

Sec. 2—Powers, Duties of the President

Cl. 1—Commander-In-Chiefship

cil on the President.²⁴⁶ The idea ultimately failed, partly because of the diversity of ideas concerning the council's make-up. One member wished it to consist of "members of the two houses," another wished it to comprise two representatives from each of three sections, "with a rotation and duration of office similar to those of the Senate." The proposal with the strongest backing was that it should consist of the heads of departments and the Chief Justice, who should preside when the President was absent. Of this proposal the only part to survive was the above cited provision. The consultative relation here contemplated is an entirely one-sided affair, is to be conducted with each principal officer separately and in writing, and is to relate only to the duties of their respective offices.²⁴⁷ The *Cabinet*, as we know it today, that is to say, the *Cabinet meeting*, was brought about solely on the initiative of the first President,²⁴⁸ and may be dispensed with on presidential initiative at any time, being totally unknown to the Constitution. Several Presidents have in fact reduced the Cabinet meeting to little more than a ceremony with social trimmings.²⁴⁹

PARDONS AND REPRIEVES

The Legal Nature of a Pardon

In the first case to be decided concerning the pardoning power, Chief Justice Marshall, speaking for the Court, said: "As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institution ours bear a close resemblance; we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it. A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the Court. . . . A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom

²⁴⁶ 1 M. FARRAND, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* 70, 97, 110 (rev. ed. 1937); 2 *id.* at 285, 328, 335–37, 367, 537–42. Debate on the issue in the Convention is reviewed in C. THACH, *THE CREATION OF THE PRESIDENCY 1775–1789* 82, 83, 84, 85, 109, 126 (1923).

²⁴⁷ E. Corwin, *supra* at 82.

²⁴⁸ L. WHITE, *THE FEDERALISTS: A STUDY IN ADMINISTRATIVE HISTORY* ch. 4 (1948).

²⁴⁹ E. Corwin, *supra* at 19, 61, 79–85, 211, 295–99, 312, 320–23, 490–93.