

Sec. 1—The President

Clause 1—Powers and Term of the President

Hamilton and Madison.—Hamilton's defense of President Washington's issuance of a neutrality proclamation upon the outbreak of war between France and Great Britain contains not only the lines but most of the content of the argument that Article II vests significant powers in the President as possessor of executive powers not enumerated in subsequent sections of Article II.¹⁷ Hamilton wrote: "The second article of the Constitution of the United States, section first, establishes this general proposition, that 'the Executive Power shall be vested in a President of the United States of America.' The same article, in a succeeding section, proceeds to delineate particular cases of executive power. It declares, among other things, that the president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; that he shall have power, by and with the advice and consent of the senate, to make treaties; that it shall be his duty to receive ambassadors and other public ministers, *and to take care that the laws be faithfully executed*. It would not consist with the rules of sound construction, to consider this enumeration of particular authorities as derogating from the more comprehensive grant in the general clause, further than as it may be coupled with express restrictions or limitations; as in regard to the co-operation of the senate in the appointment of officers, and the making of treaties; which are plainly qualifications of the general executive powers of appointing officers and making treaties."

"The difficulty of a complete enumeration of all the cases of executive authority, would naturally dictate the use of general terms, and would render it improbable that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the constitution, in regard to the two powers, the legislative and the executive, serves to confirm this inference. In the article which gives the legislative powers of the government, the expressions are, 'All legislative powers herein granted shall be vested in a Congress of the United States.' In that which grants the executive power, the expressions are, 'The *executive power* shall be vested in a President of the United States.' The enumeration ought therefore to be considered, as intended merely to specify the principal articles implied in the definition of executive power; leaving the rest to flow from the general grant of that power, interpreted in conformity with other parts of the Constitution, and with the principles of free government. The general doctrine of our Constitution then is, that the *executive power*

¹⁷ 32 WRITINGS OF GEORGE WASHINGTON 430 (J. Fitzpatrick ed., 1939). See C. THOMAS, AMERICAN NEUTRALITY IN 1793: A STUDY IN CABINET GOVERNMENT (1931).