

The Creation of the American Presidency

By David Marion, Ph.D.

Alexander Hamilton begins his treatment of the executive department in the Federalist Papers with the observation that “hardly any part of the system [was] attended with greater difficulty in [its] arrangement.” The difficulty to which he alluded was the product of many things, including especially the general understanding that executive power is both a common source of tyranny and a necessary ingredient of a well-constructed constitutional republic. Theory and practice had taught leading Framers such as James Madison to be both wary and respectful of executive power. If King George represented for the colonists the epitome of executive power gone bad, theorists such as John Locke and the Baron de Montesquieu reminded Americans that an independent executive is good not only for the security of rights but for competence in government. The task facing the delegates at the Federal Convention of 1787 was to craft an executive department that was not too weak to discharge the responsibilities that would ordinarily fall to executives while not so strong or independent that it would pose an unacceptable risk of tyranny.

Suspicion of executives was deeply rooted in the colonial psyche by the 1770s. Governors in many of the colonies had grown accustomed to legislative and popular intransigence in matters relating to governance. Legislative assemblies often did their best to limit the discretionary powers of executive officials, especially in cases having

to do with the disbursement of public funds. The Anglo-Americans in the colonies were a rights-oriented people. It is not by chance that the words “right” and “rights” appear nearly a dozen times in the Declaration of Independence, the creedal document of the United States, while the word “duty” appears only once. It is hardly surprising that the first state constitutions, including Virginia’s 1776 constitution, provided for relatively weak executives often lacking the veto power and relegated to short terms of office. Thoughtful Americans, however, understood that these unbalanced governmental arrangements neither served the ends of competent government nor just government.

Notwithstanding the fear of governmental tyranny prompted by the excesses of King George, practical wisdom counseled the establishment of a real national executive by the end of the 1780s. It is hard to overstate the significance of the decision by James Madison and the Virginia delegation to include a provision for an independent executive in the “Virginia Plan” that shaped the early deliberations at the constitutional convention. This repre-

sented a marked departure from the absence of an independent executive department under the Article of Confederation. It was becoming increasingly evident by the mid-1780s that a true national government would be needed to secure the “blessings of liberty.” Such a government would need to be entrusted with effective power,

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and leading delegates like Madison understood that this power would need to be divided for reasons of safety. A separate executive could serve as an important bulwark against foolish or illiberal legislative action. In addition to serving as a useful check on the legislative department, there are certain tasks that the delegates understood would be advantaged by the provision for an independent executive, such as the effective oversight of foreign affairs.

The cause of the delegates who favored an independent executive was aided immeasurably by the fact that George Washington consented to preside over the constitutional convention. The perception that Washington also would be the first president eased fears that a national government would inevitably abuse its powers. Nevertheless, it was only in the last weeks of the convention that the delegates abandoned the idea of entrusting Congress with the power to select presidents who would be limited to one seven-year term. Recognizing that this would undermine independence in the executive, they finally agreed that presidents should be permitted to hold office for an indefinite number of four-year terms, and that they should be chosen by the people acting through an independent group of electors. By abandoning legislative selection and permitting re-eligibility, the delegates made it possible for presidents to function as the principal representatives of the nation abroad and the people at home.

Alexander Hamilton vigorously explained and defended the provisions of Article II of the Constitution, the article devoted to the executive department, in the *Federalist Papers*. Hamilton used this opportunity not only to defend the institutional features of the proposed executive department, such as the provision for a single executive, but to make the case for an energetic and responsible executive possessed of powers that would be adequate to the effective administration of public affairs. After noting in *Federalist No. 68* that the “executive in every government” bears a heavy responsibility for “its good or ill administration,” he added that “the true test of a good government is its aptitude

and tendency to produce a good administration.” For Hamilton, the creation of an effective executive department was critical to national unity and prosperity, and hence to the success of the American “experiment” in republican government.

Significantly, the structure and powers of the executive as set out in the Constitution are defended by Hamilton as being good for both accountability (an important consideration in a popular form of government) and competence (a characteristic of effective government). Hamilton’s response to the proponents of a plural executive, for example, is that responsibility tends to be obscured when it is dispersed among many parties. Concentrating all authority in a single president makes it easy for the people to punish misconduct as well as to reward the “faithful exercise of any delegated power.” Armed with the power to recommend and veto legislation as well as to oversee foreign policy (e.g., power to negotiate treaties), the military (e.g., commander in chief), and federal agencies (e.g., power to appoint “officers of the United States” and “require the opinion, in writing, of the principal officer in each of the executive departments”), Hamilton believed that presidents would be led by their pursuit of public honors or fame to advance important national interests. This is not to say that Hamilton diminished the significance of constitutional checks on the executive. He noted with great approval that the Senate’s participation in the confirmation of high-ranking members of the executive department would discourage presidents from abusing their nomination powers by appointing persons who would merely be “obsequious instruments of [their] pleasure.” The goal for Hamilton, as for Madison, was the creation of system of government that was equal to the task of securing the public good; the single executive entrusted with significant powers is only a means to this larger end.

The expectation that George Washington would be the first person to fill the presidency, and that this would be good for the country, was widely shared. Hamilton, among others, pressed him to leave Mount Vernon yet again

to serve his country. As the first president, it fell to Washington to give life and meaning to the clauses that make up Article II of the Constitution. He took seriously his obligation to “preserve, protect, and defend” the new nation. He invoked his foreign policy powers to preserve American neutrality in the conflict between England and France in the 1790s, and he responded forcefully to put down the Whiskey Rebellion at home in 1794. He consciously set about to lend dignity and respectability to his office and to the new government, and used occasions such as his Farewell Address to cultivate sound judgment and good habits in the people. He was engaged as much in civic education as in precedent-setting administrative actions.

The American presidency represents one of the distinctive contributions of the Founders to modern political science. The culture of the period favored weak and heavily constrained executives who were little more than mere administrators. It was nothing less than an act of courage on the part of the delegates at the constitutional convention to propose the creation of a true national executive who would oversee an independent department of the government with influence over the legislative (e.g., power to veto acts of Congress) and judicial departments (e.g., authority to nominate federal judges). The American president emerged out of the recognition that the new nation would need a government that was equal to the formidable challenges with which it would inevitably be confronted. And in this connection, leading Founders such as James Madison understood that the effective discharge of executive tasks would be no less necessary to securing the “blessings of liberty” for the American people than the responsible and effective discharge of legislative and judicial tasks.