

**FEDERALIST No. 72**  
**The Same View Continued in Regard to the Re-Eligibility of the President**  
**Hamilton**

*From the New York Packet*  
*Friday, March 21, 1788*

To the People of the State of New York:

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 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 moneys in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the directions 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 ought to be subject to his superintendence. This view of the subject will at once suggest to us the intimate connection between the duration of the executive magistrate in office and the stability of the system of administration. To reverse and 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 dismissal 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 favor 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 to 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 his 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 forever 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 behavior. There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantages 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 their interests coincide with their 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 speculation, 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 emoluments he enjoyed, would feel a propensity, not easy to be resisted by such a man, to make the best use of the opportunity he enjoyed while it 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 man, probably, with a different prospect before him, might content himself with the regular perquisites of his situation, 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 honors 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, when he found himself seated on the summit of his country's honors, when he looked forward to the time at which he must descend from the exalted eminence for ever, and reflected that no exertion of merit on his part could save him from the unwelcome reverse; such a man, in such a situation, would be much more violently tempted to embrace a favorable 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 be raised 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 at 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 NECESSITATING a change of men, in the first office of the nation, it would necessitate 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 exclusion would always render the readmission 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 these disadvantages? 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 pretense 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 connections, 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. If the exclusion were to be perpetual, a man of irregular ambition, of whom alone there could be reason in any case to entertain apprehension, would, with infinite reluctance, yield to the necessity of taking his leave forever 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 favorite. There may be conceived circumstances in which this disgust of the people, seconding the thwarted ambition of such a favorite, 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.

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### **FEDERALIST No. 73**

#### **The Same View Continued in Relation to the Provision Concerning Support and the Power of the Negative** **Hamilton**

*From the New York Packet*  
*Friday, March 21, 1788*

To the People of the State of New York:

THE third ingredient towards constituting the vigor 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 services 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 on 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, are 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, to 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 suggested and repeated; 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 defense, 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 to the mercy of the other, but ought to possess a constitutional and effectual power of self-defense.

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 enactment 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 combated by an observation, that it was not to be presumed a single man would possess more virtue and 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 legislature will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of 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 maturer reflexion, would condemn. The primary inducement to conferring the power in question upon the Executive is, to enable him to defend himself; the secondary one is to increase the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design. The oftener the 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 missteps 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 happen to be at any given period, as much more likely to do good than harm; because it is favorable 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 there would oftener be room for a charge of timidity than of rashness in the exercise of it. 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 prerogatives, 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 consideration, 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 be rarely exercised, 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 defense, 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 case. 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 negative, 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 spite of the counterposing 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, that persons who, in compiling the Constitution, were violent opposers of it, have from experience become its declared admirers.

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 favor of that of Massachusetts. Two strong reasons may be imagined for this preference. One is 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 capacities; the other is 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.

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**FEDERALIST No. 74**

**The Same View Continued in Relation to the Command of the National Forces and the Power of Pardoning  
Hamilton**

*From the New York Packet  
Tuesday, March 25, 1788*

To the People of the State of New York:

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 in itself, 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 a 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 officers.” 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 to be authorized to grant “reprieves and pardons for offenses 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 favor 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 rigor 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 numbers, they might often encourage each other in an act of obduracy, and might be less sensible to the apprehension of suspicion or censure for an injudicious or affected clemency. On these accounts, one man appears to be a more eligible dispenser of the mercy of 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 leveled 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 offense. And when parties were pretty equally matched, the secret sympathy of the friends and favorers of the condemned person, 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 to the Chief Magistrate is this: in seasons of insurrection or rebellion, there are often critical moments, when a welltimed 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 recall. The dilatory process of convening the

legislature, or one of its branches, for the purpose of obtaining its sanction to the measure, 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 beforehand 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.

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**FEDERALIST No. 75**  
**The Same View Continued in Relation to the Power of Making Treaties**  
**Hamilton**

*For the Independent Journal*

To the People of the State of New York:

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 power 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 favorable 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 already given in other places, 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 of them. 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 defense, 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 enactment 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 stake in the government to be in any material danger of being corrupted by foreign powers. But a man raised from the station of a private citizen to the rank of chief magistrate, possessed of 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 his duty to his interest, which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state to 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 entrusted 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 degree with the constitutional representatives 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, which have been alluded to in another part of this paper, 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 dispatch, 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 endeavor 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 then merely to require a proportion of the attending members. The former, by making a determinate number at all times requisite to a resolution, 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 consist 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 members to whose agency that power will be entrusted, but we shall probably be led to conclude that a body more numerous than the Senate would be likely to become, would be very little fit for the proper discharge of the trust.

PUBLIUS.

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**FEDERALIST No. 76**  
**The Same View Continued in Relation to the Appointment of the Officers of the**  
**Government**  
**Hamilton**

*From the New York Packet*  
*Tuesday, April 1, 1788*

To the People of the State of New York:

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 than this 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, ought to be modified 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; as waiving every other consideration, it would leave them little time to do anything 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. A single well-directed man, by a single understanding, cannot be distracted and warped by that diversity of views, feelings, and interests, which frequently distract and warp the resolutions of a collective body. 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 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.

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But might not his nomination be overruled? I grant it might, yet this could 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 very 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 favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, 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 entire 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 favoritism, 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. This supposition of universal venality in human nature is little less an error in political reasoning, than the supposition of universal rectitude. The institution of delegated power implies, that there is a portion of virtue and honor 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.”

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**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**  
**Hamilton**

*From the New York Packet*  
*Friday, April 4, 1788*

To the People of the State of New York:

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. 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 favor of a person more agreeable to him, by the apprehension that a 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 suggested 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 doubt that the entire 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 favorite 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. The POWER which can ORIGINATE the disposition of honors 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 uncontrolled agency of that Magistrate. The right of nomination would produce all the good of that of appointment, and would in a great measure avoid its evils. 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 would 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 inconsiderable number of FOUR men can too 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 connections 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 favoritism and intrigue in the distribution of public honors, 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 have 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 excepted to. 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 endeavored 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 a 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; from the election of the President once in four years by persons immediately chosen by the people for that purpose; and from his being at all times liable to impeachment, trial, dismissal from office, incapacity to serve in any other, and to 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 favor 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 could be desired by an enlightened and reasonable people?

PUBLIUS.