

When the attorney general does Congress's job for it

By [Steve Thorngate](#)

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First Attorney General Eric Holder announces plans to [make aggressive use of what's left of the Voting Rights Act](#) in order to make up for what [the Supreme Court took away](#). Now he's [instructing prosecutors to leave out key details when bringing cases against nonviolent drug offenders](#), in order to keep mandatory minimum laws from kicking in.

Is the AG a politically nimble crusader, overstepping the bounds of his office to pursue his version of justice?

Not exactly. These are just more examples of how the government works now: since Congress isn't really functioning as a legislative body anymore, the executive branch is getting things done on its own. [Wonkbook explained this recently](#) in a different context:

Republicans and Democrats in Congress can't come to agreement and so Congress ends up doing nothing. "Gridlock," we call it, as if the bills are piled up, one after another, because Congress tried to do too much too fast.

This is a mistake. It's a metaphor that leads us awry. When Congress can't get anything done, things do happen. It just means they happen outside of Congress.

Is this a problem for the separation of powers? Maybe. But is that worse than simply accepting that nothing will ever get done?

After all, the Voting Rights Act section the Court struck down had broad congressional support, and the Court's decision [explicitly advised Congress](#) to not rid themselves of the notion but rather revise and update it. But despite past unanimous support for the section in question—and despite [current efforts](#) by some legislators—the process is too dysfunctional to offer much hope that this will get done.

As for mandatory minimums, Holder is responding to a major problem crying out for reform. [The prison population](#) has quadrupled since 1980, a trend driven first and foremost in recent years by longer sentences for drug offenders. This is devastating for the lives of prisoners and their families. It disproportionately affects people of color. And it's [extremely expensive](#).

Here too, [some legislators](#) want to pass reform in Congress, the way it's supposed to work. But no one's too confident this will happen.

If the executive branch were using its power to pursue fringe policies few people want, that would be cause for alarm. That's not what this is. Holder is doing the people's work, addressing broadly acknowledged problems—because Congress can't or won't.