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THE WHITE HOUSE
WASHINGTON

Date 7.10.84

Suspense Date _____

MEMORANDUM FOR: John

FROM: **DIANNA G. HOLLAND**

ACTION

- _____ Approved
- _____ Please handle/review
- X_____ For your information
- _____ For your recommendation
- _____ For the files
- _____ Please see me
- _____ Please prepare response for
_____ signature
- _____ As we discussed
- _____ Return to me for filing

COMMENT



NATIONAL Forum

THE PHI KAPPA PHI JOURNAL

Editor
STEPHEN W. WHITE

June 25, 1984

Managing Editor
ELAINE M. SMOOT

The Honorable Fred F. Fielding
Counsel to the President
Old Executive Office Building
Room 45
Washington, DC 20500

Dear Mr. Fielding:

We have received the first draft of your manuscript for our special issue on the Bicentennial of the Constitution. A copy-edited version of your paper will be mailed to you for approval if any significant changes are requested by the Editor or the Guest Editor.

Thank you for agreeing to be a part of this special issue.

Sincerely,

Stephen W. White
Editor

jwn

Title of Manuscript: THE POWER OF THE PRESIDENCY

1984 JUN 25 AM 6 18

THE WHITE HOUSE

WASHINGTON

July 10, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS 

SUBJECT: President's Article

Attached is a memorandum for Darman requesting such staffing as he considers appropriate for our draft article on the Presidency. Unless deadlines have slipped a bit (as they invariably do in this sort of endeavor), we must submit any changes to the editors by Friday. Accordingly, the memorandum for Darman requests any comments by noon Thursday. If anyone has serious objections to the draft, we can put off the Friday deadline.

Attachment

THE WHITE HOUSE

WASHINGTON

July 10, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: President's Article

The attached draft article has been submitted on behalf of the President for inclusion in the upcoming issue of National Forum magazine devoted to the bicentennial of the Constitution. The issue will contain articles on the Constitution by scholars and statesmen, including an article on the Supreme Court by the Chief Justice, one on the Congress by the Speaker of the House, and the instant article on the Presidency by the President. I would appreciate whatever staffing of the article you consider appropriate. Our office must provide final comments to the editors by Friday, so we would appreciate any suggestions by noon Thursday. Many thanks.

FFF:JGR:aea 7/10/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

July 10, 1984

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FFF:JGR:aea 7/10/84
cc: FFFielding/JGRoberts/Subj/Chron

MARK W. CANNON
8404 MARTINGALE DRIVE
MCLEAN, VIRGINIA 22102

July 20, 1984

Mr. John Roberts
Room 106, EOB
The White House
Washington, D.C. 20050

Dear John:

Enclosed is a typeset version of the President's article for National Forum. If you wish to make additional changes, National Forum requests that you notify them by telephone no later than Monday. In addition, could you check for us the attribution of the quotation "God governs in the affairs of men" on page six? Is it possible that President Cleveland incorrectly cited Franklin instead of Washington, who used the phrase in the Constitutional Convention?

Thank you for all of your assistance.

Sincerely,



Mark W. Cannon

Enclosure

Contact at National Forum: Elaine Smoot (615)929-5347

/m1[ufnaftel2c]

[ufbeg]T[mc]he Presidency: Roles and Responsibilities[ql]

/m5[ufaut]Ronald W. Reagan[ql]

/m1[ufcap]T[uf1tx]he Declaration of Independence not only proclaimed our freedom from Great Britain, but also set forth the principles for which the Founding Fathers were willing to pledge their lives, fortunes, and sacred honor: ". . . that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The battles of the Revolution secured the independence proclaimed in the Declaration; it remained for the revolutionaries to put the ideals of liberty into practice. History has recorded many tragic episodes that bear witness to President Millard Fillmore's caution "that revolutions do not always establish freedom." Ours did, largely because it was followed shortly by the framing of the Constitution, what the great American historian George Bancroft termed "the most cheering act in the political history of mankind." [ql]

One of our more able statesmen and constitutional lawyers, Daniel Webster, once wrote: "We may be tossed upon an ocean where we can see no land--nor, perhaps, the sun or stars. But there is a chart and a compass for us to study, to consult, and to obey. The chart is the Constitution." For nearly 200 years, the Constitution has endured with relatively few amendments as a blueprint for freedom. In commemorating the Bicentennial of the Constitution we celebrate not simply the historic event that took place in Philadelphia on September 17, 1787, but the process by which we govern ourselves today. [ql]

The very notion of self-government was novel when the Framers embarked upon the constitutional experiment. James Madison, in "The Federalist Papers," urged his fellow citizens not to oppose ratification of the Constitution because of its novelty. He argued that it was the virtue of the American people that they were not blindly bound to the past but willing to rely on "their own good sense" and experience in charting their future. "To this manly spirit posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theater in favor of private rights and public happiness." [ql]

Madison's prediction has proved true. Americans are indebted to the Framers for their brave willingness to govern themselves, and the world is indebted to America for the example it continues to provide of democratic self-government. But while the Framers had to overcome the fear of the new, we now must fight with equal vigilance against complacency toward the old. A people who have lived with freedom under law for two centuries are in peril of forgetting how rare and precious that condition is. [ql]

An active and informed citizenry is necessary to the effective functioning of our constitutional system. As Chief Justice John Marshall, who knew a thing or two about the Constitution, once wrote, "the people make the Constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will." All of us have an obligation to study the Constitution and participate actively in the system of self-government it establishes. This is an obligation we owe not only to ourselves and our posterity, but to the Framers as well, who risked everything for freedom, and to the brave men and women who throughout our history have preserved the Constitution, often at the cost of their lives. There is no occasion better than this Bicentennial to refamiliarize ourselves with the Constitution and rededicate ourselves to the values it embodies. [ql]

[uftcap]T[uf1tx]he central challenge confronting the Framers of the Constitution was to create a strong national government that would not

threaten the liberties so recently won. Experience under the Articles of Confederation had demonstrated the inadequacies of a weak government "destitute of energy"; the colonial rule of George III had demonstrated the threats posed by strong central government. The challenge was to reconcile those two experiences. As Madison wrote, the difficulty lay in "combining the requisite stability and energy in government with the inviolable attention due to liberty and to the republican form." [ql]

The solution the Framers embraced was to diffuse the national governmental authority. Power was to be shared among separate institutions--the legislature, the executive, and the judiciary--in order that no single branch could become so powerful as to threaten the liberties of the people. In considering the allocation of authority in the Constitution, it is important to keep in mind the purpose of this act--nothing less than the preservation of liberty. This is what Alexander Hamilton meant when he wrote that the unamended Constitution "is itself, in every rational sense, and to every useful purpose, a bill of rights." Our liberties have been preserved in large part because of the allocation of powers in the Constitution. [ql]

This central fact--that the unamended Constitution is itself a bill of rights, and that the allocation of powers in the Constitution preserves liberty--imposes a special obligation on those who hold office under the Constitution. Public officials must not only discharge their responsibilities but also must respect the constitutional restraints on their offices and, equally important, preserve the constitutional prerogatives of their offices. Any individual president is a trustee of the powers of the office and cannot yield those powers for expediency or any other purpose. Presidents may at times prefer that another branch make a difficult decision or take action vested in the executive; or they may sometimes be willing to countenance an intrusion on their powers to achieve a particular result. At such times, the chief executive must recall that the Constitution allocated powers not simply for efficiency but to preserve liberty. In defending the constitutional prerogatives of the office the president is protecting liberty by fulfilling the Framers' design. [ql]

The Framers looked primarily to the president to provide the critical element of "energy" in the government. The problem with the government of the Articles of Confederation had been that it was "destitute of energy." The Drafters of the Constitution redressed that problem by vesting "competent powers" in the executive to lead the Nation. As Hamilton wrote: [ql]

[ufext][if0]Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. [ql]

[uftex][if0]The president's popular mandate justified this grant of authority. The president and the vice president with whom he runs are the only officials in our government elected through a process involving all the voters. Only the president can claim to speak for all the people, because, as Hamilton wrote, his selection looks "in the first instance to an immediate act of the people of America." The office of president has "a due dependence on the people, and a due responsibility." [ql]

[if1m]Perhaps the most pervasive responsibility of the president is to administer the executive branch. The Framers were practical men who recognized, as Hamilton wrote, "that the true test of good government is its

aptitude and tendency to produce a good administration." The people look ultimately to the president to ensure the efficient performance of duty by the millions of federal employees scattered among the various departments and agencies. I doubt that any of the Framers, prescient as they were, could have imagined the size and scope of today's federal establishment. They nonetheless afforded the presidency the tools necessary "to produce a good administration." [ql]

The Framers gave the president the responsibility to "take Care that the Laws be faithfully executed" and the power to appoint officers to assist him in discharging that responsibility. In the landmark case of *Myers v. United States*, Chief Justice William Howard Taft, a former president, wrote that it was a "reasonable implication" from the president's obligation to execute the laws that "he should select those who were to act for him under his direction in the execution of the laws." The Constitution provides that the president shall nominate, and with the advice and consent of the Senate, shall appoint the officers of the United States. The chief justice recognized the principle that the president's appointment power carried with it the corollary power to remove those officers in whom confidence can no longer be placed: "as his selection of administrative officers is essential to the execution of laws by him, so must be his power of removing those for whom he can not continue to be responsible." As the Framers recognized, this power to appoint and remove officers of the United States is necessary if the president is to be responsible for the faithful execution of the laws and the provision of "a good administration." [ql]

The challenge confronting the modern presidency is to "produce a good administration" when the federal establishment has grown so far beyond anything the Framers could have imagined. It is an amazing fact that there are more federal employees today than people living in America when the Framers drafted the Constitution. Perhaps President George Washington could play an active role in supervising the details of the first administration, but it is now the responsibility of his successors to create mechanisms for the control and coordination of the executive branch. One such mechanism is Executive Order 12291, which I issued during my first month in office. Executive Order 12291 for the first time provided effective and coordinated management of the regulatory process. Under the Executive Order, all regulations issued by executive departments and agencies must be reviewed by the Office of Management and Budget before being issued in order to determine whether they conform to the president's policies and to consider, to the extent possible whether their social benefits, conceived in the broadest terms, will exceed their social costs. The administration has issued a comprehensive statement of regulatory policy, and established procedures to ensure that this policy be reflected in the actions of individual agencies. [ql]

Other initiatives include the recent establishment of the President's Council on Management Improvement, an interagency committee charged with improving management and administration throughout government; the President's Council on Integrity and Efficiency, established in 1981 to root out fraud, waste, and mismanagement; and the President's Private Sector Survey on Cost Control's comprehensive review of the functioning of the government. Given the size and scope of the federal bureaucracy, Hamilton's admonition that the executive "produce a good administration" requires careful, continuous attention to regulatory and managerial reform. [ql]

At the same time, however, it is fitting to consider whether the federal government is trying to do too much. The Framers did not charge the national government to solve all the problems that might confront the citizens of the Republic: the early Americans were too jealous of their freedom to sanction such an expansive view of central authority. Every president must not only manage government efficiently; they also must offer leadership in recognizing that government spending must be limited to functions that are the proper responsibility of government and that taxing by government must be limited to providing revenue for legitimate government purposes.[q]

[u]f[cap]T[u]f[tx]he president has no responsibility under the Constitution more important than the conduct of foreign affairs. As John Marshall noted on the floor of the House of Representatives, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." In the famous *Marbury v. Madison* decision of 1803, the Supreme Court agreed with Marshall's assessment: "In this vast external realm, the President alone has the power to speak or listen as a representative of the nation." The president's foreign policy powers derive from the general grant of executive power, the more specific grants of authority to make treaties and appoint and receive our ambassadors, and from fulfilling the role of commander in chief of the armed forces.[q]

The Framers recognized that of the two democratic branches, only the executive was suited to the successful conduct of foreign relations. Hamilton noted in his description of the executive that "Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number," and John Jay--himself one of our most successful early diplomats--argued that "the President will have no difficulty to provide" those qualities, though they were beyond the capability of a basically deliberative body such as Congress.[q]

When it came to the defense of the Nation, the Framers were even more unambiguous. Hamilton, who served at General Washington's side during the American War of Independence, knew that[q]

[u]f[ext][if0]the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority.[q]

[u]f[ext][if0]In the areas of defense and foreign affairs, the Nation must speak with one voice; only the president is capable of providing that voice.[q]

[if1m]This is not to denigrate the role of Congress in the development of foreign policy. On the contrary, the Framers required the assent of two-thirds of the senators to a treaty, and of course only Congress possesses the power to declare war. Beyond these defined roles, the support of Congress has been indispensable to an effective foreign policy throughout our history.[q]

The 1970s saw a rapid rise in congressional efforts to affect directly the formulation and implementation of foreign policy by the executive. A large number of prohibitions and restrictions on presidential authority were enacted in the areas of trade, human rights, arms sales, foreign aid, intelligence operations, and the deployment of United States armed forces abroad. Scholars and officials differ over the constitutionality of several of these initiatives. It is important to note, however, that efforts by Congress to participate in the development of American foreign policy must be accompanied by a recognition of the concomitant responsibility for developing bipartisan

5

consensus. We need to restore the honorable American tradition that partisan politics stops at the water's edge. As Congress attempts to augment its foreign policy role, it must ensure that its efforts do not force America to present multiple and perhaps discordant voices to the world, to the detriment of its security and interests. The president--"the sole organ of the nation in its external relations"--must continually seek the means of developing a bipartisan legislative-executive consensus on America's role in the world and the means of safeguarding that role. As Congress increasingly enters the foreign policy realm, it too must recognize a greater responsibility for developing such a consensus.[ql]

Apart from executive functions, the Constitution accords the president a significant role in the legislative process. The president has not merely the power but the duty to "from time to time give to the Congress Information of the State of the Union, and recommend to their consideration such Measures as he shall judge necessary and expedient" The people have grown to expect leadership from the president in executing the laws and in presenting a legislative program to Congress for consideration.[ql]

Perhaps the most prominent of the president's legislative powers is the qualified veto power. This power is qualified in the sense that a bill returned by the president with specific disapproval can nonetheless be enacted into law by a two-thirds vote of both houses. The Framers accorded the president a veto power for two reasons. First, they recognized the "propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments" and provided the president a veto with which to defend the prerogatives of the office of the president. The second purpose of the veto was as "an additional security against the enactment of improper laws." [ql]

The unique perspective the president can bring to bear on legislation was recognized by Chief Justice Taft: [ql]

[ufext][if0]The President is a representative of the people just as the members of the Senate and of the House are, and it may be, at some times, on some subjects, that the President elected by all the people is rather more representative of them all than are the members of either body of the Legislature whose constituencies are local and not countrywide.[ql]

[uftex][if0]The intent of the Framers in providing the president a qualified veto power has been frustrated to a large extent by the development of the congressional practice of combining various items in a single appropriations bill. The Framers undoubtedly anticipated that Congress would pass separate appropriations bills for discrete programs or activities, and that the president would be able to review each program. Until about the time of the Civil War, this was the practice of Congress. Since that time, however, Congress has increasingly combined various items of appropriation in omnibus appropriations bills. This makes it difficult for the president to discharge the responsibility vested in the office of the presidency by the Framers, because a president cannot consider the individual items of appropriations separately, but must either veto or approve the package as a whole. The president is thus prevented from using the veto as the Framers intended.[ql]

[if1m]It is for this reason that we have proposed restoring the Framers' original design through a constitutional amendment granting the president line-item veto authority. The constitutions of no fewer than forty-three states grant some such authority to the governor, and the experience at the state level suggests a line-item veto would work well at the federal level.[ql]

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[uftcap]T[uf1tx]he powers of the presidency are limited, and the president discharges constitutional responsibilities in a system according other powers to the coordinate branches of the legislature and the judiciary. As the Supreme Court has remarked, there is a[ql]
[ufext][if0]. . . never-ending tension between the President exercising the executive authority in a world that presents each day some new challenge with which he must deal and the Constitution under which we all live and which no one disputes embodies some sort of system of checks and balances.[ql]
[uftex][if0]The members of all three branches take an oath to uphold the Constitution, and it is a monument not only to the genius of the Framers but also to the statesmanship of those who have held office under the Constitution that the system has worked as well as it has.[ql]

[if1m]Thomas Jefferson called the presidency "a splendid misery." The Framers intended, as Hamilton wrote, that "the executive should be in a situation to dare to act his own opinion with vigor and decision." Presidents have learned advisors at their disposal, and they can consult with Congress, but the difficult and potentially momentous decisions the Constitution vests in the executive are, in the final analysis, the president's alone. Our most tested president, Abraham Lincoln, announced a guide for making those decisions that has yet to be bettered:[ql]

[ufext][if0]I desire to conduct the affairs of this Administration that if, at the end, when I come to lay down the reins of power, I have lost every other friend on earth, I shall at least have one friend left, and that friend shall be down inside of me.[ql]

[uftex]As we prepare to commemorate the Bicentennial of the Constitution, let us honor the memory of the Framers who drafted our blueprint for freedom, as well as those who, like Lincoln, did not permit their dreams to die. But let us also recognize the workings of a greater force. The Signers of the Declaration of Independence acted with "a firm reliance on the protection of divine Providence," and Madison, reviewing the work of the Constitutional Convention, noted that "It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution." What President Grover Cleveland said on the occasion of the Centennial of the Constitution rings even truer today:[ql]

[ufext][if0]When we look down upon 100 years and see the origin of our Constitution, when we contemplate all its trials and triumphs, when we realize how completely the principles upon which it is based have met every national need and national peril, how devoutly should we say with Benjamin Franklin, "God governs in the affairs of men." [ufnf][ql]

/m5[ufaff]RONALD W. REAGAN is the fortieth president of the United States.[ql]

[ufqt]Reagan[mc]/m6"In defending the constitutional prerogatives of the office the president is protecting liberty by fulfilling the Framers' design." [mc]

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Bob Jackson
x5924
From "Writings of Grover Cleveland"
1892
P.O. 120
Caswell Publishers
NY
Edited by
G.F. Parker

THE WHITE HOUSE
WASHINGTON

TO: *ANN*

FROM: John G. Roberts, Jr.
Associate Counsel
to the President

☐ FYI

☐ COMMENT

☐ ACTION

*copy this, and on copy
mark what they changed
from version you telephoned
to Tennessee. Thanks.*

/m1[ufnaftel2c]

[ufbeg]T[mc]he Presidency: Roles and Responsibilities[ql]

/m5[ufaut]Ronald W. Reagan[ql]

/m1[ufcap]T[uf1tx]he Declaration of Independence not only proclaimed our freedom from Great Britain, but also set forth the principles for which the Founding Fathers were willing to pledge their lives, fortunes, and sacred-honor: "... that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The battles of the Revolution secured the independence proclaimed in the Declaration; it remained for the revolutionaries to put the ideals of liberty into practice. History has recorded many tragic episodes that bear witness to President Millard Fillmore's caution "that revolutions do not always establish freedom." Ours did, largely because it was followed shortly by the framing of the Constitution, what the great American historian George Bancroft termed "the most cheering act in the political history of mankind." [ql]

One of our more able statesmen and constitutional lawyers, Daniel Webster, once wrote: "We may be tossed upon an ocean where we can see no land--nor, perhaps, the sun or stars. But there is a chart and a compass for us to study, to consult, and to obey. The chart is the Constitution." For nearly 200 years, the Constitution has endured with relatively few amendments as a blueprint for freedom. In commemorating the Bicentennial of the Constitution we celebrate not simply the historic event that took place in Philadelphia on September 17, 1787, but the process by which we govern ourselves today. [ql]

The very notion of self-government was novel when the Framers embarked upon the constitutional experiment. James Madison, in "The Federalist Papers,"... urged his fellow citizens not to oppose ratification of the Constitution because of its novelty. He argued that it was the virtue of the American people that they were not blindly bound to the past but willing to rely on "their own good sense" and experience in charting their future. "To this manly spirit posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theater in favor of private rights and public happiness." [ql]

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The solution the Framers embraced was to diffuse the national governmental authority. Power was to be shared among separate institutions--the legislature, the executive, and the judiciary--in order that no single branch could become so powerful as to threaten the liberties of the people. In considering the allocation of authority in the Constitution, it is important to keep in mind the purpose of this act--nothing less than the preservation of liberty. This is what Alexander Hamilton meant when he wrote that the unamended Constitution "is itself, in every rational sense, and to every useful purpose, a bill of rights." Our liberties have been preserved in large part because of the allocation of powers in the Constitution. [q1]

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The Framers gave the president the responsibility to "take Care that the Laws be faithfully executed" and the power to appoint officers to assist him in discharging that responsibility. In the landmark case of Myers v. United States, Chief Justice William Howard Taft, a former president, wrote that it was a "reasonable implication" from the president's obligation to execute the laws that "he should select those who were to act for him under his direction in the execution of the laws." The Constitution provides that the president shall nominate, and with the advice and consent of the Senate, shall appoint the officers of the United States. The chief justice recognized the principle that the president's appointment power carried with it the corollary power to remove those officers in whom confidence ~~can no longer be placed~~. "as his selection of administrative officers is essential to the execution of laws by him, so must be his power of removing those for whom he can not continue to be responsible." (As the Framers recognized, this power to appoint and remove officers of the United States is necessary if the president is to be responsible for the faithful execution of the laws and the provision of "a good administration." [q1]

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The challenge confronting the modern presidency is to "produce a good administration" when the federal establishment has grown so far beyond anything the Framers could have imagined. It is an amazing fact that there are more federal employees today than people living in America when the Framers drafted the Constitution. Perhaps President George Washington could play an active role in supervising the details of the first administration, but it is now the responsibility of his successors to create mechanisms for the control and coordination of the executive branch. One such mechanism is Executive Order 12291, which I issued during my first month in office. Executive Order 12291 for the first time provided effective and coordinated management of the regulatory process. Under the Executive Order, all regulations issued by executive departments and agencies must be reviewed by the Office of Management and Budget before being issued in order to determine whether they conform to the president's policies and to consider, to the extent possible, whether their social benefits, conceived in the broadest terms, will exceed their social costs. The administration has issued a comprehensive statement of regulatory policy, and established procedures to ensure that this policy is reflected in the actions of individual agencies. [q1]

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Other initiatives include the recent establishment of the President's Council on Management Improvement, an interagency committee charged with improving management and administration throughout government; the President's Council on Integrity and Efficiency, established in 1981 to root out fraud, waste, and mismanagement; and the President's Private Sector Survey on Cost Control's comprehensive review of the functioning of the government. Given the size and scope of the federal bureaucracy, Hamilton's admonition that the executive "produce a good administration" requires careful, continuous attention to regulatory and managerial reform. [q1]

At the same time, however, it is fitting to consider whether the federal government is trying to do too much. The Framers did not charge the national government ~~to solve~~ all the problems that might confront the citizens of the Republic: the early Americans were too jealous of their freedom to sanction such an expansive view of central authority. Every president must not only to manage government efficiently; ^{but} they also ^{too} must offer leadership in recognizing that government spending must be limited to functions that are the proper responsibility of government and that taxing by government must be limited to providing revenue for legitimate government purposes.[q1]

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[u]ftcap[T]u[ft]txhe president has no responsibility under the Constitution more important than the conduct of foreign affairs. As John Marshall noted on the floor of the House of Representatives, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." In the famous /m5Curtiss-Wright /m1decision of 1936, the Supreme Court agreed with Marshall's assessment: "In this vast external realm, the President alone has the power to speak or listen as a representative of the nation." The president's foreign policy powers derive from the general grant of executive power, the more specific grants of authority to make treaties and appoint and receive ~~our~~ ambassadors, and from fulfilling the role of commander in chief of the armed forces.[q1]

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When it came to the defense of the Nation, the Framers were even more unambiguous. Hamilton, who served at General Washington's side during the American War of Independence, knew that[q1]

[u]fext[if0]the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority.[q1]

[u]ftex[if0]In the areas of defense and foreign affairs, the Nation must speak with one voice; ~~only~~ the president is capable of providing that voice.[q1]

[i]f1mThis is not ~~denigrate~~ the role of Congress in the development of foreign policy. On the contrary, the Framers required the assent of two-thirds of the senators to a treaty, and of course only Congress possesses the power to declare war. Beyond these defined roles, the support of Congress has been indispensable to an effective foreign policy throughout our history.[q1]

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consensus. We need to restore the honorable American tradition that partisan politics stops at the water's edge. As Congress attempts to augment its foreign policy role, it must ensure that its efforts do not force America to present multiple and perhaps discordant voices to the world, to the detriment of its security and interests. The president--"the sole organ of the nation in its external relations"--must continually seek the means of developing a bipartisan legislative-executive consensus on America's role in the world and the means of safeguarding that role. As Congress increasingly enters the foreign policy realm, it too must recognize a greater responsibility for developing such a consensus.[ql]

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[uftex][if0]The intent of the Framers in providing the president a qualified veto power has been frustrated to a large extent by the development of the congressional practice of combining various items in a single appropriations bill. The Framers undoubtedly anticipated that Congress would pass separate appropriations bills for discrete programs or activities, and that the president would be able to review each program. Until about the time of the Civil War, this was the practice of Congress. Since that time, however, Congress has increasingly combined various items of appropriation in omnibus appropriations bills. This makes it difficult for the president to discharge the responsibility vested in the office of the presidency by the Framers, because a president cannot consider the individual items of appropriations separately, but must either veto or approve the package as a whole. The president is thus prevented from using the veto as the Framers intended, [ql] . . .

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[if1m]Thomas Jefferson called the presidency "a splendid misery." The Framers intended, as Hamilton wrote, that "the executive should be in a situation to dare to act his own opinion with vigor and decision." Presidents have learned advisors at their disposal, and they can consult with Congress, but the difficult and potentially momentous decisions the Constitution vests in the executive are, in the final analysis, the president's alone. Our most tested president, Abraham Lincoln, announced a guide for making those decisions that has yet to be bettered:[ql]

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[ufext][if0]When we look down upon 100 years and see the origin of our Constitution, when we contemplate all its trials and triumphs, when we realize how completely the principles upon which it is based have met every national need and national peril, how devoutly should we say with Benjamin Franklin, "God governs in the affairs of men." [ufnf][ql]

/m5[ufaff]RONALD W. REAGAN is the fortieth president of the United States.[ql]

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THE WHITE HOUSE

WASHINGTON

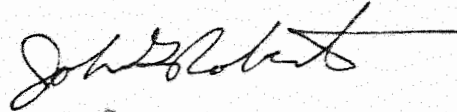
July 31, 1984

Dear Dr. White:

Enclosed please find the corrected galley proofs for the President's article. All of the changes are properly classified as author's alterations; you are well served by your printer.

Thank you once again for your continuing assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "John G. Roberts", with a long horizontal flourish extending to the right.

John G. Roberts
Associate Counsel to the President

Stephen W. White, Editor
NATIONAL FORUM
Box 19420A
East Tennessee State University
Johnson City, TN 37614-0002

cc: Mark Cannon

The Presidency: Roles and Responsibilities

Ronald W. Reagan

8

The Declaration of Independence not only proclaimed our freedom from Great Britain, but also set forth the principles for which the Founding Fathers were willing to pledge their lives, fortunes, and sacred honor: "... that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The battles of the Revolution secured the independence proclaimed in the Declaration: it remained for the revolutionaries to put the ideals of liberty into practice. History has recorded many tragic episodes that bear witness to President Millard Fillmore's caution "that revolutions do not always establish freedom." Ours did, largely because it was followed shortly by the framing of the Constitution, what the great American historian George Bancroft termed "the most cheering act in the political history of mankind."

One of our more able statesmen and constitutional lawyers, Daniel Webster, once wrote: "We may be tossed upon an ocean where we can see no land—nor, perhaps, the sun or stars. But there is a chart and a compass for us to study, to consult, and to obey. The chart is the Constitution." For nearly 200 years, the Constitution has endured with relatively few amendments as a blueprint for freedom. In commemorating the Bicentennial of the Constitution we celebrate not simply the historic event that took place in Philadelphia on September 17, 1787, but the process by which we govern ourselves today.

The very notion of self-government was novel when the Framers embarked upon the constitutional experiment. James Madison, in "The Federalist Papers," urged his fellow citizens not to oppose ratification of the Constitution because of its novelty. He argued that it was the glory of the American people that they were not blindly bound to the past but willing to rely on "their own good sense" and experience in charting their future. "To this manly spirit posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theater in favor of private rights and public happiness."

indebted to the Framers for their brave willingness to govern themselves, and the world is indebted to America for the example it continues to provide of democratic self-government. But while the Framers had to overcome the fear of the new, we now must fight with equal vigilance against complacency toward the old. A people who have lived with freedom under law for two centuries are in peril of forgetting how rare and precious that condition is.

An active and informed citizenry is necessary to the effective functioning of our constitutional system. As Chief Justice John Marshall, who knew a thing or two about the Constitution, once wrote, "the people make the Constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will." All of us have an obligation to study the Constitution and participate actively in the system of self-government it establishes. This is an obligation we owe not only to ourselves and our posterity, but to the Framers, who risked everything for freedom, and to the brave men and women who throughout our history have preserved the Constitution, often at the cost of their lives. There is no better time than this Bicentennial period to refamiliarize ourselves with the Constitution and rededicate ourselves to the values it embodies.

The central challenge confronting the Framers of the Constitution was to create a strong national government that would not threaten the liberties so recently won. Experience under the Articles of Confederation had demonstrated the inadequacies of a weak government "destitute of energy"; the colonial rule of George III had demonstrated the threats posed by strong central government. The challenge was to reconcile those two experiences. As Madison wrote, the difficulty lay in "combining the requisite stability and energy in government with the inviolable attention due to liberty and to the republican form."

The solution the Framers embraced was to diffuse the national governmental authority. Power was to be shared among separate institutions—the legislature, the executive, and the judiciary—in order that no single branch could become so powerful as to threaten the liberties of the people. In considering the allocation of authority in the Constitution, it is important to keep in mind the purpose of this allocation—nothing less than the preservation of liberty. This is what Alexander Hamilton meant when he wrote that the unamended Constitution "is itself, in every rational sense, and to every useful purpose, a bill of rights." Our liberties have been preserved in large part because of the allocation of powers in the Constitution.

This central fact—that the unamended Constitution is itself a bill of rights, and that the allocation of powers in the Constitution preserves liberty—imposes a special obligation on those who hold office under the Constitution. Public officials must not only discharge their responsibilities but also must respect the constitutional restraints on their offices and, equally important, preserve the constitutional prerogatives of their offices. Any individual president is a trustee of the powers of the office and cannot yield those powers for expediency or any other purpose. Presidents may at times prefer that another branch make a difficult decision or take action vested in the executive; or they may sometimes be willing to countenance an intrusion on their powers to achieve a particular result. At such times, the chief executive must recall that the Constitution allocated powers not simply for efficiency but to preserve liberty. In defending the constitutional prerogatives of the office the president is protecting liberty by fulfilling the Framers' design.

the Framers looked primarily to the president to provide the critical element of "energy" in the government. The problem with the government of the Articles of Confederation had been that it was "destitute of energy." The Drafters of the Constitution redressed that problem by vesting "competent powers" in the executive to lead the Nation. As Hamilton wrote:

Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy.

The president's popular mandate justified this grant of authority. The president and the vice president with whom he runs are the only officials in our government elected through a process involving all the voters. Only the president can claim to speak for all the people, because, as Hamilton wrote, his selection looks "in the first instance to an immediate act of the people of America." The office of president has "a due dependence on the people, and a due responsibility."

Perhaps the most pervasive responsibility of the president is to administer the executive branch. The Framers were practical men who recognized, as Hamilton wrote, "that the true test of good government is its aptitude and tendency to produce a good administration." The people look ultimately to the president to ensure the efficient performance of duty by the millions of federal employees scattered among the various departments and agencies. I doubt that any of the Framers, prescient as they were, could have imagined the size and scope of today's federal establishment. They nonetheless afforded the presidency the tools necessary "to produce a good administration."

The Framers gave the president the responsibility to "take Care that the Laws be faithfully executed" and the power to appoint officers to assist him in discharging that responsibility. The Constitution provides that the president shall nominate, and by and with the advice and consent of the Senate, shall appoint the officers of the United States. In the landmark case of *Myers v. United States*, Chief Justice William Howard Taft, a former president, wrote that it was a "reasonable implication" from the president's obligation to execute the laws that "he should select those who were to act for him under his direction in the execution of the laws." The chief justice went on to recognize the principle that the president's appointment power carried with it the corollary power to remove those officers in whom he could no longer place his confidence: "as his selection of administrative officers is essential to the execution of laws by him, so must be his power of removing those for whom he can not continue to be responsible." As the Framers recognized, this power to appoint and remove officers of the United States is necessary if the president is to be responsible for the faithful execution of the laws and the provision of "a good administration."

The challenge confronting the modern presidency is to "produce a good administration" when the federal establishment has grown so far beyond anything the Framers could have imagined. It is an amazing fact that there are more federal employees today than people living in America when the Framers drafted the Constitution. Perhaps President George Washington could play an active role in supervising the details of the first administration, but it is now the responsibility of his successors to create mechanisms for the control and coordination of the executive branch. One such mechanism is Executive Order 12291, which I issued during my first month in office. Executive Order 12291 for the first time provided effective and coordinated manage-

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At the same time, however, it is fitting to consider whether the federal government is trying to do too much. The Framers did not charge the national government with solving all the problems that might confront the citizens of the Republic: the early Americans were too jealous of their freedom to sanction such an expansive view of central authority. It is the responsibility of the president not only to manage government efficiently, but also to offer leadership in recognizing that government spending must be limited to functions that are the proper responsibility of government and that taxing by government must be limited to providing revenue for legitimate government purposes.

The president has no more important responsibility under the Constitution than the conduct of foreign affairs. As John Marshall noted on the floor of the House of Representatives, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." In the famous *Curtiss-Wright* decision of 1936, the Supreme Court agreed with Marshall's assessment: "In this vast external realm, the President alone has the power to speak or listen as a representative of the nation." The president's foreign policy powers derive from the general grant of executive power, the more specific grants of authority to make treaties and appoint and receive ambassadors, and his role as commander in chief of the armed forces.

The Framers recognized that of the two democratic branches, only the executive could successfully conduct foreign relations. Hamilton noted in his description of the executive that "Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number," and John Jay—himself one of our most successful early diplomats—argued that "the President will have no difficulty to provide" those qualities, though they were beyond the capability of a basically deliberative body such as Congress.

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It is for this reason that we have proposed restoring the Framers' original design through a constitutional amendment granting the president line-item veto authority. The constitutions of no fewer than forty-three states grant some such authority to the governor, and the experience at the state level suggests a line-item veto would work well at the federal level.

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As we look down the past century to the origin of our Constitution, as we contemplate its trials and its triumphs, as we realize how completely the principles upon which it is based have met every National peril and every National need, how devoutly should we confess, with Franklin, "God governs in the affairs of men." NF

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Reagan

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Reagan

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The Presidency

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Johnson City, TN 37614-0002

Author's Alterations:

Wherever possible make substitutions equal in number of letters to corresponding deletions. If it is necessary to add new material, add at end of paragraphs or as a new paragraph. Type extensive new copy on a separate sheet and indicate on the proof where it is to be inserted.

Extensive changes must be approved by the Editor, and Phi Kappa Phi reserves the right to charge authors for other than minimal alterations.

PLEASE SEE REVERSE SIDE FOR SIGNS USED IN CORRECTING PROOFS.

THE WHITE HOUSE
WASHINGTON

July 31, 1984

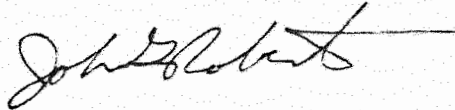
*Thanks for follow
up, John*
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Sincerely,



John G. Roberts
Associate Counsel to the President

Stephen W. White, Editor
NATIONAL FORUM
Box 19420A
East Tennessee State University
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cc: Mark Cannon

The Presidency: Roles and Responsibilities

8

Ronald W. Reagan

The Declaration of Independence not only proclaimed our freedom from Great Britain, but also set forth the principles for which the Founding Fathers were willing to pledge their lives, fortunes, and sacred honor: "... that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The battles of the Revolution secured the independence proclaimed in the Declaration; it remained for the revolutionaries to put the ideals of liberty into practice. History has recorded many tragic episodes that bear witness to President Millard Fillmore's caution "that revolutions do not always establish freedom." Ours did, largely because it was followed shortly by the framing of the Constitution, what the great American historian George Bancroft termed "the most cheering act in the political history of mankind."

One of our more able statesmen and constitutional lawyers, Daniel Webster, once wrote: "We may be tossed upon an ocean where we can see no land—nor, perhaps, the sun or stars. But there is a chart and a compass for us to study, to consult, and to obey. The chart is the Constitution." For nearly 200 years, the Constitution has endured with relatively few amendments as a blueprint for freedom. In commemorating the Bicentennial of the Constitution we celebrate not simply the historic event that took place in Philadelphia on September 17, 1787, but the process by which we govern ourselves today.

The very notion of self-government was novel when the Framers embarked upon the constitutional experiment. James Madison, in "The Federalist Papers," urged his fellow citizens not to oppose ratification of the Constitution because of its novelty. He argued that it was the glory of the American people that they were not blindly bound to the past but willing to rely on "their own good sense" and experience in charting their future. "To this manly spirit posterity will be indebted for the possession, and the world for the example, of the numerous innovations displayed on the American theater in favor of private rights and public happiness."

indebted to the Framers for their brave willingness to govern themselves, and the world is indebted to America for the example it continues to provide of democratic self-government. But while the Framers had to overcome the fear of the new, we now must fight with equal vigilance against complacency toward the old. A people who have lived with freedom under law for two centuries are in peril of forgetting how rare and precious that condition is.

An active and informed citizenry is necessary to the effective functioning of our constitutional system. As Chief Justice John Marshall, who knew a thing or two about the Constitution, once wrote, "the people make the Constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will." All of us have an obligation to study the Constitution and participate actively in the system of self-government it establishes. This is an obligation we owe not only to ourselves and our posterity, but to the Framers, who risked everything for freedom, and to the brave men and women who throughout our history have preserved the Constitution, often at the cost of their lives. There is no better time than this Bicentennial period to refamiliarize ourselves with the Constitution and rededicate ourselves to the values it embodies.

The central challenge confronting the Framers of the Constitution was to create a strong national government that would not threaten the liberties so recently won. Experience under the Articles of Confederation had demonstrated the inadequacies of a weak government "destitute of energy"; the colonial rule of George III had demonstrated the threats posed by strong central government. The challenge was to reconcile those two experiences. As Madison wrote, the difficulty lay in "combining the requisite stability and energy in government with the inviolable attention due to liberty and to the republican form."

The solution the Framers embraced was to diffuse the national governmental authority. Power was to be shared among separate institutions—the legislature, the executive, and the judiciary—in order that no single branch could become so powerful as to threaten the liberties of the people. In considering the allocation of authority in the Constitution, it is important to keep in mind the purpose of this allocation—nothing less than the preservation of liberty. This is what Alexander Hamilton meant when he wrote that the unamended Constitution "is itself, in every rational sense, and to every useful purpose, a bill of rights." Our liberties have been preserved in large part because of the allocation of powers in the Constitution.

This central fact—that the unamended Constitution is itself a bill of rights, and that the allocation of powers in the Constitution preserves liberty—imposes a special obligation on those who hold office under the Constitution. Public officials must not only discharge their responsibilities but also must respect the constitutional restraints on their offices and, equally important, preserve the constitutional prerogatives of their offices. Any individual president is a trustee of the powers of the office and cannot yield those powers for expediency or any other purpose. Presidents may at times prefer that another branch make a difficult decision or take action vested in the executive; or they may sometimes be willing to countenance an intrusion on their powers to achieve a particular result. At such times, the chief executive must recall that the Constitution allocated powers not simply for efficiency but to preserve liberty. In defending the constitutional prerogatives of the office the president is protecting liberty by fulfilling the Framers' design.

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Perhaps the most prominent of the president's legislative powers is the qualified veto power. This power is qualified in the sense that a bill returned by the president with disapproval can nonetheless be enacted into law by a two-thirds vote of both houses. The Framers accorded the president a veto power for two reasons. First, they recognized the "propensity of the legislative department to intrude upon the rights, and to absorb the powers, of the other departments" and provided the president a veto so that he could defend the prerogatives of his office. The second purpose of the veto was as "an additional security against the enactment of improper laws."

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It is for this reason that we have proposed restoring the Framers' original design through a constitutional amendment granting the president line-item veto authority. The constitutions of no fewer than forty-three states grant some such authority to the governor, and the experience at the state level suggests a line-item veto would work well at the federal level.

The powers of the presidency are limited, and the president discharges constitutional responsibilities in a system according other powers to the coordinate branches of the legislature and the judiciary. As the Supreme Court has remarked, there is a

... never-ending tension between the President exercising the executive authority in a world that presents each day some new challenge with which he must deal and the Constitution under which we all live and which no one disputes embodies some sort of system of checks and balances.

The members of all three branches take an oath to uphold the Constitution, and it is a monument not only to the genius of the Framers but also to the statesmanship of those who have held office under the Constitution that the system has worked as well as it has.

Thomas Jefferson called the presidency "a splendid misery." The Framers intended, as Hamilton wrote, that "the executive should be in a situation to dare to act his own opinion with vigor and decision." Presidents have learned advisors at their disposal, and they can consult with Congress, but the difficult and potentially momentous decisions the Constitution vests in the executive are, in the final analysis, the president's alone. Our most tested president, Abraham Lincoln, announced a guide for making those decisions that has yet to be bettered:

I desire to conduct the affairs of this Administration that if, at the end, when I come to lay down the reins of power, I have lost every other friend on earth, I shall at least have one friend left, and that friend shall be down inside of me.

As we prepare to commemorate the Bicentennial of the Constitution, let us honor the memory of the Framers who drafted our blueprint for freedom, as well as those who, like Lincoln, did not permit their dreams to die. But let us also recognize the workings of a greater force. The Signers of the Declaration of Independence acted with "a firm reliance on the protection of divine Providence," and Madison, reviewing the work of the Constitutional Convention, noted that "It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution." What President Grover Cleveland said on the occasion of the Centennial of the Constitution rings even truer today:

As we look down the past century to the origin of our Constitution, as we contemplate its trials and its triumphs, as we realize how completely the principles upon which it is based have met every National peril and every National need, how devoutly should we confess, with Franklin, "God governs in the affairs of men." **NF**

RONALD W. REAGAN is the fortieth president of the United States.

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The Presidency: Roles and Responsibilities

Ronald W. Reagan

The Declaration of Independence not only proclaimed our freedom from Great Britain, but also set forth the principles for which the Founding Fathers were willing to pledge their lives, fortunes, and sacred honor: "... that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." The battles of the Revolution secured the independence proclaimed in the Declaration; it remained for the revolutionaries to put the ideals of liberty into practice. History has recorded many tragic episodes that bear witness to President Millard Fillmore's caution "that revolutions do not always establish freedom." Ours did, largely because it was followed shortly by the framing of the Constitution, what the great American historian George Bancroft termed "the most cheering act in the political history of mankind."

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Fillmore, The American Dream, 686.
Address, 1853

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X Proc 4949,
June 23, 1982

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X Fed 15 (108)

X Fed 37 (226)

X Fed 84 (515)

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X Feb 70 (424)

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X Art II, § 3

X 272 U.S. 52

X 272 U.S., at 117

X 272 U.S., at 117

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X 299 U.S., at 319

X 299 U.S. 304

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X Art II, § 2

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X 299 U.S., at 319

X Art. II, § 3

X Art. I, § 7

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X 125 - Chubb, at 28,
272 U.S., at 123

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... never-ending tension between the President exercising the executive authority in a world that presents each day some new challenge with which he must deal and the Constitution under which we all live and which no one disputes embodies some sort of system of checks and balances.

The members of all three branches take an oath to uphold the Constitution, and it is a monument not only to the genius of the Framers but also to the statesmanship of those who have held office under the Constitution that the system has worked as well as it has.

Thomas Jefferson called the presidency "a splendid misery." The Framers intended, as Hamilton wrote, that "the executive should be in a situation to dare to act his own opinion with vigor and decision." Presidents have learned advisors at their disposal, and they can consult with Congress, but the difficult and potentially momentous decisions the Constitution vests in the executive are, in the final analysis, the president's alone. Our most tested president, Abraham Lincoln, announced a guide for making those decisions that has yet to be bettered:

I desire to conduct the affairs of this Administration that if, at the end, when I come to lay down the reins of power, I have lost every other friend on earth, I shall at least have one friend left, and that friend shall be down inside of me.

As we prepare to commemorate the Bicentennial of the Constitution, let us honor the memory of the Framers who drafted our blueprint for freedom, as well as those who, like Lincoln, did not permit their dreams to die. But let us also recognize the workings of a greater force. The Signers of the Declaration of Independence acted with "a firm reliance on the protection of divine Providence," and Madison, reviewing the work of the Constitutional Convention, noted that "It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution." What President Grover Cleveland said on the occasion of the Centennial of the Constitution rings even truer today:

As we look down the past century to the origin of our Constitution, as we contemplate its trials and its triumphs, as we realize how completely the principles upon which it is based have met every National peril and every National need, how devoutly should we confess, with Franklin, "God governs in the affairs of men." **MF**

X Feb 73 (443)

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X Davis + Moore, 7/2/81

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Remin

RONALD W. REAGAN is the fortieth president of the United States.

Reagan

“In defending the constitutional prerogatives of the office the president is protecting liberty by fulfilling the Framers’ design.”

14

Reagan

“In the areas of defense and foreign affairs, the Nation must speak with one voice, and only the president is capable of providing that voice.”

Reagan

“Thomas Jefferson called the presidency ‘a splendid misery.’ ”

The Presidency

The Presidency

The Presidency

The Presidency

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The Presidency
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To John

Date 7/23 Time 3:00

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M. Pam Ripley

of Natl. Forum

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