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Source: *The Journal of American History*, Vol. 73, No. 1 (Jun., 1986), pp. 35-58

Published by: Oxford University Press on behalf of Organization of American Historians

Stable URL: <http://www.jstor.org/stable/1903605>

Accessed: 29-08-2016 20:38 UTC

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The Electoral College at Philadelphia: The Evolution of an Ad Hoc Congress for the Selection of a President

Shlomo Slonim

With the approach of the bicentennial of the adoption of the Constitution, attention is once again focused on the drafting of that remarkable instrument of government. Among the provisions of the Constitution assured of closer examination is the one dealing with the Electoral College, the system devised by the Founding Fathers for the election of a chief executive.¹ No other constitutional provision gave them so much difficulty in its formulation. The subject of the method of electing a president was brought up in the Constitutional Convention on twenty-one different days and occasioned over thirty distinct votes on various phases of the subject. Over the years no other provision has drawn so much criticism or provoked so many constitutional amendments as has the Electoral College clause. Close to seven hundred proposals to amend the Electoral College scheme have been introduced into Congress since the Constitution was inaugurated in 1789. The most recent effort to revise the system for electing a president was undertaken in 1979, when a constitutional amendment, moved by Sen. Birch E. Bayh, Jr., of Indiana and endorsed by President Jimmy Carter, to institute popular election of the president, was soundly defeated.²

Two main interpretations have been put forward to explain the adoption of the Electoral College provision. On the one hand, the Progressive school, represented by such writers as J. Allen Smith and Charles Beard, maintained that the complicated, indirect method instituted for selecting a chief executive was a reflection of the Founding Fathers' deep distrust of democracy. The Framers, according to that

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¹ Constitution of the United States, Article II, sec. 1.

² Max Farrand, ed., *The Records of the Federal Convention of 1787* (4 vols., New Haven, 1937), II, 501, III, 166, 329, 458, 459. According to Max Farrand, "Whatever difficulties might have been encountered in other directions, they paled into insignificance in comparison with the problem before the convention of determining a satisfactory method of electing the executive." Max Farrand, *The Framing of the Constitution of the United States* (New Haven, 1913), 160. See also Max Farrand, "Compromises of the Constitution," *American Historical Review*, 9 (April 1904), 486; Herman V. Ames, *The Proposed Amendments to the Constitution of the United States during the First Century of Its History* (Washington, 1897), 75–76; Sen. Doc. No. 93, 69 Cong., 1 sess. (1926); Sen. Doc. No. 163, 87 Cong., 2 sess. (1963); Sen. Doc. No. 38, 91 Cong., 1 sess. (1969); Richard A. David, Congressional Research Service of Library of Congress, Report No. 85-36 Gov.; *Congress and the Nation. V, 1977–1980* (Washington, 1981), 941–43; U.S. Congress, Senate, Committee of the Judiciary, *Direct Popular Election of the President and Vice President of the United States*, 96 Cong., April 9, 1979; and *Public Papers of the President of the United States, Jimmy Carter 1977*, bk. 1, March 22, 1977 (Washington, 1980), 481–85.

view, deliberately precluded popular choice of the president to ensure that the leveling force of the masses would not threaten the rights of the propertied minority. That economic-determinist thesis has, in turn, been vigorously challenged by John P. Roche, who asserts that the Electoral College was but a last-minute compromise designed to allow the Constitutional Convention to wind up its business. It was, he writes, merely a "jerry-rigged improvisation . . . subsequently . . . endowed with a high theoretical content. . . . No one seemed to think well of the College as an institution. . . . The future was left to cope with the problem of what to do with this Rube Goldberg mechanism."³

Roche's antideterminist interpretation clearly denies an overall design to the Electoral College; it was in the nature of a makeshift contraption. That is not, however, the way contemporaries viewed the Electoral College. According to Abraham Baldwin, delegate for Georgia (as reported by John Pickering), "late in their session the present complex mode of electing the President and Vice-President was proposed; that 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." And Alexander Hamilton, in *Federalist* No. 68, wrote: "The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. . . . I venture somewhat further, and hesitate not to affirm that if the manner of it be not perfect, it is at least excellent." Max Farrand, in his succinct work, *The Framing of the Constitution of the United States*, sums up the attitude of the Framers toward the Electoral College: "For of all things done in the convention the members seemed to have been prouder of that than of any other, and they seemed to regard it as having solved the problem for any country of how to choose a chief magistrate."⁴

The true rationale and purpose of the Electoral College scheme can best be unraveled by a close examination of the Constitutional Convention debates. By following the tortuous course the Framers took during the summer months of 1787, we can gain insight into the influences that led them to institute such a complex procedure for selecting a president. The records of the convention debates also shed light on the extent to which the Founding Fathers were consciously guided by such factors as prevailing political theories and past republican practices—ancient or modern. In particular, how prominently did the state constitutional precedents

³ J. Allen Smith, *The Spirit of American Government: A Study of the Constitution: Its Origin, Influence and Relation to Democracy* (New York, 1907), 135–36, 165; Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York, 1913), 161–62; John P. Roche, "The Founding Fathers: A Reform Caucus in Action," *American Political Science Review*, 55 (Dec. 1961), 799–816, esp. 810–11. John P. Roche was not the first to highlight the compromise nature of the Electoral College. See Farrand, "Compromises of the Constitution," 479–89; Farrand, *Framing of the Constitution*, 166–67; and Charles Warren, *The Making of the Constitution* (Boston, 1937), 621–23. Neither of the latter writers have accepted the assertion that in the eyes of the Framers the Electoral College was "a jerry-rigged improvisation." See the comments of Gouverneur Morris and James Madison in Farrand, *Records*, III, 405, 458, 464.

⁴ Farrand, *Records*, III, 132, 403; E. M. Earle, ed., *The Federalist* (New York, n.d.), 441; Farrand, *Framing of the Constitution*, 175.

figure in the deliberations at Philadelphia? Did the other well-known clashes at the convention—large states versus small states, federalists versus nationalists, slaveholders versus nonslaveholders—inform the Electoral College debates? A detailed analysis of the 1787 discussions should also help to explain why the Electoral College scheme encountered so little criticism in the state ratifying conventions.⁵

Both the Virginia Plan and the New Jersey Plan, the foundation documents of the Constitution, called for election of the executive by the legislature, as was the practice in all but three of the states. In two of the three states where the choice was by popular election, in the event that no candidate received a clear majority, the choice would fall on the legislature. During the debates the delegates frequently referred to this pattern of state practice.⁶

That both the Virginia and the New Jersey plans endorsed selection by the legislature did not mean that they were at one on the mode of election. The legislature, in each case, was a very different body. Whereas the Virginia Plan provided for a popularly elected legislature with the representation of each state proportional to the size of its population, the New Jersey Plan proposed that the legislature remain (as under the Articles of Confederation) the representative body of the states, with each state entitled to one vote. Thus while the Virginia Plan called for a “National Executive” to be chosen by the “National Legislature,” the New Jersey Plan envisaged a “federal Executive” to be appointed by “the U. States in Congs.” In effect, therefore, at the very outset of the convention, the large and small states were at loggerheads over the method of selecting an executive no less than they were over the composition of the legislature.⁷

When, on June 1, the convention moved to debate the scheme outlined in the Virginia Plan for selection of the executive (the New Jersey Plan was first submitted on June 15), three distinct, but interrelated, issues arose for discussion: (1) the mode of election; (2) the term of office; and (3) the question of reeligibility. The three

⁵ See the statements of James Wilson and Rufus King in Farrand, *Records*, III, 166, 461. See also that of Madison at the Virginia ratifying convention in Jonathan Elliot, ed., *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution* (5 vols., Philadelphia, 1881), III, 494. See also Cecelia M. Kenyon, “Men of Little Faith: The Anti-Federalists on the Nature of Representative Government,” *William and Mary Quarterly*, 12 (Jan. 1955), 13.

⁶ Farrand, *Records*, I, 20–22, 242–45. In both plans the term of office was left blank while reeligibility was ruled out. Election of the executive by the legislature was provided for under the constitutions of Delaware, Georgia, Maryland, North Carolina, New Jersey, Pennsylvania, South Carolina, and Virginia. (In every instance of a bicameral legislature the executive was chosen by joint ballot. Other officers of government, however, were chosen by regular legislative procedures, allowing each house to exercise a veto on the choice of the other. On occasion that procedure produced deadlock and crisis.) Popular election of the executive was provided for under the constitutions of Massachusetts, New Hampshire, and New York. Under the last a simple plurality was sufficient to be elected, and there was no provision for a contingency choice. But in the former two, in the absence of a popular majority for any one candidate, the lower house chose two out of the top four candidates, and the upper house made the final choice out of the two selected. Ben: Perley Poore, comp., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* (2 vols., Washington, 1877). Contingency proposals surfaced frequently during the convention debates and, of course, the Electoral College scheme contains such an arrangement.

⁷ During the course of the convention two further plans were presented: the Pinckney Plan (May 29) and the Hamilton Plan (June 18). Under the former the executive would be chosen annually by both houses of the legislature in joint session; under the latter the executive would be selected by electors chosen by the people and would serve during good behavior. Neither plan figured in the convention debates and neither was ever voted on. The Hamilton Plan was not even moved to committee. Farrand, *Records*, I, 292, II, 135, III, 606, 617.

issues formed a sort of tripod where an imbalance on one side disrupted the balance of the whole. Since the executive was to be elected by the legislature, it was deemed essential that he not be eligible for reelection, for reeligibility would compromise his independence; but if he was to serve only one term, then it ought to be a reasonably lengthy one. The relationship between reeligibility and term of office was stressed throughout the debate. James Wilson favored a three-year term "on the supposition that a reeligibility would be provided for." This was endorsed by Roger Sherman who was "agst. the doctrine of [compulsory] rotation as throwing out of office the men best qualified to execute its duties." George Mason, on the other hand, favored "seven years at least" and a prohibition on reeligibility "as the best expedient both for preventing the effect of a false complaisance on the side of the Legislature towards unfit characters; and a temptation on the side of the Executive to intrigue with the Legislature for a re-appointment." In short order the convention, by a vote of 8 to 2, endorsed Mason's viewpoint (moved by Charles Pinckney) and decided that the executive should be chosen by the legislature for a seven-year term without right of reelection.⁸ This was but the first of many times that the convention would settle for this formula.

In the course of the debate, two diverse, even conflicting challenges were directed at the proposed scheme. Wilson, a delegate from Pennsylvania and "a nationalist of the nationalists," advocated popular election of the executive. That system of electing "the first magistrate," he declared, though "it might appear chimerical," was really "a convenient and successful mode" as the experience of New York and Massachusetts had proven. On the next day, June 2, Wilson submitted a motion to divide the states into districts, the voters in each district to choose electors who, in turn, would select the "executive Magistracy." (The intervention of electors did not, apparently, make it any less "an election by the people" in Wilson's eyes.) In supporting his proposal Wilson argued for "an election without the intervention of the States." His suggestion evoked interest but also considerable skepticism. Thus Mason said he favored the idea but thought it "impracticable." Similarly, Elbridge Gerry of Massachusetts said he "liked the principle" but feared "that it would alarm & give a handle to the State partizans, as tending to supersede altogether the State authorities."⁹

And, indeed, at that very sitting, one of the convention's foremost "State partizans," John Dickinson of Delaware, moved "that the Executive be made remove-

⁸ *Ibid.*, I, 68–88, III, 132, 167; Roche, "Founding Fathers," 810; George Bancroft, *History of the Formation of the Constitution of the United States of America* (2 vols., New York, 1889), II, 166.

⁹ Charles C. Thach, Jr., *The Creation of the Presidency, 1775–1789: A Study in Constitutional History* (Baltimore, 1923), 85; Farrand, *Records*, I, 68, 69, 77, 80. This was the first of many times in the debate that the use of electors was proposed. Ultimately, of course, the convention adopted a system of indirect election in the form of the Electoral College. One can speculate on the precedents for the introduction of an intermediate step in the selection of an executive. In the Massachusetts ratifying convention, former Gov. James Bowdoin declared, "This method of choosing was probably taken from the manner of choosing senators under the constitution of Maryland." Elliot, *Debates in the Several State Conventions*, II, 127–28. Under that constitution the people chose electors, who, in turn, selected the fifteen members of the state Senate for a five year term. In Federalist No. 63 Madison gave high praise to that feature of the Maryland constitution. See also Ames, *Proposed Amendments*, 75–76. For Elbridge Gerry's role in the convention, see George Athan Billias, *Elbridge Gerry, Founding Father and Republican Statesman* (New York, 1976), 153–205, 331–39.

able by the National Legislature on the request of a majority of the Legislatures of individual States." "He had no idea of abolishing the State Governments as some gentlemen seemed inclined to do. . . . He hoped that each State would retain an equal voice at least in one branch of the National Legislature." James Madison and Wilson both objected to Dickinson's motion on the ground (inter alia) "that it would leave an equality of agency in the small with the great States."¹⁰

Neither Wilson's nor Dickinson's motion was received with much sympathy. (The votes were 2 to 8 and 1 to 9, respectively.) But these divergent suggestions reflected a contrast of views on the measure of state control to be exercised in the selection of the executive. In the eyes of such a nationalist as Wilson, even election by the legislature detracted from the national independent stature of the executive, whereas for Dickinson the states were not accorded adequate control over the nation's chief executive officer. The two viewpoints, in one shape or another, arose repeatedly during the numerous discussions the convention was to hold on the mode of electing an executive. Dickinson's comment on the composition of the legislature foreshadowed, at this early stage of the discussions, the growing dissatisfaction of the smaller states, with their diminished role in the organs of government.¹¹

On June 15 (some two weeks after Dickinson's address), William Paterson presented the New Jersey Plan to the convention, and the issue of the small states versus the large states was joined. The controversy was not settled until July 7, after three weeks of protracted discussions. The Connecticut Compromise, which emerged, resolved the issue of the composition of the legislature.¹² But had it equally settled the procedure for the election of the executive? At first glance it would appear that it had done so since the convention's earlier decision to provide for election of the executive by the legislature remained intact. Delegates could not but realize, however, that the new legislature was a creature very different from the body previously entrusted with the task of selecting an executive. For one thing, the upper house now represented the states. Furthermore, as a result of the principle of equality of representation in the upper house, the smaller states would exercise willy-nilly an inordinate influence on the selection of a chief executive. It is perhaps not surprising, therefore, that no sooner had the convention adopted the Connecticut Compromise than the issue of the mode of electing the chief executive arose once again.

On July 17 Gouverneur Morris, one of the "leading conservatives" of the convention (and probably its "most brilliant member"), criticized the earlier decision to leave the selection of the nation's chief magistrate in the hands of the legislature. He moved to insert, in place of "National Legislature," "citizens of U.S."

¹⁰ Farrand, *Records*, I, 78, 85, 86, 87, 244.

¹¹ *Ibid.*, 77, 78, 81, 87. Delaware, John Dickinson's state, alone favored his proposal. There is evidence that even before a quorum had assembled at the Constitutional Convention, the smaller states were already evincing anxiety about the outcome. See the letter of George Read of Delaware to Dickinson on May 21 in *ibid.*, III, 25–26. Subsequently Dickinson endorsed election of the executive "by the people as the best and purest source." *Ibid.*, II, 114. Clearly, Dickinson's present move was designed to ensure a federal system of government in which the role of the states was not entirely eclipsed.

¹² *Ibid.*, I, 242–45, 549–51.

He ought to be elected by the people at large, by the freeholders of the Country. . . . If the people should elect, they will never fail to prefer some man of distinguished character, or services; some man . . . of continental reputation. If the Legislature elect, it will be the work of intrigue, of cabal, and of faction. . . . He will be the mere creature of the Legisl: if appointed and impeachable by that body.¹³

Wilson supported the Morris motion for popular election and dismissed the argument that a majority of the people might be unable to agree on any one candidate. In such event, he said, "the expedient used in Masts." could be employed with the legislature choosing between the leading candidates. "This would restrain the choice to a good nomination at least, and prevent in a great degree intrigue & cabal." In response, Pinckney of South Carolina highlighted the fears of the smaller states.

[He] did not expect this question would again have been brought forward; An Election by the people being liable to the most obvious & striking objections. They will be led by a few active & designing men. The most populous States by combining in favor of the same individual will be able to carry their points.

Sherman of Connecticut also gave voice to the concern of the small states.

The sense of the Nation would be better expressed by the Legislature than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment.¹⁴

The smaller states clearly were concerned that in a straight-out popular election the larger states would overwhelm them. The smaller states had not fought for equality in one branch of the legislature only to see control of the executive go by default.

Mason of Virginia (a large state) did not share the fears of the small states. Nonetheless, he was sharply critical of the suggestion for nationwide popular election of the executive. He graphically portrayed the inability of the people to select a national figure:

He conceived it would be as unnatural to refer the choice of a proper character for a Chief Magistrate to the people, as it would, to refer a trial of colours to a blind man. The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates.¹⁵

This passage is frequently cited as evidence of the Framers' lack of faith in democracy. If the words are examined in their context, however, it is evident that Mason was not challenging the *right* of the people to choose but, rather, their *ability* to

¹³ Thach, *Creation of the Presidency, 1775–1789*, 35; Farrand, *Framing of the Constitution*, 21; Farrand, *Records*, II, 22, 29.

¹⁴ Farrand, *Records*, II, 29–30.

¹⁵ *Ibid.*, 31.

do so given the size of the electoral district within which they would have to exercise that right. The vast expanse of the United States, the difficulty of communication, and the unfamiliarity of the general populace with national personalities—all militated against an informed choice. In fact, as noted above, Mason had earlier expressed himself in favor of popular election but considered it “impractical,” for the reasons, no doubt, he now enumerated by reference to “the extent of the Country.” As Cecelia M. Kenyon, in discussing the stand of the anti-Federalists, has written:

This belief that larger electoral districts would inevitably be to the advantage of the well-to-do partially explains the almost complete lack of criticism of the indirect election of the Senate and the President. If the “middling” class could not be expected to compete successfully with the upper class in Congressional elections, still less could they do so in state-wide or nation-wide elections. It was a matter where size was of the essence. True representation . . . could be achieved only where electoral districts were small.

It was in this sense that Mason, for one, found fault with nationwide elections of the executive. Under the circumstances, popular election of the executive would have the trappings of representative democracy but not the essence.¹⁶

The final speaker on Gouverneur Morris’s proposal for popular election of the executive was Hugh Williamson of North Carolina, who added a new slant to the discussions. He reiterated the point made by the earlier speakers that “the people will be sure to vote for some man in their own State, and the largest State will be sure to succeed.” He went on to say, “This will not be Virga. however. Her slaves will have no suffrage.” Williamson was adverting to a key advantage that the slave states presently enjoyed in the projected lower house, where slaves counted three-fifths for purposes of representation. If a system for direct popular election of the executive were instituted, the slave states stood to lose that advantage because only the enfranchised white population could actually vote, and the increment derived from the slaves would be lost. In effect, adoption of the Connecticut Compromise had forged a natural alliance between the small states and the slave states in reserving decisions for the legislature as currently constituted. The slave states gained an advantage in the lower house, and the smaller states gained one in the Senate (small slave states, such as the Carolinas, had a double advantage). It is hardly surprising, therefore, that Morris’s motion for popular election was rejected by a vote of 1 to 9 with only his own state, Pennsylvania, voting in favor. Luther Martin of Maryland then proposed that the executive be chosen by electors appointed by the state legislatures. The proposal was defeated by a vote of 2 to 8. Election of the executive by the legislature was thereupon unanimously reendorsed.¹⁷

¹⁶ Kenyon, “Men of Little Faith,” 13. This analysis is reflected in Wilson’s argument in the Pennsylvania Ratifying Convention on the method of electing a president. Farrand, *Records*, III, 167. See also Billias, *Elbridge Gerry*, 160. George Mason’s record, both before and during the convention, demonstrates that he was a foremost champion of democratic causes. Farrand, *Records*, I, 48, II, 201–203, 273–74, 370, 637; Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development* (New York, 1970), 120.

¹⁷ Farrand, *Records*, II, 22, 32.

At this point, however, the convention took a peculiar step. As matters stood on July 17, the executive was (1) to be elected by the legislature; (2) to serve for seven years; and (3) to be ineligible for a second term. The latter two provisions were designed to ensure the executive's independence of the legislature. But now William Houston of Georgia moved that the clause on ineligibility be struck out. Morris supported the motion because ineligibility, he argued, "tended to destroy the great motive to good behavior, the hope of being rewarded by a re-appointment. It was saying to him, make hay while the sun shines." The argument apparently impressed the other delegates, who proceeded by a vote of 6 to 4 to strike out the ineligibility clause. Such a move, however, meant that one leg of the tripod was out of balance, since the legislature was now in a position to exert undue influence on the executive, who was beholden to it for reelection. By the same token, because the executive could serve more than once, a term as long as seven years was no longer warranted. Various delegates thus suggested substitution of a shorter term. Others, however, maintained that the only way to ensure the executive's independence was to provide that he serve "during good behavior." The latter proposal was vigorously condemned by Mason, who "considered an Executive during good behavior as a softer name only for an Executive for life. . . . the next would be an easy step to hereditary monarchy." The motion for instituting "good behavior" was defeated by a vote of 6 to 4, and the seven-year term was retained by the same margin. Clearly, the delegates were much troubled by the difficulty of maintaining the harmony of the tripod arrangement. Endowing the legislature with authority to reelect the executive compromised the latter's independence and posed problems in fixing the term of office. All this prompted thoughts that only by removing the selection of the executive from the legislature could the tripod be secured firmly. This idea, among others, surfaced in the full-dress debate on the issue held on July 19.¹⁸

Martin of Maryland opened the discussion with a proposal that the clause barring a second term be reinserted. He was supported by Edmund Randolph of Virginia, who stressed the need to ensure the executive's independence. "If he ought to be independent, he should not be left under a temptation to court a re-appointment. If he should be re-appointable by the Legislature, he will be no check on it." He warned the smaller states that reeligibility would work to their disadvantage, in particular, since the executive would undoubtedly court the larger states to ensure his reelection.¹⁹

Gouverneur Morris vigorously challenged the Martin proposal. Once again he advocated popular election of the executive, coupled with a right of reeligibility. "If he is to be the Guardian of the people let him be appointed by the people." In a lengthy address he extolled the virtues of popular election: "The Executive Magistrate should be the guardian of the people, even of the lower classes, agst Legislative tyranny, against the Great & the wealthy who in the course of things will necessarily compose—the Legislative body. . . . The Executive therefore ought to be so con-

¹⁸ *Ibid.*, 23, 33, 35, 36.

¹⁹ *Ibid.*, 52, 54–55.

stituted as to be the great protector of the Mass of the people.” He recommended biennial elections of the executive, and in conclusion noted that popular election would make the plan of the constitution “extremely palatable to the people.” Both Rufus King of Massachusetts and Paterson of New Jersey also endorsed popular election but feared that the people might not be able to settle on any one man. To obviate the difficulty they suggested “an appointment by electors chosen by the people for this purpose.” At this point Wilson remarked that he “perceived with pleasure that the idea was gaining ground, of an election mediately or immediately by the people.” Only Gerry spoke out against popular election, regarding it as “the worst [mode] of all.” “The people are uninformed,” he declared, “and would be misled by a few designing men.” But even Gerry endorsed the notion of electors, except that he would entrust their selection to the state executives rather than to the state legislatures.²⁰

Madison inveighed strongly against any role by the legislature in the selection of the executive since such an arrangement would tend to “establish an improper connection between the departments.” During the debate of two days earlier, he had argued against reelection by the legislature: “A dependence of the Executive on the Legislature would render it the Executive as well as the maker of laws; & then according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner.” In the current debate Madison expressed doubts whether “an appointment in the 1st. instance [even] with an ineligibility afterwards would not establish an improper connection between the two departments.” Inevitably, it would produce “intrigues and contentions.” He therefore favored lodging the appointment in some other source. “The people at large was in his opinion the fittest in itself.” Madison acknowledged, however, “one difficulty . . . of a serious nature attending an immediate choice by the people”:

The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty and seemed on the whole to be liable to the fewest objections.²¹

Madison’s reference to the disparity of eligible voters between the North and the South highlighted, of course, the advantage the latter enjoyed under the three-fifths rule. The use of electors on something less than a directly proportionate scale would help preserve the relative advantage of the South (and of the smaller states). In this spirit Oliver Ellsworth of Connecticut moved that in place of “apptment by the Natl. Legislature” there be inserted “to be chosen by electors appointed by the Legislatures of the States in the following ratio”: each state with less than 100,000 population—one vote; between 100,000 and 300,000—two votes; and above 300,000—three votes. Since the ratio was 1:3, no southern or small state had cause to feel disadvantaged, and it is not surprising, therefore, that the convention sum-

²⁰ *Ibid.*, 52–54, 55–56, 57.

²¹ *Ibid.*, 34, 56–57.

marily proceeded to endorse the system of electors by a vote of 6 to 4. For the first time in the course of the deliberations, the legislature had been excluded from the executive-selection process. And with the removal of the legislature, the convention felt free to restore the reeligibility clause. The term of office was fixed at six years, and members of the legislature were forbidden to serve as electors.²² Now the provision for choosing an executive was, in certain key features, approaching the ultimate form that would emerge from the convention.

But barely three days later, on July 23, doubts were expressed with regard to the system of electors just adopted. Houston "urged the extreme inconveniency & the considerable expense, of drawing together men from all the States for the single purpose of electing the Chief Magistrate." Obviously, it was envisaged that the electors under the scheme adopted would assemble in some central location to cast their votes. On the next day, July 24, Houston moved that the system of electors be abandoned in favor of restoring to the legislature the choice of the executive. "He dwelt chiefly on the improbability, that capable men would undertake the service of Electors from the more distant States." Houston was supported by Williamson, who argued that "the proposed Electors would certainly not be men of the 1st. nor even of the 2d. grade in the States. These would all prefer a seat in the Legislature." Interestingly, Gerry dismissed Houston's fears and urged retention of the system of electors. "The best men," he declared, 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." Nonetheless, Houston's motion was carried by a vote of 7 to 4.²³

Thereupon Martin and Gerry moved to reinstate the ineligibility clause. Involvement of the legislature in selection of the executive compromised his independence, they maintained. "The longer the duration of his appointment the more will his dependence be diminished," said Gerry. "It will be better then for him to continue 10, 15, or even 20—years and be ineligible afterwards." Others proposed an eight- or eleven-year term of office. King recommended a twenty-year term since "this is the medium life of princes." In a footnote Madison remarked, "This might possibly be meant as a caricature of the previous motions in order to defeat the object of them." Williamson favored a seven-year term without eligibility for reelection, but would not object to a ten- or twelve-year term. "It was pretty certain he thought that we should at some time or other have a King; but he wished no precaution to be omitted that might postpone the event as long as possible."²⁴

Once again the convention was thrown into disarray in its efforts to settle on a system for electing the executive that would not leave him overdependent on the legislature. Balancing the tripod—mode of election, term of office, and reeligibility—was proving to be an extremely difficult task. Gerry summed up the frustration

²² *Ibid.*, 50, 57, 58, 59, 60, 61, 63–64, 69.

²³ *Ibid.*, 95, 97, 99, 100, 101. A possible explanation for the sudden change of heart on the scheme of electors may lie in the fact that a move to accord New Hampshire and Georgia two electors each, instead of the one each had been allotted, failed. *Ibid.*, 60–61, 63–64.

²⁴ *Ibid.*, 98–99, 100–101, 102.

of the delegates when he said, "We seem to be entirely at a loss on this head." He recommended that the problem be referred to the Committee of Detail, which was to be set up. "Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out." Wilson, acknowledging "the difficulties & perplexities into which the House is thrown," proposed a scheme whereby a small group, drawn by lot from the legislature, would retire to make the choice "and not separate until it be made." "By this mode intrigue would be avoided . . . and . . . dependence . . . diminished." Gouverneur Morris warned the convention against denying the executive a right of reelection. "He will be in possession of the sword, a civil war will ensue." Wilson's proposal, he said, was worth considering. "It would be better that chance sh. decide than intrigue." Regardless, the delegates were not inclined to accept Wilson's novel suggestion precisely because it left too much to chance.²⁵

On the next day, July 25, Ellsworth moved that the executive be selected by the legislature except where the incumbent stood for reelection. In that case the choice would fall to electors appointed by the state legislatures. Thereupon Madison delivered a lengthy address on the subject: "There are objections agst. every mode that has been, or perhaps can be proposed. The election must be made either by some existing authority under the Natl. or State Constitutions—or by some special authority derived from the people—or by the people themselves." The legislature, he declared, was "liable to insuperable objections." Besides compromising the independence of the executive, conferring the choice on the legislature would (1) "agitate & divide the legislature"; (2) lead to intrigues between the executive and "the predominant faction" within the legislature; and (3) result in foreign meddling in the election. He was also opposed to entrusting the selection of the national executive to the states, whether the choice devolved on their legislatures or on their executives. In conclusion, said Madison, the choice lay between direct elections and the use of electors. In the latter case, "as the electors would be chosen for the occasion, would meet at once, & proceed immediately to an appointment, there would be very little opportunity for cabal, or corruption. As a further precaution, it might be required that they meet at some place, distinct from the seat of Govt." But since that mode had just been rejected, there was little purpose in proposing it anew. There remained "election by the people or rather by the [qualified part of them] at large. With all its imperfections he liked this best." He recognized, however, that there were two serious difficulties with this method. "The first arose from the disposition

²⁵ *Ibid.*, 97, 103, 105, 106. On the difficulties encountered by the delegates at this point, compare the descriptions by Robert A. Dahl and George Bancroft. Dahl observed, "Almost to the end, it [the convention] would move toward a solution and then, on second thought, reverse itself in favor of some different alternative. . . . The Convention twisted and turned like a man tormented in his sleep by a bad dream as it tried to decide." Robert A. Dahl, *Pluralist Democracy in the United States: Conflict and Consent* (Chicago, 1967), 84. Bancroft wrote, "The convention was now like a pack of hounds in full chase, suddenly losing the trail. It fell into an anarchy of opinion and one crude scheme trod on the heels of another." Bancroft, *History of the Formation of the Constitution*, II, 170. Some writers have suggested that Wilson's notion of a choice by lot was drawn from the example of the Ephori elections in ancient Greece. See John Fiske, *The Critical Period of American History 1783-1789* (Boston, 1901), 281; and Richard M. Gummere, *The American Colonial Mind and the Classical Tradition* (Cambridge, Mass., 1963), 186.

in the people to prefer a Citizen of their own State, and the disadvantage this wd. throw on the smaller States." Madison expressed the hope "that some expedient might be hit upon that would obviate" that possibility. "The second difficulty arose from the disproportion of [qualified voters] in the N. & S. States, and the disadvantages which this mode would throw on the latter." The latter handicap, he surmised, would be overcome with the passage of time as the population of the South increased. In any case, "local considerations must give way to the general interest." Madison declared that as a southerner "he was willing to make the sacrifice."²⁶

Madison's remarks served to highlight the underlying causes of the opposition to popular election of the executive — the disadvantage from which both the smaller and the southern states would suffer. The fact was confirmed when, immediately after Madison had concluded his remarks, Ellsworth (one of the authors of the Connecticut Compromise) declared, "The objection drawn from the different sizes of the States, is unanswerable. The Citizens of the largest States would invariably prefer the Candidate within the State; and the largest States wd. invariably have the man." The same theme was taken up by Williamson, who said "an election of the Executive by the Legislature . . . opened a door for foreign influence. The principal objection agst. an election by the people seemed to be, the disadvantage under which it would place the smaller States." He suggested that as a "cure" each person should vote for three candidates, two of which would presumably be from states other than his own "and as probably of a small as a large one."²⁷

Both Gouverneur Morris and Madison liked the Williamson idea. Morris suggested that "each man should vote for *two* persons one of whom at least should not be of his own State." Madison endorsed the Morris amendment and said that the effect would be that "the second best man in this case would probably be the first, in fact." He expressed fears, however, that after having voted for his favorite candidate, each citizen would throw away his second vote on some obscure person "in order to ensure the object of his first choice. But it could hardly be supposed that the Citizens of many States would be so sanguine of having their favorite elected, as not to give their second vote with sincerity to the next object of their choice."²⁸

Dickinson suggested a means to combine popular election and selection by the legislature. He himself, he declared, "had long leaned towards an election by the people which he regarded as the best and purest source." The difficulty arose "from the partiality of the States to their respective Citizens." But could this "partiality" not be put to use in the search for an executive magistrate? Let the citizens of each state select their favorite son, and from the thirteen candidates thus nominated let the legislature, or electors appointed by it, make the final choice.²⁹ Because Dickinson did not submit a formal proposal, his scheme never came to a vote. But it did raise the possibility of dividing the nominating and selection procedure so that the legislature would make the final choice from a list of candidates nominated in

²⁶ Farrand, *Records*, II, 107–11.

²⁷ *Ibid.*, 111, 113.

²⁸ *Ibid.*, 113–14. [Emphasis added.]

²⁹ *Ibid.*, 114–15.

the states. The procedure was clearly patterned on the contingency arrangements under the Massachusetts and New Hampshire constitutions in the event that no gubernatorial candidate received a popular majority.

The complexity of the task involved in formulating a mode of election was never better demonstrated than at this stage of the debate, which extended over several days. The convention voted down in seriatim various ideas that had been put forward in the course of the debate. Thus Ellsworth's suggestion that in cases where an incumbent stood for election, the choice be left to state-appointed electors rather than to the national legislature was turned down by a vote of 4 to 7. And Williamson's popular-election proposal (as amended), whereby each person would vote for two candidates, one of whom would not be a citizen of his own state, was defeated by the narrow margin of 5 to 6. A motion by Pinckney for a system of rotation, so that no person serve as executive for more than six years out of twelve, was defeated by the same close margin.³⁰ The convention adjourned on July 25 without having decided on either the term of office or the matter of reeligibility. The only element that now stood was the decision to have the legislature make the choice.

On the next day, July 26, Mason delivered a lengthy oration in support of restoring once again the seven-year term coupled with ineligibility. He emphasized "the difficulty of the subject and the diversity of the opinions concerning it [that] have appeared. Nor have any of the modes of constituting that department been satisfactory." Earlier in the debate Pierce Butler of South Carolina and Gerry of Massachusetts had both vigorously challenged the idea of popular election of the executive. "The Govt. should not be made so complex & unwieldy as to disgust the States. This would be the case, if the election shd. be referred to the people," declared Butler. According to Gerry the proposal for "popular election in this case" was "radically vicious. The ignorance of the people would put it in the power of some one set of men dispersed through the Union & acting in Concert to delude them into any appointment. He observed that such a Society of men existed in the Order of the Cincinnati." Mason, in challenging the various proposals that had surfaced, also repeated his earlier opposition to popular election. Such an election meant "that an act which ought to be performed by those who know most of Eminent characters, & qualifications, should be performed by those who know least." He was also unable to support Williamson's suggestion that each person vote for several candidates since he was convinced that it "would throw the appointment into the hands of the Cincinnati," as Gerry had observed. The suggestions that the choice be made by the state legislatures or by special electors had all been found wanting. Nor had the idea of a "lottery" produced "much demand" for its "tickets," said Mason. He concluded, therefore, that "an election by the Ntl. Legislature as originally proposed was the best" (that is, for a single term of seven years). In opposing reelection he declared:

Having for his primary object, for the pole star of his political conduct, the preservation of the rights of the people, he held it as an essential point, as the very pal-

³⁰ *Ibid.*, 107, 111–12, 115. A rotation requirement in the office of governor was present in eight state constitutions.

ladium of Civil liberty, that the great officers of State, and particularly the Executive should at fixed periods return to that mass from which they were at first taken, in order that they may feel & respect those rights & interests, which are again to be personally valuable to them.³¹

These remarks prompted a rare comment by Benjamin Franklin:

It seems to have been imagined by some that the returning to the mass of the people was degrading the magistrate. This he thought was contrary to republican principles. In free Governments the rulers are the servants, and the people their superiors & sovereigns. For the former therefore to return among the latter was not to *degrade* but to *promote* them—and it would be imposing an unreasonable burden on them, to keep them always in a State of servitude, and not allow them to become again one of the Masters.

In response, Gouverneur Morris said:

In answer to Doctr. Franklin, that a return into the mass of the people would be a promotion. instead of a degradation, he had no doubt that our Executive like most others would have too much patriotism to shrink from the burden of his office, and too much modesty not to be willing to decline the promotion.

At the same time Morris pronounced himself opposed to the whole paragraph on the selection of the executive if reeligibility be denied. Despite that objection, the convention adopted Mason's proposal by a vote of 7–3–1 and reendorsed selection by the legislature, for a seven-year term, without right of reelection. This formula was taken up in late July by the five-member Committee of Detail for incorporation into the draft constitution that it was to prepare.³²

Although the convention had resolved on election by the legislature, no one had broached the question whether it was to be by joint ballot of both houses (voting together) or by each house acting separately. In the eight states where the legislature chose the executive, the election was by both houses jointly. Other state officials, however, were chosen according to regular legislative procedure, with each house exercising a veto. The latter arrangement for the selection of a president would give the states, especially the smaller states, substantial leverage in the choice of the executive. One document of the Committee of Detail in the Farrand collection hints that the committee experienced considerable difficulty in settling the matter. Randolph, a member of the committee, had originally written that the executive shall be elected "by joint ballot." Subsequently, "joint" had been crossed out, and Randolph had added to an emendation of South Carolina's John Rutledge the words "& in each Ho. havg a Negative on the other." However, the final report of the Committee of Detail, issued on August 6, reverted to the simple form adopted by the convention plenum, namely, "He shall be elected by ballot by the Legislature." The relevant provision (X) on the election of an executive (for the first time labeled

³¹ *Ibid.*, 112, 114, 118–20.

³² *Ibid.*, 116, 117, 120–21, 128. [Emphasis in original.]

"The President of the United States") read as follows: "He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time."³³

When the convention on August 7 took up the committee's report, the issue of electing the president arose in discussion of the procedures of the legislature (for the first time called the "Congress"). According to Article III of the draft constitution, each house "shall, in all cases, have a negative on the other." Mason expressed doubts regarding "the propriety of giving each branch a negative on the other 'in all cases.'" He assumed that there were some cases in which no negative was intended, "as in the case of balloting for appointments." Morris moved to insert "legislative acts" in place of "all cases." Sherman objected that such wording would "exclude a mutual negative in the case of ballots." Nathaniel Gorham of Massachusetts supported election by joint ballot and cited the difficulties experienced in his own state in selecting officers because of separate balloting by each house of the state legislature. "If separate ballots should be made for the President, and the two branches should be each attached to a favorite, great delay, contention & confusion may ensue." Wilson also advocated a joint ballot, "particularly in the choice of the President. Disputes between the two Houses, during & concerning the vacancy of the Executive might have dangerous consequences," he declared. Nonetheless, Morris's motion failed to carry by a tie vote, 5 to 5. In the meantime, however, Madison argued that a provision spelling out a negative by one house on the other was in any case unnecessary since the same was implied by the very existence of a bicameral legislature. Madison's motion to strike out the reference to a mutual negative in the legislature carried by a vote of 7 to 3.³⁴ Since the powers of each house were left unchanged, the vote in effect postponed a decision on the matter of legislative balloting for the office of president.

When on August 24 the convention took up the provision on the election of the executive in the report of the Committee of Detail, the delegates were once again divided on the procedure of balloting by the legislature. The previous week, on August 17, a similar clash had arisen over appointment of the treasurer by the legislature (as envisaged under the report of the Committee of Detail). Gorham had moved to insert "joint" before "ballot." "Mr [Roger] Sherman opposed it as favoring the large States." Nonetheless, Gorham's amendment was upheld by a vote of 7 to 3. Now Rutledge moved to make election of the executive also by "joint" ballot "as the most convenient mode of electing." But, as on the previous occasion, Sherman objected to the motion "as depriving the *States* represented in the *Senate* of the negative intended them in that house." Gorham again responded that "it was wrong to be considering, at every turn whom the Senate would represent. The public good was the true object to be kept in view." His words, in turn, drew the following retort from Jonathan Dayton of New Jersey: "It might be well for those not to consider how the Senate was constituted, whose interest it Was to keep it out of sight. — If

³³ *Ibid.*, 145, 185.

³⁴ *Ibid.*, 177, 193, 196–97.

the amendment should be agreed to," he declared, "*a joint* ballot would in fact give the appointment to one House. He could never agree to the clause with such an amendment."³⁵ At this point Daniel Carroll of Maryland, with the support of Wilson, vainly tried to have "election by the people" inserted in place of "by the Legislature." The motion was quickly dismissed by a vote of 2 to 9.

Reverting to the proposal for a joint ballot, David Brearley of New Jersey, in opposing the proposal, reminded the delegates that "the argument that the small States should not put their hands into the pockets of the large ones did not apply in this case." This was a reference to the demand of the larger states that money bills originate in the House of Representatives and not be subject to amendment in the Senate. That arrangement had formed an essential part of the Connecticut Compromise. In effect, Brearley was arguing that, unlike money bills, which affected the larger and wealthier states more directly and which were, therefore, left to the determination of the lower house, the selection of an executive concerned all states, smaller no less than larger, and was therefore a legitimate subject for Senate control. In contrast, Wilson "urged the reasonableness of giving the larger States a larger share of the appointment and the danger of delay from a disagreement of the two houses." He also pointed out that the Senate had a privileged position in other spheres, "balancing the advantage given by a joint ballot in this case to the other branch of the Legislature." Madison pointed out that even with a joint ballot, the larger states would still not exercise influence commensurate with their size. "The rule of voting will give to the largest State, compared with the smallest, an influence as 4 to 1 only, altho the population is as 10 to 1." This, declared Madison, "cannot be unreasonable as the President is to act for the *people* not for the *States*." But the most telling speech in favor of a joint ballot was delivered by John Langdon of New Hampshire. In his home state, he declared, "the mode of separate votes by the two Houses was productive of great difficulties. . . . He was for inserting 'joint' tho' unfavorable to N. Hampshire as a small State." The proposal for a joint ballot of both houses was accepted by a vote of 7 to 4, with two small states (New Hampshire and Delaware) breaking ranks and voting with the large states. The smaller states did not concede defeat, however. Immediately after the vote, Dayton of New Jersey, seconded by Brearley of the same state, moved to insert after "Legislature" the words "each State having one vote." The motion failed, by the close vote of 5 to 6.³⁶ (Delaware, in this instance, sided with its natural allies, the smaller states.)

It was now Gouverneur Morris's turn to express displeasure at the decision of the convention. The executive, he complained, can never be truly independent if he is chosen by the legislature. "Cabal & corruption are attached to that mode of election: so also is ineligibility a second time . . . rivals would be continually intriguing to oust the President from his place." He proposed that as a means of guarding against "all these evils," the president "be chosen by Electors to be chosen by the people

³⁵ *Ibid.*, 314–15, 401, 402. [Emphasis in original.]

³⁶ *Ibid.*, I, 524, 526, II, 397, 402–403. [Emphasis in original.] Although the executive in New Hampshire was elected by popular vote, other officers were selected by the legislature, with each house voting separately.

of the several States.” His motion was defeated by the narrow margin of 5 to 6 in one vote and by a split vote, 4–4–2 (1 absent) on a second try.³⁷

But the convention was apparently still not satisfied with the arrangements it had settled on for choosing the president. Although it had confirmed election by the legislature in joint ballot, it was not yet ready to determine with finality the term of office or the reeligibility issue. Those matters were postponed, at the suggestion of the New Jersey delegation, to the next day, August 25.³⁸ The matter was not broached then, however, and apparently the convention preferred to let the issue ride.

The convention’s continuing vacillation and soul-searching on the whole subject was subsequently revealed when on August 31 the delegates took up for consideration Article XXIII of the draft constitution. That provision described the procedures for instituting the government, including a direction to Congress to “choose the President of the United States.” Morris moved to strike those words out of the provision, “this point, of choosing the President not being yet finally determined.” The clause was struck out by the rather surprising vote of 9–1–1 (one state divided). Clearly the convention had not yet pronounced the last word on the method of selecting a president. The delegates, even at this late stage, were still groping for a solution free of the serious shortcomings raised against every single method proposed to date. At the conclusion of the day’s session, the issue of the election of a president, together with all other pieces of unfinished business, were referred to a committee composed of a representative from each state. Apparently the convention was hoping that the members of the committee, as Gerry had put it, would be able to come up with something that would “unite the various opinions which have been thrown out.”³⁹

The Brearley Committee on Unfinished Parts (named thus after its chairman) completed its work on procedures for electing an executive in four days and reported back to the Convention on September 4. The result was the Electoral College.⁴⁰ It was striking in its innovation and quite remarkable for having combined all the salient features of the numerous plans proposed during the debate while having overcome the deficiencies of each. First and foremost, it removed the choice of president from the Congress and conveyed it to an independent, ad hoc body whose sole function was the selection of a chief executive. The independence of the president was thus assured while cabal and foreign influence were safely excluded, and the president was free to run for reelection without fear that his independence would be compromised. Yet at the same time, and this was the really critical point, in terms of numbers the Electoral College was an exact replica of Congress, since each state was entitled to as many votes in the Electoral College as it had in Congress, with even the smallest state entitled to at least three votes; moreover, the southern states

³⁷ *Ibid.*, II, 397, 404.

³⁸ *Ibid.*, 397–98, 404.

³⁹ *Ibid.*, 103, 472, 473, 480, 481.

⁴⁰ According to Charles Warren, the reason for the success of the committee is that it consisted of “almost the ablest men from each State.” Warren, *Making of the Constitution*, 621n1. See also Roche, “Founding Fathers,” 810.

would enjoy the bonus of the three-fifths rule. The smaller and the southern states thus would continue to enjoy the relative advantage they possessed in Congress itself, either in the Senate or in the House of Representatives, or in both. In mathematical terms the advantage in the first Congress (with sixty-five members in the House of Representatives and twenty-six in the Senate) was as follows:

Delaware (smallest state)

$$\begin{array}{r} 1 + 2 = 3 \\ 65 + 26 = 91 \end{array}$$

Virginia (largest state)

$$\begin{array}{r} 10 + 2 = 12 \\ 65 + 26 = 91 \end{array}$$

Thus, as a result of the Electoral College, the ratio was 1:4 rather than 1:10 as it would have been had size of population been the sole criterion.⁴¹

In effect, the Electoral College was simply a special congress elected to choose a president, without the shortcomings of the real Congress. Since the electors would never assemble together at one national site but would meet to vote "in their respective States" and immediately thereafter disband, there was no danger of corruption, plotting, or cabal. As Gouverneur Morris indicated, "The principal advantage aimed at was that of taking away the opportunity for cabal." To prevent the larger states from dominating the selection process, each elector was to vote for two persons, one of whom, at least, was not to be a citizen of his own state. At the same time, since a majority was required for selection of the president, no elector would be prone to throw away his second vote. Thus the outcome would be, not simply the selection of thirteen favorite sons, but a genuine possibility that a national figure would be chosen at the first round. In the event that no candidate received an absolute majority in the Electoral College, the Senate would choose the president (from the five highest on the list). In effect, the smaller states were to get two bites of the cherry under the new plan. First, they retained their numerical advantage in the Electoral College. Second, if no candidate succeeded in obtaining an absolute majority, the choice would devolve on the Senate, where again the smaller states had a built-in advantage. As noted above, this contingency arrangement was derived from the constitutions of Massachusetts and New Hampshire.⁴²

Presentation of the Electoral College scheme to the convention excited considerable surprise. "Mr. Randolph & Mr. Pinkney wished for a particular explanation &

⁴¹ Constitution of the United States, Article I, secs. 2, 3. In the 1790 census Delaware had a population of 59,000 while that of Virginia was 692,000. In the 1792 elections Virginia elected nineteen members to the House of Representatives whereas Delaware continued to elect only one. Since the Electoral College total was 132, the resultant ratio was Delaware, 3:132; Virginia, 21:132. Thus the ratio was 1:7 rather than 1:12 as the population figures would warrant. (These figures allow 3 votes for 5 blacks under the census.) U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970*, (Washington, 1975), pt. 1, pp. 24, 36; *ibid.*, pt. 2, pp. 1074, 1085. Representation in the House was apportioned on the basis of 30,000 population per seat. Constitution of the United States, Article I, sec. 2.

⁴² Farrand, *Records*, II, 501.

discussion of the reasons for changing the mode of electing the Executive." Gouverneur Morris served as the committee's spokesman in explaining the "reasons" for the new proposal: (1) "The danger of intrigue & faction if the apptmt should be made by the Legislature." (2) "The inconveniency of an ineligibility" were the choice to remain with the legislature. (3) "The difficulty of establishing a Court of Impeachments, other than the Senate," which would be an improper body to judge the executive if he were to be chosen by the legislature. (4) "No body had appeared to be satisfied with an appointment by the Legislature." (5) "Many were anxious even for an immediate choice by the people." (6) "The indispensable necessity of making the Executive independent of the Legislature.—As the Electors would vote at the same time throughout the U.S. and at so great a distance from each other, the great evil of cabal was avoided."⁴³

In response, Mason expressed his satisfaction that the plan "had removed some capital objections, particularly the danger of cabal and corruption." It was liable, however, "to this strong objection, that nineteen times in twenty the President would be chosen by the Senate, an improper body for the purpose." Randolph "dwelt on the tendency of such an influence in the Senate over the election of the President in addition to its other powers, to convert that body into a real & dangerous Aristocracy." Pinckney and Rutledge also argued that conferring the choice on the Senate, even in the ultimate resort, was likely to compromise the president's independence. Sherman apparently sensed that some delegates were objecting to the Senate because of the influence of small states there. He "reminded the opponents of the new mode . . . that if the Small States had the advantage in the Senate's deciding among the five highest candidates, the Large States would have in fact the nomination of these candidates." Nonetheless, when Mason moved that the choice be made from the top three rather than the top five, the smaller states objected. Sherman declared he "would sooner give up the plan." Apparently, the smaller states reasoned that a choice out of five rather than three allowed them some prospect to land a candidate of their own. Other delegates stressed that, in fact, the choice would most likely be made in the Electoral College, and there would be no need to resort to the Senate. "The increasing intercourse among the people of the States," declared Baldwin, "would render important characters less & less unknown; and the Senate would consequently be less & less likely to have the eventual appointment thrown into their hands." Wilson also stressed that "Continental Characters will multiply as we more & more coalesce, so as to enable the electors in every part of the Union to know & judge of them." Gouverneur Morris similarly felt that the matter would be settled by the electors and would never reach the Senate. Madison considered it "a primary object to render an eventual resort to any part of the Legislature improbable." He referred to two features of the plan that made such an eventuality unlikely. First, given the reluctance of the large states to see the choice fall to the Senate, their "concerted effort . . . would be to make the appointment in the first instance conclusive." Second, the fact that the vice-presi-

⁴³ *Ibid.*, 500.

dent, unlike the president, could be selected without a majority would deter electors from wasting their second votes and would heighten the chance that the choice would be made in the Electoral College.⁴⁴

The delegates, it appears, were impressed with the Electoral College scheme, which so successfully blended all the necessary elements to ensure a safe and equitable process for electing a president and which reserved considerable influence for the states. They beat back, by large majorities, every attempt to upset the plan and to restore legislative selection of the executive. There was, however, considerable sentiment against leaving the ultimate choice in the hands of the Senate. Mason regarded it as "utterly inadmissible. He would prefer the Government of Prussia to one which will put all power into the hands of seven or eight men, and fix an Aristocracy worse than absolute monarchy." Mason was vigorously supported by Wilson, who complained that too much power was concentrated under the Constitution in the Senate. As a means of avoiding resort to the Senate, Mason proposed that the candidate receiving the highest number of ballots in the Electoral College be pronounced president whether or not the vote constituted a majority. Wilson proposed that the final choice be accorded the whole legislature rather than the Senate alone. The convention, however, rejected both proposals, just as it rejected numerous other proposals that tended to alter the finely tuned instrument that had evolved. The Electoral College constituted a package deal in which diverse interests and safeguards were neatly balanced. Even the slightest change was likely to undermine the entire structure and to make the machinery inoperable. The delegates were not prone to tamper with the delicate compromise. Only in the matter of the Senate as the venue of ultimate resort were the delegates ready to accept change. Sherman, alert to objections that the Senate represented a center of "aristocracy," proposed that the House of Representatives be substituted for the Senate in the ultimate resort, with voting by states, not per capita. Since this proposal, in contrast to the other suggestions, preserved state power, the amendment was readily accepted by a vote of 10 to 1. Another amendment readily accepted (this time unanimously) was a clause barring "a member of the Legislature of the United States or who holds any office of profit or trust under the United States" from serving as an elector. An incidental by-product of the new scheme was the emergence of the office of vice-president, designed to take care of the electors' second vote. Some delegates voiced opposition to creation of the office, and others protested that the vice-president's appointment as ex officio president of the Senate would violate the principle of the separation of powers. But once again the vast majority wished to preserve the Electoral College plan intact, and the office of vice-president and his role in the Senate were overwhelmingly confirmed.⁴⁵

⁴⁴ *Ibid.*, 500, 501, 507, 511, 512–13, 514, 523; Bancroft, *History of the Formation of the Constitution*, II, 177. The remarks by Abraham Baldwin, Wilson, Gouverneur Morris, and Madison demonstrate that a considerable body of opinion at the convention did not share Mason's view that "nineteen times in twenty" the selection would be made in the Senate (House). Roche's claim that "no one seriously disputed [Mason's] point" is thus unsupported. Moreover, as Madison notes, certain features of the Electoral College scheme were specifically designed to heighten the prospects of a final choice in the College. On this point, see Warren, *Making of the Constitution*, 629. But cf. Farrand, *Framing of the Constitution*, 167; and Farrand, *Records*, III, 405.

⁴⁵ Farrand, *Records*, II, 507, 511, 512, 513, 514, 515, 517–21, 522–23, 525–29, 532, 536–38. Gouverneur Morris quipped that the vice president "will be the first heir apparent that ever loved his father." *Ibid.*, 537.

The convention records demonstrate that the protracted discussion over the mode of electing an executive was but a continuation of the struggle that marked the debate on the composition of the legislature. The smaller states were no more prepared to concede to the large states domination of the process of selecting a chief executive than they were prepared to allow them to dominate the legislature. From a truly "nationalist" choice, as envisaged under the Virginia Plan, the United States executive was transformed, in the give-and-take of the debates at Philadelphia, into a "federal" institution in which the rights and interests of the states, particularly the smaller states, would also be safeguarded.⁴⁶ The compromise that marked the creation of the Electoral College is thus revealed as simply a second round of the Connecticut Compromise in settling large state–small state differences.

This second stage of the running battle between the large and the small states was distinguished from the first in several ways. The dispute over the mode of electing an executive never assumed the same dimensions of crisis that nearly disrupted the convention with respect to the issue of the composition of the legislature. Of that confrontation Gouverneur Morris said that "the fate of America was suspended by a hair."⁴⁷ After having backed down on the issue of the legislature, the large states were neither able nor willing to create a new impasse. Nevertheless, a major and prolonged struggle (down to the wire) ensued over the system to be instituted for choosing an executive.

Second, the small states were not the only ones to feel directly affected by the various schemes proposed. Once the Connecticut Compromise had accorded the smaller states a handsome increment in the Senate, they understandably refused to contemplate removal of the choice from the legislature. But the slave states were no less reluctant to agree to such a move since it would dissipate the advantage they had secured in the lower house through the three-fifths rule. As a result, a natural alliance existed between the two groups—the slave states and the smaller states—in reserving the decision to the national legislature. However, according the legislature such a role would inevitably have compromised the executive's independence, something that tended to violate the principle of the separation of powers, regarded as sacrosanct by the Founding Fathers. To overcome this deficiency, it was decided that the executive's term of office be relatively long (seven years) and that he be ineligible for reelection. Those conditions, however, were found wanting in other respects, so that the delegates kept probing and testing for an alternative to the triangular arrangement—choice by the legislature, long term, ineligibility.

Now it was the turn of the small states to make a valuable concession, which represents a third noteworthy aspect of the Electoral College compromise. Given the equality of both houses in the legislature, the Senate would be free to exercise a veto in the choice of the executive. In the interest of preventing deadlocks, however, several smaller states resolved to endorse a joint ballot of both houses in selecting

⁴⁶ See the subsequent comment of Jonathan Dayton, delegate from New Jersey: "The States, whatever was their relative magnitude, were equal under the old Confederation, and the small States gave up a part of their rights as a compromise for a better form of government and security; but they cautiously preserved their equal rights in the Senate and in the choice of a Chief Magistrate." *Ibid.*, III, 400–401. See also the remarks of Gouverneur Morris, *ibid.*, 405; and of Rufus King, *ibid.*, 462.

⁴⁷ *Ibid.*, 391.

an executive. Unlike the Connecticut Compromise, in which the concession of the smaller states was limited to granting the lower house the right to initiate money bills, in this instance the concession was significant and meaningful. It paved the way for a transference of the responsibility of choosing the executive from the legislature to some outside body. The most logical outside body was the people, in direct popular elections. Such a step, however, would have canceled the advantages enjoyed by the smaller and the slave states in the legislature. In response, the Committee on Unfinished Parts invented the Electoral College—an ingenious means of preserving the built-in advantages of those states while removing the choice from the legislature. The Electoral College represented a congress away from home for the express and limited purpose of choosing the nation's chief magistrate. The institution of the Electoral College represented the first, indeed the primary, compromise in the arrangements for selecting an executive. National and federal elements were neatly balanced therein. But it was only part of the package. In the event that the Electoral College failed to come up with a sufficiently national choice, the Senate (ultimately the House of Representatives) as the constitutive body of the states, would choose. In effect, therefore, in the event that the Electoral College became a mere nominating body under the domination of the large states, the smaller and the slave states would be well placed to exercise a controlling voice over the final election in the Senate (House of Representatives).⁴⁸ (Although the three-fifths rule did not operate at this point, the slave states retained influence by virtue of the number of southern states present.)

The convention's records indicate that many delegates favored direct popular election of the executive but, for the reasons noted, were unable to institute such a system. The most prominent advocates of direct elections were those campaigning for a strong executive—Wilson, Gouverneur Morris, and Madison. Their motives possibly were mixed. They were opposed to lodging the choice in the legislature because the executive's independence would be compromised. They were also concerned about the disproportionate influence of the smaller states in that body. As Martin told the Maryland legislature, "Those who wished as far as possible to establish a *national* instead of a *federal* government, made repeated attempts to have the President chosen by the people at large." Democratic doctrine—the belief that the executive should represent the mass of the people—also seems to have been a factor. In the end the proponents of direct elections achieved partial success. Although the election of the president was not to be a direct act of the people, the state legislatures would be free, if they wished, to confer the choice of electors upon the people themselves. Indeed, that seems to have been the expectation of the

⁴⁸ At various times the contingency arrangement, with the House of Representatives voting by states, has been depicted as the key element of compromise in the Electoral College scheme. See, for instance, Farrand, "Compromises of the Constitution," 487–88; and Farrand, *Records*, III, 458, 461, 464. However, as noted, this is only part of the package. The first and fundamental element of compromise lay in the composition of the Electoral College. As summed up by Baldwin, "The Constitution in directing *Electors* to be appointed throughout the United States equal to the whole number of the Senators and Representatives in Congress . . . had provided for the existence of as respectable a body as Congress, and in whom the Constitution on this business has more confidence than in Congress" *Ibid.*, 382. See also the remarks of Gouverneur Morris, *ibid.*, 405; and of King, *ibid.*, 461.

Framers. For this reason Madison, in one of the last sessions of the convention, described the election of the president as one “by the people.”⁴⁹

Only a few delegates—most notably Mason, Gerry, and Butler—were opposed in principle to direct election of the executive. But such opposition reflected, at least in the case of Mason, 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. True representation could work only over a small area where the people could be acquainted firsthand with the candidates. An attempt to apply representative democracy on a national scale was a distortion of the principle and would simply lead to the manipulation of elections by nefarious characters. The ultimate solution of state electors was, from that standpoint, a sound means of giving expression to the popular will, and it was viewed in that light by the antifederalists in the state ratifying conventions.

What clearly emerges from the foregoing is that, contrary to the claim of the Progressive historians, antimajoritarianism was by no means the primary motivation behind the creation of the Electoral College. Nor was it, as Roche would have it, simply the product of a last-minute accident of history. Design and purpose guided the creation of the Electoral College. At the same time, however, it would be wrong to suggest that the Electoral College was based on some grand concept of political theory. Also, there is no evidence that the convention was inspired in the matter by classical or medieval precedents. Not once did the delegates advert to the procedures that prevailed in ancient Rome or Greece or in republican Venice. (The Federalist Papers, equally, do not mention any such historical forerunners of the Electoral College.) The delegates were confronted with a practical problem arising from the constellation of clashing forces at Philadelphia, and they devised a practical solution—an ad hoc congress reflecting faithfully the pattern of weighted voting that was an integral part of the operation of the real Congress. The precedents guiding their deliberations were all drawn from state practice.⁵⁰

Two alternatives presented themselves. The indirect method of selection by the legislature and the direct method of popular choice (qualified by a contingency procedure entailing a legislative role). The latter method represented too national a choice for some; the former, while it offered a satisfactory federal solution, clashed with accepted republican principles. Concepts that had come to be viewed by many as essential components of representative government—separation of powers, limited terms of office, reeligibility, rotation in office, and devices for minimizing electoral corruption—were analyzed and weighed in the search for an unassailable solution. Thus if political theory did not inform the creation of the Electoral College, it provided the essential backdrop to the evolution of this new instrument of government. The device of a congress away from home represented, in sum, an

⁴⁹ *Ibid.*, 217, 330, 422–23, II, 587, I, 50. [Emphasis in original.] See also Federalist Papers Nos. 60 and 68.

⁵⁰ King commented, “The members of the Convention in settling the manner of electing the Executive of the U.S. seem to have been prejudiced in favor of the manner, to which they were accustomed, in the election of the Governor of their respective States.” *Ibid.*, III, 459. Also, as indicated earlier, the notion of establishing an electoral college may well have been drawn from the precedent of the Maryland senate. Elliot, *Debates in the Several State Conventions*, II, 127–28.

adaptation of state experience modified by the need to resolve the central dispute at Philadelphia, namely the large state–small state controversy. Concessions to the federal impulse were reflected in the manner in which the composition of the Electoral College was fixed; in the option accorded the state legislatures to appoint the electors; and in the ultimate choice being bestowed upon the House of Representatives, voting by states. These features stamped the compromise nature of the Electoral College and assured its acceptability both within the convention and without. For in the eyes of its admirers, the Electoral College represented a brilliant scheme for successfully blending national and federal elements in the selection of the nation's chief magistrate.