

# CONSOURCE



*The Constitutional Sources Project*

## CONSTITUTIONAL CONVENTION SIMULATION

### Creating an Executive Branch

#### TIME AND GRADE LEVEL

**TWO** 45 or 50 minute class periods in a **Grade 9-12** US history, civics, or government course.

#### PURPOSE AND CRITICAL ENGAGEMENT QUESTIONS

History is the chronicle of choices made by actors/agents/protagonists in specific contexts. This simulation places students at the Constitutional Convention and asks them to explore one of the fundamental quandaries faced by the framers: how to create an executive branch that lacked monarchical prerogatives yet could make the government function more efficiently. Students will discuss various options: Should there be a single chief executive or should authority be shared? How should the chief executive(s) be chosen? How long should he/they serve, and should he/they be eligible for re-election?

Students will enter the historical moment and engage with these issues. By discussing and debating the various options, they will gain a deeper understanding of the choices the framers faced and why they opted for particular structures, ones we live with today. Further, by discussing these alternatives, they will be exploring a critical dimension of republican government: how, exactly, can the people, for whom government is intended, delegate authority?

#### LESSON OBJECTIVES

\*Students will be able to elucidate the difficult challenge the framers faced in fashioning an executive branch: it needed to foster the functioning of government without resembling a monarchy.

\* Students will be able to outline the arguments for a single versus a plural chief executive(s).

\*Students will be able to list the pros and cons of the two main alternatives for choosing the chief executive: popular elections and selection by Congress.

\*Students will be able to explain why a complex elector system was devised as a compromise.

\*Students will be able to explain the workings of the elector system as it appeared in the 1787 Constitution.

## **OVERVIEW OF THE LESSON**

### **Prefatory homework for day one:**

Handout A, *“Executive Branch: Historical Precedents”*

### **In class, day one:**

1. Homework review: Challenges of creating a chief executive — 10-15 minutes
2. Presentation: Single or plural executive? — 10 minutes
3. Student deliberations: Single or plural executive? — 10-15 minutes
4. Presentation and discussion of the historical outcome: 10 minutes

### **Prefatory homework for day two:**

How to choose the executive? Assign page 3 of Handout B, **“Executive Branch: Options.”**

### **In class, day two:**

1. Homework review: two methods of choosing the president — 5 minutes
2. Student deliberations: How to choose the executive? — 10 minutes
3. Further student decisions on the executive — 5-10 minutes
4. State delegations cast their votes — 5 minutes
5. Presentation and class discussion of the historical conventions decisions as of August 31, 1787: 10 minutes
6. Presentation and class discussion of the historical convention’s final decisions: 10 minutes

Summary homework / Extended activities

## **MATERIALS**

*Background Handouts*

A. Executive Branch: Historical Precedents

*Classroom Handouts*

B. Executive Branch: Options

C. Executive Branch: Class Decisions

D. Decisions of the Historical Convention as of August 31, 1787

E. Final Decision of the Convention, September 17, 1787

F. Vocabulary List

*Teacher Resources*

T-A. Homework Answers

T-B. Infrastructure for the Constitutional Convention Simulation

T-C. Timeline for the Federal Convention of 1787

*Links:*

\*Madison's *Notes of Debates* for [May 29](#), [June 1](#), [June 2](#), [June 4](#), [June 9](#), [June 13](#), [June 15](#), [July 17](#), [July 19](#), [July 20](#), [July 21](#), [July 23](#), [July 24](#), [July 25](#), [July 26](#), [August 6](#), [August 7](#), [August 22](#), [August 24](#), [August 31](#), [September 4](#), [September 5](#), [September 6](#), [September 7](#), [September 17](#)

## **PREFATORY HOMEWORK FOR DAY ONE**

Students read and answer questions on Handout A: “**Executive Branch: Historical Precedents.**”

### **CLASS ACTIVITIES FOR DAY ONE: 45-50 MINUTES**

#### **1. HOMEWORK REVIEW: 10-15 minutes**

Guided question possibilities:

*What are the “executive” functions of government?*

Response: to carry out or “execute” laws, or more simply, to make sure things happen.

*What words or terms did you circle in the Declaration of Independence?*

Response: See “Executive Branch: Homework Answers.”

*What powers did the President of Congress have under the Articles of Confederation?*

Response: “to preside,” that was all. Note that the word “president” comes from the word “preside.” Presiding over a deliberative body meant calling on people to speak and keeping order. Following the custom of the many conventions and congresses during the Revolutionary era, the president was to initiate no program, favor no position, and indeed, not even speak his mind. When debates heated up, he was to mediate between

rival factions. Also according to custom, he was expected to sign official resolutions and conduct correspondences in Congress's name.

*So when Congress decided that the Continental Army needed more tents, who actually purchased those tents and made sure they got in the hands of the army?*

Response: Congress did, through committees. All executive functions were carried out by committees. There were no executive officers until 1781, when Congress appointed three "civil executive departments," headed by a Superintendent Finance, Secretary of War, and Secretary of Marine. Under the Articles of Confederation, there never was a *chief* executive, one person who had the final say.

*In what ways did the early state constitutions limit executive powers?*

Response: Short terms, councils to advise the governor, no power to dissolve legislatures, no veto power.

Now ask one or two students to respond to James Madison's letter. Responses should reveal the quandary (dilemma) faced by the framers: they wanted a stronger government, which would require a stronger executive—but people were still wary of anything that resembled kingly powers. They had to toe a narrow line.

**Conclude:** This was the central question that delegates kept in mind as they created the executive branch.

## **2. PRESENTATION: SINGLE OR PLURAL EXECUTIVE? 10 MINUTES**

Distribute: Handout B: "**Executive Branch: Options.**"

Instruct class: Look first at the **7<sup>th</sup> resolution in the Virginia Plan**, which offered a broad outline of what an executive branch could look like. We will spend the rest of the day on the creation of the executive branch, starting with this resolution.

As soon as the delegates opened discussion on the 7<sup>th</sup> resolution, **James Wilson offered this motion: "That the Executive consist of a single person."** Note that the Virginia Plan did not say that the national executive would be headed by a single person, but James Wilson thought there should be one person ultimately responsible for executive actions. This triggered a debate among the delegates. Extracts of this debate appear on the page 2 of "Executive Branch: Options." Students read this selection from Madison's *Notes of Debates* silently.

Guided question possibilities:

***Did any of these delegates favor giving the executive or executives "the power of war and peace"?***

Response: no.

***What do you think Edmund Randolph meant here — “The Executive ought to be independent. It ought therefore in order to support its independence to consist of more than one.”***

Possible response: One man might be easily swayed, or influenced, by someone else or by a particular interest group. It would be harder to influence three than one, so they would be more “independent.”

Notice that both sides mentioned the British Monarchy. At issue here: would the “fixed genius of the people of America” (what we might call public opinion) permit a single executive, or would that appear too much like the British Monarchy?

### **3. STUDENT DELIBERATIONS: SINGLE OR PLURAL EXECUTIVE? 10-15 minutes**

Instruction to students: Break into your D & D groups to discuss Wilson’s motion for a single chief executive.

If you think a plural executive might be better, how would that work? How many should there be? Would they all address the same issues, or would they be in charge of separate departments, as they were in 1781? How would the *biggest* issues be handled, like what to do if the nation were suddenly invaded?

If a single head, should there also be an executive council (“council of advice”)? How, specifically, might you check the power of the chief executive to alleviate people’s fear of monarchy? On the other hand, if you limit the office too much, will the government become inefficient, as it was under the Articles of Confederation?

At the close of the discussion, have students enter their personal decisions on page 2 of their “**Executive Branch: Options**” sheet:

Single or plural?

If single, with or without an executive council?

If plural, how many? Would they head separate departments or function as a group?

### **4. PRESENTATION AND DISCUSSION OF THE HISTORICAL OUTCOME: 10 minutes**

To students: As we all know, the single executive option prevailed. For a moment, though, imagine that it hadn’t. How might that have worked? What if our political world was not so linked to the personality of one individual? Has our nation become *culturally* monarchical? The idea here to foster a free-form discussion about the intersection of personality and politics. Ideas generated in this discussion can be pursued in great depth during extended activities.

## PREFATORY HOMEWORK FOR DAY TWO

Students read page 3 of Handout B, “**Executive Branch: Options.**” Assignment: What do you think is the strongest argument popular election of the executive? What do you think is the strongest argument for election by Congress?

### CLASS ACTIVITY FOR DAY TWO: 45-50 MINUTES

#### 1. HOMEWORK REVIEW: 5 minutes

Go over the arguments for and against the two methods of selecting the president: by the people or by Congress.

Prepare students for their deliberations:

*As you discuss this in your D & D groups, consider:*

*\*If chosen by Congress, will the executive be the “creature” of Congress?*

*\*If he cannot stand for reelection, would that reduce his dependence on Congress?*

*\*If chosen by popular election, might the people be easily swayed by “a few active & designing men”?*

#### 2. STUDENT DELIBERATIONS: HOW TO CHOOSE THE EXECUTIVE? 10 minutes

Allow about five minutes to discuss Morris’s motion to substitute “citizens of the U. S.” for “National Legislature.” Then have students cast their individual votes on page 3 of their “**Executive Branch: Options**” sheet.

#### 3. FURTHER STUDENT DECISIONS ON THE EXECUTIVE: 5-10 minutes

Instructions to students: Now move on to page 4 of “**Executive Branch: Options.**” You will have five [or ten] minutes to discuss these issues.

Note that the issues are interrelated. If you vote for a shorter term, you might prefer eligibility for re-election, whereas with a longer term, you might think one is enough. Note, too, that you want to strike a balance: the term(s) should be long enough for the executive(s) to garner experience and build on that experience, yet short enough to keep the executive(s) responsive to the electorate. If you opt for eligibility for re-election, should there be term limits?

Have students cast their individual votes on page 4 of their “**Executive Branch: Options**” sheet.

#### 4. STATE DELEGATIONS CAST THEIR VOTES: 5 minutes

Students meet briefly with their state delegations to determine the state’s votes on all the matters discussed.

Distribute Handout C: “**Executive Branch: Class Decisions.**” In class, the vote is taken on each issue. Be clear that each state delegation gets only one vote. After each vote, students record it on the “**Executive Branch: Class Decisions**” sheet.

### **5. PRESENTATION AND EXPLANATION OF THE HISTORICAL CONVENTION’S DECISIONS AS OF AUGUST 31: 10 minutes**

Distribute Handout D, “**Decisions of the Historical Convention as of August 31, 1787.**” Options for presentation: (a) Teacher can read in advance and relay the information orally, or (b) students can read and then discuss. Discussion should reveal the interconnectedness of the issues, as stated in the concluding paragraph.

Ask the class: *So is that the way it works today, a president serving a single 7-year term?*

### **6. PRESENTATION AND EXPLANATION OF THE HISTORICAL CONVENTION’S FINAL DECISION: 10 minutes**

Distribute Handout E, “**Final Decision of the Convention, September 17, 1787.**” Again, teacher can read in advance and relay the information orally, or students can read and then discuss. This will serve as the basis for the activities listed below.

## **SUMMARY HOMEWORK / EXTENDED ACTIVITIES**

Research and essays:

1. Electors were supposed to be wise and disinterested people who would exercise their discretion. Is that how it works today? Are electors free to decide?
2. The elector system broke down during the first contested election (1796), and in the second (1800), it was so broken the presidency wasn’t determined until the 35<sup>th</sup> ballot in the House. As political parties formed around the two leading contenders, each party put up its own slate of electors, pledged to its candidate. [For a narrative of how this happened, see Ray Raphael, *Mr. President: How and Why the Founders Created a Chief Executive*, 199-229. See also the ConSource Lesson Plan: “Breakdown of the Elector System.”] Ironically, although the presidency was made independent of the legislative branch in large measure to bypass partisan politics, the selection of the president has fostered partisan politics. Students can investigate this further and then explore: *Why* did the elector system break down? Will people always separate into parties? They might also explore the four elections in which the candidate receiving the most votes from the people failed to win the presidency. Through researching and writing on this topic, students will see that although the Constitution has not always worked as intended, customs have evolved that enable our government to function within the letter of the Constitution, if not always in its spirit.

3. In a parliamentary system of government, the legislature chooses the chief executive, commonly called the “Prime Minister.” When the Prime Minister no longer has majority support within the legislature, new elections are held for members of the parliament and the new parliament then chooses a Prime Minister. This avoids a split or broken government, but is it preferable to our presidential system, in which the chief executive is responsible directly to the people and has to stand for re-election after four years? Is it better to hold elections at regular intervals, as in our system, or when the government loses the confidence of the people? Although a parliamentary system is more immediately responsive to popular discontent, might it increase the possibility of turmoil or complete breakdown? And if so, is it worth the risk? (This question also appears in the ConSource lesson “Balance of Powers.”)

## Executive Handout A: Historical Precedents

A. Highlight or circle words or terms in this passage from the [Declaration of Independence](#) that reveal how Americans in 1776 felt about the British Monarch:

“The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.... [The long list of complaints is omitted.] In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.”

B. [The Articles of Confederation](#) were composed of 3,442 words. Here is the only mention of a “president.” Highlight or circle the word or words that define the president’s authority.

“The United States in Congress assembled shall have authority ... to appoint one of their members to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years.”

QUESTION: What was Congress’s president empowered to do?

C. During the Revolutionary War, state constitution-makers used various mechanisms to curtail executive power. Massachusetts, the first to cast off British rule and therefore the first to need a new governmental arrangement, eliminated the governorship entirely. In 1775, in the immediate aftermath of Lexington and Concord, it decided to resume its old charter in all respects — minus a separate and distinct executive. All functions that were formerly performed by the royal governor were assumed by a council elected by members of the assembly.

New Hampshire, likewise, abolished the office of governor in the provisional new government it created early in 1776. Although it established a council with an elected president, it defined that body only as a “separate branch of the legislature” and assigned it no specific executive duties.

South Carolina’s provisional new government did provide for a chief executive, but it did not call him a “governor,” one who governs or rules. Instead, like New Hampshire, South Carolina called its most prominent leader a “president,” one who presides, a lesser term carried over from their Provincial Congress. Two other states, Pennsylvania and Delaware, also adopted the title “president” over “governor.”

The states devised various mechanisms for holding executive officers closely accountable. Six of the ten states that formed new Constitutions within a year of independence elected their governors or presidents annually. Two states had biennial

elections [every two years], the remaining two triennial [every three years]. Five of the annual-election states permitted no more than three successive years in office, and only three states failed to require rotation in office, as they said at the time, or term limits, as we call it today. “A long continuance in the first executive departments of power or trust is dangerous to liberty,” the Maryland Constitution of 1776 declared. “A rotation, therefore, in those departments is one of the best securities of permanent freedom.”<sup>1</sup>

All Revolutionary Era Americans could recall, or had heard about, the many times royal governors had seized power from the people by preventing elected representatives from gathering, and they wanted none of this in their new governments. The new state constitutions did not grant executive officers the power to “prorogue, adjourn, or dissolve” the legislatures. (In some states this prohibition was made specific, in others the power was simply absent.) One state, New York, did allow its governor to prorogue [suspend] the legislature for no more than sixty days within the period of a year, but the governor still could not adjourn or dissolve it.

Eight of the ten states established executive or privy councils to diffuse the authority of their chief executives. Although colonists had suffered much grief at the hands of His Majesty’s Privy Council, these junior versions would help spread the concentration of authority within the new state governments. No single executive should be empowered to act solely on his own will, they believed. An elected council, not personally beholden to a chief executive officer, would keep him from using patronage for political or economic gain.<sup>2</sup>

Finally, and most definitively, all but two of the new constitutions denied their governors or presidents the power of the veto. Recalling how royal governors once ran roughshod over colonial assemblies, most Americans opposed giving executive officers any influence in legislative matters. The two exceptions, New York and Massachusetts, had extenuating circumstances. Governors in these states, unlike in the others, were popularly elected, so their veto was viewed as the people’s check on the legislature. And the veto was not absolute, as in colonial times. In both states, the legislature could override a gubernatorial veto with a two-thirds vote.<sup>3</sup> (From Ray Raphael, *Mr. President: How and Why the Founders Created a Chief Executive*, 39-40)

#### QUESTIONS:

1. List three ways in which state constitutions placed limitations of the power of governors or presidents.
2. Why do you think Revolutionary Era Americans were so hesitant to grant powers to state governors or presidents?

**D.** On April 16, 1787, shortly before the opening of the Constitutional Convention, James Madison wrote to George Washington about the need for a national government with broad authorities, including “a negative [veto] *in all cases whatsoever* on the legislative acts of the States.” But “a Government composed of such extensive powers should be well organized and balanced,” he wrote. To this end, Madison offered specific ideas for a

bicameral national legislature and a national judiciary, but here is all he had to say about the executive branch: “A national Executive must also be provided. I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be cloathed.”

QUESTION: Why do you think Madison was at a loss for words about the executive?

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<sup>1</sup> The various state constitutions can be viewed online at [ConSource here](#).

<sup>2</sup> The only new constitutions without an executive council were those of New Hampshire, which had no executive branch at all but did have a legislative council to temper the authority of its president, and New York, which transferred some appointive powers to a Chancellor and others to a special committee that included himself and four members of the Senate.

<sup>3</sup> South Carolina’s provisional constitution, drafted before independence, granted its president an absolute veto power, but after independence, an amended constitution eliminated the executive veto.

## Executive Handout B: Options

**Seventh resolution of the Virginia Plan:** *Resolved*, That a national executive be instituted, to be **chosen by the national legislature for the term of \_\_\_\_\_ years**, to receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made, so as to affect the magistracy existing at the time of the increase or diminution; to be **ineligible a second time**; and that, **besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in congress by the confederation.**

**Madison's Notes of Debates on James Wilson's motion to further define the "national executive," June 1, 1787: "That the Executive consist of a single person."**

**Mr. RUTLIDGE** [John Rutledge, SC] ... said he was for vesting the Executive power in a single person, tho' he was not for giving him the power of war and peace. A single man would feel the greatest responsibility and administer the public affairs best.

**Mr. WILSON** [James Wilson, PA] preferred a single magistrate, as giving most energy dispatch and responsibility to the office. He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of Legislative nature. Among others that of war & peace &c. The only powers he conceived strictly Executive were those of executing the laws, and appointing officers.

**Mr. RANDOLPH** [Edmund Randolph, VA] strenuously opposed a unity in the Executive magistracy. He regarded it as the foetus of monarchy. We had he said no motive to be governed by the British Governmt. as our prototype. He did not mean however to throw censure on that Excellent fabric. If we were in a situation to copy it he did not know that he should be opposed to it; but the fixt genius of the people of America required a different form of Government. He could not see why the great requisites for the Executive department, vigor, despatch & responsibility could not be found in three men, as well as in one man. The Executive ought to be independent. It ought therefore in order to support its independence to consist of more than one.

**Mr. WILSON** said that unity in the Executive instead of being the fetus of monarchy would be the best safeguard against tyranny. He repeated that he was not governed by the British Model which was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it.

**Madison's Notes of Debates on June 4:**

**Mr. Sherman:** [Roger Sherman, Connecticut]: In all the States there was a Council of advice, without which the first magistrate [governor] could not act. A council he thought necessary to make the establishment [of a single chief executive] acceptable to the people. Even in G. B. [Great Britain] the King has a Council; and though he appoints it himself, its advice has its weight with him, and attracts the Confidence of the people.

**Your vote:** Should there be a single head of the executive department, or several? If several, how many? Would they head separate departments or make major decisions as a body? If a single head, should there also be an executive council ("council of advice")?

**Madison's Notes on #7 in the Virginia Plan: "To be chosen by the National Legislature" — July 17, 1787**

**Mr. GOUVERNOR MORRIS** [Gouverneur Morris, PA] was pointedly against his being so chosen. He will be the mere creature of the Legislature, if appointed & impeachable by that body. He ought to be elected by the people at large, by the freeholders of the Country. If the people should elect, they will never fail to prefer some man of distinguished character, or services, some man of continental reputation. If the Legislature elect, it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment. **He moved to strike out "National Legislature" & insert "citizens of U.S."**

**Mr. SHERMAN** [Roger Sherman, CT] thought that the sense of the Nation would be better expressed by the Legislature, than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment. If the choice be made by the Legislature, a majority of voices may be made necessary to constitute an election.

**Mr. WILSON:** A particular objection with him against an absolute election by the Legislature was that the Executive in that case would be too dependent to stand the mediator between the intrigues & sinister views of the Representatives and the general liberties & interests of the people.

**Mr. WILLIAMSON** [Hugh Williamson, NC]: As the Salary of the Executive will be fixed, and he will not be eligible a 2d. time, there will not be such a dependence on the Legislature as has been imagined.

**Mr. PINKNEY** [Charles Pinckney, SC]: An Election by the people [is] liable to the most obvious & striking objections. They will be led by a few active & designing men. The most populous States by combining in favor of the same individual will be able to carry their points. The National Legislature being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

**Your vote:** Do you vote **yes** or **no** on Mr. Morris's motion, **to strike out "National Legislature" & insert "citizens of U.S."?**

**Further decisions to be made:**

How many years should the chief executive(s) serve? (Listed here are alternatives suggested by delegates. Circle your choice or write in your preference if it's not listed)

3 4 7 8 15 20 "during good behavior"

Should the chief executive(s) be eligible for more than one term?

If so, should there be a limit on the number of terms?

If you chose yes, how many terms?

**Open-ended question:**

Should other branches of government be able to impeach the chief executive(s), and if so, how might that work?

**Executive Handout C: Class Decisions**

**A.** Single or plural executive?

If plural, how many? Will they head separate departments or work together?

If single, will there be an executive council?

**B.** Yes or no on the Gouverneur Morris's motion to have the executive chosen by "citizens of the U. S." instead of the "National Legislature."

**C.** How long will the chief executive(s) serve?

**D.** Will he/they be eligible for re-election?

If eligible, will there be a limit on the number of terms?

Is so, what will that limit be?

**E.** Will other branches of government have any checks the power of the chief executive(s), and if so, how will those work?

## Executive Handout D: Decisions of the Historical Convention as of August 31, 1787

*\*One chief executive, called the president, chosen by Congress to serve a 7-year term and be ineligible for re-election. No executive council.*

*\*Subject to impeachment by the House of Representatives, tried by the Supreme Court.*

Explanation for the most controversial item: selection by Congress. Although all delegates believed that governmental authority rested ultimately with the people, they did not want “the people” to be *directly* involved in government. Roger Sherman (CT) expressed it this way: “The people immediately should have as little to do as may be about the government. They want information and are constantly liable to be misled.” James Madison then noted that in several states, the people chose representatives for the lower house of the legislature, and these appointed members of the upper house, who in turn appointed a governor or council, and these made still further appointments. He liked this process of “successive filtrations” and suggested it could be adapted to the national government. The people would select the House of Representatives, which would select senators, and both houses would then choose the chief executive(s). Through their representatives, people would have an *indirect* say in electing the president.

This did not satisfy Gouverneur Morris and James Wilson, who pushed repeatedly for popular election of the president. They hoped the president would be able to moderate partisan politics within Congress, particularly divisions likely to arise between the House (the “democratic” part of the legislature) and the Senate (which would be more “aristocratic”). If Congress chose the president, the office would be politicized. Morris and Wilson were in a small minority, however. On [July 19](#), after failed attempts to secure popular election, they convinced the Convention that state legislatures should choose electors, and these would select the president—but five days later the Convention returned to selection by Congress. On [August 24](#) a final motion to have the president selected “by the people” instead of “by the legislature” failed, nine states to two.

There was also a practical obstacle to popular election of the president: states had different criteria for who could vote, so those that allowed more people to vote would have a greater voice. This was not insurmountable, however. The framers could have given each state a number of votes proportional to its population, and then the voters of that state would choose the candidate they wished to receive those votes.

Having decided on selection by Congress, delegates worried that if Congress could reelect the president, he would curry the favor of congressmen and could not function independently. For this reason, they decided he should not be eligible for re-election. But since he would serve only once, his term should be reasonably long so he could settle into his job and gain by experience. For fear of resembling a monarchy, they settled on seven years, the shortest of the long-term suggestions.

## Executive Handout E: Final Decisions of the Convention, [September 17, 1787](#)

*\*One chief executive, called the president, chosen by special electors to serve a 4-year term and be eligible for re-election.*

*\*A new office of the vice-president. (With a president was chosen by Congress, Congress would just select a replacement if the president could not serve.)*

*\*Subject to impeachment by the House of Representatives, tried by the Senate.*

*\*Elector system: Each state legislature chooses in any manner it wishes (by popular vote or the legislature; by districts or statewide) a number of electors equal to the total number of members that state has in Congress (House + Senate). Each elector casts two votes. The person receiving the most votes is president, and the runner-up is vice president. If no person receives a majority, the House of Representatives chooses the president from among the top five candidates. Voting in the House is by state delegations. (This is the only time the House votes this way. Small states refused to go along with the electoral system unless each state had an equal say in the runoff for president.)*

**Explanation:** After three months of deliberation, and less than two weeks before they would adjourn, delegates entirely reconstructed the executive branch. Why?

Gouverneur Morris and James Wilson refused to give up. On [August 31](#) the Convention appointed one member from each state to a committee that would address remaining unsettled matters. Even though selection of the president *had* been settled, this committee, which included Morris, took up the issue once again. To establish independence from Congress, yet not hand it over to the people, the committee devised a complex system of electors. Each state would select electors equaling the its members in Congress (both the House and the Senate). Each elector would have two votes, but one could not be from his own state. The winner would be president, the runner-up vice president. If no candidate received a majority, the House of Representatives would choose the president from among the top five vote-getters. Presumably, these special electors would be chosen for their wisdom and discretion. They would make their selection free of political bias.

Then, since the president would no longer be dependent on the support of congressmen, the committee said he should be eligible for re-election. Further, since he could be re-elected, they opted for a shorter term. They did think Congress should be able to remove him for wrongdoing, however, so they empowered the Senate, instead of the Supreme Court, to try his impeachment.

When the committee reported its suggestions on [September 4](#), other delegates were surprised—but they were also fatigued after more than three months of deliberations. With minimal discussion, they approved the new plan just days before they adjourned. This was the origin of what we call today the “Electoral College.”

(For a detailed account, see Ray Raphael, *Mr. President: How and Why the Founders Created a Chief Executive* (Alfred A. Knopf, 2012), chapters 3-5.)



### **Executive Handout F: Vocabulary List**

1. Cabal: a small group of people who work together secretly.
2. Designing: acting in a calculated or deceitful way.
3. Faction: a group formed to seek some goal within a political party or a government.
4. Freeholders: one who holds title to an estate in land with the freedom to dispose of it at will.
5. Magistrate: a civil officer charged with the administration of the law.
6. Monarchy: a system of government in which one person reigns, usually a king or queen. The authority, or crown, in a monarchy is generally inherited.
7. Partisan: a strong supporter of a party, cause, or person.
8. Prerogatives: an exclusive right or privilege exercised by virtue of rank or office.
9. Prorogue: to discontinue a session of a legislative assembly without dissolving it.
10. Roughshod: to treat harshly or domineeringly; override; crush
11. Usurpations: wrongful or illegal encroachment, infringement or seizure.

## Executive Handout T-A: Homework Answers

**A.** Highlight or circle words or terms in this passage from the Declaration of Independence that reveal how Americans in 1776 felt about the British Monarch:

“The history of the present King of Great Britain is a history of repeated **injuries and usurpations**, all having in direct object the **establishment of an absolute Tyranny** over these States. To prove this, let Facts be submitted to a candid world.... [The long list of complaints is omitted.] In every stage of these **Oppressions** We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by **repeated injury**. A Prince whose character is thus marked by every act which may define a **Tyrant**, is **unfit to be the ruler of a free people**.”

**B.** The Articles of Confederation were composed of 3,442 words. Here is the only mention of a “president.” Highlight or circle the word or words that define the president’s authority.

“The United States in Congress assembled shall have authority ... to appoint one of their members to **preside**, provided that no person be allowed to serve in the office of president more than one year in any term of three years.”

QUESTION: What was Congress’s president empowered to do?

**C.** During the Revolutionary War, state constitution-makers used various mechanisms to curtail executive power. Massachusetts, the first to cast off British rule and therefore the first to need a new governmental arrangement, eliminated the governorship entirely. In 1775, in the immediate aftermath of Lexington and Concord, it decided to resume its old charter in all respects — minus a separate and distinct executive. All functions that were formerly performed by the royal governor were assumed by a council elected by members of the assembly.

New Hampshire, likewise, abolished the office of governor in the provisional new government it created early in 1776. Although it established a council with an elected president, it defined that body only as a “separate branch of the legislature” and assigned it no specific executive duties.

South Carolina’s provisional new government did provide for a chief executive, but it did not call him a “governor,” one who governs or rules. Instead, like New Hampshire, South Carolina called its most prominent leader a “president,” one who presides, a lesser term carried over from their Provincial Congress. Two other states, Pennsylvania and Delaware, also adopted the title “president” over “governor.”

The states devised various mechanisms for holding executive officers closely accountable. Six of the ten states that formed new Constitutions within a year of independence elected their governors or presidents annually. Two states had biennial

elections [every two years], the remaining two triennial [every three years]. Five of the annual-election states permitted no more than three successive years in office, and only three states failed to require rotation in office, as they said at the time, or term limits, as we call it today. “A long continuance in the first executive departments of power or trust is dangerous to liberty,” the Maryland Constitution of 1776 declared. “A rotation, therefore, in those departments is one of the best securities of permanent freedom.”

All Revolutionary Era Americans could recall, or had heard about, the many times royal governors had seized power from the people by preventing elected representatives from gathering, and they wanted none of this in their new governments. The new state constitutions did not grant executive officers the power to “prorogue, adjourn, or dissolve” the legislatures. (In some states this prohibition was made specific, in others the power was simply absent.) One state, New York, did allow its governor to prorogue [suspend] the legislature for no more than sixty days within the period of a year, but the governor still could not adjourn or dissolve it.

Eight of the ten states established executive or privy councils to diffuse the authority of their chief executives. Although colonists had suffered much grief at the hands of His Majesty’s Privy Council, these junior versions would help spread the concentration of authority within the new state governments. No single executive should be empowered to act solely on his own will, they believed. An elected council, not personally beholden to a chief executive officer, would keep him from using patronage for political or economic gain.

Finally, and most definitively, all but two of the new constitutions denied their governors or presidents the power of the veto. Recalling how royal governors once ran roughshod over colonial assemblies, most Americans opposed giving executive officers any influence in legislative matters. The two exceptions, New York and Massachusetts, had extenuating circumstances. Governors in these states, unlike in the others, were popularly elected, so their veto was viewed as the people’s check on the legislature. And the veto was not absolute, as in colonial times. In both states, the legislature could override a gubernatorial veto with a two-thirds vote. (From Ray Raphael, *Mr. President: How and Why the Founders Created a Chief Executive*, 39-40)

#### QUESTIONS:

1. List three ways in which state constitutions placed limitations of the power of governors or presidents.

RESPONSE: Short terms, councils to advise the governor, no power to dissolve legislatures, no veto power.

2. Why do you think Revolutionary Era Americans were so hesitant to grant powers to state governors or presidents?

RESPONSE: Americans believed that during colonial times, royal governors had represented the interest of the Crown, not the people they governed. They had used the

powers granted them to destructive ends. The simplest way to prevent the abuse of power is to not grant power in the first place.

**D.** On April 16, 1787, shortly before the opening of the Constitutional Convention, James Madison wrote to George Washington about the need for a national government with broad authorities, including “a negative [veto] *in all cases whatsoever* on the legislative acts of the States.” But “a Government composed of such extensive powers should be well organized and balanced,” he wrote. To this end, Madison offered specific ideas for a bicameral national legislature and a national judiciary, but here is all he had to say about the executive branch: “A national Executive must also be provided. I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be cloathed.”

QUESTION: Why do you think Madison was at a loss for words about the executive?

RESPONSE: Because of their experience with the British monarchy, Americans were wary of granting powers to a single individual. This was tricky business. The point of an executive is to act decisively and efficiently, but how could this be done in such a way as to keep the executive from becoming a “tyrant”?

## T-B. Infrastructure for the Constitutional Convention Simulation

These eight lessons can be used individually or as a unit. In either case, here are basic rules of operation:

Assign each student to a state delegation that participated in the 1787 Federal Convention in Philadelphia. (Alternately, you could allow students to choose their states or have a lottery, but this will add an extra step.) Please note that delegates from Rhode Island did not attend.

The numbers in each state delegation will vary by class size. For classes with 24 or more students, there should be two or more in each delegation. (Add delegates in rough proportion to size of states. For instance, in a class of 25, Virginia will have three, the other states two each.) If fewer than 24, you can combine states of similar size and regional interests so each group has more than one delegate. Possible state combinations, in order of preference: DE and NJ (small and free), GA and NC (small/medium and slave), NH and CT (small and free), MA and NY (large/medium and free), VA and MD (large/medium and slave). To facilitate classroom management, students should sit with their fellow state delegates.

Breakout groups, called “**discussion and debate**” (**D &D**) **groups**, will be composed of several state delegations from *diverse* regions: lower South, upper South, mid-Atlantic, New England. These should be small enough to allow each student to participate—the size of each, and therefore the number of state delegations in each, will vary by class size and teacher preference. Again, to facilitate movement, state delegations in each D & D group will sit proximate to each other. For small classes, teachers might choose to conduct all deliberations with the full class—for historical authenticity, you can call this the “**committee of the whole.**”

Each time students meet in their D & D groups, they should be reminded that these are for deliberations only. The groups do not have to come to any agreement. Students will not yet be casting their votes.

Inform students that all votes will be by state delegations—one vote for each state delegation, just as it was at the Federal Convention of 1787. When students do meet with their delegation to determine its vote, they are not to discuss the issue at length—they’ve already done that in their D & D groups. They simply vote and report the state’s preference to the committee of the whole. If delegates of any state are evenly divided on an issue, they report “divided” as their state’s vote.

If you are teaching the full unit, you might want a secretary (it can be the teacher) to keep track of class decisions. You should also stress the importance of retaining all handouts. In extended activities, students will be asked to compare their personal choices, class decisions, and historical decisions of the actual Convention and project how alternate outcomes might have altered the course of history.

If the units are used in a unit, here is the suggested order:

- 1. Reform or Revolution?** (one-day and two-day options)
- 2. Composition of Congress** (one-day and two-day options)
- 3. Creating an Executive** (one-day and two-day options)
- 4. Should Judges Judge Laws?** (one-day lesson)
- 5. Fine Tuning the Balance of Powers** (one-day and two-day options)
- 6. Slavery at the Constitutional Convention** (two-day lesson)
- 7. Amendments and Ratification** (one-day and two-day options)
- 8. To Sign or Not To Sign**
  - Option A: The Historical Constitution** (one-day lesson)
  - Option B: The Student-Generated Constitution** (one-day lesson)

Throughout these lessons, students need to understand key features of the Articles of Confederation:

\*The United States under the Articles was a “confederacy” of sovereign states.

\*There was only one branch, Congress, where each state had one vote. There were no separate executive and judicial branches.

\*Congress was not a “government” as we view it today. It engaged only with states, not citizens. It passed no laws bearing directly on citizens and had no enforcement powers.

\*Congress had no powers of taxation. It raised money by requisitioning the states, but it lacked the authority to force states to pay.

\*Amendments required unanimous approval of the states.

These are highlighted in the first lesson and will be brought into play in the appropriate lessons.

**Premise for engagement:**

History is the chronicle of choices made by actors/agents/protagonists in specific contexts. Students understand choices – they make them all the time. These lessons

involve students by placing them in the shoes of historical people and asking: “What might you do in such instances?”

For these exercises to be historical (more than affirmations of individual whims), we need to provide context: what was the issue, the problem to be solved? What were the existing realities/constraints that limited possibilities? With those in mind, what were the available options? For each option, how did people view the possibilities for a desired outcome? What were the potential dangers? When studying battles, we see how generals evaluate troop strengths, positioning, logistics, morale, and so on. In fact, all historical actors do this—not just leading political figures, but ordinary people and collective bodies. In Revolutionary times, people often made decisions in groups, both indoors (town meetings, caucuses, conventions, congresses) and “out-of-doors,” as they said at the times, informal gatherings that protested authority or enforced popular will. The Federal Convention of 1787, known today as the Constitutional Convention, provides a perfect example of historical actors making consequential decisions in a group context. When coupled with a study of ratification of the Constitution, it shows the interrelation between political decisions made “in chambers,” as they said at the time, with politics “out-of-doors.”

**Basic structure for choice-centered lessons, including but not limited to these Constitutional Convention simulations:**

(Some lessons include two or even three of the cycles outlined here; others have only a single round. For complex simulations with multiple rounds, more than one class period might be appropriate, at teacher discretion.)

1. *Formulate the problem*, the issue at hand. Define the players: who will be making the choices, deciding which path to take? Provide *context*, including any *constraints* that would limit their actions, with documents when possible. Without context, we will be operating in our world, not theirs.
2. Outline and discuss the *available options*, including possible outcomes of each – that, after all, is what the participants had to do. This is sometimes done as a class, sometimes in breakout groups of two or more students. The size and composition of breakout groups is left to teacher discretion.
  - 2A. After breakout groups, in some lessons, the class will reconvene to share, compare, and evaluate what they came up with. When, historically, the decision was up to a body (a congress or convention), the class will always reconvene as that body—but if no group decision was involved, once students have discussed options in groups, they can continue to the next step.

3. Individuals or bodies make and reveal their choices.
4. Presentation of the *historical outcome*: the choice actually made by the player(s) – use documents when possible.
5. Discuss with full class the *consequences* that did in fact ensue from that choice, including *further* issues raised by the outcome. Sometimes those issues, in turn, provide the “catch” for a subsequent lesson.

To summarize: the opening for each lesson—the catch—is the crossroad, the choice to be made. Then, in turn, come the *context and constraints, discussion of options, decision making, presentation of historical outcomes, and analysis of those outcomes*, including where they might lead next. In these lessons, students actually *engage* in the historical process. **By exercising individual and group decision-making skills within political contexts, they prepare for civic life. When the time comes for them to make history, they will be well rehearsed in making reasoned choices.**

### **T-C. Timeline for the Federal Convention of 1787**

September 11-14, 1786: Twelve delegates from 5 states, meeting at Annapolis, call for a larger convention the following year.

February 21, 1787: Congress endorses the Annapolis Convention's call for a convention, slated to meet in Philadelphia on May 14.

May 14: Delegates from only Pennsylvania and Virginia are present in Philadelphia. This did not constitute a quorum according to the standards of the Continental Congress.

May 25: With 29 delegates from 9 states present, the Convention begins. George Washington is chosen to preside.

May 29: Rule of secrecy adopted. Edmund Randolph presents the Virginia Plan.

May 30: Delegates start debating the Virginia Plan. The Delaware delegation threatens "to retire from the Convention" if all states do not have an equal vote in Congress. Convention resolves: "A *national* government ought to be established consisting of a *supreme* legislative, executive & judiciary."

June 2: Convention stipulates that the executive "be chosen by the national legislature for the term of seven years." This is rescinded on July 19 but reaffirmed on July 26.

June 4: Convention decides on a single executive, 7 states to 3.

June 15: William Paterson introduces the New Jersey Plan, which proposes only to amend the Articles of Confederation and maintains Congress as a unicameral body, each state having one vote.

June 18: Hamilton proposes that the chief executive and senators serve for life, with the executive having absolute veto power over all legislation. He receives no support.

June 19: Virginia Plan, as amended, defeats New Jersey Plan, 7-3 with one divided.

July 12: Convention finalizes the compromise on representation in the House: each slave counts as three-fifths of a person. Vote: 6-2-2.

July 16: Convention finalizes the "Great Compromise": proportional representation in the House; equal representation of states in the Senate; all money bills originate in the House. Vote: 5-4-1.

July 23: Convention resolves to send its proposed plan to Congress, with a recommendation that it be sent to "assemblies chosen by the people" in each state for ratification. Vote: 9-1.

[July 24](#): Convention appoints a five-member committee “to report a Constitution conformable to the Resolutions passed by the Convention.” (Committee of Detail.)

July 27-August 5: Convention recesses. Committee of Detail prepares the first full draft of the Constitution.

[August 6](#): Committee of Detail submits its report, which enumerates the powers of each branch. Debate on this draft commences.

[August 21, 22, 23, and 24](#): Convention debates whether Congress can prohibit the importation of slaves.

[August 24](#): Popular election of the president is defeated a final time. Vote: 9-2.

[August 25](#): Convention decides there can be no ban on slave importation until 1808. Vote: 7-4.

[August 30](#): Convention decides that ratification by nine states will suffice to place the Constitution into effect. Vote: 8-3.

[August 31](#): Convention appoints an eleven-member committee (one from each state delegation) to consider “such parts of the Constitution as have been postponed, and such parts of Reports as have not been acted on.” (Committee on Remaining Matters.)

[September 4](#): Committee of Remaining Matters issues its report, reversing key provisions that had already been decided: special electors, not Congress choose the president; the president, not the Senate, has treaty-making and appointive powers; a newly created vice-president presides over the Senate.

[September 8](#): Convention approves the Committee of Remaining Matters report with only minor revisions. Convention appoints a five-member committee “to revise the stile of and arrange the articles which had been agreed to by the House.” (Committee of Style.)

[September 12](#): Committee of Style submits its almost-final draft of the Constitution. George Mason and Elbridge Gerry propose “a Committee to prepare a Bill of Rights.” The motion fails, 0-10.

[September 15](#): The Convention approves the Constitution, with all states present voting in favor.

[September 17](#): 39 of the 42 members present sign the Constitution. Congress sends it to Congress.

September 28: Congress sends the Constitution to the state legislatures with instructions to call conventions to consider ratification, as stipulated by the Federal Convention.

