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I 3 Publius on Monarchy

Eric Nelson

I

The eleven essays published by "Publius" between March 11 and April 4, 1787 jointly constitute the most famous defense of presidential power in the American constitutional tradition. It is here that Alexander Hamilton extols "energy in the executive," along with the canonical litany of "decision, activity, secrecy, and dispatch." Such energy, for Hamilton, requires "unity" in the chief magistracy, the focus and coherence of a single mind (*Fed.* 70, 471–472). But it equally demands "firmness" – a readiness to exert oneself in defense of the "constitutional powers" of one's office – which can only be expected from those whose "duration in office" is sufficiently long. "It is a general principle of human nature," Hamilton explains, "that a man will be interested in what he possesses, in proportion to the firmness or precariousness of the tenure, by which he holds it." Only a magistrate who regards his office as truly his own will subject himself to danger or opprobrium in order to secure the system of which it is a part – and this he must routinely do. For while "it is a just observation that the people commonly *intend* the PUBLIC GOOD," they do not, alas, always "*reason right* about the means of promoting it." An effective, energetic executive must accordingly wield his prerogatives to tame their episodic folly; to "withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection." The republican principle may require deference to "the deliberate sense of the community," but it "does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests" (*Fed.* 71, 481–82).

These passages will be familiar to any student of American politics and jurisprudence, but far less familiar is the broader argument of which they are a part. For Hamilton is not merely analyzing "the proposed executive" in *Federalist* 67–77; he is, rather, offering a distillation of his views on monarchical government in general, and on the British monarchy in particular. Indeed, this series of essays has deep roots in a text that Hamilton published years before the drafting of the new federal Constitution.

In 1775, when he was still an undergraduate at King's College in New York, he took up his pen to answer an attack on the Continental Congress that had been written by the Loyalist Samuel Seabury. *The Farmer Refuted*, as Hamilton entitled his rejoinder, primarily addressed itself to Seabury's argument that Parliament, as the supreme legislature of the British Empire, must naturally have jurisdiction over America. Seabury rested his case on a reputable understanding of the English constitution:

In every government, there must be a supreme absolute authority lodged somewhere. In arbitrary governments this power is in the monarch; in aristocratical governments, in the nobles; in democratical in the people; or the deputies of their electing. Our own government being a mixture of all these kinds, the supreme authority is vested in the King, Nobles and People, i.e. the King, House of Lords and House of Commons elected by the people. This supreme authority extends as far as the British dominions extend. To suppose a part of the British dominions which is not subject to the power of the British legislature, is no better sense than to suppose a country, at one and the same time, to be and not to be a part of the British dominions.¹

"This argument," Hamilton thundered in reply, "is the most specious of any, the advocates for parliamentary supremacy are able to produce."² In truth, the American colonies were not at all "subject to the power of the British legislature," but it did not follow from this fact that they were not "British dominions." The colonies were instead

connected to Britain solely through "the person and prerogative of the King." The monarch alone "conjoins all these individual societies, into one great body politic. He it is, that is to preserve their mutual connexion and dependence, and make them all co-operate to one common end the general good. His power is equal to the purpose, and his interest binds him to the due prosecution of it."³ On this view, Parliament had no more authority over British America than the Massachusetts General Court enjoyed over Great Britain. "The several parts of the empire, though, otherwise, independent on each other, will all be dependent on" the crown.⁴

So far, Hamilton had not asserted anything remotely idiosyncratic. By the late 1760s and early 1770s, most Patriot theorists had embraced the view that the king alone wielded just authority over America and that he should revive long defunct prerogatives of the crown (among them the royal "negative," or veto) in order to become the "pervading" and "superintending" power of the empire. These opposition leaders thereby committed themselves to a radical critique of the eighteenth-century Whig constitutional consensus. The settlement that followed the Glorious Revolution had definitively subjected the king to Parliament, drastically curtailing his prerogatives and recasting him as a pure "executive." Those powers of state that legally remained with the crown were no longer wielded by the person of the king, but rather by ministers who were required to command a parliamentary majority (and who themselves sat in one of the two houses). Patriots were thus effectively proposing to turn back the clock on the English constitution by over a hundred years – to separate the king from his Parliament and his British ministers, and to install him as an independent king and emperor, wielding prerogative powers that his Hanoverian predecessors had never claimed.⁵ The great Patriot complaint, as Benjamin Franklin put it, was that the Lords and Commons "have been long encroaching on the Rights of their and our Sovereign, assuming too much of his Authority, and betraying his Interests."⁶

Hamilton, however, went a good deal further in 1775. Virtually every other Patriot theorist would have accepted in principle Seabury's

claim that, within Great Britain itself, "the supreme authority is vested in the King, Nobles and People, i.e. the King, House of Lords and House of Commons elected by the people." They would have dissented from Seabury only in insisting that the king *also* enjoyed an independent political existence outside Parliament, by virtue of which he wielded imperial authority over his American dominions – and in asserting that the royal negative and other prerogative powers still rightfully belonged to the king himself, rather than to a parliamentary ministry. Hamilton, in contrast, flatly rejected the claim that, under the English constitution, sovereign power is shared among king, Lords, and Commons. Having initially accused Seabury merely of "losing sight of that *share* which the King has in the sovereignty, both of Great-Britain and America,"⁷ he went on to make clear that, in fact, the error runs deeper. If we wish to speak with "propriety," Hamilton observed, we will hold instead "that the King is the *only* Sovereign of the empire. The part which the people have in the legislature, may more justly be considered as a limitation of the Sovereign authority, to prevent its being exercised in an oppressive and despotic manner: Monarchy is universally allowed to predominate in the constitution."⁸

It is difficult to overstate the radicalism of this claim. Hamilton was endorsing a particularly strident variant of seventeenth-century Royalist thought. Seabury, after all, was merely quoting as doxa a claim about the character of the English constitution that Charles I himself had introduced in the *Answer to the Nineteen Propositions* (1642). In the course of defending the royal negative and other prerogatives against the pretensions of the Commons, Charles had famously characterized England as a "mixed monarchy":

There being three kinds of Government amongst men, Absolute Monarchy, Aristocracy and Democracy, and all these having their particular conveniencies and inconveniencies. The experience and wisdom of your Ancestors hath so moulded this out of a mixture of

these, as to give to this Kingdome (as farre as humane Prudence can provide) the conveniencies of all three, without the inconveniencies of any one, as long as the Balance hangs even between the three Estates, and they run joyntly on in their proper Chanell (begetting Verdure and Fertilitie in the Meadows on both sides) and the overflowing of either on either side raise not deluge or Inundation . . . In this Kingdome the Laws are joyntly made by a King, by a House of Peers, and by a House of Commons chosen by the People, all having free Votes and particular priviledges.⁹

The most conservative Royalists of the 1640s, while agreeing that England was a limited monarchy, objected that Charles had conceded too much in this passage. As Henry Ferne put the complaint: while it is true that the Lords and Commons must consent "to certain Acts of Monarchical Power, and this makes a Mixture," the two houses technically "have no share in the very power, but concur to the exercise of it only."¹⁰ The king, on this view, is not one of three co-equal estates amongst which "the Balance hangs even"; rather "the Prelates, Lords, and Commons are the three Estates of this Kingdome, under his Majesty as their Head."¹¹ The constitution places salutary *limits* on the sovereign authority, but it does not *divide* that authority among king, Lords, and Commons. The king is above the estates of the realm, and he alone is sovereign.

It is this position that the young Hamilton endorses.¹² There is, on his account, only one sovereign in each of the personal dominions of George III: the king himself. This power is not shared with the legislature, either in Britain or its colonies. Rather, "the part which the people have in the legislature, may more justly be considered as a limitation of the Sovereign authority, to prevent its being exercised in an oppressive and despotic manner." The people rightfully play a constitutional role in each dominion of the crown, but, *pace* Seabury, they do not partake in any way of "the supreme authority." For Hamilton, monarchy "predominate[s] in the constitution," and he assures his reader that this axiom is "universally allowed." In fact, it

was allowed by almost no one in the eighteenth-century Atlantic world. On the contrary, it was a high Royalist constitutional heresy.

In Hamilton's juridical imagination, the crown was therefore spectacularly powerful. As an empirical matter, however, he believed that the monarchy had become lamentably weak in recent decades. In this respect, he straightforwardly associated himself with a distinctive view of English constitutional decline that we have come to know (problematically) as "Tory." The basic historical facts were not in dispute. All agreed that no British monarch had vetoed a parliamentary bill for generations (indeed most British Americans – including Hamilton – believed, mistakenly, that no monarch had done so since before 1688¹³) and that the executive powers of the crown in relation to war and peace, appointment to office, and the regulations of trade had long been exercised, not by the king himself, but rather by ministers who were required to maintain the support of a parliamentary majority. Whigs explained these facts by asserting, counterintuitively, that the crown had secured an iron grip on the legislature: it now used patronage to obtain the support of a majority of MPs, with the result that it invariably got its way in the Commons without employing the negative. Likewise, the fact that the king allowed his ministers to wield the prerogatives of the crown without interference demonstrated, not that the will of the sovereign no longer held sway in these areas of government, but rather that the Parliament to which the ministry answered was filled with the monarch's "creatures."

But this "Country" or "real" Whig narrative of constitutional decline had its committed opponents. Beginning in the 1730s, a series of theorists began to argue that, in fact, the British monarchy had been largely absorbed by the legislature – that it had become too weak, not too strong. The most eloquent spokesman for this rival position was David Hume. In his essay "Of the Independency of Parliament" (1742), Hume announced that the latter-day Whigs had gotten things precisely backwards. "The share of power, allotted by our constitution to the house of commons," he declared, "is so great, that it absolutely commands all the other parts of government."¹⁴ In particular, the practice of

seeking the royal assent for parliamentary bills had become a mere pantomime: "The king's legislative power is plainly no proper check to it [the House of Commons]. For though the king has a negative in framing laws; yet this, in fact, is esteemed of so little moment, that whatever is voted by the two houses, is always sure to pass into a law, and the royal assent is little better than a form."¹⁵ On this rival account, no monarch had vetoed a bill in generations because no monarch would dare to do so. Nor would any monarch attempt to wield the other prerogatives of the crown without parliamentary approval.

But Hume's proposed solution to "this paradox" of royal weakness was unexpected. He did not suppose that the king could revive his negative voice and other defunct prerogatives. Rather, he focused his hopes on the patronage power of the crown.¹⁶ The unending crusade of the Commons to subjugate the executive could be "restrained," Hume believed, by the self-interested behavior of individual legislators seeking royal favor. "The crown has so many offices at its disposal, that, when assisted by the honest and disinterested part of the House, it will always command the resolutions of the whole, so far, at least, as to preserve the ancient constitution from danger." Others may call this "influence" by "the invidious appellations of *corruption* and *dependence*," but in truth "some degree and some kind of it are inseparable from the very nature of the constitution, and necessary to the preservation of our mixed government."¹⁷ In a world of unbridled parliamentary supremacy, patronage would have to replace prerogative.

A great many Patriot theorists of the 1770s and 1780s came to share Hume's diagnosis of what had gone wrong with the English constitution, but Hamilton was again virtually alone in embracing Hume's remedy. While he had already quoted Hume extensively in *The Farmer Refuted*, it was in the Constitutional Convention that he nailed his colors most firmly to the mast. During the debate over what would become Article I, Section 6 of the Constitution – which provides that "no Person holding any Office under the United States, shall be a Member of either House [of Congress] during his

Continuance in Office" and bars senators and congressmen from being appointed to any office created during their terms – Pierce Butler of South Carolina declared in Whiggish tones that "this precaution ag[ain]st. intrigue was necessary" and "appealed to the example of G[reat] B[ritain]. where men got into Parliament that they might get offices for themselves or their friends."¹⁸ "This," Butler announced, "was the source of the corruption that ruined their Gov[ernment].t." Hamilton, by contrast, objected to the measure. He cited instead "[one] of the ablest politicians (Mr Hume)," who "had pronounced all that influence on the side of the crown, which went under the name of corruption, an essential part of the weight which maintained the equilibrium of the Constitution."¹⁹ The crown's prerogative control of the "many offices at its disposal," Hamilton agreed with Hume, constituted the last remaining bulwark against abject legislative tyranny. The English monarch might well be "the only Sovereign of the Empire" as a legal and constitutional matter, but his political position had in fact become exceedingly precarious. This distinctive combination of Royalist constitutional theory and Humean political sociology would animate Hamilton's remarkable performance as Publius in the months to come.

Publius's discussion of executive power formally begins in *Federalist* 67, but Hamilton actually launches his own exploration of this subject much earlier, in *Federalist* 17, where he addresses the Anti-Federalist anxiety that the government of the "Union" would overwhelm those of the states under the proposed Constitution.²⁰ Hamilton argues in response that "the experience of all federal constitutions" shows quite the reverse: that the central government will always be in constant danger of assault from the periphery (*Fed.* 17, 107–08). In support of this claim, he offers a somewhat surprising example: the history of "feudal systems" in medieval European monarchies. While these were "not, strictly speaking, confederacies," Hamilton insists nonetheless that they "partook of the nature of that species of association (*Fed.* 17, 108)." In particular, as he goes on to explain, the great pathology of feudal systems was the weakness of the monarch:

There was a common head, chieftain, or sovereign, whose authority extended over the whole nation; and a number of subordinate vassals, or feudatories, who had large portions of land allotted to them, and numerous trains of *inferior* vassals or retainers, who occupied and cultivated that land upon the tenure of fealty or obedience, to the persons of whom they held it. Each principal vassal was a kind of sovereign, within his particular demesnes. The consequences of this situation were a continual opposition to authority of the sovereign, and frequent wars between the great barons or chief feudatories themselves. The power of the head of the nation was commonly too weak, either to preserve the public peace, or to protect the people against the oppressions of their immediate lords. This period of European affairs is emphatically styled by historians, the times of feudal anarchy.

(*Fed.* 17, 108)

Hamilton continues by observing that "in general, the power of the barons triumphed over that of the prince; and in many instances his dominion was entirely thrown off, and the great fiefs were erected into independent principalities or states" (*Fed.* 17, 109).²¹ And, as he explains in *Federalist* 84, "Magna Carta" was merely one such encroachment on royal power, "obtained by the barons, sword in hand, from King John" (*Fed.* 84, 578).²² At long last, when

the monarch finally prevailed over his vassals, his success was chiefly owing to the tyranny of those vassals over their dependents. The barons, or nobles equally the enemies of the sovereign and the oppressors of the common people were dreaded and detested by both; till mutual danger and mutual interest effected a union between them fatal to the power of the aristocracy.

(*Fed.* 17, 109)

Hamilton returned to precisely the same material in his speech to the New York Ratifying Convention, offering this description of "the antient feudal governments":

It has been proved, that the members of republics have been, and ever will be, stronger than the head. Let us attend to one general historical example. In the antient feudal governments of Europe, there were, in the first place a monarch; subordinate to him, a body of nobles; and subject to these, the vassals or the whole body of the people. The authority of the kings was limited, and that of the barons considerably independent. . . . The history of the feudal wars exhibits little more than a series of successful encroachments on the prerogatives of monarchy. . . . I may be told, that in some instances the barons were overcome: But how did this happen? Sir, they took advantage of the depression of the royal authority, and the establishment of their own power, to oppress and tyrannise over their vassals. As commerce enlarged, and as wealth and civilization increased, the people began to feel their own weight and consequence: They grew tired of their oppressions; united their strength with that of the prince; and threw off the yoke of aristocracy.²³

Here again, the disorder of feudal government is monarchical weakness and baronial hegemony, and this pathology is ultimately resolved only when king and people forge a momentous alliance in favor of liberty.

The first point to stress about this account is that it has an identifiable source: book 3, chapter 3 of Adam Smith's *Wealth of Nations*, "Of the Rise and Progress of Cities and Towns, after the Fall of the Roman Empire." In feudal societies, Smith had likewise argued, "the authority of government" was always "too weak in the head, and too strong in the inferior members; and the excessive strength of the inferior members was the cause of the weakness of the head."²⁴ Even "after the institution of feudal subordination, the king was as incapable of restraining the violence of the great lords as before. They still continued to make war according to their own discretion, almost continually upon one another, and very frequently upon the king; and the open country still continued to be a scene of violence, rapine,

and disorder." This period is therefore most properly described as "the times of feudal anarchy."²⁵ It was brought to its merciful conclusion only when king and people united against their baronial oppressors: "The burghers naturally hated and feared the lords," who "plundered" them mercilessly, and "the king hated and feared them too; but though, perhaps, he might despise, he had no reason either to hate or fear the burghers. Mutual interest, therefore, disposed them to support the king, and the king to support them against the lords."

The fact that Hamilton took his account almost verbatim from Smith is not, however, a mere matter of antiquarian interest. In describing feudalism in these terms, Smith and Hamilton were each straightforwardly setting themselves against the crucial historiographical underpinnings of Whig political theory. Whigs located in the remote Saxon past an "ancient constitution" of balanced, free government, in which elected monarchs merely executed laws approved by their independent, landowning subjects in a primeval parliament. This republican idyll, they believed, was then tragically interrupted by the Norman Conquest of 1066, which introduced feudal tenures and, consequently, absolute monarchy. The great constitutional watersheds of English medieval and early modern history – chief among them Magna Carta – were celebrated in the Whig canon for restraining the power of the crown and thereby reconfirming the ancient liberties enjoyed by Englishmen before the arrival of the Conqueror.²⁶

Royalist historians of the seventeenth century, by contrast, had emphatically rejected this narrative. For Sir Henry Spelman, Robert Brady, and their disciples, the pre-feudal constitution of liberty was pure myth. They insisted that in its origins Parliament was a fundamentally feudal institution and that the House of Commons had not existed in any form until the high medieval period. More importantly, these historians rejected the Whig conceit that feudalism was pathological because it amounted to monarchical tyranny. On the contrary, they argued, the distinctive perversity of feudalism was its tendency to weaken the king at the expense of "Factious barons,"

who (in Brady's words) "when they had secured their own Liberties, rather made use of them to Oppress, than Relieve their Tenants and Neighbours."²⁷ Magna Carta itself could only properly be understood as an episode in this disturbing narrative of creeping aristocratic hegemony and perilous royal retreat – yet another encroachment by "incorrigible Norman rebels against their own Norman princes."²⁸ This revisionist account returned to prominence with the publication of Hume's *History of England* (1754–61), in which readers learned that, under feudalism, the great danger was "that the community would every where crumble into so many independant baronies, and lose the political union, by which they were cemented" (Hume cites Brady directly on this point) and that the system only achieved equilibrium when the king "assumed the salutary office of general guardian or protector of the commons."²⁹ Adam Smith merely developed and intensified the Royalist thrust of his friend Hume's earlier narrative.

It was this tradition that Hamilton wholeheartedly embraced in 1788. The great political danger in modern states, he believed, was not royal power, but monarchical weakness. Feudal history, rightly understood, reveals that the monarch is the natural champion of popular rights, bound to the Commons by "mutual interest." The great enemy of the people is instead the aristocracy. In making this case, Hamilton was essentially echoing his argument from the *Farmer Refuted* that the colonists could depend upon the king because he "is under no temptation to purchase the favour of one part of his dominions, at the expense of another; but, it is his interest to treat them all, upon the same footing. Very different is the case with regard to the Parliament. The Lords and Commons have a separate interest to pursue."³⁰ Seen in relation to British America, Parliament itself had become a kind of aristocracy – a body of men not derived from the people, who were happy to plunder and oppress their fellow-subjects across the sea. As Thomson Mason of Virginia put the point in 1774, his fellow Americans sought merely "to check the growing power of aristocracy [i.e. Parliament] in *Great Britain*, and to restore your Sovereign to that

weight in the National Councils which he ought to possess." Mason could accordingly assure his readers that "the general opinion, that the great defect in the present Constitution of *Britain* is the enormous power of the Crown" ought to be dismissed as "a vulgar error."³¹

By the late 1770s, an influential group of American theorists had emerged as champions of this distinctive account of modern politics. These men had pioneered the Patriot defense of the royal prerogative only several years earlier, and they now used the same arguments to defend a sweeping conception of executive power.³² Benjamin Rush fretted in 1770 that it is in the nature of legislative bodies to be "filled in the course of a few years with a majority of rich men," whose "wealth will administer fuel to the love of arbitrary power that is common to all men" – eventually yielding "aristocracy," a noxious regime in which there are "only two sorts of animals, tyrants and slaves."³³ Only a prerogative-wielding chief magistrate, constituting a full third of the legislative power, could resist the forces of aristocratic despotism in the name of liberty. John Adams was making the very same point as early as 1779: "we have so many Men of Wealth, of ambitious Spirits, of Intrigue, of Luxury and Corruption, that incessant Factions will disturb our Peace, without [the chief magistrate's negative voice]."³⁴ Writing to Jefferson in December 1787, he repeated his basic conviction: "You are afraid of the one – I, of the few. We agree perfectly that the many should have a full fair and perfect Representation. – You are Apprehensive of Monarchy; I, of Aristocracy."³⁵

Adams accordingly insisted that the wealthy few should be quarantined in their own legislative chamber, thus preventing them from coming to dominate the popular chamber.³⁶ The "many" would then find their crucial support against the encroachments of the aristocratic house in the prerogatives of the chief magistrate:

it is the true policy of the common people to place the whole executive power in one man, to make him a distinct order in the state, from whence arises an inevitable jealousy between him and the gentlemen; this forces him to become a father and protector of

the common people, and to endeavor always to humble every proud, aspiring senator, or other officer in the state, who is in danger of acquiring an influence too great for the law, or the spirit of the constitution.³⁷

James Wilson likewise defended both an independent chief magistrate and a weak senate on the grounds that the president would naturally be "the man of the people," their ally against the aristocratic few.³⁸ He would "stand the mediator between the intrigues & sinister views of the Representatives and the general liberties & interests of the people."³⁹

With Adams posted overseas, Wilson and Hamilton led the campaign in favor of a strong executive in the Philadelphia Convention (although the latter left Philadelphia on June 29 and did not return until the end of the proceedings). It was Wilson who moved that the new federal executive should "consist of a single person," a proposal he defended on the grounds that "the people of America Did not oppose the British King but the parliament – the opposition was not against an Unity but a corrupt multitude."⁴⁰ And it was largely thanks to their combined efforts (along with those of Gouverneur Morris) that Article II of the Constitution created a single president, independent of the legislature, armed with a veto and vested with the authority of commander-in-chief. But it is essential to recognize that Hamilton and Wilson (along with Adams, *in absentia*) had wished to go even further. Each had argued strenuously in favor of giving the president an "absolute" rather than "qualified" negative (that is, a veto that could not be overridden by a legislative supermajority), and insisted that the chief magistrate should have plenary power to make appointments to executive offices (without the consent of the Senate).⁴¹ Moreover, in his famous speech of June 18, Hamilton broke with Wilson in proposing that the president should serve a life term "on good behavior" – a proposal supported by four state delegations, as well as by Madison and Washington himself.⁴²

Hamilton made no secret of the motivating idea behind these proposals. He believed "that the British Gov[ernment]. was the best in

the world: and that he doubted much whether any thing short of it would do in America." If his fellow citizens could not be persuaded to adopt a proper hereditary monarchy, "we ought to go as far in order to attain stability and permanency, as republican principles will admit." As for the objection "that such an Executive will be an elective Monarch,"⁴³ Hamilton answered that "Monarch is an indefinite term. It marks not either the degree or duration of power. If this Executive Magistrate w[oul]d. be a monarch for life – the other prop[ose]d. by the Report from the Committee of the whole, w[oul]d. be a monarch for seven years." The president, in short, would be a "monarch" whether given an absolute negative or a qualified veto; whether elected for seven years or for life. The question was not whether to have a monarch, but, rather, what kind of monarch to have. And Hamilton's answer to this question was perfectly clear: a British monarch, or the closest available thing to it.

But the British monarch that Hamilton had in mind was not the beleaguered, empirical figure described by Hume, reduced to using patronage to compensate for the erosion of his rightful prerogatives. This figure could not possibly serve as the sort of transcendent champion of the Commons that Hamilton had desired since 1775. Hamilton wanted the new American chief magistrate to resemble instead the British monarch of his high Royalist constitutional imagination: the "only Sovereign of the Empire," vested with sweeping prerogatives that no actual English king had wielded for a hundred years. Yet Hamilton did not quite get his way. The executive that emerged from the Convention was far more powerful than many would have wished, but a good deal less powerful than Hamilton himself had hoped. It is this fact above all that explains the peculiar character of Publius's essays on the executive.

II

While Hamilton believed that the new president was insufficiently monarchical, he confronted a mass of Anti-Federalist opinion that took precisely the opposite view. Many Americans would have agreed with

Edmund Randolph of Virginia that the proposed single executive amounted to a "foetus of monarchy."⁴⁴ Thus, Mercy Otis Warren fumed that the Constitution established a "Republican *form* of government, founded on the principles of monarchy," investing "discretionary powers in the hands of man, which he may, or may not abuse."⁴⁵ Luther Martin of Maryland, one of the dissenting delegates to the Convention, likewise declared that the new president "as here constituted, was a king, in every thing but the name" and that he would be able "to become a king in *name*, as well as in substance, and establish himself in office not only for his own life, but even, if he chooses, to have that authority perpetuated to his family"⁴⁶ – a point seconded by "Montezuma," who wrote in the *Independent Gazetteer* (posing satirically as a Federalist) that "president" was merely a name adopted "in conformity to the prejudices of a silly people who are so foolishly fond of a Republican government, that we were obliged to accommodate in names and forms to them, in order more effectually to secure the substance of our proposed plan; but we all know that Cromwell was a King, with the title of Protector."⁴⁷ The anonymous author of the "Tamony" letters agreed: in truth, he observed, "though not dignified with the magic name of King," the president "will possess more supreme power, than Great Britain allows her hereditary monarchs."⁴⁸

Hamilton's task in *Federalist* 67–77 was to answer this charge. He sought, on the one hand, to defend a strong executive vested with significant prerogative powers; but, at the same time, he attempted to assuage concerns about the monarchical tendencies of the Constitution by stressing the *weakness* of the president relative to the king of Great Britain. Rather than applauding the degree to which the new Constitution borrowed from the British original, Hamilton's tactic in this context was to accentuate its distance from that model. This approach required two highly rhetorical series of maneuvers. First, Hamilton had to defend as virtues of the Article II presidency all of the features that he had assailed as its vices in the Convention itself: the lack of a life term, the absence of an absolute negative, the partial

character of the chief magistrate's appointment power and so on. Second, and even more importantly, he had to paint a wholly outlandish picture of the powers of the British monarch, as they actually existed in 1787. That is, in order to make the presidency look weak in relation to the British monarchy, he had to contrast the former to a radically idealized, parchment version of the latter.⁴⁹ Hamilton knew perfectly well that the prerogative powers that he attributed to the crown in these essays had not in fact been wielded by English kings for generations; indeed, as we have seen, this had always been his great lament. His performance in *Federalist* 67–77 was, therefore, disingenuous in the extreme, but it was not simply that. The rhetorical imperative to make the British monarchy seem stupendously powerful gave Hamilton a final, grand opportunity to reaffirm his own radical conception of the *proper* role of the British sovereign, one that he had been defending since the *Farmer Refuted*.⁵⁰ The result was perhaps the most stridently Royalist account of the British constitution to appear in the eighteenth century.

Hamilton began his performance by complaining that no aspect of the proposed Constitution "has been inveighed against with less candor or criticised with less judgment" than its vision of the chief magistrate. "Here the writers against the Constitution seem to have taken pains to signalize their talent of misrepresentation. Calculating upon the aversion of the people to monarchy, they have endeavored to enlist all their jealousies and apprehensions in opposition to the intended President of the United States; not merely as the embryo, but as the full-grown progeny, of that detested parent" (here Hamilton was clearly recalling Randolph's charge that the president would be a "foetus of monarchy," *Fed.* 67, 452). He proceeded to offer an elaborate satire of Anti-Federalist anxieties:

To establish the pretended affinity [with monarchy], they have not scrupled to draw resources even from the regions of fiction. The authorities of a magistrate, in few instances greater, in some instances less, than those of a Governor of New-York, have been

magnified into more than royal prerogatives. He has been decorated with attributes superior in dignity and splendor to those of a King of Great Britain. He has been shown to us with the diadem sparkling on his brow and the imperial purple flowing in his train. He has been seated on a throne surrounded with minions and mistresses; giving audience to the envoys of foreign potentates, in all the supercilious pomp of majesty. The images of Asiatic despotism and voluptuousness have scarcely been wanting to crown the exaggerated scene. We have been taught to tremble at the terrific visages of murdering janizaries, and to blush at the unveiled mysteries of a future seraglio.

(*Fed.* 67, 452–53)

Drawing perhaps from the opening of Book II of *Paradise Lost* – where we encounter Satan seated "High on a throne of royal state, which far / Outshone the wealth or Ormuz and of Ind, / Or where the gorgeous East with richest hand / Showers on her kings barbaric pearl and gold" (II.1–4)⁵¹ – Hamilton lampooned his opponents for imagining the new president as an Asiatic Grand Signor, "decorated with attributes superior in dignity and splendor to those of a King of Great Britain."

His refutation of the charge takes the form of a point-by-point comparison of the powers of the president and the British monarch, designed to show the relative weakness of the former.⁵² The discussion begins innocently enough, by stating the obvious: although both the British constitution and the proposed American one vest the "executive authority" in "a single magistrate," in the latter "that magistrate is to be elected for four years; and is to be re-eligible as often as the People of the United States shall think him worthy of their confidence," whereas the king of Great Britain serves for life as a hereditary prince. Hamilton had bemoaned this asymmetry in the Convention, but here it served his purpose. Where the president can be removed by impeachment, the king is immune from such proceedings and his person is deemed "sacred and inviolable" (*Fed.* 69, 463). Likewise, the king presides over an established church and may

"confer titles of nobility," prerogatives the president lacks. And, whereas the "the President is to nominate, and, *with the advice and consent of the Senate*, to appoint Ambassadors and other public Ministers, Judges of the Supreme Court, and in general all officers of the United States established by law," the king "appoints to all offices" without the formal consent of a legislative body (*Fed.* 69, 468). Once again, Hamilton had desperately sought to assign the president an analogous prerogative of appointment, but now this failure is presented as a virtue of the scheme.

So far, all of this is relatively unremarkable.⁵³ But Hamilton does not leave matters here. "The President of the United States," he continues, "is to have power to return a bill, which shall have passed the two branches of the Legislature, for re-consideration; and the bill so returned is to become a law, if, upon that reconsideration, it be approved by two thirds of both houses. The King of Great Britain, on his part, has an absolute negative upon the acts of the two houses of Parliament." (*Fed.* 69, 463–64) The royal negative, as Hamilton well knew, had not been exercised for generations, but here he insists that

the disuse of that power for a considerable time past does not affect the reality of its existence; and is to be ascribed wholly to the crown's having found the means of substituting influence to authority, or the art of gaining a majority in one or the other of the two houses, to the necessity of exerting a prerogative which could seldom be exerted without hazarding some degree of national agitation.

(*Fed.* 69, 464)

In order to make the British monarch appear as strong as possible (and the American president correspondingly weak), Hamilton deploys the Whig explanation for the "disuse" of the negative: the king has simply felt no need to wield the negative because he is powerful enough to control both houses of Parliament by means of corruption. This was a view of the British constitutional predicament that Hamilton had always rejected; he had instead followed Hume in regarding

"corruption" as a wholly inadequate, but still essential, *replacement* for prerogative powers (chiefly, the negative voice) that now, regrettably, existed only as a matter of form. Like "Centinel," he bemoaned the fact that "the king of England . . . enjoys but in *name* the prerogative of a negative upon the parliament" and "has not dared to exercise it for near a century past."⁵⁵

Moreover, Hamilton would shortly argue in *Federalist* 73 that the qualified negative of the president should be preferred to the absolute negative because it would *strengthen*, rather than weaken the prerogative: "in proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason it may in practice be found more effectual" (*Fed.* 73, 498). But in this polemical context Hamilton is happy to emphasize the weakness of the president's qualified negative in relation to what he had regarded for two decades as a lamentably defunct prerogative of the sovereign. As one Anti-Federalist complained, "touching on the President" ("more properly, our new KING"), Hamilton and his allies were aiming "to conceal his immense powers, by representing the King of Great Britain as possessed of many hereditary prerogatives, rights and powers that he was not possessed of." In particular, the president, unlike the British monarch *in fact*, is to have "a negative over the proceedings of both branches of the legislature: and to complete his uncontrouled sway, he is neither restrained nor assisted by a *privy council*, which is a novelty in government."⁵⁶

Next, we read that "the President is to be the 'Commander-in-Chief' of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it," for "that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies – all which, by the Constitution under consideration, would appertain to the Legislature" (*Fed.* 69, 465).⁵⁷ This was an extraordinary claim. Although the making of war and peace formally remained prerogatives of the crown, in reality decisions of this kind had long been taken by cabinet ministers. These ministers were in turn required to maintain the support of a majority in the House of

Commons, and they themselves sat in one of the two Houses.⁵⁸ Indeed, George III had only recently shown himself powerless to assume any personal control over the waging of the Revolutionary War, and in 1779 had nearly provoked a constitutional crisis simply by choosing to summon and address his own cabinet (no monarch since Queen Anne had done so).⁵⁹ Moreover, while it remained a prerogative of "the crown" (read: ministers of the crown) to raise and equip armies and fleets, monarchs since the Glorious Revolution had lacked the authority to do so in the absence of an annual "Mutiny Act" passed by the House of Commons – and, in any event, required supply from the Commons in order to pay their troops.⁶⁰

Hamilton's Anti-Federalist opponents eagerly seized upon these facts. The still unidentified author of the letters of "Cato" could distinguish no important respects in which "this president, invested with his powers and prerogatives, essentially differ[s] from the king of Great Britain (save as to name, the creation of nobility, and some immaterial incidents, the offspring of absurdity and locality)." "Cato" pointedly observed that "though it may be asserted that the king of Great-Britain has the express power of making peace or war, yet he never thinks it prudent so to do without the advice of his parliament from whom he is to derive his support – and therefore these powers, in both president and king, are substantially the same."⁶¹ William Lancaster likewise rose in the North Carolina Ratifying Convention to insist that "a man of any information knows that the king of Great Britain cannot raise and support armies. He may call for and raise men, but he has no money to support them."⁶² The author of the "Tamony" letters went even further, observing that the new president "will possess more supreme power, than Great Britain allows her hereditary monarchs, who derive ability to support an army from annual supplies, and owe the command of one to an annual mutiny law. The American President may be granted supplies for two years, and his command of a standing army is unrestrained by law."⁶³ Hamilton registered these objections, but replied in the language of a strident Royalist: "TAMONY, has asserted that the king of Great-Britain owes his

prerogative as commander-in-chief to an annual mutiny bill. The truth is, on the contrary, that his prerogative, in this respect, is immemorial, and was only disputed, 'contrary to all reason and precedent' . . . by the Long Parliament of Charles I" (*Fed.* 69, 465n.). In truth, Hamilton declared (quoting Blackstone's *Commentaries*, but badly misrepresenting the position of his source⁶⁴), "the sole supreme government and command" of armies and navies "EVER WAS AND IS the undoubted right of his Majesty and his royal predecessors, kings and queens of England, and that both or either house of Parliament cannot nor ought to pretend to the same."

The crucial thing to note is that Hamilton had made precisely the same argument in *The Farmer Refuted* over a decade earlier. Then he was responding to Seabury's claim that British Americans owed allegiance to Parliament in return for "the protection we have received from the mother country."⁶⁵ "Nothing is more common," he lamented, "than to hear the votaries of parliament" defending this assertion, but, in truth, "they entertain erroneous conceptions of the matter." Parliament could never have protected the American colonies, because it had no rightful share of the sovereign prerogatives of war and peace. "The King himself," Hamilton insisted, "is regarded by the constitution, as the supreme protector of the empire. For this purpose, he is the generalissimo, or first in military command: in him is vested the power of making war and peace, of raising armies, equipping fleets and directing all their motions. He it is that has defended us from our enemies, and to him alone, we are obliged to render allegiance and submission."⁶⁶ The fact that his British contemporaries had regrettably "los[t] sight" of the king's sovereign authority in no way altered this constitutional reality.⁶⁷

Hamilton's argument in *Federalist* 69 proceeds in much the same vein. "The President," he continues, "is to have power, with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur. The king of Great Britain is the sole and absolute representative of the nation in all foreign transactions. He can of his own accord make treaties of peace, commerce,

alliance, and of every other description." (*Fed.* 69, 467). Opponents of the Constitution scoffed once again. "It is contended," observed Patrick Henry in the Virginia Ratifying Convention, "that, if the king of Great Britain makes a treaty within the line of his prerogative, it is the law of the land." But

can the English monarch make a treaty which shall subvert the common law of England, and the constitution? Dare he make a treaty that shall violate Magna Charta, or the bill of rights? Dare he do any thing derogatory to the honor, or subversive of the great privileges, of his people? No, sir. If he did, it would be nugatory, and the attempt would endanger his existence.⁶⁸

Even some Federalists were prompted to concede as much. Wilson Nicholas of Virginia mocked the notion that "the king of Great Britain can make what treaties he pleases." "But, sir," he countered, "do not the House of Commons influence them? Will he make a treaty manifestly repugnant to their interest? Will they not tell him he is mistaken in that respect, as in many others? Will they not bring the minister who advises a bad treaty to punishment? This gives them such influence that they can dictate in what manner they shall be made." Francis Corbin added that "if the king were to make such a treaty himself, contrary to the advice of his ministry," a constitutional crisis would ensue.⁶⁹ Moreover, a number of Anti-Federalists pointed out that treaties in Britain were in fact frequently laid before Parliament – not least the Peace of Paris that had ended the Revolutionary War.⁷⁰

Hamilton once again stuck to his Royalist guns. "It has been insinuated," he wrote, "that his authority [i.e. the king's] in this respect is not conclusive, and that his conventions with foreign powers are subject to the revision, and stand in need of the ratification, of Parliament." But, Hamilton insisted,

I believe this doctrine was never heard of, till it was broached upon the present occasion. Every jurist of that kingdom, and every other

man acquainted with its Constitution, knows, as an established fact, that the prerogative of making treaties exists in the crown in its utmost plenitude; and that the compacts entered into by the royal authority have the most complete legal validity and perfection, independent of any other sanction.

(*Fed.* 69, 467)⁷¹

James Iredell, who simply paraphrased Hamilton's comparative argument in the North Carolina Convention, agreed: "A gentleman from New Hanover has asked whether it is not the practice, in Great Britain, to submit treaties to Parliament, before they are esteemed as valid. The king has the sole authority, by the laws of that country, to make treaties." To be sure, "after treaties are made, they are frequently discussed in the two houses, where, of late years, the most important matters of government have been narrowly examined." But "the constitutional power of making treaties is vested in the crown; and the power with whom the treaty is made considers it as binding, without any act of Parliament."⁷²

Hamilton had no compunction about carrying his argument through to its logical conclusion. He confidently attributed to the person of the king an effective prerogative to "prorogue or even dissolve the Parliament," to select his ministers at pleasure, to "make denizens of aliens," to "erect corporations with all the rights incident to corporate bodies," to "serve as the arbiter of commerce," "establish markets and fairs," "regulate weights and measures," "lay embargoes for a limited time," "coin money," and "authorize or prohibit the circulation of foreign coin" (*Fed.* 69, 470). And although the sovereign was duty-bound to seek advice from his ministers, Hamilton insisted that "the king is not bound by the resolutions of his council, though they are answerable for the advice they give. He is the absolute master of his own conduct in the exercise of his office and may observe or disregard the council[sic] given to him at his sole discretion" (*Fed.* 70, 478). Again, as a description of the British monarchy as it actually functioned in the late eighteenth century, this was mere burlesque. But as a defense of a particular conception of what the monarchy *should* be like

under the proper construal of the English constitution, it was perfectly continuous with what Hamilton and other Patriots of similar views had been arguing since the imperial crisis. At that time, even Jefferson had implored the king to separate himself from his "British counselors" – who were dismissed as intruding "parties" – and to "think and act for yourself and your people."⁷³ But this high Royalist understanding of the kingly office was as reactionary in 1787 as it had been in 1775.

In other contexts, it suited Hamilton's purpose to acknowledge this fact. In *Federalist* 71, he developed a subtle a fortiori argument designed to reassure critics who might remain anxious about the prerogatives assigned to the chief magistrate. In Britain, the argument goes, the king is vested with hereditary power and other "splendid attributes," but even these advantages of the crown had spectacularly failed to prevent the House of Commons from achieving complete supremacy during the course of the previous century. How much less, then, should we fear that the far weaker president, as imagined in Article II, would come to dominate the legislature? This argument, in short, attempted to strike yet another delicate balance: it once again sought to emphasize the strengths of the British monarch, relative to those of the president, but, at the same time, to demonstrate that the monarchy had been gradually but utterly subjected to the legislature despite these advantages (thus directly contradicting the carefully wrought account of sweeping royal power in *Federalist* 69).

If a British House of Commons from the most feeble beginnings, from the mere power of assenting or disagreeing to the imposition of a new tax, have, by rapid strides, reduced the prerogatives of the crown and the privileges of the nobility within the limits they conceived to be compatible with the principles of a free government, while they raised themselves to the rank and consequence of a coequal branch of the Legislature; if they have been able, in one instance, to abolish both the royalty and the aristocracy, and to overturn all the ancient establishments, as well in the church as State; if they have been able, on a recent occasion,

to make the monarch tremble at the prospect of an innovation attempted by them [Charles James Fox's India Bill⁷⁴], what would be to be feared from an elective magistrate of four years duration, with the confined authorities of a President of the United States?
(*Fed.* 71, 485–86)⁷⁵

Here the king of Great Britain, depicted in *Federalist* 69 as master of all he surveys, is shown "trembling" before an all-powerful legislature. We are finally allowed to glimpse the Humean reality lurking behind the Royalist idyll.

III

Fifteen years after the Constitution was ratified, the Virginia jurist St. George Tucker revisited Hamilton's influential comparison of the presidency and the British monarchy in his 1803 annotated edition of Blackstone's *Commentaries*. The occasion was apposite: Hamilton had festooned his analysis of royal power in *Federalist* 69 with references and direct quotations drawn from Blackstone, plainly hoping that the appearance of agreement with England's greatest constitutional authority would lend credibility to his account. Tucker, for his part, was no committed defender of the new American chief magistracy: he openly mused that the presidency might perhaps be replaced with a "numerous executive," on the model of the French Directory, and fretted in his commentary that "if a single executive do not exhibit all the features of monarchy at first, like the infant Hercules, it requires only time to mature it's [sic] strength, to evince the extent of it's [sic] powers."⁷⁶ But he was nonetheless fully prepared to explore and acknowledge the ways in which the American executive might be seen to perfect the British original. His project, however, required emphasizing the degree to which Hamilton had, in fact, deployed a caricature of Blackstone's constitutional analysis in 1788. For, while Blackstone had admittedly been a Tory who was eager to minimize the extent of the century-long transition from royal to ministerial government, Tucker recognized that he had also been a lucid observer of British political reality. The

great jurist had indeed supplied a list of what remained, as a matter of law, the prerogatives of the crown (although he took a far narrower view of these than Hamilton suggested⁷⁷), but he had also immediately reminded his readers that many of these powers were no longer at the effective disposal of the king.

"The powers of the crown are now to all appearances greatly curtailed and diminished since the reign of King James the first," Blackstone had observed, to the extent that "we may perhaps be led to think that, the balance is enclined pretty strongly to the popular scale, and that the executive magistrate has neither independence nor power enough left, to form that check upon the lords and commons, which the founders of our constitution intended."⁷⁸ Blackstone argued that this conclusion was overly hasty, but not because he had any illusions that British monarchs could exert their prerogative powers in government as they had before the parliamentary revolutions. Instead, like Hume, he identified "influence" as a substitute for prerogative, although he was both far more confident in its efficacy than was Hume, and far more anxious about the dangers of the substitution (in this respect, he came rather close to endorsing the standard Whig theory of English constitutional corruption).⁷⁹ "The instruments of [royal] power are not perhaps so open and avowed as they formerly were," on Blackstone's telling, "but they are not the weaker on that account." The rise of what we now call the eighteenth-century fiscal-military state had placed the monarch in control of an extensive patronage network and thereby assigned the "executive power so persuasive an energy . . . as will amply make amends for the loss of external prerogative." "Whatever may have become of the *nominal*, the *real* power of the crown has not been too far weakened by any transactions of the last century . . . the stern commands of prerogative have yielded to the milder voice of influence."⁸⁰ On Blackstone's account, if the king remained strong, it was *despite* the fact that he no longer wielded the legal powers of the crown; the latter were now the effective possession of ministers accountable to Parliament.

Armed with this recognition, Tucker concluded that, although it is certainly true that "many of the most important prerogatives of the British crown, are transferred from the executive authority, in the United States, to the supreme national council, in congress assembled," in a very real sense the Constitution had assigned the American president powers far *greater* than any enjoyed by the king of Great Britain.⁸¹ In the English constitution, the "unity of the executive" and its attendant "dispatch" were, in truth, illusory:

If such are the real advantages of a single executive magistrate, we may contend that they are found in a much greater degree in the federal government, than in the English. In the latter it exists, only theoretically, in an individual; the practical exercise of it, being devolved upon ministers, councils, and boards. The king, according to the acknowledged principles of the constitution, not being responsible for any of his acts, the minister upon whom all responsibility devolves, to secure his indemnity acts by the advice of the privy council to whom every measure of importance is submitted, before it is carried into effect. His plans are often digested and canvassed in a still more secret conclave, consisting of the principal officers of state, and stiled the cabinet-council, before they are communicated to the privy council: matters are frequently referred to the different boards, for their advice thereon, previously to their discussion, and final decision, in the council. Thus, in fact, the unity of the executive is merely ideal, existing only in the theory of the government; whatever is said of the unanimity, or dispatch arising from the unity of the executive power, is therefore without foundation.⁸²

Here was the great fact about the eighteenth-century British monarchy that Hamilton had deplored for all of his adult life, the same fact that he had been forced to occlude in order to make his rhetorical case in *Federalist* 69. While the crown retained its "prerogatives," the king enjoyed most of them only in name.⁸³ Under the Constitution of the United States, in contrast, "we find a single executive officer substituted

for a numerous board, where responsibility is divided, till it is entirely lost, and where the chance of unanimity lessens in geometrical proportion to the number that compose it."⁸⁴ Moreover, "as every executive measure must originate in the breast of the president, his plans will have all the benefit of uniformity, that can be expected to flow from the operations of any individual mind."⁸⁵ The president of the United States does in reality what the king of Great Britain does only in theory.

But if the new president was, for this reason, more powerful than any British monarch had been for almost a century, he was nonetheless weaker than the splendid, revived sovereign that Hamilton had begun to imagine in 1775. At least one of his fellow delegates at the Convention registered and appreciated this fact. Years later, Thomas Hart Benton of Missouri recalled a conversation with the aged Rufus King of New York "upon the formation of the constitution in the federal convention of 1787." On this occasion, he explained, King "said some things to me which, I think ought to be remembered by future generations, to enable them to appreciate justly those founders of our government who were in favor of a stronger organization [i.e. executive] than was adopted."

He said: "You young men who have been born since the Revolution, look with horror upon the name of a King, and upon all propositions for a strong government. It was not so with us. We were born the subjects of a King, and were accustomed to subscribe ourselves 'His Majesty's most faithful subjects'; and we began the quarrel which ended in the Revolution, not against the King, but against his parliament."⁸⁶

Publius himself could not have said it any better.

NOTES

- 1 Samuel Seabury, *A View of the Controversy Between Great Britain and her Colonies* (New York, 1774), 9.
- 2 Alexander Hamilton, *The Farmer Refuted: or, A More Impartial and Comprehensive View of the Dispute between Great-Britain and the Colonies* (New York, 1775), 15. Hamilton quotes in full Seabury's characterization of the English constitution.

- 3 *Ibid.*, 16.
- 4 *Ibid.*, 17.
- 5 See Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA: Harvard University Press, 2014), esp. ch. 1.
- 6 Benjamin Franklin to Samuel Cooper, June 8, 1770, in *The Papers of Benjamin Franklin*, XVII, ed. William B. Willcox (New Haven, CT: Yale University Press, 1973) (hereafter *PBF*), 163.
- 7 Hamilton, *The Farmer Refuted*, 16. My italics.
- 8 *Ibid.* My italics.
- 9 Charles I, *His Maiesties Ansvver to the XIX Propositions of Both Houses of Parliament* (London, 1642), 11–12.
- 10 See Henry Ferne, *A Reply unto Severall Treatises* (London, 1643), 17–18. For Ferne's position on the far right (as it were) of Royalist discourse, see Corinne Comstock Weston, *English Constitutional Theory and the House of Lords, 1556–1832* (New York: Routledge and Kegan Paul, 1965), 23–24.
- 11 Ferne, *A Reply*, 32.
- 12 For the closest thing to a second contemporary American endorsement of this view, see Benjamin Franklin, "Marginalia in *An Inquiry*, an Anonymous Pamphlet," in *PBF*, XVII, 345 ("the King . . . alone is the Sovereign").
- 13 It was, for example, taken as an uncontroversial statement of fact in the Constitutional Convention that "the King of G[reat] B[ritain]. had not exerted his negative since the Revolution [i.e. 1688]." See *The Records of the Federal Convention of 1787*, 3 vols., ed. Max Farrand (New Haven, CT: Yale University Press, 1911), I, 98–99 (note that Hamilton and Franklin agreed on this point). British Americans were not alone in making this error. See e.g. Jean-Louis Delolme, *The Constitution of England* (London, 1775), 398–99.
- 14 David Hume, *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), 25.
- 15 *Ibid.*
- 16 For the views of the "Court Whigs" whose thoughts prefigured Hume's, see Simon Targett, "Government and Ideology during the Age of the Whig Supremacy: The Political Arguments of Sir Robert Walpole's Newspaper Propagandists," *The Historical Journal*, 37 (1994), 289–317 (esp. 307–13).
- 17 Hume, *Political Essays*, 26.
- 18 *Records of the Federal Convention*, I, 376.

- 19 Ibid. On Hamilton's use of Hume, see Paul Rahe, *Republics Ancient and Modern*, 3 vols. (Chapel Hill: University of North Carolina Press, 1994), III, 115–16; Forrest McDonald, *The American Presidency: An Intellectual History* (Lawrence: University Press of Kansas, 1994), 94–97; and Gerald Stourzh, *Alexander Hamilton and the Idea of Republican Government* (Stanford, CA: Stanford University Press, 70–87). This was the aspect of Hamilton's thought that Jefferson later bowdlerized for polemical purposes (see Jefferson, "The Anas, 1791–1806," in *The Works of Thomas Jefferson*, ed. Paul Leicester Ford [New York: G. P. Putnam's Sons, 1892], I, 167–80). "Hamilton," Jefferson announced, "was not only a monarchist, but for a monarchy bottomed on corruption" (179). For a discussion of Jefferson's use of "political gossip" in constructing this account of Hamilton's constitutionalism, see Joanne B. Freeman, "Poison, Whispers, and Fame: Jefferson's 'Anas' and Political Gossip in the Early Republic," *Journal of the Early Republic*, 15 (1995), 25–57 (esp. 36–39, 55). Wilson likewise came quite close to endorsing Hume's position in remarks to the Pennsylvania Ratifying Convention: "The reason why it is necessary in England to continue such influence [i.e. the king's patronage power], is, that the crown, in order to secure its own influence against two other branches of the legislature, must continue to bestow places; but those places produce the opposition which frequently runs so strong in the British Parliament." *DHRC*, II, 498.
- 20 While I shall use the established terminology of "Federalist" and "Anti-Federalist" throughout the remainder of this essay, I do so with a deep sense of its inadequacy. To label opponents of the Constitution as "Anti-Federalists" is to beg the very question that the parties were debating: namely, whether the unamended Constitution provided the only plausible route to an effective federal union of the states. Virtually all the participants in the ratification debates accepted that the Articles of Confederation had proved gravely deficient and that a series of new powers should accordingly be conferred on the federal government. All of them were "federalists" in this sense.
- 21 Hamilton adds that, in this period, "when the sovereign happened to be a man of vigorous and warlike temper and of superior abilities, he would acquire a personal weight and influence, which answered, for the time, the purpose of a more regular authority." This comment also adapts a remark by Hume: "where [the king] was possessed of personal vigour and abilities

- (for his situation required these advantages) he was commonly able to preserve his authority, and maintain his station as head of the community, and the chief fountain of law and justice." Compare John Adams, *Defence of the Constitutions of Government of the United States*, 3 vols. (London, 1787–88), I, 75: "When the prince was an able statesman and warrior, he was able to preserve order; but when he was weak and indolent, it was common for two or three barons in conjunction to make war upon him."
- 22 Hamilton may have taken this phrase from Hume, who writes that, immediately after the signing of Magna Carta, "those generous barons, who first extorted these concessions, still held their swords in their hands" (David Hume, *The History of England* (Indianapolis: Liberty Fund, 1983), I, 445–46).
- 23 *DHRC*, XXII, 1958.
- 24 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 2 vols., ed. R. H. Campbell, A. S. Skinner, and W. B. Todd (Indianapolis: Liberty Fund, 1981), I, 418. Madison was clearly paraphrasing the same passage in his well-known October 24, 1787 letter to Thomas Jefferson: "[The new Constitution] presents the aspect rather of a feudal system of republics, if such a phrase may be used, than of a Confederacy of independent States. And what has been the progress and event of the feudal Constitutions? In all of them a continual struggle between the head and the inferior members, until a final victory has been gained in some instances by one, in others, by the other of them." *James Madison: Writings*, ed. Jack N. Rakove (New York: Library of America, 1999), 146–47. Cf. *Federalist* 45, 310–311.
- 25 Ibid., I, 386. Writing several years before Smith (although probably influenced by his Edinburgh lectures of 1748–50), William Robertson referred to "the universal anarchy" of feudalism (Robertson, *History*, 16). Hume, for his part, had seen within this form of political life "a mixture of . . . order and anarchy, stability and revolution" (Hume, *The History of England*, I, 456). Gibbon likewise later referred to the "feudal anarchy of Europe" and "the days of feudal anarchy." See Edward Gibbon, *The History of the Decline and Fall of the Roman Empire*, ed. J. B. Bury, 12 vols. (New York: Fred de Fau and Co., 1906), VII, 323, 361. Chapter 53, in which this phrase appears, was not published until 1788. For Robertson's debts to Smith, see Nicholas Phillipson, "Providence and Progress: An Introduction to the Historical Thought of William Robertson," in *William*

- Robertson and the Expansion of Empire*, ed. Stewart J. Brown (Cambridge: Cambridge University Press, 1997), 55–73 (esp. 59–60).
- 26 J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1957).
- 27 Robert Brady, *A Complete History of England, from The First Entrance of the Romans under The Conduct of Julius Caesar, Unto the End of the Reign of King Henry III* (London, 1685), B1r.
- 28 *Ibid.*, B2r.
- 29 Hume, *The History of England*, I, 464.
- 30 *Farmer Refuted*, 18.
- 31 [Thomson Mason], “The British American” (1774), Letter 6, in *The American Archives*, ed. Peter Force (Washington, D.C.: St. Clair Clarke and Peter Force, 1837), 4th series, I, 519. See also William Strahan to David Hall, April 7, 1766, in “Correspondence between William Strahan and David Hall, 1763–1777,” *Pennsylvania Magazine of History and Biography*, X (1886), 86–99 (esp. 97–98). “The Crown, even upon the ablest Head, is now hardly able to retain its just and proper Weight in the Legislature.”
- 32 For a full discussion, see Nelson, *The Royalist Revolution*, ch. 4.
- 33 “Ludlow,” Letter 2, *The Pennsylvania Journal*, May 28, 1777, 1.
- 34 Adams to Elbridge Gerry, November 4, 1779, in *Papers of John Adams*, ed. Robert J. Taylor (Cambridge, MA: Harvard University Press, 1977), VIII, 276.
- 35 Adams to Jefferson, December 6, 1787, in *The Adams–Jefferson Letters*, ed. Lester J. Cappon (Chapel Hill: University of North Carolina Press, 1988), 213. Compare Adams’s later claim that “cities have advanced liberty and knowledge by setting up kings to control nobles . . . Since the existence of courts, the barons have been humbled and the people liberated from villainage.” Adams, Annotations to Mary Wollstonecraft, *Historical and Moral View of the Origin and Progress of the French Revolution* (1796), reprinted in Zoltán Haraszti, *John Adams and the Prophets of Progress* (Cambridge, MA: Harvard University Press, 1952), 232–33.
- 36 Adams, *Defence*, III, 299. Compare Delolme, *The Constitution of England*, 210–11.
- 37 Adams, *Defence*, III, 460.
- 38 *Records*, I, 523. For Wilson’s impassioned rejection of hereditary aristocracy, see his “Lectures on Law” (1790), in *The Works of James*

- Wilson*, ed. Robert Green McCloskey, 2 vols. (Cambridge, MA: Belknap Press of Harvard University Press, 1967), I, esp. 314–15.
- 39 *Records*, II, 30.
- 40 *Ibid.*, I, 71 (King).
- 41 For Wilson’s endorsement of these proposals, see *ibid.*, I, 98; II, 73–74 (on the negative); I, 119; II, 538–39 (on the appointment power). For Hamilton’s, see *ibid.*, I, 98; I, 291–93.
- 42 *Ibid.*, 1:290–91. The sheet in Madison’s Notes recording this vote and its circumstances is among the most extensively revised in the manuscript. Madison was eager, in retrospect, to cast his support of the motion as purely tactical in character, as opposed to Hamilton’s. See Mary Bilder, *Madison’s Hand: Revising the Constitutional Convention* (Cambridge, MA: Harvard University Press, 2015), 114–15.
- 43 *Records*, I, 290.
- 44 *Ibid.*, I, 66.
- 45 Mercy Otis Warren, *Observations on the New Constitution, and on the Federal and State Conventions* (Boston, MA, 1788) in *Pamphlets on the Constitution of the United States*, ed. Paul Leicester Ford (New York: Da Capo Press, 1968), 7, 15. Compare William Grayson’s comment of June 11, 1788 in the Virginia Ratifying Convention: “What, sir, is the present Constitution? A republican government founded on the principles of monarchy, with the three estates. Is it like the model of Tacitus or Montesquieu? Are there checks in it, as in the British monarchy? There is an executive fetter in some parts, and as unlimited in others as a Roman dictator.” *DHRC*, XI, 1169.
- 46 Luther Martin, “Mr. Martin’s Information to the General Assembly of the States of Maryland,” in *The Complete Anti-Federalist*, ed. Herbert J. Storing (Chicago, IL: Chicago University Press), II, 67–68.
- 47 “Letter from Montezuma,” *Independent Gazetteer* (Philadelphia), October 17, 1787. The author continues by attributing to the president all of the prerogatives of the crown, as enumerated by Blackstone.
- 48 “Tamony,” *The Virginia Independent Chronicle*, December 20, 1787.
- 49 See the wise remark on this subject in Frank Prochaska, *The Eagle and the Crown: Americans and the British Monarchy* (New Haven, CT: Yale University Press, 2008), 14. See also Ray Raphael, *Mr. President: How and Why the Founders Created a Chief Executive* (New York: Alfred A. Knopf, 2012), 151; and Josep M. Colomer, “Elected Kings with the Name of

- Presidents. On the Origins of Presidentialism in the United States and Latin America," *Revista Latinoamericana de Política Comparada*, 7 (2013), 79–97.
- 50 Scholars have tended to take Hamilton's description of the powers of the crown at face value. See, most recently, Michael P. Federici, *The Political Philosophy of Alexander Hamilton* (Baltimore, MD: Johns Hopkins University Press, 2012), 135.
- 51 *John Milton*, ed. Stephen Orgel and Jonathan Goldberg (Oxford: Oxford University Press, 1991), 376.
- 52 Hamilton also compares both to the governor of New York, with the aim of demonstrating that the president is far more similar to him than to the king.
- 53 I say "relatively," because even here Hamilton's account is significantly exaggerated. Legally, all appointments to office were indeed a matter of the royal prerogative – and eighteenth-century monarchs did retain the discretionary power to create peers and bishops – but, in practice, the king was not at liberty to select ministers at pleasure (any minister was required to command the support of the House of Commons). Moreover, it was an accepted norm that he would not dictate appointments to executive departments below the ministerial level. On this, see John Brooke, *George III: A Biography of America's Last Monarch* (New York: McGraw-Hill, 1972), 241; John Brewer, "Ministerial Responsibility and the Powers of the Crown," in *Party Ideology and Popular Politics at the Accession of George III* (Cambridge: Cambridge University Press, 1976), 112–36.
- 54 Compare with *Fed.* 73, 496–97.
- 55 "Centinel," Letter 2, in *Complete Anti-Federalist*, II, 150–51. On this issue, see William E. Scheuerman, "American Kingship? Monarchical Origins of Modern Presidentialism," *Polity*, 37 (2005), 24–53 (esp. 41).
- 56 [Benjamin Workman,] "Philadelphensis," Letter 12, in *Complete Anti-Federalist*, III, 137.
- 57 Compare "Philadelphensis," Letter 10, *ibid.*, 131–32.
- 58 See, in general, Jeremy Black, *Parliament and Foreign Policy in the Eighteenth Century* (Cambridge: Cambridge University Press, 2004), 1–12.
- 59 On this, see Andrew Jackson O'Shaughnessy, "'If Others Will Not be Active, I Must Drive': George III and the American Revolution," *Early American Studies*, 2 (2004), 1–46 (esp. 33). When forced to accept the principle of American independence in 1782, George went so far as to draft a letter of abdication, lamenting that "one Branch of the legislature" had "totally incapacitated Him" from "conducting the War with effect" (quoted in O'Shaughnessy, *The Men Who Lost America: British Leadership, the American Revolution, and the Fate of the Empire* [New Haven, CT: Yale University Press, 2013], 42–43). For a more general account, see Brewer, *Party Ideology and Popular Politics*, 112–36.
- 60 The Act of Settlement had likewise imposed a requirement of parliamentary consent for any war fought for non-British interests – although this limitation was not invoked during the eighteenth century. See Jeremy Black, *A System of Ambition: British Foreign Policy 1660–1793*, 2nd ed. (Stroud: Sutton, 2000), 14; and Jack Rakove, "Taking the Prerogative out of the Presidency: An Originalist Perspective," *Presidential Studies Quarterly*, 37 (2007), 85–100 (esp. 88–91).
- 61 "Cato," Letter 4, in *DHRC*, XIV, 10.
- 62 Elliot, *Debates in the Several State Conventions*, IV, 214. Iredell, for one, acknowledged this fact (*Pamphlets on the Constitution of the United States*, 363).
- 63 "Tamony," *The Virginia Independent Chronicle*, December 20, 1787. Madison conceded this point. See *Fed.* 41, 273.
- 64 See Sir William Blackstone, *Commentaries on the Laws of England*, 4 vols. (London, 1765–69), I, 254.
- 65 *Farmer Refuted*, 9 (paraphrasing Seabury, *A View of the Controversy*, 15–16).
- 66 *Ibid.*, 9.
- 67 *Ibid.*, 16.
- 68 *DHRC*, X, 1384–85.
- 69 *Ibid.*, XII, 1251. Roger Sherman likewise conceded that "the king of Great Britain has by the constitution a power to make treaties, yet in matters of great importance he consults the parliament" (Ford, *Essays on the Constitution of the United States*, 155).
- 70 *DHRC*, X, 1392.
- 71 See, for example, Patrick Henry's remarks of June 19, 1788, *DHRC*, X, 1394–95.
- 72 It is worth noting that, even at the level of pure theory, the crown was required to seek parliamentary approval for any treaty requiring expenditures of money or changes to British law. See Black, *Parliament and Foreign Policy*, 2, 10, 102. James McHenry raised this point in the Federal Convention (see *RFC*, II, 395).

- 73 Elliot, *Debates in the Several State Conventions*, IV, 128. Iredell heaped praise on *The Federalist* in his response to George Mason's objections, calling it "a work which I hope will soon be in every body's hands" (*Pamphlets on the Constitution*, 363).
- 74 [Thomas Jefferson], *A Summary View of the Rights of British America* (Williamsburg, VA, 1774), 22. See Gerald Stourzh's perceptive remark that Hamilton's mature constitutional thought "was influenced by the peculiar predicament of the final stage of the British-American contest before independence, from 1774 to 1775 . . . the period when leading colonial advocates like John Adams, Thomas Jefferson, James Wilson, and Alexander Hamilton himself espoused a dominion theory of the British Empire. While they now denied the supremacy of the British Parliament . . . they continued to see in the king of England their sovereign ruler." Stourzh refers to this period as "an Indian summer of virtual Tory philosophy" (Stourzh, *Alexander Hamilton and the Idea of Republican Government*, 26, 43).
- 75 George III vehemently opposed this bill (drafted by Edmund Burke), which would have nationalized the East India Company. It passed the House of Commons, raising the prospect that the king might be left with the unpalatable choice of either accepting the bill or else attempting to revive the defunct royal negative. Instead, when the bill reached the House of Lords, the king let it be known that "whoever voted for the India Bill were not only not his friends, but he should consider as his enemies." The bill was defeated on December 17, 1783. Hamilton is stressing the fact that the king feared to wield his negative power. For this episode, see Brooke, *George III*, 250-55.
- 76 Compare Hamilton's remarks of June 21, 1788 in the New York Ratifying Convention *DHRC*, XXII, 1789.
- 77 *Blackstone's Commentaries: with Notes of Reference to the Constitution and Laws of the Federal Government of the United States*, ed. St. George Tucker, 5 vols. (Philadelphia, PA, 1803), I, 349. Tucker was particularly worried about the president's power of appointment to offices: "The influence which this power gives him, personally, is one of those parts of the constitution, which assimilates the government, in its administration, infinitely more nearly to that of Great Britain, than seems to consist with those republican principles, which ought to pervade every part of the federal constitution" (*ibid.*, 321).
- 78 To take one important example, although Blackstone agreed that the crown is empowered to act on behalf of the nation "in foreign concerns," he never supposed that this category embraced "imperial" concerns. It was for this reason that he utterly rejected the Patriot Royalist position during the 1760s and 1770s. In the Commons debate over repeal of the Stamp Act on February 3, 1766, Blackstone insisted that "all the Dominions of G. B. are bound by Acts of Parl[iamen]t" – not dependent only on the crown. See *Proceedings and Debates of the British Parliaments respecting North America*, ed. Leo Francis Stock (Washington, DC: Carnegie Institution of Washington, 1924), II, 148. He likewise readily conceded that, although the king retained a legal prerogative to raise and equip armies, such forces were in fact now "kept on foot it is true only from year to year, and that by the power of parliament" (Blackstone, *Commentaries*, 1:325). Many other examples could be offered.
- 79 *Ibid.*, I, 323.
- 80 Blackstone notes approvingly that when the conditions requiring the operation of what scholars now call the fiscal-military state are relaxed, "this adventitious power of the crown will slowly and imperceptibly diminish, as it slowly and imperceptibly rose" (*ibid.*, 326).
- 81 *Ibid.*, 326-35. Tucker's comments on this section of Blackstone make clear that he regarded this as a profoundly unwelcome development (*ibid.*, II, 335n., 337).
- 82 *Ibid.*, II, 280n.
- 83 *Ibid.*, I, 316-17. Tucker may well have drawn this argument from Wilson. The latter had made precisely the same observation in his "Lectures on Law" (1790). See McClosKey, ed., *Works of James Wilson*, I, 318-19.
- 84 In relation to treaties, Tucker points out that, while the crown possesses "plenitude of authority in this respect," Blackstone had laid considerable stress on the fact that "the constitution hath interposed a check by means of parliamentary impeachment, for the punishment of such members as from criminal motives advise or conclude any treaty, which shall afterwards be judged to derogate from the honor and interest of the nation." Tucker, *Blackstone's Commentaries*, I, 335.
- 85 *Ibid.*, 319.
- 86 *Ibid.*, 318-19. Thomas Hart Benton, *Thirty Years' View, Or A History of the Working of the American Government for Thirty Years, from 1820-1850*, 2 vols. (New York, 1858), I, 58.