The Once and Future King
Guest: F.H. Buckley
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WOODS: I became aware of your book because of a rave review, a word-of-mouth review, from my friend Kevin Gutzman, a Madison biographer who thinks very highly of your book. He thinks very highly of very few books, so I thought, all right—

BUCKLEY: Kevin is a very astute guy. What can I say?

WOODS: That's right. We all feel that way. He likes my books as well. I want to start off with your discussion of the separation of powers because the average schoolboy's understanding of the Constitution is that it emerged from discussions that were centered in large part around a concern for maintaining the separation of powers between three branches. We're all familiar with this story. But you're saying this isn't quite accurate in describing the evolution of the presidency in the constitutional debates.

BUCKLEY: That's right. Now, there were a couple of things going on. One was small states versus large states, which is roughly states' rights versus centralization. But when it came to the central government, to the federal government, the principal concern was making sure we wouldn't have what George Mason called a collective monarch. The fear they had coming out of the Revolutionary War and with memories of George III—what they didn't want would be an all-powerful individual, and they said that again and again. And right at the end the language of separation of powers emerged, and it was cloaked around a really, really messy compromise, but most of the people there were very solid, practical politicians who for the most part weren't theoreticians. What they thought they gave us was a government where mostly Congress would do the picking. In nearly all cases Congress would appoint the president. You think about the 2012 election and imagine the House of Representatives making the choice voting by state. Very different result.

Where we get the separation of powers from importantly is the *Federalist Papers*. The *Federalist Papers* are kind of a shorthand version of the debates themselves. The record of the debates spreads over 800 pages. Well, the *Federalist Papers* are shorter, but they also have a spin, and the spin is provided by Alexander Hamilton, importantly, and the spin is: we really like a powerful president. Federalist 70: energy in the executive. So I guess what I am arguing is we're coming to a split amongst libertarians/conservatives. On the one hand we have what I might call congressionalists, who think the president is way too powerful. On the other hand we have some people, again, on the right who like the idea of a very powerful president. This would be my friend John Yoo, for example. It would be people sometimes called neoconservatives. It's people who like the idea of a powerful president who can take us to war. That's the other side of it. So I guess my concern is almost nonpartisan. I would like to see a weaker president, a stronger Congress, and that means that I wouldn't care, or I don't care much for people on the right who want to make the president as strong as they can.

WOODS: Well, you're singing in my choir when you say that, I'll put it that way. On the subject of John Yoo, he's made an argument—and he's not the only one—along these lines: Article I is very precise in laying out the powers of Congress. Article I, Section 8, lists specific tasks assigned to Congress. But then when you get to Article II, all we read is that executive power will be vested in the hands of a president. He takes that to mean that the president, therefore, has a more open-ended authority because it's not specified as precisely as

in Article I. How would you address an argument like that?

BUCKLEY: Well, the thing is, John is talking about an understanding of the presidency today, and the understanding of what the executive power was in 1787 is entirely different. I mean, you don't have a regulatory state. You don't have the modern media. You don't have the expense of central government. You have a very thin government, and the model most people have of what the executive would do would be simply follow out what Congress dictated, not unlike the way in which when we get an IKEA crate and we put it together, we get a bunch of instructions, and we just do what they say. So they didn't think that the executive, the president, would have all that much discretion. They would be shocked with the idea that the president could dictate foreign policy by himself—take us to war on his own initiative—but that's not what they had in mind. So I think, you know, John is taking the language of the Constitution but rather ignoring what was in the mind of the framers at the time in 1787. They are describing a very different government, and in particular they were frightened by what they called "the royal prerogative," which is George III. George III was the guy who kept the Revolutionary War going years longer than anybody else in England, and that's what they didn't want—a president who could make foreign policy like that.

WOODS: Now the natural follow-up is: how did the president evolve into the figure he is now? How did the office become what it is now? But before we get there, on the way there I want to pass through your discussion of Britain, Canada, and the U.S., which are all coming from the same line of political evolution, and they have different outcomes. What are the different outcomes, and how does that fit into the picture here?

BUCKLEY: Well, here's the idea. Back in 1787 the Framers provided the most brilliant discourse on political liberty you'll ever find. I mean, it's absolutely wonderful. And like the *Federalist Papers*, it's exciting. You see people arguing with each other. It's great stuff. What they gave us was a vast improvement over England at the time, but England changed over the next 50 years and England in 1832 more or less eliminated what had been a separation of powers back then. So you ended up with an all-powerful Parliament. So that was a consequence of democracy. Democracy dispatched the separation of powers. It brought it to America, and now everything is folding into an all-powerful chief executive. The difference is, you have mechanics to address that problem in the House of Commons. You have, you know, question period, for example. Just a little anecdote—Obama went over to India in 2010, I believe. He addressed their Parliament, the Lok Sabha, and the Indian parliamentarians were just amazed: Obama had a teleprompter. That was amazing to them. You don't do that in Parliament. You stand up, you take questions from all over the place. You have to do it with a degree of wit if possible but certainly being informed. A teleprompter is entirely inconsistent with that. And by the way, the Indian press reported Obama spent $200 million on that one trip. The annual budget of the queen is $60 million. So yeah. When I talk about crown government, yeah.

So I guess what I want to say is, the idea of a separation of powers as a way of preventing power from being centralized was a brilliant bit of theorizing in 1787, but now the separation of powers is employed to give power to the president. It's exactly the opposite of what was intended. We have this story: the separation of powers is to prevent the accumulation of powers in a single body. But it works just the opposite. The separation of powers assists the president who wants to expand his power. You have government by executive order. You have the president who doesn't want to enforce laws he doesn't like, and all of that is justified on the basis of separation of powers. So it's like a boomerang that has come back and has struck the person who launched it.

WOODS: You describe in here the process by which the president goes from the fairly modest figure of Article II into the larger-than-life figure he is today, and there is a number of ingredients. Certainly the modern media making a celebrity out of the president, making him an object of, if not veneration, then certainly fascination by many people. We all know what his golf handicap is. We know all kinds of things that would have horrified Jefferson for us to be preoccupied with.

In my own case, I have written about the key role in this evolution played by Teddy Roosevelt. He did have very explicitly James Wilson's view of the presidency that you talk about, in which the president is the man of the people because unlike any other person in the U.S. government, he's elected by the whole population, not just the population of any one state, and he governed in that style. He intervened in matters large and small in American society, whether it was the safety of college football, or whether it was imposing as an executive agreement a treaty with the Dominican Republic that he couldn't get through the Senate, so he just called it an executive agreement. He issues over 1000 executive orders. I think that's the watershed point, at

least from my point of view as a historian.

BUCKLEY: I think there's a lot to that. Who was it that called him "that damned cowboy"? I have forgotten.

WOODS: Oh, I do know that Mark Twain called him "clearly insane," so that's something.

BUCKLEY: Well, he did a lot to expand the power. His, what, his second cousin, FDR, took it further. It's been gradually expanding, and I think Obama has simply taken it to the next level. Again, I don't want this to sound too partisan in the sense that you can blame a lot of presidents if you want, or you can say it's simply the structure of the government, but it's been a gradual expansion, and you know, for example, Bush 43 created the Department of Homeland Security by executive order.

WOODS: I didn't realize that. I didn't even know that.

BUCKLEY: Yeah, but Obama has taken it to the next level by not enforcing laws he doesn't like, for example. Here's a good example. I abhor the idea of the TARP bailout. I get ill every time I hear "too big to fail," but the TARP bailout was designed for financial institutions. Now, $80 billion went to car manufacturers—Chrysler, GM, Government Motors. That wasn't authorized. There was no appropriation for that. The appropriation was for financial institutions. GM Motors was not a financial institution. In short, Obama spent $80 billion without congressional authorization. That clearly violates the Constitution. So what we saw in all of that is the president staring down Congress. The president acts in a way which is not authorized, clearly exceeding his authority and Congress simply doesn't want to take him on. They are responding, I guess, to the politics of the day. That's why I think what we need is a congressional party, a party dedicated to restoring the balance of powers between the branches of government.

WOODS: Well, that's the problem, of course, because as we all know, and as you have chronicled in the book, people support a strong president when it's their man. Schlesinger is all in favor of a strong president as long as it's JFK, and Republicans are all in favor as long as it's George W. Bush, and then suddenly they are appalled at the abuses of Obama. Nobody has any credibility on this.

BUCKLEY: Well, actually, John Yoo does because he likes executive power any times he sees it, including Obama.

WOODS: I will grant you that, but it's very rare for some reason on the other side to find somebody who, like you and me, favor greatly reduced executive power no matter who the person is.

BUCKLEY: You know, it's funny when you talk about this to conservatives; there are a lot of people who seem to think that the name of the president is Reagan or Bush.

WOODS: Yeah!

BUCKLEY: And they kind of figure, well, that's okay, our time will come, and then boy, we'll stick it to them. That's thinking politically and not constitutionally, and I think we need to start thinking constitutionally on this one, and the concern is precisely the concern with respect to where we're heading with all of this.

WOODS: All right, I have two more things I want to ask. The first is, I have a lot of libertarian listeners of this program, and I am sure a lot of them can appreciate the dangers of the type of presidency we're seeing evolve before us, but at the same time they may say: I am not so concerned about these procedural matters as to what branch does what. I am concerned with the cause of liberty in general. So even if we defer more to Congress, well, Congress does a lot of rotten things, too. Why should they care about the apportionment of powers between branches?

BUCKLEY: Well, I will tell you. I know what you're talking about. I am going to have to give a talk next month at Cato on this subject, and I think what I will say is yes, there are probably a fair number of libertarians who would be happy with a President Putin so long as he relaxed the drug laws or didn't enforce criminal law so much, and I think that's simply short-sighted, because I think the cause of liberty is importantly a constitutional issue. That's what the Framers figured out. Moreover, if you take a look around the world, what you see is presidential governments are really bad for political liberty. America is one of the great exceptions, but the point is it's free in spite of its Constitution and not because of it. In other countries with a presidential regime, presidents morph into presidents for life, or where you have term limits you get an Argentinian or a Russian solution. Of course, now, we've got Hillary 2016. I will tell you something I saw a

bumper sticker the other day that said, “Hillary/Michelle 2016.” That’s the pure Argentinian solution.

WOODS: At that point I think you would have to move to Argentina. That would be my Argentinian solution.

All right, so what do we do here? Toward the end of the book you offer some thoughts as to what might be done, realizing this is an uphill battle because the establishments of both parties really don’t care about executive power when it gets right down to it. They use it for political posturing. But nevertheless as scholars we have to forge ahead and offer our recommendations anyway. What do you recommend?

BUCKLEY: Well, I would recommend firstly, as I say, a congressional party that isn’t simply all about, you know, expanding whatever our politics of the day are for our side, which means that what we don’t want is the Republican version of Barack Obama. We want somebody who will have a limited vision of government. Secondly, everything we can do to strengthen the Darryl Issas who are examining corruption in Washington —we have to support that. And we’re not getting the kind of support from the Speaker of the House at this point with respect to, for example, Benghazi. Congress needs to clean up its act. I mean, the Tea Party made a good start in banning, for trying to ban earmarks. Earmarks are not completely gone away. I also suggested a national referendum run by Congress. For example, if you worry about the budget as I do, about public debt, and Congress finds itself handicapped dealing with the president elected by all the people whereas they are just for their own write-ins, their own districts, then getting the support of the nation behind you would be particularly useful, I think.