

# We The People: The Framers: Integrity and Impeachment Will Temper Use of Pardon Power

“There is no substitute to electing candidates with integrity.”

by David Adler

English history was constantly before the eyes of delegates to the Constitutional Convention as they stressed about the exercise of the presidential pardon power. Kings had abused the pardoning authority for corrupt ends. They sold pardons to those who could afford them and, on occasion, sought to screen from parliamentary inquiry those whom they had instigated to violate the law. The historical practice, it seemed to the Framers, constituted a parade of horribles.

What, then, persuaded the founders—a generation that lived in dread fear of an expansive, undefined executive power—to vest in one man a seemingly unbridled authority with potentially disastrous implications for the nation? From the Framers’ perspective, the exercise of the power itself provided sufficient restraints on the president. In Federalist 74, Alexander Hamilton stated: “As the sense of

responsibility is always strongest, in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which were calculated to shelter a fit object of its vengeance.” The weight of the responsibility, he added, would “inspire scrupulousness and caution; the dread of being accused of weakness or connivance, would beget equal circumspection.”

Hamilton’s belief that presidential integrity would constrain the exercise of the pardon power, however, was not sufficient to convince him during debates in Philadelphia to extend the power to acts of treason, without approval of the Senate. Whether the president should be empowered to grant pardons for treason was particularly troublesome for the Framers, and it provoked an impassioned debate on the scope of the author-

ity that was not resolved until the last days of the Convention.

Edmund Randolph shared Hamilton’s concern and moved to exclude treason from the scope of the pardon authority. In rhetoric that stirred images of a presidential coup, he warned: “The President himself may be guilty. The traitors may be his own instruments.” George Mason agreed with his fellow Virginian and framed his objection in words that echoed English history. The power “may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime and thereby prevent discovery of his own guilt.”

Against this nightmare, the subversion of the Republic by pardons, James Wilson of Pennsylvania asserted the need for the availability of pardons for treason to extract confessions from those engaged in rebellion. In a speech that assuaged the Convention’s concerns, Wilson



explained that if the president were involved in treason, he could be “impeached and prosecuted.”

Every warning that a president might use the pardon power to exonerate accomplices, to forestall investigations, and generally to subvert law and government was met with assurances that that the threat of impeachment—“the terror of punishment”—would prevent such misconduct. These guardrails—impeachment and prosecution—in addition to

Hamilton’s emphasis on the integrity and accountability of the executive, persuaded the Convention that the pardon authority should encompass acts of treason.

Despite the Framers’ fears, there was no getting around the need for the existence of the power to temper miscarriages of justice and to quell rebellions, as demonstrated by the effectiveness of the gubernatorial pardons to participants in ending Shay’s Rebellion in Massachusetts. As an executive tool, the pardon

might secure justice, but it might also be a handmaiden of tyranny.

In drafting the Constitution to create a government, to borrow from the delegates, in which men would govern men, it was true then, as it will always be true, that there is no substitute to electing candidates with integrity. A blueprint can only go so far.

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# Trump stocking his administration with self-dealing billionaires

Instead of corporate powers having to lobby regulators to get special favors, corporate officials will become the regulators.

Howard Lutnick wants to have his cake and eat it, too. Then, he intends to eat *your* cake.

Lutnick is another billionaire corporate huckster who was a campaign bagman for Trump, and now he’s Trump’s pick to become Commerce Secretary. But first, he’s been tasked with picking hordes of corporate loyalists to be placed in Trump’s government as friendly “regulators” of

corporate hucksterism. Convenient, huh? This is what Trump & Company mean by saying they’ll make the government “efficient.” Instead of corporate powers having to lobby regulators to get special favors, corporate officials will *become* the regulators. That is so much smoother for Lutnick and his ilk, who look forward to four free-wheeling years of devouring our

economy. In choosing who to police corporate price gouging, workplace rules, bank rip-offs, and such, Lutnick has been calling Wall Streeters, Silicon Valley tech bosses, corporate giants, and billionaires, telling them to send their best operatives to Trump’s regime. “Let’s get them into government,” he exults! Notice that he’s not calling any union lead-



Hightower

ers, consumer protectors, or other real public interest watchdogs.

By the way, Lutnick himself is in line to

profit from the corporate feeding frenzy he’s now staffing. He is invested in everything from health care profiteers to cryptocurrency flimflams — and while he’s been doing Trump’s work, he’s simultaneously been pushing Congress to do favors for his personal holdings.

But he insists that there is no conflict of interest in his efforts. After all, he says with a straight-face, he holds his government policy meetings in separate rooms from his own

business pleadings. And that paper-thin wall of separation is Trump’s new ethical standard for protecting us from raw corporate greed.

*OtherWords columnist Jim Hightower is a radio commentator, writer, and public speaker. This op-ed was distributed by OtherWords.org.*

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**CONTACTS:**  
 Kathy Svidal, Publisher: ksvidal@devilslakejournal.com  
 Louise Oleson, Editor: loleson@cmpapers.com  
 Deb Toso, Advertising: dtoso@cmpapers.com  
 Andrew Benjamin, Reporter: abenja1@gmail.com  
 Jen Schwab, Classifieds: classifieds@devilslakejournal.com  
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 Subscriptions: carlien@devilslakejournal.com