Federalist No. 10: How Do Factions Affect the President as Administrator-in-Chief?

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Federalist *No. 10 arguably is the most frequently read of the* Federalist Papers, *in no small measure because it offers a distinct and often negative image of the polity as a source of conflict. It argues that factions cannot be tamed, but they can be controlled. This essay argues that factions have weakened effective public administration and offers a detailed discussion of the proliferation of interest groups and their role in undermining the system of checks and balances.*

Federalist No. 10 deals primarily with the problem of factions in republican government. Written by James Madison, it considers factions to be "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community" (Carey and McClellan 2001, 43). Madison argues that eliminating factions is undesirable and impractical. Consequently, the efficacy of the Constitution in dealing with factions depends on its provisions for controlling them. Madison points to majority rule as a check on minority factions and to federalism and an extended republic as bulwarks against the formation of majority factions. He mentions the roles of citizens, electors, and representatives in controlling factions, but not those of the president or the judiciary—and he offers only passing reference to administration.

Madison's prescription for controlling factions ... has proven inapt. On the simplest level, his extended republic has generated an extensive proliferation of interest groups, many of which fit his definition of factions. More complexly, neither Madison nor any of the Constitution's framers possibly could have foreseen the development, scope, and policy-making roles of the contemporary U.S. administrative state.

Introduction: The Problem of Factions

Despite massive changes in the structure of U.S. government, federalism, the extensiveness of the extended republic, and the proliferation of interest groups, Madison's diagnosis of the causes and consequences of factions still resonates in our hyperpluralistic age. Factions are caused by human nature. First, "as long as the connection subsists between ... reason and ... self-love," an individual's "opinions and ... passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves" (*Federalist* No. 10, Carey and McClellan 2001, 43). Second, "the diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an [sic] uniformity of interests" (43). Among the consequences of factions are the ability of minority interests to "clog the administration [and] convulse the society" (45). Majority factions pose a potential "danger" to the "public good" and "private rights" (45).

Madison's prescription for controlling factions, by contrast, has proven inapt. On the simplest level, his extended republic has generated an extensive proliferation of interest groups, many of which fit his definition of factions. More complexly, neither Madison nor any of the Constitution's framers possibly could have foreseen the development, scope, and policy-making roles of the contemporary U.S. administrative state. There were roughly 4 million people in the United States when the Constitution was ratified; at the end of World War II, there were approximately the same number of civilian federal employees. Although hagiographers of the framers might argue that the Constitution nevertheless offers a blueprint for modern public administration, in reality, it does not. The Constitution divides authority over federal administration between Congress and the president,

vesting greater power in the former and more direct responsibility in the latter. It also wholly fails to foresee the role of the courts in contemporary administration. More to the point, perhaps, it does not anticipate the legislative functions performed by administrative agencies, especially representing particular interests, rulemaking, and framing budget options.

Also writing in the *Federalist Papers,* Alexander Hamilton's prescription for an energetic executive offers more potential for dealing with the negative aspects of factions in contemporary public administration. Hamilton proclaimed that "the true test of a good government is, its aptitude and tendency to produce a good administration" and that "a feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice a bad government" (*Federalist* Nos. 68, 70, Carey and McClellan 2001, 354, 362–63). His ingredients for energy in the executive are discussed elsewhere in this symposium and need not be considered here. However, they raise the question of whether the president can be "administrator-in-chief" with the ability to direct and coordinate federal administrative rulemaking, spending, implementation, and other forms of policy making.

This article addresses that question by considering (1) how patterns of bureaucratic politics enable interest groups, including factions, to dominate arenas of administrative policy making and implementation; (2) why the president is unable to control factions as administrator-in-chief; and (3) three options for controlling factions in the executive branch by strengthening the president as administrator-in-chief.

Factions and Bureaucratic Politics

Institutionalized Means of Exercising Influence

Following Harold Lasswell's (1958) classic definition of politics, bureaucratic politics can be defined as "who gets what, when, how" for and from administrative agencies. In the federal government, the "how" is substantially institutionalized and provides a relatively comprehensive framework through which interest groups can exercise influence (Piotrowski and Rosenbloom 2005). The following are the major institutionalized avenues for trying to get the "what" and determining "when."

Rulemaking. Federal agencies make policy through a variety of rulemaking approaches. Substantive rules, also called legislative rules, are the generic equivalent of legislation. They essentially are interchangeable with the laws enacted by Congress. Such rules set standards in virtually all areas of domestic policy, including agriculture, banking and securities, consumer and occupational safety, education, employment, energy, environmental protection, fair trade, food and drug safety, health, homeland security, housing, mining, natural resources and conservation, product identification, species protection, and transportation.

The main substantive rulemaking process, known as informal rulemaking or notice and comment rulemaking, requires agencies to publish a notice of proposed rulemaking in the *Federal Register* and to accept comments from the public, including interest groups. Research on interest group influence in rulemaking shows unequivocally that such groups are active participants in shaping rules and are perceived as influential by public administrators (Furlong 1998; Golden 1998; Kerwin 2003). In another form of substantive rulemaking, negotiated rulemaking, agencies form committees of stakeholders, whose opportunity and challenge are to formulate proposed rules. Because unanimity is required for the negotiation to be successful, this rulemaking process provides considerable influence to representatives of organized interests.

Federal advisory committees. The Federal Advisory Committee Act of 1972 regulates the establishment and use of advisory committees composed of private parties who reflect the interests found among those concerned with particular geographic areas and ecologies or relatively specific economic activities, production processes, and technologies. Advisory committees can be established by law, executive order, or agency action. Their number varies, but in recent years, there have been approximately 1,000 committees with a total of 40,000 members. The committees meet regularly with administrative agencies and advise them on agenda setting, rulemaking, policy making, implementation, and other matters. The act requires that membership on the committees be "fairly balanced in terms of the points of view represented and the functions to be performed" (section 5). However, many of the committees are focused on relatively narrow economic interests, such as peanuts, raisins, cotton, eggs, mushrooms, or cattle. Consequently, they provide organized interests with a formal seat at the table when trying to obtain favorable rules and policies.

Government Performance and Results Act and GPRA Modernization Act. The Government Performance and Results Act (GPRA), amended in 2010 by the GPRA Modernization Act, also provides an institutionalized means by which organized interests can seek to influence agencies. It requires agencies to develop strategic plans for four (originally five) years. In terms of providing interest groups with influence, the original act mandated that agencies "shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan" (section 306[d]). The GPRA Modernization Act contains similar language: "When developing or making adjustments to a strategic plan, the agency … shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan" (section 2, 8[d]). The act also requires agencies to consult with "interested parties" when prioritizing performance goals (section b[1][A][a]).

Political appointments. Although not based on law, the practice of consulting interest groups on potential political appointees to the agencies is well established. In some cases, organized interests are able to block potential appointments, and in others, they are able to secure the appointees they favor. Frequently, political appointees to regulatory commissions and other administrative units come from the regulated or subsidized industries with which these administrative units deal. Such appointees bring valuable expertise to administrative decision making. However, they also may promote a particular industry's economic interests.

Models of Bureaucratic Politics

Institutional means by which interest groups exert influence over administrative agencies are augmented by informal contacts and patterns of interaction with agencies. Together, they may enable private interests to capture public authority. The so-called iron triangle

is the classic model. The triangle is composed of an interest group representing an economic or other activity, the agency or administrative unit with programmatic authority over that activity, and the congressional (sub)committee charged with policy making in the area and overseeing the agency. It becomes "iron" when the three participants develop a harmonious outlook that, de facto, leads the agency and committee to reflect the viewpoint of the interest group. The iron triangle becomes a "policy subsystem" that resists intrusion by other interests and presidential initiatives.

Despite their tendency toward impermeability, in recent decades, iron triangles have been replaced or enveloped by policy networks (also called issue networks). These networks are largely the result of the complexity of some policy arenas, such as environmental regulation, that engulf a wide array of interests and concerns. Policy networks involve large numbers of groups and individuals with diverse perspectives and expertise. As described by Marissa Martino Golden, networks in regulatory administration are characterized by groups moving "in and out of the policy process, depending on the issue," "a fair amount of communication among groups" because "information was the currency of the networks," and agency rulemakers who act as "arbiters" (1998, 12).

Golden also found that "agency personnel give shape to the heretofore formless issue networks" (1998, 12). This observation feeds into Theodore Lowi's (1969) model of "interest group liberalism," in which agencies not only represent established interests, but also organize and act as spokespersons for previously unorganized ones. In this model, agencies, programs, and government spending expand as public policy seeks to satisfy the putative needs of an almost ever-increasing number of private interests. Logrolling among interests is more characteristic of interest group liberalism than the Madisonian expectation that factions will compete with one another. Instead of Congress and administrative agencies discerning the public interest out of the pluralistic competition among interest groups, the agencies and congressional (sub)committees align with organized interests and competition occurs among administrative agencies and congressional committees. In interest group liberalism, private factions and public power merge (McConnell 1966).

James Q. Wilson's (1980) model of the politics of regulation also recognizes the potential for interest group influence in bureaucratic politics. The model is based on the distribution of costs and benefits to various segments of society. In particular, when the costs are widely distributed and the benefits narrowly concentrated, a condition that Wilson calls "client politics," interest group influence may be at its strongest.

The common element in all models of bureaucratic politics is that as a substantial amount of policy making historically shifted from Congress to administrative agencies, interest group activity followed suit. This does not come as a surprise—to a considerable extent, it was planned by Congress in drafting and enacting the Administrative Procedure Act of 1946. As a leading proponent of the act, Congressman Francis Walter argued, "Day by day Congress takes account of the interests and desires of the people in framing legislation; and there is no reason why administrative agencies should not do so when they exercise legislative functions which the Congress has delegated to them" (U.S. Congress 1946, 5736). Note, however, that enactment of a statute affords considerable opportunity to stifle factions because legislation requires support by a majority in both houses of Congress and the president's signature or acquiescence. The opportunity for faction to counteract faction in agency rulemaking is more limited. The major checks on agency support of factional interests are opposition by other agencies, oversight by the Office of Management and Budget (OMB), the rarely used Congressional Review Act of 1996, and judicial review.

Furthermore, all models of bureaucratic politics raise the question of whether the president can be administrator-in-chief. None of them identifies a strong, centralizing, or coordinating presidential role in administrative policy making. The president's main tools for controlling agency policy making are political appointees, the OMB, and executive orders—and each has serious limitations. Appointees, sometimes referred to as "birds of passage," tend to have relative short tenure, often only one or two full budget cycles, and are subject to "going native," that is, being captured by the agencies in which they work (Heclo 1977). The OMB is powerful, but it is subject to congressional checks and has limited authority over the independent regulatory commissions. Executive orders are valid only insofar as they do not conflict with legislation or violate the Constitution.

Hamilton's analysis of the presidency in the *Federalist Papers* argues that as head of the executive branch, the president is provided by the Constitution with sufficient powers to control, coordinate, and energize federal administration.... [But] as several presidents have noted, Hamilton's expectations have long been frustrated. . . .

Why the President Cannot Control Factions as Administrator-in-Chief in the Contemporary Administrative State

Madison could not possibly have imagined the many avenues available to factions for exercising influence in contemporary bureaucratic politics. Hamilton's analysis of the presidency in the *Federalist Papers* argues that as head of the executive branch, the president is provided by the Constitution with sufficient powers to control, coordinate, and energize federal administration. Without using the term, Hamilton broadly outlines the parameters of the president as administrator-in-chief:

> The administration of government ... in its most usual, and perhaps in its most precise signification, ... is limited to executive details, and falls peculiarly within the province of the executive department. The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public monies, in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the direction of the operations of war; these, and other matters of a like nature, constitute what seems to be most properly understood by the administration of government. The persons, therefore, to whose immediate management these different matters are committed, ought to be considered as the assistants or deputies of the chief magistrate;

> and, on this account, they ought to derive their offices from his appointment, at least from his nomination, and be subject to his superintendence (*Federalist* No. 72, Carey and McClellan 2001, 374).

As several presidents have noted, Hamilton's expectations have long been frustrated by the limited constitutional powers over federal administration that the president enjoys, constitutional law, and the very large role of Congress in the post–New Deal administrative state.

On June 4, 1787, at the Constitutional Convention in Philadelphia, George Mason noted that "[w]e have not yet been able to define the Powers of the Executive" (Kurland and Learner 1987, 3:494). To a surprising extent with regard to domestic administration, Mason's statement is as correct today as it was then. The Constitution is notoriously vague with regard to the scope of executive power, and constitutional law has produced unclear boundaries rather than bright lines for distinguishing between presidential and congressional roles in directing, regulating, and supervising federal agencies. As U.S. Supreme Court Justice John Paul Stevens explained in a concurring opinion in *Bowsher v. Synar,* "One reason that the exercise of legislative, executive, and judicial powers cannot be categorically distributed among three mutually exclusive branches of Government is that governmental power cannot always be readily characterized with only one of those three labels. On the contrary, as our cases demonstrate, a particular function, like a chameleon, will often take on the aspect of the office to which it is assigned" (478 U.S. 714 [1986], 749).

If the Constitution envisions the president as administrator-in-chief, its vision is far too limited to enable the president to control, design, direct, or coordinate the activities of today's multiplicity of federal departments, agencies, independent regulatory commissions, and their relatively autonomous bureaus and other units. Article II calls on the president to "take Care that the Laws be faithfully executed" (section 3). The "be" suggests that the president has a supervening managerial role rather than direct responsibility for implementing and enforcing legislation. Consistent with this role, the Constitution provides the president with very limited independent power over domestic administration. Without congressional authorization, the president *can* make recess appointments and ask for the opinions of the department heads in writing; but *cannot* draw money from the treasury; create offices; establish, organize, reorganize, or empower agencies; control use of delegated legislative authority to individual administrators or agencies; or play a substantial role in budgeting, spending, and human resource management. Neither does the president have constitutional authority to limit congressional oversight and investigation of federal agencies and programs. Perhaps most telling of the limits on the president's ability to be administrator-in-chief is the constitutional law proposition, good since 1838, that "[i]t would be an alarming doctrine, that [C]ongress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the [C]onstitution; and in such cases, the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President" (*Kendall v. United States,* 37 U.S. 525 [1838], 610; see also *Morrison v. Olson,* 487 U.S. 654 [1988]).

The president's constitutional powers being inadequate to the role of administrator-in-chief, a wide array of extraconstitutional measures have been adopted over the years to provide him (or a future her) with tools for penetrating, directing, coordinating, and regulating federal agencies. Foremost among these, perhaps, was establishment of the Executive Office of the President in 1939. The Executive Office was thought necessary "to remedy [the] dangerous situation" in which "the President's administrative equipment is far less developed than his responsibilities" as chief executive (President's Committee on Administrative Management 1939, 3). In addition to the Executive Office of the President, Congress has provided the president with a variety of tools to enhance his role as administrator-in-chief. These include responsibility for formulating the federal budget, greater authority over the government's personnel systems, and putative assistance by a greater corps of political appointees (but see Light 1995). Contingent on congressional explicit or tacit assent, since 1974, the president has had impoundment and rescission powers, as well as on-and-off authority to initiate administrative reorganizations. As noted earlier, the president also can use executive orders to promote control and coordination of agencies' activity. By contrast, a congressional effort to give the president a line-item veto was held unconstitutional (*Clinton v. City of New York,* 524 U.S. 417 [1998]).

The potential effectiveness of extraconstitutional tools in enabling the president to be administrator-in-chief is debatable. However, these tools do not exist in a vacuum. Congress tends to develop its own means for maintaining a strong role in federal administration, sometimes in response to the expansion of presidential authority. For instance, in 1946, through the enactment of the Legislative Reorganization Act, the Employment Act, and the Administrative Procedure Act, Congress strengthened its capacity to oversee agencies, gained greater control over the administrative allocation of public works spending, and mandated a variety of procedures for agency rulemaking, adjudication, enforcement, and transparency (Rosenbloom 2000). The Legislative Reorganization Act contained provisions for congressional formulation of a federal budget, largely in response to the president's stronger role in budgeting after the Bureau of the Budget was moved from the Treasury to the newly created Executive Office of the President in 1939. In 1974, Congress established the Congressional Budget Office in response to the president's reorganization of the Bureau of the Budget into the much more broadly empowered Office of Management and Budget in 1970. The Inspectors General Act (1978) and Chief Financial Officers Act (1990) further strengthened congressional oversight of administration. The GPRA, GPRA Modernization Act, and Congressional Review Act provide for direct congressional participation in agency strategic planning and intervention in rulemaking.

The process of adding presidential and legislative tools may be a manifestation of Madison's desire that "[a]mbition must be made to counteract ambition" (*Federalist* No. 51, Carey and McClellan 2001, 268). However, it does not enable the president to fulfill the role of administrator-in-chief. Because these tools are additive and tend to encumber federal administration, they may frustrate that role even further. For example, as outlined in the Administrative Procedure Act, informal rulemaking is a relatively simple and straightforward process. Over the years, it has become convoluted ("thickened," to use Light's term) by OMB review;

potential congressional review; procedural requirements mandated by executive orders; a variety of obligatory assessments regarding impacts on small businesses and entities, families, federalism, environmental justice, and other concerns; data quality requirements; and much more. The growing complexity of rulemaking feeds into more elaborate judicial review, which further detracts from the president's ability to be administrator-in-chief (e.g., see O'Leary 1993). Similarly, there are so many political appointees now—once thought to serve the president—that the appointments process is overwhelmed and key positions go unfilled or are staffed by "acting" personnel (Carter 1994).

Three Options for Control of Factions by the President as Administrator-in-Chief

Federalist *No. 10.1: Public Administration as a Government-Wide Function*

In *Federalist* No. 72, before emphasizing the executive's administrative responsibilities, Hamilton notes that "[t]the administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary" (Carey and McClellan 2001, 374). Lewis Meriam, a Brookings Institution scholar, elaborated on this expansive definition of public administration during the controversy over the legislative recommendations of the President's Committee on Administrative Management (Brownlow Committee) in the late 1930s: "under our system of divided powers, the executive branch of the national government is not exclusively controlled by the President, by the Congress, or by the courts. All three have a hand in controlling it, each from a different angle and each in a different way" (Meriam 1939, 131; see also Rosenbloom 1983). From a separation of powers perspective, the *Federalist's* executive-centered vision of public administration has proven far too narrow.

William F. Willoughby, also a Brookings scholar, stridently emphasized this point in the 1920s and 1930s. Willoughby maintained that, constitutionally, Congress is "the source" and "the possessor of all administrative authority" (1927, 11; 1934, 115, 157). He argued that "[d]ue largely to the unfortunate use of the words 'executive' and 'administrative' as almost interchangeable terms, the chief executives of our governments are very generally regarded by the public as being the custodians of administrative authority. In this the public is wholly in error" (1934, 115). In his view, there is "clear distinction between executive power and administrative power" (115). The executive's function is to represent "the government as a whole" and to ensure "that all of its laws are properly complied with by its several parts" (115). The "administrative function," by contrast, "is that of actually administering the laws as declared by the legislative, and interpreted by the judicial, branch of government" (115).

Enthralled with "unity of command" (Gulick 1937, 85) as a field of study, public administration has been very slow to adopt the broader Hamilton/Meriam/Willoughby vision of administration as a government-wide function. As a result, it has expected too much of the president as administrator-in-chief and misunderstood legislative and judicial involvement in public administration. Although it can be misguided, rather than interference with sound administration, the legislative and judicial roles largely have been to augment executive-centered values, such as cost-effectiveness, with the democratic-constitutional values of representation, participation, transparency, and individual rights. One wonders what those imbued with Hamiltonian energy in the executive branch might think of the U.S. Supreme Court's language in *Stanley v. Illinois:*

> [T]he Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones. (405 U.S. 645, 656 [1972]).

From such a perspective, the lesson of *Federalist* 10.1 is clear: Public administration is a government-wide function that must incorporate the constitutional values associated with the functions of execution, legislation, and adjudication (see Rosenbloom 1983).

Federalist *No. 10.2: "Parliamentarizing" the Separation of Powers by Infusing the President's Role as Administrator-in-Chief with Congressional Direction*

It is moot to ask whether, had the framers foreseen the scope of today's administrative state, they would have opted for a parliamentary rather than a separation of powers system. Fusing the executive and legislative functions promotes coordination over administration. Woodrow Wilson hinted at this in his famous essay "The Study of Administration," noting that "the distribution of authority … is obviously a central constitutional question. If administrative study can discover the best principles upon which to base such distribution, it will have done constitutional study, an invaluable service. Montesquieu did not, I am convinced, say the last word on this head" (1887, 23).

Wilson's line of thought was picked up by Estes Kefauver as a member of Congress involved in the 1946 legislative reorganization. Later a senator, Kefauver favored a fusion of administrative and legislative functions. He called on the agencies to "enlarge the number of departmental offices in the Capitol … [and] locate these offices next door to the rooms of the committees having jurisdiction over them" because "this would save much leg work, promote closer cooperation between the legislative and executive branches, and facilitate committee work" (U.S. Congress 1945, 16). He maintained that these department offices "should be headed by a top official of the particular executive unit with authority to speak for the proper Cabinet member or the agency director" in order to "provide continuous service to the committees and to individual members" of Congress (Kefauver and Levin 1947, 149). He also wanted administrators to answer legislators' questions "face to face on the floor of the Senate and House" during regular "report and question" sessions (Kefauver and Levin 1947, 70–71).

Kefauver was not alone in favoring "parliamentarizing" the separation of powers. Senator Robert La Follette, Jr., a chief architect of the 1946 congressional reorganization, proposed a Joint Legislative-Executive Council composed of policy committees in each house of Congress, the president, and the cabinet. The council, never established, would have facilitated coordination and collaboration between the executive and legislative branches and helped to avoid deadlocks (Rosenbloom 2000, 68–69).

The Constitution's provision that "[n]o Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the United States" (Article I, section 6) presents a fundamental barrier to fusing legislative and executive functions. Nevertheless, as Kefauver, La Follette, and others have argued, there is room in the separation of powers to provide closer coordination between Congress and administrative agencies, as envisioned by the GPRA and the GPRA Modernization Act.

If the solution to controlling the influence of factions on the executive branch is to make the president administrator-in-chief, *Federalist* No. 10 ... offer[s] little hope of success.

Federalist *No. 10.3: A Unitary Executive Branch: Making the President Administrator-in-Chief*

Even within the separation of powers system, though uncomfortably, the president could become a true administrator-in-chief by adhering to the theory of a unitary executive branch. Unitary executive branch theory enhances presidential power by claiming that the president (1) along with the Supreme Court and Congress, has "the power and duty to interpret the Constitution"; (2) has plenary power to "remove subordinate policy-making officials at will," (3) can "direct the manner in which subordinate officials exercise discretionary executive power," and (4) can "veto or nullify such officials' exercises of discretionary executive power" (Yoo, Calabresi, and Colangelo 2005, 606–7).

In a unitary executive branch, the president could exercise directly all legislatively delegated authority to executive branch administrators, regardless of whether it was statutorily vested in particular agencies. This would include rulemaking authority delegated to the Environmental Protection Agency and other units based on their scientific expertise. The most extreme version of unitary executive branch theory claims that no law "can place any limits on the President's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing and nature of the response [because] [t]hese decisions, under our Constitution, are for the President alone to make" (Yoo 2001). Similarly, "no treaty" can limit the president's power to authorize "torture [of] somebody, including by crushing the testicles of the person's child" (Blumenthal 2006, quoting Deputy Assistant Attorney General John C. Yoo).

Among presidents to date, George W. Bush was the strongest proponent of unitary executive branch theory. This is reflected in his signing statements, which frequently asserted presidential authority to "supervise the unitary executive branch" (Halstead 2006, 9). Prominent examples include his signing statements accompanying the USA PATRIOT Improvement and Reauthorization Act (2005) and the McCain Detainee Amendment (2005), which, respectively, contained reporting requirements and prohibited cruel, inhuman, and degrading treatment of prisoners (Halstead 2006, 9).

A unitary executive branch is more consonant with a Hamiltonian vision of the presidency than with constitutional tradition. For instance, the American Bar Association called Bush's signing statements "contrary to the rule of law and our constitutional separation of powers" (Savage 2006, 1). However, it clearly would strengthen the president's ability to serve as administrator-in-chief and, in some respects, would be a logical result of the field of public administration's historical executive-centered outlook (Rosenbloom 2010).

Conclusion

If the solution to controlling the influence of factions on the executive branch is to make the president administrator-in-chief, *Federalist* No. 10 and *Federalist* No. 10.1 offer little hope of success. *Federalist* No. 10.3 could go a long way toward making the president an effective administrator-in-chief, but it recalls Benjamin Franklin's famous quip, "a republic, if you can keep it."

The Federalists and Anti-Federalists alike feared executive power, and it is highly unlikely that a constitution clearly embracing a unitary executive branch, in modern terms, could have been ratified. However, *Federalist* No. 10.1 combined with *Federalist* No. 10.2 could improve overall control of factions by generating more coordination and collaboration between the presidency and Congress in federal administration. This approach could make presidential and congressional "joint custody" over the executive branch more harmonious (Rourke 1993) and seems to offer the greatest hope of retrofitting the modern administrative state to the 1787 constitutional design.

What might Madison say of *Federalist* Nos. 10, 10.1, 10.2, and 10.3? He certainly would oppose 10.3 for its aggrandizement of presidential power and threats to the separation of powers and system of checks and balances. Similarly, the separation of powers would be compromised by fusing legislative and executive authority over administration and checks and balances would fail if "[t]he interests of the man" were disconnected from "the constitutional rights of the place" (*Federalist* No. 51, Carey and McClellan 2001, 268).

Federalist No. 10 Appended

Ultimately, Madison might tend toward *Federalist* No. 10.1, while insisting that strict adherence to the constitutional design would make the national government largely irrelevant to the interests of narrow factions. "Channeling" Madison, we might read something like the following:

The extended republic militates against majority factions by expanding the number and variety of interests. However, it poses the danger of promoting a plethora of narrowly focused minority factions that may gain representation in the Congress and the agencies of the executive department. In a separation of powers system, unified governmental action is the chief means of countering this pernicious tendency.

Yet, that very unity may tend toward tyranny by rendering checks and balances ineffective. The first defence against this problem is to insist that each branch fulfill its constitutional obligations and not share them or delegate them to another. The national government's dependence on a vigilant public will ensure that neither expediency nor self-interest will offer a justification for compromising constitutional integrity. Congress will not be permitted to delegate its legislative functions to either chamber, a member or committee thereof, the president, or to agencies in the executive department.

The second defence lies in the federal design. The national government is concerned with comprehensive and aggregated interests, whereas the more limited and narrow interests are within the competence of the state and local governments. Again, we may rely on constitutional integrity

to prevent the national government, which is one of enumerated powers, from usurping the police and residual powers of the states. Narrow factions will have nothing to gain from the national government because it lacks constitutional authority to respond to their interest.

Proper adherence to the constitutional design and maintenance of its integrity will prevent narrow factions from satisfying their aims through the exercise of influence on the national government.

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