

A Constitutional Theory of the American Presidency

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Abstract : This article integrates the debate about presidential powers with the debate about federalism, arguing that there are two ways of exercising presidential powers, one working in tandem with expanding federal powers, and the other working against it. Alexander Hamilton and Thomas Jefferson—the former a Federalist and the latter echoing the views of many Anti-Federalists—disagreed not only on the constitutional basis of prerogative, but also on the ends for which it should be deployed. This tension has always existed in American politics, and is reproduced today. Modern Democrats and Republicans both want a strong executive, but the Democrats who want a strong executive to pass legislation to expand the reach of the federal government; naturally, they must rely on an equally empowered Congress to do so. Republicans generally do not want an intrusive federal government, which is why their defense of a strong presidency does not come alongside a call for a strong Congress. This distinction cannot be explained without recourse to foundational yet opposing views about the appropriate role of federal power. When we bring federalism back in, we see that there are indeed two presidencies; one neo-Federalist, in favor of moderate presidential prerogative alongside a robust Congress directed collectively to a national state-building agenda and expanding the federal prerogative; another, neo-Anti-Federalist, in favor of expansive presidential prerogative and an ideologically sympathetic Congress equally suspicious of federal power to retard or roll back national state-building in favour of states rights.

Keywords : US presidency, federalism, prerogative, anti-federalism

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