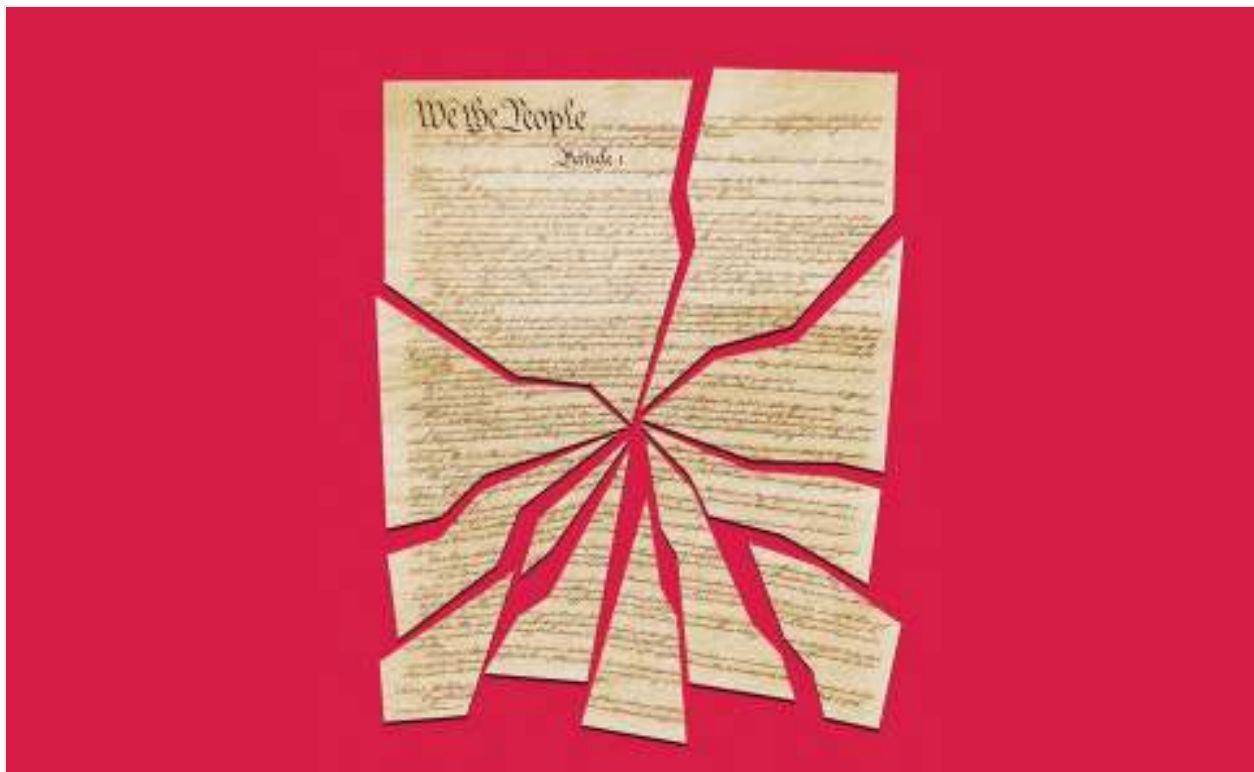


America's Fragile Constitution

The Founders misread history and established a dysfunctional system of government. A case for a little less reverence.



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YONI APPELBAUM | OCTOBER 2015 ISSUE

OVER THE PAST few decades, many of the unwritten rules of American political life have been discarded. Presidential appointees, once routinely confirmed by the Senate, now spend months in limbo. Signing statements have increased in frequency and scope, as presidents announce which aspects of a law they intend to enforce, and which they intend to ignore. Annual spending bills stall in Congress, requiring short-term extensions or

triggering shutdowns.

The system isn't working. But even as the two parties agree on little else, both still venerate the Constitution. Politicians sing its praises. Public officials and military officers swear their allegiance. Members of Congress keep miniature copies in their pockets. The growing dysfunction of the government seems only to have increased reverence for the document; leading figures on both sides of the aisle routinely call for a return to constitutional principles.

What if this gridlock is not the result of abandoning the Constitution, but the product of flaws inherent in its design?

The history recounted in a recent book on the Constitution's origins, by Eric Nelson, a political theorist at Harvard, raises that disturbing possibility. In *The Royalist Revolution*, Nelson argues that the standard narrative of the American Revolution—overthrowing a tyrannical king and replacing him with a representative democracy—is mistaken. Many leaders of the patriot cause actually wanted George III to intervene in their disputes with parliament, to veto the bills it passed, even to assert that he alone had the right to govern the American colonies. In short, they wanted him to rule like a king. When he declined, they revolted.

As they framed their appeals to the king, Nelson demonstrates, the patriots reached back to the debate leading up to the English civil wars. In the 1620s, the Stuart monarch Charles I feuded with his parliament, which feared that he would usurp its authority to approve taxes, and reign as an absolute monarch. Both sides claimed to be working for the common good. The parliamentarians insisted that only a legislature—a miniature version of the people as a whole—could represent the people's interests. Royalists responded that legislators were mere creatures of their constituencies, bound to cater to voters' whims instead of tending to the kingdom's needs. Only a monarch, they argued, could counterbalance legislative parochialism and look to the long term.

Charles required revenues, but parliament was determined not to authorize

taxes on his terms. So from 1629 to 1640, he ruled without calling parliament into session, scraping together funds by reviving moribund fines and fees, and creatively reinterpreting his royal prerogatives. The deadlock led to a series of civil wars from 1642 to 1651, to Charles's execution, and to the ultimate triumph of parliament, which absorbed almost all executive authority, leaving England's monarchs to reign in name alone.

While the wars raged, the early settlers of New England sided squarely with parliament, decrying monarchical tyranny and celebrating its replacement by parliamentary democracy. A century later, however, many of their descendants were nostalgic for Stuart royalism. By the 1760s, parliament was imposing taxes on the colonists without their consent. Patriot leaders like John Adams expressed longing for George III to restrain the legislative tyranny of parliament.

America's system operates best when politicians remain skeptical of its ability to operate at all.

Generations of historians have largely regarded such statements as insincere rhetorical ploys—as arguments of convenience lodged and then quickly forgotten. Nelson makes a convincing case that in so doing, historians have overlooked an important part of the political philosophy that impelled the American Revolution. By citing the king's refusal to act like a king, he writes, the patriots justified taking matters into their own hands.

Once the war was over, Nelson shows, many of the patriot leaders who had previously argued for royal prerogatives proceeded to push for an executive empowered to do what George III would not. At the Constitutional Convention, the Pennsylvania delegate James Wilson stepped forward and moved “that the

Executive consist of a single person.” This was a loaded phrase with which to introduce a controversial idea: When, in 1649, shortly after executing Charles I, parliament abolished the monarchy, it famously declared, “The office of a King ... shall not henceforth ... be exercised by any one single person.” Wilson was not just proposing that the United States have a president. He was attempting, in the horrified view of the Virginia delegate Edmund Randolph, to insert into the Constitution “the foetus of monarchy.”

Wilson and Randolph, and their respective allies in Philadelphia, revived the old debate between the royalists and the parliamentarians: Which posed the greater threat, legislative tyranny or monarchy? Had America revolted against a king, or against his parliament? In the end, Nelson argues persuasively, the royalists won.

In this telling, the Constitution created not a radical democracy, but a very traditional mixed monarchy. At its head stood a king—an uncrowned one called a president—with sweeping powers, whose steadying hand would hopefully check the factionalism of the Congress. The two houses of the legislature, elected by the people, would make laws, but the president—whom the Founders regarded as a third branch of the legislature—could veto them. He could also appoint his own Cabinet, command the Army, and make treaties.

The Convention placed limits on the president’s powers, to be sure: Some of his actions would be contingent on approval by the Senate, or subject to overrides. But these hedges on presidential authority did not make the office a creature of Congress. Having defeated the armies of George III, the Framers seized upon a most unlikely model for their nascent democracy—the very Stuart monarchy whose catastrophic failure had produced the parliamentary system—and proceeded to install an executive whose authority King George could only envy.

SINCE THE AMERICAN REVOLUTION, many new democracies have taken inspiration from the U.S. Constitution. Around much of the world, parliamentary systems became prevalent, but some countries, particularly in Latin America, adopted the presidential model, splitting power

between an executive and a legislative branch.

When, in 1985, a Yale political scientist named Juan Linz compared the records of presidential and parliamentary democracies, the results were decisive. Not every parliamentary system endured, but hardly any presidential ones proved stable. “The only presidential democracy with a long history of constitutional continuity is the United States,” Linz wrote in 1990. This is quite an uncomfortable form of American exceptionalism.

Linz’s findings suggest that presidential systems suffer from a large, potentially fatal flaw. In parliamentary systems, governmental deadlock is relatively rare; when prime ministers can no longer command legislative support, the impasse is generally resolved by new elections. In presidential systems, however, contending parties must eventually strike a deal. Except sometimes, they don’t. Latin America’s presidential democracies have tended to oscillate between authoritarianism and dysfunction.

In the 30 years since Linz published these findings, his ideas have enjoyed wide currency among political scientists and seized the imagination of pundits, but gained little purchase among U.S. politicians or the American public at large. America has, after all, defied the odds, through the rise and demise of political parties, through depressions and wars, to the present day. Why would that change? Linz’s critics, moreover, suggest that trying to infer immutable laws of politics from a handful of Latin American governments is a pointless exercise.

Even if we discount the failures of other presidential democracies, though, we should not dismiss the fact that the U.S. Constitution was modeled on a system that collapsed into civil war, and that it is inherently fragile. “This is a system that requires a particular set of political norms,” Eric Nelson told me, “and it can be very dangerous and dysfunctional where those norms are not present.” Once those norms have been discarded, the president or either house of Congress can simply go on strike, refusing to fulfill their responsibilities. Nothing can compel them to act.

Until recently, American politicians have generally made the compromises necessary to govern. The trouble is that cultures evolve. As American politics grows increasingly polarized, the goodwill that oiled the system and helped it function smoothly disappears. In 2013, fights over the debt ceiling and funding for the Affordable Care Act very nearly produced a constitutional crisis. Congress and the president each refused to yield, and the government shut down for 16 days. In November 2014, claiming that he was “acting where Congress has failed,” President Obama announced a series of executive actions on immigration. House Republicans denounced him as “threatening to unravel our system of checks and balances” and warned that they would cut off funding for the Department of Homeland Security unless Obama’s actions were rolled back. For months, the two sides faced off, pledging fealty to the Constitution even as they exposed its flaws. Only at the 11th hour did the House pull back from the edge.

Strikingly, in these and other recent crises, public opinion has tended to favor the president. As governments deadlock, executives are inclined to act unilaterally, thereby deepening crises. When parliament refused to provide Charles I with funds unless he met its demands, he moved to circumvent the legislators, and they in turn deposed him. Other presidential systems have collapsed in much the same way.

The Framers do not seem to have understood this particular flaw of mixed monarchy. But then, neither did they express absolute faith in their own wisdom. “They were incredibly conscious of the fragility of what they were creating,” Nelson says, “that it depends on forbearance.” The Constitution was an experiment, and its signers believed that its success was contingent on the willingness of varied constituencies to work together.

When politicians today praise America’s system of checks and balances, they seem to understand it as a self-correcting mechanism: When one branch pushes too hard, the other branches must push back, preserving equilibrium. That understanding actually encourages politicians to overreact, in the belief that they

are playing a vital constitutional role. It also encourages complacency, because a system that rights itself requires no painful compromises to preserve.

Neither Congress nor the president has the capacity to govern alone, but either can refuse to compromise, and prevent the other from governing. If the system is thought to be indestructible, the temptation to take stands becomes overwhelming. Filibusters, shutdowns, and executive orders multiply. The veneration of the Constitution becomes its undoing.

This is the paradox of America's mixed monarchy, a system that operates best when politicians and the public remain skeptical of its ability to operate at all. Blind faith in the wisdom of the Constitution, and in its capacity to withstand the poor behavior of politicians, will eventually destroy it.

But a constant fear that the entire system will collapse absent frenzied efforts to save it might just help the country continue to defy the odds, and last another 200 years.