

A Felon in the Oval Office Would Test the American System

The revolutionary hero Patrick Henry knew this day would come. He might not have anticipated all the particulars, such as the porn actress in the hotel room and the illicit payoff to keep her quiet. But he feared that eventually a criminal might occupy the presidency and use his powers to thwart anyone who sought to hold him accountable. “Away with your president,” he declared, “we shall have a king.”

That was exactly what the founders sought to avoid, having thrown off the yoke of an all-powerful monarch. But as hard as they worked to establish checks and balances, the system they constructed to hold wayward presidents accountable ultimately has proved to be unsteady.

Whatever rules Americans thought were in place are now being rewritten by Donald J. Trump, the once and perhaps future president who has already shattered many barriers and precedents. The notion that 34 felonies is not automatically disqualifying and a convicted criminal can be a viable candidate for commander in chief upends two and a half centuries of assumptions about American democracy.

And it raises fundamental questions about the limits of power in a second term, should Mr. Trump be returned to office. If he wins, it means he will have survived two impeachments, four criminal indictments, civil judgments for sexual abuse and business fraud, and a felony conviction. Given that, it would be hard to imagine what institutional deterrents could discourage abuses or excesses. (...)

“There is no useful historical precedent whatsoever,” said Jeffrey A. Engel, the director of the Center for Presidential History at Southern Methodist University. “The interesting matter is not that a former president has been tried and convicted, as the founders might well have anticipated, but that he remains a viable candidate for office, which they would have found astounding and ultimately disheartening.”

The question of how to create an empowered executive without making him an unaccountable monarch absorbed the framers when they designed the Constitution. They divided power among three branches of government and envisioned impeachment as a check on a rogue president. They even explicitly made clear that an impeached president could still be prosecuted for crimes after being removed from office.

But even then, there were voices worried that the limits were not enough. Among them was Henry, the patriot famed for his “give me liberty or give me death” speech. At the Virginia convention on ratifying the Constitution in 1788, he warned of the possibility of “absolute despotism.”

“His point is that if such a criminal president comes to power, that president will realize there are few mechanisms to stop him,” said Corey L. Brettschneider, a Brown University professor (...) “He goes so far as to claim that such a president will claim the throne of a monarch.” (...)

Mr. Trump has proved that pushing ahead relentlessly regardless of scandal, investigation and trial can work for him politically — at least so far. He is on track to win the Republican presidential nomination for a third time and has at least an even chance of beating Mr. Biden to return to the White House. If he does, he will set a new standard for what is considered acceptable in a president. (...)

Peter Baker, *New York Times*, June 2, 2024.