

Presidential Power

“I have but one lamp by which my feet are guided; and that is the lamp of experience. I know of no way of judging the future but by the past.” -Patrick Henry

From King to President

- Executives of the past were generally the kings
- They made the law, created treaties, regulated the property, controlled the church, established citizenship, nobility, and taxation. Not only were they the creators they were the enforcers of all they decreed
- Limited Monarchy - A government where either an elected or hereditary monarch is the head of state and the monarch's power is limited by law, usually a written charter such as a constitution. A limited monarchy may be restrained by the consent of others such as the populace or a legislative body or council.
- The American system of government draws from 5 British liberty charters, which was termed their “Constitution and Bill of Rights” by Alexander Hamilton. Our American rebellion was one against an executive (George III) who refused to follow their Liberty charters.
- The major shift in the government designed by America's founders was a move away from Kings.

**The foundational element of America's design was
LIBERTY FIRST
THE PRESERVATION AND PROTECTION OF LIBERTY**

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

— That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

— That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness....”

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THE MORE PERFECT UNION

TO SECURE THE BLESSINGS OF LIBERTY

Our constitution follows the British government model in creating 3 branches of government.

Charles de Secondat, Baron de **Montesquieu**, or simply Montesquieu In 1748, Montesquieu published a treatise titled, The Spirit of Laws. The founders made frequent reference to these writings.

In the past British governments there was a separation of power between the executive, legislative, and judicial branches. However, there was no real means to enforce that separation. As a result the executive branch would regularly consume the role and authority of the legislative branch and the judicial branch would become a tool of the executive to devour all power.

James Madison in Federalist #47:

“HAVING reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and the distribution of this mass of power among its constituent parts. One of the principal objections inculcated by the more respectable adversaries to the Constitution, is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts. No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded.”

- It is the accumulation of power in once branch or in one person that proved throughout history to be the source of the greatest tyranny.

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“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.... In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct... The oracle who is always consulted and cited on this subject is the celebrated Montesquieu... so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty... From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying "There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates..."

Madison emphasizes that: **"When the legislative and executive powers are united in the same person or body," says he, "there can be no liberty, because apprehensions may arise lest THE SAME monarch...should ENACT tyrannical laws to EXECUTE them in a tyrannical manner "**



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Federalist v AntiFederalist

Great study and deliberation was conducted in designing the office of the president. What was the designer's chief concern? That the president wouldn't become a king.

When creating the office of the president our founders had many things to consider. Would this executive purpose be best fulfilled with a committee, a tribunal, or one person.

George Clinton, writer of the Antifederalist #67:

"It is, therefore, obvious to the least intelligent mind to account why great power in the hands of a magistrate, and that power connected with considerable duration, may be dangerous to the liberties of a republic. The deposit of vast trusts in the hands of a single magistrate enables him in their exercise to create a numerous train of dependents. This tempts his ambition, which in a republican magistrate is also remarked, to be pernicious..."

The designers of our Constitution developed a solution to this foreseeable problem, establish the executive of the Constitutional Republic with limited and CONCURRENT authority.

Article 2 of the Constitution enumerates the limited authority delegated to the executive. The student of the Constitution will have to admit that the power delegated to the executive is considerably less than the power delegated to congress. As a matter of fact, both Alexander Hamilton and James Madison describe the power of the president of being less than the power of most Governors of the States.

The most frequent mention of this comparison is found in Alexander Hamilton's Federalist #69:

"...the President of Confederated America would stand upon no better ground than a governor of New York, and upon worse ground than the governors of Maryland and Delaware...."

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The president is intended to have very few powers and practically no autonomous power, this was one of the ways our designers intended to keep the president from becoming a king. It is interesting when you follow this documented debate over the creation of the president, that the sections of Article 2 seem to flow in answer to the greatest questions. Going back to George Clinton's Antifederalist #67, let us see their specific concerns about this future executive:

“And here it may be necessary to compare the vast and important powers of the president, together with his continuance in office with the foregoing doctrine

—his eminent magisterial situation will attach many adherents to him, and he will be surrounded by expectants and courtiers

—his power of nomination and influence on all appointments

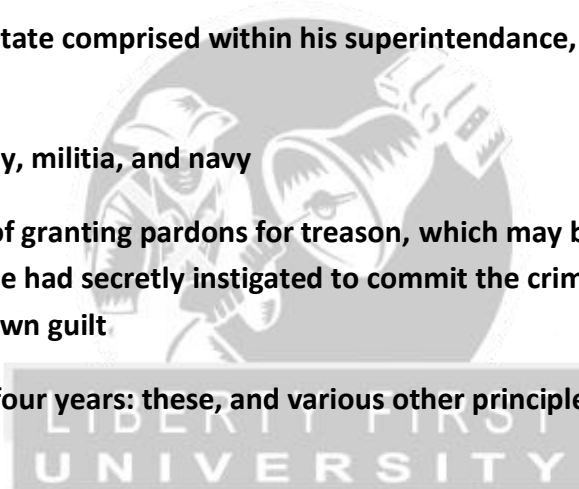
—the strong posts in each state comprised within his superintendance, and garrisoned by troops under his direction

—his controul over the army, militia, and navy

—the unrestrained power of granting pardons for treason, which may be used to screen from punishment, those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt

—his duration in office for four years: these, and various other principles evidently prove the truth of the position

—that if the president is possessed of ambition, he has power and time sufficient to ruin his country.”



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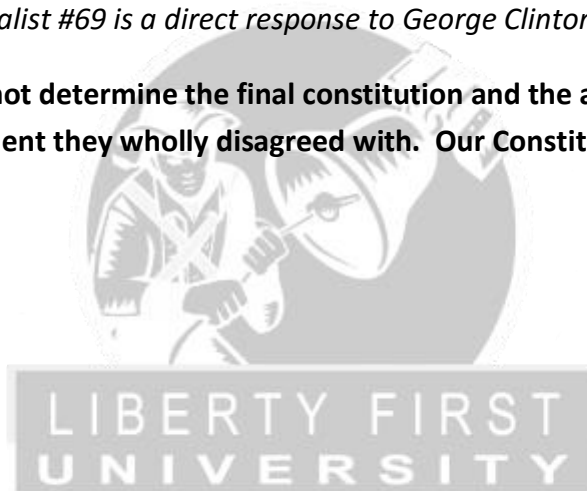
George Clinton continues:

“Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy, or monarchy?”

The safety of the people in a republic depends on the share or proportion they have in the government; but experience ought to teach you, that when a man is at the head of an elective government invested with great powers, and interested in his re-election, in what circle appointments will be made; by which means an imperfect aristocracy bordering on monarchy may be established.”

Alexander Hamilton’s Federalist #69 is a direct response to George Clinton’s Federalist #67.

- **The federalists did not determine the final constitution and the antifederalist didn’t concede to a document they wholly disagreed with. Our Constitution is the product of this debate.**



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Presidential Limits

In federalist #69, Alexander Hamilton is addressing the concerns of a current president holding power that could, over time, be used to transform the president into a king. He leads off right away by declaring that the president is not delegated a kingly power, but a power much less than a king and less than that of a State governor:

“The first thing which strikes our attention is, that the executive authority, with few exceptions, is to be vested in a single magistrate. This will scarcely, however, be considered as a point upon which any comparison can be grounded; for if, in this particular, there be a resemblance to the king of Great Britain, there is not less a resemblance to the Grand Seignior, to the khan of Tartary, to the Man of the Seven Mountains, or to the governor of New York.”

Term

Many were very concerned about the TIME a person could spend as a president. The argument, as George Clinton articulated, over time he could build himself into a king. Hamilton makes direct reference to Article 2 section 1 clause 1 of the Constitution as evidence to dispute this concern. Article 2 section 1 clause 1 reads:

“The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows...”

Hamilton explains that this 4 year term limit will guard against kingly transformation.

“That magistrate is to be elected for four years; and is to be re-eligible as often as the people of the United States shall think him worthy of their confidence. In these circumstances there is a total dissimilitude between him and a king of Great Britain, who is an hereditary monarch, possessing the crown as a patrimony descendible to his heirs forever...”

Hamilton then once again makes the comparison of the president to the governor of New York. He argues that the governor of New York has a similar term limit and the possibility of the governor of New York becoming kingly is much greater than the possibility of the president becoming kingly because the governor of New York is the executive of one State, but in order for the president to assume the role of king he would have to assume power over all the States, and that would be too difficult a task to achieve in 4 years. Listen as Hamilton explains:

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“there is a close analogy between him and a governor of New York, who is elected for three years, and is re-eligible without limitation or intermission. If we consider how much less time would be requisite for establishing a dangerous influence in a single State, than for establishing a like influence throughout the United States, we must conclude that a duration of four years for the Chief Magistrate of the Union is a degree of permanency far less to be dreaded in that office, than a duration of three years for a corresponding office in a single State.”

Election – Electoral College

That brings us to the protections of Article 2, section 1 clauses 2, 3 & 4... the mode of election of the president.

Hamilton also assures in Federalist #68, that the because the manner in which the president will be elected and his term being limited to 4 years, the people, through their delegates, we know as the electoral college, will be able to prevent any such kingly accumulation of power, as the people, who are the greatest guard of their own Liberty, will never tolerate to re-elect a king.

“It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations...

They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment...

Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias... The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications.”

The creation of the electoral college was another intentional remedy to prevent kingly power accumulating in the hands of the president. The designers of our Constitution believe that a

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popular vote would not only confuse the purpose of the president as an ambassador of the States but would enviably lead to the corruption of the power delegated to the president.

Charles Cotesworth Pickney, delegate to the Constitutional Convention, summed up what was not only the popular belief of the delegates, but would also become the controlling belief in establishing Article 2 section 1 clauses 2 and 3 of the Constitution. He classified a national popular vote of the president to be **“liable to the most obvious & striking objections.”** He said if the people were to elect the president by popular vote, **“They will be led by a few active & designing men. The most populous States by combining in favor of the same individual will be able to carry their points.”**

Not only will the States be silenced in their political affairs nationally and in foreign negotiations, the national popular vote would ensure that the people themselves would be silenced. What would be the point in voting if you didn't live in New York, Texas, California, or Florida, where the majority of the voting population resides? Every presidential election would be chosen by these few States and these few States would grow and maintain their voting power, because the national popular vote system would ensure the enrichment of these States over every other State. Or more starkly, the President would be elected solely by urban vote – where 84% of the currently population resides.

America was created as a Constitutional Republic, not a democracy.

A national popular vote is contrary to the principles of a Republic and therefore contrary to the principles of liberty.

A national popular vote, is in fact an oxymoron, as it would only reflect the voice of the majority (pure democracy), denying every person in their State a voice in the presidential election.

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Natural Born Citizen

There is a specific difference between the election of the president and the election of the House and Senate members; that is the requirement of the president being a “natural born citizen.”

Article 2 section 1 clause 5 addresses the eligibility requirements for the office of the president.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

- A person who is born of just one parent who is a citizen of the United States is a citizen by birth, but not a Natural Born Citizen.
- Someone cannot hold or have held dual citizenship with a foreign country and be a Natural Born Citizen.

Why?

The whole reason the president must be a Natural Born Citizen is because our framers had a history full of foreign kings imposing foreign law and foreign favor upon the people and they knew how dangerous foreign influence and foreign or split allegiance was to Liberty.

George Washington, Farewell Address of 1796:

“Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.”

In the Grand Remonstrance of King Charles I, in 1641 the grievances were indicative of a larger design to overturn and undermine Liberty of the people and the Law of the Land. One of the grievances illustrates how foreign influence and foreign law contributed to that destruction of Liberty:

“Such Councillors and Courtiers as for private ends have engaged themselves to further the interests of some foreign princes or states to the prejudice of His Majesty and the State at home.”

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In the English Bill of Rights of 1689, the people of Great Britain actually require an oath of their King and his council to shun all foreign influence:

“And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm. So help me God.”

Protecting the United States from foreign influence was very prominent in the minds of our framers, especially in the office of president. At the time of the creation of the Constitution by the States there were no Natural Born Citizens (since the nation only just came into existence) so an exception was made until that qualification could be met. Article 2 section 1 clause 5 reads:

“No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President;”

The exception to the Natural Born Citizen requirement was that the President must be a “Citizen of the United States, at the time of the Adoption of this Constitution.” This exception was introduced out of respect to those distinguished revolutionary patriots, who were born in a foreign land, and yet had entitled themselves to high honors for their dedication to liberty and service in the war for independence.

- The President is the commander in chief of the military. Our framers knew from their history that it would be extremely dangerous to allow someone of foreign influence to exercise power over our military.

John Jay wrote a letter to George Washington on July 25, 1787, expressing this very point.

“Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government, and to declare expressly that the Commander in chief of the American army shall not be given to, nor devolved on, any but a natural born Citizen.”

Once time established the availability of Natural Born Citizen candidates, that unbroken loyalty would be proven in part by the fact that both parents were citizens of the United States and establishing that the candidate would have been raised in a home with loyalty only to his native land.

- When a child is raised in a home where one or both parents are citizens of a foreign country, then that child will naturally be raised with an attachment to that foreign

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country out of love for that parent. Our framers knew that in time of military crisis, our commander in chief must be free from all attachments and bias with a foreign country and it mattered not if that bias was for or against the foreign country. The president must not hesitate or haste in matters of war. He must only act upon the best interest of the United States, free from internal conflict. George Washington explains this fact in his Farewell Address:

“Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other.”

Alexander Hamilton gives another perspective upon the Natural Born Citizen requirement. He postulates why a foreign country might want to raise up someone to become president of the United States and the inherent danger in that possibility:

“Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union?”

Just as the birth of a child on US soil does not create citizenship in the parent, the birthplace of the child does not establish the status of Natural Born Citizen. Throughout history citizenship has been based upon the criteria of the parents. It has not been linked to the child.

In summary, the entire reason for establishing the criteria for a president to be a Natural Born Citizen was to help to eliminate any possibility that the commander in chief of the military be influenced by love or hate of a foreign nation. Because of this well established and historically justified reason, we should think very long and hard before we consider altering or diluting this established requirement through modern interpretation or modern court opinions. Our framers did what they did on purpose and with a purpose. We only endanger our Liberty when we assume they didn't know what they were doing, and our advanced intellect means we can disregard their reasons for our own personal preferences. We would do well to learn from this history, instead of dooming ourselves to repeat history's mistakes.

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Age of the President

...neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

- The designers of our Constitution thought it was necessary for any candidate to be old enough to have a significant period of adult life to examine when considering a person for office.
- They wanted to be able to accurately judge the character of any candidate chosen to represent the People.

Our framers knew, that for government to function properly, we must have a moral people occupying those responsibilities. They expected us to consider the Character of the people we elect.

"Nothing is more essential to the Establishment of Manners in a State, than that all Persons employed in Places of Power and Trust be Men of exemplary Characters. The Public cannot be too curious concerning the Characters of Public Men." S. Adams to J. Warren Nov. 4, 1775

Character matters. One of the most important questions of our candidates is what KIND of person are they? Morality matters. There is no getting around it. As a matter of fact, morality in government is essential to the prosperity, health, welfare, and national security of a society.

"We may look up to Armies for our Defense, but Virtue is our best Security. It is not possible that any State should long continue free, where Virtue is not supremely honored." S. Adams to J. Warren Nov 4, 1775

Virtue in government AND in the populace is the ultimate guard of the people's Rights and national security of a society.

"No people will tamely surrender their Liberty nor be easily subdued when knowledge is diffused and virtue is preserved. On the contrary, when a people become universally ignorant and debauched in their manners, they will sink underneath their own weight without the aid of foreign invaders." S. Adams to Warren Nov 4, 1775

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In Samuel Adams' letter to James Warren:

"There are Virtues and Vices which are properly called political. "Corruption, Dishonesty to one's Country, Luxury and Extravagance tend to the Ruin of States. The opposite Virtues tend to their Establishment. But there is a Connection between Vices as well as Virtues, and one opens the Door for the Entrance of another. Therefore Every able Politician will guard against other Vices and be attentive to promote every Virtue."

In Samuel Adam's day, Dr. Benjamin Church was discovered to have been "holding a criminal Correspondence with the Enemies of his Country." The entire population appears to be shocked to learn of Dr. Church's treason, with the exception of Samuel Adams. Adams, astounded by their surprise, explains that Dr. Church's betrayal of his country should've been expected because "his Infidelity to his Wife had been notorious." Since everyone knew that the man was unrepentant about cheating on his wife, his betrayal of the country was just a matter of time.

"He who is void of Virtuous Attachment in private Life, is, or very soon will be void of all Regard to his Country. There is seldom an Instance of a Man guilty of betraying his Country, who had not before lost the feeling of moral Obligation in his private Connections." S. Adams to Warren Nov 4, 1775

It was no so much about his infidelity, but the fact that Dr. Church was living a life of deceit. If he can live every day lying to the woman that he had pledged his life to before God, then betraying a country is of little consequence - Adams would say it's inevitable.

Knowing someone's true moral character may seem a bit difficult, Adams would insist that we make a candidate's private issues a matter of public consideration. Character is revealed over time. We may not be the person we once were. Life's testimony reveals who we are but is evidence of who we have become.

Wilson Nicholas, delegate for the State of Virginia stated during the ratification debates in 1788, that this requirement of age would "create a certainty of their judgment being matured, and of being attached" to the loyalties of the States and to liberty.

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Oath of Office

The president's oath of office is no less important and is a strong indication of the focus and purpose of the powers delegated to that office. Article 2 section 1 clause 8 of the Constitution gives the text of that oath:

"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Contrary to the countless times you hear a politician say "I took an oath to defend the American people," that's NOT what the oath says!

The purpose of the office of the president is to **"preserve, protect, and defend the Constitution"** not control the economy, not protect national security, not to perform any act whatsoever if those acts do not first preserve, protect, and defend the Constitution.

Perhaps that would be a great meter for any thing a president may want to do; first ask does this particular act "preserve, protect, and defend the Constitution." If the answer is no, then the president should never perform such an act.

Not a King

Alexander Hamilton, in Federalist #69 points out that unlike a king, the president:

"is liable to be impeached, tried, and, upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law."

However, as Hamilton accurately points out,

"The person of the king of Great Britain is sacred and inviolable; there is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution."

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Article 2 section 1 describes the president's power to be as follows:

1. Shall be the Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States;
2. he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices,
3. he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

Each power that is established is immediately followed by a limitation of that power.

This is distinctly different than that of the King, as Alexander Hamilton points out.

“The most material points of difference are these: First. The President will have only the occasional command of such part of the militia of the nation as by legislative provision may be called into the actual service of the Union.”

- The distinction between the power of the president and the king gives us evidence of how the president's power is supposed to and not supposed to be exercised. Remember, he is NOT a king!

“The king of Great Britain and the governor of New York have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the President would be inferior to that of either the monarch or the governor. Secondly. The President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature.”

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War

- The president is denied the power to declare war specifically because of this desire to prevent him from becoming a king and so America could avoid the kingly consequence of frequent wars.

James Madison explained;

“The constitution supposes, what the History of all Govts demonstrates, that the Ex. is the branch of power most interested in war, & most prone to it. It has accordingly with studied care, vested the question of war in the Legisl.”

Hamilton repeats this distinction in his closing of Federalist #69 to emphasize the difference between our president and the king:

“The one (the President) would have a right to command the military and naval forces of the nation; the other (the King), in addition to this right, possesses that of declaring war, and of raising and regulating fleets and armies by his own authority.”

What Hamilton is saying, is that the president cannot be a king, because he is ONLY the general of the forces, WHEN there is a formal declaration of war.

- The Constitution reserves to Congress the powers to declare war, raise and regulate fleets and armies, and control the military.
- The president is tasked with making suggestions to the Congress, he is not empowered to make demands or circumvent the legislative authority.

For the president to have this kind of controlling power over the legislative branch, would violate the very principles of separation of powers we have already discussed.

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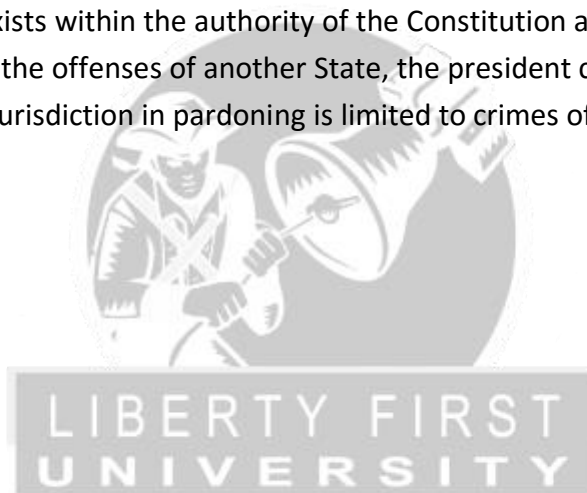
Pardons

Even the autonomous powers of the president are limited. The president is authorized to issue pardons but only for federal offenses and not in the case impeachment.

Hamilton first points out that the power to pardon in the hands of the president is significantly less than that of the governors of the States:

“The power of the President, in respect to pardons, would extend to all cases, except those of impeachment. The governor of New York may pardon in all cases, even in those of impeachment, except for treason and murder. Is not the power of the governor, in this article, on a calculation of political consequences, greater than that of the President?”

His power to pardon only exists within the authority of the Constitution and just as a governor of one State cannot pardon the offenses of another State, the president cannot issue a pardon outside his jurisdiction, his jurisdiction in pardoning is limited to crimes of a federal nature.



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Article 2 section 2 clauses 2 & 3 describe the president's power being:

1. to make Treaties, provided two thirds of the Senators present concur;
2. nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law:
3. to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Treaties

With regard to treaties, the Constitution establishes that the president has the authority to make treaties, but they are only valid once 2/3 of the Senate ratify. Hamilton points out that this is a significant distinction between the power of the president and that of a king:

“The President is to have power, with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur. The king of Great Britain is the sole and absolute representative of the nation in all foreign transactions. He can of his own accord make treaties of peace, commerce, alliance, and of every other description.”

The president cannot make any treaties autonomously, and his authority over treaties is further limited by Article 6 section 2 of the Constitution, referred to as the Supremacy Clause. The Supremacy Clause requires all acts by the federal government to be made in “pursuance” to the Constitution to be valid. So any treaty that does not rest upon a power delegated to the federal government is therefore made invalid and not binding upon the States.

Finally on the matter of treaties, Hamilton again repeats these distinctions in his closing to highlight the difference in the powers delegated to the president and those powers inherited by the king:

“The one (the President) would have a concurrent power with a branch of the legislature in the formation of treaties; the other (the King) is the sole possessor of the power of making treaties.”

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Nominations

According to the Constitution, the president has the power to make nominations, but those nominations are merely suggestions, appointment of those nominations are the sole power of the Senate. Hamilton makes this distinction:

“The President is to nominate, and, with the advice and consent of the senate, to appoint ambassadors and other public ministers, judges of the Supreme Court, and in general all officers of the United States established by law, and whose appointments are not otherwise provided for by the Constitution. The king of Great Britain is emphatically and truly styled the fountain of honor. He not only appoints to all offices, but can create offices. He can confer titles of nobility at pleasure; and has the disposal of an immense number of church preferments. There is evidently a great inferiority in the power of the President, in this particular, to that of the British king; nor is it equal to that of the governor of New York...”

Even the vacancies filled by president while the Senate is out of session expires once the Senate is back in session.

Hamilton concludes with this comparison:

The one (the President) would have a like concurrent authority in appointing to offices; the other (the King) is the sole author of all appointments.



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Communication and Judgement

Article 2 section 3, the last clause in the delegation of power to the president once again highlights the limited delegated authority of the office of the president. This section delegates the following power to the president:

1. He shall from time to time give to the Congress Information of the State of the Union, and
2. recommend to their Consideration such Measures as he shall judge necessary and expedient;
3. he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment,
4. he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers;
5. he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

A simple reading of this text show us these powers are inherently limited. For example, the State of the Union, is to be given to Congress, periodically, to provide Congress with the information they need to perform their delegated authorities. The president is tasked with merely making recommendations to Congress, he is not empowered to make demands or circumvent the legislative authority. That would again be a violation of separation of powers.

Finally, the president is tasked with EXECUTING the laws, not creating them. Article 1 section 7 of the Constitution delegates an authority to the president to veto certain laws, but that power is also limited as the veto itself can be overturned by Congress. Hamilton says, this distinction proves the president is not a king.

“The President of the United States is to have power to return a bill, which shall have passed the two branches of the legislature, for reconsideration; and the bill so returned is to become a law, if, upon that reconsideration, it be approved by two thirds of both houses. The king of Great Britain, on his part, has an absolute negative upon the acts of the two houses of Parliament.”

You will find no authority delegated by the Constitution to the president to create a tax, eliminate a tax, or even raise or lower a tax, that power is reserved to the House of Representatives alone, via Article 1 section 7 clause 1.

Presidential Power

The president is only authorized to spend the money Congress apportions to the executive branch, therefore any debt incurred by the federal government is not the product of the president, but due to the spending of Congress. Even the autonomous powers of the president are limited. The president is authorized to issue pardons but only for federal offenses and not in the case impeachment.

Alexander Hamilton also points out in Federalist #69, the president is not authorized to make citizens out of aliens and he is not authorized to confer the benefits of citizenship on any person. These, again, are powers reserved to Congress.

“The one (the President) can confer no privileges whatever; the other (the King) can make denizens of aliens, noblemen of commoners; can erect corporations with all the rights incident to corporate bodies.”

Hamilton concludes his comparison with a list of additional powers that are commonly exercised by the king that the president was never delegated:

“The one can prescribe no rules concerning the commerce or currency of the nation; the other is in several respects the arbiter of commerce, and in this capacity can establish markets and fairs, can regulate weights and measures, can lay embargoes for a limited time, can coin money, can authorize or prohibit the circulation of foreign coin. The one has no particle of spiritual jurisdiction; the other is the supreme head and governor of the national church!”

The designers of our Constitution created the office of the president with great care, drawing upon centuries of history and experience. The American colonists didn't simply separate themselves from Great Britain, they declared independence from kings forever. Their purpose was to ensure the Blessings of Liberty not just to themselves, but to all future generations. They knew the only way to do that would be to keep the president limited in power, and they hoped to never again have a king.