

The Founders' Plight

Presidential Accountability without Citizens

Abstract

In *Federalist 57* James Madison identified two prerequisites for Constitutional success: leaders of wisdom and virtue and institutional checks to keep them in line while in power. Strangely, “public opinion” played no part in his calculation. Despite efforts by Jefferson and others to establish a national system of education to equip citizens as vigilant overseers the idea generated little support and was “off the table” by the 1787 convention. This left the founders to regard unprepared citizens as latent enablers of demagogic presidents instead of as the last line of defense against abuses of power. It also squandered a historic opportunity to strengthen the accountability system at the design stage. Nevertheless, the people retain the potential to add important strength to the system. Beginning with what “was and should have been” the paper ends by outlining the components of 21st Century citizen commitment: essential for what remains the most important oversight role in the American political system.

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In theory the Preamble to the U.S. Constitution was “a breakthrough in political science. Never before had so many “ordinary” (my quotation marks) people been invited to deliberate and vote on the supreme law under which they and their posterity would be governed.” (Amar, 2005: 10). The Preamble to the Constitution stood for “ongoing popular sovereignty” (Amar’s quote marks) the idea that government is created by and subject to the will of the people (Amar, 2005: 12). But in fact, these people were neither ordinary nor greatly empowered. The electorate at the time was comprised of white male property owners whose education level was sufficient for them to recognize the classical origins of the pseudonym *Publius* (Elkins and McKittrick, 1993: 22). Those who drove the ratification debates in the key states had real influence, but for the most part, they were not ordinary but leading lights among the citizenry (Maier, 2010).

In other words, the Constitution and the politics surrounding its promotion and ratification *oversold* the extent to which “ordinary” citizens were actual players in these proceedings. As we see below, the peoples’ role in overseeing presidents, as implied in the *Federalist*, was also exaggerated.

A Preview of the Argument

The enshrining of popular sovereignty, its longstanding centrality to the legitimacy of America’s elected political leadership, and the peoples’ direct constitutional role in electing members of the House of Representatives can be interpreted as empowering citizens to lay down binding expectations for the performance of all those who wield power in their name. James Madison implied as much when he concluded in his Federalist 51 essay that “A dependence on the people is, no doubt, the primary control on the government.”

But in fact, despite Madison's statement, and despite Hamilton's similarly misleading representation of the popular role in presidential oversight (described below) even the well-born and well-educated people eligible to vote at the time would have no direct oversight role in the new constitutional system save electing the members of the House of Representatives. State legislators would in most states choose the members of the Electoral College who actually chose the president. This meant that in those states the people were twice removed from a serious role in presidential selection and oversight.

Later, after this constitutional firewall between citizens and the executive had been breached by Presidents Jefferson and Jackson, it was clear that the framers' effort to prevent executive alliances with the citizenry had failed. Would the kind of better-prepared-and-more-aggressive citizens that several founding fathers sought to cultivate (*unsuccessfully* as explained later) have prevented this alliance? No, because the 1800 and 1824 election fights were about *policy*. It is unlikely that even a well-trained electorate would have been any less tempted than the actual electorate to bond with presidents against opposition elites (i.e., Federalists and Whigs) on the disputed policy grounds (federal vs. state supremacy in 1800; economic fairness in 1828). But products of schools for citizens most probably *would* have displayed a wary vigilance against presidential overreach in the *use of power* because they would have been far better equipped than the unschooled to "know ambition in all its shapes," as Jefferson put it. In other words, better-prepared citizens would have been better equipped to *supplement* the framers' system of checks and balances against usurpation of power when the need arose, as a kind of *third line of defense* after virtuous leaders and parchment barriers.

This is still true. After more than two centuries as what Andrew Jackson called “the source of all sovereignty” it is even more important that the people be effective overseers of presidents because this has become the central accountability relationship in American politics. Popular sovereignty has more grounding in reality today than when it first emerged as a “convenient fiction” in the early republic. Because electoral margin and poll support are now major determinants of legitimacy and political leverage for presidents, and because Congress, Court, media and political opposition are themselves dependent in one way or another on legitimizing public support, the people have become the *de facto* anchor of the modern presidential accountability system (Buchanan, 2013). Citizens *could have been* and *still should be* better prepared for the starring role forced on them from the beginning. Better states of citizen preparedness for presidential oversight remain attainable. They will be more difficult to bring about today than they would have been then. But if *civic commitment*, (a complex attitude defined in conclusion) can be instilled, it is not too late.

The Constitutional Design

A Single President

In the 1787 Constitutional Convention debates a major concern was designing an executive that could be both powerful enough to overcome the weaknesses of the 1781 Articles of Confederation yet also subject to adequate democratic control. A particularly contentious question was whether to vest executive power in a single individual or in a committee. In his Federalist 70 essay, Alexander Hamilton made the case for the

Convention's choice: an individual. Not only could a single official act with greater dispatch, he could also be more easily held to account for his performance in office. This was important to Hamilton because he felt that in a republic, where the sovereign people delegate their authority to elected representatives, "every magistrate ought to be personally responsible for his behavior in office." The powers of the "chief magistrate" in particular should be lodged in one person because that alone affords the two greatest securities the people have for the faithful exercise of delegated power: the "opportunity of discovering with facility and clearness the misconduct of the persons they trust," and the "restraints of public opinion" on officials so visible that they know in advance that any misconduct would very likely be discovered and punished. He does not explicitly say so, but Hamilton here seems to implicate public opinion as a check on presidents.

Two Prerequisites for Constitutional Success

The people figure prominently in the Preamble to the Constitution and are mentioned frequently in *The Federalist*, which (it should be emphasized) included essays written to "convert doubters objecting to the new Constitution" (Elkins and McKittrick, 1993: 22). But how serious were such founders as Madison and Hamilton when they characterized the peoples' role in controlling the government and the president as central and decisive in Federalist 51, 70, and elsewhere? It is telling that *neither of the two major elements that Madison saw as essential to constitutional success involved direct contributions from the people*. What mattered instead was first to "obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of society; and in the next place to take the most effective precautions (separate institutions,

regular elections) for keeping them virtuous while they continue to hold the public trust” (Federalist 57, in Wills, 1982: 289).

Men of Virtue

Accordingly, the framers’ presidential selection system was intended to surface as presidential candidates only those who had distinguished themselves as statesmen by longstanding reputations for wisdom and public service (Ceaser, 1979). The recognized evidence of such statesmanlike talent in 1787 took the forms of social, economic, and educational superiority displayed over long careers by state and community leaders. All knew that such people were the most likely to have the kind of practical experience, wisdom, and public spiritedness (which the framers described as *virtue*) needed to look beyond their personal interests to the common good in managing public questions. According to Poole, men with these qualities were often deferred to by less accomplished people—the yeomanry and tenants of the country, the tradesmen, mechanics and laborers of the towns (1987: 16; 11). That is why most framers believed that state legislators, electors and in more restricted ways, even ordinary voters, could be trusted to select the best men in each community for positions of leadership in the new government

The first president, George Washington (who presided at the Constitutional Convention) was widely seen as supremely qualified for that high office by the framers’ reputational standard. Other men of proven distinction could seek election to the national legislature where they would refine their talents for statesmanship by debating public policy. (See, for example, Madison’s discussion of the necessity of disinterested devotion to the “happiness of the people” and study of “the objects and principles of legislation” in *Federalist* No. 62 on the Senate). It is worth noting that no comparable provision for skill

refinement was contemplated there or elsewhere in the *Federalist* for the preparation of citizens.

Separation of Powers

Once such men were in office, separate institutions, each empowered not only to cultivate its own special functional genius but also to prevent illegitimate action by either of the others would reduce if not eliminate any need to rely on mass public uprisings as a source of correction. A close reading of the Constitution shows that the protections are numerous and complex. Why did the framers believe that this much protection was necessary? Because they counted themselves as realists about human nature; no less among governing elites than ordinary people (“What,” Madison famously asked in *Federalist* 51, “is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary...Ambition must be made to counteract ambition...Wills, 1982: 262).

There was a presumption that free and frequent elections, a key part of the constitutional design, would help keep officeholders virtuous. But when it came to the presidency it would be electors rather than voters who would bear the responsibility for exercising the franchise that counted. The same was true of the Senate. Until the passage of the 17th amendment to the Constitution providing for direct election of Senators in 1913, the members of the House of Representatives were the only officials directly elected by the people. The presidency had a tenuous link to the people through the choice of electors in the states that allowed it. But electors were not required to follow the dictates of popular votes in those states.

The Role of the People

Some leading constitutional convention participants such as Gouverneur Morris, of New York, James Wilson of Pennsylvania, and James Madison of Virginia, went so far as to speak out for direct election of the president by the people. Madison thought the people capable of using the vote to pick men of wisdom to serve as president, and able to vote out of office presidents who got out of line. But according to Matthews, Madison did not want them to participate in the discussion of policy choices nor in the setting of the national agenda (Matthews 1995: 159; 276).

The Electoral College

In the end, practical and political obstacles to direct election of the president emerged, which meant that the creation of an Electoral College was premised on more than just mistrust of the people. One practical obstacle, for example, was lack of access to information about national candidates at the local level by ordinary people. Because people rarely left their home states they had no easy way to become acquainted with those beyond their borders who might emerge as serious candidates for president. They needed help from especially well-informed and better-traveled elites to make an informed choice. There was also the practical difficulty of ensuring uniform voting practices in every state and the impassioned political problem of how to count slaves that made direct election untenable (Amar 2005: 148-159).

Americans are still not directly involved in the selection of presidents. Article II left it to the states to appoint electors, who would actually choose the president, as each state saw fit. In the first presidential election in 1788, just four of 10 states, and by 1804 only 11 of 17 states let voters choose electors directly (Legislatures, or a combination of legislature

and popular votes identified electors in the remaining states. See Amar, 2005: 552). It was not until 1860 that all states except South Carolina allow voters to directly choose presidential electors (Amar, 2005: 158). Today, although all states allow direct choice of electors, citizens are still one step removed from direct choice of the president. But because electors have so consistently implemented the popular vote in their states the so called “faithless elector” problem has not had a significant impact.

Nevertheless, even though the Electoral College would not succeed in preventing a presidency-public relationship from emerging, that was a major reason for its creation. The presidency was clearly designed to be strong and independent enough to operate without the involvement of the people. The House of Representatives would reflect public opinion, but the presidency, like the Senate, was intended to serve as a counterweight to popular passions. Its occupant could only help to protect the constitutional system, the framers reasoned, if he were a statesman oriented toward the public interest rather than a politician seeking the support of the masses or of particular groups. Thus the people, the putative source of all sovereignty, were carefully distanced from the task of supervising the presidency to keep it from any dependence on their support.

Respected but Constrained

The idea of “the people” and the notion of “public opinion” both emerged in the Anglo-American world of the 1700’s from the need for a dialogue between those who sought to exercise power and the electorates that were in a position to bestow it. In the case of America the “bestowers” amounted to somewhat more than one-third of the population; notably white male property owners (Cremin, 1970: 445). This was the context within which the framers were obliged to signal great respect for the people, and by many accounts

they were, at least a first, genuinely respectful of them (Amar, 2005; Wilentz, 2005; Sinopoli, 1992; Ackerman, 1991; Wood, 1969). But again, the peoples' role was carefully circumscribed. Apart from imprecise statements like that of Madison in Federalist 51 ("A dependence on the people is, no doubt, the primary control on the government.") or Hamilton's reference in Federalist 70 to the "restraints of public opinion" on presidents, there was no authoritative discussion, in the convention records, the Federalist Papers, or anywhere else circa 1787 of any actual supervisory role the people might assume over the president as part of the constitutional system for holding the executive to account.

Citizen Development: A Third Line of Defense?

Yet interestingly, many of the leading lights within the revolutionary leadership that began to emerge in the early 1760's, including some who would later become delegates to the 1787 Constitutional Convention and/or members of the government it established to replace the Articles of Confederation had forcefully expressed their belief in the need to raise up an aggressive citizenry; one capable of sharing the responsibility for resisting governmental oppression. Their turn to the citizenry was sparked by unhappiness with what they perceived as British high-handedness. Between the years 1763 and 1775 a series of British parliamentary acts affecting colonial overseas trade, imported consumer goods, western lands, newspapers and legal transactions aroused repeated protests by colonial elites. When these elites sought to mobilize opposition to the British measures by means of legislative resolutions, public meetings, newspapers and pamphlets, they "discovered the importance of an informed citizenry" for building pressure on the British government (Brown, 1996: 52, 53). Future president John Adams in an essay published in the Boston Gazette in 1765 captured something of the fervor of this sentiment: "The people have a

right, an indisputable, unalienable, indefeasible divine right to that most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers... The preservation of the means of knowledge among the lowest ranks, is of more importance to the public than all the property of all the rich men in the country” (Adams, in Papers, 1977: 120-121).

Practical politics required that citizens be properly informed; that is, made aware of the facts and interpretations that would reinforce support for acts of resistance to Great Britain. More generally the feeling was that the people should be made aware of their rights and responsibilities in order to avoid falling prey to the designs of tyrants. Tyranny could not be prevented without a vigorous and assertive citizenry, well schooled in its own rights and in the moral and legal limits on the discretion of government officials.

This point of view, made salient to colonial leaders by British excesses, had long been nurtured in the writings of intellectuals. “Radical Whig” thinkers and writers, in the New England states, New York, Pennsylvania and Virginia offered theoretical justification for such practical sentiments as the need for mass-based political resistance. These thinkers were influenced by European authors such as Robert Crowley, who as early as the Renaissance had defended the right to “speak against the faults of all degrees without exception.” They also drew on John Milton, who condemned government censorship and on John Locke and Robert Molesworth whose writings encouraged them to argue that free inquiry and a free press were preconditions of liberty. *Such theories were interpreted as supportive of a major political role for an informed citizenry* that, in a departure from established European thought, *had to include ordinary people as well as elites*, as the Adams quotation above indicates. An earlier statement of this argument was published in the *Independent Reflector* magazine by William Livingston of New York in 1753. This

article implied an inclusive view of a politically informed citizenry; that “the very same values, ideas and information” previously instilled only in elites “might (usefully) penetrate and permeate the entire social order.” The radical new idea that emerged from the stirrings of rebellion against Great Britain, then, was that to protect their own liberty and well-being ordinary people actually had to be able to “evaluate public policy” (Brown, 1996: 38-40).

But how was an informed citizenry to be made a reality? The principal available ways and means included families, churches, the press, the post office, and the schools, all of which were promoted rhetorically. Yet there were practical barriers to bending these institutions to the shared purpose of creating a uniformly knowledgeable citizenry assertively pressing a common political ideology. For example, leaders of all types had long viewed churches as fundamental promoters of the altruism and public spiritedness viewed by most as essential to the new American political order. Under the British Crown church state and school were integrated. But the doctrinal republican separation of church and state, the fact of American religious pluralism and the reality of often starkly dissimilar state and local approaches to education had severed those bonds, and with them a ready made organizationally integrated path to citizen development. Outside of New England which evinced some standardization, educational curricula were highly individualized and of uneven quality. Thus, institutional deficiencies hindered the development of an informed citizenry (Brown, 1996:70). Further, the Revolutionary War (1779-1783) diverted resources and attention away from education even in states where it had been institutionalized. And once independence had been achieved, the lack of clear models for defining and institutions for creating an informed citizenry became particularly glaring.

In this context two theories, dissimilar but not entirely incompatible, of how best to nurture citizen development emerged. The first relied exclusively on the guarantees of liberty against state intrusion—freedom of speech, the press, of assembly and of religion—to ferment decentralized citizen development. The second relied just as exclusively on financial support from government to create and sustain the necessary institutions: schools, colleges and universities, libraries, and learned societies to move toward national standards. But whenever attention shifted from individual rights to state control and possible standardization of curricula, what it took to become an informed and virtuous citizen became the subject of great controversy.

Elite Founders and Citizen Development

Though most innovations in public instruction in the generations following the founding would be private and voluntary, the leaders of the early republic—including John Adams, Thomas Jefferson, James Madison, Benjamin Rush, Benjamin Franklin and George Washington—still directed most of their attention to government policy rather than to private initiative. They were more convinced of the need for centralized citizen development than others because many of them were acutely sensitive to the historic fragility of republican regimes. Accordingly, they believed that tax-supported, state sponsored schools and universities were vital necessities if the United States was to avoid a similar fate. Their motives were defensive: to equip citizens to help to safeguard liberty from tyrants and demagogues. And their concerns were mainly secular. They recognized the importance of religion only to the extent that it secured social and political benefits in this world, as the Massachusetts constitution stated (Brown, 1996: 85; 105; 111).

There were many efforts, both before and after the ratification of the 1787 Constitution, to promote national standards for citizen development. A particularly interesting example involved the American Philosophical Society, whose members included many leading intellectuals, which mounted a contest in 1795 intended to identify the “best plan for instituting and conducting public schools in this country.” One prizewinning essay suggested that “it was the duty of the nation to superintend and even coerce the education of children.” Another called for “a uniform system of national education” The purpose of the contest was to develop plans that could serve as models for reformers to use as the basis for proposals to Congress and the states (Rudolph, 1965: xv).

Other potential national models predated the constitutional convention. One was included in the 1780 Massachusetts constitution authored by John Adams. Another, which was by far the most fully and coherently developed, was Thomas Jefferson’s 1779 bill, submitted to the Virginia state legislature, for the “More General Diffusion of Knowledge.” Though targeted initially to Virginia, Jefferson clearly intended his plan to serve as a model for the rest of the country as well (Pangle and Pangle, 1993: 106-7).

Jefferson sets forth the objective of political education in the preamble to his bill (reproduced in Cremin, 1970: 440). Preeminent is the prevention of tyranny, which despite well-conceived governmental forms, experience shows to be probable unless “the minds of the people at large” are “illuminated” with enough of historical experience to “know ambition under all its shapes.” They are also encouraged to “use their natural powers to defeat [ambition’s] purposes.” Thus, “illumination” (knowledge of the history of political tyranny and of the forms of government best able to restrain it, plus knowledge of the sources of their own political tradition and of the rights and liberties secured by the

revolution) and “encouragement” (the cultivation of a socialized attitude: vigilance against tyranny, which to fulfill required “full information of [the performance of currently elected leaders] through the channel of the public [news]papers [which should] penetrate the whole mass of the people”) are the two most important educational means to this great end. Given the limited safety of even the best governmental forms, the spirit of watchfulness in the population at large is of decisive importance. “In Jefferson’s view, that spirit cannot be presumed—as the *Federalist Papers* seem to imply—but must be cultivated and its grounds carefully articulated” (Pangle and Pangle, 1993: 108, 111, 114).

To buttress the protection offered by a wary and knowledgeable public those naturally endowed with “genius and virtue,” i.e., a natural aristocracy, should be recruited and educated at public expense to make them “worthy to receive and able to guard the sacred deposit of the rights and liberties of their fellow citizens.” If such leaders, being human, could not entirely eliminate the threat of tyranny they would at least reduce it. But for Jefferson it is the education of the masses that can be the only truly effective safeguard against corruption of even the gifted minority recruited and trained for virtuous leadership called for in his bill.

Because of what he saw as a stingy and shortsighted state legislature, Jefferson’s bill did not become law in Virginia. Neither did its principles gain traction at the national level. Some highly influential figures, for example Alexander Hamilton, “warned of the dangers in directing the core of public education toward the inculcation of a suspiciously vigilant stance toward authority” which might lead to a contempt and disregard of all authority. President George Washington, who saw the wisdom in both points of view, sought in his first Annual message to Congress, to strike a healthy balance between them. Acknowledging the need to

teach the people their own rights “and provide against invasions of them” he also called for teaching citizens to “distinguish between oppression and the necessary exercise of lawful authority...uniting a speedy but temperate vigilance against encroachments, with an inviolable respect to the Laws” (Pangle and Pangle, 1993: 112-113).

In the end, after much discussion and debate of Jefferson’s and other schemes, the idea of a nationally defined and generated program for the formation of a politically sophisticated citizenry failed to take root in the United States. The historian Richard D. Brown explains (1996: 103):

True, elements of positive government support existed nationally. The 1785 United States land ordinance required that land be set aside for schools in Every new township and later Congress furnished subsidies to the states to further their educational efforts. The U.S. government also sponsored the creation of an extensive postal system to enable newspapers to circulate nationally and subsidized their distribution to make them widely available. State governments, too, made provisions for public education. But at the national level, the ruling principle was usually a policy of empowerment of states and localities rather than direct government support. [Local initiatives] were always more popular politically than any national centralized, tax-supported program.

It is likely that these political realities, which were abundantly clear well before the convening of the Constitutional Convention in 1787, discouraged any thought of providing for citizen development in the Constitution itself or any attempt in the new Congress to require states to educate their people according to the Jefferson model or any other standardized plan, despite President Washington’s encouragement. The framers did not abandon the hope that the good moral character and the political attentiveness of the American people, voluntarily nurtured through families, churches, local public and private schools and other organizations, would help sustain and moderate the new government. But the fact that there would be no formal national citizen preparation program surely reinforced the decision to avoid relying on citizens in any direct or formal way in the system for

checking the president. Instead they would “concentrate...their attention chiefly on new arrangements of legal and political institutions that would focus, check, and balance power in such a way as to foster the efficacious vigor of government while preventing its oppressive misuse” (Pangle and Pangle, 1993:2). The elite legislative, executive and judicial departments created by the Constitution would therefore be designed to operate largely without the citizenry. Thus, except on Election Day, when the people had the limited voting rights described earlier, the system was designed to be “a machine that would go of itself” (Kammen, 1993) at least insofar as doing without much popular input was concerned.

Nevertheless, concerns remained that despite the framers’ best efforts to prevent “oppressive misuse” unscrupulous men might occasionally slip through their screens and attain the presidency by riding a wave of popular support. A people not taught to be “suspiciously vigilant” toward power seekers as well as office holders could inadvertently become enablers of unprincipled exemplars of either. In Federalist 63, for example, Madison, speaking of the benefits of a lengthy term of office for Senators, describes the traits of an unprepared public that made any direct link to the presidency seem dangerous. Left to their own devices, people were too susceptible to being “stimulated by some irregular passion” he said; or “misled by the artful misrepresentations of interested men” (Wills, 1982: 320). This fear is why the framers sought above all else to avoid any possibility that “popular leaders” could win the presidency and use the “popular arts” (i.e., issue arousal or appealing personalities, or rhetorical skills or demagoguery) to sway the masses and undermine the Constitutional system by coopting the peoples’ legitimizing power. It is also why they took such pains to prevent the president from defining himself and from being seen as a popular favorite (Ceaser, 1979).

Actual Loyalty, Fictional Sovereignty

If the citizenry could not be schooled as defenders against demagoguery or tyranny but instead had to be regarded as potential sources of breakdowns in both, would they have any positive role at all? The answer was yes. Their role would be to *support* (be loyal to) the new national government after it was launched, and thereby to vest it with legitimacy. But legitimacy could only be conferred by the people if they were regarded as *sovereign*. Historian Edmund Morgan (1988) argues that James Madison, realizing this, simply “invented a sovereign people” as a way to ensure the primacy of the national government over the states. Morgan contends that popular sovereignty is in fact no more than a “convenient fiction,” which, like the “divine right of kings” that preceded it was designed to supply an essential veneer of legitimacy to power wielders. To take popular sovereignty seriously in the context of a population with no special preparation for the implicit responsibility requires leaps of faith that strain credulity. “[I]t requires that we believe not only in the existence of something we call people, but also the capacity of that something to make decisions and to act apart from [their] elected representatives...”(1988: 286;256). Left unaddressed were questions bound to arise if popular sovereignty was to be taken seriously in the actual operation of government. For example, what kind of oversight can the people be expected to exercise? Would the power they delegated to their representatives be exclusively held by those representatives during terms of office, with the people wielding power only on Election Day? Or could the people re-assert themselves at other times of their own choosing if a majority concluded that a representative was acting in a way inimical to theirs or the nation’s interests and well-being?

But fictionally sanctified or not, a sovereign peoples' blessing was essential. Popular endorsement for the Constitution, and the consent of the governed to the actions of the institutions that the Constitution created, were the only viable sources of legitimacy available to sustain a national government. Again, this is why ordinary people had to be celebrated, their genius for Republican government extolled. It is also why they had to be included, and in more than purely nominal ways, which direct election of members of the House of Representatives ensured.

Elites Lose Faith

Despite this politically necessary public posture, however, the idea of giving voters power any greater than that finally included in the Constitution began to seem unwise after the burst of democratic passion sparked by the 1779-1783 revolution. That event also unleashed public displays of both disrespect for traditional authority and preoccupation with individual economic gain. Dismayed at the spectacle elites began to lose faith. The ratification debates briefly rekindled the faith of some (Maier, 2010). But because most showed only fitful, often self-serving interest in government, elite trust began to wane. Ordinary people had come to seem incapable of the degree of virtue needed for republicanism (Wood, 1992: 229). Fatovic (2009: 24) notes that this change of heart was signaled by a "remarkable shift" in the writings of liberal constitutionalists about the scope of republican virtue:

(They) reconsidered their ideas about who could be expected to possess public virtue. Rather than look for such virtue in the citizenry as a whole, as republicans recommended, they restricted their search... What had been a matter of general civic concern was now an elite affair to be centered on the presidency... The president would be motivated by the public spirit that the people themselves lacked.

In *Federalist 6*, Hamilton reflects the new elite consensus on the people, lamenting that “we...are yet remote from the happy empire of perfect wisdom and perfect virtue...”

(Wills, 1982: 26).

Relatedly, there was agreement that limits should be placed on the frequency with which citizens were expected to mobilize and focus on national business such as ratifying the Constitution (Ackerman, 1991: 30. See also Madison’s caution against too-frequent emotional appeals to the people in *Federalist 49*). Except when stirred by grievances or caught up in crises like the Revolutionary War people were not innately more interested in politics and government in 18th century America than they are today. For example, after noting the inconvenience that voting imposed on many “common people” who at this time lived at great distances from polling places, the historian Eugene Roseboom adds that “[a]nother factor, which time has not remedied, was the *sheer indifference of many* voters, who did not trouble to use their privilege. The hard grinding labor of pioneering was not conducive to an active interest in government except when it directly touched some everyday problem” (1959: 3; emphasis added). Hamilton, in *Federalist 61*, was less charitable, and may have spoken for many other framers when he decried the “alarming indifference discoverable in the exercise of so invaluable a privilege...” as voting. Perhaps it is no accident, then, that the Constitution does not mention “citizenship” until the 14th Amendment, which was not ratified until 1868 (Shklar, 1991: 15) [Though “citizens” were mentioned in Article IV, section 2 of the Constitution, which granted them standardized “privileges and immunities” in all the states].

The Triumph of Popular Leadership

In the end, of course, the framers' intricately wrought scheme for distancing the citizenry from the executive did not work. They failed to anticipate what has been called the "democratization" of the presidency, which toppled their effort to prevent an alliance between the president and the people. Ironically, it would be the founding elites themselves, recast as partisan opponents during the Washington and Adams Administrations, who would precipitate this constitutional setback.

Origins of Democratization

Democratization started when Republican opposition to the Washington administration sparked a new look at the citizenry, as such opposition leaders as Madison and Jefferson came to believe that the governing Federalists had secured their rule through a combination of purposeful misinformation and public ignorance (Wilenz, 2005: 57). At this point, both Federalists and Republicans began "appealing to the people in an effort to shape and mobilize public opinion around their respective conceptions of the public good. Leaders sought to tap, organize and channel the ultimate source of political strength in a republic—the people—in order to legitimize their own interpretation of the public good" (Sharp, 1993: 11-12). By the 1800 election a greater percentage of the population could vote than during the colonial years, and the popular vote, which was influenced by many sources of unhappiness with the performance of the Adams administration (e.g., new taxes, the repressive Alien and Sedition Acts) was crucial to the outcome. Urban workers in places like New York City went for Jefferson as did majorities in four of the five states (among a total of 16 at the time) in which electors were chosen by popular vote (Ferling, 2004: 14; 166-174)

It was the seeking of public support in the bitterly contested 1800, 1824 and 1828 presidential elections, plus the increase in the number of states that permitted voters to choose presidential electors (and the habit of electors to faithfully reflect the presidential preferences of those who chose them) that democratized the presidency. Neither a constitutional provision for an informed citizenry is likely to have altered those developments. The first real test of its importance would have come only after 1828, by which time removal of property restrictions on voting had greatly expanded the electorate (a total of just 365, 838 people voted in the 1824 presidential election, whereas 1, 148,018 voted in 1828; a more than three-fold increase in just four years. See Presidential Elections 1789-2004. 2005: 118-119). These newly enfranchised voters represented an emerging middle and working class that was less well-born, less wealthy and less well educated than previous electorates. These people would have been better educated under a Jeffersonian citizen regimen.

What Might Have Been

True, even well-educated, politically sophisticated publics are not immune to emotional arousal and manipulation by political leaders, especially in the midst of real or perceived crises. But though complete immunity to elite political manipulation is unattainable, informed skepticism remains the best available safeguard. Moreover, political discourse might have moved in different directions had the Jefferson plan or some other plan succeeded. For example, the cultivation of wariness toward power seekers would likely have tempered the carnival-like atmosphere of political campaigns that followed the expansion of the electorate, and at least partially reduced the ease with which these new

working class voters and their descendants could be stampeded, deceived, or otherwise manipulated by candidates and presidents inclined to such practice from that time to this.

Had the framers any way of knowing that their design for the presidency would come up short; that such early presidents as Jefferson and Jackson would “subvert and alter their carefully contrived constitutional structure” (Dahl, 1990:141) by creating political parties and forging more direct bonds with voters in their search for extra-constitutional power and legitimacy, they would surely have been distressed. After Jefferson claimed a mandate from the people (Ackerman, 2005) and Jackson became the first president not only to appeal to the people over the heads of their representatives in Congress, but also to assert that as the only nationally elected official he was the truest representative of the American people, and, indeed, “embodied” the people (Corwin, 1957: 21), the die was cast. The novel and controversial popular link “took root widely and deeply in the American political system” (Nelson, 2004: 79). The corollary, that as their representative the president was accountable primarily to “the people,” would soon follow.

A question worth reprising here is if codification of citizen development might actually have prevented democratization. It is not likely because (to repeat) the 1800-1828 democratization was fueled not by abuse of power but by authentic substantive disputes over policy and political ideology. It was also unlikely for a second reason that remained in force until 1828: the relatively small pool of then-eligible voters was quite well educated and politically sophisticated; much more so than later (1828 and after) far larger mass electorates would be (Elkins and McKittrick 1993: 22).

20th Century Reactions to Democratization

The entrenchment of the unintended presidency-public linkage extends all the way to the present where “the task of shaping presidential speech to influence and manipulate public opinion—when necessary by appealing over the heads of Congress in order to induce Congress to support the president’s policies—has become a central element in the art and science of presidential conduct.” Robert Dahl captures the irony from the framers’ point-of-view: “...(T)he presidency has developed into an office that is the very embodiment of the kind of executive that the framers, so far as we can discern their intentions, sought to avoid” (Dahl, 1990: 152). Imagine the framers’ distress at this, which could only have deepened had they been given to know the entire history behind Dahl’s conclusion, including not just Jefferson and Jackson but the elaboration of the popular connection from the post-1824 expansion of the electorate to the early 20th century presidencies of Theodore Roosevelt and Woodrow Wilson. These developments sparked what some contemporary scholars have variously (and unhappily) termed the “plebiscitary” (Ceaser, 1979), “personal” (Lowi, 1985) and “rhetorical” (Tulis, 1987) presidency.

These modern critics reflect the framers’ core attitude that an expansive role for the people was ill-advised. Ceaser, for example, especially dislikes the idea of authority derived from an informal relationship with the people rather than the Constitution. This, he argues, leads to an overreliance on the art of a popular leadership that inevitably fosters unrealistic expectations (1979: 258). Lowi also criticizes the bypassing of mediating institutions such as parties and Congress, noting that “built-in barriers” to meeting unrealistic expectations sets up a dangerous cycle in which presidential failure is followed by frantic White House efforts to create false images of success, followed by adventurism abroad, followed by

further public disenchantment, which pushes the succession of presidents to ever greater rhetorical manipulation of public emotions in search of popular support (1985: 134-175). Finally, Tulis (1987; 2003) premises his critique of popular leadership on the inconsistency of its most cogent theoretical justification (offered by Woodrow Wilson who based his defense of popular leadership on its *necessity*, given that the founder's presidency was too weak) with the founding perspective's greater fear of demagoguery and strong preference for constitutional rather than popular power. Tulis allows that the popular president is better equipped to reconstitute the political agenda when some crisis makes it necessary. But he argues that the very qualities of personal and/or rhetorical presidential leadership that make this possible also "tend to subvert the deliberative process, which makes unwise legislation or incoherent policy more likely" (2003:102).

To be sure, not all contemporary thinkers oppose democratization. Some who support it point to the fact that a strengthened presidency-public relationship greatly facilitated new solutions, like the Social Security system's answer to the desperate poverty created by the Great Depression (Tugwell, 1960: 426). Others note that the people occasionally display subtle powers of discrimination outside crises, for example in awarding or withholding their support for presidential initiatives. For example, Brandice Canes-Wrone (2006) offers evidence to suggest that the interactions of presidents and people do not routinely lead either to improper presidential responsiveness to public demands (pandering) or to public shifts of opinion in response to demagogic presidential appeals, the sorts of things the framers most feared. She finds, as one example, that presidents increase their prospects for legislative success mainly by publicizing *already popular initiatives* that

Congress is not initially disposed to enact, which is the most promising incentive for “going public.”

Whether effectively deployed or not, however, “going public” has become standard presidential procedure. As one of the public presidency’s closest students recently concluded “presidents will not soon abandon public strategies” (Kernell, 2007: 235).

The Puzzle

Occasional displays of public competence notwithstanding, the costs of an ill-prepared citizenry still exist and still limit the effort to hold presidents to meaningful account. The most costly recent examples include constitutionally suspect wars of presidential choice in Korea, Viet Nam and Iraq (Buchanan, 2013: 59-80). Absent the wary skepticism a civic development plan like Jefferson’s sought to instill, citizens are more vulnerable to presidential “hard sells” such as those used by Lyndon Johnson and George W. Bush to win support before sending troops to Vietnam and Iraq. An unprepared citizenry is more likely to instinctively support than skeptically question emotionally evocative presidential appeals. A citizenry schooled along Jeffersonian lines would be better equipped to function as a check against presidential overreach. But is such a project—politically untenable in the early years--any more realistic now?

To address this question it will be useful to begin with a speculative return to the past. My strategy is to ask what the framers might have done differently and why, *had they been able to see the future*. The answer helps to highlight the steps needed to prepare citizens today.

Counterfactual: The Road Not Taken

If there had been some way to show the framers what lay ahead, a way to confront them with the unhappy results of their blueprint before they implemented it, what might they have done? They might have returned to the drawing board in search of a solution. They would then have been compelled to acknowledge that there was a key piece of the puzzle they had not adequately addressed, the piece that (just as they feared) would emerge as the enabler in the long road toward personalizing and popularizing the presidency: the people. Granted a premonition of the fragility of their plan they would have been forced to go beyond trying to limit the damage a manipulable citizenry might allow if protected only with their governmental “forms” or by elites groomed to be virtuous, both of which Jefferson had dismissed as insufficient in his 1779 “Diffusion of Knowledge” bill (Cremin, 1970: 440). The leading advocates of what was by 1787 a 25-year-old effort to create national educational institutions and standards able to produce a more informed and vigilant citizenry would have been freshly empowered to press their case.

Thus vindicated, these advocates—notably Washington and Madison at the 1787 convention and John Adams and Jefferson outside it—would have urged the delegates to revisit the question of how to equip a citizenry sure to be forced by events into a direct relationship with presidents to not just protect itself from manipulation, but to help keep the succession of presidents in check. The framers, in short, would have been forced to acknowledge that their aspiration for “a more perfect union” was contingent not only on statesmanship and institutional checks but also on a “more perfect citizenry.”

A Constitutional Strategy

If proponents had succeeded in building political support for the idea of a national investment in citizen preparation before the Constitutional convention of 1787 they might well have sought to consolidate and extend that achievement into the future by constitutional means. An intriguing strategy would have been to press for a Constitutional amendment calling for the right to civic education for each American citizen as part of what came to be called the Bill of Rights (presented by Madison to Congress in 1789, two years after the constitutional convention). Given the political realities of the time the language of the amendment would necessarily have mimicked the ambiguity of Article II and the terseness of the First Amendment, and for the same reason: to avoid the inevitable and potentially fatal political disagreements that arise from too much specificity, in this case over the curricular details of civic preparation (disputes over specificity did much to derail the “real” national standards movement. See Brown, 1996: xiii-xvii). Any constitutional provision able to be ratified would only have outlined the main obligation of citizenship (the duty to be vigilant and informed enough to command the respect of all elected federal officials, presidents and Congresspeople alike). It would have avoided specifying required subjects of instruction, such as history, because community schools in the states could be expected to cover such subjects without prompting. Just as the framers created surprisingly expansive possibilities with vague phrases in Article II such as “the executive power is vested in a President of the United States,” they could have done something similar by using equal vagueness in a constitutional description of what they expected of citizens (e.g., “citizens share responsibility with those they elect for the effective operation of the institutions of government, for monitoring the performance of elected officials, and for equipping

themselves to adequately discharge such responsibility”). Similarly, section 2 of Article IV could have been amended to read: “the Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in the several States, including educational opportunity sufficient to meet their responsibility for assessing the performance of elected officials.”

How could such relatively minimalist constitutional commitments to a prepared citizenry be expected to result in the meaningful devotion of time, money and energy to civic education? First, constitutional placement alone would have signaled that the framers attached real importance to what Justice Brandeis would later call the highest office in a democracy—that of citizen (Lewis, October 28, 1994: A19). Second, such a move would also have put the people themselves, people often indifferent to government outside of crises, on notice that the new regime expected something more, something new and something different: a commitment to do what was necessary to be respected by elected officials in ordinary times as well as during crises. Respect required not just general familiarity with political traditions and history, but *close attention to the performance of current incumbents*, as Jefferson made clear. Citizens cannot hope to be respected by those they elect if they do not grasp *the nature of the specific problems these officials face at any given time*, as well as the basic workings of the government. This, in short, is the essential “current political affairs” curriculum needed to supplement the political history, U.S. constitutional forms, and civic duty ethos taught in a Jefferson-style citizen school. Such ongoing update demands show why, as a purely practical matter, preventing disrespectful treatment (such as deception or manipulation) of themselves by their elected leaders requires

far more “due diligence” than the American people as a whole have generally displayed outside of crisis circumstances.

If the people had been “sent” such a role in the authoritative form of a constitutional amendment in the earliest days of the republic, they would surely have felt the need to think differently of their place in the political order. Whether actual citizen schooling under the amendment began shortly thereafter or not until much later, the constitutional mandate would have been an enduring reminder. The First Amendment, for example, took a long time to build the stature eventually achieved for freedom of speech. Enroute, the rights implied by that amendment were routinely ignored in times of stress (e.g., the Alien and Sedition Acts of 1798; the Sedition Act of 1918 and other intolerant treatment of German-Americans during the First World War; FDR’s incarceration of Japanese Americans by Executive Order 9066 in 1942 during the Second World War). Despite such neglect and abuse, the First Amendment did eventually achieve a unique stature, as suggested by its now-frequently exalted characterization (see, for example, Liptak’s not atypical March 8, 2007: A14 reference to the “majesty” of the First Amendment).

Constitutional standing for citizen development might eventually have sparked a similarly fitful yet ultimately positive evolution toward a serious commitment to a more effective citizenry. If so, it would have put to the test a proposition that is still controversial precisely because it remains untested: that the American people can in time and with patient trial and error be equipped to move, if not to perfection, at least well beyond the “rather passive notion of citizenship expounded by Publius” (Sinopoli, 1992: 157) toward something just as beneficial to the republic as the loyalty the framers actually sought; yet much more in keeping with the peoples’ symbolic status as “sovereign.”

21st Century Civic Virtue

The Contemporary Citizenry

The inability of leading political elites to nationalize citizen development in the years before and after the constitutional convention of 1787 is part of the explanation for the emergence of a contemporary mass public that is politically indifferent and therefore inattentive to politics outside crises. As we have seen, this indifference predated the Constitution. Because it was never addressed in any comprehensive way it has been extended and reinforced across two centuries by spotty political socialization and civic education in families and schools. As a result, the American way of preparing citizens does not impel upcoming generations to be skeptical and vigilant overseers of presidents or other elected officials.

This is well-documented in survey research that shows large majorities in what is now a modern mass democracy to be inattentive to most political matters (Delli Carpini and Keeter, 1996: 68). Americans are politically passive as well, not prone to act except when galvanized by historic crises or “constitutional moments” (Ackerman, 1991). Ackerman counts only the creation of the republic, its reconstitution after the Civil War, and the coming of the New Deal as examples. Burnham (1994) adds the Jacksonian presidential mobilization of the 1830’s and what he calls the “metapolitical ascendancy of the Supreme Court in the 1890’s” to the list. But however we count them, such moments are increasingly rare. Current normalcy for citizens is well described by former Supreme Court Justice Sandra Day O’Conner, who after seeing the results of the quadrennial National Assessment

of Educational Progress test results showing that middle and high school students had lost ground in civics knowledge since 2006, said that “we have a crisis on our hands when it comes to civics education.” (Horrigan, May 27, 2011:A13)

Citizen preparation needs a present-day upgrade for three reasons. First, presidential accountability is less effective due to longstanding citizen indifference and unpreparedness. Second, the loss of faith by political elites in ordinary peoples’ civic virtue in the early republic (review pp. 20-21) was misguided. They overlooked the crucial fact that *civic virtue is not innate*. It had to be taught to the elites the framers trusted, and it can be taught to ordinary people today. Although a program for such teaching would have been most effective if put in place in the early republic, it is not too late. Third, civic virtue needs redefinition if it is to fit the modern era’s need for effective citizen oversight not just of the presidency, but indirectly, the entire presidential accountability system (Buchanan, 2013). To see why these things are true, consider the following.

Manipulation

First is the chronic threat of manipulation. The more informed and sustained is citizen surveillance the more consistent the display of presidential virtue and the more likely the application and efficacy of Congressional checks and balances. Absent wary citizens the framers’ plan proved vulnerable to its two most flawed assumptions: that the supply of trustworthy presidents would usually be sufficient, and when it wasn’t that their parchment barriers would suffice to restrain the less reliable presidents who slipped through their screens. They underestimated the extent to which *all* presidents are “interested men” in Madison’s sense, all tempted, sometimes beyond their power to resist, to use what he called “artful misrepresentations.” The need to build public support for controversial policies (e.g.,

President Clinton's universal health care proposal; the second President Bush's war in Iraq) creates strong incentives to distort or withhold information. This constitutes *manipulation*, a standard dictionary definition of which is "to control or play upon by artful, unfair or insidious means, especially to one's own advantage."

The Bush administration's 2003 push for support of the invasion of Iraq is the most comprehensive recent example (See Rich, 2006; Lewis and Reading-Smith, January 23, 2008, and Cushman, Jr., January 23, 2008: A 12). In a statement that was both fear-inspiring and inaccurate, President Bush said "Intelligence gathered by this and other governments leaves no doubt that the Iraq regime continues to possess and conceal some of the most lethal weapons ever devised" (quoted in Jacobson, 2007: 101.). Consider too some details of President Clinton's 1993 health care campaign. Jacobs and Shapiro (2000: 309-310) explain: "Manipulation and deception were routine in the 1990's. For its part the Clinton White House staged public appeals in 1993-94 that deliberately obscured the new costs and government regulations inherent in their health care reform plan in order to best "sell" it in a country uneasy with government...Clinton aides later conceded that the White House's claims about costs and government regulation failed to "level with the people" and to be "honest up front."

Persuasion

Persuasion, on the other hand, though always more difficult to achieve, is (unlike manipulation) a legitimate tool of presidential leadership. To persuade is "to induce to believe by appealing to reason or understanding; to convince." Franklin D. Roosevelt's careful multi-step effort to convince a very reluctant American people of the need to support Great Britain in the war against Hitler and eventually to enter the Second World War is an

example. These excerpts from a 1940 “fireside chat” were one step in that effort: “Some of our people like to believe that wars in Europe and in Asia are of no concern to us. But it is a matter of the most vital concern to us that European and Asiatic war-makers should not gain control of the oceans which lead to this hemisphere...Frankly and definitely there is danger ahead—danger against which we must prepare” (Penguin 60’s, 1995: 50, 52).

Another example is Lincoln’s successful effort to persuade highly doubtful Americans of the wisdom of his (at first) intensely unpopular decision to suspend the right of habeas corpus and jail a famous anti-war agitator during the Civil War. “Long experience” Lincoln wrote, “has shown that armies cannot be maintained unless desertion shall be punished by the severe penalty of death. (But must) I shoot a simple minded soldier-boy who deserts, while I must not touch a hair of a wily agitator who induces him to desert?” (Donald, 1995: 443). That argument trumped the opposition.

Rationalization

Admittedly, the line between legitimate persuasion and illegitimate manipulation is not always bright. For example both persuasion and manipulation may include emotional appeals. The “noble art of civic rhetoric,” as described by Socrates and Aristotle, include emotional appeals justified as necessary to win support for worthy ends (Pangle, 1992: 127-129). The key distinction between persuasion and manipulation turns not on emotion, however, but on the presence or absence of deception. Manipulation invariably involves not only emotion but the trimming, distorting, or withholding of information that, if fully disclosed, might reduce or eliminate the chance of winning popular support. The decision to manipulate subordinates the audience’s right to the truth to a perceived higher value. A

president chooses this course when the plain truth cannot be assured of moving the citizenry in a direction the president deems essential.

President Richard Nixon offers an artful rationalization. He argues that while it would “be absurd” to claim that a good end justifies any means, it is equally absurd to claim that “when otherwise unacceptable means (i.e., manipulation) are necessary to a great goal they are never justified” (1982:325). But manipulation, even well-intentioned manipulation (the sort of thing that Nixon sought to justify and that the Bush and Clinton examples presented above illustrate) threatens citizens’ interests as directly as cynical manipulation. It does so by reducing citizens to unconsulted targets. At issue is respect for the audience. Lincoln, the greatest of presidential rhetoricians, respected his audiences. Gary Wills (1991: 27) explains:

Rhetoric meant, in Lincoln’s lexicon, that policy must be formulated from the outset in ways that would make sense to the electorate...[his] appeal to the common people was not a public relations device assumed for its salability...[he] did not write off public opinion as something so uninformed that the people must be *tricked* into following policy...[he] retained, even in the midst of a viciously destructive war, a faith in people, in their responsiveness to providence, that he could state in the quasireligious images of the Gettysburg Address.

With presidential self-restraint in the face of the temptation to manipulate a highly unreliable commodity, the need for effective external checks is compelling. The second line of defense after presidential self-restraint is Congress: the wielder of the major constitutional tools for both encouraging good behavior and discouraging abuse (investigative oversight, legislation, appropriations, and impeachment). But on many important national questions, especially national security questions, Congress has acted less often on its own initiative than in response to constituent pressure (Mann and Ornstein: 2006; Schlesinger, 2004). For example, the Congress (itself highly susceptible to presidential manipulation) did not

extensively review the plans of Presidents Truman, Johnson or Bush to initiate the Korean, Vietnam or Iraq wars. Nor did legislators seek to end either the Vietnam or the Iraq war until the popular demand that they do so was unmistakable (Perret, 2007)

Committed Citizens

The fecklessness of Congress in the absence of public pressure is one of the two most important reasons why the people—the third line of defense--remain a vital part of the accountability equation. The other is the need for a citizen audience that is respected enough to discourage manipulation and encourage persuasion as the presidential leadership method of choice. But to deliver these vital services on a regular basis, the citizenry would have to *consistently* be what Walter Dean Burnham has said it only *rarely* has been: “a central player in the enterprise, mobilizing to debate and act on fundamental matters of principle.” playing “a proactive, autonomous, and central role quite at variance with the models of passivity and indifference projected by modern survey research” (1994: 65).

To play this role routinely, citizens would have to be, in Jefferson’s words, transformed away from indifference with encouragement and illumination. To translate his insights into modern parlance, citizens would have to be *committed*; that is, they would have to internalize and display a particular mix of mutually reinforcing attitudes and behaviors. The first component of the mix is an attitude: personal *identification* with the supervisory responsibilities that accompany the aggressive view of citizenship implicit in the concept of popular sovereignty. The second component is behavioral: *involvement*, i.e., a demonstrated willingness to acquire the information and to display the vigilance needed to command the respect of legislators and presidents. Third and finally is *loyalty*, the psychological investment needed to sustain behavioral involvement in presidential oversight on a

consistent basis, in ordinary as well as crisis circumstances, through the course of a civic lifetime, without the need of special inducements beyond the socialized incentive of civic duty. These components (to be explained in detail in a book in progress) define 21st century civic virtue.

Developing such a citizenry would still be useful and perhaps not impossible. But because the efforts of the leading lights among the founding generation were unsuccessful, it will be far more challenging today than it would have been had the cultivation of citizens been institutionalized at the outset.

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