

Constitutional Corner – The Imperial Presidency

"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 unexceptionable characters. The public cannot be too curious concerning the character of public men." Samuel Adams, in a letter to James Warren on November 4, 1775.

As we prepare to enter what could well prove to be the most ruthless, mean-spirited, and most uncivil presidential election season in modern times, it would be well worth our time to take a step back, a few deep breaths, and reflect on both the office of President as it is defined by the Constitution as well as the character of the current candidates vying for that high office. America has seen rancorous elections in the past, beginning in 1800, but this one could take the cake.

Part of what makes recent presidential elections so emotional is that, over the years, the Office of President has become something it was never intended to be. Let's look back:

George Washington had it easy; no previous precedents to bind him, only the broadly formed words of the new Constitution as his guide, the ink barely dry.

The Philadelphia delegates had shuddered at the thought of a kingly Chief Executive, but shuddered equally at the examples created by some of the new state Constitutions. Their state Governors were weak, impotent, mere figureheads. As they designed the U.S. Presidency the delegates knew some of the powers of a king would be absolutely necessary, but which ones? "Their challenge was to invent an executive office that would be strong enough to provide effective governance without threatening the newly developed and most cherished republican form of government."¹

Certainly the power to negotiate foreign treaties should be vested in the President; the Confederation Congress had had this power, and exercised it reasonably well, fielding a stable of diplomats of the first order and negotiating the "tie-breaking" treaty with France; but still, this is a power best left to a single person than a committee. Executing the laws? That was a given. Congress didn't want to both write and enforce the law (but the Executive, as it turns out, would be more than willing to do both). But what of the war-making power?² That was a landmine waiting to go off, and the delegates knew it - except that they didn't have landmines back then. Best not to have a Chief Executive with the power to drag us off into costly wars (in both lives and fortune) every few years such as the kings of Europe were wont to do. The

¹ Thomas E. Cronin, "Inventing the American Presidency," University Press of Kansas, 1989. p. ix.

² For a thorough analysis of the evolution of Presidential war-making power, at least through President Nixon's first term, I recommend "The imperial Presidency" by Arthur m. Schlesinger, Jr., Houghton Mifflin Company, 1973.

solution: the delegates would give most of the war-associated powers to the Congress and only allow the President to lead the forces into battle (or lead from behind, as has become fashionable of late). And so Article 2 of the Constitution came to be.

But still, Washington had to make it up as he went; everything he did would set the first precedent; that much was apparent. Best tread cautiously then, which he did – seeking advice from both sides of each argument before setting his tack.

Today's Presidents operate on the precedents that Washington and every President since have set, some Presidents (and their precedents) have been respectful of the Framers' principle of a limited government of enumerated powers, some Presidents have appeared oblivious (at best) or arrogantly spiteful (at worst) of this principle.

Many Presidents, perhaps most of them, have exceeded the limits of their Constitutional powers, beginning with Washington whose declaration of neutrality, ostensibly binding individual Americans from lending support to either Britain or France in their incessant bickering, was an exercise in arbitrary, unconstitutional power. Lincoln acknowledged that it was necessary he violate the Constitution in order to save the nation. Writing of Theodore Roosevelt's approach to the president's power, Erin Ruth Leonard thinks: *"The decisive and benevolent--if possibly unconstitutional--actions that Theodore Roosevelt took benefitted America by making it a more equal and progressive place."*³ So as long as unconstitutional use of presidential power results in something *"more equal and progressive,"* it's apparently A-OK. Roosevelt himself said: *"My belief was that it was not only [the President's] right but his duty to do anything that the needs of the nation demanded unless such action was forbidden by the Constitution or by the laws."* Sorry Framers, you tried, but you failed. Woodrow Wilson viewed the Constitution as an artifact of a stilted past: *"The government ... is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life."* Voila! The "Living Constitution" emerges from the primordial ooze.

Presidential Executive Orders are a favored way of abusing presidential power. Here's a short summary of many of them.⁴ David Harsanyi, writing at [Federalist.com](http://federalist.com),⁵ believes President Obama's "legacy" will be one of executive overreach.

And with (nearly) each new precedent, the power of the President grew and grew, only occasionally slapped down by a jealous Congress or a Supreme Court. Now, candidates for the

³ <http://www.let.rug.nl/usa/essays/1901-/theodore-roosevelts-broad-powers-erin-ruth-leonard.php>

⁴ <http://www.heritage.org/research/reports/2001/02/the-use-and-abuse-of-executive-orders-and-other-presidential-directives>

⁵ <http://thefederalist.com/2016/01/05/obamas-legacy-will-be-executive-abuse/>

highest office in the land, the “leader of the free world,” Commander in Chief of the mightiest military the world has ever known, put principle aside, decorum on hold, and say and do whatever their handlers think necessary to attain the office. It is a sad spectacle, really. Debate after mind-numbing debate, pushing the same policy promises, most of which they know they will be unable to deliver without the gracious help of Congress, the candidates march on, and eventually dwindle as reality sets in.

Just over 1,000 words describe the most powerful office on earth. Reading Article 2 (and the few powers found outside it) one gets a sense of the Framers’ caution. The President negotiates treaties but must convince 2/3 of the Senators the treaty is in the country’s best interest. He can negate the will of 353 legislators,⁶ but the Congress can override his veto. The President will be compensated for his services – but only what Congress thinks proper. He can nominate judges and other high officials, but the Senate must confirm them; he can “fill up all Vacancies that may happen during the Recess of the Senate” but they expire at the end of the next session. Finally, he can be removed from office and sent packing by the Congress. This is no King.

But we have turned the office into something much different today. Now we look for a candidate who promises to fix everything that’s broken, solve all our problems, stop the rising of the oceans.

The people of Israel asked Samuel to appoint a King to rule over them “like the other nations.” Samuel warned them of the consequences if he acceded to their request: “This is what the king who will reign over you will claim as his rights: He will take your sons and make them serve with his chariots and horses, and they will run in front of his chariots. Some he will assign to be commanders of thousands and commanders of fifties, and others to plow his ground and reap his harvest, and still others to make weapons of war and equipment for his chariots. He will take your daughters to be perfumers and cooks and bakers. He will take the best of your fields and vineyards and olive groves and give them to his attendants. He will take a tenth of your grain and of your vintage and give it to his officials and attendants. Your male and female servants and the best of your cattle and donkeys he will take for his own use. He will take a tenth of your flocks, and you yourselves will become his slaves. When that day comes, you will cry out for relief from the king you have chosen, but the LORD will not answer you in that day. But the people refused to listen to Samuel. “No!” they said. “We want a king over us. Then we will be like all the other nations, with a king to lead us and to go out before us and fight our battles.”⁷

⁶ If only 287 Representatives and 66 Senators have voted for a bill, the President’s veto is probably secure.

⁷ 1 Samuel 8: 11-20 (NIV)

Interestingly, the more power “we the people” allow, and Congress allows, and the Courts allow the President to acquire, the more America begins to take on the trappings of Samuel’s warning.

Despite clear warnings, today we look for a King. The successful nominee will be the person who promises to solve the most problems for the greatest number of Americans, the person who promises the least disruption to the gravy train that is today our federal government.

As I asked on WFYL radio last week: “Where are the Washingtons? Where are the Jeffersons? I’d even take a hot-headed John Adams over any of the present stock.” None of our first three presidents was elected because of promises they made or policies they endorsed; they were elected to the highest office in the land because of who they were, the character they had exhibited, and the service to their country they had already demonstrated. That should be the prime criteria today, but it isn’t.

What qualities should we want, insist on really, in a President of the United States? Mark Alexander has a nice essay on that question [here](#).⁸ I’d start with an example from Exodus 18, which I’ll paraphrase:

“Select able men who fear God, men of truth, those who hate dishonest gain.”

I want someone who acknowledges that there is a transcendent God who “governs in the affairs of men,”⁹ someone who promises to call upon God for both guidance and strength, and acknowledges that the laws of this God lay supreme over all man-made law. I want a President with an obvious sense, perhaps even an inflated sense of accountability and great discipline in his personal conduct, a President who has demonstrated the ability to self-govern and who will both model and encourage this practice in all Americans. Lastly, I want a President who willingly acknowledges the Constitutional limits of the office and agrees to step down before violating these limits.

Eleanor Roosevelt said: “...our system is founded on self-government, which is untenable if the individuals who make up the system are unable to govern themselves.” This applies equally well to the President.

We discussed this issue last week on WFYL Radio. If you want to learn the views of my two co-commentators, please download or listen to the podcast, available [here](#).¹⁰

⁸ <http://patriotpost.us/alexander/41349>

⁹ As Benjamin Franklin did at the Constitutional Convention.

¹⁰ <http://www.1180wfyl.com/podcasts.html>