SECTION TWELVE

On the Presidency

The founders created something unprecedented when they established the office of the American presidency. They were writing in an age of monarchies abroad and very weak state executives at home. Perhaps this is why Publius dedicates more papers to the presidency than any other aspect of the proposed Constitution.

The Anti-Federalists' concerns revolved around the topics of terms, power, and responsibility. Four years was too long a term of office, some argued, and to be re-eligible for office might set up a president to serve for life. Would the president become a monarch in all but name, accumulating followers and gaining power over others? Under the proposed Constitution, the presidency was given considerable power, and Anti-Federalists feared the president could particularly use the appointment power to buy off members of Congress and the pardon power to protect himself and coconspirators. They further worried that the nature of the Senate would work to make that body unable and unwilling to hold a corrupt president responsible through an impeachment trial. Perhaps most surprising for us to hear today is their concern with the vice presidency. That office was established in the executive branch of government but was to be the president of the Senate as well, giving the officeholder a foot in both branches of government and potentially violating the separation of powers doctrine. The vice president, having the power to cast a vote in the Senate when there was a tie, was also problematic as it would give one of the states an extra vote during those times—the vice president necessarily being a citizen of one of the states.

In *Federalist 67*, Publius immediately takes on the charges that the presidency looks too much like a monarchical office. He returns to the theme in numerous papers, particularly *Federalist 69* in which he demonstrates how the president would be subject to impeachment, have a limited veto power and a set term in office, and possess limited powers over war and treaty making, thus making the office very different from that of the British monarchy.

In *Federalist 68*, Publius outlines what we today refer to as the Electoral College, the method by which presidents would be chosen. Unlike what we are accustomed to today, the reader will note that there was not to be anything like a campaign for the office and that people would not vote directly for the president. Rather, the president would be chosen by "men most capable," acting in an environment that would foster deliberation on the qualities and characters of potential presidents.

In *Federalist 70* and *Federalist 71*, which are among the most famous, Publius takes up the cause of an energetic presidency and argues it is essential for republican government. He writes: "Energy in the executive is a leading character in the definition of good government." The standard political theory at the time was that free government could only be based in popularly elected legislatures close to the people and executives needed to be kept weak with limited responsibilities. Publius argues, however, that "a feeble executive implies a feeble execution of the government. 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 so, after turning the theoretical tables, he argues that the presidency in the Constitution is properly set up to be both energetic and safe, which is the subject of the next several papers.

In *Federalist 70*, he argues that the office should be held by a single person rather than a "plural executive," which some of the Anti-Federalists argued would be safer. In *Federalist 71*, Publius makes the case for a four-year term as necessary to give the president the firmness and fortitude to resist temporary delusions that might sweep the public. *Federalist 72* raises serious questions for us in contemporary America. In 1951, we ratified the Twenty-second Amendment to the Constitution, which limited our presidents to two terms in office. That amendment was one the Anti-Federalists could have appreciated, but Publius here lays out a strong case for the danger of telling presidents they are not re-eligible for office.

We know it today as the veto power, but in *Federalist 73*, Publius refers to it as the president's "qualified negative" over legislation. This power is essential, he argues, so that the president can protect his own office against the legislature but also so that presidents can protect the nation from bad laws and force Congress to deliberate further before trying to pass them. While some see this power as giving the president too much ability to impede legislative progress, Publius is more conservative, preferring time for reflection on new legislation and the prevention of laws we might regret from being enacted in the first place.

The Anti-Federalists were very concerned with giving the president the power to offer pardons, arguing a corrupt officeholder could protect himself and offer pardons to his co-conspirators. In *Federalist 74*, Publius argues for two purposes for the power: First, sometimes something goes wrong in the courts of justice, and true justice might need to be restored outside the courtroom. This is the argument most presidents have used for most of their pardons. However, according to Publius, the "principal argument" for giving the president the power to pardon was so that he could offer pardons at critical

moments, such as during a rebellion when they would be useful in re-establishing law, order, and peace in the nation.

Some Anti-Federalists feared the president would form an aristocratic class with the Senate through their constitutionally required partnerships on treaties and appointments to high office. Publius takes up the treaty-making responsibilities of the president and his appointment powers in relation to the Senate in *Federalist 75* and *Federalist 76*. The presidency is not a safe place to deposit sole powers over either of these important responsibilities, he argues, and a partnership with the Senate will not only ensure a safer outcome but a better outcome as well.

QUESTIONS FOR OUR TIME

1. The Electoral College no longer functions as Publius suggested it would in *Federalist 68*. The original electoral system was based on quiet deliberations by a few in each state, while ours today centers on big, expensive campaigns for the hearts and minds of voters. If you were to start over, what electoral system could you devise to give us the best chance of achieving the goal of having, as Publius desired, "a constant probability of seeing the station filled by characters preeminent for ability and virtue"?

2. In *Federalist 71*, Publius makes a strong case for presidential leadership that resists the temporary demands of the people and the legislature. He seems to celebrate leaders who risk being unpopular in the moment in hopes that, over time, the public will come to see things their way and be thankful. With polling, the "constant campaign," and the news cycle that never ends, some consider Publius' ideal of leadership impossible today. Others find it undemocratic in the first place. Should our presidents and other elected officials do what the people want (delegate representation), or should we entrust them to use their own judgement and resist bad ideas (trustee representation)?

3. The Twenty-second Amendment to the Constitution was added in 1951 to limit presidents to no more than two terms. Some at the time argued that it was undemocratic—shouldn't we elect anyone we want to be president? In *Federalist 72*, Publius makes a strong case that term limits are dangerous. What do you think? Is it better to limit our presidents to two terms or should they be eligible to serve longer if the American people wish?

4. The size of the executive branch of government has grown massively since the founding period. Today there are roughly 2 million people working in that branch of government—a number about half the size of the entire U.S. population in 1787. Yet we still just have one president to oversee it all. Should we reconsider the size of the executive branch, the one-person presidency, or make other adjustments for the realities of the 21st century?

5. The Anti-Federalists feared the presidency would grow beyond constitutional bounds, becoming a threat to the other branches of government and to individual Americans' liberty. Particularly in the "modern age" of American politics, which began with Franklin Delano Roosevelt's presidency, the office has grown to have significant power over foreign policy, trade, war, and domestic policymaking. What adjustments are now needed to rebalance our constitutional system, or is the enlarged presidency something that is necessary in the modern age?

FEDERALIST NO. 67

CONCERNING THE CONSTITUTION OF THE PRESIDENT: A GROSS ATTEMPT TO MISREPRESENT THIS PART OF THE PLAN DETECTED

The constitution of the executive department of the proposed government, next claims our attention.

There is hardly any part of the system, the arrangement of which could have been attended with greater difficulty, and there is perhaps none which has been inveighed against with less candour, or criticised with less judgment.

Here the writers against the constitution seem to have taken pains to signalize their talent of misrepresentation. Calculating upon the aversion of the people to monarchy, they have endeavoured to enlist all their jealousies and apprehensions in opposition to the intended president of the United States; not merely as the embryo, but as the full grown progeny of that detested parent. To establish the pretended affinity, they have not scrupled to draw resources even from the regions of fiction. The authorities of a magistrate, in few instances greater, in some instances less, than those of a governor of New York, have been magnified into more than royal prerogatives. He has been decorated with attributes, superior in dignity and splendour to those of a king of Great Britain. He has been shown to us with the diadem sparkling on his brow, and the imperial purple flowing in his train. He has been seated on a throne surrounded with minions and mistresses; giving audience to the envoys of foreign potentates, in all the supercilious pomp of majesty. The images of Asiatic despotism and voluptuousness, have not been wanting to crown the exaggerated scene. We have been taught to tremble at the terrific visages of murdering janisaries; and to blush at the unveiled mysteries of a future seraglio.

Attempts extravagant as these to disfigure, or rather to metamorphose the object, render it necessary to take an accurate view of its real nature and form; in order to ascertain its true aspect and genuine appearance, to unmask the disingenuity, and to expose the fallacy of the counterfeit resemblances which have been so insidiously, as well as industriously, propagated.

In the execution of this task, there is no man who would not find it an arduous effort either to behold with moderation, or to treat with seriousness, the devices, not less weak than wicked, which have been contrived to pervert the public opinion in relation to the subject. They so far exceed the usual, though unjustifiable, licenses of party-artifice, that even in a disposition the most candid and tolerant, they must force the sentiments which favour an indulgent construction of the conduct of political adversaries, to give place to a voluntary and unreserved indignation. It is impossible not to bestow the imputation of deliberate imposture and deception upon the gross pretence of a similitude between a king of Great Britain, and a magistrate of the character marked out for that of the president of the United States. It is still more impossible to withhold that imputation, from the rash and barefaced expedients which have been employed to give success to the attempted imposition.

In one instance, which I cite as a sample of the general spirit, the temerity has proceeded so far as to ascribe to the president of the United States a power, which, by the instrument reported, is *expressly* allotted to the executives of the individual states. I mean the power of filling casual vacancies in the senate.

This bold experiment upon the discernment of his countrymen, has been hazarded by the writer who (whatever may be his real merit) has had no inconsiderable share in the applauses of his party;[40] and who, upon this false and unfounded suggestion, has built a series of observations equally false and unfounded. Let him now be confronted with the evidence of the fact; and let him, if he be able, justify or extenuate the shameful outrage he has offered to the dictates of truth, and to the rules of fair dealing.

The second clause of the second section of the second article, empowers the president of the United States "to nominate, and by and with the advice and consent of the senate, to appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other *officers* of the United States, whose appointments are *not* in the constitution *otherwise provided for,* and *which shall be established by law.*" Immediately after this clause follows another in these words: "The president shall have power to fill up all *vacancies* that may happen *during the recess of the senate,* by granting commissions which shall *expire at the end of their next session.*" It is from this last provision, that the pretended power of the president to fill vacancies in the senate has been deduced. A slight attention to the connexion of the clauses, and to the obvious meaning of the terms, will satisfy us, that the deduction is not even colourable.

The first of these two clauses, it is clear, only provides a mode for appointing such officers, "whose appointments are *not otherwise provided for* in the constitution, and which *shall be established by law;*" of course it cannot extend to the appointment of senators; whose appointments are *otherwise provided for* in

40 See Cato, No. 5.

the constitution,[41] and who are *established by the constitution,* and will not require a future establishment by law. This position will hardly be contested.

The last of these two clauses, it is equally clear, cannot be understood to comprehend the power of filling vacancies in the senate, for the following reasons: *First.* The relation in which that clause stands to the other, which declares the general mode of appointing officers of the United States, denotes it to be nothing more than a supplement to the other; for the purpose of establishing an auxiliary method of appointment, in cases to which the general method was inadequate. The ordinary power of appointment is confided to the president and senate *jointly,* and can therefore only be exercised during the session of the senate; but, as it would have been improper to oblige this body to be continually in session for the appointment of officers; and as vacancies might happen *in their recess,* which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorize the president, *singly,* to make temporary appointments "during the recess of the senate, by granting commissions which should expire at the end of their next session." *Second.* If this clause is to be considered as supplementary to the one which precedes, the *vacancies* of which it speaks must be construed to relate to the "officers" described in the preceding one; and this, we have seen, excludes from its description the members of the senate. *Third.* The time within which the power is to operate, "during the recess of the senate," and the duration of the appointments, "to the end of the next session" of that body, conspire to elucidate the sense of the provision, which, if it had been intended to comprehend senators, would naturally have referred the temporary power of filling vacancies to the recess of the state legislatures, who are to make the permanent appointments, and not to the recess of the national senate, who are to have no concern in those appointments; and would have extended the duration in office of the temporary senators to the next session of the legislature of the state, in whose representation the vacancies had happened, instead of making it to expire at the end of the ensuing session of the national senate. The circumstances of the body authorized to make the permanent appointments, would, of course, have governed the modification of a power which related to the temporary appointments; and, as the national senate is the body, whose situation is alone contemplated in the clause upon which the suggestion under examination has been founded, the vacancies to which it alludes can only be deemed to respect those officers, in whose appointment that body has a concurrent agency with the president. But, *lastly,* the first and second clauses of the third section of the first article, obviate all possibility of doubt. The former provides, that "the senate of the United States shall be composed of two senators from each state, chosen *by the legislature thereof* for six years;" and the latter directs, that "if vacancies in

41 Article 1, Sec. 3, Clause 1.

that body should happen by resignation or otherwise, *during the recess of the legislature of* ANY STATE, the executive THEREOF may make temporary appointments until the *next meeting of the legislature,* which shall then fill such vacancies." Here is an express power given, in clear and unambiguous terms, to the state executives, to fill the casual vacancies in the senate, by temporary appointments; which not only invalidates the supposition, that the clause before considered could have been intended to confer that power upon the president of the United States; but proves, that this supposition, destitute as it is even of the merit of plausibility, must have originated in an intention to deceive the people, too palpable to be obscured by sophistry, too atrocious to be palliated by hypocrisy.

I have taken the pains to select this instance of misrepresentation, and to place it in a clear and strong light, as an unequivocal proof of the unwarrantable arts which are practised, to prevent a fair and impartial judgment of the real merits of the plan submitted to the consideration of the people. Nor have I scrupled, in so flagrant a case, to indulge a severity of animadversion, little congenial with the general spirit of these papers. I hesitate not to submit it to the decision of any candid and honest adversary of the proposed government, whether language can furnish epithets of too much asperity, for so shameless and so prostitute an attempt to impose on the citizens of America.

PUBLIUS

FEDERALIST NO. 68

THE VIEW OF THE CONSTITUTION OF THE PRESIDENT CONTINUED, IN RELATION TO THE MODE OF APPOINTMENT

The mode of appointment of the chief magistrate of the United States, is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit, that the election of the president is pretty well guarded.[42] I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.

It was desirable, that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favourable to deliberation, and to a judicious combination of all the reasons and inducements that were proper to govern their choice. A small number of persons, selected by their fellow citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation.

It was also peculiarly desirable, to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of *several,* to form an intermediate body of electors, will be much less apt to convulse the community, with

42 Vide Federal Farmer.

any extraordinary or violent movements, than the choice of *one,* who was himself to be the final object of the public wishes. And as the electors, chosen in each state, are to assemble and vote in the state in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, that might be communicated from them to the people, than if they were all to be convened at one time, in one place.

Nothing was more to be desired, than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government, might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the president to depend on preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the president in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the number of the electors. Thus, without corrupting the body of the people, the immediate agents in the election will at least enter upon the task, free from any sinister bias. Their transient existence, and their detached situation, already noticed, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time, as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen states, in any combinations founded upon motives which, though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

Another, and no less important, desideratum was, that the executive should be independent for his continuance in office, on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favour was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will be happily combined in the plan devised by the convention, which is, that each state shall choose a number of persons as electors, equal to the number of senators and representatives of such state in the national government, who shall assemble within the state, and vote for some fit person as president. Their votes, thus given, are to be transmitted to the seat of the national government; and the person who may happen to have a majority of the whole number of votes, will be the president. But as a majority of the votes might not always

happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided, that, in such a contingency, the house of representatives shall select out of the candidates, who shall have the five highest numbers of votes, the man who, in their opinion, may be best qualified for the office.

This process of election affords a moral certainty, that the office of president will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honours of a single state; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole union, or of so considerable a portion of it, as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters preeminent for ability and virtue. And this will be thought no inconsiderable recommendation of the constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet, who says

> *"For forms of government, let fools contest . . .*
> *"That which is best administered, is best;"*

yet we may safely pronounce, that the true test of a good government is, its aptitude and tendency to produce a good administration.

The vice-president is to be chosen in the same manner with the president; with this difference, that the senate is to do, in respect to the former, what is to be done by the house of representatives, in respect to the latter.

The appointment of an extraordinary person, as vice-president, has been objected to as superfluous, if not mischievous. It has been alleged, that it would have been preferable to have authorized the senate to elect out of their own body an officer answering to that description. But two considerations seem to justify the ideas of the convention in this respect. One is, that to secure at all times the possibility of a definite resolution of the body, it is necessary that the president should have only a casting vote. And to take the senator of any state from his seat as senator, to place him in that of president of the senate, would be to exchange, in regard to the state from which he came, a constant for a contingent vote. The other consideration is, that, as the vice-president may occasionally become a substitute for the president, in the supreme executive magistracy, all the reasons which recommend the mode of election prescribed for the one, apply with great, if not with equal force to the manner of appointing the other. It is remarkable, that, in this, as in most other instances, the objection which is made, would lie against the constitution of this state. We have a lieutenant-governor, chosen by the people at large, who presides in the senate, and is the constitutional substitute for the governor in casualties similar to those which would authorize the vice-president to exercise the authorities, and discharge the duties of the president.

PUBLIUS

FEDERALIST NO. 69

THE SAME VIEW CONTINUED, WITH A COMPARISON BETWEEN THE PRESIDENT AND THE KING OF GREAT BRITAIN, ON THE ONE HAND, AND THE GOVERNOR OF NEW YORK, ON THE OTHER

I proceed now to trace the real characters of the proposed executive, as they are marked out in the plan of the convention. This will serve to place in a strong light the unfairness of the representations which have been made in regard to it.

The first thing which strikes our attention is, that the executive authority, with few exceptions, is to be vested in a single magistrate. This will scarcely, however, be considered as a point upon which any comparison can be grounded; for if, in this particular, there be a resemblance to the king of Great Britain, there is not less a resemblance to the Grand Signior, to the Khan of Tartary, to the man of the seven mountains, or to the governor of New York.

That magistrate is to be elected for *four* years; and is to be re-eligible as often as the people of the United States shall think him worthy of their confidence. In these circumstances, there is a total dissimilitude between *him* and a king of Great Britain, who is an *hereditary* monarch, possessing the crown as a patrimony descendible to his heirs for ever; but there is a close analogy between *him* and a governor of New York, who is elected for *three* years, and is re-eligible without limitation or intermission. If we consider how much less time would be requisite for establishing a dangerous influence in a single state, than for establishing a like influence throughout the United States, we must conclude, that a duration of *four* years for the chief magistrate of the union, is a degree of permanency far less to be dreaded in that office, than a duration of *three* years for a correspondent office in a single state.

The president of the United States would be liable to be impeached, tried, and, upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law. The person of the King of Great

Britain is sacred and inviolable: there is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected, without involving the crisis of a national revolution. In this delicate and important circumstance of personal responsibility, the president of confederated America would stand upon no better ground than a governor of New York, and upon worse ground than the governors of Virginia and Delaware.

The president of the United States is to have power to return a bill, which shall have passed the two branches of the legislature, for re-consideration; and the bill so returned, is not to become a law, unless, upon that re-consideration, it be approved by two-thirds of both houses. The king of Great Britain, on his part, has an absolute negative upon the acts of the two houses of parliament. The disuse of that power for a considerable time past, does not affect the reality of its existence; and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation. The qualified negative of the president, differs widely from this absolute negative of the British sovereign; and tallies exactly with the revisionary authority of the council of revision of this state, of which the governor is a constituent part. In this respect, the power of the president would exceed that of the governor of New York; because the former would possess, singly, what the latter shares with the chancellor and judges: but it would be precisely the same with that of the governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the convention have copied.

The president is to be the "commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He is to have power to grant reprieves and pardons for offences against the United States, *except in cases of impeachment;* to recommend to the consideration of congress such measures as he shall judge necessary and expedient; to convene, on extraordinary occasions, both houses of the legislature, or either of them, and in case of disagreement between them *with respect to the time of adjournment,* to adjourn them to such time as he shall think proper; to take care that the laws be faithfully executed; and to commission all officers of the United States." In most of these particulars, the power of the president will resemble equally that of the king of Great Britain, and of the governor of New York. The most material points of difference are these: . . . *First.* The president will have only the occasional command of such part of the militia of the nation, as by legislative provision may be called into the actual service of the union. The king of Great Britain and the governor of New York, have at all times the entire command of all the militia within their several jurisdictions. In this article, therefore, the power of the president would be inferior to that of either the monarch, or the governor. *Second.* The president is to be commander in chief of the army and navy

of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the confederacy: while that of the British king extends to the *declaring* of war, and to the *raising* and *regulating* of fleets and armies; all which, by the constitution under consideration, would appertain to the legislature.[43] The governor of New York, on the other hand, is by the constitution of the state vested only with the command of its militia and navy. But the constitutions of several of the states, expressly declare their governors to be commanders in chief, as well of the army as navy; and it may well be a question, whether those of New Hampshire and Massachusetts, in particular, do not, in this instance, confer larger powers upon their respective governors, than could be claimed by a president of the United States. *Third.* The power of the president, in respect to pardons, would extend to all cases, *except those of impeachment.* The governor of New York may pardon in all cases, even in those of impeachment, except for treason and murder. Is not the power of the governor in this article, on a calculation of political consequences, greater than that of the president? All conspiracies and plots against the government, which have not been matured into actual treason, may be screened from punishment of every kind, by the interposition of the prerogative of pardoning. If a governor of New York, therefore, should be at the head of any such conspiracy, until the design had been ripened into actual hostility, he could insure his accomplices and adherents an entire impunity. A president of the union, on the other hand, though he may even pardon treason, when prosecuted in the ordinary course of law, could shelter no offender, in any degree, from the effects of impeachment and conviction. Would not the prospect of a total indemnity for all the preliminary steps, be a greater temptation to undertake, and persevere in an enterprise against the public liberty, than the mere prospect of an exemption from death and confiscation, if the final execution of the design, upon an actual appeal to arms, should miscarry? Would this last expectation have any influence at all, when the probability was computed, that the person who was to afford that exemption might himself be involved in the consequences of the measure; and might be incapacitated by his agency in it,

43 A writer in a Pennsylvania paper, under the signature of TAMONY, has asserted that the king of Great Britain owes his prerogatives, as commander in chief, to an annual mutiny bill. The truth is, on the contrary, that his prerogative, in this respect, is immemorial, and was only disputed, "contrary to all reason and precedent," as Blackstone, vol. 1, page 262, expresses it, by the long parliament of Charles First; but by the statute the 13th of Charles Second, chap. 6, it was declared to be in the king alone, for that the sole supreme government and command of the militia within his majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength, EVER WAS AND IS the undoubted right of his majesty and his royal predecessors kings and queens of England, and that both or either house of parliament cannot nor ought to pretend to the same.

from affording the desired impunity? The better to judge of this matter, it will be necessary to recollect that, by the proposed constitution, the offence of treason is limited "to levying war upon the United States, and adhering to their enemies, giving them aid and comfort;" and that by the laws of New York, it is confined within similar bounds. *Fourth.* The president can only adjourn the national legislature, in the single case of disagreement about the time of adjournment. The British monarch may prorogue, or even dissolve the parliament. The governor of New York may also prorogue the legislature of this state for a limited time; a prerogative which, in certain situations, may be employed to very important purposes.

The president is to have power, with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur. The king of Great Britain is the sole and absolute representative of the nation, in all foreign transactions. He can of his own accord make treaties of peace, commerce, alliance, and of every other description. It has been insinuated, that his authority in this respect is not conclusive, and that his conventions with foreign powers are subject to the revision, and stand in need of the ratification of parliament. But I believe this doctrine was never heard of, till it was broached upon the present occasion. Every jurist[44] of that kingdom, and every other man acquainted with its constitution, knows, as an established fact, that the prerogative of making treaties exists in the crown in its utmost plenitude; and that the compacts entered into by the royal authority, have the most complete legal validity and perfection, independent of any other sanction. The parliament, it is true, is sometimes seen employing itself in altering the existing laws to conform them to the stipulations in a new treaty; and this may have possibly given birth to the imagination, that its co-operation was necessary to the obligatory efficacy of the treaty. But this parliamentary interposition proceeds from a different cause; from the necessity of adjusting a most artificial and intricate system of revenue and commercial laws, to the changes made in them by the operation of the treaty; and of adapting new provisions and precautions to the new state of things, to keep the machine from running into disorder. In this respect, therefore, there is no comparison between the intended power of the president, and the actual power of the British sovereign. The one can perform alone what the other can only do with the concurrence of a branch of the legislature. It must be admitted, that, in this instance, the power of the federal executive would exceed that of any state executive. But this arises naturally from the exclusive possession by the union of that part of the sovereign power which relates to treaties. If the confederacy were to be dissolved, it would become a question, whether the executives of the several states were not solely invested with that delicate and important prerogative.

The president is also to be authorized to receive ambassadors, and other public ministers. This, though it has been a

44 Vide Blackstone's Commentaries, vol. 1, page 257.

rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the government; and it was far more convenient that it should be arranged in this manner, than that there should be a necessity of convening the legislature, or one of its branches, upon every arrival of a foreign minister; though it were merely to take the place of a departed predecessor.

The president is to nominate, and *with the advice and consent of the senate,* to appoint ambassadors and other public ministers, judges of the supreme court, and in general all officers of the United States established by law, and whose appointments are not otherwise provided for by the constitution. The king of Great Britain is emphatically and truly styled, the fountain of honour. He not only appoints to all offices, but can create offices. He can confer titles of nobility at pleasure; and has the disposal of an immense number of church preferments. There is evidently a great inferiority in the power of the president in this particular, to that of the British king; nor is it equal to that of the governor of New York, if we are to interpret the meaning of the constitution of the state by the practice which has obtained under it. The power of appointment is with us lodged in a council, composed of the governor and four members of the senate, chosen by the assembly. The governor *claims,* and has frequently *exercised* the right of nomination, and is *entitled* to a casting vote in the appointment. If he really has the right of nominating, his authority is in this respect equal to that of the president, and exceeds it in the article of the casting vote. In the national government, if the senate should be divided, no appointment could be made; in the government of New York, if the council should be divided, the governor can turn the scale and confirm his own nomination.[45] If we compare the publicity which must necessarily attend the mode of appointment by the president and an entire branch of the national legislature, with the privacy in the mode of appointment by the governor of New York, closetted in a secret apartment with at most four, and frequently with only two persons; and if we at the same time consider how much more easy it must be to influence the small number of which a council of appointment consists, than the considerable number of which the national senate would consist, we cannot hesitate to pronounce, that the power of the chief magistrate of this state, in the disposition of offices, must, in practice, be greatly superior to that of the chief magistrate of the union.

Hence it appears, that, except as to the concurrent authority of the president in the article of treaties, it would be difficult to determine whether that magistrate would, in the aggregate, possess more or less power than the governor of New York. And it appears yet more unequivocally,

45 Candour however demands an acknowledgment, that I do not think the claim of the governor to a right of nomination well founded. Yet it is always justifiable to reason from the practice of a government, till its propriety has been constitutionally questioned. And independent of this claim, when we take into view the other considerations, and pursue them through all their consequences, we shall be inclined to draw much the same conclusion.

that there is no pretence for the parallel which has been attempted between him and the king of Great Britain. But to render the contrast, in this respect, still more striking, it may be of use to throw the principal circumstances of dissimilitude into a closer groupe.

The president of the United States would be an officer elected by the people for *four* years. The king of Great Britain is a perpetual and *hereditary* prince. The one would be amenable to personal punishment and disgrace: the person of the other is sacred and inviolable. The one would have a *qualified* negative upon the acts of the legislative body: the other has an *absolute* negative. The one would have a right to command the military and naval forces of the nation: the other, in addition to this right, possesses that of *declaring* war, and of *raising* and *regulating* fleets and armies by his own authority. The one would have a concurrent power with a branch of the legislature in the formation of treaties: the other is the *sole possessor* of the power of making treaties. The one would have a like concurrent authority in appointing to offices: the other is the sole author of all appointments. The one can confer no privileges whatever: the other can make denizens of aliens, noblemen of commoners; can erect corporations with all the rights incident to corporate bodies. The one can prescribe no rules concerning the commerce or currency of the nation: the other is in several respects the arbiter of commerce, and in this capacity can establish markets and fairs, can regulate weights and measures, can lay embargoes for a limited time, can coin money, can authorize or prohibit the circulation of foreign coin. The one has no particle of spiritual jurisdiction: the other is the supreme head and governor of the national church! . . . What answer shall we give to those who would persuade us, that things so unlike resemble each other? . . . The same that ought to be given to those who tell us, that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism.

PUBLIUS

FEDERALIST NO. 70

THE SAME VIEW CONTINUED, IN RELATION TO THE UNITY OF THE EXECUTIVE, AND WITH AN EXAMINATION OF THE PROJECT OF AN EXECUTIVE COUNCIL

There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope, that the supposition is destitute of foundation; since they can never admit its truth, without, at the same time, admitting the condemnation of their own principles. Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks: it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man, the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of dictator, as well against the intrigues of ambitious individuals, who aspired to the tyranny, and the seditions of whole classes of the community, whose conduct threatened the existence of all government, as against the invasions of external enemies, who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble executive implies a feeble execution of the government. 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.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients, which constitute safety in the republican sense? And how far does this combination characterize the plan which

has been reported by the convention?

The ingredients which constitute energy in the executive, are, unity; duration; an adequate provision for its support; competent powers.

The ingredients which constitute safety in the republican sense, are, a due dependence on the people; a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles, and for the justness of their views, have declared in favour of a single executive, and a numerous legislature. They have, with great propriety, considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people, and to secure their privileges and interests.

That unity is conducive to energy, will not be disputed. Decision, activity, secrecy, and despatch, will generally characterize the proceedings of one man, in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways; either by vesting the power in two or more magistrates, of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and cooperation of others, in the capacity of counsellors to him. Of the first, the two consuls of Rome may serve as an example: of the last, we shall find examples in the constitutions of several of the states. New York and New Jersey, if I recollect right, are the only states which have intrusted the executive authority wholly to single men.[46] Both these methods of destroying the unity of the executive have their partizans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

The experience of other nations will afford little instruction on this head. As far, however, as it teaches any thing, it teaches us not to be enamoured of plurality in the executive. We have seen that the Achaeans, on an experiment of two praetors, were induced to abolish one. The Roman history records many instances of mischiefs to the republic from the dissentions between the consuls, and between the military tribunes, who were at times substituted to the consuls. But it gives us no specimens of any peculiar advantages derived to the state, from the plurality of those magistrates. That the dissentions between them were not more frequent or more fatal, is matter of astonishment, until we advert to the singular position in which the republic was almost continually placed, and to the prudent policy pointed out by the

46 New York has no council except for the single purpose of appointing to offices; New Jersey has a council, whom the governor may consult. But I think, from the terms of the constitution, their resolutions do not bind him.

circumstances of the state, and pursued by the consuls, of making a division of the government between them. The patricians, engaged in a perpetual struggle with the plebeians, for the preservation of their ancient authorities and dignities; the consuls, who were generally chosen out of the former body, were commonly united by the personal interest they had in the defence of the privileges of their order. In addition to this motive of union, after the arms of the republic had considerably expanded the bounds of its empire, it became an established custom with the consuls to divide the administration between themselves by lot; one of them remaining at Rome to govern the city and its environs; the other taking the command in the more distant provinces. This expedient must, no doubt, have had great influence in preventing those collisions and rivalships which might otherwise have embroiled the republic.

But quitting the dim light of historical research, and attaching ourselves purely to the dictates of reason and good sense, we shall discover much greater cause to reject, than to approve, the idea of plurality in the executive, under any modification whatever.

Wherever two or more persons are engaged in any common enterprize or pursuit, there is always danger of difference of opinion. If it be a public trust or office, in which they are clothed with equal dignity and authority, there is peculiar danger of personal emulation and even animosity. From either, and especially from all these causes, the most bitter dissentions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority, and distract the plans and operations of those whom they divide. If they should unfortunately assail the supreme executive magistracy of a country, consisting of a plurality of persons, they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state. And what is still worse, they might split the community into violent and irreconcilable factions, adhering differently to the different individuals who composed the magistracy.

Men often oppose a thing, merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon, contrary to their sentiments. Men of upright and benevolent tempers have too many opportunities of remarking, with horror, to what desperate lengths this disposition is sometimes carried, and how often the great interests of society are sacrificed to the vanity, to the conceit, and to the obstinacy of individuals, who have credit enough to make their passions and their caprices interesting to mankind. Perhaps the question now before the public may, in its consequences, afford melancholy proofs of the effects of this despicable frailty, or rather detestable vice in the human character.

Upon the principles of a free govern-

ment, inconveniences from the source just mentioned, must necessarily be submitted to in the formation of the legislature; but it is unnecessary, and therefore unwise, to introduce them into the constitution of the executive. It is here too, that they may be most pernicious. In the legislature, promptitude of decision is oftener an evil than a benefit. The differences of opinion, and the jarring of parties in that department of the government, though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection; and serve to check excesses in the majority. When a resolution too is once taken, the opposition must be at an end. That resolution is a law, and resistance to it punishable. But no favorable circumstances palliate, or atone for the disadvantages of dissention in the executive department. Here they are pure and unmixed. There is no point at which they cease to operate. They serve to embarrass and weaken the execution of the plan or measure to which they relate, from the first step to the final conclusion of it. They constantly counteract those qualities in the executive, which are the most necessary ingredients in its composition . . . vigour and expedition; and this without any counterbalancing good. In the conduct of war, in which the energy of the executive is the bulwark of the national security, every thing would be to be apprehended from its plurality.

It must be confessed, that these observations apply with principal weight to the first case supposed, that is, to a plurality of magistrates of equal dignity and authority; a scheme, the advocates for which are not likely to form a numerous sect: but they apply, though not with equal, yet with considerable weight, to the project of a council, whose concurrence is made constitutionally necessary to the operations of the ostensible executive. An artful cabal in that council, would be able to distract and to enervate the whole system of administration. If no such cabal should exist, the mere diversity of views and opinions would alone be sufficient to tincture the exercise of the executive authority with a spirit of habitual feebleness and dilatoriness.

But one of the weightiest objections to a plurality in the executive, and which lies as much against the last as the first plan, is, that it tends to conceal faults, and destroy responsibility. Responsibility is of two kinds, to censure and to punishment. The first is the most important of the two; especially in an elective office. Men in public trust will much oftener act in such a manner as to render them unworthy of being any longer trusted, than in such a manner as to make them obnoxious to legal punishment. But the multiplication of the executive adds to the difficulty of detection in either case. It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures, ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune, are sometimes so complicated, that where there are a

number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce, to whose account the evil which may have been incurred is truly chargeable.

"I was overruled by my council. The council were so divided in their opinions, that it was impossible to obtain any better resolution on the point." These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble, or incur the odium, of a strict scrutiny into the secret springs of the transaction? Should there be found a citizen zealous enough to undertake the unpromising task, if there happen to be a collusion between the parties concerned, how easy is it to clothe the circumstances with so much ambiguity, as to render it uncertain what was the precise conduct of any of those parties?

In the single instance in which the governor of this state is coupled with a council, that is, in the appointment to offices, we have seen the mischiefs of it in the view now under consideration. Scandalous appointments to important offices have been made. Some cases indeed have been so flagrant, that ALL PARTIES have agreed in the impropriety of the thing. When inquiry has been made, the blame has been laid by the governor on the members of the council; who, on their part, have charged it upon his nomination: while the people remain altogether at a loss to determine by whose influence their interests have been committed to hands so manifestly improper. In tenderness to individuals, I forbear to descend to particulars.

It is evident from these considerations, that the plurality of the executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power. *First*. The restraints of public opinion, which lose their efficacy as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and *secondly,* the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office, or to their actual punishment, in cases which admit of it.

In England, the king is a perpetual magistrate; and it is a maxim which has obtained for the sake of the public peace, that he is unaccountable for his administration, and his person sacred. Nothing, therefore, can be wiser in that kingdom, than to annex to the king a constitutional council, who may be responsible to the nation for the advice they give. Without this, there would be no responsibility whatever in the executive department, an idea inadmissible in a free government. But even there, the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office; and may observe or disregard the counsel given to him at his sole discretion.

But in a republic, where every magistrate ought to be personally responsible for his behaviour in office, the reason which in the British constitution dictates the propriety of a council, not only ceases

to apply, but turns against the institution. In the monarchy of Great Britain, it furnishes a substitute for the prohibited responsibility of the chief magistrate; which serves in some degree as a hostage to the national justice for his good behaviour. In the American republic it would serve to destroy, or would greatly diminish the intended and necessary responsibility of the chief magistrate himself.

The idea of a council to the executive, which has so generally obtained in the state constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men, than of a single man. If the maxim should be admitted to be applicable to the case, I should contend, that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion in this particular with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is ONE:"[47] that it is far more safe there should be a single object for the jealousy and watchfulness of the people; in a word, that all multiplication of the executive, is rather dangerous than friendly to liberty.

A little consideration will satisfy us, that the species of security sought for in the multiplication of the executive, is unattainable. Numbers must be so great as to render combination difficult; or they are rather a source of danger than of security. The united credit and influence of several individuals, must be more formidable to liberty, than the credit and influence of either of them separately. When power, therefore, is placed in the hands of so small a number of men, as to admit of their interests and views being easily combined in a common enterprise, by an artful leader, it becomes more liable to abuse, and more dangerous when abused, than if it be lodged in the hands of one man; who, from the very circumstance of his being alone, will be more narrowly watched and more readily suspected, and who cannot unite so great a mass of influence as when he is associated with others. The decemvirs of Rome, whose name denotes their number,[48] were more to be dreaded in their usurpation than any one of them would have been. No person would think of proposing an executive much more numerous than that body; from six to a dozen have been suggested for the number of the council. The extreme of these numbers, is not too great for an easy combination; and from such a combination America would have more to fear, than from the ambition of any single individual. A council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions; are often the instruments and accomplices of his bad, and are almost always a cloak to his faults.

I forbear to dwell upon the subject of

47 De Lolme.

48 Ten.

expense; though it be evident that if the council should be numerous enough to answer the principal end aimed at by the institution, the salaries of the members, who must be drawn from their homes to reside at the seat of government, would form an item in the catalogue of public expenditures, too serious to be incurred for an object of equivocal utility.

I will only add, that prior to the appearance of the constitution, I rarely met with an intelligent man from any of the states, who did not admit as the result of experience, that the unity of the executive of this state was one of the best of the distinguishing features of our constitution.

PUBLIUS

FEDERALIST NO. 71

THE SAME VIEW CONTINUED, IN REGARD TO THE DURATION OF THE OFFICE

Duration in office, has been mentioned as the second requisite to the energy of the executive authority. This has relation to two objects: to the personal firmness of the chief magistrate, in the employment of his constitutional powers; and to the stability of the system of administration, which may have been adopted under his auspices. With regard to the first, it must be evident, that the longer the duration in office, the greater will be the probability of obtaining so important an advantage. It is a general principle of human nature, that a man will be interested in whatever he possesses, in proportion to the firmness or precariousness of the tenure by which he holds it; will be less attached to what he holds by a momentary or uncertain title, than to what he enjoys by a title durable or certain; and, of course, will be willing to risk more for the sake of the one, than of the other. This remark is not less applicable to a political privilege, or honour, or trust, than to any article of ordinary property. The inference from it is, that a man acting in the capacity of chief magistrate, under a consciousness that, in a very short time, he *must* lay down his office, will be apt to feel himself too little interested in it, to hazard any material censure or perplexity, from the independent exertion of his powers, or from encountering the ill-humours, however transient, which may happen to prevail, either in a considerable part of the society itself, or even in a predominant faction in the legislative body. If the case should only be, that he *might* lay it down, unless continued by a new choice; and if he should be desirous of being continued, his wishes, conspiring with his fears, would tend still more powerfully to corrupt his integrity, or debase his fortitude. In either case, feebleness and irresolution must be the characteristics of the station.

There are some, who would be inclined to regard the servile pliancy of the executive, to a prevailing current, either in the community, or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of

the purposes for which government was instituted, as of the true means by which the public happiness may be promoted. The republican principle demands, that the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests. It is a just observation, that the people commonly *intend* the public good. This often applies to their very errors. But their good sense would despise the adulator who should pretend, that they always *reason right* about the *means* of promoting it. They know, from experience, that they sometimes err; and the wonder is, that they so seldom err as they do, beset, as they continually are, by the wiles of parasites and sycophants; by the snares of the ambitious, the avaricious, the desperate; by the artifices of men who possess their confidence more than they deserve it; and of those who seek to possess, rather than to deserve it. When occasions present themselves, in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed, to be the guardians of those interests; to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited, in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure.

But however inclined we might be, to insist upon an unbounded complaisance in the executive to the inclinations of the people, we can, with no propriety, contend for a like complaisance to the humours of the legislature. The latter may sometimes stand in opposition to the former; and at other times the people may be entirely neutral. In either supposition, it is certainly desirable, that the executive should be in a situation to dare to act his own opinion with vigour and decision.

The same rule which teaches the propriety of a partition between the various branches of power, teaches, likewise, that this partition ought to be so contrived as to render the one independent of the other. To what purpose separate the executive or the judiciary from the legislative, if both the executive and the judiciary are so constituted, as to be at the absolute devotion of the legislative? Such a separation must be merely nominal, and incapable of producing the ends for which it was established. It is one thing to be subordinate to the laws, another to be dependent on the legislative body. The first comports with, the last violates, the fundamental principles of good government; and whatever may be the forms of the constitution, unites all power in the same hands. The tendency of the legislative authority to absorb every other, has been fully displayed and illustrated by examples in some preceding numbers. In governments purely republican, this tendency is almost irresistible. The representatives of the people, in a popular assembly, seem sometimes

to fancy, that they are the people themselves, and betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter, as if the exercise of its rights, by either the executive or judiciary, were a breach of their privilege, and an outrage to their dignity. They often appear disposed to exert an imperious control over the other departments; and, as they commonly have the people on their side, they always act with such momentum, as to make it very difficult for the other members of the government to maintain the balance of the constitution.

It may perhaps be asked, how the shortness of the duration in office can affect the independence of the executive on the legislature, unless the one were possessed of the power of appointing or displacing the other? One answer to this inquiry may be drawn from the principle already mentioned, that is, from the slender interest a man is apt to take in a short-lived advantage, and the little inducement it affords him to expose himself, on account of it, to any considerable inconvenience or hazard. Another answer, perhaps more obvious, though not more conclusive, will result from the circumstance of the influence of the legislative body over the people; which might be employed to prevent the re-election of a man who, by an upright resistance to any sinister project of that body, should have made himself obnoxious to its resentment.

It may be asked also, whether a duration of four years would answer the end proposed? and if it would not, whether a less period, which would at least be recommended by greater security against ambitious designs, would not, for that reason, be preferable to a longer period, which was, at the same time, too short for the purpose of inspiring the desired firmness and independence of the magistrate?

It cannot be affirmed, that a duration of four years, or any other limited duration, would completely answer the end proposed; but it would contribute towards it in a degree which would have a material influence upon the spirit and character of the government. Between the commencement and termination of such a period, there would always be a considerable interval, in which the prospect of an annihilation would be sufficiently remote, not to have an improper effect upon the conduct of a man endued with a tolerable portion of fortitude; and in which he might reasonably promise himself, that there would be time enough before it arrived, to make the community sensible of the propriety of the measures he might incline to pursue. Though it be probable that, as he approached the moment when the public were, by a new election, to signify their sense of his conduct, his confidence, and with it his firmness, would decline; yet both the one and the other would derive support from the opportunities which his previous continuance in the station had afforded him, of establishing himself in the esteem and good will of his constituents. He might then, with prudence, hazard the incurring of reproach, in proportion to the proofs he had given of his wisdom and integrity, and to the title he had acquired to the respect and attachment of his fellow

citizens. As, on the one hand, a duration of four years will contribute to the firmness of the executive in a sufficient degree to render it a very valuable ingredient in the composition; so, on the other, it is not long enough to justify any alarm for the public liberty. If a British house of commons, from the most feeble beginnings, *from the mere power of assenting or disagreeing to the imposition of a new tax*, have, by rapid strides, reduced the prerogatives of the crown, and the privileges of the nobility, within the limits they conceived to be compatible with the principles of a free government, while they raised themselves to the rank and consequence of a co-equal branch of the legislature; if they have been able, in one instance, to abolish both the royalty and the aristocracy, and to overturn all the ancient establishments, as well in the church as state; if they have been able, on a recent occasion, to make the monarch tremble at the prospect of an innovation[49] attempted by them; what would be to be feared from an elective magistrate of four years duration, with the confined authorities of a president of the United States? What but that he might be unequal to the task which the constitution assigns him? I shall only add, that if his duration be such as to leave a doubt of his firmness, that doubt is inconsistent with a jealousy of his encroachments.

PUBLIUS

49 This was the case with respect to Mr. Fox's India bill, which was carried in the house of commons, and rejected in the house of lords, to the entire satisfaction, as it is said, of the people.

FEDERALIST NO. 72

THE SAME VIEW CONTINUED, IN REGARD TO THE RE-ELIGIBILITY OF THE PRESIDENT

The administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary; but in its most usual, and perhaps in its most precise signification, it is limited to executive details, and falls peculiarly within the province of the executive department. The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public monies, in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the direction of the operations of war; these, and other matters of a like nature, constitute what seems to be most properly understood by the administration of government. The persons, therefore, to whose immediate management these different matters are committed, ought to be considered as the assistants or deputies of the chief magistrate; and, on this account, they ought to derive their offices from his appointment, at least from his nomination, and to be subject to his superintendence. This view of the thing will at once suggest to us the intimate connexion between the duration of the executive magistrate in office, and the stability of the system of administration. To undo what has been done by a predecessor, is very often considered by a successor, as the best proof he can give of his own capacity and desert; and, in addition to this propensity, where the alteration has been the result of public choice, the person substituted is warranted in supposing, that the dismission of his predecessor has proceeded from a dislike to his measures, and that the less he resembles him, the more he will recommend himself to the favour of his constituents. These considerations, and the influence of personal confidences and attachments, would be likely to induce every new president to promote a change of men to fill the subordinate stations; and these causes together, could not fail to occasion a disgraceful and ruinous

mutability in the administration of the government.

With a positive duration of considerable extent, I connect the circumstance of re-eligibility. The first is necessary, to give the officer himself the inclination and the resolution to act his part well, and to the community time and leisure to observe the tendency of his measures, and thence to form an experimental estimate of their merits. The last is necessary to enable the people, when they see reason to approve of his conduct, to continue him in the station, in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of administration.

Nothing appears more plausible at first sight, nor more ill founded upon close inspection, than a scheme which, in relation to the present point, has had some respectable advocates. . . . I mean that of continuing the chief magistrate in office for a certain time, and then excluding him from it, either for a limited period or for ever after. This exclusion, whether temporary or perpetual, would have nearly the same effects; and these effects would be for the most part rather pernicious than salutary.

One ill effect of the exclusion would be a diminution of the inducements to good behaviour. There are few men who would not feel much less zeal in the discharge of a duty, when they were conscious that the advantage of the station, with which it was connected, must be relinquished at a determinate period, than when they were permitted to entertain a hope of *obtaining* by *meriting* a continuance of them. This position will not be disputed, so long as it is admitted, that the desire of reward is one of the strongest incentives of human conduct; or that the best security for the fidelity of mankind, is to make interest coincide with duty. Even the love of fame, the ruling passion of the noblest minds, which would prompt a man to plan and undertake extensive and arduous enterprises for the public benefit, requiring considerable time to mature and perfect them, if he could flatter himself with the prospect of being allowed to finish what he had begun, would, on the contrary, deter him from the undertaking, when he foresaw that he must quit the scene before he could accomplish the work, and must commit that, together with his own reputation, to hands which might be unequal or unfriendly to the task. The most to be expected from the generality of men, in such a situation, is the negative merit of not doing harm, instead of the positive merit of doing good.

Another ill effect of the exclusion, would be the temptation to sordid views, to peculation, and, in some instances, to usurpation. An avaricious man, who might happen to fill the office, looking forward to a time when he must at all events yield up the advantages he enjoyed, would feel a propensity, not easy to be resisted by such a man, to make the best use of his opportunities, while they lasted; and might not scruple to have recourse to the most corrupt expedients to make the harvest as abundant as it was transitory; though the same person probably, with a different prospect before him, might content himself with the regular emoluments of his station, and might even be unwilling to risk the consequences of an abuse of his opportunities. His avarice might be a guard upon his avarice. Add to this, that the same

man might be vain or ambitious as well as avaricious. And if he could expect to prolong his honours by his good conduct, he might hesitate to sacrifice his appetite for them, to his appetite for gain. But with the prospect before him of approaching an inevitable annihilation, his avarice would be likely to get the victory over his caution, his vanity, or his ambition.

An ambitious man too, finding himself seated on the summit of his country's honours, looking forward to the time at which he must descend from the exalted eminence for ever, and reflecting that no exertion of merit on his part could save him from the unwelcome reverse, would be much more violently tempted to embrace a favourable conjuncture for attempting the prolongation of his power, at every personal hazard, than if he had the probability of answering the same end by doing his duty.

Would it promote the peace of the community, or the stability of the government, to have half a dozen men who had had credit enough to raise themselves to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?

A third ill effect of the exclusion would be, the depriving the community of the advantage of the experience gained by the chief magistrate in the exercise of his office. That experience is the parent of wisdom, is an adage, the truth of which is recognized by the wisest as well as the simplest of mankind. What more desirable or more essential than this quality in the governors of nations? Where more desirable or more essential, than in the first magistrate of a nation? Can it be wise to put this desirable and essential quality under the ban of the constitution; and to declare that the moment it is acquired, its possessor shall be compelled to abandon the station in which it was acquired, and to which it is adapted? This, nevertheless, is the precise import of all those regulations which exclude men from serving their country, by the choice of their fellow citizens, after they have, by a course of service, fitted themselves for doing it with a greater degree of utility.

A fourth ill effect of the exclusion would be, the banishing men from stations in which, in certain emergencies of the state, their presence might be of the greatest moment to the public interest or safety. There is no nation which has not, at one period or another, experienced an absolute necessity of the services of particular men, in particular situations, perhaps it would not be too strong to say, to the preservation of its political existence. How unwise, therefore, must be every such self-denying ordinance, as serves to prohibit a nation from making use of its own citizens, in the manner best suited to its exigencies and circumstances! Without supposing the personal essentiality of the man, it is evident that a change of the chief magistrate, at the breaking out of a war, or any similar crisis, for another even of equal merit, would at all times be detrimental to the community; inasmuch as it would substitute inexperience to experience, and would tend to unhinge and set afloat the already settled train of the administration.

A fifth ill effect of the exclusion would be, that it would operate as a constitutional interdiction of stability in the administration. By inducing the necessity of a change of

men, in the first office in the nation, it would necessarily lead to a mutability of measures. It is not generally to be expected, that men will vary, and measures remain uniform. The contrary is the usual course of things. And we need not be apprehensive that there will be too much stability, while there is even the option of changing; nor need we desire to prohibit the people from continuing their confidence where they think it may be safely placed, and where, by constancy on their part, they may obviate the fatal inconveniences of fluctuating councils and a variable policy.

These are some of the disadvantages, which would flow from the principle of exclusion. They apply most forcibly to the scheme of a perpetual exclusion; but when we consider, that even a partial one would always render the re-admission of the person a remote and precarious object, the observations which have been made will apply nearly as fully to one case as to the other.

What are the advantages promised to counterbalance the evils? They are represented to be: 1st. Greater independence in the magistrate; 2d. Greater security to the people. Unless the exclusion be perpetual, there will be no pretence to infer the first advantage. But even in that case, may he have no object beyond his present station to which he may sacrifice his independence? May he have no connexions, no friends, for whom he may sacrifice it? May he not be less willing, by a firm conduct, to make personal enemies, when he acts under the impression, that a time is fast approaching, on the arrival of which he not only MAY, but MUST be exposed to their resentments, upon an equal, perhaps upon an inferior footing? It is not an easy point to determine, whether his independence would be most promoted or impaired by such an arrangement.

As to the second supposed advantage, there is still greater reason to entertain doubts concerning it, especially if the exclusion were to be perpetual. In this case, as already intimated, a man of irregular ambition, of whom alone there could be reason in any case to entertain apprehensions, would, with infinite reluctance, yield to the necessity of taking his leave for ever of a post, in which his passion for power and pre-eminence had acquired the force of habit. And if he had been fortunate or adroit enough to conciliate the good will of the people, he might induce them to consider as a very odious and unjustifiable restraint upon themselves, a provision which was calculated to debar them of the right of giving a fresh proof of their attachment to a favourite. There may be conceived circumstances in which this disgust of the people, seconding the thwarted ambition of such a favourite, might occasion greater danger to liberty, than could ever reasonably be dreaded from the possibility of a perpetuation in office, by the voluntary suffrages of the community, exercising a constitutional privilege.

There is an excess of refinement in the idea of disabling the people to continue in office men who had entitled themselves, in their opinion, to approbation and confidence; the advantages of which are at best speculative and equivocal, and are overbalanced by disadvantages far more certain and decisive.

PUBLIUS

FEDERALIST NO. 73

THE SAME VIEW CONTINUED, IN RELATION TO THE PROVISION CONCERNING SUPPORT, AND THE POWER OF THE NEGATIVE

The third ingredient towards constituting the vigour of the executive authority, is an adequate provision for its support. It is evident that, without proper attention to this article, the separation of the executive from the legislative department, would be merely nominal and nugatory. The legislature, with a discretionary power over the salary and emoluments of the chief magistrate, could render him as obsequious to their will, as they might think proper to make him. They might, in most cases, either reduce him, by famine, or tempt him by largesses, to surrender at discretion his judgment to their inclinations. These expressions, taken in all the latitude of the terms would no doubt convey more than is intended. There are men who could neither be distressed, nor won, into a sacrifice of their duty; but this stern virtue is the growth of few soils: and in the main it will be found, that a power over a man's support, is a power over his will. If it were necessary to confirm so plain a truth by facts, examples would not be wanting, even in this country, of the intimidation or seduction of the executive by the terrors, or allurements, of the pecuniary arrangements of the legislative body.

It is not easy, therefore, to commend too highly the judicious attention which has been paid to this subject in the proposed constitution. It is there provided, that "the president of the United States shall, at stated times, receive for his service a compensation, *which shall neither be increased nor diminished during the period for which he shall have been elected,* and he *shall not receive within that period any other emolument* from the United States, or any of them." It is impossible to imagine any provision which would have been more eligible than this. The legislature, on the appointment of a president, is once for all to declare what shall be the compensation for his services during the time for which he shall have been elected. This done, they will have no power to alter it either by increase or diminution, till a new period

of service by a new election commences. They can neither weaken his fortitude by operating upon his necessities, nor corrupt his integrity by appealing to his avarice. Neither the union, nor any of its members, will be at liberty to give, nor will he be at liberty to receive, any other emolument than that which may have been determined by the first act. He can of course have no pecuniary inducement to renounce or desert the independence intended for him by the constitution.

The last of the requisites to energy, which have been enumerated, is competent powers. Let us proceed to consider those which are proposed to be vested in the president of the United States.

The first thing that offers itself to our observation, is the qualified negative of the president upon the acts or resolutions of the two houses of the legislature; or, in other words, his power of returning all bills with objections, which will have the effect of preventing their becoming laws, unless they should afterwards be ratified by two-thirds of each of the component members of the legislative body.

The propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments, has been already more than once suggested; the insufficiency of a mere parchment delineation of the boundaries of each, has also been remarked upon; and the necessity of furnishing each with constitutional arms for its own defence, has been inferred and proved. From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the executive, upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands. If even no propensity had ever discovered itself in the legislative body, to invade the rights of the executive, the rules of just reasoning and theoretic propriety would of themselves teach us, that the one ought not to be left at the mercy of the other, but ought to possess a constitutional and effectual power of self-defence.

But the power in question has a further use. It not only serves as a shield to the executive, but it furnishes an additional security against the enaction of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

The propriety of a negative has, upon some occasions, been combatted by an observation, that it was not to be presumed a single man would possess more virtue or wisdom than a number of men; and that, unless this presumption should be entertained, it would be improper to give the executive magistrate any species of control over the legislative body.

But this observation, when examined, will appear rather specious than solid. The propriety of the thing does not turn upon the supposition of superior wisdom

or virtue in the executive; but upon the supposition, that the legislative will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of the other members of the government; that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on mature reflection, would condemn. The primary inducement to conferring the power in question upon the executive, is to enable him to defend himself; the secondary, is to increase the chances in favour of the community against the passing of bad laws, through haste, inadvertence, or design. The oftener a measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those mi[s] steps which proceed from the contagion of some common passion or interest. It is far less probable that culpable views of any kind should infect all the parts of the government at the same moment, and in relation to the same object, than that they should by turns govern and mislead every one of them.

It may perhaps be said, that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws, which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they may happen to be at any given period, as much more likely to do good than harm; because it is favourable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws, will be amply compensated by the advantage of preventing a number of bad ones.

Nor is this all. The superior weight and influence of the legislative body in a free government, and the hazard to the executive in a trial of strength with that body, afford a satisfactory security, that the negative would generally be employed with great caution; and that, in its exercise, there would oftener be room for a charge of timidity than of rashness. A king of Great Britain, with all his train of sovereign attributes, and with all the influence he draws from a thousand sources, would, at this day, hesitate to put a negative upon the joint resolutions of the two houses of parliament. He would not fail to exert the utmost resources of that influence to strangle a measure disagreeable to him, in its progress to the throne, to avoid being reduced to the dilemma of permitting it to take effect, or of risking the displeasure of the nation, by an opposition to the sense of the legislative body. Nor is it probable, that he would ultimately venture to exert his prerogative, but in a case of manifest propriety, or extreme necessity. All well-informed men in that kingdom will accede to the justness of this remark. A very considerable period has elapsed since the negative of the crown has been exercised.

If a magistrate, so powerful, and so well

fortified, as a British monarch, would have scruples about the exercise of the power under co[n]sideration, how much greater caution may be reasonably expected in a president of the United States, clothed, for the short period of four years, with the executive authority of a government wholly and purely republican?

It is evident, that there would be greater danger of his not using his power when necessary, than of his using it too often, or too much. An argument, indeed, against its expediency, has been drawn from this very source. It has been represented, on this account, as a power odious in appearance, useless in practice. But it will not follow, that because it might rarely, it would never be exercised. In the case for which it is chiefly designed, that of an immediate attack upon the constitutional rights of the executive, or in a case in which the public good was evidently and palpably sacrificed, a man of tolerable firmness would avail himself of his constitutional means of defence, and would listen to the admonitions of duty and responsibility. In the former supposition, his fortitude would be stimulated by his immediate interest in the power of his office; in the latter, by the probability of the sanction of his constituents; who, though they would naturally incline to the legislative body in a doubtful case, would hardly suffer their partiality to delude them in a very plain one. I speak now with an eye to a magistrate possessing only a common share of firmness. There are men who, under any circumstances, will have the courage to do their duty at every hazard.

But the convention have pursued a mean in this business, which will both facilitate the exercise of the power vested in this respect in the executive magistrate, and make its efficacy to depend on the sense of a considerable part of the legislative body. Instead of an absolute, it is proposed to give the executive the qualified negative, already described. This is a power which would be much more readily exercised than the other. A man who might be afraid to defeat a law by his single VETO, might not scruple to return it for reconsideration; subject to being finally rejected, only in the event of more than one-third of each house concurring in the sufficiency of his objections. He would be encouraged by the reflection, that if his opposition should prevail, it would embark in it a very respectable proportion of the legislative body, whose influence would be united with his in supporting the propriety of his conduct in the public opinion. A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or disapproved, by those to whom they are addressed. In proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason it may in practice be found more effectual. It is to be hoped that it will not often happen, that improper views will govern so large a proportion as two-thirds of both branches of the legislature at the same time; and this too in defiance of the counterpoising weight of the executive. It is at any rate far less probable, that this should be the case, than that such views should taint

the resolutions and conduct of a bare majority. A power of this nature in the executive, will often have a silent and unperceived, though forcible, operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition, from doing what they would with eagerness rush into, if no such external impediments were to be feared.

This qualified negative, as has been elsewhere remarked, is in this state vested in a council, consisting of the governor, with the chancellor and judges of the supreme court, or any two of them. It has been freely employed upon a variety of occasions, and frequently with success. And its utility has become so apparent, the persons who, in compiling the constitution, were its violent opposers, have from experience become its declared admirers.[50]

I have in another place remarked, that the convention, in the formation of this part of their plan, had departed from the model of the constitution of this state, in favour of that of Massachusetts. Two strong reasons may be imagined for this preference. One, that the judges, who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacity. The other, that by being often associated with the executive, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distinct from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the executive.

PUBLIUS

50 Mr. Abraham Yates, a warm opponent of the plan of the convention, is of this number.

FEDERALIST NO. 74

THE SAME VIEW CONTINUED, IN RELATION TO THE COMMAND OF THE NATIONAL FORCES, AND THE POWER OF PARDONING

The president of the United States, is to be commander "in chief of the army and navy of the United States, and of the militia of the several states *when called into the actual service* of the United States." The propriety of this provision is so evident, and it is, at the same time, so consonant to the precedents of the state constitutions in general, that little need be said to explain or enforce it. Even those of them which have, in other respects, coupled the chief magistrate with a council, have for the most part concentrated the military authority in him alone. Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war, implies the direction of the common strength: and the power of directing and employing the common strength, forms an usual and essential part in the definition of the executive authority.

"The president may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." This I consider as a mere redundancy in the plan: as the right for which it provides would result of itself from the office.

He is also authorized "to grant reprieves and pardons for offences against the United States, *except in cases of impeachment*." Humanity and good policy conspire to dictate, that the benign prerogative of pardoning should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favour of unfortunate guilt, justice would wear a countenance too sanguinary and cruel. As the sense of responsibility is always strongest, in proportion as it is undivided, it may be inferred, that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigour of the law, and

least apt to yield to considerations, which were calculated to shelter a fit object of its vengeance. The reflection that the fate of a fellow creature depended on his *sole fiat,* would naturally inspire scrupulousness and caution: the dread of being accused of weakness or connivance, would beget equal circumspection, though of a different kind. On the other hand, as men generally derive confidence from their number, they might often encourage each other, in an act of obduracy, and might be less sensible to the apprehension of censure for an injudicious or affected clemency. On these accounts, one man appears to be a more eligible dispenser of the mercy of the government than a body of men.

The expediency of vesting the power of pardoning in the president has, if I mistake not, been only contested in relation to the crime of treason. This, it has been urged, ought to have depended upon the assent of one, or both of the branches of the legislative body. I shall not deny that there are strong reasons to be assigned for requiring in this particular the concurrence of that body, or of a part of it. As treason is a crime levelled at the immediate being of the society, when the laws have once ascertained the guilt of the offender, there seems a fitness in referring the expediency of an act of mercy towards him to the judgment of the legislature. And this ought the rather to be the case, as the supposition of the connivance of the chief magistrate ought not to be entirely excluded. But there are also strong objections to such a plan. It is not to be doubted, that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment, than any numerous body whatever. It deserves particular attention, that treason will often be connected with seditions, which embrace a large proportion of the community; as lately happened in Massachusetts. In every such case, we might expect to see the representation of the people tainted with the same spirit which had given birth to the offence. And when parties were pretty equally poised, the secret sympathy of the friends and favourers of the condemned, availing itself of the good nature and weakness of others, might frequently bestow impunity where the terror of an example was necessary. On the other hand, when the sedition had proceeded from causes which had inflamed the resentments of the major party, they might often be found obstinate and inexorable, when policy demanded a conduct of forbearance and clemency. But the principal argument for reposing the power of pardoning in this case in the chief magistrate, is this: in seasons of insurrection or rebellion, there are often critical moments, when a well-timed offer of pardon to the insurgents or rebels may restore the tranquillity of the commonwealth; and which, if suffered to pass unimproved, it may never be possible afterwards to recal. The dilatory process of convening the legislature, or one of its branches, for the purpose of obtaining its sanction, would frequently be the occasion of letting slip the golden opportunity.

The loss of a week, a day, an hour, may sometimes be fatal. If it should be observed that a discretionary power, with a view to such contingencies, might be occasionally conferred upon the president; it may be answered in the first place, that it is questionable whether, in a limited constitution, that power could be delegated by law; and in the second place, that it would generally be impolitic before hand to take any step which might hold out the prospect of impunity. A proceeding of this kind, out of the usual course, would be likely to be construed into an argument of timidity or of weakness, and would have a tendency to embolden guilt.

PUBLIUS

FEDERALIST NO. 75

THE SAME VIEW CONTINUED, IN RELATION TO THE POWER OF MAKING TREATIES

The president is to have power, "by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur."

Though this provision has been assailed on different grounds, with no small degree of vehemence, I scruple not to declare my firm persuasion, that it is one of the best digested and most unexceptionable parts of the plan. One ground of objection is, the trite topic of the intermixture of powers; some contending, that the president ought alone to possess the prerogative of making treaties; others, that it ought to have been exclusively deposited in the senate. Another source of objection, is derived from the small number of persons by whom a treaty may be made. Of those who espouse this objection, a part are of opinion, that the house of representatives ought to have been associated in the business, while another part seem to think that nothing more was necessary than to have substituted two-thirds of *all* the members of the senate, to two-thirds of the members *present.* As I flatter myself the observations made in a preceding number, upon this part of the plan, must have sufficed to place it, to a discerning eye, in a very favourable light, I shall here content myself with offering only some supplementary remarks, principally with a view to the objections which have been just stated.

With regard to the intermixture of powers, I shall rely upon the explanations heretofore given, of the true sense of the rule upon which that objection is founded; and shall take it for granted, as an inference from them, that the union of the executive with the senate, in the article of treaties, is no infringement of that rule. I venture to add, that the particular nature of the power of making treaties, indicates a peculiar propriety in that union. Though several writers on the subject of government place that power in the class of executive authorities, yet this is evidently an arbitrary disposition: for if we attend carefully to its operation, it will

be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either. The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society: while the execution of the laws, and the employment of the common strength, either for this purpose, or for the common defence, seem to comprise all the functions of the executive magistrate. The power of making treaties is, plainly, neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones; and still less to an exertion of the common strength. Its objects are, CONTRACTS with foreign nations, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems, therefore, to form a distinct department, and to belong, properly, neither to the legislative nor to the executive. The qualities elsewhere detailed, as indispensable in the management of foreign negotiations, point out the executive as the most fit agent in those transactions; while the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole, or a portion, of the legislative body in the office of making them.

However proper or safe it may be in governments, where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to intrust that power to an elective magistrate of four years duration. It has been remarked, upon another occasion, and the remark is unquestionably just, that an hereditary monarch, though often the oppressor of his people, has personally too much at stake in the government, to be in any material danger of being corrupted by foreign powers: but that a man raised from the station of a private citizen to the rank of chief magistrate, possessed of but a moderate or slender fortune, and looking forward to a period not very remote, when he may probably be obliged to return to the station from which he was taken, might sometimes be under temptations to sacrifice duty to interest, which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state for the acquisition of wealth. An ambitious man might make his own aggrandizement, by the aid of a foreign power, the price of his treachery to his constituents. The history of human conduct does not warrant that exalted opinion of human virtue, which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a president of the United States.

To have intrusted the power of making treaties to the senate alone, would have been to relinquish the benefits of the constitutional agency of the president in the conduct of foreign negotiations. It is true, that the senate would, in that case,

have the option of employing him in this capacity; but they would also have the option of letting it alone; and pique or cabal might induce the latter rather than the former. Besides this, the ministerial servant of the senate, could not be expected to enjoy the confidence and respect of foreign powers in the same extent with the constitutional representative of the nation; and, of course, would not be able to act with an equal degree of weight or efficacy. While the union would, from this cause, lose a considerable advantage in the management of its external concerns, the people would lose the additional security which would result from the co-operation of the executive. Though it would be imprudent to confide in him solely so important a trust; yet it cannot be doubted, that his participation would materially add to the safety of the society. It must indeed be clear, to a demonstration, that the joint possession of the power in question, by the president and senate, would afford a greater prospect of security, than the separate possession of it by either of them. And whoever has maturely weighed the circumstances which must concur in the appointment of a president, will be satisfied, that the office will always bid fair to be filled by men of such characters, as to render their concurrence, in the formation of treaties, peculiarly desirable, as well on the score of wisdom, as on that of integrity.

The remarks made in a former number, will apply with conclusive force against the admission of the house of representatives to a share in the formation of treaties. The fluctuating, and taking its future increase into the account, the multitudinous composition of that body, forbid us to expect in it those qualities which are essential to the proper execution of such a trust. Accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character; decision, *secrecy,* and despatch; are incompatible with the genius of a body so variable and so numerous. The very complication of the business, by introducing a necessity of the concurrence of so many different bodies, would of itself afford a solid objection. The greater frequency of the calls upon the house of representatives, and the greater length of time which it would often be necessary to keep them together when convened, to obtain their sanction in the progressive stages of a treaty, would be a source of so great inconvenience and expense, as alone ought to condemn the project.

The only objection which remains to be canvassed, is that which would substitute the proportion of two-thirds of all the members composing the senatorial body, to that of two-thirds of the members *present*. It has been shown, under the second head of our inquiries, that all provisions which require more than the majority of any body to its resolutions, have a direct tendency to embarrass the operations of the government, and an indirect one to subject the sense of the majority to that of the minority. This consideration seems sufficient to determine our opinion, that the convention have gone as far in the endeavour to secure the advantage of numbers in the formation of treaties, as

could have been reconciled either with the activity of the public councils, or with a reasonable regard to the major sense of the community. If two-thirds of the whole number of members had been required, it would, in many cases, from the non-attendance of a part, amount in practice to a necessity of unanimity. And the history of every political establishment in which this principle has prevailed, is a history of impotence, perplexity, and disorder. Proofs of this position might be adduced from the examples of the Roman tribuneship, the Polish diet, and the states general of the Netherlands; did not an example at home, render foreign precedents unnecessary.

To require a fixed proportion of the whole body, would not, in all probability, contribute to the advantages of a numerous agency, better than merely to require a proportion of the attending members. The former, by increasing the difficulty of resolutions disagreeable to the minority, diminishes the motives to punctual attendance. The latter, by making the capacity of the body to depend on a *proportion* which may be varied by the absence or presence of a single member, has the contrary effect. And as, by promoting punctuality, it tends to keep the body complete, there is great likelihood, that its resolutions would generally be dictated by as great a number in this case, as in the other; while there would be much fewer occasions of delay. It ought not to be forgotten, that under the existing confederation, two members *may,* and usually *do,* represent a state; whence it happens that congress, who now are solely invested with *all the powers* of the union, rarely consists of a greater number of persons than would compose the intended senate. If we add to this, that as the members vote by states, and that where there is only a single member present from a state, his vote is lost; it will justify a supposition that the active voices in the senate, where the members are to vote individually, would rarely fall short in number of the active voices in the existing congress. When, in addition to these considerations, we take into view the co-operation of the president, we shall not hesitate to infer, that the people of America would have greater security against an improper use of the power of making treaties, under the new constitution, than they now enjoy under the confederation. And when we proceed still one step further, and look forward to the probable augmentation of the senate, by the erection of new states, we shall not only perceive ample ground of confidence in the sufficiency of the numbers, to whose agency that power will be intrusted; but we shall probably be led to conclude, that a body more numerous than the senate is likely to become, would be very little fit for the proper discharge of the trust.

PUBLIUS

FEDERALIST NO. 76

THE SAME VIEW CONTINUED, IN RELATION TO THE APPOINTMENT OF THE OFFICERS OF THE GOVERNMENT

The president is "to *nominate,* and by and with the advice and consent of the senate, to appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not otherwise provided for in the constitution. But the congress may by law vest the appointment of such inferior officers as they think proper, in the president alone, or in the courts of law, or in the heads of departments. The president shall have power to fill up *all vacancies* which may happen *during the recess of the senate,* by granting commissions which shall *expire* at the end of their next session."

It has been observed in a former paper, that "the true test of a good government, is its aptitude and tendency to produce a good administration." If the justness of this observation be admitted, the mode of appointing the officers of the United States contained in the foregoing clauses, must, when examined, be allowed to be entitled to particular commendation. It is not easy to conceive a plan better calculated to promote a judicious choice of men for filling the offices of the union; and it will not need proof, that on this point must essentially depend the character of its administration.

It will be agreed on all hands, that the power of appointment, in ordinary cases, can be properly modified only in one of three ways. It ought either to be vested in a single man; or in a *select* assembly of a moderate number; or in a single man, with the concurrence of such an assembly. The exercise of it by the people at large, will be readily admitted to be impracticable; since wa[i]ving every other consideration, it would leave them little time to do any thing else. When, therefore, mention is made in the subsequent reasonings, of an assembly or body of men, what is said must be understood to relate to a select body or assembly, of the description already given. The people collectively, from their number and from their dispersed situation, cannot be regulated

in their movements by that systematic spirit of cabal and intrigue, which will be urged as the chief objections to reposing the power in question in a body of men.

Those who have themselves reflected upon the subject, or who have attended to the observations made in other parts of these papers, in relation to the appointment of the president, will, I presume, agree to the position, that there would always be great probability of having the place supplied by a man of abilities, at least respectable. Premising this, I proceed to lay it down as a rule, that one man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particular offices, than a body of men of equal, or perhaps even of superior discernment.

The sole and undivided responsibility of one man, will naturally beget a livelier sense of duty, and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have *fewer* personal attachments to gratify, than a body of men who may each be supposed to have an equal number, and will be so much the less liable to be misled by the sentiments of friendship and of affection. There is nothing so apt to agitate the passions of mankind as personal considerations, whether they relate to ourselves or to others, who are to be the objects of our choice or preference. Hence, in every exercise of the power of appointing to offices by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances, will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party, will be more considered than those which fit the person for the station. In the last, the coalition will commonly turn upon some interested equivalent: "give us the man we wish for this office, and you shall have the one you wish for that." This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of party victories, or of party negotiations.

The truth of the principles here advanced, seems to have been felt by the most intelligent of those who have found fault with the provision made, in this respect, by the convention. They contend, that the president ought solely to have been authorized to make the appointments under the federal government. But it is easy to show, that every advantage to be expected from such an arrangement would, in substance, be derived from the power of *nomination,* which is proposed to be conferred upon him; while several disadvantages which might attend the absolute power of appointment in the hands of that officer would be avoided. In

the act of nomination, his judgment alone would be exercised; and as it would be his sole duty to point out the man, who with the approbation of the senate should fill an office, his responsibility would be as complete as if he were to make the final appointment. There can, in this view, be no difference between nominating and appointing. The same motives which would influence a proper discharge of his duty in one case, would exist in the other. And as no man could be appointed but upon his previous nomination, every man who might be appointed would be, in fact, his choice.

But his nomination may be overruled: this it certainly may; yet it can only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not probable, that his nomination would often be overruled. The senate could not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them: and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate; it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

To what purpose then require the co-operation of the senate? I answer, that the necessity of their concurrence would have a powerful, though in general, a silent operation. It would be an excellent check upon a spirit of favouritism in the president, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connexion, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.

It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body; and that body an intire branch of the legislature. The possibility of rejection, would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favouritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same state to which he particularly belonged, or of being, in some way or other, personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.

To this reasoning it has been objected,

that the president, by the influence of the power of nomination, may secure the complaisance of the senate to his views. The supposition of universal venality in human nature, is little less an error in political reasoning, than that of universal rectitude. The institution of delegated power implies, that there is a portion of virtue and honour among mankind, which may be a reasonable foundation of confidence: and experience justifies the theory. It has been found to exist in the most corrupt periods of the most corrupt governments. The venality of the British house of commons has been long a topic of accusation against that body, in the country to which they belong, as well as in this; and it cannot be doubted, that the charge is, to a considerable extent, well founded. But it is as little to be doubted, that there is always a large proportion of the body, which consists of independent and public spirited men, who have an influential weight in the councils of the nation. Hence it is, (the present reign not excepted) that the sense of that body is often seen to control the inclinations of the monarch, both with regard to men and to measures. Though it might therefore be allowable to suppose, that the executive might occasionally influence some individuals in the senate, yet the supposition, that he could in general purchase the integrity of the whole body, would be forced and improbable. A man disposed to view human nature as it is, without either flattering its virtues, or exaggerating its vices, will see sufficient ground of confidence in the probity of the senate, to rest satisfied, not only that it will be impracticable to the executive to corrupt or seduce a majority of its members, but that the necessity of its co-operation, in the business of appointments, will be a considerable and salutary restraint upon the conduct of that magistrate. Nor is the integrity of the senate the only reliance. The constitution has provided some important guards against the danger of executive influence upon the legislative body: it declares, "that no senator or representative shall, during the time *for which he was elected,* be appointed to any civil office under the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office."

PUBLIUS

FEDERALIST NO. 77

THE VIEW OF THE CONSTITUTION OF THE PRESIDENT CONCLUDED, WITH A FURTHER CONSIDERATION OF THE POWER OF APPOINTMENT, AND A CONCISE EXAMINATION OF HIS REMAINING POWERS

It has been mentioned as one of the advantages to be expected from the co-operation of the senate, in the business of appointments, that it would contribute to the stability of the administration. The consent of that body would be necessary to displace as well as to appoint.[51] A change of the chief magistrate, therefore, would not occasion so violent or so general a revolution in the officers of the government as might be expected, if he were the sole disposer of offices. Where a man, in any station, had given satisfactory evidence of his fitness for it, a new president would be restrained from attempting a change in favour of a person more agreeable to him, by the apprehension that the discountenance of the senate might frustrate the attempt, and bring some degree of discredit upon himself. Those who can best estimate the value of a steady administration, will be most disposed to prize a provision, which connects the official existence of public men with the approbation or disapprobation of that body, which, from the greater permanency of its own composition, will, in all probability, be less subject to inconstancy than any other member of the government.

To this union of the senate with the president, in the article of appointments, it has in some cases been objected, that it would serve to give the president an undue influence over the senate; and in others, that it would have an opposite tendency; a strong proof that neither suggestion is true.

To state the first in its proper form, is to refute it. It amounts to this . . . the president would have an improper *influence over* the senate; because the senate would have the power of *restraining* him. This is an absurdity in terms. It cannot admit of a

51 This construction has since been rejected by the legislature; and it is now settled in practice, that the power of displacing belongs exclusively to the president.

doubt, that the intire power of appointment would enable him much more effectually to establish a dangerous empire over that body, than a mere power of nomination subject to their control.

Let us take a view of the converse of the proposition: "the senate would influence the executive." As I have had occasion to remark in several other instances, the indistinctness of the objection forbids a precise answer. In what manner is this influence to be exerted? In relation to what objects? The power of influencing a person, in the sense in which it is here used, must imply a power of conferring a benefit upon him. How could the senate confer a benefit upon the president by the manner of employing their right of negative upon his nominations? If it be said they might sometimes gratify him by an acquiescence in a favourite choice, when public motives might dictate a different conduct; I answer, that the instances in which the president could be personally interested in the result, would be too few to admit of his being materially affected by the compliances of the senate. Besides this, it is evident, that the POWER which can *originate* the disposition of honours and emoluments, is more likely to attract than to be attracted by the POWER which can merely obstruct their course. If by influencing the president be meant *restraining* him, this is precisely what must have been intended. And it has been shown that the restraint would be salutary, at the same time that it would not be such as to destroy a single advantage to be looked for from the uncontroled agency of that magistrate. The right of nomination would produce all the good, without the ill.

Upon a comparison of the plan for the appointment of the officers of the proposed government, with that which is established by the constitution of this state, a decided preference must be given to the former. In that plan, the power of nomination is unequivocally vested in the executive. And as there would be a necessity for submitting each nomination to the judgment of an entire branch of the legislature, the circumstances attending an appointment, from the mode of conducting it, would naturally become matters of notoriety; and the public could be at no loss to determine what part had been performed by the different actors. The blame of a bad nomination would fall upon the president singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the senate; aggravated by the consideration of their having counteracted the good intentions of the executive. If an ill appointment should be made, the executive for nominating, and the senate for approving, would participate, though in different degrees, in the opprobrium and disgrace.

The reverse of all this characterizes the manner of appointment in this state. The council of appointment consists of from three to five persons, of whom the governor is always one. This small body, shut up in a private apartment, impenetrable to the public eye, proceed to the execution of the trust committed to them. It is known, that the governor claims the right of nomination, upon the strength of some ambiguous expressions in the constitution; but it is not known to what extent, or in what manner he exercises it; nor upon what occasions he is contradicted or opposed. The censure of a bad appointment, on account of the

uncertainty of its author, and for want of a determinate object, has neither poignancy nor duration. And while an unbounded field for cabal and intrigue lies open, all idea of responsibility is lost. The most that the public can know, is, that the governor claims the right of nomination; that *two,* out of the considerable number of *four* men, can often be managed without much difficulty; that if some of the members of a particular council should happen to be of an uncomplying character, it is frequently not impossible to get rid of their opposition, by regulating the times of meeting in such a manner as to render their attendance inconvenient; and that, from whatever cause it may proceed, a great number of very improper appointments are from time to time made. Whether a governor of this state avails himself of the ascendant he must necessarily have, in this delicate and important part of the administration, to prefer to offices men who are best qualified for them; or whether he prostitutes that advantage to the advancement of persons, whose chief merit is their implicit devotion to his will, and to the support of a despicable and dangerous system of personal influence, are questions which, unfortunately for the community, can only be the subjects of speculation and conjecture.

Every mere council of appointment, however constituted, will be a conclave, in which cabal and intrigue will have their full scope. Their number, without an unwarrantable increase of expense, cannot be large enough to preclude a facility of combination. And as each member will have his friends and connexions to provide for, the desire of mutual gratification will beget a scandalous bartering of votes and bargaining for places. The private attachments of one man might easily be satisfied; but to satisfy the private attachments of a dozen, or of twenty men, would occasion a monopoly of all the principal employments of the government, in a few families, and would lead more directly to an aristocracy or an oligarchy, than any measure that could be contrived. If to avoid an accumulation of offices, there was to be a frequent change in the persons who were to compose the council, this would involve the mischiefs of a mutable administration in their full extent. Such a council would also be more liable to executive influence than the senate, because they would be fewer in number, and would act less immediately under the public inspection. Such a council, in fine, as a substitute for the plan of the convention, would be productive of an increase of expense, a multiplication of the evils which spring from favouritism and intrigue in the distribution of public honours, a decrease of stability in the administration of the government, and a diminution of the security against an undue influence of the executive. And yet such a council has been warmly contended for, as an essential amendment in the proposed constitution.

I could not with propriety conclude my observations on the subject of appointments, without taking notice of a scheme, for which there has appeared some, though but few advocates; I mean that of uniting the house of representatives in the power of making them. I shall, however, do little more than mention it, as I cannot imagine that it is likely to gain the countenance of any considerable part

of the community. A body so fluctuating, and at the same time so numerous, can never be deemed proper for the exercise of that power. Its unfitness will appear manifest to all, when it is recollected that in half a century it may consist of three or four hundred persons. All the advantages of the stability, both of the executive and of the senate, would be defeated by this union; and infinite delays and embarrassments would be occasioned. The example of most of the states in their local constitutions, encourages us to reprobate the idea.

The only remaining powers of the executive, are comprehended in giving information to congress of the state of the union; in recommending to their consideration such measures as he shall judge expedient; in convening them, or either branch, upon extraordinary occasions; in adjourning them when they cannot themselves agree upon the time of adjournment; in receiving ambassadors and other public ministers; in faithfully executing the laws; and in commissioning all the officers of the United States.

Except some cavils about the power of convening *either* house of the legislature, and that of receiving ambassadors, no objection has been made to this class of authorities; nor could they possibly admit of any. It required indeed an insatiable avidity for censure, to invent exceptions to the parts which have been assailed. In regard to the power of convening either house of the legislature, I shall barely remark, that in respect to the senate at least, we can readily discover a good reason for it. As this body has a concurrent power with the executive in the article of treaties, it might often be necessary to call it together with a view to this object, when it would be unnecessary and improper to convene the house of representatives. As to the reception of ambassadors, what I have said in a former paper will furnish a sufficient answer.

We have now completed a survey of the structure and powers of the executive department, which, I have endeavoured to show, combines, as far as republican principles will admit, all the requisites to energy. The remaining inquiry is . . . Does it also combine the requisites to safety in the republican sense . . . a due dependence on the people . . . a due responsibility? The answer to this question has been anticipated in the investigation of its other characteristics, and is satisfactorily deducible from these circumstances . . . the election of the president once in four years by persons immediately chosen by the people for that purpose; his liability, at all times, to impeachment, trial, dismission from office, incapacity to serve in any other, and to the forfeiture of life and estate by subsequent prosecution in the common course of law. But these precautions, great as they are, are not the only ones which the plan of the convention has provided in favour of the public security. In the only instances in which the abuse of the executive authority was materially to be feared, the chief magistrate of the United States would, by that plan, be subjected to the control of a branch of the legislative body. What more can an enlightened and reasonable people desire?

PUBLIUS

THE ANTI-FEDERALIST PERSPECTIVE

CATO IV

For the *New York Journal*

It is remarked by Montesquieu, in treating of republics, that in all magistracies, the greatness of the power must be compensated by the brevity of the duration; and that a longer time than a year, would be dangerous. It is therefore obvious to the least intelligent mind, to account why, great power in the hands of a magistrate, and that power connected, with a considerable duration, may be dangerous to the liberties of a republic—the deposit of vast trusts in the hands of a single magistrate, enables him in their exercise, to create a numerous train of dependants—this tempts his ambition, which in a republican magistrate is also remarked, to be pernicious and the duration of his office for any considerable time favours his views, gives him the means and time to perfect and execute his designs—he therefore fancies that he may be great and glorious by oppressing his fellow citizens, and raising himself to permanent grandeur on the ruins of his country. — And here it may be necessary to compare the vast and important powers of the president, together with his continuance in office with the foregoing doctrine—his eminent magisterial situation will attach many adherents to him, and he will be surrounded by expectants and courtiers—his power of nomination and influence on all appointments—the strong posts in each state comprised within his superintendance, and garrisoned by troops under his direction—his controul over the army, milita, and navy—the unrestrained power of granting pardons for treason, which may be used to screen from punishment, those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt—his duration in office for four years: these, and various other principles evidently prove the truth of the position—that if the president is possessed of ambition, he has power and time sufficient to ruin his country.

FEDERAL FARMER XIV

For the Poughkeepsie *Country Journal*

By art. 2. sect. 1. the executive power shall be vested in a president elected for four years, by electors to be appointed from time to time, in such manner as the state legislatures shall direct—the electors to be equal in numbers to the federal senators and representatives: but congress may determine the time of chusing senators, and the day on which they shall give their votes; and if no president be chosen by the electors, by a majority of votes, the states, as states in congress, shall elect one of the five highest on the list for president. It is to be observed, that in chusing the president, the principle of electing by a majority of votes is adopted; in chusing the vice-president, that of electing by a plurality. Viewing the principles and checks established in the election of the president, and especially considering the several states may guard the appointment of the electors as they shall judge best, I confess there appears to be a judicious combination of principles and precautions. Were the electors more numerous than they will be, in case the representation be not increased, I think, the system would be improved; not that I consider the democratic character so important in the choice of the electors as in the choice of representatives: be the electors more or less democratic, the president will be one of the very few of the most elevated characters. But there is danger, that a majority of a small number of electors may be corrupted and influenced, after appointed electors, and before they give their votes, especially if a considerable space of time elapse between the appointment and voting. I have already considered the advisory council in the executive branch: there are two things further in the organization of the executive, to which I would particularly draw your attention; the first, which, is a single executive, I confess, I approve; the second, by which any person from period to period may be re-elected president, I think very exceptionable.

Each state in the union has uniformly shewn its preference for a single executive, and generally directed the first executive magistrate to act in certain cases by the advice of an executive council. Reason, and the experience of enlightened nations, seem justly to assign the business of making laws to numerous assemblies; and the execution of them, principally, to the direction and care of one man. Independent of practice, a single man seems to be peculiarly well circumstanced to superintend the

execution of laws with discernment and decision, with promptitude and uniformity: the people usually point out a first man—he is to be seen in civilized as well as uncivilized nations—in republics as well as in other governments. In every large collection of people there must be a visible point serving as a common centre in the government, towards which to draw their eyes and attachments. The constitution must fix a man, or a congress of men, superior in the opinion of the people to the most popular men in the different parts of the community, else the people will be apt to divide and follow their respective leaders. Aspiring men, armies and navies, have not often been kept in tolerable order by the decrees of a senate or an executive council. The advocates for lodging the executive power in the hands of a number of equals, as an executive council, say, that much wisdom may be collected in such a council, and that it will be safe; but they agree, that it cannot be so prompt and responsible as a single man—they admit that such a council will generally consist of the aristocracy, and not stand so indifferent between it and the people as a first magistrate. But the principal objection made to a single man is, that when possessed of power he will be constantly struggling for more, disturbing the government, and encroaching on the rights of others. It must be admitted, that men, from the monarch down to the porter, are constantly aiming at power and importance; and this propensity must be as constantly guarded against in the forms of the government. Adequate powers must be delegated to those who govern, and our security must be in limiting, defining, and guarding the exercise of them, so that those given shall not be abused, or made use of for openly or secretly seizing more. . . . Admitting that moderate and even well defined powers, long in the hands of the same man or family, will probably, be unreasonably increased, it will not follow that even extensive powers placed in the hands of a man only for a few years will be abused. . . . The great object is, in a republican government, to guard effectually against perpetuating any portion of power, great or small, in the same man or family; this perpetuation of power is totally uncongenial to the true spirit of republican governments: on the one hand the first executive magistrate ought to remain in office so long as to avoid instability in the execution of the laws; on the other, not so long as to enable him to take any measures to establish himself. The convention, it seems, first agreed that the president should be chosen for seven years, and never after to be eligible. Whether seven years is a period too long or not, is rather matter of opinion; but

clear it is, that this mode is infinitely preferable to the one finally adopted. When a man shall get the chair, who may be re-elected, from time to time, for life, 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 no exertions, to increase the powers and importance of it; the servile supporters of his wishes will be placed in all offices, and tools constantly employed to aid his views and sound his praise. A man so situated 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. If we reason at all on the subject, we must irresistably conclude, that this will be the case with nine-tenths of the presidents; we may have, for the first president, and, perhaps, one in a century or two afterwards (if the government should withstand the attacks of others) a great and good man, governed by superior motives; but these are not events to be calculated upon in the present state of human nature.

A man chosen to this important office for a limited period, and always afterwards rendered, by the constitution, ineligible, will be governed by very different considerations: he can have no rational hopes or expectations of retaining his office after the expiration of a known limited time, or of continuing the office in his family, as by the constitution there must be a constant transfer of it from one man to another, and consequently from one family to another. No man will wish to be a mere cypher at the head of the government: the great object of each president then will be, to render his government a glorious period in the annals of his country. When a man constitutionally retires from office, he retires without pain; he is sensible he retires because the laws direct it, and not from the success of his rivals nor with that public disapprobation which being left out, when eligible, implies. It is said, that a man knowing that at a given period he must quit his office, will unjustly attempt to take from the public, and lay in store the means of support and splendour in his retirement; there can, I think, be but very little in this observation.

The same constitution that makes a man eligible for a given period only, ought to make no man eligible till he arrive to the age of forty or forty-five years: if he be a man of fortune, he will retire with dignity to his estate; if not, he may, like the Roman consuls, and other eminent characters in

republics, find an honorable support and employment in some respectable office. A man who must, at all events, thus leave his office, will have but few or no temptations to fill its dependant offices with his tools, or any particular set of men; whereas the man constantly looking forward to his future elections, and, perhaps, to the aggrandizement of his family, will have every inducement before him to fill all places with his own props and dependants. As to public monies, the president need handle none of them, and he may always rigidly be made account for every shilling he shall receive.

On the whole, it would be, in my opinion, almost as well to create a limited monarchy at once, and give some family permanent power and interest in the community, and let it have something valuable to itself to lose in convulsions in the state, and in attempts of usurpation, as to make a first magistrate eligible for life, and to create hopes and expectations in him and his family, of obtaining what they have not. In the latter case, we actually tempt them to disturb the state, to foment struggles and contests, by laying before them the flattering prospect of gaining much in them without risking any thing.

GENUINE INFORMATION IX, BY LUTHER MARTIN

For the *Maryland Gazette and Baltimore Advertiser*

The second article, relates to the executive—his mode of election—his powers—and the length of time he should continue in office. On these subjects, there was a great diversity of sentiment—Many the members were desirous that the president should be elected for seven years, and not to be eligible a second time—others proposed that he should not be absolutely ineligible, but that he should not be capable of being chosen a second time, until the expiration of a certain number of years—The supporter of the above propositions, went upon the idea that the best security for liberty was a limited duration and a rotation of office in the chief executive department.

There was a party who attempted to have the president appointed during good behaviour, without any limitation as to time, and not being able to succeed in that attempt, they then endeavoured to have him re-eligible without any restraint,—It was objected that the choice of a president to continue in office during good behaviour, would be at once rendering our system an elective monarchy—and, that if the president was to be re-eligible without any interval of disqualification, it would amount nearly to

the same thing, since with the powers that the president is to enjoy, and the interest and influence with which they will be attended, he will be almost absolutely certain of being reelected from time to time, as long as he lives—As the propositions were reported by the committee of the whole house, the president was to be chosen for seven years, and not to be eligible at any time after—In the same manner the proposition was agreed to in convention, and so was it reported by the committee of detail, although variety of attempts were made to alter that part of the system by those who were of a contrary opinion, in which they repeatedly failed; but, Sir, by never losing sight of their object, and choosing proper time for their purpose, they succeeded at length in obtaining the alteration, which was not made until within the last twelve days before the convention adjourned.

As the propositions were agreed to by the committee of the whole house, the president was to be appointed by the national legislature, and as it was reported by the committee of detail, the choice was to be made by ballot in such a manner, that the States should have an equal voice in the appointment of this officer, as they, of right, ought to have; but those who wished as far as possible to establish national instead of a federal government, made repeated attempts to have the president chosen by the people at large; on this the sense of the convention was taken, I think not less than three times while I was there, and as often rejected; but within the last fortnight of their session, they obtained the alteration in the manner it now stands, by which the large States have a very undue influence in the appointment of the president.—There is no case where the States will have an equal voice in the appointment of the president, except where two persons shall have each an equal number of votes, and those a majority of the whole number of electors, a case very unlikely to happen, or where no person has a majority of the votes; in these instances the house of representatives are to choose by ballot, each State having an equal voice, but they are confined in the last instance to the five who have the greatest number of votes, which gives the largest States a very unequal chance of having the president chose under their nomination.

As to the vice-president, that great officer of government, who is in case of death, resignation, removal or inability of the president, to supply his place, and be vested with his powers, and who is officially to be the president of the senate, there is no provision by which a majority of the voices of the electors are necessary for his appointment, but after it is decided who is

chosen president, that person who has the next greatest number of votes of the electors, is declared to be legally elected to the vice-presidency, so that by this system it is very possible, and not improbable, that he may be appointed by the electors of a single large State; and a very undue influence in the senate is given to that State of which the vice-president is a citizen, since in every question where the senate is divided that State will have two votes, the president having on those occasions a casting voice. Every part of the system which relates to the vice-president, as well as the present mode of electing the president, was introduced and agreed upon after I left Philadelphia. Objections were made to that part of this article, by which the president is appointed commander in chief of the army and navy of the United States, and of the militia of the several States, and it was wished to be so far restrained, that he should not command in person; but this could not be obtained. The power given to the president of granting reprieves and pardons, was also thought extremely dangerous, and as such opposed—The president thereby has the power of pardoning those who are guilty of treason, as well as of other offences; it was said that no treason was so likely to take place as that in which the president himself might be engaged—the attempt to assume to himself powers not given by the constitution, and establish himself in regal authority—in which attempt a provision is made for him to secure from punishment the creatures of his ambition, the associates and abettors of his treasonable practices, by granting them pardons should they be defeated in their attempts to subvert the constitution.

To that part of this article also, which gives the president a right to nominate, and with the consent of the senate to appoint all the officers, civil and military, of the United States, there were considerable opposition—it was said that the person who nominates, will always in reality appoint, and that this was giving the president a power and influence which together with the other powers, bestowed upon him, would place him above all restraint and controul. In fine, it was urged, that the president as here constituted, was a king in every thing but the name—that though he was to be chosen but for a limited time, yet at the expiration of that time if he is not re-elected, it will depend entirely upon his own moderation whether he will resign that authority with which he has once been invested—that from his having the appointment of all the variety of officers in every part of the civil department for the union, who will be very numerous—in them and their connexions, relations, friends and dependants, he will have a formidable

host devoted to his interest, and ready to support his ambitious views.—That the army and navy, which may be encreased without restraint as to numbers, the officers of which from the highest to the lowest, are all to be appointed by him and dependant on his will and pleasure, and commanded by him in person, will, of course, be subservient to his wishes, and ready to execute his commands; in addition to which, the militia also are entirely subjected to his orders—That these circumstances, combined together, will enable him, when he pleases, to become a king in name, as well as in substance, and establish himself in office not only for his own life, but even if he chooses, to have that authority perpetuated to his family.

It was further observed, that the only appearance responsibility in the president, which the system holds up to our view, is the provision for impeachment; but that when we reflect that he cannot be impeached but by the house of delegates, and that the members of this house are rendered dependant upon, and unduly under the influence of the president, by being appointable to offices of which he has the sole nomination, so that without his favour and approbation, they cannot obtain them, there is little reason to believe that a majority will ever concur in impeaching the president, let his conduct be ever so reprehensible, especially too, as the final event of that impeachment will depend upon a different body, and the members of the house of delegates will be certain, should the decision be ultimately in favour of the president, to become thereby the objects of his displeasure, and to bar to themselves every avenue to the emoluments of government.

Should he, contrary to probability, be impeached, he is afterwards to be tried and adjudged by the senate, and without the concurrence of two-thirds of the members who shall be present, he cannot be convicted—This senate being constituted privy council to the president, it is probable many of its leading and influential members may have advised or concurred in the very measures for which he may be impeached; the members of the senate also are by the system, placed as unduly under the influence of, and dependent upon the president, as the members of the other branch, since they also are appointable to offices, and cannot obtain them but through the favour of the president—There will be great, important and valuable offices under this government, should it take place, more than sufficient to enable him to hold out the expectation of one of them to each of the senators—Under these circumstances, will any person conceive it to be difficult for the president always to secure to himself more than one third of that body?

Or, can it reasonably be believed, that a criminal will be convicted who is constitutionally empowered to bribe his judges, at the head of whom is to preside on those occasions the chief justice, which officer in his original appointment, must be nominated by the president, and will therefore, probably, be appointed not so much for his eminence in legal knowledge and for his integrity, as from favouritism and influence, since the president knowing that in case of impeachment the chief justice is to preside at his trial, will naturally wish to fill that office with a person of whose voice and influence he shall consider himself secure—These are reasons to induce a belief that there will be but little probability of the president ever being either impeached or convicted; but it was also urged, that vested with the powers which the system gives him and with the influence attendant upon those powers, to him it would be but of little consequence whether he was impeached or convicted, since he will be able to set both at defiance.—These considerations occasioned part of the convention to give a negative to this part of the system establishing the executive as it is now offered for our acceptance.

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CENTINEL II

For the *Freeman's Journal*

It is well known, that some members of convention, apprized of the mischiefs of such a compound of authority, proposed to assign the supreme executive powers to the president and a small council, made personally responsible for every appointment to office, or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step. Such a check upon the chief magistrate would admirably secure the power of pardoning, now proposed to be exercised by the president alone, from abuse. For as it is placed he may shelter the traitors whom he himself or his coadjutors in the senate, have excited to plot against the liberties of the nation.