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The Origins of the Presidential Election: The Creation of the Electoral College through the First Federal Elections

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THE ORIGINS OF THE PRESIDENTIAL ELECTION

The Creation of the Electoral College through the First Federal Elections

A Thesis

Presented to

The Faculty of the Department of History

The College of William and Mary in Virginia

In Partial Fulfillment

Of the Requirements for the Degree of

Master of Arts

by

Giacomo Mazzei

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APPROVAL SHEET

This thesis is submitted in partial fulfillment of
the requirements for the degree of

Master of Arts

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ABSTRACT

In this study I examine the creation at the Philadelphia Convention of the Electoral College for the election of the President of the United States. I then examine the debate on the constitutional provisions regulating the election of the United States president and vice-president during the process of ratification of the United States Constitution. I finally examine the actual operation of that electoral system in the first federal election.

I draw on a body of published primary sources that includes primarily the records of the Philadelphia Convention of 1787, the records of the debates in the several state conventions on the adoption of the United States Constitution, particularly with regard to the years 1787-1788, and the records of the first federal election of 1788-1790.

This subject matter provides valuable information for further understanding the political culture of the Revolutionary period. In particular, my argument is that the creation of the Electoral College and its operation in the first federal election reveal the remarkable degree to which partisanship was involved in the process of selecting George Washington and John Adams as, respectively, the first president and the first vice-president of the United States. I put my interpretation within the context of the relevant historiography on the subject.
THE ORIGINS OF THE PRESIDENTIAL ELECTION

The Creation of the Electoral College through the First Federal Elections
INTRODUCTION

The Electoral College was one of the ingenious creations that came out of the Philadelphia Convention, and has been a controversial peculiarity of American constitutionalism ever since. After the 2000 election many American voters realized for the first time how complicated its machinery is. They also realized that it is not a purely democratic electoral system which every four years establishes who will dwell in the White House, but one that reflects the federal character of the United States government. They understood that with their vote they had actually elected electors of the president, and not the president himself. And they found that the electors they had entrusted could overthrow their vote and give it to a candidate different from the one they favored, even if this is a more theoretical than real possibility, which until now has occurred only rarely in American history.

Over the years many have criticized this electoral scheme, which has provoked the highest number of amendments introduced in Congress for a single constitutional provision. But, with the exception of the twelfth amendment, which introduced the single electoral ticket for both the president and the vice-president, and the twenty-second amendment, which limited the president’s tenure in office to two consecutive terms, all the reforms proposed have been defeated. The changes the state legislatures have provided for choosing the presidential electors and the development of the two-party system, of which the introduction of the twelfth amendment was a consequence, have
stressed the federal character of the presidential election and have made it virtually direct. Yet its original design is in many respects unaltered and continues to be the object of political controversies.

It is indeed a sign of the complexity of executive power that the problem of the presidential election was also hotly debated at the Philadelphia Convention, by the very statesmen who conceived the mechanism of the Electoral College. The framers discussed the mode of election for the president on twenty-one different days and voted on it over thirty times during the proceedings of the Convention. Several schemes of congressional, direct, and indirect popular election were put forward. The final draft of the Electoral College was proposed by the Committee on Unfinished Parts only on September the 4th and approved, after the introduction of minor amendments, on the 7th, three and a half months after the Convention had opened and ten days before the delegates signed the Constitution and submitted it to the states for approval.¹

The whole problem of defining the position of the president in the constitutional framework was one of the most difficult and dividing issues the framers confronted. To begin with, the idea of an elective national magistrate vested with executive power was in many respects a novelty. When the American Revolution broke out, no recent nor significant historical precedent stood as an example for the rebels who were building new republican governments in the former British colonies. They had to look back to ancient Greece and Rome, whose greatness no modern republic had been able to match. True,

they drew on the rich tradition of European constitutional thought as well as the works of seventeenth- and eighteenth-century Republican thinkers. John Locke and Montesquieu, who had advocated the separation of powers between the branches of government, and the political as well as practical necessity of an independent executive power, were already well known in America. In his *Second Treatise of Government*, Locke wrote:

"The good of the society requires that several things should be left to the discretion of him that has the executive power... For the legislators not being able to foresee and provide by laws for all that may be useful to the community, the executor of the laws, having the power in his hands, has by the common law of Nature a right to make use of it for the good of the society." But Locke, as did Montesquieu, was referring to a hereditary monarch, namely the English "King in Parliament," as he would be conceived after the Glorious Revolution of 1688. When both Locke and Montesquieu theorized the separation of powers, they were also defending the prerogative of the crown. And if as early as 1656 James Harrington had put forward the idea of an elective executive in *The Commonwealth of Oceana*, such an idea remained the peculiarity of largely unheard republican theorists. A century later in his influential *Commentaries on the Laws of England*, the English jurist William Blackstone discarded it because it would result in "periodical bloodshed and misery."  

   In fact, while drafting their new constitutions, the American revolutionaries most of all reacted to the stubborn authoritarianism of George III, so vehemently condemned

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by Thomas Jefferson in the Declaration of Independence. This antimonarchical stance, with its implied opposition to regal prerogative, resulted in a fundamental rebuttal of the separation of powers. In the newborn state republics the governors were made directly dependent on the legislatures, and stripped of the major powers that they had enjoyed in the colonies as the agent of the English crown. Under the Articles of Confederation the president was also dependent on the legislature and merely presided over Congress.\textsuperscript{3}

The years following the outbreak of the Revolution witnessed rapid developments in politics, of which the democratization of the state legislatures and the increasing inadequacy of the Confederation were major cases. The Philadelphia Convention was conceived of as a means to confront such developments, and to the advocates of political consolidation the empowerment of the executive, which had already been attempted in New York and Massachusetts with the introduction of the constitutions of 1777 and 1780, and had been proposed in the Continental Congress by superintendent of finance Robert Morris, was instrumental to a design aimed at restraining the rising populism of American politics and the ineffectiveness of the Confederation. Confronting what they now considered the perils of unchecked legislative assemblies and increasingly factious political majorities, the framers thus reinterpreted the principle of the separation of powers. But the definition of the executive power, particularly a national executive within a new continental government, was by no means easy. As late as April 16, 1787, only a

month before the opening of the convention, James Madison wrote to George Washington and confessed his difficulty in conceiving the very nature of a national executive: “I have scarcely ventured as yet to form my own personal opinion either of the matter in which he ought to be constituted or of the authorities with which he ought to be clothed.” His difficulty would be that of many at Philadelphia, where the lack of consistent historical precedents, the persistence of the antimonarchical stance, and the disagreement between the delegates over the nature of the future national government, made the definition of the executive particularly challenging. “[T]o unite a proper energy in the Executive and a proper stability in the Legislature departments,” as Madison explained to Jefferson after the convention, was “peculiarly embarrassing.”

The choice of the mode of election of the president was part of the framers’ effort to create the presidency. As such, it was interconnected with other important issues, since it would affect the representativeness, the independence, and therefore the authority of the executive within the national government. The election of the president by the legislature would result in his dependence on it, weakening his appeal among the people, and undermining the separation of powers many favored. Depending on the nature of representation in Congress, such mode of election would prove palatable either to the states with large electorates or to those with small ones. Had Congress been elected by the people at large, Congressional election would be favored by the states with large

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electorates, while it would be opposed by the states with small electorates, because the former would be, in terms of numbers, more influential in the choice of the president. On the other hand, if Congress were to represent the states, as it was under the Articles of Confederation, Congressional election would be supported by the states with small electorates, because this way electoral size would not matter and each state would be granted an equal share in the presidential election. Popular election would save the separation of powers and create an independent executive with greater authority and national character as one powerful unifying symbol for the newborn nation. Indirect popular election would meet the expectations of those who, given the size of the nation and the increase of factions and partisanship, were concerned about the practical as well as political feasibility of direct popular election. Finally, two other issues further complicated the matter: terms of office and eligibility for reelection. Depending on their mix, the president would be held more or less accountable, whether by the legislature or the people.

The Electoral College provided what the framers considered a viable middle ground for the solution of all these issues. Yet, their virtually unanimous satisfaction with the original mechanism they had devised was not always matched by an equally positive appraisal from those who were asked to ratify the new constitution. Furthermore, from the first federal elections, the Electoral College only partially worked as the framers had claimed it would, particularly with regard to the election of the vice-president, who was also chosen through the Electoral College. What the framers failed to envision was the remarkable influence exerted by rapidly developing national parties. These proved
pivotal in determining the actual operation of the first Electoral College, and their existence defeated the main purpose of indirect elections, that of keeping the selection of both the president and the vice-president out of the reach of political factions.

The records of the Philadelphia Convention provide ample evidence with regard to the issues that were at stake in the framing of the presidential election as well as the difficulty the framers confronted while conceiving of the Electoral College. The first part of this thesis, which covers the proceedings of the convention, is mainly based on those records. The debate during the ratification of the Constitution in the several states and the first federal election, the regulation and the proceedings of that election, and private correspondences from the period provide further evidence with regarding to the framers' intentions as well as the reception of their ideas in the political environment of the time. The latter set of documents constitute the foundation for the second part of this study.5

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CHAPTER I

THE FRAMING OF THE ELECTORAL COLLEGE

The first scheme of election of the national executive discussed at Philadelphia was that outlined in the Virginia Plan, the proposal for national consolidation drafted by Virginia's delegates and presented by Governor Edmund Randolph on May 29, 1787, four days after the opening of the Convention. The Virginia Plan provided for a national executive "to be chosen by a National Legislature," and "to be ineligible a second time." The executive was to join the judiciary in a council of revision. The office was also to enjoy a limited veto. The number of magistrates who would compose the executive and the length of the term of office were not specified. On June 1 the Convention begun to debate the scheme, and James Wilson of Pennsylvania soon stood out as a major advocate for a strong executive. Wilson's first struggle was that for a single office, which alone, he contended, would provide it with the necessary "energy, dispatch and responsibility." His proposal was aimed to achieve further consolidation, but it met the immediate opposition of Randolph, who regarded a unitary executive as "the foetus of monarchy." Madison favored it, but only if it would be "aided by a council, who should have the right to advise and record their proceedings, but not to control his authority." Roger Sherman of Connecticut simply "wished the number might not be fixed." He maintained that the legislature "should be at liberty to appoint one or more as experience
might dictate.”

Randolph well embodied the antimonarchical stance at the Convention, while also expressing the concerns of those who opposed excessive consolidation. By the same token, Sherman envisioned a weak executive in the hands of the legislature, as governors were in most of the states. Madison, in contrast, endorsed the idea of concentrating the authority of the executive on a single person, but he still felt obliged to maintain the provision of a council. This arrangement resembled the balance of powers in the state governments, where, with the sole exception of Pennsylvania, the executive was unitary and a council directly elected by the people advised and checked the governor. The idea of a vigorous and independent executive was still far from winning the support of the majority of the delegates, including Madison, the great architect of the Convention.²

Despite such resistance, the following day, June 2, Wilson took a further step. This time he outlined the first scheme of indirect popular election presented at the Convention, providing that the states would be “divided into Districts,” and that “the persons, qualified to vote in each District,” would “elect Members for their respective Districts to be electors of the Executive Magistracy.” A similar Electoral College had been introduced in Maryland in 1776, and proposed, though unsuccessfully, at the New York constitutional convention of 1777. Drafted by the wealthiest and most prominent leaders of the colony and not submitted to the people, the Maryland Constitution

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¹ RFC 1:21, 65-7.
² With the constitution of 1776, Pennsylvania had replaced the governor with an Executive Council of twelve, who were elected directly by the people. In the other states the executive office was also weakened by the introduction of state councils. According to Gordon Wood, state councils “greatly diluted the independence of governors’ authority, making them... little more than chairman of their executive boards.” Wood, Creation, 137.
provided that fifteen senators were chosen by forty electors, selected by the voters of the county in which they lived. Two electors were selected from each county, and the Cities of Annapolis and Baltimore were entitled to one each.  

Letters exchanged between Edmund Pendleton and Thomas Jefferson after the introduction of Virginia’s Constitution show two points of view on the matter, one political, and the other practical, which many shared at Philadelphia. While admitting that his arguments would be “disagreeable to the people,” Pendleton wrote on August 10, 1776, that he would not object to the election of the senators by the people, had they been given life term and “been chosen out of the people of great property,” that is, with “fixed Permanent property.” Jefferson agreed since he had already suggested the election of the upper house by the lower house, arguing: “A choice by the people themselves is not generally distinguished for its wisdom. This first secretion from them is usually crude and heterogeneous. But give to those so chosen by the people a second choice by themselves, and they generally will chuse wise men.” Similarly the case of the Electoral College in Maryland was in Madison’s eyes one of the best alternatives to an election of the executive by the legislature. One year after the closing of the Convention, in his observations on Jefferson’s draft of a constitution for Virginia, he wrote: “An election by the Legislature is liable to insuperable objections. It not only tends to faction intrigue and corruption, but leaves the Executive under the influence of an improper obligation to that department. An election by the people at large, as in this and several other States – or by

3 RFC 1:77-78. According to Jackson Turner Main, this was the fulfillment of antidemocratic theories that many elite revolutionaries shared, but that were successful only in Maryland, where the upper class proved “sufficiently determined and powerful to create a truly aristocratic Senate.” Jackson Turner Main, *The Upper House in Revolutionary America, 1763-1788* (Madison, University of Wisconsin Press, 1967), 204.
Electors as in the appointment of the Senate in Maryland, or indeed by the people through any other channel than their legislative representatives, seem to be far preferable.”

Though the Electoral College *per se* did not meet any particular criticism when Wilson first proposed it on June 2, the attempt to strengthen the executive, by making it independent of the legislature, received scarce support. Instead, the Convention passed a resolution submitted by Randolph, which provided for an executive “to be chosen by the national legislature for the term of seven years,” and “to be ineligible a second time.” Of this initial balance between mode of election, terms of office, and eligibility for reelection, the seven-year term was the only aspect meant to grant a certain degree of autonomy to the executive. The Committee of the Whole confirmed Randolph’s provision, while also rejecting Delaware delegate John Dickinson’s proposal of an executive “removeable by the National Legislature on the request of a majority of the Legislatures of individual States,” a check on the national legislature which, on the other hand, would make the executive dependent on the states. However, despite the theatrical opposition of Randolph, “which he believed he should continue to feel as long as he lived,” and at least eleven other delegates who favored a plural executive, on June 4 the Committee approved Wilson’s provision for a unitary executive, hence laying the basis upon which the empowerment of the office would be grounded.

On June 15 William Patterson of New Jersey submitted the New Jersey Plan,

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4 Pendleton and Jefferson quoted in Main, *Upper House*, 204; *Papers*, 11:289.
which called for a “Federal Executive,” to be elected by “the U. States in Congress,” and to be “ineligible a second time, and removable by Congress on application by a majority of the Executives of the several States.” The composition and the term of the office, which in the amended Virginia Plan constituted the strength of the executive, were not specified. Under the provisions of the New Jersey Plan, which involved only a partial reformation of the Articles of Confederation, the executive once again enjoyed little independence – like in Dickinson’s proposal it depended on the states – and therefore modest power. Against such a drawback Alexander Hamilton of New York raised his voice in his lengthy speech of June 18. Unmistakably rejecting the New Jersey Plan, but also substantially revising the Virginia Plan, he plainly called for a “general and national government, completely sovereign.” His plan arranged for a senate “to be elected by electors to be chosen for that purpose by the people, and to remain in office during life,” and provided that “all state laws” would be “absolutely void,” if they contravene those passed by the national legislature. As such, it aimed not only at the consolidation of the national government, but also at altering the balance of powers as it had evolved in most of the states. The strengthening of the executive, who would have the power, among others, “of negativing all laws,” and would be in office “during life,” was an essential aspect of this design. Like Wilson, Hamilton proposed that electors would be “appointed in each of the states to elect the executive.”

6 RFC 1:244, 300.
institution for carrying the will of the Legislature into effect,” and that “the person or persons ought to be appointed by and accountable to the Legislature only, which was the depositary of the supreme will of the Society.” His concept of the executive magistrate still resembled that which inspired the framers of state constitutions in 1776. For example, Jefferson in his 1776 draft for the Virginia Constitution conceived of a governor who had no voice in legislation, no authority in international relations, no authority to pardon crimes, and restricted power of appointment. Though the Virginia Constitution actually granted the governor greater powers, Jefferson mainly conceived of him as an “Administrator.”

Cognizant of the weakness of the national executive in the Confederation, Hamilton held a completely different notion of its position in the constitutional framework. “Let one executive be appointed who dares execute his powers,” he urged his fellow delegates. He thus recognized the key role of the chief executive as a military leader and his broad responsibility in administration. He also acknowledged the executive’s function in unifying contrasting political views within the legislature as well as opposing sectionalism and what he considered shortsighted grievances, such as those from debtors and paper money champions, which were seen not only as economically detrimental but as a threat to the established social order. After all, he maintained that “all communities divide themselves into the few and the many. The first are the rich and well born, the other the mass of the people.” As he would later explain in The Federalist, Hamilton believed that “energy in the Executive [was] a leading character in the

definition of good government," and that "a vigorous Executive" was "essential to the protection of the community against foreign attacks... the steady administration of the laws... the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice... the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy."\(^8\)

Hamilton presented his proposals as amendments to the Virginia Plan, but the Convention never debated them. Uttered in an assembly where conservative statements were not rare, his speech was appreciated, but it was probably deemed impractical. A few days after Hamilton had intervened, William Samuel Johnson of Connecticut noted that the "gentleman from New York" had "been praised by every body," but had "been supported by none." And yet, even though the overall nationalistic and antidemocratic logic of his plan was substantially discarded, Hamilton’s proposals for the empowerment of the executive would eventually be influential. In the end the Convention would give the executive the power of "negativing all laws" passed by the legislature, even though two-thirds of the legislature could then void the presidential veto. The executive could also make treaties and appoint ambassadors and judges of the Supreme Court with the consent of the Senate, and act as "the sole direction of all military operations," as Hamilton had recommended. Finally, the idea of an indirect presidential election eventually appeared in the proposal for the introduction of the Electoral College, which

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\(^8\) RFC 1:65, 299. Publius, "The Federalist LXX," New York Independent Journal, March 15, 1788, in DHRC, 16:396. In his exhortation to "[[l]et one executive be appointed who dares execute his powers," Hamilton was touching upon what Harvey C. Mansfield has defined as "the ambivalence of the executive power," that is, its peculiarity of being "both subordinate and not subordinate, both weak and strong." Harvey C. Mansfield, Jr., *Taming the Prince: The Ambivalence of Modern Executive Power* (New York, The Free Press, 1989), xvi.
Hamilton actively supported when, after a long absence, he came back to Philadelphia toward the end of the Convention, and later, as "Publius," in the struggle for the ratification of the Constitution. The thrust of Hamilton's view was in its national perspective: a strong union needed a strong executive.⁹

In the four weeks between Hamilton's speech and the adoption, on July 16, of the Connecticut Compromise, the issue of presidential selection was in practice set aside. It came up again only once the former supporters of the Virginia and the New Jersey plans had reached a basic agreement on the crucial subject of representation in the national legislature. At this point, Randolph's provision still ruled: with the Connecticut Compromise, the delegates had agreed that the president was to be elected by the legislature, to serve for seven years, and to be ineligible for a second term. This settlement did not last long, and the issue of the mode of electing the executive once again arose, in increasingly Hamiltonian terms. Once almost everyone had finally accepted the idea of the unitary executive, the necessity of an adjustment in the balance of powers in favor of the executive became apparent. From July 17 to July 26, several schemes were put forward, all somehow aimed at rendering the chief executive, now widely called "the president," more independent of the legislature. As a result, the Convention turned its attention back to popular election, and the interconnected problems of eligibility and terms of office.

This time the discussion went into greater depth, with the delegates' expressing

⁹ RFC 1: 300, 363. As Broadus Mitchell put it, a number of Hamilton's proposals, "percolated through the discussions in the succeeding three months and won their way into the Constitution." This was particularly true with respect to the executive power. Broadus Mitchell, Alexander Hamilton: Youth to Maturity, 1755-1788 (New York: The Macmillan Company, 1957), 392.
practical as well as political considerations of the feasibility of an election by the people. However the independence of the executive was not the only issue at stake. Now that representation in both houses had been defined, the delegates had clearer ideas about whom the president should represent, and conceived different modes of election to give more power to the states, or to the people. The delegates who favored popular election were primarily from the states with larger electorates, notably Pennsylvanians Morris and Wilson. Those who opposed popular election were from the states with smaller electorates, whether because of their size, or because they had large slave populations that would not be influential in the selection of the president. The Connecticut Compromise had solved the issue of representation in the national legislature. As a result, in this crucial second round of discussion, the idea of a scheme of presidential election that would reflect the balance of representation in the legislature finally appeared. Some of the proposals now presented actually anticipated the compromise that would be eventually reached with the introduction of the Electoral College.

Popular election was the first scheme debated. On July 17 Gouverneur Morris, another delegate from Pennsylvania, advocated an energetic executive, which was not impeachable, was provided with ample powers of appointment, was elected by the people, and was re-eligible. In particular, Morris made so strong a case against ineligibility – he contended that it “tended to destroy the great motive to good behavior, the hope of being rewarded by a re-appointment” – that the clause was immediately removed from the text on which the Convention so far had agreed. But the acceptance of Morris’s argument implied the rejection of legislative election – which he compared to
“the election of a pope by a conclave of cardinals” – because re-eligibility alone would put the president in the hands of the legislature. To reestablish the independence of the executive, proposals were thus made for letting him remain in office “during good behavior.” But that was going too far, because no definite term limits meant not enough check on the executive, and the Convention rejected both proposals. And yet, once reeligibility had passed, popular election seemed indeed to be the only way to make the executive independent of the legislature. It was then reconsidered, two days later, when Morris called for an executive magistrate who should be “the guardian of the people,” against “Legislative tyranny.”

At this point of the proceedings, two issues arose in the discussion. Those issues were distinct, but they both brought the delegates to the same conclusion and paved the way for the final scheme: indirect election, whether it involved the participation of the people, or not. On the one hand, many were concerned that popular election would be practically impossible and politically dangerous for their republican design. Rufus King and Elbridge Gerry of Massachusetts were among those. Representing a populous state where the people already elected the governor, they had reasons to both support and oppose it. They were not prejudicially against a popular election in which their state would have the lion share, but their own experience with democratic politics warned them against the perils that, in their eyes, popular election entailed. King assured his colleagues that he was “much disposed to think that in [a national presidential election] the people at large would chuse wisely,” but he also saw “some difficulty arising from the

10 RFC 2:33, 52.
improbability of a general concurrence of the people in favor of any one man.” The difficulties King was referring to were practical: in the absence of well-structured national parties and a modern press, whose rapid development starting from the 1790s none of the framers fully anticipated, it was indeed difficult that one single candidate would reach the majority. Like Wilson and Hamilton had done before him, King proposed that “electors chosen by the people for the purpose” would elect the president. To him, indirect election apparently was a way to create an electorate which would be most likely to cast a useful vote for a national candidate to the presidency.11

In a political environment in which, despite rising democratization, deference still regulated personal relations to a great extent, and enfranchisement was limited to around one sixth of the population, King apparently expected that voters would select presidential electors out of informed people, whether because of their higher social statues or their involvement in politics. But, of course, indirect election was not only a practical device to ensure that the result of presidential elections would be clear. It was also meant to keep the great mass of voters from directly electing the highest magistrate of the republic. Governeur Morris advocated a presidential election “by the freeholders of the Country.” He admitted that “difficulties attend this mode,” but he also added that “they have been found superable in New York &. in Connecticut and would... be found so, in the case of an Executive for the United States.” Perhaps because, like many others at the Convention, he too relied on Washington’s fame, Morris was optimist about the feasibility of popular election. “If the people should elect,” he predicted, “they will never

11 RFC 2:55-56.
fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation.” Gerry, who spoke little after King, made clear that there were also critical political issues at stake.12

Gerry discarded popular election all together, even in the form of indirect election proposed by King. “The popular mode of electing the chief Magistrate would certainly be the worst of all,” he unambiguously stated. He made clear that he feared the appeal of demagogues on the voters, who, he maintained, were “uninformed” and would be “misled by a few designing men.” To support his position he had convincing reasons that went back to Shays's Rebellion of the year before, and the role the governor of Massachusetts and the president of New Hampshire had played in suppressing it. Both the governor and the president had not been reelected in their states in 1787, and now Gerry warned the Convention against the popular election of the national executive: “If he should be so elected and should do his duty, he will be turned out for it like Governor Bowdoin in Massachusetts and President Sullivan in New Hampshire.”13

It was remarkable that two delegates from a state that, in terms of representation, would have been favored by popular election nevertheless opposed it, to the point that one of them had proposed a presidential election by the state executives. It was less surprising that the delegates from small states as well as those from the Southern states, where approximately one third of the population were disenfranchised slaves, were dissatisfied with popular election and favored indirect election. Patterson of New Jersey made the case for the small states, when he said that his ideas “nearly coincided” with

12 RFC, 2:29.
13 RFC 2:57.
those of King, and then proposed that the president should be appointed “by Electors to be chosen by the States in a ratio that would allow one elector to the smallest and three to the largest States.” Madison, who spoke shortly after Patterson, made what would eventually result as the decisive point for the provision of electors.\(^{14}\)

A fine student of constitutionalism, but also a delegate from a slave state and a slaveholder himself, Madison praised the virtues of popular election – apparently during the discussion nobody but Gerry explicitly rejected it – while at the same time indicating its risks, particularly with regard to the imbalance in representation between the states. Madison was still concerned that popular elections would excessively suffer from localism. “The people at large” were, in his opinion, “as likely as any that could be devised to produce an Executive Magistrate of distinguished Character,” but they “generally could only know and vote for some Citizen whose merits had rendered him an object of general attention and esteem.” However Madison also noticed another problem with popular election, one “of a serious nature”. “The right of suffrage was much more diffusive in the Northern than the Southern States,” he maintained, “and the latter could have no influence in the election on the score of the Negroes.” On the other hand, he found that indirect election through electors “obviated this difficulty and seemed on the whole to be liable to the fewest objections.”\(^ {15}\)

Gerry followed Madison’s lead and put forward his plan of indirect election. As a

\(^{14}\) RFC 2:56.

part of a complicated frame of government he had conceived, he proposed that the executive would be appointed "by Electors to be chosen by the State Executives." The Convention did not even discuss Gerry's plan, and he soon backed another plan of indirect election, this time by Oliver Ellsworth of Connecticut. Ellsworth proposed that the executive should be chosen by electors "appointed by the Legislatures of the States," whose number would be apportioned in the following ratio: "one for each State not exceeding 100,000 inhabitants, two for each above 100,000 and not exceeding 300,000, and, three for each State exceeding 300,000." Ellsworth's scheme was not as palatable to some states as the Connecticut Compromise had been. A crucial state in supporting the consolidation of the national government, Virginia would not see its slaves counted, as they were under the three-fifth clause. Having a free population of c. 450,000, it would be as represented as would Pennsylvania, Massachusetts, and New York, whose population ranged from 310,000 to 430,000. But Virginia also had a slave population of almost 300,000 that would go completely unrepresented. By attenuating the principle of proportional representation, granting the state legislatures the power of choosing the electors of the president, while also securing the executive's independence from the legislature, Ellsworth's scheme nevertheless proposed a viable alternative to both congressional and popular election. As such, it resembled what would be the final scheme of the Electoral College.16

The Convention approved Ellsworth's plan, but the time was not ripe for

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16 RFC 2:57. Jack Rakove noted that Ellsworth's scheme "briefly took on the aura of a panacea." Rakove, Original Meanings, 259. According to Shlomo Slonim, "now the provision for choosing an executive was, in certain key features, approaching the ultimate form that would emerge from the convention." Slonim, "Electoral College," 44.
agreement. Four days later, on July 24, when discussion of the adoption of electors resumed, it was soon clear that most delegates were still not convinced. Hugh Williamson of North Carolina contended that electors “would certainly not be men of the 1st nor even of the 2nd grade in the States,” because “these would all prefer a seat in the Legislatures.” Gerry, backed by King, replied that “the best men” would be honored to be electors, since “the election of the Executive Magistrate will be considered as of vast importance and will excite great earnestness.” Williamson’s argument proved convincing while Gerry’s did not. The Convention thus rejected Ellsworth’s plan and readopted election by the legislature, now proposed by William Houston of New Jersey. Williamson seconded Houston’s motion, while Pennsylvania (Wilson and Morris’s state), Massachusetts (King and Gerry’s), Connecticut and Virginia (Ellsworth and Madison’s) voted against it.¹⁷

Apparently the concept of indirect popular election through presidential electors had still not won the approval of enough delegates from slave and small states. And yet, again, states’ representation was not the only issue at stake. While arguing about the personal quality of presidential electors, both Williamson and Gerry were in fact confronting the new problem of political organization in a national republic within the boundaries of a political conception that, while rooted in tradition, had nevertheless been eroded, and would gradually become anachronistic in the following years and decades. They spoke as if the electors’ honor, that is, their capability of living up to their social status, or “grade,” would provide the only reliable guarantee that a suitable president could be elected. True, those who had national interests or were enough aware of state

and continental politics as to raise above a narrow perspective were most likely to come from the ranks of what was then called the “better sort.” But the electors’ status also promised that they could be trusted in another way: that, with their choice, they would not defy the social order some had started questioning during the Revolution.

In a time when deferential habits were still usual and hierarchically organized mass parties were still to come, the politically problematic popular choice of an independent national executive was to pass through the filter of indirect election. And Williamson and Gerry were by no means the only ones that shared such a traditional conception. As would soon become clear, most of the framers intended indirect election as something similar to a system of “virtual representation,” of the kind the American colonists had opposed while revolting against the British Parliament, rather than a modern system of political representation. They expected or, rather, they wished the popular vote to be similar to an act of trust as opposed to a real political mandate.

If those who agreed with Williamson might have still believed that popular election, even indirect popular election, would be impractical and politically dangerous, the rejection of Ellsworth’s plan still left the compelling point for an independent executive unanswered. As the Convention moved on to re-discuss the matter the next day, Ellsworth presented a second plan of indirect election. This time he proposed that the legislature appoint the president but, in case he stood for reelection, “Electors appointed by the Legislatures of the States for that purpose” would decide whether he would stay in his office for another term or not. This way, Ellsworth explained, “a deserving Magistrate may be reelected without making him dependent on the
Gerry, too, presented a new plan of indirect election, which slightly altered the one he had presented a few days before. Once again he moved that the national executive would be appointed by the executives of the states, but this time he added: "with advice of their Councils, and when there are no Councils by Electors chosen by the Legislatures." The Convention rejected Ellsworth’s plan and did not even discuss Gerry’s.  

Ellsworth and Gerry’s proposals may have been awkward attempts to reach a compromise on a different basis, but they also illustrate how election by the legislature was repeatedly contrasted at the Convention and how the idea of electors loomed throughout the proceedings, being presented in several shapes, until it finally passed in the form of the Electoral College. At this point, however, agreement was still far away. Madison, indeed, thought that the Convention had definitely discarded the idea of electors. "This mode however had been rejected so recently and by so great a majority that it probably would not be proposed anew," he said. But he also did not see any alternative to direct popular election. Election by the legislature, he maintained, was "liable to insuperable objections." Election by the state legislatures was not politically practicable, since it stood against the very purpose of the Constitutional Convention itself. "The Legislatures of the States," he contended, "had betrayed a strong propensity to a variety of pernicious measures. One object of the National Legislature was to controll this propensity. One object of the National Executive, so far as it would have a

negative on the laws, was to control the National Legislature, so far as it might be infected with a similar propensity. Refer the appointment of the National Executive to the State Legislatures, and this controlling purpose may be defeated." Madison thus favored popular election, which "with all its imperfections he liked... best." There was, of course, the disadvantage at which it put the slave states and the small states. But for his part, "as an individual from the Southern States," he assured them that he was willing "to make the sacrifice," conceding that "local considerations must give way to the general interest." 20

There was also another problem Madison saw with popular election. He was not convinced that voters could overcome their localism, and feared they would give their vote only to candidates from their own state, hence failing to select a national candidate. But he was willing to strike a compromise on this. He therefore endorsed Morris's proposal that each voter would elect two candidates, one of which would be from a state different from his own, although he was also concerned that "each Citizen after having given his vote for his favorite fellow Citizen would throw away his second on some obscure Citizen of another State, in order to ensure the object of his first choice." Once applied to presidential electors rather than common voters, Morris's provision would eventually become part of the final scheme of election. On July 25 the Convention rejected it, and on the next day they resumed discussion of congressional election, ineligibility, and the seven-year term, as originally provided for in Randolph's proposal of June 2 and now reintroduced by George Mason of Virginia. 21

The second round of debate on the selection of the president, from July 17 to July

21 RFC 2:113-114, 121.
26, had touched all the problems at stake: the independence of the executive; the relevance of direct and indirect popular vote and of congressional selection in terms of state representation; and the suitability of both voters and appointed electors for selecting the president. The delegates discussed several provisions that would be eventually considered along with the introduction of the Electoral College: indirect popular election, non-proportional apportionment of the electors, and double selection – by either the people or state elected bodies – of the presidential candidates. They painstakingly tried to set the right balance between mode of election, term of office, and re-eligibility, but they were not able to go beyond the scheme they had initially agreed on while discussing the Virginia Plan.

Later in July the matter went to the Committee of Detail, who had to decide how the houses would vote for president: if separately or jointly, if casting votes by single representative and senator or by state. In fact their task was to conceive a system that could save the independence of the president while somehow reflecting the balance of representation that had already been imbedded in the legislature with the Connecticut Compromise.

On August 6, the Committee of Detail reported to the Convention that they had not yet solved the matter. They had agreed on the unitary office – there would be no further argument on that issue – but they had left Randolph’s provision unchanged, without specifying the mode of election by the legislature. That day and the following the Convention discussed the matter, with no result. It would be taken up again on the 24th, only to be again postponed. Discussion resumed on the 31st, when the Convention finally
referred the matter to the Committee on Unfinished Parts, which was charged with resolving all issues that had been postponed or not acted on. That was the last chance to reach an agreement. On September 4 the Committee on Unfinished Parts reported back to the Convention, and proposed the adoption of the Electoral College. There are no records left from the proceedings of the Committee, whose four days of work must have been intense, because they virtually ended three and a half months of debate on the election of the national executive. Only minor amendments to the Committee’s provision for presidential election were added afterwards. The plan submitted was ingenious, as it provided the answers to many of the questions raised until then. The Committee, presided over by New Jersey delegate David Brearly, had chosen a system of indirect election that secured the independence of the president, while reproducing the balance between popular and state representation guaranteed by the Connecticut Compromise. The system also met the expectation of those who had warned the Convention against the practical and political viability of popular election on the national scale, as presidential electors were more likely than common voters to make an informed choice.

That the Electoral College proved satisfying to state’s righters was a crucial aspect of the plan for the sake of its reception. Each state would appoint, “in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature.” In terms of representation, the plan constituted an exact reproduction of Congress. Hence the Electoral College was in line with the Connecticut Compromise, upon which the delegates had long since agreed. The state legislatures were also at liberty
to decide upon the mode of election of the presidential electors. Furthermore, in case of a tie vote or if no candidate attained a majority, the presidential election would be decided by a majority vote in the Senate, where each state was equally represented.\(^{22}\)

The idea of a runoff election was not a novelty. It had existed in Massachusetts for the election of the Senate since 1780, and in a form very similar to the one the framers adopted. Each county chose its senator, but if no candidate reached the absolute majority, the lower house would ballot until they filled the undecided seats. It is likely that the framers expected a presidential runoff election to work in the same way. They probably assumed that, if no candidates won the majority in the Electoral College, the selection made by the presidential electors would be considered just as an indication of candidates, from which the Senate should pick the one they favored.\(^{23}\)

Mason predicted that the presidential election would end up in the Senate "nineteen times in twenty." Baldwin, Wilson, and Gouverneur Morris, were more confident in the choice of the presidential electors. But if a runoff election eventually took place, it would have probably altered the nature of presidential election. The provision of a runoff election in the Senate was a safety measure, because it granted that even a candidate with a plurality in the Electoral College would become a president of national character, as that individual would be ultimately chosen by at least a majority of the states. However a runoff election would make the presidential election a matter of

\(^{22}\) RFC 2:497.

\(^{23}\) According to Main, while selecting the state’s senators Massachusetts’s lower house “felt no obligation to name the candidate with the highest number of votes, but chose from the first two or three on the list, depending on the balance of political power.” The framers probably saw the runoff election in Congress likewise. Of course, if the framers wanted Congress to merely register the result of the Electoral College and appoint the candidate with a plurality of the electoral votes, why through a congressional runoff election? Main, Upper House, 164.
state power, and would affect the separation and balance of power, because it would weaken the president’s independence from the Senate, the branch of Congress that would share with him substantial powers of appointment and the responsibility of foreign affairs.  

On the issues of representation and the separation of power was therefore centered the discussion that opened after the report of Brearly’s Committee. Williamson and Wilson, both from states – North Carolina and Pennsylvania – that would be influential in the Electoral College, offered amendments to the provisions for runoff election. Williamson proposed that the Senate’s choice was restrained at least to the two candidates with the highest number of votes. Wilson thought it might be better “to refer the eventual appointment to the Legislature than to the Senate, and to confine it to a smaller number than five of the Candidates.” The day after, September 5, the Convention was still discussing the problem when Mason, a delegate from Virginia, moved to strike down the suggestion of a runoff election. Williamson seconded Mason’s motion, which would have allowed a candidate with a simple plurality in the Electoral College to become president.

It is not easy to understand whether Mason and Williamson’s purpose was to safeguard the people’s will or to give their states a chance to play a larger role in the election of the president. Apparently Sherman referred to the latter when he reminded the opponents of a runoff election that “if the Small States had the advantage in the Senate’s

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24 RFC 2:500. On the framers’ prediction about the likelihood of a runoff election in Congress, see the brief but thoughtful discussion in Slonim, “Electoral College,” 54, n. 44.  
deciding among the five highest candidates, the Large States would have in fact the nomination of these candidates.” On this crucial point the Convention almost unanimously decided to support the compromise reached in the Brearly’s committee. Even Wilson opposed Mason’s motion that was rejected by all of the states but Williamson’s North Carolina. Conversely the next day, September 6, the Convention substituted the House of Representatives for the Senate, as the branch of Congress that would select the president in a runoff election. The Convention also ensured that state power would remain influential, by providing that the House would vote “with Members from each State having one vote”.[26]

The provision for state-regulated presidential elections was a further concession to state’s righters. This provision did not discard popular election all together, but considerably limited its likelihood, since the state legislatures were free to avoid a risky popular election. But even in the states that would choose popular election of the electors, the choice of the people was meant to matter only to a very limited degree. The apparent aim of the Electoral College was in fact to create a political body that would be elected by the people, but independent from its will. The provision that the electors would meet “in their respective States” was meant to isolate them from any external influences. Whether those influences would come from “factious” minorities or foreign agents – concerns about the possible intervention of European powers in a popular election of the president had been repeatedly expressed throughout the proceedings of the Convention – it was deemed unlikely that they could spread over the entire national territory, hence

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being determinant for the final outcome of the election. True, the electors could still suffer from the excesses of localism. Hence the provision that the electors would “vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves.” This way the framers tried to assure that at least one of the candidates from each state, even the one who got fewer votes, would have a national character.

Madison had already warned the Convention against the possibility that common voters could “throw away” their second vote. Even though the electors of the president were supposed to be more “informed,” to a certain extent Madison’s warning applied to them too. In fact the delegates hoped that under the system they had engineered it would be possible that the second-best man in all the states would be the president, or that, in case of a runoff election in the House, the choice could at least be made among notable candidates.27

The Electoral College thus solved several problems, and though it certainly was a sophisticated mechanism, its genius was its simplicity. Being an exact reproduction of Congress, it perfectly reflected the Connecticut Compromise in the apportionment of presidential electors among the several states, while at the same time securing the president’s independence. With the introduction of the Electoral College, the framers were also avoiding what they considered the practical as well as political shortcomings of popular election. As a result, the Electoral College met with the almost unanimous consent of the framers. They added only minor amendments to the text the Committee had submitted, before finally passing the whole provision on September 7. The

27 RFC 2:498. An illustration of the framers’ typical concerns about the possible intervention of European powers in a popular election of the president is in one of Madison’s intervention of July 25, RFC 2:109.
substitution of the House for the Senate, as the branch of Congress that would select the president in case of a runoff election, was coupled by another amendment that further secured the election from “the great evil of cabal,” as Morris put it. The words “the election shall be on the same day throughout the United States” were thus added to the provision that the electors “shall meet in their respective States.” This way, the framers aimed at further isolating the electors from any external influence.  

That the framers, with few exceptions, were satisfied with the final Electoral College is also revealed by testimony other than the records of the Philadelphia Convention. In The Federalist Hamilton wrote that at the Convention “the mode of appointment of the chief magistrate of the United States [had been] almost the only part of the system, of any consequence, which [had] escaped without severe censure, or which [had] received the slightest mark of approbation from its opponents.” Maybe Hamilton overstated his memory for the sake of political struggle. Maybe Abraham Baldwin did so as well fifteen years later, on December 1803, during a session of the U.S. Senate that was debating the adoption of the Twelfth Amendment. Baldwin had been one of Georgia’s five delegates at Philadelphia and he recalled how the Convention welcomed the proposal of the Electoral College: “The mode was perfectly novel, and therefore occasioned a pause, but when explained and fully considered was universally admired, and viewed as the most pleasing feature in the Constitution.” However there might be some truth in both Hamilton and Baldwin’s reminiscences.  

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28 RFC 2:519, 500, 518. According to Slonim, the Electoral College was “a special congress elected to choose a president, without the shortcomings of the real Congress.” Slonim, “Electoral College,” 52.  
The Electoral College was the answer to a complicated and long-debated set of problems, and it was an ingenious mechanism indeed. No wonder, then, that the assembly filled with a number of well-educated eighteenth-century rationalists was not only surprised by that last-minute solution, but also impressed by such a masterpiece of constitutional engineering.
CHAPTER II

FEDERALISTS AND ANTI-FEDERALISTS DISCUSS THE PLAN

The proceedings of the Philadelphia Convention were kept secret throughout the almost four months the framers conceived and discussed the provisions of the new constitution. On September 17 the Convention adjourned for the last time and forwarded its report to the Continental Congress, recommending that the Constitution be sent to the states to be ratified by appropriately elected conventions. On September 20 the Continental Congress read the document and on the 28th, after a brief debate, it transmitted the draft to the states. Over the next months the states called the conventions for ratification while the Constitution started being discussed, supported, and criticized. It had finally entered the public sphere.

The debate on the ratification of the Constitution involved many disparate voices that dominated American politics at least until the Constitution was finally secured when the New York Convention voted for its ratification in late July, 1788. The many provisions of the proposed plan of government gave rise to a host of highly problematic predictions about their alleged consequences. However, because of the relevance of the changes in the federal government that the Constitution entailed as well as the extension of popular participation in the ratification process, the nature of the debate became a grand referendum on the state of American politics after more than a decade of revolutionary ferment. And while the contending arguments were national in character,
within the borders of each state the outcome of ratification depended on many variables: to what extent joining the Union was advantageous for the state, social conditions and political partisanship, the degree of party organization, the relative openness of the press and democratization of society, and the timing of the decision.

A variety of either wishful or worried predictions were thus expressed by an array of notable personalities as well as obscure figures. An assortment of political languages was displayed in both the private sphere and the public arena, including the chambers of the state legislatures and conventions, where discussion was regulated by formal procedures, the growing and less manageable world of the press, and the public meetings of common citizens, where deferential habits could be easily put aside. Printed material was particularly rich and diverse, including the learned essays of The Federalist and The Federal Farmer series as well as pieces of pure propaganda, satires, and parodies.

That the ratification of the Constitution gave rise to such a cacophony makes historical interpretation harder but it is also a blessing. The records of the debate provide useful information for our understanding of the framers’ intentions, since most of them actively participated in the struggle for ratification, dwelling on the feature of the new plan of government and responding to several enquires about the reason why they had approved certain provisions while striking others down.

But most of all, though the lack of well-organized national parties does not allow one to draw straight lines between those pro or against ratification, the records of the debate still provide valuable evidence as to how the Constitution was understood, supported, and opposed by Americans of different culture and social status, and from
different sections of the newborn nation.¹

The major issues that informed the discussion at Philadelphia—federalism, representation, the separation of powers and their balance in the federal government—were now debated in a way that reflected the compound political culture of Revolutionary America, while also mirroring sectional and interstate cleavages. Both the Federalists and that heterogeneous coalition that we call the Anti-Federalists were enmeshed in the contradictions of a traditional order strained by social tensions. And if the Federalists more coherently championed a modern concept of political representation, whereas many Anti-Federalists most likely were stuck to a chimerical idea of direct democracy, neither those who supported nor those who either strenuously opposed or simply criticized the Constitution were completely free from a traditional concept of government and society. Both the Federalists and the Anti-Federalists often called for a paramount and elusive common good, while at the same time advocating the legitimacy of private interests.²

The political meaning of the struggle between nationalism and parochialism was complex in other ways too. By enlarging the size of electoral districts and extending terms of office, the Constitution was meant to dilute the character of representation at the federal level. National consolidation therefore entailed a conservative turn away from the


radicalism of the Revolution and promised to curb the democratic accomplishments as well as populist excesses in many of the states. Commercial and financial interests as well as the improvement of the market economy were also at stake. Creditors and commercial-minded Americans were more likely to favor the adoption of the new constitution than debtors and rural denizens who were on the periphery of the market economy.³

Though with varying intensity, these lines of conflict cut across each state, both in the North and the South. Basically, those cleavages ran along the blurring line that separated the wealthier areas of ports and navigable streams from the poorer ones of the backcountry, the older and more urbanized Eastern regions from the less structured settlements that spread toward the Western frontier. And if the late pre-Revolutionary period witnessed a gradual democratization of the colonial governments, the Revolution opened unprecedented possibilities in the states for the representation of these conflicting interests, which were also intensified by the economic and financial distress that came along with the struggle for independence.

As political consciousness and mutual support emerged among the lesser classes who traditionally had been the ruled rather than the rulers, partisanship exacerbated and, particularly in Massachusetts, New York, and most of all Pennsylvania, party politics developed at the state level.

³ For the distinction between nationalists and parochialists see Merrill Jensen, *The New Nation: A History of the United States during the Confederation, 1781-1789* (New York). Jensen interpreted the partisan politics of the Congress as a contest between centralists and parochialists over the kind of powers to be granted to the national governments. He viewed the parochialists as defenders of democratic accomplishments in the states and the centralists as conservatives who tried to control social and economic change through consolidation.
A major feature of consolidation was also the regulation of sectional and interstate relations. The thirteen states spread over a large area and formed a diverse coalition. Slavery constituted a major difference between Northern and Southern states, affecting culture, politics, and social structure, as did the relative newness of settlements. The size and geographical location of the states also mattered, particularly with regard to the access to Western lands. Landed states like Massachusetts, Connecticut, New York, Virginia, North Carolina, and Georgia had extensive western claims, which landless states, led by Maryland, confronted. The situation in the West was also a matter of common concern. Indians and European powers, the persistence of separatist movements, and widespread defiance of state and federal officials by illegal settlers were a threat to both the expansion and the defense of the new nation as a whole. In the Continental Congress landed and landless states reached a decisive compromise on the Northwest Ordinance, which established Congress’s title to the western lands. The Ordinance was adopted on July 13, 1787, only a few days before the Philadelphia Convention agreed upon the Connecticut Compromise and the three-fifth clause. The Constitution, of which the Connecticut Compromise and the three-fifth clause were two cornerstones, promised to provide the foundation for national defense.4

The Ordinance and the Constitution virtually resolved the conflict between large and small states, which would not be a critical issue during the struggle for ratification. There was no serious debate in small states like Delaware, New Jersey, and Maryland,

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nor in a weak state like Georgia, where the constant threat of Indian wars demanded protection from Congress to allow westward expansion. That the Constitution protected slavery and, at least until 1808, the slave trade was thus the main reason why Federalist slaveholders, who ran the state’s economy and dominated the state’s government, encountered limited opposition in South Carolina.

Yet the balance of power between the states and the federal government embedded in the Constitution continued to be seen as a major problem by those who still resisted consolidation and its effect on the states’ autonomy and, most of all, on the political situation in many areas of the Confederation. Opposition to the ratification of the Constitution coalesced particularly in those landed and more populated states that had strengthened their relative autonomy throughout the colonial period, and where social turmoil and political partisanship had increased over the course of the Revolution. In Pennsylvania ratification was influenced by the flush of enthusiasm that spread after the signing of the Constitution. The Constitutional Party – the coalition of back-country Scotch-Irish Presbyterian farmers and Philadelphia artisan-radicals that had created the state’s constitution of 1776 and had run the state legislature for most of the Revolutionary period – probably did not have enough time to organize into an effective opposition to the conservative, former-loyalist, and now-Federalists Republicans. But in Massachusetts, New Hampshire, Virginia, and New York, where ratification took much longer, the Constitution was warmly debated and closely contested between two evenly balanced parties. North Carolina and Rhode Island ratified the Constitution even later. Not ratifying it would have confined the two states to a disadvantageous and perhaps
dangerous isolation from the other eleven that had already entered the Union.\footnote{For a general account of the ratification in the several states, see primarily Patrick T. Conley and John P. Kaminski, eds., \textit{The Constitution and the States: The Role of the Original Thirteen in the Framing and Adoption of the Federal Constitution} (Madison, Wis.: Madison House, 1988). But see also Michael Allen Gillespie and Michael Lienesch, eds., \textit{Ratifying the Constitution} (Lawrence: University Press of Kansas, c1989); Steven R. Boyd, \textit{The Constitution in State Politics: From the Calling of the Constitutional Convention to the First Federal Elections} (New York: Garland, 1990).}

Federalism, representation, and the separation and balance of powers had been central to the framers' definition of the national executive and its election. Those issues informed the discussion of the Electoral College during the ratification debate as well. Many Anti-Federalists criticized Article II of the Constitution, the one that defines the powers and election of the president. A major concern of virtually all Anti-Federalists was the power of Congress to determine the time and place of the presidential election. But their main objection was that the president had been given too much power and that he could have even become a king, because his power would not be sufficiently checked. Many thus criticized the length of the terms of office and its indefinite re-eligibility. And if almost nobody objected to the provision of a single executive, there were fears that the president and the Senate, who share extended power of appointment and major responsibility in foreign policy, would resemble the British king and privy council. Proposals were thus made that an independent council of appointment be created.

Likewise those who criticized the Electoral College stressed the risk of a new monarchy and the establishment of a truly aristocratic regime. Some complained about indirect election that rendered the president, as Richard Henry Lee put it, "two removes from the people." Mercy Otis Warren defined the Electoral College as "an aristocratic junto, who may easily combine in each State to place at the head of the Union the most convenient
instrument for despotic sway.” Others considered the possibility that elections would invariably end up in Congress not only as a concession to the states but also as limitations on the representation of the people.6

Conversely, those who during the early 1780s had been willing to strengthen the continental government, were unhappy with the absence of an independent executive under the Articles of Confederation. Though they were probably not prepared as were the Federalists to concentrate so much authority in the hands of the president and though they suspected the Federalists’ intentions, some Anti-Federalists nevertheless recognized the need for a stronger executive office. Among them were influential Anti-Federalists like the author of the Letters from the Federal Farmer as well as prominent figures, such as Virginia’s Patrick Henry and George Mason, New York’s Governor George Clinton, and Massachusetts’s Elbridge Gerry. Gerry and Mason were two of the five delegates at the Philadelphia Convention who at the last minute refused to sign the Constitution. Yet they had mixed feelings about the Electoral College.

In fact finding a properly balanced system of presidential election, like the framers had laboriously done over the course of the Philadelphia Convention, was a difficult task, one that often resulted in proposals that were hard to justify within the given Constitutional framework. For example, one of the fourteen amendments Massachusetts Anti-Federalist “Agrippa” proposed as a condition to the adoption of the Constitution provided that “[t]he president shall be chosen annually and shall serve but one year, and shall be chosen successively from the different states, changing every

year.” With this constitutional amendment Agrippa was providing a coherent alternative to the Electoral College. The amendment, however, would have defeated the framers’ attempt to provide the president with the necessary dispatch, strength, and independence, while probably voiding the office of any significance but that of a politically irrelevant administrator. The Federalists had thus good arguments to champion the framer’s work, and that was particularly true with regard to the crucially important balance between states’ right and the authority of the federal government that had been accomplished with the creation of the Electoral College.\(^7\)

That was one of the main subjects of the speech that James Wilson – a major advocate for the strengthening of the executive office at the Philadelphia Convention – delivered in the State House Yard of Philadelphia, on October 6. Held less than three weeks after the closing of the Convention, Wilson’s speech opened the Federalists’ campaign for ratification in Pennsylvania. Wilson’s argument that the Constitution made the presidential election the domain of the state legislatures was simple and effective: “The president is to be chosen by electors, nominated in such manner as the legislature of each state may direct,” he maintained, “so that if there is no legislature, there can be no electors, and consequently the office of president cannot be supplied.” The speech was immediately published and then widely reprinted at the national level. Wilson repeatedly made his case about the federal character of the presidential elections in newspapers and as a delegate at the Pennsylvania Convention. His straightforward argument represented the Federalists’ typical understanding of federalism, and was particularly influential over

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\(^7\) Agrippa XVI, Massachusetts Gazette, February 5, 1788, DHRC 5:866.
the course of the ratification debate. 8

In a letter where he explained the features of the new Constitution to Jefferson, Madison, like Wilson, stressed that “[t]he general authority will be derived entirely from the subordinate authorities,” and that the president “derives his appointment from the States, and is periodically accountable to them.” Writing a few month later as “Publius” in the New York Independent Journal, he likewise maintained that “[t]he State Governments may be regarded as constituent and essential parts of the federal Government; whilst the latter is nowise essential to the operation of the former. Without the intervention of the State Legislatures, the President of the United States cannot be elected at all.” 9

Later in the ratification process, the same argument echoed in a speech by Federalist James Iredell at the North Carolina Convention. Noting that “[t]he very existence of the general government depends on that of the State governments,” Iredell argued that each branch of the federal government, including the presidency, depended directly on the states. “The State legislatures are to choose the senators. Without a Senate there can be no Congress. The State legislatures are also to direct the manner of choosing the president. Unless, therefore, there are State legislatures to direct that manner, no president can be chosen. The same observation may be made as to the House of Representatives, since, as they are to be chosen by the Electors of the most numerous

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9 James Iredell, Speech at the North Carolina Convention, July 25, 1788, in DSSC 3:53. For an articulate statement of the same argument by Wilson, see also his speech at the Pennsylvania Convention of November 28, 1787, DHRC 2:401-404.
branch of each State legislature, if there are no State legislatures, there are no persons to choose the House of Representatives.”

According to Federalist John Dickinson, who had been one of the authors of the Connecticut Compromise at the Philadelphia Convention, the states had been given “the fairest, freest opening” regarding the presidential election. But many Anti-Federalists did not share the Federalists’ conception of federalism. Most Anti-Federalists criticized the Federalists’ idea of representation and sovereignty, which they evidently considered too abstract, if not deceptive. Arthur Lee, an elite Anti-Federalist from New York writing as “Cincinnatus,” rejected the idea that “[b]ecause the state legislatures must nominate the electors of the President once in four years… therefore they will continue to be sovereign,” and that “[s]overeignty then consists in electing the members of a sovereignty.” Lee explicitly attacked Wilson: “Did you think, Sir, that you was [sic] speaking to men or to children, when you hazarded such futile observations?” Similarly, Samuel Bryan, the radical Anti-Federalist who authored the widely circulated and quite influential essays known as “Centinel,” challenged Wilson’s argument that “the existence of the proposed federal plan depends on the existence of the State governments, as the senators are to be appointed by the several legislatures, who are also to nominate the electors who chuse the President of the United States; and that hence all fears of the several States being melted down into one empire, are groundless and imaginary.” Bryan asked: “Who is so dull, as not to comprehend, that the semblance and forms of an ancient establishment, may remain after the reality is gone?” Rejecting what he considered

Wilson’s formalism, Bryan was concerned that the state legislatures would “dwindle into mere boards of appointment.” A skeptical Samuel Osgood was likewise concerned about Congress and their power “of making or altering the Times & Manner” of choosing the presidential electors. “How far the Word ‘Manner’ extends I know not,” he confided to Samuel Adams. But it was clear to him that the existence of the State Legislature was “not necessary for the purpose of choosing Electors,” and that it was “not fit that a Board of Electors Should be called a Legislature.”

Lee, Bryan, and Osgood’s remarks reflected the understandable uncertainties on the actual functioning of the Electoral College, that sometimes gave rise to untenable predictions about the possible encroachment of the federal government on the state governments. Though the Constitution reserved ample power to the state legislatures, in most of the states Anti-Federalists of any provenance were still afraid that Congress would manage to exclude the state legislatures from the regulation of federal elections and even curb the people’s right to vote. Robert Whitehill, a delegate at the Pennsylvania Convention from Cumberland County, a western stronghold of Pennsylvania Anti-Federalists, found it “improper” that Congress had the power to fix the time of choosing the presidential electors. “We have no power to oblige Congress to act,” he maintained. Massachusetts Anti-Federalist “Samuel” argued that Congress may make the president “perpetual,” and that even the president may make himself so: “For the Congress are to appoint the time, and place of choosing the electors, and of their giving their votes, the

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President may so far negative it, as that there must be two thirds of both Houses to make it valid; and the standing army they may keep in time of peace, they may canton where they please, to suppress any complaints that may arise by oppression, or loss of rights or privileges.” Patrick Henry warned the Virginia Convention that the “control given to Congress over the time, place, and manner of holding elections, will totally destroy the end of suffrage.” In New York “The Federal Farmer” was likewise concerned that Congress would not make any provision for election and would eventually cancel them.12

Even after their state had already ratified the Constitution, a group of Pennsylvania Anti-Federalists, including Whitehill, published “The Dissent of the Minority of the Pennsylvania Convention.” Their grim prediction was that, “as Congress have the control over the time of the appointment of the president general, of the senators and of the representatives of the United States, they may prolong their existence in office, for life, by postponing the time of their election and appointment, from period to period, under various pretences, such as an apprehension of invasion, the factious disposition of the people, or any other plausible pretence that the occasion may suggest... when the spirit of the people shall be gradually broken; when the general government shall be firmly established, and when a numerous standing army shall render opposition vain, the Congress may compleat the system of despotism, in renouncing all dependence on the people, by continuing themselves, and children in the government.” “A Georgian” proposed a constitutional amendment to “fix the day unalterably forever for choosing

Electors, and for them to give their votes for a President,” but he found little support for the idea. However amendments providing for no federal interference into election laws, unless a state failed to provide for election, were proposed by the conventions of Pennsylvania, Massachusetts, South Carolina, New Hampshire, Virginia, New York, North Carolina, and Rhode Island. These amendments were similarly not adopted.13

Less controversial was the provision for the runoff election in Congress. That concession to state righters derived, as Pennsylvania Federalists Tench Coxe put it, “from a due attention to [the states’] sovereignty in appointing the ostensible head of the federal government.” Therefore most Anti-Federalist did not argue about it. Only the so-called “Society of Western Gentlemen,” from Kentucky, proposed a constitutional amendment providing that, in case of a runoff election in the House, representatives would vote “individually,” and that a quorum for that purpose would consist of “a Member or Members from two thirds of the states.” The intention of the “Gentlemen” was perhaps that of allowing Kentucky, at that time still a territory within the borders of Virginia, to play an independent role in the election of the president. This proposal never received serious discussion.14

The constitutional provision for the runoff election was nothing more than a

14 A Freeman II, Pennsylvania Gazette, January 30, 1788, DHRC 15:510. “The Society of Western Gentlemen Revise the Constitution,” Virginia Independent Chronicle, April 30, 1788, DHRC 771, 777. The “Western Gentlemen” were not the only ones in Kentucky to criticize the apportionment of representation in the Electoral College and the provision for the runoff election in the House. Republicus warned his readers that “the sacred rights of mankind” would “dwindle down to Electors of Electors, and those again Electors of other Electors.” Republicus, Kentucky Gazette, March 1, 1788, DHRC 8:448.
safety valve in case no candidate reached a majority in the Electoral College. That was not likely to happen when one of the candidates was a George Washington. But when the celebrated general would no longer be politically active, a runoff election was still considered, as Hamilton put in *The Federalist*, “a case which it cannot be doubted will sometimes, if not frequently, happen.” That was part of the framers’ intention to regulate the presidential election, in a way that guaranteed the federal character of the winning candidate, while also securing the election from the reach of factious minorities. In other words, the provision touched upon the major problems of partisanship and popular representation in an extended republic. And those turned out to be the most divisive issue not only between Federalists and Anti-Federalists, but also among Anti-Federalists, when they discussed the Electoral College. The debate on the Electoral College in states such as Pennsylvania, Massachusetts, Virginia, and New York sheds light on the social and political character of the struggle between Federalists and Anti-Federalists as well as the composite nature of Anti-Federalism. In particular, it demonstrated the division that existed among elite, middling, and plebeian Anti-Federalists, with respect to the critical issues of partisanship and representation.\(^{15}\)

Central to the Anti-Federalists’ conception of representation was the praise of the virtues of the small republic and the consequent rebuttal of the Federalists’ plan of the extended republic. As one historian noted with regard to the Anti-Federalist position,

\(^{15}\) Publius, “The Federalist LXVI,” New York Independent Journal, March 8, 1788, DHRC 16:356. On the diversity of the Anti-Federalist coalition, that reflected “inchoate class divisions in America,” and their attempt to unite through the growing world of print, that provided them with “a shared language and common set of criticisms,” see Cornell, *Other Founders*, particularly Chapter I. Quotations are from pages 28, 48.
"[b]ehind the administrative defects of a large republic lie three fundamental considerations, bearing on the kind of government needed in a free society. Only a small republic can enjoy a voluntary attachment of the people to the government and a voluntary obedience to the laws. Only a small republic can secure a genuine responsibility of the government to the people. Only a small republic can form the kind of citizens who will maintain republican government." Yet the reasons why Anti-Federalists advocated small size republics seem more complex. Elite Anti-Federalist, particularly from small states, often considered the limited extent of a republic as a means of social control, whereas in large states a republican government was likely to be strained by internal social tension. It was probably with this in mind that Luther Martin, a Maryland delegate to the Constitutional Convention and a leading Anti-Federalist in the Maryland Ratifying Convention, told his fellow delegates at Philadelphia that "the States that please to call themselves large, are the weakest in the Union." Conversely, popular Anti-Federalists, for example those from a large states like Pennsylvania, where partisanship and popular participation had increased over the course of the Revolution, advocated states’ rights in order to support popular representation, and feared that the establishment of a strong federal government would curb the democratic tendencies in their states. A plebeian Anti-Federalists from Pennsylvania, such as Centinel, embraced a class-conscious and radically localist ideology that was far from the aristocratic stance of elite Anti-Federalists, such as Virginian Patrick Henry or Marylander Luther Martin.16

16 Storing, Anti-Federalists, 16. RFC 2:4. For Centinel's constitutional thought, see in particular Centinel I, Philadelphia Independent Gazetteer, October 5, 1787, DHRC 1:159-165. The consideration of the composite nature of the Anti-Federalists is necessary for a comprehensive
In Pennsylvania the debate on ratification started right after the closing of the Philadelphia Convention. On September 29 the Pennsylvania legislature called for a state ratifying convention. With a few exceptions, Republicans were Federalists and Constitutionalists were Anti-Federalists. From the outset of the debate, the Federalists carefully stressed the “popular” character of the presidential election. Tench Coxe, a Federalist from the eastern county of Lancaster, championed the Electoral College in a series of widely circulated essays, which he published under the pseudonyms of “An American Citizen” and “A Democratic Federalist.” If Wilson, in his speech of October 6, had stated that the presidential election was the domain of the state legislatures, Coxe now maintained that the people were, under the proposed constitution, “the fountain of power and public honor.” This applied to all branches of government, including the presidency: “The President, the Senate, and House of Representatives, will be the channels through which the stream will flow – but it will from the people, and from them only. Every office, religious, civil and military, will be either their immediate gift, or it

evaluation of their constitutional thought. Storing’s contention that Anti-Federalists saw “the chief danger as the inherently aristocratic character of any government” may be misleading, because there were aristocrats sharing a traditional view of society in both coalitions. Likewise Wood’s idea that the quarrel between Federalists and Anti-Federalists “was fundamentally one between aristocracy and democracy” seems partial. Cornell’s perspective seems more balanced. To elite Anti-Federalists, Cornell maintained, “a proper measure of democracy was necessary for rulers to enjoy the confidence of the people,” and the Constitution “threatened this distinctive vision of localism, because it would no longer be possible to reconcile natural aristocracy with democracy.” On the other hand, “popular Anti-Federalism asserted the superiority of democracy and vigorously defended egalitarian ideals.” Cornell’s pluralist perspective allows one to grasp the diversity of Anti-Federalism and to go beyond Main’s more limited distinction between “well-to-do thinkers, most frequently from the agricultural interests,” and “small property holder.” According to Cornell, “[p]opular opposition to the Constitution brought together a diverse coalition that included members of the middling sort as well as plebeian farmers and artisan. The most influential spokesmen for middling ideas were the new political men who dominated state politics in places like New York and Pennsylvania.” Storing, Anti-Federalists, 48; Wood, Creation, 485; Cornell, Other Founders, 80-82; Main, The Antifederalists: Critics of the Constitution, 1781-1788 (Chicago: University of Chicago Press, 1961), xi.
will come *from them* through the hands of *their servants*.\(^{17}\)

On the other fence of the political struggle, Centinel held a much different concept of the presidency. In an inflamed essay in which he attacked the “wealthy and ambitious, who in every community think they have a right to lord it over their fellow creatures,” he rejected John Adams’s concept of mixed government as “chimerical,” because “different orders in government will not produce the good of the whole,” and dismissed the proposed plan of government as an “attempt to establish a despotic aristocracy among freemen,” Centinel warned his readers against the cumulating powers in the president and the Senate. The president, he contended, “would be a mere pageant of state, unless he coincides with the views of the Senate, would either become the head of the aristocratic junto in that body, or its minion.” And “from his power of granting pardons, he might skreen [*sic*] from punishment the most treasonable attempts on liberties of the people.” An Old Whig considered the president as powerful as a king, but what he found most dangerous was that the president would be a king “of the worst kind; an elective King.” An Old Whig believed that an election for such a powerful office would be “a scene of horror and confusion.” In fact he had the same concern that the Federalists had about the political feasibility of the presidential election, but he did not think the Electoral College to be the solution. According to An Old Whig, the office of the president should have been “either reduced to a lower pitch or made perpetual and

hereditary.”18

At the state convention that opened on November 20 Wilson was, again, an eloquent advocate of the proposed constitution. He articulated the Federalists’ idea of the president as a national figure above factious partisanship. He praised the provision of the presidential veto over Congress, as a measure “for the security and happiness of the people of the United States.” He believed that the president had to be a paternal figure, and that the provision of the Electoral College served the purpose. The president, Wilson contended, “will be chosen in such a manner that he may be justly styled THE MAN OF THE PEOPLE; being elected by the different parts of the United States, he will consider himself as not particularly interested for any one of them, but will watch over the whole with paternal care and affection.” And if Centinel warned against the perils of aristocracy, Wilson favored the Electoral College because “[u]nder this regulation, it will not be easy to corrupt the electors, and there will be little time or opportunity for tumult or intrigue.” The presidential election, he maintained, “will not be like the elections of a Polish diet, begun in noise and ending in bloodshed.”19

After Pennsylvania had ratified the Constitution, Anti-Federalists continued to campaign for amendments. The 23 delegates that had voted against ratification issued “The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents.” They did not share the Federalists’ conviction that the will of the electorate would be refined and achieved through the creation of the Electoral College.

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18 Centinel I, Philadelphia Independent Gazetteer, October 5, 1787, DHRC 1:159-165. An Old Whig VI, Philadelphia Independent Gazetteer, November 24, 1787, CAF 3.3.31.
19 James Wilson, Speech at the Pennsylvania Convention, December 1, 1787, DHRC 2:452; Speech at the Pennsylvania Ratifying Convention, December 11, 1787, DHRC 2:566-567.
To the contrary, they were concerned that, under the new constitution, “men of the most elevated rank in life, will alone be chosen,” and that “[t]he other orders in society, such as farmers, traders, and mechanics, who all ought to have a competent number of their best informed men in the legislature, will be totally unrepresented.” Philadelphiensis published new warnings against the perils of an “elective king.” To this charge John Dickinson responded: “This president is to be chosen, not by the people at large, because it may not be possible, that all the freemen of the empire should always have the necessary information, for directing the choice of such an officer; nor by Congress, lest it should disturb the national councils; nor BY ANY ONE BODY WHATSOEVER, for fear of undue influence.” What Dickinson meant by “undue influence” was mobocracy, because “[w]hen frenzy [sic] seizes the mass, it would be madness to think of their happiness, that is, of their freedom. They will infallibly have a Philip or a Caesar, to bleed them into soberness of mind.”

Words like Dickinson’s resonated in the chamber of the Massachusetts Ratifying Convention, where Fisher Ames maintained that “[f]action and enthusiasm are the instruments by which popular governments are destroyed.” Ames was a leading Federalist and a member of the so-called “Essex Junto,” an elitist group of propertied conservatives from Essex County, in the Northern part of the state. To Ames, democracy was “a volcano, which conceals the fiery materials of its own destruction.” But William

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Symmes, an elite Anti-Federalist also from Essex County, considered faction “the vehicle of all transactions in publick bodies,” and claimed to be “rather surprised” to see that other gentlemen that “know this so well” were “so sanguine in this respect.” Faction was a controversial issue in a state that had long clung to the ideal of a cooperative society but had been recently strained by the tension between commerce and community. To Anti-Federalist Benjamin Austin, Jr., a leader of the Boston mob close to Samuel Adams, and a delegate to the state convention, presidential electors could indeed be a faction. Writing as “Candidus,” he contended that the “choice of President by a detached body of electors was dangerous and tending to bribery.”

Virginia delegates that convened in their state convention between the 2nd and the 27th of June, 1788, were equally preoccupied with the influence of faction in the presidential election. Both Federalists and Anti-Federalists Virginians expressed alleged concerns about the problem of partisanship. Most Federalists probably agreed with Francis Corbin, who found that the “evils” of “faction, dissension, and consequent subjection of the minority, to the caprice and arbitrary decisions of the majority, who instead of consulting the interest of the whole community collectively, attend sometimes to partial and local advantages,” would be “avoided by this Constitution.” Anti-Federalist leaders thought the opposite. James Monroe did not trust Congress, for its power to fix the time of choosing the presidential electors and the president. He asked the Convention: “Is it not presumable they will appoint the times of choosing the Electors, and electing

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the president, at a considerable distance from each other, so as to give an opportunity to
the Electors to form a combination?” Monroe also predicted that a number of presidential
electors might have prevented the election of a candidate they disliked, by throwing the
election into Congress. The president would have thus depended on a majority of the
states. And if that was the case, William Grayson glossed, “the seven Eastern States”
would take hold of the presidential election, so that the federal government would have
been a “government of a faction.” Apparently the issue of popular participation in the
presidential election did not concerned these elite Anti-Federalists, who focused instead
on the representation of the states.22

A concern similar to Monroe’s was expressed by “The Federal Farmer,” who
probably was New York middling Anti-Federalist Melancton Smith. The Federal Farmer
was against “a feeble executive,” and admitted that the constitutional provision for the
presidential election was the result of “a judicious combination of principles and
precautions.” He found that, if the number of presidential electors were increased, “the
system would be improved,” yet he did not consider the democratic character “so
important in the choice of the electors as in the choice of representatives,” because the
president will be anyway “one of the very few of the most elevated characters.” But what
he found truly dangerous was “that a majority of a small number of electors may be
corrupted and influenced, after appointed electors, and before they give their votes,
especially if a considerable space of time elapse between the appointment and voting.”

22 Francis Corbin, Speech at the Virginia Ratifying Convention, June 6, 1788, DHRC 9:1010. James
Monroe, Speech at the Virginia Ratifying Convention, June 18, 1788, DHRC 10:1371. William Grayson,
Speech at the Virginia Ratifying Convention, June 18, 1788, DHRC, 10:1374.
On the other hand, Hamilton, who confronted Smith in the New York Ratifying Convention and wrote probably the most cogent defense of the Electoral College by a Federalist, contended that the presidential election would be guarded against “cabal, intrigue and corruption,” the “most deadly adversaries of republican government.” Hamilton’s take on the problem of faction, while judicious, was less nuanced than the one Madison had expressed a few months before in “The Federalist X.”

Rhetorical skirmishes were not absent in the discussion about faction among Federalists and Anti-Federalists: each side tended to ascribe factious motives to the other, for the sake of their own position. But the problem of faction, partisanship, and party politics remained controversial throughout the debate on ratification. True, a Federalist like Madison was beginning to articulate a modern, pluralist concept of party-politics, while an Anti-Federalist like Symmes stated what was probably clear to many, when he referred to the inevitability of factions as “the vehicle of all transactions in publick bodies.” Yet both coalitions were for the most part composed by men who, as one historian put it, “looked upon parties as sores on the body public.” If most Federalists still held a classical concept of society, which was organic, hierarchical, and genuinely elitist in its character, many Anti-Federalists pursued the equally traditional concept of the small, homogeneous, and participatory community of yeoman farmers. Party politics had gradually developed throughout the late colonial and revolutionary periods at both state

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and national level, and the debate on the ratification of the Constitution further promoted political polarization. In the decade immediately following the ratification of the Constitution, a still inchoate party system rapidly articulated, hence changing the nature of presidential elections, which became intensely politicized. The beginnings of this politicization were already apparent in the first federal elections of 1788-1790.²⁴

CHAPTER III
THE ELECTORAL COLLEGE IN THE FIRST FEDERAL ELECTIONS

None of the ten amendments in the Bill of Rights fundamentally altered either the structure of the federal government or the regulation of the federal elections. The carefully crafted mechanism of the presidential election, with its many implications with regard to federalism, representation, and the separation of power, was probably the constitutional provision least likely to be altered. Madison was right when he reminded his fellow delegates of the Virginia Ratifying Convention that “[i]t was found difficult in the Convention, and will be found so by any Gentleman who will take the liberty of delineating a mode of electing the President that would exclude those inconveniences which they apprehend.” During the ratification debate the Federalists’ plan for the presidential election was never seriously challenged. The Anti-Federalists who criticized it were often unable to provide any viable alternative.¹

¹ James Madison, Speech at the Virginia Ratifying Convention, June 18, 1788, DHRC 10:1377. According to Main, while the office of the president came under attack, “the major criticism was not directed at the mode of his election nor his term of office. Less than a dozen of Antifederalists writers registered a protest against the Electoral … the vast majority of critics did not even mention the subject. Probably this was so because no substitute seemed any more acceptable. Direct election would be a national rather than a federal feature (as was understood in the Philadelphia Convention), while election by the legislature was no more democratic than by the Electoral College.” Main, Antifederalists, 140. The validity of Main’s observation could be indirectly suggested by a remark by Wilson about Anti-Federalist critiques of presidential indirect election. In a speech at the Pennsylvania Ratifying Convention Wilson asked his opponents: “if gentlemen object that an eighth part of our country forms a district too large for election, how much more would they object, if it was extended to the whole Union?” James Wilson, Speech at the Pennsylvania Ratifying Convention, 11 December 1787, DHRC 2:567. However there is no evidence that the Anti-Federalist opposed popular election for its federal character.
Still, the actual functioning of the Electoral College was, at least in part, indefinite, to the extent that nobody knew for certain what system each state legislature would choose for the selection of the presidential electors. Federalist Tench Coxe praised the Electoral College, since the “[t]he people at large in each state… may choose the electors of the President and Vice-President of the Union.” But he had to add: “unless ordered otherwise by the state legislatures.” The debate on the presidential election therefore continued as the state legislatures had to decide on how to select the presidential electors. In the pages of the “Massachusetts Centinel” an anonymous Anti-Federalist advocated the popular election of the presidential electors and attempted a first interpretation of the framer’s original intent. He opposed the election by the State legislature because, if that were the case, “there would be much time given for making an interest among the members, whereas no such interest could be made among Electors, as it is impossible to foresee who the people are to choose.” He concluded that this seemed to be “the object of the Constitution, in directing that all the Electors shall sit on the same day, so as to make it impossible for any communications of runners between.” The General Court of Massachusetts only partially fulfilled his claim, providing for a direct popular election by district, followed by a runoff election in the state legislature between the first two candidates from each district. Pennsylvania, Delaware, Maryland, and Virginia choose direct popular election instead, while New Jersey and Georgia opted for the election by their state legislatures. North Carolina and Rhode Island, who still had not ratified the Constitution, did not participate in the first presidential election. Neither did New York, whose state legislature did not come to an agreement on the method of
election of the presidential electors.²

The case of New York sheds light on a critical aspect of the first presidential election. In New York the ratification debate sharpened party lines between the opposing coalitions that had formed after the split of the state’s independence coalition. As in the colonial era sharp partisan divisions characterized New York’s politics in the 1780s. These cleavages reflected conflicting social and economic interests. The Federalists represented the landed interests from the more established and wealthier urban and commercial southern counties, and were the heirs of the great families of Dutch aristocrats, who had dominated the state’s politics prior to the Revolution. The Anti-Federalists came from the ranks of the coalition of popular Whigs that had formed during the Revolution. Largely representative of the farmers from the northern counties and the rising bourgeoisie of the south, the Anti-Federalists were united under the leadership of Governor George Clinton. In the state’s ratifying convention forty-six delegates were Anti-Federalists, and only nineteen were Federalists. But not all Anti-Federalists opposed ratification. Many of them were dissatisfied with the Articles of Confederation and, particularly after Virginia ratified on July 2, 1788, they merely conditioned ratification on the introduction of constitutional amendments. The New York Convention finally ratified the Constitution on July 26, by a close vote of thirty to twenty-seven, but on the same day the Convention issued a circular letter which called for a second constitutional convention. Political turmoil continued as the Anti-Federalists started campaigning for constitutional amendments. Intense partisanship characterized the proceedings of the new

legislative assembly that began in December, with the Federalists controlling the Senate and the Anti-Federalists dominating the House. For almost two months the Senate and the House were unable to reach a compromise on the election of the presidential electors. On February 4, the date specified by Congress for the meeting of the Electoral College, the Senate refused to compromise on a bill for the appointment of the electors.

New York’s failure to participate in the first presidential election could probably be explained with the Federalists’ success in frustrating Clinton’s ambition to win the vice-presidency. Clinton maneuvered to secure the vice-presidency, so that he would be in a favorable position for promoting constitutional amendments. He could count on a wide support in his state and, with the help of his allies in Virginia, he hoped to rival John Adams, the Federalists’ favorite candidate for the office. Melancton Smith, with Clinton and Abraham Yates the leader of New York Anti-Federalists, deemed it “very probable” that his state and Virginia “would agree in the person for vice President – and by their union might very probably determine the choice.” Smith was therefore willing to strike a compromise on the election of New York presidential electors, and on January 10 he told a friend that he was “of the opinion that the Legislature may yet choose.” But the Federalists did not need New York’s votes to secure Washington’s election to the presidency, and found it convenient to allow the deadlock. As early as December 30, the strategy of New York and Virginia Anti-Federalists for winning the vice-presidency was clear also to Federalist Edward Carrington, who came second in Virginia’s first district for the election of presidential electors. Carrington informed Henry Knox that Patrick Henry was making “a push to get electors appointed who shall vote for his Friend
Clinton, as vice President," and that it was "not unlikely that some votes for [Clinton] will come from this State & South Carolina." Carrington continued that it was possible that he would be a presidential elector, and that he had been informed that Knox too could be appointed elector. Since he believed that it became "necessary for the Friends of the Government not to divide their votes too much," Carrington asked Knox "some information upon this point, as it will stand in your quarter." The next day the Pennsylvania Gazette, a Philadelphia paper close to the Federalists, announced the candidacy of John Adams as vice-president, and warned its readers that "[n]othing but an union in the choice of Mr. Adams can exclude Governor Clinton from the Vice-President's chair." 3

Smith, Hamilton, and Carrington’s words were not seemingly inconsistent with the alleged spirit of the presidential election. With the creation of the Electoral College, the framers apparently had wanted to confine the presidential electors to a sort of political limbo: the electors must operate in splendid independence from external influences, and would go back to their private lives once they elected the president. Indirect election was thus intended to provide that “filtration of talent” that only could foster "cosmopolitanism” against “localism.” It would therefore secure the national government into the hands of what John Adams called the “natural aristocracy,” a selected body of disinterested citizens. Perhaps one could borrow from Madison’s definition of representation in a republican government, and note that the Electoral College was

conceived "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations." Given the political environment of late eighteenth-century America, Madison was in fact advocating for a system of "virtual" rather than "actual" representation. The framers did not expect that such "refinement" would always work in the selection of the president, hence the provision for a runoff election in the House of Representatives, but they did trust the presidential electors more than common voters, because of the "virtuality" of indirect election.4

Yet the framers could not rely exclusively on the presidential electors' status to obtain what they considered a sound method of selection. Although Washington's election to the presidency was virtually certain, the election of the vice-president was more problematic. In those states where presidential electors were chosen by the state legislature, local parties with increasingly strong ties to other states might make the choice. And even in those states where the Electoral College worked as an indirect popular election, electioneering was, particularly with regard to the vice-presidency, influenced by the rapidly developing national coalitions. The latter were not yet the organized Federalist and Republican parties of the 1790s, but they were nevertheless vital in influencing the election. For example, in preparing for the 1789 elections,

Pennsylvania Federalists and Anti-Federalists held apposite conventions to select their candidates to the Electoral College. Furthermore, as Maryland Federalist William Tilghman told Tench Coxe, the Constitution was “defective, in not obliging the Electors to vote for a President & vice president, distinctly.” If the electors intended to concentrate their votes on two candidates, one as president and the other as his vice-president, it was conceivable that might mismanage their vote and elect the wrong person to the Presidency. The problem was solved in 1804, with the introduction of the twelfth amendment, that helped parties to organize around a national ticket for both the president and the vice-president. But in the first presidential election Tilghman, who was one of Maryland presidential electors, still had to ask Coxe who was “talked of to the Northward as Vice President.”

The election of John Adams as vice-president therefore entailed the intrusion of party politics in the pristine isolation of the Electoral College. And it soon became apparent that, despite the provisions of the Electoral College, some sort of national coordination was needed to facilitate the popular election of the presidential electors. In the first federal elections the Electoral College worked as a substitute for party organization on the national scale. Thus, it is perhaps ironic that the Electoral College, which was allegedly meant to prevent the influence of parties over the presidential election, was in fact one of the means by which national parties first began to organize in the United States.

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5 William Tilghman to Tench Coxe, Chestertown, January 2, 1789, DHFFE 2:180.
CONCLUSION

The Electoral College nicely fitted the constitutional framework designed by the framers. With the creation of the Electoral College, the framers preserved both the separation of powers and state’s rights, two major features of the compromise reached at Philadelphia. While avoiding what they considered its practical and political shortcomings, the framers also upheld the principle of popular election of the national executive. The Electoral College can therefore be considered as one of the means by which the framers were able to make the constitutional machine work and stabilize the federal government at its very inception.

Shlomo Slonim, who has written probably the most accurate account of the framing of the Electoral College, maintained that the framers were primarily concerned with issues such as “separation of powers, limited terms of office, reeligibility, rotation in office, and devices for minimizing electoral corruption,” and most of all they needed “to resolve the central dispute at Philadelphia, namely the large state-small state controversy.”

This is also how contemporary supporters of the Electoral College view its creation at Philadelphia. They underline the enduring importance of the Electoral College for the protection of federalism and representative democracy within the constitutional

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1 Slonim, “Electoral College,” 57-58.
framework, and praise the framers for having established the foundation of today's electoral system.²

Something is nevertheless missing from this interpretation. It is apparent that the framers held a concept of representation that was more traditional than modern, and that the Electoral College was the constitutional provision that best embodied that concept. Given the political and technological environment of the time, that was probably the only form of representation that made a presidential election possible. Yet the formation, through the Constitution, of a more aristocratic national elite was precisely one of the framers' primary objectives. This has been the classic argument of those Progressive and neo-Progressive historians who have understood the Constitution as a Thermidorean reaction and have maintained that the Electoral College was originally devised to keep the common people from choosing the president.³

Slonim has rejected the claim of the Progressive historians, maintaining that "antimajoritarianism was by no means the primary motivation behind the creation of the Electoral College." Instead he argued that "[o]nly a few delegates were opposed in principle to direct election of the executive," and that their opposition reflected "not


mistrust of representative democracy, but a conviction that the extent of the country and the difficulty of communication did not permit informed selection of a national candidate." Slonim’s argument reflects that of the majority of historians who have dealt with the subject.⁴

Slonim effectively illustrated the genius of the Electoral College in solving an array of constitutional questions regarding the election of the chief executive. Slonim’s dismissal of antimajoritarianism and indeed of partisan objectives on the part of the framers, however, seems not convincing. This becomes apparent if one does not stop at considering the records of the Constitutional Convention but proceeds on to examining the ratification debate and, most of all, the actual proceedings of the first federal elections. The latter, in particular, allows one to look beyond the Republican rhetoric that clothed the arguments of the framers as well as those of the Federalists and their opponents, and to appreciate the extent to which partisanship was instrumental to the actual practice of electioneering.

The first federal elections were a Federalist triumph and Washington’s rise to the presidency was never in doubt. Had the framers chosen a system different from the Electoral College, the result of the presidential election would have most likely been the same. It is not clear, however, who might have been elected as vice-president, particularly in a direct popular election that would have probably dispersed the people’s

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votes while increasing partisanship in areas already in turmoil, such as western Massachusetts and North Carolina’s backcountry. Perhaps, had the election been direct, the candidacy of the Federalist John Adams to the vice-presidency would have encountered more resistance that it did. Clinton, an Anti-Federalist and a popular figure at the time, might have taken advantage of a direct election better than Adams.

Furthermore, with no constitutional provision for separate ballots for president and vice-president, like the one introduced in 1804 with the twelfth amendment, there existed the possibility that the Federalists would inadvertently cast less ballots for Washington than for his running mate. There is evidence that party discipline worked among presidential electors as the Federalist leadership influenced the vote in the Electoral College to keep such a scenario from taking place. Arguably it would have been more difficult for the Federalist leadership to direct the common voters instead of presidential electors, had the common voters been the ones to cast the ballot to elect the president and the vice-president. By establishing a mechanism of indirect election of both the president and the vice-president, the framers favored the exercise of patronage and promoted political organization on a continental scale. They therefore helped the better-connected Federalists not only to secure Washington’s election from the unexpected liabilities of the electoral system, but also to ensure the success of Adams’s candidacy to the vice-presidency.

The framers allegedly hoped to place the presidential election process above partisanship. From their firm condemnation of party politics, they seemingly believed that presidential elections could operate in an unrealistic political vacuum. Carl Becker
once noted: "If the motives of the founding fathers in devising [the Electoral College] were of the highest, it must be said that their grasp of political realities, ordinarily so sure, failed them in this instance." The Electoral College, Becker concluded, "was in the nature of an academic invention which ignored experience in the vain expectation that, in this one instance for this high purpose, politicians would cease to be politicians, would divest themselves of party prejudice and class and sectional bias, and be all for the time being noble Brutuses inspired solely by pure love of liberty and the public good." Historians have long agreed that the framers could not have predicted the emergence of national parties that in the 1790s came to dominate American politics. In *The Idea of a Party System: The Rise of Legitimate Opposition in the United States 1780-1840*, Richard Hofstadter provided the classic statement of this standard interpretation. But if the framers could not have apprehended how quickly the presidential election would become a highly politicized contest, this does not mean that they really meant to keep the presidential election out of the domain of politics and that they were ready to give up control of the political process. The motives of the framers, and those of the Federalists who echoed the framers' anti-party rhetoric in the ratification debate, were not necessarily "of the highest."\(^5\)

In the ratification debate and the first federal election, particularly with regard to the election of the vice-president, party politics played a role that went beyond what the framers had predicted at Philadelphia. But those Federalists and Anti-Federalists who spoke against the evils of partisanship, including many of the former delegates at the

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Philadelphia Convention, actively campaigned for electors they trusted and sought to organize the Electoral College to avoid the unintended shortcomings of the simultaneous election of both the president and the vice-president. Thus, in the first federal election the Electoral College worked as a substitute for the electoral machine that each party would soon build into national coalitions. Not for the first time did the rhetoric of virtue give way to the reality of politics.
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