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## THE TWO CONSTITUTIONAL PRESIDENCIES

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The formal design of the presidency can be found in Article II of the Constitution. Yet, according to Jeffrey K. Tulis, two constitutional presidencies exist. One is the enduring, capital C version that the Framers invented at the Constitutional Convention of 1787, the formal provisions of which remain substantially unaltered. The other is the adapted, lowercase c constitution that Woodrow Wilson devised and that most presidents during the past century have followed. Sometimes the fit between the formal and informal constitutional presidencies is close—for example, in the months following the September 11, 2001, terrorist attacks on the United States. But Tulis argues, the two constitutional presidencies usually are in tension. Both constitutions value “energy” in the presidency, but the exercise of popular rhetorical leadership that is proscribed by the Framers’ Constitution is proscribed by Wilson’s. As a result, Tulis concludes, “many of the dilemmas and frustrations of the modern presidency may be traced to the president’s ambiguous constitutional station, a vantage place composed of conflicting elements.” These dilemmas—and others—were never more apparent than during the Trump presidency.

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The modern presidency is buffered by two “constitutions.” Presidential action continues to be constrained, and presidential behavior shaped, by the institutions created by the original Constitution. The core structures established in 1789 and debated during the founding era remain essentially unchanged. For the most part, later amendments to the Constitution have left intact the basic features of the executive, legislative, and judicial branches of government. Great questions, such as the merits of unity or plurality in the executive, have not been seriously reopened. Because most of the structure persists, it seems plausible that the theory on which the presidency was constructed remains relevant to its current functioning.<sup>1</sup>

Presidential and public understanding of the constitutional system, and of the president’s place in it, has changed, however. This new understanding is the “second constitution,” under which presidents attempt to govern. Central to this second constitution is a view of statecraft that is in tension with the original Constitution—indeed it is opposed to the Founders’ understanding of the presidency’s place in the political system. The second constitution, which puts a premium on active and continuous presidential leadership of popular opinion, is buttressed by several institutional, albeit extraconstitutional, developments. These include the proliferation of presidential primaries as a mode of selection and the emergence of the mass media as a pervasive force.<sup>2</sup>

Many of the dilemmas and frustrations of the modern presidency may be traced to the president’s ambiguous constitutional station, a vantage place composed of conflicting elements. This chapter lays bare the theoretical core of each of the two constitutions to highlight those elements that are in tension between them.

To uncover the principles that underlie the original Constitution, I rely heavily on *The Federalist*. A set of papers justifying the Constitution, the text was written by three of the Constitution’s most articulate proponents, Alexander Hamilton, James Madison, and John Jay. The purpose of this journey back to the Founders is not to point to their authority or to lament change; nor do I mean to imply that all the supporters of the Constitution agreed with each of their arguments. *The Federalist* does represent, however, the most coherent articulation of the implications of, and interconnections among, the principles and practices that were generally accepted when the Constitution was ratified.<sup>3</sup>

I explore the political thought of Woodrow Wilson to outline the principles of the second constitution. Wilson self-consciously attacked *The Federalist* in his writings; as president he tried to act according to the dictates of his reinterpretation of the American political system. Presidents have continued to follow his example, and presidential scholars tend to repeat his arguments. Most presidents have not thought through the issues Wilson discussed—they are too busy for that. But if pushed and questioned, modern presidents would probably (and occasionally do) justify their behavior with arguments that echo Wilson’s. Just as *The Federalist* represents the deepest and most coherent articulation of understandings of the presidency held through the nineteenth century, Wilson offers the most comprehensive theory in support of contemporary impulses and practices.

## THE FOUNDING PERSPECTIVE

Perhaps the most striking feature of the founding perspective, particularly in comparison with contemporary political analyses, is its synoptic character. The Founders' task was to create a whole government, one in which the executive would play an important part, but only a part. By contrast, contemporary scholars of American politics often study institutions individually and therefore tend to be partisans of "their institution" in its contests with other actors in American politics.<sup>4</sup> Presidency scholars often restrict their inquiries to the strategic concerns of presidents as they quest for power. Recovering the founding perspective provides a way to think about the systemic legitimacy and utility of presidential power as well. To uncover such a synoptic vision, one must range widely in search of the principles that guided or justified the Founders' view of the executive. Some of these principles are discussed most thoroughly in *The Federalist* in the context of other institutions, such as Congress or the judiciary.

The Founders' general and far-reaching institutional analysis was preceded by a more fundamental decision of enormous import. Federalists and Anti-Federalists alike sought a government devoted to limited ends. In contrast to politics that attempt to shape the souls of their citizenry and foster certain excellences or moral qualities by penetrating deeply into the "private" sphere, the Founders wanted their government to be limited to establishing and securing such a sphere. Politics would extend only to the tasks of protecting individual rights and fostering liberty for the exercise of those rights. Civic virtue would still be necessary, but it would be elicited from the people rather than imposed on them.

Proponents and critics of the Constitution agreed about the proper ends of government, but they disagreed over the best institutional means to secure them.<sup>5</sup> Some critics of the Constitution worried that its institutions would undermine its limited liberal ends. Although these kinds of arguments were settled politically by the Federalist victory, *The Federalist* concedes that they were not resolved fundamentally because they continued as problems built into the structure of American politics.

Is a vigorous executive consistent with the genius of republican government? Hasty readers of *The Federalist* think yes, unequivocally. Closer reading of *The Federalist* reveals a deeper ambivalence regarding the compatibility of executive power and republican freedom.<sup>6</sup>

### Demagoguery

The Founders worried especially about the danger that a powerful executive might pose to the system if power were derived from the role of popular leader.<sup>7</sup> For most Federalists, "demagogue" and "popular leader" were synonyms, and nearly all references to popular leaders in their writings are pejorative. Demagoguery, combined with majority tyranny, was regarded as the peculiar vice to which democracies were susceptible. Although much historical evidence supported

this insight, the Founders were made more acutely aware of the problem by the presence in their own midst of popular leaders such as Daniel Shays, who led an insurrection in Massachusetts. The Founders' preoccupation with demagoguery may appear today as quaint, yet it may be that we do not fear it today because the Founders were so successful in institutionally proscribing some forms of it.

The original Greek meaning of demagogue was simply "leader of the people," and the term was applied in premodern times to champions of the people's claim to rule as against that of aristocrats and monarchs. As James Ceaser pointed out, the term has been more characteristically applied to a certain quality of leadership—that which attempts to sway popular passions. Because most speech contains a mix of rational and passionate appeals, it is difficult to specify demagoguery with precision. But as Ceaser argued, one cannot ignore the phenomenon because it is difficult to define, suggesting that it possesses at least enough intuitive clarity that few would label Dwight Eisenhower, for example, a demagogue, whereas most would not hesitate to so label Joseph McCarthy. The main characteristic of demagoguery seems to be an excess of passionate appeals. Ceaser categorized demagogues according to the kinds of passions that are summoned, dividing these into "soft" and "hard" types.

The soft demagogue tends to flatter constituents "by claiming that they know what is best, and makes a point of claiming his closeness (to them) by manner or gesture."<sup>8</sup> Hard demagogues attempt to create or encourage divisions among the people to build and maintain their constituency. Typically, this sort of appeal uses extremist rhetoric that panders to fear. James Madison worried about the possibility of class appeals that would pit the poor against the wealthy. But the hard demagogue might appeal to a very different passion. "Excessive encouragement of morality and hope" might be employed to create a division between those alleged to be compassionate, moral, or progressive, and those thought insensitive, selfish, or backward. Hard demagogues may be of the right or the left.<sup>9</sup>

Demagogues can also be classified by their object, in which case the issue becomes more complicated. Demagoguery might be good if it were a means to a good end, such as preservation of a decent nation or successful prosecution of a just war. The difficulty is to ensure by institutional means that demagoguery would be used only for good ends and not simply to satisfy the overweening ambition of an immoral leader or potential tyrant. How are political structures created that permit demagoguery when appeals to passion are needed but proscribe it for normal politics?

The Founders did not have a straightforward answer to this problem, perhaps because there is no unproblematic institutional solution. Instead, they addressed it indirectly in two ways: They attempted both to narrow the range of acceptable demagogic appeals through the architectonic act of founding itself and to mitigate the effects of such appeals in the day-to-day conduct of governance through the particular institutions they created. The Founders did not choose to make provision for the institutional encouragement of demagoguery in time of crisis, refusing to adopt, for example, the Roman model of constitutional

dictatorship for emergencies.<sup>10</sup> Behind their indirect approach may have been the thought that excessive ambition needs no institutional support and the faith that in extraordinary circumstances popular rhetoric, even forceful demagoguery, would gain legitimacy through the pressure of necessity.

Many references in *The Federalist* and in the ratification debates over the Constitution warn of demagogues of the hard variety who through divisive appeals would aim at tyranny. *The Federalist* literally begins and ends with this issue. In the final paper, Hamilton offered “a lesson of moderation to all sincere lovers of the Union [that] ought to put them on their guard against hazarding anarchy, civil war, a perpetual alienation of the states from each other, and perhaps the military despotism of a victorious demagogue.”<sup>11</sup> The Founders’ concern with hard demagoguery was not merely a rhetorical device designed to facilitate passage of the Constitution. It also reveals a concern to address the kinds of divisions and issues exploited by hard demagoguery. From this perspective, the founding can be understood as an attempt to settle the large issue of whether the one, few, or many ruled (in favor of the many “through” a constitution); to reconfirm the limited purposes of government (security, prosperity, and the protection of rights); and, thereby, to give effect to the distinction between public and private life. At the founding these large questions were still matters of political dispute. Hamilton argued that adopting the Constitution would settle these perennially divisive questions for Americans, replacing those questions with smaller, less contentious issues. Hamilton called this new American politics a politics of “administration,” distinguishing it from the traditional politics of disputed ends. If politics was transformed and narrowed in this way, thought Hamilton, demagogues would be deprived of part of their once-powerful arsenal of rhetorical weapons because certain topics would be rendered illegitimate for public discussion. By constituting an American understanding of politics, the founding would also reconstitute the problem of demagoguery.<sup>12</sup>

If the overriding concern about demagoguery in the extraordinary period before the ratification of the Constitution was to prevent social disruption, division, and possibly tyranny, the concerns expressed through the Constitution for normal times were broader to create institutions that would be most likely to generate and execute good policy and resist bad policy. Underlying the institutional structures and powers the Constitution created are three principles designed to address this broad concern: representation, independence of the executive, and separation of powers.

## Representation

As the Founders realized, the problem with any simple distinction between good and bad law is that it is difficult to provide clear criteria to distinguish the two in any particular instance. It will not do to suggest that in a democracy good legislation reflects the majority will. A majority may tyrannize a minority, violating its rights; and even a nontyrannical majority may be a foolish one,

preferring policies that do not further its interests. These considerations lay behind the Founders' distrust of "direct" or "pure" democracy.<sup>13</sup>

Yet an alternative understanding—that legislation is good if it objectively furthers the limited ends of the polity—is also problematic. It is perhaps impossible to assess the "interests" of a nation without giving significant attention to what the citizenry considers its interests to be. This concern lay behind the Founders' animus toward monarchy and aristocracy.<sup>14</sup> Identifying and embodying the proper weight to be given popular opinion and its appropriate institutional reflections constitute one of the characteristic problems of democratic constitutionalism. The Founders' understanding of republicanism as representative government reveals this problem and the Constitution's attempted solution.

Practically, the Founders attempted to accommodate these two requisites of good government by four devices. First, they established popular election as the fundamental basis of the Constitution and of the government's legitimacy. They modified that requirement by allowing "indirect" selection for some institutions (for example, the Senate, Supreme Court, and presidency)—that is, selection by others who were themselves chosen by the people. With respect to the president, the Founders wanted to elicit the "sense of the people," but they feared an inability to do so if the people acted in a "collective capacity." They worried that the dynamics of mass politics would at best produce poorly qualified presidents and at worst open the door to demagoguery and regime instability. At the same time, the Founders wanted to give popular opinion a greater role in presidential selection than it would have if Congress chose the executive. The institutional solution to these concerns was the Electoral College, originally designed as a semiautonomous locus of decision for presidential selection and chosen by state legislatures at each election.<sup>15</sup>

Second, the Founders established differing lengths of tenure for officeholders in the major national institutions, which corresponded to the institutions' varying "proximity" to the people. House members were to face reelection every two years, making them more responsive to constituent pressure than members of the other national institutions. The president was given a four-year term, sufficient time, it was thought, to "contribute to the firmness of the executive" without justifying "any alarm for the public liberty."<sup>16</sup>

Third, the Founders derived the authority and formal power of the institutions and their officers ultimately from the people but immediately from the Constitution. The effect would be to insulate officials from day-to-day currents of public opinion, while allowing assertion of deeply felt and widely shared public opinion through constitutional amendment.

Fourth, the Founders envisioned that the extent of the nation itself would insulate governing officials from sudden shifts of public opinion. In his well-known arguments for an extended republic, Madison reasoned that large size would improve democracy by making the formation of majority factions difficult. But again, argued Madison, the extent of the territory and diversity of factions would not prevent the formation of a majority if the issue was an important one.<sup>17</sup>

The brakes on public opinion, not the provision for its influence, are what cause skepticism today.<sup>18</sup> Because popular leadership is so central to modern theories of the presidency, the rationale behind the Founders' distrust of "direct democracy" should be noted specifically. This issue was raised dramatically in *The Federalist* No. 49, in which Madison addressed Jefferson's suggestion that "whenever two of the three branches of government shall concur in [the] opinion . . . that a convention is necessary for altering the Constitution, or *correcting breaches of it*, a convention shall be called for the purpose." Madison recounted Jefferson's reasoning because the Constitution was formed by the people, it rightfully ought to be modified by them. Madison admitted "that a constitutional road to the decision of the people ought to be marked out and kept open for great and extraordinary occasions." But he objected to bringing directly to the people disputes among the branches about the extent of their authority. In the normal course of governance, such disputes could be expected to arise fairly often. In our day, they would include, for example, the war powers controversy, the impoundment controversy, and the issue of executive privilege.

Madison objected to recourse to "the people" on three basic grounds. First, popular appeals would imply "some defect" in the government: "Frequent appeals would, in great measure, deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability." *The Federalist* pointed to the institutional benefits of popular veneration—stability of government and the enhanced authority of its constitutional officers. Second, the tranquility of the society as a whole might be disturbed. Madison expressed the fear that an enterprising demagogue might reopen disputes over "great national questions" in a political context less favorable to their resolution than the Constitutional Convention.

Third, Madison voiced "the greatest objection of all" to frequent appeals to the people: "The decisions which would probably result from such appeals would not answer the purpose of maintaining the constitutional equilibrium of government." Chief executives might face political difficulties if frequent appeals to the people were permitted because other features of the office (its singularity, independence, and executive powers) would leave presidents at a rhetorical disadvantage in contests with the legislature. Presidents will be "generally the objects of jealousy and their administrations . . . liable to be discolored and rendered unpopular," Madison argued. "The Members of the legislatures on the other hand are numerous. . . . Their connections of blood, of friendship, and of acquaintance embrace a great proportion of the most influential part of society. The nature of their public trust implies a personal influence among the people."<sup>19</sup>

Madison realized that there may be circumstances "less adverse to the executive and judiciary departments." If the executive power were "in the hands of a peculiar favorite of the people . . . the public decision might be less swayed in favor of the [legislature]. But still it could never be expected to turn on the

true merits of the question.” The ultimate reason for the rejection of “frequent popular appeals” is that they would undermine *deliberation* and result in bad public policy:

The *passions*, therefore, not the *reason*, of the public would sit in judgment. But it is the reason, alone, of the public, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government.<sup>20</sup>

There are two frequent misunderstandings of the Founders’ opinion on the deliberative function of representation. The first is that they naively believed that deliberation constituted the whole of legislative politics—that there would be no bargaining, logrolling, or nondeliberative rhetorical appeals. The discussions of Congress in *The Federalist* Nos. 52 to 68 and in the Constitutional Convention debates reveal quite clearly that the Founders understood that the legislative process would involve a mixture of these elements. The founding task was to create an institutional context that made deliberation most likely, not to assume that it would occur “naturally” or, even in the best of legislatures, predominantly.<sup>21</sup>

The second common error, prevalent in leading historical accounts of the period, is to interpret the deliberative elements of the Founders’ design as an attempt to rid the legislative councils of “common men” and replace them with “better sorts”—more educated and, above all, more propertied individuals.<sup>22</sup> Deliberation, in this view, is the by-product of the kind of person elected to office. The public’s opinions are “refined and enlarged” because refined individuals do the governing. Although this view finds some support in *The Federalist* and was a worry of several Anti-Federalists, the Founders’ Constitution placed much greater emphasis on the formal structures of the national institutions than on the background of officeholders.<sup>23</sup> Indeed, good character and high intelligence, they reasoned, would be of little help to the government if it resembled a direct democracy: “In all very numerous assemblies, of whatever characters composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.”<sup>24</sup>

The presidency was thus intended to be representative of the people, but not merely responsive to popular will. Drawn from the people through an election (albeit an indirect one), presidents were to be free enough from the daily shifts in public opinion that they could refine it and, paradoxically, better serve popular interests. Hamilton expressed well this element of the theory in a passage in which he linked the problem of representation to that of demagoguery:

There are those who would be inclined to regard the servile pliancy of the executive to a prevailing current, either in the community or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which public happiness may be promoted. The republican

principle demands that the deliberative sense of the community should govern the conduct of those to whom they intrust the management of their affairs; but it does not require an unqualified complaisance . . . to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests. . . . When occasions present themselves in which the interests of the people are at variance with their inclinations, it is the duty of the persons whom they have appointed to be the guardians of those interests to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection.<sup>25</sup>

## Independence of the Executive

To “withstand the temporary delusion” of popular opinion, the executive was made independent. The office would draw its authority from the Constitution rather than from another government branch. The Framers were led to this decision from their knowledge of the states. According to John Marshall, the state governments (with the exception of New York’s) lacked any structure “which could resist the wild projects of the moment, give the people an opportunity to reflect and allow the good sense of the nation time for exertion.” As Madison stated at the convention, “Experience had proved a tendency in our governments to throw all power into the legislative vortex. The executives of the states are in general little more than Cyphers; the legislatures omnipotent.”<sup>26</sup>

Independence from Congress was the immediate practical need, yet the need was based on the close connection between legislatures and popular opinion. Because insufficient independence from public opinion was the source of the concern about the legislatures, the Founders rejected James Wilson’s arguments on behalf of popular election as a means of making the president independent of Congress.

Executive independence created the conditions under which presidents would be most likely to adopt a different perspective from Congress on matters of public policy. Congress would be dominated by local factions that, according to plan, would give great weight to constituent opinion. The president, as Thomas Jefferson was to argue, was the only national officer “who commanded a view of the whole ground.” Metaphorically, independence gave presidents their own space within, and their own angle of vision on, the polity. According to the founding theory, these constituent features of discretion are required by the twin activities of executing the will of the legislature and leading a legislature to construct good laws to be executed, laws that would be responsive to the long-term needs of the nation.<sup>27</sup>

## Separation of Powers

The constitutional role of the president in lawmaking raises the question of the meaning and purpose of separation of powers. What is the meaning of separation of power if power is shared among the branches of government?

Clearly, legalists are wrong if they assume that the Founders wished to distinguish so carefully among executive, legislative, and judicial powers as to make each the exclusive preserve of a particular branch. However, such an error gives rise to another one.

Political scientists, following Richard Neustadt, have assumed that because powers were not divided according to the principle of “one branch, one function,” the Founders made no principled distinction among kinds of power. Instead, according to Neustadt, they created “separate institutions sharing power.”<sup>28</sup> The premise of that claim is that power is an entity that can be divided up to prevent any one branch from having enough to rule another. In this view, the sole purpose of separation of powers is to preserve liberty by preventing the arbitrary rule of any one center of power.

The Neustadt perspective finds some support both in the Founders’ deliberations and in the Constitution. Much attention was given to making each branch “weighty” enough to resist encroachment by the others. Yet this “checks and balances” view of separation of powers can be understood better in tandem with an alternative understanding of the concept powers were separated, and structures of each branch differentiated, to equip each branch to perform different tasks. Each branch would be superior (although not the sole power) in its own sphere and in its own way. The purpose of separation of powers was to make effective governance more likely.<sup>29</sup>

Ensuring the protection of liberty and individual rights was one element of effective governance as the Founders conceived it, but it was not the only one. Government also needed to ensure the security of the nation and to craft policies that reflected popular will.<sup>30</sup> These governmental objectives may conflict, for example, if popular opinion favors policies that violate rights. Separation of powers was thought to be an institutional way of accommodating the tensions among governmental objectives.

Table 1.1 presents a simplified view of the purposes behind the separation of powers. Note that the three objectives of government—popular will, popular rights, and self-preservation—are mixed twice in the Constitution. They are mixed among the branches and within each branch so that each objective is given priority in one branch. Congress and the president were to concern themselves with all three, but the priority of their concern differs, with self-preservation or national security, of utmost concern to the president.

The term *separation of powers* has perhaps obstructed understanding of the extent to which different structures were designed to give each branch the special quality needed to secure its governmental objectives. Thus, although the Founders were not so naive as to expect that Congress would be simply “deliberative,” they hoped its plural membership and bicameral structure would provide necessary, if not sufficient, conditions for deliberation to emerge. Similarly, the president’s “energy,” it was hoped, would be enhanced by unity, the prospect of reelection,

**TABLE 1.1 ■ Separation of Powers**

Objectives (in order of priority)	Special Qualities and Functions (to be aimed at)	Structures and Means
<b>CONGRESS</b>		
1. Popular will 2. Popular rights 3. Self-preservation	Deliberation	a. Plurality b. Proximity (frequent House elections) c. Bicameralism d. Competent powers
<b>PRESIDENT</b>		
1. Self-preservation 2. Popular rights 3. Popular will	Energy and “steady administration of law”	a. Unity b. Four-year term and reeligibility c. Competent powers
<b>COURTS</b>		
1. Popular rights	“Judgment, not will”	a. Small collegial body b. Life tenure c. Power linked to argument

and substantial discretion. As we all know, the Supreme Court does not simply “judge” dispassionately; it also makes policies and exercises will. But the Founders believed it made no sense to have a Court if it were intended to be just like a Congress. The judiciary was structured to make the dispassionate protection of rights more likely, if by no means certain.

The Founders differentiated powers as well as structures in the original design. These powers (“the executive power” vested in the president in Article II and “all legislative power herein granted” given to Congress in Article I) overlap and sometimes conflict. Yet both the legalists’ view of power as “parchment distinction” and the political scientists’ view of “separate institutions sharing power” provide inadequate guides to what happens and what the Founders thought *ought* to happen when powers collide. The Founders urged that “line drawing” among spheres of authority be the product of political conflict among the branches, not the result of dispassionate legal analysis. Contrary to more contemporary views, they did not believe that such conflict would lead to deadlock or stalemate.<sup>31</sup>

Consider the disputes that sometimes arise from claims of “executive privilege.”<sup>32</sup> Presidents occasionally refuse to provide Congress with information that its members deem necessary to carry out their special functions. They usually justify assertions of executive privilege on the grounds of either national security or the need to maintain the conditions necessary for sound execution, including the unfettered canvassing of opinions.

Both Congress and the president have legitimate constitutional prerogatives at stake: Congress has a right to know, and the president has a need for secrecy. How does one discover whether in any particular instance the president’s claim is more or less weighty than Congress’s? The answer depends on the circumstances—for example, the importance of the particular piece of legislation in the congressional agenda versus the importance of the particular secret to the executive. There is no formula independent of political circumstance with which to weigh such competing institutional claims. The most knowledgeable observers of those political conflicts are the parties themselves: Congress and the president.

Each branch has weapons at its disposal to use against the other. Congress can threaten to hold up legislation or appointments important to presidents. Ultimately, it could impeach and convict them. For their part, presidents may continue to “stonewall”; they may veto bills or fail to support legislation of interest to their legislative opponents; they may delay political appointments; and they may put the issue to public test, even submitting to an impeachment inquiry for their own advantage. The lengths to which presidents and Congresses are willing to go were thought to be a rough measure of the importance of their respective constitutional claims. Nearly always, executive–legislative disputes are resolved at a relatively low stage of potential conflict. In 1981, for example, President Ronald Reagan ordered Interior Secretary James Watt to release information to a Senate committee after the committee had agreed to maintain confidentiality. The compromise was reached after public debate and “contempt of Congress” hearings were held.

This political process is dynamic. Viewed at particular moments, the system may appear deadlocked. Looked at over time, considerable movement becomes apparent. Similar scenarios could be constructed for the other issues over which congressional and presidential claims to authority conflict, such as the use of executive agreements in place of treaties, the deployment of military force, or the executive impoundment of appropriated monies.<sup>33</sup>

Although conflict may continue to be institutionally fostered or constrained in ways that were intended by the Founders, one still may wonder whether their broad objectives have been secured and whether their priorities should be ours. At the beginning of the twentieth century, Woodrow Wilson mounted an attack on the Founders’ design, convinced that it had not achieved its objectives. More important, his attack resulted in a reordering of those objectives in the understandings that presidents have of their roles. His theory underlies the second constitution that buffets the presidency.

## THE MODERN PERSPECTIVE

Woodrow Wilson's influential critique of *The Federalist* contains another synoptic vision. Yet his comprehensive reinterpretation of the constitutional order appears, at first glance, to be internally inconsistent. Between writing his classic dissertation, *Congressional Government*, in 1884 and publishing his well-known series of lectures, *Constitutional Government in the United States*, in 1908, Wilson shifted his position on important structural features of the constitutional system.

Early in his career Wilson depicted the House of Representatives as the potential motive force in American politics and urged reforms to make it more unified and energetic. He paid little attention to the presidency or judiciary. In later years, he focused his attention on the presidency. In his early writings, Wilson urged a plethora of constitutional amendments that were designed to emulate the British parliamentary system, including proposals to synchronize the terms of representatives and senators with that of the president and to require presidents to choose leaders of the majority party as cabinet secretaries. Wilson later abandoned formal amendment as a strategy, urging instead that the existing Constitution be reinterpreted to encompass his parliamentary views.

Wilson also altered his views at a deeper theoretical level. According to Christopher Wolfe, although the early Wilson held a traditional view of the Constitution, as a document whose meaning persists over time, the later Wilson adopted a historicist understanding, claiming that the meaning of the Constitution changed as a reflection of the prevailing thought of successive generations.<sup>34</sup>

As interesting as these shifts in Wilson's thought are, they all rest on an underlying critique of the American polity that Wilson maintained consistently throughout his career. Wilson's altered constitutional proposals—indeed, his altered understanding of constitutionalism itself—ought to be viewed as a series of strategic moves designed to remedy the same alleged systemic defects. Our task is to review Wilson's understanding of those defects and to outline the doctrine he developed to contend with them—a doctrine whose centerpiece would ultimately be the rhetorical presidency.

Wilson's doctrine counterpoises the Founders' understandings of demagoguery, representation, independence of the executive, and separation of powers. For clarity, I examine these principles in a slightly different order from before separation of powers, representation, independence of the executive, and demagoguery.

### Separation of Powers

For Wilson, separation of powers was the central defect of American politics. He was the first and most sophisticated proponent of the now conventional argument that "separation of powers" is a synonym for "checks and balances"—that is, the negation of power by one branch over another. Yet Wilson's view was more sophisticated than its progeny because his ultimate indictment of the Founders' conception was a functionalist one. Wilson claimed that under

the auspices of the Founders' view, formal and informal political institutions failed to promote true deliberation in the legislature and impeded energy in the executive.

Wilson characterized the Founders' understanding as "Newtonian," a yearning for equipoise and balance in a machinelike system:

The admirable positions of the *Federalist* read like thoughtful applications of Montesquieu to the political needs and circumstances of America. They are full of the theory of checks and balances. The President is balanced off against Congress, Congress against the President, and each against the Court. . . . Politics is turned into mechanics under [Montesquieu's] touch. The theory of gravitation is supreme.<sup>35</sup>

The accuracy of Wilson's portrayal of the Founders may be questioned. He reasoned backward from the malfunctioning system as he found it to how they must have intended it. Wilson's depiction of the system, rather than his interpretation of the Founders' intentions, however, is of present concern.

Rather than equipoise and balance, Wilson found a system dominated by Congress, with several attendant functional infirmities: major legislation frustrated by narrow-minded committees, lack of coordination and direction of policies, a general breakdown of deliberation, and an absence of leadership. Extraconstitutional institutions—boss-led political parties chief among them—had sprung up to assume the functions not performed by Congress or the president, but they had not performed them well. Wilson also acknowledged that the formal institutions had not always performed badly, that some prior Congresses (those of Webster and Clay) and some presidencies (those of Washington, Adams, Jefferson, Jackson, Lincoln, Roosevelt, and, surprisingly, Madison) had been examples of forceful leadership.<sup>36</sup>

These two strands of thought—the growth of extraconstitutional institutions and the periodic excellence of the constitutional structures—led Wilson to conclude that the Founders had mischaracterized their own system. The Founders' rhetoric was "Newtonian," but their constitutional structure, like all government, was actually "Darwinian." Wilson explained:

The trouble with the Newtonian theory is that government is not a machine but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. It is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life.<sup>37</sup>

The Founders' doctrine had affected the working of the structure to the extent that the power of the political branches was interpreted mechanically and many of the structural features reflected the Newtonian yearning. A tension arose between

the “organic” core of the system and the “mechanical” understanding of it by politicians and citizens. Thus, “the constitutional structure of the government has hampered and limited [the president’s] actions but it has not prevented [them.]” Wilson tried to resolve the tension between the understanding of American politics as Newtonian and its actual Darwinian character to make the evolution self-conscious and thereby more rational and effective.<sup>38</sup>

Wilson attacked the Founders for relying on mere “parchment barriers” to effectuate a separation of powers. This claim is an obvious distortion of founding views. In *Federalist* Nos. 47 and 48, the argument is precisely that the federal Constitution, unlike earlier state constitutions, would not rely primarily on parchment distinctions of power but on differentiation of institutional structures.<sup>39</sup> Through Wilson’s discussion of parchment barriers, however, an important difference between his and the Founders’ views of the same problem becomes visible. Both worried over the tendency of legislatures to dominate in republican systems.

To mitigate the danger posed by legislatures, the Founders had relied primarily on an independent president with an office structured to give its occupant the personal incentive and means to stand up to Congress when it exceeded its authority. These structural features included a nonlegislative mode of election, constitutionally fixed salary, qualified veto, four-year term, and indefinite reeligibility. Although the parchment powers of Congress and the president overlapped (contrary to Wilson’s depiction of them), the demarcation of powers proper to each branch would result primarily from political interplay and conflict between the political branches rather than from a theoretical drawing of lines by the judiciary.<sup>40</sup>

Wilson offered a quite different view. First, he claimed that because of the inadequacy of mere parchment barriers, Congress, in the latter half of the nineteenth century, had encroached uncontested on the executive sphere. Second, he contended that when the president’s institutional check was used, it took the form of a “negative”—prevention of a bad outcome rather than provision for a good one. In this view, separation of powers hindered efficient, coordinated, well-led policy.<sup>41</sup>

Wilson did not wish to bolster structures to thwart the legislature. He preferred that the president and Congress be fully integrated into, and implicated in, each other’s activities. Rather than merely assail Congress, Wilson would tame or, as it were, domesticate it. Separation would be replaced by institutionally structured cooperation. Cooperation was especially necessary because presidents lacked the energy they needed, energy that could be provided only by policy backed by Congress and its majority. Although Congress had failed as a deliberative body, it could now be restored to its true function by presidential leadership that raised and defended crucial policies.

These latter two claims represent the major purposes of the Wilsonian theory: leadership and deliberation. Unlike the Founders, who saw these two functions

in conflict, Wilson regarded them as dependent on each other. In “Leaderless Government” he stated,

I take it for granted that when one is speaking of a representative legislature he means by an “efficient organization” an organization which provides for deliberate, and deliberative, action and which enables the nation to affix responsibility for what is done and what is not done. The Senate is deliberate enough; but it is hardly deliberative after its ancient and better manner. . . . The House of Representatives is neither deliberate nor deliberative. We have not forgotten that one of the most energetic of its recent Speakers thanked God, in his frankness, that the House was not a deliberative body. It has not the time for the leadership of argument. . . . For debate and leadership of that sort the House must have a party organization and discipline such as it has never had.<sup>42</sup>

It appears that the Founders and Wilson differed on the means to common ends. Both wanted “deliberation” and an “energetic” executive, but each proposed different constitutional arrangements to achieve those objectives. In fact, their differences went much deeper, for each theory defined deliberation and energy differently. These differences, hinted at in the previous quotation, will become clearer as we examine Wilson’s reinterpretation of representation and independence of the executive.

## Representation

In the discussion of the founding perspective, the competing requirements of popular consent and insulation from public opinion as a requisite of impartial judgment were canvassed. Woodrow Wilson gave much greater weight to the role of public opinion in the ordinary conduct of representative government than did the Founders. Some scholars have suggested that Wilson’s rhetoric and the institutional practices he established (especially regarding the nomination of presidential candidates) are the major sources of contemporary efforts to create a more “participatory” democracy. However, Wilson’s understanding of representation, similar to his views on separation of powers, was more sophisticated than that of his followers.<sup>43</sup>

Wilson categorically rejected the Burkean view that legislators are elected for their quality of judgment and position on a few issues and then left free to exercise that judgment:

It used to be thought that legislation was an affair to be conducted by the few who were instructed for the benefit of the many who were uninstructed that statesmanship was a function of origination for which only trained and instructed men were fit. Those who actually conducted legislation and conducted affairs were rather whimsically chosen by Fortune to illustrate

this theory, but such was the ruling thought in politics. The Sovereignty of the People, however . . . has created a very different practice. . . . It is a dignified proposition with us—is it not?—that as is the majority, so ought the government to be.<sup>44</sup>

Wilson did not think his view was equivalent to “direct democracy” or to subservience to public opinion (understood, as it often is today, as response to public opinion polls). He favored an interplay between representative and constituent that would, in fact, educate the constituent. This process differed, at least in theory, from the older attempts to “form” public opinion; it did not begin in the minds of the elite but in the hearts of the masses. Wilson called the process of fathoming the people’s desires (often only vaguely known to the people until instructed) “interpretation.” Interpretation was the core of leadership for him.<sup>45</sup> Before we explore its meaning further, it is useful to dwell on Wilson’s notion of the desired interplay between the “leader–interpreter” and the people so that we may see how his understanding of deliberation differed from that of the Founders.

For the Founders, deliberation meant reasoning on the merits of policy. The character and content of deliberation would thus vary with the character of the policy at issue. In “normal” times, there would be squabbles among competing interests. Deliberation would occur to the extent that such interests were compelled to offer arguments and respond to those made by others. The arguments might be relatively crude, specialized, and technical, or they might involve matters of legal or constitutional propriety. But in none of these instances would they resemble the great debates over fundamental principles—for example, over the question of whether to promote interests in the first place. Great questions were the stuff of crisis politics, and the Founders placed much hope in securing the distinction between crisis and normal political life.

Wilson effaced the distinction between “crisis” and “normal” political argument:

Crises give birth and a new growth to statesmanship because they are peculiarly periods of action . . . [and] also of unusual opportunity for gaining leadership and a controlling and guiding influence. . . . And we thus come upon the principle . . . that governmental forms will call to the work of the administration able minds and strong hearts constantly or infrequently, according as they do or do not afford at all times an opportunity of gaining and retaining a commanding authority and an undisputed leadership in the nation’s councils.<sup>46</sup>

Wilson’s lament that little deliberation took place in Congress was not that the merits of policies were left unexplored but rather that, because the discussions were not elevated to the level of major contests of principle, the public generally did not interest itself. True deliberation, he urged, would rivet the attention of press and public, whereas what substituted for it in his day were virtually secret contests of interest-based factions. Wilson rested this view on three observations.

First, the congressional workload was parceled out to specialized standing committees, whose decisions usually were ratified by the respective houses without any general debate. Second, the arguments that did take place in committee were technical and structured by the “special pleadings” of interest groups, whose advocates adopted the model of legal litigation as their mode of discussion. As Wilson characterized committee debates,

They have about them none of the searching, critical, illuminating character of the higher order of parliamentary debate, in which men are pitted against each other as equals, and urged to sharp contest and masterful strife by the inspiration of political principle and personal ambition, through the rivalry of parties and the competition of policies. They represent a joust between antagonistic interests, not a contest of principles.<sup>47</sup>

Finally, because debates were hidden away in committee, technical and interest based, the public cared little about them. “The ordinary citizen cannot be induced to pay much heed to the details, or even the main principles of lawmaking,” Wilson wrote, “unless something more interesting than the law itself be involved in the pending decision of the lawmaker.” For the Founders, this would not have been disturbing, but for Wilson, the very heart of representative government was the principle of publicity: “The informing function of Congress should be preferred even to its legislative function.” The informing function was to be preferred both as an end in itself and because the accountability of public officials required policies that were connected with one another and explained to the people. Argument from “principle” would connect policy and present constellations of policies as coherent wholes to be approved or disapproved by the people. “Principles, as statesmen conceive them, are threads to the labyrinth of circumstances.”<sup>48</sup>

Wilson attacked separation of powers in an effort to improve leadership for the purpose of fostering deliberation. “Congress cannot, under our present system . . . be effective for the instruction of public opinion, or the cleansing of political action.” As mentioned at the outset of this section, Wilson first looked to Congress itself, specifically to its Speaker, for such leadership. Several years after the publication of *Congressional Government*, Wilson turned his attention to the president: “There is no trouble now about getting the president’s speeches printed and read, every word,” he wrote at the turn of the century.<sup>49</sup>

## Independence of the Executive

The attempt to bring the president into more intimate contact with Congress and the people raises the question of the president’s “independence.” Wilson altered the meaning of this notion, which originally had been that the president’s special authority came independently from the Constitution, not from Congress or the people. For the Founders, presidents’ constitutional station afforded them the possibility and responsibility of taking a perspective on policy different from

that of either Congress or the people. Wilson urged us to consider presidents as receiving their authority independently through a mandate from the people. For Wilson, presidents remained “special” because they were the only government officers with a national mandate.<sup>50</sup>

Political scientists today have difficulty finding mandates in election years, let alone between them, because of the great number of issues and the lack of public consensus on them. Wilson understood this problem and urged the leader to sift through the multifarious currents of opinion to find a core of issues that he believed reflected majority will even if the majority was not yet fully aware of it.

The leader’s rhetoric could translate the people’s felt desires into public policy. Wilson cited Daniel Webster as an example of such an interpreter of the public will:

The nation lay as it were unconscious of its unity and purpose, and he called it into full consciousness. It could never again be anything less than what he said it was. It is at such moments and in the mouths of such interpreters that nations spring from age to age in their development.<sup>51</sup>

“Interpretation” involves two skills. First, the leader must understand the true majority sentiment underneath the contradictory positions of factions and the discordant views of the masses. Second, the leader must explain the people’s true desires to them in a way that is easily comprehended and convincing.

Wilson’s desire to raise politics to the level of rational disputation and his professed aim to have leaders educate the masses are contradictory. He acknowledged candidly that the power to command would require simplification of the arguments to accommodate the masses: “The arguments which induce popular action must always be broad and obvious arguments; only a very gross substance of concrete conception can make any impression on the minds of the masses.”<sup>52</sup> Not only is argument simplified, but disseminating “information”—a common concern of contemporary democratic theory—is not the function of a deliberative leader, in Wilson’s view:

Men are not led by being told what they don’t know. Persuasion is a force, but not information; and persuasion is accomplished by creeping into the confidence of those you would lead. . . . Mark the simplicity and directness of the arguments and ideas of true leaders. The motives which they urge are elemental; the morality which they seek to enforce is large and obvious; the policy they emphasize, purged of all subtlety.<sup>53</sup>

## Demagoguery

Wilson’s understanding of leadership raises again the problem of demagoguery. What distinguishes a leader–interpreter from a demagogue? Who is to make this distinction? The Founders feared there was no institutionally effective way to

exclude the demagogue if popular oratory during “normal” times was encouraged. Indeed, the term *leader*, which appears a dozen times in *The Federalist*, is used disparagingly in all but one instance, and that one is a reference to leaders of the Revolution.<sup>54</sup>

Wilson was sensitive to this problem: “The most despotic of governments under the control of wise statesmen is preferable to the freest ruled by demagogues,” he wrote. Wilson relied on two criteria to distinguish the demagogue from the leader, one based on the nature of the appeal, the other on the character of the leader. The demagogue appeals to “the momentary and whimsical popular mood, the transitory or popular passion,” whereas the leader appeals to “true” and durable majority sentiment. The demagogue is motivated by the desire to augment personal power, and the leader is more interested in fostering the permanent interests of the community. “The one [trims] to the inclinations of the moment, the other [is] obedient to the permanent purposes of the public mind.”<sup>55</sup>

Theoretically, these distinctions present a number of difficulties. If popular opinion is the source of the leader’s rhetoric, what basis apart from popular opinion is there to distinguish the “permanent” from the “transient”? If popular opinion is constantly evolving, what sense is there to the notion of “the permanent purposes of the public mind”? Yet the most serious difficulties are practical ones. Assuming it is theoretically possible to distinguish the leader from the demagogue, how is that distinction to be incorporated into the daily operation of political institutions? Wilson offered a threefold response to this query.

First, he claimed his doctrine contained an ethic that could be passed on to future leaders. Wilson hoped that politicians’ altered understanding of what constituted success and fame could provide some security. He constantly pointed to British parliamentary practice, urging that long training in debate had produced generations of leaders and few demagogues. Indeed, Wilson had taught at Johns Hopkins, Bryn Mawr, Wesleyan, and Princeton, and at each of those institutions he established debating societies modeled on the Oxford Union.<sup>56</sup>

Second, Wilson placed some reliance on the public’s ability to judge character:

Men can scarcely be orators without that force of character, that readiness of resource, that cleverness of vision, that grasp of intellect, that courage of conviction, that correctness of purpose, and that instinct and capacity for leadership which are the eight horses that draw the triumphal chariot of every leader and ruler of freemen. We could not object to being ruled by such men.<sup>57</sup>

According to Wilson, the public need not appeal to a complex standard or theory to distinguish demagoguery from leadership but could easily recognize “courage,” “intelligence,” and “correctness of purpose”—signs that the leader was not a demagogue. Wilson did not say why prior publics had fallen prey to enterprising demagogues, but the major difficulty with this second source of restraint is that public understanding of leaders’ character would come from their

oratory rather than from a history of their political activity or from direct contact with them. The public's understanding of character might be based solely on words.

Third, Wilson suggested that the natural conservatism of public opinion, its resistance to innovation that is not consonant with the speed and direction of its own movement, would afford still more safety:

Practical leadership may not beckon to the slow masses of men from beyond some dim, unexplored space or some intervening chasm it must daily feel the *road* to the goal proposed, knowing that it is a slow, very slow, evolution to the wings, and that for the present, and for a very long future also, Society must *walk*, dependent upon practicable paths, incapable of scaling sudden heights.<sup>58</sup>

Wilson's assurances of security against demagogues may seem unsatisfactory because they did not adequately distinguish the polity in which he worked from others in which demagogues had prevailed, including some southern states in this country. However, his arguments should be considered as much for the theoretical direction and emphases that they implied as for the particular weaknesses they revealed. Wilson's doctrine stood on the premise that the need for more energy in the political system was greater than the risk incurred through the possibility of demagoguery.<sup>59</sup> His view represented a major shift, indeed a reversal, of the founding perspective. If Wilson's argument regarding demagoguery was strained or inadequate, it was a price he was willing to pay to remedy what he regarded as the Founders' inadequate provision for an energetic executive.

## CONCLUSION

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Both constitutions were designed to encourage and support an energetic president, but they differ over the legitimate sources and alleged virtues of popular leadership. For the Founders, presidents draw their energy from their authority, which rests on their independent constitutional position. For Woodrow Wilson and for presidents ever since, power and authority are conferred directly by the people. *The Federalist* and the Constitution proscribe popular leadership. Wilson prescribed it. Indeed, he urged the president to minister continually to the moods of the people as a preparation for action. The Founders' president was to look to the people, but less frequently, and to be judged by them, but usually after acting.

The second constitution gained legitimacy because presidents were thought to lack the resources necessary for the energy promised but not delivered by the first. The second constitution did not replace the first, however. Because many of the founding structures persist, while our understanding of the president's legitimate role has changed, the new view should be thought of as superimposed on the old, altering without obliterating the original structure.

Many commentators have noted the tendency of recent presidents to raise public expectations about what they can achieve. Indeed, public disenchantment with government altogether may stem largely from disappointment in presidential performance, inasmuch as the presidency is the most visible and important American political institution. Yet, rather than being the result of the personality traits of particular presidents, raised expectations are grounded in an institutional dilemma common to all modern presidents. Under the auspices of the second constitution, presidents must continually craft rhetoric that pleases their popular audience. Even though presidents are always in a position to promise more, the only additional resource they have to make good on their promises is public opinion itself. Because Congress retains the independent status conferred on it by the first Constitution, it can resist the president.

Naturally, presidents who are exceptionally popular or gifted as orators can overcome the resistance of the legislature. For the political system as a whole, this possibility is both good and bad. To the extent that the system requires periodic renewal through synoptic policies that reconstitute the political agenda, it is good. But the very qualities that are necessary to achieve such large-scale change tend to subvert the deliberative process, which makes unwise legislation or incoherent policy more likely.

Ronald Reagan's major political victories as president illustrate both sides of this systemic dilemma.<sup>60</sup> On the one hand, without the second constitution, it would be difficult to imagine Reagan's success at winning tax reform legislation. His skillful coordination of a rhetorical and a legislative strategy overcame the resistance of thousands of lobbies that sought to preserve advantageous provisions of the existing tax code. Similarly, Social Security and other large policies that were initiated by Franklin D. Roosevelt during the New Deal might not have been possible without the second constitution.

On the other hand, Reagan's first budget victory in 1981 and the Strategic Defense Initiative (SDI, also known as Star Wars) illustrate how popular leadership can subvert the deliberative process or produce incoherent policy. The budget cuts of 1981 were secured with virtually no congressional debate. Among their effects was the gutting of virtually all of the Great Society programs initiated by President Lyndon B. Johnson, which themselves were the product of a popular campaign that circumvented the deliberative process.

When Congress does deliberate, as it has on SDI, the debate is often structured by contradictory forms of rhetoric, the product of the two constitutions. The arguments presidents make to the people are different from those they make to Congress. To the people, Reagan promised to strive for a new defense technology that would make nuclear deterrence obsolete. But to Congress, his administration argued that SDI was needed to supplement, not supplant, deterrence.<sup>61</sup> Each kind of argument can be used to impeach the other. President Jimmy Carter found himself in the same bind on energy policy. When he urged the American people to support his energy plan, Carter contended that it was necessary to remedy an existing crisis. But to Congress he argued that the same policy was necessary to forestall a crisis.<sup>62</sup>

The second constitution promises energy, which is said to be inadequately provided by the first. This suggests that the two constitutions fit together to form a more complete whole. Unfortunately, over the long run, the tendency of the second constitution to make extraordinary power routine undermines, rather than completes, the logic of the original Constitution. Garry Wills has described how presidents since John F. Kennedy have attempted to pit public opinion against their own executive establishment. Successors to a charismatic leader then inherit “a delegitimated set of procedures” and are themselves compelled “to go outside of procedures—further delegitimizing the very office they [hold].”<sup>63</sup> In Reagan’s case, this cycle was reinforced by an ideology opposed to big government. “In the present crisis,” Reagan said at his first inaugural, “government is not the solution to our problem; government is the problem.” Although fiascoes such as the Iran-contra affair are not inevitable, they are made more likely by the logic and legitimacy of the second constitution.

It was hard to imagine that any leader would embrace the second constitution more than Reagan did, but President Bill Clinton surpassed him. According to George Edwards,

The Clinton presidency is the ultimate example of the rhetorical presidency—a presidency based on a perpetual campaign to obtain the public’s support and fed by public opinion polls, focus groups, and public relations memos. No president ever invested more in measuring, and attempting to mold, public opinion. [This administration] even polled voters on where it was best for the First Family to vacation. This is an administration that spent \$18 million on ads in 1995, a nonelection year! And this is an administration that repeatedly interpreted its setbacks, whether in elections or health care reform, in terms of its failure to communicate rather than in terms of the quality of its initiatives or the strategy for governing. Reflecting his orientation in the White House, Bill Clinton declared that “the role of the President of the United States is message.”<sup>64</sup>

The Clinton presidency was a roller coaster of political successes and failures. No simple explanation can address how this president, who was the head of his political party when the Democrats were badly defeated in 1994, rebounded so decisively in 1996, or how he came to be impeached by the House in 1998 yet acquitted by the Senate in 1999. It may be helpful, however, to suggest how the two constitutional presidencies provide a useful backdrop for a fuller narrative. The political dilemmas Clinton faced and the choices he made to contend with them are, at least in part, products of the uneasy conjunction of the two constitutions.

For example, the president’s fidelity to the second constitution contributed to the most serious mistake that prompted the impeachment proceeding. Faced with an inquiry into his relationship with Monica Lewinsky, Clinton sought a rhetorical solution to his political difficulty. Oriented to the immediate demands of persuasion in a national plebiscite, Clinton relied on his bully pulpit. On the

advice of his former pollster Dick Morris and friend and media adviser Harry Thomason, the president went on national television and forcefully denied that he had “sexual relations” with Lewinsky. That denial, more than the conduct it concealed, fueled congressional opposition and delegitimized his presidency in the eyes of many of his critics and even some of his allies.

Yet presidents are schooled by both constitutions even when they only consciously understand the second. President Carter discovered the Rose Garden strategy of retreating from public view when the demands of foreign policy placed him in a position to see the benefits of a political posture inherent to the first Constitution.<sup>65</sup> Similarly, President Clinton rediscovered the first Constitution as the nation taught itself the constitutional meaning of impeachment.

As the impeachment drama unfolded, Clinton was uncharacteristically mute. He let his lawyers and other surrogates do the talking about impeachment-related matters while he attended to the nation’s other business. The nation’s resurrection of a nineteenth-century constitutional anachronism, impeachment, placed the president in a position from which he could see the political benefit of acting like a nineteenth-century president. Because the animating charge of the political opposition was that Clinton had disgraced his office—whether through his sexual behavior or his subsequent deceptions and alleged perjury—the president’s conduct during the formal proceedings became a rhetorical or dramaturgical refutation of the main charge against him. The one exception to this presidential style, so characteristic of the first Constitution, seemed to prove its significance. When the president emerged from the White House to lead congressional allies in a show of support immediately following the House vote, he was severely criticized for politicizing a constitutional process. Clinton’s conscious and seemingly instinctive understanding of leadership conflicted with the model of statesmanship inherent to the constitutional order. After that misstep, the president attempted to recapture the advantages that the dignity of the office provided him.

Although political circumstance encouraged Clinton to rediscover the first Constitution, political crisis led George W. Bush to a more rhetorical presidency than would be his natural inclination.<sup>66</sup> Bush was not a gifted orator. Similar to his father, he had difficulty expressing himself, was prone to misstatement, and seemed unable to master the proper cadences of formal speech. Nevertheless, the terrorist attacks on New York and Washington, D.C., Bush’s response to them in Afghanistan, and his subsequent war against Iraq required him to lead. In this array of circumstances and responsibilities, one can see both the promise and the pitfall of presidential leadership under the auspices of two constitutions. Bush’s response to the 9/11 terrorist attacks shows how the president’s traditional roles under the Constitution can be enhanced by modern rhetorical practices. His leadership of the nation into the war in Iraq reveals how the second constitution sometimes undermines the first.

In the wake of the terrorist attacks on the United States, Bush found it necessary to deliver a number of speeches to a grieving nation. Because it was proper for the president to do this, even under the first Constitution, his words gained

in politically constructed authority what they lacked in natural grace. The Constitution, its norms, institutions, and traditions, elevated an ordinary speaker to a station from which he was able to deliver extraordinarily effective leadership.

By contrast, Bush's case for the war in Iraq did not respond to a widely felt crisis. Rather, the president tried to convince the nation that an unseen crisis existed. To do this, he developed a public case for war that differed, at least in emphasis, from the real reasons that animated decision makers within the administration. The case for war that prevailed within the administration stood on three basic grounds: the threat from weapons of mass destruction, Iraq's support of terrorism, and the brutality of Iraq's totalitarian practices on its own people. Taken together, these three reasons were all grounded in the nature of the Iraqi regime and therefore were thought to necessitate regime change. Although all three were part of the public case for war,<sup>67</sup> the threat of weapons of mass destruction was the one the administration stressed. When it became apparent that there were no such weapons, the president's policy was, in effect, hoisted by its own rhetorical petard. Bush's credibility was undermined by the rhetorical choices he made to speedily gain popular support for the war and to pressure Congress to authorize the use of force. His "deception" was not, as many commentators alleged, an intentional effort to lie to Congress, to the United Nations, or to the American people. Instead, it was an effort to simplify a complex argument to make it more effective rhetorically.<sup>68</sup> The problem of credibility that hounded the Bush administration toward the end was not the president's personality or moral character. Rather, it was a by-product of a second constitution that lives in tension with the first.

President Barack Obama inherited both the worst economic crisis since the Great Depression and wars in Iraq and Afghanistan. Because he is such a gifted orator, because the nation needed a president to get it through a genuine crisis, and because Obama promised in his first presidential campaign to be a "transformational" leader, it was reasonable to expect that Obama would try to perfect the kind of rhetorical leadership that marked the administration of Franklin D. Roosevelt. He did not. To be sure, President Obama's first term, like FDR's, was marked by large and significant policy successes: an economic stimulus, banking regulation, auto bailouts, national health care reform, significant defeats for the Al Qaeda terrorist network, withdrawals from Iraq and Afghanistan, the end of "don't ask, don't tell" in the military, and an enhancement of legitimacy for gay marriage. But Obama did not offer a "new" Deal, nor did he articulate a new grand strategy in foreign affairs. Instead of an overarching "public philosophy," he offered pragmatic responses to problems.<sup>69</sup> In many ways, his leadership style reflected the norms of the first constitutional presidency more than the second. For example, when proposing a major reform of health care, he left the crafting of the legislation to Congress and did not mount a public speaking campaign to pressure legislators to adopt it or launch a subsequent speaking campaign to facilitate its implementation. As a series of concrete responses to practical problems, Obama's presidency was remarkably successful. Judging from the

criticisms of progressive Democrats as well as conservative Republicans, however, one would have thought Obama a great disappointment. He was often criticized for a lack of popular leadership by friends as well as foes—for failure to be a rhetorical president.

Three years into his first term, Obama decided to follow the advice of his critics. He launched his bid for a second term while still in the midst of his first. Deploying the skills and tactics of electoral campaigns, Obama began to blend campaigning and governing in ways typical of the modern rhetorical presidency. He abandoned “post-partisanship” and became a partisan Democrat, albeit in a muted form compared with his political foes or presidential predecessors. Although this new leadership style pleased his party and helped him win reelection, Republican critics and many independent journalists seized the norms of the first constitution as their own and criticized Obama for being a “demagogue,” as well as for pressuring Congress by appealing over its head to the people at large. For example, on the eve of his successful campaign to avoid the so-called “fiscal cliff” just before the new year of 2013, some senators accused the president of diminishing his office by giving a speech in which he criticized Congress generally and Republicans more specifically.<sup>70</sup>

How might President Obama have avoided the dilemma of being criticized from the vantage point of both of the two constitutions? Is there an alternative kind of presidential leadership to those made familiar by the first and second constitutions? There may be. Obama could have deployed the tools of the modern rhetorical presidency for a new kind of political purpose. Instead of trying to pressure or supplant the legislature, Obama might have diagnosed the failures of modern national politics and made a case for constitutional and institutional reform. Although he promised to be a post-partisan president in his first campaign, he never clearly explained what that meant, why it was required, or what it implied for the reform of our political institutions. Devoid of the familiar kind of “public philosophy” that marked the New Deal, Obama could only have become the transformational president he promised if he had changed our understanding of transformation itself. Instead of a public philosophy crafted to market a basket of public policies, Obama needed to articulate a new understanding of the constitutional order—of its infirmities and of the innovations needed for its repair. He needed to defend the kind of leadership in practice he enacted but never explained. He needed to show that the post-partisanship and pragmatism he heralded offered a political theory, not just a series of ad hoc responses. With pragmatism understood and explained as a theory of political reform, Obama might have created a third constitutional presidency.

Although Obama never consciously articulated a new understanding of leadership, he did instinctively resurrect the leadership style of George Washington to the extent that he renewed a sense of dignity in the nation’s highest office. David Brooks wrote, in the early days of the Obama presidency, that contemporary American political culture suffered from an almost total absence of the understanding and practice of dignity. In the first year of the Obama

presidency, a corrupt governor of Illinois fell from office in a manner completely lacking dignity or grace; a governor of South Carolina publicly humiliated his family and himself; and a governor of Alaska, according to Brooks, “aspire[d] to a high public role but [wa]s unfamiliar with the traits of equipoise and constancy, which are the sources of authority and trust.”<sup>71</sup> But then there was Obama. “Whatever policy differences people may have with him, we can all agree the he exemplifies reticence, dispassion and the other traits associated with dignity. The cultural effects of his presidency are not yet clear, but they may surpass his policy impact. He may have [preserved] the concept of dignity for a new generation and [have] embodied a new set of rules for self-mastery.”<sup>72</sup> Forrest McDonald’s description of George Washington’s most important and most subtle legacy may well describe Barack Obama: “He endowed the presidency with the capacity—and the awesome responsibility—to serve as the symbol of the nation, of what it is and what it can aspire to be.”<sup>73</sup>

Obama’s Washington-style dignity was most evident during the transition to the Donald Trump administration. Having campaigned hard against the new president and often expressing the view that Donald Trump lacked the skills and temperament to be president, during the transition, Obama pivoted to a posture designed to facilitate an efficient and graceful transfer of power. Given a new president who campaigned on a platform to replace virtually all of the signature policies and achievements of the Obama presidency, the departing president seemed to trust his legacy to the manifest contrast between himself and his successor. In the waning days of his administration, Obama exemplified statesmanship for the nation and for his successor in a desperate hope that he could tutor and attenuate the proclivities of a demagogue or, at least, provide the citizenry a model against which to judge the new president.

Before Trump, America had never elected a demagogue. The only true demagogue who served as president was Andrew Johnson. But Johnson was not elected, and he served in a political order that opposed every one of his important initiatives, overruled his vetoes, impeached him, and drove him from office in disgrace.<sup>74</sup> President Trump was elected with a solid majority of Electoral votes, with his party in control of both houses of Congress and initially offering strong support, and a Supreme Court with a decisive seat open for his preferred candidate.

Throughout his tenure, President Trump exercised the office in the same demagogic manner that he campaigned. He thereby abused his office and posed a greater threat to the constitutional order than had any previous president.

To be sure, some features of Trump’s leadership style are not unprecedented. Many recent presidents have effaced the distinction between campaigning and governing. Many presidents have relied on their top campaign advisors as key counselors in governance. The techniques of campaigning have been brought into the White House as necessary instruments to advance policy agendas. Even specific or particular demagogic appeals are not new. Nevertheless, there is a big difference between importing the skills of campaigning and deploying

a demagogic appeal to secure a specific objective, as all recent presidents have done, and demonstrating no understanding of governance other than a personal communion between the leader and his followers. All of Trump's recent predecessors toggled between the rhetorical presidency and the president's traditional Constitutional roles. There appears to be no toggle switch for Trump. One month into his term, Trump told reporters traveling with him to a rally in Florida, "Life is a campaign. Make America Great Again is a campaign. For me, [the presidency] is a campaign."<sup>75</sup> He used the tools of popular leadership so intensively that the result, a rhetorical presidency on steroids, was a change in kind, not just in degree. Through his use of repetition, proliferation, and projection, Trump became the nation's first Orwellian leader.<sup>76</sup>

The ascendance of Trump surprised most observers because during the campaign he made dozens of utterances and took dozens of actions any one of which would have sunk previous campaigns. Edmund Muskie, Howard Dean, Michael Dukakis, Gary Hart, John Edwards, and Rick Perry are just a few examples of politicians who stumbled and failed because of mistakes they made on the campaign trail. How was it possible for Trump to succeed given his proclivity to break any norm that got in his way, to say anything that came into his head no matter how crude or inappropriate? Trump proliferated his outrages, repeated his claims incessantly, and projected his vices onto his opponents. These techniques—proliferation, repetition, and projection—transformed what for other candidates would be gaffes or mistakes into the constitutive elements of his victory and fueled his ability to prevent effective oversight of his corruption.

In a recent book, Michael Signer usefully interprets James Fenimore Cooper's essay on demagoguery to highlight certain features of the phenomenon. "As Cooper recognized, true demagogues meet four rules: (1) They fashion themselves as a man or woman of the common people, as opposed to the elites; (2) their politics depends on a powerful, visceral connection with the people that dramatically transcends ordinary political popularity; (3) they manipulate this connection, and the raging popularity it affords, for their own benefit and ambition; and (4) they threaten or outright break established rules of conduct, institutions, and even the law."<sup>77</sup> Jan-Werner Muller adds that demagogues nurture a powerful connection with their own supporters, and if such support is sufficient to win election, the faction supporting the demagogue is invested with the authority of the people as a whole. The enthusiasm of a faction is represented as the will of the people.<sup>78</sup>

Donald Trump amplified the power of a traditional demagogue to manipulate passion by turning traditional campaign vices into additional demagogic instruments. Faced with criticism for his gaffes, mistakes, and norm-breaking behavior, Trump not only refused to apologize, he instead reaffirmed his misstatements and uttered more of them. The effect of this strategy was to diminish or discount the harm to his campaign of any single mistake. Faced with fact-checking of his many untruths, Trump insisted on repeating them to the point that his followers believed them and the wider world became desensitized to the differences between truth and falsehood. Finally, Trump repeatedly accused

his own opponents of his own vices. When he lied, he labeled his opponent the liar. When faced with a mountain of evidence of conflicts of interest, he painted his opponents as beholden to special interests. Faced with whistleblowers who revealed potentially illegal behavior by his staff, he labeled the reports themselves illegal because they were leaked. When investigations into his campaign's contacts with Russian officials mounted, he responded by accusing former President Obama of a Watergate-type crime. Through projection, Trump was able to diminish the stature of his opponents, deflect attention from his own vices, and render disqualifying attributes as unremarkable. The effect of these demagogic innovations is the most extensive and troublesome degradation of presidential discourse in American history.<sup>79</sup>

In their recent book, *A Lot of People Are Saying*, political theorists Russell Muirhead and Nancy Rosenblum show how Trump and Trumpism have changed the way citizens think and talk, not just what policies they dispute.<sup>80</sup> Trump's use of the Orwellian techniques of repetition, proliferation, and projection enabled him to reconfigure basic terms of discourse and political argumentation. Deeper than ideological polarization, which is familiar to most students of American politics, is an epistemological polarization—a division between those who create and live in fictive realities and those who still value evidenced based claims to truth. The new divide and the new phenomenon of political fictions such as conspiracy theories completely made up, with no factual basis whatsoever, is the deepest and most disturbing legacy of Trump's brand of presidential leadership. Even when less than half the voting population register support for his presidency in polls, Trump has developed the skill to effectively silence or mute the majority of Americans who still value the fundamentals of the American constitutional order.

## Notes

1. Notable structural changes in the Constitution are the Twelfth, Seventeenth, Twentieth, and Twenty-second Amendments, which deal, respectively, with change in the Electoral College system, the election of senators, presidential succession, and presidential reeligibility. Although all are interesting, only the last seems manifestly inconsistent with the Founders' plan. For a defense of the relevance of the constitutional theory of the presidency to contemporary practice, see Joseph M. Bessette and Jeffrey Tulis, eds., *The Presidency in the Constitutional Order* (Baton Rouge: Louisiana State University Press, 1981); and Joseph M. Bessette and Jeffrey K. Tulis, *The Constitutional Presidency* (Baltimore, MD: Johns Hopkins University Press, 2009). See also David K. Nichols, *The Myth of the Modern Presidency* (University Park: Pennsylvania State University Press, 1994).
2. James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton, NJ: Princeton University Press, 1979); Nelson Polsby, *Consequences of Party*

*Reform* (New York, NY: Oxford University Press, 1983); Doris A. Graber, *Mass Media and American Politics*, 6th ed. (Washington, DC: CQ Press, 2001); David L. Paletz and Robert M. Entman, *Media, Power, Politics* (New York, NY: Free Press, 1981); and Harvey C. Mansfield Jr., *America's Constitutional Soul* (Baltimore, MD: Johns Hopkins University Press, 1991), chap. 12.

3. This essay does not reveal the Founders' personal and political motives except as they were self-consciously incorporated into the reasons offered for their Constitution. The Founders' views are treated on their own terms, as a constitutional theory; Hamilton's statement in the first number of *The Federalist* is taken seriously: "My motives must remain in the depository of my own breast. My arguments will be open to all and may be judged by all." James Madison, Alexander Hamilton, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter (New York, NY: New American Library, 1961), no. 1, 36. For a good discussion of the literature on the political motives of the founding fathers, see Erwin C. Hargrove and Michael Nelson, *Presidents, Politics, and Policy* (New York, NY: Knopf, 1984), chap. 2.
4. The most influential study of the presidency is by Richard Neustadt. See *Presidential Power: The Politics of Leadership from FDR to Carter* (New York, NY: Wiley, 1979), vi: "One must try to view the Presidency from over the President's shoulder, looking out and down with the perspective of his place."
5. Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago, IL: University of Chicago Press, 1981), 83n.
6. *The Federalist*, no. 70, 423.
7. In the first number, "Publius" warns "that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying obsequious court to the people, commencing demagogues and ending tyrants." And in the last essay, "These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from TIME and EXPERIENCE."
8. Ceaser, *Presidential Selection*, 12, 54–60, 166–167, 318–327. See also V. O. Key, *The Responsible Electorate* (New York, NY: Random House, 1966), chap. 2; Stanley Kelley Jr., *Political Campaigning: Problems in Creating an Informed Electorate* (Washington, DC: Brookings Institution Press, 1960), 93; Pendleton E. Herring, *Presidential Leadership* (New York, NY: Holt, Rinehart and Winston, 1940), 70; and *The Federalist*, no. 71, 432.
9. *The Federalist*, no. 10, 82; and Ceaser, *Presidential Selection*, 324.
10. Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton, NJ: Princeton University Press, 1948), chap. 3.

11. *The Federalist*, no. 85, 527.
12. Harvey Flaumenhaft, "Hamilton's Administrative Republic and the American Presidency," in *The Presidency in the Constitutional Order*, ed. Bessette and Tulis, 65–114. The Civil War and turn-of-the-century progressive politics show that Hamilton's "administrative republic" has been punctuated with the sorts of crises and politics Hamilton sought to avoid.
13. *The Federalist*, no. 10, 77; no. 43, 276; no. 51, 323–325; no. 63, 384; and no. 73, 443. Moreover, the factual quest to find a "majority" may be no less contestable than is dispute over the merits of proposals. Contemporary political scientists provide ample support for the latter worry when they suggest that it is often both theoretically and practically impossible to discover a majority will—that is, to count it up—owing to the manifold differences of intensity of preferences and the plethora of possible hierarchies of preferences. Kenneth Arrow, *Social Choice and Individual Values* (New York, NY: Wiley, 1963); and Benjamin I. Page, *Choices and Echoes in Presidential Elections* (Chicago, IL: University of Chicago Press, 1978), chap. 2.
14. *The Federalist*, no. 39, 241; see also Martin Diamond, "Democracy and the Federalist: A Reconsideration of the Framers' Intent," *American Political Science Review* 53 (March 1959): 52–68.
15. *The Federalist*, no. 39, 241; no. 68, 412–423. See also James Ceaser, "Presidential Selection," in *The Presidency in the Constitutional Order*, ed. Bessette and Tulis, 234–282. Ironically, the Founders were proudest of this institutional creation; the Electoral College was their most original contrivance. Moreover, it escaped the censure of, and even won a good deal of praise from, antifederal opponents of the Constitution. Because electors were chosen by state legislatures for the sole purpose of selecting a president, the process was thought more democratic than potential alternatives, such as selection by Congress. Compare Nichols, *Myth of the Modern Presidency*, 39–45.
16. *The Federalist*, no. 72, 435. The empirical judgment that four years would serve the purpose of insulating the president is not as important for this discussion as the principle reflected in that choice, a principle that has fueled recent calls for a six-year term.
17. *The Federalist*, nos. 9 and 10.
18. Gordon Wood, *The Creation of the American Republic: 1776–1787* (New York, NY: Norton, 1969); Michael Parenti, "The Constitution as an Elitist Document," in *How Democratic Is the Constitution?* ed. Robert Goldwin (Washington, DC: American Enterprise Institute, 1980), 39–58; and Charles Lindblom, *Politics and Markets* (New York, NY: Basic Books, 1979), conclusion.
19. *The Federalist*, no. 49, 313–317.

20. *Ibid.*, 317.
21. See *The Federalist*, no. 57; Joseph M. Bessette, "Deliberative Democracy," in *How Democratic Is the Constitution?* ed. Goldwin, 102–116; and Michael Malbin, "What Did the Founders Want Congress to Be—and Who Cares?" (paper presented at the annual meeting of the American Political Science Association, Denver, September 2, 1982). On the status of legislative deliberation today, see Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago, IL: University of Chicago Press, 1994); William Muir, *Legislature* (Chicago, IL: University of Chicago Press, 1982); and Arthur Maas, *Congress and the Common Good* (New York, NY: Basic Books, 1983).
22. Wood, *Creation of the American Republic*, chap. 5; and Ceaser, *Presidential Selection*, 48.
23. *The Federalist*, no. 62; no. 63, 376–390; and Storing, *What the Anti-Federalists Were For*, chap. 7.
24. *The Federalist*, no. 55, 342.
25. *The Federalist*, no. 71, 432; Madison expresses almost the identical position in no. 63, where he stated,
- As the cool and deliberate sense of the community, ought in all governments, and actually will in all free governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be most ready to lament and condemn. In these critical moments how salutary will be [a Senate].
26. John Marshall, *Life of George Washington*, quoted in Charles Thatch, *The Creation of the Presidency* (1923; reprint, Baltimore, MD: Johns Hopkins University Press, 1969), 51; and Max Farrand, ed., *The Records of the Federal Convention of 1787*, 4 vols. (New Haven, CT: Yale University Press, 1966), vol. 2, 35, 22, 32.
27. *The Federalist*, no. 68, 413; no. 71, 433; and no. 73, 442; see also Storing, "Introduction," in Thatch, *Creation of the Presidency*, vi–viii. Thomas Jefferson, "Inaugural Address," March 4, 1801, in *The Life and Writings of Thomas Jefferson*, ed. Adrienne Koch and William Peden (New York, NY: Modern Library, 1944), 325.
28. Neustadt, *Presidential Power*, 26, 28–30, 170, 176, 204. See also James Sterling Young, *The Washington Community* (New York, NY: Columbia University Press, 1964), 53. This insight has been the basis of numerous critiques of the American "pluralist" system, which, it is alleged, frustrates leadership as it forces politicians through a complicated political obstacle course. See also

Jeffrey K. Tulis, "The President in the Political System: In Neustadt's Shadow," in *Presidential Power: Forging the Presidency for the Twenty-First Century*, ed. Robert Y. Shapiro, Martha Joynt Kumar, and Lawrence R. Jacobs (New York, NY: Columbia University Press, 2000), 265–273.

29. Farrand, *Records*, vol. 1, 66–67; *The Federalist*, no. 47, 360–380; see also U.S. Congress, *Annals of Congress* (Washington, DC: Gales and Seaton, 1834), vol. 1, 384–412, 476–608. See generally Louis Fisher, *Constitutional Conflict between Congress and the President* (Princeton, NJ: Princeton University Press, 1985).
30. In many discussions of separation of powers today, the meaning of effectiveness is restricted to only one of these objectives—the implementation of policy that reflects popular will. See, for example, Donald Robinson, ed., *Reforming American Government* (Boulder, CO: Westview Press, 1985).
31. See, for example, Lloyd N. Cutler, "To Form a Government," *Foreign Affairs* 59 (Fall 1980): 126–143.
32. Gary J. Schmitt, "Executive Privilege: Presidential Power to Withhold Information from Congress," in *Presidency in the Constitutional Order*, ed. Bessette and Tulis, 154–194; and David Crockett, "Executive Privilege," in *The Constitutional Presidency*, ed. Bessette and Tulis, 203–228.
33. Richard Pious, *The American Presidency* (New York, NY: Basic Books, 1979), 372–415; Gary J. Schmitt, "Separation of Powers: Introduction to the Study of Executive Agreements," *American Journal of Jurisprudence* 27 (1982): 114–138; and Louis Fisher, *Presidential Spending Power* (Princeton, NJ: Princeton University Press, 1975), 147–201.
34. Woodrow Wilson, *Congressional Government: A Study in American Politics* (1884; reprint, Gloucester, MA: Peter Smith, 1973), preface to 15th printing, introduction; Wilson, *Constitutional Government in the United States* (New York, NY: Columbia University Press, 1908); and Christopher Wolfe, "Woodrow Wilson: Interpreting the Constitution," *Review of Politics* 41 (January 1979): 131. See also Woodrow Wilson, "Cabinet Government in the United States," in *College and State*, ed. Ray Stannard Baker and William E. Dodd, 2 vols. (New York, NY: Harper and Brothers, 1925), vol. 1, 19–42; Paul Eidelberg, *A Discourse on Statesmanship* (Urbana: University of Illinois Press, 1974), chaps. 8 and 9; Harry Clor, "Woodrow Wilson," in *American Political Thought*, ed. Morton J. Frisch and Richard G. Stevens (New York, NY: Scribner, 1971); and Robert Eden, *Political Leadership and Nihilism* (Gainesville: University of Florida Press, 1984), chap. 1.
35. Wilson, *Constitutional Government*, 22, 56; and Wilson, "Leaderless Government," in *College and State*, ed. Baker and Dodd, 337.
36. Wilson, *Congressional Government*, 141, 149, 164, 195.
37. Wilson, *Constitutional Government*, 56.

38. *Ibid.*, 60; see also Wilson, *Congressional Government*, 28, 30, 31, 187.
39. *The Federalist*, nos. 47 and 48, 300–313. Consider Madison’s statement in *Federalist* no. 48, 308–309:
- Will it be sufficient to mark with precision, the boundaries of these departments in the Constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied upon by the compilers of most of the American Constitutions. But experience assures us that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble against the more powerful members of the government. The legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex.
40. Schmitt, “Executive Privilege.”
41. Wilson, “Leaderless Government,” 340, 357; Wilson, *Congressional Government*, 158, 201; and Wilson, “Cabinet Government,” 24–25.
42. Wilson, “Leaderless Government,” 346; at the time he wrote this, Wilson was thinking of leadership internal to the House, but he later came to see the president performing this same role. Wilson, *Constitutional Government*, 69–77; see also Wilson, *Congressional Government*, 76, 97–98.
43. Eidelberg, *Discourse on Statesmanship*, chaps. 8 and 9; and Ceaser, *Presidential Selection*, chap. 4, conclusion.
44. Woodrow Wilson, *Leaders of Men*, ed. T. H. Vail Motter (Princeton, NJ: Princeton University Press, 1952), 39. This is the manuscript of an oft-repeated lecture that Wilson delivered in the 1890s. See also Wilson, *Congressional Government*, 195, 214.
45. Wilson, *Leaders of Men*, 39; and Wilson, *Constitutional Government*, 49. See also Wilson, *Congressional Government*, 78, 136–137.
46. Wilson, “Cabinet Government,” 34–35. See also Wilson, “Leaderless Government,” 354; and Wilson, *Congressional Government*, 72, 136–137.
47. Wilson, *Congressional Government*, 69, 72.
48. *Ibid.*, 72, 82, 197–198; Wilson, “Cabinet Government,” 20, 28–32; and Wilson, *Leaders of Men*, 46.
49. Wilson, *Congressional Government*, 76, and preface to 15th printing, 22–23.
50. *Ibid.*, 187.
51. Wilson, *Constitutional Government*, 49. Today, the idea of a mandate as objective assessment of the will of the people has been fused with the idea of leader

as interpreter. Presidents regularly appeal to the results of elections as legitimizing the policies they believe ought to reflect majority opinion. On the “false” claims to represent popular will, see Stanley Kelley Jr., *Interpreting Elections* (Princeton, NJ: Princeton University Press, 1984).

52. Wilson, *Leaders of Men*, 20, 26.
53. *Ibid.*, 29.
54. I am indebted to Robert Eden for the point about *The Federalist*. See also Ceaser, *Presidential Selection*, 192–197.
55. Wilson, “Cabinet Government,” 37; and Wilson, *Leaders of Men*, 45–46.
56. See, for example, Wilson, *Congressional Government*, 143–147.
57. *Ibid.*, 144.
58. Wilson, *Leaders of Men*, 45.
59. Wilson, *Congressional Government*, 144.
60. I discuss this and other dilemmas more fully in *The Rhetorical Presidency* (Princeton, NJ: Princeton University Press, 1987; new ed., 2017). See also Jeffrey K. Tulis, “Revising the Rhetorical Presidency,” in *Beyond the Rhetorical Presidency*, ed. Martin Medhurst (College Station: Texas A&M Press, 1996); and Jeffrey K. Tulis, “The Constitutional Presidency in American Political Development,” in *The Constitution and the American Presidency*, ed. Martin Fausold and Alan Shank (Albany: State University of New York Press, 1991). For criticisms of these ideas along with my rejoinders, see Richard Ellis, ed., *Speaking to the People: The Rhetorical Presidency in Historical Perspective* (Amherst: University of Massachusetts Press, 1998); and Jeffrey Friedman and Shterna Friedman, eds., *Rethinking the Rhetorical Presidency* (London, UK: Routledge, 2012).
61. Steven E. Miller and Stephen Van Evera, eds., *The Star Wars Controversy* (Princeton, NJ: Princeton University Press, 1986), preface.
62. Sanford Weiner and Aaron Wildavsky, “The Prophylactic Presidency,” *Public Interest* 52 (Summer 1978): 1–18.
63. Garry Wills, “The Kennedy Imprisonment: The Prisoner of Charisma,” *Atlantic Monthly*, January 1982, 34; and H. H. Gerth and C. Wright Mills, eds., *From Max Weber* (New York, NY: Oxford University Press, 1958), 247–248.
64. George C. Edwards, “Campaigning Is Not Governing: Bill Clinton’s Rhetorical Presidency,” in *The Clinton Legacy*, ed. Colin Campbell and Bert A. Rockman (New York, NY: Chatham House, 1999), 37. Clinton quoted in Elizabeth Drew, *Showdown: The Struggle between the Gingrich Congress and the Clinton White House* (New York, NY: Simon and Schuster, 1996), 19.

65. Tulis, *Rhetorical Presidency*, 174–175.
66. For a firsthand account of the demands of rhetoric in the George W. Bush presidency, see John J. Dilulio, “The Hyper-Rhetorical Presidency,” in Friedman and Friedman, eds., *Rethinking*, 106–115.
67. Deputy Secretary of Defense Paul Wolfowitz interview with Sam Tannenhaus, May 9, 2003, <http://www.defenselink.mil/transcripts/2003/may2003.html>.
68. See Nicole Mellow, “The Rhetorical Presidency and the Partisan Echo Chamber” in Friedman and Friedman eds., *Rethinking*, 158–162.
69. Jeffrey K. Tulis, “Plausible Futures,” in *The Presidency in the Twenty-First Century*, ed. Charles W. Dunn (Lexington: University Press of Kentucky, 2011). See also Rogers M. Smith, “The Constitutional Philosophy of Barack Obama: Democratic Pragmatism and Religious Commitment,” *Social Science Quarterly* (December 2012) 93: 1251–71.
70. Transcript, Obama’s New Year’s Eve Remarks on the Fiscal Cliff. *Washington Post*, December 31, 2013, [http://articles.washingtonpost.com/2012-12-31/politics/36104248\\_1\\_tax-hike-tax-credits-fiscal-cliff](http://articles.washingtonpost.com/2012-12-31/politics/36104248_1_tax-hike-tax-credits-fiscal-cliff) (accessed January 2, 2012); see also James Ceaser, “The Changing Face of Barack Obama’s Leadership,” in Carol MacNamara and Melanie M. Marlowe, eds., *The Obama Presidency in the Constitutional Order* (Lanham, MD: Rowman and Littlefield, 2011). I respond to Ceaser in “*The Rhetorical Presidency in Retrospect*,” in Friedman and Friedman eds., *Rethinking*, 272–277.
71. David Brooks, “In Search of Dignity,” *New York Times*, July 7, 2009, A23.
72. Ibid.
73. Forrest McDonald, “Today’s Indispensable Man,” in *Patriot Sage: George Washington and the American Political Tradition*, ed. Gary L. Gregg II and Matthew Spalding (Wilmington, DE: ISI Books, 1999), 37.
74. Jeffrey K. Tulis and Nicole Mellow, *Legacies of Losing in American Politics* (Chicago, IL: University of Chicago Press, 2018), chap. 3.
75. Lindsey Bever, “‘Demonic Activity Was Palpable’ at Trump’s Rally, Pastor Says,” *Washington Post*, February 22, 2017, [https://www.washingtonpost.com/news/acts-of-faith/wp/2017/02/22/demonic-activity-palpable-at-president-trumps-rally-pastor-says/?tid=sm\\_fb&utm\\_term=.e09de89c9308](https://www.washingtonpost.com/news/acts-of-faith/wp/2017/02/22/demonic-activity-palpable-at-president-trumps-rally-pastor-says/?tid=sm_fb&utm_term=.e09de89c9308) (accessed February 25, 2017). “One advisor calls political rallies the president’s ‘oxygen.’”
76. Jeffrey Tulis, “The Rhetorical Presidency on Steroids,” *Lawfare*. Podcast audio. January 26, 2019. <https://www.lawfareblog.com/jeffrey-tulis-rhetorical-presidency-steroids>.

77. Michael Signer, *Demagogue: The Fight to Save Democracy from Its Worst Enemies* (New York, NY: St. Martin's, 2009) p. 35, citing James Fenimore Cooper, *The American Democrat* (Indianapolis, IN: Liberty Classics, 1931 reprint; orig. publ. 1838).
78. Jan-Werner Muller, *What Is Populism?* (Philadelphia: University of Pennsylvania Press, 2016).
79. See William E. Connolly, *Aspirational Fascism: The Struggle for Multifaceted Democracy under Trumpism* (Minneapolis: University of Minnesota Press, 2017).
80. Russell Muirhead and Nancy L. Rosenblum, *A Lot of People Are Saying: The New Conspiracism and the Assault on Democracy* (Princeton, NJ: Princeton University Press, 2019); See also, Russell Muirhead, Nancy Rosenblum, Matthew Landauer, Stephen Macedo, Jeffrey K. Tulis and Nadia Urbanati, "Conspiracism and Deligitimation," *Contemporary Political Theory* 19, no. 1 (March 2020,): 142–174.

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