd position: A majority of citizens voting against incumbents in both branches would "punish" the party in control of one branch by awarding it control of the other. The logic of

separation of powers—shared responsibility for policy making, combined with accountability through separate elections—makes holding officials accountable for policy failure extremely difficult.

Meanwhile, congressional incumbents of both parties can avoid responsibility when running for reelection by blaming failed policies on the administration or by claiming that, whatever the collective congressional responsibility for the problems, they *individually* have not contributed to them.³⁸ Given the way the separation-of-powers system muddles responsibility for policy, assessing the truth of such claims is nearly impossible for even the most conscientious citizen. Not surprisingly, despite widespread dissatisfaction in the country with Congress as a whole and growing uneasiness about many domestic issues, incumbent members of Congress are usually reelected.³⁹

In the end, the 2012 election produced a muddled result typical of the confused accountability inherent in the separation of powers. Obama was reelected with a decisive majority; although Democrats gained seats in both the House and Senate, the Republicans retained control of the House, and the Democrats' Senate margin remained far below the sixty votes needed to break a filibuster. The election had not altered the essential partisan dynamic in Washington and produced even more partisan gridlock. In the 2014 midterms, voters' continued unhappiness with their political leaders only enhanced the gridlock by turning Senate control to the Republicans.

Along with providing citizens an opportunity to punish their representatives for policy failures or reward them for policy successes, accountability is supposed to ensure more responsible behavior from representatives between elections. But rather than ensuring such responsible behavior, the separation of powers instead opens up opportunities for special interests to gain legislation favorable to themselves. This process has been at work over the past three decades as Congress and several presidential administrations have promoted deregulation in banking and corporate oversight. New Deal regulatory agencies and procedures established in the 1930s to prevent corporate abuse were dismantled. When such deregulation led to disastrous results, first in the savings and loan collapse of the 1980s, which proved a precursor of the more devastating 2008 financial crisis and its aftermath, the separation of powers impeded the process of holding lawmakers accountable for the consequences of their actions. Since voters could not easily understand whether the president or Congress—or who in Congress—might be to blame for the bad policies leading to these disasters, they could not hold the responsible persons accountable, opening the door to further bad policy making.

The separation-of-powers system diffused responsibility for the banking crisis that led to the Great Recession of 2008, leaving voters a difficult

task in holding anyone responsible.⁴⁰ The financial crisis developed in 2007 over defaults in subprime mortgages—a class of home mortgages given to people whose low income or poor credit history normally would not qualify them to receive a mortgage. Around 2000, as housing prices rose dramatically and mortgage interest rates fell, many lenders began to write these subprime mortgages, promising borrowers that their monthly payments would remain low and that rising home prices would permit them to sell their property at a profit if they got into financial difficulty. Financial deregulation allowed mortgage companies to develop a variety of loans, such as variable-rate mortgages (a mortgage payment would rise as interest rates rose), no-down-payment loans, and loans at low “teaser rates” that ballooned after the first few years. At the same time, Wall Street modified the way it packaged mortgage securities to sell to investors so that the risk associated with the subprime loans was hidden. When rising mortgage rates and falling house prices in 2007 began causing people to default on their subprime mortgages, many large banks and other investors found themselves holding mortgage securities that included these risky loans. The resulting millions of dollars in losses forced the Federal Reserve and Congress to attempt a \$700 billion bailout of the entire banking system. Taxpayers were made to assume the consequences of the actions of irresponsible mortgage lenders and of the financial institutions that bought the risky mortgages they sold. Again, Washington policy makers had largely escaped accountability for the banking crisis, as both parties pointed fingers at each other and no one was held responsible.

Responsiveness and Accountability Failures and the Rise of Trump

The populist appeal of Donald J. Trump can be understood as a response to many Americans’ perception that their government did not respond to their needs and that to hold it accountable, they needed to turn to an authoritarian personality. The 2008 financial crisis and the subsequent recession devastated countless American households as workers became unemployed, families lost their houses through mortgage foreclosure, and students had to set aside college dreams because of lost college savings. This catastrophe came after several decades of growing economic inequality brought on by stagnant wages, loss of good manufacturing jobs in much of the country, and increasing economic insecurity fostered by globalization (developments analyzed in detail in chapters 6 and 7). The economic recovery prior to 2016 proved quite uneven with the big banks, corporations, and wealthy investors recouping their losses quickly while the slow rise in employment and continued wage stagnation kept most

American households economically insecure. The inability of the government to respond to the crisis with adequate fiscal stimulus and seemingly to reward, rather than hold accountable, the banks and financial manipulators responsible for the financial crisis angered millions of American voters.

Trump responded to and stoked this anger, as demagogues usually do by identifying scapegoats to blame for these economic ills. He named immigrants, foreign countries that took advantage of America in trade deals (especially China), the press, and liberal “politically correct” elites, particularly a Black president, Barak Obama, as the sources of the economic insecurity of his supporters. His rhetoric also drew on a reservoir of racial and cultural resentment among his supporters through which he channeled their economic grievances.⁴¹ These claims, of course, ignored how America’s separation-of-powers system had blocked many policy initiatives that could have ameliorated the economic pain and fears that Trump’s supporters felt. Initiatives such as a more vigorous fiscal system to address the 2008 recession or a more robust set of social policies, such as adequate health insurance, job training and other education programs, or protection of retirement pensions, might have cushioned the effects of the economic dislocations brought on by globalization.

Trump himself discovered the roadblocks of the Constitution’s institutional structure upon taking office. Even with Republican majorities in both the House and Senate, his first major legislative initiative, the repeal of ObamaCare—the Affordable Care Act—failed to pass. During the campaign, Trump had made ending the Affordable Care Act a key campaign promise and during Obama’s second term, House Republicans had voted numerous times to repeal ObamaCare. Yet once in control in Washington, the roadblocks of separation of powers foiled repeal when a handful of Republican senators sided with Democrats to block repeal. Trump’s only major legislative achievement in his first two years was passage of a major tax cut bill in 2017 that primarily benefitted corporations and wealthy taxpayers. To pass that bill, however, Republicans had to employ the same legislative maneuver, a budget reconciliation measure, that the Democrats had used to pass ObamaCare in 2009. With roles reversed, the tax bill passed with only Republican votes. The opportunity for any other Trump legislative initiatives ended when the Democrats regained control of the House in 2018. Total gridlock now prevailed. With control of the House, Democrats could now pass numerous bills on important issues such as electoral reform, family leave, gun control, and so on, but as with the Republican House’s earlier repeated repeals of ObamaCare, passage of these progressive measures was symbolic as none could pass the Republican Senate or overcome a Trump veto. Voters in 2016 may have been looking for more responsiveness and accountability, but after two elections, the gridlock inherent in separation of powers combined with partisan polarization denied it to them.

The Parliamentary Alternative

If the separation of powers now inhibits governmental responsiveness to majorities and muddles accountability, achieving these democratic values would require concentration of policy-making power in a single institution—what political scientists call *unified government*.

In 1789, the founders associated unified government with tyranny because the existing examples of such governments, usually ones that concentrated power in the monarchy, were clearly authoritarian regimes. After the eighteenth century, however, a democratic variant of unified government was devised as European democrats came to power in their countries. This form of unified government, called a *parliamentary system*, is the most widespread form of democratic government in the world. Among the world's most industrially advanced democracies, the United States is the only one with a separation-of-powers system rather than a parliamentary system.⁴²

The founders' attempt to craft the world's first large-scale representative democracy could not draw on the experience with mass-based political parties and party-organized legislatures that would bring about the evolution of parliamentary systems in nineteenth-century Europe. Had they the opportunity to consider this alternative in 1787, they too might have opted for a parliamentary structure.⁴³ Unlike the authors of our Constitution, modern Americans are able to consider such a democratic alternative to our separation-of-powers system and whether it might provide better opportunities to achieve responsive and accountable government. In doing so, we would be following the recommendation of Gouverneur Morris "to take counsel from experience"—in this case, the experience of parliamentary democracies—to identify ways to improve our constitutional structure.⁴⁴

In a parliamentary system, both executive and legislative powers are concentrated in a government composed of members of whichever party or coalition of parties has a majority in a democratically elected legislature (or parliament). This government consists of a prime minister, who is usually the leader of the legislative majority party, and a cabinet that the prime minister selects from among her or his legislative majority. Cabinet ministers head the various executive departments (or ministries, as they are usually called) and under the direction of the prime minister, supervise the day-to-day operation of the government bureaucracy. In exercising their executive roles, the prime minister and cabinet function much as the president and the cabinet in the American system do, except that they serve simultaneously as elected representatives in the legislature—a dual status that is constitutionally prohibited in our separation-of-powers system.

As legislative leader, the parliamentary government is responsible for initiating and passing all legislation. Its policy proposals are discussed, debated, and always strongly criticized by the legislative opposition, but

with rare exception, its proposals are also enacted into law. The government can pass its legislative program because it can count on the support of the members of its party or coalition, who possess the majority of votes in the legislature. Thus when a prime minister is elected to power in a parliamentary system, he or she can expect to be able to enact the governmental agenda promised to the voters during the election campaign. Political party leaders tend to have more control over rank-and-file legislators in their parties in a parliamentary system than we are accustomed to in the United States. In the legislature, whether they are among the majority or in opposition, individual legislators in a parliamentary system follow the directions of their party leaders when voting on legislation. They must do so because the party leaders control their ability to run under the party label at election time—a major difference from the American system of primary elections, which limits the ability of party leaders to control who runs under a party label. In a parliamentary system, any legislator who votes against the leadership can expect to find someone nominated in his or her place for the next election. In addition, advancement to positions of governmental power, such as a cabinet post, is under the control of party leaders, providing an additional incentive for ambitious legislators to submit to party discipline.

Political parties in most parliamentary systems are also more closely associated with consistent sets of public policy positions than are those in the United States. Within the American Republican and Democratic parties, one finds officeholders advocating different specific policy positions, although American parties have become more ideologically cohesive in

House of Commons/PA Images via Getty Images



In the British House of Commons, the government party and opposition party face one another on opposite sides of the chamber to debate legislation.

recent years. Nevertheless, American legislators can carve out independent positions on issues because each is elected on the basis of his or her individual legislative record, not on the collective record of the political party. In a parliamentary system, it is that collective record that a party member must defend when running for election; therefore, policy differences usually exist between parties, not within them. Because of the sharper definition of what a party stands for and because parties have the power to enact their promises when elected, voters in a parliamentary system focus much more on party than on any other factor at election time. National legislative elections are contests between political parties, each presenting its party program and seeking control of government to carry it out. In the United States, even as our political parties have provided voters with distinct policy choices, thus allowing voters to choose between contrasting visions of where the parties want to take the country, separation of powers prevents the party the voters choose from carrying out its vision when in office.

When a political party wins an election in a parliamentary system, the party and its leader, the prime minister, control all the governmental levers of power needed to enact their legislative mandate. Responsiveness in carrying out the will of its electoral majority is obviously not a problem. But what about accountability? Accustomed as we are to the checks inherent in the separation of powers, Americans are apt to regard the awesome power of a parliamentary prime minister with alarm. What is to prevent such a powerful individual from using this power to pursue an undemocratic agenda? How can one be sure that a prime minister, once in office, will not act tyrannically?

The appearance of unrestrained power does not coincide with the reality of the political position of prime ministers in most parliamentary systems. Prime ministers are constrained and held democratically accountable in their exercise of power in three ways.

First, their political parties hold them accountable. Although leaders can normally count on discipline from the members of their party in the legislature, those same members can collectively remove the prime minister if they become dissatisfied with his or her leadership. British Prime Minister Margaret Thatcher was forced to resign in 1990 because members of her Conservative Party feared that her leadership would result in defeat for the party at the next election; Labour Prime Minister Tony Blair suffered the same fate in 2007 when party leaders eased him from power in response to dissatisfaction among party rank and file with his support for the Iraq War; and Conservative David Cameron was removed for bringing on the Brexit crisis in 2016 and his successor, Theresa May, for failure to resolve it.

Second, a prime minister can lose the parliamentary majority if enough members of that majority defect to the opposition. This result can come about either because some members of the prime minister's own party

defect or, in the case of a multiparty governing coalition (given party discipline, this is the more likely scenario), because one of the coalition parties withdraws its support.

Finally, and most important, citizens hold prime ministers and their governments accountable in parliamentary systems. Although they possess unified control of government while in power, prime ministers know that eventually, at the next election, they will need to defend their exercise of power to the voters. Unlike the separation-of-powers system, the parliamentary system offers no possibility of deflecting responsibility for governmental performance onto another branch of government or onto the opposition party. Consequently, in making every governmental decision, prime ministers and their governments must be sensitive to how these decisions will affect the people who will decide at the next election whether the government should continue in power.

Removing the head of government from office for misbehavior, abuse of office, or simply failed leadership occurs more easily in a parliamentary system than in a separation-of-powers system. Removing an individual prime minister from office is easier and carries with it less constitutional significance than removal of an American president who serves a fixed term and is both head of government and head of state. Prime ministers are merely heads of government; they do not carry with them the quasi-monarchical character of a president. Moreover, although prime ministers are important political leaders who tend to dominate their governments and—in the current era of highly personalized campaigning and media coverage—to become the primary symbols of governmental power, they remain simply heads of a collective leadership that is composed of their cabinet and party majority in parliament.

Although in most parliamentary systems, modern prime ministers are more than “first among equals”; their power derives from the collective leadership that backs them up. Therefore, if an individual prime minister is removed for whatever reason between elections, the collective party leadership remains in power, promoting the programs and policies the electorate endorsed in the last election. How different from the act of removing an American president! Since a president is elected separately from Congress and embodies alone (albeit in combination with the vice president) the will of the voters who elected him, removing a president between elections constitutes a reversal of the previous presidential election. In a democracy, this is an awesome decision that cannot be made easily.

The founders understood how serious it would be to remove a president in the system they had devised, and that caused them to ponder at length how it would be accomplished. The solution they came up with was impeachment, based on a procedure developed in eighteenth-century Britain to remove the king's ministers.⁴⁵ In an era before the development of the modern parliamentary system, the king appointed government

ministers whom Parliament could remove only through impeachment and proof of “high crimes and misdemeanors.” The process was a quasi-judicial one, although Parliaments of the era often abused it to remove officials on political grounds. As the practice of having the parliamentary majority appoint ministers evolved in the nineteenth century, impeachment was no longer needed. Everyone understood that all ministers, including the prime minister, served only as long as they had the confidence of a parliamentary majority; no legal process proving guilt was required to be rid of them. Impeachment and conviction in a Senate trial of treason, bribery, or high crimes and misdemeanors remain, however, the only means of removing American presidents between elections. This quasi-legal standard, to be administered in the quasi-judicial proceeding of a Senate trial, means that an American president who has lost public support—even support from his own party—and the ability to provide effective leadership remains in office until the next scheduled presidential election.

In more than just the removal of a head of government, the operation of parliamentary systems seems superior to that of our separation-of-powers system in providing both responsiveness and accountability.⁴⁶ Elections produce mandates that those elected have the power to carry out. Voters can select through their ballots which party’s policy proposals they prefer and can actually expect them to be implemented. They can also hold governments accountable. Citizens in a parliamentary system are able to evaluate clearly and unambiguously whether the government has served them well or poorly. In making that evaluation, they are assisted by the political opposition party or parties, which naturally seek to expose the governing party’s failures and offer themselves as an alternative. In such a system, citizens can use their strongest tool (elections) much more effectively than is possible under a separation-of-powers system. The ambiguity, confusion, and obfuscation of who is or is not responsible for governmental action are not possible in a unified government system.

Parliamentary government—which, as mentioned earlier, is universal in the developed world except in the United States—seems to be related also to the long-term stability of democracies. Although the United States has maintained a stable democracy under the separation of powers—or what in the study of comparative politics is called the *presidential* system—it seems the exception among such regimes.⁴⁷ Experience elsewhere in the world suggests that the institutional conflict between presidents and legislatures inherent in presidential regimes frequently leads to the demise of democracy. That has been the case in parts of the developing world, especially in Latin America, where presidential democracy has often been tried. In most cases, when a crisis cannot be resolved between president and Congress, either an elected president with military backing assumes dictatorial powers in defiance of the Congress or a military coup replaces both.

Although many economic and cultural factors play a role in such anti-democratic coups, evidence is strong that a separation-of-powers regime seems to facilitate undemocratic crisis resolution. Political scientist Fred W. Riggs, in a comprehensive 1992 study of democracies in developing countries, found that every one of thirty-three presidential regimes had experienced at least one antidemocratic coup, whereas only about one-third of the forty-three parliamentary regimes had suffered such a disruption.⁴⁸ Although many Americans consider separation of powers a key factor in the stability of our democracy, such studies suggest that our democratic culture and economic prosperity allow our democracy to succeed in spite of—not because of—the separation of powers!

As political scientist Juan Linz argued in a classic essay two decades ago, presidential (separation-of-powers) systems are inherently unstable because since the people elect the president and the legislature independently in separate elections, at any point in time both the president and the legislative majority can claim to represent the legitimate interests of the people.⁴⁹ This “dual legitimacy” will not be a problem as long as the president and legislature agree or the same party controls both branches. The danger arises when different parties with very different policy agendas control the different institutions. In that case, each branch of government can claim that it represents the true will of the democratic majority and speaks on behalf of the people. When such conflicts arise and if the branches cannot agree, the system provides no principle for resolving the conflict.

Under ordinary circumstances, these conflicts will lead only to governmental gridlock and partisan bickering, such as the sort with which we have become familiar in the United States in recent years. But in a time of crisis, such as a war, social unrest, or severe economic downturn, when decisive action is essential, the competing branches might be tempted to ignore the constitutional legitimacy of the competing branch and assert extraconstitutional, unilateral power. Usually, presidents, who can claim to be the one representative of the whole people, will be most likely to take unilateral action. Alternatively, if both branches are gridlocked and unable to act in a crisis, a military dictatorship might step in to resolve the crisis and restore social order, a frequent occurrence in Latin American presidential systems.

The Recent Rise of Unilateral Executive Action

Although the American presidential system seems far from the disintegration into dictatorship that Linz describes, partisan conflict between the legislature and president in recent years seems to have taken on an aura of conflicting dual legitimacies, as he describes them. Recent presidents, including Presidents Clinton and Bush, have resorted to the use

of unilateral executive action, drawing on their legitimacy as the president chosen in a nationwide election to overcome congressional resistance to measures they favored. In his second term, facing hostile Republican majorities in both the House and Senate, President Obama took use of unilateral executive power to a new level. His successor, President Trump, has gone even further in pursuing policies independent of or even in the face of explicit congressional opposition.

Obama's conflict with congressional Republicans over immigration reform fits well the pattern of conflicting claims of the different branches to represent the authentic will of the people and, as Linz predicts, it resulted in Obama asserting a new claim to unilateral executive power. President Obama sought comprehensive immigration reform to provide undocumented immigrants with a path to legal status and citizenship from the beginning of his presidency. At the same time, the tea party wing of the Republican Party, which in 2010 was a major factor in Republicans regaining a majority in the House and in 2014 helped give the Republicans a Senate majority, strongly opposed immigration reform as giving amnesty to those who immigrated illegally.

In 2012, out of frustration with the failure of Congress to enact the DREAM Act, a measure that would have legalized and provided a path to citizenship for the Dreamers—young undocumented immigrants who had been brought to the United States as children—President Obama issued an executive order creating the Deferred Action for Childhood Arrivals (DACA) program. The order was based on the president's discretion in the enforcement of immigration laws that allowed him to grant Dreamers the ability to stay in the United States legally, go to school, and hold jobs; however, without legislation, they could not become citizens.⁵⁰ The executive action was seen as a step toward more comprehensive immigration reform.

In 2013, such reform seemed possible as despite tea party opposition, the Senate managed to pass bipartisan-compromised immigration reform legislation.⁵¹ The compromise bill died in the House, however, because Speaker John Boehner, under pressure from tea party members of his own party, refused to allow a vote on the bill, even though most observers believed a bipartisan majority of Democrats and Republicans would have passed it.⁵² The bill's supporters, including President Obama, were outraged that Boehner allowed a minority of House members to torpedo a measure of such importance that had genuine bipartisan support.

After Republicans took control of the Senate after the 2014 elections, making prospects dim for immigration reform legislation during the rest of his term, Obama decided to act unilaterally, saying, "When Congress refuses to act . . . I have an obligation as president to do what I can without them."⁵³ The Obama administration then issued an executive order to suspend deportation of unauthorized immigrants who were parents of

children protected under DACA or had children born in the United States and provide them work permits, a power he asserted that he had based on discretion under existing law to exercise discretion in prosecuting illegal immigrants.⁵⁴ From Obama's perspective, his own electoral mandate from the 2008 and 2012 elections, which included a strong boost from Latino voters, obliged him to take action to address the fears and anxieties of undocumented workers. Predictably, Republicans were outraged, accusing Obama of defying the election mandate of the 2014 midterm that gave them control of both Houses and of acting unconstitutionally. In response, tea party Republicans pressed for their own constitutional brinkmanship, threatening to shut down the federal government by refusing to pass federal appropriations.⁵⁵

The immigration example sharply illuminates how clashing dual legitimacy can lead to serious confrontations between the branches. Yet it is not the only case in recent years. The struggle over the debt ceiling described earlier in this chapter and numerous other partisan conflicts in the Obama years fit the pattern. Beyond immigration, Obama took unilateral action in a variety of areas without congressional approval: ordered the Environmental Protection Agency to regulate carbon emissions, joined the Paris Climate Agreement to reduce global warming, signed an agreement with Iran and other nations to curtail Iran's nuclear weapons development, and ordered higher standards on auto emissions.

Under Trump, the unilateral executive action has been expanded even further. Upon taking office, Trump proceeded to overturn Obama's executive actions, including, among many, protections of undocumented immigrants, the environmental standards meant to reduce carbon emissions, and, most notably, withdrawing from both the Paris Climate Agreement and the agreement to control Iranian nuclear weapons. Defenders of separation of powers often cite legal stability as one of its main virtues—the barriers to legislative enactment prevent sharp policy reversals from one government to the next. Paradoxically, in inducing presidents to resort to executive authority, because of the challenges of separation of powers, to enact their policy agenda the system itself may be producing the whipsaw of rapid reversals of policy that separation of powers is supposed to prevent.

Beyond reversing many of Obama's policies, Trump has asserted novel and unconventional claims of executive power on behalf of policy objectives he has been unable to enact legislatively, particularly in pursuit of his immigration agenda. The expansive use of executive power occurred in the first few days after his inauguration with his "Muslim ban," an effort to restrict refugees and others from seven predominately Muslim countries from entering the United States.⁵⁶ Hastily drafted and with little legal justification, federal courts initially blocked the measure, but the Supreme Court eventually approved a revised version of the measure as an appropriate exercise of presidential power.

In early 2019, Trump went even further in asserting his power of immigration in direct defiance of Congress. In a dispute over funding for construction of a wall on the southern border, Trump refused to sign a budget agreement to fund the government, causing a government shutdown of several weeks. When political backlash to the shutdown forced Trump to end it and sign the budget bill without his wall funding, Trump declared a national emergency authorizing him to spend federal funds to build the wall anyway. Even when both Houses passed a resolution to terminate his emergency declaration, Trump vetoed it, an action in direct defiance of the explicit will of Congress.⁵⁷ President Trump also has invoked national emergency powers to impose tariffs without consulting Congress. In 2019, he took the unprecedented step to threaten to impose a tariff on Mexican goods unless the Mexican government took action to stem the flow of immigrants to the U.S. border. This was the first time a president had invoked emergency powers over trade in such a way as to punish a close ally such as Mexico.⁵⁸ This was one example of how, unlike any of his predecessors, Trump has invoked emergency powers, usually employed to impose sanctions on foreign governments and individuals, to pursue his trade policy objectives, imposing or threatening tariffs on many countries. Trump also has invoked emergency powers to get around congressional restrictions selling arms, advanced weapons technology, and the nuclear power plants to Saudi Arabia and the United Arab Emirates.⁵⁹ Trump went well beyond his predecessors in the invocation of novel uses of emergency powers so that the president could pursue his policy objectives independent of congressional oversight. In sum, the separation of powers, designed in part due to the framers' fear of a tyrannical executive, has produced a paradoxical result, an ever more powerful chief executive capable of acting independent of any constraint, potentially becoming the very tyrant the framers' feared.

Objections to a Parliamentary System in the United States

Despite the argument of the previous section, Americans are likely to be nervous about any movement toward a parliamentary regime. The idea of institutional checks and balances is such a settled and familiar part of our constitutional history that many are likely to be worried about what we might lose in modifying the system. Even those who have been convinced that parliamentary democracy could produce more responsive and accountable government still might argue that these benefits would be purchased at too high a cost. Separation of powers, even though it presents barriers to democracy, remains a useful deterrent to tyranny. Defenders of the separation of powers usually offer three arguments on its behalf: Separation of powers decreases the chance of majority tyranny, it provides a

useful bias toward limited government, and it constitutes a check on the abuse of power.

The specter of majority tyranny was, of course, the primary rationale for the American separation of powers from the beginning. But it is a rationale based on an unproven assumption: that majority tyranny is somehow a greater danger than minority tyranny.⁶⁰ The founders, who were preoccupied with the former, set up a system that, as we have seen, actually facilitates the latter. If tyranny is the danger, instead of solving the problem, the separation of powers creates a system in which well-placed minorities can pursue their interests at the expense of other minorities or even the majority. A more productive way to avoid tyranny would be to rely on the democratic ethos of citizens. As the noted political theorist Robert Dahl argues,

The protection of minority rights can be no stronger than the commitment of the majority of citizens to preserving the primary democratic rights of all citizens, to maintaining respect for their fellow citizens, and to avoiding the adverse consequences of harming a minority.⁶¹

Also, American political history offers little evidence to support the founders' fear of majority tyranny. Rather than a group united by a single-minded passion or interest, majorities in American politics tend to be large coalitions representing widely varying interests.⁶² In a large and diverse country such as the United States, even without institutional checks and balances, a governing majority would include many different groups with overlapping memberships. In such a situation, building a consensus behind any policy measure would involve a process of accommodating multiple preferences and interests. James Madison realized this himself when he argued in *Federalist* No. 10 that the size and social diversity of the United States were the principal check against majority tyranny. Institutional checks and balances were only an auxiliary precaution, but one that, I have argued, does not discriminate between tyrannical and benign majority preferences. By reforming the separation of powers as suggested, we can facilitate majority rule in America without significant risk of majority tyranny.

Along with their concerns about majority tyranny, the founders—being good, classical liberals—were interested in limiting government. As shown earlier, their handiwork has succeeded in establishing an institutional bias in favor of limited government. Attempts to introduce policies that will expand the role of government into a new area or activity—even when such policies are popular with a majority of citizens—are easily blocked. Realizing this, defenders of the separation of powers often accuse its critics

of advocating more unified government merely as a way of promoting an activist ideological agenda.⁶³ This fear is probably justified: Contemporary liberals (not the classical kind) do believe that a majority of citizens would support a more activist government if the restraints on political change inherent in the separation of powers were removed.

But why should one of the central issues of our time—activist versus limited government—be decided by the bias of our constitutional structure rather than democratically, through political debate, discussion, and competitive elections? Political conservatives who favor a smaller, less activist government should pursue their goal through open processes of political competition; they should persuade a democratic majority that such a government is in the majority's interest. Those conservatives who defend separation of powers because they support its bias toward limited government are supporting a particular constitutional structure because they believe it promotes their ideological agenda.

A third argument usually given in defense of the separation of powers is that it provides an institutional check on the abuse of power. Usually, proponents of this argument point to the important role that Congress has taken in investigating abuses of executive power in the past few decades. The Senate Watergate hearings, the 1970s hearings on abuses by the FBI and the CIA, the Iran-Contra hearings in the 1980s, and the 1990s hearings on Clinton administration campaign finance dealings are examples of a politically independent Congress looking into abuses of executive power.

However, despite the institutional capacity to check the president, there is no guarantee that Congress will use its institutional power. During his first two years in office, when the Republicans controlled both the Senate and the House, Trump had little to fear from congressional oversight of his administration. Despite reports of ethical lapses within his administration, concerns that he and his family were using the presidency to promote the Trump business ventures, Trump's refusal to release his tax returns and disclose possible conflicts of interest in his financial dealings, and the ongoing concerns about Russian interference in the 2016 campaign, Republican-controlled committees refused to investigate the executive branch and rebuffed Democratic attempts to obtain administration documents.⁶⁴ Although the Justice Department itself appointed Special Counsel Robert Mueller to investigate Russian interference, few of Trump's fellow partisans criticized his repeated attacks on the Mueller investigation and Attorney General Jeff Sessions for allowing it. Although the framers assumed that institutional loyalty would lead members of Congress to be eager to check the president—for "ambition to counteract ambition"—partisan loyalty seems to have trumped institutional loyalty in the modern era. Presidents have little to fear from congressional oversight when their own party controls Congress.

Even when the Democrats regained the House in 2018, the logic of the separation of powers impeded their ability to limit unilateral presidential power. Even as multiple House committees sought testimony from administration officials and documents from administrative agencies, they faced a blanket refusal from the administration to cooperate.⁶⁵ Although tax law gives the House Ways and Means Committee authority to examine tax returns, the Treasury secretary ordered the Internal Revenue Service not to comply with the committee's request for Trump's tax returns. After the Mueller Report on Russian interference in the 2016 election and Trump's possible efforts to obstruct the inquiry was released, Trump ordered current and former administration officials not to testify or comply with subpoenas from committees seeking information to follow up the report. When questions were raised about political motives for inserting a question about citizenship on the U.S. Census, a question that would have produced a census undercount—particularly in Democratic-leaning districts—because both legal and illegal immigrants would be afraid to participate, Trump refused to release documents about Commerce Department deliberations on the issue or allow officials to testify.⁶⁶ In all these cases, the Trump administration asserted various forms of executive privilege and executive authority in refusing to comply. While some of these assertions of executive power will not be upheld by the Supreme Court, many will be as the Court often defers to the executive on administrative matters, and for even those that the Court denies, the administration's tactic will delay congressional oversight on these matters. These experiences show that the capacity of congressional oversight to check abuses of power has grave limits in the face of a president determined to use his powers to escape oversight.

While the American separation-of-powers system relies on institutional checks on abuse of power by one branch or another, checks that may not be as effective as in the past, a parliamentary system would rely on different and perhaps more effective checks on the abuse of power. In a parliamentary system, responsibility for monitoring governmental abuses would shift to the political opposition and the electorate as a whole. The party in opposition would have great incentive to be vigilant in looking for abuses because, once exposed, such issues could be the basis for electoral defeat of the government and a return of the opposition to power. Since a governing party would have to take responsibility for abuses that occurred while it controlled the government, its members would have to take responsibility for any abuses of power during their tenure in office. That concern for accountability to the electorate led British Parliament members, even those in the governing Labour Party, to be much more critical of Prime Minister Tony Blair's use of misleading intelligence prior to the Iraq War than the Republican majorities in the U.S. Congress were of

similar actions by the U.S. president. Blair was forced to respond directly to detailed critiques of his policy during parliamentary Question Time, while President Bush avoided any direct confrontation with his critics. In parliamentary systems, when incidents such as Watergate, the Iraq War debacle, or Russian interference in elections occur, they produce governmental resignations and often new elections in which the electorate can pass judgment directly on the abuses that have occurred. In the United States, we rely instead on long, drawn-out hearings or judicial investigations in which the electorate is simply an observer. At the end of the investigations, responsibility for the abuses usually remains unclear—which is not surprising, given the way the separation of powers muddles responsibility for governmental actions—and the resolution is obscured by complicated legal proceedings. A parliamentary form of government would shift responsibility for monitoring governmental abuse to the more democratic process of competition between government and opposition, followed by the voters' judgment.

Meeting the Challenge: Bridging the Separation of Powers

Although most critics of the separation-of-powers system would be delighted if the United States were to adopt a parliamentary form of government, few expect Americans to embrace such a drastic reform. Nevertheless, reformers believe that changes could be made within the separation-of-powers system that, while falling short of creating a true parliamentary system, would introduce quasi-parliamentary features. These reforms would permit more unified government, reviving at the least the possibility that the Jeffersonian model of government could again become viable. In fact, most reform advocates would go beyond the Jeffersonian model to ensure permanent and continuing unified government.

A key first step would be to abolish the filibuster rule in the Senate. Up to the 1980s, the filibuster was invoked only rarely on only crucial legislation.⁶⁷ Since the late 1980s, however, filibusters have been used more and more frequently until, in the past few years, they have become routine.⁶⁸ This gives a unified partisan minority in the Senate the capacity to routinely block the majority's legislation—a form of minority tyranny. Since 2009, nearly every measure considered in the Senate, including routine administrative appointments, has required a super majority of sixty votes to break a filibuster. The Senate must revise its rules to end this antimajoritarian practice by abolishing the filibuster and returning to the democratic norm of majority rule. The Senate took a small step in this direction in 2013

when Democratic Senate Majority Leader Harry Reid invoked a rarely used procedure to modify Senate rules and eliminated filibusters of presidential appointments (except those to the Supreme Court).⁶⁹ In 2017, Republican Senate Majority Leader Mitch McConnell took the further step of barring filibusters of Supreme Court nominees. This change left intact, however, filibusters of legislation.

Even with more ideologically coherent and unified parties, as long as the president and individual Congress members are elected independently of one another, both presidents and members of Congress will seek to establish independent political bases organized around their individual political performance. Although strong and organized parties make them more effective collectively, they also need to be made individually accountable for collective outcomes. Rather than having to answer for those collective outcomes, however, individual politicians prefer to go it alone. Although split-ticket voting is not as prevalent nowadays as it once was, team ticket ballots might increase the ties between congressional votes and presidential ones. These would require voters to choose both a president and their congressional representatives with a single vote, enhancing the chance for a winning president to have partisan majority support in the House and probably in the Senate. More important, it would link the political fates of all members of Congress to their party's presidential candidate. Individual congressional candidates would have to convince voters to select not only themselves but also their party's presidential candidate.

Another possible reform would be to hold elections for Congress in presidential election years two weeks after the presidential election. The delay would give the newly elected president a chance to appeal to the voters who had just elected him or her to support his or her party's candidates for Congress. This system has been used for several decades in France and usually helps French presidents to gain a supportive legislative majority.⁷⁰ A more dramatic reform would ensure presidential control of Congress by giving the president-elect's party automatic bonus seats to provide majorities in both houses.

These reforms would increase the likelihood of unified government in presidential election years, but divided government could still return and muddle accountability in midterm elections. To prevent this, midterm elections simply should be abolished by making both House and Senate terms four years. This would place the entire House and one-third of the Senate up for election in a given year on the same election cycle and responsive to the same electorate. A more radical variant would require all members of the Senate to stand for election every four years. In addition, abolition of midterm elections would give a president with the support of partisan majorities in both houses more time to put in place a policy

program before being subject to voter judgment. With more time, voters would be better able to evaluate whether a party's policies were effective or not.

In addition to these electoral changes, reformers suggest a number of changes in the relations between the separate branches to create quasi-parliamentary government.⁷¹ One would be to amend the Constitution so that members of Congress could serve in the president's cabinet and head executive branch agencies. Another would require presidents periodically to submit to questions either before congressional committees or before the entire Congress, as happens in most parliamentary regimes. Some reformers also suggest that the president should have the power to dissolve Congress and call new congressional elections, which would allow him or her to appeal directly to the people to elect new representatives if the president thought Congress was an obstacle to enacting a coherent government program. Congress, also, ought to have the power to force new elections, including for the president, through votes of no confidence in both chambers. This latter seems an especially important democratic measure if the earlier proposal to eliminate midterm elections were adopted. Legislators in a democracy need to have the ability to turn to the voters in the face of discontent with the executive. The basic premise of all these proposals is that elements of parliamentary-style government can be introduced into the American constitutional structure that would retain the form of the separation of powers while instituting the reality of more unified government.

The separation of powers challenges democracy by impeding responsiveness to legitimate majority interests and by muddling the accountability of representatives to citizens. The institutional checks in our constitutional structure offer many opportunities for minority interests to block needed change and reform. The fact that politicians must share policy making with those in other institutions permits them to blame others for policy failures and thereby escape accountability to the people. Unfortunately, democrats must realize that the sorts of constitutional reforms discussed in this chapter are not likely to be adopted easily. Among the barriers to progressive change built into our constitutional structure is a complex amendment process that was designed to impede change. In addition, two centuries of indoctrination concerning the "sanctity" of our constitutional arrangements have made most Americans reluctant even to consider changes, despite massive institutional failure. Although Americans seem less and less confident in the performance of their governmental institutions, they tend to blame the current occupants of those institutions, rather than the institutional structure. Much public education will be needed to convince the American public that reconsideration, as the founders intended, of a portion of our constitutional arrangements—the separation of powers—might be the way to better and more democratic government.

THOUGHT QUESTIONS

1. This chapter argues that the separation-of-powers system reflects the outlook of the Protective Democracy model. Why? What about the other models? Analyze separation of powers from the perspective of each of the other models. From which perspectives can you develop arguments supportive of separation of powers, and which suggest more support for a parliamentary system?
2. Suppose the founders had adopted a parliamentary system: How would American history have been different? Pick a crucial moment from history and analyze how it might have been different if America had had a parliamentary system. For example, how might Prime Minister Abraham Lincoln have handled the threatened secession of the Southern states?
3. Suppose that, having been persuaded by this chapter's argument, the American people amended the Constitution to create a parliamentary system: How might such a change affect the party system? Would we continue to have two dominant (Republican and Democratic) parties? Or would a multiparty system evolve? How would such a development affect responsiveness and accountability in an American parliamentary system?
4. A parliamentary system, according to this chapter, would be superior to separation of powers in achieving democratic accountability and responsiveness. But what other political values would you want to consider before adopting as momentous a constitutional change as proposed here? How would those values be affected under each alternative system?
5. Political leaders in parliamentary systems, such as prime ministers, must have long experience in national government before rising to the leadership of their party and, hence, governmental power. In contrast, American presidents, because of the separation-of-powers system, can come to power with little or no experience in national government and politics. Dwight Eisenhower, Ronald Reagan, Bill Clinton, George W. Bush, and Donald J. Trump are examples of men whose first national elective office was president of the United States. What are the advantages and disadvantages of these alternative patterns of recruitment to national office?

SUGGESTIONS FOR FURTHER READING

Burns, James MacGregor. *The Deadlock of Democracy*. Englewood Cliffs, NJ: Prentice Hall, 1963. A classic statement of the political consequences of separation of powers and how Americans have coped with them for the past two hundred years.

Dahl, Robert A. *How Democratic Is the American Constitution?* 2nd ed. New Haven, CT: Yale University Press, 2003. In this book, Dahl evaluates the Constitution as an instrument of democratic government and finds it not as democratic as it should be.

*Goldwin, Robert A., and Art Kaufman, eds. *Separation of Powers—Does It Still Work?* Washington, DC: American Enterprise Institute, 1986.

*Goldwin, Robert A., and William Schambra, eds. *How Democratic Is the Constitution?* Washington, DC: American Enterprise Institute, 1980. This collection and *Separation of Powers* contain articles arguing various points of view on the extent to which the separation of powers and other aspects of the Constitution are democratic.

Linz, Juan, and Arturo Valenzuela, eds. *The Failure of Presidential Democracy*. Vol. 1. Baltimore, MD: Johns Hopkins University Press, 1994. Distinguished political scientists compare the performance of presidential (separation of powers) and parliamentary systems around the world and find parliamentary ones both more democratic and more stable. Linz's essay argues strongly that presidential democracies are prone to collapse and replacement by authoritarian governments.

*Mayhew, David. *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–2002*. 2nd ed. New Haven, CT: Yale University Press, 2005. Mayhew argues that divided government has not made any difference for the enactment of “a standard kind of important legislation” and documents his claim with a thorough analysis of legislative enactments over the past fifty years. But he does not consider whether these enactments were responsive to democratic majorities; he ignores the accountability issue.

Mezey, Michael L. *Presidentialism: Power in Comparative Perspective*. Boulder, CO: Lynne Reiner, 2013. A thorough review of political science literature on the advantages and disadvantages of presidential systems.

Rosenbluth, Frances McCall, and Ian Shapiro. *Responsible Parties: Saving Democracy From Itself*. New Haven, CT: Yale University Press, 2018. A cogent analysis of how different party systems interact with different institutional structures to either enhance or diminish the possibility of democratic representation.

Sabato, Larry J. *A More Perfect Constitution: Why the Constitution Must Be Revised*. New York: Walker Publishing Company, 2008. Some very practical suggestions on updating the Constitution to address contemporary problems in governance—including governmental gridlock.

Sundquist, James L. *Constitutional Reform and Effective Government*. Washington, DC: Brookings Institution, 1986. Also two follow-up volumes published by Brookings, *Beyond Gridlock? Prospects for Governance in the Clinton Years and After* (1993) and *Back to Gridlock? Governance in*

the Clinton Years (1995). A well-argued case for fundamental changes in the separation of powers, including an interesting history of the origins of the constitutional structure and the two-century debate it has engendered. The two follow-up volumes are based on conferences that examined Sundquist's arguments in the light of Clinton's first term.

*Presents points of view that disagree with the arguments presented in this chapter.

SELECTED WEBSITES

www.congress.gov. The Library of Congress site for gaining access to legislative information and all government agencies.

www.potus.com/james-madison A site on the Internet Public Library with information about James Madison and links to related sites.

www.whitehouse.gov. The official White House website.

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