

# Preface

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## **The Presidency and the Constitution**

The role of the presidency was one of the most contentious issues during the creation of the US Constitution. What must be remembered, to understand how this branch of the government was conceived, was that the Framers had grown up within the British monarchic system, and though the political radicals in the Patriot movement wanted to move away from some aspects of this system, there was also a concerted effort, driven by some members of this fraternity, to *preserve* aspects of the monarchic system. This included maintaining a strong symbol of central authority who would personify national identity, and who would essentially be a new kind of king for a new kind of society. The presidency that was created therefore served as a compromise between those suspicious of concentrated power, and those who wanted to retain the familiar system that they had not only grown up within, but that they also understood to be the key to their continued power and influence.

Over the years, the American presidency has become more and more powerful, as presidents have used popular appeal, and complicit legislatures, to expand the powers of the office beyond the constitutionally established duties. This balance between executive and legislative power, and between populism and elitism, has shaped the presidency over the years and continues to define how presidents approach their duties.

## **How Did the Monarchy Work at the Time of the Revolution?**

When the first colonists arrived in the United States (in the early 1600s), the British monarchy was what is known as an “absolute monarchy,” in which the king and advisors had absolute authority over the laws, the use of the military, and the economy. However, even though the monarchy was still absolute at this time, the seeds of change had already been sown. The Magna Carta, of 1215, was an important step towards the development of legal or “constitutional monarchy,” in which the powers of the monarch were seen as a part of the law, rather than a direct reflection of immutable divine authority. The debate, however, over whether the monarchy should have absolute, divine authority, or limited, legal authority, lasted for hundreds of years.

During the English Civil War, from 1649 to 1660, Britain briefly became a commonwealth, under Oliver Cromwell. This period lasted only a few years, but it was a monarch-less time in which traditional hereditary system of Lords was temporarily removed from power. The monarchy would be restored, several decades later, but it would never return to the position of absolute power that

monarchs had traditionally enjoyed. The Glorious Revolution (1688–89) restored the monarchy and the aristocracy, but also created a “Bill of Rights” that spelled out the basic rights afforded to each British citizen. Under this system, the monarchy shared power with a legislature, providing a system of checks and balances and prohibiting the monarchy from exercising tyrannical power.<sup>1</sup>

During the time of the American Revolution (1765–89), the British Monarchy had been a constitutional monarchy for a century, and this was the system that all of the Framers knew as they came of age. Under the system at that time, the monarch, King George III, was the nation’s chief executive. He appointed ministers to various posts, and he was the head of state, but he could neither pass laws nor change the tax system without the consent of the Parliament, which was a bicameral (two-house) legislature. The Parliament consisted of the House of Commons, who were elected by the people, and the House of Lords, who either inherited their positions or were appointed. The government in the late 1700s operated under a principle of “Parliamentary sovereignty,” which meant that Parliament had supreme legislative power over the entire empire.

Interestingly, the mythopoetic story of the American Revolution obscures the way that the British constitutional monarchy of the 1700s actually worked. American colonists, for instance, often directed their anger and even their petitions directly to King George during the disputes over taxation, but the king had limited power to control taxation and legislation.<sup>2</sup> King George was the symbol of what the Patriots saw as British tyranny, but the reality was that the United States was already part of a representative constitutional system, though not one that was specified through a written formal constitution. The British constitutional system functioned on a set of constitutional guidelines created through distributed legal judgments, conventions, and things like the Bill of Rights. Much of this nuance has been obscured as historians have framed the American Revolution as a struggle against tyranny.

While the British system was certainly unfair, in many ways, the American colonies were already part of an evolving legal system, not subjects of a tyrannical regime. American colonists might have disagreed with parliamentary decisions on taxation and military allotment, but this was not, strictly speaking, the result of tyranny. What is true, however, is that there were no elected members of the American colonies in the British Parliament. Americans, therefore, felt that their direct and unique needs were not represented and that they had not been given fair influence over the way that the laws impacting the colonies were determined. This perception was the origin of the Revolutionary slogan, “No Taxation, Without Representation.” Within the colonies, the colonists also paid taxes to colonial assemblies, which acted like local parliaments, and so many colonists objected to having to pay an additional tax to a nonrepresentative government, on top of what they already paid in local taxes.<sup>3</sup>

A good metaphor for understanding the American Revolution is to imagine that the British monarchy was a corporation, and that the various colonies—India, Australia, Canada, and the American colonies—were franchises

representing that corporation. The franchises had their own managers and “owners,” but they still needed to pay dues to the central corporation. Essentially, what happened in the American colonies was that members of the management class felt that they were paying too much in dues to their parent company, and so they formed an independent coalition (republic) of corporations (states) and tried to separate from the parent company. The parent company objected to this loss in revenue, and felt that they were owed because it had been their initial investment that created the satellite businesses in question, and so they fought a war for control.

The average American colonist who embraced the Independence Movement might have seen themselves as a freedom fighter fighting tyranny, but the reality was that the Framers of the Constitution didn’t really want to stray too far from the British system with which they were familiar. The system they established featured a bicameral legislature, and an elected office to replace the monarch as head of state. A key difference was that the American president also serves as head of government, a role played by the prime minister in parliamentary nations. The Framers did this to reduce the power of the legislature, so as to prevent a powerful chief legislator from exercising supreme control.

## **Power in the American System**

A key difference between the proposed American system and the parent British constitutional monarchy was the elimination of inherited offices. This meant that both the chief executive (the president) and the members of both houses would be elected from the citizenry. While this might sound like radical populism, there were members of the founding fraternity who wanted to keep more of the British monarchic system in place, recreating the power of the aristocracy, but as a meritocracy rather than an inherited system.

Alexander Hamilton, for instance, proposed in his now famous “Hamilton Plan,” written in 1787, that the US Senate should consist of an elected president who would serve for life, unless removed for bad performance. He also proposed lifetime terms for members of the Senate, which would also be chosen by electors. Under his plan, the only democratic body in the US government was the lower house (the House of Representatives) whose members would be directly elected by the people for short (three-year) terms. Furthermore, Hamilton wanted to abolish state sovereignty. States would have appointed governors, with veto power over any state law.<sup>4</sup>

Hamilton’s plan was essentially a recreation of the British system, though without inherited titles. Neither the president, nor members of the Senate were chosen by democratic vote in the Hamilton Plan, but rather, they were chosen by “Electors,” elites chosen to represent the state in a series of “electoral colleges” where they would then select the president and members of the senate. If the electors were elected by the people, why bother with this secondary level organization? Why not simply have the people vote directly for the senators and the president? The answer is complex.

At the time, the nation had been plunged into a recession because of the war. The American dollar had been depreciated, the United States was no longer trading with Britain, the nation's most important trading partner, and the cost of the war had been passed on to the public through a series of state taxes. Around 90 percent of the population were farmers who were struggling to pay these taxes and this led to widespread foreclosures, poverty, and eventually rebellions against the state. Gradually, state legislatures bowed to popular demand and passed debt-relief measures that reduced the financial toll on the laboring class and shifted some of this debt back to the ownership class, the property owners who were leasing land to the farmers.

The elites objected to this, and one must remember that prominent Patriots, like George Washington, were part of this class; they were landowners and renters, not members of the laboring class. Men like Washington and Hamilton believed that the problem was that the state governments were too responsive to the public and further believed that the public at large was too uneducated and divided in their interests and levels of commitment, to be trusted with important decisions. The Constitution was created, in part, out of an effort to symbolically place the populace in charge of the country, while at the same time creating a layer of representatives who would essentially represent the elite class. The Constitution was designed to provide these opportunities for elite dominance, and then to use this to mitigate public opinion on key issues, especially economic issues involving wealth and income distribution.

This system still exists. In modern America, candidates for state offices are promoted by wealthy elites who spend millions on campaigns to promote certain candidates, and additional millions on campaigns against other candidates. The ultimate result of this is that the elite class retains influence far beyond the size of their population within the country. This is not an accident of American history, but a purposeful result of the way that the nation's government was created. At the time of the founding, men like Washington, Hamilton, and Thomas Jefferson were the elite class, and the government was created to ensure that men like them had an outsized influence over the law.

To give examples, the Constitution limited the power of the states to enact debt relief, made the federal government dominant when it came to determining how to tax the populace and how to protect private property. Things like the "electoral college" were created so that there would be a level of elite influence between the people and the presidency. Until 1913, and the passage of the Seventeenth Amendment, members of the Senate were also appointed by state legislatures, rather than directly elected, again providing a layer of elite influence between the people and their government.<sup>5</sup>

The powers of the presidency, therefore, reflected this duality. Unlike the British monarch, who inherited their power, the American president was elected through a mix of public and elite influence, and would command many of the same powers, including control of the military, exercising a dominant role in

foreign policy, and the ability to issue executive orders similar to royal prerogatives issued under the constitutional monarchic system.

The strength of the American executive branch is an outgrowth of monarchic leanings, but there were others in the constitutional conventions who worried that a strong central government would leave the people vulnerable to tyranny. What if a new generation of elites, from one party selected a president with authoritarian leanings? What would stop that president, as commander of the military, from turning the nation into an autocracy? The basic idea was to create a series of checks and balances that the legislature could use to control a rogue presidency.

1. The president is empowered to reject any law passed through the US Congress, but Congress can override any presidential veto, with a two-thirds vote in both the Senate and the House.
2. The Senate has the power to approve high-level presidential choices for important positions, including cabinet members, federal judges, and ambassadors.
3. The Senate has approval power over treaties and must approve by a two-thirds vote.
4. Congress controls all government money and must approve all presidential projects or military actions.
5. The Congress has the sole power to declare war, and to approve military budgets.
6. The House of Representatives and the Senate can remove a president from office through impeachment.
7. Congressional committees can hold public hearings and question executive branch officials on various topics.

### **Evolution of Executive Power**

The American government that grew out of the constitutional conventions was therefore a compromise between populist and antipopulist ideals, and aspects of the presidency were tailored to create a semi-independent executive with enough power to check legislative dominance, but not so much power that the legislature could not control them. During the Washington era, the president was a distant executive, a symbol of the government, and a conciliatory leader in the debates within the cabinet and the legislature. While the president had enormous power and responsibility, power was still shared between the legislature and the executive branch.

The American presidency changed significantly under Andrew Jackson, the seventh president. What is interesting about Jackson is that, in many ways, he had far more popular appeal than any president since Washington. Jackson campaigned directly to the people, rather than to the elites, and this enabled him to harness populist power in a way that no previous president had managed. He advertised himself as a champion of the working class and the settler population, and he was a critic of the nation's financial elites in the East. He called the Washington power structure "corrupt" and claimed that he would combat corruption. He was advertised by his supporters as the "curative to corrupt politics."<sup>6</sup> He was the first president whose political successes were largely the result of his capability to capture the public imagination, and this was a new kind of presidential power, the power of public celebrity over connectivity to the elite class.

This did not mean, however, that Jackson would be the people's champion while in office. From the beginning of his political career, Jackson had used his political power to enrich himself. As an Army general (where he gained the celebrity that allowed him to win the presidency later) Jackson forced Cherokee people from the Tennessee River Valley (in what is now Alabama), and then he and his friends essentially stole 45,000 acres, establishing massive cotton plantations that used enslaved laborers. He did the same in 1818 as a US Indian commissioner during negotiations with the Chickasaw people, using a clause in the treaty to provide lands to himself and his business partners far below the market rate.<sup>7</sup>

When he won the presidency, Jackson's marketing campaign portrayed him as a member of the people, and a champion of the working class, but Jackson was by then part of the rentier (a person who earns income from owning property, investments, or securities rather than from active labor) class, a wealthy elite and a slave owner. While he had come from a poor background, he had exploited his position in the military and later the government to grow his own wealth and he would use the presidency to maintain his power and that of his friends. While in office, Jackson gave positions to his friends and loyal underlings rather than to qualified people representing the various positions of the cabinet. In addition, he essentially invalidated the work of Congress during his two terms, vetoing all legislation except for a bill that removed Native Americans from their lands (the Indian Removal Act). The nation's first populist president, therefore, did little for the working class, and his war on the economic elite contributed to a recession that greatly hurt the working class, and this ultimately led to extreme job and wage losses and the Panic of 1837.<sup>8</sup>

The next major shift in presidential authority came during Abraham Lincoln's time in office, when Lincoln engaged in several actions during the Civil War that raised questions about presidential authority versus that of the judiciary and the legislature. These extreme actions, however, were taken during an extreme crisis, the Civil War, and this became a repeating pattern in history. During periods of national crisis or warfare, executives would expand executive authority, using the national panic to consolidate support or to request additional authority and

funding from Congress. In some cases, presidents violated the separation of powers, engaging in unapproved spending and activities against the views of the legislature.

After years of presidential liberties, especially in the realms of economic and military authorities, there was a period of retraction in the 1960s and 1970s when legislators tried to curb the increasingly unilateral powers of the presidency, by strengthening checks and balances. These efforts worked in some cases but also failed to control presidential overreach in others. Subsequent national emergencies, like the Vietnam Conflict, and the War on Terror, gave executives the perceived power to exceed constitutional authorities or to stretch the powers of the executive branch. Increasingly, presidents turned to administrative methods to achieve success, when the legislature was compromised by deadlock or to bypass unfriendly legislatures.

The presidency of the twenty-first century is still an office caught between the influence of the elite class, and the interests of the populace. Some presidents in the modern age have attempted to use executive authority to engage in actions aligning with public opinion, and others have more clearly used executive authority to protect the interests of the elite class, or to increase the power of their political allies. The Donald Trump era has been marked by repeated and extreme debates over executive authority as the Trump administration has engaged in economic and military activities that strain or violate the existing limits of executive authority, while in some cases maintaining popular support and in other cases reducing or eliminating support. Students and researchers examining Trump era policy have an opportunity, therefore, to scrutinize unique attempts to use and to expand executive authority and can determine whether these actions serve to meet popular demand or increase the authoritarian leanings of the office, both characteristics in an uneasy balance since the establishment of the US Constitution.

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## Notes

1. "The Monarchy," *The Constitution Society*.
2. Roberts, *The Last King of America*.
3. Bailyn, *The Ideological Origins of the American Revolution*.
4. Hamilton, "The Hamilton Plan, 18 June 1787."
5. Reed, "The Framers of the Constitution Didn't Want You to Choose the President."
6. Bicknell, "Andrew Jackson: Man of the People."
7. Inskeep, "How Jackson Made a Killing in Real Estate."
8. "1837: The Hard Times," Harvard Business School.