

Critical Dialogue

Constitutional Polarization: A Critical Review of the U.S. Political System. By Josep M. Colomer. London: Routledge, 2023. 156p. \$48.95 paper.
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Josep M. Colomer, a political scientist at the School of Foreign Service of Georgetown University, has produced an important contribution to the literature on the crisis facing democracy in the United States. *Constitutional Polarization* provides rich historical insight into why our constitutional system scarcely resembles what the Framers envisioned and how intervening developments have threatened our status as a democracy. The book begins with what can helpfully be compared with a high stakes children's game of telephone, detailing misunderstandings, compounded by miscommunications, at several critical steps affecting the Constitution's framing. It then recounts prolonged policy shifts alternating between international crises, which tend to unify the country, and peacetime domestic issues, which tend to divide it. What remained constant, Colomer demonstrates, amid unpredictable electoral and policy swings, has been a steady, and increasingly threatening, aggrandizement of executive power aided by minority factions with blocking power in a system marked by two increasingly polarized parties.

With notable concision, Colomer deepens our understanding of why our constitutional system sharply differs from the Framers' imaginings, adding critical and overlooked historical detail. *Constitutional Polarization* also exhibits an internal tension common to the genre—a bold diagnosis coupled with a reticent prescription. Colomer's explanation is clear: the high bar makes amending the Constitution “unthinkable” (p. 116). Yet following his compelling account of the roots of our crisis, which he grounds in fundamental misconceptions at the Framing, this reviewer hoped Colomer might force readers to confront the urgent need for bold reform.

Colomer's insightful analysis benefits from comparing a fun children's party game with the high stakes, increasingly unfun, game of governance. In telephone, several children line up in a row. The first child whispers a complex message to the next in line—“The witches ate

waffles, betwixt and between”—and each child whispers what he or she understood to the next. The amusement comes when the first and last children compare how it all began and ended. But Colomer's game isn't amusing.

It starts before the beginning, predating the Constitution by eight decades. In a chapter titled “Montesquieu Did Not Speak English” (p. 19), Colomer ascribes the Framers' misunderstanding of England to the French philosopher's book, *The Spirit of Laws*, published in 1748. Montesquieu was an unreliable reporter. He failed to appreciate that the system he described, even then imprecisely, was superseded several decades before his London tour. Because Montesquieu didn't speak English, he relied on erroneous and outdated characterizations by French-speaking contemporaries.

The distorted messaging took several steps, from the parliamentary system in place at the Framing, to Montesquieu's descriptions four decades before, to the misimpressions of Montesquieu's semi-reliable informants of the system displaced from still four decades earlier, to disregarding Montesquieu's half-hearted disclaimer on accuracy, to a literal mistranslation of “stop” or “brake” as “check” (p. 21). Each miscommunication compounded distortions and compromises that rested less on principle than on arbitrary timelines and external pressures. Rather than construing and conveying a tongue twister, acknowledging the complexity of a changing scheme they hoped to adapt and carry forward, the Framers transformed the twists and turns of English history into a system embraced by no nation before or since.

The Framers believed King George III, beyond a ceremonial figurehead, remained head of government, with the final power to negate, or veto, bills sent by Parliament. In fact, the monarch had last done so in 1708, forty years before Montesquieu published his book. By the time Montesquieu hit London, England had replaced executive independence with parliamentary-executive fusion. Adding to the Framers' confusion, the monarch continued a policymaking role over the colonies long since abandoned domestically. In England, the monarch accommodated the House of Commons whose leader formed the government.

Although Alexander Hamilton defeated a proposed executive counsel, his plea for monarchy failed (pp. 31–32). Once settled on an elected president, the Framers split

among three groups on the means by which one would be chosen—in Congress, by the states, or by the people. Colomer envisions the groups playing the childhood game Rock Paper Scissors, experiencing a cycle in which for any option, a majority preferred another (p. 34). Whereas the steps within the telephone game are amply documented, this game requires speculation as we lack the camps' complete preference orderings. Regardless, Colomer explains that exigencies of time yielded an alliance, with those preferring direct elections joining small state representatives in favor of an Electoral College, whose origins he describes as medieval (p. 34).

Colomer adds to the brew other antidemocratic features that further enhance presidential power. These include Senate apportionment, two per state regardless of population; a winner-take-all Electoral College giving each state the sum of its House and Senate delegations; and Senate ratifications and supermajority veto overrides giving minority factions blocking power. The Senate filibuster—which demands a 60 percent majority for cloture, to end debate, and move to a vote—lets a single Senator even from a tiny state effectively block popular legislation.

The process for electing the president, the Senate, and, beginning in the 1840s, the House, with individuals representing each district, state, or the nation, produced what the Framers sought to avoid, an entrenched two-party system. Colomer aptly describes the end result as “An Elected King with the Name of President” (p. 29). Even with four-year terms and a two-term limit, after the Twenty-Second Amendment, features providing partisan minorities with blocking power have come to dominate imagined institutional rivalries. The end result systematically empowered a single office—the presidency—beyond any specific White House occupant. The president's vast and growing powers belie the Framers' insistence that the branch motivating the greatest institutional jealousy—to the point of demanding a Solomonic split—ever was Congress.

Colomer divides the relevant history, in the aftermath of the Framing, into four periods: the first seven presidential elections (broad consensus, culminating in the era of good feelings), 1824–1916 (internal agitation with discord over slavery, Reconstruction, and the aftermath); 1932–1988 (the Great Depression, World War II, and the Cold War), and the post-Cold War period since 1992 (growing internal policy divisiveness) (p. 83). However one divides our history, Colomer shows that the underlying dynamics, whether marked by internal divisions or external threats, have let the president emerge ever more powerful.

A renowned scholar with deep expertise in foreign affairs, Colomer amply supports his claim of a supercharged presidency. An office whose portfolio began with four cabinet positions—State, War, Treasury, and Attorney General (p. 47)—has multiplied nearly fourfold, to fifteen. Even that fails to capture the remarkable scope of

presidential powers. The president leads one of the only two parties with a chance of succeeding to that high office, making countless aspiring politicians dependent on his goodwill. The sheer breath of presidential appointment power is overwhelming. Beyond cabinet posts, which require Senate advice and consent, the president appoints over 100 “Czars,” with powers covering extraordinarily broad policy domains, none of whom require Senate approval. Over its entire history, the presidency has issued 15,434 Executive Orders, averaging one per week (p. 47), and 97% of presidential vetoes have held (p. 42).

With Senate approval, the president appoints federal judges, who unlike cabinet officials or policy czars, hold life tenure. This includes appointments to the Supreme Court, which holds final say on matters of constitutional interpretation and, often, given minority blocking power, on statutory interpretation. These anti-democratic checks—Senate apportionment, the high bar for overriding presidential vetoes, Senate filibuster and cloture rules—invite presidents to aggrandize power, knowing someone representing even a minuscule minority of the population can incapacitate Congress as a meaningful check.

The Framers envisioned avoiding political parties in favor of yet another Rock Paper Scissors game, whereby each branch could defeat, or be defeated by, another. Instead, they unwittingly produced a game dominated by two parties whose centers, or modes, have grown increasingly far apart, thereby compromising electoral accountability and further enhancing executive powers (pp. 81–82).

Colomer's several prescriptions embed tensions when contrasted with his bold diagnosis. His proposed remedies include increased voting access and turnout; open primaries, top-two primary runoffs, and ranked-choice voting; improved inter-branch cooperation; and honoring subsidiarity, which he defines as pressing issues down or up to the appropriate level of governmental decision-making (pp. 115–28). It's not possible to assess each proposal, and I've discussed several elsewhere. Here I'll observe that none tackle the twin pathologies Colomer powerfully identifies as the root of our constitutional crisis: presidentialism and an increasingly polarized two-party system. I agree with Colomer that beneath our two major parties are five to six natural parties: Democrats, Progressives, Republicans, America First, Green, and Libertarian (p. 73). But recognizing implicit parties isn't enough. The challenge lies in forging institutions that let such parties emerge and thrive, thereby improving political accountability, blunting extremism, and meaningfully checking widening executive power.

Colomer ascribes the roots of our crisis to the most basic misunderstandings, so much so that the Framers' scheme has never been successfully replicated anywhere in the world. His powerful diagnosis demands as effective a cure. Some of his proposals are meritorious, such as encouraging

greater political engagement and better calibrating policy-making based on institutional competence. But for those, and others, to happen, we first need a genuinely functional multiparty democracy that checks against presidential aggrandizement without fear of reprisal from each side's increasingly strident base. Profound misunderstandings set our threatened scheme into motion. For U.S. democracy to endure and thrive, we must now correct the Framers' unforced errors—presidentialism and the two-party system.

Colomer's book is a major contribution to the literature on our constitutional crisis. Our job remains devising remedies worthy of his powerful historical account.

**Response to Maxwell L. Stearns' Review of
*Constitutional Polarization: A Critical Review of the
U.S. Political System***

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— Josep M. Colomer 

Juan J. Linz initiated the modern critique of the United States political system and its imitators by warning about “the perils of presidentialism” and praising “the virtues of parliamentarism” (especially in his 1990 article for *Journal of Democracy* and later in his 1994 book, *The Failure of Presidential Democracy*, with Arturo Valenzuela). My point is that these two institutional systems can be better labeled as separation of powers and fusion of powers or parliamentarism (to follow Walter Bagehot's nomenclator). “Presidentialism” is not an institution but an anomalous behavior in an institutional system of separation of powers; as it favors the concentration of powers in one of the institutions, it generates institutional conflict with the separate congressional branch.

My book is subtitled “a critical review” of the U.S. political system, while Maxwell Stearns' book is a proposal for its transformation. He says that my “powerful diagnosis demands as effective a cure.” I agree, and in the last chapter of my book, I suggest three possible lines of behavior that could improve the current system's performance without major institutional reforms. First, improving voting with procedures already spread at the local and state levels, such as open primaries with a top-two runoff. Second, reinforcing cooperation between the Cabinet and Congress by generalizing the Secretaries' delivery of periodical accounts of their job to Congress. And third, more overlooked and more important, reconsidering some divisions of powers between the federal government and the states to diminish the confrontation on certain issues that may be more consensually settled at lower institutional levels. The subsidiarity criterion states that whatever a low-level government can do efficiently should not be transferred to a higher level. What the local government can handle should be left to the local government; what the state can handle should be under state jurisdiction; the

federal government should have jurisdiction only over those issues that lower-level authorities cannot handle well. An efficient distribution of issues between the different levels of government should lower the stakes of national politics and, thus, reduce the contentiousness of presidential elections and de-escalate political conflicts in Washington.

All in all, my proposals point to “parliamentarizing presidentialism.” Let us change political behavior if the foundations of the institutional system cannot be replaced. The tone may sound like muddling through and kicking the can down the road. This is because I guess that the blockage of the existing political system regarding major legislation is even stronger when it comes to constitutional amendments. But, of course, I salute the debate about more ambitious initiatives for institutional reforms, such as those framed by Maxwell Stearns, which can always serve as a reference for critical comparison.

**Parliamentary America: The Least Radical Means of
Radically Repairing Our Broken Democracy.** By

Maxwell L. Stearns. Baltimore: Johns Hopkins University Press, 2023.
354p. \$34.95 cloth.

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Parliamentary America is a highly relevant, timely book about the flaws of the United States political system with a proposal for its transformation. The author, a law professor, makes good use of political economy, social choice theory, and comparative politics to make his case. It certainly is not an “academic” exercise in the bad sense of the word, but it is in the best one. The presentation is didactical, with a practical purpose; for the author, his book is not a “mere thought experiment,” but “deeply personal and existential” (p. 241).

I particularly appreciate the diagnosis of the long-term origins of the United States' current institutional and political crisis. Contrary to a broadly shared opinion, Maxwell Stearns holds that the U.S. Constitution does not deserve credit because it has “long outlasted other constitutions through the world” (p. 28). A better explanation of its endurance can be found in the country's geopolitical isolation, which avoided military threats and foreign wars on its territory, the long-term experience of slavery, the steady and constant influx of immigrants. “To the extent that the story of our nation is exceptional, it's in spite of, not because of, our constitutional design”, he states (pp. 2-3). In fact, the basic tenets of the U.S. constitutional system—the separation of powers between the legislative and the executive branches alongside congressional elections in single-member districts by plurality rule—have not been replicated anywhere else across the globe.