

James Madison and the Origins of Partisanship

Critics argue that Congress has become the “broken branch” of government, marked by extreme partisanship and few achievements. They prescribe nostrums ranging from campaign finance regulation to redistricting reform to foster compromise rather than conflict on Capitol Hill. Yet the American founders, especially James Madison, believed “ambition must be made to counteract ambition” as a way to limit the power of government. The Constitution itself favors broad consent to laws over an efficient implementation of the will of a majority. William F. Connelly, Jr., the John K. Boardman Professor of Politics at Washington and Lee University and author of *James Madison Rules America: The Constitutional Origins of Congressional Partisanship*, and W. Lee Rawls, a long-time Senate chief of staff and author of *In Praise of Deadlock: How Partisan Struggle Makes Better Laws*, discussed Connelly’s book, as well as the benefits and burdens of partisanship, at a Cato Book Forum in October.

WILLIAM F. CONNELLY, JR.: James Madison’s Constitution incorporates both the mischief of faction and the spirit of party. American politics encompasses both intense minorities and aspiring majorities—both minority factions and special interest groups, and majority sentiment, often given voice by majoritarian parties. The Constitution checks and balances special interests and political parties, but the Constitution also embraces and empowers special interests and political parties. Arguably, the struggle among contending interest groups both constitutes and, if you will, corrupts our politics. Similarly, partisan confrontation between the political parties both constitutes and potentially corrupts our politics.

People persist today in arguing that the Founders were anti-party. Yet Madison concluded, “Parties . . . seem to have a permanent foundation in the variance of political opinions in free states.” Madison saw poli-

tics as essentially partisan: “No free country has ever been without parties, which are a natural offspring of freedom.” Indeed, he observed, “The Constitution itself . . . must be an unfailing source of party distinctions.” It is tempting to concur with Madison and conclude that partisanship to this day is rooted in the Constitution.

Some insist today that the Founders did not expect political parties to form, that parties only arose later in American history. But in a 1792 essay titled “A Candid State of Parties,” Madison concluded that parties of distinction are “natural to most political societies,” and will likely endure. Even to this day, perhaps?

Admittedly, “A Candid State of Parties” is a partisan tract, just as were *The Federalist Papers*. Madison the Founder was a statesman, a politician, a political theorist, and a partisan. And that is not a criticism. Madison clearly understood that “in every political society, parties are unavoidable.” In

fact, he concluded parties “must always be expected in a government as free as ours.”

Madison recognized that American politics and partisanship are rooted in the Constitution. Mere partisanship is possible precisely because of limited constitutional government, or as I like to say, the Constitution governs parties more than the parties govern the Constitution. Our constitutional concrete is sufficient to withstand partisan warfare today just as it did in the 1790s.

Partisanship is rooted in the Constitution because of First Amendment freedoms. Clearly freedom of the press and freedom of association allow and even invite the abuse of licentiousness and excessive partisanship. But what is the alternative? Madison understood that in a free society, politics, including the spirit of party, is ubiquitous. Since the latent cause of faction and spirit of party are natural to man, Madison sought to control the effects of faction, rather than to remove the causes, since the cure would be worse than the disease. That is what the Anti-Federalists wanted; it would have required curbing liberty. The point was to expand, not limit, liberty.

Partisanship is also rooted in the Constitution in another fundamental way. Throughout our history beginning in the 1790s, partisanship has been premised on the fault lines of constitutional interpretation and debate over the central principles of the separation of powers and federalism, or in other words, role of government questions. Contentious partisanship has its roots in the Constitution.

In the 1790s we also see the Founders’ practice of their principles; their actions, too, seem to refute the notion that the Founders were anti-party. While the 1950s was a period of relative partisan quiescence as was the era of good feeling in the early part of the 1800s, I think if you look historically those two periods are the exception more than the rule.

Now, partisanship is potentially good and

bad. Friction creates light as well as heat. Our Constitution invites constructive partisanship, including often cantankerous, cacophonous, contentious partisanship. The principal differences between our two great parties, whether over the war on terrorism, health care reform, or global warming, matter, and they are often principled differences.

It is worth examining some of the causes of heightened partisanship today. First, party primaries, especially in congressional elections, invite appeals to the party base, and clearly contribute to greater partisan polarizations. Should we eliminate congressional primaries or nominating primaries either at the presidential or congressional level? Should we return to the smoke-filled rooms?

A second cause is gerrymandered redistricting, especially enhanced by computer modeling. Perhaps we should adopt the reform of eliminating computers—or maybe not?

Third, the democratization and decentralization of Congress due to institutional reforms. Some of the above causes were consequences of the 1970s reforms, in Congress in particular, designed to make Congress more open and democratic. Should we reform the reforms?

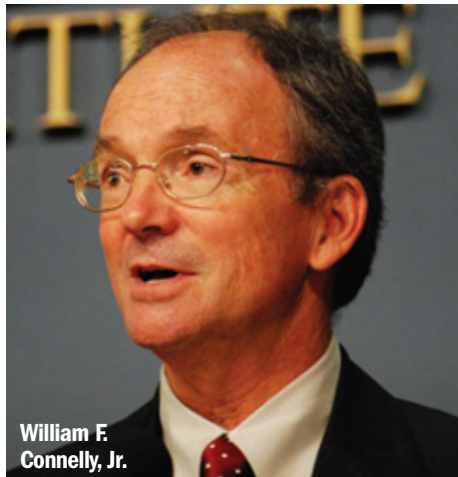
Fourth: the growth of government and the concomitant increased stake in our politics contribute to increased partisan polarization. Big government gives you big politics. James Q. Wilson, one of the leading political scientists of recent generations, said that once politics was about a few things; today it is about nearly everything. Maybe what we need to do is limit government if we want to limit politics and make our politics less cantankerous.

Fifth, an important cause of partisan polarization has been the effort to advance comprehensive, nonincremental reforms. For example, the decision by Democrats to advance comprehensive health care reform may by its very nature have raised fundamental questions about the role of government. Perhaps we should refederalize some of the policy questions. Moreover, we blame political parties when we should also acknowledge the role of our two other key mediating institutions: interest groups and the media.

Sixth, greater partisan polarization is due

to the explosion in the role of the number of interest groups, so-called hyperpluralism, including in the think-tank universe. Maybe we should blame or credit Cato for partisan polarization. The proliferation of think tanks over the last 30 to 40 to 50 years has contributed to a more ideological, or you could say more principled, politics.

Seventh, the dramatic increase in educa-



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tion among Americans augments polarization. If I may paraphrase Shakespeare, perhaps the first thing we should do is kill all the professors, though I personally hope we don't do that.

Eighth, decentralization, fragmentation, and greater competition of the new media as the hegemony of the old media establishment erodes have clearly contributed to the more cacophonous, contentious character of our politics. We're clearly not going to get rid of the Internet anytime soon. The media loves to report on the planes that crash, not the thousands of planes that fly successfully every day. Conflict is what gets covered as opposed to consensus, exaggerating the

level of contentiousness in our politics. But do we want to get rid of the new media and return to the good old days, or was it the bad old days, of the media establishment? Do we really want to return to the 1960s' near monopoly of national news by NBC, ABC, CBS, the UPI, and AP wires?

And yet, finally, the most fundamental cause of partisan polarization may be our 200-year-old constitutional system which, as I suggested earlier, invites the spirit of party in our politics—and I certainly don't recommend a new constitutional convention.

W. LEE RAWLS: For practitioners, this is a liberating book. For all of you who have cared deeply about America, participated in the American political system, and thought about America's future, this book is for you. If you're like me and over the past several decades have participated with gusto in our competitive two-party system, but you have found yourself recently pursued by a self-anointed core of political pundits crying foul at your every move, and demanding that you demonstrate more civility, comity, and a willingness to compromise, then this book is also for you.

Now, before I mistakenly portray this book as an ode to the rightwing rock star Ted Nugent, on the virtues of beef, beer, and hunting with a bow, let me emphasize that the liberation here is intellectual. At the core of Professor Connelly's thought, again to the practitioner, is what we would label "Madison's Conundrum." It is in fashioning this conundrum and embedding it in the Constitution that the full scope of Madison's genius becomes apparent. For Professor Connelly, the strategic challenge faced by every participant in the American legislative process in its simplest terms is, "Do you compromise or do you confront?" Do you seek bipartisanship or partisan advantage, are you after a policy solution or a political outcome? Do you want to achieve an agenda item of the party platform, or do you want to advance the party's desire to achieve power? For all of us who have participated in the process, this is an eternal dilemma. For some, it arises as an occasional issue. But I can say that for members of Congress, their staff, and the political elements of the

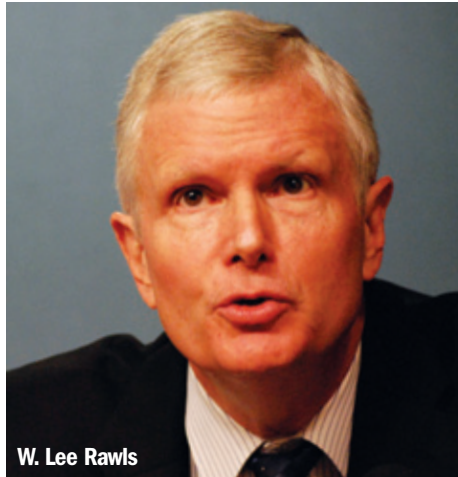
executive branch, this is not just a daily, but an hourly issue, as to how you respond to the challenges before you.

The brilliance of Professor Connelly's analysis is that what I call conundrum is not only intentionally embedded in the Constitution, but that Madison has made it unavoidable. The combination of separation of powers, bicameralism, federalism, midterm elections, all work together to pin the decisionmaker eternally on the horns of this dilemma. In Federalist 10 and 51, Madison lays out the underlying rationale and mechanics of this dilemma. Now, whereas the Greek gods chained Prometheus to the rock for eternity in retribution for helping man, Madison is not after revenge. Instead, he pins the participants of the American political process on the eternal horns of this dilemma for a purpose, forcing future generations to walk a tightrope. The goal is limited, but effective, government. Madison is not just protecting it against the abuses of power by Congress and the executive, he's also aiming to provide a new nation, after the failure of the Articles of Confederation, an effective enough system to govern itself on a new continent.

Moreover, this conundrum not only provides for limited and effective government, it also provides for energetic, creative government. This is a point I had never thought about—40 years in the game and it never crossed my pea-brain, and I have to say as an aside, my wife stands prepared with a list of other points I've completely missed in my lifetime, but a little thought will quickly show you the value of this insight. Decentralized, horizontal systems with multiple participants are inherently more energetic and creative. This may offer an explanation of how a backwater country of several million in 1789 has managed to become the wealthiest, most powerful nation on the planet, utilizing a government designed 220 years ago. With his separation of power, Madison ensured that energy is not unchecked; with his cool, accurate assessment of human nature, Madison ensured that the combination of the strategic dilemma, the separation of powers served to keep energy within constitutional bounds. Madison gave us energy, delibera-

tion, but not unchecked ambition.

After I left Senator Frist in 2005, I made the mistake of picking up and reading some of the "broken branch" literature. In particular, the broken branch school of thought criticized Senator Frist for passing the Medicare drug benefit and the bankruptcy legislation during his time as majority leader. Now, my understanding of broken means



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something that doesn't work, so I was mystified by a lot of the line of criticism that says when you pass something others disagree with, the system is broken. I fully understand policy or political disagreement; it says a piece of legislation is bad, poorly conceived, deserves defeat. But the fact that your opponent passes a bill you do not like does not strike me, at least, as evidence of a broken system; rather, it raises the fact that you, as an opponent, consider it to be bad law. The broken branch school also began to clamor for bipartisanship, compromise, and civility.

I took some time and went over to the Woodrow Wilson International Center and wrote a little book that takes a hands-on look at the American legislative system. I'm going

to do a little bit of a self-promotion and quote from the book that was written before the election in 2008: "Advocates of post-partisan politics invoke a new era where these tensions dissolve. Regrettably, as we have shown, the existing legislative machine will not grant them their wish. Moreover, as long as political parties remain the unit of cooperation within the American political system, and it is difficult to imagine American democracy without them, the desire of the post-partisans to cross the river Jordan into the political promised land will remain unfulfilled."

More important, the post-partisans fail to realize that the clash of contending forces they hear in the political arena is the sound of democracy at work.

Whereas the broken branch and other schools of thought attempt to solve Madison's dilemma, Madison rejects the very existence of a right answer. For Madison, as long as the dilemma stays intact and the basic constitutional machinery remains intact to provide limited and energetic government, the answer to the strategic dilemma at any given moment is up to the participants, based on a range of particular considerations that they face. Madison is not out to determine the outcomes as long as the decision takes place within a constitutional context. In fact, Madison would reject a silver bullet explanation or solution to his conundrum.

Madison would not be on the sidelines going tsk, tsk about purported fouls in the legislative process. He'd be in the middle of it, moving ahead rapidly, maximizing whatever he thought was the best policy. For Madison, you can choose bipartisanship, or you can go your merry partisan way. You can choose a policy outcome, or seek political advantage. You can even wholeheartedly engage in gridlock, which I have done on occasion. After all, gridlock is no more than a preference for existing law over some new untested scheme. All of these are valid responses. Think of Madison as offering a political form of the Atkins Diet: eat meat, be happy, lose weight.

In short, all Americans should feel that they can enter the political fray, love their country, and fight hard; and certainly don't let anybody tell you they have all the answers. ■