

Center *for the Study of the* American Constitution

NO. 12: THE FEDERALIST AND ANTIFEDERALIST DEBATE OVER THE EXECUTIVE BRANCH

The Constitutional Convention had more difficulty drafting provisions for the election and responsibilities of the president than for any other part of the Constitution. Americans had considerable experience with executives—they had lived under the British king, who had power to veto colonial acts of legislation. Each colony had a powerful governor who was assisted by a small advisory council. Under the Continental Congresses executive functions were handled by committees, but when the duties became too onerous the Confederation Congress created executive departments (Finance, War, Foreign Affairs, and the Post Office), all headed by men who were not members of Congress. In essence, this was a unique American parliamentary system of government. The states under their new Revolutionary-era constitutions had governors or presidents. These figures were often weak in comparison to colonial governors or state assemblies. Although the Articles of Confederation provided for no separate executive, the Confederation Congress did elect its own president, who served more or less as the speaker of Congress. The governors of New York and Massachusetts served as the best models for the Constitutional Convention in shaping the new American presidency.

Soon after it convened, the Constitutional Convention agreed to have a single executive as opposed to the plural executive favored by a handful of delegates who feared the reinstatement of monarchy. Greater disagreement persisted on the manner of electing the president. Some delegates wanted a president elected by Congress for a lengthy term but ineligible for reelection. Others favored direct election by the people for a shorter term with no restrictions on the number of consecutive terms. A compromise eventually provided that the president would be elected for a four-year term by electors chosen in a manner prescribed by the state legislatures. No restrictions were placed on the president's eligibility for reelection.

During the debate over the ratification of the Constitution, Antifederalists charged that the president would become a king. In fact, he would be the worst kind of king: an elected one. Cabals and intrigues would surely develop over the reelection of the incumbent. Some even believed that the orderly transfer of power from a defeated incumbent to a newly elected president was too much to expect, especially since the president had complete control over the country's military and the states' militias when called up for federal service.

Antifederalists also charged that the Constitution was defective for violating the separation of powers—the belief that the three branches of government (legislative, executive, and judicial) ought to have distinct roles and functions. For example, the mixture of power and responsibility over appointments to office and treaty-making bothered many Antifederalists. Would the Senate really exercise authority in the appointment of officers? Or would the president's power to nominate be tantamount to the power to appoint? Who would be responsible if corrupt individuals were appointed—the president, the Senate, or both? And could it be expected that senators who had confirmed officeholders would convict those same individuals on impeachment?

Similar fears were expressed over the treaty-making power. The Constitution declared that treaties should be the supreme law of the land. Yet, the House of Representatives, elected directly by the people, played no role in the drafting or adoption of treaties. Only the president and the Senate had responsibility in this important area that could affect the lives of every American. Several critics of the Constitution suggested that the dangerous connection between the president and the Senate could be eliminated by substituting a privy council for the Senate. With precedents in both the British and

American state governments, such a council would advise the president on appointments and treaties. If privy councillors gave faulty advice, they could be held accountable.

Antifederalists argued that the president's power to veto acts of Congress would give him too much influence over legislation and that the president's pardoning power was dangerous. The president could conspire with others in treasonable activities and guarantee his co-conspirators' pardons if their activities were discovered.

Federalists praised the presidency. They pointed to the weakness of the Confederation's and state governments' executives, who were almost powerless in some cases. The United States needed a separate president with executive powers to enforce federal laws and to conduct foreign policy. Federalists contrasted the president with the British monarch. The former had limited power checked by two other branches of government, while the latter had more extensive prerogatives. Some state executives even had greater power than the president in certain areas.

The president, it was argued, would be accountable to both the people and Congress. If he failed to satisfy the people, he would not be reelected; if he committed crimes, he could be impeached by Congress. Furthermore, everyone realized that George Washington would be elected the first president. This great man had already voluntarily given up total power in 1783, preferring a rural retirement; he could be expected to follow a similar course of action after he set the new government in motion. Washington's example would be followed by his successors. ■

CATO IV

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Notwithstanding the great learning and abilities of the gentlemen who composed the convention, it may be here remarked with deference, that the construction of the first paragraph of the first section of the second article, is vague and inexplicit, and leaves the mind in doubt, as to the election of a president and vice-president, after the expiration of the election for the first term of four years . . . this inexplicitness perhaps may lead to an establishment for life.

It is remarked by Montesquieu, in treating of republics, that *in all magistracies, the greatness of the power must be compensated by the brevity of the duration; and that a longer time than a year, would be dangerous*. It is therefore obvious to the least intelligent mind, to account why, great power in the hands of a magistrate, and that power connected, with a considerable duration, may be dangerous to the liberties of a republic—the deposit of vast trusts in the hands of a single magistrate, enables him in their exercise, to create a numerous train of dependants—this tempts his *ambition . . . to be pernicious* and the duration of his office for any considerable time favours his views, gives him the means and time to perfect and execute his designs—*he therefore fancies that he may be great and glorious by oppressing his fellow citizens, and raising himself to permanent grandeur on the ruins of his country*.—And here it may be necessary to compare the vast and important powers of the president, together with his continuance in office with the

foregoing doctrine—his eminent magisterial situation will attach many adherents to him, and he will be surrounded by expectants and courtiers—his power of nomination and influence on all appointments—the strong posts in each state comprised within his superintendance, and garrisoned by troops under his direction—his controul over the army, militia, and navy—the unrestrained power of granting pardons for treason, which may be used to screen from punishment, those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt—his duration in office for four years: these, and various other principles evidently prove the truth of the position—that if the president is possessed of ambition, he has power and time sufficient to ruin his country.

Though the president, during the sitting of the legislature, is assisted by the senate, yet he is without a constitutional council in their recess—he will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites, or a council of state will grow out of the principal officers of the great departments, the most dangerous council in a free country.

The ten miles square, which is to become the seat of government, will of course be the place of residence for the president and the great officers of state—the same observations of a great man will apply to the court of a president possessing the powers of a monarch, that is observed of that of a monarch—*ambition with idleness—baseness with pride—the thirst of riches without labour—*

aversion to truth—flattery—treason—perfidy—violation of engagements—contempt of civil duties—hope from the magistrates weakness; but above all, the perpetual ridicule of virtue—these, he remarks, are the characteristics by which the courts in all ages have been distinguished. . . .

The establishment of a vice president is as unnecessary as it is dangerous. This officer, for want of other employment, is made president of the senate, thereby blending the executive and legislative powers, besides always giving to some one state, from which he is to come, an unjust pre-eminence.

It is a maxim in republics, that the representative of the people should be of their immediate choice; but by the manner in which the president is chosen he arrives to this office at the fourth or fifth hand, nor does the highest votes, in the way he is elected, determine the choice—for it is only necessary that he should be taken from the highest of five, who may have a plurality of votes.

Compare your past opinions and sentiments with the present proposed establishment, and you will find, that if you adopt it, that it will lead you into a system which you heretofore reprobated as odious. Every American whig . . . bore his emphatic testimony against a monarchical government . . . and wherein does this president, invested with his powers and prerogatives, essentially differ from the king of Great-Britain[?] . . . It is necessary, in order to distinguish him from the rest of the community, and enable him to keep, and maintain his court, that the compensation for his services; or in other words, his revenue should be such as to enable him to appear with the splendor of a prince; he has the power of receiving ambassadors from, and a great influence on their appointments to foreign courts; as also to make treaties, leagues, and alliances with foreign states, assisted by the senate, which when made, become the supreme law of the land: he is a constituent part of the legislative power; for every bill which shall pass the house of representatives and senate, is to be presented to him for approbation; if he approves of it, he is to sign it, if he disapproves, he is to return it with objections, which in many cases will amount to a compleat negative; and in this view he will have a great share in the power of making peace, coining money, &c. and all the various objects of legislation, expressed or implied in this Constitution: for though it may be asserted that the king of Great-Britain has the express power of making peace or war, yet he never thinks it prudent so to do without the advice of his

parliament from whom he is to derive his support, and therefore these powers, in both president and king, are substantially the same: he is the generalissimo of the nation, and of course, has the command & controul of the army, navy and militia; he is the general conservator of the peace of the union—he may pardon all offences, except in cases of impeachment, and the principal fountain of all offices & employments. Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy, or monarchy? The safety of the people in a republic depends on the share or proportion they have in the government; but experience ought to teach you, that when a man is at the head of an elective government invested with great powers, and interested in his re-election, in what circle appointments will be made; by which means *an imperfect aristocracy* bordering on monarchy may be established. . . .

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That magistrate is to be elected for *four* years; and is to be re-eligible as often as the People of the United States shall think him worthy of their confidence. In these circumstances, there is a total dissimilitude between *him* and a King of Great-Britain; who is an *hereditary* monarch, possessing the crown as a patrimony descendible to his heirs forever; but there is a close analogy between *him* and a Governor of New-York, who is elected for *three* years, and is re-eligible without limitation or intermission. If we consider how much less time would be requisite for establishing a dangerous influence in a single State, than for establishing a like influence throughout the United States, we must conclude that a duration of *four* years for the Chief Magistrate of the Union, is a degree of permanency far less to be dreaded in that office, than a duration of *three* years for a correspondent office in a single State.

The President of the United States would be liable to be impeached, tried, and upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law. The person of the King of Great-Britain is sacred and inviolable: There is no constitutional tribunal to which he is amenable; no punishment to which he can be subjected without involving the crisis of a national revolution. In this delicate and important circumstance of personal re-

sponsibility, the President of confederated America would stand upon no better ground than a Governor of New-York, and upon worse ground than the Governors of Maryland and Delaware.

The President of the United States is to have power to return a bill, which shall have passed the two branches of the Legislature, for re-consideration; but the bill so returned is to become a law, if upon that re-consideration it be approved by two thirds of both houses. The King of Great Britain, on his part, has an absolute negative upon the acts of the two houses of Parliament. . . . The qualified negative of the President differs widely from this absolute negative of the British sovereign; and tallies exactly with the revisionary authority of the Council of revision of this State, of which the Governor is a constituent part. In this respect, the power of the President would exceed that of the Governor of New-York; because the former would possess singly what the latter shares with the Chancellor and Judges: But it would be precisely the same with that of the Governor of Massachusetts, whose constitution, as to this article, seems to have been the original from which the Convention have copied.

. . . First; the President will have only the occasional command of such part of the militia of the nation, as by legislative provision may be called into the actual service of the Union—The King of Great-Britain and the Governor of New-York have at all times the entire command of all the militia within their several jurisdictions. In this article therefore the power of the President would be inferior to that of either the Monarch or the Governor.—Secondly; the President is to be Commander in Chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the King of Great-Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and Admiral of the confederacy; while that of the British King extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies; all which by the Constitution under consideration would appertain to the Legislature. The Governor of New-York on the other hand, is by the Constitution of the State vested only with the command of its militia and navy. But the Constitutions of several of the States, expressly declare their Governors to be the Commanders in Chief as well of the army as navy; and it may well be a question whether those of New-Hampshire and Massachusetts, in particular, do not in this instance confer larger powers upon their respective Governors, than could be claimed by a

President of the United States.—Thirdly; the power of the President in respect to pardons would extend to all cases, *except those of impeachment*. The Governor of New-York may pardon in all cases, even in those of impeachment, except for treason and murder. Is not the power of the Governor in this article, on a calculation of political consequences, greater than that of the President? All conspiracies and plots against the government, which have not been matured into actual treason, may be screened from punishment of every kind, by the interposition of the prerogative of pardoning. If a Governor of New-York therefore should be at the head of any such conspiracy, until the design had been ripened into actual hostility, he could ensure his accomplices and adherents an entire impunity. A President of the Union on the other hand, though he may even pardon treason, when prosecuted in the ordinary course of law, could shelter no offender in any degree from the effects of impeachment & conviction. . . . Fourthly; the President can only adjourn the national Legislature in the single case of disagreement about the time of adjournment. The British monarch may prorogue or even dissolve the Parliament. The Governor of New-York may also prorogue the Legislature of this State for a limited time; a power which in certain situations may be employed to very important purposes.

The President is to have power with the advice and consent of the Senate to make treaties; provided two thirds of the Senators present concur. The King of Great-Britain is the sole and absolute representative of the nation in all foreign transactions. He can of his own accord make treaties of peace, commerce, alliance, and of every other description. . . . In this respect therefore, there is no comparison between the intended power of the President, and the actual power of the British sovereign. The one can perform alone, what the other can only do with the concurrence of a branch of the Legislature. It must be admitted that in this instance the power of the federal executive would exceed that of any State executive. But this arises naturally from the exclusive possession by the Union of that part of the sovereign power, which relates to treaties. . . .

The President is to nominate and *with the advice and consent of the Senate* to appoint Ambassadors and other public Ministers, Judges of the Supreme Court, and in general all officers of the United States established by law and whose appointments are not otherwise provided for by the Constitution. The King of Great-Britain is emphatically and truly stiled the fountain of honor. He not only appoints to all offices, but can create offices. He can

confer titles of nobility at pleasure; and has the disposal of an immense number of church preferments. There is evidently a great inferiority, in the power of the President in this particular, to that of the British King; nor is it equal to that of the Governor of New-York, if we are to interpret the meaning of the constitution of the State by the practice which has obtained under it. The power of appointment [in New York] is . . . lodged in a Council composed of the Governor and four members of the Senate chosen by the Assembly. The Governor *claims* and has frequently *exercised* the right of nomination, and is *entitled* to a casting vote in the appointment. If he really has the right of nominating, his authority is in this respect equal to that of the President, and exceeds it in the article of the casting vote. In the national government, if the Senate should be divided, no appointment could be made: In the government of New-York, if the Council should be divided the Governor can turn the scale and confirm his own nomination. If we compare the publicity which must necessarily attend the mode of appointment

by the President and an entire branch of the national Legislature, with the privacy in the mode of appointment by the Governor of New-York, closeted in a secret apartment with at most four, and frequently with only two persons, and if we at the same time consider how much more easy it must be to influence the small number of which a Council of Appointment consist than the considerable number of which the national Senate would consist, we cannot hesitate to pronounce, that the power of the Chief Magistrate of this State in the disposition of offices must in practice be greatly superior to that of the Chief Magistrate of the Union.

. . . What answer shall we give to those who would persuade us that things so unlike resemble each other?—The same that ought to be given to those who tell us, that a government, the whole power of which would be in the hands of the elective and periodical servants of the people, is an aristocracy, a monarchy, and a despotism. ■

DISCUSSION QUESTIONS FOR A SOCRATIC SEMINAR

- What does the argument by “Cato” about the executive branch becoming a European-style royal court reveal about the debate over the presidency?
- Would you suggest that the speculations of “Cato” about the executive branch are exaggerated?
- What are the strengths and weaknesses of the arguments of “Publius”?
- What does the comparative argument of “Publius” in contrast to the historical argument of “Cato” suggest about the nature of Federalist-Antifederalist disagreements?
- Why might “Cato” virtually ignore the checks and balances on the executive branch and “Publius” emphasize them?



TEACHING TOOLS

I. Comparing and Evaluating Federalist and Antifederalist Arguments Over the Executive Branch

1. Divide the class into two halves; one half (Antifederalists) will read “Cato” IV, and one half (Federalists) will read *The Federalist* 69 (“Publius”).
2. In the first part of the lesson, each half of the class should be divided into groups of 3-5 students. They should read their assigned essay, discuss, and summarize the arguments of their author using the T-chart below.

“Cato” IV Arguments	<i>The Federalist</i> 69 Arguments
*	*
*	*
*	*
*	*

3. After the groups have read and discussed their respective essays, have all of the Antifederalist groups and all of the Federalist groups meet together to reach a consensus on the four best arguments of their author.
4. Each half of the class should then select a student/students to present the arguments made by its author to the entire class.
5. You can move to the second part of the lesson where each side will evaluate the arguments of the opposition.
6. As a student/students present “Cato,” the Federalists will listen and evaluate the arguments using the T-chart. Likewise, as a student/students present “Publius,” the Antifederalists will listen and evaluate the

arguments using the T-chart. Each side can use the score bar to rate the effectiveness of the opposition's arguments. Evaluators can use a 1-10 scale to rate arguments.

7. When all of the arguments have been presented, have the Federalists and the Antifederalists meet together to reach a consensus on the two best arguments from the opposition.
8. Once the Federalists and the Antifederalists have had an opportunity to discuss and rank the arguments of their opposition, have a spokesperson report the findings of each to the class.
9. After each side has reported its assessment, the teacher can lead a discussion using the following questions:
 - Ask the Federalists, "What would you say is the strongest argument made by the Antifederalists?"
 - Ask the Antifederalists, "What would you say is the strongest argument made by the Federalists?"
 - Is the opposition's ranking of your arguments consistent with your own ranking of them? Why or why not?

II. A King or Not?: Comparing the Arguments of "Cato" and "Publius"

1. Divide the class into groups of 3-5 students. Half of the groups should read "Cato" (Antifederalist); the other half should read "Publius" (Federalist). As groups read their document, they should summarize and record their author's arguments using the chart below.

The Danger of the Executive
Antifederalist, Cato

The Safety of the Executive
Federalist, Publius

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2. After each group has had an opportunity to read and list its author’s arguments, have a representative from each group report its findings to the class. The groups representing the opposing perspective should pay particular attention to the opposition’s summary points. They will be asked to find and use arguments in their own piece as rebuttals to the opposition’s points.
3. After groups from each side, Antifederalist and Federalist, have reported their findings, give all groups an opportunity to evaluate the opposition’s summary points. Groups should then select the best excerpts from their author to use as an effective rebuttal.
4. Then have one side begin with a summary statement. For example:

(The Charge) The Antifederalist group could start with:
 Cato charges the president “has power and time sufficient to ruin his country.”

(The Rebuttal) The Federalist side might respond with:
 Publius says the president can be “impeached, tried, and upon conviction . . . removed from office.”
5. Reverse the sequence in the next round: Federalists make an accusation from their text and Antifederalists select their rebuttal statement. Teachers may select a panel of judges to score the rebuttals in each round and keep a running score to determine the winner. The chart below would be useful for judges.

The Charge	The Rebuttal
1.	F/AF
2.	F/AF
3.	F/AF
4.	F/AF

6. Conclude the lesson by leading a discussion using the following questions:
 - In your opinion, did “Cato” overstate the case that the executive branch would be a monarchy?
 - In your estimation, did “Publius” successfully rebut the arguments of “Cato”?
 - In your view, were Antifederalists effective in equating the executive branch with the British monarchy?
 - Was the comparative approach of “Publius” an effective way to rebut “Cato”? What are the strengths and weaknesses of using a comparative argument?

Vocabulary

“Cato” IV

1. *deference*: respect
2. *brevity*: shortness
3. *duration*: length of time
4. *trusts*: confidences
5. *pernicious*: wicked; harmful
6. *fancies*: imagines
7. *eminent*: distinguished; elevated
8. *courtiers*: flatterers; hangers-on
9. *garrisoned*: housed
10. *minions*: followers or underlings
11. *baseness*: lack of character
12. *want*: lack
13. *plurality*: the greatest number but less than half
14. *reprobated*: declared as evil
15. *odious*: revolting; offensive
16. *constituent*: essential or basic
17. *approbation*: approval
18. *generalissimo*: military dictator

“Publius”: *The Federalist* 69

1. *dissimilitude*: difference
2. *patrimony*: inheritance from a father or male ancestor
3. *correspondent*: similar
4. *inviolable*: secure in his place (the king); unchallengeable
5. *amenable*: accountable
6. *Council of Revision*: A New York body made up of the governor, the chancellor, and three justices of the state Supreme Court that could veto an act passed by the state legislature, but whose veto could be overturned by a two-thirds vote of both legislative houses
7. *appertain*: relate
8. *interposition*: intervention
9. *prerogative*: right
10. *impunity*: immunity (from prosecution)
11. *adjourn*: interrupt until a later time
12. *prorogue*: suspend or end for a period
13. *dissolve*: permanently discontinue
14. *stiled*: labeled; named
15. *preferments*: offices; positions of honor
16. *casting vote*: the tie-breaking vote
17. *despotism*: tyranny