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DID THE US CONSTITUTION FULFILL THE IDEOLOGY OF THE AMERICAN  
REVOLUTION?: AN EXPLORATION OF PRESIDENTIAL POWERS

HEATHER ALLEVA  
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Reviewed and approved\* by the following:

Mark Neely  
McCabe Greer Professor in the American Civil War Era  
Thesis Supervisor

Michael Milligan  
Senior Lecturer in History, Director of Undergraduate Studies  
Honors Adviser

Anne C. Rose  
Distinguished Professor in History and Religious Studies  
Second Reader

\* Signatures are on file in the Schreyer Honors College.

## ABSTRACT

It is a common belief among those who study United States history that the Constitution was the ultimate ideological fulfillment of the goals of the American Revolution that made the Revolutionary ideals a reality for all Americans. However, it is often overlooked that there are many discrepancies between what the leaders of the Revolution believed and the government that was actually created by the Constitution. This project examines the question of whether or not the Constitution was truly consistent with the ideology of the Revolution by analyzing three presidential powers: the Commander in Chief power, the veto power, and the power to pardon. By comparing the literature from the Revolution with the debates over the ratification of the Constitution regarding these three powers, it becomes clear that the Framers of the Constitution were not as dedicated to bringing the philosophy of the American Revolution to life as most Americans believe. The provisions in the new state constitutions that emerged during the Revolution and the ideas found in the speeches and writings of Anti-Federalist leaders from each state differ greatly from the strong, central government formed by the Constitution. These state-by-state analyses are particularly important to this project not only because state issues were more central in political discourse than national issues at the time, but also because the Constitution was ratified separately by each state. The discrepancies between the Revolutionary ideals and the powerful President created by the Constitution demonstrate that the United States Constitution was not a complete ideological fulfillment of the American Revolution.

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## Introduction

The American Revolution was an ideological movement centered on the ideals of republicanism, a political philosophy that emphasizes liberty and individual rights and relies on individual citizens to fulfill their civic duties in order to prevent corruption and avoid tyranny. As the British slowly infringed upon the freedoms of the colonists in North America through legislation, taxes, and acts of military aggression, the colonists began to reject the British government and the power of the British King and call for a new, more republican form of government that would better protect their rights. Literature from the period demonstrated a blatant concern over political power and the negative impact that it could have on republicanism and freedom. “The theory of politics that emerge(d) from the political literature of the pre-Revolutionary years rests on the belief that what lay behind every political scene...was the disposition of power...The colonists had no doubt about what power was and about its central, dynamic role in any political system.”<sup>1</sup> With each violent or political altercation between the colonists and the British government, the colonists became more fearful and wary of unchecked political power, especially that of the British King. American Revolutionary literature demonstrates that the colonists were particularly fearful of how political power could lead to corruption and tyranny, a loss of political representation for the common man, and even a loss of peace in the face of standing armies.

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<sup>1</sup> Bernard Bailyn. *The Ideological Origins of the American Revolution*. Enlarged Edition. (Cambridge: Belknap Press of Harvard University Press, 1967), 55.

During the American Revolution, the colonists experienced much political change in their nation. Not only was there an expensive and bloody war being waged on their land against the British, but the Revolution also became a time of great intellectual exchange and political change in the New World. Based on the themes of liberalism, republicanism, and fear of unchecked political power, the colonists worked each day to shape a new nation that would represent the ideals of the Revolution. The newly formed states were rewriting their colonial charters to be state constitutions that would protect the rights of the people through a commitment to representative democracy. Each state also sent delegates to be members of the Continental Congresses, aimed at creating a national bond between the new states that would help them survive as a new nation without Great Britain. At the First Continental Congress in Philadelphia, 1774, the delegates created a list of grievances against the King to justify their rebellion. At the Second Continental Congress in Philadelphia, 1775, the representatives from each state signed Thomas Jefferson's Declaration of Independence and drafted the Articles of Confederation, the first formal government of the United States. The Articles of Confederation were a fairly literal interpretation of the American Revolution, as the Articles provided as little opportunity as possible for the national government to become too powerful, tyrannical, or corrupt. The provisions of the Articles of Confederation contained no executive branch, no power for the federal government to tax, and no national army.

Although the Articles of Confederation created a national government consistent with the ideals of the Revolution that would protect against abuses of power, the new political system was not functional. Mainly because the federal government was not able to raise revenue through taxes or control any aspects of interstate trade, the national

confederation failed to contain the competition between the states, and the union was slowly beginning to fail. By 1787, delegates from each state were sent to Philadelphia again for the Constitutional Convention, where they drafted the Constitution of the United States to more effectively govern the nation.

Because the Constitution still governs the United States today and the turmoil of the period under the Articles of Confederation ended with its creation, many consider the writing of the Constitution to be “the final and climactic expression of the ideology of the American Revolution.”<sup>2</sup> However, the ratification of this document by leaders of the American Revolution was not a simple process. Many of the delegates from the different states believed that the Constitution strayed too far from the Articles of Confederation and, in turn, the ideals of the Revolution, so the debates over the document’s ratification were sharply divided. By exploring these debates over the ratification of the Constitution as well as propaganda and political literature from the states during the years of debate over its ratification, there is much evidence to suggest that the Constitution may not entirely be a fulfillment of the ideology of the American Revolution. A member of the ratifying convention in Massachusetts who had also been present when the Articles of Confederation were written, Amos Singletary, even said in a speech to the ratifying convention in 1775, “if at that time...any body had proposed such a constitution as this...it would have been thrown away at once. It would not have been looked at.”<sup>3</sup>

The discrepancy between the ideology of the Revolution, the collection of political ideas that emerged during the time period, and the text of the Constitution is

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<sup>2</sup> Bailyn, *The Ideological Origins of the American Revolution*, 321.

<sup>3</sup> Bailyn, *The Ideological Origins of the American Revolution*, 344.

especially obvious when it comes to the powers of the executive branch. One major theme of the Revolution was the fear of tyranny as a result of concentrating too much power in a single executive, like the King of Great Britain. The Articles of Confederation protected against this danger by including no executive at all, and many of the state constitutions written between 1776 and 1781 included articles that limited the executive power of their governors. For example, the Governor of Delaware was required to receive approval from the legislature to convene or give any order to the state militia, and the executive power in Georgia was split between a Governor and his executive council, rather than being invested in a sole executive.<sup>4</sup> However, when it came to the Constitutional Convention, the Framers of the Constitution seemed to abandon many of these protections against the abuse of executive power. Not only did they create an executive branch in Article II of the Constitution under the control of one single President, but they also invested in this President powers that many believed should only belong to a King. Three of the President's new powers were thought of as particularly too strong and potentially tyrannical: the Commander in Chief power, the presidential veto, and the power to pardon. All of these powers were considered by some to be excessive, and the Anti-Federalists continuously warned throughout ratification that too much power was being vested in a single executive.

The Anti-Federalists are sometimes referred to as the defenders of republicanism during the ratification of the Constitution, and they often believed that the President and executive branch created by the Constitution would infringe upon their republican ideals.

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<sup>4</sup> "Constitution of Delaware; 1776." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).

One Anti-Federalist who wrote under the penname of “Old Whig V” expressed his concern about the office of the President created by the new Constitution in an article in the *Philadelphia Independent Gazetteer*:

In the first place the office of the President of the United States appears to me to be clothed with such powers as are dangerous. To be the fountain of all honors in the United States, commander in chief of the army...with the power of making treaties and of granting pardons, and to be vested with an authority to put a negative upon all laws...is in reality to be a KING as much *a King as the King of Great Britain*, and a King too of the worst kind; an elective king.<sup>5</sup>

This anonymous Anti-Federalist writer felt that the Constitution created a monarchy, rather than a republic, and that the new President of the United States would be no less dangerous to freedom and liberty than the King of Great Britain had been. Another Anti-Federalist writer, “Cato”, expressed similar dissatisfaction with Article II of the Constitution in an article in the *New York Journal*. He wrote:

And here it may be necessary to compare the vast and important powers of the president...his controul over the army, militia, and navy—the unrestricted power of granting pardons for treason, which may be used to screen from punishment, those whom he had secretly instigated to commit the crime...evidently prove the truth of the position—that if the president possessed of ambition, he has power and time sufficient to ruin his country.<sup>6</sup>

“Cato” believed that the powers vested in the President by Article II of the Constitution were likely to be abused by any politician holding the office who was overly ambitious or

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<sup>5</sup> ““An Old Whig V, Philadelphia Independent Gazetteer, 1 November,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, (Madison: State Historical Society of Wisconsin, 1981), 541.

<sup>6</sup> Cato. “Cato IV, New York Journal, 8 November,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 9.

bold, and that the abuse of those powers could lead to the ultimate demise of the new nation.

The Federalists answered these claims by the Anti-Federalists and insisted that their ideas were actually more representative of republicanism and of the ideology of the Revolution. They pointed to the checks and balances within the branches of the Constitution and the limitations on certain powers within Article II to demonstrate that the powers given to the President were actually constrained. Despite their defenses, though, it is clear that there are discrepancies between the ideology expressed during the American Revolution and the textual provisions of the Constitution of the United States. By comparing the ideas represented by the Revolutionary leaders with the literature and notes from debates found during the process of ratification of the Constitution, it is possible to consider that the Framers of the Constitution may have been working toward a new political system, rather than trying to protect the visions of those who had instigated and lead the Revolution. Was the Constitution really a fulfillment of the Revolution, or was it the product of a new political ideology all together?

## Chapter 1

### The Commander in Chief Clause

There was a general belief during the American Revolution that individual liberty is always fragile, and any type of power is a threat to that liberty. Samuel Adams spoke at a Boston Town Meeting in 1772 about the incapability of men to withstand the temptations of power, declaring that, “ambition and lust of power above the law are...predominant passions in the breasts of most men.”<sup>7</sup> Because of this fear of human nature in combination with political power, there was a widespread fear throughout the colonies of standing armies, as most believed that such professional armies controlled by the government would oppress them and take away their freedom. This fear of standing armies was also derived from the historical precedent of “despotic kingdoms” in Spain, Poland, Turkey and Russia during the seventeenth century.<sup>8</sup> Many of the colonists who believed that the King of Great Britain was oppressing their liberties feared his standing army in the colonies would only take away more of their independence.

This “almost obsessive concern in the colonies with standing armies” can be seen throughout the literature of the American Revolution.<sup>9</sup> Standing armies were commonly referred to as corrupt or dangerous to individual liberties. In a Revolutionary pamphlet written by a group of anonymous writers addressed to the inhabitants of the colony of New York, the British Army and all other national armies are described as “an

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<sup>7</sup> Bailyn, *The Ideological Origins of the American Revolution*, 60.

<sup>8</sup> Bailyn, *The Ideological Origins of the American Revolution*, 63.

<sup>9</sup> Bailyn, *The Ideological Origins of the American Revolution*, 62.

impropriety of the greatest importance to a free people, justly jealous of their honour, and conscious of their real dignity!”<sup>10</sup> The writers of the same pamphlet went on to assert that no legislature has the right to give permission for any type of permanent military force. They declared, “the Legislature can give no *lawful* authority to such acts of *perpetual duration* any more than they can lawfully surrender the liberties of the people. [The people] have, in reserve, an *unalienable* right to *ratify* or *annul*, every act of their Delegates to the legislative Assemblies.”<sup>11</sup> The authors of this pamphlet were so opposed to standing armies that they believed no legislature could legally subject any people to one, and in order to protect their liberties, all citizens should be able to annul any such army. Some Revolutionary thinkers even went so far as to claim that the British government’s purpose in sending their permanent army to the colonies was to enslave all of the colonists. Historian Bernard Bailyn quoted some of these thinkers in his book, *The Ideological Origins of the American Revolution*, when he stated, “the less inhibited of the colonial orators were quick to point out that ‘the MONSTER of a standing army’ had sprung directly from ‘a plan...*systematically* laid, and pursued by the British *ministry*, near twelve years, for enslaving America.”<sup>12</sup> These Revolutionary thinkers believed that the British Army was diminishing their liberties so much as to reduce them to slavery.

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<sup>10</sup> "No Standing Army in the British Colonies or An Address to the Inhabitants of the Colony of New York Against Unlawful Standing Armies."  
[http://infoweb.newsbank.com.ezaccess.libraries.psu.edu/iw-search/we/Evans?p\\_action=doc&p\\_theme=eai&p\\_topdoc=1&p\\_docnm=1&p\\_sort=YMD\\_date:D&p\\_product=EVAN&p\\_text\\_direct0=u433=\(%2014351%20\)%7Cu433ad=\(%2014351%20\)&p\\_nbid=66J5FJSMTM1NTk2NDg3MC45NTY1ODI6MToxMzoxMjguMTE4Ljg4Q4&p\\_docref=](http://infoweb.newsbank.com.ezaccess.libraries.psu.edu/iw-search/we/Evans?p_action=doc&p_theme=eai&p_topdoc=1&p_docnm=1&p_sort=YMD_date:D&p_product=EVAN&p_text_direct0=u433=(%2014351%20)%7Cu433ad=(%2014351%20)&p_nbid=66J5FJSMTM1NTk2NDg3MC45NTY1ODI6MToxMzoxMjguMTE4Ljg4Q4&p_docref=) (accessed 1 Dec. 2012).

<sup>11</sup> Ibid.

<sup>12</sup> Bailyn, *The Ideological Origins of the American Revolution*, 119.

Much of the opposition to standing armies came as a result of altercations with the British forces during the early 1770s, such as the Boston Massacre. At that time, British soldiers had been regularly stationed in the colonies since the Seven Years War ended in 1763.<sup>13</sup> Some colonists were wary of their presence in the colonies, but others doubted they posed any threat until after the Boston Massacre. In a letter from Boston Congregational Minister, Andrew Eliot, to his correspondent and English political philosopher, Thomas Hollis, on June 28, 1770, Eliot stated that the massacre “serves to show the impossibility of our living in peace with a standing army. A free people will sometimes carry things too far, but this remedy will always be found worse than disease.”<sup>14</sup> Eliot believed that the permanent British Army posed such a threat to the colonists that they could no longer peacefully coexist. He admits that there are times, such as the day of the Boston Massacre, when free people can cause danger and havoc, but he believes that a standing army is no remedy to the problem and may even create a more dangerous situation. Eliot then went on to say, “unless there is some great alteration in the state of things the era of independence of the colonies is much nearer than I once thought, or now wish it.”<sup>15</sup> He saw that the fear and anger instilled by the actions of the British standing army at the Boston Massacre were so great that a revolution was now inevitable, though he was opposed himself to such an outcome. About a year later, James Lovell, one of the delegates to the Continental Congress from Massachusetts, asserted his objections to the idea of standing armies in a speech commemorating those colonists who had been killed during the Boston Massacre. On April 2, 1771, Lovell said to the people

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<sup>13</sup> Bailyn, *The Ideological Origins of the American Revolution*, 113.

<sup>14</sup> Bailyn, *The Ideological Origins of the American Revolution*, 116.

<sup>15</sup> Ibid.

of Boston, “[a standing army] is extremely dangerous in a land of liberty, to make a distinct order of the profession or of arms; that such an order is an object of jealousy; and that *the laws and constitution of England are strangers to it.*”<sup>16</sup> To Lovell and many of the other colonists in Boston, the idea of a standing army was unacceptable after the Boston Massacre.

One aspect of standing armies that caused objection among the Revolutionary thinkers was their professionalism, meaning that they are full-time soldiers, paid and commanded by the government, and often by a single executive. Because of this professionalism, members of the army could be easily tempted by money and increases in their pay to violate the liberties of the people, should they be commanded to do so. Pastor Simeon Howard explained this objection to an artillery company in New England during a sermon on June 7, 1773. Howard said that because professional soldiers get paid to fight for a living, “there will always be danger of their being tempted by the promise of larger pay to betray [the people’s] trust, and turn their arms against it. No people, therefore, can with safety trust entirely to a standing army, even for defence against foreign enemies.”<sup>17</sup> Howard continued to explain that standing armies are always dangerous when there is no threat of foreign invasion when he stated, “without any enemy, a standing army may be fatal to the happiness and liberty of a community. They generally propagate corruption and vice where they reside, they frequently insult and

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<sup>16</sup> James Lovell. “An Oration Delivered April 2, 1771. At the Request of the Inhabitants of the Town of Boston; to Commemorate the Bloody Tragedy of the Fifth of March, 1770”. *Eighteenth Century Collections Online*. Gale. CIC Penn State University, Online (accessed 19 Dec. 2012).

<sup>17</sup> Simeon Howard. “A Sermon Preached to the Ancient and Honorable Artillery-Company, in Boston, New-England, June 7th, 1773. Boston, 1773.” *Eighteenth Century Collections Online*. Gale. CIC Penn State University, Online. (accessed 1 Dec. 2012).

abuse the unarmed and defenceless people.”<sup>18</sup> Howard believed that the incentive of pay was a powerful force on the professional soldier and would inevitably lead to corruption and the loss of liberty and freedom.

Howard further explained this monetary influence later on in his sermon:

When there is any difference between rulers and subjects, [the army] will generally be on the side of the former, and ready to afflict them in oppressing and enslaving the latter. For though they are really servants of the people, and paid by them; yet this is not commonly done in their name, but in the name of the supreme magistrate...The KING’S BREAD, and the KING’S SERVICE, are familiar expressions among soldiers, and tend to make them consider him as their only master, and prefer his personal interest to that of the people. So that an army may be the means, in the hands of a wicked and oppressive sovereign, of overturning the confliction of a country, and establishing the most intolerable despotism.<sup>19</sup>

Howard’s sermon not only describes the corruption that can arise from a professional army paid by the government, but it more importantly introduces the fear of standing armies commissioned by a single executive. Even if a legislature or other body of the people is what actually provides the professional soldiers with their pay, Howard understood that those soldiers would still consider their employer to be the “supreme magistrate,” or whoever is their commander. This idea of the sharing the “king’s bread” after doing the “king’s service” instilled fear among the Revolutionary thinkers. If one single executive could sway the military from the interests of people, then there would be no protection of individual liberties. Other Revolutionary writers also discussed the danger of a single executive commanding a permanent army. The authors of the Revolutionary propaganda pamphlet in New York discussed earlier warned the colonists

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<sup>18</sup> Ibid.

<sup>19</sup> Howard, “*A Sermon Preached to the Ancient and Honorable Artillery-Company, in Boston, New-England, June 7<sup>th</sup>. Boston, 1773*”.

of the dangers of a Governor commanding a standing army: “illegal warrants may be issued, and remain unquenched for a considerable time, to bewilder the bulk of the people with innumerable doubts...to intimidate and oppress.”<sup>20</sup> They too saw the potential corruption that could stem from a single executive presiding over the military, and they proposed a solution that the bodies of the people, or legislatures, should be the ones in charge of military power, for “[the King] cannot bribe the body of the people, in whom, originally, and finally, lies the sovereign power.”<sup>21</sup>

Another common objection to standing professional armies was based on the colonists’ strong faith in the citizen militias. Many of the colonists believed that their true defense resided in the militia, rendering a standing army unnecessary and potentially dangerous to the strength of the militia. Pastor Simeon Howard expressed this idea of defense by the militias rather than standing armies in his sermon to the Artillery Company in Boston. He explained that “to have an army continually stationed in the midst of a people, in time of peace, is a precarious and dangerous method of security,” but “a safer way, and which has been esteemed the wisest and best, by impartial men, is to have the power of defence in the body of the people, to have a well-regulated and well-disciplined militia.”<sup>22</sup> Howard believed that when national defense was left to militias, the government was “placing the sword in hands that will not be likely to betray their trust, and who will have the strongest motives to act their part well and in defence of their

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<sup>20</sup> *"No Standing Army in the British Colonies or An Address to the Inhabitants of the Colony of New York Against Unlawful Standing Armies."*

<sup>21</sup> *Ibid.*

<sup>22</sup> Howard, *"A Sermon Preached to the Ancient and Honorable Artillery-Company, in Boston, New-England, June 7<sup>th</sup>. Boston, 1773"*.

country, whenever they shall be called for.”<sup>23</sup> Civilians, Howard argued, would be more dedicated to the public good than professional armies because “when fighting in defence of their religion, their estates, their liberty, and families, [citizen militias] will have stronger motives to exert themselves”.<sup>24</sup> James Lovell also addressed the importance of militias in his commemoration address a year after the Boston Massacre. After alluding to Julius Caesar’s unrestrained control over the military and how that led him to become a dictator, Lovell warned the people by saying, “by the same instruments, many less republicans have been made to fall a pretty to the devouring jaws of tyrants.”<sup>25</sup> He went on further to explain, “the true strength and safety of every commonwealth...is the bravery of its freeholders, its militia. By brave militias [democracies] rise to grandeur, and they come to ruin by a mercenary army.”<sup>26</sup>

Another Revolutionary leader from Boston, Samuel Williams, also praised the militias as the true defense of the nation in his 1774 pamphlet, *A Discourse on the Love of our Country*:

The powers of Europe are undoing themselves, and one another, with the exorbitant number of their forces...the nature, and the tendency of this evil, till within a few years have been unknown among us. Our defence has been our Militia. With this we have all along repelled our numerous savage enemies...But instead of keeping up our armies, when war has ceased, our officers and soldiers like the old *Romans* have laid down their arms, and returned to their fields and farms, to cultivate the more useful arts of peace...The general operation of things among ourselves, indicate

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Lovell, “*An Oration Delivered April 2, 1771. At the Request of the Inhabitants of the Town of Boston: To Commemorate the Bloody Tragedy of the Fifth of March, 1770.*”

<sup>26</sup> Ibid.

strong tendencies towards a state of greater perfection and happiness than mankind has yet seen.<sup>27</sup>

Williams not only believed that the militias were safer than the standing armies of Europe, which he referred to as “evil”, but he also believed that it was these civilian armies that differentiated the colonies from other nations. He believed that the militias helped to contribute to this “greater perfection and happiness” in the New World than had ever existed in Europe.

The Revolutionary thinkers were so opposed to the idea of standing armies, especially under the control of a single executive, that the delegates of the First Continental Congress specifically declared such armies illegal. With the *Declaration and Resolves of the First Continental Congress* released on October 14, 1774, the delegates to the Congress declared that the inhabitants of the English colonies in North America had certain rights. One of those rights, the ninth resolution on the list, stated “that the keeping of a standing army in these colonies, in times of peace, without consent of the legislature of that colony, in which any such army is kept, is against the law.”<sup>28</sup>

This same resoluteness against standing armies under executive commanders continued to pervade the colonies for several years following the First Continental Congress. The Articles of Confederation, written by the Continental Congress in 1777 and ratified by each state between 1778 and 1781, contained provisions against standing

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<sup>27</sup> Samuel Williams. "A Discourse on the Love of Our Country." *TeachingAmericanHistory.org* <http://teachingamericanhistory.org/library/index.asp?document=2427> (accessed 19 Dec. 2012).

<sup>28</sup> "Declaration and Resolves of the First Continental Congress." *The Avalon Project: Documents in Law, History, and Diplomacy. Yale Law School*, Online. (accessed 1 Dec. 2012).

armies and maintained that the defense of the new nation would be left up to the state militias. Article VI of The Articles of Confederation established the laws of the states in regards to preparations for war:

No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the united States in congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up in any State in time of peace, except such number only, as in the united States, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.<sup>29</sup>

Unless decided upon specifically by a congress of representatives, no states were permitted to have any kind of standing or permanent army during times of peace under the Articles of Confederation. Further, the specific provisions in Article VI for each state regarding their militias demonstrate the reliance of the new nation on those militias for defense. Not only was each state required by the federal government to keep up a militia, but they were also required to provide for themselves enough ammunition and other equipment for any enemy that they may encounter.

The delegates of the Continental Congress further demonstrated their opposition to permanent armies under executive leadership in Article IX of the Articles of Confederation, where the rights of the federal government were specifically listed. Not only is there no chief executive created by the Articles of Confederation, but a specific provision in Article IX actually prevents a commander in chief of the army or navy from

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<sup>29</sup> *"The Articles of Confederation." U.S. Constitution.*  
[www.usconstitution.net/articles.html](http://www.usconstitution.net/articles.html) (accessed 1 Dec. 2012).

ever being appointed, unless the decision is ratified by at least nine of the thirteen states in the Confederation.<sup>30</sup> The delegates at the Constitution Congress clearly feared that a Commander in Chief of the army or navy would be too powerful and infringe upon the liberties of the people.

However, despite the Revolutionary opposition to both standing armies and executive power over military forces, Article II, Section II of the Constitution of the United States gives the President, a single executive, the sole power of being “Commander in Chief of the Army, Navy, and all state militias when called into service of the United States”.<sup>31</sup> This clause was not only completely inconsistent with the fear of standing armies and single executive military commanders seen in the literature of American Revolution, but it also abandoned the ideas about national defense seen in the Articles of Confederation’s lack of executive and national army. Clearly, the Framers of the Constitution were departing from the previous beliefs held in the colonies about militias and military leaders and were in favor of more nationalized defense. Further, the powers vested in the President in regards to military power were very vague and less specific than the powers enumerated to Congress in Article I of the Constitution, implying a broader and more lenient interpretation of them, which could theoretically lead to an excessively powerful executive. For example, by making the President the permanent Commander in Chief of the professional armies and state militias when called into service of the United States, Article II vests in the President the “authority to deploy

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<sup>30</sup> Ibid.

<sup>31</sup> "U.S. Constitution." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 1 Dec. 2012).

these men to repel sudden invasions in the absence of prior legislative authorization”.<sup>32</sup> Although the power to deploy troops without legislative consent is not specifically listed in Article II Section II, the vague and non-specific language of the article allows this power to be interpreted by the executive. Further, although the President’s Commander in Chief powers are limited by Article I, which gives Congress the power to control appropriations for the national army and navy and the power to declare war, there are no specific limitations as to when and how the President may use his power in Article II. Not only that, but with the combination of Articles I and II, the state governments and their governors lost all of the control that they had previously held over national defense to the single, federal executive.<sup>33</sup> The Continental Congress had felt that the best way to promote national defense was through the state governments, but the delegates at the Constitutional Convention had strayed away from this Revolutionary concept and voted for a more powerful executive and military commander.

Not surprisingly, the Commander in Chief clause of the Constitution of the United States met opposition as the document went out for ratification among the states. Many who read the Constitution felt that this clause was so dangerous to individual liberties and freedom that they accused the Framers of leading the states and American citizens into an inevitable tyranny. Benjamin Workman, an Anti-Federalist who wrote under the name of “Philadelphiensis” in Philadelphia newspapers and other publications, responded to the Commander in Chief clause with contempt and compared the powers given to the President as identical to the powers given to a king. He wrote in the *Philadelphia*

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<sup>32</sup>Akhil Reed Amar. *America’s Constitution: A Biography*. (New York: Random House, 2005), 188.

<sup>33</sup> Amar, *America’s Constitution: A Biography*, 188.

*Freeman's Journal* on February 6, 1788, “who can deny but the *president general* will be a *king* to all intents and purposes, and one of the most dangerous kind too; a king elected to command a standing army? Thus our laws are to be administered by this *tyrant*; for the whole, or at least the most important part of the executive department is put in his hands.”<sup>34</sup> It is notable that “Philadelphiensis” not only compared the President to a king or a tyrant, but also that he refers to the President as “president general”, implying that the most important and powerful aspect of the office is militarily based.

Another opponent of the Commander in Chief clause was Honorable William Pierce, a delegate to the Philadelphia Convention from Georgia. Like “Philadelphiensis”, Pierce believed that the Commander in Chief clause made the President like a king. In an excerpt of a letter written by Pierce to St. George Tucker published by the *Gazette of the State of Georgia* on March 20, 1788, Pierce stated:

The most solid objection I think that can be made to any part of the new government is the power which is given to the Executive Department; it appears rather too highly mounted to preserve exactly the equilibrium. The authority which the President holds is as great as that possessed by the King of England. Fleets and armies must support him in it...<sup>35</sup>

Pierce not only believed that the Commander in Chief clause made the President as powerful as the British monarch, but he also believed that presidential control over the army and navy would upset the equilibrium of the government, since it would make the

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<sup>34</sup> Philadelphiensis. “Philadelphiensis IX: Philadelphia Freeman’s Journal, 6 February,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 16, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 58.

<sup>35</sup> “Gazette of the State of Georgia, 20 March,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 16, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 445.

Executive Branch the most powerful branch of the government. Another writer, William Dickson, resident of Duplin County in North Carolina, was also threatened by the Commander in Chief Clause and compared the power to that of a king in a letter to his brother: "How much easier may it be for a President of the United States to Establish himself on a Throne here...invested with the sole command of all our armies, and no rival to circumvent him. I conceive the way is in a Manner laid open and plain before him, shou'd his Ambitious Views inspire him to Aim at Sovereign Power."<sup>36</sup> Dickson believed that power vested in a single executive over a standing army could easily lead to a dangerous monarchy.

One major objection to the Commander in Chief clause found among the debates over ratification of the Constitution was the fact that the clause created a standing army that would become the nation's primary form of defense, rather than the citizens' militias of each individual state. During the Revolution, the state militias were considered to be the most important defense for the nation and the ultimate protection for each state against an oppressive tyrant. However, Article II Section II of the Constitution gave the President the power to be Commander in Chief "of the Militia of the Several States, when called into actual Service of the United States."<sup>37</sup> By giving the President the power to control the state militias, the Constitution nationalized the militias, which increased the power of the federal executive while decreasing the power of the states. This completely counteracted the American Revolution's ideas of republicanism. Those who adhered to

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<sup>36</sup> William Dickson. "William Dickson to Robert Dickson: Goshen, Duplin County, 30 November (excerpt)," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino, Madison: State Historical Society of Wisconsin, 1981), 312.

<sup>37</sup> "U.S. Constitution."

republicanism believed that individual citizens had the moral responsibility to defend themselves and their fellow citizens from the dangers of tyranny, greed, and corruption. Therefore, volunteering in the citizens' militias, where ordinary men would leave their homes and pick up arms to defend against their enemies, was seen as the ultimate republican act. The nationalization of the militia and the new reliance on professional armies set up by the Constitution seemed to counter these tenants of republicanism.

James Madison's notes from the Constitutional Convention demonstrate that many of the delegates at the convention held deep concerns about the standing army and its implications for the state militias. George Mason, one of the delegates from Virginia, believed that the standing army was unnecessary and that the power of defense should be left to the militias. Madison writes in his notes that "[Mr. Mason] hoped there would be no standing army in time of peace, unless it might be for a few garrisons. The Militia ought therefore to be the more effectually prepared for the public defense."<sup>38</sup> After the Constitution went out for ratification, many other politicians also became concerned with the nationalization of the militia. In a 1787 letter to Arthur Lee, Colonel George Lee Turberville explained that the nationalization was dangerous to republican ideals. In his letter, he sarcastically questioned, "Of what consequence is the federal guarantee of republican governments to the individual states, when the power of the Militia's even is rested in the president?"<sup>39</sup> Turberville believed that a state's control over its own militia

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<sup>38</sup> James Madison. *Notes From the Constitutional Convention.* *U.S. Constitution.* <http://www.usconstitution.net/constconnotes.html> (accessed 19 Dec. 2012).

<sup>39</sup> George Lee Turberville. "George Lee Turberville to Arthur Lee, Richmond, 28 October," in *The Documentary History of the Ratification of the Constitution: Virginia No. 1*, Vol. 8, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 128.

was necessary for a republican government, and by giving that control to the President, the Constitution was taking away the republicanism of the states.

Another important figure from the American Revolution and the ratification period that opposed standing armies and the nationalization of the militia was Mercy Otis Warren. Married to James Warren and brother of James Otis, both active participants in Massachusetts's politics, Mercy became politically involved herself, as her house became a common meeting place for revolutionaries in the town, and she became a good friend of John and Abigail Adams.<sup>40</sup> Mercy Otis Warren was an especially interesting participant in the American Revolution, as she was one of the most outspoken women throughout the time period and published numerous pieces of anonymous political propaganda starting in 1772.<sup>41</sup> While the Constitution was out for ratification, Warren wrote an anonymous pamphlet entitled, "A Columbian Patriot: Observations on the Constitution", where she expressed some of her concerns about the proposed government. In response to the idea of standing armies, Warren wrote unfavorably, stating, "standing armies have been the nursery of vice and the bane of liberty from the Roman legions...to the planting [of] the British cohorts in the capitals of America."<sup>42</sup> Warren was also opposed to the nationalization of the militia. Later in her pamphlet, she stated, "by the edicts of the authority vested in the sovereign power by the proposed constitution the militia of the

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<sup>40</sup> "Mercy Otis Warren." *Massachusetts Historical Society*.  
<http://www.masshist.org/bh/mercybio.html> (accessed 20 Dec. 2012).

<sup>41</sup> Ibid.

<sup>42</sup> "A Columbian Patriot: Observations on the Constitution; Boston, February," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 16, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 280.

country, the bulwark of defence, and the security of national liberty is no longer under the controul of civil authority; but at the rescript of the Monarch.”<sup>43</sup> Warren not only believed that the nationalization of the militia would undermine national security, but she also believed that the control of the militia by the single executive was so dangerous to liberty that she referred to the President as a “Monarch”. Another reason that Warren was opposed to the standing armies and the nationalization of the militia was because she had always believed that it was the militia who won the Revolutionary War, not the Continental Army. In a letter to her friend, Catharine Sawbridge Macaulay on February 15, 1777, Warren criticized the Continental Army for its inefficiency and stated that it was the Militia that kept the Army from losing the war. She wrote in the letter, “But the peculiar mode of raising and recruiting the Continental army in every state has retarded the operations of war...and in some measure tends to defeat the best concerted plans...This has occasioned frequent calls on the Militia in aid of the army”.<sup>44</sup> Since, to Warren, it was the Militia that won the Revolution, the nationalization of that militia and the creation of the standing army in Article II Section II of the Constitution was dangerous to both liberty and the safety of the new nation.

Although there was much opposition to the Commander in Chief clause, there were also prominent political leaders who supported and defended it to the public. Alexander Hamilton, one of the most outspoken Federalists and author of many of *The Federalist Papers*, defended the nationalization of the militia and the creation of a standing army by pointing out its practicality. Hamilton stated in “Federalist Paper 29:

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<sup>43</sup> Ibid.

<sup>44</sup> Jeffrey H. Richards, and Sharon M. Harris, eds. *Mercy Otis Warren: Selected Letters*. (Athens: University of Georgia, 2009), 90.

Concerning the Militia”, “the power of regulating the militia, and of commanding its services in times of insurrection and invasion are natural incidents to the duties of superintending the common defense, and of watching over the internal peace of the Confederacy.”<sup>45</sup> He further explained, “it requires no skill in the science of war to discern that uniformity in the organization and discipline of the militia would be attended with most beneficial effects,” and that “this desirable uniformity can only be accomplished by confiding the regulation of the militia to the direction of the national authority.”<sup>46</sup>

Hamilton also stated, “if the federal government can command the aid of the militia in those emergencies which call for the military arm in support of the civil magistrate, it can the better dispense with the employment of a different kind of force.”<sup>47</sup> He believed that federal control over defense was essential to safety because the federal government would be able to better utilize the militia to its full potential. Madison’s notes from the Constitutional Convention show that some of the delegates also took this position, such as General Pinckney who “mentioned a case during the war in which a dissimilarity in the militia of different States had produced the most serious mischiefs” and then stated, “uniformity is essential”.<sup>48</sup>

However, despite its practicality, the solution of nationalizing the militia and creating a standing army still met opposition throughout the ratification process because of the way it defected from the ideals of the Revolution. For example, although the delegate at the Constitutional Convention from Massachusetts, Elbridge Gerry, agreed

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<sup>45</sup> Alexander Hamilton. “The Federalist No. 29: Concerning the Militia.” *The Federalist Papers*. Ed. Wayne LaPierre. (Birmingham: Palladium Press, 2000), 176.

<sup>46</sup> Hamilton, “*The Federalist No. 29: Concerning the Militia*”, 176.

<sup>47</sup> Ibid.

<sup>48</sup> Madison, “*Notes From the Constitutional Convention.*”

with Hamilton and Pinckney that uniformity in an army was essential and understood the necessity of a capable, permanent army in case of invasion, he was still extremely fearful of the Commander in Chief clause because no checks were made against standing armies in times of peace. Gerry raised his concerns about the clause during the Constitutional Convention, and James Madison recorded his objections in his notes:

[Gerry] thought an army was dangerous in time of peace and could never consent to a power to keep up with an indefinite number. He proposed that there shall not be kept up in time of peace more than thousand troops. His idea was that the blank should be filled with two or three thousand.<sup>49</sup>

Gerry's proposal for a numerical limit on the standing army was overruled by the votes of men like General Pinckney, and the standing army created by Article II of the Constitution remained unchecked. At the end of the Constitutional Convention, Gerry refused to sign the final draft of the Constitution because "he thought it centralized too much power at the federal level."<sup>50</sup>

The Federalists further defended the Commander in Chief clause by pointing to the checks placed on the Executive and the standing army through the other branches of government. Alexander Hamilton wrote in "Federalist Paper 24: The Powers Necessary to the Common Defense Further Considered", "I have met with but one specific objection, which, if I understand it right, is this, that proper provision has not been made against the existence of standing armies in time of peace; an objection which, I shall now

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<sup>49</sup> Madison, "Notes From the Constitutional Convention."

<sup>50</sup> "Elbridge Gerry in Constitutional Convention." Shmoop.

<http://www.shmoop.com/constitutional-convention/elbridge-gerry.html> (accessed 19 Dec. 2012).

endeavor to show, rests on weak and unsubstantial foundations.”<sup>51</sup> Hamilton then went on to explain that because the Legislature, the popularly elected branch of the government, is the only branch that can provide appropriations for the army, it is actually the Legislature that controls the standing army and not the President. He then wrote that the Constitution also contained “an important qualification even of the legislative discretion, in the clause which forbids the appropriation of money for the support of an army for any longer period than two years—a precaution which...will appear to be a great and real security against the keeping up of troops without evident necessity.”<sup>52</sup> This clause was listed in Article I Section VIII of the Constitution, and Hamilton believed that because the Congress was required to review its appropriations for the Army and Navy every two years, the President’s actions as Commander in Chief would be significantly checked.

Despite this division over the control of the standing army between Congress and the President, many of the early American politicians were not satisfied by the check on the President because the Congress’ appropriations need only to be renewed every two years, rather than reviewed annually. One Anti-Federalist who wrote anonymously under the penname “Tamony” believed that the two-year appropriations made the President an even more dangerous military leader than the King of Great Britain had been, since an annual appropriations law, called the Mutiny Act of 1689, limited the King’s control over his military. “Tamony” said:

The office of the President is treated with levity and intimated to be a machine calculated for state pageantry...though not dignified with the magic name of

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<sup>51</sup> Alexander Hamilton. “The Federalist No. 24: The Powers Necessary to the Common Defense Further Considered.” *The Federalist Papers*. Ed. Wayne LaPierre. (Birmingham: Palladium Press, 2000), 147.

<sup>52</sup> Hamilton, “*Federalist Paper No. 24*”, 148.

King, he will possess more supreme power, than Great Britain allows her hereditary monarchs, who derive ability to support an army from annual supplies, and owe the command of one to an annual mutiny law. The American President may be granted supplies for two years, and his command of a standing army is unrestrained by law or limitation. . . . Pause America—suspend a final affirmation, till you contemplate what may ensue—Do not contemn the declarations of Locke, Sydney, Montesquieu, Raynal. . . . they unite in asserting that annual supplies and an annual mutiny law, are the chief dykes man’s sagacity can raise against that torrent of despotism, which continually attempts to deluge the rights of individuals.<sup>53</sup>

In this article in the *Virginia Independent Chronicle*, “Tamony” alluded to many important political philosophers whose theories and ideas had greatly influenced the American Revolutionary ideology, and he used their ideas to prove that Article II of the Constitution strayed from the republican ideals that emerged during the Revolution.

One of these philosophers was Charles-Louis de Secondat, Baron de Montesquieu, who was an extremely influential figure in American politics because he developed and popularized the idea of the separation of powers. Montesquieu not only believed in the separation of the legislative and executive branches of government, but he also encouraged that the powers of the different branches overlap to create a system of checks and balances between the different branches. In his literary work, *The Spirit of the Laws*, written in 1748, Montesquieu addressed some of the ways in which the legislatures and the executives should interact, and as “Tamony” had suggested in the *Virginia Independent Chronicle*, Montesquieu believed that the legislature should renew its

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<sup>53</sup> Tamony. “Tamony, Virginia Independent Chronicle, January 9,” in *The Documentary History of the Ratification of the Constitution: Virginia No. 1*, Vol. 8, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 287-288.

apportionments for the armies annually in order to ensure the protection of liberty. He explained:

If the legislative power was to settle the subsidies, not from year to year...it would run the risk of losing its liberty, because the executive power would be no longer dependent...the same may be said if it should come to a resolution of entrusting, not an annual, but a perpetual command of the fleets and armies to the executive power.<sup>54</sup>

Montesquieu recommended an annual appropriation of money for the armies because such appropriations can act as a check on executive power each year. However, as “Tamony” pointed out, the Constitution allows the President to be granted supplies for two years, which doubles the length of time the Commander in Chief can go without a check by the legislature. One of the other political philosophers to whom “Tamony” alluded in the *Virginia Independent Chronicle* was Algernon Sydney, an English political philosopher whose republican ideals and reputation as a “martyr for republican government” made him a great influence on political thought in the American colonies.<sup>55</sup> Like Montesquieu, Sydney believed that the executive power should be checked annually by another branch of the government, especially in regards to military force. He wrote in his 1680 publication, *Discourses Concerning Government*, “when the regal power is committed to an annual or otherwise chosen magistracy, the virtues of excellent men are at use...when many are by practice rendered able to perform the same things, the loss of

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<sup>54</sup> Baron de Montesquieu. *"The Spirit of the Laws."* *Constitution Society*. [www.constitution.org/cm/sol.txt](http://www.constitution.org/cm/sol.txt) (accessed 19 Dec. 2012).

<sup>55</sup> Chris Baker. *"Algernon Sidney: Forgotten Founding Father."* *The Freeman*. [http://www.fee.org/the\\_freeman/detail/algernon-sidney-forgotten-founding-father#axzz2E12FxqeZ](http://www.fee.org/the_freeman/detail/algernon-sidney-forgotten-founding-father#axzz2E12FxqeZ) (accessed 19 Dec. 2012).

one is easily supplied by the election of another.”<sup>56</sup> Sydney believed that by a larger body checking the single executive annually, it could be ensured that good virtues were being followed by his actions.

As “Tamony” pointed out in the *Virginia Independent Chronicle*, the two-year appropriations laid out in the Constitution differed greatly from the republican ideals of the American Revolution. Many of the political philosophers whose works influenced the Revolutionary leaders and were quoted throughout the literature of the Revolution advocated for annual appropriations by the legislatures to check the power of the Commander in Chief, and the Mutiny Act of 1689 in Great Britain limited the maintenance of the King’s standing army to only one year.<sup>57</sup> Despite all of these republican precedents, the Framers of the Constitution gave the President unchecked control over his army for two years, doubling the length of time in which he could potentially abuse his powers. Others involved in the ratification debates also noticed this discrepancy and preferred that appropriations be made annually as well in order to decrease the power of the President. An article published in the *Gazette of the State of Georgia* where the author proposed amendments to all the clauses of the Constitution that he considered objectionable specifically targeted the two-year appropriations. The author proposed that the clause should instead read, “To raise and support armies only in times of war, invasion, insurrection, or rebellion; and no appropriation of money to be for a

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<sup>56</sup> Algernon Sydney. *Algernon Sidney: Discourses Concerning Government*. "Constitution Society. [http://www.constitution.org/as/dcg\\_223.htm](http://www.constitution.org/as/dcg_223.htm) (accessed 19 Dec. 2012).

<sup>57</sup> “1689 Mutiny Act”. *Colonial America: History of the First 13 Colonies and How They Became the United States*. <http://www.landofthebrave.info/mutiny-act.htm> (accessed on 19 Dec. 2012).

longer term than one year to that use.”<sup>58</sup> Further, Notes of the Massachusetts Ratification Convention by Theophilus Parsons, a Massachusetts jurist, show that one of the delegates, General Wiley Thompson, was also dissatisfied with the power vested in the President by the two-year appropriations. While debating about the standing armies, Parsons summarized Thompson’s objections. He wrote, “standing armies are a curse...soldiers in a standing army are the worst men...The Constitution is not clear...the learned are not agreed about it. Some people say we should swallow for the sake of the meat, and then pick the bone out. Now for the section—Britain never authorized the Parliament to pay an army for two years.”<sup>59</sup> Like “Tamony”, Thompson alluded to the Mutiny Act in Great Britain to imply that two-year appropriations made the President even stronger than the King.

One further objection to the Commander in Chief clause was felt especially in Pennsylvania, where Quakers and other people of non-violent religious denominations believed that the clause forced the President to be a “military man” who would favor only those also willing to be “military men”. The Anti-Federalist anonymous writer, “Philadelphensis”, wrote an essay discussing the issue that was printed in the *Philadelphia Freeman’s Journal* and the *Philadelphia Independent Gazetteer*. In regards

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<sup>58</sup> “A Georgian: Gazette of the State of Georgia, 15 November,” in *The Documentary History of the Ratification of the Constitution: Delaware, New Jersey, Georgia, and Connecticut*, Vol. 3, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 240.

<sup>59</sup> Theophilus Parsons. “Theophilus Parsons: Notes of the Convention Debates, 23 January, AM,” in *The Documentary History of the Ratification of the Constitution: Massachusetts No. 3*, Vol. 6, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 1332.

to standing armies and the danger that they posed to religious freedom,

“Philadelphiensis” wrote:

In regard to religious liberty, the cruelty of the new government will probably be felt sooner in Pennsylvania than in any state in the union. The number of religious denominations in this state, who are principled against *fighting* or *bearing arms*, will be greatly distressed indeed. In the new constitution there is no declaration in their favour; but on the contrary, the Congress and President are to have an absolute power over the *standing army, navy, and militia*; and the *president*, or rather *emperor*, is to be commander in chief. . . . Indeed, from the nature and qualifications of the president, we may justly infer. . . . he is by profession a *military man*. . . . only men of his own kind will be esteemed by him; his fellow soldier he will conceive to be his true friend, and the only character worthy of his notice and confidence.<sup>60</sup>

“Philadelphiensis” feared that a President who was Commander in Chief of a standing army would become preoccupied by his military duties and lose any concern for his non-violent constituents. Further, “The Dissent of the Minority of the Convention” in Philadelphia, published by those at the Pennsylvania Ratifying Convention who did not want to sign the Constitution, also shows that Pennsylvanians were concerned about the executive power oppressing their religious liberties. One of the amendments to the Constitution proposed by the dissenters in the article stated that the executive should have no authority to “alter, abrogate, or infringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion.”<sup>61</sup> Although those opposed to the Constitution in Pennsylvania were eventually overruled, there is

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<sup>60</sup> Philadelphiensis. “Philadelphiensis II: Philadelphia Freeman’s Journal, 28 November,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 252-253.

<sup>61</sup> “The Dissent of the Minority of the Convention,” in *The Documentary History of the Ratification of the Constitution: Pennsylvania*, Vol. 2, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 623.

evidence that the Commander in Chief clause seemed to be a threat to many who practiced religions dedicated to non-violence and had immigrated to the colonies for republicanism and the freedom of religion.

There is clearly a disconnect between the Revolutionary literature about executives and standing armies and what was actually created by Article II of the Constitution. The colonists during the American Revolution were terrified of the British Army controlled by the single executive King, and they believed that their true defense rested with the citizens' militias. However, the Framers of the Constitution created a government with a powerful, single executive who was the Commander in Chief of both a professional, standing army and of all the militias of the individual states. Had the Framers of the Constitution really intended on fulfilling the ideals of republicanism that evolved during the American Revolution, the executive would not have had so much power over a standing army, and there may have even been no Commander in Chief clause at all.

## Chapter 2

### The Presidential Veto

During the American Revolution, King George III was the all-powerful monarch of the British Empire. He held the power of the royal veto, meaning that he had the absolute power to veto any act of legislation passed in the British Parliament or the colonial legislatures, and his veto could not be overridden. Many times throughout his reign, King George III enacted this royal veto power to overturn legislation that had been passed in the colonies, which was very unsettling to many colonists who believed in the power of the legislature to represent the interests of the people. As King George III continued to use his royal veto power, more and more colonists began to consider him a tyrant rather than their beloved King.

There is evidence of the fear of the veto power in the literature from the Revolutionary period. Many of the colonists who feared the royal veto believed that the power to veto a law instated by a legislature was too extensive a power for a single executive to hold. They preferred that the Parliament or the local legislatures determine the laws under which they were governed, since those were the bodies of government that most represented the public. In one pamphlet of propaganda written by Reverend John Joachim Zubly in 1772, the King's veto is described as a threat to democracy. Zubly wrote of the King's negative over Parliament, or his power to veto Parliament's actions, "...and if the Crown has any power that may restrain freedom of debate, or abridge the liberty of giving and granting in the House of Commons, or impede them in business,

otherwise than by adjournment, prorogation, or dissolution, I cannot see how the House may be conceived free and independent in their deliberations.”<sup>62</sup> The language that Reverend Zubly uses is important in understanding objections to the power throughout the Revolutionary period. Zubly describes the veto power as something that “restrain[s] freedom of debate” and “abridge[s] the liberty” of the House of Commons in Parliament. He also explains that the use of the royal veto takes away the freedom and independence of the Parliament. This pamphlet was written in 1772 when dissatisfaction with the King was apparent and thoughts of Revolution were beginning to emerge. By this time, the colonists had become very wary of any type of power that could impede on their liberties and freedoms because they believed that “power always and everywhere had had a pernicious, corrupting effect upon men,” and that power “converts a good man in private life into a tyrant in office.”<sup>63</sup> So, a colonist reading Zubly’s pamphlet about a power that has the capacity to decrease the freedoms, liberties, and independence of their legislative bodies would be moved by that language and certainly fear the veto power of the King.

Another Revolutionary propaganda message against the royal veto of the King can be found in the *Virginia Gazette* on March 23, 1770. An anonymous writer wrote in an article for the newspaper, “to exert [the] veto to its full extent...to exert it in all cases...would be to forfeit what I value more than life...and even the confidence of the

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<sup>62</sup> John Joachim Zubly. “*Calm and Respectful Thoughts on the Negative of the Crown on a Speaker Chosen and Presented by the Representatives of the People.*” May 1772. *Eighteenth Century Collections Online*. Gale. CIC Penn State University, Online (accessed 13 Jan. 2013).

<sup>63</sup> Bailyn, *Ideological Origins of the American Revolution*, 60.

future in general.”<sup>64</sup> To this writer, the most important aspect of the government and what he valued “more than life” was the power of the legislature to properly represent the people. In his opinion, the overuse of the royal veto by the King would be detrimental to democracies, both in the present and in the future.

Opposition to the veto power in the colonies was most apparent in the reactions of the colonists when King George III would use the veto to overrule colonial legislation. One controversial veto by occurred in 1759 when King George III vetoed the Two-Penny Act, which had been passed by the Virginia legislature in 1755.<sup>65</sup> Prior to the Two-Penny Act, clergymen of the Anglican Church were paid their salaries in tobacco, which sold at two cents per pound.<sup>66</sup> However, after severe droughts in 1759 and 1760, the price of tobacco rose much higher. In response to the inflation, the Virginia legislature passed the Two-Penny Act, “which declared that contracts payable in tobacco should be valued according to the normal price rather than the higher ‘windfall’ caused by the recent drought.”<sup>67</sup> Being an Anglican himself, King George III vetoed the act of the Virginia legislature and encouraged clergymen to sue for back pay.

The citizens of Virginia were outraged, especially as some of the clergymen began to sue for damage payments. One of the most famous of these lawsuits occurred in Hanover County and has become known as the Parson’s Cause case. In 1763, Reverend

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<sup>64</sup> “A Soliloquy. Virginia Gazette, 22 March 1770”. *Eighteenth Century Collections Online*. Gale. CIC Penn State University, Online. (accessed on 28 Jan. 2013).

<sup>65</sup> "Parson's Cause." *Encyclopedia Britannica Online*.  
<http://www.britannica.com/EBchecked/topic/444740/Parsons-Cause> (accessed 29 Jan. 2013).

<sup>66</sup> "Biography of Patrick Henry." *Patrick Henry: Voice of the American Revolution*.  
<http://www.redhill.org/biography.html> (accessed 28 Jan. 2013).

<sup>67</sup> Ibid.

James Maury sued his vestry for back pay and won. The decision of the vestry did not sit well with many citizens, especially Patrick Henry. Patrick Henry, who later became one of the most outspoken Revolutionary leaders as a delegate for Virginia at both the First and Second Continental Congresses and the speaker of the famous “Give me Liberty or Give me Death!” speech in the Virginia Convention in 1775, began his political career with the Parson’s Cause case.<sup>68</sup> After Reverend Maury’s original victory, Henry stepped up as a young attorney arguing his first case in the trial to determine how much Maury would be paid. Henry argued in this case against payback for Maury because he believed that the King’s veto of the colonial legislature’s Two-Penny Act was undemocratic and that the act should still stand. Henry argued, “a king who would veto a good and necessary law made by a locally elected representative body was not a father to his people but ‘a tyrant who forfeits the allegiance of his subjects.’”<sup>69</sup> Henry then continued to compare King George III to tyrants of the past such as Caesar and Charles the First.<sup>70</sup> The jury and the people of Virginia responded well to Henry’s speech, as Maury was awarded only one penny in damages, and the clergy in Hanover quickly gave up their protest to the Two-Penny Act.<sup>71</sup> Although this case occurred in 1759, approximately six years before the Stamp Act of 1765 that really sparked the American Revolution, the Parson’s Cause case is still important in demonstrating that dissatisfaction with the King had been building up for years in the colonies. The Parson’s Cause case and the reaction to Patrick Henry’s speech in court show that many believed that the King’s veto power

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<sup>68</sup> “*Biography of Patrick Henry.*”

<sup>69</sup> “*Patrick Henry.*” *Colonial Williamsburg Official Historical Site.*

<http://www.history.org/almanack/people/bios/biohen.cfm> (accessed 29 Jan. 2013).

<sup>70</sup> *Ibid.*

<sup>71</sup> “*Parson's Cause.*”

was too extensive, and they feared that the overuse of the power would lead to tyranny and a decrease in freedoms.

Vetoes by King George III also created controversy in the colonies over the issue of slavery. Prior to the King taking his throne in 1760, the Georgia Colony had made itself known as a colony that was opposed to slavery and the slave trade. In 1735, the colonial legislature in Georgia banned the importation of black slaves and the practice of slavery. The Georgian legislature had banned slavery for its immorality, its economic hindrance to the white working class, and as a matter of security from the Spanish empire.<sup>72</sup> At the time, the Spanish occupied Florida and offered freedom to slaves in exchange for military service, so those in Georgia feared that their slaves would revolt to go to Florida and fight against them with the Spanish troops.<sup>73</sup> Along with Georgia, the colonial legislature of Virginia also made attempts to legally ban certain aspects of slavery by passing an act in 1761 to suppress slave importation of Africans by levying a prohibitory duty.<sup>74</sup> Despite these obvious objections to slavery and the slave trade in the colonies, the King was motivated by the economic benefits of the Atlantic Slave Trade and so made a declaration to all of the colonies that vetoed any anti-slavery laws that originated in colonial legislatures. On December 10, 1770, he wrote to the Governor of Virginia, "Upon pain of the highest displeasure, to assent to no law by which the importation of slaves should be in any respect prohibited or obstructed."<sup>75</sup>

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<sup>72</sup> "Slavery in Colonial Georgia." *New Georgia Encyclopedia*. <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-685> (29 Jan. 2013).

<sup>73</sup> Ibid.

<sup>74</sup> "History of Slavery." *Sons of the South*. <http://www.sonofthesouth.net/slavery/history-slavery.htm> (accessed 29 Jan. 2013).

<sup>75</sup> Ibid.

This veto by King George III was not well received in the colonies, especially in Virginia. The Virginia Assembly continually tried to find ways to get rid of slavery, and Thomas Jefferson is quoted in the Assembly of 1772, asking his fellow delegates, “How shall we get rid of the great evil?”<sup>76</sup> During that same assembly in 1772, the Virginians decided to petition the King directly, asking him to reverse his veto, but the King refused.<sup>77</sup> Jefferson considered this veto such an overstep of power and was so appalled by the King’s actions that his first draft of the Declaration of Independence included an entire paragraph about the event in its list of King’s many grievances against the colonists. That paragraph reads:

[King George III] has waged cruel war against human nature itself, violating it’s most sacred rights of life & liberty in the persons of a distant people who never offended him...this piratical warfare, the opprobrium of *infidel* powers, is the warfare of the CHRISTIAN king of Great Britain. determined to keep open a market where MEN should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce...he is now exciting those very people to rise in arms among us, and to purchase that liberty of which *he* has deprived them.<sup>78</sup>

This passage by Jefferson was powerful, and his language clearly demonstrates his anger over the King’s veto of anti-slavery legislation. Jefferson was not only vehemently opposing slavery in this paragraph, but he was also accusing King George III of abusing his power of the negative over the legislatures in exchange for money and trade.

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<sup>76</sup> “*History of Slavery.*”

<sup>77</sup> Ibid.

<sup>78</sup> Thomas Jefferson. “*Jefferson's ‘Original Rough Draught’ of Declaration of Independence.*” Princeton University. [http://www.princeton.edu/~tjpapers/declaration/declaration.html#\\_edn11](http://www.princeton.edu/~tjpapers/declaration/declaration.html#_edn11) (accessed 29 Jan. 2013).

Eventually, this portion of the draft was removed from the Declaration of Independence for political reasons, but a portion of Jefferson's anger toward the King's adamant veto of anti-slavery legislation remains in the document today:

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered by repeated injury, a prince whose character is thus marked by every act which may define a tyrant, is unfit to be the rule of a people who mean to be free. future ages will scarce believe that the hardiness of one man, adventured within the short compass of 12 years only, on so many acts of tyranny without a mask, over a people fostered & fixed in principles of liberty.<sup>79</sup>

In this passage, Jefferson refers to the King as a tyrant whose acts encroach so much on human liberties that future generations will hardly believe this portion of history.

Jefferson emphasizes that the King refused to overturn his unpopular veto, making him a despotic ruler who has taken away the freedom and the liberties of the colonists.

Although the Second Continental Congress removed the slavery portion of this passage from the Declaration of Independence to ensure ratification by pro-slavery delegates, it is relevant that they left the second portion of the passage intact. Not all of the delegates agreed with Jefferson about the immorality of slavery, but they agreed that the King's refusal to overturn his unpopular veto was a grievance by a tyrant against the people.

Patrick Henry and Thomas Jefferson were not the only Revolutionaries who took issue with the King's veto power. Other early American politicians agreed that the absolute negative was detrimental to the ideals of republicanism, and their opposition to it manifested itself in the First Continental Congress. On October 14, 1774, the delegates of the Congress in Philadelphia released the *Declaration and Resolves of the First Continental Congress*, which laid out some of their grievances with the British

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<sup>79</sup> Jefferson, "Jefferson's 'Original Rough Draught' of Declaration of Independence."

Parliament along with a list of specific rights, or resolutions, that the colonists thought they should be guaranteed. The fourth of these resolutions stated that the colonists had the right to govern themselves through their colonial legislatures, free from the negative of the King, except in cases of external commerce:

***Resolved, 4.*** That the foundation of English liberty, and of all free government is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed: . . .restrained to the regulation of our external commerce, for the purpose of securing commercial advantages of the whole empire.<sup>80</sup>

Because of the Navigation Acts, which had been in place since 1651, the colonists were willing to accept interference from the King on laws regarding external commerce, since their cooperation with the Navigation Acts guaranteed their use of the British Navy for protection from foreign invasion. However, as the language in this resolve demonstrates, the delegates at the First Continental Congress were no longer willing to tolerate the King's negative on any pieces of colonial legislation that dealt with local governance.

Despite all of these instances of dissatisfaction with the King's veto power prior to the Revolution and during both the First and Second Continental Congresses, the Framers of the Constitution of the United States endowed the President with the power to veto Congressional legislation. The word "veto" is never specifically used in the Constitution, but Article I Section 7 Clause 2 of the document states:

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States:

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<sup>80</sup> "*Declaration and Resolves of the First Continental Congress.*"

If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.<sup>81</sup>

By including this clause in Article I of the Constitution, the Framers subjected all legislative acts of Congress to the opinions of the current President and his desires for the nation. These “presentment rules” give the President three options when bills are passed through the House and the Senate: to sign the bill into law, to allow it to become a law without his signature, or to reject it from becoming a law by returning it to Congress with objections.<sup>82</sup>

Although many were opposed to the veto power of the President and found it disturbingly similar to the royal veto of the King, the Federalists continually defended the power throughout the ratification of the Constitution in *The Federalist Papers*. In “Federalist No. 73: The Provision for the Support of the Executive and the Veto Power”, Alexander Hamilton argued that the veto power would actually protect the people from a too-powerful government. Hamilton argued that the veto power was designed not to increase the power of the executive, but instead to add “an additional security against the enactment of improper laws.”<sup>83</sup> He continued to explain that the Presidential veto would “establish a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public

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<sup>81</sup> "U.S. Constitution."

<sup>82</sup> Amar, *America's Constitution: A Biography*, 183.

<sup>83</sup> Alexander Hamilton. “The Federalist No. 73: The Provision for the Support of the Executive and the Veto Power.” *The Federalist Papers*. Ed. Wayne LaPierre. (Birmingham: Palladium Press, 2000), 477.

good, which may happen to influence a majority of that body.”<sup>84</sup> To Hamilton and the other Federalists, the veto was designed to protect the public against bad laws by allowing the President to point out any constitutional objections in a passed bill and send it back for reconsideration. This concept is somewhat difficult to understand today, since the veto power has become “a vehicle for expressing a president’s policy disagreement with the legislature, with no executive responsibility to veto a bill because of its constitutional flaws.”<sup>85</sup> However, it should be understood that it was not until the 1830s with President Andrew Jackson’s veto of the National Bank that it became normal for a President to veto legislation based on their personal preferences. In fact, George Washington’s first veto in 1792 was “explicitly based...on constitutional objections to the congressional-apportionment bill presented to him.”<sup>86</sup> So, contrary to today’s beliefs, Hamilton and the other Federalists claimed that the power of the veto in the Constitution explicitly made the President the “Defender of the Constitution.”<sup>87</sup>

Later in “Federalist No. 73: The Provision for the Support of the Executive and the Veto Power”, Hamilton continues to defend the veto power by distinguishing it from the royal veto of Great Britain’s King. Hamilton explains that while the King has the right to exercise an absolute negative that cannot be overruled, the President only has the power to enact a “qualified negative” that can be overruled by two-thirds of the Congress after being sent back for reconsideration. He continues to argue that this qualified veto is

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<sup>84</sup> Ibid.

<sup>85</sup> Amar, *America’s Constitution, A Biography*, 183.

<sup>86</sup> Amar, *America’s Constitution, A Biography*, 183.

<sup>87</sup> Amar, *America’s Constitution, A Biography*, 185.

more democratic than an absolute veto because it would prevent the Executive from overruling good laws based on his own personal preferences. Hamilton explained:

It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in spite of the counterposing weight of the Executive. It is at any rate far less probable that this should be the case, than that such views should taint the resolutions and conduct of a bare majority.<sup>88</sup>

In this passage, Hamilton shares his belief that it would be highly unlikely for both the President and the Congress to share some unconstitutional or illegal belief. Because it would be so unlikely that so many elected officials would share the same unconstitutional idea, Hamilton argued that the two-thirds majority needed to override a Presidential veto would be sufficient to protect against any veto that goes against the public good.

Despite the Federalists' defenses of the veto power, it is necessary to remember that *The Federalist Papers* were written as propaganda to encourage and convince Americans to ratify the Constitution. Their arguments need to be read skeptically, and their language should be viewed carefully in order to determine the true intentions that the Federalists had for certain Constitutional clauses. For example, although Hamilton repeatedly argues that the President should use his veto when he has constitutional objections to a law in order to protect the public, there is no mention of "constitutional objections" in Article I Section 7. In fact, the clause that defines the veto power in the Constitution is extremely vague and never addresses when a President should or should not use that power. Neither the text nor the structure of the Article I Section 7 imply that the President has some obligation to protect against unconstitutional laws, yet Hamilton

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<sup>88</sup> Hamilton, "*The Federalist No. 73: The Provision for the Support of the Executive and the Veto Power*", 480.

argues in *The Federalist Papers* that this was the intention of clause. Further, Article III of the Constitution gave the Supreme Court judicial power that “shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States”.<sup>89</sup> If the Framers created the Supreme Court to judge the laws made by Congress, why would the President need to be the “Defender of the Constitution”?

Another reason to be skeptical of the Federalists’ discussion of the Presidential veto is their reluctance to use certain words. Hamilton rarely uses the word “power” when speaking about the President in his articles. He often uses the term “energy” instead of the word power because so many were fearful of a strong executive at the time of the Constitution’s ratification. For example, in “Federalist No. 70: The Executive Department Further Considered”, Hamilton makes the statement, “Energy in the Executive is a leading character in the definition of good government.”<sup>90</sup> It could be argued that Hamilton knew that the Executive created by the Constitution was stronger than what would have been accepted during the Revolution, but in his propaganda, he would be reluctant to admit to this fact. Another example of the Federalists’ reluctance to use certain words is in the Constitution itself. As stated earlier, the words “veto” or “negative” are never explicitly stated in the Constitution, but the concept of the veto is defined in Article I Section 7. This should be interpreted skeptically since the terms “veto” or “negative” were common at the time that the document was written and could have been purposely avoided in order to make the President seem less powerful. Both Patrick Henry and Thomas Jefferson used the words “veto” or “negative” in their pre-

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<sup>89</sup> “*U.S. Constitution.*”

<sup>90</sup> Alexander Hamilton. “The Federalist No. 70.” *The Federalist Papers*. Ed. Wayne LaPierre. (Birmingham: Palladium Press, 2000), 454.

Revolutionary speeches and papers against the King's veto, yet the Framers of the Constitution chose to leave both terms out, possibly because of the negative associations between those words and King George III's actions.

At the time of the ratification of the Constitution, there were many men, especially the Anti-Federalists, who understood that *The Federalist Papers* were propaganda, read the arguments in defense of the veto power with much skepticism, and ultimately disapproved of the President's negative. There are many instances throughout the ratification of the Constitution where the President is compared to a King or tyrant when the issue of the veto power is discussed. In a letter written to James Madison on October 2, 1787 regarding the flaws of the Constitution, one anonymous writer took an extreme position against the veto power and its potential effect on the structure of the government. He wrote to Madison about his fear of the veto power leading to a despotic executive:

...Since it appears almost a certainty, that where those powers are united, government must soon degenerate into a Tyranny. A sole Executive, who may be for life, with almost a Negative upon ye Legislature... appear to me to be most unfortunate features in the new Constitution. I may be deceived, but they present to my Mind so strong a Stamp of Monarchy or Aristocracy, that I think many Generations would not pass before one or other would spring from the new Constitution provided, it were to continue in its present form.<sup>91</sup>

This author was so fearful of the power of the President to veto acts of Congress that he believed the office of the executive would turn into the office of a tyrant, creating an aristocracy in the government that would undermine the principles of democracy and

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<sup>91</sup> "To James Madison, 1 October," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 284.

republicanism. Further, his fear was extremely urgent. He did not feel that more than a generation would pass before the new Constitution gave way to a Monarchy that would infringe upon people's rights by overriding the legislature.

A group of Virginia men, known as "The Society of Western Gentlemen", also believed that the veto power had the potential to destroy a democratic government. On April 30, 1788, "The Society of Western Gentlemen" revised what they believed were flaws in the Constitution and had their revised version printed in the *Virginia Independent Chronicle*. These men were very concerned with the powers of the Executive, as they revised or even eliminated a great number of the executive powers in their version of the Constitution, including the veto power. They felt that the elimination of the veto would create "a more mild and...a more just plan of government" because the current Constitution "simply had too many of the features of despotism, making it a danger to the liberties of Americans."<sup>92</sup> These men shared the same fears with the man who anonymously wrote to James Madison and warned that the veto power would lead to tyranny. To "The Society of Western Gentlemen", the veto placed too much power in the hands of the single executive, endangering the democratic process and the freedoms of the people.

Many of the delegates at the Pennsylvania ratification convention were particularly concerned with the capacity of the veto to interfere with the proper representation of the people. On December 18, 1787, twenty-one of the twenty-three

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<sup>92</sup> "The Society of Western Gentlemen Revises the Constitution, Virginia Independent Chronicle, 30 April, 7 May (Extra)," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 17, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 254.

delegates who voted against ratification of the Constitution printed their “Dissent of the Minority of the Pennsylvania Convention” in both the *Pennsylvania Packet* and the *Philadelphia Independent Gazetteer* to publicize their criticisms of the newly proposed government.<sup>93</sup> They discussed the necessity of maintaining a free and fair legislature, and they believed that the President’s power to veto legislation would be a hindrance to that maintenance. Their dissent stated:

The legislature of a free country should be so formed as to have a competent knowledge of its constituents, and enjoy their confidence. To produce these essential requisites, the representation ought to be fair, equal, and sufficiently numerous... We will now bring the legislature under this constitution to the test of the foregoing principles, which will demonstrate, that it is deficient in every essential quality of a just and safe representation... The president is to have the countrol over the enacting of laws, so far as to make the concurrence of *two* thirds of the representatives and senators present necessary, if he should object to the laws... How unadequate and unsafe a representation!... The representation is unsafe, because in the exercise of such great powers and trusts, it is so exposed to corruption and undue influence, by the gift of the numerous places of honor and emolument, at the disposal of the executive; by the arts and address of the great and designing; and by direct bribery.<sup>94</sup>

These dissenting delegates at the Pennsylvania Convention feared that the veto power would lead to legislation that was made in the interests of the elected officials, rather than in the interests of the people. By using terms such as “corruption”, “undue influence”, and “direct bribery” while referring to the veto power, the delegates insinuated that the President’s oversight of legislation would lead to self-interested laws, which would

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<sup>93</sup> “The Dissent of the Minority of the Pennsylvania Convention: *Pennsylvania Packet*, 18 December,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 15, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 8.

<sup>94</sup> “*The Dissent of the Minority of the Pennsylvania Convention: Pennsylvania Packet*, 18 December”, 26-27.

ultimately undermine a republican democracy by creating an unfair representation of the public.

Joseph Spencer, a lawyer who had served as a delegate to the Continental Congress in 1779 under the Articles of Confederation, also had serious doubts about the implications of the veto power on the just representation of the people.<sup>95</sup> At the request of James Madison, Spencer wrote him a letter on February 26, 1788 with his objections to the proposed Constitution. His second objection in his list dealt with the veto power and the negative consequences that he believed would stem from that power:

There is a Contradiction in the Constitution, we are first inform'd that all Legislative Powers therein granted shall be Vested in a Congress, composed of *two houses*, & yet afterwards all the power that lies between a Majority two thirds...is taken from these *two Houses*, and given to one man, who is not only chosen two removes from the people, but also the head of the executive department... We have always been taught that it was dangerous Mixing the Legislative & Executive powers together in the same body of the People but in this Constitution, we are taught better, or worse—<sup>96</sup>

Spencer's first objection to the President's veto in this passage is the same as the objection of the dissenters at the Pennsylvania Convention who feared a loss of proper representation. Spencer refers to the Electoral College to point out that the President is indirectly elected, which removes him twice from the people, while Congressmen are directly elected by the people and so should have all the power to create legislation. Because the indirectly elected President has the power to deny legislation passed by

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<sup>95</sup> "Spencer, Joseph (1714-1789)." *Biographical Directory of the United States Congress*. <http://bioguide.congress.gov/scripts/biodisplay.pl?index=S000728> (accessed 6 Feb. 2013).

<sup>96</sup> Joseph Spencer. "Joseph Spencer to James Madison, Orange County, VA. 28 February," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 16. Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 253.

Congress, Spencer believed that the interests of the public could be overridden by an executive who may not truly represent them as well as would an elected legislature. To Spencer, this was a “contradiction” because the people are led to believe that the Congress creates the legislation, while it in fact is greatly influenced by the President.

At the end of the passage, Spencer continues to explain that his problem with the veto stems from a political belief that the mixing of powers between legislative and executive branches has “always” been considered dangerous. Spencer was not the only person throughout the ratification process to express this concern of mixing powers when it comes to the Presidential veto. One of these men was Elbridge Gerry, the representative at the Constitutional Convention from Massachusetts who ultimately refused to sign the Constitution. After deciding not to sign the document, Gerry wrote to the members of the Massachusetts state legislature to explain and justify his decision by providing the members of the legislature with his objections to the proposed government. Gerry wrote:

It was painful for me, on a subject of such national importance, to differ from the respectable members who signed the Constitution; but conceiving, as I did, that the liberties of America were not secured by the system, it was my duty to oppose it. My principle objections to the plan are, that there is no adequate provision for the representation of the people...that the executive is blended with, and will have an undue influence over, the legislature.<sup>97</sup>

Like Joseph Spencer, Gerry believed the mixing of executive and legislative powers endangered proper democratic representation of the people. To Gerry, the mixing of the two branches through clauses in the Constitution such as the veto power were among the most objectionable parts of the document because they made liberties fragile, which

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<sup>97</sup> Library of Congress. *"Elbridge Gerry's Reasons for Not Signing the Federal Constitution." The New Nation: The US Constitution.* <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/timeline/newnatn/usconst/egerry.html> (accessed 6 Feb. 2013).

threatened democracy and freedom. The President had so much power over the legislature that Gerry did not feel comfortable endorsing the new plan of government, and so he did not sign the Constitution.

Another man who feared the power of the President's veto and the mixing of the legislative and executive branches was "Cato". "Cato" was a prominent, anonymous Anti-Federalist who published a series of articles in the *New York Journal* criticizing the Constitution. Many scholars believe that the "Cato" was the penname used by New York Governor, George Clinton, but no concrete evidence for his true identity exists.<sup>98</sup> In his fourth paper, published on November 8, 1787 in the *New York Journal* and referred to as "Cato IV", "Cato" expressed his discontent with the office of the President at length. His criticism in "Cato IV" included his negative opinions of the President's veto power:

[The President] 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...therefore these powers, in both president and king, are substantially the same.<sup>99</sup>

Not only does "Cato" compare the power of the President's negative to the royal veto of the British King, but he also believes that the veto power guaranteed in the Constitution makes the President a fundamental part of the legislative process, and this is unacceptable to him. "Cato" is not optimistic that the President's veto will be used to correct

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<sup>98</sup> "Anti-Federalist Papers: 'Cato'." The Constitution Society.  
[http://www.constitution.org/afp/cato\\_00.htm](http://www.constitution.org/afp/cato_00.htm) (accessed 6 Feb. 2013).

<sup>99</sup> Cato. "Cato IV, New York Journal, 8 November," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 10.

constitutional objections to laws, since he instead believes that most vetoes will result in absolute negatives. Further, “Cato” implies that the mixing of the Executive with the Legislature is dangerous as he explains that a complete negative will give the President too much influence over the powers that are enumerated to Congress, such as coining money. “Cato” believes that the President’s capacity to influence such legislation that should be regulated only by Congress makes him too similar to a monarch.

The Framers of the Constitution clearly disengaged from the Revolutionary ideology when they granted the President the power to veto legislation. By including Article I Section 7 in the Constitution, the Framers purposely ignored the fears of the King’s veto that had been prevalent throughout the Revolution. The colonists and Revolutionary leaders were fearful and distrusting of an executive that had enough power to override their legislatures, which were considered the true representations of the people, and they took issue with the King of Great Britain when he used the royal veto because he was farther removed from the people than the local legislatures. However, the Framers of the Constitution endowed the President with the power to deny any act of legislation from becoming a law at his discretion. It is true that the Framers may have included the veto power to protect the people from the passage of unconstitutional laws, but this is not explicitly stated in the Constitution and so cannot be proven. Despite the Framers’ intentions in creating a Presidential negative, the power of the veto in the Constitution is detached from the ideology of the Revolution and the fear of the royal veto. Had the Constitution really been an ideological fulfillment of the American Revolution, such powers that differ from Revolutionary ideology would not exist in the document.

## Chapter 3

### The Presidential Pardon

Prior to the Revolutionary period, the pardoning power of the executive had existed in English political and legal thought for centuries and was well engrained into the colonial society. During the 16<sup>th</sup> century, the pardon power became centralized in the British King, and the king's royal pardon could extend to any situation he saw fit. The British monarch retained the "authority to pardon or remit any treasons, murders, manslaughters or any kinds of felonies...or any outlawries for any such offenses...committed...by or against any person or persons...of this Realm."<sup>100</sup> This extremely broad royal pardon allowed the King to use the power to his advantage by offering conditional pardons in exchange for money for the crown or military service.<sup>101</sup> This tradition of the broad and unrestricted pardon extended into early colonial America, as royally appointed governors were often given unlimited pardoning powers in the colonial charters. For example, the colonial charter of Maryland gave its governor the power "to Remit, Release, Pardon, and Abolish all Crimes and Offences whatsoever against such Laws, whether before, or after Judgment passed."<sup>102</sup> Other governors, such

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<sup>100</sup> Henry Krent. "Conditioning the President's Conditional Pardon Power." *California Law Review* 89, no. 6 (2001), Online (accessed 1 Mar. 2013), 1671.

<sup>101</sup> Ibid.

<sup>102</sup> Krent, "Conditioning the President's Conditional Pardon Power", 1672.

as the governor of Virginia, had the power to issue conditional pardons in exchange for indentured servitude on plantations or service in the British army.<sup>103</sup>

Despite these traditions of the royal and colonial pardons and how engrained the pardoning power was in early colonial political and legal discourse, the power began to lose its exclusivity in the executive as the American Revolution approached. As the soon-to-be-states began drafting their new constitutions between the years 1775 and 1778, the colonists' dissatisfaction with the current pardoning system became evident as governors and other executives of states lost their power to control the pardon system. The states' executives no longer retained an unrestricted power to grant pardons, and many were subject to the discretion of a legally chosen council if they wanted to issue a pardon. There were also many restrictions placed on governors that controlled the types of cases that they could become involved in or the time frame in which they were allowed to use the pardon.

Of the first thirteen states' constitutions, ten defined the power of the executive's pardon and then specified limits that the executive would have in using the pardon. Two of the most surprising cases of a limited pardon power were in Massachusetts and New York, where the governors created by the new state constitutions were known for being strong executives. Although both of these governors had the right to use the pardon system, both were limited to pardoning after convictions, whereas early colonial governors could grant a pardon before a trial and sidestep the legal process completely.<sup>104</sup> The governor of Massachusetts was also further restricted, as he could not grant a pardon

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<sup>103</sup> Krent, "Conditioning the President's Conditional Pardon Power", 1672.

<sup>104</sup> Amar, *America's Constitution: A Biography*, 189.

without the advice of a legislatively chosen council, and the governor of New York was not able to pardon criminals in cases of murder or treason.<sup>105</sup> He could suspend a sentence if a person was convicted of murder or treason, but a pardon would have to wait until the legislature convened to examine the case.<sup>106</sup>

Many of the constitutions in other states used these same methods to curtail the power of the executive pardon while increasing the power of the legislatures in the pardoning system. Like Massachusetts, the Governor of New Jersey stood alongside a legislative council, and his pardons would go into effect only with the consent of that council.<sup>107</sup> The Governor of South Carolina experienced the same check on his power, as he could not take *any* executive action, including giving a pardon, without the consent of his Privy Council, which was chosen by the legislature.<sup>108</sup> Further, similar to the governor of New York, the governor of Vermont could not pardon in cases of murder or treason, since in those cases there “shall be no remission or mitigation of punishment... except by act of legislation.”<sup>109</sup> Pennsylvania’s constitution provided the same check against the executive, stating that the President and Vice-President have only the power to grant reprieves in cases of treason or murder, and pardons would be left to the legislature.<sup>110</sup>

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<sup>105</sup> Amar, *America’s Constitution: A Biography*, 189.

<sup>106</sup> *Ibid.*

<sup>107</sup> "Constitution of New Jersey; 1776." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online. (accessed 19 Dec. 2012).

<sup>108</sup> "Constitution of South Carolina." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).

<sup>109</sup> "Constitution of Vermont." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).

<sup>110</sup> "Constitution of Pennsylvania." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).

Other state legislatures took even greater measures to exert their power over the executive in the use of the pardoning power. The Constitution of Maryland included a provision that allowed the legislature to pass laws limiting the cases in which the pardon could be used at any time.<sup>111</sup> Further, many state legislatures ensured that governors could not interfere with their own trials by preventing pardons during legislative cases. One of these states was North Carolina, where the governor had the “power of granting pardons and reprieves, except where the prosecution shall be carried on by the General Assembly.”<sup>112</sup>

The state of Virginia had the same provision in its constitution preventing pardons from being issued during trials carried out by the House of Delegates.<sup>113</sup> The Constitution of Delaware took this provision one step farther, as the governor not only had no pardon in cases taken up by the General Council, but all of his other pardons had to be approved by the General Council before they took effect.<sup>114</sup> The state of Georgia had the strictest provision against the power to pardon, stating:

The governor shall...exercise the executive powers of the government, according to the laws of this state and the constitution thereof, save only in the case of pardons...which he shall in no instance grant; but he may relieve a criminal, or suspend a fine, until the meeting of the general assembly, who may determine therein as they shall Judge fit.<sup>115</sup>

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<sup>111</sup> "Constitution of Maryland." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec.2012).

<sup>112</sup> "Constitution of North Carolina." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).

<sup>113</sup> "The Constitution of Virginia." *Who We Are: The Story of America's Constitution*. [www.nhinet.org/ccs/docs/va-1776.htm](http://www.nhinet.org/ccs/docs/va-1776.htm) (accessed 19 Dec. 2012).

<sup>114</sup> "Constitution of Delaware; 1776."

<sup>115</sup> "Constitution of Georgia." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).

The governor of Georgia had no power to pardon at any point during the justice system; only the General Assembly could issue a pardon. Like many of the other states, the General Assembly was entrusted with the pardoning power during murder and treason trials, but all other cases were left to the discretion of the jury.

This decrease in the power of the executive to have an unlimited and unrestricted pardon is evidence of the dissatisfaction with the royal pardon prior to the American Revolution. As the Revolution neared and the colonists became more disillusioned by the British government and felt more grievances from the King, they became wary and skeptical of executive power, and their hindrance of the pardoning power of governors shows one of their attempts to decrease the strength of executives. Most of these restrictions involved legislative checks on the executive power to pardon, since the colonists were more trusting of their elected legislatures than of any powerful executive figure.

It is not surprising that these types of beliefs about the pardoning power began to emerge during the Revolution, considering the new political ideologies about democracy that were developing in both America and Great Britain at the time. One particularly influential English writer who warned about the pardoning power was Sir William Blackstone. Blackstone was heavily involved in English politics, serving as a Member of Parliament for many years and teaching law at Oxford University.<sup>116</sup> He wrote many pieces about English common law, the most influential of which was his *Commentaries on the Laws of England*, first published in 1765, which had a tremendous influence in

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<sup>116</sup> Dennis R. Nolan. "Sir William Blackstone and the New Republic: A Study of Intellectual Impact." *The Political Science Reviewer* 51 (1976), Online (accessed 1 Mar. 2013), 285.

America. According to Edmund Burke, an Irish politician and statesman, “they [had] sold nearly as many of Blackstone’s *Commentaries* in America as in England.”<sup>117</sup>

Blackstone’s *Commentaries* warned that the King’s pardoning power was a threat to democracy. He stated, “in democracies...this power of pardon can never subsist; for there nothing higher is acknowledged than the magistrate who administers the laws: and it would be impolitic for the power of judging and of pardoning to center in one and the same person.”<sup>118</sup> Blackstone continued to explain that it is the legislative body that should have the power to pardon, rather than the executive. He wrote, “with regard to the manner of *allowing* pardons; we may observe, that a pardon by act of parliament is more beneficial than by the king’s charter: for a man is not bound to plead it, but the court must *ex officio* take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the king’s charter of pardon.”<sup>119</sup> Blackstone believed that the legislative power of the pardon was a greater protector of individual liberties than an executive pardon, since the legislature would have to take notice of possible cases for pardon by its institutional laws, whereas a single executive could neglect certain cases and make decisions based on his own preferences. Liberty was safer when the pardoning power was split between men, rather than in the hands of one man who could choose which cases to consider based on his own inclinations.

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<sup>117</sup> Nolan, “*Sir William Blackstone and the New Republic: A Study of Intellectual Impact*,” 283.

<sup>118</sup> William Blackstone. “*Article 2, Section 2, Clause 1: William Blackstone, Commentaries 4:397--402.*” *The Founder's Constitution*. [http://press-pubs.uchicago.edu/founders/documents/a2\\_2\\_1s17.html](http://press-pubs.uchicago.edu/founders/documents/a2_2_1s17.html) (accessed 1 Mar. 2013).

<sup>119</sup> *Ibid.*

Blackstone's beliefs about the pardoning power were not uncommon as the Revolution approached, and these ideas began to emerge in newspaper editorials in the colonies at the same time as the state constitutions were being drafted. People began to maintain that vesting the pardoning power in one single executive allowed for corruption and decreased the safety and liberties of the people. In *The Boston Evening Post* on July 9, 1770, an anonymous author wrote about the soldiers who had been involved in the Boston Massacre and how he feared that the King might pardon them because of their military affiliations:

It is to be hoped, however, that Capt. Preston, and his *fellow-murderers*, have already met with the fate they deserve. For, if they are respited and his Majesty pardon them, it will furnish, I am afraid, but too just a handle to say, that however rigorously the laws may be executed against indifferent offenders, it seems to be laid down as a fixed maxim that no murderer shall suffer during the present reign if he have any, even the most distant connection with servants of the King, were it only with his chimney-sweeper, or the scullion of his kitchen.<sup>120</sup>

This man believed that the King's pardoning power was inherently corrupt because the power was vested in one single person's hands. He believed that the King only used the pardoning power to his personal advantage to keep the strength of his army in the colonies by letting war crimes go unpunished. The author then went on to explain that these abuses of the pardoning power were interrupting democracy and could possibly lead to turmoil or even Revolution when he said, "I only insist on this one argument, that our government, instead of free, is become an absolute [government]."<sup>121</sup> This author

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<sup>120</sup> *Boston Evening Post*, "To North Briton," May 12, 1770.

[http://infoweb.newsbank.com.ezaccess.libraries.psu.edu/iw-search/we/HistArchive?p\\_product=EANX&p\\_action=timeframes&p\\_theme=ahnp&p\\_nb\\_id=D5AN53YPMTM2Mjk0MjQ0My40NDMxNzU6MT0xMzoxMjguMTE4Ljg4LjQ4&p\\_clear\\_search=yes&d\\_refprod=EANX&](http://infoweb.newsbank.com.ezaccess.libraries.psu.edu/iw-search/we/HistArchive?p_product=EANX&p_action=timeframes&p_theme=ahnp&p_nb_id=D5AN53YPMTM2Mjk0MjQ0My40NDMxNzU6MT0xMzoxMjguMTE4Ljg4LjQ4&p_clear_search=yes&d_refprod=EANX&) (accessed 3 Mar. 2013).

<sup>121</sup> *Boston Evening Post*, "To North Briton," May 12, 1770.

believed that the corruption of the King as a result of the power to pardon was so great, that democracy was being overshadowed by an absolute monarchy.

There was a general trend of decreasing the emphasis on the federal power to pardon leading up to and throughout the Revolution. With the limits and restrictions placed on the governor's pardons in most of the state constitutions, the popular and influential political ideas of Sir William Blackstone, and the newspaper editorialists speaking out against the royal power, it is no surprise that the Articles of Confederation written during the Second Continental Congress had no mention of a pardon power whatsoever. There was no executive or executive branch in the Articles of Confederation, since the Second Continental Congress was so wary of too much power being invested in one man, so it makes sense that the power to pardon, which had such strong ties to the monarchy, would be excluded from the post-Revolutionary government. However, after the Constitutional Convention in 1787 when the United States Constitution was sent out for ratification, the power of the executive pardon had been reintroduced into American law. In Article II Section II, which lays out many of the President's enumerated powers, the Constitution states, "he shall have the power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment."<sup>122</sup> How and why did the power to pardon make its return to American politics after it had been so increasingly restricted and criticized throughout the American Revolution?

As with the other powers in the Constitution that were debated and critiqued throughout ratification, the Federalists used *The Federalists Papers* to defend the power of the Presidential pardon. Whereas the state constitutions and Sir William Blackstone's

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<sup>122</sup> "U.S. Constitution."

*Commentaries* indicated that the legislatures should be responsible for pardons to ensure justice and protect freedoms, Alexander Hamilton argued in “Federalist No. 74: The Command of the Military and Naval Forces, and the Pardon Power of the Executive” that liberty was best protected when one single person was in charge of the pardoning power. Hamilton explained that the pardon in the hands of the single executive would be the best safeguard against an incorrect guilty verdict or punishments that are too cruel because “a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law”, whereas groups of men “generally derive confidence from their numbers” and can “often encourage each other in an act of obduracy, and might be less sensible to the apprehension of suspicion or censure for an injudicious or affected clemency.”<sup>123</sup> To Hamilton, the presidential pardon provided the President with another opportunity to be the defender of the laws. Just as Hamilton explained that the veto power protected the people from a tyrannical legislature, the presidential pardon was supposed to protect the people from an unfair jury or a corrupt legislature during Congressional investigative trials.

Hamilton then continued to defend the presidential pardon by addressing cases of treason. He started by explaining that the objection in cases of treason is that the President himself will be able to pardon those whom he had employed to act against his own country, thereby using the pardon as a cover-up for his own treason. Hamilton conceded to this argument, explaining that in such a situation it *would* be best for the legislative body to decide on the pardon, but he then sidesteps the argument all together

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<sup>123</sup> Alexander Hamilton. “The Federalist No. 74” *The Federalist Papers*. Ed. Wayne LaPierre. (Birmingham: Palladium Press, 2000), 482-483.

when he continues with, “it is not to be doubted, that a single man of prudence and good sense is better fitted, in delicate conjunctures, to balance the motives which may plead for and against the remission of the punishment than any numerous body whatever.”<sup>124</sup>

Instead of addressing what should be done in the case of the President being a participant in treason and using the pardon to shield himself, Hamilton changes the subject of the paper and repeats the same argument that he made before—that a single man is best fit to determine when to mitigate the law. As stated earlier in this essay, it is imperative to remember when reading *The Federalist Papers* that they were written as propaganda to convince people to ratify the Constitution, so they need to be read skeptically. In this particular paper, Hamilton ignores instead of addresses the biggest concern that people had with the pardoning power throughout ratification—that it could be used by the President to shield himself and those close to him from charges of treason, corruption, or other high crimes.

A great many people throughout the ratification of the US Constitution realized the flaws in Hamilton’s argument and continued to fight against the presidential pardon for its potential to lead to corruption and treason within the executive branch. It is not uncommon when looking at documents from the debates over ratification of the Constitution to find speakers and writers who were fearful of the President using the pardoning power to shield himself from the law and to commit treasonous acts. One person who held this particular belief was George Mason, one of the delegates at the Constitutional Convention from Virginia. Mason was one of the three delegates at the Convention who did not sign the Constitution at the end, and he wrote down his

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<sup>124</sup> Hamilton, “*The Federalist No. 74*”, 483.

objections to the Constitution in a document that he circulated to important politicians such as George Washington. Mason's objections to the Constitution included many objections to the office of the Presidency and the structure of the executive branch, and he was especially concerned with the presidential pardon. Mason wrote of the pardoning power, "the President of the United States has the unrestrained Power of granting Pardons for Treason; which may be sometimes exercised to screen from Punishment those whom he had secretly instigated to commit the Crime, & thereby prevent a Discovery of his own guilt."<sup>125</sup> Mason was clearly fearful of tyranny and skeptical of the power of the executive, both common themes throughout the Revolutionary period. It was not uncommon for early Americans to be distrustful of power, and Mason did not trust the President to have the power of a presidential pardon, lest he use the power for unlawful purposes.

"Centinel", another anonymous Anti-Federalist writer during the ratification period, shared Mason's fear of the President using the pardoning power to hide his own crimes. The second paper written by "Centinel" and published in the *Philadelphia Freeman's Journal* on October 24, 1787 discussed the office of the presidency and the problems that "Centinel" had with its structure. Like Mason, "Centinel" believed that the presidential pardon would allow the President to shield himself from charges for treason because the power was vested in one single person. "Centinel" believed that if the

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<sup>125</sup> George Mason. "Mason's Objections to the Constitution of Government formed by the Convention," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 349-350.

pardoning power were shared among a council of men, it could not be used by the President for treasonous acts. He wrote in “Centinel II”:

It is well known, that some members of convention, apprized of the mischiefs of such a compound of authority, proposed to assign the supreme executive powers to the president and a small council, made personally responsible for every appointment to office, or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step. Such a check upon the chief magistrate would admirably secure the power of pardoning, now proposed to be exercised by the president alone, from abuse. For as it is placed he may shelter the traitors whom he himself...[has] excited to plot against the liberties of the nation.<sup>126</sup>

Both “Centinel” and Mason would agree that the pardoning power being invested in one individual is dangerous to the freedom of the nation, as the chief executive would be able to easily hide his own crimes from the public by pardoning his coconspirators. They were both very untrusting of this power in the hands of one man, and “Centinel” believed that an advisory council to the President would be the only way to keep the pardoning power without guaranteeing treason and corruption in the government.

There were others who also wished to limit the presidential pardon by requiring the President to get approval from a council before granting a pardon. This had been Sir William Blackstone’s idea in his *Commentaries*, as he believed that the liberties of the people were best safeguarded when more than one man was required to issue a pardon. Those who dissented in the Pennsylvania ratifying convention by voting against the Constitution expressed in their “Dissent of the Minority of the Convention” their concern

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<sup>126</sup> Centinel. “Centinel II Philadelphia Freeman’s Journal, 24 October,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 465.

about the pardoning power and how they wished an advisory council were in place to approve of presidential pardons. They wrote:

...and having the power of pardoning without the concurrence of a council, [the President] may screen from punishment the most treasonable attempts that may be made on the liberties of the people...Instead of this dangerous and improper mixture of the executive with the legislative and judicial, the supreme executive powers ought to have been placed in the president, with a small independent council...and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step.<sup>127</sup>

The dissenters in this passage did not argue that the President should not have the power to pardon but rather that his pardon would be most democratic if it were subject to the advice and consent of a council. As Blackstone had suggested in his *Commentaries*, the idea was that the division of the pardoning power among several men would prevent the abuse of that power and the corruption that would arise if the executive were to use the pardon to shield his own treason. The dissenters in Pennsylvania further demonstrated their belief that the pardoning power should be a legislative power when they explained that the presidential pardon as set up in the Constitution was dangerously mixing the executive and legislative powers together, and they believed that an independent council that would work with the President would make the pardoning process more democratic and conducive to the peoples' liberties.

The fear that the President may use the pardoning power to commit treason and other high crimes often led people to believe that the office of the presidency would soon develop into a monarchy or aristocracy. It is not uncommon to find comparisons between the President and the King throughout the debates over ratification, especially when the pardon power was discussed. Because the power was often associated with corrupt

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<sup>127</sup> “*The Dissent of the Minority of the Convention*”, 635.

activities within the government among many early Americans, the President's pardoning power was seen as "a legal re-creation of the ancient precept that the king can do no wrong."<sup>128</sup> "Centinel" demonstrated this idea in his first paper, "Centinel I", as he compared the President to an "aristocratic junto" when talking about the presidential pardon. He wrote of the power:

The President, who would be a mere pageant of state... would become the head of the aristocratic junto... And from his power of granting pardons he might screen from punishments the most treasonable attempts on liberties of the people... From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice of a *permanent* ARISTOCRACY.<sup>129</sup>

"Centinel" was clearly concerned with the effect that the power to pardon would have on the structure of the executive and on the rest of the government in general. He did not believe that the liberties of the people could persist when a single person held such a power, and he believed that democracy would soon fall to an aristocracy such as the one that the colonists had lived under before the Revolution.

Another anonymous Anti-Federalist who believed that the presidential pardon created a king-like President was "Cato". In his fourth paper, "Cato" discussed at length all of the powers of the Presidency that he believed made the executive too strong. "Cato" was extremely untrustworthy of men in office who held too much authority, and he believed that the President created by the new Constitution was endowed with too many powers to ensure a republican government. When discussing these powers that made him

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<sup>128</sup> Bailyn, *Ideological Origins of the American Revolution*, 342.

<sup>129</sup> Centinel. "Centinel I: Philadelphia Independent Gazetteer, 5 October," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 165-166.

wary of the Presidency, “Cato” specifically mentioned the power to pardon and compared it with a power generally reserved for monarchs or aristocrats:

...He may pardon all offences, except in cases of impeachment... 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 government; but experience ought to teach you, that when a man is at the head of an elective government invested with great powers... *an imperfect aristocracy* bordering on monarchy may be established.<sup>130</sup>

“Cato” believed that the power of the presidential pardon created an executive that was too similar to a monarch. In his opinion, the pardoning power, along with other strong executive powers, would inevitably end democracy in the new republic, as he believed that the only two alternatives possible from the executive branch in the Constitution were “a vile and arbitrary aristocracy” or a “monarchy”. To “Cato”, the President of the United States created by the Constitution was too much like the King of Great Britain, and the pardoning power decreased the chances that democracy could thrive in America.

Another major concern with the presidential pardon was that it was too vague. Many were concerned with the pardoning power because it is unlimited and unrestricted in the Constitution, giving the President an extremely broad power that puts him above the legal system in all types of cases, except cases of impeachment. One man at the Constitutional Convention who took particular concern with this issue was Edmund Randolph, a delegate from Virginia who refused to sign the Constitution along with George Mason and Elbridge Gerry of Massachusetts. In a document written to summarize what issues had been expressed so far during the Constitutional Convention, Pierce Butler of South Carolina wrote down a list of Randolph’s objections to the document.

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<sup>130</sup> Cato, “*Cato IV, New York Journal, 8 November*”, 10.

Butler wrote that Randolph had two main concerns with the Presidency. The first was that “The Executive is one”, and the second was that “the power of pardon is unlimited.”<sup>131</sup> When Randolph officially released his decision not to sign the document in a letter he called “On the Federal Constitution” on October 10, 1787, he wrote, “a constitution ought to have the hearts of the people on its side...under my impressions, and with my opinions, I should not be able to justify myself had I signed it.”<sup>132</sup> One of Randolph’s major objections to the Constitution was the unlimited power of the single executive to pardon, and he obviously believed that this was one power that the Federalists included without the “hearts” or the interests of the people in mind.

One specific type of limitation that many believed was lacking in the presidential pardon clause was a limit on what types of cases in which the pardon could be used. One offense that many wanted the President to not be able to pardon was treason. Treason was not taken lightly in early America and is, in fact, the only crime specifically defined in the Constitution. Throughout the debates over ratification, it was not uncommon for people to suggest amendments to the Constitution to their legislatures, and there were many cases in which those proposed amendments included provisions that specifically excluded treason from the circumstances in which the President could use his pardon. One of the delegates at the New York ratifying convention, Malancton Smith, proposed three amendments to the executive branch during the proceedings in New York City on

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<sup>131</sup> *“Objections to the Constitution.” Digital History.*  
[http://www.digitalhistory.uh.edu/disp\\_textbook.cfm?smtID=3&psid=253](http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=253) (accessed 1 Mar. 2013).

<sup>132</sup> Edmund Randolph. *“On the Federal Constitution.” TeachingAmericanHistory.org.*  
<http://teachingamericanhistory.org/library/index.asp?document=1815> (accessed 1 March 2013).

July 3, 1788, one of which being that the President “shall not pardon Treason.”<sup>133</sup> During the proceedings on the next day, another delegate, Gilbert Livingston, continued with the topic and seconded the motion that the President should not be able to pardon in cases of treason, especially without the consent of Congress. Livingston stated, “[the president’s] pardon is also dangerous...he should never grant Pardon for Treason without the Consent of Congress, but may respite until the Pleasure of Congress is known.”<sup>134</sup> Both Smith and Livingston from the New York ratification convention agreed that the pardoning clause needed be amended to prevent the President from pardoning treason, at least without the consent of Congress, in order to safeguard the people from corruption in government.

Early Americans were so fearful of treason and corruption in government, especially from the chief executive, yet the Framers of the Constitution gave the President a power that many believed would lead to these two problems. One of the more peculiar clauses in the Constitution is the clause that creates the presidential pardon because it seemed to be a reemergence of a very king-like power that had been increasingly restricted in America for decades. Leading up to and throughout the Revolution, the pardoning power had been losing its popularity in both the public eye and political thought. It was considered a threat to proper democracy and republicanism, and almost all of the state legislatures took measures to decrease the potential of their

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<sup>133</sup> ““Convention Debates and Proceedings, 3 July 1788,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 22, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 2093

<sup>134</sup> ““Convention Debates and Proceedings, 4 July 1788,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 22, Ed. John P. Kaminski and Gaspare J. Saladino. (Madison: State Historical Society of Wisconsin, 1981), 2094.

governors to issue pardons. It became more common for the decision to issue a pardon to be left to either the legislatures or independent councils of men rather than a single executive, and yet, the Framers of the Constitution decided to give the President the exclusive and unlimited power to pardon in all cases except impeachment. This was clearly a disconnect on the part of the Framers from the ideas about the pardoning power during the American Revolution. There is no obvious reason that the Framers would break from the trend of decreasing the power of the pardon, except to create a stronger executive than had been desired throughout the Revolutionary period. The presidential pardon created by Article II Section II provides great evidence for this argument.

## Conclusion

Contrary to what many historians believe and what Americans are taught during their United States History classes, the Constitution is *not* the ultimate fulfillment of the ideology of the Revolution. When looking at the powers given to the executive in the Constitution, it is clear that there was a disconnect between what people wanted during the American Revolution and what was actually created by the Framers. While the colonists and Revolutionary leaders were extremely fearful of consolidated, central power in the hands of a few or just one man, the Framers of the Constitution created a President who would have immense powers over the people, the legislature, and the justice system. Despite the almost paranoid fear of standing armies throughout the Revolution, the President of the United States was endowed with complete command of the Army and Navy, both of which he can control without any direction from the legislature. Further, although a representative and elected legislature was considered to be the most democratic and republican form of government, the Constitution gave the President the power to veto any piece of legislation created by the Congress with which he did not agree. Additionally, in spite of the fact that the power of the executive pardon was widely distrusted and had been disappearing in the New World leading up to and during the Revolution, the President of the United States has the power to pardon any federal criminal in any federal case, excluding cases of impeachment.

Historian Bernard Bailyn argues in his book, *The Ideological Origins of the American Revolution*, that despite the differences between the literature of the Revolution

and the government created at the Constitutional Convention, the United States Constitution should still be considered “the final and climactic expression of the ideology of the American Revolution”.<sup>135</sup> He argues that in creating the Constitution, the Framers “did not leave the confinement...of their own intellectual world and depart for some other”, but rather that they responded to the inadequacies of the Articles of Confederation by creating a government that would both embody the ideas of the Revolution and function more practically in the future.<sup>136</sup> Bailyn admitted that the Articles of Confederation were a more literal interpretation of the Revolution, but because the Articles were failing and the new country was experiencing both economic and political crises throughout the 1780s, the Framers had to create a more sensible political system to save the union. He believed that the Federalists created a more realistic application of the Revolutionary ideology at the Constitutional Convention in the way that they “enlarged its dimensions, reshaped it, [and] modernized it.”<sup>137</sup> Bailyn even went so far in his argument for fulfillment as to call the Anti-Federalists paranoid and overly fearful of governmental power, and he considered many of their writings objecting to the Constitution to be “feverish diatribes” that should not be taken seriously.<sup>138</sup>

However, Bailyn’s argument that the Anti-Federalists should be seen as ““men of little faith”” who “lacked faith in the safe future that the Federalists foresaw under the Constitution” cannot be taken at face value. When the literature of the Revolution is compared with the debates during ratification, it is clear that the Anti-Federalists were in

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<sup>135</sup> Bailyn, *Ideological Origins of the American Revolution*, 321.

<sup>136</sup> Bailyn, *Ideological Origins of the American Revolution*, 325.

<sup>137</sup> Bailyn, *Ideological Origins of the American Revolution*, 379.

<sup>138</sup> Bailyn, *Ideological Origins of the American Revolution*, 334.

fact the ones who kept the faith in the ideals of republicanism and the ideology that emerged during the Revolution.<sup>139</sup> Bailyn's argument about fulfillment implies that there was something wrong with the ideology of the Anti-Federalists, but without that ideology, the American Revolution would never have occurred. The Anti-Federalists were not paranoid extremists who were unwilling to change, but rather, they were the ones who best represented the ideals that emerged during the Revolution, and their speeches and writings are important in understanding American history and the political changes that needed to occur in America between 1776 and 1787 to overcome the failures of the Articles of Confederation.

Although the Federalists claimed in *The Federalist Papers* and other sources of propaganda literature to be the voices of the American Revolution, it was the Anti-Federalists who truly embodied the Revolutionary ideology. That is not to say that the Federalists were misguided in creating the Constitution and granting the federal government with greater powers than had been demanded during the Revolution; the Constitution clearly created a more practical and lasting government than did the Articles of Confederation. Still, it is important to recognize that what Americans are taught about the Federalists and the connection between the Revolution and the Constitution is not entirely true. The Federalists were brilliant politicians who created a great and lasting nation and a new science of politics, and they were the ones who recognized that changes needed to be made to the ideology of the Revolution once the union entered a state of turmoil. However, it was the Anti-Federalists who truly wanted the Revolutionary

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<sup>139</sup> Bailyn, *Ideological Origins of the American Revolution*, 331.

ideology to survive throughout the ages and who were willing to fight for the republican ideals of the Revolution.

The Anti-Federalists' fear of executive power and their objections to the Commander in Chief clause, the veto power, and the presidential pardon were more representative of the colonists' beliefs throughout the Revolution and Early American than were the clauses in Article II of the Constitution that created the office of the Presidency. The Federalists created a more powerful executive branch than the Revolutionary ideology called for to overcome the problems created by the lack of the executive branch in the Articles of Confederation, but it is important to recognize how and why the office of the Presidency met so much opposition during the debates over ratification. The distrust in the executive created by King George III and the resistance to executive power was still prevalent in Early America, and these ideas were very representative of the ideology of the Revolution. The break from these ideas about the executive branch by the Federalist Framers of the Constitution demonstrates that the United States Constitution was not a fulfillment of the American Revolution but was instead a break from Revolutionary ideology in an attempt to create a more practical and lasting government.

## BIBLIOGRAPHY

### PRIMARY SOURCES

- “1689 Mutiny Act”. *Colonial America: History of the First 13 Colonies and How They Became the United States*. <http://www.landofthebrave.info/mutiny-act.htm> (accessed on 19 Dec. 2012).
- “A Democratic Federalist: Pennsylvania Herald, 17 October,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 386-392. Madison: State Historical Society of Wisconsin, 1981.
- “A Federal Centinel: South Carolina Weekly Chronicle, 9 October,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 355-356. Madison: State Historical Society of Wisconsin, 1981.
- “A Georgian: Gazette of the State of Georgia, 15 November,” in *The Documentary History of the Ratification of the Constitution: Delaware, New Jersey, Georgia, and Connecticut*, Vol. 3, Ed. John P. Kaminski and Gaspare J. Saladino, 236-243. Madison: State Historical Society of Wisconsin, 1981.
- “A Soliloquy. Virginia Gazette, 22 March 1770”. *Eighteenth Century Collections Online. Gale. CIC Penn State University*, Online. (accessed on 28 Jan. 2013).
- “An Old Whig V, Philadelphia Independent Gazetteer, 1 November,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 538-543. Madison: State Historical Society of Wisconsin, 1981.
- “*Anti-Federalist Papers: ‘Cato’*.” The Constitution Society. [http://www.constitution.org/afp/cato\\_00.htm](http://www.constitution.org/afp/cato_00.htm) (accessed 6 Feb. 2013).
- Blackstone, William. "Article 2, Section 2, Clause 1: William Blackstone, Commentaries 4:397--402." *The Founder's Constitution*. <http://press>

-pubs.uchicago.edu/founders/documents/a2\_2\_1s17.html (accessed 1 Mar. 2013).

*Boston Evening Post*, "To North Briton," May 12, 1770.

[http://infoweb.newsbank.com.ezaccess.libraries.psu.edu/iw-search/we/HistArchive?p\\_product=EANX&p\\_action=timeframes&p\\_theme=ahnp&p\\_nbid=D5AN53YPMTM2Mjk0MjQ0My40NDMxNzU6MToxMzoxMjguMTE4Ljg4LjQ4&p\\_clear\\_search=yes&d\\_refprod=EANX&](http://infoweb.newsbank.com.ezaccess.libraries.psu.edu/iw-search/we/HistArchive?p_product=EANX&p_action=timeframes&p_theme=ahnp&p_nbid=D5AN53YPMTM2Mjk0MjQ0My40NDMxNzU6MToxMzoxMjguMTE4Ljg4LjQ4&p_clear_search=yes&d_refprod=EANX&) (accessed 3 Mar. 2013).

Brutus. "Brutus II: New York Journal, 1 November," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 524-529. Madison: State Historical Society of Wisconsin, 1981.

Cato. "Cato IV, New York Journal, 8 November," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino, 7-11. Madison: State Historical Society of Wisconsin, 1981.

Centinel. "Centinel I: Philadelphia Independent Gazetteer, 5 October," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 326-337. Madison: State Historical Society of Wisconsin, 1981.

Centinel. "Centinel II Philadelphia Freeman's Journal, 24 October," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 457-468. Madison: State Historical Society of Wisconsin, 1981.

"A Columbian Patriot: Observations on the Constitution; Boston, February," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 16, Ed. John P. Kaminski and Gaspare J. Saladino, 272-289. Madison: State Historical Society of Wisconsin, 1981.

"Constitution of Delaware; 1776." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).

"Constitution of Georgia." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).

- "Constitution of Maryland." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec.2012).
- "Constitution of New Jersey; 1776." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online. (accessed 19 Dec. 2012).
- "Constitution of North Carolina." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).
- "Constitution of Pennsylvania." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).
- "Constitution of South Carolina." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).
- "Constitution of Vermont." *Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online (accessed 19 Dec. 2012).
- "Convention Debates and Proceedings, 3 July 1788," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 22, Ed. John P. Kaminski and Gaspare J. Saladino, 2088-2093. Madison: State Historical Society of Wisconsin, 1981.
- "Convention Debates and Proceedings, 4 July 1788," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 22, Ed. John P. Kaminski and Gaspare J. Saladino, 2094-2097. Madison: State Historical Society of Wisconsin, 1981.
- "Declaration and Resolves of the First Continental Congress." *The Avalon Project: Documents in Law, History, and Diplomacy*. Yale Law School, Online. (accessed 1 Dec. 2012).
- de Montesquieu, Baron. "*The Spirit of the Laws*." *Constitution Society*. [www.constitution.org/cm/sol.txt](http://www.constitution.org/cm/sol.txt) (accessed 19 Dec. 2012).
- Dickson, William. "William Dickson to Robert Dickson: Goshen, Duplin County, 30 November (excerpt)," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino, 311-312. Madison: State Historical Society of Wisconsin, 1981.

“Gazette of the State of Georgia, 20 March,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 16, Ed. John P. Kaminski and Gaspare J. Saladino, 442-446. Madison: State Historical Society of Wisconsin, 1981.

Hamilton, Alexander. “The Federalist No. 24: The Powers Necessary to the Common Defense Further Considered.” *The Federalist Papers*. Ed. Wayne LaPierre. Birmingham: Palladium Press, 2000. 147-152.

Hamilton, Alexander. “The Federalist No. 29: Concerning the Militia.” *The Federalist Papers*. Ed. Wayne LaPierre. Birmingham: Palladium Press, 2000. 175-182.

Hamilton, Alexander. “The Federalist No. 67” *The Federalist Papers*. Ed. Wayne LaPierre. Birmingham: Palladium Press, 2000. 436-441.

Hamilton, Alexander. “The Federalist No. 69” *The Federalist Papers*. Ed. Wayne LaPierre. Birmingham: Palladium Press, 2000. 445-454.

Hamilton, Alexander. “The Federalist No. 70.” *The Federalist Papers*. Ed. Wayne LaPierre. Birmingham: Palladium Press, 2000. 454-463.

Hamilton, Alexander. “The Federalist No. 73: The Provision for the Support of the Executive and the Veto Power.” *The Federalist Papers*. Ed. Wayne LaPierre. Birmingham: Palladium Press, 2000. 474-481.

Hamilton, Alexander. “The Federalist No. 74” *The Federalist Papers*. Ed. Wayne LaPierre. Birmingham: Palladium Press, 2000. 481-484.

Hamilton, Alexander. “The Federalist No. 84” *The Federalist Papers*. Ed. Wayne LaPierre. Birmingham: Palladium Press, 2000. 555-567.

Howard, Simeon. A” Sermon Preached to the Ancient and Honorable Artillery-Company, in Boston, New-England, June 7th, 1773. Boston, 1773.” *Eighteenth Century Collections Online*. Gale. CIC Penn State University, Online. (accessed 1 Dec. 2012).

Jefferson, Thomas. "Jefferson's 'Original Rough Draught' of Declaration of Independence." *Princeton University*.  
[http://www.princeton.edu/~tjpapers/declaration/declaration.html#\\_edn11](http://www.princeton.edu/~tjpapers/declaration/declaration.html#_edn11) (accessed 29 Jan. 2013).

King, Rufus and Nathaniel Gorham. “Response to Elbridge Gerry’s Objections,” in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John

P. Kaminski and Gaspare J. Saladino, 550-555. Madison: State Historical Society of Wisconsin, 1981.

Lovell, James. "An Oration Delivered April 2, 1771. At the Request of the Inhabitants of the Town of Boston; to Commemorate the Bloody Tragedy of the Fifth of March, 1770". *Eighteenth Century Collections Online*. Gale. CIC Penn State University, Online (accessed 19 Dec. 2012).

Madison, James. "Notes From the Constitutional Convention." *U.S. Constitution*. <http://www.usconstitution.net/constconnotes.html> (accessed 19 Dec. 2012).

Martin, Luther. "Luther Martin's Speech, 29 November," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino, 285-293. Madison: State Historical Society of Wisconsin, 1981.

Mason, George. "George Mason's Objections: Massachusetts Centinel, 21 November," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino, 149-152. Madison: State Historical Society of Wisconsin, 1981.

Mason, George. "Mason's Objections to the Constitution of Government formed by the Convention," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 348-351. Madison: State Historical Society of Wisconsin, 1981.

"No Standing Army in the British Colonies or An Address to the Inhabitants of the Colony of New York Against Unlawful Standing Armies." [http://infoweb.newsbank.com.ezaccess.libraries.psu.edu/iw-search/we/Evans?p\\_action=doc&p\\_theme=eai&p\\_topdoc=1&p\\_docnm=1&p\\_sort=YMD\\_date:D&p\\_product=EVAN&p\\_text\\_direct0=u433=\(%2014351%20\)%7Cu433ad=\(%2014351%20\)&p\\_nbid=66J5FJSMTM1NTk2NDg3MC45NTY1ODI6MToxMzoxMjguMTE4Ljg4Q4&p\\_doref=](http://infoweb.newsbank.com.ezaccess.libraries.psu.edu/iw-search/we/Evans?p_action=doc&p_theme=eai&p_topdoc=1&p_docnm=1&p_sort=YMD_date:D&p_product=EVAN&p_text_direct0=u433=(%2014351%20)%7Cu433ad=(%2014351%20)&p_nbid=66J5FJSMTM1NTk2NDg3MC45NTY1ODI6MToxMzoxMjguMTE4Ljg4Q4&p_doref=) (accessed 1 Dec. 2012).

"Objections to the Constitution." *Digital History*. [http://www.digitalhistory.uh.edu/disp\\_textbook.cfm?smtID=3&psid=253](http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=253) (accessed 1 Mar. 2013).

Parsons, Theophilus. "Theophilus Parsons: Notes of the Convention Debates, 23 January, AM," in *The Documentary History of the Ratification of the*

*Constitution: Massachusetts No. 3*, Vol. 6, Ed. John P. Kaminski and Gaspare J. Saladino, 1330-1332. Madison: State Historical Society of Wisconsin, 1981.

Philadelphiensis. "Philadelphiensis II: Philadelphia Freeman's Journal, 28 November," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 14, Ed. John P. Kaminski and Gaspare J. Saladino, 251-255. Madison: State Historical Society of Wisconsin, 1981.

Philadelphiensis. "Philadelphiensis IX: Philadelphia Freeman's Journal, 6 February," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 16, Ed. John P. Kaminski and Gaspare J. Saladino, 57-60. Madison: State Historical Society of Wisconsin, 1981.

Randolph, Edmund. "On the Federal Constitution."  
*TeachingAmericanHistory.org*.  
<http://teachingamericanhistory.org/library/index.asp?document=1815>  
(accessed 1 March 2013).

"Reverend James Madison on the Constitution," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 283-285. Madison: State Historical Society of Wisconsin, 1981.

Spencer, Joseph. "Joseph Spencer to James Madison, Orange County, VA. 28 February," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 16. Ed. John P. Kaminski and Gaspare J. Saladino, 252-254. Madison: State Historical Society of Wisconsin, 1981.

Sydney, Algernon. "Algernon Sidney: Discourses Concerning Government." *Constitution Society*. [http://www.constitution.org/as/dcg\\_223.htm](http://www.constitution.org/as/dcg_223.htm)  
(accessed 19 Dec. 2012).

Tamony. "Tamony, Virginia Independent Chronicle, January 9," in *The Documentary History of the Ratification of the Constitution: Virginia No. 1*, Vol. 8, Ed. John P. Kaminski and Gaspare J. Saladino, 286-288. Madison: State Historical Society of Wisconsin, 1981.

"The Articles of Confederation." *U.S. Constitution*.  
[www.usconstitution.net/articles.html](http://www.usconstitution.net/articles.html) (accessed 1 Dec. 2012).

- "*The Constitution of Virginia.*" *Who We Are: The Story of America's Constitution.* [www.nhinet.org/ccs/docs/va-1776.htm](http://www.nhinet.org/ccs/docs/va-1776.htm) (accessed 19 Dec. 2012).
- "The Dissent of the Minority of the Convention," in *The Documentary History of the Ratification of the Constitution: Pennsylvania*, Vol. 2, Ed. John P. Kaminski and Gaspare J. Saladino, 617-640. Madison: State Historical Society of Wisconsin, 1981.
- "The Dissent of the Minority of the Pennsylvania Convention: Pennsylvania Packet, 18 December," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 15, Ed. John P. Kaminski and Gaspare J. Saladino, 7-36. Madison: State Historical Society of Wisconsin, 1981.
- "The Society of Western Gentlemen Revises the Constitution, Virginia Independent Chronicle, 30 April, 7 May (Extra)," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 17, Ed. John P. Kaminski and Gaspare J. Saladino, 254-255. Madison: State Historical Society of Wisconsin, 1981.
- Turberville, George Lee. "George Lee Turberville to Arthur Lee, Richmond, 28 October," in *The Documentary History of the Ratification of the Constitution: Virginia No. 1*, Vol. 8, Ed. John P. Kaminski and Gaspare J. Saladino, 127-128. Madison: State Historical Society of Wisconsin, 1981.
- "To James Madison, 1 October," in *The Documentary History of the Ratification of the Constitution: Commentaries on the Constitution: Public and Private*, Vol. 13, Ed. John P. Kaminski and Gaspare J. Saladino, 283-285. Madison: State Historical Society of Wisconsin, 1981.
- "U.S. Constitution." *Avalon Project: Documents in Law, History, and Diplomacy.* *Yale Law School*, Online (accessed 1 Dec. 2012).
- Williams, Samuel. "*A Discourse on the Love of Our Country.*" *TeachingAmericanHistory.org*  
<http://teachingamericanhistory.org/library/index.asp?document=2427>  
(accessed 19 Dec. 2012).
- Zubly, John Joachim. "*Calm and Respectful Thoughts on the Negative of the Crown on a Speaker Chosen and Presented by the Representatives of the People.*" May 1772. *Eighteenth Century Collections Online.* Gale. *CIC Penn State University*, Online (accessed 13 Jan. 2013).

## SECONDARY SOURCES

- Amar, Akhil Reed. *America's Constitution: A Biography*. New York: Random House, 2005.
- Bailyn, Bernard. *The Ideological Origins of the American Revolution*. Enlarged Edition. Cambridge: Belknap Press of Harvard University Press, 1967.
- Baker, Chris. "Algernon Sidney: Forgotten Founding Father." *The Freeman*. [http://www.fee.org/the\\_freeman/detail/algernon-sidney-forgotten-founding-father#axzz2E12FxqeZ](http://www.fee.org/the_freeman/detail/algernon-sidney-forgotten-founding-father#axzz2E12FxqeZ) (accessed 19 Dec. 2012).
- "Biography of Patrick Henry." *Patrick Henry: Voice of the American Revolution*. <http://www.redhill.org/biography.html> (accessed 28 Jan. 2013).
- "Elbridge Gerry in Constitutional Convention." *Shmoop*. <http://www.shmoop.com/constitutional-convention/elbridge-gerry.html> (accessed 19 Dec. 2012).
- "History of Slavery." *Sons of the South*. <http://www.sonofthesouth.net/slavery/history-slavery.htm> (accessed 29 Jan. 2013).
- Krent, Henry. "Conditioning the President's Conditional Pardon Power." *California Law Review* 89, no. 6 (2001): 1671-1679, Online (accessed 1 Mar. 2013).
- Library of Congress. "Elbridge Gerry's Reasons for Not Signing the Federal Constitution." *The New Nation: The US Constitution*. <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/timeline/newnatn/usconst/egerry.html> (accessed 6 Feb. 2013).
- "Mercy Otis Warren." *Massachusetts Historical Society*. <http://www.masshist.org/bh/mercybio.html> (accessed 20 Dec. 2012).
- Nolan, Dennis R. "Sir William Blackstone and the New Republic: A Study of Intellectual Impact." *The Political Science Reviewer* 51 (1976): 283-322, Online (accessed 1 Mar. 2013).
- "Parson's Cause." *Encyclopedia Britannica Online*. <http://www.britannica.com/EBchecked/topic/444740/Parsons-Cause> (accessed 29 Jan. 2013).

"Patrick Henry." *Colonial Williamsburg Official Historical Site*.  
<http://www.history.org/almanack/people/bios/biohen.cfm> (accessed 29 Jan. 2013).

Richards, Jeffrey H., and Sharon M. Harris, eds. *Mercy Otis Warren: Selected Letters*. Athens: University of Georgia, 2009. Print.

"Slavery in Colonial Georgia." *New Georgia Encyclopedia*.  
<http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-685> (29 Jan. 2013).

"Spencer, Joseph (1714-1789)." *Biographical Directory of the United States Congress*.  
<http://bioguide.congress.gov/scripts/biodisplay.pl?index=S000728>  
(accessed 6 Feb. 2013).

# ACADEMIC VITA

Heather Alleva

hra5016@psu.edu

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## **Education**

Double B.A in Political Science and History, Minor in Civic and Community Engagement, 2013, Pennsylvania State University Schreyer Honors College, State College, PA

## **Honors and Awards**

- Dean's List Academic Achievement, Fall 2009-Fall 2012
- College of the Liberal Arts Scholarship, 2011-2012
- College of the Liberal Arts Scholarship, 2012-2013

## **Association Memberships/Activities**

- Trilogy for Penn State Dance Marathon, 2009 to Present
- Undergraduate Law Society, 2011 to Present
- Penn State College Republicans, 2011 to Present
- Liberal Arts Mentor Program, 2011 to Present
- Mock Trial Club, winner to Tom Richards Memorial Tournament, Fall 2011
- National Society of Collegiate Scholars, 2010-Present
- Golden Key International Honor Society, 2010-Present
- National Society of Leadership, 2010-Present

### **Professional Experience**

- Research Assistant, Penn State Political Science Department, 2011-2012.
- Political Intern, Republican Committee of Chester County, Summer 2011.
- Associate Political Director, Republican Committee of Chester County, Summer 2012.

### **Research Interests**

I have broad interests in American politics and history. I am especially interested in early American history, specifically the time period from the American Revolution to the mid-nineteenth century.

### **Professional Presentations**

Student Speaker, History Round Table: “The Constitution: A Fulfillment of the Revolution or a Reaction Against It?”—Penn State Undergraduate History Conference, University Park, PA, December 7, 2012.

### **Publications and Papers**

Alleva, Heather. (2013). *Did the US Constitution Fulfill the American Revolution? An Exploration of Presidential Powers*. Undergraduate Honors Thesis, Penn State University Schreyer Honors College.