KEY DEBATE NOTES

HOW DID WE GET ARTICLE II AND THE U.S. PRESIDENCY AS ENSHRINED IN THE CONSTITUTION?

The framers as a whole had a range of opinions when it came to the new executive. On one end of the spectrum, Alexander Hamilton and John Dickinson voiced admiration for the limited monarchy of Britain. On the other end of the spectrum, Roger Sherman suggested that no constitutional provision need be made for the executive because it was "nothing more than an institution for carrying the will of the Legislature into effect"—so, a weak president and a strong Congress. In the end, Pennsylvania's James Wilson would be the driving force behind the presidency at the Convention.

The debate over the presidency was a long and winding road. In many ways, it often felt like the more that the framers discussed the executive, the more puzzled they became. Furthermore, unlike the debates over Congress, the framers' positions often didn't match the perceived interests of their states. Over time, they wrestled with five big issues:

- Structure of the presidency
- Selection of the president
- Length of president's term and reelection
- The president's role in the legislative process
- Removal from office

The delegates repeatedly learned that a decision made on one of these issues changed their views about one (or more) of the others. Under these conditions, no single delegate or faction could control the course of the debate—although, James Wilson can most persuasively lay claim to being called the "Father of the American Presidency."

That's a bit of the backstory, but how did Article II evolve through the course of the Convention?

Let's begin with the Virginia Plan—the proposal introduced at the beginning of the Convention by Edmund Randolph and driven by James Madison—that helped frame so many of the Convention's debates.

The Virginia Plan contained a thorough theory of the legislative branch of government, but little on the executive. Basically, it proposed two big things—that (1) there should be an executive, chosen by Congress, to serve a single term; and (2) that the executive should have a joint veto power (with the judiciary) over acts of the national legislature, subject to a supermajority legislative override.

It's also worth noting what the Virginia Plan didn't say. It didn't specify the length of the president's term, state whether the president would play any role in matters of war and diplomacy, or grant the president any powers of appointment. So, everything else was left to further debate.

FIRST DEBATE: STRUCTURE OF THE PRESIDENCY

First, the delegates had a heated debate over whether to have a single president or whether to divide the executive power between multiple people.

It's easy to take the American presidency—with a single president—for granted today, but the decision to go with a single president was a big deal. Various states had more than one executive or limited the executive's power through some sort of council. At first, even Madison himself supported an arrangement like this. (This may have been in deference to fellow Virginian, Edmund Randolph, and his fear of a unitary executive.) James Wilson—initially standing alone—argued vigorously "that the Executive consist of a single person." Two key delegates then attacked Wilson.

- Connecticut's Roger Sherman suggested leaving the entire subject—and the structure of the presidency itself—to Congress.

- Virginia's Edmund Randolph—sponsor of the Virginia Plan—described "unity in the Executive magistracy" (so, a single president) as "the foetus of monarchy." In short, he criticized Wilson for taking the British Constitution (and its king) "as our prototype."

- Wilson countered that a single president—if structured properly—would balance the advantages of a powerful king (namely, "energy" and "dispatch") with "responsibility" (in other words, checks by Congress and the American people).

On June 4, Wilson eventually convinced his colleagues (including Madison) of the viability of an energetic, single president. Wilson saw before others that in a republic where even executive power rested directly or indirectly on the people, we had less to fear in a strong executive than under an unaccountable monarchy. Wilson (who was America's prophet of popular sovereignty) argued that the more the president was held responsible to the American people, the more power he could safely be given. (Wilson also supported a national popular vote for the president.) So, Madison—and the delegates—eventually went along with Wilson's plan for a single executive.

SECOND DEBATE: SELECTION OF THE PRESIDENT

The delegates debated how to elect a president.

Today, many democratic nations elect their executives by direct popular vote. But we don't. Instead, we use a system known as the "Electoral College." How does it work?

- Today, the Electoral College is made up of 538 electors drawn from the states and the District of Columbia. Under Article II of the Constitution, the states are given a number of electors equal to their congressional delegation. (So, if your state has two members in the U.S. House and two U.S. senators, you get four electoral votes in the Electoral College.)

- Today, the American people vote for president and vice president on Election Day in November. But, technically speaking, these votes don't directly determine the outcome of the election. Technically, these popular votes determine which electors will be appointed to the Electoral College from each state. The electors eventually meet in December to cast their votes for president and vice president. If a candidate receives a majority of these votes in the Electoral College, she wins—even if she lost the popular vote. If no candidate secures a majority in the Electoral College, then the election is sent to Congress (as happened in the Election of 1824).

    - The U.S. House of Representatives—voting as states, not individuals—selects the president and the Senate selects the vice president.

At the Constitutional Convention, the delegates staked out a range of positions on how to elect a president, including by a popular vote (Wilson's preference), by an Electoral College (Wilson's compromise), by members of Congress selected by lot (Wilson's ridiculous suggestion), by state governors (Elbridge Gerry's idea), or by Congress (a popular view held by many of the delegates). For much of the Convention, the election of the president seemed like an unsolvable problem. Each idea had its own strengths and weaknesses.

- Election by the legislature had the advantage of placing the decision in the hands of the nation's most knowledgeable leaders. However, the concern was, as Gouverneur Morris warned, that the result would eventually be the "work of intrigue, of cabal, and of faction," producing a pliable president who would become the willing tool of his supporters in Congress.

- Election by popular vote had the advantage of rooting the presidency in popular sovereignty. Many delegates were concerned that the size of the country would make it difficult for the average voters to know anything about an out-of-stater's record.

- The third—and final—idea on the table was the Electoral College. The key advantage of this proposal was that it would keep the president independent of the legislature. He would have his own independent base of support that would dissolve after the election. Key disadvantages were the logistics of getting the electors to meet and the related

> expenses. The framers also feared whether the electors would "be men of the 1st or even the 2d grade in the States."

Late in the Convention, the delegates settled on the Electoral College as a compromise between those who supported congressional election of the president and those who supported a role for the American people in selecting a president. Over time, the Electoral College has remained in place, but within this system (and beginning in our nation's earliest years), the American people have played a key role in presidential elections.

THIRD DEBATE: LENGTH OF PRESIDENT'S TERM AND REELECTION

The delegates debated the length of the president's time and whether to impose term limits on the president.

The Constitution sets the president's term at four years and allows the president to run for reelection, but the delegates debated other options. For instance, in July, the delegates agreed to a president who would serve for a single term of six years.

- So, that's a longer term than today but with term limits attached. This was consistent with the Virginia Plan. Remember, the longest term for a state governor at the time was *three* years—with most state executives serving for a term of only *one* year. The delegates were open to a relatively longer term because they wanted a president powerful enough to compete with Congress and also one with enough experience to do the job well.

The delegates forcefully debated whether or not to impose term limits on the president.

- On one side was George Mason, strongly in support of term limits. He argued that it was "the very palladium of Civil liberty, that the general officers of State, and particularly the executive, should at fixed periods return to that mass from which they were first taken, in order that they may feel & respect those rights & interests, which are again to be personally valuable to them." This was hardly a surprise. He had already written this principle into the influential Virginia Declaration of Rights in 1776. On the other side were delegates—like Roger Sherman and Rufus King—who saw eligibility for reelection as valuable. They argued, "He who has proved himself to be most fit for Office, ought not to be excluded by the constitution from holding it."

The delegates settled on a four-year term, with the president able to run for reelection.

FOURTH DEBATE: THE PRESIDENT'S ROLE IN THE LEGISLATIVE PROCESS

The delegates debated whether to grant the president a role in the legislative process as a check on Congress.

James Madison proposed a "Council of Revision"—with the president sitting with members of the federal judiciary to review law passed by Congress and veto any bad ones. When Madison's proposal came up for debate in early June, Elbridge Gerry immediately pushed to give the president a limited veto over laws passed by Congress. This would allow the president to veto congressional law, but also give Congress the right to override the president's veto.

For Gerry and his Massachusetts colleague Rufus King, Madison's proposed Council of Revision was flawed because it would give judges an improper role in legislating, while making it difficult for them to "expound the law as it should come before them, free from the bias of having participated in its formation."

Wilson and Hamilton then pushed for an absolute veto for the president—one that couldn't be overridden by a vote in Congress. But this was too much for the delegates to accept and drew the support of only Wilson, Hamilton, and Rufus King.

Gerry's proposal for a limited veto passed decisively, 8–2. So, rather than having the president serve as part of Madison's Council of Revision, the delegates gave the president his own veto power—with Congress given the authority to override it with a two-thirds vote in both houses of Congress.

FIFTH DEBATE: REMOVAL FROM OFFICE

Finally, the delegates debated the process for removing a president from office before the end of his term—in other words, the process of impeachment and removal.

In July, the delegates agreed to a version of the impeachment and removal power that was broader than the one in the final draft—with removal allowed for "mal Practice or Neglect of Duty." This broad language could have even included allegations of general incompetence—not simply abuses of power.

The Committee of Detail—tasked with taking the Resolutions passed during the first phase of the Convention and creating the first full draft of the Constitution—then narrowed the impeachment and removal power, limiting it to "Treason or Bribery or Corruption."

The final text settled on "Treason, Bribery, or other High Crimes and Misdemeanors."