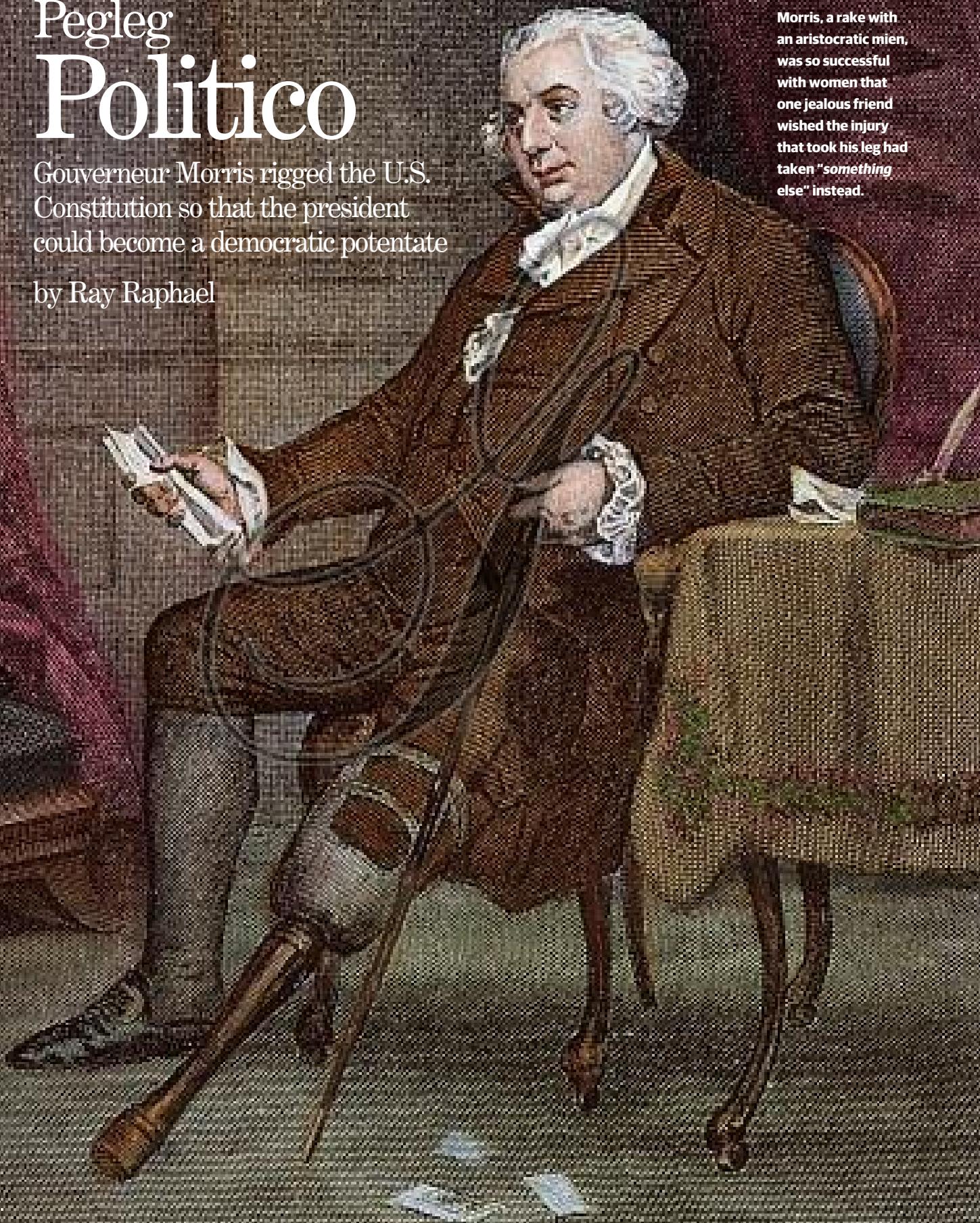


Pegleg Politico

Gouverneur Morris rigged the U.S. Constitution so that the president could become a democratic potentate

by Ray Raphael



Morris, a rake with an aristocratic mien, was so successful with women that one jealous friend wished the injury that took his leg had taken "something else" instead.



Morris, circa 1774

In 1774, Gouverneur Morris, a haughty 22-year-old scion of a politically prominent family whose sprawling manor, Morrisania, comprised most of New York's Bronx, attended a raucous pre-revolutionary rally not far from Wall Street. "The mob begin to think and to reason," wrote Morris in a letter to a friend. "Poor reptiles: it is with them a vernal morning, they are struggling to cast off their winter's slough, they bask in the sunshine, and ere noon they will bite, depend on it. The gentry begin to fear this." So did Morris, who predicted, "if the disputes with Britain continue, we shall be under the worst of all dominions... a riotous mob."

In 1787, Morris attended a more genteel political gathering: the Constitutional Convention in Philadelphia. There, surrounded by men of property, he felt more at home. Morris, who had moved to Philadelphia a decade earlier, was a member of the Pennsylvania delegation. Two physical deformities—shriveled flesh on his right arm, from a pot of boiling water he spilled while he was a teen, and a wooden peg below his left knee, the result of a carriage accident in 1780—marked him from his peers, and so did his flamboyant manner. Despite a three-week absence, Morris rose to speak more times and offered more motions than anyone else at the convention. "Mr. Gouverneur Morris is one of those geniuses in whom every species of talents combine to render him conspicuous and flourishing in public debate," marveled William Pierce of Georgia. "He winds through all the mazes of rhetoric and throws around him such a glare that he charms, captivates, and leads away the senses of all."

Morris pushed a radically nationalist agenda, and he is often called the "penman of the Constitution" for his part in crafting the final version of the document. Yet the critical role he played in stage-managing both the floor debates and backroom deal making at the convention has gone largely untold. Morris deserves a lion's share of credit for the creation of a strong and independent executive branch. Indeed, it is due to Morris' persistence that the United States did not end up with a parliamentary system in which the nation's chief executive would be chosen by the legislature and beholden to it.

Just two weeks before the convention adjourned it seemed a *fait accompli*: The president would be appointed by Congress, serve for seven years and be ineligible for reelection. That's when Morris launched his final, and ultimately successful, campaign for an independent executive. If he hadn't, the office of the president would be very different today. Congress would likely have chosen presidents from its own ranks. Meet the sitting president of the United States, Nancy Pelosi, in office for seven years following her election in 2006, but soon to depart in 2013.



Morrisania Manor
Morris was raised in this stately house on TK00 acres near the juncture of the Harlem and East rivers in New York City. Today, it's the site of the Harlem River Rail Yard.

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Morris was among a distinct minority at the Constitutional

Convention who believed from the outset that the country needed a strong executive, independent of Congress. Most of the delegates worried that such a leader could become a royal tyrant in the mold of Britain's King George III. Soon after the proceedings began in late May, Benjamin Franklin warned his colleagues that a powerful national executive would not always be of the caliber of their beloved hero, George Washington, whom they had chosen to preside over the convention. "The Executive will be always increasing here, as elsewhere, till it ends in a Monarchy," he predicted. To prevent this, Franklin suggested the executive branch be led by more than one man. Despite support from several other delegates, the idea of a plural executive did not prevail. Instead, after less than three days' debate, delegates settled on broad outlines for the office: A single chief executive would be appointed by Congress and could be removed at any time for "mal-practice or neglect of duty," vague terms that would leave the chief executive ever at Congress' mercy. He would serve for seven years and could not be reelected. He had no separate powers but could only "carry into execution the national laws" and make appointments allowed by Congress.

That plan remained in place until mid-July, when Morris began to chip away at it. Congressional selection of

the executive would be “the work of intrigue, of cabal, and of faction,” he argued. As an alternative, he moved that the chief executive be chosen directly by “citizens of the United States,” a radical idea that had been advanced and rejected at the beginning of the convention by his fellow Pennsylvania delegate James Wilson. Coming from the man who had expressed his palpable disdain for the common folk at the Manhattan rally on the eve of the Revolution, popular election was a startling proposal, but even that was preferable to an executive under the sway of Congress, Morris believed.

Not surprisingly, the motion was overwhelmingly rejected by his fellow framers, some of whom felt the nation already suffered from “an excess of democracy.” But Morris did not give up. Two days later, in an impassioned speech, he argued that the executive must be “guardian of the people, even of the lower classes, against Legislative tyranny, against the great and wealthy who in the course of things will necessarily compose the legislative body.” Morris thought that the best way to preserve checks and balances in the new government was to create two extremes in the legislature that would curb each other’s excesses: a democratic branch to represent the masses, offset by a consciously aristocratic one to serve the very top rung of society. While he had once seemed most fearful of the lower orders, now he expressed an equal concern that “the rich will strive to establish their dominion and enslave the rest.” The popular branch alone could not check this drive for power, he argued. “The rich will take advantage of their passions and make these the instruments for oppressing them.” That’s why delegates needed to create a truly independent executive, Morris added, who could function as “the great protector of the mass of the people.” In his speech Morris made several interrelated suggestions.

MORRIS ARGUED FOR THE NEED TO CREATE A TRULY INDEPENDENT EXECUTIVE WHO COULD FUNCTION AS ‘THE GREAT PROTECTOR OF THE MASS OF THE PEOPLE’

Congress should neither select the chief executive nor impeach him—the people should. The executive should also be permitted to repeat in office if he was doing a good job. If the term of office was shortened from seven to two years, he argued, the people could remove him simply by not reelecting him. “The people are the King,” he proclaimed.

While Morris failed to convince his fellow delegates that the chief executive should be chosen by popular election, he did convince them that four issues were inextricably linked—who selected the president, how long he served, whether he was eligible for more than one term and who would remove him from office. When he moved at the end of his presentation “that the whole constitution of the executive might undergo reconsideration,” the state delegations unanimously consented. Shortly after, the framers agreed



Convention delegates at Independence Hall met behind closed doors—and windows—despite Philadelphia’s oppressive heat.

that the executive would be selected not by Congress, but by a group of electors chosen by state legislatures. They also decided the executive could serve more than once and each term would be shortened—not to two years, as Morris had wanted, but from seven years to six. But Morris’s partial victory proved illusory. Only four days later members of the convention retreated to their original plan, including congressional selection of the executive for a single seven-year term.

Morris continued his campaign for an independent executive through the last week of August, to little avail. But he still had one last hope. As the floor debates drew to a close on August 31, the convention decided that a Committee of Eleven, one delegate from each state, should suggest solutions to issues that had not been resolved. One week earlier, delegates had settled on congressional selection of the president down to the finest detail: Congress would choose the president by a joint ballot (rather than the House and Senate voting separately), the winner would need to garner an absolute majority, and the president of the Senate would break a tie vote. But also on that day Morris had confused the matter with an “abstract” vote on presidential electors that failed narrowly, and now the convention hastily approved his motion to send the issue into committee.

It just so happened that Pennsylvania’s representative on the Committee of Eleven was Gouverneur Morris. There are no official minutes of those backroom proceedings, but Morris’s fingerprints are all over the results.

Most significantly, the chief executive would not be selected by Congress. The committee recommended that special electors chosen by the states would cast their votes for two men, at least one of whom



would be from a state not an elector’s own. The top vote-getter would have the title of president, the second vice-president—as Morris had suggested weeks earlier.

The committee also recommended that the president could be reelected, another of Morris’ top priorities, and each term would last four years (more than Morris’ two, but less than the original plan for seven). In addition, contrary to a general consensus reached during the convention, the committee adopted Morris’ proposal that the president, not the Senate, would be empowered to negotiate treaties and appoint ambassadors and Supreme Court judges. Although the Senate still needed to ratify treaties and confirm appointments, the president would now take the lead.

When the committee reported out its recommendations on September 4, some delegates were taken aback. Why had they debated these issues for three months if a committee could suddenly undo their work? Edmund Randolph of Virginia and Charles Pinckney of South Carolina demanded “a particular explanation & discussion of the reasons for changing the mode

of electing the Executive.”

Gouverneur Morris answered immediately with “the reasons of the Committee and his own.” Although his explanations covered familiar ground—“the indispensable necessity of making the Executive independent of the Legislature,” “the danger of intrigue & faction if the appointmt. should be made by the Legislature,” and so on—this time he spoke from a position of strength. He was no longer an outsider trying to overturn prior positions of the convention; now, the burden of proof had shifted. If delegates didn’t like the committee’s decisions, it was up to them to say why.

After a full summer of contentious debates in a hot, steamy room, delegates were worn out. They longed for home. Overwhelmed, they devoted only four days to debating the committee’s momentous reversals, so they never tackled their full implications. In the end they altered only one provision: If electors failed to produce a clear majority, the House, not the Senate, would choose the president, voting by state delegations.

The American presidency, which took shape through Morris’ stub-

Junius Brutus Stearns’ 1856 oil *Washington as Statesman* shows the future president as the most commanding presence among the delegates to the Constitutional Convention.

born and largely unheralded unwillingness to accept defeat, has evolved over time into the most powerful political office in the world, and we now accept the notion of popular election as the norm. Morris had traveled far from his prewar disdain for the people, not because he felt any great love for them, but because he felt it was the only way to insure that the new-found American republic would end up with a strong and independent chief executive. Four years later, while in France during its revolution, Morris drafted a constitution for that struggling nation that he hoped would save the monarchy. His recommendation that France keep its king was ignored, but as that nation succumbed to mob rule, Morris scrambled to provide refuge for terrified French aristocrats. ■

Ray Raphael is the author of the newly released book, Mr. President: How and Why the Founders Created a Chief Executive