

Saikrishna Bangalore Prakash. *Imperial from the Beginning: The Constitution of the Original Executive.* New Haven: Yale University Press, 2015. 464 pp. \$45.00, cloth, ISBN 978-0-300-19456-2.

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Although many Americans regard the Constitution as sacred, they frequently clash over matters of constitutional interpretation. Questions often arise over whether the document intended for the president or Congress to actively lead the government. Legal theorists battle over whether the Constitution should reflect current values or be interpreted through an eighteenth-century lens. In moments of acute partisan divide, these debates monopolize political discourse and news headlines.

In *Imperial from the Beginning*, Saikrishna Bangalore Prakash offers a timely contribution to these debates. Traditional arguments that emphasize the checks and balances between the branches of government assume that the delegates to the 1787 Constitutional Convention intended to create a relatively weak president. Prakash refutes this argument and instead suggests that the president has been powerful from the beginning, the delegates intended to create a powerful executive, and early Americans interpreted the Constitution as achieving this goal. Prakash's thesis of imperial executive power rests on a broad reading of the vesting clause in Article II, Section 1.

Prakash bridges two important bodies of scholarship, responding to both legal scholars and historians of the executive branch in *Imperial from the Beginning*. This work also joins a recent,

and growing, body of scholarship, including Gautham Rao's *National Duties* (2016), as well as Max Edling's *A Revolution in Favor of Government* (2003) and *A Hercules in the Cradle* (2014), arguing that the new federal government was small but surprisingly powerful and capable of harnessing extensive resources. Perhaps Prakash's biggest contribution is his extensive use of historical evidence to respond to constitutional arguments. Prakash also makes ample use of the extensive editing projects documenting the ratification conventions, the first several sessions of Congress, and the private papers of the founding generation.[1]

Prakash utilizes a compelling structure to present his argument. First, he introduces a section of the Constitution and his interpretation of the specific clause. Second, he outlines the various arguments that support or contradict his position. Finally, he analyzes an event from the eighteenth century or from the first several presidential administrations of the nineteenth century that illustrates his claim. As an example, in chapter 5, Prakash introduces the argument that one of the president's primary powers is to execute the law. He mentions that other scholars "are certain that the original Constitution granted the president little or no law enforcement authority" (p. 84). To dismiss this claim, Prakash analyzes Washington's response to the Whiskey Rebellion in the summer

of 1794. Washington wrote that he had a “duty to see the Laws executed: to permit them to be trampled upon with impunity would be repugnant to it” (p. 92). Accordingly, Washington summoned more than fifteen thousand militiamen from four states to quash the rebellion. Prakash repeats this analytical device in each of the thirteen chapters.

Prakash begins *Imperial from the Beginning* by suggesting that Americans have come to accept a deceptively simple narrative of the nation’s anti-monarchy roots. While the state constitutions adopted in the 1770s reflected a gut-check move away from Britain’s monarchical power, by the late 1780s many leading figures recognized the need for a powerful executive. Prakash argues that “the standard narrative of implacable opposition to kings had not yet fully crystallized and colored perceptions” (p. 25). Driven by fears of anarchy or a sluggish executive committee located in Congress, delegates at the Constitutional Convention created a single executive that reminded many of an elected monarch. They included just enough checks in the hands of Congress and the US Supreme Court to ensure the public’s acceptance of the powerful executive branch.

Prakash identifies four key features of eighteenth-century executive power. The president is responsible for the execution of the law, or as one founding-era dictionary defined it, “having the power to put in act the laws” (p. 84). The president is also in control of foreign affairs as part of the grant of “executive Power,” but limited by the broad exceptions granted to Congress. The president commands the military, yet remains subordinate to civilian authority. Finally, the president appoints and directs officers involved in implementing all three features, but relies on the Senate for approval and the House of Representatives for funding.

In chapters 5 through 8, Prakash analyzes in greater detail how the language in Article II of the Constitution reflects each of the four executive powers. The faithful execution clause obliges the

president to ensure that the laws are faithfully executed and assumes the president has the power to carry out those responsibilities. The president has the right to appoint and direct his subordinates in order to carry out the law. In extreme cases, the president may resort to military enforcement when civil means prove inadequate. In regard to foreign affairs, Prakash argues that most foreign relations powers remain in the president’s purview as a matter of executive power. The president’s foreign-relations powers are limited by the specific responsibilities in foreign affairs appointed to Congress—namely, the powers to declare war, regulate commerce, and approve treaties—but Congress lacks a generic foreign affairs authority. On the other hand, the president does not enjoy a generic military power. The Constitution grants the president the right to oversee troops in the field, discipline troops overseas, establish training standards, and defend the nation. But the president’s military authority is limited by Congress’s war powers. The Constitution makes clear that Congress holds the general grant of power in this case: “By vesting Congress with the power to call out, fund, and equip the militia, the Constitution implicitly bars any concurrent presidential power” (p. 151).

In chapters 9 through 13, Prakash explores how executive powers are limited by grants to Congress and the Supreme Court. One example is Article I, Section 8, which grants Congress many powers, including the right to declare war, raise an army and navy, issue letters of marque and reprisal, establish offices, regulate commerce (which can mean imposing embargoes), and change citizenship requirements. By specifically granting these powers to Congress, the Constitution created a “series of implied exceptions to the executive power” (p. 205). Similarly, the president’s right to veto confirms that he lacks a generic power to make laws.

In addition to this rational approach that balances the provisions outlined in the Constitution, Prakash also explores how colonial governments,

state constitutions, and British examples provided context for decisions in the 1780s. For example, when exploring the president's power in diplomacy, Prakash notes that the colonial governors represented the colony in external relations with Native American tribes. Just a few years later, "state executives corresponded with other nations" (p. 114). Under the Articles of Confederation, the Continental Congress enjoyed executive power over foreign affairs by making treaties, waging war, and receiving ambassadors. In chapter 7, when Prakash explores the limitations placed on the president's command over the military, he notes that the president lacks the authority to unilaterally punish soldiers while they are on US soil. The Constitution carried over this constraint from the English Constitution.

Prakash is at his best early in the book when he explores the ramifications of Article II without resorting to modern politics or partisan interpretation. The last few chapters offer a more proscriptive approach. He analyzes Abraham Lincoln's suspension of habeas corpus (which he deems unconstitutional, if forgivable) and offers suggestions for how modern presidents might respond to unconstitutional legislation. While perhaps politically sound, these conversations distract from the compelling argument on the monarchical attributes of the executive. Particularly problematic is Prakash's assertion that the president's oath to "preserve" the Constitution requires him to reject constitutional interpretation that changes in step with public morality (p. 312). As Prakash acknowledges, the Constitution is a compilation of compromises designed to appease the various factions present at the Convention. George Washington himself admitted that the Constitution was imperfect, but "the best that could be obtained at [the] time" and because "a constitutional door is opened for amendment hereafter," interpretation was likely to change.^[2] Nonetheless, *Imperial from the Beginning* is an impressively thorough assessment of the presidency and Prakash makes a substantive contribution to the scholarship on the federal government in the early republic.

Notes

[1]. *Documentary History of the First Federal Congress*, ed. Linda Grant De Pauw et al., 20 vols. (Baltimore: Johns Hopkins University Press, 1972-2012); *Documentary History of the Ratification of the Constitution*, ed. John P. Kaminski et al. (Madison, WI: University of Wisconsin Press, 1976-); *The Papers of Alexander Hamilton*, ed. Harold C. Syrett, 27 vols. (New York: Columbia University Press, 1961-1987); *The Papers of George Washington*, ed. W. W. Abbott et al. (Charlottesville: University of Virginia Press, 1970-); *The Papers of James Madison*, ed. Robert A. Rutland et al., 8 vols. (Charlottesville: University of Virginia Press, 1984-2015); and *The Papers of Thomas Jefferson*,

ed. Julian P. Boyd et al. (Princeton: University of Princeton Press, 1950-).

[2]. George Washington to Benjamin Harrison, September 24, 1787, *The Papers of George Washington*, ed. W. W. Abbot (Charlottesville: University Press of Virginia, 1997), 5: 339-340.

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