

shining new form of republican government and a bold invention in the history of democracy. In this sense, Article II of the Constitution represents one of the great triumphs of American ingenuity. As two prominent presidential scholars have noted: "The president would not be a king or sovereign. Instead, he would swear to protect and defend a higher authority: the Constitution."<sup>2</sup>

At the same time, if the framers knew they were creating a revolutionary type of chief executive who would play a central role in the life of the nation, they put surprisingly little meat on the bones of this key figure. Article II, Section 1, vests the "executive Power" in the president, but does nothing to define the powers that lie at the heart of the chief executive's office. Section 2 states that the president shall be "Commander in Chief of the Army and Navy," yet it does nothing to clarify the president's authority in commanding the military. Nor does it untangle the president's authority from Congress's separate power to "declare War" (Article I, Section 8, Clause 11), leaving that sticky wicket for another day. Article II, Section 2, empowers the president "with the Advice and Consent of the Senate" to make treaties, appoint federal judges, ambassadors, and certain "inferior Officers," and to seek advice from "principal Officers" in the executive branch. The language is ostensibly packed with power, yet it is surrounded by a mist of uncertainty: If the president must secure the advice and consent of the Senate to *appoint* certain officials, must he or she also obtain permission from the Senate to *remove* these officials? What about "inferior officers" in the executive branch—how much control does the president have over these figures if Congress is empowered (as is often the case) to create them in the first place? And if the president plays a central role in appointing ambassadors and making treaties with foreign nations, does this mean that under the Constitution, the president is the chief actor in foreign affairs, more generally?

Even in areas where the president's powers seem to be clearest, gaps and instances of constitutional silence abound. For example, the Constitution gives the president a seemingly sweeping power to grant "Reprieves and Pardons" for all federal offenses (Article II, Section 2). Another provision gives the president authority to deliver a "State of the Union" address to Congress so that he or she can propose legislation (Article II, Section 3). Interestingly, one of the president's most potent powers—to veto legislation that he or she finds objectionable (Article I, Section 7)—is wedged into the Constitution's opening article rather than with the other key presidential

## Introduction

### *An Unfinished Presidency*

KEN GORMLEY



The presidency of the United States is the most powerful position in the American system of government, and perhaps in the world. As Woodrow Wilson once wrote, the chief executive "is the vital place of action in the system, whether he accepts it as such or not, and the office is the measure of the man—of his wisdom as well as his force."<sup>1</sup> Yet the Constitution dedicates surprisingly little space to defining the duties or powers of the president; instead, it leaves the contours of that high office to be sketched out in real time, as history plays itself out over distinctive eras in American life.

Article II of the Constitution, which barely contains a thousand words, is the provision in which most of the power of the American presidency is housed. In one sense, the article is vast and awesome in scope. After all, in the period following the Revolutionary War, the framers created a new model of a chief executive—a model that had no precise parallel in world history. The office of presidency was designed to maximize the good—and temper the bad—characteristics of executive power known to the framers in the 1780s. This constitutional office thus helped to create a

powers in Article II. Taken together, these provisions seem to crown the president with extraordinary power vis-à-vis Congress. Yet the Constitution is silent as to when, and for what reasons, the president can trump Congress where there is overlap in authority—which occurs frequently. It is almost as if the Constitution assumes that the president and Congress will have to duke it out, battling over the parameters of their respective powers.

The same is true with respect to the judicial branch. Ever since Chief Justice John Marshall in *Marbury v. Madison* (1803) confirmed the power of judicial review over other branches of government, presidents are subject to being checked by the courts. Thus, the Constitution creates an uneasy dynamic between all three branches.

And when the president goes too far or seeks to defy another branch of government, there is the looming presence of Article II, Section 4, which states that he or she “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” To heighten the drama, impeachments will be initiated in the House of Representatives and tried before the Senate, with the chief justice of the United States presiding over the proceedings (Article I, Section 3, Clause 6). Thus, the other two branches of government, often at odds with the president as they skirmish for authority, have the final power to extinguish his or her time in office, a provision that hangs over the head of each president like a constitutional sword of Damocles.

And who, exactly, is the vice president? This ill-defined official is barely mentioned in the Constitution. His or her only official duty is to preside over the Senate, and this individual does not even have a vote except for ties (Article I, Section 3, Clause 4). What exactly did the framers intend to do when the president could no longer function? Did they envision that this weak vice president would have a temporary role as an acting chief executive who merely exercised “the Powers and Duties” of his or her predecessor for a brief time (Article II, Section 6)? Or was the purpose to fully empower this individual to become the new president? On this point, the Constitution remained silent.

The framers were not unaware of the ill-defined nature of the new presidential office they were creating. Indeed, they reached a consensus in Philadelphia only by leaving many of the bedeviling details to be worked out over time.<sup>3</sup> Records of the Constitutional Convention and other historical sources suggest that the provisions dealing with the presidency were purposely left sketchy, with the intention that the presidents themselves

(starting, the framers expected, with George Washington) would fill in that sketch.

Yet certain common goals no doubt undergirded the drafting of the provisions of the Constitution dealing with the presidency. During the heated ratification debates, James Madison wrote in *The Federalist* No. 47 that “the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”<sup>4</sup> Consequently, the principle of separation of powers lay at the heart of the new form of republican government being constructed by the framers. It was derived from the work of writers like Montesquieu, who had spelled out the essentials of the doctrine in 1748 in his famous treatise *The Spirit of Laws*.<sup>5</sup>

As the drafting of the Constitution progressed, it became clear that the principal fear of the Federalists was that the *legislature* would gain too much power and become oppressive. Ironically, during the colonial period, the foremost perceived enemy was the chief magistrate: King George III had ruled like a despot, and British governors in the colonies were forever taxing the colonists and running roughshod over them.<sup>6</sup> With fresh memories of unscrupulous and unpopular governors, the first state constitutions, beginning with Virginia’s in 1776, had created weak chief executive positions and placed the lion’s share of power in the legislative bodies.<sup>7</sup> Yet the experience of the post-Revolutionary period taught new lessons. Under the newly adopted state constitutions, legislative bodies in some states had run away with seemingly unchecked power and left governors as impotent figureheads. Additionally, Shays’ Rebellion in 1787 demonstrated the folly of the Articles of Confederation, which had established a system of government with no chief executive—that crisis escalated because there was no central figure who could take command and quell domestic crises. Indeed, Secretary of Foreign Affairs John Jay wrote to George Washington in 1787 and asked: “Shall we have a king?”<sup>8</sup> States like New York, whose constitution had been adopted in 1777, had established strong governors in their state constitutions, and these executives seemed surprisingly successful.<sup>9</sup> James Wilson of Pennsylvania, the chairman of the Committee of Detail at the Constitutional Convention, therefore led the fight for a single, vigorous chief executive. He favored “a single magistrate, as giving most energy, dispatch, and responsibility to the office.” Wilson also believed that a strong chief executive was necessary to blunt

unwelcome acts of the legislature. "Without such a defense specifically a veto power," he declared, "the legislature can at any moment sink it [the executive branch] into non-existence."<sup>10</sup>

Thus, although the framers were wary of monarchs after the period of British oppression, they had become even wavier of a runaway legislative branch. As Madison noted in *The Federalist* No. 47, the legislature possessed "an intrepid confidence in its own strength" and an ability to overpower other branches of government.<sup>11</sup> Madison sharpened this point in *The Federalist* No. 48, reasoning that the three departments had to be "blended" and interlaced to achieve the desired separation of powers.<sup>12</sup> Additionally, the framers concluded that the Constitution had to include an elaborate system of checks and balances, so that each branch of government was in a position to limit or check the powers of the other competing branches.

The chief executive's place in this new weblike scheme was the subject of considerable debate as different versions of the Constitution were being drafted and subject to negotiation. A central notion that ultimately gained acceptance, as articulated by Alexander Hamilton in *The Federalist* No. 70, was linked to the idea of the president as a force of energy and action in the tripartite system of government. In Hamilton's words, "energy in the executive is the leading character in the very definition of good government."<sup>13</sup> Or, as Hamilton argued in *The Federalist* No. 69, "a feeble execution is but another phrase for a bad executive; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government."<sup>14</sup>

Tench Coxe, a delegate from Pennsylvania, would later write that there was a great advantage to having a democratically selected president over a king who ruled merely by hereditary right. The president, said Coxe, would hold office by virtue of having been selected by the people and "cannot be an idiot, [and] probably not a knave or tyrant, for those whom nature makes so, discover it before the age of thirty-five."<sup>15</sup>

When the delegates of the Constitutional Convention gathered in Philadelphia, in May 1787, they were purportedly assembling "for the sole and express purpose of revising the Articles of Confederation." Yet it quickly became clear that their task was to draft a wholly new constitution. The wrangling that took place before they decided on the type of chief executive they wanted in the Constitution is instructive, because it discloses what options they *rejected*.

Several issues dominated the debate as the American presidency took shape. First, some delegates favored having more than one chief executive.

John Rutledge of South Carolina declared that "unity in the Executive magistracy" was "the foetus of monarchy."<sup>16</sup> In contrast, as described above, James Wilson pressed hard for a unitary chief executive. His argument won the day; the delegates ultimately approved the notion of incorporating a single, unitary head of the executive branch.<sup>17</sup>

The second big decision facing the convention delegates was how the chief executive would be selected. At various times during the debate, they considered having the president chosen by the national legislature, directly by the people, or through a complex scheme of electors (originally, these electors would be selected by the state legislatures).<sup>18</sup> Early in its deliberations, the convention leaned toward a provision that would have the president selected by the national legislature (i.e., Congress) for a single term of seven years.<sup>19</sup> As the summer progressed, however, the framers concluded that election by Congress was too dangerous. Respected delegates such as James Wilson, John Rutledge, and Edmund Randolph of Virginia argued that this system would give the national legislature—specifically the Senate—a disproportionate amount of power. It would vest that chamber of Congress with "such an influence . . . over the election of the President in addition to its other powers, [as] to convert that body into a real & dangerous Aristocracy."<sup>20</sup>

The novel Electoral College ended up being the compromise solution, designed to keep the president from being co-opted by the legislative branch. At the same time, this solution also (at least in theory) kept the electoral process at arm's length from the general citizenry so that the president did not become "tribune of the people" and so that the job of selecting the president was placed in the hands of "men of special discernment."<sup>21</sup> In many ways, the complex, untested Electoral College system that was ultimately adopted mimicked the Connecticut Compromise—it dispersed electoral votes among the states in a fashion that took account of population, while also recognizing the basic equality of each state in the new union. While the Electoral College relied on specially elected "electors," as a practical matter it largely mirrored the will of the general electorate. Thus, populism made its way back into the mix, albeit in a slightly diluted fashion.

A hidden piece of the new Electoral College scheme, however, would leave a dubious imprint on the new nation for nearly a century. Article I, Section 2, Clause 3, provided that slaves would count as three-fifths of persons for purposes of determining population and hence the number of

each state's representatives in the U.S. House of Representatives.<sup>22</sup> This provision, also known as the federal ratio, had been a nonnegotiable condition imposed by the Southern states before they would agree to ratify the Constitution. It guaranteed that Southern states would indefinitely hold the whip hand over Northern states in electing members of Congress. It also gave the South a clever advantage in selecting presidents: Article II, Section 2, mandated that the number of electors would be determined by the number of senators and representatives to which each state was entitled in Congress. Thus, slave owners—and slave-owning states—received a whopping over-vote in the Electoral College. The three-fifths provision therefore skewed the results in favor of the South even though the slaves themselves, whose numbers affected the outcome, “had no more will in the matter than New England horses, cows, and oxen.”<sup>23</sup> Thus, the Electoral College system itself, combined with the insidious Three-Fifths Clause, played a direct role in shaping the U.S. presidency for a century, ensuring that the slavery issue would inevitably come to a head in the new nation.

A third issue confronting the Constitutional Convention was whether to create a “council of revision”—similar to that established by the first New York Constitution—to allow a joint executive-judicial council to override repugnant acts of Congress.<sup>24</sup> The idea was to enable the weaker two branches of government to band together and invalidate “unjust and pernicious laws” enacted by the legislature.<sup>25</sup> In the end, this idea was scrapped on the assumption that the separation of powers built into the Constitution would allow the executive and judicial branches to fend off encroachments by the legislative branch. Yet the death of the council of revision gave birth to an important new presidential power: a limited veto power over congressional legislation. While some delegates (particularly Wilson and Hamilton) were prepared to give the chief executive an absolute veto, this idea was scuttled because it might allow power-hungry presidents to cripple Congress by cutting legislation to ribbons. The limited veto power, on the other hand, contained a safety valve: It permitted Congress to override the veto with a two-thirds vote of both chambers. This was viewed as a prudent middle ground that sufficiently shored up the president's place in the system of government.<sup>26</sup>

As the completed Constitution was being debated prior to its ratification, those who harbored doubts about the potentially powerful and largely undefined office of the presidency were mollified, to a certain extent, by the understanding that George Washington would be the likely first

occupant of the office. Thus, the details of the presidency could be hashed out, at least initially, with an honorable man in the chief executive's post. As Hamilton noted at the conclusion of the Constitutional Convention, the fact that Washington was the presumptive choice for the nation's first president “will insure a wise choice of men to administer the government and a good administration.” Moreover, Hamilton said, the choice “will conciliate the confidence and affection of the people and perhaps enable the government to acquire more consistency than the proposed constitution seems to promise.”<sup>27</sup> Another delegate wrote after the Convention: “I am free to acknowledge that his powers [the president's] are full great, and greater than I was disposed to make them. Nor, *entre nous*, do I believe they would have been so great had not many of the members cast their eyes towards George Washington as President; and shaped their ideas of the powers to be given to a President by their opinions of his virtue.”<sup>28</sup>

As reduced to parchment in the new U.S. Constitution, the presidency was therefore a uniquely American office. More than any other branch of government delineated in the first three articles of the Constitution, the executive branch was left intentionally incomplete. As Professor Akhil Reed Amar has written in his magnificent biography of the Constitution: “The evident openness of the text [in Article II] reflected the framers' genuine uncertainty as they struggled to invent a wholly new sort of executive.”<sup>29</sup> Some of the blanks would be filled in during the expected presidency of George Washington; he could guide the way through the fog for future occupants of that office. The rest of the blanks would be left to history itself. The new American presidency would be defined by the Constitution but also would be allowed to play itself out, gradually giving definition to the sparse words of the written document.

For all of the flexibility built into the presidency by the framers, the office has remained remarkably stable. Some of this stability was made possible because presidents—starting with George Washington—voluntarily stepped down from office after two terms to ensure that the office did not transform itself into a monarchy. (President Franklin D. Roosevelt, of course, broke the two-term tradition—a decision that led to the passage of the Twenty-Second Amendment.) Some of the stability of the office also related to the willingness of losing presidential candidates—beginning with defeated President John Adams after the election of 1800 and most recently with Vice President Al Gore in the contested election of 2000—to step aside and transfer power peacefully to the new chief executive.



Some of the stability, as well, can be traced to the physical location of the chief executive. In over 225 years, the home of U.S. presidents has remained remarkably fixed. When George Washington took office in 1789, he initially conducted his executive business from the four-story private mansion on Cherry Street in New York City. That home had been used by the president of the Continental Congress, because there was not yet a permanent seat of government for the new nation.<sup>30</sup> In late 1790, Congress and President Washington both moved to Philadelphia; that city then served as the temporary capital for a decade while the newly planned Federal City (which would come to be named Washington, D.C.) was being built on a swampland along the Potomac River, between Maryland and Virginia. For the duration of his two terms, then, Washington leased a spacious three-story house on Market Street in Philadelphia that belonged to his close friend (and fellow delegate at the Constitutional Convention) Robert Morris. Finally, in 1800, John and Abigail Adams moved into the grand neoclassical White House situated behind wrought-iron gates on Pennsylvania Avenue in Washington, D.C., becoming the first executive and spouse to occupy that mansion.

For over two centuries, American presidents have taken up residence in that same structure—with only a brief hiatus during the presidency of James Madison in the midst of the War of 1812: When the British burned the White House in 1814, the Madisons lived temporarily in the Octagon House on New York Avenue. (Newly elected President James Monroe moved back into the refurbished White House in 1818.) Thus, the office has enjoyed remarkable stability, even in terms of its domicile.

Yet bricks and mortar only constitute a backdrop for the story. The study of American presidents and the Constitution is primarily animated by events that must be placed into an historical context. Individual presidents and their personalities, as the framers like Alexander Hamilton had hoped, “energize” the office. Unexpected events in American history play out across the landscape of a president’s term in office, creating breezes, strong winds, and at times tornadoes, buffeting around the actors and squeezing out meaning from the sparse words of the Constitution that define the chief executive’s role.

This book seeks to bring to life the rich story of forty-four (and still counting) presidents, as they have interfaced with the Constitution, and to tell their stories in the context of American history. (Grover Cleveland served two noncontiguous terms as president; for this reason, the book

consists of forty-four chapters rather than forty-three.) This is not meant to be a book solely, or even primarily, about famous Supreme Court cases defining presidential power. Nor does it follow the pattern of traditional books on presidential power, which examine groups of cases and other material dealing with specific topics, such as presidential power as commander in chief, in foreign affairs, in domestic matters, and so on. Even the most astute reader cannot simply peruse neat folders of material, organized by topic, to get the full picture. The fast-moving events of history that propel presidents into office and animate their time in public life are equally important—or more important—if one is to understand the unique interplay between the American presidency and the Constitution. Thus, this book chronicles the people and events that have pushed, tugged at, lit fires under, made heroes of, or destroyed American presidents as they carried out their duties in office.

The framers constructed the American presidency with an elaborate web of strings attached and affixed these tightly to the legislative and judicial branches. The more one observes the arc of the story over time, the more one can appreciate that all three branches of government are bound together inextricably in this saga. Indeed, the framers ensured this by building into the Constitution the Federalist notion of *separation of powers* and *checks and balances*, so that the three branches of government would remain in a constant state of tension, each guarding its own turf.<sup>31</sup> The events that have most poignantly defined presidential authority under the Constitution—from President George Washington through President Barack Obama—have thus been played out like a stage drama featuring all three branches of government. When one actor performs, the other two step forward or recede accordingly. In this fashion, animated by real people and competing institutions of government and unexpected historical forces, the presidents’ roles *vis-à-vis* the Constitution have sprung to life.

Simultaneously, the framers constructed a system of *federalism*, by which the national government regularly vies with the states for authority.<sup>32</sup> Even as presidents wield enormous power as the chief executive in one of the world’s most powerful nations, they must be respectful of dozens of independent sovereignties (in the form of fifty states) nipping at their heels. Federalism thus provides another source of drama and presidential energy.

The goal of capturing all U.S. presidents in action is admittedly an ambitious one. The American presidents have been a busy and lively bunch of political figures. As Franklin D. Roosevelt once stated: “All of our great

presidents [have been] leaders of thought at a time when certain ideas in the life of the nation had to be clarified."<sup>33</sup> Constitutional issues, during the presidents' respective times in office, swirl around like thunderstorms and become relevant only at unpredictable moments. How is it possible to produce forty-four chapters that say something meaningful about each president, especially when some have held office for as little as thirty-one days? (See the chapter on William Henry Harrison.)

The authors selected to write these chapters are experts uniquely suited to answer that question. They are historians, political scientists, judges, legal scholars, and journalists who rank among the nation's leading presidential experts. Their challenge in each case was to create a short, readable chapter that created a colorful portrait of the president and shone a light on constitutional issues that confronted the president, helped to shape the president's time in office, or gave birth to a piece of constitutional precedent during the president's tenure in office. Chapters were then edited and rewritten countless times to weave together an interconnected historical account.

If this were an exhaustive collection of presidential biographies, it would require forty-four volumes. Yet this was not the goal. Nor was the book designed as an assortment of unconnected essays. It is an ongoing narrative that continues to evolve each time the American citizenry elects a new president and as new elements of the story come to life.

Illuminating the elements that span the divide across presidential administrations makes this a particularly fascinating and worthwhile endeavor. Consider the story of Woodrow Wilson, who in 1914 sought to force a *New York Tribune* city editor named George Burdick to testify in front of a federal grand jury about allegations that a Treasury Department employee was illegally leaking information to the press. President Wilson decided to outsmart Burdick by having a pardon waiting for him so that the editor could not invoke the Fifth Amendment and assert that he might be subjected to criminal prosecution for his testimony. Yet the president was thwarted by the Supreme Court, when it handed down its decision in *Burdick v. U.S.* in 1915, declaring that a pardon "carries an imputation of guilt; acceptance a confession of it," and held that Burdick could not be forced to accept that pardon.<sup>34</sup>

Now, consider Gerald R. Ford in 1976, when he made the politically risky decision to pardon his predecessor, Richard M. Nixon, for all crimes relating to the Watergate scandal. In doing so, Ford sent a young lawyer

named Benton Becker to President Nixon's home in California carrying a copy of the *Burdick* case in his briefcase. At Ford's insistence, the former president was informed that if he accepted the pardon, it would constitute a legal admission of guilt. (It turns out that, for this reason, President Nixon at first refused to accept the pardon, although the American public was generally unaware of this fact.) President Ford was therefore prepared to consummate the pardon deal only because he believed that he was getting from the disgraced former president what the American people most wanted—a formal admission of wrongdoing. Yet only if one connects the dots back to President Wilson's foiled attempt to use the pardon power in 1914 can one properly appreciate President Ford's action in 1976—an action that was tied to Ford's understanding of the Constitution and that helped extinguish his own political career.

Similarly, one needs to place events in an historical context to properly analyze the decisions made by George W. Bush and Barack Obama as they confronted the recent War on Terror, set up military tribunals in Guantanamo, and unleashed drones in Pakistan. Specifically, one must understand the decisions faced by Abraham Lincoln during the Civil War, the role played by new technology (telephones and telegraphs) during the presidency of William McKinley in the Spanish-American War, and the failed effort by Harry S. Truman to exert his commander-in-chief powers in seizing the nation's steel mills during the Korean War, to make sense of such modern-day executive actions.

How will scholars and American citizens assess the fitness of individuals to step into this high office, when it comes time to elect new presidents? How will they judge the records of past, present, and future presidents on dramatic constitutional issues that inevitably define the nation? Only by peering through a specially crafted historical lens can one see links between and among presidents, from George Washington to present-day leaders—links that would otherwise be obscured by a web of distant events.

By helping to untangle this web, this book aims to bring to life a story as unique as the American presidents themselves.

## NOTES

1. Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1908), 73.
2. Michael A. Genovese and Robert J. Spitzer, *The Presidency and the Constitution: Cases and Controversies* (New York: Palgrave Macmillan, 2005), 5.

3. James Madison, just weeks before the delegates arrived in Philadelphia, confided to George Washington that when it came to the chief executive position, he had "scarcely ventured to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be clothed." Madison to Washington, April 16, 1787, in *The Papers of Madison*, ed. William T. Hutchinson et al. (Chicago and Charlottesville, VA: 1962-1991), 9:385, quoted in Jack Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Vintage Books, 1997), 255.
4. James Madison, Federalist No. 47, in *The Federalist Papers*, ed. Clinton Rossiter (New York: New American Library, 1961), 301.
5. For a complete text of the work, see Montesquieu, *Spirit of the Laws*, trans. and ed. Anne M. Cohler, Basia C. Miller, and Harold S. Stone (Cambridge: Cambridge University Press, 1989).

Montesquieu wrote: "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."

"Again there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression." Philip B. Kurland and Ralph Lerner, eds., *The Founder's Constitution* (Chicago: University of Chicago Press, 1987), book 11, chap. 6, 1:624-625, available at <http://press-pubs.uchicago.edu/founders/documents/v1ch17s9.html>. A slightly different text version appears in *ibid.*, 157.

6. Edward S. Corwin, *The President: Office and Powers, 1787-1984* (New York: NYU Press, 1984), 5-6; Donald L. Robinson, *To the Best of My Ability: The Presidency and the Constitution* (New York: W.W. Norton, 1987), 37-39.
7. Corwin, *President: Office and Powers*, 6-7.
8. Genovese and Spitzer, *Presidency and the Constitution*, 4.
9. Robinson, *To the Best of My Ability*, 46-47.
10. Max Farrand, ed., *Records of the Federal Convention of 1787*, rev. ed. (New Haven, CT: 1937; repr. 1966), 1:65, 68-69, 98, cited in Corwin, *President: Office and Powers*, 11.
11. Madison, Federalist No. 47, 300-308.
12. James Madison, Federalist Paper No. 48, in *The Federalist Papers*, ed. Clinton Rossiter (New York: New American Library, 1966), 308-313.
13. Alexander Hamilton, Federalist Paper No. 70, in *The Federalist Papers*, 423-431.
14. Alexander Hamilton, Federalist Paper No. 69, in *The Federalist Papers*, 415-423.
15. Trench Coxe, "An American Citizen," *Philadelphia Independent Gazetteer*, September 26, 1787, *Doc. Hist.*, 13:249-251, quoted in Rakove, *Original Meanings*, 276.
16. John Rutledge, quoted in Rakove, *Original Meanings*, 257.
17. Farrand, *Records*, 1:66-69, quoted in Rakove, *Original Meanings*, 257.
18. For selection by national legislature, see Rakove, *Original Meanings*, 260. For selection by the people or by electors, see Corwin, *President: Office and Powers*, 12.
19. Rakove, *Original Meanings*, 260.

20. Farrand, *Records*, 2:501-502, 511-513, quoted in Rakove, *Original Meanings*, 265.
21. For "tribune of the people," see Genovese and Spitzer, *Presidency and the Constitution*, 5. This reference refers to tribunes of Roman times. But see Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005), 151-155 (noting that the notion of populism was emphasized by leading Federalists during the ratification debates). For "men of special discernment," see Corwin, *President: Office and Powers*, 13.
22. Gary Wills, *Negro President: Jefferson and the Slave Power* (Boston: Houghton Mifflin, 2003), 1-5; Amar, *America's Constitution: A Biography*, 87-98.
23. Albert F. Simpson, "The Political Significance of Slave Representation, 1787-1821," *Journal of Southern History* 71 (1941): 321, quoted in Wills, *Negro President*, 2.
24. Peter J. Galie, *Ordered Liberty: The Constitutional History of New York* (New York: Fordham University Press, 1996), 44-46. There was also some similarity to the Council of Censors created by the Pennsylvania Constitution.
25. Farrand, *Records*, 2:78 (Mason), 52 (Morris, July 19), 30 (Wilson, July 17), cited in Rakove, *Original Meanings*, 261.
26. Rakove, *Original Meanings*, 258.
27. Alexander Hamilton, *Conjectures About the Constitution: September*, in *The Documentary History of the Ratification of the Constitution* (Madison: State Historical Society of Wisconsin, 1981), 13:277-278, cited in Rakove, *Original Meanings*, 287.
28. Pierce Butler to Weedon Butler, quoted in Genovese, *Presidency and the Constitution*, 6 (emphasis added).
29. Amar, *America's Constitution: A Biography*, 197.
30. President Washington also lived briefly at the Alexander Macomb House on Broadway, before moving to Philadelphia.
31. The separation of powers doctrine, premised on the notion that the sum total of governmental power should not reside in one individual or body, is embedded in the structure and provisions of the Constitution. Pursuant to this doctrine, government is divided into three distinct branches—the legislative, the executive, and the judicial—and each is given its own sphere of power. At the same time, the Constitution provides each branch with the means to check and balance the others and thus further prevent the abuse of power. Keith E. Whittington, "The Separation of Powers at the Founding," in *Separation of Powers: Documents and Commentary*, ed. Katy J. Harriger (Washington, DC: CQ Press, 2003), 1-12.
32. The Constitution's scheme of federalism recognizes that sovereignty exists at the national and state levels. Thus, power is exercised concurrently by the U.S. government and by the governments of the individual fifty states. Will Paul Adams, *The First American Constitutions* (Chapel Hill: University of North Carolina Press, 1980), 276-291.
33. Arthur M. Schlesinger Jr., Introduction to *George Washington*, by James McGregor Burns and Susan Dunn (New York: Times Books, 2004), xvii; *New York Times*, November 13, 1932, quoted in Corwin, *President: Office and Powers*, 313.
34. *Burdick v. United States*, 236 U.S. 79, 94-95 (1915).