George Washington and American Constitutionalism

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The story of George Washington's role in the founding of our constitutional traditions is not one of unrelenting success. As President he aspired to much that went unfulfilled during his two terms in office. In several significant ways, in fact, constitutional practices developed quite differently from what he had envisioned. But even here, Washington's role in the development of new and important constitutional forms was substantial, albeit unintended.

The frustrations that Washington suffered can be explained at least in part by the following observation: as Washington came more and more to embody the ideal of American heroism and public service, he came less and less to embody the ideals of American politics. As his personal standing advanced, the representativeness of his political values receded.

This may seem a curious claim. But it is based on a view that the early constitutional period (indeed, perhaps even the writing and ratification of the Constitution itself) represented a transitional period in American political history. According to Gordon Wood, before 1787 the dominant political tradition in American politics was classical republicanism. With the new Constitution, that tradition began to surrender its hegemony over how Americans thought (and acted) about politics to a new tradition, still republican in its spirit, but more liberal in its application.

Nearly all Americans in the 1790s could be called republicans. They shared enough core values—support for constitutionalism and the rule of law, a belief in the social contract, self-government through institutions of representation, a commitment to liberty—that many Old World traditionalists saw these new Americans as all-of-a-piece. But while they shared a common political language, there were still fundamental differences in the way conservative, classical republicans and
other republicans—some liberal, some democratic, some even radical—viewed their world.

For example, where conservatives saw the principal mission of republican government to be the promotion of virtue, liberals saw it as the protection of liberty. Where conservatives concerned themselves with generating public-spiritedness among citizens, liberals focused on safeguarding the private liberties of free men. Where conservatives favored mixed government and political unity, liberals preferred divided government and checks against excessive power. Where conservatives believed in the existence of something called the public interest, liberals acknowledged that private interest was both natural and largely uncontrollable. Where conservatives still believed that even republican governmental institutions should reflect the natural divisions within society, liberals believed that all republican institutions should be grounded in the "people." Where conservatives believed that order was a necessary condition for social harmony and economic prosperity, liberals saw the spirit of liberty as the more essential condition.

These dichotomies are, to some extent, archetypal. They define "ideal types"—what a "pure" classical republican and a "pure" liberal republican might look like in the 1790s. One ought not to make too much of these distinctions because most Americans, including Washington himself, drew upon both traditions. Practical experience tends to play havoc with ideological purity. Thus, while Washington was in most ways a classical republican, he had come to believe that a national republic might prosper better by binding the interests of citizens to itself (a more "liberal" notion), rather than by relying merely on some hoped-for improvement in the virtue of those citizens (a more "classical" aspiration). His many travels to the West and his extensive interests there (especially his entrepreneurial vision of a Potomac Canal) had convinced him that economic advantage, not just virtue and liberty, was what animated people on the frontier.

As important as the West, or his own particular idea of the West, was in shaping his political views, for George Washington the experience that directed much of his post-1787 thinking was, once again, the war, particularly the circumstances and frustrations of coordinating the military campaign for independence. His was a singular vantage point that set him apart from all other Americans. Even the members of his military "family"—men such as Hamilton, David Humphreys, and
John Laurens—or his nationalist political allies in Congress—Madison, Alexander McDougall, Robert Morris, James Duane, and others—could only share that experience at its edges, where it blurred into and was shaded by their own experiences.

Other Americans learned very different lessons from the war. Many spent those years going about their business, concerned only with how the conflict affected their families and themselves. Still others had come to political age after the war. Nor was the war the only thing that colored American's perceptions of politics. Their religious faith or the social values they held in common with their neighbors or the way they earned their living were often more important in shaping their political character than either the war or the tenets of republican ideology. In short, by 1789 the United States already contained a diversity of ideas, interests, and experiences that made Washington's vision of a virtuous, harmonious, prosperous union only one vision among many. It is not surprising, then, that Washington was compelled to accept the development of some constitutional traditions very different from the precedents he had hoped to initiate. At the height of his personal popularity he was engaged in a politics of nostalgia, seeking, in many respects unsuccessfully, to hold back the tide of liberal republicanism in favor of a classical vision of politics that was already on the wane.

A Cooperative Presidency

Among the constitutional traditions held in highest regard today are the twin structures undergirding the national government: separation of powers and checks and balances. Few constitutional debates today proceed very far without partisans seeking to justify their claims with an appeal to some particular reading of those two principles. Few now doubt that separation of powers and checks and balances are "good" principles and that they are each an essential element of a broadly accepted constitutional tradition. The language and spirit of the Constitution now seems to us self-evident. The Founders wanted to create a strong national union. Thus they endowed the central government with powers sufficient to accomplish its important ends. But to guard against the abuse of those powers they divided them among three separate political institutions and created provisions whereby each branch
could involve itself in the others' business—a system based on "separate institutions sharing power."

What we often fail to acknowledge is that this orthodox view reflects the perspective only of the victorious version of republicanism. Not all of the Founders fully subscribed to this view. As noted earlier, Washington had confided that there were some aspects of the Constitution that he was "persuaded never will, obtain my cordial approbation." One of those things for which Washington had little enthusiasm was checks and balances. His own notions about republicanism emphasized, instead, the idea of mixed government. Drawn from classical antecedents and modified by the British constitutional tradition, mixed government was premised on the principle that each of the three "natural" orders within society—the monarchy, the aristocracy, and the people—should be represented within the government because each, indeed, retained some recognizably distinct interests. But the theory of mixed government also assumed that a genuine "public interest" could be discovered and advanced by the cooperation of the three orders. The British model of the king-in-parliament served as an example of the energy and unity that were possible in a mixed-government state. The king, guided by his ministers in the Lords (aristocracy) and the Commons (the people), could act only on those matters that generally served to protect the interests and privileges of all Englishmen. The system seemed to offer the advantages of republican government (a jealous regard for liberty, virtue, and the public interest), while maintaining a state sufficiently unified and energetic to achieve the common purposes of its people.

To many Americans, Britain was the seedbed of republicanism, and they saw much in its mixed-government system to commend it to the emerging American strain. Perhaps the best example of mixed-government thinking in the founding period can be seen in Alexander Hamilton's plan for government offered at the Philadelphia Convention. Recognizing that America had no hereditary monarchy and no ascriptive aristocracy, he proposed to create new, "artificial," orders in an elected presidency and an elected Senate, each to serve during good behavior, as well as another assembly popularly elected for limited terms. Hamilton was urging the convention to adopt a functional equivalent of Britain's mixed-government system, acknowledging "that the British Govt. was the best in the world." But Hamilton's proposal was not
taken up by the delegates, most of whom recognized that it was a form of constitutional monarchy no longer likely to generate popular consent.  

The newer orthodoxy, drawn from liberal strains of republicanism, warmly embraced the principle of checks and balances. James Madison in *Federalist* no. 51 best exemplifies the "new science of politics." Mixed government, with its emphasis on uniting the different social orders to cooperate for the common good, seemed to make little sense in a society without clearly demarcated classes. It was to be replaced with a new system in which political power would be checked and balanced by a division of powers into different departments, each held accountable in some way by the same class—the people. Nor was all this a purely federalist notion. Many antifederalists shared the new orthodoxy with respect to the principle of *balanced*, as opposed to *mixed*, government. If anything, the antifederalists were fearful that the Constitution did not go far enough in erecting sufficient safeguards against the abuse of power. They called for more checks, not fewer.

For Washington, much of this new "science of politics" was anathema. He believed that the crisis of the confederacy had come about not because the national government lacked balance or had insufficient checks on its power. On the contrary, Washington was convinced that the central government needed *fewer* limitations on its power; that it needed *fewer* obstacles to its efficient operation; that it required, in a word, *energy*. The carefully wrought theories of Montesquieu and Hume may have been attractive to many of his better-read contemporaries. But Washington, who had been exposed to the paralyzing effects of an overly limited central government both during and after the Revolution, wanted a constitution that granted powers, not one that constrained them. He thought it foolhardy in the extreme to replace a government constrained by the petty, parochial jealousies of the states with one equally stalemated by excessive internal checks and balances. "No man is a warmer advocate for proper restraints and wholesome checks in every department than I am; but I have never yet been able to discover the propriety of placing it absolutely out of the power of men to render essential Services, because a possibility remains of their doing ill."

But Washington remained a committed constitutionalist. Good republicans of all varieties accepted the authority of law, particularly law
established through the consent of constituent assemblies, and Washington was, as we have seen, no exception. These two norms—his broad republican commitment to the rule of law (epitomized by the new Constitution) and his more classical republican desire for harmony in government (in opposition to the very checks and balances established in that Constitution)—posed a difficult problem for the president. How could a president with strong nationalist feelings and a commitment to energetic government govern effectively under a Constitution that raised substantial barriers to the accomplishment of those goals?

The answer to that question reveals George Washington as a constitutional interpreter of considerable creativity. Moreover, the logic of his interpretation was both sensible and consistent. As we have seen, whenever his responsibilities as president were textually stipulated by the Constitution, Washington nearly always scrupulously followed the letter of the law, sometimes to absurd lengths. On the other hand, when the Constitution was silent or ambiguous, his classical inclination toward unity and cooperation led him to ignore the implicit boundaries between himself, the other branches of the national government, and the American people. A few examples—some successful, some not—will illustrate how Washington sought to use the presidency as symbol and representative of unity and national consolidation.

The Idea of a Consultative Presidency

Once again, Washington's experiences as revolutionary commander-in-chief provide a context for understanding his commitment to energy and unity in the national government. During the war he never once questioned that the army was an instrument for accomplishing a political purpose—indepedence. Expediency dictated that there be complete unity of purpose among the Congress, the states, and the army. Throughout the war Washington continually sought to involve as many individuals and political agencies in the common effort as possible. One could, of course, argue that Washington was simply trying to diffuse responsibility for the war effort in case things went badly (and they did go badly for much of the war). But consultation was essential to the character of a mixed government, especially a republican one; thus, it
is not surprising that Washington sought to graft several consultative practices onto the constitutional presidency.

Councils of War were common occurrences at Washington's headquarters during the war. Here, his youthful experiences as an officer in the prewar Virginia militia are worth noting. He had served under two seasoned British commanders, General Braddock and Colonel Forbes, who used Councils of War to plan strategy and discuss tactical alternatives. Washington was impressed with the practice, not least perhaps because he found that his own advice was often taken seriously by his more "professional" superiors. But in addition, responsibility for the success of the subsequent operations could be shared, and each officer could be made aware of the purposes of the planned campaign so as to coordinate his efforts toward its success.

When the Continental Congress appointed Washington as commander-in-chief the delegates wanted to maintain direct control over the war effort. To that end they fully intended to keep the general on a short leash. Among the "friendly" suggestions offered by Congress was that Washington rely on a Council of War whenever considering strategy. Because Congress appointed all of the other general officers, a council would assure that the various congressional factions were represented at Washington's headquarters. War policy could not, therefore, emerge without a substantial consensus among the generals. In fact, Washington heartily endorsed the practice. He continued to use councils even after Congress had ceded its supervision of military operations to Washington in the periods of his "dictatorship." Washington was not lacking in confidence or self-regard, so his willingness to accede to councils (and there are instances in which advice from his councils dissuaded him from his own initial plans) might at first seem out of character. Washington recognized, however, that without the support of his own staff, victory in the field would be problematic. A council recommendation carried with it a sense of shared responsibility and common purpose that a general order issued by a commander-in-chief could never attain. If everyone's reputation were contingent upon the achievement of a common objective there would be ample glory to go around.

Washington made a conscious effort to incorporate these lessons into his conception of the presidency. The most successful example of his commitment to unified, cooperative government that has found its
way into our constitutional tradition is the idea of a cabinet. Under the new Constitution Congress was authorized to create executive departments to see to the daily business of government. But might their responsibilities go beyond administration? Might they advise the president on other important public matters? The most that the Constitution said was that 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 Offices." Construed narrowly, this meant only that the president might insist on a written accounting from officers who otherwise stood apart from his authority—a formal, compartmentalized view of government operations inconsistent with the notion of mixed government and shared responsibility.

Washington, instead, chose to draw upon his wartime experiences for a precedent. As commander-in-chief he faced a mountain of paperwork (running the army was a bureaucratic enterprise far larger even than his presidency). To help in this daunting task Washington surrounded himself with a singular assemblage of enormously talented young men, his "family" as he preferred to call them. It was a remarkable group—the brilliant Alexander Hamilton, the impulsive Marquis de Lafayette, the diplomatic David Humphreys, and the poetic John Laurens were but a few—all dedicated to serving the great general. Washington could ask advice on any political question (and he was compelled to deal with many), and he could expect useful counsel from several of his young assistants.

As president, Washington referred to his experience with the Councils of War and with his personal staff and tried to adopt elements of both. He refused to use his cabinet secretaries purely as departmental administrators. He preferred, instead, to utilize their collective talents as a presidential "family." Thus, while each cabinet member had specific administrative duties he was also a minister without portfolio, free to advise the president on any matter of public concern. Matters of foreign policy, for example, would not be the exclusive bailiwick of the secretary of state, Thomas Jefferson. Washington would also solicit the opinions (occasionally in writing, but more often in conversation) of his other cabinet members (Hamilton, Randolph, Knox) regardless of their departmental responsibilities. He would even look to trusted friends outside the executive branch such as John Jay and James Madi-
son. Moreover, he used his cabinet as a genuine consultative body, occasionally making up his mind only after a full discussion with all of his ministers.

Most presidents of the early 1800s adhered to Washington's practice, but as a constitutional precedent his notions of a free-floating cabinet eventually withered away. The increasingly burdensome administrative duties of departmental secretaries have made their expertise more specialized and their time more scarce. Moreover, as a more liberal, interest-oriented philosophy of government developed later in the nineteenth century, department heads often became advocates of the interests represented within their particular agencies. This bias made them less attractive as presidential counselors because they and their agencies were not necessarily "interested" in harmony and common purpose. However, modern presidents have found indispensable Washington's idea of a body of political advisers dedicated to serving the president, as the mushrooming growth of the White House staff suggests.

The Case of the Reluctant Judges

Where some supporters of the Constitution maintained that separation of powers set up impregnable barriers (or "high walls" to use Jefferson's analogy) between the branches, Washington preferred to conceive of those barriers as a semipermeable membrane. To liberal republicans the existence of these barriers promoted ongoing conflict and tension, perhaps even jealousy, among the branches of the federal government. The logic of Madison's Federalist certainly seemed to bear this out: "The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary and constitutional means and personal motives to resist encroachments of the others. . . . Ambition must be made to counteract ambition." But Washington advocated harmony, not conflict; cooperation, not tension; common purpose, not institutional jealousy. And he sought at every opportunity to bend and stretch the Constitution in ways that minimized the new theory of balance.

An incident early in Washington's second term illustrates the grow-
ing incompatibility of classical republicanism with its newer varieties. Washington was committed to a policy of noninvolvement in European affairs. Yet he found his administration besieged by Americans (and Frenchmen—Citizen Genet was already working his political wiles) who insisted that the president be more supportive of the French and their revolution. Washington resisted. His conservative nature was offended by the extremes of the French Revolution. He deeply resented the involvement of the French in the internal politics of America. And he wanted to maintain decent trade relationships with all of the Old World; favoritism in the deepening Anglo-French conflict might harm that policy. But most significant of all, Washington feared that the French were trying to maneuver the United States into a joint war against Britain. This was a dark scenario, indeed, because it would once again make the United States the plaything of Europe, subject most certainly to the efforts of an angry, vindictive Britain to reimpose its colonial authority. War was the last thing that a newly emergent nation needed. The country and the Constitution needed breathing space.

A policy of neutrality thus made perfect sense to Washington. But there was a small problem. The French properly insisted that they still had a treaty with the United States. The military alliance of 1778 that had been so indispensable to Washington's final success at Yorktown had never been revoked. It called for the sort of mutual assistance that might well draw the United States into war or, at the very least, require a foreign policy favorable to France (and therefore sure to alienate Great Britain). As a practical matter the treaty posed no particular obstacle to Washington's foreign policy. He had often commented that governments could be trusted to adhere to treaties only so long as their provisions coincided with each government's interests. But as the president of the United States he was firmly committed to evenhanded enforcement of the laws; and there was no question that the treaty was still the law of the land. As a matter of principle it would have been awkward for Washington to argue that treaties negotiated by the Continental Congress were not obligatory as a matter of law (and honor!), while the financial obligations of that government were assumable in full and enforceable under law.

So Washington's constitutional dilemma lay in trying to find a way to enforce the letter of the French treaty while maintaining his policy
of neutrality. If he were to pull off this legal finesse, he would need the cooperation and support of the other branches of government. So, in addition to the advice of his cabinet and other trusted advisers, Washington sought the counsel of the Supreme Court. He was particularly interested in the views of John Jay, the chief justice. Jay had served for a time as the secretary for foreign affairs under the Confederation and was as experienced in diplomacy as any man in the country. Washington had good reason, then, to believe that Jay could offer valuable insights into the history of Franco-American relations. The president sent the Court a list of twenty-nine questions concerning the application of the French treaty. The wording of many of the questions left little doubt that the president wanted the Supreme Court to validate a legal interpretation of the treaty that would endorse his neutrality policy.

Washington saw nothing untoward in this request. He had often consulted with individual justices before, especially Chief Justice Jay, on political matters. Three years earlier, the British had petitioned the president to permit them to march some troops across the frontier from Detroit to New Orleans. (The British wanted to make a show of strength against the Spanish there.) Washington knew that there was little that he could do militarily to prevent such a march, but he did not wish to give official consent to such a provocative request. He asked the heads of each of the departments and the chief justice to present their recommendations for a course of action. Washington considered this a time that required unity and mutual support among the great organs of government. Jay apparently agreed; he replied almost immediately. This was not the only "advisory opinion" that Washington received. Washington encouraged Jay to write to the president regularly "and to pray that your ideas may not be confined to matters merely Judicial, but extended to all other topics which have, or may occur to you as subjects for general or private Communications." When the president left the capital on one of his tours in 1791, he authorized the cabinet secretaries, the vice president, and the chief justice to consult with each other on pressing matters of government. Moreover, Washington had already induced the Chief Justice to serve on a commission to manage the national debt fund (a purely executive function).

Washington understood all of this to mean that the Constitution was not hostile to the notion of interbranch cooperation, particularly be-
tween the executive and the judiciary. Was it any wonder, then, that in the face of a threat to the dignity and independence of the United States orchestrated by foreign powers Washington believed a president ought to receive the best available advice from whatever quarter it might come? Patriotism and the public interest demanded no less, separation of powers notwithstanding. Thus it was a considerable shock when the Supreme Court at last responded to the president’s queries:

We have considered the previous question . . . regarding the lines of separation drawn by the Constitution between the three departments of the government. These being in certain respects checks upon each other and our being judges of a court in the last resort, are considerations which afford strong arguments against the propriety of our extra-judicially deciding the questions alluded to especially as the power given by the Constitution to the president, of calling on the heads of departments for opinions seems to have been purposely as well as expressly united to the executive departments [my emphasis].

The Court’s response was fully consistent with the theory of separation of powers. What if the federal government enforced the treaty in accordance with the Court’s advice? And what if that enforcement led to litigation over the appropriateness or constitutionality of the executive’s actions? How could the Court impartially hear such a “case or controversy” if it had already advised the president as to the treaty’s proper interpretation? Ironically then, Washington, the advocate of mixed government, had unintentionally set the stage for one of the first and strongest precedents supporting separation of powers—that the judicial branch shall not offer advice on matters pending before the executive (or the legislature).

Yet the precedent is less pervasive than modern scholars contend. Less than a year later, Washington appointed John Jay as special envoy to Great Britain, where he negotiated the controversial treaty bearing his name. Yet despite the Court’s earlier pronouncement, Jay did not resign the chief justiceship, conceding, perhaps, that a president’s call to serve the national interest transcended the claims of strict separation—a view more consistent with Washington’s sentiments. Indeed, despite the now-famous Supreme Court reply of 1793 several modern
presidents have continued to call upon federal judges to provide them with advice or to perform executive functions. Franklin Roosevelt consulted with Felix Frankfurter even after the latter had been appointed to the Supreme Court, as did Lyndon Johnson with Abe Fortas. Johnson appointed Earl Warren to head the commission that investigated the assassination of John Kennedy (a particularly egregious breach of the separation principle in that the Supreme Court could well have had to deal with litigation emerging from the murder), and Ronald Reagan induced Warren Burger to chair the commission charged with celebrating the bicentennial of the Constitution.

Washington must have been disappointed that his actions triggered a constitutional rule regarding executive-judicial relations that favored separation; but he insisted on sufficient exceptions to that rule that modern judges do not uniformly hang up the phone when the president calls.

The Creek Treaty Affair

Washington's idea of a "consultative presidency" was not confined to the judiciary. He wanted the new constitutional government to speak and act as much as possible with one voice. The Senate was the principal object of his efforts at cooptation. Washington's grand plan bore a strong resemblance to the king-and-council form characteristic of the British parliamentary system. A constitutionally defined and limited monarch ruled with the advice of a small group of ministers drawn from Parliament. These ministers would attend the king whenever important issues were at hand, retaining, of course, their links with Parliament. These prior consultations assured (or so it was presumed) that when the government chose to act it would have the sort of cooperation and national harmony indispensable to energetic leadership.

Washington was attracted to the idea of drawing the Senate into his circle for several reasons. First, it was a small group (only twenty-two senators at the outset of his first term—North Carolina and Rhode Island had yet to ratify the Constitution). Second, it was composed of the "better sort of men" because of its method of appointment. He thought that state legislatures were likely only to select men with significant experience and national reputations. Third, he thought the
Senate probably would be free of local, parochial interests, or that it would at least reflect those interests to a lesser degree than the House. Finally, the Senate had certain constitutional responsibilities, principally the "advise and consent" power, that suggested the possibility for close partnership with the president. What better instrument for combining with the president in pursuit of his nationalist vision?

The early months of his administration saw several attempts by Washington to institute procedures that would bridge the constitutional separation between the president and the Senate. For example, there were plans for establishing a special chamber where the Senate could meet with the president (at his call) for consultations, especially on diplomatic matters. Sensitive to the protocol problems involved in direct presidential-Senate consultations, particularly with regard to the "awkward situation" respecting the role of the vice president, Washington thought that a permanent meeting place, separate from Congress's usual chambers, would be appropriate. When he was reviewing plans for the new capital city, he suggested that "Whenever the Government shall have buildings of its own, an executive Chamber will no doubt be provided, where the Senate will generally attend the president." Thus would the bonds between the president and the Senate be further cemented.

He hoped that these meetings would conform to the style and manner of his revolutionary Councils of War. He was comfortable with that format and thought it valuable in unifying military command. In a typical council Washington presented a broad strategic objective to his generals as well as a series of tactical problems, each usually phrased as a question. Generals were free to offer whatever analyses or comments they thought fit, and a consensus nearly always emerged. Occasionally, the commander-in-chief was dissuaded from his proposed course of action by the weight of the arguments. The vital elements in the success of these councils were the openness of the discussions and the immediacy of the results. Washington left each council believing that he and all of his generals understood equally well what the military strategy of the Continental Army was.

Washington believed that all consultations between the president and the Senate regarding treaties, ministerial appointments, and other diplomatic matters should be conducted orally. He was not opposed in principle to written communications to the Senate, particularly when
dealing with non-diplomatic appointments. The Senate's responsibility there was simply to say yes or no; extended communications were unnecessary. But Washington's understanding of "advice and consent" was that treaties and questions of foreign policy required "advice" as well as "consent." A long, perhaps interminable, series of written memoranda between the chief executive and the Senate about complex questions would not serve the national interest well because of the inevitable delays and institutional posturing. "In all matters respecting Treaties, oral communications seem indispensably necessary—because in these a variety of matters are contained, all of which not only require consideration, but some of them may undergo much discussion—to do which by written communications would be tedious without being satisfactory." 1121 The Senate was uncomfortable with Washington's plan. Senators seemed especially uneasy over the matter of "oral communications."

The Senate's uneasiness was well founded. Some indication of precisely how Washington wished to coopt the Senate came less than two weeks later with the onset of the Creek Treaty affair. A border dispute had arisen between Georgia and the Creeks (getting the states to conform to federal treaties with Indians proved to be a continual problem in Washington's administration), and Washington determined to send emissaries to enter into new negotiations with the Creeks and other southeastern tribes. But what sort of instructions should be provided to these emissaries? Invoking the council of war model, Washington called on the Senate to advise him on an appropriate strategy. With Secretary of War Henry Knox and Vice President John Adams in tow, Washington appeared before the Senate in person. 22 In his message to the Senate, he said: "As it is necessary that certain principles should be fixed previously to forming instructions for the Commissioners; the following questions arising out of the foregoing communications, are stated by the president of the United States, and the advice of the Senate requested thereon [my emphases]." 23 Would the Senate, he inquired, provide him with its "advice and consent" to a series of eleven questions? Vice president Adams then read the rather involved questions to a befuddled and unprepared Senate.

Things quickly deteriorated into broad farce. One senator rose and, citing the noise from passing carriages, asked that the questions be read again. William Maclay, self-appointed guardian of the people's liberties
and a man deeply suspicious of Washington and his Federalist friends, initiated a series of motions designed to delay the proceedings and to insist on a full written disclosure of the president's plans. Washington's legendary temper now added further confusion to the moment. He angrily responded that Maclay's proposals would defeat "every purpose of my coming here" and then stormed out the chamber.24 He is reputed to have declared that "he would be damned if he ever went there again."25

Washington should not, however, have been surprised by the Senate's reticence regarding oral consultations. The president had presumed that he could repeat the success of his wartime councils. But he overlooked important practical and constitutional differences between his general staff and the Senate. His generals had all been well versed in the practical realities of the war. They had faced the same enemy, dealt with the same day-to-day logistical difficulties, and most, important of all, shared the same "institutional memory" of the war. They knew what had gone on before and had learned, collectively, whatever lessons were to be learned. Therefore, every general understood precisely the problems the commander-in-chief faced and had a substantial body of experience to draw upon. In short, like a gathering of nuclear physicists who speak in a jargon mysterious to outsiders but perfectly plain to themselves, the generals spoke the same language. The senators, by contrast, found themselves confronted with a series of complex "but if" propositions that must have seemed perfectly alien to them. Here was the president asking their advice on something that they had never discussed and about which no background information had been provided. Moreover, he gave every impression of wanting the senators' advice now! No wonder they wanted time to consider the president's requests.

The second factor standing in the way of Washington's vision of consultative government was his misunderstanding of the Senate's constitutional standing. His generals had all been his subordinates. While the councils had been an attempt to develop a sense of shared responsibility, there was no disputing the hierarchical nature of the meetings. The commander-in-chief called the generals at a time and to a place of his choosing. They responded to questions of his selection. And they understood that, in the end, the authority to make any decisions rested solely with Washington. Washington's attempt to cast the Senate into this same mold was sure to fail. The Senate, after all, had its own con-
institutional standing as a coequal branch of government; it was in no way subordinate to the president. The formidable appearance of Washington with his "lieutenants" Knox and Adams must have unnerved some of the senators. They clearly felt pressured (Maclay referred to the episode as one in which "the president wishes to tread on the necks of the Senate"), and even the president's supporters in the Senate were discomfited by the royalist manner of the proceedings. Many of the senators were themselves Founders, having participated either at the Philadelphia Convention or their state ratifying conventions. And their interpretation of the document led many of them to believe that the Senate was not to be a mere instrument of the president. The Senate had powers and responsibilities of its own, powers that existed in part as a counterbalance to monarchical tendencies in the executive branch. Those responsibilities could not be blithely ignored even for the sake of efficiency. Washington's mixed-government interpretation was clearly out of sync with the constitutional times. Liberal republicanism with its suspicion of concentrated power and a preference for the checking function in presidential-Senate relationships was in the ascendant.

Most constitutional scholars see the Creek Treaty incident as an important precedent in strengthening the principle of separation of powers, an outcome quite the opposite of Washington's intention. Indeed, never again would a president appear before the Senate for a face-to-face exchange of ideas. And never again would a president utilize oral communications as part of the advice and consent process. Henceforth, both parties would communicate their concerns in writing.

But this conventional interpretation is only partially accurate. Washington, in fact, returned two days later and put the same questions to the Senate. This time the senators consented to give the president the advice he sought, and they granted it by oral discussions and voice votes in the president's presence. But both parties disliked the process, and written consultations became the rule thereafter. The conventional interpretation sometimes goes further, suggesting that the incident signaled a precedent whereby future presidents would conduct foreign policy at their own initiative and leave the Senate the responsibility of conducting only post hoc assessments. While this has become the contemporary practice, Washington never completely abandoned his attempts to incorporate the Senate into a conciliar partnership. Even after the disappointing Creek Treaty business he contin-
ued to ask the Senate for their recommendations on "talking points" before committing the United States to negotiations, though he there­after communicated only by written memoranda. ²⁷

However, by 1793 Washington conceded that his aspirations for a "special relationship" with the Senate had gone aground. Faced with increasing partisanship in Congress (and, for a time, within his own "family") Washington became less willing to trust the Senate to act in the national interest. With the Neutrality Proclamation he announced, without consultation with the Senate, that the foreign policy of the United States would henceforth be initiated by the president. With Jay's Treaty two years later he ended his efforts to consult with the Sen­ate before treaty negotiations. Instead, the treaty was delivered to the Senate for their advice and consent, but in a way that made it clear that the Senate's role was now confined exclusively to "consent." It meant an abandonment of his vision of mixed government and his hopes for a consultative presidency. The foreign policy leviathan represented in the "two presidencies" moved closer to fruition, but it was not a develop­ment that Washington could have been pleased about.

Some Questions of Privilege

We can see further examples of Washington's efforts to establish a con­sultative presidency when we examine his reaction to congressional re­quests for information from the executive branch. In a system predi­cated upon separation of powers we would expect a president to assert the traditional prerogatives of a sovereign monarch against the en­croachments of the legislature. Information intended for the presi­dent's eyes and ears would be solely at his disposal and beyond the legal grasp of any other governmental institution. Permitting, say, the House to obtain access to papers relative to the workings of the presidency would imply the subordination of the latter to the former.

When the Watergate crisis was at its zenith, there was a flurry of scholarly interest in the constitutional roots of executive privilege. Could Congress, pursuant to its constitutional authority to legislate in matters relative to campaign reform (the ostensible purpose for which the Senate's Ervin Committee was first formed) or to impeach officers of the United States, compel a president to turn over his personal pa-
pers and effects? Could Congress compel the testimony of members of the president's inner circle? Could the president, consistent with the principle of separation of powers, refuse such requests on constitutional grounds? As is often the case in matters of constitutional interpretation many looked to history for answers. They were particularly interested in the first precedents laid down in Washington's time. The president and many members of Congress were framers of the Constitution; their resolution of these questions would be greatly instructive, perhaps even definitive, in helping to determine whose constitutional claim in the Watergate crisis, Nixon's or Congress's, was the stronger. Not surprisingly each side discovered precedents from the Washington administration favorable to its own interpretations. But proponents of the most prevalent view argued that Washington successfully established the principle of limited, though not absolute, privilege.

I believe, however, that a careful reading of each instance in which George Washington responded to a congressional request for information will indicate that he was less interested in invoking executive privilege (as might be defensible under a strict interpretation of the separation principle) than in promoting a spirit of comity between the two branches. Contemporary presidents have energetically defended their prerogatives; but it is not Washington's constitutional interpretation that they follow but their own. If a Nixon or Reagan or Truman can successfully insist on a privileged status under the Constitution, it is but one more sign of Washington's frustrated constitutional aspirations. Washington had wanted to leave a constitutional legacy of cooperation, not confrontation.

When, in 1790, the president's emissaries concluded a treaty with the Creeks (the same negotiations that had triggered Washington's ill-starred invitation to the Senate to serve as an advisory council) the question arose as to how much information should be provided to the Senate. Just the treaty? The treaty plus whatever background materials the president deemed relevant? Or all materials relative to the negotiations? Washington first consulted his cabinet. Their advice was that the president could constitutionally withhold any materials whose release he deemed harmful to the national interest or to his own executive power. That advice is often cited as an example of Washington's support for a rather expansive privilege. But this was only his cabinet's advice. When put to the test, Washington preferred to be guided by his
own concern for unity within the national government. A strict adherence to a claim of privilege could shatter his hopes for cooperation. Therefore, he decided to submit, along with the treaty and his personal written recommendation for approval, all other related papers. He considered "that an unreserved ... communication" of all such papers was "indispensably requisite for the information of Congress [my emphasis]." His only stipulation was that any information that might jeopardize the national interest be reviewed in closed session. The Senate's constitutional authority to "advise and consent" gave it a textual claim to the information; the general public had no such claim.

Washington proved equally willing to share unpopular or embarrassing information with Congress. The St. Clair incident was nothing if not embarrassing. Washington had appointed Arthur St. Clair to command an expedition of militiamen against Indians of the Ohio Valley. Following his preference for seeking out men who had served with him in the Revolution Washington believed St. Clair to be a good choice. But St. Clair was routed, losing more than nine hundred of his men and leaving a trail of abandoned equipment. It was a national humiliation. Congress insisted on an investigation into this purely executive operation and, intent on discovering scapegoats for the disaster, asked the president to provide papers relating to the incident. To the surprise of those who invoke Washington as the progenitor of executive privilege he acceded to the House's request "for such persons, papers, and records as may be necessary to assist their inquiries." He expressed some concern that a president might need to keep certain sensitive papers secret in the national interest; but his inclination toward interbranch cooperation and his desire to promote confidence in the new Constitution and its presidency led him to err on the side of openness. In the end, no papers were withheld.

St. Clair was not the only source of embarrassment to the president. For some time the growing Jeffersonian faction in Congress had focused their conspiracy theories and partisan fervor on the persona of Alexander Hamilton. In 1794 Hamilton's critics at last believed they had "the goods" on him. They asked him to appear before Congress to answer charges of financial mismanagement and misapplication of public funds. Washington made it clear that while he would not compel Hamilton to testify, he considered cooperation with Congress an important hallmark of his administration. Realizing that his political career was
at stake Hamilton appeared before the Congress, where he defended his conduct quite successfully. We might well wonder about Washington's motivations in this. Had he chosen, to use John Ehrlichman's pithy phrase, to leave Hamilton "twisting slowly in the wind" in order to safeguard his own political reputation? Or had he acted for principled constitutional reasons, recognizing that Congress's request could easily be justified through its power of the purse? The documentary record is not helpful here. But Washington's behavior established a constitutional precedent that has remained difficult for executive officers, from Hamilton to Robert Haldeman to Oliver North, to ignore.

The imperious Gouverneur Morris was also a thorn in the side of the president. A man of extreme opinions, Morris did not suffer fools lightly—a characterization that the Anglophilic Morris was eager to ascribe to the French. As minister to France Morris wrote dispatches to Washington that dripped with insulting, derogatory portrayals of French leaders. Morris's stormy relationship with the French became the focus of much gossip in the capital and fueled Jeffersonian suspicions that Federalist foreign policy was antirepublican and Francophbic. At last, the Senate asked the president to provide all of the correspondence between Morris, the French government, and the State Department, apparently with an eye to embarrassing the Federalists and forcing Morris's ouster. For the first time, Washington was reluctant to comply with the Senate's request. Some of the messages in question were addressed to Washington personally, not as president, and he doubted that the Senate could constitutionally command them. In addition, Washington thought that the incendiary comments by Morris would only inflame passions and embarrass the United States in the international community. Nevertheless, after making his case to the Senate he submitted all but one of the dispatches they had asked for. Several obvious deletions had been made—not unlike Richard Nixon's celebrated "expletive deleted" transcripts. Washington maintained that releasing this information (in the main, Morris's gratuitous insults) would be harmful to the "national interest" without contributing to any useful public purpose. The Senate did not protest, perhaps because Washington indicated that Morris would be recalled.31

The foreign policy arena, particularly as it affected Franco-American relations, proved a continual challenge to Washington's expectations for a harmonious, cooperative national government. Jeffersonian repub-
licans grew increasingly suspicious of the administration's motives, just as Federalists increasingly questioned the patriotism of their critics. Thus Washington began to harbor doubts that a system of mixed government could really govern effectively in the national interest. He came to trust Congress less, to rely on Federalist advisers (especially Hamilton) to the exclusion of almost all others, and to insist on presidential prerogatives in some matters (e.g., the neutrality proclamation, negotiations over the Jay Treaty) where he had previously sought to establish bridges between the executive and legislative branches. In the Morris affair he even seriously considered "stonewalling" the Congress, though in the end he convinced himself (his advisers strongly counseled him to resist Congress's entreaties) that this would be an unwise constitutional precedent.

The dispute over the Jay Treaty provided one more test of Washington's now-wavering commitment to consultative government. In the months after the Senate's approval of the treaty popular reaction against it widened, spurred in many instances by Jeffersonians who saw the treaty's controversial provisions as signs of a sinister conspiracy to undermine the promises of the American Revolution. The House of Representatives, seeking to reopen the controversy, requested that the president "lay before the House, a copy of the instructions to the Minister of the United States [Jay] who negotiated the treaty ... together with the correspondence and other documents relative to that Treaty, excepting such of the said papers as any existing negotiation may render improper to be disclosed." The House justified its request by noting that implementation of the treaty required the expenditure of public funds, $90,000 to be precise, for which the House had joint responsibility with the Senate. Jeffersonian representatives believed that a detailed examination of the negotiation record would reveal the duplicitous conduct of the Federalists. Most of the motion's supporters were looking to pillory Jay and Hamilton, not the president. Many understood that Washington had come to support the treaty reluctantly as the best that could be attained under the circumstances.  

It was a shock (and a moment of much Federalist rejoicing), then, when Washington took strong offense at the request and absolutely refused to comply with it. Again, many scholars point to this as one of the earliest and strongest precedents for executive privilege. But Washington's message to the House reveals that he made no such extrava-
gant claim. His denial was based not on a general claim of executive prerogative, but rather on a constitutional interpretation that narrowed the House's role in foreign affairs. First, he insisted that the Constitution, not partisan considerations, could be the only basis for resolving the interbranch dispute. Second, he argued that the Constitution authorized only the Senate to "advise and consent" to treaties. The Founders had deemed that a small body like the Senate was better able to exercise this checking function while maintaining a veil of secrecy beneficial to the national interest. Adding the House to treaty deliberations would expand the circle of political information and imperil the national interest by making secrecy next to impossible. Third, the Philadelphia Convention specifically rejected any House involvement in the treaty-making process. (Washington here was invoking his special standing as a Founder-at-the-scene.) Fourth, a bicameral Congress had been established as a fundamental constitutional compromise. The House had no authority to unilaterally amend the Constitution so as to minimize or eliminate the special responsibilities delegated to a chamber based on equality of the states (the Senate). To do so would imperil the delicate constitutional consensus. Fifth, the House had not previously contested the primacy of the president and Senate. In effect, this emergent constitutional tradition now precluded the House from raising the argument anew. Finally, the House would only be constitutionally entitled to these papers if it were conducting an impeachment investigation. Since the House had not couched its request in these constitutional terms, then he (the president) was not obliged to comply.

This certainly sounds like a ringing justification for executive privilege. But two points should be noted. First, Washington even here did not invoke an absolute privilege. Where the House could lay claim to a textual provision in the Constitution (pursuant to its impeachment powers, for example) Washington implied that the president was powerless to resist. He would be obliged to turn over the disputed papers. Second, Washington had already laid all of the papers in question before the Senate! Despite the Founders' concern for secrecy, the particulars surrounding the treaty were widely known because of the debates conducted in the Senate. No representative could seriously argue that Washington's refusal had prevented the House from examining those materials. In sum, this was hardly the sort of presidential "'stonewall'"
that it is made out to be. Washington assuredly wanted to avoid further partisan warfare and preserve his own reputation. He had come to believe that opponents of the treaty were using the occasion only to "raise a general ferment" against constitutional government. But in the end he excluded only the House from the treaty process, not the Senate.

The point, of course, is not that Washington never sought to exercise presidential prerogatives. As the Morris incident and the events surrounding the Jay Treaty suggest, Washington did invoke them on occasion. When his constitutional duties were clear, as when engaging in diplomacy with foreign governments, he could assert his prerogatives as jealously as any modern president. What sets Washington apart, however, is his willingness to cooperate with Congress whenever possible and to avoid actions that would divorce the presidency from the other institutions of national government. Executive openness, not executive privilege, was his constitutional practice. Washington would no doubt be disheartened to learn that contemporary presidents have interpreted the legacy of his administration quite differently.

_The Impartial Magistracy_

He would be even more disheartened, however, at the role political parties have come to play in the American constitutional tradition. There is no greater contrast between the older, classical vision of republicanism and the newer, liberal tradition than in how each views parties or factions. The Constitution of 1787 took no notice of parties. Even the slightest whiff of partisan aroma was enough to send many of Washington's generation scurrying to the parapets, eager to repel the "baneful spirit of party." Parties implied the existence of interests concerned more with the advancement of the self or of the group than with the community as a whole. Classical republicanism held that politics was dedicated to the attainment of "the good"—of the one, true, genuine public interest. This public interest could be discerned only by employing experience and careful, disinterested reason to the resolution of great public questions. The pursuit of virtue allowed for no consideration of the particular or the self-interested. Partisanship, therefore,
was a noxious, unrepublican lesion on the body politic to be excised whenever it surfaced.

No man exemplified these views more adamantly than George Washington. In his Farewell Address he could still maintain that partisanship was the greatest threat to republican liberty and order:

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissention . . . is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an Individual: and sooner or later the chief of some prevailing faction more able or fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty.34

Partisanship, in other words, was a practice that would lead inevitably to the reimposition of the very tyranny against which republican Americans had fought.

Parties also "enfeebled" government administration, agitated the community with rumors and unwarranted jealousies, fomented "riot and insurrection," opened "the door to corruption and foreign influence," and encouraged citizens to pursue party patronage rather than disinterested public service.35

Yet the legacy of the Washington administration regarding partisanship and parties presents a curious paradox. Despite his passionate pleadings to refrain from factionalism Washington's presidency served, with the exception of the first year or two, as a lightning rod for partisanship—partisanship of a virulence that might well astonish modern-day Democrats and Republicans.36 While Washington decried the formation of permanent political parties, his years in office saw partisanship obtain a tenacious foothold in American politics.37 Thus, while president Washington had hoped to establish a political tradition consistent with the classical republican aspirations of impartiality and unity in pursuit of the national interest, he left office in 1797 immersed in a national politics dominated by parties and factions. The story of that failure in large part represents the story of the failure of classical republicanism.
It was no surprise that when George Washington took the oath as first president, he brought with him a loathing of the spirit of party. The previous dozen years had convinced him of the perils of partisanship. It mattered little to Washington whether the factionalism emerged from the parochial interests of individual states, from the petty posturings of self-interested politicians, from the regional prejudices already taking root in America, or from those suspicious of the patriotism of others. To him, the nation was poised on the brink of anarchy, and only a higher call to virtue, disinterestedness, and the common good could rescue the great republican experiment in America.

He wanted to be, and he wanted the office to be, "above party." In his first Inaugural Address he promised that "no local prejudices, or attachments; no separate views, nor party animosities, will misdirect the comprehensive and equal eye which ought to watch over this great Assemblage of communities and interests." Today, the mantle of party leadership comes with the office of president. Washington, however, sought to create a presidency whose primary role was that of a chief magistrate, impartial and inured to the demands of any interest or faction. He could hardly expect to build the "national character" that he was so concerned about if, in his own conduct, he fell victim to the party disease. He laid out his conception of a republican presidency to James Wilson, one of the Philadelphia delegates most responsible for shaping the executive branch: "I presume it will be unnecessary for me to say that I have entered upon my office without the constraint of a single engagement, and that I never wish to depart from that line of conduct which will always leave me at full liberty to act in a manner which is befitting an impartial and disinterested magistrate."

In what sense, specifically, did Washington believe he had to be "impartial"? From what did he have to distance himself? These questions are best explained by an examination of his views on the sources of faction. Many of Washington's generation saw class cleavage as the root cause of conflict in American politics. Even Madison, who tried to attribute the causes of faction to many impulses, concluded that the "most common and durable source of factions has been the various and unequal distribution of property." Washington certainly had little sympathy for debtors and even less for legislative efforts to alleviate their distress. Stay laws and other legislation aimed at renunciating debts, public or private, were inherently dishonest and incompatible
with the virtues expected of a republican people. Yet a search of his voluminous personal correspondence finds few references that suggest that class differences were, for him, the principal source of faction.

He saw the spirit of party arising, instead, from two other sources. Washington's revolutionary experience had convinced him of the salience of sectionalism and parochial viewpoints as continuing threats to national unity. The debates in Philadelphia and his observations of the subsequent ratification struggles only reinforced his belief that many factions derived from the pursuit of local interest. He had long pleaded with the state governments and with anyone else who would listen to "forget their local prejudices and policies, . . . make those mutual concessions which are requisite to the general prosperity," and "sacrifice their individual advantages to the interest of the Community." 42

Personalism was the other principal source of faction. He had witnessed it in Virginia, where figures like Patrick Henry, John Robinson, and Thomas Jefferson were often able to attract a coterie of followers and influence (or disrupt) the administration of government. During the war Washington constantly felt the breath of conspiracy at his back and believed that combinations of congressional delegates pursuing their own personal interests and reputations were the cause. These "personality factions," or cliques, were especially odious to Washington because they often were characterized in his mind by conspiratorial backroom politics and a reliance on demagogic appeals for popular support. He early on had characterized Shays's Rebellion, for instance, not as a case of genuine class conflict, but rather as a symptom of factional dispute among the Massachusetts elite: "There are surely men of consequence and abilities behind the curtain who move the puppets; the designs of whom may be deep and dangerous." 43

If localism and personalism were the two principal threats to the national interest, then many of Washington's actions as president were dedicated to defusing those prejudices. He sought to minimize sectionalism in a number of ways, not the least of which was the example of his own conduct. He took great care, as in his extensive tours of each section of the country, to project an image of himself as an American president who happened to be from Virginia, not as a Virginian president of the United States. When Rhode Island finally acknowledged the impossibility of its continued isolation and entered the new Union, Washington quickly extended a formal welcome to the state's governor.
Washington assured him that Rhode Island would be treated without prejudice and as a full partner in the national republic. But he also pressed the governor to join with the president to "drive away the daemon of party spirit and local reproach." He sought to further dispel Rhode Islanders' suspicions regarding the new union by making a special trip to the state almost immediately after its ratification. The purpose of this trip, as with his southern and eastern tours, was to convert his enormous personal popularity into a medium conducive to the growth of unionist sentiments. The more that Americans could think "nationally" and could trust the federal government's officers, the less would be the threat of sectionally driven partisanship.

His opposition to sectionalism was more than symbolic. He took great pains to demonstrate impartiality in his advocacy and administration of policy. When Congress initially sought to reapportion the House of Representatives in 1792, its formula would have distributed those seats in a way that favored several northern states. Washington was convinced early on that the plan was unconstitutional but was further distressed when it became an issue that divided North and South. This conflict put him in a painfully awkward position because, as he confided to Jefferson, "he feared that he should be thought to be taking sides with a southern party." Another Virginian, David Stuart, had earlier warned that "a spirit of jealousy which may become dangerous to the Union, towards the Eastern States, seems to be growing fast among us." Washington counseled his friend to avoid such localist thinking. He maintained that the Union could not long survive if it continually favored one section of the country over another. Accommodation and compromise were to be the watchwords of his administration. This "impartial magistracy" meant that some Virginians would have to be disappointed from time to time; neither the presidency nor the union itself could long survive if either catered to factional impulses. Washington ultimately vetoed the bill, but his carefully worded list of objections to Congress addressed constitutional issues only; he pointedly refrained from appealing to sectional considerations.

Further evidence of his efforts at sectional impartiality can be seen in his pattern of executive appointments. The scores of would-be officeholders and their sponsors who besieged Washington with requests for positions led him to resort to a sort of "stock" letter: "I have...
formly declined giving any decisive answer to the numerous applications which have been made to me; being resolved, whenever I am called upon to nominate persons for those offices which may be created, that I will do it with a sole view to the public good—and shall bring forward those who, upon every consideration... will in my judgment be most likely to answer that great end." Some of these considerations were noted earlier: competence, previous elective office, experience in the revolutionary cause, political reliability (usually defined early on in Washington's administration as support for the Constitution). But another consideration had nothing to do with the personal qualities of the applicant. One way to minimize sectional jealousies was to assure each state that it was represented in the executive branch. No state should have grounds for claiming that the presidency was the private domain of Virginians or New Yorkers or Pennsylvanians. To this end Washington viewed geography as a valid political consideration in the appointment process. In 1795, for example, he thought it important to review his six-year record of executive and judicial appointments, perhaps trying to convince himself of his impartiality in such matters. The list is particularly intriguing because he categorized his appointees by state—clearly an effort to determine whether he was maintaining a proper geographical balance to his administration.

Washington also feared that party cliques might coalesce around prominent personalities. Competition for power between these personal factions could easily undermine the political harmony that he desired. To prevent the growth of these cliques Washington adopted a strategy of cooptation and democratic centralism. His courting of Thomas Jefferson is illustrative. He was well aware that during the ratification struggle Jefferson's support for the Constitution had been reluctant and conditional—a principal concern being the document's lack of a Bill of Rights. Nor did Washington have the same affectionate feelings toward Jefferson as he had toward his other principal advisers, Hamilton, Knox, and Madison. Why then was Jefferson so heavily lobbied by Washington for inclusion in the first cabinet? In part he was responding to the entreaties of Madison who was close to both men. However, a strategy of cooptation provides an equally plausible explanation. Jefferson already had a substantial personal following, especially in the southern states. What better way to weaken an alternative
center of partisan gravity than to invite Jefferson into the administration?

Washington repeated this same strategy with other persons who might have served as a focal point for faction. The case of Patrick Henry is especially interesting. Henry had long been an extremely flamboyant and effective Virginia politico whose reputation had become well known throughout the nation. He and Washington had been on opposing sides in 1788 when Henry's ardent antifederalism had nearly carried the day at Virginia's ratifying convention. But Henry's criticisms of the new government under president Washington had thereafter become more muted. When Randolph left the cabinet during the height of the Jay Treaty controversy, Washington invited his old rival to become secretary of state—an obvious attempt to coopt the loyalty of Henry and his supporters. Henry declined, but Washington's larger purpose was still served; Henry was never again a serious critic of the administration.50

Some might fear bringing one's enemies into one's house. But Washington's strategy of cooptation was made effective by an organizational style that relied on democratic centralism. Washington encouraged his advisers to offer their policy views freely and frankly. Even in the first days of Washington's administration, Hamilton would often take issue with Jefferson and Madison.51 The president was little concerned with these disputes at first because his conservative instincts encouraged him to move deliberately in most things, particularly something as perilous as establishing a new form of government. He needed the best advice he could get. However, once the president had decided on a line of conduct it was incumbent on members of his administration to hew to the party (presidential) line. Hamilton and Jefferson both understood this and, for the first few months of his administration, went out of the way to bend their own views to the president's will once Washington had decided on a policy.

But when the Hamilton-Jefferson conflict deepened and began to spill over into Congress, Washington saw the ugly specter of party on the horizon. In long, very personal letters he pleaded with both men for a compromising attitude—one that could provide at least an outward appearance of unity. To Jefferson he observed "how much it is to be regretted then, that whilst we are encompassed on all sides with avowed enemies and insidious friends, that internal dissensions should be har-
rowing and tearing our vitals.' The republic itself was at risk, and unless there were "liberal allowances, mutual forbearances, and temporizing yieldings on all sides" the noble experiment could yet fail.52

But the effort could not bridge the widening ideological rift. Jefferson soon sensed that he could not continue to join in the president's political agenda, nor could he in good conscience enforce those policies as an officer of the administration. British and colonial politics offered numerous examples of cabinet governments in which factional struggles were tolerated and even in some cases promoted. Robert Walpole had managed an extraordinary political career in Britain with just such a politics of inclusion, constructing his ministry from a coalition of numerous competing interests. Walpole maintained his authority by allowing himself to be the fulcrum in these factional struggles.53 Jefferson, though, understood well the president's character. He knew that Washington, both out of commitment to classical republican ideology and out of a sense of personal insecurity, could not play Walpole's game. So Jefferson left at the beginning of Washington's second term in 1793 rather than conduct guerrilla warfare from within the administration.

Washington and the Paradox of Party

George Washington was a stalwart antiparty man. To the end of his days one of his most scathing indictments of a man's character was that the fellow was a "partisan." His aversion to partisanship had been shaped by classical republican ideology, and his actions as president—his efforts to erect an impartial magistracy, his attempts to deflect sectionalism, his strategy of coopting potentially competing centers of political gravity—consistently sought to promote the national harmony essential to this classical vision. In many other respects Washington was a remarkably successful president. By his retirement in 1797 he had accomplished much of his constitutional agenda. Yet national government was riven by partisanship within months of his inauguration; and that party spirit only escalated during his eight years as president. Why, then, did Washington fail here, while elsewhere he was so successful?

The answer to that paradox rests with two fundamental flaws in Washington's constitutional vision. One was a failure to recognize the
changed realities of American political life in his time. The second was a failure to perceive the partisan qualities of his own political character.

There is a common public perception that presidents are not creatures of principle—that they are not, for example, bound to fulfill their campaign promises. Voters who believe what they are told by such knaves, so the conventional wisdom goes, are fools. Even though we live in different times than our constitutional Founders the claim that presidents are disingenuous regarding their true motives and plans has always been a bit of an exaggeration. Most presidents, in fact, expend extraordinary energy in trying to fulfill their promises to the American people. Washington was no exception. Throughout his presidency he rarely departed from the classical republican principles he had espoused publicly and privately for at least a generation. He was unable to recognize, however, that he was attempting to implement an ideal of republicanism that no longer captured the reality of American politics—if it ever had. His pursuit of consensus and harmony and his perception of an organically whole national political community were hopes, not realities. Factionalism, not unity, had characterized colonial and national politics at least since the beginning of the eighteenth century.

Washington had come to political maturity during a period in Virginia politics (the 1750s and 60s) when factionalism was less contentious than at most other times in its history. A common concern with the Indians and the French in the West combined with the sly political leadership of the Walpolian Speaker, John Robinson, may have contributed much to this era of stability. This era of good feelings in Virginia did not last. But Washington took it as a sign that government without parties was not only desirable, but possible.

This aspiration was reinforced by his revolutionary experience. The war, in his mind, had been fought for one purpose, national independence. And in the pursuit of that noble end there could be no factions or parties. He retained the quixotic view that national politics (he had long since abandoned hope for the survival of nonpartisan republican governments in the states) could rise above party. He insisted that national government was sufficiently continental in scope that, in drawing on his own extraordinary popularity as an exemplar, a "national character" could be molded on republican principles.
His own experiences with the Continental Congress should have dissuaded him from this flawed vision, as that body was no less factional than any other American legislature. Washington simply refused to adapt his republicanism to accommodate parties. He refused to recognize, as Madison did, that factions and interests were the natural byproducts of liberty. By 1789 classical republicanism was already a politics of nostalgia and was being supplanted by the dynamics of liberalism. The Washington presidency is a useful signpost to indicate the inadequacy of the older, classical vision of republicanism to contain the new American politics.

Moreover, despite his sincere desire to serve as an impartial chief magistrate Washington was never really nonpartisan in the sense of being "impartial" toward the great public questions of the day. The oft-repeated characterizations of Washington as a kind of disaffected ref­eree in the mighty Hamilton-Jefferson struggle over public policy in the new government, or as a politically naive president increasingly over­whelmed by events, or as a man who lacked any strong ideological con­victions of his own simply are not true. Hamilton was the intellectual progenitor of the Federalist "party" and the architect of many of its most significant legislative accomplishments. But Washington did not need any persuasion from the younger man to guide him into the Feder­alist camp. As I have noted, Washington held Federalist sentiments be­fore, during, and after his presidency. He did not become a committed Federalist only, as some accounts would have it, in 1793 after compro­mise with the Jeffersonians was no longer possible. Washington was never an impartial magistrate on matters of public policy. Yet he could not comprehend or allow for the criticisms of his Jeffersonian oppo­nents in part because he could not recognize his own persistent parti­sanship on behalf of the Federalist agenda.

Despite his repeated protestations to the contrary, Washington's self­image as a nonpartisan force for national harmony could not conceal from the administration's critics his obvious enthusiasm for Federalist politics. He patiently listened to the views of Jefferson and Madison and Randolph, but his interpretation of "accommodation" was that Federalist policy (his policy) and the national interest were one and the same. One strains to find any significant examples of this president who claimed to be "above party" exercising his impartiality on behalf of Jeffersonian aims.
As a classical republican he could only equate criticism of government policy with criticism of the constitutional system. Increasingly, he grew to see the national political landscape as one composed of well-meaning, reasonable supporters of good government (i.e., Federalists) versus conspiratorial foes of the Constitution (i.e., Jeffersonian republicans). This "impartial magistrate" confided to Hamilton that "[t]he difference of conduct between the friends, and foes of order, and good government, is in nothg. more striking than that, the latter are always working, like bees, to distil their poison; whilst the former, depending, often times too much, and too long upon the sense, and good dispositions of the people to work conviction, neglect the means of effecting it."

Washington perceived the tenets of republican ideology (portions of which were held by nearly all factions in the 1790s) as an endorsement of Federalist policies and only Federalist policies. If there was only one true national interest, and if that national interest was synonymous with Federalism, then opposition was both illegitimate and antirepublican. But Jeffersonians were justifiably skeptical of this link between republicanism and Federalism. Jefferson and his followers saw nothing inherently "virtuous" in Hamilton's funding program. There was nothing unquestionably "honorable" in the Jay Treaty. "Liberality" was not necessarily to be found in the excise tax and in no other alternative. These were all policies about which good republicans could, and did, disagree. This, of course, is nothing new. American presidents have always tried to cloak their substantive goals in the rhetoric of "national interest." We now accept the idea of the president as head of his party as well as head of government and consider it part of our constitutional tradition. Even though he feared the "baneful spirit of faction" Washington's presidency verified that constitutional government could survive, perhaps even thrive, on partisan competition—something that he had thought impossible under a republican constitution.

Washington's gradual "conversion" from impartial magistrate to Federalist president was neither paradoxical nor unexpected. Washington was trying to rescue an ideal of classical republicanism, based on harmony and national consensus, that no longer described the reality of American politics. He refused even to acknowledge the lesson of his
own experiences—that faction was an integral part of the national character he so earnestly wished to shape. In the end, there was only a paradox of party in Washington's mind. There was no paradox in his actions. He was our first partisan president.