

## Contents

---

*Acknowledgments* vii

1. *Introduction*

—Zachary Courser, Eric Helland, and Kenneth P. Miller 1

2. *The Madisonian Constitution, Political Dysfunction, and Polarized Politics*

—George Thomas 15

3. *Rising Partisan Polarization in the US Congress*

—Kathryn Pearson 35

4. *Governing by Dividing: How the Legislative Executive Drives Polarization*

—Benjamin Kleinerman 58

5. *An Activist's Court: Political Polarization and the Roberts Court*

—Amanda Hollis-Brusky 80

6. *Polarization and the Administrative State*

—Eric Helland and Kenneth P. Miller 97

7. *Federalism in a Polarized Age*

—Michael S. Greve 119

8. *Parties against the Constitution*

—Zachary Courser 157

9. *In Defense of Polarization*

—Joseph M. Bessette 176

*About the Contributors* 193

*Index* 197



University Press of Kansas

## *Acknowledgments*

---

The editors gratefully acknowledge the help and assistance of the people and institutions that made this book possible. We extend our sincere appreciation to David Dreier, longtime member of the US House of Representatives and former chair of the Rules Committee, who established the Dreier Roundtable at Claremont McKenna College. This work is the first major research project undertaken by the Roundtable, and it has benefited greatly from Mr. Dreier's unwavering and generous support of our efforts.

This project would not have been possible if not for the financial support of the Annenberg Foundation and the William and Flora Hewlett Foundation. Our thanks to Larry Kramer, president of the Hewlett Foundation, for his advice and guidance during the early stages of the project.

We are indebted to the outstanding group of scholars who joined this project and are grateful for the excellent collaborations we enjoyed in building this book together. This volume represents the coordinated work of academics in a diversity of disciplines—political science, economics, and law—and its insights are thanks to their scholarship, dedication, and collegiality.

The concept and chapters were developed during two different conferences, one in California and the other at James Madison's Montpelier. Our thanks to Kat Imhoff, president of the Montpelier Foundation, for helping make our final conference such a success, and for sharing the unique legacy of James Madison's home and estate with our group. Our thanks to Hiram Chodosh, Gary Schmitt, Steven Teles, and Craig Volden for their insights and suggestions during the conferences. Also, our thanks to Claremont McKenna College students Mohamad Batal, Jessica Davis, and Jessica Jin for their research assistance as Dreier Fellows.

Lastly, we are grateful to David Congdon and his team at the University Press of Kansas for their enthusiasm and support for this project.



University Press of Kansas

## *Parchment Barriers*

---



University Press of Kansas



University Press of Kansas

## CHAPTER 1

---

### *Introduction*

Zachary Courser, Eric Helland, and Kenneth P. Miller

We live in an age of polarization. The United States of America has become the “Divided States of America”—divided into entrenched, powerful, rival, partisan camps. Surveys confirm that Americans, especially the most politically active, have become more sharply separated along ideological lines. Most conservatives now identify as Republicans and most liberals as Democrats, and the number of persons holding consistently conservative or consistently liberal views is rising.<sup>1</sup> In Congress, the two parties have pulled apart. As measured by key roll call votes, the 114th Congress (2015–2017) had the highest level of partisan polarization of any Congress in a century,<sup>2</sup> the number of moderate members is declining, and bipartisan cooperation on major legislation is increasingly rare. Recent presidents have contributed to the nation’s polarization. Republican George W. Bush ran for office claiming to be “a uniter, not a divider,” and Democrat Barack Obama famously said, “[W]e are not a collection of red states and blue states. We are the United States of America.”<sup>3</sup> But their actions often contradicted these aspirations, and the nation’s partisan divisions hardened during their presidencies. The 2016 election of Republican Donald J. Trump introduced a new intensity to the nation’s polarization. Democrats immediately formed a “resistance” to the president, and some called for his impeachment within weeks of his inauguration. Similarly, although the judiciary was designed to be insulated from politics, it too has been affected by polarization to the point where it is now seen as an important element of partisan control of government. Most federal judges are viewed as either liberal or conservative; nominations to the federal courts, especially

the US Supreme Court, are seen in partisan terms; and Senate confirmation votes divide along partisan lines. The states, too, are polarizing. Most states have become more consistently conservative or liberal—more solidly “red” or “blue”—and are forming partisan alliances to support or resist federal policies on ideological grounds. Partisan polarization clearly defines contemporary American politics and causes concern on all sides about the direction of the nation’s political life.

How should we view this condition? What is the nature of our contemporary polarization? What is causing it? How do our divisions affect our governing institutions? Is polarization truly a problem or not? And, if so, in what ways? In this book, scholars from the disciplines of political science, economics, and law approach these questions by exploring the relationship between our current political polarization and the nation’s constitutional design.

The architects of the Constitution were fundamentally concerned about political division. They believed that democratic governments were prone to factional conflict—indeed, the “violence of faction.” James Madison warned in *Federalist* 10 that:

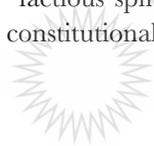
A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good.<sup>4</sup>

Madison believed that such factions were inevitable in a free society. In his view, the challenge was to develop a system of government that would make it difficult for majority factions to form, gain control of government, and overpower their opponents. The Constitution thus contained numerous means for controlling factional division, restraining pure majority rule, and preventing concentrations of power. These features included federalism, indirect elections, separately elected institutions, separation of powers, bicameralism, the presidential veto, and numerous other checks and balances.

This constitutional structure was masterfully designed, but Madison knew that it was vulnerable to an encroaching and impetuous “spirit of power.” In *Federalist* 48, for example, he noted the difficulty of limiting the power of Congress due to its popular nature. Madison cautioned against trusting in “parchment barriers”—mere words on paper—to protect a constitutional sys-

tem against encroachments by the legislative power.<sup>5</sup> He argued that a “more adequate defense is indispensably necessary for the more feeble, against the more powerful, members of the government.”<sup>6</sup> Indeed, Madison believed that the popular power of the legislative branch was such a danger to the Constitution that “the people ought to indulge all their jealousy and exhaust all their precautions” in restraining it.<sup>7</sup> In other words, the people themselves shared the responsibility to defend the constitutional structure and preserve constitutional limits. In our own day, the rise of mass politics and the intensification of partisan polarization have empowered other members of the government, including, especially, the executive. These developments have made it even more difficult to resist the pull of democratic power and to preserve the constitutional order. The Framers of the Constitution armed us with the tools to resist the usurpations of popular power, but these limitations rest upon our acceptance that liberty requires power to be restrained, and that democratic power should not extend beyond constitutional norms.

To be sure, the same James Madison who warned against the dangers of faction in the 1780s, soon thereafter, with Thomas Jefferson, participated in founding the nation’s first party system. In the early 1790s, Madison became convinced that a new political party was needed to challenge the policies of Alexander Hamilton and the Federalists. He and Jefferson formed what is known as the Democratic-Republican Party, the forerunner to the modern Democratic Party. When the Republican Party later formed in the 1850s, the nation settled in to the present two-party system. Over time, many have concluded that, in addition to checking the government, parties are needed to inform, organize, and mobilize voters. Indeed, parties have become an indispensable feature of American government. The question is thus not whether parties have any value, but whether under present conditions, “partyism” or “factious spirit” or, in current terms, “polarization,” endangers the nation’s constitutional design.



## DEFINING POLITICAL POLARIZATION

The *Oxford English Dictionary* defines political polarization simply as “division into two sharply contrasting groups or sets of beliefs.”<sup>8</sup> By this definition, political polarization is not new. Throughout its history, the nation has “divi[ded] into two sharply contrasting groups or sets of beliefs” on a series of major issues. One such divide, regarding the status of slavery, was so deep and intractable that it caused the nation to descend into civil war. The United States has also been divided over the ratification of the Constitution itself, the introduction of the New Deal in the 1930s, the effort to end racial segregation,

the prosecution of wars in Vietnam and Iraq, and many other consequential questions.

In the past, however, the nation's polarization has been limited by several factors. First, policy cleavages have often cut across party lines. The two major parties have often experienced internal divides on policy questions—to the point where sometimes they have been almost as deeply divided internally as from each other. Second, the parties have generally polarized over a single issue or a related cluster of issues at a time—that is, while sharply divided on a few controversial questions, they could cooperate on others. Third, despite their differences, most Americans generally have shared a broad set of cultural, political, and legal assumptions, including many shared understandings of the Constitution. Today, these three limits on partisan polarization have weakened as the nation's political life is increasingly defined by partisan sorting, conflict across a larger range of issues, and erosion of consensus on fundamentals.

### *Sorting*

Levels of partisan polarization have varied greatly over the course of the nation's history. At times, the parties have been sharply divided; at other times, they have overlapped so extensively that it was difficult to find differences between them. The middle of the twentieth century was a period of relatively low partisan polarization. American politics featured broad bipartisan consensus on many economic, social, and foreign policy issues. During this era, the Democratic Party included a large conservative faction, located mainly but not exclusively in the South, and many Republicans identified as liberals. As a consequence, policy conflicts did not divide neatly along party lines, and many voters “split their tickets” between Democrats and Republicans on Election Day.

This pattern of low partisan polarization began to break down during the 1960s, which was marked by revolutions in civil rights, the status of women, sexual mores, and environmentalism, as well as intense antiwar activism. As the Democratic Party began to embrace more liberal positions on these issues, conservative Democrats, especially in the South, began to gravitate to the Republican Party. The Republican Party, in turn, became more consistently conservative, alienating liberal Republicans and inducing them to join the rival team. Scholars debate the causes of this division but agree that the public has sorted ideologically between the two parties, which are now more clearly separated and defined on major policy questions.

*Broadening of Conflict*

Through a process scholars have called “conflict extension,” partisan polarization has expanded to include a broader swath of political issues.<sup>9</sup> In the past, party polarization tended to focus on a single contested issue or set of issues, with party coalitions organizing around the party’s stance on that fundamental controversy. On other issues, party members could disagree. In this former system, a new issue or cluster of issues could emerge and “displace” the formerly dominant issue. When that occurred, the party would coalesce around the new dominant issue, but party members could continue to disagree on other matters. Today, however, the two parties no longer organize and polarize around a single issue or a small set of issues; instead, they are polarized across a much broader issue domain.

*Eroding Consensus on Fundamentals*

The spread of polarization to a broader set of issues has corresponded with an erosion of consensus on fundamental cultural, political, and legal questions, many of which implicate the terms of the Constitution itself. Although debates over the Constitution have persisted throughout the nation’s history, we now are experiencing new depths of partisan division over the proper role of government and the definition of constitutional rights. Many of these issues are not amenable to compromise, and committed partisans on both left and right are motivated to prevail on them by any means necessary. Intense fights over issues that partisans consider fundamental place enormous stress on the constitutional structure.

*Is Polarization Necessarily a Problem?*

Polarization has its defenders. During the mid-twentieth century, many argued that the country needed more polarization—they lamented the two parties’ internal divisions, ideological incoherence, and overlap. In the 1960s, Alabama governor George Wallace famously complained that there wasn’t “a dime’s worth of difference” between the two parties.<sup>10</sup> Many scholars agreed, arguing that the parties needed to differentiate themselves in order to give voters clearer policy choices, and, after elections, to provide the majority party the mandate and means to govern more effectively. In 1950, for example, a committee of the American Political Science Association issued a report calling for the nation to move “toward a more responsible two-party system”—that is, a

system in which parties are more differentiated and disciplined.<sup>11</sup> Indeed, it is true that polarization can help mobilize voters and guide their voting choices. Similarly, polarization can sometimes facilitate government policymaking, at least under circumstances when one party controls the presidency and both houses of Congress. Moreover, as Joseph M. Bessette argues in chapter 9, polarization can be a necessary step toward resolution of certain fundamental policy questions.

Experience has shown, however, that our polarization also can have negative consequences. In recent years, political polarization has been marked by persistent disagreement between the parties, incivility, tribalism, decreasing cooperation across party lines, the near-extinction of moderate elected officials, and, especially in times of divided party control, gridlock. More fundamentally, as several of the following chapters illustrate, our present polarization places chronic stress on our constitutional system, which is premised on institutional loyalty, deliberation, consensus building, and compromise.

Thus, while polarization may be benign, or beneficial, or even necessary under some circumstances, it also can be destructive. This book asks whether our present conditions of polarization are affecting our constitutional system in ways that should cause us alarm. The chapters that follow provide a diverse scholarly range of perspectives on the relationship between polarization and the nation's constitutional system. The first seven chapters examine in turn the Madisonian constitutional design, Congress, the presidency, the judiciary, the federal bureaucracy (or "administrative state"), federalism, and political parties. A recurring theme in these chapters is that the constitutional design is under sustained pressure to yield to the desires of partisan majorities, and American institutions are straining against their constitutional limits to govern in a highly polarized political environment. The book's final chapter presents a different perspective, making a case for the value of polarization in American politics, at least under some circumstances.



## CHAPTER SUMMARIES

### *Madisonian Constitutional Design*

American government in a period of polarization necessarily emphasizes the veto points of the Constitution: those checks that each institution possesses to stop or delay political action. In chapter 2, George Thomas reexamines James Madison's constitutional design and reminds us that checks and balances were not meant to be the centerpiece, nor were they intended to produce political paralysis. Rather, Madison was more concerned about the American political system being effective and most likely to achieve a government capable of

promoting the general welfare, as stated in the preamble to the Constitution. Checks and balances were to present political actors with the resources of time and space within which to refine the public's immediate concerns into a fuller idea of the public good, not simply to stymie political action.

Thomas notes that the successful operation of the Constitution relies on intermediary institutions like the press, parties, and leaders to educate and shape the public's political sensibilities. As political stalemates force leaders to focus on achieving policy goals at the expense of constitutional norms, we are beginning to see pathologies emerge that diminish the public's commitment to democratic norms. The 2016 presidential election evinced no positive constitutional vision from either candidate. Donald Trump's victory was built on a populist message at times deeply at odds with constitutional norms and a conventional understanding of the American political system. With the threat of illiberal democracy upon us, and polarization leading us away from the possibility of compromise, Thomas encourages us to think of the Constitution in more instrumental terms. We ought to consider constitutional reform with an open mind and recognize that the goal of constitutional government is effective government that promotes the general welfare. And, in thoughtfully contemplating reform, we should also pay heed to how our civil society is failing to produce the leadership and educative resources necessary for a Madisonian constitutional order to succeed.

### *Congress*

Madison assumed that Congress would be the centerpiece of the constitutional system he designed, that it would jealously guard its prerogatives and attempt to consolidate all political power within its grasp. In chapter 3, Kathryn Pearson demonstrates that polarization has weakened Congress within the separation of powers and has undermined its effectiveness in responding to critical problems that affect the national interest. As parties have become more ideologically homogenous since the 1990s, power has shifted from committees and minority interests to majority party leaders. Members are less concerned with institutional prerogatives and the constitutional legitimacy of their actions than they are about achieving policy goals in an uncompromising ideological fashion. The result has been a significant reduction in the productivity of Congress in passing legislation and an emphasis on a new kind of leadership-driven irregular legislative order that undermines deliberation and compromise. With moderates no longer having an effective role in legislating, there is little need for negotiation, and policy is increasingly formulated by a handful of the majority leadership without bipartisan support.

### *The Presidency*

In chapter 4, according to Benjamin Kleinerman, while intense partisan conflict has existed throughout American history, this animosity did not prevent the government from working. During the twentieth century, the role of the president has evolved to include control over policy as party leader, and executives increasingly attempt to enact their party's policy goals through administrative control. Ideological polarization has motivated both parties to prefer obstructionism to compromise, focusing contemporary congressional leaders on framing the next election, with their presidential candidate as a quasi-parliamentary leader, rather than following the regular constitutional order of deliberation, debate, and compromise. In the Constitution's system of separated powers, the president is ill-equipped to serve as a parliamentary leader, and of necessity must rely on his powers as head of the administration—or on informal powers derived from public opinion—to accomplish his policy goals. The result is a disfiguration of the constitutional order that transfers the mantle of representation from Congress to the executive and grants legitimacy to a mere partisan majority rather than to a deliberative process that considers the public as a whole. Drawing on the historical development of the executive branch, Kleinerman observes that an executive acting as a parliamentary leader, and shifting the responsibility of representative from Congress to the executive, pushes our politics toward ideological polarization, partisan obstruction, and uncompromising assertions of power over compromise.

### *The Judiciary*

Within the separation of powers, the judiciary is intended to stand apart from partisan consideration and popular pressures to uphold the paramount law that is the Constitution. Amanda Hollis-Brusky demonstrates in chapter 5 that in a prolonged era of polarization the courts cannot but reflect and respond to the stark and uncompromising partisan differences that exist in American politics. Moreover, as the political process stagnates, the judiciary is increasingly called on to resolve political disputes and policy questions that cannot be settled by ordinary political means. Under these unorthodox circumstances, the Supreme Court becomes an attractive venue for partisan actors to achieve their policy goals, while judicial selection and the Court's docket turn into objects of partisan political intrigue. The result is a judiciary that is increasingly receptive to resolving the concerns of party activists, interest groups, and legislators, rather than exercising independent judgment and remaining detached from partisan considerations.

This adaptation compromises the Madisonian constitutional order by placing responsibility for representation and policymaking in the hands of an unelected minority, and undermining the representative powers of Congress and the executive. Hollis-Brusky reminds us that as policy becomes “juridified”—when it becomes a legal rather than a political process—it necessarily degrades the democratic quality of our politics and threatens domination by a handful of elites. Supreme Court decisions are more difficult to alter or overturn than legislation as they are insulated from political control, and thus narrow the choices and alternatives for political actors working within a regular constitutional order. Despite these unintended consequences, Hollis-Brusky sees that both sides of the political divide have adapted to this new judicial order, with conservatives calling for “judicial engagement” and liberals for “activism” from the courts. These adaptations are a reflection of the growing divide in our country and the deep political rift that exists within the public. Therefore, the path back to the Madisonian constitutional order lies not in a reform of the courts but in a change of our politics.

### *The Administrative State*

The Framers of the Constitution could not have anticipated how vast and powerful federal administrative agencies would become in the modern era. In chapter 6, Eric Helland and Kenneth P. Miller describe the establishment of an “administrative state” as a central feature of the federal government and analyze how polarization has affected its operation. Although the architects of the administrative state hoped that it would be insulated from partisan politics, they grafted it into the Madisonian constitutional system so that all three branches exert some degree of control over its actions. Partisans now seek to use these institutional controls over agencies to shape policy.

When examining how partisan polarization has affected institutional control of agencies, it is important to take into account whether one party controls both Congress and the presidency. The effects of polarization are quite different when government is unified than when control of the branches is divided between the two parties. The Obama and early Trump eras illustrate these dynamics. In the first two years of the Obama administration, Democrats exercised unified control over the presidency and Congress. Through party discipline across the two branches, they expanded federal administrative responsibilities by enacting the Affordable Care Act, Dodd-Frank, and other measures—all over Republican opposition. When Republicans took control of the House of Representatives in 2011, however, the dynamics shifted into an extended partisan stalemate over control of the administrative state. Under

conditions of partisan gridlock, Congress's ability to exercise oversight over the administrative state diminished, and the president increasingly used his control over agencies—his “pen” and his “phone”—to adopt major policies in areas ranging from immigration to environmental regulation unilaterally, without securing bipartisan consensus in Congress.

Presidential policymaking through administrative action is vulnerable to override, however, as events following the 2016 election demonstrated. With the election of Donald Trump, Republicans gained unified control of government and were able to reverse many Obama-era administrative policies through a combination of congressional and executive action. In contrast to the expansion of agency powers under President Obama, President Trump and his advisors sought to “deconstruct” the administrative state. Meanwhile, the judiciary has entered the fray. For many years, courts have extended deference to agency decision-making, loath to substitute their own judgment for the complex and often arcane disputes that arise from administrative rulemaking. But in recent years, the judiciary has begun to assert a stronger check on unilateral assertion of executive power through administrative fiat.

The frustrations of polarized politics have led activists to seek policy change through administrative action, an approach that has lacked bipartisan consensus and generated resistance in the courts. The interbranch struggle for control of policymaking through the administrative state has been less stable than lawmaking by conventional constitutional means and, in turn, has contributed to polarization.

### *States and the Federal System*

The Madisonian constitutional order envisions the national government bounded not only by the branches of government countering each other but also by the several state governments' exercise of their own sovereign powers. In *Federalist* 51, Madison anticipated a “double security” arising to protect the rights of the people, deriving from “two distinct governments” countering each other's ambitions and maintaining each within their proper sphere of power.<sup>12</sup> In chapter 7, Michael S. Greve shows us that polarized politics has pushed relations between the states and the executive to eschew formal institutional arrangements. Instead of working within the limitations the Constitution places on the national government, states negotiate with the president on a series of political settlements that achieve short-term policy goals at the expense of legal legitimacy. The inability to achieve policy change through the regular constitutional order has accelerated the transformation of a formal federal system into what Greve calls presidential government. Polarization at

the state level has disabled individual states from resisting the pull of presidential government.

Following this trajectory, relations between the state and federal government become informal, highly personalized negotiations centered on executive power. Policy becomes transacted in an extralegal process of high-level state and presidential officials working to resolve policy questions. Greve sees states acting as blocs to advance their interests, appealing to the president and the courts, or sometimes resisting them if they see their interests threatened by executive power. Although this informal system of state and federal relations has proved tolerably effective in “getting things done,” it comes at a high price: it is less representative in a broad sense. Instead of distinct governments representing the people in a constitutionally defined formal legal and legislative process, national policies are increasingly enacted in an improvised and informal process by the president. Greve warns that this tendency—if left unchecked—will make American politics more vulnerable to executive control and the corruptions of an unpopular politics that favors discrete interests and oppresses minorities through political, economic, and social controls.

### *Political Parties*

The Framers of the Constitution did not anticipate the formation of political parties, and indeed looked upon party spirit as a threat to the deliberative capacities of the constitutional order. Despite these misgivings, political parties proved to be indispensable tools for organizing public opinion and mobilizing voters during elections. Congressional government is scarcely imaginable without the device of party caucuses to organize a buzzing confusion of interests into policy considerations that are digestible by an often distracted public. However, as Zachary Courser demonstrates in chapter 8, instead of parties working to facilitate the constitutional order as envisioned by Madison, they now chafe against its limits on majority power. Whereas nineteenth-century parties accepted and respected these republican limitations as protections for liberty and minority rights, today’s parties seek to overcome them as undemocratic and illegitimate. The conflict between today’s democratic parties and the republican Constitution has resulted in much of the gridlock in American politics today.

American parties increasingly operate under parliamentary assumptions of unlimited majority control of government, disdaining compromise and deliberation with minority interests, and asserting only the interests of a partisan majority. In our highly polarized era, partisans disdain compromise in favor of the chance to fully affect their will under conditions of unified party gov-

ernment; they seek the unlikely governing coalition of the executive, congressional supermajorities, and a politically sympathetic judiciary. Courser warns that the growing appetite for uncompromising partisan power over the federal government—fed by the frustrations of prolonged political gridlock—may tempt partisans to operate outside established constitutional norms to achieve their policy ends. We may run the risk of impetuous majorities working to oppress or ignore minority interests, impair rights, and undermine constitutional legitimacy in pursuit of their partisan ends, all under a banner of democratic rule.

### *A Case for Polarization*

Madison himself was not immune to the allure of partisanship, and in fact he contributed to the polarization of politics in his own generation as a political actor. In the concluding chapter, Joseph M. Bessette offers a defense of polarizing politics as a means of enacting reforms that cannot be achieved through normal constitutional order. Polarization need not always be considered negative when it is a reflection of real and meaningful differences in the public over fundamental constitutional considerations that cannot be resolved through compromise. Drawing on the examples set by Madison and Abraham Lincoln, Bessette suggests that fundamental questions of the regime sometimes require leaders to polarize opinion in order to facilitate political change. Seeing a threat to the republican order of the Constitution from the Federalists, Madison worked to sharpen political divisions and delegitimize the opposition. In concert with like-minded politicians such as Thomas Jefferson, Madison helped to build a partisan apparatus to wrest political control away from the Federalists to secure the Constitution and preserve the ideals of the revolution.

Lincoln polarized public opinion in order to arrest the decline of respect for natural rights that the scourge of slavery had encouraged in American politics. He recognized that the founding generation had seen the evils of slavery but had tolerated them to achieve political union. Further political compromises to maintain this union had obscured the evil of slavery and had pushed toleration to its limits. Northern leaders such as Senator Stephen Douglas sought further compromise on the question of slavery as being fully a matter of majority opinion and not principle, justifying the preservation of the union as the paramount political interest. While accepting the legality of slavery, Lincoln pushed against Douglas's banal approach to moral compromise to polarize public opinion around the question of slavery's morality. Lincoln saw the accommodation of slavery as a moral question necessarily undermining

the principles of the Declaration of Independence and believed that Douglas's policy of compromise would degrade American politics to mere calculations of self-interest. Unable to find a political compromise that acknowledged the evil of slavery, Lincoln led the union to reestablish itself and transform the Constitution.

In both of these critical junctures in American politics, extraordinary leaders were able to mold public opinion in defense of republican government, relying on their superior talent of practical political wisdom to guide them. In our own political moment, as this book demonstrates, there are many alarms that suggest another such critical juncture may be upon us.

## CONCLUSION

This book provides various perspectives on how polarization is affecting our constitutional order. Although the contributors have a range of views about the character of our contemporary partisan polarization and the balance of its benefits and harms, they agree that polarization is now a defining feature of the nation's politics and is placing strains on our institutions and political life. Following the tumultuous 2016 presidential election, we see polarization persisting with continued legislative gridlock driven by uncompromising partisans and continued strains on the constitutional order. We may take heart that periods of polarization have, despite their tumult and excess, often led to positive political reform. There is hope that our current moment may lead to such reform under the established principles of republican government enshrined in the Constitution.

## NOTES

1. Pew Research Center, "Political Polarization in the American Public: How Increasing Ideological Uniformity and Partisan Antipathy Affect Politics, Compromise, and Everyday Life," June 12, 2014, last accessed May 10, 2018, <http://www.people-press.org/2014/06/12/political-polarization-in-the-american-public>.

2. Voteview, "The End of the 114th Congress," December 18, 2016, last accessed May 12, 2018, <https://voteviewblog.com/category/114th-congress>.

3. "Gov. Bush: 'I'm a Uniter, not a Divider,'" CNN.com transcripts, aired February 29, 2000, last accessed May 10, 2018, <http://transcripts.cnn.com/TRANSCRIPTS/0002/29/se.01.html>; and "Barack Obama's Caucus Speech," the *New York Times* online, January 3, 2008, last accessed May 10, 2018, <https://www.nytimes.com/2008/01/03/us/politics/03obama-transcript.html>.

4. James Madison, *Federalist* 10, in Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter (New York: Mentor, 1999), 47.

5. Madison, *Federalist* 48, 276.
6. Madison, *Federalist* 48, 277.
7. Madison, *Federalist* 48.
8. *Oxford English Dictionary*, s.v. “polarization,” last accessed May 8, 2018, <http://www.oed.com/view/Entry/146757>.
9. Geoffrey C. Layman and Thomas M. Carsey, “Party Polarization and ‘Conflict Extension’ in the American Electorate,” *American Journal of Political Science* 46, no. 4 (October 2002): 786–802.
10. Howard Raines, “George Wallace, Segregation Symbol, Dies at 79,” *New York Times* online, September 14, 1998, last accessed May 10, 2018, <https://www.nytimes.com/1998/09/14/us/george-wallace-segregation-symbol-dies-at-79.html>.
11. American Political Science Association (APSA), *Toward a More Responsible Two-Party System, a Report* (Menasha, WI: American Political Science Association, 1950).
12. Madison, *Federalist* 51, 291.

