CHAPTER IX

CREATING THE PRESIDENCY

EIGHT MONTHS after the Convention adjourned, the South Carolina delegate Pierce Butler recorded an observation that has misled some casual interpreters of the origins of the presidency. Acknowledging that its powers were “greater than I was disposed to make them,” Butler doubted that “they would have been so great had not many of the members cast their eyes toward General Washington as President; and shaped their Ideas of the Powers to be given to a President, by their Opinions of his Virtue.” Many framers and other Federalists certainly thought Washington’s election would prove crucial to the fate of the Constitution. But Butler’s observation hardly squares with the tangled record of proposals, tentative decisions, reconsiderations, and reversals from which the presidency finally, and belatedly, emerged.

To derive a coherent theory of executive power from what Madison called these “tedious and reiterated” debates is not easy. The uncertainties surrounding the executive reflect what Harvey C. Mansfield, Jr. has recently described as “the ambivalence of executive power.” This ambivalence inheres in the disparity between the weakness of the executive as a subordinate, instrumental authority and the real advantages it enjoys in wielding power, advantages that its formal weakness often disguises and thus promotes. But the difficulties the framers encountered owed as much in turn to ambiguities in the definition of executive power as to ambivalence in its exercise. The first sentence of Article II of the Constitution did little to dissolve this ambiguity when it baldly stated that “The executive power shall be vested in a president of the United States of America” without explaining what executive power is.

Deriving a single definition of executive power could never be a simple exercise. Multiple layers of historical experience shaped American thinking on this subject: the great disputes of Stuart England, which resonated still in eighteenth-century America; alarms over the rise of ministerial “corruption” under the Hanoverian kings; and lessons learned from the efforts of the early state constitutions to cabin executive power within strict republican limits. The conceptual confusion which arose as Americans sought to define executive power in nonmonarchical terms generated further uncertainty. They embraced the theory of separated powers without wholly abandoning the language of mixed government; they struggled to distinguish the administrative parts of governance from other powers that the British crown had exercised as its prerogative; and they were further puzzled to decide whether foreign relations was more nearly executive or legislative or a hybrid of both. Nor could they readily imagine the political dimensions of executive power. Was a republican executive best conceived as the equivalent of a “patriot king above party,” a potential prime minister, or merely a general administrator?

These ambiguities in the definition of the executive made the other problems the framers faced in designing the presidency even less tractable, contributing to the cyclical debates Madison lamented. Yet the creation of the presidency was also their most creative act, and their achievement was all the more notable because leading framers thought about the executive in notably divergent ways. It was precisely because their views diverged so sharply that disagreements over the power of the presidency emerged as a potent source of constitutional controversy in the 1790s.

AMERICAN IDEAS OF THE EXECUTIVE developed within the two broad paradigms that eighteenth-century commentators employed to explain why Britain’s “boasted” constitution had attained its liberty-preserving stability. The first and more important was the ancient theory of mixed government that Charles I invoked in His Majesties Answer to the XIX Propositions of Both Houses of Parliament (1642); the second was the newer idea of the separation of powers that received its classic statement in Montesquieu’s De l’esprit des lois (1748). As several studies have painstakingly explained, the relation between these two theories was fraught with ambiguity. The English theory of mixed government held that the presence in the legislature of the three estates of monarchy, aristocracy, and people would prevent the constitution from degenerating into the corrupt forms of tyranny, oligarchy, or anarchy. By contrast, separation
of powers emphasized the qualitatively distinct functions performed by the legislative, executive, and judicial departments of government. In securing the balance that both principles were expected to promote, the two theories could be regarded as complementary, alternative, or even rival explanations of the "matchless constitution" that Britons and Americans revered. The two theories could be amalgamated, for example, if diverse tasks of governance were allocated to the institutions of monarchy, Lords, and Commons on the basis of the perceived characteristics of their members. But because mixed government presumed that royalty and nobility were part of the natural order, it proved vulnerable to the republican tendency of the Enlightenment to treat both estates as vestiges of feudalism. Separation of powers could then appear as a more attractive model of government because it did not depend on an archaic image of society.

Both theories emerged from the great disputes of the mid-seventeenth century—the era of revolution and regicide, Long Parliament and Commonwealth, the Protectorate of Oliver Cromwell and the Restoration of Charles II. Responding to the royalist reliance on mixed government in the escalating conflict of the 1640s, several supporters of Parliament first sketched a theory of separated powers. In their view, the most objectionable prerogatives were those that enabled the king to govern without Parliament, veto legislation, and suspend or dispense with duly enacted statutes. If these powers were abrogated, the Crown would be restricted to truly executive functions. The regicide of 1649 and the ensuing abolition of the monarchy and House of Lords weakened the model of mixed government even more, while the theory of separation of powers ironically gained support from the mounting reaction against the excesses of a factious Long Parliament that thereafter "governed the country by appointing a host of committees dealing with all the affairs of state, confiscating property, summoning people before them, and dealing with them in a summary fashion." Its critics now ranged across the political spectrum, and they argued that Parliament's proper function was to enact general laws, framed in regular but relatively brief sessions, while the executive conducted the daily activity of governing subject to legislative review. With the restoration of the monarchy and the House of Lords in 1660, mixed government regained its dominant place, and separation of powers was relegated to its secondary position. But many accounts of the constitution now emphasized the special functions that Crown, Commons, and Lords were individually presumed to perform.

In classifying the forms of public authority concerned with lawful governance within the realm, seventeenth-century English thinkers recognized only two powers: legislative and executive. The judiciary remained enfolded within the executive, while royal judges who had often acted as instruments of an arbitrary Crown at whose pleasure they served still commanded more distrust than respect. Yet because the process of doing justice also comprised nearly the entire corpus of executive duties, the administration of government still largely meant the administration of royal justice, while the truly executive aspect of this power was literally to carry out the judgments of the courts. This equation of executive and judicial power also reflected the absence of anything like a national bureaucracy exercising broad administrative functions. Here the English Crown lagged far behind other European monarchies in developing the apparatus of a modern state. Not until its long isolation from European wars gave way after 1688 to prolonged international conflicts would conditions exist to construct a state in which executive power meant ministerial government of a kind unseen (if not entirely unforeseen) in the Stuart age.

The mid-century ideas of separated powers were certainly known to John Locke as he drafted his Two Treatises of Government around 1680. Locke's primary contribution to these ideas was to add a third category of "federative" power covering relations "with all Persons and Communities without the Commonwealth." This power was "really distinct" in itself, not only in being directed toward external affairs but also in being "much less capable to be directed by antecedent, standing, positive Laws, than the Executive, and so must be left to the Prudence and Wisdom of those whose hands it is in." Yet Locke found underlying similarities between federative and executive power. Just as the executive derived from "the power every Man naturally had before he entred into Society" to preserve himself, so federative power concerned relations among communities in an international "state of nature." Moreover, both powers "requiring the force of Society for their exercise," it was "impracticable" to deposit them in different "hands," because the ensuing rivalry could end in "disorder and ruine." Locke's argument for prudence in the exercise of federative power further paralleled his willingness to allow the executive latitude in applying, ignoring, or even defying standing laws. Both forms of governance required the continuous exercise of a discretion that a legislature, meeting occasionally to frame general rules, would lack. While affirming that executive and federative powers were both "Ministerial and subordinate to the Legislative," Locke would allow the executive to retain the prerogatives of negating and dispensing with legislation, and his thinking in this respect resembled that of the royalists of the 1660s.

Other writers evoked the idea of separated powers in succeeding decades. Of these the most notable was Viscount Bolingbroke, whose 1738 tract, The Idea of a Patriot King, shaped American ideals of executive
leadership by prescribing a model of governance in which the king would rise above party turmoil to embody a disinterested notion of the public good. But it was Montesquieu who brought this principle closer to party with mixed government in his famous examination of the English constitution in Book XI of The Spirit of the Laws. Montesquieu began by restating Locke's definitions: “In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.” A few paragraphs later, however, he offered a different triad of powers: “that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.” This classification is commonly taken as the first statement of the modern theory of separated powers, and the ensuing discussion treated the legislative, executive, and judicial aspects of governance without further reference to external affairs.4

As an empirical observer of Georgian politics, Montesquieu left much to be desired. He ignored the concerns of those who fretted, like his friend Bolingbroke, that “corruption” was subverting the independence of Parliament, or the rival claims of those who held, with David Hume, that a Crown lacking influence would sink before an overmighty Parliament. Montesquieu instead followed Locke in thinking that the prerogatives of vetoing legislation and controlling the meeting of the legislature were essential sources of executive power. In fact the use of influence to manage Parliament had rendered the negative redundant since the reign of Queen Anne, while temptations more alluring than lust for power kept its members from sitting year-round in their drafty debating chambers. Nor did Montesquieu take account of other changes that were transforming the British state. The commanding figures of this newly modeled executive were its great ministers—beginning with Robert Walpole—who presided as virtual prime ministers from the stronghold of the Treasury. These men were still royal servants whose tenure depended on both their parliamentary skills and their relations with the king. But the government they administered was no longer the underdeveloped English state of the previous century, with its handful of bureaus and offices clustered around the Privy Council and royal household. In its place there now stood a growing apparatus of departments, boards, and most important, a revenue system that made the limited monarchy of Britain more efficient than its absolutist European rivals.5

Neither Britons nor Americans needed a French nobleman, however eminent, to explain the workings of their constitution. They celebrated Montesquieu because he celebrated their regime, and neither the flaws in his description nor his literary vices detracted from his influence.6 But Americans had more specific reasons for taking his aphoristic defense of the separation of powers to heart (even as they rejected his defense of particular prerogatives). His warnings against concentrating two forms of power in one set of hands appealed to the colonists for the same reason that first attracted the opponents of Charles I to the same idea. Recurring disputes between colonial assemblies and governors reprised the rival claims of parliamentary rights and executive prerogative that had been central to seventeenth-century English politics. In America royal governors retained the right to prorogue and dissolve assemblies, powers they freely used to send turbulent legislatures home in the hope that a respite or new elections would make their next meeting more pliable. In Britain the abuse of this power was barred by statutes requiring Parliament to meet once every three years and elections to occur no more than seven years apart. Moreover, Parliament had to meet to vote on the supplies that the nation's strategic commitments required. But in America these prerogatives rendered the institutional life of the assemblies precarious, while the reduced urgency of government made their services more dispensable. And colonial governors routinely vetoed bills or insisted that they include clauses suspending final enactment for review and approval by the Privy Council, and they did so not on personal whim but in obedience to instructions from London and without regard to the circumstances warranting particular legislative acts.7

From the memory of the wrongs inflicted by generations of royal governors and the belief that ambitious monarchs and their ministers regularly threatened liberty, the American constitution writers of 1776 drew two great lessons. The first was to "strip" the new state executives of what John Adams called "those badges of domination called prerogatives"; the second was to affirm the principle of separated powers with the fervor that enabled the Virginia constitution of 1776 to declare "that the legislative, executive, and judiciary departments shall be separate and distinct; so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them at the same time."8 As J. M. C. Vile has observed, this "was the clearest, most precise statement of the doctrine which had at that time appeared anywhere, in the works of political theorists, or in the pronouncements of statesmen," for it presupposed that there were three distinct forms of power that could be deposited in separate institutions whose members would serve in only one branch of government at a time. But the theoretical symmetry of this formula was belied in practice. "When Americans in 1776 spoke of keeping the several parts of the government separate and distinct," Gordon Wood has noted, "they were primarily thinking of insulating the judiciary
and particularly the legislature from executive manipulation”—not of sub-
jecting legislators to any external checks other than the good sense of the
electorate.”

The evisceration of executive power was the most conspicuous aspect
of the early state constitutions, which deprived the executive of its polit-
cal independence and nearly every power that smacked of royal prerog-
avative. Governors lost the ability to control the meetings of the assemblies,
much less veto or suspend their acts; most were subject to legislative elec-
tion for the brief term of a year; they exercised only limited powers of ap-
pointment; and executive authority became merely that, the obligation to
carry out the legislative will. When Thomas Jefferson drafted a consti-
tution for Virginia, he went so far as to enumerate the specific preroga-
tives that his proposed “[a]dministrator . . . shall not possess.” The
constitution that Virginia adopted while Jefferson was absent at Congress
declared more simply that the executive “shall not, under any pretence,
exercise any power or prerogative by virtue of any Law, statute, or Cus-
tom, of England,” save a limited power to grant reprieves and pardons.
While this lack of detail did not satisfy Jefferson, the essential principle
remained the same.

In reconstituting the executive, then, Americans paid homage to
Montesquieu’s principle of separation without allowing his (or Locke’s)
defense of prerogative to outweigh the lessons of their own history. The
reactionary character of their animus against the executive became trou-
blesome only after problems of wartime governance exposed the defects of
legislative supremacy. With the memory of monarchical power “before
our eyes,” William Livingston recalled in 1783, “we improvidently raised
a battery against an attack that could never be made upon us, & accord-
ingly constituted the Executive branch too weak & ineffectious to oper-
ate with proper energy & vigour.” Madison reached the same conclusion.
“The want of fidelity in the administration of power having been the
grievance felt under most Governments, and by the American States
themselves under the British Government,” he recalled in 1785, “it was
natural for them to give too exclusive an attention to this primary attribute.”

Much the same impulse propelled an equally fundamental reconstitu-
tion of the colonial councils, the anomalous bodies which in nearly every
colony acted as an upper legislative chamber, an advisory executive coun-
cil, and a high court of appeal (with the governor). The closest analogue
to these bodies in the British constitution was the House of Lords, which
the theory of mixed government made the fulcrum balancing the more
volatile forces of king and Commons—even though the Lords were as

subject to the blandishments of “influence” as the Commons, and nearly
always supported the governing ministry. In Britain this discrepancy be-
tween theory and fact mattered little, but in America the incapacity of the
councils to play their prescribed mediating role seemed more troubling.
Even before the Revolution, the councils were deemed defective not be-
cause they lacked the necessary formal powers but because the social con-
ditions required to sustain mixed government seemed hopelessly absent.
All the colonies had upper classes—some wealthy and cohesive, like the
planter elites of South Carolina and Virginia, with its great cousinry; oth-
ers a gentry only modestly superior to their neighbors, as in New Jersey
and Connecticut—but none possessed an aristocracy in the proper sense.
American councilors lacked the hereditary rights and great estates that
presumably gave the British aristocracy its permanent stake in the weal of
the realm; as creatures of Crown patronage, serving at pleasure, they were
mere cogs in the machinery of influence that spanned the Atlantic, inca-

cable of balancing either prerogative-wielding governors or the turbulent
commons represented in the lower houses of assembly.

When the revolutionaries began reconfiguring the structure of gov-
ernment, the councils were as much an object of reform as the gov-
norships. Their claim to exercise all three forms of power violated the
principle of separation as flagrantly as the “archaic” prerogatives of the
governors. The state constitutions dispersed the multiple powers of
the old councils among a new array of institutions: senates to act as upper
legislative chambers, councils of state to serve as advisory boards for the
executive, and high courts of appeal to cap the newly distinct judicial de-
partment of government.

Yet if this process of disaggregation simplified the task of making
separation of powers the dominant constitutional paradigm, the older im-
agery of mixed government retained a residual hold on American think-
ing. By default, the new senates became the one institution expected to
provide a measure of balance—a check—within government itself. In the
absence of a legal aristocracy, it was not evident how an American senate
could play the same mediating role as the House of Lords. Although
seven states required either senators, their electors, or both to hold more
property than members or electors of the lower house, the social distance
between the chambers was trivial. Yet so long as the notion survived that
the senate represented a social elite, mixed government and the more
functional theory of separated powers remained permeable. John Adams
did not give the senate a distinct social character in his influential
Thoughts on Government, yet the concept of mixed government still
echoed faintly when he described it “as a mediator between the two ex-
treme branches of the legislature, that which represents the people and that which is vested with the executive power.” Mixed government resonated far more strongly in the tract that the Virginia planter Carter Braxton wrote in response to Adams, which called for an aristocratic “council of state” whose members would serve for life. At the other end of the spectrum of opinion, more populist writers imagined eliminating the senate entirely or giving it advisory powers only.16

Dispersing the multiple functions of the colonial councils affected the new shape of the executive in one other way: by requiring governors to act in consultation with councils of state whose members were elected either by the assembly or by the people at large. Just as legislative power was best divided between two houses, so executive power was to be vested in a plural body of which the governor was only the leading member. These councils were not conceived as a ministerial cabinet. Their members were not heads of administrative departments but advisers whose counsel the governor should take in the normal course of discharging executive duties. Should their advice be ignored, councilors were expected to make a formal record of their dissent. The state constitutions thus presumed that governors could not be trusted to act decisively on their own individual authority. Moreover, in most states governors lacked authority to appoint the subordinate officials for whose administration they were presumably accountable.27

To constitute a weaker executive would have been nearly impossible. Had Americans not learned the history of the Long Parliament and the dicta of Montesquieu so well, they might have moved to deconstitutionalize the executive entirely, leaving the legislature to delegate executive tasks as it saw fit. Or had they prudently foreseen the problems of governance that prolonged war would create, they might have anticipated that victory could depend more on the effective use of executive discretion than on fidelity to legislative supremacy. Respect for the idea of a balanced constitution ran deep enough for the executive to be recognized as a distinct department, but not to annul older lessons. Yet as powerfully as this anti-executive bias worked in 1776, it quickly began to wane. The New York constitution of 1777 marked a first step away by allowing the governor to be elected by popular vote for a term of three years. Thus freed from political dependence on the legislature, however, the executive could not be trusted completely. New York was the first state to create an external check on the legislature, but it vested this limited negative in a council of revision that included the chancellor and justices of the supreme court as well as the governor; powers of appointment were similarly placed in a second council made up of the governor and four sen-

ators. This movement to revitalize the executive continued in the Massachusetts constitution of 1780, but again ambiguously. Here, too, the people elected the governor, but for a term of only one year. Massachusetts was the first state to give the governor alone a limited veto over legislation. But in conducting “the executive part of government,” including appointments to all civil offices, he was still obliged to act with the advice and consent of the council.28

The restoration of executive power in these states reflected the active part that John Jay, Gouverneur Morris, James Duane, and Robert R. Livingston took in drafting the New York constitution and which John Adams played in Massachusetts. All were actively involved in mobilizing the country for war, and their ideas of republican government were more prudent than enthusiastic. But the prevailing understanding of the executive was still tinged by anti-monarchical sentiments that had little room for reviving monarchical prerogatives or empowering governors to check the excesses of the legislature. Americans preferred a plural or conciliar executive to the idea that a single individual could hold the plenum of executive power, and they still regarded separation of powers more as a formula for restricting the executive than as a symmetrical balance among coequal departments. It is a mark of the misgivings that militated against the executive that as late as 1785 Madison could confess that he had formed “no final opinion whether the first Magistrate should be chosen by the people at large or whether the power should be vested in one man assisted by a council or in a council of which the President shall be only primus inter pares.” The most promising remedy for the vices of republican misrule, he told Caleb Wallace, lay in creating true senates or a body like the New York council of revision.29

In this same letter, Madison identified a further ambiguity in American thinking when he suggested that the executive was no longer “entitled” to “the ad place” in the structure of state government because “all the great powers which are properly executive [were] transfered to the Federal Government”—that is, the matters of war and diplomacy which were prerogatives of the British Crown. His comment suggests how the problem of federalism introduced a further complexity in defining the proper authority of a republican executive. The authority once claimed by the Crown had devolved on two levels of government, not only contributing to the weakness of the state executives but also complicating the task of understanding the nature of Congress itself, a body which had the appearance of a legislature but responsibilities customarily associated with the Crown.

Given its character as a “deliberating executive assembly,” Congress...
was not so much an imbalanced government as an anomalous institution to which the concept of balance seemed irrelevant. True, it had a president, but his essential duties were to carry on correspondence and to act as a speaker of the house. The multiplicity of the functions Congress discharged frequently led more businesslike members to propose reforms that would transfer numerous tasks to an administrative bureaucracy. Daily reviewing what Robert Morris called the "damned trash" of routine expenditures and mundane matters, Congress seemed a monument to an inefficiency that was compounded by patterns of rotation and leave-taking which kept its membership in continual flux. Rank "mismangement" was the necessary result, Morris charged, "because no man living can attend the daily deliberations of Congress and do executive parts of business at the same time." A series of efforts to establish administrative boards finally led to the creation of four executive departments in 1781, with Morris returning from private life to become superintendent of the first organized and most important, the department of finance.

This effort to disaggregate the functions of Congress was part of "the efficiency side" of the separation of powers. These pragmatic reforms were designed to unburden Congress of decisions that need not require its collective attention while delegating the administration of finance to an individual whose qualifications were widely respected. Morris's conduct in office, however, had the ironic effect of confirming both republican prejudices against the executive and the potential benefits of an "energetic" administration. His bold but ultimately rash efforts in 1783 to foment discontent among public creditors and the army in order to persuade Congress to adopt his financial program only reminded his detractors of the dangers of allowing ambitious ministers to manipulate legislative deliberations. On the other hand, to his admiring allies—congressional delegates James Wilson, Thomas FitzSimons, and Alexander Hamilton, and his assistant Gouverneur Morris—the vigor with which Morris acted contrasted sharply with the malaise they ascribed to the state and national officials who carried out essential functions of wartime governance. His political errors notwithstanding, Morris's administration illustrated the wisdom of placing executive powers in the hands of a single, energetic, responsible official.

Once Morris left office, Secretary of Foreign Affairs John Jay was the most prominent national official. A former president of Congress, minister to Spain, and peace commissioner, Jay had also had frequent occasion to ponder the problems Congress brought on itself by attempting to manage and discuss everything. When he accepted his new position in 1784, he insisted on the right to consult Congress in person and to conduct its foreign correspondence—signs that he regarded himself as a true minister rather than a glorified clerk. By the summer of 1786 Jay could write Jefferson that he was daily more convinced that the Construction of our Federal Government is fundamentally wrong. To vest legislative, judicial and executive Powers in one and the same Body of Men, and that too in a Body daily changing its Members, can never be wise. In my Opinion those three great Departments of Sovereignty should be for ever separated, as to serve as Checks on each other. Here Jay transposed to national government concerns more often generated within the states. Yet he was writing only a fortnight after he had urged Congress to support his plan to abjure immediate claims to the navigation of the Mississippi in order to secure a commercial treaty with Spain. The opposition Jay evoked from southern delegates did as much to confirm their reservations about the dangers of executive discretion as to illustrate the virtues of executive independence.

At the national level of government, then, Morris and Jay produced a mixed political legacy. No one with substantial experience of the inefficiency of Congress could fail to appreciate the benefits of delegating administrative responsibility to qualified executive officials. But at the point where administration and the formulation of policy overlapped, the lessons were less clear. For those who admired Morris and Jay, much could be said for transferring initiative from a quarrelsome Congress to competent ministers of state. Those who blamed the erratic quality of the American war effort on Congress, or recalled its difficulties in framing terms of peace, similarly wondered whether matters of war and peace were best decided by collective debates. But the prejudice against allowing executive ministers to manipulate legislative deliberations had deep roots—and neither Morris nor Jay had convinced their detractors that this prejudice was misplaced.

Among the delegates gathering at Philadelphia in May 1787, the greatest enthusiasts for an energetic executive were those framers most closely allied with Morris and Jay: Hamilton, Wilson, and Gouverneur Morris. By contrast, Madison's thinking on the executive had evolved little since 1785. Only weeks before the Convention met, he confessed to Washington that he had "scarcely ventured to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be cloathed." He was certain of one thing only: that it was imperative to create an independent executive capable of
withstanding overt manipulation by the legislature. Yet as important as it was to enable this weaker branch to defend itself against legislative encroachments, it remained difficult to imagine the executive as the crucial source of balance within the government as a whole. The Senate remained the most obvious candidate for that mediating role. Only after its limitations became apparent could a broader conception of the utility of the executive emerge to shape the development of the American presidency.

Other framers were less tentative and hesitant about the executive than Madison. But their early comments revealed a spectrum of opinions which ranged from the admiration that Hamilton and John Dickinson voiced for the limited monarchy of Britain to Roger Sherman’s suggestion that no constitutional provision need be made for the executive because it was “nothing more than an institution for carrying the will of the Legislature into effect.” Moreover, the structure of this debate differed from the comparable discussion of representation in several respects. The choices the framers faced in constructing Congress were always fairly obvious, and their positions usually followed the manifest interests of their states. But the longer they discussed the executive, the more puzzled they grew; nor did their positions correlate neatly with the perceived interests of their states. The matrix of issues surrounding the election, term, reeligibility, and removal of the executive proved peculiarly complex. As the delegates repeatedly learned, a decision taken on one of these matters required revisions in one or more of the others. Under these conditions, no delegate or faction could control the course of a debate that proved frustratingly episodic and even circular. At crucial points, Wilson and Gouverneur Morris gave a decided twist to the debate, but at other times so did such lesser figures as John McClurg, William Houston, and Hugh Williamson.

There were three distinct phases in the evolution of the presidency. The first (June 1–6) produced agreement on two major points: to vest the executive power in a single person, who would in turn wield a limited veto over legislation. During the second phase (July 17–26), the framers struggled to reconcile the general principle of an independent executive with different options for rules of election and tenure. Much of this discussion involved weighing the relative disadvantages of election by the legislature, the people, or an electoral college. These doubts persisted into the final stage of debate (September 4–8), but the decisions taken as adjournment neared also made the presidency the net beneficiary of growing reservations about the Senate.

The Virginia Plan offered only a minimalist approach to the problem of executive power. Article 7 proposed that the executive “be chosen by the National Legislature” for a single term of unspecified length, receive “a fixed compensation,” and possess “general authority to execute the National laws” and “to enjoy the Executive rights vested in Congress by the Confederation.” Whether those “executive rights” included matters of war and diplomacy was left unresolved; nor did the Virginia Plan make any provision for powers of appointment. Article 8 further proposed to join the executive “and a convenient number of the National Judiciary” in a council of revision armed with a limited veto over national legislation.

The initial discussion of Article 7 was marked by a mixture of assertion and diffidence. Charles Pinckney opened debate on June 1 by declaring that “he was for a vigorous Executive but was afraid the executive powers” it would inherit from Congress “might extend to peace & war &c which would render the Executive a Monarchy, of the worst kind, to wit, an elective one.” After Wilson moved “that the Executive consist of a single person,” the delegates sat mutely until Nathaniel Gorham, chairing the committee of the whole, asked “if he should put the question.” Serious debate began only after Benjamin Franklin and John Rutledge “ani
devverted on the shyness of gentlemen on this and other subjects.” Thus inspired, two members faulted Wilson’s motion on republican grounds: Sherman suggested leaving the entire subject to the discretion of Congress, while Randolph described “unity in the Executive magistracy” as “the foetus of monarchy” and criticized Wilson for taking the British constitution “as our prototype.” Wilson replied that the royal prerogative did not provide “a proper guide in defining the Executive powers.” Some of those prerogatives were actually legislative, including matters of “war & peace &c. The only powers he conceived strictly executive were those of executing the laws, and appointing officers” not otherwise “appointed by the Legislature.” Far from encouraging a dangerous discretion, Wilson added, unity would reconcile the monarchical advantages of “energy” and “dispatch” with the “responsibility” demanded by republican orthodoxy.

There debate on Wilson’s amendment halted—the delegates “seeming unprepared for any decision on it.” Madison then hinted that the Convention should first decide what powers to vest in the executive before determining whether it should be unitary or plural. Rather than pursue this hint—which ran opposite to his strategy on representation—the delegates turned to the issue of election and tenure. After another brief debate, the committee of the whole endorsed the clauses of the Virginia Plan calling
back to their starting position as qualms about both an electoral college and popular election prevailed over the desire to make reeligibility an incentive for sound administration.

Within this matrix, the nearest thing to a first principle or independent variable was the desire to enable the executive to resist legislative "encroachments." If that is kept in mind, the logic of the positions the framers took on nearly every other aspect of the executive becomes much more explicable. But another factor repeatedly worked to make consensus elusive. In their debates over Congress, the framers were content to allow the states to decide how representatives would be elected. But the rules for electing the executive had to be fixed constitutionally, and here they labored under doubts and uncertainties that reflected the very novelty of the office they were designing. The interplay of these two crucial factors becomes evident if we examine the major questions the framers considered between July 17 and July 26.

**Election.** The framers considered three basic modes of election, and each proved vulnerable to serious criticism. The most obvious alternative was to give the choice to the national legislature, which had the advantage of placing the decision in the nation's most knowledgeable leaders. The countervailing concern, Morris warned, was that the result would inevitably be the "work of intrigue, of cabal, and of faction," producing a pliable official who would become the willing tool of his supporters. The first alternative to this mode was election by the people, which Morris, Wilson, and Madison boldly endorsed on principle. Its great defect was that the framers feared the people would be easily duped by ambitious demagogues; two other objections loomed larger. First, "The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates," Mason observed; they would naturally prefer citizens from their own states, and thus never produce a majority for any candidate. Second, if national majorities did form, Madison predicted, they would take a strongly sectional cast favoring the North, because in a vote taken at large the free white citizens of the South would be a permanent minority.

The third option was to establish an electoral college, an idea first raised by Wilson on June 2, revived by Rufus King, and then revised further when Gerry and Ellsworth proposed to have the state legislatures appoint twenty-five electors. The appeal of this scheme, which briefly took on the aura of a panacea, had little to do with the mode of election per se but rested instead on the support it gave to those who thought that eligibility for reelection would give the executive an important incentive to maintain his independence. Because the college would meet once and
then forever dissolve, the executive could not be bound to toady to its demands. But the advantages of this proposal evaporated when some delegates questioned the inconvenience and expense of gathering electors from distant states, and more important, when they began to doubt whether electors would “be men of the 1st. nor even the 2d. grade in the States.” When the delegates gathered on July 26, Mason canvassed the defects in the various modes of election before concluding “that an election by the Natl Legislation as originally proposed”—for a single term of seven years—“was the best. If it was liable to objections, it was liable to fewer than any others.” With the committee of detail about to begin its work, the Convention endorsed Mason’s motion seven states to three (with Massachusetts unaccountably absent).

Reeligibility. Mason could take this position because he strongly believed that it was “the very palladium of Civil liberty, that the great officers of State, and particularly the executive, should at fixed periods return to that mass from which they were at first taken, in order that they may feel & respect those rights & interests, which are again to be personally valuable to them.” He had included that principle in the Virginia Declaration of Rights in 1776, and nothing since had altered his belief. But other delegates regarded eligibility for reelection as valuable in itself. As Sherman and King both argued, “he who has proved himself to be most fit for an Office, ought not to be excluded by the constitution from holding it.” Two votes on this issue indicated that a majority of delegates agreed, but only so long as they were satisfied that the power of election was safely placed outside Congress. When that prospect evaporated, the Convention had to restrict the executive to a single term.

Length of term. But how long should that term be? If the underlying goal remained an executive capable of protecting his office from intrusive direction by Congress, it followed that the president should serve a reasonably lengthy term. Competence in the administrative aspects of government could not be gained in a day, nor should its benefits be yielded almost as soon as they were felt. Morris made this case forthrightly. When Dr. McClurg of Virginia offered a substitute motion for tenure “during good behavior” after the Convention initially voted for reeligibility, Morris exclaimed, “This was the way to get a good Government.” But statements like those could only spark a nervous reaction in those who worried that a president who grew too comfortable in office would acquire monopolistic ambitions. No magic number defined the optimal term an executive should serve; this calculation also depended on the mode of election and the matter of reeligibility.

Impeachment. The longer the term the executive received, the more important it was to find a mechanism “for defending the Community agst the incapacity, negligence or perfidy of the chief Magistrate.” But here, too, perplexing questions awaited. Was impeachment really necessary for an executive serving a fixed term? Why not limit its reach to the “coadjutors” of the president? What independence could the executive retain if this power was given to the legislature? But what body other than the legislature could exercise this formidable power?

Council of revision. The discussion of all these questions of tenure was shaped by the framers’ overriding concern with the need to curb legislative “encroachments.” The debate over the joint executive-judicial council of revision, however, encouraged the framers to consider executive power and influence in broader terms—to ask what further purposes the executive might serve beyond the admittedly vital one of disproving the “maxim in political Science” which held “that Republican Government is not adapted to a large extent of Country because the energy of the Executive Magistracy can not reach the extreme parts of it.”

In early June, the committee of the whole had vested a limited negative in the executive. Simply reaching this point was a substantial step away from the republican orthodoxy of 1776, for it meant that the Convention already agreed that the legislature should be subject to an external “check.” But Wilson and Madison remained strongly committed to the council of revision, and on July 21 they nearly deadlocked the Convention on its merits.

Their case for the council rested on three propositions. First, “the defence of the executive was not the sole object of the Revisionary power,” Mason observed. It should also be used to discourage or annul the passage of “unjust and pernicious laws,” and to make the executive, Morris added, “the guardian of the people, even of the lower classes, agst. Legislative tyranny, against the Great & the wealthy who in the course of things will necessarily compose the Legislative body.” Second, whatever injury a judicial role in lawmaking did to the strict separation of powers would be offset, Madison argued, by the “valuable assistance it would give in preserving a consistency, conciseness, perspicuity & technical propriety in the laws, qualities peculiarly necessary, & yet shamefully wanting in our republican codes.” But third, and most important, the case for a joint council assumed that the executive, acting alone, would lack the political resources to withstand the legislature. The key word here was “firmness,” for Ellsworth, Madison, and Morris all asserted that without judicial support the executive would not possess the necessary “wisdom & firmness,” the “confidence and firmness,” the “auxiliary firmness & weight” to oppose a dominant Congress. This pragmatic argument reflected the
in chief of the armed forces. Executive power in foreign relations involved only the ceremonial function of receiving ambassadors. Over the next five weeks, however, a growing reaction against the Senate worked in favor of the presidency, encouraging those framers who opposed legislative election and favored reeligibility to renew their efforts. Three days of debate marked turning points in this process. The first occurred when the Convention reconsidered the negative on August 15. After it rejected a new proposal by Madison requiring bills to be submitted separately “to the Executive and Supreme Judiciary Departments”—which inspired further criticism of the impropriety of judicial involvement in lawmaking—Morris and Wilson suggested that it would be better to give the executive an absolute negative, again implying that the Senate would not check the House when measures were afoot to promote legislative control of the executive. Their arguments were strong enough to carry an amendment raising the majority required to overturn a veto from two-thirds to three-fourths of each house.

The other two debates that enhanced presidential authority fell within the realm of federative power. Late in the session of August 17, after a cryptic but momentous debate, the Convention modified the clause authorizing Congress “to make war” to read “to declare war.” Madison’s notes do not fully explain how the framers distinguished these verbs. If King expressed the sense of the meeting when he observed “that make war might be understood to conduct it which was an Executive function,” the substitution would preserve the capacity of the president to wage war with the essential attributes of energy and dispatch. Though Congress could still exert great influence through its power of the purse, allowing it to make war (in the sense of directing operations) was another form of encroachment that would compromise the benefits of holding the president as responsible for the conduct of war as for the administration of government.

Could the same rationale apply to the conduct of foreign relations more generally? This much-examined debate of August 17 was not simply about the proper spheres of Congress and the president; it was no less concerned with the respective roles of the House and the Senate in matters of war and especially peace. While it seemed evident that a decision to go to war should be made bicamerally—not only because it required only a “simple and overt declaration” but also because war could only be waged if both houses voted the necessary supplies—“peace [was] attended with intricate & secret negotiations.” That point should have weighed in favor of the Senate. But as this debate and the discussion of the treaty...
power six days later revealed, a number of framers now thought that the Senate alone should not control American diplomacy. Their objections did not immediately work to enlarge the federative powers of the presidency. In fact, Morris and Wilson, who might be expected to have favored a broader presidential role, preferred to require treaties to be "ratified by a law"—in effect bringing both the president and the House into this process. But while the size of the House and the presumed inexperience of its members rendered it a doubtful partner in this delicate realm, the executive now emerged as the likely beneficiary of the misgivings that the framers were increasingly voicing about the Senate.61

The Convention took up the election of the executive on August 24. It first agreed, with difficulty, that Congress should ballot in joint session. Morris then roundly denounced legislative election as a formula for a supine executive who would be willing to "sacrifice his Executive rights." Two test votes now found the delegates evenly divided on the "abstract question" of restoring an electoral college. With this impasse, further consideration of the issue fell to the eleven-member committee that was appointed on August 31 to propose solutions to "such parts of the Constitution as have been postponed." Among its members were Morris and Madison, which assured that the arguments against congressional election would be thoroughly aired.62

The committee's deliberations were spirited, inventive, and completely satisfactory to no one. In its second report (September 4), the committee offered several proposals that bore directly on the election of the executive and its relation to the Senate. Most important was its revival of the electoral college, now modified to give each state the same number of electors as its membership in Congress. These electors would not meet as one faculty but gather separately in the states—thereby reducing the danger of cabal—to vote for two candidates each, at least one of whom must be an inhabitant of another state. Should the college not produce a majority, the decision would fall to the Senate, choosing from the five highest recipients, with the runner-up in either case being elected to the newly conceived office of vice president. The committee proposed three further changes. First, the president would serve for four years and be eligible for reelection. Second, the power "to make treaties" and to nominate and appoint "Ambassadors and other public Ministers, Judges of the supreme Court, and all other officers of the U.S. whose appointments are not otherwise herein provided for" was now given to the president, acting "by and with the advice and consent of the Senate." Third, the committee devised a removal procedure under which the House would impeach the president and the Senate try the charges brought against him.63

As three ensuing days of debate revealed, the link between the president and the Senate was liable to one critical objection. The committee had responded to the reservations raised about the Senate by giving the president a major role in treaty making and appointments, but it undercut this revision by empowering the Senate to elect the president whenever the electoral college failed to produce a majority. The objection to this clause would have been less severe had the framers thought the electoral college would make an "effectual" choice. In fact, few of them expected the electors to do anything more than nominate candidates. As Randolph, Mason, Wilson, Rutledge, Pinckney, and Williamson argued, the plan would give the Senate "such an influence... over the election of the President in addition to its other powers, [as] to convert that body into a real & dangerous Aristocracy," not least because it would then control all other executive and judicial appointments, down to the level of "tide-waiter."64 Add its power to try impeachments and make treaties, Wilson complained, and one would see that "the Legislative, Executive, & Judiciary powers are all blended in one branch of the Government." When Morris responded that the report made the Senate less dangerous by allowing the executive to share powers previously given to the Senate alone, Williamson retorted that "The aristocratic complexion proceeds from the change in the mode of appointing the President which makes him dependent on the Senate."65

These objections did not outweigh the explicitly political calculations underlying the committee's proposal, which built on the "compromise" of July 16 by giving the large states the advantage in promoting candidates while the smaller states would enjoy greater influence when the final choice devolved on the Senate.66 If either Congress or the House made this election, the large states would have the advantage at both stages. Unable to escape this dilemma, the Convention on September 6 approved both the electoral college and eventual election by the Senate. But almost immediately two committee members found an ingenious solution to the problem. Williamson first moved that the "eventual choice" be made by Congress "voting by states and not per capita," and Sherman then modified this idea to substitute the House of Representatives for the whole Congress. This had the twofold advantage of preserving the political compromise among the states while "lessening the aristocratic influence of the Senate." Sherman's amendment passed with hardly a word of debate and only Delaware dissenting.67
As this concern with the role of the House and Senate suggests, few of the framers anticipated, much less intended, that the election of the president would soon emerge as the most important stimulus for political innovation and the creation of alliances running across state lines. Madison came closest to foreseeing this result when he urged the delegates to recall that their aim was “to render an eventual resort to any part of the Legislature improbable” by encouraging the large states “to make the appointment in the first instance conclusive.” Abraham Baldwin and Wilson also voiced a prescient hope that effective government and “the increasing intercourse among the people” would “multiply” the number of “Continental Characters” from whom electors could make a decisive choice. But the prevailing expectation was that the electoral college would only limit, not eliminate, a legislative role in selecting the president.

Something of this ambiguity also marked the debates of September 7–8. By severing the electoral ties between the Senate and the president and placing the power to impeach in the House, the Convention enlarged the power of the executive at the expense of the Senate in the areas (treaties and appointments) where their authority overlapped. On the matter of diplomatic and judicial appointments, the framers reached near-consensus on the virtues of combining the “responsibility” of executive nomination with the “security” of senatorial advice and consent. But the lengthier debate over the treaty clause revealed a greater disparity of opinion. Had the president been brought into this process as the logical agent to conduct whatever negotiations the Senate desired; or as a “check” on a Senate in which a handful of men (two-thirds of a bare quorum in the most fanciful scenario) might conclude treaties alienating the territory of entire states from the Union; or as “the general Guardian of the National interests”? Only this last remark, offered by Morris, suggests an expansive conception of the executive as the one department best designed to embody a coherent national interest. No one else went as far. Wilson again tried to require the additional consent of the House for treaties, while Madison argued that peace treaties might be made “without the concurrence of the President,” who would “derive so much power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace.” Both motions failed. But the framers better revealed the limits of their conception of executive power by entertaining a flurry of amendments to modify the clause requiring treaties to be approved by two-thirds of the Senate. Although none passed, all presupposed that the Senate would remain the locus of decision for the exercise of this crucial power.

Nothing in this debate suggests that the framers viewed the president as the principal and independent author of foreign policy, or that they would have reduced the advice and consent required of the Senate to the formal approval of treaties negotiated solely at the initiative and discretion of the executive. The prosaic aspects of foreign relations—routine correspondence, consular affairs, minor incidents of diplomacy—would clearly fall to the executive. Thinking of treaties as the cornerstones in the future structure of American foreign relations, and hardly foreseeing the dilemmas that a quarter century of European war soon posed for American diplomacy, few of the framers thought that the executive virtues of “energy” and “despatch” would come into play with quite the frequency or subtlety required of European rulers operating amid an ever-fluctuating balance of power. Yet by repeatedly expressing mistrust for the Senate, the framers indicated that they regarded the president as something more than a convenient conduit for negotiations. Much of the jockeying over the two-thirds clause reflected fears that particular regional interests might be “sacrificed” in a Senate that still closely resembled the Continental Congress. In 1779 and 1786, Congress had plunged into bitterly divisive debates, first over securing access to the Newfoundland fisheries, then over the free navigation of the Mississippi. Both disputes erupted while Congress was drafting instructions for treaty negotiations, and thus illustrated the problem of framing foreign policy in a quasi-legislative manner; both spilled beyond its chambers to foment public mistrust of Congress. Familiar as the framers were with these episodes, they could readily appreciate the diplomatic and political advantages of allowing the president a significant initiative in the conduct of foreign relations. Interpreted in this way, this debate suggests that the placement of the treaty power in Article II was more than a quirk of draftsmanship but less than a complete endorsement of the idea that the general conduct of foreign relations was an inherently executive function derived from British precedent and the Lockean reasoning which explained why “federative power,” though “really distinct” in itself, was most conveniently lodged in executive “hands.”

This debate also illustrates the difficulty of converting the strong views that individual framers expressed about the executive into a coherent set of intentions for the Convention collectively. The growth of the presidency owed more to doubts about the Senate than to the enthusiasm with which Hamilton, Morris, and Wilson endorsed the virtues of an energetic administration. The electoral college similarly owed more to the perceived defects in alternative modes of election than to any great confidence that this ingenious mechanism would work in practice. Whether it would give the president the “firmness” to wield the veto not only to...
resist congressional encroachments but also to serve as a check against unjust legislation was far from certain. Moreover, precisely because the electoral college extended “the great compromise” over representation, with its dubious expectation that the division between small and large states would persist beyond 1787, its formal logic proved irrelevant to the actual politics of presidential election.

The problems that confounded the framers’ efforts to imagine how any system of presidential selection would work anticipated the prolonged experimentation that accompanied the ebb and flow of party competition in the early Republic. No feature of the Constitution stimulated the organization of political parties more than the recognition that control of the national government depended on control of the presidency. That was hardly the result the framers intended, nor was it even an outcome that they could plausibly imagine. Had Britain progressed further toward the norms of cabinet government and strong party connections between executive and legislature that emerged in the next century, the framers might have reasoned differently about the political dimensions of executive appointment and leadership. But nothing like national political parties yet existed in Britain. Ministers still served at the pleasure of a Crown whose capacities for governance remained subject to the personality quirks and genetic vagaries of monarchy. In 1782 and 1783 the political turmoil accompanying the loss of America briefly disrupted the king’s ability to control the selection of ministers, but by the election of 1784 George III had successfully restored the normal pattern in which the king personally chose ministers who would then use the resources of influence to manage a docile Parliament. Attractive examples of the virtues of efficient administration and dynamic leadership could be found in the careers of such ministers as William Pitt, the great commoner and hero of the Seven Years’ War, and Jacques Necker, the reforming director general of French finances in the 1780s. But the ideal of executive leadership that the framers favored remained, in a sense, apolitical. They saw the president not as a leader who would mobilize governing coalitions but as an executive who would rise like a patriot king above party, free from the habits of intrigue and corruption that the lessons of history ascribed to both Stuart kings and Georgian ministers.

George Mason was the only one of the three nonsigners who placed the structure of the presidency high among his objections to the Constitution. At Philadelphia, Mason consistently favored a plural executive, first in the form of a troika with one member from each of the nation’s three regions, then of a six-member council of state, also regional in composition, and empowered to “make all appointments and be an advisory body” to the president. Without such a “Constitutional Council,” the president would be unsupported by proper information and advice, and will generally be directed by minions and favorites; or he will become a tool to the Senate—or a Council of State will grow out of the principal officers of the great departments; the worst and most dangerous of all ingredients for such a Council in a free country...”

Mason’s council was manifestly not a formula for a ministerial cabinet but a variant of the conciliar executive of the states. In this form it drew striking support when Mason moved (September 7) to instruct the committee on postponed parts to draft a suitable provision. Franklin thought it a useful way to avoid “caprice” in appointments; Wilson hoped that it could replace the Senate as “a party to appointms”; and Dickinson argued that “it wd. be a singular thing if the measures of the Executive were not to undergo some previous discussion before the President.” To placate his grumpy colleague, Madison also supported the proposed instruction, but its rejection only confirmed Mason in his dissent.

Of the three likely sources of improper influence over the president—cronies, the Senate, or a cabinet—the one that most alarmed Mason was the Senate. Though he was as much its architect as any framer, Mason was also the one delegate most troubled by the Senate’s “aristocratic” character. “His idea of an aristocracy was that it was the governt of the few over the many,” Mason noted on August 8, while resisting a proposal to empower the Senate to “originate” money bills. “An aristocratic body, like the screw in mechanics, work[n]g its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency.” The Senate would embody “the few” not in any representative sense—not as the institutional repository of “characters, distinguished for their rank in life and their weight of property” or of “family,” as Dickinson urged; nor as a chamber in which “the rich” could be quarantined, as Morris argued—but literally because it was small, hence potentially conspiratorial, and if its formal powers allowed it to control the springs of government. That was why Mason favored restricting its authority over money bills, and why he thought the reallocation of power between the Senate and the president would compound the danger of aristocracy. The factors that “will destroy any balance in the government,”
Mason noted, were the "great powers" the Senate would exercise "of altering all money bills," joining the executive in appointments and treaties, and trying impeachments, all of which "their duration of office and their being a constantly existing Body" would make more dangerous still. These "long continued sessions" could have been avoided had a formal executive council been created; instead the "alarming dependence and connection" between the Senate and the president would abet their "usurpations." By making treaties the "supreme laws of the land," the Constitution would also give the president and the Senate an "exclusive power of legislation." Though Mason professed to be uncertain whether a government that would "commence a moderate aristocracy" would evolve into a "monarchy, or a corrupt, tyrannical oppressive aristocracy," the source of its future imbalance was evident.8

Mason did not cite Montesquieu to support these claims, and he explicitly invoked the language of separated powers only when he objected to allowing "that unnecessary & dangerous Officer the Vice President" to preside over the Senate, "for want of other Employment." Other Anti-Federalists were less reticent about appealing to Montesquieu, but they did so largely to echo Mason's indictment of the Senate. When they faulted the Constitution for violating the separation of powers, their overarching concern was neither with the revival of an executive veto nor the specter of judicial review but with what the minority in the Pennsylvania convention called "the undue and dangerous mixture of the powers of government" in the Senate, the one "body possessing legislative, executive, and judicial powers." Its executive power inhered in its responsibility for appointments and treaties; its judicial power in the trial of impeachments, which it might use "to screen great delinquents from punishment," in effect acting as both "judge and party" because the "principal officers" of the government would "derive their offices in part from the senate." Whatever "weight and importance" the president enjoyed would depend on "his coincidence with the views of the ruling junto in that body." In practice, the president "may always act with the senate, but never can effectually counteract its views," the "Federal Farmer" warned, and in contests between the two houses of Congress, the executive might similarly "aid the senatorial interest when weakest, but never can effectually support the democratic [House] however it may be oppressed." Not only would this connection "destroy all independence and purity in the executive," the Pennsylvania minority declared, but the presidential power of pardoning, unregulated by any council, could in turn be used to "screen from punishment ... his coadjutors in the senate."

This was the formula that other Anti-Federalists repeated with little variation. The easy consensus they discovered created other conceptual difficulties, however. Committed as they were to defending state sovereignty, Anti-Federalists could not readily attack the Senate on representative grounds. They argued instead that senators serving six-year terms, without fear of recall, would have time enough to elevate personal ambition above loyalty to constituents. Anti-Federalists also had to differentiate the aristocracy they detected in the Senate from the aristocracy they attributed to the House. When the "Federal Farmer" took up this issue, he conceded that "the aristocratical and democratical interests" in American society were "too unequal . . . to produce a balance" between the houses. Instead of a Lords-like Senate formed "on pure principles" of "its numbers and wisdom, its extensive property, its extensive and permanent connections," Americans would have "a senate composed of a few men, possessing small property, small and unstable connections," whose influence would depend on their ability "to dispose of the public offices, and the annexed emoluments." In fact, the members of both houses would come from "the same grade in society," the "Federal Farmer" predicted, and "probably, if there be any difference, the senators will be the most democratic." Nor would there be much to distinguish the two chambers beyond "the partitions . . . of the building in which they sit," for they were likely to share "the same motives and views, and therefore pursue the same system of politics." Far from worrying that the proposed Senate would be too aristocratic, the "Federal Farmer" was thus driven to wish that the Senate could somehow be drawn "from a pure source" of prestige, wealth, and influence—that it could be made more aristocratic, because only thus could the government be properly balanced.4

In explaining why the Constitution threatened the separation of powers, Anti-Federalists thus took the peculiar position of exalting the British constitution in the language of mixed government. The great vice of the scheme of checks and balances proposed by the framers was that it lacked the social sources of stability that mixed government ascribed to the British constitution. This was the concern that inspired Patrick Henry to praise the British constitution in terms even Hamilton could not have surpassed. What made that government "superior . . . to any Government that ever was in any country," he told the Virginia convention in his restlessly impassioned speech of June 9, was that the House of Lords stood ever ready to "keep the balance" between the Commons and a Crown whose rivalry would necessarily endanger the "hereditary nobility" as well. The motive that inspired the Lords to do their constitutional duty was "self-love," by which Henry meant their personal interest in their permanent rights and estates; but such attachments hardly resembled the crude
ambitions that Henry thought the Constitution would release. "The President and Senators have nothing to lose," he warned. "They have not that interest in the preservation of the Government, that the King and Lords have in England." The "real balances and checks" of the British constitution seemed far superior to the mere "checks on paper" the Constitution proposed. It would have been less "dangerous" to omit the usual republican prohibition against titles of nobility, Henry suggested, than to make "the perilous cessions of power contained in that paper."86

Henry's point was not that it would be better to establish a nobility but that in the absence of a true aristocracy, senators would seek to convert themselves into an aristocracy of ambition. Anti-Federalists disagreed whether senators were more likely to come from the upper strata of American society or from the ranks of the crassly ambitious, but once the cast was chosen, there seemed little doubt about the drama they would plot. By colluding with the president and exploiting its lengthier tenure and sessions, the Senate would use its legislative powers to overawe the House, its appointive powers to create a network of dependents (embracing pliable members of the lower House or their families), and the treaty power to legislate in its own right. In the most extreme scenario, a mere handful of senators (the proverbial two-thirds of a bare quorum required to conclude a treaty) could secretly assemble to strike some heinous deal with a foreign power—dismembering the Union, for example, or sacrificing the vital interests of individual states or entire regions—and thereby irrevocably confirm their own coup as the supreme law of the land. Like the Convention that had created it, the Senateloomed as a conspiratorial den.

This emphasis on the "baneful aristocracy" of the Senate, however, made it more difficult to criticize the presidency alone. Anti-Federalists depicted the president less as an independent wielder of power in his own right than as a senatorial co-conspirator, "a mere primus inter pares" but little more.87 To be sure, they often suggested that the formal powers of the president equaled or exceeded the prerogatives of a British king. "[W]herein does this president, invested with his powers and prerogatives, essentially differ from the king of Great-Britain, (save as to name, the creation of nobility and some immaterial incidents)?" asked "Cato."88 The president might not be "dignified with the magic name of King," warned "Tamony," but as "commander of the fleets and armies of America . . . he will possess more supreme power, than Great Britain allows her hereditary monarchs," notably because the president "may be granted supplies for two years, and his command of a standing army is unrestrained by law or limitation."89 But their more compelling fear was not that the executive department would evolve into an institutional monarchy, exploiting the same sources of influence that enabled the Crown (king and ministry) to manage Parliament. They worried instead that ambition or desperation would drive individual presidents to attempt to set themselves up literally as kings. Rather than relinquish his rulership and endure the relegation that the republican rule of rotation required, would a retiring president not risk everything to retain power, ordering his ruthless janissaries in the standing army to repress whatever resistance appeared? "To be tumbled headlong from the pinnacle of greatness and be reduced to a shadow of departed royalty is a shock almost too great for human nature to endure," warned "An Old Whig."90 Were such a president "a favorite with his army" and devoid of "the virtue, the moderation and love of liberty which possessed the mind of our late general"—and when would another Washington appear?—he would "die a thousand deaths rather than sink from the heights of splendor and power into obscurity and wretchedness."91 And what would happen, Henry asked, should a president be formally charged with "crimes" against his office? "Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push [for the American throne]?"92

Here again the Anti-Federalist case ironically owed as much to the language of mixed government as to the maxims of separated powers. The president and the Senate could not be made perpetually reeligible for office precisely because they must lack the hereditary rights and properties of estates—the social attributes—that gave British kings and nobility their permanent stake in the welfare of the realm. No Anti-Federalist writer developed this point more effectively than the "Federal Farmer." "Men who hold property, and even men who hold powers for themselves and posterity, have too much to lose, wantonly to hazard a shock of the political system," he argued, "to risque what they have, for the uncertain prospect of gaining more." But the case would be altogether different in the United States, where the temptations of power would overwhelm all restraint. "When a man shall get the chair, who may be re-elected from time to time, for life," the "Federal Farmer" predicted,

his greatest object will be to keep it; to gain friends and votes, at any rate; to associate some favourite son with himself, to take the office after him: whenever he shall have any prospect of continuing the office in himself and family, he will spare no artifice, no address, and
This description would fit “nine-tenths of the presidents,” he added. They “will have no permanent interest in the government to lose, by contests and convulsions in the state, but always much to gain, and frequently the seducing and flattering hope of succeeding.” But with a rule of rotation, the situation would be reversed; presidents deprived of the temptations of succession might then be trusted with substantial power. Otherwise it would be better “to create a limited monarchy at once,” with a presumed permanent interest in preserving the state, than to incite ambitious presidents “in attempts of usurpation.”

Predictions like these were faithful to the tales of liberty lost that were a staple of radical Whig literature. But precisely because they imagined how the entire constitutional system might collapse in extremis, they offered little insight into how Anti-Federalists thought executive power would be used in the course of normal governance. Their analyses left little room to assess the political advantages that might enable the presidency to emerge as the focal point of national governance without evolving into a surrogate of monarchy. Yet here the rhetorical Anti-Federalist tendency to leap to shrill conclusions reflected the genuine problem of anticipating how the presidency would work. Indeed, Anti-Federalists often shied away from examining the executive in any sustained way. It was symptomatic of this problem that “Brutus” could provide the most acute discussion of judicial power in the Anti-Federalist corpus yet never examine the executive in the sixteen essays he published between October 1787 and April 1788, or that in four weeks of deliberation, the Massachusetts convention spent only three days on the executive and judicial articles, and in terms that Benjamin Russell, reporting its debates, deemed unworthy of publication. When the “Federal Farmer” finally reached the subject in his thirteenth and fourteenth essays, he was far more concerned with the modest limitations placed on the appointment of congressmen to offices than with the presidential veto, a topic he professed to take up “rather as a matter of amusement” and then dismissed in a single paragraph which concluded that the framers would have done better to imitate the New York council of revision (as Madison originally proposed). Patrick Henry’s fulminations at the Richmond convention largely spared the presidency. There the task of criticizing the executive fell to Mason, who mixed a moderate caution against presidential reeligibility with the xenophobic warning that “the great powers of Europe” would be so “interested in having a friend in the President” that they would either “interpose” in his appointment by bribing the electors, or else offer him a “pension” to do their bidding.

For the Virginia Anti-Federalists, however, such fears were less an abstract assessment of the foreign-policy powers of the executive than a reflection of two political concerns: anxiety about the security of southern interests in the navigation of the Mississippi, and a brazen appeal to the Kentucky members, who were regarded as the swing bloc within the convention. Whenever the electoral college failed to decide—as Mason insisted it must always fail to do—it would not matter that the choice would fall to the House, for a majority of northern states would select a president who would collude with their counterparts in the Senate to surrender southern rights and interests under the unassailable authority of the treaty power and supremacy clause. A president might negotiate “a partial treaty,” then summon the Senate into session without notifying “those States whose interest he knew to be injured” by it, thus making it arithmetically possible for as few as ten northern senators from five states to “relinquish and alienate territorial rights, and our most valuable commercial advantages.” Even were southern senators present, William Grayson warned, they would have to be “nailed to the floor”; should they “be gone but one hour, a treaty may be made by the rest yielding that inestimable right” to navigate the Mississippi.

Where did the greater danger lie: in the presidency or the Senate? Like other Anti-Federalists, Grayson assumed that the true danger lay in their collusion. And this in turn illustrates the great conceptual difficulty they faced in linking the presidency to the larger case for consolidation. Of the three departments of the federal government, the executive was the one which Anti-Federalists emphasized least. In their criticisms of Article II they found no middle ground between the specter of monarchy and the danger of cabal with the Senate; they could not imagine the president acting as an independent source of political influence within the government, much less being the focus of political agitation without. If the president proved to be a tool neither of foreign powers nor of his co-conspirators in the Senate, what role would he play?

**FEDERALISTS NONETHELESS EXPECTED** charges of monarchism to be leveled against the presidency. That was why Tench Coxe devoted the first substantive essay published anywhere in favor of the Constitution largely to contrasting the “nature and powers of the head” of Great Brit-
ain with those of “the ostensible head of ours.” Those contrasts were pun-
gently drawn. In Britain “the king is hereditary and may be an idiot, a
knave, or a tyrant by nature, or ignorant from neglect of his education,”
Coxe noted, “yet cannot be removed, for he can do no wrong.” The pres-
ident would be a creature of the people, and “cannot be an idiot, [and]
probably not a knave or tyrant, for those whom nature makes so, discover
it before the age of thirty-five.” Nor would presidents possess the income
and estates that elevated European monarchs above their subjects. It
seemed more likely “that many citizens will exceed him in shew and ex-

No citizen of America has a fortune sufficiently large, to enable him
to raise and support a single regiment. The President’s salary will be
greatly inadequate either to the purpose of gaining adherents, or of
supporting a military force: He will possess no princely revenues,
and his personal influence will be confined to his native State. Be-
sides, the Constitution has provided, that no person shall be eligible
to the office, who is not thirty-five years old; and in the course of
nature very few fathers leave a son who has arrived to that age.

Where would a president find the “ensigns” of kingship? “He has no
guards, no regalia, none of those royal trappings which would set him
apart from the rest of his fellow citizens.” For Anti-Federalists it was the
radical absence of these “royal trappings” from American society that
would drive the desperately ambitious to pursue their desire for kingly
preeminence. But from this same circumstance Federalists drew the op-
posite conclusion. Executive power in the United States could never turn
monarchical because presidents must derive all their authority and influ-
ence from the Constitution itself.

When Anti-Federalists indicted the aristocratic tendencies of the
Constitution in the language of mixed government, they inspired their
adversaries to reply in more pragmatic, functional terms. In denying that
any class of national officials could ever possess such independent sources
of authority, Federalists thus proved more faithful exponents of the idea
of separated powers than their opponents. The theory of separated powers
could at last escape the shadow of mixed government because Federalists
dismissed monarchy and aristocracy as obsolete categories of analysis, ir-
relevant to the new republican world the Revolution had created. How-
ever the tasks of government were now to be classified—as legislative,

executive, judicial, or federative—and distributed, they would be defended
in essentially functional terms. Though many Federalists hoped that the
national government would indeed recruit its members from the elite
ranks of society—and sometimes confessed as much in public—they
rarely described either the presidency or the Senate as the institutional
embodiments of any distinct strata of the larger society.

Far from it: They defended these institutions in terms that almost
transparently justified the overt provisions of the Constitution. Common
sense and simple arithmetic suggested that the fixed terms of presidents
and senators offered no formula for lifelong or hereditary office, while the
arrival of a fresh class of senators every two years would preclude incum-
ents from pursuing their conspiracies. “Machiavel and Caesar Borgia to-
gether could not form a conspiracy in such a senate,” John Dickinson
noted in his second “Fabius” essay, “destructive to any but themselves and
their accomplices.” If the president and the Senate used the power of
appointment to corrupt members of the House, would not the prohibition
against holding office under two departments still preserve its institu-
tional integrity? Simple arithmetic also cautioned against equating the
president’s veto with the absolute negative of the British crown. As Coxe
noted, this “modified and restrained power must give way to the sense of
two-thirds of the legislature. In fact it amounts to no more than a serious
duty imposed upon him to request both houses to reconsider any matter
on which he entertains doubts or feels apprehensions; and here the people
have a strong hold upon him from his sole and personal responsibility.” The
negative was an incentive to deliberation—a friendly office,” one Virginia
writer put it, likely to be used only on “capital occasions,” or, another
commentator observed, when “prejudices, passions, and partial views”
hastened Congress into unwise measures.

Points so easily made required little sustained theorizing. Nor were
Federalists hard-pressed to defend the connection between the president
and the Senate. They could not deny that the Senate would exercise some
executive powers. This was manifestly true in the case of appointments,
and arguably well as in treaty-making. Wilson conceded the dual
character of the Senate in his statehouse speech but denied that this
would concentrate power unduly. Just as the Senate could not legislate by
itself, so “in its executive character, it can accomplish no object, without
the concurrence of the president.” Against the specter of collusion, Fed-
eralists emphasized the defects of Mason’s favored scheme for a “privy” or
“constitutinal” council to the president, to be “made personally responsi-
bale for every appointment to office, or other act, by having their opinions
recorded.” Was it likely that such a council would check the president
more effectively than the Senate? "From the superiority of his talents, or the superior dignity of his place," observed "A Native of Virginia," the president "would probably acquire an undue influence over" a majority of his councilors, "at the same time that he would have the means of sheltering himself from impeachment, under that majority." In Britain royal councilors and ministers had to be held accountable for their conduct because the king himself could do no wrong, but to adopt that model for America would only dilute the "responsibility" that the Constitution rightly vested in "the first Magistrate [who] is the efficient Minister of the people, and as such, ought to be alone responsible for his conduct." Moreover, the problem of constituting a council would replicate the dilemmas that had vexed the framers in designing the presidency. If it was appointed by Congress, Alexander C. Hanson asked, would that not violate the canon of separated powers by rendering the executive "dependent" on the legislature? But if councilors served on good behavior, that would require establishing a "tribunal" to judge their conduct, which in this case was less behavior or action than wisdom and opinion, for which "there can be no sure criterion." An independent Senate would thus provide a more prudent source of advice to the president than a body modeled either on a royal council or the executive boards in the states. Yet in making these comparisons, both sides largely ignored the form of council most likely to emerge in practice: a protocabinet in which the president would draw his advice from the heads of departments who constituted the actual government. James Iredell, the beleaguered Federalist spokesman in North Carolina, provided a rare exception to this neglect in his Answers to Mr. Mason's Objections. After faulting Mason for his loose allusions to British practice and for failing to explain how a constitutional council could be established, Iredell suggested that the clause authorizing the president to require "the opinion, in writing" of his principal subordinates was a better security.

He is not to be assisted by a Council, summoned to a jovial dinner perhaps, and giving their opinions according to the nod of the President—but the opinion is to be given in the utmost solemnity, in writing. No after equivocation can explain it away. From these written reasons, weighed with care, surely the President can form as good a judgment as if they had been given by a dozen formal characters, carelessly met together on a slight appointment.

Iredell's encomium on opinions presented solemnly "in writing" mirrored the Anti-Federalist fascination with councilors boldly recording their dissents in a book. Neither inspired a serious inquiry into the nature of collective decision-making within the executive. How cabinet officials would stand in relation to either the president or Congress was a matter that also went unexplored. For Iredell and other Federalists, it was enough to establish that a constitutional council promised no advantages over the advice of either the Senate or subordinate executive officials. If responsibility and prudence were the attributes that sound advice should foster, it was "infinitely more safe, as well as more just" to judge the "conduct" of a unitary executive than to hold councilors individually or collectively accountable for their mere advice.

This emphasis on the virtue of concentrating responsibility in a single president complemented the response that Federalists wearily made to the charge that the Constitution would license rabid ambition to run amok. "This evil ... of the possible depravity of all public officers, is one that can admit of no cure," Iredell complained. At times depravity indeed seemed the crucial issue. "The depraved nature of man is well known," Henry reminded the Richmond convention, while agitating the Mississippi question. "He has a natural bias towards his own interest, which will prevail over every consideration, unless it be checked." But if depravity, ambition, and lust for power were the ruling passions of mankind, Federalists answered, no set of checks and balances could long preserve any government. Make universal depravity the premise of government and political debate might as well stop. Treat it not as a uniform rule of conduct but as a danger to be prudently guarded against, however, and the idea of making the president ultimately responsible for the administration of government, and jointly responsible with a distinct Senate for other executive functions, could be defended as a reasonable solution to a manageable problem.

Anti-Federalists probably surprised their opponents by deflecting much of the criticism they might have been expected to make of the presidency toward the Senate. "The objection against the powers of the President is not that they are too many or too great," Wilson remarked at the Pennsylvania convention, but rather that "they are so trifling that the President is no more than the tool of the Senate." Wilson limited his comments on the presidency accordingly. This same economy impoverished the general Federalist treatment of the executive; few Federalists felt compelled to provide a comprehensive survey of Article II. The one exception to this was The Federalist. But modern interpretations
of the original understanding of the executive do not rely on The Federalist merely because it is the most systematic or even in deference to its authors. For Madison's revisionist view of the separation of powers in Federalist 47-51 and Hamilton's examination of the presidency in Federalist 67-77 assume still greater importance in light of the process of constitutional contestation that unfolded as soon as the new government took effect in 1789—and which gave the meaning of Article II and "executive power" a critical place in the partisan conflicts of the 1790s. From this vantage point, Hamilton's essays loom larger, not least because they illuminate the conception of leadership on which the first secretary of the treasury acted. Yet in his essays on the presidency, Hamilton was careful to invoke the theoretical paradigm that Madison sketched in Federalist 47-51, which accordingly provides the appropriate context within which the general discussion of the executive may be situated.

Madison's essays say remarkably little about the specific constitutional arrangements he was ostensibly defending. A reader could hardly tell that the major charges leveled against the Constitution under the rubric of separated powers were the link between the president and the Senate and the improper concentration of all three forms of power in the Senate. Only a single paragraph tucked in the middle of Federalist 51 obliquely endorsed "the qualified connection" the Constitution would create "between this weaker department [the executive] and the weaker branch [the Senate] of the stronger department [Congress]." Though Federalist 48 clearly located the chief source of imbalance in the "impetuous vortex" of the legislature, Madison alluded to the remedies of bicameralism and an executive veto almost in passing, while ignoring the role of the judiciary.

In Federalist 49-50, he dwelled instead on an idea that was irrelevant to the actual debate of 1787-88: Jefferson's scheme to enable any two branches of government to call a popularly elected convention to propose revisions to a constitution whose walls of separation had been breached by the third department. And when Madison finally reached the structure of national government in Federalist 51, he concluded the entire discussion not with a round statement of the theory of checks and balances but by reiterating the ways in which an extended federal republic would break the play of faction—in other words, by repring Federalist 10.

What, then, did these essays provide a coherent restatement of the theory of separated powers that in turn prepared the ground on which Hamilton examined executive (and judicial) power? Madison's initial step was to interpret the dicta of separation in light of his own reflections on the epistemology of the science of politics. While honoring Montesquieu for having brought this concept "most
islative encroachments on other departments, and though as "Publius" he let this point go unmentioned, he reached the ultimate conclusion it supported: No constitutional dispute within government could ever be safely remedied through an appeal to the people out-of-doors. These quarrels would prove too highly charged to be resolved on their merits, while recurring appeals to the people would erode the legitimacy of the Constitution itself."

This conclusion explains why Madison found Jefferson's otherwise irrelevant proposal useful. In asking the people to act as constitutional arbiters, Jefferson merely modified the prevailing assumption that treated the separation of powers as a vehicle for protecting the legislature from the executive while the people themselves served as the principal check on the legislature. By denying that the people could meet that task, Madison eliminated the most important alternative to a reliance on a scheme of checks and balances. The first set of conclusions that Federalist 51 proposed followed readily. If the great danger to separation lay in the legislature, balance could be secured only by dividing its authority bicamerally, restoring a limited veto, and giving the Senate an incentive to support the executive in the exercise of its "constitutional rights."

Madison used this same phrase in the best-known passage of Federalist 51: "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place." Only by awakening new ambitions in the members of the politically weaker branches could the Constitution check the populist pressures and demagoguery that would spur the legislature on its encroaching path. The republican reliance on the check of popular election was not the solution to the problem of ambition; rightly channeled, ambition was the solution to the problem of republicanism. Yet Federalist 51 does not so much explain how these ambitions will work as assume that differences in election and tenure among the branches will foster the desired attachment between "personal motives" and "constitutional rights." Moreover, its final two paragraphs bring the entire discussion of the problem of separation of powers to a surprising conclusion by reminding those faithful readers who recalled Federalist 10 that the "multiplicity of interests" within the extended Republic will provide the chief solution to the deeper challenge of protecting "one part of the society against the injustice of the other part."

The more effective this remedy proved, the less need would arise for "introducing into the government" the "precarious security" attained "by creating a will in the community independent of the majority—that is, of the society itself." In other regimes, that "will" was found in the "hereditary or self-appointed authority" of monarchy and aristocracy—the extras that Anti-Federalists implied they would trust more than the pale replica of Crown and Lords they saw in the president and the Senate. Madison thus answered this charge by suggesting that in an extended republic, the dominant popular house of Congress would be less likely to encroach on the weaker branches.

Madison's treatment of the separation of powers is rich in nuance and theoretical implications; at crucial points it is also allusive and elliptical. In later years, Madison came to doubt whether Federalist 48 had been right to argue that "executive power being restrained within a narrower compass [than the legislature's], and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves." It was Hamilton's exploitation of the ambiguity of Article II that led Madison to reappraise this conclusion, and to review what his coauthor had written about the executive as "Publius." What he found there was ambivalent in its own way.

After Madison left New York in March 1788 to secure election to the Richmond convention, it was entirely appropriate that it fell to Hamilton to explain how the ambitions of the members of the weaker branches would operate in practice. In resuming the quill of "Publius," Hamilton did not have complete editorial liberty. He had to cast his general defense of the executive within the theoretical framework Madison had laid down, and to maintain positions other Federalists had taken. Discussing impeachment in Federalist 66, for example, he followed Madison in affirming that the doctrine of separation barred only a complete concentration of authority in one department. Federalist 71 again echoed Madison by evoking the "almost irresistible tendency" of the legislature "to absorb every other" authority, while Federalist 73 argued that the political advantages that representative assemblies possessed would prevent the executive from wielding the veto wantonly. Hamilton also felt obliged to dispel certain misrepresentations about the presidency still swirling about the public debate, and to do so in ways that would appeal to his primary audience in New York.

Yet Hamilton also embedded in these essays passages that presage the ambitious use of executive power he would make after 1789 when, as secretary of the treasury, he acted much like a prime minister. From his later conduct it is possible to discover in The Federalist those conceptions of the executive which seem most avowedly Hamiltonian—as opposed to the more conventional points he made in his opening essays. With the first sentence of Federalist 70, however, he took a deep, reflective breath and challenged his readers to reconsider the hoary assumption "that a vigorous
Executive is inconsistent with the genius of republican government." Nothing was further from the truth. "A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government." And "energy," Hamilton proceeded to explain, was both a crucial "character in the definition of good government" and the defining attribute of the executive itself. It was also the one attribute that he emphasized in the succeeding seven essays as he described the "ingredients which constitute energy in the Executive:[] unity; duration; an adequate provision for its support; competent powers."  

In making energy the product of each of these "ingredients" of the executive, Hamilton drew a sharp contrast between the traits that republican values desired in a legislature and those most useful in the executive. Legislative deliberations and executive decisions could not be judged by the same criteria, he argued in Federalist 70. In a legislature "differences of opinion, and the jarings of parties ... often promote deliberation and circumspection"; but in the executive, "the disadvantages of dissension" would constantly "embarrass or weaken the execution of the plan or measures to which they relate." Nor was the "maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man" any more "applicable to the executive power."  

Whatever "unbounded complaisance" the executive owed to the true "inclinations of the people" did not extend to "the humors of the legislature," and it was therefore entirely proper to provide the executive with a term in office long enough to encourage him to withstand the "imperious" acts of the legislature.  

All of this was consistent with the image of a president who had to be able to resist congressional encroachments for the laws to be faithfully executed. But when he turned to presidential reeligibility in Federalist 72, Hamilton introduced a more positive theme. "In its most precise signifi-
sent no brief for broad executive discretion in the making of foreign policy. In a passage that resembled (but did not fully follow) Locke’s concept of federative power, Hamilton suggested that treaty making was “a distinct department” that “belong[s], properly, neither to the legislative nor the executive.” Like John Jay, who had treated this clause in Federalist 64, Hamilton emphasized the prudence of dividing this power between the Senate and the president, who would act “as the most fit agent to conduct negotiations.” Hamilton also steered a middle course when he discussed the appointment power in Federalist 76 and 77. Vesting this power solely in a legislature would produce “a full display of all the private and party likings and dislikes” that swirled among its members, while placing it in the president alone might give his “private inclinations and interests” free rein. A further restraint on the capricious exercise of this power existed, Hamilton added, because the consent of the Senate “would be necessary to displace as well as to appoint” a sitting officer, so that an incoming president could not “occasion so violent or so general a revolution” as would disrupt the “steady administration” of government.

Although Hamilton repudiated this last position a year later, its appearance in Federalist 77 remains puzzling. It is difficult to imagine how a new president saddled with holdovers from the prior administration could provide the robust leadership Hamilton already favored. This was the situation that bedeviled John Adams in 1797, when he felt obliged to retain the cabinet he had inherited from Washington—and whose leading members looked more to Hamilton for guidance than to the president. Perhaps in the hurried and harried circumstances of 1788, Hamilton simply did not think through the implications of this statement—or perhaps this position better fit the rhetorical demands of the moment. The immediate challenge was not to expound his own expansive views of executive leadership but to answer the main Anti-Federalist objections within the general theoretical framework that Madison had laid down.

Hamilton’s treatment of this single minor issue illustrates a further ambiguity in his thinking. Among all the participants in the debates of 1787–88, he was best qualified by experience, temperament, and intellect to grasp the “ambivalence of executive power”—its capacity to convert nominal constitutional weakness into overt political advantage. That perception may have been replicated in Hamilton’s assessment of the relation between the debates of 1787–88 and the opportunities for governance that would arise once the Constitution was adopted. The theoretical questions that Madison felt driven to resolve did not bore Hamilton, but neither did they inspire or command his deepest intellectual powers. He was content to follow Madison’s theoretical lead in part because he concurred with its essential tenets, but also because he was already more concerned with the uses to which the power of the new government could be put than with the exact basis upon which its authority would be established. Together, these two men were the great political entrepreneurs who most shaped American politics in the late 1780s and early 1790s, but they approached the task of legitimating the Constitution in strikingly different ways. For Madison the challenge of securing popular attachment to the Constitution depended in crucial ways on the character of the ratification process itself, which he increasingly regarded as an essential component of the larger project of nation-building. Concluded in the right way, it could provide political capital on which the new government could draw as it tackled real issues of public policy.

For Hamilton, by contrast, ratification was at most a hurdle to be surmounted. If the Constitution was rejected, he observed shortly after the Convention adjourned, the ensuing “struggles animosities and heats in the community,” coupled with “the real necessity of an essential change in our situation will produce civil war.” But if it were ratified, Washington’s likely election as first president “will insure a wise choice of men to administer the government and a good administration,” and this in turn “will conciliate the confidence and affection of the people and perhaps enable the government to acquire more consistency than the proposed constitution seems to promise.” Only then would deeper loyalties to the government be forged, and Hamilton made it his project to frame the policies that would best serve to attach the people to the government. In the meantime, the terms on which particular provisions were defended mattered primarily as they promoted ratification. Once the government was launched, Hamilton did not allow the rhetoric of 1788 to constrain his sense of the possible uses of the formal power and informal political initiative of the executive. To his chief detractors, Madison and Jefferson, these efforts displayed the ambivalence of the executive in a new light, spurring them to ask whether Hamilton was using the energy of the executive to attract support to the government, or the government to attract support to the executive.