

Following the Founding Fathers: Constitutional Principles and Continuity of Public Policy

When they were designing the new American government, the Founding Fathers had several concerns on their mind – limiting government control, minimizing the dangers of political division, and protecting individual liberties. In drafting the Constitution, they structured the US government and policy process to involve various balances and checks to ensure power was not concentrated in any one part and prevent policies that did not reflect the interests of the people. The United States government and policy making process is shaped by several key principles rooted in the Constitution – two such being the separation of powers and the rules guiding the work of the federal bureaucracy – that have biased the system to heavily favor policy continuity. Though this continuity has led to a system where policy change is difficult to achieve, slowing down the process and promoting continuity can often prove beneficial in the end.

The separation of powers is a fundamental constitutional principle dividing the federal government into three branches: the Legislative, Executive, and Judicial, with the powers and responsibilities of each laid out in Articles I, II, and III of the Constitution, respectively (US Constitution, art 1-3). Having left behind the tyrannical rule of Great Britain, the Founding Fathers worried about consolidating too much power in one branch of government. To minimize this concern, they split power across the three branches and instilled the capabilities for each branch to check and balance the others (Birkland 2020, 97). This manifests, for example, with

the legislative branch responsible for introducing laws and managing federal appropriations, the executive branch acting as the Commander in Chief, responsible for executing Congress' laws, while the judicial branch interprets the Constitution and laws as necessary (Ginsberg et al. 2019, 49). The powers can overlap, and be checked by the others, however, as the executive, for example, can veto Congress' bills, while Congress can then override this veto with enough votes, and the judicial branch can provide oversight by judging the legality and constitutionality of laws and policies implemented by the other branches (Ginsberg et al. 2019, 50).

Related to the separation of powers, another key principle is the rules and structures guiding the federal bureaucracy's work. The bureaucracy falls under the executive branch and is responsible for implementing and administering Congress' laws. Though some may argue bureaucracy does not make policy, their involvement in implementing regulations is a form of policy making on its own (Birkland 2020, 145-146). The structures and rules for these processes have developed and shifted throughout the history of the United States and while not explicitly outlined in the Constitution, they still follow the key principles, ensuring policy works in the best interests of the public. Currently, this process includes many steps: an agency will identify and propose the necessary regulations, release the policy for public comment, then incorporate that feedback for analysis and revision before it can be fully implemented (Ginsberg et al. 2019, 350-351). While some believe the bureaucracy operates with limited accountability (Birkland 2020, 146), this is not entirely accurate, as even once implemented, policies are subject to Congressional or judicial review (Ginsberg et al. 2019, 365). These rules ensure there are checks and balances on the powers of the bureaucracy, while other rules protecting civil servants ensure

the agencies can maintain their roles as expected – including the Civil Service Act, requiring the employees be selected for expertise and providing legal protections (Ginsberg et al. 2019, 351).

These key principles have created and influenced a policy-making process in the United States biased toward protecting policy continuity. Separation of powers, though initially designed to prevent abuses of authority, can also result in increased policy continuity, particularly if the political system is especially divisive. The system of checks and balances can lead to gridlock, making it difficult for significant policy changes to occur quickly – if policy requires consensus among multiple branches, the system may indirectly favor the status quo if agreement cannot be reached, leaving policy unchanged. Bureaucracy structures are another influence on policy continuity, as its emphasis on the expertise of civil servants, careful consideration of policy implementations, and long processes for ensuring public satisfaction can slow down policy making and prevent abrupt or extreme changes to policy, even if general legislation from Congress supports similar ideas.

These principles, amongst others, have created a system heavily favoring policy continuity, and while that does often make introducing policy changes difficult, it is not always a negative outcome. The Founders were concerned about limiting the amount of power each government branch had and this system ensures that. Even if it feels like it can cause policy-making to often come to a standstill, the system upholds the constitutional principles and keeps policy from being drastically changed when partisan control switches, for example, and ensures policies are fully developed, researched, and given public support before changes are made. The same goes for bureaucratic processes. The process for implementing regulations slows down

policy-making to ensure the requirements are met, while it and the protections for civil servants also protect policy from abrupt changes at the whims of changing executive leadership.

Encouraging policy continuity is beneficial for a variety of reasons. Birkland argues in favor of policy stability, stating that policy remains stable because those are the wishes and values of the American public, with change welcome in gradual increments as necessary (2020, 99), and with a government designed for the people it is critical to consider the values of the public. Beyond this, policy continuity promotes stability and predictability in governance which can improve trust and public support of government. It can also reduce hasty or reckless policy changes that can result from short-term political trends. Policy will generally have long-lasting effects, so ensuring policy will be best for the public long term is important to prevent lasting detrimental impacts. Furthermore, continuity also protects the founding principles. Though this can seem cyclical with the principles promoting continuity, it works the other direction as well, ensuring policies continue to protect these principles, in turn promoting further public confidence and trust by protecting these core shared values.

It is important to recognize the ways the policy making system has been shaped to promote policy continuity as it helps explain the way things are shaped in the government today and understand why current issues of gridlock and standstill occur. In general, policy continuity is not bad, but it has been villainized and worsened by the extreme polarization and lack of action many perceive in Congress and the federal government today. Many criticize this policy continuity as the reason why no actionable progress is being made in government. While this lack of action can be frustrating, it is also important to recognize that this same policy continuity

prevents policy whiplash within the overly polarized government, as control of Congress and the White House flips between parties and ideological values. In the long run, the bias of the policy making system towards continuity prevents the implementation and enforcement of policies that could be damaging to the fabric of the nation and society overall.

References

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