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The shutdown is the Constitution's fault

By Dylan Matthews, Updated: October 2, 2013

The government is shut down. Two million federal workers are having [paychecks delayed](#), and 800,000 of them might never be repaid at all. Food safety inspections are on hold. Kids are being [refused experimental treatments for cancer](#).

So whose fault is it?

You can say it's the fault of House Republicans, who refuse to pass a continuing resolution that gives them [more in the way of spending cuts](#) than they wanted just two years ago, but which the Senate's passed already and President Obama has said he'll sign.

If you're Ted Cruz, you'll say that it's the fault of Obama and the Senate for not being willing to trade the government staying open for Obamacare getting defunded.

If you're a congressional process nerd, you'll blame a budget process that has stopped working, if it ever did work, and which asks Congress to take far more actions every year than it can be expected to take in its currently hyper-polarized state.

But the deeper answer is that it's James Madison's fault. This week's shutdown is only the latest symptom of an underlying disease in our democracy whose origins lie in the Constitution and some supremely misguided ideas that made their way into it in 1787, and found their fullest exposition in Madison's [Federalist no. 51](#). And that disease is rapidly getting worse.

What Madison got wrong

It's hard to discuss these issues calmly, given that the Constitution and the Federalist Papers have taken on a Holy Scripture-like role in American political debate. One does not debate *if* they're right, but only the proper way to interpret them on a given matter, which is then presumed to be correct.

We're basically the only country that does this. Angela Merkel does not stay awake at night, asking herself, "What would Bismarck do?" Camillo Benso and Giuseppe Garibaldi are not assumed infallible when Italians discuss politics. Canadians do not cite John Macdonald when discussing tax policy. The only parallel that comes close is Venezuela and Simón Bolívar, which probably isn't a comparison most Americans would embrace.

But obviously the Founding Fathers were wrong about all kinds of stuff. Today, few Americans think it's acceptable to kidnap African people, ship them to America and then compel them through torture and beatings to perform agricultural labor.

Madison is also wrong about how best to safeguard democracy in a diverse republic. The thesis of Federalist 51 is that elections alone are insufficient to guard against the possibility that a government will encroach upon the rights of citizens, either by a majority faction oppressing others or through all-out tyranny. "A dependence on the people is, no doubt, the primary control on the government," Madison writes, "but experience has taught mankind the necessity of auxiliary precautions."

Subsequent experience, however, has shown Madison to be incorrect. New Zealand, Norway, Israel and Sweden all have unicameral parliaments whose leader serves as the executive, with only a weak monarch or powerless president and (in some cases) the judiciary to check them. None of those countries have collapsed into despotism as a result. The UK, Japan, Germany, Spain, Canada and the Netherlands have upper houses of parliament that are formally much weaker than the lower houses, and each has the leader of its lower house serve as executive. No coups d'état ensued in those places either.

Even in this country, there's one state — Nebraska — that abolished its upper house starting in 1937. Omaha did not collapse into a dystopian hellmouth as a consequence.

But it's not just that Madison's system is unnecessary. It's potentially dangerous. Scholars of comparative politics have shown that presidential systems with a separation of executive and legislative functions, like America's, are considerably more likely to collapse into dictatorship than are parliamentary systems where the executive and legislative branches are merged. That's because there are competing branches of government able to claim democratic legitimacy and steer the ship of state at the same time — and when they disagree profoundly, there's no real mechanism for resolving the dispute.

The classic treatment here is the late Yale political scientist Juan Linz's "[The Perils of Presidentialism](#)." ([Linz died Tuesday](#).) "Aside from the United States, only Chile has managed a century and a half of relatively undisturbed constitutional continuity under presidential governments," Linz noted. "But Chilean democracy broke down in the 1970s." And Linz wasn't particularly optimistic that the U.S. will remain an outlier. He has [compared](#) the U.S. system to the 18th century [Polish-Lithuanian Sejm](#), where [a single member could veto a bill](#). That measure helped ensure the Polish-Lithuanian Commonwealth's collapse.

That's borne out in subsequent study of the matter. As Michigan's George Tsebelis told me in an [interview](#) this year, "The likelihood of survival of democracy is much greater in parliamentary systems than presidential systems." Linz's idea that presidentialism is the main cause of this disparity has faced some [challenges](#) since then (which themselves have faced [strong challenges](#)) but there's a fairly broad consensus that presidentialism can be harmful in certain circumstances. And even the skeptics don't take Madison's view that parliaments with a merged legislature and executive would be *likelier* to descend into tyranny.

"We can say with at least some certainty that if highly divided countries adopt executive-centered presidential systems, then they are probably making a mistake," Robert Elgie of Dublin City University [concludes](#).

Why the system worked for so long

Cases like the current shutdown are exactly why highly divided societies like ours end up endangered by presidential systems. There is an inherent conflict between the president's and the Senate's claims to popular legitimacy and the House's, and because of the Constitution's design, none of those bodies has formal supremacy over the others.

Article I doesn't have "tie-breakers" in case we're in danger of shutting down the government or defaulting on our debts. If Congress and the president can't agree on spending or on a debt level, then the fallback option is that we don't have a government and we turn treasuries into junk bonds.

The obvious question here is why, if America's form of government is so precarious, it's worked so well for so long. The answer is that America's party system has been unusually weak and diffuse. Through much of the 20th Century, both the Democratic and Republican parties provided a home to both liberals and conservatives. Since the parties didn't agree internally it was easier for them to come to a deal and much, much harder for them to threaten brinkmanship. The Republican Party of the 1960s wouldn't be threatening a default over Obamacare because many of them would've voted for Obamacare — just as they voted for Medicare.

But those days are over. The parties are polarized, and they're only getting more so. American politics is beginning to exhibit the exact symptoms scholars have seen in other presidential systems: highly disciplined, highly unified parties that both believe they truly represent the people and that both control crucial levers of power at the same time. The result, as you'd expect, is more brinkmanship and more high-stakes showdowns.

It's important to be very clear about what's scary here. It's not any one instance of disagreement or brinkmanship. It's the emergence of the sustained, structural problems that have harmed other countries with similar presidential systems. To believe that the U.S. won't eventually face terrible consequences from the mixture of polarized parties in a presidential system is to believe that the clear trends in our political system will, for reasons that are currently unclear, reverse themselves. That would be nice, but as they say, hope is not a plan. And the problems of our politics have something of a built-in defense mechanism against meddling voters trying to impose sanity on the system.

Can't the voters stop this?

Max Weber, in [conversation](#) with Gen. Erich Ludendorff, advanced my personal favorite theory of democracy: "In a democracy the people choose a leader in whom they trust. Then the chosen leader says, 'Now shut up and obey me.' " People and party are then no longer free to interfere in his business. ... Later the people can sit in judgment. If the leader has made mistakes — to the gallows with him!" Hanging leaders rather than failing to reelect them seems a mite harsh, but the overall idea here is exactly right. For a government to be truly accountable to the people, it needs to actually control the circumstances over which the people will judge it. And in developed countries, the people judge it in large part based on the state of the economy.

In country after country, leaders who preside over bad economies do worse electorally than those who preside over good ones, as Iowa's Michael Lewis-Beck and Missouri's Mary Stegmaier's [review of the literature](#) makes clear (thanks to our friends at The Monkey Cage for [the pointer](#)). "Although voters do not look exclusively at economic issues, they generally weigh those more heavily than any others, regardless of the democracy they vote in," Lewis-Beck and Stegmaier conclude.

If voters expect their leaders to deliver favorable economic outcomes, then those leaders should actually be able to control favorable economic outcomes. That's how the United Kingdom works. David Cameron and George Osborne have complete control over the government's fiscal policy lever, through the coalition's total control over the budget and tax rates, and have a great deal of control over monetary policy through their ability to appoint the governor of the Bank of England and members of the Monetary Policy Committee without a U.S.-style confirmation conference. Leaders before 1998, when the Bank became formally independent of political control, had even more power.

So when Britons go to the polls and judge Cameron and Osborne (and their Liberal Democrat coalition-mates) on their economic management, they'll be holding accountable the people who are in fact responsible for their economic situation.

That doesn't happen in the United States. In 2010 the economy was garbage, so, as political science would predict, the American people punished the party in power, the Democrats.

But the diffusion of power throughout the political system made it impossible to know for sure who was responsible for the state of the economy. Maybe it was the fault of Susan Collins and other moderate senators who used filibuster threats to cut the stimulus. Maybe it was the fault of the rest of the Republican caucus for imposing a 60-vote threshold for stimulus and not cooperating. Maybe it was the Bush-appointed Federal Open Market Committee's fault for not loosening rates in 2007 and 2008. Maybe it was all Obama's fault for not pushing for more stimulus, and Democrats in Congress would have been happy to pass it.

The point being, while it is clear in the U.K. who is to blame for poor economic performance, it's far more difficult for American voters to sort out who's responsible. So they just hold to account whoever they get to vote on first. That leads to more or less random shifts in sentiment, with divided government and ensuing deadlock and crises, which makes assigning blame and holding members to account even more difficult.

That's James Madison's fault. It's the Constitution's fault. If you're mad that American democracy has gotten to this point, don't just blame Boehner or Obama or Ted Cruz. Don't hate the players. Hate the game — and think about how to change the rulebook.

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