

Alexis de Tocqueville, *Democracy in America*: “The Executive Power”

In “The Federal Constitution” (Volume I, Chapter VIII)

THE EXECUTIVE POWER. Dependence of the President—He is elective and responsible—Free in his own sphere, under the inspection, but not under the direction, of the Senate—His salary fixed at his entry into office—Suspensive veto.

THE American legislators undertook a difficult task in attempting to create an executive power dependent on the majority of the people and nevertheless sufficiently strong to act without restraint in its own sphere. It was indispensable to the maintenance of the republican form of government that the representative of the executive power should be subject to the will of the nation.

The President is an elective magistrate. His honor, his property, his liberty, and his life are the securities which the people have for the temperate use of his power. But in the exercise of his authority he is not perfectly independent; the Senate takes cognizance of his relations with foreign powers, and of his distribution of public appointments, so that he can neither corrupt nor be corrupted. The legislators of the Union acknowledge that the executive power could not fulfill its task with dignity and advantage unless it enjoyed more stability and strength than had been granted it in the separate states.

The President is chosen for four years, and he may be re-elected, so that the chances of a future administration may inspire him with hopeful undertakings for the public good and give him the means of carrying them into execution. The President was made the sole representative of the executive power of the Union; and care was taken not to render his decisions subordinate to the vote of a council, a dangerous measure which tends at the same time to clog the action of the government and to diminish its responsibility. The Senate has the right of annulling certain acts of the President; but it cannot compel him to take any steps, nor does it participate in the exercise of the executive power.

The action of the legislature on the executive power may be direct, and I have just shown that the Americans carefully obviated this influence; but it may, on the other hand, be indirect. Legislative assemblies which have the power of depriving an officer of state of his salary encroach upon his independence; and as they are free to make the laws, it is to be feared lest they should gradually appropriate to themselves a portion of that authority which the Constitution had vested in his hands. This dependence of the executive power is one of the defects inherent in republican constitutions. The Americans have not been able to counteract the tendency which legislative assemblies have to get possession of the government, but they have rendered this propensity less irresistible. The salary of the President is fixed, at the time of his entering upon office, for the whole period of his magistracy. The President, moreover, is armed with a suspensive veto, which allows him to oppose the passing of such laws as might destroy the portion of independence that the Constitution awards him. Yet the struggle between the President and the legislature must always be an unequal one, since the latter is certain of bearing down all resistance by persevering in its plans; but the suspensive veto forces it at least to reconsider the matter, and if the motion be persisted in, it must then be backed by a majority of two thirds of the whole house. The veto, moreover, is a sort of appeal to the people. The executive power, which without this security might have been secretly oppressed, adopts this means of pleading its cause and stating its motives. But if the legislature perseveres in its design, can it not always overpower all resistance? I reply that in the constitutions of all nations, of whatever kind they may be, a certain point exists at which the legislator must have recourse to the good sense and the virtue of his fellow citizens. This point is nearer and more prominent in republics, while it is more remote and more carefully concealed in monarchies; but it always exists somewhere. There is no country in which everything can be provided for by the laws, or in which political institutions can prove a substitute for common sense and public morality....

ACCIDENTAL CAUSES WHICH MAY INCREASE THE INFLUENCE OF EXECUTIVE GOVERNMENT. External security of the Union—Army of six thousand men—Few ships—The President has great prerogatives, but no opportunity of exercising them—In the prerogatives which he does exercise he is weak.

IF the executive government is feebler in America than in France the cause is perhaps more attributable to the circumstances than to the laws of the country.

The Executive Power, cont'd.

It is chiefly in its foreign relations that the executive power of a nation finds occasion to exert its skill and its strength. If the existence of the Union were perpetually threatened, if its chief interests were in daily connection with those of other powerful nations, the executive government would assume an increased importance in proportion to the measures expected of it and to those which it would execute. The President of the United States, it is true, is the commander-in-chief of the army, but the army is composed of only six thousand men; he commands the fleet, but the fleet reckons but few sail; he conducts the foreign relations of the Union but the United States is a nation without neighbors. Separated from the rest of the world by the ocean, and too weak as yet to aim at the dominion of the seas, it has no enemies, and its interests rarely come into contact with those of any other nation of the globe. This proves that the practical operation of the government must not be judged by the theory of its constitution. The President of the United States possesses almost royal prerogatives, which he has no opportunity of exercising; and the privileges which he can at present use are very circumscribed. The laws allow him to be strong, but circumstances keep him weak.

On the other hand, the great strength of the loyal prerogative in France arises from circumstances far more than from the laws. There the executive government is constantly struggling against immense obstacles, and has immense resources in order to overcome them; so that it is enlarged by the extent of its achievements, and by the importance of the events it controls, without modifying its constitution. If the laws had made it as feeble and as circumscribed as that of the American Union, its influence would soon become still more preponderant....

CRISIS OF THE ELECTION. The election may be considered as a moment of national crisis—Why?—Passions of the people—Anxiety of the President—Calm which succeeds the agitation of the election.

I HAVE shown what the circumstances are that favored the adoption of the elective system in the United States and what precautions were taken by the legislators to obviate its dangers. The Americans are accustomed to all kinds of elections; and they knew by experience the utmost degree of excitement which is compatible with security. The vast extent of the country and the dissemination of the inhabitants render a collision between parties less probable and less dangerous there than elsewhere. The political circumstances under which the elections have been carried on have not as yet caused any real danger. Still, the epoch of the election of the President of the United States may be considered as a crisis in the affairs of the nation.

The influence which the President exercises on public business is no doubt feeble and indirect; but the choice of the President though of small importance to each individual citizen, concerns the citizens collectively; and however trifling an interest may be, it assumes a great degree of importance as soon as it becomes general. In comparison with the kings of Europe, the President possesses but few means of creating partisans; but the places that are at his disposal are sufficiently numerous to interest, directly or indirectly, several thousand electors in his success. Moreover, political parties in the United States are led to rally round an individual in order to acquire a more tangible shape in the eyes of the crowd, and the name of the candidate for the Presidency is put forward as the symbol and personification of their theories. For these reasons parties are strongly interested in winning the election, not so much with a view to the triumph of their principles under the auspices of the President elect as to show by his election that the supporters of those principles now form the majority. For a long while before the appointed time has come, the election becomes the important and, so to speak, the all-engrossing topic of discussion. Factional ardor is redoubled, and all the artificial passions which the imagination can create in a happy and peaceful land are agitated and brought to light. The President, moreover, is absorbed by the cares of self-defense. He no longer governs for the interest of the state, but for that of his re-election; he does homage to the majority, and instead of checking its passions, as his duty commands, he frequently courts its worst caprices. As the election draws near, the activity of intrigue and the agitation of the populace increase; the citizens are divided into hostile camps, each of which assumes the name of its favorite candidate; the whole nation glows with feverish excitement, the election is the daily theme of the press, the subject of private conversation, the end of every thought and every action, the sole interest of the present. It is true that as soon as the choice is determined, this ardor is dispelled, calm returns, and the river, which had nearly broken its banks, sinks to its usual level; but who can refrain from astonishment that such a storm should have arisen?

RE-ELECTION OF THE PRESIDENT. When the head of the executive is re-eligible, it is the state that is the source of intrigue and corruption—The desire to be re-elected is the chief aim of a President of the United States—Disadvantage of the re-election peculiar to America—The natural evil of democracy is that it gradually subordinates all authority to the slightest desires of the majority—The re-election of the President encourages this evil.

The Executive Power, cont'd.

WERE the legislators of the United States right or wrong in allowing the re-election of the President? At first sight it seems contrary to all reason to prevent the head of the executive power from being elected a second time. The influence that the talents and the character of a single individual may exercise upon the fate of a whole people, especially in critical circumstances or arduous times, is well known. A law preventing the re-election of the chief magistrate would deprive the citizens of their best means of ensuring the prosperity and the security of the commonwealth; and by a singular inconsistency, a man would be excluded from the government at the very time when he had proved his ability to govern well.

But if these arguments are strong, perhaps still more powerful reasons may be advanced against them. Intrigue and corruption are the natural vices of elective government; but when the head of the state can be re-elected, these evils rise to a great height and compromise the very existence of the country. When a simple candidate seeks to rise by intrigue, his maneuvers must be limited to a very narrow sphere; but when the chief magistrate enters the lists, he borrows the strength of the government for his own purposes. In the former case the feeble resources of an individual are in action; in the latter the state itself, with its immense influence, is busied in the work of corruption and cabal. The private citizen who employs culpable practices to acquire power can act in a manner only indirectly prejudicial to the public prosperity. But if the representative of the executive descends into the combat, the cares of government dwindle for him into second-rate importance, and the success of his election is his first concern. All public negotiations, as well as all laws, are to him nothing more than electioneering schemes; places become the reward of services rendered, not to the nation, but to its chief; and the influence of the government, if not injurious to the country, is at least no longer beneficial to the community for which it was created.

It is impossible to consider the ordinary course of affairs in the United States without perceiving that the desire to be re-elected is the chief aim of the President; that the whole policy of his administration, and even his most indifferent measures, tend to this object; and that, especially as the crisis approaches, his personal interest takes the place of his interest in the public good. The principle of re-eligibility renders the corrupting influence of elective government still more extensive and pernicious. It tends to degrade the political morality of the people and to substitute management and intrigue for patriotism.

In America it injures still more directly the very sources of national existence. Every government seems to be afflicted by some evil inherent in its nature, and the genius of the legislator consists in having a clear view of this evil. A state may survive the influence of a host of bad laws, and the mischief they cause is frequently exaggerated; but a law that encourages the growth of the canker within must prove fatal in the end, although its bad consequences may not be immediately perceived.

The principle of destruction in absolute monarchies lies in the unlimited and unreasonable extension of the royal power, and a measure tending to remove the constitutional provisions that counterbalance this influence would be radically bad even if its immediate consequences were unattended with evil. By parity of reasoning, in countries governed by a democracy, where the people is perpetually drawing all authority to itself, the laws that increase or accelerate this action directly attack the very principle of the government.

The greatest merit of the American legislators is that they clearly discerned this truth and had the courage to act up to it. They conceived that a certain authority above the body of the people was necessary, which should enjoy a degree of independence in its sphere without being entirely beyond the popular control; an authority which would be forced to comply with the permanent determinations of the majority, but which would be able to resist its caprices and refuse its most dangerous demands. To this end they centered the whole executive power of the nation in a single arm; they granted extensive prerogatives to the President and armed him with the veto to resist the encroachments of the legislature.

But by introducing the principle of re-election they partly destroyed their work; they conferred on the President a great power, but made him little inclined to use it. If ineligible a second time, the President would not be independent of the people, for his responsibility would not cease; but the favor of the people would not be so necessary to him as to induce him to submit in every respect to its desires. If re-eligible (and this is especially true at the present day, when political morality is relaxed and when great men are rare), the President of the United States becomes an easy tool in the hands of the majority. He adopts its likings and its animosities, he anticipates its wishes, he forestalls its complaints, he yields to its idlest cravings, and instead of guiding it, as the legislature intended that he should do, he merely follows its bidding. Thus, in order not to deprive the state of the talents of an individual, those talents have been rendered almost useless, and to retain an expedient for extraordinary perils, the country has been exposed to continual dangers.

Federalist Papers: “Federalist No. 69”

The Real Character of the Executive

Friday, March 14, 1788

by Alexander Hamilton

To the People of the State of New York:

I PROCEED now to trace the real characters of the proposed Executive, as they are marked out in the plan of the convention. This will serve to place in a strong light the unfairness of the representations which have been made in regard to it.

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.

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; but 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.

The President of the United States would be 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. 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. In this delicate and important circumstance of personal responsibility, 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.

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. The disuse of that power for a considerable time past does not affect the reality of its existence; and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the President differs widely from this absolute negative of the British sovereign; and tallies exactly with the revisionary authority of the council of revision of this State, of which the governor is a constituent part. In this respect the power of the President would exceed that of the governor of New York, because the former would possess, singly, what the latter shares with the chancellor and judges; but it would be precisely the same with that of the governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the convention have copied.

The President is to 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. He is to have power to grant reprieves and pardons for offenses against the United States, EXCEPT IN CASES OF IMPEACHMENT; to recommend to the consideration of Congress such measures as he shall judge necessary and expedient; to convene, on extraordinary occasions, both houses of the legislature, or either of them, and, in case of disagreement between them WITH RESPECT TO THE TIME OF ADJOURNMENT, to adjourn them to such time as he shall think proper; to take care that

the laws be faithfully executed; and to commission all officers of the United States." In most of these particulars, the power of the President will resemble equally that of the king of Great Britain and of the governor of New York. 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 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. [1] The governor of New York, on the other hand, is by the constitution of the State vested only with the command of its militia and navy. But the constitutions of several of the States expressly declare their governors to be commanders-in-chief, as well of the army as navy; and it may well be a question, whether those of New Hampshire and Massachusetts, in particular, do not, in this instance, confer larger powers upon their respective governors, than could be claimed by a President of the United States. Thirdly. 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? All conspiracies and plots against the government, which have not been matured into actual treason, may be screened from punishment of every kind, by the interposition of the prerogative of pardoning. If a governor of New York, therefore, should be at the head of any such conspiracy, until the design had been ripened into actual hostility he could insure his accomplices and adherents an entire impunity. A President of the Union, on the other hand, though he may even pardon treason, when prosecuted in the ordinary course of law, could shelter no offender, in any degree, from the effects of impeachment and conviction. Would not the prospect of a total indemnity for all the preliminary steps be a greater temptation to undertake and persevere in an enterprise against the public liberty, than the mere prospect of an exemption from death and confiscation, if the final execution of the design, upon an actual appeal to arms, should miscarry? Would this last expectation have any influence at all, when the probability was computed, that the person who was to afford that exemption might himself be involved in the consequences of the measure, and might be incapacitated by his agency in it from affording the desired impunity? The better to judge of this matter, it will be necessary to recollect, that, by the proposed Constitution, the offense of treason is limited "to levying war upon the United States, and adhering to their enemies, giving them aid and comfort"; and that by the laws of New York it is confined within similar bounds. Fourthly. The President can only adjourn the national legislature in the single case of disagreement about the time of adjournment. The British monarch may prorogue or even dissolve the Parliament. The governor of New York may also prorogue the legislature of this State for a limited time; a power which, in certain situations, may be employed to very important purposes.

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. It has been insinuated, that his authority in this respect is not conclusive, and that his conventions with foreign powers are subject to the revision, and stand in need of the ratification, of Parliament. But I believe this doctrine was never heard of, until it was broached upon the present occasion. Every jurist [2] of that kingdom, and every other man acquainted with its Constitution, knows, as an established fact, that the prerogative of making treaties exists in the crown in its utmost plenitude; and that the compacts entered into by the royal authority have the most complete legal validity and perfection, independent of any other sanction. The Parliament, it is true, is sometimes seen employing itself in altering the existing laws to conform them to the stipulations in a new treaty; and this may have possibly given birth to the imagination, that its co-operation was necessary to the obligatory efficacy of the treaty. But this parliamentary interposition proceeds from a different cause: from the necessity of adjusting a most artificial and intricate system of revenue and commercial laws, to the changes made in them by the operation of the treaty; and of adapting new provisions and precautions to the new state of things, to keep the machine from running into disorder. In this respect, therefore, there is no comparison between the intended power of the President and the actual power of the British sovereign. The one can perform alone what the other can do only with the concurrence of a branch of the legislature. It must be admitted, that, in this instance, the power of the federal Executive would exceed that of any State Executive. But this arises

naturally from the sovereign power which relates to treaties. If the Confederacy were to be dissolved, it would become a question, whether the Executives of the several States were not solely invested with that delicate and important prerogative.

The President is also to be authorized to receive ambassadors and other public ministers. This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government; and it was far more convenient that it should be arranged in this manner, than that there should be a necessity of convening the legislature, or one of its branches, upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor.

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, if we are to interpret the meaning of the constitution of the State by the practice which has obtained under it. The power of appointment is with us lodged in a council, composed of the governor and four members of the Senate, chosen by the Assembly. The governor CLAIMS, and has frequently EXERCISED, the right of nomination, and is ENTITLED to a casting vote in the appointment. If he really has the right of nominating, his authority is in this respect equal to that of the President, and exceeds it in the article of the casting vote. In the national government, if the Senate should be divided, no appointment could be made; in the government of New York, if the council should be divided, the governor can turn the scale, and confirm his own nomination. [3] If we compare the publicity which must necessarily attend the mode of appointment by the President and an entire branch of the national legislature, with the privacy in the mode of appointment by the governor of New York, closeted in a secret apartment with at most four, and frequently with only two persons; and if we at the same time consider how much more easy it must be to influence the small number of which a council of appointment consists, than the considerable number of which the national Senate would consist, we cannot hesitate to pronounce that the power of the chief magistrate of this State, in the disposition of offices, must, in practice, be greatly superior to that of the Chief Magistrate of the Union.

Hence it appears that, except as to the concurrent authority of the President in the article of treaties, it would be difficult to determine whether that magistrate would, in the aggregate, possess more or less power than the Governor of New York. And it appears yet more unequivocally, that there is no pretense for the parallel which has been attempted between him and the king of Great Britain. But to render the contrast in this respect still more striking, it may be of use to throw the principal circumstances of dissimilitude into a closer group.

The President of the United States would be an officer elected by the people for FOUR years; the king of Great Britain is a perpetual and HEREDITARY prince. The one would be amenable to personal punishment and disgrace; the person of the other is sacred and inviolable. The one would have a QUALIFIED negative upon the acts of the legislative body; the other has an ABSOLUTE negative. The one would have a right to command the military and naval forces of the nation; the other, in addition to this right, possesses that of DECLARING war, and of RAISING and REGULATING fleets and armies by his own authority. The one would have a concurrent power with a branch of the legislature in the formation of treaties; the other is the SOLE POSSESSOR of the power of making treaties. The one would have a like concurrent authority in appointing to offices; the other is the sole author of all appointments. The one can confer no privileges whatever; the other can make denizens of aliens, noblemen of commoners; can erect corporations with all the rights incident to corporate bodies. 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! What answer shall we give to those who would persuade us that things so unlike resemble each other? The same that ought to be given to those who tell us that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism.

PUBLIUS.

1. A writer in a Pennsylvania paper, under the signature of TAMONY, has asserted that the king of Great Britain owes his prerogative as commander-in-chief to an annual mutiny bill. The truth is, on the contrary, that his prerogative, in this respect, is immemorial, and was only disputed, "contrary to all reason and precedent," as Blackstone vol. i., page 262, expresses it, by the Long Parliament of Charles I. but by the statute the 13th of Charles II., chap. 6, it was declared to be in the king alone, for that the sole supreme government and command of the militia within his Majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength, EVER WAS AND IS the undoubted right of his Majesty and his royal predecessors, kings and queens of England, and that both or either house of Parliament cannot nor ought to pretend to the same.

2. Vide Blackstone's "Commentaries," vol i., p. 257.

3. Candor, however, demands an acknowledgment that I do not think the claim of the governor to a right of nomination well founded. Yet it is always justifiable to reason from the practice of a government, till its propriety has been constitutionally questioned. And independent of this claim, when we take into view the other considerations, and pursue them through all their consequences, we shall be inclined to draw much the same conclusion.