George Washington and American Constitutionalism

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When George Washington arrived in New York in 1789 to take his oath of office, no one doubted that he was the president of a newly reconstituted United States. There remained much doubt, however, as to what, precisely, this new presidency was. A few properties of the presidency seemed clear (for the time being): the qualifications for the office, the mode of selection, and the length of the presidential term. Ambiguity reigned, however, when the political character of the presidency was considered. As Ralph Ketcham has aptly put it, "Far from everything being settled, virtually nothing was." The cryptic words of Article II, "The executive Power shall be vested in a President of the United States," offered little guidance to the first occupant of the office. What should be the relationship between the president and the other branches of the federal government: the Senate, the House, and the Judiciary? Between the president and the states? Between the president and the people of the United States? Between the president and the world community? Even more broadly, what were the president's responsibilities to the Constitution itself?

In the Declaration of Independence, Thomas Jefferson had written confidently about the existence of "self-evident truths." But the Constitution, with its emphasis on the distribution and application of political power rather than on the rhetorical flagellation of a king, contained few such truths. The skeleton of a constitutional government was present, but it was without sinew and lacked clear definition. Perhaps the best indicator of the new Constitution's lack of clarity was the degree to which the Founders themselves, the men who had written the document in Philadelphia or discussed it in state ratifying conventions, disagreed over its interpretation. For Washington, then, the project of the first presidency was not so much defined by the desire to ful-
fill a personal policy agenda as it was by the need to clarify the powers of the office and the role of the person who occupied it.

Washington was aware of the ambiguity of the constitutional text; he was also aware of his potential as an authoritative explicator of that text. He shared with many others of the founding generation the view that a constitution draws its life not merely from the words of the written document, but also from the deeds and understandings of those responsible for acting under its commands. Founding was a continuous and open process in which customs, practices, and institutions unmentioned in the Constitution would add specific meaning to the outline of 1787. In a letter to several of his advisers in the spring of 1789, Washington noted, "Many things which appear of little importance in themselves and at the beginning, may have great and durable consequences from their having been established at the commencement of a new General government." The veneration of the Constitution that characterizes much contemporary American political thinking (and that has been promoted to occasionally absurd lengths in the "good feelings" generated by the current Bicentennial period) can deflect us from the tangible anxieties of Washington and his contemporaries. For them the survival of the new Constitution and its federal government was anything but sure. The Articles of Confederation had already been cast aside as a failure. Several states were also in the midst of constitutional crises whose outcomes were unsure. The republican experiment was still in jeopardy, and hard choices would have to be made to ensure its survival.

Washington clearly understood that he was in a unique position to affect those choices and, thus, the meaning of the Constitution for future generations. He was, after all, the first president. As patently obvious as that statement is, we ought not underestimate its significance. The constitutional slate was uniquely clean for Washington as it never could be again for any of his successors. If we imagine our constitutional tradition as a great river we can easily see the important advantage that being first confers. The first rivulets from the constitutional spring can be made to flow in almost any direction. Those interested in moving the course of the stream can steer it as easily one way as another, for there is little weight behind the water. But later, as the stream continues it gathers more water, deepening the original channel. Those wishing to change the flow further downstream find that it
requires extraordinary efforts to counter the weight that the river now carries.

Put another way, many contemporary constitutional practices can be said to derive from "the persistence of original forms." Certainly not all of the "forms" proffered by Washington have become part of our constitutional tradition. Subsequent presidents, for example, have not felt obliged to take their authority as commander-in-chief as literally as Washington did. None have followed the example of his conduct in the Whiskey Rebellion, when he took to horse to lead the nation's troops in the field. While Washington or Eisenhower or Grant might have fit the part, visions of the corpulent Taft or tiny, anemic-looking Madison at the head of an army are sufficient to justify the principle of delegation employed by later presidents. But there are many other examples of how Washington's choices set our constitutional tradition onto a course easily recognizable today. Some might be tempted to minimize the significance of these choices. "Washington was only doing what the Constitution required," some might say. "What else could he have done?" But our familiarity with these forms, our confidence that these choices surely were the only sensible ones, mask the fact that many of these choices were matters of great debate during Washington's presidency and that other choices less familiar to us might have just as easily become our "original forms."

Washington came to this enterprise with an array of political resources unmatched by any president since. As the commanding general of the victorious Continental Army he emerged without challenge as the one authentic national hero of the Revolution. His journey six years earlier from New Jersey to Annapolis to relinquish his revolutionary command to Congress had become a "victory tour." Towns large and small along the route outdid each other in their efforts to honor the retiring general. Many of the celebrations were wildly spontaneous. Now, in 1789, the people once again turned out to cheer the new president as he journeyed from Mount Vernon to New York. No other American could lay a similar claim to the affections of the people; not Jefferson, not Hamilton, not Franklin, nor any other of his contemporaries could rival his reputation. George Washington inspired the nearest thing to a "cult of personality" that this nation has ever witnessed.

This immense reservoir of popular adulation was supplemented at the outset of his administration with a level of political support un-
matched since. First, his selection by the electoral college was unanimous. The electors represented the "better sort of men" that Washington hoped would provide leadership for the new republic. Their confidence in him meant that Washington began his tenure with a political base of support that embraced the elite and the ordinary alike. In addition, the new Congress, while not partisan in the sense that it would become later in his administration, was dominated by men whom Washington perceived as political allies. Throughout much of 1788 he was concerned that the "federal party" would not obtain control of the new government. But his fears melted away with the summer and fall elections as he learned of the victory of more and more "friends of the Constitution"—friends who he was confident shared his constitutional vision.

There can be little question that the new president did have a constitutional vision. He shared with many others of the founding generation a commitment to classical republican principles. His singular experience as commander-in-chief in the Revolutionary War had induced him to reshape those ideals on a larger scale. Now he was uniquely situated to make manifest that constitutional vision. As he remarked to James Madison, "As the first of everything, in our situation will serve to establish a Precedent, it is devoutly wished on my part, that these precedents may be fixed on true principles." Founding was an unfinished project in which Washington intended to play a significant role, defined by his own sense of the "true principles" of the Constitution.

Constitutional Order and the Rule of Law

Not the least important of the constitutional norms endorsed by the new president was his commitment to the rule of law itself. Republicans were addicted to constitution making. For the founding generation it was not enough to declare one's love of liberty; one also had to demonstrate a capacity for exercising that liberty by establishing effective instruments of self-government: constitutions. Indeed, republicans put great stock in their professed willingness to abide by laws of their own making. Liberty without a regard for the public interest was licentiousness. Order without respect for liberty under law was tyranny. Republicanism with its concern for ordered liberty and the pro-
motion of public virtue saw constitution making as a genuine "founding" act. Constitutions defined a people, stated their public aspirations, preserved their natural liberties, and created institutions of self-government to protect them from foreign intrigues and from their own worst passions. Republican citizens were not mere subjects. Subjects obeyed the law because the government (the king) had more guns or because medieval rituals of fealty commanded obedience. Citizens, on the other hand, were covenanted one to another by the laws established in the common interest by governments of their own making. In addition, citizens obeyed the law because it served their mutual interest in maintaining order and stability within their own communities. Perhaps most significantly, in republican communities the law was binding on all. The law was not just an obligation of subjects to obey an unfettered monarch whose own actions were to be judged by different criteria (usually of his own making). Republican law bound lawmakers and citizens equally.

This, of course, was an idealized republic. As self-confident as the founding generation is sometimes made to appear, we can easily forget just how uncertain it was about this whole business of republican government. In his first Inaugural Address Washington had noted that "the destiny of the Republican model of Government" was staked "on the experiment entrusted to the hands of the American people." In 1789 the viability of constitutional self-government was still in question. Most of the states had established constitutional governments during the Revolution. But this by no means had settled the issue. Several states were already suffering convulsions that raised substantial doubts as to whether government without a monarch could ever establish a stable political society within which peace and prosperity could grow.

One need only remember Washington's anxieties over the "commotions" of 1786 in New England: "They exhibit a melancholy proof of what our transatlantic foe [Britain] has predicted . . . that mankind when left to themselves are unfit for their own government. I am mortified beyond expression when I view the clouds that have spread over the brightest morn that ever dawned upon any Country." Washington was not at all sure that republican governments, with the mere wave of the constitutional wand, could exhibit the "efficiency" and "energy" that republican ideology self-confidently proclaimed. Even as he prepared to accept the presidency his doubts persisted. "I see nothing but
clouds and darkness before me." Some of those clouds had lifted for Washington with the success of the Constitutional Convention, the Constitution's ratification, and the election of many good federalists in 1788. But the development of the new constitutional government still presented the president with formidable problems.

Washington's most immediate concern was best encapsulated by James Madison in his famous Federalist Paper No. 51: "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

As commander-in-chief of the Continental Army, Washington had been both frustrated and angered by the lack of authority given to the Congress. The national government, the government that ought to have been the best expression of the American people, lacked "dignity," "honor," and "energy" not only among the courts of Europe, but also among its own citizens. Thus Washington, as the first president, set out to ensure that the new constitutional government would project ample dignity, honor, and energy. He did so in two ways. First, he took every opportunity, both in symbol and substance, to assert the Constitution as the supreme law of the land and the national government as the custodian of its true meaning. Citizens and, especially, the states would have to be brought around to accepting the primacy of federal law. He would have no part in the sort of obstructionism and disrespect toward the national government that he had witnessed for eight years in the army. Second, as a deliberate tactic to induce greater confidence in and loyalty to the Constitution, Washington chose on several occasions to deny the power of the national government, or more particularly his own power as president. In almost every instance his clearly stated reason was that the constitution (the law) compelled him to do so. Washington's strategy was, in his own mind, simple common sense. People would only attach themselves to a government and obey its Constitution if they could be convinced that officers of that government were bound by the same constitution. Formal checks and balances of the kind described in The Federalist only solved Madison's "if
men were angels' problem when, and only when, legal limits on power were taken seriously by those endowed with that power.

Washington versus the States

As The Federalist suggested, not only was the national government to be limited and balanced within itself, it was also to be limited by the reservation of a substantial reservoir of power to the states that protected them (and their citizens) from abuse or usurpation by the national government. Many have argued that federalism, or at least the redefinition of the concept of federalism that emerged from the Constitutional Convention, remains the one original American contribution to the world of political ideas.

Ironically, Washington came to New York believing that there was very little genius in federalism. From his experiences in the Revolutionary War he determined that state sovereignty was not the bastion of liberty and the font of republican virtue that its advocates so dearly maintained. The states, in his mind, had demonstrated only that they could serve as the breeding grounds for the tendentiousness and petty jealousies that continued to imperil the union. As a large-scale republican he firmly believed that liberty and republican self-government could only prevail in an unfriendly world through the aegis of a national agency.

But how did this deep suspicion of state power affect Washington the president? And did his choices affect the ways in which we have come to understand the role of the president today? From the first days of his administration it is clear that Washington had a constitutional agenda predicated in large part upon establishing a national government (and a presidency) independent of and superior to the power of the states. Achieving this end required a bit of creative interpretation by the president. The Constitution did not clearly define the role of the chief executive. Was he to be simply an administrator—a kind of exalted clerk? Or a ceremonial head of state to give the new government legitimacy in the eyes of foreign kings and princes? Or a Solon-like giver of law in the national interest? Or the protector of the Constitution? To some extent presidents have become all of these, but the roles to which George Washington devoted most of his energies were those of national symbol
and head of state. In choosing to emphasize these roles he hoped to impress the American people with the importance of establishing an identity with the national government, and to equally impress the state governments with the primacy of national authority.

One of the earliest opportunities for demonstrating this primacy arose in the context of a matter that would strike us as unremarkably ordinary. Thanksgiving proclamations were a well entrenched custom by 1789. Such proclamations, as well as requests for days of fasting or prayer, had been common during the war. However, when the new Congress in its first session requested a national day of thanksgiving it provoked a debate about the proper constitutional relationship between the nation, the states, and the people. Washington saw it as an opportunity to invoke his own sense of the new Constitution. During the war Washington communicated important information or requests to the states through circulars (a common letter transmitted to each state governor or legislature separately). It was a cumbersome process, but he had little choice. His legal position was as an agent of the states acting collectively through their delegates in Congress. He had no authority to speak directly to American citizens. He could not request aid, make appeals to patriotism, call for volunteers, or ask for a day of prayer and thanksgiving unless solicited by state officials.

When the first Congress routinely resolved to commemorate a day of national thanksgiving some states' rights advocates assumed that the request would be transmitted to the state executives for their implementation just as had been done previously—a clear attempt to revive at least the forms of the Confederation. Washington would have none of this. He saw the episode as an opportunity to establish a direct link between the national government and the American people through the office of the presidency. Taking his lead from the words of the Preamble ("We the people . . .") he determined that there would be no intermediaries between the president and American citizens everywhere. Not only was his proclamation directed to the people of the United States, but it asked a special blessing for the national government and the Constitution, but not the states!

Washington also asserted that whenever national power and interests were at issue, the president and the state governors were not equals. Two examples will suffice to make the point—one, straightforward; the other, absurd. During the notorious Citizen Genet affair, Washington
was anxious to avoid any incidents that might compromise his policy of neutrality. Genet, the French ambassador to the United States, had been working actively to enlist American supporters in the French cause and to pull the United States, with or without the sanction of its elected government, into an alliance against Great Britain. One of his schemes was to outfit captured British merchantmen in American ports as French privateers. Washington worried about the British reaction. Would they view this as a provocative act? After all, providing a safe haven for one belligerent against another is hardly consistent with neutrality.

The issue came to a head with the Little Sarah affair. The Little Sarah was a British merchant ship captured off the Virginia Capes and sailed by its French captors to Philadelphia. Word came to Washington that French seamen were arming the ship with cannon, presumably to convert her into a privateer. Today, it might seem a simple enough thing for the president to put a stop to. But in 1793 the situation was different. The small federal army was garrisoned almost exclusively on the western frontier to fight Indians. The navy consisted of a few desultory revenue cutters—hardly the sort of force to strike fear into the great naval powers of France and Britain. In short, the president had no permanent establishment either for obtaining information or acting on it. He was forced to rely on the state governments for much of his intelligence and law enforcement. Even though the Little Sarah (now rechristened the Petite Democrate) was anchored virtually in sight of the national capital, Washington had to ask Governor Thomas Mifflin to provide him with information on the ship’s activities and with sufficient harbor police to prevent any untoward happenings. This business had an unsatisfactory end. Washington’s cautious posture eventually permitted the Petite Democrate to embark unopposed (though the ominous presence of a large French fleet in the West Indies probably precluded any other response). Yet Governor Mifflin, an old political foe from Washington’s revolutionary days, had complied with the president’s requests with considerable diligence, providing almost daily information. This was a matter of foreign policy, an area in which the federal government’s authority was constitutionally supreme. Mifflin never once questioned Washington’s authority to subordinate a state governor on a matter of this sort.15

The second incident is interesting not merely as a constitutional
precedent but also as an example of the sort of nonsense that often happens when two enormously vain men clash over a matter of protocol. During his trip through the northern states in the winter of his first presidential year, Washington expressed an interest in dining with the governor of Massachusetts—no less a personage than John Hancock. Washington understood that Hancock first would call upon the president at his lodgings; the two would then repair to Hancock’s home for dinner. When Hancock declined to visit the president, claiming ill health, Washington canceled the dinner engagement. It appeared to Washington that the Governor was making a statement about their respective standing under the Constitution—that a president first ought to pay his respects to a Governor because of the preeminent status of the states within the Union. Washington suspected that Hancock’s complaint of ill health was a none-too-subtle ploy intended to force Washington to pay the first courtesy call. He dashed off a note to Hancock: “The President of the United States presents his best respects to the Governor, and has the honor to inform him that he shall be at home ’till 2 o’clock. The President of the United States need not express the pleasure it will give him to see the Governor; but at the same time, he most earnestly begs that the Governor will not hazard his health on the occasion.”

Hancock conceded the field and, according to Woodrow Wilson’s account, arrived at Washington’s lodgings “swathed . . . in flannels and borne upon men’s shoulders up the stairs.” Less charitable observers claim that it was merely Hancock’s way of saving face. Silly? Perhaps. But Washington had made his point.

Interestingly, the Hancock protocol escapade arose in the context of an event intended to solidify the role of president as symbol of national authority and unity. Remembering the reluctance of some states to accept the primacy of the Continental Congress in national affairs, Washington planned a campaign to appeal directly to the American citizenry. Like a monarch surveying his realm (and often accompanied with the sort of pomp and circumstance reserved for royalty), Washington made it a point to travel to every state in the Union within a few years of his inauguration. In the fall of 1790 he toured the New England states. This was the trip that occasioned the Hancock visit. Later in 1790 he made a separate trip to Rhode Island shortly after that state had at last ratified the Constitution and officially entered the Union. He did so even though he had long reviled that state’s noxious “paper-
money junto” and radically egalitarian politics. In 1791 he completed the cycle with a tour of the southern states. On every trip and in virtually every town the great hero was welcomed with enthusiastic, patriotic celebrations.

These presidential tours illustrate an important paradox of Washington’s presidency. In legal-constitutional regimes public officials derive their respect and authority from the office they hold. As private citizens they may still wield great influence over public affairs, but they have authority only when acting under the color of law. The reverse was true for the first president. Washington quite simply was revered and respected far more than the as yet untested Constitution. Washington’s public credibility was unassailable; such was not the case for the Constitution. By “showing the flag” (which, in a sense, was himself) the president intended to win the hearts and minds of ordinary Americans. Washington’s clear purpose was to use his personal charisma to endow the presidency with much of its authority. That transference was the singular mission of the tours. For many Americans the Constitution was legitimated because Washington supported it. Thus, the presidency was also respected because Americans everywhere could see the great man filling the office.

All of this was but a prelude to what Washington believed must surely come. Sooner or later, the authority of the federal government (and the presidency) would be directly challenged—a challenge that would test whether the new government could act with “dignity” and “energy.” In March of 1791 Congress, at the urging of Secretary of the Treasury Alexander Hamilton, passed a series of fiscal measures that included an excise tax on “spirituous liquors.” There were a few grumblings that the measure would not be popular. Excise taxes, after all, had been the object of much revulsion in colonial times. Some congressmen feared that the appeal of taxation even with representation would quickly diminish, as would public support for the Constitution. But all recognized that the assumption of the war debt required taxation. The excise was only a small part of the revenue package, and most congressmen concluded that it was not unreasonable.

The whiskey tax fell almost exclusively on westerners who often relied on their distilleries for cash income. Few were surprised when active opposition to the tax emerged in Pennsylvania, Kentucky, western Virginia, and the Carolinas in the summer of 1792. Washington could
not permit the law to be so publicly flouted. Images of Shays’s Rebellion were still fresh. When "occurrences of a nature so repugnant to order and good Government" happen "and lenient and temporizing means have been used, and serve only to increase the disorder; longer forbearance would become unjustifiable remissness, and a neglect of that duty which is enjoined on the President." Compare these thoughts to his assessment of Shays's Rebellion: "Know precisely what the insurgents aim at. If they have real grievances, redress them if possible; . . . If they have not, employ the force of government against them at once. If this is inadequate, all will be convinced that the superstructure is bad." So Washington moved cautiously. He issued a proclamation declaring the opposition proceedings "subversive of good order, contrary to the duty that every citizen owes to his country, and to the laws, and of a nature dangerous to the very being of a government."

He cited his constitutional duty "to take care that the laws be faithfully executed" as justification for insisting that order be restored and lawbreakers brought to justice. But he mobilized no army (he confessed that unleashing a federal army would confirm the worst fears of the anti-standing army faction: "There would be a cry at once, 'The Cat is let out;' we see now for what purpose an Army was raised") and made no threat of specific executive action.

At this point he still sought to employ moral suasion and popular appeals. He charged "all Courts, Magistrates and Officers" to uphold the law, leaving only a veiled reference to more direct actions if these pleas went unanswered. Most significantly, the president presumed that among these "Magistrates" were the governors of the affected states. Washington sent each of them a copy of the proclamation and included an additional message stating that "I feel an entire confidence that the weight and influence of the Executive of [each state] will be cheerfully exerted in every proper way, to further the objects of this measure, and to promote on every occasion, a due obedience to the Constitutional Laws of the Union." Where enforcement of the laws of the federal government was concerned, Washington firmly believed that governors were constitutionally subordinate to the president.

It was not the first time that Washington had asserted this kind of authority over state governors. For three consecutive years beginning in 1790 Washington had requested several states to send militia for a campaign against frontier Indians. The governors had gladly complied. Af-
ter all, it was their territory that was affected, and the president's plan meant that the federal government would pay for the expedition. But the expedition was to be commanded by a federally appointed officer; once mobilized, the state militias ceased to be under the jurisdiction of the governors. Organized as state units they were nonetheless the president's men exclusively.24

In these three instances—the Little Sarah affair, the first Whiskey Proclamation, and the Indian expeditions—Washington was laying the foundation for national supremacy and a strong presidency. He grounded his actions in each case upon the Constitution, principally the "commander-in-chief" clause and the provision authorizing the chief executive to "see that the laws be faithfully executed." Most importantly, he interpreted each of these provisions as a personal responsibility. As we shall see later, he often preferred to employ a consultative style in his presidency. But responsibility under the Constitution for actions of the chief executive was not collective; it was his alone. This also meant that the obligations of citizens and state officials under the laws of the Constitution were also due to him alone.

*Com Liquor and a Nationalist Constitution*

The significance of these early precedents was manifested when opposition to the excise tax reemerged in 1794. The first protests had been quieted in large part by Congress's willingness to amend the excise bill, removing some of the most objectionable enforcement provisions. Washington's proclamation probably had some influence as well (many of the oppositionists were war veterans still loyal to their old commander), but little more than that can be claimed. But Hamilton's renewed determination to aggressively collect the tax and prosecute resisters rekindled the embers of protest. Whether Hamilton intended to foment a rebellion, he certainly got one.25

Reports filtered back to Philadelphia that tax collectors were being threatened and beaten, courts closed, and the homes of "revenuers" burned. Some of these reports, coming as they did from Hamilton's agents, were exaggerated. But to Washington the events signaled a crisis in federal authority: "If the Laws are to be so trampled upon, with impunity, and a minority (a small one too) is to dictate to the majority
there is an end put, at one stroke, to republican government; and noth­
ing but anarchy and confusion is to be expected thereafter." Order or
anarchy: for Washington this was the critical test of republican govern­
ment. Either citizens could live peacefully and prosperously under
laws of their own making, or they could not. He could conceive of no
middle ground.

Washington did not doubt that he had the constitutional authority to
suppress the rebellion. But he resisted pressure from more hawkish
Federalists like Hamilton and Knox to call out the militia immediately
in a massive show of force. To the president this would be putting the
constitutional cart before the political horse. He recalled the humilia­
tion of the Congress during the war when proclamation after proclama­
tion, each of them constitutionally grounded, had been ignored by the
states. Whatever came out of the rebellion would be an important prec­
edent, but a precedent of what?

Governor Mifflin of Pennsylvania was a Jeffersonian. Could he be re­
lied upon to answer a call for the use of his state’s militia? When, in
Shakespeare’s Henry IV, Part One, Owen Glendower boasts, “I can call
spirits from the vasty deep,” the skeptical Hotspur replies, “Why, so
can I, or so can any man; but will they come when you do call for
them?” Washington shared Hotspur’s skepticism. This was, after all,
no popular crusade against Indians. This would be a call for Americans
to take up arms against Americans—in Mifflin’s case, of Pennsylva­
nians against Pennsylvanians. Washington feared more than just a re­
bellion by mountain farmers, he feared a complete breakdown in the
authority of the federal government vis-à-vis the states. If Pennsylvania
refused to recognize the constitutional authority of the president could
the Union long survive? Washington endorsed Edmund Randolph’s
view that massive force exercised without a solid base of popular sup­
port “would heap curses upon the government” because republican
government must ultimately rest on “the affection of the people.” So
Washington refrained, at first, from calling for troops.

Instead, he chose to employ a complex strategy that involved, first,
offering amnesty to those elements within the rebellion that might be
induced to declare their loyalty to the federal government. The West
was still the key to Washington’s grand vision of an American empire.
If he wished to “attach” the interests of westerners to those of the fed­
eral government he would have to take care not to permanently alienate
them. Brutal suppression, even to uphold the Constitution, would perhaps irrevocably shatter any hope of bringing the West into the federal orbit. Westerners would look for new patrons, perhaps Spain or France or even England.

The second part of his strategy was to mobilize popular support for the government’s cause by encouraging Americans to see the conflict as Washington saw it, as one between constitutional government and violent anarchy. In particular, Washington was careful to find out which states would answer a call-up of militia. He could count on Virginia. His old friend Henry Lee was now governor. Besides, Washington was still a Virginian. Virginians could be relied upon to defend the president’s honor against Pennsylvanians! But what of the other states, Pennsylvania in particular? A war between the states would be no less damaging to the constitutional union than a war between the federal government and one of its states.

Washington’s double game seems to have had its desired effect. The offer of amnesty to those who would swear loyalty to the federal government drew away many of the erstwhile rebels. This defection isolated the most militant of the rebels and allowed the administration to portray them as a treasonous opposition dedicated to violent “insurrection” against constitutional government. When Washington finally determined that only force would compel the submission of these “diehards,” he was able to link the administration’s actions with the revolutionary cause—still a potent symbol for most Americans. He characterized the government’s purpose as “nothing less than to consolidate and to preserve the blessings of that Revolution which at much expense of blood and treasure constituted us a free and independent Nation.” His proclamation asked the militias of four states (New Jersey, Maryland, Virginia, and Pennsylvania) to defend the Constitution against the rebels, a call that was met with an oversubscription of troops. These were state troops, but they were commanded by federal officers for the purpose of enforcing federal law against citizens of a member state. The military power of the states was now harnessed to the federal plowhorse.

Managed differently, the Whiskey Rebellion might have led to the establishment of a very different sort of Constitution than the one envisioned by Washington—perhaps a union looking much more like the old Confederation than a nationalist republic. The successful govern-
ment action against the rebels by no means settled the relative status of the states and the federal government. It would take a Civil War to do that [and, perhaps, not even then would the issue be resolved]. But Washington's effective invocation of presidential power on behalf of the federal government began to direct the stream of constitutional tradition down a course that certified the presidency as the unchallenged symbol and representative of national power.

The President as Constitutional Literalist

One might presume from the previous discussion that Washington was a committed "strong presidency" man, dedicated to bringing to the office all of the "energy" and "dignity" that would make the United States respectable in the eyes of the world. By this standard the president would assume leadership for national politics, propose public policy and guide it through to its final effective implementation, and vigorously enforce compliance with the national law. This assessment is but partly true, and it would seriously misstate Washington's constitutional philosophy to read his presidency in this light.

The delegates at the Philadelphia Convention had agreed almost unanimously that the great political problem they faced was how to provide for a government of sufficient power and authority to deal with matters of national concern. Washington and others understood that a strong, unified executive was essential to the achievement of that vision. A government (even one where public policy remained largely a legislative prerogative) was no government at all if it did not have the power to enforce its laws through an "energetic" executive. In this limited sense Washington was a strong president. The fragmentation and weakness of the Union was the one factor that had compelled his attendance at Philadelphia. As president he was not likely to undermine the great purpose for which he believed the Constitution had been ratified. Thus, he took every opportunity to use his office to assert federal dominance over the states in matters constitutionally entrusted to the national government. When he asked for compliance from governors or ordinary citizens he made sure that he asked it in the name of the Constitution of the United States, and when he finally resorted to coercion to quell the Whiskey Rebellion he once again insisted that he was act-
ing on the basis of the law of the land, not merely appealing to some mysterious, ancient prerogative.

But when we step back from the issue of federal-state relations, the portrait of Washington as a strong president becomes less sharply drawn—a portrait in water colors rather than oil. Some have suggested that Washington used the Constitution more as a rule book than as a broad guideline for the use of power. Indeed, there are numerous examples of Washington denying his own authority in a matter under dispute because of a particularly literal approach to reading the Constitution.

The case of the 'unappointed' justice is illustrative of Washington's great sensitivity to the specific wording of the Constitution. In 1793 Washington nominated William Paterson of New Jersey to sit as an associate justice on the Supreme Court. Well-qualified to serve, Paterson had been attorney general of New Jersey, a delegate to the Philadelphia Convention, and a member of the United States Senate, where he was an important player in the creation of the Judiciary Act of 1789 (the authorizing legislation for the judicial branch). But Paterson's service in the Senate soon posed a constitutional problem. A provision of the Constitution (Art. I, Sec. 6) stated that 'no Senator . . . shall during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created . . . during such time.' Paterson had recently resigned from the Senate to accept the chancellorship of New Jersey, but 'the time for which he was elected' had not expired. Moreover, he had helped write the Judiciary Act, which had created the associate justiceships of the Supreme Court. (The Constitution had created only the Supreme Court, leaving to Congress the authority to establish the Court's size.) When Washington learned of this he immediately rescinded Paterson's nomination: 'It has since occurred that he was a member of the Senate when the Law creating that Office was passed, and that the time for which he was elected is not yet expired. I think it my duty therefore, to declare that I deem the nomination to have been null by the Constitution.'

This decision must have been painful for Washington. Not only was Paterson a good choice, he was willing to serve. Washington had already suffered enough embarrassments in trying to staff the Supreme Court. He was turned down far more often than not—in one instance a confirmed nominee had second thoughts and decided not to show up—and found it difficult throughout his two terms to keep a full comple-
ment of six persons empaneled on the Court. Fortunately, Paterson's Senate term was due to expire in four days when the new Congress assembled. Washington then resubmitted Paterson's nomination, and it was quickly approved by the Senate.

In the context of the modern presidency Washington's behavior strikes us as slightly naive, perhaps even inept. Why publicly declare your nominee constitutionally invalid when the new Senate was not likely to meet until after Paterson's term had expired anyway? Why go out of the way to raise questions about your constitutional authority, particularly when you had written and spoken for many years on behalf of a strong executive? The answer to this enigma is twofold. First, Washington took the Constitution seriously. One factor separating republican governments from tyrannical ones was a commitment from the governors, no less than the governed, to be bound by law. Self-government was defined as much by self-discipline and self-denial as it was by the expression of popular rule. This posture was nothing new for Washington. His opposition to British colonial policy had been based on constitutional objections. During the war he had felt bound by ill-considered policies of Congress and the states because they were properly the law. Even in his personal affairs, Washington, though ever capable of using the law to his own advantage, conceded that the law ruled. In one of his many tenant-landlord disputes he objected that the jury was being summoned well before the date set for hearing the suit. This he thought quite unfair as it left the jurors exposed to the influence of local characters favorable to the tenants, while Washington, living many miles away and unable to attend the trial, would be at a disadvantage. Nevertheless, he conceded that "if it is an event to be regretted, it is equally unavoidable, as it is constitutional." This commitment to the notion of rule of law often led him to narrow, literalist readings of the Constitution.

But his reasons for exercising such deference to the constitutional text were as purposeful as they were principled. An appropriate (and highly visible) deference to the Constitution and to the other branches of the federal government was actually part of a strategy for establishing a strong presidency. This was, after all, a new form of government that had been established only after heated, often recriminatory, debates in the state ratifying conventions. Its opponents were still wary and suspicious. Only twelve years earlier many Americans had de-
declared independence from "the present King of Great Britain" because of a "history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny." Even the Country ideology in which Washington had received his early political education was deeply suspicious of the corruption of Kings (executives) and their ever-present placemen. Governmental arrangements, even those with Washington at the helm, that resurrected notions of an energetic executive would not be observed merely because they carried with them the trappings of constitutionality. Sons and daughters of the Revolution would need more assurance than that no new American monarchy was being contemplated.

Washington believed that the public and the Congress needed to be shown that the president could be trusted. If the first president chose to run roughshod over the Constitution for his own political ends, then the antifederalists and their fears about monarchical tendencies in the new government would be proved right and a bitter conflict over the Constitution's legitimacy would probably ensue. If, however, the confidence of the public and of congress in the chief executive were to increase—if they could be assured that the president could be relied upon to safeguard the Constitution and not use it for his personal aggrandizement—then Washington and, more importantly, future presidents would find it easier to assert a more directive role in national policy making. As Garry Wills has noted, part of the Cincinnatus myth of Roman legend is that power must first be denied before it can be freely exercised. Washington was a president concerned with constitutional limits; but he was in no sense a weak president.

The Deferential Presidency and the Case of the Unopened Packet

Consider the question of the president as legislative leader—a role expected of modern presidents. Washington's reading of the Constitution informed him that, at least in internal matters of national concern, the power to make law for the federal government resided with Congress. The text was explicit for Washington on this point ("'all legislative powers herein granted shall be vested in a Congress'"), therefore he was quite deferential to Congress's prerogatives. His formal addresses to
Congress rarely set out his policy agenda in a fashion that we would recognize today. In his first annual address to Congress, for example, he mentioned not a single specific legislative proposal. He did note that "many interesting objects . . . will engage your attention." For example, he suggested that Congress ought to legislate in such matters as the "proper establishment of the troops," "uniformity in the currency," a "uniform rule of nationalization," "the advancement of agriculture, commerce, and manufacture," and "the promotion of science and literature." Beyond these broad generalities, most of them little more than restatements of Congress's powers enumerated in Article I, Washington offered no specific recommendations or legislative "package." He continued this pattern in all of his subsequent annual addresses to Congress.

Some have interpreted this reticence as an indication that Washington was a president without a clear substantive vision who therefore forfeited the opportunity to exercise decisive policy leadership for the new nation. But such an indictment misses the real thrust of Washington's presidency: the establishment of a viable republican constitutional government. Washington never lacked a vision of American politics. In the years before his election as president, he had written again and again about policies he believed essential to the health of the nation. He pleaded for an end to paper money, the full funding of the national debt as a matter of "public justice" and "national honor," broad powers to regulate and promote national commerce and manufactures, a system of roads and canals to connect the western interior to the eastern states, a liberal policy of immigration, the use of imposts as a source of federal revenue, and the establishment of a national university. A glance at the fragmentary excerpts of his original, but undelivered, first inaugural address makes clear that this was still his domestic political agenda in 1789.

Yet the record confirms that Washington did not take an active role in "politicking" for his preferences, though his Federalist supporters within and outside the administration surely acted as his surrogates. Even during his second term, when partisanship escalated to a point where he no longer could rely on his accommodational leadership style, he still refused to involve himself directly in the legislative process or to interfere with what he saw as the rightful (constitutional) prerogatives of Congress. Lawmaking was the business of Congress,
and he consistently refused to interject himself into their turf. To one European, apparently amazed by Washington's seeming lack of authority, he insisted that

however convinced I am of the great advantages to be derived to the Community [from legislation to improve agricultural methods] in my public capacity, I know not whether I can with propriety do anything more at present than what I have already done. I have brought the subject in my speech, at the opening of the present Session of Congress, before the national Legislature. It rests with them to decide what measures ought afterwards to be adopted for promoting the success of the great objects, which I have recommended to their attention.³⁹

Washington here concedes that he is no policy leader. The weight of his office and his enormous personal influence would not be brought to bear even in support of policies that he supported.

But to interpret this detachment from the hurly-burly of politics as a sign of presidential weakness is to overlook Washington's larger constitutional agenda. His primary purpose was to establish the integrity of the presidency as the trustworthy and vigilant guardian of the people's Constitution. One must remember that in 1789 the Supreme Court was a lightly regarded body whose functions were as yet undefined. Today, it may be true that "the Constitution is what the judges say it is." But during Washington's administration, judicial review, with its ability to make of the Court the definitive interpreter of the meaning of the Constitution, was still far in the future.

Washington most often used the term "Chief Magistrate" when referring to his own presidency. The choice of that title was deliberate. His notion of a strong presidency was not predicated on the success of a particular set of personal policy preferences. Rather, he envisioned that presidential strength was measured by his ability to control the meaning and application of the Constitution for the people, the states, and the other branches of the federal government. Constitutionally, he could argue that this power derived from his authority "to take care that the laws [and what was the Constitution but the supreme law of the land?] be faithfully executed." But the claim would be credible only if Washington could show ample evidence of his willingness to be
bound by the text of the Constitution, even, and especially, when the matter at hand affected the nominal power of the presidency.

This willingness to defer to the authority of Congress as a matter of constitutional principle is best illustrated by the slightly ludicrous case of the unopened packet. In December 1790, Washington received a packet from the National Assembly of France, then in the throes of its own revolution. It was addressed to "The president and Members of the American Congress." The packet had been delivered to the president, and he was the first party addressed in the salutation. Thus Washington could have opened it without controversy. (Indeed, had Washington not raised the question there is every likelihood that Congress would have taken no notice of the business.) Yet Washington chose to submit the matter to the Senate for their advice: should he open it, or should Congress? The Senate decided that the president should break the seal, examine the contents, and report back to Congress if the message warranted. "An executive who took pains of this sort to respect the authority of the legislative branch was not," Douglas Freeman commented, "likely to have a clash." Yet by willingly conceding his prerogative to Congress in this matter he acquired something more permanent in return—a reservoir of political trust that he could draw from in the future when matters more essential to establishing a strong presidency were at issue.

The Old Precedent: Irresponsible Executives

Washington believed that the powers of government ought to be as cooperative and unified as possible. Mixed government and shared responsibility were the best means for achieving good policy. The implementation of policy, on the other hand, ought to be as centralized as possible. Enforcement responsibility ought to reside within a single person who, in turn, should be granted powers sufficient to meet that responsibility.

This was, perhaps, his most bitter lesson of the Revolutionary War. The Continental Congress struggled throughout the war to find an effective way to supervise and provision the army. At first, Congress acted as a committee of the whole. When that proved ineffective they established a committee of five members of Congress to serve as the ar-
my's "executive" head. In 1777 they made another change, this time retaining the idea of a five-member board, but selecting the members from outside of Congress. At several points during the war they empowered some of their colleagues to serve as "committees-at-camp," going to Washington's headquarters to oversee and expedite administration of the war effort. In each of these instances, though, Congress insisted on retaining executive power for itself.

Washington was impressed only by the utter ineffectiveness of these approaches. The states were the principal bogeymen impeding his prosecution of the war, but his regard for Congress's methods of administration was not much higher. Even when Congress succeeded in raising the necessary supplies the distribution system was so fragmented that rarely did the provisions reach the army where or when they were needed.

Washington lobbied throughout the war for single executives—men who could take responsibility for specific enterprises. In his notes for a letter to Congress in the summer of 1775 he planned to "express gratitude for the readiness which the Congress and different committees have shown to make every thing as convenient and agreeable as possible, but point out the inconvenience of depending upon a number of men and different channels through which these supplies are to be furnished and the necessity of appointing a Commissary General for these purposes." Congress met Washington's request in this case, but it was not until 1781, only months before Yorktown, that Congress finally abandoned plural executives in favor of individual secretaries for war, marine, foreign affairs, and finance. Robert Morris's success in supplying the army in those crucial months only reinforced Washington's bias in favor of strong, independent executive leadership.

The war taught Washington another lesson: those burdened with political responsibilities should also have sufficient authority to meet those responsibilities. General Washington often lacked that authority—with consequences that, in his mind, seriously compromised the war effort. For one, Washington never had the unity of command that a commander-in-chief ought to have. The eastern, middle, and southern armies were all under his direct control. But the northern army was another matter. From the war's outset the northern army command was an object of conflict among New York interests and factions within Congress. Philip Schuyler, one of the most powerful figures in New
York politics, successfully lobbied for command of the northern army. Although nominally under Washington's authority, Schuyler behaved more like an equal than a subordinate—a consequence of his independent political base. In time, Schuyler relinquished the command, but rather than consolidating command under Washington, Congress continued to exercise direct control over the northern army. This army won several important engagements in the war, most notably the Battle of Saratoga, but Washington was frustrated by his inability to effectively coordinate the northern army with the rest of his troops. On many occasions he was compelled to plead with the northern commander to provide troops and supplies or to join with him in combined operations. Never was he in a situation where he could command the northern army.

Washington had accepted the post of commander-in-chief of the Continental Army believing that responsibility for the success or failure of the war was conferred on him alone. This was surely not true. Congress and the state governments were still constitutionally responsible for the war. Nevertheless, Washington bemoaned this bifurcation of command, believing that it jeopardized his chances for success. His reputation (no small concern for a classical republican) would be the victim of failure. He complained that "I see the impossibility of serving with reputation, or doing any essential service to the cause by continuing in command and yet I am told that if I quit the command inevitable ruin will follow from the distraction that will ensue. . . . I am fully persuaded that under such a system of management as has been adopted, I cannot have the least chance for reputation."

Washington's unity of command was further weakened by his inability to obtain complete control over the appointment of his field generals. He fought a losing battle with Congress over the merit principle—in his view the only criterion for the selection of officers (but, additionally, the only criterion that would give the commander-in-chief control over the appointment process). Because most of his generals carried congressional appointments they were able to exercise a degree of independence from Washington. Officers interested in preserving their own reputations with their patrons in Congress could delay responding to Washington's orders or find political excuses for ignoring them altogether. Further undermining Washington's command were militia officers responsible to their state governors rather than to
him. This structural disunity of command made Washington feel politically vulnerable and made it appear to him that confidence in his leadership was less than it actually was.

How else to explain his behavior in the Conway affair? Congress in 1777 was considering the appointment of Thomas Conway to inspector general of the army. This was a position of great importance because the inspector general was responsible for implementing a uniform system of training and discipline. (In Washington's mind, an inspector general could serve as an alternative locus of power in the army.) Conway, an Irishman trained in the French military who carried an air of overweening superiority, had privately disparaged Washington's abilities to General Horatio Gates, the commander of the northern army and a man who resented Washington's reputation. The coincidence of these events meant only one thing to Washington: some of his nominal subordinates and their advocates in Congress were conspiring to unseat him. This was the sort of mischief he thought was an inevitable result of his incomplete authority. Washington weathered the "crisis." Indeed, many historians believe that the "Conway Cabal" can be attributed entirely to Washington's overly sensitive ego. The truth of the business is, nonetheless, less important than what Washington perceived as true. It was the latter that helped convince him of the necessity of a responsible executive.

The New Precedent:
A Responsible Chief Executive

Washington's presidency reflected this concern for administrative centralization. There would be no divided responsibility or ambiguity as to who was the chief executive. This is not to say that Washington failed to delegate. Military command had convinced him of the value of having talented lieutenants and staff officers to implement his plans. As president he was perfectly content to have surrogates, principally Alexander Hamilton, promote the administration's policies.

This style of administration has led many to conclude that Washington was not a president in the activist mold, or, less charitably, that Washington was little more than a stooge for Hamilton's grand machinations. I will leave for others the daunting task of probing the psy-
chological depths of the relationship between Hamilton and Washington. But from the standpoint of his conception of what a chief executive should be, Washington's conduct was perfectly consistent with his own long-held notions of administrative centralism. No matter how much discretion he chose to delegate to his subordinates Washington always held the reins of responsibility very tightly. Although he remained aloof from the details of government operations he insisted that his department heads inform him of every aspect of their daily activities, especially with regard to how their actions might affect his own authority. Washington could be quite jealous of his own authority and would chastise any subordinates who acted outside their official capacities. Close attention to the reports of his secretary of war led him to comment: "Who is Mr. Rosecrantz? And under what authority has he attended the councils of the Indians at Buffalo Creek? . . . No person should presume to speak to the Indians on business of a public nature except those who derive their Authority and receive their instructions from the War office." In short, Washington was completely aware of what sort of actions his subordinates were embarking on (at least in their official capacities). If he chose not to rein in Hamilton it was not out of diffidence or dotty befuddlement; it was because Hamilton's plans for the federal government conformed perfectly well with his own.

His revolutionary years had also impressed upon him the age-old administrator's bugaboo, "saying it doesn't make it so." More than once, opportunities were lost and battles jeopardized because Washington's orders were not effectively communicated down the chain of command: "Unless orders are attended to, and executed, they are of no consequence, and the greatest disorders will ensue"; officers should "see themselves that they are executed—if everyone in his own department would exert himself for this purpose, it would have the most happy effect." When he became president he issued similar guidance to his administrative subordinates:

Let me, in a friendly way, impress the following maxims upon the executive officers. In all important matters, to deliberate maturely, but to execute promptly and vigourously. And not to put things off until the Morrow which can be done, and require to be done to day. Without an adherence to these rules, business will never be well
done, or done in an easy manner: but will always be in arrear, with one thing treading upon the heels of another.\footnote{51}

These illustrations of Washington’s administrative style would have little importance in a study of Washington’s contribution to American constitutional development were it not for one often overlooked detail of considerable importance. There was nothing in the text of the Constitution that allocated exclusive responsibility for the work of subordinate executive officers to the president. He could ‘‘Commission all the Officers of the United States’’; he could ‘‘appoint . . . all other Officers of the United States’’ (subject to limitations by Congress); and he could ‘‘require the Opinion, in writing of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of the respective Offices.’’ But the Constitution did not expressly make these officers responsible to him alone. Indeed, there was substantial opinion and precedent to suggest that responsibility for department heads was to be shared by Congress and the president. Under the provisions of the Confederation, department heads had reported to Congress. Under the new Constitution the attorney general was clearly an executive officer, but a claim could be made that Congress’s constitutional authority to insist on ‘‘a regular Statement and Account of the Receipts and Expenditures of all public Money’’ was cause to place the secretary of treasury at least partially within its jurisdiction. Congress’s shared responsibility for making treaties and raising and supporting armies could give it a similarly based claim on the secretaries of state and war.

Washington, supported by the ‘‘strong presidency’’ faction in Congress, insisted that the president alone should assume responsibility for the actions of administrative officers. They successfully argued that the constitutional admonition that the president ‘‘take Care that the Laws be faithfully executed’’ would be null if an executive had to share his responsibilities with the legislature. If having a single executive held any advantage it was that he could more efficiently administer the laws and at the same time be held personally responsible for their execution.

Washington did not relish accepting responsibility for failure. To assure that he would not often be placed in such a position Washington applied two lessons as president that he had learned during his days as
commander-in-chief of the Continental Army. First, he insisted on personally selecting all of his key subordinates. The Constitution gives the president the power to nominate, but it also gives the Senate the power to confirm. But the precise meaning of those provisions was left unclear by the framers. Might, for example, the Senate insist on "advising" the president on nominees as well as "consenting" to the president's choices? Might the "advise and consent" provision also mean that the Senate must be consulted before the president removed any of his appointees from office?

Washington clarified the ambiguity in favor of the responsible-executive principle. When the Senate first exercised its power of refusal—it rejected one Benjamin Fishbourne, Washington's nominee for customs officer for Savannah, Georgia—Washington accepted the Senate's constitutional prerogative, though with some irritation. The incident is often cited as the first example of senatorial courtesy in that Senator Gunn of Fishbourne's home state of Georgia appears to have led the opposition. But Washington's response served as another equally important precedent. He conceded that whatever "the reasons which induced your dissent, I am persuaded that they were such as you deemed sufficient." He would not challenge the Senate's authority to say no, nor would he require the Senate to show just cause for its refusal. But another precedent was also validated. The president would not allow the Senate to play any role in suggesting nominees for the executive department. He continued to solicit suggestions from those he trusted, some of them Congressmen. But he would not permit involvement as a matter of right by the Senate in naming his lieutenants. If this point were conceded Washington would have to subject his own reputation to subordinates whose political loyalties and reliability he had little confidence in. "I shall not, whilst I have the honor to Administer the government, bring a man into office, of consequence knowingly whose political tenets are adverse to the measures which the general government are pursuing; for this, in my opinion, would be a sort of political Suicide." No president should, he thought, have to tolerate a Gates or a Conway in his own "family."

More even than loyalty to the presidency, Washington demanded personal loyalty from his subordinates. Washington's volatile, nearly reckless behavior on learning of Benedict Arnold's treason (he abandoned important military discussions and rushed immediately to West Point
at great risk to himself and, therefore, the command structure of the army) has perplexed many biographers. After all, both sides in the war suffered their share of traitors. Arnold's treason triggered Washington's well-known fury precisely because Arnold had been one of his most trusted lieutenants. His treason reflected poorly on Washington's executive judgment. As president, Washington wanted no Arnolds to sully his reputation. Personal loyalty became a selection criterion (though certainly not the only one) for all of his high-level nominees.\textsuperscript{54} Unlike the model of the British cabinet (especially under Walpole), where various factions and competing political personalities were represented, all of the president's men were the president's men—a practice followed by most presidents ever since.

Given George Washington's standing with the public, personal disloyalty was never really an issue during his administration. When Jefferson sensed that his political sentiments and activities were out of step with the president's he chose to resign rather than be deemed disloyal. His replacement as secretary of state, Edmund Randolph, soon found himself in precisely the sort of situation his predecessor had hoped to avoid. Information had come to Washington (information that many believe was carefully selected and manipulated by Hamilton's allies) that Randolph had taken a bribe from the French to oppose the Jay Treaty. Washington coldly confronted Randolph with the accusation. Flustered, Randolph offered a limp explanation and then abruptly and angrily resigned. Recent scholarship suggests that Randolph was the injured party, but excessive fear of betrayal created a blind spot for Washington.\textsuperscript{55} Nevertheless, with few exceptions political appointees from Alexander Hamilton to John Dean and Oliver North have henceforth been selected as much for their loyalty to the president as for their competence. This was the constitutional price if presidents were to be held accountable for the actions of their subordinates.

\textit{The Two Presidencies and the Case of the Unpaid Dragoons}

Twenty-five years ago Aaron Wildavsky postulated the existence of two presidencies. The "domestic policy presidency" was characterized by high levels of partisanship, interbranch competition, and bargaining.
Presidents found it difficult to achieve their domestic goals and often had to settle for incremental accomplishments. Presidents could still lead, but they had to accommodate the significant constitutional and political prerogatives of Congress in doing so. Wildavsky noted that even relatively successful presidents were often frustrated in their attempt to establish a coherent legislative program.

On matters of military and foreign policy, however, the picture looked quite different. Presidents were generally much more likely to be given their head in such matters. Partisanship tended to be more muted; the president's constitutional prerogatives were at least equal to Congress's. The practical consideration that the nation must speak with one voice in the international arena; the need for foreign policy to be based on coherent, long-term commitments; and the superior intelligence-gathering capability of the executive branch all combined to give the president preeminence in foreign policy. Thus, Wildavsky painted a portrait of the modern president that revealed presidential dominance in foreign policy but presidential-congressional bargaining in domestic policy—two presidencies. Wildavsky's conclusions were meant to apply only to modern presidencies, but strong evidence suggests that Washington already had a constitutional conception of the presidency that anticipated Wildavsky's observation.

This distinction can be illustrated by examining Washington's use (and nonuse) of the veto power. At the Philadelphia Convention, Washington advocated a veto power with few limits. He voted against a resolution that would have reduced the congressional majority needed to override a presidential veto from three-fourths to two-thirds (the resolution was approved despite his opposition). Other proposals at the Convention considered the possibility of linking the judiciary or the Senate with the president in a Council of Revision. The veto power was ultimately placed exclusively with the chief executive, but the implication of these discussions was that the veto was to be exercised as a check on "unconstitutional" or improper legislation. Washington, who attended every session of the convention, must have been aware of this intention of the framers.

The president, then, had a constitutionally explicit veto power. But questions remained. Under what circumstances could the veto be exercised? Was it to be applied only against legislation of questionable constitutionality? Or could a president veto statutes whose policy aims he
deemed detrimental to the national interest? Washington's advisers often encouraged this latter interpretation and urged him to use the veto as a policy tool. Such use would have established a precedent for presidential involvement in, and perhaps even dominance over, the legislative process. It might have even signaled the onset of a presidential model of government. But with one important exception, Washington declined these invitations.

For example, as a matter of justice Washington strongly believed that tariffs and duties should be based on the principle of reciprocity. Nations that interfered with or discriminated against American trade should not be entitled to the same treatment as the "good friends" of the United States. Thus, when he received, in July 1789, a tonnage bill that did not contain these discriminations, he considered not signing the bill as an indication of his displeasure. But he did not consider vetoing it. He eventually signed the bill when he was assured that Congress was already considering a revision that would satisfy many of his objections.58

A few weeks later Congress was considering another bill that struck Washington as unjust, and once again he declined to play the role of legislative leader. Congress was about to pass legislation providing that all congressmen be paid six dollars a day. Six years earlier, in his famous Circular Letter to the States, Washington had argued that governmental rewards should be proportionate "to the aids the public derives from them," an argument that led him to suggest that greater rewards for officers, either in severance pay or bounty lands, were justified.59 Writing now to Madison, Washington expressed his view that senators (perhaps because of their added constitutional responsibilities) ought to receive higher pay than representatives and asked whether a veto would be appropriate.60 Little more is known about the affair than this one cryptic note—except that no veto occurred.

While Washington thus declined to use his veto power to nullify policies he disagreed with, the controversy over the assumption bill indicated that he was willing to consider vetoing legislation he supported if its constitutionality were questioned. As a general and as a private citizen, Washington had long advocated the full payment of the national debt; early in his presidency he had even drafted his own plan for financing the debt, but he seems to have withdrawn it in favor of Hamilton's more comprehensive, sophisticated plans.61 In the cabinet debate
about Hamilton’s funding plan, Washington never questioned its wisdom. The plan repaid the national debt at full value and did so in a way that clearly encouraged participation by the federal government in the development of national economic life, both long-held goals of Washington. But he voiced great concern over the bill’s constitutionality. Although he signed the bill, it is clear that he viewed the president as having a special guardianship of the Constitution—this in the days before John Marshall was to take the first tentative steps toward asserting such a role for the Supreme Court.

Washington’s endorsement of this special constitutional role explains his first veto. The census of 1790 yielded a population figure that when divided by the constitutional criterion of one representative per 30,000 persons authorized a House of Representatives of 120 members. But after allocating to each state one representative for every 30,000 persons, there obtained only 112 representatives. The congressional plan allocated the remaining seats to the eight states with the largest remainders (that is, with the largest population “balances” after seats had been allocated under the one seat per 30,000 rule). These “bonus” seats would have disproportionally favored the northern states. Sectional feeling ran high. Even his cabinet was divided. Hamilton and Knox (northerners) supported the bill; Jefferson and Randolph (southerners) opposed it. Washington decided to veto the bill but explained that his action was dictated solely by his regard for the Constitution. His message to Congress explained that “the Constitution has . . . provided that the number of representatives shall not exceed 1 for every 30,000 . . . and the bill has allotted to eight of the states more than 1 for every 30,000.”

Washington, then, understood the constitutional relationship between Congress and the president as one in which Congress held preeminent constitutional standing to make law. Several “strong presidency” men insisted that the chief executive could veto acts of Congress if in his view the national interest commanded it. This would have made the president’s power analogous to the royal prerogatives held by the king and many of the colonial governors. But Washington refrained from using his veto in such a manner on domestic policy, not because he could not, but because he would not. He believed the policy preferences of Congress on domestic matters should prevail unless a clear constitutional provision commanded his intervention not only
because he chose to take a strictly literalist view of the Constitution, but because to do otherwise would arouse the suspicions and jealousies of those who saw monarchist tendencies lurking in the new constitutional arrangements. He summarized his ideas to his old friend Edmund Pendleton:

You do me more than Justice when you suppose that from motives of respect to the Legislature (and I might add from my interpretation of the Constitution) I give my signature to many Bills with which my Judgment is at variance. . . . From the nature of the Constitution, I must approve all parts of a Bill, or reject it in toto. To do the latter can only be Justified upon the clear and obvious ground of propriety; and I never had such confidence in my own faculty of judging as to be over tenacious of the opinions I may have imbibed in doubtful cases. 63

Should we assume from all of this that Washington felt constitutionally bound to assume the role of a "weak" president, completely deferential to the whims of the legislature and unwilling to exercise policy leadership? Wildavsky’s insight suggests that we should look closer. And, indeed, when we examine Washington’s words and deeds with regard to foreign and military affairs we find a very different picture. Here, Washington willingly accepted a much more activist notion of presidential power.

First, Washington had considerably more "confidence in [his] own faculty of judging" the propriety of legislation regarding military and foreign affairs. The subjects had occupied much of his life for the previous twenty-five years. Few other Americans (and certainly even fewer congressmen) had the breadth and depth of personal experience with these matters, nor did any (not even Hamilton) match his commitment to the virtues of a single-minded, coherent, foreign policy. Second, in Washington’s literalist reading of the Constitution there were few points of entry that would allow the president to challenge Congress’s primacy in domestic politics. But foreign policy and military affairs were another matter. Here, his constitutional literalism led him to envision a leadership role for the president. The Constitution stipulated that the "president shall be Commander in Chief of the Army and Navy," that he shall have the power "to make treaties," to "appoint
ambassadors," to "receive ambassadors," and to protect each state "against invasion." Even the proviso in the presidential oath that required him to "preserve, protect and defend the Constitution of the United States" implied added presidential responsibilities. Washington was not interested in monarchical authority; he still preferred a consensual mode of governance. But he was more likely to insist on his own constitutional prerogatives when diplomatic and defense related issues were at stake.

We can see this difference in perspective at work in Washington's oft-overlooked second veto. In the final days of his second term Congress passed a bill to reduce the size and cost of the military establishment. In what amounted to an item veto (that is, he vetoed the entire bill, but only because he objected to one particular provision), Washington rejected the bill because it included the dismissal of two specific companies of light cavalry (dragoons). His explanation to Congress focused on two policy objections. First, these units were serving at outposts on the western frontier. Travel and communication delays being what they were, it would be weeks before the troops could be notified of the decision, organized for demobilization (soldiers do not simply drop their gear in the mud and leave), and sent home. Yet if the president signed the bill, their pay would end immediately. As a soldier of the Revolution who had been constantly plagued by the grievances of unpaid troops, Washington was not about to have his administration be the source of similar indignities. Yet if he paid the troops in the interim, he would be overriding Congress's spending authority—a power exclusively granted to Congress by the Constitution.

Washington's second appeal also was based purely on practical (policy) considerations that he felt confident in asserting. The provision dismissing the dragoons was simply bad military policy. The frontier was the last place to turn for military reductions. Replacements would surely be needed, and re-mobilization would prove far less economical in the long run than maintaining the status quo. Congress agreed and immediately passed a new bill without the objectionable item. Congress has found it difficult to resist a firmly convinced president on military and diplomatic matters ever since.