

Constitutional Underpinnings Test Rubric

Question 1 - 1994

"In republican government, the legislative authority necessarily predominates. The remedy for this inconvenience is to divide the legislature... [And] the executive... should be fortified."

*James Madison
The Federalist, Number 51*

Using specific examples, discuss how Madison's observations apply to the relationship between the legislative branch and the modern presidency.

This question attempts to get at the evolving relationship between the U.S. Congress and the presidency since Franklin D. Roosevelt's era. The question is not focused on Madison and a historical treatment of checks and balances or separation of powers, but rather on an examination of how the presidency of the past 50 years has been both fortified as well as challenged by legislative authority.

To begin with, a student must understand the meaning of Madison's quote to answer the question. Consequently, some treatment of the original conflict over separation of powers and checks and balances would not be out of order, but the answer should not focus exclusively on the historical dimensions. What is required instead is an understanding of a series of unfolding events, legislation, and maneuvers that have created an almost chronic tension between the legislative and executive branches as each tries to dominate the policy process.

The best answers to this question will include appropriate examples from both domestic and foreign policy-making. For example, one could point to how President Roosevelt assumed sweeping economic powers to deal with the Great Depression, and that during his long administration Congress reorganized the executive branch, giving the President more control over fiscal policy. The significant shift of military power into the hands of the President during World War II, and the reinforcement of that power in the Cold War era that followed should also be cited. Specific actions such as the Employment Act of 1946, the National Defense Act of 1947, the Truman Doctrine, and the Marshall Plan are all appropriate examples to illustrate how budgetary authority, foreign policy-making, and national security helped create an "imperial presidency." Presidential control over nuclear weapons and undeclared "presidential wars" in Korea and Vietnam provide other solid examples of how a "fortified" executive

assumed legislative authority.

A strong response would also recognize, however, that while Congress acquiesced in delegating authority to the President, it also has tried to recoup much of it since the early 1970s. Good examples include the use of the legislative veto, the Case Amendment of 1972, the War Powers Act of 1973, and the Congressional Budget and Impoundment Control Act of 1974. The answer may also refer to a growing resistance by Congress to support presidential policies in trouble spots such as Angola, El Salvador, or Nicaragua, or to an increasingly tough confirmation process for presidential appointees to the Supreme Court or cabinet.

Question 1 Scoring Guide

- 9 Presents clear understanding and analysis of Madison's concern about balance of powers between Congress and the President. Relates concern to modern era, e.g., expanding presidential authority in foreign and domestic policy-making, and/or congressional initiatives to restrain authority — the War Powers Act, Congressional Budget and Impoundment Control Act, legislative veto, appointments, and/or White House attempts to use military force. Provides at least three specific examples that clearly link contemporary relationships to Madison's quote.
- 8 Presents a clear understanding and analysis of Madison's concern about balance of powers between Congress and the President. Relates concern to the modern development of executive authority and/or congressional initiatives to restrain that authority. Provides at least two specific examples linking contemporary relationships to Madison's quote.
- 7 Understands Madison's concern and some analysis in the context of modern times.

- Provides examples or generalizations that are not specific. Examples may not be clearly linked to Madison's quote. The specific examples may be less developed or less clearly applied to the argument
- 6 Understands Madison's concern and some analysis in the context of modern times. Provides examples or generalizations that are not specific. Examples may not be clearly linked to Madison's quote.
 - 5 Basic understanding of Madison's quote. Analysis is weak in the context of modern times. Discussion may include errors or vague references to modern examples. This is (the highest score for an answer focused only on checks and balances or division of powers.
 - 4 Weak understanding of Madison's quote. Assertions that vaguely discuss legislative and executive relations. Data dumping (gives bits of information without relating it to the question or argument). May contain errors and/or poor examples. Lack of analysis.
 - 3 Simply repeats phrasing of the question. Breadth of coverage and knowledge of legislative-executive relations is insufficient to address question. Answer does not provide clear examples or analysis to explain the modern relationships. Highest score for "How a bill becomes a law" response.

2 Little or no attempt to discuss legislative-executive relations. No evidence of how relationship has evolved in recent years. No examples, and little if any discussion of changing relationships between the two branches. May be very brief.

1 No attempt to apply the stimulus of the question to discussing legislative-executive relationships, past or present. Answer is so brief that it constitutes little or no attempt to respond to question.

0 No effort to answer the question.

- Blank exam book. Frivolous, off-task.

Overall Comment on Student Responses

Many responses overemphasized the historical aspects of the question, i.e., focusing on Madison and the original concerns with checks and balances and separation of powers, at the expense of a more substantive analysis of how the quote applies to contemporary relationships between the legislative and executive branches. Most candidates failed to consider how Congress has attempted to regain much of the authority it gave to the President. The better responses acknowledged these shifts in the relationship and provided appropriate examples.

Question 2 - 2000

5 POINTS TOTAL

Part A: 3points total

1 point for each problem clearly linked to a solution

If only problem OR solution is given, no credit

No credit if problem is only implicit, not clearly listed

Possible examples of A:

- Amendment process
- Creation of a dominant national legislature
- Creation of an executive
- Interstate commerce
- National court system
- Power to coin money
- Power to raise a military force
- Power to tax/raise revenue
- Settle disputes between states
- Supermajority
- "Supremacy Clause"
- Treaties
- Reference to other enumerated powers of Article 1, Section 8

Part B: 2 points total

1 point for general description of specific continuing tensions between centralization and decentralization (federal/state; federal/local governments) with at least implicit linkage to one of the three policy areas.

2 points for a specific explanation of the continuing tensions between centralization and decentralization (federal/state; federal/local governments) with explicit linkage to one of the three policy areas. Explanation has to say how, why, etc.

*Readers should look throughout essay for identification of problems and solutions, even if not

Attempts to answer question but earns no points: scored as zero (0) Blank or off-task: scored as a dash (-)

Question 3 - 2001

8 POINTS TOTAL

Part (a): 2 points (1 for each method identification)

Part (b): 4 points (1 for each description; 1 for each example)

Part (c): 2 points

Part (a): (1 point for each method identification; 2 points total)

Formal methods:

Methods of amendment must include one method of proposal and one method of ratification.

Methods of proposal:

- By two-thirds vote in both houses of Congress
- By national constitutional convention called by Congress at the request of two-thirds of the state legislatures (never been used)

Methods of Ratification:

- By legislatures in three-fourths of the states
- By conventions in three-fourths of the states

Students do not have to give the exact fractions, as long as they understand that it is an extraordinary majority and that it involves federalism.

Simple majority is not adequate.

Do not have to use exact terms (propose, ratify, supermajority, federalism).

Part (b): (1 point for each description of informal methods; 1 point for each example; 4 points total)

Informal methods may include:

- Courts (judicial review/judicial interpretation/application)
- Elastic clause
- Development of political customs/traditions
- The example chosen must be linked to the method described.

Part (c): (1 point for basic explanation; 1 point for elaboration; 2 points total)

Can get one point for a basic explanation, (i.e., "it's harder to amend formally") Second point requires further elaboration

Score of zero (0) for attempted answer that earns no points

Score of dash (-) for blank or off-task answer