

The President

Introduction

The Constitutional Convention had more difficulty drafting provisions for the election and responsibilities of the President than for any other part of the Constitution. Americans had considerable experience with executives—they had lived under the British king, who had power to veto colonial acts of legislation even before they went into effect. The Articles of Confederation provided for no separate executive, but the Confederation Congress did elect its own president who served more or less as the Speaker of Congress. Congress also created outside executive departments in charge of foreign affairs, finance, war and the post office. The secretaries of these departments and their small staffs were not members of Congress. The states under the Articles each had a governor or president. Most were relatively weak in comparison to their state assemblies. The governors of New York and Massachusetts served as the best models for the Constitutional Convention in shaping the image of the new American President.

Soon after it convened, the Constitutional Convention agreed to have a single executive as opposed to the plural executive favored by a handful of delegates who feared the reinstatement of the monarchy. Greater disagreement persisted on the manner of electing the President. Some delegates wanted a President elected by Congress for a long term but ineligible for reelection. Others favored direct election by the people for short terms and with no restrictions on the number of consecutive terms. A compromise eventually provided that the President would have a four-year term and would be elected by electors chosen in a manner prescribed by the states legislatures. No restrictions were placed on the President's eligibility to be reelected.

During the debate over the ratification of the Constitution, Antifederalists charged that the President would become a king—in fact, he would be the worst kind of a king: an elected one. Cabals and intrigues would surely develop over the reelection of the incumbent. Some even charged that the orderly transfer of power from a defeated incumbent was too much to expect, especially since the President had complete control over the country's military and the states' militia when called up for federal service.

Antifederalists also charged that the Constitution was defective in that it violated the commonly held belief that the three branches of government ought to be separate. The mixture of power and responsibility over appointments to office and treaty-making bothered many Americans. Would the Senate really exercise authority in the appointment of officers or would the President's power to nominate be tantamount to the power to appoint? Who would be responsible if corrupt individuals were appointed—the President, the Senate or both? And could it be expected that Senators who had confirmed officeholders would convict those same individuals on impeachment?

Similar fears were expressed over the treaty-making power. The Constitution declared that treaties should be the supreme law of the land. Yet, the House of Representatives, elected directly by the people, played no role in the drafting or adoption of treaties. Only the President and the Senate had responsibility in this important area that could affect the lives of every American.

Several critics of the Constitution suggested that the dangerous connection between the President and the Senate could be eliminated by substituting a privy council for the Senate. This council, which had precedents in both the British and American state governments, would advise the President on both appointments and treaty-making. If privy councillors gave faulty advice, they could be held accountable.

Antifederalists charged that the President would have too much influence over legislation through his veto power over acts of Congress and that the President's pardoning power was

dangerous. He could conspire with others in treasonable activities and guarantee his co-conspirators pardons if their activities were discovered.

Federalists praised the Presidency. They pointed to the weakness of the Confederation and state governments with their almost powerless executives. America needed a separate President with executive powers to enforce federal laws and conduct foreign policy. Federalists contrasted the President with the British monarch. The former had limited power checked by two other branches of government, while the latter had almost limitless power. Some state executives even had greater power in certain areas than the President.

The President, it was argued, would be accountable to both the people and Congress. If he failed to satisfy the people, he would not be reelected; if he committed crimes, he could be impeached by Congress. Furthermore, everyone realized that George Washington would be elected the first President. This great man had already once voluntarily given up total power in 1783, preferring a rural retirement; he could be expected to follow a similar course of action after he set the new government under the Constitution in motion. Washington's example would be followed by his successors.

Sources

Antifederalist Sources

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George Mason: Speech in the Virginia Convention, 18 June 1788
James Monroe: Speech in the Virginia Convention, 18 June 1788

Federalist Sources

- An American Citizen (Tench Coxe) I, On the Federal Government, Philadelphia
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Publius (Alexander Hamilton): The Federalist 67, *New York Packet*, 11 March 1788
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Fabius (John Dickinson) II, *Pennsylvania Mercury*, 15 April 1788
Fabius (John Dickinson) IX, *Pennsylvania Mercury*, 1 May 1788
James Madison: Speech in the Virginia Convention, 18 June 1788

Roles in Script–12 (L–large role; M–medium role; S–small role)

Moderator (L)

Antifederalist Panelists

- Cato (M)
- A Columbian Patriot (S)
- Luther Martin (M)
- George Mason (M)
- James Monroe (S)
- An Old Whig (M)
- Philadelphiensis (S)

Federalist Panelists

- An American Citizen (M)
- Fabius (L)
- James Madison (L)
- Marcus (S)
- Publius (L)

Script

Moderator: Welcome and good evening. Tonight we have with us a group of individuals that have been involved in the debate over the Constitution. Antifederalists contend that the Constitution should not be adopted without amendments; while Federalists maintain that it is in the best interest of the nation to ratify the Constitution. Today we will address Article II, the section that outlines the executive branch. Gentlemen, welcome.

All Panelists: Hello, Thank you, It's good to be here, etc.

Moderator: Let's begin with An Old Whig. You contend that the executive as designed in the Constitution is nothing less than a monarch. Is this correct?

An Old Whig: [Yes.] In the first place the office of President of the United States appears to me to be clothed with such powers as are dangerous. [He is the] <source>¹ of all honors in the United States, commander in chief of the army, navy and militia, with the power of making treaties and of granting pardons, and to be vested with an authority to <veto>² all laws. . . . [He] is in reality to be a king as much a King as the King of Great Britain, and a King too of the worst kind;—an elective King.

Moderator: And Cato, you have suggested that there are additional dangers associated with this provision?

Cato: [Absolutely. When you consider that the Constitution also provides for a] ten miles square, which [will] become the seat of government. [This] will of course be the place of residence for the president and the great officers of state; the court of a president possessing the powers of a monarch, ambition with idleness—baseness with pride—the thirst of riches without labour—aversion to truth—flattery—treason—<treachery>³—violation of engagements— <dislike>⁴ of civil duties—hope from the magistrates weakness; but above all, the <continual>⁵ ridicule of virtue—these . . . are the characteristics by which the [royal] courts in all ages have been distinguished.

Moderator: I presume that Federalists maintain this is hyperbole?

An American Citizen: [Most certainly.] In Britain their king is for life—In America our president will always be one of the people at the end of four years. In that country the king is hereditary and may be an idiot, a knave, or a tyrant by nature, or ignorant from neglect of his education, yet cannot be removed, for [in theory] “he can do no wrong.” In America, as the president is to be one of the people at the end of his short term, so will he and his fellow citizens remember, that he was originally one of the people; and that he is created by their breath.

Moderator: So, is it your <argument>⁶ that Antifederalists exaggerate in their fears about the Executive?

Publius: [The Executive] has been shown to us with the <jeweled head band>⁷ sparkling on his brow, and the imperial purple flowing in his train. He has been seated on a throne surrounded with <servants>⁸ and mistresses; giving audience to the <ambassadors>⁹ of foreign <rulers>¹⁰, in all the

<arrogant display>¹¹ of majesty. The images of Asiatic despotism and <sensual pleasure>¹² have . . . been . . . the exaggerated scene. We have been taught to tremble at these terrific <pictures of murdering fanatics>.¹³

Moderator: Mr. Martin, you were at the Convention when the Executive was being discussed. Was there any talk of creating an American monarch?

Luther Martin: 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 <limits>.¹⁴

Moderator: But, when we look at the Constitution now, is it your view that those individuals got what they wanted?

Luther Martin: [When looking at Article II as a whole] these circumstances, combined together, will enable him, when he pleases, to become a king in name, as well as in substance, and . . . have that authority perpetuated to his family.

Cato: [We must remember that Montesquieu said] the deposit of vast trusts in the hands of a single magistrate, enables him . . . to create a numerous train of dependants—this tempts his ambition . . . 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.

Moderator: I think this is a good transition point in our discussion to consider a related issue; the term of office of the Executive. It seems to me that this is fundamental to the question of whether Article II creates a monarchy?

Publius: [The President] 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 <complete difference>¹⁵ between him and a King of Great-Britain; who is an hereditary monarch, possessing the crown as <an inheritance>¹⁶ to his heirs forever.

Moderator: But, aren't Antifederalists correct in viewing the possibility of re-eligibility as the problem here? Mr. Mason, your thoughts?

George Mason: Nothing so strongly impels a man to regard the interest of his constituents, as the certainty of returning to the general mass of the people, from whence he was taken; where he must participate [in] their burdens.

Cato: [And again Montesquieu said] 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 . . . great power in the hands of a magistrate . . . with a considerable duration, may be dangerous to the liberties of a republic.

Fabius: If any person . . . shall say, there will be more danger to our freedom under the proposed plan, than to that of Britons under their constitution, he must mean, that Americans are . . . inferior to Britons in understanding and virtue. [We have] a constitution and government, [where] every

branch is <elective>.¹⁷ [We can] certainly guard rights, at least as well, as Britons can guard their rights.

Moderator: Let's turn to perhaps the most critical part of our discussion. For many, the powers of the Executive branch are more important than the term of office. Central to this issue is the vagueness of the text in Article II, which leads many to conclude that the Presidency is dangerous. I know that Publius has insisted that the Executive cannot be compared to the British monarchy. Is this the case?

Publius: [To begin with,] 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 <secure from being checked>.¹⁸

Moderator: True. What are some other limits?

Publius: The King of Great Britain has an absolute <veto>¹⁹ upon the acts of the two houses of Parliament. 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; but the bill so returned is to become a law, if upon that re-consideration it be approved by two thirds of both houses.

Philadelphiensis: [However,] the two branches of the legislature, will be at his service. . . . As a body, and as individuals, they will be his <cronies>²⁰ and flatterers.

Publius: 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.

Moderator: Another area where Antifederalists have expressed great concerns about the powers of the Executive is the military powers. According to An Old Whig, this should be scrutinized carefully.

An Old Whig: [That's an understatement.] Let us suppose this man to be a favorite with his army, and that they are unwilling to part with their beloved commander in chief; or . . . let us suppose, a future President and commander in chief adored by his army and the militia to as great a degree as our late illustrious commander in chief; and . . . that this man is without the virtue, the moderation and love of liberty which possessed the mind of our late general . . . this country will be involved at once in war and tyranny.

Luther Martin: [Additionally,] the officers . . . from the highest to the lowest, are all to be appointed by him and dependent on his will and pleasure, and commanded by him in person, will, of course, be <submissive>²¹ to his wishes, and ready to execute his commands; in addition to which, the militia also are entirely subjected to his orders.

Publius: [Again, let me point out that my colleagues are overstating the case.] 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.

Fabius: Is there more danger to our liberty, from such a president as we are to have, than to that of Britons, from an hereditary monarch, with a vast revenue; in the command of the militia, fleets, and armies, and the direction of their operations; . . . who can call parliaments with a breath, and dissolve them with a nod; who can at his will, make war, peace, and treaties <unbreakably>²² binding the nation . . . as it pleases him?

Moderator: But, Fabius, doesn't this assume that future Presidents will possess <discretion>²³ and virtue that would prevent the abuse of these military powers?

An Old Whig: [Exactly.] So far is it from its being improbable that the man who shall hereafter be in a situation to make the attempt to <continue>²⁴ his own power, should <lack>²⁵ the virtues of General Washington; that it is perhaps a chance of one hundred millions to one that the next age will not furnish an example of so disinterested a use of great power.

Marcus: [Let's look at it this way. Let's consider] the improbability of a man honored [by being elected the President] . . . by his country . . . [risking,] like General [Benedict] Arnold, the damnation of his fame to all future ages.

Moderator: But, isn't this the point Antifederalists are making? No one has a crystal ball. How are we to reasonably assume that future presidents will not abuse these military powers? Or to put it a different way, can historical precedents guide us as to the actions of future presidents?

Marcus: The probability of the President of the United States committing an act of treason against his country is very slight; he is so well guarded by the other powers of government, and the natural strength of the people at large must be so weighty, that in my opinion it is the most <unrealistic fantasy>²⁶ that can be entertained.

Fabius: [It is crucial to remember that the sovereignty, will, and great generosity of the people matter. Even in England,] this taught Charles the first, that he was but a royal servant; and this caused James the second's army, raised, paid and kept up by himself, to confound him with <shouts>²⁷ for liberty.

An American Citizen: [Another consideration is that] in all royal governments an helpless infant or an inexperienced youth, may wear the crown. Our president must be matured by the experience of years, and being born among us, his character at thirty-five must be fully understood. Wisdom, virtue, and active qualities of mind and body can alone make him the first servant of a free and <open-minded>²⁸ people.

Fabius: Americans, who have the same blood in their veins [as Britons,] have, it seems, very different heads and hearts. We shall be enslaved by a president . . . chosen by ourselves, and continually rotating? [Again, this is ridiculous.] 'Tis strange.

Moderator: Philadelphiensis, are you willing to accept this line of reasoning?

Philadelphiensis: Who can [in their right mind] deny but the president general will be a king to all intents and purposes, and one of the most dangerous kind too; a king elected to command a standing army?

Cato: [These powers are clearly dangerous. Let's face it,] he is the <supreme commander>²⁹ of the nation, and of course, has the command & controul of the army, navy and militia; he is the general <protector>³⁰ of the peace of the union. . . . Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy, or monarchy?

Philadelphiensis: His officers can wantonly inflict the most disgraceful punishment on a peaceable citizen, under pretence of disobedience, or the smallest neglect of militia duty [even during peacetime].

Moderator: I suppose this leads us to another issue that divides this panel. It has been said that this Executive will control a vast network of government officials. Mr. Martin, why is this patronage such a problem for you?

Luther Martin: Though . . . chosen for a limited time . . . his having the appointment of all 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.

Moderator: What assurances do the American people have that this patronage doesn't become a reality? Can we be confident that we'll not have the equivalent of the British Monarchy?

An American Citizen: The British King is the great Bishop or Supreme Head of an established church, with an immense patronage annexed. In this capacity he commands a number of votes in the House of Lords, by creating Bishops, who, besides their great incomes, have votes in that assembly.

Moderator: But, what about the American context? I presume you are aware that we are **not** British.

All Antifederalist Panelists: Raucous laughter!

An American Citizen: In America . . . all religious funds, honors and powers, are in the gift of numberless, unconnected, disunited, and contending corporations, wherein the principle of perfect equality universally prevails. In short, danger from ecclesiastical tyranny . . . that <profane>³¹ engine of royal power in some countries, can be feared by no man in the United States.

Moderator: Let's turn our attention to the last issue that divides our panelists. The manner in which the Executive is elected has generated a substantial amount of debate. Again, in Article II, the Constitution stipulates that Each State shall appoint . . . a Number of Electors, equal to the whole Number of Senators and Representatives . . . in Congress. These electors are to meet in their respective States, and vote by Ballot for two Persons. And as I understand it, one of those votes cannot be for a candidate from their state. The candidate receiving the highest number of votes is to be President and the person receiving the next highest number of votes becomes Vice-President. If

no candidate receives a majority of the votes the decision then goes into the House of Representatives. This is a pretty complicated method, but Mr. Monroe, what other objections do you have with this system?

James Monroe: [Well first of all,] he is to be elected by **Electors**, in a manner perfectly dissatisfactory to my mind. I believe that he will owe his election, in fact, to the State Governments, and not to the people at large.

A Columbian Patriot: If the <ultimate authority>³² of America is designed to be elective, the <limiting of>³³ the votes to only ten electors in my state [of Massachusetts], and the same proportion in all the others, is <equivalent>³⁴ to the exclusion of the voice of the people in the choice of their first magistrate.

Moderator: And the specific problem with this is?

George Mason: This mode of election [is] . . . a mere <deception of>³⁵ the people of America, and thrown out to make them believe they were to choose him.

A Columbian Patriot: It is vesting the choice solely in an aristocratic junto, who may easily combine in each State to place at the head of the Union the most convenient instrument for despotic sway.

Moderator: It seems that Mr. Madison wants to weigh in on this?

James Madison: [Yes.] I would not contend against some of the[se] principles.

Moderator: But I assume you will explain where you differ with Antifederalists on this?

James Madison: [Certainly. In this country] there is a great diversity of interests.

Moderator: Meaning?

James Madison: It will be found impracticable to elect [the President] by the immediate suffrages of the people. Difficulties would arise from the extent and population of the States. Instead of this, the people choose the Electors.—This can be done with ease and convenience, and will render the choice <sensible and wise>.³⁶

Moderator: But doesn't this take us back to the point that your opponents are making; that the Electoral College is a secretive aristocrat plot?

Fabius: [No, not at all.] As these electors are to be appointed, as the legislature of each state may direct . . . they will be appointed by the people of the state. Thus, the fairest, freest opening is given, for each state to chuse such electors for this purpose, as shall be most <uniquely>³⁷ qualified to fulfil the trust.

Moderator: But doesn't that still leave the process open to the possibility that some sort of chicanery or bribery will enter this procedure of electing the President?

Fabius: To guard against undue influence these electors . . . are to meet in their respective states, and vote by ballot; and still further to guard against it, Congress may determine the time of chusing the electors, and the day on which they shall give their votes—**WHICH DAY SHALL BE THE SAME THROUGHOUT THE UNITED STATES.**

Moderator: So if I understand this, you are suggesting that when you consider the size of the country and the improbability of any one being able to influence the votes in all the states on the same day, we don't have to worry?

James Madison: [In a nation so large,] there can be no union of interests or sentiments between States so differently situated. I have found no better way of selecting the [President] than that delineated in the plan of the Convention.

Moderator: With that, we need to conclude our discussion. I would like to have a representative from each side leave us with a closing thought. Publius, would you like to start?

Publius: [Thank you. We need not fear this Executive. The powers are all checked in some manner.] The President of the United States would be an officer elected by the people for four years . . . and would be <subject>³⁸ to personal punishment and disgrace . . . the President would be liable to be impeached, tried, and upon conviction . . . removed from office. . . The President is to nominate with the advice and consent of the Senate. . . [he has] has no particle of spiritual jurisdiction . . . [has] a concurrent power with a branch of the Legislature in the formation of treaties . . . the [veto] of the President [is checked] by two thirds of each of the component members of the legislative body. [In conclusion I would like to address the tactics of our opposition.] [Antifederalists] so far exceed the usual <over blown rhetoric of mindless hacks>³⁹ that . . . it is impossible <to not accuse them of deliberately deceiving us with their suggestions that there is>⁴⁰ a similitude between a King of Great-Britain and . . . the President of the United States. It is still more impossible to withhold that imputation from the rash and <obvious tactics>⁴¹ which have been employed to give success to the attempted imposition.

Moderator: For Antifederalists, An Old Whig.

An Old Whig: [Thank you.] When I say that our future President will be as much a king as the king of Great-Britain, I only ask of my readers to look into the constitution of that country, and then tell me what important <powers>⁴² the King of Great-Britain is entitled to, which does not also belong to the President during his continuance in office. I would therefore advise my countrymen seriously to ask themselves this question;—Whether they are prepared to receive a king? If they are to say at once, and make the kingly office hereditary; to frame a constitution that should set bounds to his power, and, as far as possible secure the liberty of the subject. If we are not prepared to receive a king, let us call another convention to revise the proposed constitution, and form it anew on the principles of a confederacy of free republics; but by no means, under <the disguise>⁴³ of a republic, to lay the foundation for a military government, which is the worst of all tyrannies.

Moderator: I hope that our discussion here will prove helpful as Americans continue to debate the ratification of the Constitution in the state conventions. Good night and good luck.

Endnotes

¹ fountain

² negative

³ perfidy

⁴ contempt

⁵ perpetual

⁶ contention

⁷ diadem

⁸ minions

⁹ envoys

¹⁰ potentates

¹¹ supercilious pomp

¹² voluptuousness

¹³ visages of murdering janizaries

¹⁴ restraint

¹⁵ dissimilitude

¹⁶ patrimony descendible

¹⁷ popular

¹⁸ inviolable

¹⁹ negative

²⁰ sycophants

²¹ subservient

²² irrevocably

²³ prudence

²⁴ perpetuate

²⁵ want

²⁶ chimerical apprehension

²⁷ huzzas

²⁸ enlightened

²⁹ generalissimo

³⁰ conservator

³¹ sacrilegious

³² sovereignty

³³ circumscribing

³⁴ tantamount

³⁵ ignus fatuus

³⁶ judicious

³⁷ signally

³⁸ amenable

³⁹ licenses of party-artifice

⁴⁰ to bestow the imputation of deliberate imposture and deception upon the gross pretence of

⁴¹ barefaced

⁴² prerogatives

⁴³ pretence

Pedagogical Materials

T-Chart for Notes—The President

Instructions: As students listen to the scripted debate, they should take notes using the T-Chart below. Notes should summarize the key ideas from both Federalist and Antifederalist speakers. You may also want to assess the strength of each argument using a numerical ranking system. This chart can also be used when using the discussion questions below.

<u>Federalist Arguments</u>	<u>Antifederalist Arguments</u>

Discussion Questions—The President

1. To what extent, do Federalists effectively refute Antifederalist charges that the President was monarchical?
2. In your opinion, are the blended powers between the President and Senate an effective rebuttal to those who made the accusation that the President was a monarchy?
3. In your view, do Federalists effectively make the case for the practicality of the Electoral College? Do Antifederalists effectively make the case that it is an elitist group?
4. Was the re-eligibility of the President a mistake of the framers at the Philadelphia Convention?
5. Which Presidential powers in the Constitution are most alarming to you?

Extension Activities

1. Create a Political Cartoon. Students can create political cartoons from the following passages from the script that illustrate two individuals and their different points of view:

On page 4, Cato and An American Citizen have very different views about the nature of the Executive.

On page 10-11, Fabius and A Columbian Patriot have very different views on the Electoral College.

2. Create a Graphic novel. Instead of creating traditional book reports or writing summaries, get "graphic" by creating a comic book adaptation of an important section in the script. Characters in the story could include An Old Whig, Luther Martin, Publius, and James Madison.

3. Converting speeches into poetry. Students could take lines from the script and convert them into various types of poems. For example a limerick from An Old Whig's views of the Executive might be:

Old Whig saw a monarchical future
On the 'stution we needed a suture
We'd have no relief
From this commander in chief
Hark and take heed of this dastardly creature

4. Have student groups do research about the executives of other nations. They could focus on issues of:

- a) mode of election
- b) terms
- c) re-eligibility
- d) removal process
- e) powers

Students could present their findings to the class through simple reports, roundtable discussions, or a debate. If you wanted to have a debate, the resolve could be, "The design of the US Presidency is flawed and should be modified to reflect characteristics of other executives."