

We the People

The Constitutional Separation of Powers

PART TWO: THE FRAMERS NEVER WANTED ANOTHER KING

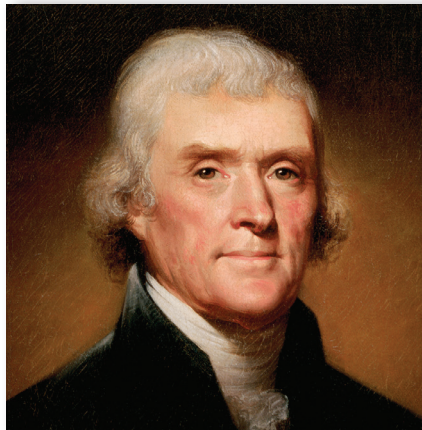
Those who designed our constitutional system wrestled with the matter of the presidency. We fought the Revolutionary War to escape the tyranny of King George. Yet, the first attempt to govern ourselves under the Articles of Confederation failed in part because of the lack of a single executive officer. The prospect of a President of the United States of America was frightening to many, yet the Framers realized the country could not succeed without one.

This ambivalence is captured in the contradictory positions presented by those who created our system of government. Alexander Hamilton argued in favor of an executive chosen for life, with a veto power that could not be overridden by Congress. Thomas Jefferson countered this idea, writing “I am astonished at some people’s considering a kingly government as a refuge.” John Adams thought the chief executive should be referred to as “His Highness, the President of the United States and Protector of their Liberties.” Benjamin Franklin saw the presidency in a starkly different light: “In free governments, the rulers are the servants.”

Despite these disagreements, most of the Framers recognized the necessity of overcoming these differences and successfully completing their vital task. As Gouverneur Morris observed, “And this must take place or general anarchy will be the alternative.”

The answer for the Framers of the Constitution was to establish a President of the United States, while creating check after check upon the power the president would possess and exercise. The president’s authority as commander-in-chief was limited by providing Congress with the ultimate decision on whether war should be declared.

The president’s capacity to negotiate treaties with other nations was restricted by the requirement of Senate ratification.



“THE IDEA OF SEPARATING THE EXECUTIVE BUSINESS OF THE CONFEDERACY FROM CONGRESS, AS THE JUDICIARY IS ALREADY IN SOME DEGREE, IS JUST AND NECESSARY.”
THOMAS JEFFERSON
TO JAMES MADISON, 1787

Similarly, while the president was given the power to make appointments to key governmental posts, those positions would not be filled until the Senate provided confirmation. The president is empowered to veto legislation passed by Congress, but the Framers gave Congress the ability to override that veto. The president leads the Executive Branch, yet the Constitution imposes the requirement that the president faithfully execute the laws enacted by the Legislative Branch. Finally, the president can be impeached by the House of Representatives and removed by the Senate.

The Framers’ uncertainty about the executive foreshadowed later controversies over presidential power. Since the end of World War II, Harry Truman’s seizure of the nation’s steel mills during the Korean War, Richard Nixon’s assertion of executive

privilege during Watergate, Bill Clinton’s claim of presidential immunity from a sexual harassment suit and George W. Bush’s policy of detention of enemy combatants after 9/11 each resulted in Supreme Court rulings that these presidential actions were inconsistent with the Constitution.

The genius of the Constitution is that the president is empowered to do what is necessary for the government to function, but that power is inevitably checked to ensure additional voices are heard and the whim of one person does not become the policy of the United States. Looking back, the Framers’ varied ideas came together to ensure that for more than two hundred years the president has functioned as a servant of the public and the Constitution and no single individual within the government operates as the ultimate protector of our liberties.

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