

The 'No-Confidence' Vote

President Nixon, addressing a group of businessmen in Chicago a few months ago, was asked if the Constitution should be amended to provide for mid-term elections upon a vote of "no confidence" by the Congress. The unspoken thought, of course, was that we would have spared ourselves the prolonged anguish of the impeachment process if we had such a system.

The President answered that that was the British system and that the framers of our Constitution had wisely rejected it. Apparently the President did not know that this notion is not true.

When the U.S. Constitution was written in 1787 the parliamentary "no confidence" system did not exist. The duty of the Cabinet to resign when it fails to hold the confidence of a majority in Parliament is one of the great unquestioned, but unwritten, features of the British constitutional system. Its development was gradual, and it was barely nascent at the time drafters met in Philadelphia.

The first precedent for such a resignation of a Cabinet came only a few years before the Philadelphia Convention, in 1782. In that year, a motion to end the war in America carried in the House of Commons and another motion expressing "no confidence" in the prime minister was narrowly defeated. Lord North, who had already become convinced that the colonial war "must end in ruin to His Majesty and the Country," refused to conduct the war policy for the King any longer and felt obliged to resign. The other ministers followed suit.

But the precedent did not take hold until decades later. Two kings and a queen continued to appoint and dismiss ministers at their pleasure, regardless of support, or lack of it, in the Commons. Finally, in 1841, after successive defeats in the Commons, young Queen Victoria was forced to dismiss her ministers and to commission Sir Robert Peel to form a government. This happened only after Peel successfully put through a resolution in Commons that "it is at variance with the spirit of the Constitution for a Ministry to continue in office without

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the confidence of the House." With that, in 1841, the British "no confidence" system was established.

Even though Alexander Hamilton and James Madison favored a strong executive, they make clear in The Federalist Papers that the executive they had in mind was one stripped of the monarch's ability to ignore the influence of the people and the Congress. In The Federalist No. 69, Hamilton lists the constitutional mechanisms for keeping the President accountable and compares them with the unfettered powers of the king: The four year term, impeachment, criminal prosecution, congressional override of presidential vetoes, lack of presidential power to declare war and raise armies, lack of power to adjourn the Congress, and the necessity of obtaining the advice and consent of the Senate in making treaties and in appointing justices of the Supreme Court and all officers of the United States established by law.

If Hamilton and the other framers of the Constitution had been told that, 50 years hence, the king would lose the power to maintain a cabinet which failed to hold the confidence of the Parliament, is it not reasonable to suppose that they would have added that device for accountability to the others listed in The Federalist No. 69? Otherwise, they would have opened themselves to the charge, proved now by history, that they had created a presidency less accountable than the king (and later, the prime minister) of Britain. And it is that very charge that they were at such pains to deny.

Thus, it is perhaps a mere irony of history that we do not have a constitutional mechanism to dismiss a President who has lost the confidence of the country. It is too late to adopt such a mechanism in connection with our current President. But what about the next one?