

## Introduction

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On June 1, 1787, James Wilson moved that the Constitutional Convention invest executive power in a single individual. As Madison records, a "considerable pause" ensued as one of history's most distinguished deliberative bodies succumbed to "shyness." But of course the silence at the Convention was broken soon enough by speech, and the American presidency has since that time occasioned as much critical deliberation as mute anxiety and awe. Today, some consider the presidency to have grown from a mere "foetus of monarchy" into an "imperial presidency," while others worry that an institution intended to loom large and exude energy risks being fettered like Gulliver with legislative cables. Some see in the American executive the apostasy of republicanism, while others see its salvation. Given the debates that would follow on the heels of Wilson's proposal and continue down to the present, one understands why even the Convention's most daring delegates shied from speaking about such a singular office.

Perhaps the most distinguished entry in the long-standing debates over the American executive is Harvey Mansfield's *Taming the Prince*.<sup>1</sup> Mansfield located the essence of executive power in its *ambivalence*. The political executive enforces laws passed by legislatures but confronts emergencies on his own; he embodies both the passivity of the executor and the action of the executioner. Indeed, he can hardly be one without the other, for his claim to act on behalf of some larger force is all that prevents the exercise of his own will from engendering resentment and resistance. Much of the strength of the American regime arises from its energetic executive, Mansfield claims, but the presidency is not for that reason an American original. The American

however, much of his insight into the necessity of a strong executive had already been hard-won in practice. In political life under the Articles of Confederation, argues Jeffrey Sedgwick, one sees clearly the perils of politics without princes—but one also sees that the political men of the time saw those perils as well. Indeed, the legislative power, supreme under the Articles, all but brought its opposite number into being as it created standing committees and administrative heads to perform many of the functions that the executive would later assume. The Constitution is therefore better viewed as a continuation and refinement of tendencies already emergent under the Articles than as a sharp break with everything that preceded it. Executive power arose to integrate and unify what might otherwise fall apart—and that was true no less in domestic than in foreign affairs. If government lacked an executive, it would have to create one. That is more or less what happened in the early history of the American republic.

Even with this practical background in view, however, Locke's theory of executive power was a valuable guide to the American founders. The trouble was, as David Nichols's chapter points out, that Locke was a monarchist—or at least, he framed his political thought with the assumption that hereditary monarchy would continue. How, then, could one bring Locke into line with republicanism? And how could one limit popular excesses when governmental authority arose only from the consent of the people? The leading founders developed a range of approaches to this problem: Hamilton argued at the Convention for a solution similar to Locke's own, for he thought that without institutions closely resembling the British monarchy and aristocracy, the Constitution was doomed. Jefferson favored strict construction combined with an executive capable of wandering outside of the Constitution on occasion, anchored only in the legitimacy provided by his embodiment of the popular will. Madison favored a "Council of Revision" and other mechanisms by which the federal government might protect its rights and the rights of individuals against the excesses of state legislatures.

The Constitution itself, argues Nichols, represents a distinct and persuasive solution to the problem of "unLock[e]ing" republican government. Instead of grounding executive power in an extraconstitutional popular will, the Constitution trusted in the Electoral College and in the Constitution's own authority (which had, after all, arisen from popular ratification) to confer sufficient power on the president. Instead of relying on a Council of Revision, the Constitution trusted the national judiciary and national legislature to protect the rights of the national government and of individuals. The heroes of