

Perspectives on Early America

THE ROOTS OF AMERICAN POLITICS

FROM ANTIQUITY TO THE EARLY REPUBLIC

John Frederick Martin



The Roots of American Politics

This book examines the ways in which American habits and politics replaced the traditional European republican canon.

Before the modern era, European republics relied on procedural complexity in office-filling to arrive at neutral government. They did so with such technical consistency over a long span of time as to create a republican procedural tradition. That tradition collided with conditions in the Anglo-American world: with entrenched social deference in politics, quasi-representative institutions, and an ascendant doctrine of majorities. American habits would ultimately overwhelm the European republican canon, but not without a fight. This book suggests that arguments over the abandonment of the procedural tradition shook politics in early America, especially at the federal convention, and that it is difficult to understand the convention delegates' votes concerning the Great Compromise (apportioning the House and Senate) and the presidential selection system without reference to those arguments. The contest between simple majorities and complexity aiming at comity was not resolved neatly in Philadelphia and continued during the first decades of the republic; this book argues that some political institutions to this day bear the stamp of the imperfect arrangements reached at the nation's founding which among other things was a moment of inflection between older and newer concepts of republican architecture.

This volume will be of interest to students and scholars interested in American Political History, Early American History, and Political Science.

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Perspectives on Early America

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The Roots of American Politics

From Antiquity to the Early Republic

John Frederick Martin



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To Eli and Peter, and to the memory of Daniela



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Better a lean truce than a fat victory.

Machiavelli, *Florentine Histories*



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Introduction

For more than twenty centuries – from ancient Greece and Rome to the republics of early modern Europe – a fundamental goal of republican government was to transcend politics. Today, in the United States, though some vestiges of that idea persist, government is an expression of politics. From the ancient to the early modern world, republics were frequently unstable, but when strife broke out it constituted a breakdown of government, rather than being, as strife is today, inherent in the very character of government. Many things brought about this transformation; one was a sea-change in political procedures.

The classical ideal was accomplished, or at least pursued, through elaborate procedures designed to produce a neutral, depersonalized, and therefore stable government. Although republics varied widely in the premodern world, generally they treated elections with circumspection, rejected simple majorities (let alone pluralities), and selected officeholders through a multi-stage process, often including lottery, making it difficult for one interest to coalesce its forces and take command. Political organizing was proscribed; in Florence, in the 1490s the crime carried a life sentence in prison.¹ The idea of representation did not exist in republics. In principle, eligible citizens ruled according to their own lights, not as agents for this or that group. And the tenure of officeholders was brief. Rotation was key. If a professional political class skilled in the ways of governing took over the republic, the system had failed. These features of political life were thought to be unchanging, unchangeable, and even sacrosanct.

But then in the seventeenth and eighteenth centuries these principles, relatively suddenly, changed. At a critical juncture at the close of the early modern era, when the older procedural tradition clashed with new political conditions in the Anglo-American world, these inherited procedures dissolved and new ones replaced them. We still live with the consequences of that change. Today, elections are regarded as the essential procedure of a free society, majorities (sometimes pluralities) are authoritative, whoever wins should govern, whoever loses abides, representation is unavoidable, and professionals are a tolerated side effect. These assumptions are now axioms, forming a new tyranny of the familiar, but, like all forms of human behavior, they are the results of a long and complex history.²

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This book tries to tell that history. It studies electoral procedures in free states across a considerable span of time in an effort to explain how one set of certitudes replaced another. Exactly how early Americans interacted with the European republican tradition as they strived to set up governments in the New World, especially the national government, is the main topic.

As much as possible, I have tried to keep a tight focus on electoral procedures and to steer clear of the rich and varied republican body of ideas about broader subjects such as humanism, history, human character, and freedom. “As much as possible” because procedures are impossible to understand without reference to the goals of their makers, and people’s goals change over time. Whatever political practitioners of antiquity and the late medieval period thought they were doing when they created their political systems, it certainly was not what we think we are doing. This distinction in goals and assumptions requires probing (“probing” because conjecture is unavoidable when practitioners do not articulate their premises). Still, with all the rich scholarly work done on republicanism in recent decades, it has seemed prudent to leave alone the arguments about republican ideology and where it was or was not transmitted. Another furrow is not needed in that well-ploughed field.³ The topic here is procedures. Moreover, even in this narrow topic, this study is not about transmission but about the existence and alteration of practices.

The first and shorter section of this study is a summary of republican procedural evolution from antiquity through the Renaissance. I have included it because the procedural innovations of the premodern era are interesting in their own right. But more importantly, it is difficult to understand the writings and arguments about procedures that occurred during the transition in the seventeenth and eighteenth centuries without being familiar with the premodern storehouse. This context is especially useful when studying early American struggles over procedures, for much of American historiography is vacant of premodern republican techniques. Most specialists in medieval and Renaissance electoral procedures have been British or continental European. The work they have done in recent decades is invaluable, and the narrative survey attempted in the present book would not have been possible without that recent scholarly outpouring.⁴

I have also returned to classic texts of the premodern era, by writers as diverse as Aristotle, Plato, Cicero, Marsilius of Padua, Guicciardini, Machiavelli, Savonarola, James Harrington, and others. It is remarkable to encounter some of these authors’ abiding, meticulous interest in, of all things, nominating practices, which on occasion rose to the level of an obsession. Attention to nominating was due because nominating in the premodern era was a mostly government function, not a partisan one, and it was used to help blend, harmonize, or neutralize interests. Intellectual historians in our time, however, have not always shared the obsession, with good reason, for their purpose has been properly concerned with classical republican ideas (of virtue, the active citizen, moral philosophy, and more). As a result, when

some intellectual historians come across lengthy passages on electoral procedures, their eyes glaze over and they either skip the passages, redact them from their edited version of the writings, or treat them with a whiff of condescension.⁵ Intricate procedures have not infrequently been put into their own corner and called the “mechanization of virtue.” This present study has its own bias. It is inclined to regard virtue (or the large attention paid to it) as the “sentimentalization of procedures,” the downgrading of the hardheaded, practical work that republicans did to sustain their polities.

The second section of this study, taking up the bulk of the work, deals with the Anglo-American world and seeks to describe how and why British and North American political conditions proved so corrosive to republican procedures. This section relies largely on archival research and primary sources (mostly records of colonial governments, federal convention, ratification, and the papers of the major framers of the Constitution). It takes a new look at the influential James Harrington and his fixation with Venetian-like procedures (detailed in his 1656 book *Oceana*), a fixation which has long wearied scholars and which here is interpreted as his vain effort to reconcile the ascendant representative idea with older republican procedural goals. It describes the stony ground republicanism found in colonial political arrangements and John Winthrop’s smothering of the republican tradition in New England. It also explores the role that joint stock companies played in the making of American political procedures. It may seem counter-intuitive that business entities played a part in reviving republican habits in the medieval and early modern eras, but they did. Companies were laboratories for self-government. When enterprising individuals came together in a shareholder structure, they managed their own affairs and cared a good deal about internal procedures because they had money at risk. The rules they devised for corporate actions influenced the political habits of colonies and towns founded by corporate vehicles. But business influence on political institutions was an equivocal one. For joint stock companies in the seventeenth century evolved a new form of professional management and to the extent that the professionalization of this corporate vehicle abetted the professionalization of politics, it undermined both shareholder and political democracy.

The central concern in this second section is the writing of the Constitution. Many scholars have studied republican theory and its influence on the Founders. The topic in this book is not the transmission of republican vocabulary but rather specific procedural choices that the framers made in the federal convention and the extent to which those choices mimicked and departed from the republican procedural canon. The approach here is to understand to what extent old procedural principles entered the minds of the framers and were self-consciously introduced into debate; to what extent were the framers engaged, whether consciously or unconsciously, in a combat over the very changes that the modern, majoritarian assumptions were making to old republican ways; and to what extent did agreements made in Philadelphia contribute to the further evanescence of the republican

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procedural tradition. Historians have written exhaustively and ably about the debates but not with this particular series of questions in mind.⁶

The argument made in the pages below may be summarized as follows.

Procedures flowed necessarily in a republic from the core idea, as Aristotle put it, that in a city-state run by citizens, the ruled were the rulers and therefore all citizens were eligible for office. If all citizens were eligible for office, some means had to be devised to select from the mass of eligible citizens a manageable number of candidates. This was the first purpose of procedures. Athens used sortition (lottery) to fill most offices, rotation every year meant a lot of sortitions, and Athens invented a machine, the *kleroterion*, to answer the need. Lottery would later figure in procedures for the entirety of the republican tradition.

But lottery was more than a tool of efficiency. It was a technique of democracy and inclusivity: every citizen was eligible. It was also an emollient. Never is there a moment more laden with destructive power than when a community fills its high offices. That is the event dreaded in the calendar of republics. How to conduct the selection so as to tame, and not inflame, passions is a challenge. Lottery helped by taking selection out of human hands. Over time, other tools were added to the kit: supermajority thresholds (rather than simple majority or plurality, the latter being the highest vote albeit less than a majority), and multistage elections.

In devising multistage elections, republics spent a good deal of effort on nominating techniques. Across many eras, they usually gave groups (regionally or economically or socially differentiated) the privilege of nominating candidates at the group or local level, reserving, however, final selection for the national level. The result was a federative glue: a national mandate, but with regional or constituent contributions at an earlier stage. The election of the board of generals in classical Athens was done this way. This mixture of local (or group) nominating and national decision appeared in republics from antiquity to the Renaissance all the way through to the creation of the Electoral College in 1787, for it gave parts of the electorate (sometimes interest groups, sometimes regions) a role in national governance, and conversely made the national government dependent for candidate production on local interests, and so helped knit the parts and the whole together. This architectural point John Dickinson (federal convention delegate) never tired of making during the writing and ratification of the Constitution.

In addition to federative glue, nominating procedures managed the wizardry of involving major interests while not ceding control to any one of them. This theme of involving but not ceding predominance, making its first European appearance in Aristotle, was meticulously developed in the late medieval era. In many Italian communes local and economic groups produced candidates who then had to receive approval by two-thirds of a “scrutiny” committee. Once past this gauntlet, in Florence and elsewhere an approved nominee’s name ticket went into a bag to be drawn randomly in future whenever a government office needed filling. In theory, no faction or

quarter could determine the outcome, for no faction controlled two-thirds of the scrutiny committee, and no one could control the drawing of names from a bag.

Not only was predominance to be prevented through this complexity, so also was strife. In some communes, the scrutiny vote and bagging of tickets were secret activities, so that one could not know who succeeded until the day (months and even years ahead) when name tickets were drawn from the bag to fill a vacancy. More importantly, one never knew who had *not* made it through the selection process, for a new nominating cycle could well be ordered before the bags were empty of tickets. This thoughtful secrecy had as its purpose to reduce tensions. Nothing increases tension so much as the production of winners and losers.

By giving clashing interests a clear-cut role in nominating, but carefully not a dominant role in the electoral result, republics nominated their way to stability. At least such was the ideal, if not always realized. Into the complex electoral machine, with multi-stages and sortition – a kind of electoral heat exchanger – republics fed the hot energy lines of factions, of great and minor guilds, of rivalrous families, of inland and coastal and mountain inhabitants on the Attic plain, all in competition with each other – and out flowed the cool allocation of unpredestined winners of high and low office, who, as disappointed as one or another group might be, were accepted as the product of a fair or neutral or providential process.⁷

Finding a place in electoral arrangements for competing groups was not part of a genial plan but rather resulted from pressure exerted by interest groups knocking on the door of officeholding. If the knocking was loud enough, republics tended to open the door, not out of beneficence but self-preservation. In the late medieval era Florence added lower economic classes to the citizens eligible for office. But although opening the door, she did so carefully. Procedural complexity was introduced to make sure that new entrants, while attaining a stake in the process, could not determine voting outcomes and could not hand-pick their own representatives. This result, barring one from sending one's own selected agent into office, had the effect of reinforcing the disinterestedness of public office.

Once the office was filled, republics lowered the portcullis and walled off the officeholders from influence by their fellow citizens. In Siena, when lottery commenced the short term of office of the highest council, councilors lived day and night in the communal palace for two months, sequestered with their own cook and messengers, so they could not be influenced by either their family members or others lobbying them.⁸ The procedural thrust in most republics was decisively to sever the links between officeholders and constituents. The former were not there for the latter; they were there for the city-state.

What after the long span of centuries curtailed this remarkable tradition in modern times was the principle of representation and its companion, majority rule. Ancient and early modern republics had little use for the concept

of representation by recidivist officeholders. Taking precautions to avoid the emergence of a dominant political class ruling over citizens, republicans believed that the ruled, not delegates of themselves, were the rulers. And they did not find merit in the simple rule of numbers. Representation gained ground in the seventeenth and eighteenth centuries as the instrument of freedom for logical and good reasons, but it was not a natural evolution of republican institutions. Rather the encounter with Anglo-American political culture disfigured the republican canon out of all recognition.

That culture was a mixture of ideology and facts on the ground: an elevation of Parliament in England as the counterweight to royal prerogative, a parallel elevation of colonial legislatures mimicking that parliamentary part in the colonies, re-formulations of popular sovereignty, and an inherited creed in the colonies of stubborn social deference and professionalization in politics. By the time the Founders gathered in Philadelphia in 1787 to write the United States Constitution, the venerable republican procedural tradition had entered a gray twilight transition when its principles were still admired, efforts still being made in the colonies to keep them active and alive, but new institutions had arisen that ill-fitted those principles. By the 1780s, representative government was taken for granted, majorities favored, professionals not disdained, and a strong executive seemed to answer the needs of Americans who had struggled with a headless confederation through eight years of a difficult and closely fought war. Ancient republics were a long way off.

However, the old republican architecture, although facing stiff headwinds, had not vanished from memory. On the contrary, the in-fighting of the delegates in the State House (now called Independence Hall) resuscitated both the architecture and the principles. The key fight of the summer was over apportioning seats in the Senate. On one side were those who argued for proportional representation and seating the Senate in proportion to population. On the other side were those advocating equal voting by the states. After six weeks of arguing, the matter was resolved with equal vote in the Senate. This conclusion is usually interpreted as resulting from a series of compromises, including the willingness by big state delegates and nationalists to hold their nose and vote with the small states to save the convention from breaking up. But an analysis of voting behavior and speeches reveals a principled concern among delegates about organizing the legislature solely around popular representation. John Dickinson was the intellectual leader of the group who rejected the “rule of numbers,” calling it “unreasonable and dangerous.”⁹

In the early going, he lost the key votes over proportionality. But two things changed the debate. First, many of Dickinson’s allies, who at first had dwelt on the desultory argument about small states being exploited by big ones, shifted their argument. In a series of coordinated speeches they began to arraign the functioning of representation. They argued that representation would not filter out local interests and passions, that majorities would form and anyone left outside a legislative alliance would suffer. Soon others not aligned with the small state camp began expressing anxiety about popular

representation, and among them were delegates who switched their votes from proportionality to equal vote.

Second, the contest took on a sharply regional edge when James Madison abandoned his arguments about the impossibility of majorities forming in such a diverse country and began speaking as a champion of the South and South West. This about-face had a destabilizing effect, pushing some Northerners out of the proportionalist camp he was leading. It was because of the regionalization of the dispute that standard interpretations of Philadelphia have held that the Great Compromise was a compromise not only between big and small states but also between North and South. There is truth to that. The Senate voting equally by state gave a preponderance to the seven or eight Northern states, while the proportional House benefited the faster growing South. This different regional weighting of the bicameral legislature was on everyone's mind and helped shape the presidential selection system.

But it cannot explain all the ballots cast on the equal vote issue. In several key votes, states with many enslaved persons (as well as big states) voted on both sides of the matter. And the apostates switching out of the proportionality camp included both Northerners and Southerners. Apostates from both regions cited their concerns about proportional representation. By the debate's end, a growing number of delegates regularly in attendance had made floor statements rejecting the "rule of numbers" as a sound apportionment criterion (versus a handful who advocated that rule).

The procedural matter in dispute had become a battleground by itself, a new bone of contention, cutting across regional lines and across the divide between big and small. Through a series of votes from mid-June onward to the last vote, the proportional camp experienced a steady loss of votes. This steady erosion is not consistent with the idea that the outcome resulted from last-minute compromises to save the convention from breaking up. Many were the differences among the winning voters of July 16 – some were Southern and some Northern, some small and some big states – but the one thing they had in common was a rejection of popular representation.

This Senate debate was one of the first, and last, times that the functioning of representation was seriously questioned in a national forum. From the perspective of a proceduralist faithful to the republican canon, it was overdue. In the era of rising representative assemblies, so antithetical to core republican procedures, this debate brought into focus the agency of local interests being thrust into the heart of government by elected representatives, and there combining with other interests. The remedy agreed, the equal vote in Senate, was not in its form a republican procedure; representation techniques of any kind had no precedent in the republican canon. But that is one of the reasons the Senate solution had a republican kernel: it was plainly anti-representational. The other reason it did was because of the partisans' certainty that the rule by numbers was "dangerous."

That a dispute about procedural principle has seldom been explored in the literature of the federal convention is owing to several factors. First, this

study has benefited from the recent scholarly works on European republican procedures, and I have looked at the federal convention debates and the papers of the principal framers through the prism of that procedural tradition. Unquestionably some of the delegates were looking through that same prism as they grappled with each other in the State House. Second, the fights in Philadelphia over slavery and state size *were* the major fights in the convention, and it has not seemed especially required to investigate procedural issues to explain the convention (notwithstanding the anomaly that the votes did not line up along the standardly understood divisions). Third, some writers have missed the interesting evolution of the debate about representation, and have depicted the protagonists from beginning to end as small states men versus nationalists. What has contributed to this error is a key source material: the notes of James Madison. Madison, taking the most copious notes of the convention, was a partisan in this debate and consistently mischaracterized the equal vote camp as the small state camp. Finally, the accomplishment of the equal vote camp was throwing a spanner in the works. That negative move has not been understood to have had anything to do with principles of government; but as an anti-representation and anti-majorities move, it did.

Toward the end of the convention, the delegates finally agreed a system for presidential selection, and the intricate solution they devised resembled the nominating systems of old republics. Proposed by some of the same delegates concerned about simple legislative majorities, it used local nominating and national electing, hermetically sealed steps to keep influence at bay, and uncertainty about the ultimate selection. The uncertainty was achieved by giving each elector in the Electoral College two votes to cast, the so-called double vote, which among other things made it difficult to predict who would be the winner even with the best organizational efforts. This multistage, partially aleatory (i.e., dependent on chance) process was the delegates' most republican creation.

The third echo of the republican past (after the Senate debate and the electoral college) was heard in the acrimonious dispute – the most raw of all debates during the federal convention – over how admission of new states and new citizens should affect political apportionment between the North and South. Resting their case on the argument of majority rule, the winning side prevailed in reapportioning voting power in Congress and in the Electoral College every ten years based on population. The losing side – which included Gerry, Paterson, Dickinson, Morris, and many others – favored a reapportionment rule that would never let the original thirteen states be outvoted in Congress. In the alternative, some proposed redrawing state boundaries and creating new and equal divisions of the entire country.

The convention decided on periodic reapportionment and deliberately set the regional competitors off on a desperate scramble for political predominance as soon as the ink was dry. This dangerous dynamic, powered by expansion, was immensely destabilizing for the nation. Both North and South feared their political position was worsening with time. The failure was one

of republican emulation. Older republics generally had been careful not drastically to alter voting balances once those balances were agreed, even over long spans of time. So said one of the losers in this fight, and he cited the fall of the Roman Republic.¹⁰

The majority principle not only prevailed on this vital reapportionment question but also emerged from the ratification debate as the predominant political doctrine in the country (which was not so clearly the case within the secret proceedings of the federal convention). The triumph of that principle in political culture, in addition to the onset of presidential campaigning, soon led to the rewriting of the presidential selection process in the form of the Twelfth Amendment. That amendment eliminated the double vote of the electors in the Electoral College among other changes. These changes made it easier to organize a campaign because a candidate did not have to worry how the second vote would be cast. Few amendments have changed a clause of the Constitution so much as this one did. It reduced the role of uncertainty – uncertainty which was central to republican selection systems – made it easier for parties to organize their campaigns around a single candidate, and converted the Electoral College from the nominating body to the electing body.

However, the Twelfth Amendment left intact the central role of the states. Electoral votes continued to be allocated to the states, and states could regulate election of electors as they wished. That state discretion had been integral to the college's original nominating function, enabling states to organize their own production of nominees for consideration nationally. The Twelfth Amendment, by keeping the states central to the process but simultaneously turning the Electoral College into the likely final electing venue, disfigured the college.

In time, states moved to popular election of electors, in keeping with the increasingly egalitarian political culture; and states, as was their privilege under the unamended part of Article 2, adopted the winner-take-all rule. The result was people could vote one way and states another, and a president could be elected without receiving a majority of popular votes. This has happened in almost one-third of the presidential elections held. The smallest plurality ever won by a successful candidate was that of Abraham Lincoln in 1860, who ascended to office with 39% of the popular vote. It is also possible under the disfigured system for the majority winner in the college to lose the popular vote; this has happened a handful of times.

The system as it emerged turned upside down the intentions of its framers. They had designed a republican-looking, hermetic process to banish “cabal and intrigue,” but hermeticism was pierced early on and presidential campaigns took off. They had conceived the Electoral College for nominating, but it soon acquired the unplanned function of electing, and its unsuitability for this task continues to this day. Nothing could be more foreign to the republican procedural canon – not to mention common sense – than a system that consults voters and then crowns the plurality winner. The fault lay in part with a drafting error about electors' selection, but the major cause of

this disaster was that the complex republican mechanism the framers crafted was bound to collide with the ascendant, majoritarian political culture which was gathering speed more rapidly in the country than it had demonstrated inside the walls of the State House. A mismatch occurred between educated memory and rising political culture. The federal convention took place during a moment in the history of republican efforts when the procedural hinge still swung both ways – backward toward depoliticized government and consensus and all the hermetic and aleatory tricks those values required to be implemented, and forwards toward political government, majorities, and winners and losers – but it was soon to swing in one direction only.

Once the Electoral College was refashioned into a semi-dysfunctional electing body, nominating still needed to occur somewhere. In time, parties took command of this task and nominating ceased being a government responsibility. After a series of reforms, the most recent American version permits early primary pluralities to produce nominees. Sequencing of primaries occurs with no concern for the effect that wins and losses in one primary have on voters of a later one. Republics going back to antiquity regulated the timing of elections with care. The framers of 1787 required electors to meet separately and simultaneously and to vote in secret, lest they influence each other. Only a sweeping procedural amnesia could explain the procedural mistakes that permeate the modern American nominating and electing systems.

One would think that with the advent of mostly representative and majoritarian government in the modern state, the portcullis between voter and citizen would be raised and citizens would be closer to their government than in the premodern era. That might have been a reasonable trade-off to consider (had it been offered): give up neutral, depersonalized government of old republics, and gain in return a government close to the people. But the possibility did not reckon with the barnacle-like incrustation of a professional political class, itself contrary to ancient procedural purposes. Many things contributed to the rise of this class, including representation itself, elections, and political habits dating from the colonial era. To some degree, paradoxically the eighteenth-century panegyrics to popular sovereignty played a role, for representation by professional politicians helped to drain popular sovereignty of its threat to elites. The result is a government that has successfully kept people outside but nevertheless vibrates with their grievances and divisions, ably transmitted to the inside by officeholders seeking re-election.

By and large, Americans have thrown away and forgotten venerable republican devices in an almost reckless abandonment. After the end of the Roman republic, it had taken about ten centuries of neglect before medieval communes in Europe began to recover the procedural techniques of antiquity. At least during that violent hiatus, there was the excuse of chronic invasion, poverty, chaos, and feudalism. In some places, it took even longer for procedural recovery. As late as the sixteenth century Cossacks still voted by throwing their fur hats in the air.¹¹ Although the counting might not have been with pinpoint accuracy, it was a more intelligent electoral procedure

than modern pluralities. (For all we know, they threw the hats four or five times in the quest for ranked choice, but that might have seemed ridiculous even to Cossacks.) Modern states have diverted once again from the republican way, and because this time the plausible justification for detour – majority rule through elected representatives – is more unassailable than was the dictatorship of kings and tyrants, the diversion is stronger than before and there are no signs of a renaissance in the works. But there are another few centuries to go before we match the medieval hiatus.

* * *

A matter of definition: what is meant herein by “republican”? The time span is so vast and there exist so many varieties of states which called themselves republican (or which are so-called by posterity) that, as Blair Worden has said, no single definition can claim authenticity. It could be that kingless government is the main characteristic, as Quentin Skinner has well argued; but then a lot of people who thought of themselves as acting in the tradition of Cicero and Polybius would be surprised to be counted out because a monarchy hovered over them somewhere. It could be a polity informed by the civic humanism transmitted by Machiavelli and transformed in England in the early modern era, but that would exclude pathbreaking thinkers in Holland in the seventeenth century and elsewhere. It could be an entity that looked to incorporate the famous mixed elements of a polity first mentioned by Aristotle and later made famous by Polybius, but the mixed government concept was adapted in such a hopelessly diverse way – essentially as a tactic by one group struggling against another – that it is hard to find in it anything of redeeming value except the idea of balance. As Donald Winch has said, by the eighteenth century if not before (this author would say before), “the idea of a single heritage seems difficult to sustain.”¹² What is common is the extraordinary flexibility and adaptability of republican concepts, and the inventive and resourceful way that political combatants at any given time – nobles against kings, commoners against nobles, or other embattled pairs – employed republican phrases and doctrines plucked from the past – usually some version of mixed government – to hammer their neighborly enemies with.

In this book the word “republican” will be applied to any political entity formed by a self-governing community that devises procedures to assure that no one group (or person) can gain a monopoly over offices or political predominance, and so that the public good, rather than a private interest, is served by the offices of government. In other words, a republic is defined by its architecture, which, although usually complex, was aimed at the straightforward goal of the common good.¹³ A further part of the working definition used herein comes from Aristotle: in a republic, the ruled should be the rulers (and vice versa). This concept, applying to citizens only, was taken seriously by all premodern republics under review here. It was part of what it meant to be “self-governing.” An ineluctable consequence of this concept was that citizens could not and did not delegate their powers and duties to others, and

that meant that republics had no use for the idea of representation, and the latter was not present in any entity which considered itself a democracy or a republic in the classical and Renaissance eras. Councils with rotating citizens were different in their character from representative bodies of the modern era.

However ill-suited, when representative bodies in the eighteenth century became central to the idea of a free state, the definition of republic necessarily changes in that hinge moment to encompass representative systems. It then becomes necessary to examine how different polities constituted representational bodies, how “representative” these bodies were, how close to the people being represented. The idea of representation, anathema to premodern republics, having arrived, the question worth pondering is, did the result fulfill the idea?

This broad, simple definition captures states that were vastly different over long spans of time; that is its weakness. The word “republic” did not appear until long after Athens worked out its political structure in the classical era. Athens of the fourth century BC was strikingly different from the Roman republic of the same time; but both qualify under this definition as republics. The extent of direct democratic decision-making – unchecked in some polities, heavily filtered in another – would not make an entity more or less republican by this definition, as long as in no case were decisions delegated to a semi- or fully-professional political class (let alone tyrant, oligarchy, or monarch). If it was a rotating council, or a great council, or a whole citizens’ assembly making decisions, it would not cause the republic to fall in or out of the bed of this definition, as long as the principle was kept intact that citizens were in charge directly or through constant rotation of themselves as officeholders. The lamentable exclusion of slaves, women, and foreigners who were not counted as citizens similarly has no bearing on the definition; nor the fact that in many early republics large numbers of residents were not citizens by virtue of their penury (this latter was not the case in classical Athens and the Roman republic, in neither of which was there a property requirement for voting). Where to draw the line about voting citizens is a changeable and contested thing – it still is today – but the idea that procedures were needed to safeguard the republic was constant. The definition is about the procedures that kept power dispersed and tyrants at bay – because this was the pre-eminent aim of republics.

Notes

- 1 The death penalty almost passed. Donald Weinstein, *Savonarola: The Rise and Fall of a Renaissance Prophet* (New Haven and London, 2011), 193–194.
- 2 “tyranny of the familiar” is Rahe’s phrase. Paul A. Rahe, *Republics Ancient and Modern*, 3 vols. (Chapel Hill, 1994), 3: xxii.
- 3 See among many works Martin van Gelderen and Quentin Skinner eds., *Republicanism: A Shared European Heritage*, 2 vols. (Cambridge, England, and New York, 2002), hereafter cited as *Republicanism*; Paul A. Rahe, *Republics Ancient*

- and Modern; and J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton and Oxford, 1975).
- 4 Charles Seymour and Charles Paige Frary, *How the World Votes: The Story of Democratic Development in Elections*, 2 vols. (Springfield, Mass., 1918), is a comprehensive survey but, more than a century old, predates recent, groundbreaking scholarship on electoral practices. Of valuable works of the 1960s touching on late medieval and early modern procedures, see among others: Nicolai Rubinstein, *The Government of Florence under the Medici (1434 to 1494)* (Oxford, 1966); Rubinstein, "Florentine Constitutionalism and Medici Ascendancy in the Fifteenth Century," Rubinstein ed., *Florentine Studies: Politics and Society in Renaissance Florence* (London, 1968); William M. Bowsky, "The Buon Governo of Siena (1287-1355): A Medieval Italian Oligarchy," *Speculum*, vol. 37, no. 3 (July 1962), 368–381; Daniel Waley and Trevor Dean, *The Italian City-Republics* (Harlow, UK, 1969; 4th ed. 2010). From the 1980s and 90s among others are: Guidubaldo Guidi, *Il governo della città-repubblica di Firenze del primo quattrocento*, 3 vols. (Firenze, 1981); Bowsky, *A Medieval Italian Commune: Siena Under the Nine, 1287-1355* (Berkeley and London, 1981); John M. Najemy, *Corporatism and Consensus in Florentine Electoral Politics, 1280-1400* (Chapel Hill, NC, 1982); Mario Ascheri and Donatella Ciampoli eds., *Siena e il suo territorio nel Rinascimento* (Siena, 1986); Elena Brizio, "L'elezione degli uffici politici nella Siena del trecento," *Bullettino senese di storia patria* (Siena, 1992), 16–62; Brizio, "L'elezione della Signoria: Provvidimenti Inediti (1371-1398)," Mario Ascheri ed., *Antica Legislazione della Repubblica di Siena*, (Siena, 1993), 137–159; Philip Jones, *The Italian City-State: From Commune to Signoria* (Oxford and New York, 1997). More recent works include: Najemy, *A History of Florence, 1200-1575* (Malden, Ma., 2006); Alison Brown, *Medicean and Savonarolan Florence: The Interplay of Politics, Humanism, and Religion* (Turnhout, Belgium, 2011); Tom Scott, *The City-State in Europe, 1000-1600: Hinterland, Territory, Region* (Oxford and New York, 2012); Serena Ferente, Lovro Kunčević, and Miles Pattenden eds., *Cultures of Voting in Pre-modern Europe* (London, 2018); and Mario Ascheri and Fabrizio Ricciardelli, *The City-States in Late Medieval Italy* (Rome, 2024).
 - 5 The redacted version of *Oceana* is discussed in [Chapter 4](#).
 - 6 Rather than burden the text with a running catalog of cavils, in the final endnote in [chapter 6](#) I have summarized this study's points of concurrence and difference with historians of the federal convention.
 - 7 This sentence is true with regard to most republics but not the outlier Roman republic of the classical era during which head-to-head elections were used to fill state offices.
 - 8 Bowsky, *Medieval Italian Commune*, 58.
 - 9 John Dickinson Papers, Notes for Speeches, n.d., June 1787, Box 6, Folder 28, Library Company of Philadelphia (hereinafter LCP). On June 7 on the convention floor Dickinson called for a blocking mechanism to prevent "the one great current" of popular representation from sweeping all before it. Max Farrand ed., *The Records of the Federal Convention of 1787*, 4 vols. (New Haven and London, 1937), 1: 153 (hereinafter Farrand, vol., pg.).
 - 10 William Samuel Johnson, letter to [?], August 1804 (?), James H. Hutson ed., *Supplement to Max Farrand's The Records of the Federal Convention of 1787* (New Haven and London, 1987), 303–304.
 - 11 Alexandr Osipian, "Voting at Home and on the Move: Elections of Mayors and *Caravanbashi* by Armenian Merchants in Poland and the Ottoman Empire, 1500-1700," ed. Ferente et al., *Cultures of Voting*, 311.
 - 12 Blair Worden, "Republicanism, Regicide and Republic: The English Experience," ed. van Gelderen and Skinner, *Republicanism*, 1: 307; Donald Winch,

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“Commercial Realities, Republican Principles,” *Republicanism*, 2: 309. As Jonathan Scott said, it is hard to see that Aristotle, Cicero, and Machiavelli all were saying the same thing. Jonathan Scott, “Classical Republicanism in Seventeenth-Century England and the Netherlands,” *Republicanism*, 1: 63–64, 66, 80–81.

- 13 Worden (“Republicanism, Regicide,” 327 n16) ventures that the best definition is “commitment to the introduction of republican architecture.”

1 Electoral Procedures of Antiquity

It is best to start by acknowledging, as classicist Fergus Millar said, “how little we know.”¹ Little is known about voting practices, even less about nominating practices, in antiquity. But enough scraps of information have emerged to form at least a tentative view about salient procedures.² In some respects, Athens and Rome were procedurally unlike. There was a heavy reliance on lottery, or sortition, in the Athenian democracy to fill offices (less so in Rome, where winning votes was the path to power). Nominating was an important stage in Athens (but not so in Rome). Political organizations in Athens tended to break up interests as a means to stability, while Rome empowered interests and maintained stability via managed endemic conflict. In other procedural matters, however, the two republics were alike. Both employed complexity. Both were careful about how demographic changes could destabilize political arrangements; this worry preoccupied Romans more than Athenians as a result of Rome’s numerous annexations, but it was not neglected by Athenians. In both places, the pursuit of the common good as the supreme goal of government led these republics to make procedural choices, which the modern state would never make. Trying to understand what these ancient political practitioners were thinking when they made their choices is the most interesting challenge we have.

Athens in the classical age

Posterity has commonly dismissed classical Athens (fifth- and fourth-centuries B.C.) as an unsuitable democratic model because of its small size and irrelevance to larger polities. In reality, the Athens political community was not confined to the city around the Acropolis but stretched across the Attic peninsula, some 60 miles long by 35 miles wide at its widest, with extensive and remote valleys, four mountain ranges, and a long, undulating coastline. Its population was possibly 250,000 souls in the mid-fifth century, of whom perhaps 60,000 or more were citizens. Voting was not a small affair. Quorum in the assembly for an ostracism, as well as in some jury trials, was 6,000 citizens. Journeying from hinterland to the Athens assembly could take a citizen from a remote village several days of travel.³ Residents of a large country

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today are more likely to be in touch with their fellow citizens – knowing their attitudes and sharing opinions – than was the case in ancient Attica.

The other ground for dismissing Athens in later eras was its apparent out-of-control democracy. As James Madison put it in the *Federalist Papers*, “Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.”⁴ This not-unusual opinion reflected more an eighteenth-century view about democracy than it did an understanding of actual workings of Athenian politics. The Athenian constitution defies easy categorization; it was complex, and no doubt that was intentional. Polybius (writing of Sparta) said Lycurgus understood that constitutions to be good had to be complex, “like a well-trimmed boat;” simple orders of government would not do.⁵ Athens’s boat was anything but simple.

In the topmost position of authority, classical Athens placed the direct assembly of the citizens, the *ekklesia*, which convened outdoors on the rocky slopes of the *Pnyx* above the city center. Seats faced the stone *bema*, the elevated platform carved into the hillside, which served as the speaker’s rostrum, leaving behind the distant and breathtaking valley the better to focus the attendees’ attention on the business at hand rather than the scenery. By the end of the sixth-century B.C., the assembly had ultimate and vast authority over legislation, taxes, and war and peace because Athens, like many ancient city-states, had faith in the collective judgment of the citizenry.⁶ It was possibly in order to protect this authority as the reserve of the assembly, and to prevent the rise of a dynasty or cabal, that Athens downgraded officeholding, filling most offices by lot (or sortition), and rotating citizens through offices every twelve months. Lottery was so commonly used that the polis resorted to using multiple copies of the *kleroterion*, a stone lottery machine in which a white or black ball would decide whether a citizen became a juror for a spell or an officeholder for a year. Rather than bestowing offices as prizes of honor on the famous, the brilliant, the rich, and the well-connected, Athens imbued officeholding with the blandness of your next-door neighbor.⁷

There was another reason for rotation and sortition, which had not just the negative value of preventing the rise of a ruling class but also the positive value of enabling citizens to participate actively and meaningfully in public life. And this goal gets one closer to one of the purposes of the polis. As Aristotle put it, the state was not there just to restrain humans from harming each other, but also to enable people to fulfill themselves. It was not just a locality, he said, but an association or community where humans could make “a good life,” exercise “virtue,” and find “happiness,” and for this to happen they must be able to use their faculties and participate in office. A citizen was by definition a person distinguished by his participation “in giving judgment and in holding office.” One who had no share in the honor of officeholding “is like an alien domiciled in the land” – e.g., like Aristotle himself.⁸

With some 700 offices to be filled by lot, and some 30,000 to 60,000 citizens in the fifth century, every citizen had a reasonable prospect of holding at least one office for one year in a lifetime (if they passed the pre-office scrutiny

for paying their taxes and other eligibility criteria).⁹ The limit to sitting on the highest council, the *boule*, was twice in one's lifetime. Athenians regarded their active participation in government as nearly sacred. In the aftermath of the crucial battle loss to Philip of Macedon, Athens adopted Eukrates' motion against tyranny, holding blameless the assassin of anyone who sought to overthrow the democracy of Athens.¹⁰

Xenophon said that one of the charges leveled at Socrates at his trial was that he had taught his companions to despise the lottery, arguing for the value of expertise in government, and that this teaching, against the constitution, amounted possibly to treason. In almost the next breath, Xenophon (who was a Socrates' adherent) went on to say that among Socrates' circle were men whose "ambition" knew no bounds, who were eager to "get control of everything and outstrip every rival in notoriety." In the vexing problem of fathoming why Athens put Socrates to death, his opposing the established means of citizen participation and being close to ambitious men may well have been the defendant's biggest hurdles at trial.¹¹

Athenians took great pride in their citizenship. A poignant passage in Thucydides describes when Athenians, having been defeated at Syracuse and fled into the vacant countryside of Sicily knowing they would never see home again, were addressed by their leader Nicias. Nicias had opposed the disastrous Syracusan expedition ("this mad dream of empire," he had called it in the assembly debate), and now he rallied his soldiers by telling them they should not despair of never returning to Athens because upon whatever spot of ground they might light, wherever they would settle in this strange land, they would make a polis; for it is men, not walls or ships, who make a polis.¹² In this most desperate situation, there was nothing left for Nicias to do but appeal to their pride as citizens. That pride was also evidenced by the *pinakia*, the bronze or wooden tickets issued to every citizen and used in the lottery machines to assign them to offices and jury pools, found in some graves of Athenians who chose to be buried with this symbol of their citizenship. By the fifth century, one's official name in documents included the name of the deme to which, for citizenship purposes, each citizen was formally attached – so much was the public Athens a part of the private personality.¹³

The supreme administrative body in the classical era was the *boule*, the Council of 500. It prepared legislation to present to the assembly, checked qualifications of newly lot-selected officeholders, inspected the cavalry and ships, received ambassadors, and worked with the multiple administrative boards made up of rotating citizens, among other duties.¹⁴ After the assembly, the *boule* was the key body. Pursuant to reforms at the end of the sixth-century B.C., the *boule* was composed of men from the demes, the 140 or so villages, or local units of government. In a first stage, demesmen selected candidates (by some means) and in a second step the *boule* councilors were selected by lottery from the pools of candidates.

Later in the fifth century, apparently the first deliberative selection was replaced by lot. Indeed lot had a ubiquitous role in the life of this Council.

Lot was used to fill the 500 *boule* seats each year, to choose which tribe (of the ten tribes) would hold the presidency of the Council for one-tenth of the year, and to select which person from that tribe would be the president for each day – lot and rotation continuing their linked operation through all the activities of the Council, yearly, monthly, and daily. Even the Councilors' assigned seating in the *boule* headquarters in the Agora was determined by lot.¹⁵

Many have said the *boule* was broadly representative of the polis, and because its membership came from the 140 or so demes scattered around Attica, this interpretation is correct up to a point.¹⁶ However, it is worth pausing to consider the word “representation,” which has different meanings. On the one hand, a body can be “representative” by being “broadly reflective of the whole” (such as can be achieved with a random sample of parts of the whole); on the other, an officeholder can be a “representative” by being “the agent of someone else” (such as can only be achieved at the choice of the person being represented). The latter meaning did not occur in the republics of antiquity and the late medieval/Renaissance period and its arrival had much to do with extinguishing the procedural models of these early eras. In classical Athens, although the *boule* was broadly reflective of the polis as a whole, the selection by lot deprived *boule* members of the character of being agents. A deme could not name its own choice to sit on the body; lottery did that.

But there are other more powerful reasons, having to do with the way Cleisthenes reorganized Athenian politics in 508/07, to believe that *boule* members were not expected to be emissaries of their local villages. On the contrary, thanks to the Cleisthenic reforms, the *boule* had the character of being anti-representational. Following the reforms of Solon, according to Herodotus, Athens fell into internal conflict in the early to mid-sixth-century B.C. The different regions of seacoast and plain were at war, as were some of the major families competing for power. (Athens had been traditionally organized into four tribes based to some degree on clans or clans and regions.) During this instability, the Peisistratids emerged triumphant and established a tyranny lasting until nearly the end of the sixth century. This tyranny, as brutal as it was, had the virtue of breaking the power of the clans that had ruled then destabilized Athens, and that breakthrough paved the way for the far-reaching reforms of Cleisthenes when the tyranny was overthrown at the end of the sixth century.¹⁷

Cleisthenes reconfigured the political architecture of Athens to eliminate the internal divisions that had paved the tyrant's way to power. Abolishing the four ancient tribes, Cleisthenes created ten new tribes and named them for mythological heroes of Athens. More importantly, and this was the major innovation, Cleisthenes constituted each tribe with new and artificial units spread across the landscape. He assigned the local demes to one of three categories: urban, coastal, and inland. He then created ten groups of urban demes, ten of coastal, and ten of inland; the 30 resulting units were called *trittyes*. He then assigned one *trittyes* of each kind – one urban, one coastal,

and one inland – to each of the ten tribes, so at the end of this reorganization, there were ten new tribes, each with a mixture of urban, coastal, and inland demes. No tribe had two *trittyes* of the same regional kind, and one's fellow tribesmen came from the whole variety of Attica's geographical and social landscape. This structure, which one historian understatedly called a "memorable achievement,"¹⁸ cut across the regional, economic, and clan-based conflicts that likely had given rise to mid-century fighting and then to dictatorship.

The key ingredient was the *trittyes*. Through it, the deme and its citizens were connected to the new tribe. But the *trittyes* was itself a wholly artificial invention, disconnected from time and space and without a corporate character. Although demes and tribes both had a corporate character (with officers, rites, and duties), the *trittyes* did not. That the vital link connecting the citizen to tribe and therefore to polis was an artificial device would seem to indicate that the intention was to dissolve the usual energy of interest and regional loyalty and reconfigure a citizen's involvement with public life. (It would be as if, after the American Civil War, the nation had abolished the states and created ten grand departments, each with a bit of the South, North, and West. Seldom if ever has such a dramatic political reshuffling occurred as Cleisthenes achieved.)¹⁹

After the Cleisthenic reform, the new tribes were the principal organizations in which citizens exercised most of their polis-wide duties and rights. Tribal units made up the hoplite army. It was by tribes that people celebrated the major religious festivals. War dead were publicly interred in tribal caskets in the *kerameikos* cemetery. (Possibly *ekklesia* seating was organized by tribe; the record is not clear on this.) In the center of the Agora was erected the monument of the Eponymous Heroes, each one sacred to one of the ten tribes, on the base of which were posted public notices: drafts of new decrees, notices of lawsuits, mobilization orders – a kind of noticeboard linking citizens to the power structure. An extant inscription from the sixth century lists the casualties in combat, by tribe. Most importantly, the apportionment of seats in the supreme council, the *boule*, was by tribe – each of the ten tribes received 50 seats in the 500-person council. There, in the highest council of state, people who were more used to clashing than cooperating with each other were all mixed up (as Aristotle put it) and had to get along in order to play their part in helping to run the polis. The result seemed to have atomized interest while at the same time keeping alive the drive and patriotism of Athenians.²⁰

It is because the new tribal structure pulverized the political effect of geographical and social differences that the *boule*, itself composed of tribal delegates, was not a representative body. As a council, it reflected Athens's diversity, but its members were not agents elected by constituents expecting their emissaries to represent voters back home. When councilors had their turn to run the *boule* for one-tenth of the year, they did so as members of a heterogeneous tribe, not as representatives of this or that part of Attica.

Although demes were allocated seats in the *boule* roughly proportional to population, the deme quota was unchanging and remained roughly the same for some 300 years, despite evident movements in population, 300 years, that is, without reapportionment.²¹

Most importantly, the operations of the *boule* depended on the tribes, not the demes, and tribes were organized so as not to be coherent. The effect of the tribal-*trittyes* invention was to nullify interests, not to represent them, and to render the *boule* – as Athens tried to render everything having to do with public matters – a disinterested body of citizens doing their patriotic duty.

Not all conflict, by any means, was washed out of the system, but it appears to have been diverted into less threatening streams than those trickling down from sectional, vested interests. Athenians would have found life hard to take if they had not been able to compete with each other. The artificial tribes competed for honors in games and on the battlefield. Citizens competed in choral and other contests as members of tribes. Demosthenes said that all tribesmen were keenly interested in the outcome of choral teams' competition.²² It appears that Cleisthenes took the extraordinary competitiveness inherent in the Greek mentality and channeled that instinct into benign rivalry between artificial entities.

It is possible that the abolition of regional loyalties had the effect of shifting competition from political units to individuals. For there was intense personal competition. Around the time of the Cleisthenic reforms, ostracism was introduced. It was a way of removing from the scene a political opponent and also a way, as others have observed, of maintaining the cardinal principle that howsoever important a person might think he was – a Themistocles, Aristedes, or Pericles – he was not so important as the citizens and could be removed.²³ Around when ostracism ceased being used, probably toward the end of the fifth century, the Athenian crime of *graphe paranomen* was introduced; it was the crime of proposing an order to the assembly contrary to law, and it was prosecuted by private citizens before vast public juries. Demosthenes delivered his famous "On the Crown" speech during one such prosecution. These and other practices, not least oratory on the *Pnyx*, gave scope for ambition and allowed Athenians to engage in fierce political combat, but the structure of government seemed to confine this combat to individuals who could tear each other apart, not spread to regional groups which, if permitted, could have torn the polis apart.²⁴

The supreme authority of the *ekklesia*, Cleisthenes' atomizing tribal reform, and the discouragement of a ruling cadre via sortition and rotation endured (with notable interruptions) over the long span from late sixth to late fourth century. There was another contrivance in the structure, a nominating technique. With so many people eligible for office – all citizens were eligible by definition – some means was needed to winnow the field. Rules for nominating candidates helped. But there were other fruits of the nominating principle than just producing candidates: there was the bond that could be made between local and national levels of government via nominating. For

purposes of national unity, such a bond was important to maintain. But it had to be built with delicacy lest local power centers regain unwanted influence again.

Nearly all officeholders were chosen by lot, as we have seen, but the most important one, the *strategoï*, or board of generals, was elected each year. In a century (the fifth) of nearly constant warfare, it was not surprising if Athenians wanted the generals to possess war-fighting skills and therefore be chosen by a means other than lot. Each of the ten tribes had the right to nominate candidates for general, usually, it would seem, more than one nominee from each tribe, and the assembly, or *ekklesia*, then voted on each tribe's nominees and usually selected one from a tribe. In this case, the steps were probably performed by vote, both the nominations and the final election. Importantly tribes were not permitted to say *who* from themselves should sit on the board; the generals were not representatives of tribes. Rather the whole *ekklesia* made that decision. But tribes were involved in the production of candidates. This custom of candidates generated from sub-units and national selection recurs here and in later polities, for many centuries.

The *strategoï* selection was probably unique in requiring voting in the two stages of nominating and final selection.²⁵ In most cases of multi-step selection in Athens, at least one of the steps involved sortition. Aristotle tells us that in the time of Solon, the (then) four tribes each made a "preliminary selection" of ten candidates for archon then the final nine archons were elected from these 40.²⁶ In a later passage, he refers to the first step (used in the turmoil after the Syracusan disaster) as "according to the ancestral regulations" or by the "traditional way."²⁷ The reference to "ancestral regulations" probably refers to an established custom of using a two-step process bearing a formulaic name – *klerosis ek prokriton* – or, sortition from those nominated.²⁸ Demosthenes, defending himself in the fourth century from attacks that he was not valued by his fellow demesmen, adduced as evidence to the contrary that he was among those "nominated" (*prokrinantes*) among the "noblest born" by his fellow demesmen so as to be eligible to draw lots for the priesthood of Heracles. By citing evidence of his nomination by his demesmen as a mark of high honor, Demosthenes provides us an example of one of the vital political functions of nominating: it was not only a way to winnow the field – a task required in any case – it was also a method of offering local favorites as national candidates and making sure that one of those local favorites would at least be considered for national selection, thereby assuring localities a stake in and confidence in the national governance system.²⁹

Given the de-personalization and de-regionalization of political life, it could conceivably have been difficult to motivate people to take a hand in public affairs. Handing the power of nomination to the deme or tribe possibly could do that, could serve as a bridge from local particularity to the polis generality. In this sense, *prokriton* might have been a way to claw back some of the local, particularist, clashing interest which the *trittyes* and tribes – and lotteries and Eponymous Heroes – had all conspired to dissolve. But, if so,

the clawback was done delicately and precisely: you can name your candidates, said the polis, but we'll take it from here, we'll choose as winners (or providence will) those who we (or fate) think are the best. If so, nominating was a step in granting a limited voice, but not command, to local interest and tying local interests to the nation; and that function helps explain why the nominating principle appears again and again in republics going forward. One so wished to dilute the influence of "the party of the hillmen"³⁰ that they could never bring another tyrant Peisistratus to power, but one wanted not to destroy in the process people's attachment to the polis. They needed to be involved, and could be, in a highly choreographed dance of procedures, of nominating locally, deciding nationally, mixing up all comers into non-threatening new identities, and using almost always, somewhere in the process, the aleatory resort of lottery, which reconciled nearly everyone but a Socrates to the outcome.

Plato's *Laws* is worth pausing over. In his utopia, the state should create twelve tribes named for the Gods (reminiscent of Cleisthenes' actual ten tribes named for the Eponymous Heroes). Every man should have a habitation in both the city and the country (reminiscent of the Cleisthenic intermingling of people from different Attican geographies). Commanders or generals should be appointed in an even more layered system than in Athens, with multiple nominations and selections. At one point, departing from Athens' traditions, Plato says the Council should be divided by four economic classes, but goes on to say that although each class should solely have the right of nominating council candidates, the entirety of the four classes should vote on the candidates, and should choose 180 people from each economic class, from which, then, one-half should be selected by lot to be Councilors for the year.³¹ So although departing on the matter of class divisions, he is consistent with Athenian practice in having the generality vote on the candidates produced by a class, just as the whole *ekklesia* in fact selected *stratego*i from candidates produced by the tribes; and further consistent with using lot in the end to make the final selection from persons nominated. Giving tribal or economic groups (the latter in Plato's case) the key role in nominating but not permitting that sub-unit to control which of the nominees shall prevail was a core part of the Athenian nominating principle.³²

Plato's political works were translated and disseminated after most Italian city-states had formulated their republican procedures. Aristotle's *Politics*, by contrast, was translated and distributed in the 1260s, at the height of Italian republic-building. What would medieval commune builders have found usable in Aristotle's lengthy text? First, they would have noticed early in his work that the polis resembled their own diverse societies, for Aristotle stressed social diversity. It was, said Aristotle, unnatural for "a state to be a unity."³³ Second, they would have read his classification of government types (kingship, aristocracy, and constitutional government) and their evil twins (tyranny, oligarchy, and democracy). What separates the good triad from the evil one is that the former governments have their "eye on the common

interest,” whereas the second have their eye “on the private interest of either the one or the few or the multitude.” In the latter two, oligarchy will rule to favor the rich and democracy will rule to favor the poor. The common good being the supreme aim of government, Aristotle characterized these self-interested forms as “deviations.”³⁴

To a medieval notary experimenting with new regulations, this analysis would not have been especially helpful, but what followed from it would have been directly relevant to his task. For Aristotle defined major constitutional regimes in terms of their procedures. An aristocratic constitution was one in which magistrates were elected, as it was likely that elections would benefit the educated and well-connected. (By “aristocracy” Aristotle did not mean a hereditary nobility but rather rule by “the best” or by “merit,” that is, people chosen by competition through election). Oligarchy was similar; elections would benefit the rich. However, it was democratic for offices to be filled by sortition, a method which could not be influenced by fame, wealth, or connections. High property qualifications benefited oligarchy, low ones, democracy.³⁵

Although one cannot be sure which constitution Aristotle favored, he seemed inclined toward popular or democratic government, among other reasons because that constitution gave citizens the most participation in governance, and one of his major themes was that the essence of being a citizen was sharing “in the honors of the state.” The goodness of a citizen, he said, consists in the ability both to rule and be ruled. Since all forms of government but democracy limited citizen participation, citizens had their best avenues for fulfillment in a democracy.³⁶ Moreover, he thought that officeholding on balance was safer in the care of the multitude than in the care of just a few.³⁷

What also inclined him toward a more democratic constitution was his recurring worry about small groups of powerful men seizing the reins of power. It was best to make rules so nobody may become “specially pre-eminent in power due to friends or wealth.” It was advisable “to break up the factions of the leaders and powerful men.” Probably this particular concern about power groups made him wary about simple elections. “Election intrigue” was one of the factors capable of sparking revolution, even in the absence of factious strife. He described the traditional method of choosing officeholders by a mixture of nominations and sortition (*klerosis ek prokriton*) as a technique common to both oligarchy and democracy (and procedures that combined the two kinds of constitution were the best, he said). By contrast, the use of elections only – that is, elections in both the first stage and second stages (with no lottery) – he regarded as “dangerous, for even if a moderate number of people choose to combine into a party, the elections will always go according to their wish.”³⁸

On the other hand, just as a small power group could turn the government to their own private purposes, Aristotle found that a purely popular government could do the same. Any system that permitted one group to wield the power of government to protect its own and harm another’s interest did not

meet the test of the common good. It was for this reason that Aristotle said an unrestrained majority was “bad.”³⁹

So if he tilted toward democracy but was conscious of its ability to go off the rails, what was his solution? It was a procedural one. He thought a “good mixture” would be a constitution combining the procedures of “democracy” and “oligarchy.” In particular, he recommended both lottery (associated with democracies) and elections (associated with aristocracy and oligarchy) for office-filling; in the alternative, no lottery but equally no property qualification for elected officials; fines and remuneration for jury non-service and service (to punish the rich and incentivize the poor); and a moderate property requirement for participation in legislative assemblies.⁴⁰ Regardless of who it was, the party that can “gain the upper hand over its opponents does not establish a common or equal government, but takes the superior share in the government as a prize of victory.” That must be avoided: “Excessive predominance causes faction.”⁴¹ In Aristotle’s opinion, absent regulations, power groups and whole classes always jockeyed for dominance to turn the polis’s purposes entirely to their own private interests.

Choosing a mixed set of regulations would result in a mixed collection of rulers, and that had its own unique advantage: an officeholder might be from one class, Aristotle noted, but he “will govern justly because a different class will be in control of the audits.” Such a hammer in the hands of one’s adversaries will put protagonists “in a state of suspense and not be able to do everything exactly as seems good to one, for liberty to do whatever one likes cannot guard against the evil that is in every man’s character.”⁴² He liked this idea and returned to it several times. “Let any resolution passed by both classes,” the rich and the poor, “or by a majority of each, be sovereign.” Opposites should be forced to “mingle together” in office. In another passage he praised Cleisthenes’ reforms tending toward “intermingling” people and “breaking up” existing groups.⁴³

Aristotle’s preoccupations extended beyond the realm of ideals – of virtuous action, good citizens, and the common good. He was a proceduralist and concerned with identifying the regulations best suited to advance those ideals.⁴⁴ When later medieval republicans would battle with their own power groups, they could find in this timely-translated text practical remedies. All manner of solutions were laid out for the reader: multistage elections, local nominating and national electing, mixing sortition with voting, allocating offices to opposing camps, rotation, and short tenures. They would find described in *Politics* a social community as diverse and riven as their own. They would read about the risks of elections and simple majorities and structured ways to contain those risks. And from all of this material, they would come away with a very specific meaning of the common good.

One sometimes imagines the phrase “common good” is little more than a platitude, reminding citizens to do their patriotic duty. But in the Athenian mentality, the concept had a hard edge; more than patriotic zeal, it required disinterestedness. Aristotle pointed out that when it came to war and peace

with a neighboring polis, the people living near the frontier were not to have a say, because their “private interest would prevent them from being able to take counsel wisely.”⁴⁵ In this revealing passage, he was referring to “interest” as a citizen’s bias arising from his particular circumstances not shared by the generality of citizens. Having an interest in a matter would disqualify one from having a say. Disinterestedness in general was the core principle of government. Citizens could not be sure to be disinterested, but their rulers must be. That was the purpose of the carefully built scaffold of office selection rules, which Aristotle and Plato described.⁴⁶ In the unseeable future, long after medieval city-states would emulate the Athenian model, representativeness would be elevated as the new organizing principle of government, and disinterestedness would become impossible. But here at the start of the republican project, a wall of procedural complexity was erected to protect the demos from itself.

Roman Republic

Apart from the *strategoi*, Athens did not elect popular leaders and grant them extensive power. Rome, by contrast, was an incubus of leaders competing for the glory of exercising power.⁴⁷ If Athens generally eschewed elections, Rome staked the Republic on them. If Athens managed conflict through pulverizing political interests, Rome enfranchised interests, set them against each other in perpetual conflict, and seemingly owed its longevity as a republic to the quasi-equilibrium which resulted from near constant internal struggle: so Machiavelli said in the early sixteenth century and it seems still a reasonable hypothesis.⁴⁸

The Roman Senate, commonly regarded as the preserve of privilege in the Republic, is a difficult institution to analyze. Exactly what were the criteria for membership is not clear. There was not an institutional peerage in Rome and the Senate was not composed exclusively of patrician families. If there was one certain way of gaining admission it was by virtue of having been elected to one of the high offices of the Republic, which from early days were also open to plebs. However, because magistracies in all likelihood required an indirect property requirement (by virtue of military service), it was unlikely that senators came from poor backgrounds. Perhaps more importantly, because the Roman political system revolved around ambition, elections, and the quest for office, having the wherewithal, name recognition, connections, and a family heritage of office-holding favored the filling of magistracies with the wealthy and famous descendants of previous famous officeholders. For these reasons, and not because it was a peerage, the Senate acquired its position as the major political redoubt of privileged classes.⁴⁹

The Rome in which this influential Senate cast such a long shadow had the unique character of being aristocratic and timocratic (a government in which offices and voting favored the wealthy) on the one hand, and yet, on the other, intensely democratic at the same time.⁵⁰

The voting assemblies of Rome exhibited this dualism. They were deliberately composed to maximize the voting power of patricians and the rich in one setting, and the citizenry as a whole in another. There was the *comitia centuriata*, which elected the major officeholders (the two consuls, from four to eight praetors, and the two censors who determined citizens' classification according to property and therefore their right to vote) and voted on war and at least in the later Republic few other matters.⁵¹ It was composed of 193 centuries, or groups (the origin of which dated from pre-republican days and the mustering of the army), and voting was by century; whoever attained a majority of centuries was elected, regardless of individual votes cast. The wealthiest citizens were enrolled as voters in the eighteen equestrian centuries and the 80 Class 1 centuries, which meant the 98 topmost classes out of a total of 193 centuries could by themselves deliver a majority of centuries for a law or a consul. In what might have been a concession to lower classes in the third-century B.C., the first class of centuries was reduced from 80 to 70 and henceforward a candidate needed a small number of Class 2 (there were a total of five classes ranked by wealth) to make up a majority of centuries. The citizens in Classes 2 through 5 outnumbered the voters in Class 1, but their votes counted greatly less thanks to the group voting rule and the distribution of the wealthy over such a large number of centuries.⁵²

Not only was voting weighted toward the knights and the wealthiest class, also the procedures by which votes were cast favored them too. Voting was successive by classes of centuries.⁵³ This succession meant that less wealthy classes of centuries voted after the wealthy ones voted. Moreover, one century was selected by lot to vote first, the so-called *centuria praerogativa*, and its results were announced first. After mid or late third-century reforms, the *centuria praerogativa* was always taken from the first class of centuries.⁵⁴ After its vote, which was announced, the rest of the first class voted, and before the second class voted, the results from the entire first class of centuries (possibly century by century) were announced to the public outside the voting hall.⁵⁵ Only then did voting re-commence with the second class, followed by the third, and so on. When a candidate received the vote of a majority of centuries, voting stopped. A class only voted if the issues were still in doubt.

One can imagine the effect of these rules. People are influenced by votes already cast. Nowhere was such influence greater than when the first votes were cast by knights and the well-to-do, in hopes that later voters would follow their example. Such hopes were not usually disappointed. Cicero referred to the *praerogativa's* announced vote as the "omen of the election." Never, he said, did a consul candidate lose election to this highest office in Rome after winning the *centuria praerogativa*, the first-voting century.⁵⁶ He of course liked that. Cicero favored public voting, not secret, because it was "only under the authority of the nobles, which good men will obey, that I concede the right of voting to the people."⁵⁷ By contrast, tribunes of the people in the later Republic objected to this method of choosing the *centuria praerogativa* for precisely that reason and made its reform a political cause. Gaius Gracchus

sought, unsuccessfully, to have the *centuria praerogativa* chosen by lot from all five classes of centuries.⁵⁸

So much for the timocracy of Rome. The democracy spoke through the powerful tribal assemblies. Every male citizen belonged to a tribe. Except for freedmen (former enslaved persons), a Roman's tribal assignment was determined by property holdings or place of residence. Tribes had an important part in Roman civil life: by tribes, the census was taken, army recruited, and citizens taxed. One's tribal name in its standard abbreviation formed a part of a citizen's official name (as demotic names did in Athens).⁵⁹ As Roman territory expanded with conquest, the number of tribes increased, until c. 241 B.C., when the number reached (and never changed from) 35 tribes, of which 31 were rural and four were urban. The 35 tribes acted through two assemblies: the *comitia tributa*, attended by all citizens, and *concilium plebis* open just to plebians. Under the presiding officer who was either a consul or praetor, the *comitia tributa* elected lower magistrates (curule aediles, quaestors, military tribunes, and others). Under plebian magistrates (usually tribunes), the *concilium plebis* chose tribunes and aediles of the plebs and other officers. Either assembly could vote on legislation. As of 287, in a crucial milestone, the Lex Hortensia made legislative acts of the plebian assembly acting by itself binding on the state.⁶⁰

In notable contrast with *centuriata* practice, voting in tribal electoral assemblies was simultaneous in elections, at least in the later Republic, and after 139 B.C. tribal (and century) voting was by secret ballot. These practices seem straightforwardly intended to protect the sovereignty of each vote, but the rules of tribal elections were complicated in their own way. Winners did not need to receive a majority of the tribe members' votes; pluralities could carry the tribe. But victors did have to win a majority of the tribes. (This same mix of plurality within the units being acceptable and majority of the units being required for election is repeated in the modern U.S. electoral college.) As soon as a candidate reached a majority of tribes, and took the oath of office, he was elected. Voting, however, continued. By the end of voting, it might become clear that those already elected had not indeed won the largest number of tribes (not to mention the largest number of individual votes). Timing of announcements was therefore critical. For instance, because each tribe voted for ten tribune candidates, with 35 tribes voting, many more than just ten people could reach a majority of tribes, although just ten spots were being filled. The solution, for Romans, lay in the all-important sequence of announcements by the herald, and that sequence was neutrally determined by lot.⁶¹

Both centuries and tribes, therefore, paid close attention to sequencing matters related to voting, in the case of centuries with purpose of influencing the later voting of the less well-off by the choices of the earlier voting by the well-to-do; in the case of tribes, with less obvious intent, but nevertheless it was unavoidable that the early announced votes had more influence than the later announced ones. In both cases, the sequence of announcements mattered. A meaningful contrast was Athens, in which the *dikasteria* (courts

which sometimes played a significant role in politics) regulated voting of the juries – juries of sometimes thousands of citizens – to make sure members could not see how their fellow jurors voted and moreover announced the result only when all votes were counted.⁶² This Athenian court practice was typical of a political culture that sedulously stamped out influence. Later medieval republics similarly put hermeticism at the heart of electoral systems, clothing voting in secrecy, never announcing results before all votes were in, and trying in multiple other ways to insulate voters from influence and interest. The American founders constructed a similar hermeticism in the functioning of the electoral college. Roman *centuriata* practices, by contrast, institutionalized the exercise of influence by one set of voters over others. Such maximizing of influence was a procedural outlier among later republics. The closest analogy is the modern American method of nominating presidential candidates (wherein early voting has decisive effects on later outcomes), but the difference is notable: Romans used timing intentionally to maximize influence by wealthier century voters, whereas the haphazard American sequencing of primaries has no other purpose than to satisfy the cupidity of importuning states, and the baneful side effects of sequential voting are generally ignored (except by losing candidates who have a knack for noticing them).⁶³ The Roman reliance on elections without a sortitive step and without complex nominating would also be unusual in late-medieval republics.

A close attention to timing was not the only feature these widely differing organizations, centuries and tribes, had in common; they shared other procedures. Both highly valued consulting the citizens. The number eligible to vote in the mid-Republic was two to three hundred thousand Romans. Voting was “a major occupation of the citizens” of Rome.⁶⁴ Next to the Pantheon was the gigantic *Saepta* (its foundations still visible), the building erected for voting on the Campus Martius just outside the walls of Rome. Used for tribal elections and for century voting, the *Saepta* could hold probably as many as 70,000 voters at one time. Legislating was also a major chore for Roman citizens. Tribal assemblies for lawmaking and judging were usually held on the Capitol or in the Forum, where, listening to orators, the crowd “represented the sovereignty of the Roman people” and where oratory and legislation were the foci of popular interest.⁶⁵ From the beginning of the third century to at least the mid-second century B.C., most Roman laws were proposed by tribunes of the plebs.

Representation played no role in the Roman Republic.⁶⁶ From mid-Republic to the end, the Senate helped set the public agenda and was active in foreign affairs and more; the centuries controlled some of the highest offices; but citizens in their own primary assemblies could take decisions with the Senate in matters of war and peace and by themselves could pass legislation.⁶⁷ It was this recurring return to citizens for judgment on major public matters that Rome had most in common with the most democratic city-states in Greece. In fact, Rome voted on more matters than did Athens (though this did not necessarily make Rome more democratic). Athens filled nearly all offices with lottery. Romans filled no offices with lot, using voting instead.⁶⁸

The system for producing candidates for office in Rome is little understood; it is not clear if there was a Roman nominating system to parallel the Greek *klerosis ek prokriton*. Possibly the *centuria praerogativa* vote functioned as a kind of nomination, but it seems more likely intended to further the timocratic purpose of showing voters how their betters thought they should vote.⁶⁹ A presiding magistrate at Roman elections could refuse to accept candidates if they did not fulfill criteria for election, but that was more about de-nominating than nominating, more about magisterial control of the electoral process than candidate production.⁷⁰ The absence of complex nominating such as Athenians devised, the disinclination by Romans to entrust elections to lot, the frequent resort to voting and to a style of voting whereby influencers were given a prominent role in both tribes and century votes – these procedures were traits of a political culture more similar to that of a modern democratic state than to Rome’s contemporaneous Greek republics or later medieval communes. In Rome, as in modernity, to fill its offices the Republic relied on personal ambition and the assembling of sufficient influence to propel oneself into high office, though the methods changed with time (see below).

Allowing the amassing of influence, rather than the dispersal of it, Rome had to find its own means of achieving political stability. Rome appears to have done so by cleaving the political community along two broad lines, the patricians (later nobles) plus the well-to-do on the one hand and plebians on the other, then derived a certain equilibrium or begrudging political peace as a result of a heavily regulated but intense competition. The conflict, known as the conflict of the orders, between commoners on the one hand and patricians and wealthy on the other was the great theme of the Republic’s history as told by its quasi-contemporaneous historians, principally Polybius and Livy, and the story they told is one of a gradual and reluctant cession of honors and powers from the latter to the former. In 494 B.C., the plebians went on strike over debt bondage and among other concessions granted thereafter was their right to elect their own leaders, tribunes of the plebians. In 447 they won the right to elect quaestors, an important magistrate office, overseeing the treasury and entitling one to a seat in the Senate and to be inserted into the *cursus honorum*, the vital sequence of offices that allowed one to rise, if elected, through to the highest offices of the Republic. In 367 B.C., plebians became eligible for the consulship and from 342 seemingly gained the right to one of the two consular posts each year. Soon thereafter, in 339 and reaffirmed in 287, the decisions of the plebians’ assembly became binding over the whole of Rome. But in reality, the fight was over everything – consul, censor, military tribunes, tribunes of the plebs, religious offices, land, and more. As Livy tells it, the plebs proceeded from the matter of honors and offices to limiting debt recovery and then moved up to capping land ownership at 500 acres, so the attack was on “land, money, and honors” and the patricians “became terrified.” Pushing back, one patrician observed it was not much of a “fellowship” or shared commonwealth to have imposed on themselves an unwanted consul because of a quota for a plebian spot. But the drive for

parity continued. In 339 B.C., one censor had to be plebian, and the two factions split the two censors for the years of the middle Republic. By 300 B.C., the plebian elite had largely achieved equality with patricians.⁷¹

As one might expect, each side blamed the other for every ill wind that blew through Rome. One plebian tribune blamed the dishonesty and slowness of patricians for Hannibal's being able to occupy Italy for ten years.⁷² Cicero never tired of railing against the "furor of the tribunes" and the over-excited people. But fortunately, he said, there were the consuls to counter any headlong rush into error.⁷³ Unsurprisingly, the plebs felt the same way about the tribunes; they were a useful "check upon the consuls." In this atmosphere charged with hostility, the *patres* and plebs nonetheless managed to live with each other. As the historian Appian wrote, although plebs and Senate were often at strife over everything, "the internal discord did not, however, bring them to blows; there were dissensions merely and contests within the limits of the law, which they composed by making mutual concessions, and with much respect for each other."⁷⁴ After the Lex Hortensia law of 287 or its predecessor in 339, when plebians' enactments became binding on the state, "tribunes were much more amenable to the wishes of the Senate," and worked often in harmony with the Senate.⁷⁵ The orator Antonius in the mid-90s spoke about the value of civil discord; although an affliction, some conflict had been "just and even necessary.... Without dissension among the nobiles," the kings would not have been expelled, nor tribunes of plebs created, nor consuls limited by laws passed by the plebian assembly, nor right of appeal granted to the Roman people. These were fruits of conflict.⁷⁶ Polybius referred to a state of equilibrium forged by the discipline "of many struggles and difficulties."⁷⁷

It is not known what gave rise to the original distinction and struggle between *patres* and plebs.⁷⁸ It might not matter what did, nor even matter that over time the distinction ceased accurately to describe the members of opposing political groups. The rise of the plebian elite by the end of the fourth century had replaced the old patrician aristocracy with a new nobility, a group determined to win honors and office regardless of their birth.⁷⁹ What seems to have mattered – from the point of view of the Republic's architecture – was that power was still divided between competing political bodies, which somehow had to share it. Whether plebian leaders were any longer very plebian or Senators very patrician by the mid-Republic mattered less than that the competition for office and power had an outlet, a means for regulation, and was waged by distinct bodies, which commanded loyalty from their adherents.

The principal means of regulating the competition was mutual dependence. By design, the architecture made the *patres* (then nobles) and the plebians – or more specifically the political expressions of those amorphous groups – dependent on each other. Aristotle recommended mutual dependence, as we have seen, but his recommendation came in the mid-fourth century B.C., by which time Romans had already launched their mutual dependency experiment. Without cooperation from the other power center, the one could not operate the mechanisms of government by itself. If one group sought to

destroy its rival it would destroy itself – for the system needed both to operate freely. Perhaps it was not so much a matter of conflict sustaining Rome, as conflict was contained by procedures, which did not permit a hegemony to arise without risk to the hegemon.

The forms of mutual dependence were various. First, after a concession, the groups shared the most important offices, one pleb and one of the *patres* as consuls. Each consul had the power to veto the acts of his colleague, so the two had to get along, even though (see below) they might well be adversaries. Second, leaders of one group played key roles in opposite assemblies. A tribune sat outside the Senate doors in the Forum, and objected to measures he disliked, vetoing them on behalf of the Roman people. A higher magistrate presided over the legislative and electoral assemblies of the mostly plebian *comitia tributa*. Third, c. 241 B.C., centuries, which theretofore had been composed of citizens taken from all the tribes, became divisions of the tribes. This alteration may have been intended to increase the mutual dependence of the classically opposed assemblies of these two organizations (see below).

Fourth, the *cursus honorum*, the rule that one had to work one's way up the ladder of offices from quaestor to consul, may have created a similar co-dependency. Consul and praetor were selected in the *comitia centuriata*, in voting procedures that, as we have seen, favored the wealthy. But once the plebs extracted for their assemblies the right to elect the offices on the lower rungs, automatically those who aspired eventually to the consulship needed to court the plebians. The extreme timocratic bias in the method of filling the top of the *cursus honorum* was matched by a plebian bias at the bottom, and one could not reach the top without starting at the bottom. Such was the mutual dependence of opposed political forces.⁸⁰

By the mid-Republic, and probably earlier as well, Romans had constructed a governance system that made it difficult for either of the two major social-political organizations to act without the cooperation of the other, even though they were at odds most of the time. Perhaps better said "because" they were at odds. For the Republic seemed to welcome clashing opinions. The Antonius speech about the fruits of conflict had echoes in other Roman halls. Prior to voting on legislation (and prosecutions), gatherings of the people were summoned (*contiones*) to hear not only the proposal but also the objections to the proposal as well. It was established practice in these mass meetings of the *comitia tributa* for the presiding officer to designate at least one speaker, sometimes a well-known individual, to speak *against* the measure in question. This practice, imitated by a few Renaissance republics, betokened not only tolerance for opposition but, more than that, the deliberate creation of opposition when none may have existed, perhaps because it was thought that argumentation flushed out the best policy or to demonstrate the intrinsic fairness of a system that gave every side its due and thereby won adherence to the assembly's orders.⁸¹

The *concilium plebis* – the people's assembly from which patricians were barred – was presided over not by a magistrate but by a people's tribune, who

wore an undecorated toga and was unaccompanied by lictors (magistrates' attendants), and therefore represented "a sort of antistate at Rome."⁸² These symbols (or lack thereof) said something: an important assembly, endowed with the sovereign power of law-making, convening in the Forum, yet with no insignia of office. Disharmony was so embedded in the system that a key assembly was conducted as though the plebs were convening not only in opposition to another constituency, but also against the state itself.

The dual consulate expressed a certain faith in the virtue of conflict. Not only were there two consuls, but also one was patrician and one plebian, having somehow to get along. The electoral procedure by which they were chosen (copied by republics thereafter) also raised the probability of strife between them. When voting occurred in the centuries, voters (or centuries) cast not one vote but two.⁸³ With 193 centuries voting, it was impossible to determine the outcome – because of the two votes. One would think this a problem; more likely, it was thought a blessing. It was obvious to the makers and users of this system that the second vote for consul was not controllable. A candidate simply could not organize things in such a way as to be assured that his supporters would behave uniformly and elect the consul colleague he wanted.⁸⁴ In 59 B.C., Caesar was paired with Bibulus who was far from his preferred partner as co-consul. In 142 B.C., Scipio ran with Appius Claudius for censor seats. Scipio won, but Appius lost and Scipio was stuck with Mummius as co-censor, not an ally.⁸⁵ Multiple candidates and double votes can lead to unpredictable results and to co-leaders who could be enemies as often as allies – such was the result of deliberate Roman procedures that incorporated uncertainty and preferred conflict to hegemony within the top echelon of leaders. Much later, the federal convention in Philadelphia created the double vote for president with similar, aleatory effect.

If this balance of enmity worked so smoothly, and up until around 150 B.C. it seems to have done so, why then did the Republic collapse into civil wars and dictatorship? Athens was conquered, but for which outside interference she might have continued in her unique and democratic way. Rome, by contrast, destroyed itself. The near contemporaneous historian Sallust, naming several factors, said the final conquest of Carthage deprived Rome of its *metus hostilis*, its fear of the enemy, which had until then served as the Republic's unifying force.⁸⁶ This development undoubtedly played a part. Many other things were happening in the second and first centuries undermining the Republic.⁸⁷ The limited question here is, to what extent, if at all, did changes to electoral procedures (and related political structures) contribute to the wobbling of the Republic toward the end of the second century and first decades of the first-century B.C.?

Two structural changes occurred, one gradual, the other sudden, and they appear to have rocked the procedural framework. First, the gradual one.

Over time, by slow increments, the lines separating two contending camps were blurred. It was not a merging of economic and social groups, nor a merging of the separate voting assemblies, but a merging of voters across

organizational lines to form a single electoral market targeted by candidates (notwithstanding that voting continued in the organizations' separate assemblies). Why or how did this happen? In c. 241 B.C., Rome made a key procedural change to its political organizations by sorting the top 70 centuries of the first class by tribes, assigning two centuries of the first class (juniors and seniors) to each tribe (so that each century of the first class was composed entirely from the same tribe).⁸⁸ This procedural change made tribes a rich target for aspiring *centuriata* candidates as well as for tribal candidates for several reasons. First, tribes were geographically based (even if spread out geographically); centuries were not. There were 35 tribes (versus 193 centuries). They were a more manageable target than centuries. If a candidate identified and befriended local municipal leaders, famous patrician families with local ties, rising nobles, urban plebs' leaders, and more, he could make headway in tribes, and that was a not inefficient way to reach the century voters affiliated with the tribes. Second, although voting was timocratically organized in centuries, it is not certain that the lower economic classes were superfluous in voting, and if they were not, a tribal approach made sense. As Alexander Yakobson has pointed out, the vaunted bribery and games and feasts underwritten by candidates in the late Republic were lavished mostly on the urban plebs and there would have been no reason to bribe them if their votes did not matter.⁸⁹

Third, the first step on the *cursus honorum* of Roman magistracies was running for aedile, and that was decided in the tribal assembly. If a candidate did well there, he had a chance at quaestor, again in the tribal assembly, and only then did he enter *centuriata* lists for praetor and consul. If he did well in the first office of aedile (winning over the urban plebs with games, feasts, or lowering the price of grain), that success seems to have helped him in later purely *centuriata* contests.⁹⁰ The bifurcation of lower and higher magisterial elections between tribes and centuries was not changed, but when this feature was joined by the allocating of centuries to tribes, it probably contributed to the emerging single market. It must also have been the case that success of a man in one assembly and in one office penetrated the voting consciousness of voters in the other assembly.

In the first-century B.C., Cicero's brother Quintus wrote a campaign memo with advice about how to get elected consul (an office elected by the centuries). Quintus stressed general voter contact. He hardly made a distinction between ranks or voting groups his brother should entreat: knights in centuries, well-connected men, tribesmen in far-flung places, and the leading citizens in distant towns – a hodge-podge of important and less important voters across Italy. In his analysis, tribal politics mattered as much as, if not more than, *centuriata* politics; yet it was the centuries whose votes Cicero needed to become consul. Anciently discrete voting structures were barely visible in this campaign manual.⁹¹

An event occurring just before Quintus wrote his memo was probably decisive in cementing the integration of voting groups, and that was a dramatic

increase in suffrage. This demographic event was a sudden change, on top of the gradual tendencies already underway, accelerating the convergence of political groups.

The size of the Roman citizenry was historically fairly stable, judging from Livy's catalog of the *lustrum* (enrollment of citizens), fluctuating between roughly 100,000 toward the end of the sixth century and around 300,000 in the second century; then in a matter of a few years, citizenry shot up to 400,000 in 125 B.C., then 900,000 or more in the 80s. In previous centuries, Rome had been economical about granting citizenship to allies and conquered peoples, or had created a citizenship without voting rights (*cives sine suffragio*). Rome did grant citizenship to freed slaves (unlike Athens), but there was no consensus on where to allocate the freedmen's votes.⁹² In 312 Appius Claudius registered all freedmen in various tribes, provoking a furious backlash from patricians, and eight years later Quintus Fabius reversed this step. "To prevent," Livy said, "the elections remaining in the hands of the lowest of the people, [he] purged the rest of the tribes of all the rabble of the forum, and threw it into four, and called them city tribes" for which achievement Fabius (and heirs) received the cognomen Maximus.⁹³ Two centuries later, the tribune Gaius Gracchus (apparently) proposed granting citizenship to the Latin allies and thereby triggered a violent reaction ending in his death. Three decades further on, the issue re-emerged, more murders followed, and then the bloody Social War broke out, which ought to be remembered as the first civil war (and not the last) partially triggered by a fight over apportionment.⁹⁴

As fighting occurred, the consul of 90 proposed to give full citizenship to the allied people who had not revolted. This move in turn set off strife over where to register the new voters. Some existing citizens feared being outvoted in assemblies and wanted to bunch the new citizens into new tribes (and call the latter to vote in tribal assemblies after the first 35 had voted). The Italians seeking citizenship protested this second-class treatment. Roman generals took up the struggle on either side, and after much bloodshed over four years, citizenship was granted to all adult males in Italy south of the Po. The admission of new citizens was to existing tribes, rather than aggregating them into new, second-class tribes. That admission represented a theoretical doubling (on average) of each tribe's list of voters. By Cicero's time, Rome stretched 1,000 kilometers from North to South and counted close to 1,000,000 citizens and more than 4,000,000 free persons (i.e., including family members who were not adult males).⁹⁵ Rome was bigger than the thirteen states at the time of the American Revolution 1,800 years later.

Before the Social War, tribes had already been spread over non-contiguous territory.⁹⁶ Now they were a quilt of patches across Italy. Only 3 of the 31 rural tribes were composed of contiguous areas by 86–85 B.C. Some tribes spread themselves over five or six different areas. Tribesmen probably had few common interests.⁹⁷ But although Italians were distributed among the tribes by 85 or 84 B.C., and could vote in tribes, the new citizens could not yet vote in centuries, without being so assigned by a censor. From Sulla onward, the

census process was used to protect the *comitia centuriata* from the flush of new citizens. This safety line was broken in 70–69 under consuls Pompey and Crassus, who, to wrest control from Sulla’s party, enrolled the new citizens. Still later, Caesar acted to enroll yet more citizens north of the Po.⁹⁸

It is hard to over-estimate the shock to the political system of these changes to the franchise. Mommsen observed that the “unnatural enlargement” broke up what had formerly been the organic classification of an urban community.⁹⁹ What is of interest here is less a general destabilizing of the system than the practical effect on political procedures. The great franchise expansion – from 300,000 voters in the second century to more than 900,000 in the early 60s – put extraordinary pressure on candidates to reach this suddenly vast audience. Soon more candidates also appeared. With more voters to reach and more rivals to defeat, aspirants had to find new methods of reaching voters.¹⁰⁰

New canvassing methods emerged and they were highly organized. Business or tradesmen guilds (*collegia*) were harnessed to a candidate’s cause to lobby fellow guild members, sometimes sponsoring neighborhood games in the city. Social or religious brotherhoods (*sodalitates*) were useful for reaching more influential Romans. Ward heelers (*divisores*) distributed cash on behalf of candidates. Crowds (*sectatores*) were paid to greet and escort candidates. Candidates provided seats at gladiator spectacles and banquets not only to members of their own tribes but also throughout tribes, at great expense. The tribe was the main organization through which the candidate pumped these favors into voters’ hands. It was through tribes that *divisores* furnished the bribes, not just in the tribes but also in the centuries.¹⁰¹ *Sodalitates* were split into companies and like *divisores* operated throughout the tribes, even though touching *centuriata* voters.¹⁰²

The reaction of conservatives to this irrepressible innovation was alarm, reflected in an avalanche of so-called *ambitus* laws to restrict canvassing by candidates.¹⁰³ In the seventeen years after the expansion of the voting rolls in 70–69 B.C., laws were passed or proposed to forbid anyone from canvassing except the candidate (no aides, servants, or supporters); dissolve the brotherhood companies in the tribes; abolish certain guilds operating as political action committees; limit the number of people who could follow a candidate around in the street; prohibit the hiring of people to meet or escort the candidates; proscribe the role of nomenclator, the servant who quietly reminded the candidate of an approaching citizen’s name; prohibit the provision of games and banquets throughout the tribes by a candidate (distinct from his doing so just in his own tribe); even narrow the bridge voters crossed (before voting) to reduce last minute lobbying by candidates’ helpers.¹⁰⁴

Not only did the late Republic put restrictions on voter outreach, it also laid down rules regulating the declaration of candidacies, including that candidates must announce by a certain number of days prior to an election; and probably from 62 B.C. on, candidates had to do so from within the city and in person.¹⁰⁵ (These new rules put Caesar in the dilemma of abandoning his

army or not complying with legal requirements of standing for consul.) This regulatory target suggested that the selection process had become candidate-centric, and legislators acted to suppress that feature and restore magisterial authority over candidacies. They evinced an anxiety that the electoral system was spinning out of control, taking on a life of its own, and falling prey to well-organized, well-financed, and ambitious men.

Some of the most ambitious men were patricians posing as defenders of the plebs. It was unavoidable that they should address tribal voters if they wanted to hop on the *cursus honorum* escalator (inasmuch as the lower offices were filled by the tribes); this was not new. Nor was it recent that the tribes reached parity in political power with patricians; this occurred roughly around 300 B.C. Once plebs could legislate for all of Rome, tribal office became of interest to all classes of Romans. In an evidently unintended consequence, the concessions made by patricians to plebs over a long span of time had the effect of making tribal office a magnet for ambitious men of patrician and noble families.

But the mingling of tribal and *centuriate* political activity made the cross-over tactic both more plausible and easier to accomplish. The brothers Tiberius and Gaius Gracchus achieved fame and influence as nobles leading the plebs in the 130s and 120s. Although both losing their lives as a consequence, they demonstrated the efficacy of noble-led popular politics, of the well-born leading the masses against the Senate in pursuit of economic rights. Others followed in their footsteps over the next 70 years, with assistance from a Senate showing little interest in social and economic justice. He would have been a dull-witted, declining noble not to see the path through the tribes as a reasonable route to power.

The so-called plebian elite could not have had the same interests as the mass of plebs they spoke for.¹⁰⁶ Caesar, of a famous patrician family, inveighed against the Senate's breach of the rights of the tribune of the people, as if there were no cause more dear to him than tribunician honor.¹⁰⁷ As dictator, he dispensed with his tribal infatuation and preferred the centuries for passing legislation because unlike the popular assemblies, the centuries were easier to control.¹⁰⁸ Other late-Republic generals – Scipio, Marius, Pompey, and Crassus – lent their influence to tribunes sponsoring laws in plebian assemblies, over the objection of the Senate and negating the power of the centuries.¹⁰⁹ When Clodius failed in opening up the tribunate of the plebs to patricians, he foreswore his patrician status, laid claim to plebian rights, and made life difficult for Cicero and other optimates.

One advantage the wealthy and well-born had was money. Mass electioneering and voter outreach required massive amounts of money; patricians could afford to spend or (like Caesar) they could borrow. Most bribes were paid to the urban plebs.¹¹⁰ A natural symbiosis emerged between pandering patricians and recipient poor in the new era of voter outreach and expanded franchise.

To Senators watching this dreary scene unfold – scions of famous families leading the masses on everything from land reform to voting methods and

franchise; the wealthiest men giving bribes to the poorest voters – it was dismaying and alarming, and their resolve to defeat the noble poseurs was more uncompromising, and the reprisals more brutal, as a result. The Senate's intransigence redoubled the ardor of the opposition. And so in the late Republic, the old confrontation intensified between Rome's socio-economic interest groups, but it was increasingly a confrontation occurring within a single elite set of leaders who had their feet in multiple organizations (tribes, centuries, and Senate). The formerly stabilizing conflict of orders was being transformed by the end of the second-century B.C. into a destabilizing conflict of ambitious men using the conflict of the orders among other weapons to advance their careers. Or to put it differently, people fighting over power are always disruptive, but when that fight spilled over the carefully constructed walls of the orders, as elite politicians acquired for an ally the powerful sovereign body of the tribal assembly, and yoked themselves to the economic and social causes of that assembly (believing in them or not), they converted typical electoral competition solely within an elite assembly into a series of violent, statewide brawls.

Looking back on these decades of crisis from the 130s to the 40s, one could say that the failure of the Republic was overdetermined and that the forces against it were far in excess of forces for it: the mingling of voting groups, cross-over of ambitious nobles to tribal leadership, and the rise of popular politicians, of generals aspiring to political leadership, and of landless soldiers rewarded for their loyalty to their generals. Most of all the shocking political violence rocked the Republic. When Sulla marched on Rome, from that time forward, said Appian, "seditions were decided only by the arbitrament of arms."¹¹¹ Murder became a weapon to deploy in political combat. The ornate balances of the Republic were irrelevant and "effete," wrote Mommsen, in this unfolding chaos.¹¹²

What difference could a good or bad procedure make when political generals led armies against each other? Very little. But in helping lay the groundwork for the overdetermined demise, procedures played a modest role. To the extent that massively increasingly the franchise was a procedural matter, procedures mattered. But it is not at all certain what Rome could have done about that problem. The Italians brought the war to Rome, not the other way around; they would not tolerate their inferior status any longer.

The convergence of historically separate voting groups also mattered; that was a procedural step. It abetted the cross-over by self-assured, noble aspirants, the entrepreneurial generals, and politicians appealing to the masses – and this behavior, by attaching the conflict of the orders to the customary competition for office, made the conflict unwontedly implacable and blood-soaked. But again, it was not obvious how to avoid this cross-over phenomenon once the decision was made in mid-Republic to grant sovereign power to the plebians. There were, therefore, procedural choices that added to difficulties, but they were only made under the stress of other, overpowering social forces.

There is nonetheless one stand-alone procedure, which was not ordered by larger social forces, and which proved to be uniquely destructive: the Roman reliance on elections. When in the 60s and 50s, in reaction to new electioneering techniques, the Senate passed the *ambitus* laws to suppress political canvassing and regulate untrammelled candidacies, the result was chaos. The last two decades of the Republic's electoral life were a blur of violence, canceled elections, lawsuits, bribery convictions, de-certification of winners, and willful non-compliance. Because elections occurred every year, the calendar guaranteed an annual crisis. In all likelihood, the recurring annual electoral chaos contributed to the hastening sense that things were out of control, legitimacy was missing, and the resort to an undemocratic remedy was needed.¹¹³ Elections, the historic foundation of the Roman Republic, were now a destructive force.

That elections had not a benign influence during the Republic's last years did not go unnoticed. In a trial, that of Murena in 63 B.C., Cicero acted for the defense. Murena had been elected consul but before taking office was accused of bribery and prosecuted by the moralistic Senator Cato the Younger. In Murena's defense, Cicero distinguished between bribery, which no one could countenance, and voter contact. Since time immemorial, he said, Roman patrons had surrounded themselves with clients, with those of the lower classes who had the privilege of the patron's company (in return for services rendered). Plainly, the Senate did not intend to banish the customary and productive interactions of patrons with their clients, he said. Nor could the Senate intend to disallow dinners among friends. "The Senate surely does not regard it as a crime if people go out to meet a candidate, does it?"¹¹⁴ It is not likely that Cicero believed this line of argument was relevant to the specific charge of bribery against Murena, nor that it accurately summarized recent campaign practice changes. But Cicero had what he considered a higher goal in this case. If Murena were convicted he would not take his seat as consul, and with Catiline still on the loose, Cicero feared for the Republic.

But then Cicero went further. Cato was an admirable, upright man, he said, but Cato's position could not be correct that "in choosing magistrates people should not be influenced by anything except a candidate's merit." Merit alone? Even Cato asked people for their help and support, said Cicero. Merit alone was not sufficient; a relationship between voter and candidate was required. That was what all the meetings, dinners, and patron-client interactions were about – they were the means of bringing together people of different social status, patrons and clients. Cicero did not say what constituted the relationship (though he did mention client "services"), but his brother Quintus had been more explicit about this relationship in his private memo the year before.

In his essay on running for consul, Quintus advised his brother that "those you have saved (and their number is very large) cannot fail to understand that, if at this supreme crisis they fail to do what you wish, they will never

have anyone's confidence....they must be appealed to, and must even be led to think it possible that they, who have hitherto been under an obligation to us, may now put us under an obligation to them." They must "understand that you are carefully watching the manner in which they perform the duties they owe you, and to allow no mistake to exist as to your clearly perceiving and taking note of, the amount of support coming from each one of them."¹¹⁵ In Quintus's presentation, the relationship that mattered was that of a transaction: voters owe you for what you have done in the past, now – we have to make sure they understand this, he said – they will know that *you owe them*.

Quintus was no doubt right, and so was Cicero, that electioneering was about forging a mutual indebtedness between candidate and voter, and that in turn meant that once in office the magistrate had a duty or at least an inclination to act as agent, helper, and defender of those who put him there. The transactional nature of elective office was already at work. Was it not electorally advantageous to offer citizenship to Italian allies, or land to the landless? This state of affairs was plain for all to see, and Cicero's artful speech, while praising Cato, made him out to be either a prig or a phony (or both) for not acknowledging it. But Cato and the authors of *ambitus* laws did have a deep concern about the drift of things: if transactions were the acknowledged function of campaigns, elections would be nothing more than a competition between ever rising crowd-pleasing offers, at which any rogue could excel; the customary honor and dignity of high office would be traduced; and officeholders no longer would be the disinterested leaders of the Republic.

Ironically, Cicero shared that deep concern; he was the author of one of the *ambitus* laws that same year. His concerns actually ran deeper than the matter of transactional canvassing. He lamented (a few years later) that Rome had given up its ancestral ways of conducting meetings: calmly, with deliberation, "and after all the parts had been properly arranged, by the different ranks, classes, and ages, distributed to their tribes and centuries."¹¹⁶ In Cicero's telling, the structural basis of the Roman constitution was fracturing if the electorate was becoming a mish-mash of undifferentiated and unreflecting voters. Cicero's concern was that primary assemblies were becoming structureless mass meetings, and that development touched a sensitive nerve. Rome's was not a majoritarian system. Sovereignty did not reside in the rule by numbers, but rule by a preponderance of voting units which, at least from their inception, embodied discrete social, economic, and geographic interests.¹¹⁷ This anti-head-count bias in the Roman Republic was part of the effort to forge a consensus and justify political outcomes based on key interests – such as plebs and patricians – and consulting them was not a question of raw numbers.¹¹⁸

Even during the Murena trial, Cicero let the jury understand that elections were not all they were cracked up to be. What body of troubled water "has so many eddies, such great and multifarious movements of current as would compare with the great turbulences and tides that elections have?" he asked during the Murena trial. "A day's interruption or night's intervention often throws everything into confusion, and it is not unknown for the merest

whisper of a rumour to make everyone change their mind....sometimes even the people are surprised at the way something turns out – as if they had not themselves been responsible. There is nothing more fickle than the masses, nothing more unfathomable than people’s intentions, nothing more misleading than the entire process of an election.”¹¹⁹ In essence, he was telling the jury, we all know electioneering is a sordid business and elections irrational; don’t condemn Murena for what everyone does, when the Republic is at risk from a much more serious quarter, that of Catiline. Murena was acquitted.

Murena, in which both prosecution and defense found elections untrustworthy, describes a system which was probably different from electoral practices of the early and mid-Republic. It once was the case that getting oneself elected did not require canvassing and could be achieved with reputation, friendships, and client relations. There were early-Republic attempts to outlaw candidates’ addressing public meetings and drawing attention to themselves by whitening their togas – such was the limited extent of the dreaded self-promotion of candidates. In the early Republic, for a candidate to make a direct personal appeal to the mass of voters would have been regarded “a form of treachery.” In the early Republic, it does not appear that candidates’ names were published in advance of elections; rather the presiding magistrate put names to a vote with little or no notice. It sometimes happened that a man was elected to office who had not indicated an interest in standing.¹²⁰ There was then, in the early Republic, a certain clubby insularity about elections. Elections were the keystone of the system, but they were to be conducted with limited choice and won by the candidate’s reputation and already existing relationships with friends and clients and not by out-reach, persuasion, advocacy, and corraling supporters; in other words, elections without electioneering.

There could be no electioneering or public appeals – not even the whitened toga – because there could be no question of influence or favor. In theory, the officeholder making his stately way up the *cursus honorum* was advanced to the next rung if he proved himself on the lower rungs – nothing more. Then the dramatic franchise expansion created a suddenly larger audience, and that ushered in electioneering, asking people for votes, and offering something in return. Aristotle had warned about “election intrigue.”¹²¹ Now Rome had it, and it was traducing the core idea of the disinterested *res publica*. This manifest betrayal of the Republic’s central mission made its own unique contribution to undermining the legitimacy of the regime.¹²²

It is not obvious what else Rome could have done at this juncture. The logic of the *ambitus* laws was to sever the relationship between candidates and voters and return the system to the natural selection of “the best.” Such was the dream, but it was not compatible with the exigencies of consulting as many as one million voters extending 1,000 kilometers down the peninsula of Italy. On the other hand, if through massive canvassing voters were asked for their vote, it was reasonable they should expect something in return (as Quintus wrote his brother) – and that in turn transformed the candidate into an officeholder dispensing favors in payback. The rise of entrepreneurial,

big-spending candidates (some of them generals) was directly connected to these developments, to the formation of the single voter market, and to the expensive electioneering machinery. This was the impossible choice facing the late Republic: either a Republic that betrayed its core value of disinterestedness, or elections without electioneering. Formally speaking, Rome chose the latter, to ask for voters' consent while prohibiting contact between voters and candidates. With this ineffectual solution, Rome was the first state to confront and not solve the challenge of how to involve masses of voters without also getting the voters' baggage – their demands and their hatreds – being carried across the transom of government by their grateful agents, the newly elected, whose ethics were rarely equal to their expediency. But it would not be the last. James Harrington in the seventeenth century and the framers of the U.S. Constitution in the eighteenth grappled with a similar dilemma.¹²³

* * *

The Athenian and Roman methods of self-government existed not sequentially but in overlapping epochs. They both changed over time, but at the height of their development (fifth- and fourth-centuries Athens, fourth- to first-centuries Rome), the two had striking similarities. They both placed ultimate authority in the hands of citizens convened in primary assemblies. Both eschewed representative institutions. They both distrusted the rule of numbers to fill offices: in Athens doing so mostly with lottery, in Rome by group voting rather than counting heads. They both practiced rotation in office. Both understood that the sequences of voting and announcing votes were critical matters requiring close attention. They both carefully husbanded the franchise (until the Social War, in Rome's case), and seemed to have taken pains to keep proportions steady (in the *boule* in one case, in the tribes in the other) over a long span of years.

The differences between the two models were just as striking. Athens mostly used lot for filling offices, Rome elections. Athens devised a multistage selection system for those offices not filled by lottery, a system that combined local nominating with national lottery, in other times local nominating with national election, in others local lottery with national lottery. This purposeful complexity seems to have been one means to help attach sub-units of the polis to the national community, without, however, opening an easy path to power for local champions. The complexity was also aimed at making sure that once in office, the holder was not acting as agent for a constituency. Probably the biggest difference lay in the Athenian innovation to manage the dangerous centrifugal force that confronts every free society by, in her case, allocating citizens to artificial, competing tribes that cut across regional, economic, and social allegiances in what amounted to the political nullification of interest. The dispersal of interests was the Athenian solution, whereas the Roman method was rather to empower interests with rival assemblies and consuls and tribunes, and almost deliberately promote conflict, then seek a degree of harmony by mutual dependence. The embracing of conflict

within channels as a means to stability was the Roman unique contribution to republic-making.

Although the Roman constitution endured hundreds of years, the balance of enmities would seem a chancy, unstable footing on which to plant a commonwealth. In the Roman case, it seems that changes to citizenship rolls and voting organization contributed to upsetting the balance, and Rome discovered the hidden dangers of elections when they ceased to be a clubby affair and took on the transactional character that is unavoidable in mass appeals. Most if not all the differences between the Athenian and Roman models of a republic probably derived from the difference in political culture. It has been pointed out that Athens gave the world ostracism and Rome the triumph: packing a politician out of town in the one state, returning the conquering hero on a chariot in the other.¹²⁴

Both of these procedural approaches were nuanced and sophisticated. On balance, it would seem that Athens was the more creative and daring in her atomizing of interest than Rome was. Few have emulated her in this matter in posterity, but some tried. The Athenian use of sortition, on the other hand, was widely shared in later eras, as were versions of her complex nominating. The Roman empowerment of clashing social groups and enforced mutual dependence of them reappeared in many later republics. But the Roman reliance on elections was not replicated in most republics of the medieval period, at least not without elaborate nominating and sortitive guardrails to reduce the damage that elections can wreak on a republic and which, in the case of Rome, contributed to the late-Republic chaos. Both sets of procedures were educational for posterity, Athens's as a model of complexity, and Rome's as an object lesson in the matter of elections. Later republics paid heed, until posterity arrived at the gates of modernity.

Notes

- 1 Comment made with respect to Roman electoral practices. Fergus Millar, "The Political Character of the Classical Roman Republic, 200–151 B.C.," *The Roman Republic and the Augustan Revolution*, vol. 1, *Rome, the Greek World, and the East* (Chapel Hill and London, 2002), 128.
- 2 Scraps are from a variety of sources: the works of Aristotle and Plato, for example, directly addressing politics and statecraft; random surviving speeches and biographies; contemporaneous histories; and the odd stone stele with decree inscribed.
- 3 Robin Osborne made short shrift of the idea that Athens was a "face-to-face" political society. Robin Osborne, *Demos: The Discovery of Classical Attika* (Cambridge, England, 1985), 65. Citizens are estimated to have been 60,000 or more at the start of the Peloponnesian war. Ben Akrigg, *Population and Economy in Classical Athens* (Cambridge, England, 2019), 84. See also E.S. Staveley, *Greek and Roman Voting and Elections* (London, 1972), 78.
- 4 *Federalist 55*, Bernard Bailyn ed., *The Debate on the Constitution*, 2 vols. (Library of America, 1993), 2: 204. Madison may not have known about the guardrails mentioned below—*graphe paranomen*, ostracism, the reorganization of Cleisthenes, and Athenian nominating techniques—or he did know but they did not conform to use of Athens as object lesson.

- 5 Polybius 6.10
- 6 C. Hignett, *A History of the Athenian Constitution to the End of the Fifth Century B.C.* (Oxford, 1952), 234–235; J.A.O. Larsen, *Representative Government in Greek and Roman History* (Berkeley and Los Angeles, 1966), 14–16. In the early classical period, seats on the Pnyx faced the other way around, toward the Akropolis and valley.
- 7 Aristotle, *Politics*, 1294b9–16 on the democratic character of lot, a topic he touches on often. See also Hignett, *Athenian Constitution*, 214, 230–231; James Wycliffe Headlam, *Election by Lot at Athens* (Cambridge, England, 1891), 26, 31–32, 48, 153; Larsen, *Representative Government*, 17–18; Claire Taylor, “From the Whole Citizen Body? The Sociology of Election and Lot in the Athenian Democracy,” *Hesperia: The Journal of the American School of Classical Studies of Athens*, vol. 76, no. 2 (April–June 2007), 338. A mostly intact copy of a *kleroterion* can be seen today in the Museum of the Ancient Agora. Balls were deposited in a tube at the top; one’s *pinakion* (bronze or wood ticket inscribed with citizen’s name, patronymic, and *deme*) was inserted in a row. The color of the balls randomly exiting at the bottom would indicate whether one’s row corresponded to a white or black ball, that is, to service or non-service. See also Staveley, *Greek and Roman Voting*, 65; Mabel Lang, *The Athenian Citizen: Democracy in the Athenian Agora* (Athens, 2004), 23–24. Staveley has a drawing of an imagined *kleroterion*, Lang has a photo of a partially intact machine.
- 8 Aristotle, *Politics*, 1278b22–25, 1280b29ff, 1277a25ff, 1275a22–24, 1278a35–40.
- 9 Athens’s citizen population probably doubled from the first two decades of the fifth-century B.C. (c. 30,000) to the start of the Peloponnesian War (c. 60,000), before collapsing by end of the century as a result of that conflict and in the fourth century returning to approximately its level of early fifth century. Total inhabitants at the start of the war with Sparta were probably around 250,000. Akrigg, *Population and Economy*, 61, 84, 169.
- 10 See photograph of the stele on which this decree was engraved in Lang, *Athenian Citizen*, 18. One stele was placed at the entrance to the Areopagus, the other on the Pnyx. One of the steles can be seen today in the Museum of the Ancient Agora, with a relief depicting Democracy as a goddess, or goddess-like personification, crowning the seated Demos of Athenians.
- 11 Xenophon, *Memorabilia*, I.11.9–14. As vexing was why a larger number of jurors voted for death than had earlier voted for conviction.
- 12 Thucydides 7.77. In the same vein, Robin Osborne has said that Aristotle stresses the polis’s constitution was as much about the citizens and their relationship to each other as it was about the formal organs of government, because the polis was itself coterminous with the citizens. Osborne, *Demos*, 9.
- 13 For one’s *deme* name, see Hignett, *Athenian Constitution*, 129. For *pinakia*, see John Kroll, “Dikasts’ *Pinakia* from the Fauvel Collection,” *Bulletin de Correspondance Hellénique*, 91–92 (1967), 379–396. The article contains useful photographs of *pinakia* (examples of which may also be seen today in the Museum of the Ancient Agora) and suggests based on discovery of *pinakia* elsewhere in the Greek world that Athenian constitutional practices employing the bronze tablets spread to other city-states.
- 14 Hignett, *Athenian Constitution*, 148–153, 237–244; Lang, *Athenian Citizen*, 15. The stone foundations of the *boule* are visible in the Agora today.
- 15 A fair amount is unknown about the means by which, in different eras, the 500 councilors were selected: when nominations occurred by deliberation (*prokrisis* in the *deme*) and when by lot locally, and who (the tribe per Bury or the polis per Hansen and most others) made the final selection by lot. While there is not a consensus among specialists, it seems likely that demesmen nominated candidates (by some means) and the polis selected councilors from the nominees by

lot in the fifth and fourth centuries, and that from mid-fifth century on, the local nomination was probably also conducted by lot (rather than *prokrisis* or deliberation), but some (at least V.L.S. Abel) hold that *prokrisis* carried on into the fourth century. Whatever the local means used at various times, it is likely that from beginning of the fifth century until latter fourth century, localities presented candidates from among whom the polis selected councilors. See Mogens Herman Hansen, “κλεροσις ἐκ προκρίτων in Fourth-Century Athens,” *Classical Philology*, July 1986, vol. 81, 222–223, 226–229; Hignett, *Athenian Constitution*, 150, 325; Staveley, *Greek and Roman Voting*, 52ff; J.B. Bury, *A History of Greece to the Death of Alexander the Great* (New York, 1967), 213–214. This two-step process of allocating nominations to localities and selections to the whole community would be repeated in many later republics.

- 16 Larsen, *Representative Government*, 5–8. Larsen states that the *boule* was formed to “constitute a cross section of” the citizenry and “to give all sections of Attica representation approximately in proportion to their citizen population.” (p. 5) Larsen stresses that representation in general never got off the ground in antiquity, never successfully challenging the ancient confidence in the judgment of the citizens as a whole, and their concomitant unwillingness to delegate their authority to others. For *boule* being broadly representative, see also: Osborne, *Demos*, 92; Bury, *History of Greece*, 215; Hignett, *Athenian Constitution*, 237.
- 17 Herodotus 1.59.3; Bury, *History of Greece*, 184–188, 208, 211; Hignett, *Athenian Constitution*, 122–123; Staveley, *Greek and Roman Voting*, 25–27; Robin Osborne, *Greece in the Making: 1200–1479 B.C.* (London and New York, 1996), 283–284. The overthrow of the tyranny was soon regarded as a great patriotic feat; a statute was erected in honor of the tyrannicides of Hipparchus, Harmodius and Aristogeiton (a Roman copy of which survives in the National Archaeological Museum in Naples).
- 18 Bury, *History of Greece*, 211. We have little information about Cleisthenes. Scholars have advanced varying motives for his reform. See P.B. Manville, *The Origins of Citizenship in Ancient Athens* (Princeton, 1990), 172–209; D.M. Lewis, “Cleisthenes and Attica,” *Historia: Zeitschrift für Alte Geschichte* Bd. 12 H.1 (1963), 22–40. Osborne points out that the reorganization did not abolish all traditional historical associations and practices (particularly religious ones). Osborne, *Greece in the Making*, 299–304. Elsewhere he sees Cleisthenes’ tribal reform as possibly originating in a reorganization of the armed forces. Robin Osborne, *The Transformation of Athens: Painted Pottery and the Creation of Classical Greece* (Princeton and Oxford, 2018), 90–91.
- 19 In the convention in Philadelphia, as conflicts grew sharper, John Dickinson, William Paterson, and others proposed a redrawing of borders and creation of new, artificial, political units to dissolve the rivalries between states and regions. The proposal did not progress far. See [Chapter 6](#). Briefly, Genoa tried to re-invent political identities (see [Chapter 3](#)). The French replacement of provinces with departments in 1790, although a renunciation of the ancient regime, fell short of a wholesale recalibration of social and regional loyalties.
- 20 In *Politics* Aristotle praised Cleisthenes’ reform (*Politics*, 1319b20–27) and noted the value of mixing up people the better to “break up the previously existing groups of associates.” In *Athenian Constitution* he or his Lyceum said that Cleisthenes made the four tribes into ten in order to mix up the people, and added (the curious remark) also to ensure that more people take part in the government (*Athenian Constitution* 21.2). See Hignett, *Athenian Constitution*, 129–141; Bury, *History of Greece*, 211–214; and especially John S. Traill, “The Political Organization of Attica: A Study of the Demes, Trittyes, and Phylai, and their Representation in the Athenian Council,” *Hesperia Supplement XIV* (American School of Classical Studies at Athens, Princeton, 1975) wherein Traill has reconstructed a helpful

- map showing the wide, non-contiguous dispersal of demes within tribes, because of the *trittyes*' role. For statements in this paragraph about citizens' relations to tribes, see David Pritchard, "Tribal Participation and Solidarity in Fifth Century Athens: A summary," *Ancient History: Resources for Teachers* 31 (2002), 104–118 (accessed 6/18/20: espace.library.uq.edu.au/view/UQ:162520); and Lang, *Athenian Citizen*, 9–10, 12–13.
- 21 Traill, "Political Organization of Attica," 56ff; Larsen, *Representative Government*, 8. It is impossible to imagine no reapportionment over some three centuries without a rebellion, if the *boule* was thought actually to represent constituencies. As to population changes, best estimates are that the number of citizens was halved from the fifth to the fourth century. Akrigg, *Population*, 61, 84, 169. Men enrolled on the demes' citizen list – the criterion of Athenian citizenship – could live elsewhere than in the deme and be associated with the deme because of land ownership, family ties, or long-ago residence. The deme, rather than the changing human constituencies, was the first stone in the foundation of the *boule*, and that means that even if the next stones up (the intermingled *trittyes* and the tribes) had not existed, the system would still not have been representing actual people. Osborne has suggested that by keeping demes as the vital local unit, politics in Athens was submerged into the local community and the rise of geographical competing blocks prevented. Osborne, *Demos*, 188.
 - 22 Pritchard, "Tribal Participation," 104; Osborne, *Transformation of Athens*, 214.
 - 23 Paul Cartledge, "Not Just Voting, But Being Counted: The Cases of Ancient Greece," *Cultures of Voting*, 17.
 - 24 When one considers the leading roles of individuals in classical Athens, one cannot help noticing a contradiction at the core of our understanding of Athenian politics. If one were to read only Herodotus and Thucydides, one would get a different view to that gotten from reading only Aristotle and Plato. The former is a politics of gifted leaders, anything but depersonalized; the other, a politics effaced by a carefully manufactured machine to atomize interests and allow no one person or interest group to gain ascendancy. It is not easy to reconcile the two portraits. The best one can say, possibly, is that in times of war a people will turn to its leaders for succor. In any event, war or peace, what matters most about a set of political procedures is their intended purpose, the idea in the mind of the procedure makers of what they were seeking to accomplish, even if with time the idea changed and even when the idea was not carried out in practice.
 - 25 There is no certainty whether the first stage was by vote, but given the recurrence of experienced generals on the *stratego*i board in the fifth century, it seems unlikely sortition or anything other than deliberation was used, and therefore vote likely prevailed in both stages. Much is unknown: did tribes put one candidate forward to be rubber-stamped by the assembly or more than one candidate? Why were some tribes double represented and some not represented (if each tribe had the right to a *strategos*)? See Staveley, *Greek and Roman Voting*, 41–42, 45; Lynette G. Mitchell, "A New Look at the Election of Generals at Athens," *Klio* 82, no. 2 (2000), 344–360. Mitchell stresses the pre-selection of candidates by tribes for presentation and decision by the polis.
 - 26 Archons were chief magistrates following the decline of kingship, probably beginning in the early seventh century as judges, and continued with varying powers and selection methods as the democracy expanded in the sixth and fifth centuries.
 - 27 Aristotle, *Athenian Constitution*, 8.1, 31.1. See also *Politics*, 1298b.
 - 28 The word "nominating" does not appear in translations of Greek texts. The Greek word used most often for this first selection stage is "*prokriton*" (or inflections of it), normally translated as "pre-selected." (Diacritical marks have been omitted from transliterations.) Although it is tricky to parse the meaning of words, and

trickier still to impose a word of much later provenance on an older era, it seems likely that what the Greeks (not just Athenians) were doing in the classical era was what we, since the eighteenth century, have called nominating candidates. Athenians used this technique for choosing archons, at least one high religious office, the *strategoï*, the *boule*, and possibly other boards (eventually replacing deliberation with sortition at the first stage in the case of archons and likely also the *boule*). Aristotle, in describing the archon procedure in Solon's time (*Athenian Constitution*, 8.1), used the phrase *klerotas ek prokriton*, commonly translated as "sortition from those pre-selected." This phrase occurs in several other writings (Plato, *Laws* and *Republic*; Demosthenes, *Against Eubulides*; and Aristotle, *Politics*) sufficiently often as to be a formula, a reference to a custom or commonly understood method for producing candidates from amongst whom a final election was made. The author, utilizing the Tufts University *Perseus Digital Library*, has examined several hundred appearances of *πρόκριτος* from Herodotus to Diodorus. In the vast majority the meaning has nothing to do with nominating but rather refers to something or someone's being "preferred" or "first ranking" (as in Spartans "preferred" death to surrender); but in the above handful of political texts, the meaning points to "nominating" as the first step of a two-step selection process. Although *strategoï* selection followed the main principle of local (tribal) candidates and national (*ekklesia*) selection, it was by a unique method (not altogether clear in its functioning) and not by *klerosis ek prokriton*. See Mitchell, "A New Look at the Election of Generals," 344–360. Greek nominating innovation is important because, although largely absent in contemporaneous Rome, nominating would become a key procedure in later republics.

- 29 Demosthenes, *Against Eubulides*, 62. See also Mogens Herman Hansen, "κλεροσις ἐκ προκριτον in Fourth-Century Athens," *Classical Philology*, July 1986, vol. 81, 222–229; Ulrich Kahrstedt, *Untersuchungen zur magistratur in Athen* (Stuttgart, 1936), 42–54; Hignett, *Athenian Constitution*, 150, 173, 227, 230–231, 322–325; Staveley, *Greek and Roman Voting*, 34–38, 52ff. There is not agreement on when "sortition from the nominated" began and when it ended. Isocrates stated *klerosis ek prokriton* was a characteristic of democracy established by Solon and restored by Cleisthenes; but elsewhere he attributes the practice to a mythical past going back to Theseus. Isocrates, *Areopagiticus*, 7.22. Aristotle seems to date the practice to the days of Solon. Hignett reasons it began with Cleisthenes (Hignett, 173, 230). Hansen argues that it essentially ceased by 399 B.C., whereas others, particularly V.S.L. Abel, suggest it continued well into the fourth century (see Hansen, 223.) This author finds Hansen's dismissal of the evidence of Demosthenes and Plato about fourth-century continuation of the practice open to question, but be that as it may, it would appear no one disagrees that for councilors and archons if not for many more offices, a recurring technique was local deliberative nominating (either at deme or tribe) and polis final selection by lot, and that even if the *prokriton* activity died off in the fourth century (which Demosthenes evidently contradicts), replaced by sortition, the important dynamic continued, but with sortition replacing deliberation at the first stage. Whether local candidates were produced by sortition or by deliberation does not affect the principal argument here about local nominating and national selection. Nor does the unsolved question of *klerosis ek prokriton's* longevity detract from the parallel local-national electoral dynamic in the choosing of the all-important *strategoï*, where sortition seems to have played no role. Even centuries after the passages discussed above, the word "nominate" did not exist and there continued to be verbal elasticity in naming the first step. When Polybius referred to a *strategos* candidate being nominated by the Achaean leader Aratus (a candidate subsequently defeated), the Greek words he used are "led in" by Aratus. Polybius 4.82.

- 30 Aristotle, *Athenian Constitution*, 13.4.
- 31 Plato, *Laws*, 6.745e, 6.755a-e, 6.756b-e. Because Plato says “everyone” shall vote on the candidates chosen by each class, he appears to be saying that the selection of 180 from each class’s nominees is made by all voters.
- 32 Plato concludes this interesting passage by saying this complex method of nomination and election and lot, and apportionment by class, is necessary because “slaves will never be friends with masters” and the way to make harmony in the republic is to respect the two kinds of equality, that of numbers and that of worth. *Laws*, 6.757a-e. See also his treatment of filling of religious offices (6.759). Here and elsewhere (6.763) it would appear that nominating by small and disparate or clashing units then selection by a combination of lot and voting by larger units or the state were thought by Plato to be ingredients of a peaceable republic and useful for preventing the in-fighting that he saw as the real enemy of the polis (9.856). Hansen does a persuasive job showing that Plato’s mention of *προκρινειν* in the *Apology* is misunderstood and taken to mean the technical term “to pre-select” when instead it is the more common meaning of “choose the best,” which would be consistent with the more frequent use of the term in this meaning. See n. 28 above, and Hansen, “κλεροσις ἔκ προκριτον in Fourth-Century Athens,” 223–224. However, his dismissal of *Laws* and its abundant use of *klerosis ek prokriton* and other techniques as being evidence of fourth century actual usage (Hansen, 228–229) does not diminish the importance of *Laws* as literary endorsement and confirmation of complex procedures largely based on Athenian practice to disperse power while still unifying the polis.
- 33 *Politics*, 1261a24–b15. His target in this passage was Socrates (and Plato) for stating the goal of a state should be the “the fullest possible unity.” It has sometimes been said that premodern republics were homogeneous and/or had the goal of homogeneity; this is unlikely. In addition, the ancient authority whom medieval readers relied upon said just the opposite. Aristotle focused on the rich, the poor, and the middling classes. In one passage, he listed at least eight categories of inhabitants, separated by occupation and class. 1290b21–1291b14.
- 34 *Politics*, 1279a18–b10.
- 35 *Politics*, 1293b1–10, 1294b6–12. See also Andrew Lintott, “Aristotle and Democracy,” *The Classical Quarterly*, vol. 42, no. 1 (1992), 117–118, 123; Fergus Millar, *The Roman Republic in Political Thought* (Hanover and London, 2002), 15, 170–171, 173–174.
- 36 *Politics*, 1275a22–24, 1278a35–38, 1277a25–28. In *The Athenian Constitution* Aristotle stated that after the tyranny of the Thirty and the Ten, Athenians restored the sovereignty of the people which they continued uninterrupted down to his day, and in his opinion they “seem to act rightly in doing this, for a few are more easily corrupted by gain and by influence than the many.” *Athenian Constitution*, 41.2 This sentence would not have been read by medieval Italian republicans; the work was not rediscovered until the late nineteenth century and first published in 1891.
- 37 *Politics*, 1281a39–b32.
- 38 *Politics*, 1308b17–20, 1303b27–29, 1303a13–15, 1266a8–10, 1266a25–29.
- 39 *Politics*, 1310a28–36. An earlier passage has Aristotle seeming to acknowledge that majorities are unavoidable. 1294b10–15. But that was an observation, not a judgment. Elsewhere he said that one variety of democracy, the kind which made the multitude sovereign above the law, was dangerous and tantamount to “not a constitution at all.” 1292a30–33. Later he said “if the will of the numerical majority is to prevail, they will do injustice by confiscating the property of the rich minority....” 1318a23–26. He was skeptical of justice being attained “by counting heads.” 1318a19ff.

- 40 *Politics*, 1294b9-16, 1298b6-11.
- 41 *Politics*, 1296a23-35, 1302b3-18.
- 42 *Politics*, 1318b37-1319a2. The idea of a salutary state of suspense by not knowing what your opposites will do in reaction to your own self-interested actions was a central Federalist argument in 1803 against the ratification of the Twelfth Amendment to the U.S. Constitution. See [Chapter 7](#) below.
- 43 *Politics*, 1318a30-35, 1308b25-29, 1319b20-28.
- 44 In one passage Aristotle listed the twelve different ways of choosing magistrates (plus two variations on them). *Politics*, 1300a9-1300b5.
- 45 *Politics* 1380a20-24. Note he was not talking about “interest groups,” which would have been referred to as “factions” or “parties” and were a separate concern.
- 46 There was considerable overlap in the complex electoral structures which Athens devised and Aristotle and Plato described. However, Athens did not make allocations in the power structure for economic and social classes (as Plato recommended). In its own way, the Roman republic (see below) made use of such allocations.
- 47 Among many who have pointed out this difference, see W.G.Runciman, “Doomed to Extinction: The Polis as an Evolutionary Dead-End,” in Oswyn Murray and Simon Price eds., *The Greek City From Homer to Alexander* (Oxford, 1990), 366.
- 48 Niccolò Machiavelli, *Discourses on Livy*, trans. Harvey C. Mansfield and Nathan Tarcov (Chicago and London, 1996), chapter 4, “That the Disunion of the Plebs and the Roman Senate Made that Republic Free and Powerful.”
- 49 Millar, *Roman Republic in Political Thought*, 178. Its own selection methods having nothing to do with citizen choice or electoral organization, the Senate is not relevant to this study except as a protagonist in the conflict of the orders.
- 50 This contradictory, dual character has given rise to a lively scholarly debate about whether the people or patricians controlled the republic. At the center of recent versions of this debate was the classicist Fergus Millar, who argued for the democratic character of Roman politics, against others carrying forward the traditional understanding which put the patrician-client nexus at the center of Roman politics. Among summaries of this debate, see Leonhard A. Burckhardt, “The Political Elite of the Roman Republic: Comments on Recent Discussions of the Concepts ‘Nobilitas and Homo Novus,’” *Historia: Zeitschrift für Alte Geschichte* Bd. 39, H.1 (1990), 77-79.
- 51 Lily Ross Taylor, *Roman Voting Assemblies: From the Hannibalic War to the Dictatorship of Caesar* (Ann Arbor, 1966, paperback ed., 1990), 100, 103.
- 52 Millar, “Political Power in Mid-Republican Rome: Curia or Comitium,” *Roman Republic and Augustan Revolution*, 93-94; John R. Patterson, *Political Life in the City of Rome* (London, 2000, paperback ed.), 9-11; Staveley, *Greek and Roman Voting*, 125-126; Taylor, *Assemblies* 5-6, 47.
- 53 There is some evidence that within a class of centuries voting was done in succession in the early republic then moved to simultaneously (within a class) by end of third century. With the increase of suffrage, it would have taken too long for 193 centuries to vote successively. Ursula Hall, “Voting Procedure in Roman Assemblies,” *Historia: Zeitschrift für Alte Geschichte* Bd. 13, H.3 (July, 1964), 271-272; Staveley, *Greek and Roman Voting*, 170.
- 54 Before those reforms, the eighteen even more exalted equestrian centuries voted first, and probably the *equite* class’s vote was announced before moving to the first class. After reforms of the third century, lot was cast among the 35 junior first-class centuries for choosing the *praerogativa*, which not only voted first but also had its results announced when its vote was concluded. Concerning timing, three distinct moments were important: the century class vote, the announcement of the class vote to presiding officer, and the announcement by presiding officer

to the assembly. Although not clear, it is possible that results were announced by century and not by class (Taylor, *Assemblies*, 97), but this would not have been possible when, as seems likely, class voting was simultaneous in the later republic. If and when voting was successive within a century class, it is possible announcement was made after each century's vote. Such timing would have been logical, even required, in a system that halted voting when a majority of centuries had been reached. There is some opinion that the timing of vote announcement in later classes was decided by lot. This would have handed to chance an important function, for not only did early announcements influence voters; also early announced results decided the election when a majority of centuries was reached. In this complicated and important topic of timing, about which much has been written and many records are missing, one thing is clear: staged voting and staged announcements in *centuriata* elections privileged wealthier voters. Hall, "Voting Procedure," 278–279, 282–284; Staveley, *Greek and Roman Voting* 169ff, 181, 186. A contrary view of the announcement matter is Karl-J Hölkeskamp, *Reconstructing the Roman Republic: An Ancient Political Culture and Modern Research* (Princeton and Oxford, 2010), 104–105.

55 Taylor, *Assemblies*, 97.

56 Staveley, *Greek and Roman Voting*, 154–155, 252, n. 296; Cicero, *Pro Murena* 18.38.

57 *de Legibus*, 162–163, in Francis Barham, ed., *The Political Works of Marcus Tullius Cicero*, vol. 2: *The Treatise on the Laws* (London, 1842). See similar Cicero comments about the rightness of weighting vote by wealth so as to give greater influence to those with the most at stake in society, and the dangers in a pure democracy of "popular error" and the risk of demagogues. *The Treatise on the Republic*, 227, 180–182, in Barham, ed., *Political Works of Cicero*, vol. 1 (London, 1841).

58 Valentina Avena, "Roman Reflections on Voting Practices," *Cultures of Voting*, 31–32.

59 Lily Ross Taylor, *The Voting Districts of the Roman Republic: The Thirty-five Urban and Rural Tribes* (Ann Arbor, 2013), 3–5. Tribes started as clan-based and switched to geography-based in the sixth century, and later lost their geographic cohesion (see below).

60 Taylor, *Assemblies*, 6; Staveley, *Greek and Roman Voting*, 131–132; T. Robert S. Broughton, "Candidates Defeated in Roman Elections: Some Ancient 'Also-Rans,'" *Transactions of the American Philosophical Society*, vol. 81, no. 4 (1991), i–vi, 2–4. Before the Lex Hortensia, previous versions of the law empowered tribal assemblies to legislate for Rome but with involvement of the Senate. Voters in tribal meetings under a tribune were known as plebs and it was a *concilium plebis*. Measures passed were plebiscites. Under a consul or praetor, the voters were the *populus*, the meeting was of the *comitia tributa*, and measures were laws or *leges*. Taylor, *Assemblies*, 60.

61 For complicated matters of timing, see n. 53 and 54 above, and Staveley, *Greek and Roman Voting*, 135, 153, 171, 172, 177–181; Taylor, *Assemblies*, 40, 78–81, 97; Hall, "Voting Procedure," 275–276, 284, 288.

62 In the fourth century, as Athenian jurors made their way to the front of the court carrying two voting tokens, they dropped them into two urns (the decision urn and the discard urn). They covered the shaft on the tokens' axle with their hands. One axle was hollow, which meant conviction, and the other was solid, which meant acquittal. By hiding which one he was placing in the decision urn, the juror protected the secrecy of his vote. Aristotle, *Athenian Constitution*, 68.2. See also, Staveley, *Greek and Roman Voting*, 97. There are extant jurors' tokens in the Museum of the Ancient Agora. We are less knowledgeable about taking the vote in the *ekklesia*.

- 63 The point about influence is more valid with regard to the centuries than the tribunician elections, the latter of whose timing decisions remain, to this author at least, inscrutable. The tribes' change to a secret ballot (139 B.C.) was aimed at reducing influence. The waiting to announce tribal electoral results until all votes were taken had a similar effect. On the other hand, tribal legislative assemblies voted successively (with order determined by lot) and results announced as voting occurred, which must have influenced later votes. It was also the practice in legislative assemblies for the presiding officer to call upon a highly regarded citizen in the *principium* (the first tribe voting) to cast his vote first in order to influence the rest of the voters that day. So even in tribal practices influence was to some degree considered beneficial. Staveley, *Greek and Roman Voting*, 166–168; Taylor, *Assemblies*, 77.
- 64 Taylor, *Assemblies*, 1. As to numbers, fourth-century Roman adult male citizenship was some 150,000; by the second century, some 300,000; by the time of Cicero (first century) between 900,000 and one million. See tables in PA Brunt, *Italian Manpower 225 B.C.-A.D. 14* (Oxford, 1971); Millar *Roman Republic in Political Thought*, 3, 22, 151.
- 65 Taylor, *Assemblies*, 6, 47–48, 113; Millar, "Political Character," *Roman Republic and Augustan Revolution*, 142. The *Saepta* estimates are Taylor's, the quotation Millar's, whose depiction of Roman democracy is not subscribed to by all specialists.
- 66 Taylor, *Assemblies*, 1, 16–17, 70. The same point is made by many classicists: Cartledge, "Not Just Voting, But Being Counted," 16; Millar, "Political Character," *Roman Republic and Augustan Revolution*, 138; Millar, *Roman Republic in Political Thought*, 19; Larsen, *Representative Government*, 1–2, 14, 18.
- 67 Terms of concluding a war were approved by the Senate as well as the people in assembly. Millar, "Political Character," *Roman Republic and Augustan Revolution*, 118. Cicero was not fond of this state of affairs: "When the people," he said, "are divided by wealth, rank, and age, their decisions are wiser than when they meet in the assembly of tribes." Staveley, *Greek and Roman Voting*, 247, n. 228.
- 68 Lot was used in Rome to select the *centuria praerogativa*, select the tribe where the Latins were enrolled as citizens, determine the order of calling tribes for voting in legislative assemblies and of announcing results in elective assemblies, and distribute provinces among higher magistrates. These uses of lot were important, but lot was not generally used for political office-filling.
- 69 The *tabula hebana* discovered in 1947 revealed a system by which Augustus (in 5 A.D.) replicated the *centuria praerogativa* with his own handpicked centuries. Although it is possible that under Augustus' plan only the *destinati* were put to a vote by later voting centuries, in which case the practice might have been a form of nominating, it seems more likely the emperor was in fact mimicking the *praerogativa* of old and that this was a form of influence, not nominating. For *tabula hebana*, see Taylor, *Assemblies*, 89–99; A.H.M. Jones, "The Elections Under Augustus," in Jones, *Studies in Roman Government and Law* (New York, 1968), 27–50. It seems the arrangement under the Lex Valeria Cornelia, whereby centuries were expected to rubber-stamp the emperor's choices for office, did not last long and soon the Senate took over the function of nominating candidates. However, much remains unclear. A.J. Holladay, "The Election of Magistrates in the Early Principate," *Latomus* T. 37, Fasc.4 (Oct–Dec, 1978), 874–893. It is possible that the older republican use of the *praerogativa* was itself an informal nominating system, but that is speculation for which there is no record. Tribal voting, absent nominating, presents a special mystery. Thirty-five tribes voted to fill ten tribune offices. This must have been a complex, almost unmanageable undertaking. It could have resulted in more than ten winners (i.e., receiving more than a majority of tribes), in which case the selection was decided by chance – by timing

- of announcements. But it could even more easily have resulted in not enough people receiving a majority. Thirty-five tribes casting votes for favorite sons or others should have resulted in the aggregate in a large number of vote winners and a scattered result in which few names passed the majority threshold. This same problem led the American founders, estimating the risks of no one's achieving a majority, to create the second stage of presidential election (see [Chapter 6](#)). It seems likely that tribes used some method of nominating before the tribal vote to address this problem. But that is conjecture; no evidence of such exists.
- 70 There were several such eligibility criteria. First, there was the *cursus honorum*, the sequence by which one needed to be elected to the lower rungs of the major magistracies (aedile, quaestor, praetor) before one could stand for consul. Other eligibility rules are mentioned below. See Taylor, *Assemblies*, 83. For how little we know about competition among candidates for office, see also Millar, "Political Character," *Roman Republic in Augustan Revolution*, 128–129.
 - 71 Livy 4.54, 56; 5.11; 6.35, 37, 40; Taylor, *Districts*, 298; Millar, "Political Power," *Roman Republic in Augustan Revolution*, 96; "Political Character," *Roman Republic in Augustan Revolution*, 130; A.E. Astin, *Scipio Aemilianus* (Oxford, 1967), 111, 237. Oakley makes clear that Livy cannot be depended on for many details of the so-called "conflict of the orders," including dates, as he based his history on second-century writers, not on original evidence, for matters two and three hundred years before he was writing. S.P. Oakley, "The Early Republic," Harriet I. Flower ed., *The Cambridge Companion to the Roman Republic*, 2nd ed. (Cambridge, 2014), 3, 5–6.
 - 72 Livy 27.21.
 - 73 Millar, "Popular Politics at Rome in the Late Republic," *Roman Republic and Augustan Revolution*, 178.
 - 74 Appian BC 1.0.
 - 75 Taylor, *Assemblies*, 7.
 - 76 Millar, "Politics, Persuasion, and the People before the Social War (150–190 B.C.)," *Roman Republic and Augustan Revolution*, 146–147 (for which Millar relies on Cicero, *De oratore* 2: 198–199).
 - 77 Polybius 6.10. Here Polybius was speaking of Rome. In the same passage, a few lines before, speaking of Lycurgus he stated one of his major themes: that in the best constitution "no part should become unduly predominant, and be perverted into its kindred vice; and that, each power being checked by the others, no one part should turn the scale or decisively out-balance the others; but that, by being accurately adjusted and in exact equilibrium, the whole might remain long steady like a ship sailing close to the wind."
 - 78 Millar, *Roman Republic in Political Thought*, 17.
 - 79 Oakley, "Early Republic," 9.
 - 80 The author has not seen, or has missed, mention in the literature of this particular co-dependency. It is possible or even likely that the dependence of the rich on the poor in practice in the matter of lower offices was reduced to the extent that rich, landowning Romans dominated the rural tribes, at least in the mid-Republic. Only they would have had time to journey to Rome for assemblies from distant locales (or from their Roman homes). Staveley, *Greek and Roman Voting*, 199. For Polybius, mutual dependency was a theme, not only of plebs and patricians generally but also Senate and consuls, generals and Senate, generals and the people, Senate and the people in judicial matters, tribunes and their interposition in Senate debates, people dependent on consuls as military commanders, and more. In time of crisis, the three major power centers tended to cooperate because of these dependencies, and if one aimed for predominance the others (said Polybius) would bring it back into line. Millar, *Roman Republic in Political Thought*, 31–34.

- 81 Taylor, *Assemblies*, 17–18.
- 82 Taylor, *Assemblies*, 112. In the most violent periods of strife, plebian organizations, in the words of Oakley, “functioned almost as a state within a state.” Oakley, “Early Republic,” 9.
- 83 It remains uncertain if centurions or centuries cast two votes (Hall, “Voting Procedure,” 297–298); one suspects the latter. But in aleatory effect, it does not matter.
- 84 Not that candidates did not seek to control the second vote by making bargains between tribal centuries. Hall, “Voting Procedure,” 302–303. But they were swimming upstream in the attempt. Candidates sometimes instructed their tribe to cast their second vote for someone who was *not* their ally. Hall, 299n. Hall does not say why one would do this, but it was probably for the reason that Alexander Hamilton lobbied Federalist electors to do precisely the same thing in 1788, that is, to cast their second vote for someone other than John Adams (to avoid George’s Washington’s being defeated by his running mate) – such is the uncontrollability of second votes.
- 85 Caesar was said to be held “in check” by the selection of Bibulus as his colleague in consulship. Appian *BC* 2.2.9–10. Hall, “Voting Procedure,” 300; Astin, *Scipio*, 112–114.
- 86 Sallust, *Catiline*, 10; *Jugurthine War*, 41. It has been common since Sallust to attribute unrelated political convulsions to military triumphs and defeats. Among the most famous instances, John Maynard Keynes predicted grave consequences flowing from the “Carthaginian peace” imposed at Versailles in what was called the most influential book of the twentieth century (*The Economic Consequences of the Peace* (London, 1919)). Keynes’s analogy was open to question at both ends. It was precisely because Rome passed up not once but twice the imposition of a brutal peace on Carthage that the latter came back and fought Rome again and again. On the other end of the analogy, the reparations that Keynes censured, although an important factor in German politics in the 1920s, were mostly unpaid and surpassed by allies’ capital flows in the other direction. Stephen A. Schuker, *American “Reparations” to Germany, 1919–33, Princeton Studies in International Finance* (July 1988), 14–147. If there was a lesson learned from the Rome-Carthage experience, it was that Rome paid a high price by not ending the first two Punic Wars with a peace Carthaginian enough to prevent the third. Several historians have suggested that a similar failure of the Allies “to bring the defeat home to the German people” laid the groundwork for the reparations fiasco. Sally Marks, “Smoke and Mirrors: In Smoke-Filled Rooms and the Galleries des Glaces,” in Manfred F. Boemeke, Gerald D. Feldman, and Elisabeth Glaser, eds., *The Treaty of Versailles: A Reassessment after 75 Years* (Cambridge, England, 1998), 349.
- 87 Scholars have pointed to the hollowing out of the Roman farmer class, recruitment of landless soldiers, rise of a brand of popular politics from Tiberius Gracchus onward, Senate’s failure to redress social grievances, Marius’s professionalization of the military, blurring of boundaries between military and civilian life that commenced with Sulla’s march on Rome, loss of legitimacy by the government amid deepening chaos and increasing civil bloodshed, and “the ruin of the middle class by the slave proletariat” (as Mommsen put it). See David Potter, “The Roman Army and Navy,” ed. Flower, *Cambridge Companion to Roman Republic*, 54–77; Jürgen von Ungern-Sternberg, “The Crisis of the Republic,” ed. Flower, *Cambridge Companion to Roman Republic*, 78–98; P.A. Brunt, *The Fall of the Roman Republic and Related Essays* (Oxford and New York, 1988); Theodor Mommsen, *History of Rome*, 4 vols., trans. William P. Dickson (New York, 1871), 3: 473.
- 88 Taylor, *Districts*, 9, 67, 305; *Assemblies*, 5; Staveley, *Greek and Roman Voting*, 136; Fergus Millar, “Political Character,” *Roman Republic and Augustan Revolution*, 110–111. Millar observed that embedding centuries in tribes c. 241, which

- he called an “obscure reform,” did not destabilize Rome and that in the period 200 to 150 B.C., following this key reform, the constitution functioned smoothly. The argument made here is not that Rome became destabilized overnight but that the gradual blurring of once clearly demarcated political boundaries had the long-term effects described below, and that the 241 change probably played a role.
- 89 Alexander Yakobson, “*Petitio et Largitio*: Popular Participation in the Centuriate Assembly of the Late Republic,” *Journal of Roman Studies*, vol. 82 (1992), 32–33; Yakobson, *Elections and Electioneering in Rome: A Study in the Political System of the Late Republic* (Stuttgart, 1999), 22–30.
 - 90 Yakobson, “*Petitio et Largitio*,” 39–41; Yakobson, *Elections and Electioneering*, 34.
 - 91 Q. Tullius Cicero, *Essay on Running for Consul*, in *The Letters of Cicero*, 4 vols., trans. Evelyn Shuckburgh (London, 1908–1909), 1: Appendix A (*Perseus Digital Library*, online access 7/24/2024). The single market of voters was also apparent from new canvassing techniques described below.
 - 92 Oakley, “Early Republic,” 11–13; Taylor, *Districts*, 371–72; Livy 45 15.
 - 93 Livy 9 46; Taylor, *Districts*, 134–135.
 - 94 E. T. Salmon, “The Cause of the Social War,” *Phoenix*, vol. 16, no. 2 (Summer, 1962), 107–119. Citizenship demand was the key trigger, as Italian peoples saw their economic interests threatened by not having political rights. This summary, by focusing on the matter of apportionment, does not mean to imply the insignificance of other procedural fights of the Gracchi (130s–120s B.C.) over secret ballot, simultaneous voting, and abolition of class voting, all of which the Gracchi advocated to diminish the influence of patricians and the wealthy. See Hall, “Voting Procedure,” 288; Millar, “Political Character,” *Roman Republic and Augustan Revolution*, 139; Taylor, *Districts*, 141; Ungern-Sternberg, “Crisis of the Republic,” ed. Flower, *Cambridge Companion to Roman Republic*, 79–83. As to another civil war precipitated by apportionment issues, see [Chapter 7](#) below.
 - 95 Taylor, *Districts*, 101–102, 309. Many new citizens although admitted to tribes were not immediately enrolled in the centuries. Taylor, *Districts*, 370; Taylor, *Assemblies*, 68; Ernst Badian, “Review” (of Taylor’s *Districts*), *Journal of Roman Studies*, vol. 52 (1962), 200–210.
 - 96 As tribal assemblies gained power from the fifth century onward, there was a push to create new tribes. To some degree the push came from patricians who as landowners of sparsely inhabited places could exercise influence over rural tribes, in part because only a small number of voters bothered to or could afford to go to Rome to vote. This might have been the dynamic for adding tribes as tribes acquired power. Taylor, *Districts*, 67, 299; Staveley, *Greek and Roman Voting*, 200. Then in 241 B.C., the number of tribes was fixed at 35 (31 rural and 4 urban). Thereafter, as Rome acquired new lands by conquest, rather than create new tribes, Romans added bits to older tribes, so that presently tribes were no longer composed of contiguous territory.
 - 97 Taylor, *Assemblies*, 66.
 - 98 Taylor, *Districts*, 106, 119, 120, 125. Seeking votes of freedmen by sponsoring their distribution to all tribes was a political tactic of leaders in this same period, as it had been previously. Taylor, *Districts*, 143–146. The sudden expansion of citizenry of the first century had been preceded by earlier expansions, just not on the same scale. Absorption of new citizens occurred in the fourth century after defeat of Latin communities, of which some received citizenship and some Latin rights, a kind of half citizenship without full voting rights. The last we hear of the category of citizens without the vote (common in the fourth and third centuries) was in 188 B.C. (Millar, *Roman Republic in Political Thought*, 25.) It appears that following conquests there was at first a careful husbanding of voting rights, then a loosening of the rules sometime in the second century, if not before, and then a vast opening of the sluices after the Social War in the first century.

- 99 Aristotle recounted the mishaps befalling many Greek poleis suddenly extending citizenship. *Politics*, 1308a27-b3. Mommsen mentioned “the old organization collapsed” as the heretofore “urban community” was broken apart “by its unnatural enlargement.” When the Italian confederacy was merged into the Roman state, the “whole organic classification of the Roman commonwealth had gone to wreck, and nothing was left but a crude mass of more or less disparate elements.” *History of Rome*, 3: 472.
- 100 Tammo Wallinga, “*Ambitus* in the Roman Republic,” *Revue internationale des droits de l’antiquité*, 3e Série, Tome XLI (1994), 437–438. Candidate competition increased because in 70–69 B.C. 64 Senators were stricken from the Senate, and their only way back was via election to high office.
- 101 Yakobson, “*Petitio et Largitio*,” 39–42, 48, 50. *Divisores* may have been tribal officials performing an important *centuriate* political function. Yakobson conjectures that earlier in the republic, before the secret ballot, the *centuriate* assembly may have been “a very different institution” to what it became when the “individual *nobilis* could not reach the highest honors without competing for the votes of the common people.”
- 102 T.P. Wiseman, *New Men in the Roman Senate, 139 B.C. – A.D. 14* (Oxford, 1971), 133. Wiseman points out the brotherhoods were a cousin of the time-honored Roman concept of *amicitia* but became targeted and made illegal by *ambitus* laws when they were organized throughout the tribes to buy support for a candidate. Although the tribal-centuries connection dated from mid-third century, the campaign machinery described in this paragraph dated from the late republic.
- 103 Wallinga made a strong case for the connection between voter expansion in 70–69 B.C. and *ambitus* laws. “*Ambitus*,” 411–442. Before him, Wiseman made the point. *New Men*, 130.
- 104 Wallinga, “*Ambitus*,” 411–442; Patterson, *Political Life*, 62; Staveley, *Greek and Roman Voting*, 193, 205; Millar, “Political Character,” *Roman Republic and Augustan Age*, 127–128; Wiseman, *New Men*, 130, 133, 133 n.7, 134. Cato the Younger proposed a law (which failed) forbidding anyone canvassing except the candidate himself.
- 105 The rules about timing and in-person declaration made it difficult for Caesar to comply with the electoral regulations, not once but twice, and his non-compliance was a not trivial factor in the growing contest between him and the Senate. Staveley, *Greek and Roman Voting*, 146–147; D.C. Earl, “Appian B.C. 1, 14 and ‘Professio’: Θέρον δὴν ἤδη καὶ προγραφα δημῆρχων ἐν τῷ μέλλον,” *Historia: Zeitschrift für Alte Geschichte* Bd. 14, H.3 (July 1965), 325–332.
- 106 Oakley, “Early Republic,” 8.
- 107 The crisis was precipitated by the Senate, he said, passing “decrees of the gravest and most intemperate character... about Caesar’s tenure...and about persons of the highest importance, tribunes of the people.” *De Bello Civili*, 1.5 He expressed astonishment that Pompey would dare to remove the tribunes’ sacred veto, and said among his reasons for taking action was to restore “to their proper dignity the tribunes” and to free the Roman people from oppression “by an oligarchic clique [*factione paucorum*].” This last phrase was a political slogan of the time, which Sallust associated with the Gracchi who “began to assert the freedom of the plebs and reveal the crimes of the oligarchs.” Julius Caesar, *The Civil War*, trans. by John M. Carter (Oxford and New York, 2008), editor’s explanatory notes, 277.
- 108 Taylor, *Assemblies*, 104.
- 109 Taylor, *Assemblies*, 61, 105–106; Millar, “Politics, Persuasion,” *Roman Republic and Augustan Age*, 147–150. Mommsen dwelt on the noble Pompey’s alliance with the democratic opposition. *History of Rome*, 4: 120, 232–233.
- 110 Yakobson, “*Petitio et Largitio*,” 32–37. “The centuriate system encouraged candidates to look for support in all strata of society, from top to bottom,” writes

- Yakobson. Noble candidates became skilled at blending their role as *popularis* and champion of the optimates. “The oligarchic and popular elements in the republican political system were interconnected and interdependent.” *Elections and Electioneering*, 60, 182, 233.
- 111 Appian *BC* 1.7.55.
 - 112 *History of Rome*, 3: 472–473.
 - 113 Mommsen not only said that this was the feeling of the time but also made it his opinion, i.e., that given the anarchy and collapse of the state, it was better that a despot should arrive, because what needed doing could not be done “by a collegiate board.” *History of Rome*, 3: 473.
 - 114 Cicero, *Pro Murena* 68–77, *Cicero Defence Speeches*, trans. D H Berry (Oxford, 2001).
 - 115 Q. Tullius Cicero, *Essay on Running for Consul*, sec. 6, in *The Letters of Cicero*, 4 vols., trans. Evelyn Shuckburgh (London, 1908) via *Perseus*, online access 7/24/24. See also Wiseman, *New Men*, 132.
 - 116 Cicero, *Pro Flacco* 7.15–16 (*The Orations of Marcus Tullius Cicero*, trans. C.D. Yonge, (London, 1856)). Here he was speaking of a legislative, not electoral, assembly. Cicero’s warnings can justly be taken for a complaint about mob rule; but Cicero was making specific procedural observations about voting. In the same passage in *Pro Flacco* he mentioned the Greek flaws of sitting in assemblies and lack of delay between speeches and voting on legislation, which delay in ancestral Roman practice gave scope for deliberation. (Taylor draws attention to this speech in *Assemblies*, 29–30.) Aristotle observed that ambitious men will seek office as “popular leaders” and one of the procedures to thwart them was, he said, group voting. Have the tribes elect “and not the people collectively.” *Politics*, 1305a30–34. The joint recommendation of group voting by Aristotle and Cicero likely influenced later proceduralists.
 - 117 At least one important election in Rome was patently anti-majoritarian. From the third century on, the Pontifex Maximus (chief high priest) was chosen from candidates (selected by the colleges of pontifices) by only 17 of 35 tribes (which 17 tribes themselves were selected by lot), the theory apparently being that this most important religious office ought not be subject to a majority vote (but could be to a *minor pars populi*). Taylor, *Assemblies*, 82.
 - 118 Aristotle also disparaged “head counts” and others would do the same in future. Aristotle, *Politics*, 1318a19ff.
 - 119 Cicero, *Pro Murena* 35–36.
 - 120 Staveley, *Greek and Roman Voting*, 193, 146–147.
 - 121 Aristotle, *Politics*, 1303a13–15. He did not define election intrigue, but since he said it could spark revolution even without factious strife he was probably referring to (elsewhere described in *Politics*) powerful men cooperating with each other to win an election.
 - 122 That pursuit of the common good was no less the Roman ideal for officeholders in the late Republic than it had been in the early Republic, see statements of T. Gracchus, Cicero, and others in Yakobson, *Elections and Electioneering*, 178.
 - 123 Whether the Roman republic was in its last period more subject to popular or elite control has been heavily debated in recent decades. One recent debate summary is Guido Clemente, “Democracy Without the People: The Impossible Dream of the Roman Oligarchs (and of Some Modern Scholars),” *Quaderni distoria* 87 (2018), 87–119.
 - 124 Runciman, “Doomed to Extinction,” 366.

2 Medieval Stirrings

In one of his most quoted lines, with charming irony Horace wrote, “Captive Greece took captive her rude conqueror and brought the arts to rustic Latium.”¹ Unfortunately, the same could not be said of Alaric and the Visigoths, whose invasion triggered (in the mind of one classical historian) a leveling down of Romans more than a leveling up of barbarians as the result of the mingling of two governance systems. But all was not Alaric’s fault, for the collapse of republicanism preceded his arrival by more than four centuries. The onset of the Roman dictatorship in the first-century B.C. extinguished the republic not only in Rome, not only in Italy, but also in all those distant lands, including mainland Greece, which Rome had conquered and used to have republics of their own. In its colonies, Rome as conqueror preferred to deal with provincial oligarchs rather than self-governing citizen assemblies.² Primary assemblies likely did not reappear in Europe as sovereign bodies ruling over substantial states until the early Middle Ages. That was an unrepblican interval of nine or ten centuries.

When republics reappeared their home was the urban commune, and in the next chapter, we discuss that innovative structure. Before turning to that, it is worth reviewing two medieval incubators of procedural experimentation that operated (or originated) outside the space of public governance. They were the church and the guild, in both of which institutions educated people thought about methods of self-government. Some of their contributions were negative (from a republican point of view), some not; the more positive ones contributed to the communes of medieval Italy.

Church innovations in voting

For an institution which held that government was punishment for the sins of humans, or at best was required to control sinful mortals, it did not come naturally to the Church of Rome or its many gifted thinkers to dwell on the political rights of the sinners.³ One is hard-pressed to find churchmen’s writings that advanced or even described republican principles of government until one comes to the thirteenth century and the Dominican friar Thomas Aquinas and his semi-integration of Aristotle into church teachings. But even

Aquinas' value lay more in undoing the neglect of a thousand years than laying new groundwork. With one major exception, that of Marsilius of Padua (and his followers), little was advanced in the area of republican theory (and his was almost as much a negative as positive effect; see below). The major strides in the medieval church had to do with voting procedures, concerning which the church employed some of the techniques of antiquity and also struck out in new directions that later republicans were wont to follow.

When Athenians had got around infrequently to voting for officeholders, as we have seen, they layered the process with nominations from demes or tribes, topped with national selection, often by lottery at the end. When Romans voted, they did so by groups. Both Athenians and Romans fenced voting in with sturdy guard rails (in Rome's case, not sturdy enough). Neither were believers in selecting major officeholders by a single-step vote with the outcome determined by simple majority of citizens. Nor, as it turned out, were the fathers of the Roman Church. Whether electing a Pope or the abbot in a monastery, church elders made voting complicated. It was sometimes said that ultimately the choice was God's, as He or She was acting through the assembled prelates, and since God could not Himself or Herself have been divided in Their opinion, it was sometimes decided the vote had to be unanimous. But people being what we are, feelings were not always unanimous about who should run the monastery, and methods were devised to take a deeper sounding of the chosen electorate and not leave the outcome to simple arithmetic. In this curious way, the ancient tendency toward complexity in voting procedures got a nice divinely inspired renewal. Where antiquity wanted to make the path difficult for men, the church wanted to make it easier for God, and both despised majorities.

We know little of how Popes were chosen for the first 1,000 years of the papacy, but in 1179 the rule was established that a two-thirds vote was required to elect the Pope. Elections were to be conducted in isolation, behind locked doors (how we get "conclave," or "with key"), with diminishing food rations the more days rolled by without a result. In the sixteenth century, voting was made anonymous and secret; in the seventeenth, voting was restricted to one vote per voter. Prior to that, electors could cast an unlimited number of votes.⁴ These voting procedures reappear many times in republican voting in later centuries: the themes of an isolated electorate, insulated from outside influence and from each other's vote; of two-thirds majority to require something close to a consensus, rather than a simple majority win; and multiple votes cast by each voter. This last feature in recent years has earned the sobriquet "approval voting" – one votes for as many candidates as one thinks may do the job. Approval voting has been found, in the medieval papacy and in years since, to be an efficient way to discover when there exist multiple candidates which one is the most preferred. If the church struggled to reach a unanimous choice to reflect God's will, it wanted to get as close as it could. As Pope Pius II said about his own election in 1458: "What is done by

two-thirds of the sacred college, that is surely of the Holy Ghost, which may not be resisted.”⁵

Some church orders did not use super majorities in voting.⁶ But in higher canonical elections, simple majority was not enough, and the *maior pars* (majority) had to give way to the *maior et sanior pars*, wherein the latter referred to the sounder, wiser, and weightier part of the electorate. The legal basis of this concept seems to have originated in Roman law. There was a Roman law concept, adopted by medieval canonists, which said that what touches all should be approved by all (*quod omnes tangit ab omnibus approbatur*, sometimes referred to as Q.O.T). This principle required an electoral method producing a result which one could say was unanimous, even if such universality was only implied, and that principle suited the aims of church men intent on clothing decisions with divine intent.⁷ The challenge was, how to find the “weightier” part in a church election? Generally, two ways were used: one was devising a kind of informal nominating system that produced the most learned and esteemed candidates for office. In some religious orders, electors were chosen by the friars whose job it was to scrutinize potential candidates to find the one with the most wisdom, experience, piety, scholarship, zeal, and temperament. In such cases, it appears that the scrutiny (*scrutinium*) preceded voting and served to produce candidates for the mendicants to choose from.⁸

The other method was to invent vote-counting methods to discover the most preferred candidate in a multicandidate field. Here, the late medieval church moved electoral practices to a higher level of sophistication than was seen in antiquity. Some religious orders used approval voting in which voters cast ballots for all the candidates they liked (but not ones they did not like) and he or she with the most votes prevailed. In the late thirteenth century, the Catalan Ramon Llull devised a system for electing a monastery’s new mother superior, whereby there were to be nine candidates and seven electors; each candidate was to be compared with each of the others, and whoever won the most pairings was to be elected.⁹ His was the most fool-proof (and arduous) system, prefiguring that proposed by the Marquis de Condorcet five centuries hence in the later eighteenth century. It was and remains one of the few possible ways to solve, or almost solve, the mathematical problem of finding the most preferred person in a field of many candidates. Condorcet’s mission was to avoid the problem of the “false winner,” he or she who received the highest plurality vote but, when compared with all the others, was not the most preferred. False winners were mathematically as common as real winners from plurality results. In other words, the chances that a plurality winner is actually the most preferred in a multicandidate field are about the same as could be produced by drawing lots. The false winner syndrome was made famous by Condorcet but deeply understood by his predecessors of many centuries before who tried hard to avoid misleading plurality results. (It was not understood equally well, as we shall see, by Condorcet’s American successors (see [Chapter 8](#))).

Besides approval voting and pairwise comparison voting, other innovations appeared to find the “wiser” choice. In the century after Lull, a bishop proposed a new method of electing the Holy Roman Emperor by having nominators rank each candidate in order of preference and assigning one higher number for each higher ranking.¹⁰ This system has become known in recent decades as preference or ranked choice voting and although not so fool-proof as pairwise voting was better, as anything was, than plurality wins.

On the use of ranked-choice voting, one churchman wrote that the ranking was valuable because it subdued the passion of the parties.¹¹ This statement opens an interesting window on thinking. The complicated medieval church voting innovations – two-step process of *scrutinium*, search for the *maior et sanior pars*, approval and pairwise voting, ranked-choice voting, and super majorities – were not just solving the problem of rendering God’s choice, not just finding the most preferred candidate in multicandidate fields, but were also aimed at reconciling diverging factions in the church or the monastery or the religious order. They were meant to perform the same stabilizing service that equipoised interest groups did for the Roman Republic (not in voting but in the balance of enmities) and that complex nominating (together with atomizing interest groups) did in Athens. Highly developed voting methods in the church were a solvent for internal conflict and were a distinct medieval contribution to republican practice. They resembled republican practices of antiquity in the sense that for both epochs, when an organization granted its consent, the preferred method was not aggregating highest totals but producing a more broadly acceptable result.¹²

Church and political theory

Church leaders, making major innovations in voting procedures, made a stab at political theory, with decidedly mixed results. The rediscovery of Aristotle and his integration by Aquinas into the mainstream of Christian thinking – bringing alive ideas about the naturalness of government and politics as existing for human benefit, civilized life’s not being possible outside the state, the state as composed of associations, the people as ultimately the source of authority, citizens as both rulers and ruled¹³ – these concepts had an influence on thinking about politics by the second half of the thirteenth century. They helped to disrupt the descending theory of authority in church and states in the Middle Ages, in which both kings and popes were pleased to source their authority to govern in God and make it unassailable. On the other hand, across Europe, self-governing associations of people – in guilds, corporations, and communes – had already appeared before Aquinas and before Aristotle was translated into Latin in the 1260s. To some extent (but an unknowable one), the challenge that Thomas Aquinas made to the descending principle of authority gave an intellectual framework into which people could fit their self-governing associations, which by then were already in some cases centuries old; and for that reason, the rediscovery of

antiquity was vibrant possibly as much because it was confirmatory as because it was pathbreaking.¹⁴

Aquinas was not crystal clear about what was the best source of the state's authority and to what extent kings, for instance, should answer to others. This area was a lacuna into which others soon stepped, the most influential being Marsilius of Padua. Marsilius was a scholar helping Ludwig of Bavaria, Holy Roman Emperor, in his tussle with the Pope over prerogatives and the empire's independence. In fighting in Ludwig's corner, Marsilius wrote the widely noted work *Defender of the Peace* in 1324, in which, building on Aquinas, he made the case for popular sovereignty. Law, said Marsilius, was not given by a ruler but was made by the whole community. And the scope of the people's legislation was unrestricted.¹⁵ No one in a Greek democracy or in the latter half of the Roman Republic would have doubted that citizens as a whole, acting through primary assemblies, were the community's ultimate authority. However, it was new to articulate the theory in a reasoned piece of scholarship, and to do so against well-established customs of top-down authority.¹⁶ Marsilius did not see the community as a collection of individuals but as a group of distinct collective bodies or colleges, each with its own interest; and he held that one unit of the body must not be permitted to dominate the whole body (the community or citizens' corporation). He quoted Aristotle on the danger of disrupting the symmetry of the city, if some part outgrows the other parts; and it was a governing priority to prevent this asymmetry and bring all "back to their appropriate equality or proportion."¹⁷ His was a probably influential repetition of the warning about changes to apportionments of power in a community. Apart from that warning, for Marsilius the details of how the community's power should be exercised were unimportant; what mattered was that its power existed and was unlimited. His aim was to dismantle clerical power. The community would concede, he said, its powers to whatever form of government their circumstances inclined them to use. What he did say, cryptically, was that law would be made either by the whole body of citizens in assembly or by its *valentior pars* and that this so-called *mightier part* would be found taking into account "both the quantity and the quality of persons in the community," with such sounding to be done following the customs of the community.¹⁸

Here Marsilius seems to have been following in the footsteps of the canonists who had provided for the *maior et sanior pars* of a church group determining outcomes rather than simple majorities doing so. And if that was the case, then he was doing no more than calling for proper soundings to achieve the best result for a community and not permit one part to overwhelm another. But we do not know; Marsilius's obsession was anticlericalism, not making a blueprint for republican government.¹⁹ In truth, Marsilius was not clear on this point. He hinted at representational bodies but said in any event primary assemblies had the ultimate say.²⁰

Nevertheless, whether or not Marsilius had representativeness in mind, his thoughts went some distance toward laying the groundwork for a theory

of representation. His reference to the *valentior pars* bore a similarity to his reference to the *principans pars* (the ruler-part) of a community, in that both concepts presumed that the community (whether church or commune) was an entity, a corporate body, and therefore was capable of acting as a single entity and that whoever did the acting was doing so in the name of and in the place of the whole corporate entity.²¹ If the church were a corporate body, its members sovereign and capable of giving their consent somehow (Marsilius did not care how), that was a long stride toward believing that the actor conveying the corporate consent could, in some sense, represent the constituents. This was the deduction made not by Marsilius but by his immediate intellectual successors and which informed the Conciliar movement in the church at the end of the fourteenth century. It was in this sense that Marsilius was said to have made the vital connection between popular sovereignty and representation.²²

In the late medieval church, the Conciliar movement shook the church to its foundations, and since the Roman church was the pre-eminent organization in Europe, this shock had an influence beyond church doors. Ultimately, the movement failed of its intent; when the schism in the church ended and popes regained control, the bid to place church sovereignty in the laymen collapsed. But the influence was felt.

Exactly what was the influence is open to question. Although some have said (as noted) that Marsilius made the connection between popular sovereignty and representation, that was not the same thing as a connection between people and their representatives. Marsilius himself said when one acts in the name of the community, it is the community which is acting, but the party acting could well be the *valentior pars* or even, in his own words, a king. For Marsilius *valentior pars* was the tool or means of securing consent from the whole body; it was not a means of seeking individuals' consent. An influential follower of Marsilius, Nicholas of Cusa, observed that the "wiser and more eminent are chosen rulers of others" because "being endowed with their natural clear reason, wisdom, and foresight, [they] may discover just laws and through them rule others and settle disputes, that peace may be preserved."²³ At the Basle council in 1431, the assembled delegates enunciated the bold idea of church sovereignty as an abstraction, but in practice that sovereignty was exercised by the church-in-council. After considerable debate, the church ended up with the idea of representation as "virtual" – a concept that would jar American colonists centuries later – in the sense that the whole church was "virtually" represented because the Council had men of virtue and learning.²⁴

Non-religious forms of representation had begun to appear even before Marsilius wrote his *Defender*, and these forms too had nothing to do with elections or popular consent. The electors of the Holy Roman Emperor were not elected by anyone but they represented someone.²⁵ In England, the origins of Parliament lay in a council to assist the King, in particular with tax levies.²⁶ Town burgesses in the time of Edward I were selected by the King or sheriffs to go to Parliament, not by townsmen.²⁷

One senses that this fertile period of the thirteenth and fourteenth centuries was an important intellectual turning point in the long history of republics, but exactly how is not straightforward. Popular sovereignty was not new; some Greeks and Romans accepted it implicitly. Marsilius himself took his lessons in self-government from already thriving Italian communes.²⁸ One cannot thank the church and Marsilius and the Conciliar movement for popular sovereignty. It was new, however, for popular sovereignty to be articulated in such a tub-thumping way – in the midst of a very public Europe-wide brawl between popes and emperors – the drama of which setting must have spread the arguments widely and quickly. And it was possibly new, or at any rate noticed, when Marsilius (and followers) married the sovereignty concept to the already well-established principle of the weightier, wiser part of a corporate body. One does not wish to forge connections where there is no evidence they existed. But it appears likely that what had begun as the theory of the *sanior pars*, formulated to avoid the tyranny of numbers (and close-call majorities) from taking command (of a church or other community), was now being transformed into an abstract expression of sovereignty by representatives endowed by whatever means with the right to act for the whole. The barely elected and hardly representative House of Commons lived on this theory for centuries. If this connection is right, this late medieval moment was the first of two wrong turns for the republican project into the *cul de sac* of representation; the second moment would come in early modern England, but one suspects that that latter moment owed something to what Marsilius and friends began when they made clear it was indifferent how the *valentior pars* was discovered or who could represent it. It was in this sense that as much as the church and religious orders made important electoral innovations – in voting procedures especially – which helped in new ways to attain old republican goals of binding together a community in its most stressful moments of choosing new leaders, the articulation of popular sovereignty as being exercisable by any kind of representation was a negative contribution. Paradoxically the negative contribution was bound up with the *maior et sanior pars* voting principle, which the church helpfully innovated and which, taken by itself, was beneficial in holding a community together and not allowing it to be disrupted by raw head counts. But joined with corporate sovereignty, Marsilius's idea of *valentior pars* could lead to a concept of representation far removed from the people allegedly being represented.

It is perhaps not surprising that the principal medieval church contribution lay in the voting procedures of religious orders because these small, voluntary associations – sometimes with as few as fifteen or twenty nuns or monks or friars – were people needing to master the art of living together in close quarters, and choosing new leaders when clashing opinions about personalities and policy made consensus elusive: these were republican problems to the core, whereas, by contrast, the great pronouncements about sovereignty and church councils were products of struggles among power groups for control (Marsilius himself being rewarded by the victorious emperor with

the archdiocese of Milan). It was on a smaller, voluntary scale that the biggest advances were made.

A vigorous spirit of enterprise and Italian republicanism

In answering the question why did city republics emerge in Italy more than anywhere else, the answer begins with the weather report. During and following the collapse of the Roman Empire, Europe entered a period of colder, wetter climate, pandemics, de-urbanization, rise in death rates, and a collapse of economic output. A Carolingian harvest yield was about one-half on average a Roman crop yield. In the ninth century, climate warmed, and in the immediately following centuries, population grew, large famines became scarce, and agricultural yields returned to their ancient rates. A labor shortage brought technical innovations. Importantly, a market for goods and labor grew as population expanded and agricultural productivity recovered. Beginning in the tenth century, towns' growth and trade speeded up market expansion.²⁹

Italy was well positioned for the occasion, for Italy was at the trading crossroads of Byzantium and places farther east and Europe to the west, and her entrepreneurs took advantage of the location. By pooling capital, sharing risk, and innovating techniques both of sailing and of organizing business, Italian businessmen became the accomplished forerunners and practitioners of the mercantilism that Adam Smith so scorned four centuries later. They were the precocious leaders of the medieval commercial revolution.³⁰

But it was more than just geography that advantaged Italy. The commercial revolution was an urban phenomenon; it was in towns that capital, labor, educated managers, and transport could be efficiently organized to business ends. By a wide margin, Italian towns recovered more quickly and more completely from the collapse of the Roman empire than did their Northern counterparts. To some degree, the ancient traditions of Roman urbanity continued through the occupations of Magyar and Slavic invaders.³¹ It also helped towns to grow that Italy's medieval overlords were distant and distracted German emperors. Italy had no single local monarch enforcing the laddered rules of feudalism, of lords and vassals, across the large peninsula. As population grew, the weaker grip of Italian vassalage facilitated migration to towns. By the mid-thirteenth century, serfdom had almost entirely disappeared in North and Central Italy.³² By contrast, France abolished serfdom on royal estates in the fourteenth century, and in England, it declined but villeins lingered on as an important part of the English economy until Queen Elizabeth ended serfdom in the sixteenth century.

By 1300, Italy was the leading world economy. England did not overtake Italy in real wages until the eighteenth century. In the early fourteenth century, Italy had four cities with 100,000 or more inhabitants (Venice, Milan, Florence, and Genoa). Ghent had 50,000, London 80,000. In the next

century, male literacy in Florence was 80%, a figure not reached in England until the nineteenth century. Florentine archives for the late medieval period contain 2,500 account books of businesses, more than for the rest of Italy and Europe combined. No doubt that was in part because at that time Florence was Europe's banking center, while London, in banking, was "a satellite...within orbit of Bruges." By the end of the fourteenth century, Florence had 120 banking companies. Italians pioneered bills of exchange in the early fourteenth century (if not before), a vital negotiable instrument that made possible the movement of money virtually across distances, facilitating international trade (and lending). By 1300 or earlier businessmen in Genoa and Florence used double-entry bookkeeping, a reliable way of making sense of cash flows over time, not common in the rest of Europe until the seventeenth century. In manufacturing, in the fourteenth century, one-third of Florence's population was supported by the woolen industry. Venice's *Arsenale* employed 16,000 people in ship construction. Using prefabricated parts, the Venetian naval factory could assemble a warship in less than a day.³³

To organize the explosion of business activity, Italians invented business forms. When a Genoese or Venetian merchant in the tenth century sent a ship laden with goods to trade in distant ports to the east, he undertook a project that would be months in the making. It required substantial capital and entailed substantial risk. He needed a contract with others to share the risk and pool the capital, which became known as a *commenda* contract.³⁴ What followed was the creation of a *societas*, and then a *compagno*, which were forms of partnerships and enabled merchants to do the same thing – pool capital and share risk – but with the added advantage that these were formed not just to finance a single maritime voyage but, spread over time, to finance multiple trading ventures. Such business entities typically involved the stay-at-home manager, working out of his palazzo and keeping the ever more detailed double-entry books (the better to keep track of equity accounts for his investors), then others (also staying back home), who were passive investors or lenders playing no role but hoping to profit, and finally those who physically went to the distant markets. The dualism of active managers and passive participants was a key characteristic of this entrepreneurial Italian mercantile activity. Profits normally the partners divided by stakes held in the business, stakes which might be disproportionate to capital outlay, as the active partners ventured not only their money but also their time, talents, and personal safety on the high seas to Byzantium or the rude highways to the international fairs at Champagne and Bruges.³⁵ Although they were just partnerships and lacked some of the features of later joint stock companies (permanence, liquidity, and limited liability), it is likely that Italian partnerships had an influence on that later English invention. In particular, by dividing the roles of active managers and passive participants, Italian partnerships created a corporate model emulated in the early modern period. The split of these two roles would have consequences for both corporate and political governance down the road.³⁶

But in the near-term, in the commercial revolution of the tenth and eleventh centuries, the precocious Italian business innovation had a more immediate political influence. First, there was a likely effect on procedures, and second, a pronounced effect on ideology.

In any age, participants in business ventures are exquisitely attentive to internal procedures, in particular, to how leaders are selected. Where people's money is at stake, they dote on who manages it. Moreover, being a member of a privileged, select group seems to have a psychological effect on the members, making them unusually assertive in the matter of governance. It has been pointed out that certain English corporations of restricted membership – boroughs, university faculties, livery companies, London social clubs – employed the secret ballot long before House of Commons elections did, and some of these same exclusive entities used staggered terms, rotation, and indirect election techniques.³⁷ Paradoxically, robust and egalitarian internal procedures are a by-product of exclusivity. This paradox appears a few centuries later in Anglo-American joint stock companies. It was present in medieval guilds.

The typical trading *societas* may have had too few members to codify elaborate voting procedures, but not so guilds. Guilds were self-governing organizations. They elected or appointed their own officers who were responsible to the guild, and they passed lengthy ordinances for internal governance.³⁸ In the by-laws of the Florentine *Calimala* or cloth merchants guild, the longest section dealt with elections. Scrutators (formally designated election managers) conducted elections. The first step was to nominate candidates by the drawing of names from an urn. This choice by lot produced the candidates, concerning whom guild members proceeded to vote, casting white or black beans, on each name presented in succession. The highest officers did not run the guild but rather administered it. Decisions, at least in that guild, were taken by members.³⁹

Having been present in the Roman Republic and known as *collegia*, guilds in their medieval Italian incarnation received their impetus from the rapid urbanization of the tenth and eleventh centuries. Typically in a town they were divided between powerful merchant guilds composed of *societas* determined on receiving and protecting a monopoly on trade (and negotiating hard with the workshops), and lesser craft guilds which more resembled a union or federation of workshops and looked out for the interests of weavers, vintners, butchers, and other artisans. Guilds might have begun as business organizations and acquired social and religious functions, or the reverse, starting as confraternities and adding business later.⁴⁰ Craftsmen and merchants typically were at odds, in a natural contest which likely motivated them both to form guilds and to seek influence in government. Inasmuch as guilds played their most influential part in building urban political architecture from mid-thirteenth to mid-fourteenth century – commonly seen as the golden age of city republics – and guilds had organized themselves before then, it would not be surprising if the procedural teacher were the guild and the pupil the

commune. When guilds made their first campaign in the 1290s to gain ascendancy over Florence's government, they modeled their plans on the guilds' own internal practices.⁴¹

Whichever came first, the governance practices of commune and guild were mutually reinforcing. More important, procedure-sharing was only one part of the synergy. The second business effect was an ideological one, and this one is yet more certain. At the most practical level, towns underwent a "mercantilization" from 1100 to 1300, as the problems of trading classes became the care of urban policy. In larger cities, guilds were numerous (38 in Padua, 47 in Perugia, 48 in Verona, 73 in Florence, 142 in Venice, and nearly 150 in Milan).⁴² In some towns, the *Popolo*, the non-noble heterogeneous class which took over the commune in the heyday of city-republics, was nothing less than the collective body of the town's guilds. In some, anyone aspiring to a part in communal life needed to be a guild member.⁴³ In other towns, guilds were greatly less dominant. There were 200 to 300 self-governing Italian city-states eventually⁴⁴ – and plenty of variety therefore in how they were formed.

But whether dominant or not, merchants shared with towns the common goal of establishing independence from the overlords controlling localities since the fall of the Carolingian empire. These overlords varied from place to place but typical in Central and Northern Italy were bishops, German imperial feudatories, and local nobles (sometimes combined). Beginning in roughly the eleventh century, the task of the emergent, urban "merchant culture" was to establish a new freedom for urban dwellers, "beginning with businessmen" as "self-sufficient individuals."⁴⁵

They not only had this common mission; they also shared a culture of self-governance, which was yet more consequential than the mission. Like communes, guilds were voluntary and exclusive organizations. Guilds matriculated their members in an act cementing exclusivity, just as townsmen swore oaths of loyalty. Guild members shared responsibilities (for instance, conforming to prescribed standards for prices and wages) and privileges (usually that of a monopoly). Guild members governed their own affairs with carefully laid down rules. The guild leaders they chose typically were called "consuls," the same name of the topmost office in the first "consular" phase of communal self-government. Guilds and towns were organizationally parallel republican organizations.

This phenomenon – of private organizations adopting a republican character – was not unique to guilds. Participants in any business entity join the business voluntarily. Their action is an assertion of self-sufficiency. Within the entity, equality is normal (or equality according to contribution). Membership is exclusive and restricted. An oath or subscription evidences one's agreement to the by-laws of the *societas* or company. Everyone equally shares a common goal. Finicky rules abound. The twelfth-century guild leader came naturally to his role as organizer of city-republics.

It seems counter-intuitive to imagine that republicanism should owe anything to businessmen. There was nothing in antiquity's republican experience that countenanced the mixture of public and private, government and business. The timocratic voting in Roman centuries was the closest the Romans came, and that was a very different concept to the guild-commune nexus; centuries merely counted wealthier citizens' votes as weightier than poorer citizens' votes. Romans did not condition citizenship upon membership in a business organization. No property requirement existed to vote in Roman tribes or in the Athenian *ekklesia*.⁴⁶ Moreover, what is more jarring, feudalism had survived by anchoring rulership in ownership (a long-lasting union which one writer has called the "obstinacy of property"), and yet now in medieval communes, businessmen protecting their money were founders or co-founders of dazzling republics.⁴⁷

The explanation is two-fold. First, the greed of lords was endless. As feudal structures collapsed, the persistence of declining lords in exacting their tallages was deeply resented by payers. As towns grew more wealthy, rural nobles sometimes joined the urban mercantile frenzy, other times engaged in combat with communes. When combat occurred with nobles or bishops or imperial representatives, the counter-reaction of craftsmen, traders, budding capitalists, and notaries was to join forces to free themselves of overlords.⁴⁸ Having common adversaries, merchants and towns were thrown into each other's arms. Second, there are different forms of property. Land ownership, the basis of feudal power, is unmovable and finite; it produces only one suzerain per domain. The property created in the commercial revolution was in large part intangible, liquid, expandable, and dispersible. It need not, with proper political procedures, give rise to a single ruler or even a small class of rulers. Rather its owners could be – and did become – the formulators of free governments. Instinctively one scruples at the linkage of commerce and republics, but at the moment of the Italian-led commercial revolution of the Middle Ages, the linkage was there; and we will see it appear again. With the help of Italians' vigorous spirit of enterprise, organized in exclusive companies and guilds, communes launched their bids for freedom with zeal, defiance, and care for good procedures.⁴⁹

The clergy's voting innovations were startlingly creative and made their mark on communes. But that republican sprouts emerged in Italy out of the gubernatorial desert of late antiquity seems to have had more to do with Italy's lucky geography and kingless good fortune, its rapidly growing towns, and its enterprising people.

Notes

- 1 Horace, *Epistles*, 2.1: 156–157, in *Q. Horatius Flaccus, Satires, Epistles, and Ars Poetica*, ed. H. Rushton Fairclough (London and Cambridge, Mass., 1929), *Perseus* online access 7/25/2024.
- 2 M. Rostovtzeff, *The Social and Economic History of the Roman Empire*, vol. 1 (2nd ed., Oxford, 1957), 531–541; Larsen, *Representative Government*, 120, 126, 154–155.

- 3 The observation is Lewis's: Ewart Lewis, *Medieval Political Ideas*, 2 vols. (London, 1954), 1: 145–146.
- 4 Miles Pattenden, "Cultures of Secrecy in Pre-modern Papal Elections," *Cultures of Voting*, 96, 98, 102–104; Joseph M. Colomer and Iain McLean, "Electing Popes: Approval Balloting and Qualified-Majority Rule," *Journal of Interdisciplinary History*, vol. 29, No. 1 (Summer, 1998), 2, 14–15. Although data are generally lacking, for at least some of the early papacy elections required unanimity (as proof of divine choice) and created as a consequence indecision and disputes. Colomer and McLean, "Electing Popes," 16.
- 5 Colomer and McLean, "Electing Popes," 11.
- 6 Some ecumenical councils of late antiquity and Middle Ages in the Byzantine Church adopted dogma by majority vote. At the heated Council of Constance, in early fifteenth century, without a pope to preside and order matters, delegates were thrown back on themselves to devise a means of collective decision-making. Majorities prevailed, organized nonetheless by national delegations (which was a form of group voting). Majority voting was common in some religious orders and university faculties. Vesseline Vachkova, "A Vote for the New World Order: The Dardanelles Meeting in 1235 (the Council at Lampsacus-Gallipoli)," *Cultures of Voting*, 61; Alexander Russell, "Voting at the Council of Constance (1414–18)," *Cultures of Voting*, 82–84; Hastings Rashdall, *The Universities of Europe in the Middle Ages*, 3 vols. (London, 1936 ed.), 1: 414–415.
- 7 J.H. Burns, ed., *The Cambridge History of Medieval Political Thought* (Cambridge, England, 2008 ed.), 558. Canonists wrote that the will of a body was not expressed necessarily by the major part but by the "major and saner parts." Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I*, 2 vols. (Cambridge, England, 1898, 2nd ed., reprinted 1978) 1: 509. That rendering is Pollock and Maitland's; more commonly one finds the translation to be "major and wiser." See also James Muldoon ed., *Bridging the Medieval-Modern Divide: Medieval Themes in the World of the Reformation* (London and New York, 2013), in particular, Bruce Braisington, "'A Divine Precept of Fraternal Union,': The Maxim *Quod omnes tangit* in Anglo-American Thought to the Ratification of the Constitution," 205–223.
- 8 Alexander Russell, "Voting at the Council of Constance (1414–18)," *Cultures of Voting*, 85 on use of scrutiny to find the weightier electorate in canonical elections. At Constance the "scrutinium" apparently meant no more than counting heads. One of the pioneer scholars in church voting procedures was Léon Moulin. See his article "*Sanior et maior Pars*: Note sur l'évolution des techniques électorales dans les Ordres religieux des VI^e au XIII^e siècle," *Revue historique de droit français et étranger, Quatrième série*, vol. 35 (1958), 504, 517. Scrutiny appears much in medieval and Renaissance voting, and the term is loaded with ambiguity. It does not appear in antiquity in connection with voting. Moulin (501n.) finds its definition in thirteenth-century canon law as meaning inquiry, investigation, examination. Elsewhere, in papal elections, the word was a synonym for voting, or voting by ballots. Pattenden, "Cultures of Secrecy," 101. Still elsewhere, in Italian communal republics, it referred to a kind of nominating procedure (see [Chapter 3](#)). It is possible that the thirteenth-century church's use of *scrutinium* to discover the *sanior* choice was a form of nominating. Moulin's view is that beginning in the thirteenth century over time majority rule supplanted scrutineers and the *maior et sanior pars* in religious orders, and that by at least the sixteenth century the raw force of the majority ("*la force de nombre*") ruled. This author is less sure of the progression outside the religious orders, as nominating, super majorities, lot, approval voting, and other techniques were elaborated endlessly in communes precisely to get away from what Moulin aptly called the the force of numbers. See Moulin, 507ff, 514, 516, 517n., 521; and also following endnote.

- 9 George G. Szpiro, *Numbers Rule: The Vexing Mathematics of Democracy, from Plato to the Present* (Princeton, 2010), 33–46. Examples abound of inventive church ways to arrive at virtual unanimity in elections. See for, example, William Ziezulewicz, “Abbatial Elections at Saint Florent-de-Saumur (ca. 950–1118),” *Church History*, vol. 57, No. 3 (Sept. 1988), 289–297, in particular 290 n.3; Kate Lowe, “Elections of Abbesses and Notions of Identity in Fifteenth – and – Sixteenth – Century Italy, with Special Reference to Venice,” *Renaissance Quarterly*, vol. 54, No. 2 (Summer 2001), 389–429, in particular 393 (concerning production of nominees followed by approval voting and two thirds threshold). So hardy was the *sanior* concept that it survived at least until the eighteenth century in Austria when votes in a nobles Diet were not counted but “weighed” and announced according to what the presiding officer took to be *sanior pars*. C.A. Macartney, *The Hapsburg Empire, 1790–1918* (New York, 1969), 57. (Macartney says “senior” but one suspects this is a mistake.)
- 10 Szpiro, *Numbers Rule*, 50–58.
- 11 Moulin, “*Sanior et maior pars*,” 517n.
- 12 It is debateable whether religious orders or communes were the originators of complex voting. Moulin credits the former (Moulin, “*Sanior et maior pars*,” 520). He does not mention the business organizations discussed below.
- 13 Walter Ullmann, *Principles of Government and Politics in the Middle Ages* (London, 1961 and 1966), 231–253.
- 14 Ullmann, *Principles of Government*, 255–257. The ascending/descending theory of authority is famously Ullmann’s contribution, the “confirmatory” rather than “pathbreaking” thought is not.
- 15 Marsilius of Padua, *The Defender of the Peace*, trans. Annabel Brett (Cambridge, England, 2005), 66; Ullmann, *Principles of Government*, 268–272.
- 16 Millar notes Roman imperial writings which held that the emperor derived his authority from the “*populus*” having transferred to and conferred on him all “of its own imperium and power” and observes that this concept was included in Justinian’s *Digest* of Roman law, which was rediscovered in Europe in the eleventh century. Millar, *Roman Republic in Political Thought*, 53–55.
- 17 Marsilius, *Defender*, 95–96, xliii, l. It appears the greatest influence on Marsilius was Aristotle. Millar, *Roman Republic in Political Thought*, 61–62.
- 18 Marsilius, *Defender*, 66–68.
- 19 Lewis, *Medieval Political*, 1: 257.
- 20 Marsilius, *Defender*, 72, 80. To this author, *valentior pars* echoed the church’s *sanior pars* rather than referred to a representative body, and Marsilius might have had in mind not only longstanding church teaching on this matter of consulting weightier opinion but also the experience of Italian communes (including his own Padua), which, according to Lewis, is thought to have influenced his arguments in *Defender*. Lewis, *Medieval Political*, 1: 159. Representation was not a part of communal republican structure; see [Chapter 3](#).
- 21 Marsilius, *Defender*, 90.
- 22 In saying so, JH Burns cites the ambiguous passages in Marsilius cited above (Marsilius, 66–67). Burns, *Cambridge History*, 558, 573–575. The Conciliar movement of the late fourteenth and early fifteenth centuries sought to replace the Pope with a great council of the church representing the faithful and organized by layers of representatives (from parishes then nations and thence to the whole church).
- 23 Quoted in Lewis, *Medieval Political*, 1: 192.
- 24 Burns, *Cambridge History*, 577, 580. Religious orders had their own experiments with representative structures before the Conciliar movement. On Franciscans, see Bert Roest, “Representative Bodies in Religious Orders: A Discarded Legacy?,” 46–48, in Harm Kaal and Daniëlle Sloodjes, eds., *New Perspectives on Power and*

- Political Representation from Ancient History to the Present Day: Repertoires of Representation*, *Radboud Studies in Humanities*, vol. 9 (Brill, 2019); on Dominicans, see Ernest Barker, *The Dominican Order and Convocation: A Study in the Growth of Representation in the Church during the Thirteenth Century* (Oxford, 1913), 14–16ff.
- 25 Lewis, *Medieval Political*, 1: 264–265, 312.
 - 26 Representation in England is discussed below in [Chapters 4](#) and [5](#). Ullmann notes how easily ideas of representation, which formed a part of the ascending theory of authority, found an outlet in late medieval England because of “the preparation of the soil by feudalism.” Ullmann, *Principles of Government*, 189–190, 192. This linkage to feudalism is consistent with the natural antipathy between representation and republican procedures.
 - 27 Charles Seymour and Donald Paige Frary, *How the World Votes: The Story of Democratic Development in Elections*, 2 vols. (Springfield, Mass., 1918), 1: 64–66.
 - 28 Lewis, *Medieval Political*, 1:159.
 - 29 Robert S. Lopez, *The Commercial Revolution of the Middle Ages, 950–1350* (Cambridge, England, 1976), 13, 17, 28, 29, 36, 38, 44, 50, 56.
 - 30 Sophus A. Reinert and Robert Fredona, “Merchants and the Origins of Capitalism,” Harvard Business School Working Paper, No. 18-021 (September 2017), 5, 6, 22, 26. The authors refer to the trade route from Northern Italy through to the Low Countries and Southern England as the “historical axis of capitalism.” See also Jones, *Italian City-State*, 76ff; David Waley and Trevor Dean, *The Italian City-Republics* (Harlow, UK, 2010), 3–7; and Lopez, *Commercial Revolution*, 57, 63–67.
 - 31 Jones, *Italian City-State*, 70–74; Tom Scott, *The City-State in Europe, 1000–1600: Hinterland, Territory, Region* (Oxford and New York, 2012), 10.
 - 32 Mario Ascheri and Fabrizio Ricciardelli, *The City-States in Late Medieval Italy* (Rome, 2024), 39; Lopez, *Commercial Revolution*, 157.
 - 33 The statements for this paragraph are based on: Reinert and Fredona, “Merchants and Origins of Capitalism,” 14–15, 23, 26; Lopez, *Commercial Revolution*, 93; Raymond de Roover, *The Rise and Decline of the Medici Bank, 1397–1494* (New York, 1966), 13, 125, 317; Edgcumbe Staley, *The Guilds of Florence* (London, 1906), 163, 181, 187; Jacob Soll, *Reckoning: Financial Accounting and the Rise and Fall of Nations* (Basic Books, 2014), Chapter 1; Jones, *Italian City-State*, 206; John Julius Norwich, *A History of Venice* (London, 2003), 84. The *Arsenale* was one of the two “greatest centres of manufacture in the known world” (the other being the arsenal at Galata in Constantinople). Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, 2 vols. (New York, 1972), 1: 450. For Italians’ innovation of bill of exchange, see Thomas W. Blomquist, “The Dawn of Banking in an Italian Commune: Thirteenth Century Lucca,” *The Dawn of Modern Banking* (New Haven and London, 1979), 53–75.
 - 34 Reinert and Fredona, “Merchants and Origins of Capitalism,” 11–12.
 - 35 For summaries of the tenth- to thirteenth-century business forms, see Roover, *Rise and Decline of Medici Bank*, xi, 79; Robert L. Reynolds, “Origins of Modern Business Enterprise: Medieval Italy,” *Journal of Economic History*, vol. 12, no. 4 (Autumn 1952), 352; Reinert and Fredona, “Merchants and Origins of Capitalism,” 13–14; Lopez, *Commercial Revolution*, 74, 76. Examples of partnerships precociously dividing capital into shares and allocating profits by shares were, among others, the Bardi and Peruzzi Florentine banking houses. See Roover, *Rise and Decline of Medici Bank*, 77. The origin of the *commenda* is obscure. It may owe something to the Muslim *qirad* and the Jewish *‘isqa* and most likely owes much to the Roman *societas* (or partnership) of labor and capital, in the last of which each contributor shared profit and loss. However, the *commenda* advanced things in the early medieval era in that it was a contract, not a consensual arrangement (as was

- the *societas*), and the *commendator* (capital provider) had no role in the business (as he had in the Roman *societas*); management was left to the *tractator*. John H. Pryor, "The Origins of the Commenda Contract," *Speculum*, vol. 52, no. 1 (Jan. 1977), 5–6, 17–21, 37. It would seem that it was the latter innovation of a distinction between passive and active participants that made the *commenda* contract revolutionary and a valuable source for later joint stock company innovation.
- 36 For joint stock companies and political governance, see [Chapter 5](#). As to how Italian business forms might have been models for the sixteenth-century English joint stock company, Italian merchants and bankers dominated the city of London from the early twelfth century until the fifteenth. Henry II, more famous for ordering Becket's assassination (and being espoused to the indomitable Eleanor of Aquitaine), facilitated Florentine traders' purchasing British wool. From Henry III through Edward III, the kings of England relied on the bankers and merchants of Italy who were "indispensable" to the operation of the British government (paying for wars, victualing armies, operating the mint, collecting taxes). Italian lawyers were ahead of English lawyers in defining corporateness by at least one if not two centuries. Italian entrepreneurs were ahead of all Europe in devising commercial contracts that made long-distance trade possible. Italian businessmen set up novel payments and exchange systems in London, bringing their innovations in credit instruments and accounting to England. Certainly they were noticed. Periodically medieval London erupted in anti-Italian riots. Staley, *Guilds of Florence*, 156, 171, 199–200; Maurice Powicke, *The Thirteenth Century*, 1216–1307 (Oxford, 2nd ed., 1962), 637–639; Michael Prestwich, "Italian Merchants in Late Thirteenth and Early Fourteenth Century England," in *Dawn of Modern Banking*, 77–104; Reynolds, "Origins of Modern Business," 361, 364; Austin Lane Poole, *From Domesday Book to Magna Carta*, 1087–1216, (Oxford, 2nd ed., 1955), 95; Pollock and Maitland, *History of English Law*, 1: 686–687; Roover, *Rise and Decline of Medici Bank*, 326. A different opinion was expressed by M.M. Postan who characterized the Italian contribution to the English commercial revolution in this era as "office techniques." M.M. Postan, "Spread of Techniques: Italy and the Economic Development of England in the Middle Ages," *Journal of Economic History*, vol. 11, No. 4 (Autumn 1951), 339–346.
 - 37 H. F. Russell Smith, *Harrington and His Oceana: A Study of a 17th Century Utopia and Its Influence in America* (Cambridge, England, 1914), 39, 40, 42, 44.
 - 38 Ullmann, *Principles of Government*, 221.
 - 39 These by-laws were those of years 1301–09. Staley, *Guilds of Florence*, 117–119.
 - 40 There were social and religious guilds pre-Conquest in England. Poole, *From Domesday Book to Magna Carta*, 74. It is common that the duty of charity was of a package – a package of prestige – with the right to rule, and who threatened one threatened the other. On the continent, sixteenth-century Nuremberg patricians controlling government suppressed any attempt by the local artisans to form guild organizations that could challenge older families, including the latter's charitable activities. Robert von Friedeburg, "Civic Humanism and Republican Citizenship in Early Modern Germany," *Republicanism*, 1: 132–133.
 - 41 John M. Najemy, *Corporatism and Consensus in Florentine Electoral Politics, 1280–1400* (Chapel Hill, 1982), 9. The matter of the start-date of guilds in their medieval form is cloudy. Italian merchants launched the commercial revolution in the tenth and eleventh centuries; the *Calimala* in Florence was in existence by late twelfth century if not before; the great expansion of Italian guilds occurred in late twelfth and thirteenth centuries; and communal dominance by the guild-related *Popolo* was from mid-thirteenth to mid-fourteenth century. On the basis of this sequence, one arrives at the likelihood expressed at the end of the paragraph above. Lopez, *Commercial Revolution*, 56ff, 127–129; Staley, *Guilds of Florence*, 105ff; Ullmann, *Principles of Government*, 226; Jones, *Italian City-State*, 229;

- Waley and Dean, *Italian City-Republics*, 18, 31; Ascheri and Ricciardelli, *City-States*, 9, 15, 84, 87, 104. A contrary view was expressed by Previt -Orton, who stated that guilds followed the model of communes in their internal organization. Charles W. Previt -Orton, "The Italian Cities Till c. 1200," *Cambridge Medieval History* (New York, 1926), 5: 237.
- 42 Jones, *Italian City-State*, 229.
- 43 Staley, *Guilds of Florence*, 59, 68; Lopez, *Commercial Revolution*, 68, 70; Waley and Dean, *Italian City-Republics*, 156–157. (The phrase "aspiring to a part in communal life" is an interpretation of Staley's phrasing (65).) There is a lively debate about whether guild republicanism was the triumph of urban, capitalist merchants over feudal, rural nobles. For a counter view, see Jones, *Italian City-State*; and a summary of historiography in Waley and Dean, *Italian City-Republics*, 184–197. At a similar time in Britain, guild and borough memberships were in some communities (Oxford, Winchester, Gloucester) coterminous. Poole, *From Domesday Book to Magna Carta*, 71–72. In the fifteenth century, participation in the general assembly of London was restricted to guild liverymen, the more prosperous members of guilds. The general assembly's main function was to elect the lord mayor who was always either a Grocer or a Mercer. Francis Sheppard, *London: A History* (Oxford and New York, 1998), 94–98, 191. But not everywhere in Britain were burgesses guildsmen: Pollock and Maitland, *History of English Law*, 1: 665–667.
- 44 Waley and Dean, *Italian City-Republics*, xvii.
- 45 Jones, *Italian City-State*, 205–206, 220–221, 226.
- 46 Staveley, *Greek and Roman Voting*, 78; Millar, *Roman Republic in Political Thought*, 173.
- 47 The obstinacy phrase is Lewis's: Lewis, *Medieval Political*, 1: 107.
- 48 The enemy was not confined to the locality. Because self-starting corporations were subversive to the principle of power descending from the King, Frederick II proscribed all guilds in the thirteenth century, and for the same reason Charlemagne forbade unions. Any entity whose members ruled themselves was an irritating populist island in a theocratic and feudal sea. Ullmann, *Principles of Government*, 217.
- 49 "A vigorous spirit of enterprise" is a phrase borrowed from the late Tom Doerflinger's excellent book on Philadelphia (*A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia* (Chapel Hill, 1986)).

3 City Republics in Medieval Italy

The pragmatism of communes

In the classical texts that had profound influence on late medieval thinking about government, virtue figured prominently – in Aristotle’s *Politics*, and in the memorable prose of Cicero, who put stress on the all-important roles of virtue and patriotism in sustaining a republic. The idea that the public good must in all cases prevail over private interests was a core principle, probably *the* core principle, of medieval and Renaissance communes, and for that public good to prevail required a selfless devotion to country. There is a problem, however. The case for the centrality of virtue is so self-evident that it has eclipsed (not always but often) the other important factor that went into building and sustaining republics: proper procedures.

Republics, if successful, were about details. They were designed, and continuously redesigned, by detailed-oriented political practitioners of the medieval and early Renaissance eras. For contemporaries writing about the state, the precise mix of electoral procedures was never far from their minds. The Florentine historian Francesco Guicciardini, praising Venice as nearly all humanists were wont to do, said that Venice’s republic had lasted for centuries not because ambitious and factious men, and hatred and discord, were missing there, but because of its “orders of government.”¹ “A city based on good laws and good orders,” wrote Machiavelli, “has no necessity, as have others, for the virtue of a single man to maintain it.”² The charismatic preacher Savonarola went even further. He, who was interested in political procedure, said in one of his ecstatic sermons that the people are either good or they are not good – not much to be done if they are not good – but if they are good, they need to bend their effort to make a good government, because “everything bad comes from your bad form of government.”³ Whatever weight assigned to virtue by posterity, for the participants in the politics of medieval and Renaissance-era communes there was a difference between the prose and the poetry of government, between regulations and rhetoric, and they had no doubt reliance must be placed on the former.⁴

The humanist government-makers were, if nothing else, pragmatists. To a degree foreign to modern times, they revised their electoral systems again and again until they got them right. They experimented with pulling nominations

randomly from an urn or putting them through the sieve of deliberation, with putting lottery first and voting second, then the other way around. It was not unheard of for a commune to change electoral procedures with *every* single election.⁵ This changeability was linked to the idea that however much power was delegated to councils, the community held the cards, and no assumption of permanence could be made. In Italian communes, although the phrase “popular sovereignty” was unknown, the common assumption was that ultimate political authority resided in the citizenry as a whole and that government was there for the benefit not of the rulers or of this or that class but of the common good. This assumption did not prevent lodging sovereignty in the magistracy or some organ delegated to govern.⁶ Such delegation was not a derogation of the community’s authority. On the contrary, the delegation could be, and was, often changed. In the modern era, the delegation of authority from the people to their representatives has acquired permanence (barring the convening of constitutional conventions, which seldom occurs). This has resulted in the paradox that just when “popular sovereignty” came into its own as a phrase in the modern era, the concept itself was becoming slippery, even fictive. That slipperiness triggered a heated debate at the time of the ratification of the U.S. Constitution. Antifederalists ridiculed James Wilson’s paeans to the popular sovereignty underlying the proposed new government as the kind of sovereignty (they said) which empowered the people with all power except the power actually to do anything. The humanist government-makers of the medieval era had no such debate, for they alternately bestowed then withdrew powers of government with refreshing frequency. Their version could be called a continuously active sovereignty of the community, in contrast to the more recent near-permanent delegation of powers and near immutability of constitutions.⁷

Although ultimate authority resided in the community as a whole, people needed to exercise power somewhere for practical effect, in councils or popular assemblies or persons. That was the first challenge of an independent state. A closely related problem was devising methods for filling public offices. It had been an article of faith for Aristotle that to keep citizens happy they had to be involved, and to be involved they had to share in the honors of officeholding; not to permit them to do so was to create enemies within a state. The relationship of office distribution to justice was similarly understood during the era of Italian communal republics.⁸

The difficulty was that Italian city-republics had no shortage of ambitious men who wished to monopolize office. Nobles in particular had the resources to energize supporters and stir up their quarter of the city behind the quest for office. The mixture of personal aspirations with latent differences in the city (between quarters, social ranks, and economic activities) was potent. In the constant chore of office-filling, every commune faced a powerful centrifugal force that had to be somehow contained, because, as Machiavelli put it, men’s appetites are insatiable. No appetite was larger than the desire for personal predominance.⁹

Communes dealt with these supreme challenges in ways that, although differing in important details from Rome and Athens, resembled ancient methods of republican governance. Sometimes communes mixed the best of the Roman and Athenian models. With regard to interests,¹⁰ communes occasionally barred certain groups from political participation, but generally they gave to interests each its own role in the electoral system in such a way that no one group could predominate and no one group could be vanquished – this echoed Rome. But they also went to great lengths to depersonalize politics, reduce head-to-head competition, and take the political energy out of clashing interest groups – this echoed Athens. Also imitating Athens, communes employed complex procedures of nominating and lottery, thanks to which interests had their assured place in the political structure but could not control electoral outcomes. Interests could count on being part of the nominating process, and they might be allocated a quota of seats in the magistracy, but they did not determine by themselves who was to be selected from their own interest group.

As a result, the allocation of office by interests was deliberately not a system of representation but rather aimed at giving certain groups and regions a stake in the system, yet a stake falling short of predominance. The duality – of being included in the nominating stage, yet knowing that no one, neither oneself nor one's rival, had a lock on the electoral outcome – reconciled competitors to the system. In some cases, just opening up nominations to wide sections of the public satisfied people that they were deemed worthy of officeholding, even though they never made it through to final selection – wherefore communes may be said to have nominated their way to stability.

Which were the groups to be accommodated? This varied from place to place and from one era to the next. There were roughly four historical phases in Italian communal development once towns established their right of self-government: the consular phase from late-eleventh to late-twelfth centuries; the *podestà* phase from late twelfth to mid-thirteenth; the *popolo* phase from mid-thirteenth to fourteenth; and the crisis of the late fourteenth and fifteenth centuries when *popolo* government was frequently ousted by foreign and domestic principates. Many were the exceptions to this general time-scale, and a few prominent communes (among them, Venice, Ragusa, Genoa, and Lucca) continued their republican government down to the Napoleonic era. We know little of how communes chose consuls in the dawn of self-government. We know more about the *popolo* phase, when participation in communal government expanded; and it is this apex of city-republics that we are mainly concerned with in this study. The *popolo* were non-nobles determined to wrest control from nobles, and they were led by economically powerful merchants and wealthier craftsmen, but eventually came to include in their governments less wealthy craftsmen and shopkeepers. (In some towns, the *popolo* and guildsmen were synonymous, but not everywhere.) It was in trying to work out allocation formulas between different economic ranks and different districts within the city that the *popolo* (and their hyper-active

notaries) formulated the most innovative procedures and created what has been characterized as “a culture of rules.”¹¹

In many towns, the pressure of new groups knocking on the door of the palazzo for a seat at the table produced democratic results. In the mid-thirteenth century, communes generally had a broader franchise and wider participation in government than in any regime thereafter until the French Revolution.¹² But this is not a story of linearly increasing democracy. One must guard against imposing a presentist political bias on medieval political actors. Communes often oscillated between wider and narrower access to officeholding. Venice closed its principal citizenship in 1297 (so did Ragusa in 1332), admitting only a handful of new entrants thereafter. In 1300, those entitled to participate fully in government equaled about 1% of the Venetian population. Yet the Venetian republic lasted until Napoleon and Europeans of the Renaissance (and later) admired its procedures. Venice and Ragusa were extreme in their political stinginess; but nonetheless, even in less extreme examples, the communal story is not one of ever-expanding democracy – though there were striking democratic expansions in the *popolo* era – but a story of ever-expanding procedural experimentation in order to achieve republican aims. Those aims were concord, disinterested government, and letting no one predominate.

Nominating in Florence

Medieval Italy had scores of independent city republics. This study touches on the practices of a dozen communes and takes a closer look at four others: Florence, Siena, Genoa, and Venice. The four were influential, imitated by others, and, although seeking the same aims, chose different paths to achieve them.¹³

When medieval Florence gained its independence, families connected to the aristocracy and military power exercised control, and their doing so was useful during the eleventh and twelfth centuries while the threat of foreign empires continued to loom over Tuscany. Being ruled by an elite was not without cost, for in pursuit of honors and prestige great families competed with each other, and their rivalries sometimes turned violent. If they had just killed each other it would have been one thing, but rallying their retainers, clans, and neighborhoods they could turn streets into a battlefield and had no compunction sacrificing the peace of the commune for their vendettas.

One of the commune’s remedies was to outsource the job of top administrator to remove that particularly glittering prize as a bone of contention. At the end of the twelfth century, like many communes, Florence transferred the duties of consuls to a *podestà*, an administrator recruited from another city, usually trained in law. His appointment, not triggering intense competition, did not require elaborate procedural steps. The figure of *podestà* is nonetheless a useful start to the communal procedural story because of the rules laid down for this foreigner. Under most communes’ rules the *podestà* could have no relatives in the city, nor engage in trade, nor eat or drink in company of

any citizen. He could not accept gifts. Siena required its *podestà* to rotate his residence every few months among the three city districts. The *podestà* tenure was limited to six to twelve months. He could not cultivate political allies or seek immediate re-appointment. Having experienced the organizing and partiality of home-grown leaders, communes were emphatic that the outsourced ones be isolated and neutral.¹⁴

In the course of the latter part of the thirteenth century, the foreign threat abated and Florentines had the luxury of re-examining internal affairs. At the same time economic growth and population soared (Florence tripling or possibly quadrupling from 1200 to 1300).¹⁵ Thousands of middle-ranking merchants, artisans, and shopkeepers aspired to a measure of political power commensurate with their ascending economic power. Their target was a small group of powerful elite families who through many years had dominated the city's councils. The ascending middle-ranking businessmen (some wealthy), many in the major guilds, some in minor ones, made up the *popolo* – the vast majority of guildsmen who did not belong to Florence's elite families.¹⁶ They chose the guild structure as their weapon of assault. At the end of the thirteenth century, these aspirants proposed injecting guilds directly into the electoral process, demanding a role in nominating, electing, and office allocation. Oligarchs opposed this guild concept, even though some elite family members were themselves guild members (active in the handful of greater guilds). Oligarchs did not control the guilds they were in (with the exception of the *Calimala*, the cloth merchants guild), at least not so completely as they controlled the commune's councils. They also feared that if a kind of guild democracy emerged, they would be overwhelmed, for the number of shopkeepers far outnumbered bankers and international merchants.

When the two sides spelled out their opening arguments in the 1280s and 1290s, the guilds' position was that the city government should mimic the internal organization of guilds, guilds which, after all, had caused Florence to become one of Europe's leading commercial centers. Government should be a federation of equal guilds (just as internally guild members were equal), which should elect their own representatives to communal councils. In reaction, oligarchs said that Florence was more than just the sum of its parts and needed as rulers beneficent men of prudence, experience, and justice.¹⁷ But the numbers worked against the oligarchs. They were fighting fourteen lesser guilds (butchers, vintners, blacksmiths, and others) as well as substantial numbers within the seven greater guilds (cloth finishers, wool merchants, bankers, judges and notaries, and others) who sympathized with the lesser guilds.

In the first concession, in the 1290s, guilds were given an explicit role in nominating candidates for high office. Twelve guilds were authorized to nominate one candidate from each district (*sesto*) of Florence's six districts (later the rules made local allocations by quarters). After some retrading of power by oligarchs, in the 1340s fourteen lesser guilds won a major concession in being assured no fewer than one-third of the seats on the highest council,

the *Signoria*. This was more than a role in nominating; this was a quota of seats.¹⁸ In the 1370s, a new protagonist entered the picture: the abused and least well-paid textile workers, the bottom rung in Florence's large woolen industry. In the *Ciompi* rebellion, manual laborers protested their exclusion from political participation in 1378, and as a result some 2,000 newly enfranchised citizens were suddenly made eligible for office (for a while).¹⁹ In 1387, a further reform allowed even people who were not active guild members to be eligible for nomination.²⁰ By the end of the fourteenth century, nominating was producing as many as 6,000 candidates, by the end of fifteenth, 8,000. Florence's total population was probably no more than 45,000 (post plague): a preponderance of adult males were nominees for office.²¹

Many classes of inhabitants participated in politics in late-medieval Florence and other communes imitating her. But as political participation rose, the Florentine oligarchy maintained a degree of influence so that a lower percentage of nominees hailed from the lesser guilds than had been the case in the early stages of the guild reach for power. Nevertheless the fact of so many people's being nominated, even if not gaining office, seems to have satisfied Florence's major constituencies.²²

That story, which keeps its eye trained on a tale of inclusion and exclusion, has been well told.²³ The focus here is how the struggle over political participation caused Florentines to formulate new, enduring procedures. Soon after the lesser guilds gained significant access to the power structure in the 1290s, elite families and major guilds began clawing back some of the power. In a series of reforms in 1328, 1352, and 1355, new rules created a complex, multistage selection system that formally blocked anyone's effort to hand-pick officeholders.

First, rules expanded nominating. By the early fourteenth century, Florence created several nominating commissions often composed of Guelf party captains, twenty-one guilds, and the standard bearers of the neighborhood *popolo* associations (*gonfalon*i). In 1343, there were thirty-seven different nominating committees responsible for drawing up candidate lists. The lists themselves were intricate. Depending on when and for which office, nominees were listed according to *gonfalon*i or by quarters of the city and almost always there were two lists for each jurisdiction, one for major guildsmen nominees and one for minor.²⁴

But this was only the first phase. The second phase was the scrutiny, or approval of the nominees. Nominee approval was done by a scrutiny committee composed of the highest council, *Signoria*, leaders of the local *gonfalon*i, consuls of the twenty-one guilds, sometimes the *Mercanzia* (a merchant elite group), sometimes Guelf party leaders, and eighty *popolani* (mostly from major guilds, some from minor guilds). Until the end of the republic, this stage of scrutiny was the critical stage in Florence, occupying "the central position in the electoral process." It constituted a second nominating phase, an approval by a geographically and economically diverse group, which, although diverse, disproportionately favored major guilds. Voting was secret, by fava beans.

Electors voted on each candidate, one by one, in a multi-day process. Two-thirds approval was generally needed for each candidate to advance. At the close of proceedings, three friars collected the beans and took them away to be counted; a notary entered results into a notebook used in the next phase.²⁵

The third phase, added in mid-fourteenth century, was the work of the *accoppiatori*. These individuals took the notebook of approved names and distributed them among bags (from which names were later drawn at random to fill offices) along agreed principles. For instance, for filling the *Signoria*, the *accoppiatori* at mid-century made four bags (one per quarter) with the names of major guildsmen and four bags (one per quarter) with minor guildsmen. Names were written on sheepskin which was rolled into a wax pellet, which then was placed in a bag. The notion was to fill bags with enough sheepskin tickets to last as long as eight years; with each new *Signoria* being seated every two months, bags had to contain hundreds of name tickets; and that was just for a single office. In the early fifteenth century, the *accoppiatori* filled 52 separate bags with name tickets for the major offices (not including minor offices). At times *accoppiatori* had discretion to add or even exclude names from the bags; armed with this power, they undermined the neutrality of the system and they did so normally to protect the oligarchy.²⁶ At their neutral best, *accoppiatori* were the necessary human intervention to assure that the agreed percentages of greater and lesser guilds, Florence's quarters, and similar allocations were reflected in slates of officeholders.²⁷

The bags were stored under lock and key in the Santa Croce church. As needed to fill vacancies on councils, names were taken from bags in a random drawing, the sortition (*tratta*). This was the fourth and final electoral stage. Nominating, scrutiny, and filling new bags with approved names recurred every few years in Florence. Sortition occurred all the time, whenever vacancies arose. But a bag had to be emptied before a new bag could be opened.²⁸

Such were the outlines²⁹ of the system that lasted for the next two centuries, with periods of interruption by strongmen; but when strongman intervals ended, it was to this complex system that generally Florence returned. Uncorrupted, the system was impossible to game. No one controlled two-thirds of the scrutiny committee (the threshold required for final nomination), and no one controlled sortition (the final selection for office). In 1387, the year Florence went so far as to establish office eligibility for non-guildsmen, the *borsellino* first appeared, the little bag with which elites were permitted to sprinkle every *Signoria* with a few of their own. It was probably not a coincidence that an elite-favorable technique occurred just as the bars to office were lowered even further. Although the *borsellino* is typically interpreted as a sign of the oligarchy's stubborn reluctance to give up control,³⁰ it can also be seen as confirmation of republican success. The little bag would not have been necessary if the past century of procedural development had not successfully expanded access while letting no one control outcomes.

When the guild political revolution began in the thirteenth century, the mission of the aspiring classes had been for guilds to choose their own

representatives in a guild-run commune (just as they chose their own guild leaders). In this quest, guilds were utterly rebuffed. Sometimes guild consuls participated in nominating, but at other times guilds were excluded from the first phase of nominating (even though their members were being nominated). (Guelfs had the reverse for several decades: excluded from scrutiny although allowed to contribute to nominating lists.)³¹ Guilds were often included in scrutinies but could not always choose their own delegates to scrutiny committees; sometimes their delegates were chosen by lot or by the *Signoria*.³²

This was a fork in the road for republics. As Italy's leader in commerce and culture, Florence was a model for other communes in republican architecture.³³ When guilds petitioned for greater political access, Florence obliged, but it erected a barrier of complexity so that new entrants had little control over who precisely would fill the offices they were entitled to. If the guild petitioners had been successful, Florence would have embarked on a representational voyage, of government as a collection of agents. Instead, by building a scaffold of multistage selection with a sortitive conclusion, Florence maintained – probably strengthened – the structure of common-good government. And this was to remain the republican procedural purpose for the remainder of the premodern period. Florence did not take this step necessarily for altruistic reasons (though altruism cannot be excluded) but seemingly as the price of greater democracy. Florence was willing to accommodate new petitioners for political participation – butchers, blacksmiths, and other lesser guildsmen – but on the condition that they not be able to plant their own puppets in the *Signoria*. What limited the new entrants' power of selection limited everyone's. The uncorrected procedural result of the fourteenth century weakened elites and major guildsmen just like anyone else (wherefore the corrective *borsellino*). Machiavelli said that a republic needed to "enfeeble" everyone to strengthen itself.³⁴ This enfeebling was what his city did in the heyday of republican proceduralism.

Secrecy played a part in the Florentine system. When thousands of people were nominated in the first stage, the nominations were known. When the scrutiny occurred, deliberations were secret and so was the result.³⁵ One did not know if one had been approved as a candidate for insertion in the bags until one's name was drawn from the bag – which might be years later, or never. If one had not been approved in the scrutiny, one might never learn that fact. The bags were intended to last for years. Often an intervening upheaval caused a new scrutiny to be held, and the bags were burned before being used up. In that event, one would never learn if the failure of one's name to appear in a drawing was because of chance or because his name was never in the bag. It is a measure of their commitment to concord (and their cleverness) that Florentines used secrecy to abolish the category of losers.³⁶

Those were public secrets; they were required. Private secrets in politics were reprobated. In a regulation passed in the 1290s, Florence forbade secret meetings day or night to conspire to influence the election of the *Signoria*.³⁷ This law reminds one of the rules barring *podestàs* from socializing and

seeking reappointment and of Aristotle's warnings about "electoral intrigue:" for the government to be neutral, organizing to capture the government was prohibited. It was in part for this reason – to stop efforts to capture government – that Florence like many communes restricted the political rights of the highest nobles, the magnates.

When the Medici (who were not noble) took power in 1434, they retained nominating, scrutiny, *accoppiatori*, and sortition because these practices were by then so embedded as to have become the Florentine political tradition. But keeping only the form, the Medici hollowed out the purpose of the procedures. Nothing is less appealing to an autocrat than chance; to remove government's impartiality, they attacked chance. One resort was for the *accoppiatori*, controlled by the Medici, to use the *borsellino*, the small bag, at all times to draw names for the *Signoria* and to fill the small bag exclusively with friends of the Medici. This variant was known as "a mano," or by hand or hand-picked. Another variant was to keep bags open constantly, so the Medici could add new friendly names to the bags. The rule had always been the first-in-first-out principle: a bag must be exhausted of its names before another bag from a more recent scrutiny could be opened. Breaking this rule, the Medici could continue to nominate people until they produced nominees they liked. Yet another trick was to have the *accoppiatori* remove names from bags of those hostile to the Medici. Whenever a reigning regime thought the bags had acquired an unwanted bias, there would occur a "burning of the bags" (as Machiavelli called it), to purge the system of a disliked collection of nominees.³⁸

But these manipulations were mostly not advertised; they were done in secret. And yet, when one *Signoria* after another was dominated by friends of the Medici, it was not lost on anyone that the republic's time-honored procedures, while still in place, had been betrayed. Rather than a neutral government, Florence had a leader in Cosimo and then Lorenzo who was a sort of padrone, feeding his friends and dependents, in return for support. So said Guicciardini years later.³⁹ What is striking about the revolution of 1494, when the Medici were ejected from power (for a while), was the animus which people showed toward them and their cronies.⁴⁰ After decades of manipulation from behind the scenes, Florence resolved to restore the greatness of its government again; and that meant a re-commitment to ancient procedures. To return government to neutrality, Florence needed to free itself of cronyism and all it brought – political organizing, secret agreements, and a single power group in charge. In Savonarola, Florence found the leader of the revolution.

The passion and procedures of Savonarola

Girolamo Savonarola is worth a closer look because of the part played by procedural reform in his rise and violent fall. That a charismatic prophet took an interest in electoral reform and nominating practices would seem peculiar in the history of prophets, but not in a Renaissance republic.

Savonarola was born in Ferrara in 1452, became a Dominican friar, was posted to the Convento of San Marco in Florence, and was therefore, in his adopted city, not a citizen and not entitled to vote or hold office. Like Aristotle, another *metic*, in spite of or because of this status, he took an interest in the disposition of citizens' rights and did much to expand them. He is best remembered for his calls for repentance and his bonfire of the vanities. But he rendered more concrete service as political reformer.

For some time, Savonarola had been preaching about the coming scourge that would punish sinners when, all of a sudden, Charles VIII of France invaded Italy in 1494 and advanced on Florence. Charles's arrival seemed like a fulfillment of Savonarola's prophecy. Lorenzo de Medici's ineffectual heir Piero fled the city on November 9, 1494, Pisa (Florence's valuable seaport) rebelled the same day, Florence broke out in violent unrest, and the French army entered the city on November 17. It was feared that Charles VIII would reinstate the Medicis. Savonarola met with Charles and persuaded him to leave Florence, which on November 28 the latter did, and now, having predicted the scourge, then singlehandedly dispatched the scourge, Savonarola overnight became the uncontested leader of Florence. Two days later he preached to thousands of relieved Florentines, invited them to give thanks to God for their liberty, and said now it was time to reform the government.⁴¹

Like all charismatic prophets worth their salt, he demanded personal repentance and moral reform (in particular he abominated sodomy). But he also focused on political mechanics. On December 7 Savonarola recommended the Venetian model of elections (for a description of which, see below) as the best one to avoid allowing any one person's becoming predominant. On the same day, he called for a government of the many, not the few. The next day he returned to the theme of finding a new form of "*reggimento*" for Florence. On December 14, Savonarola delivered his first major political speech (interlarded with imprecations about sodomy). He stressed the importance of a city that was well-regulated, and one governed by the many. Again he extolled Venice. Saying he was inspired by God to preach thus, he warned that unless Florentines changed their form of government, they would not live in freedom, and the reform needed was that the major offices be elected as the Venetians elected theirs, and the minor filled with sortition. He concluded this sermon by suggesting that the public caucus according to Florence's sixteen different local militia companies and debate what *reggimento* was best, whereupon (he said) the heads of the companies should choose the four best plans of the sixteen, present these to the *Signoria*, and the *Signoria* should choose the best one: an adaptation of traditional nominating techniques to the matter of electoral reform itself.⁴²

The revolution was a whirlpool of activity, and three days later, Savonarola called for help from his believers; he said opposition to his reforms was forming from the well-to-do (the "*superbi*"); and he concluded by drawing a connection between serving God and creating a new Council under the citizens' control. On December 18, still concerned, he laid out three tasks for

his congregants: fear God, love the common good, and reform the city in a way that makes it incorruptible and so a single person cannot be boss. All your evils, he said, come from your bad form of government. If you do these things, he said, I promise you paradise. The next day he predicted the reform would take Florence twenty-four months to complete and likened it to God's creation of earth. On December 21, raising his pitch, he preached that God wanted to build a new Jerusalem in Florence and the Venetian electoral reform was essential.⁴³

It was a remarkable rapid-fire outpouring of sermons, somewhere between speech and song, filled with ecstasy, love for his auditors, and specific procedural injunctions. Because of the vast emotive power of his speech, and also because he had his adherents, known as the *frateschi* ("followers of the friar"), who were active in Florence's councils, the patient accepted the prelate's prescriptions. On December 22–23, Florence created the enlarged Great Council he had called for, placing Florence's government on a broader popular foundation than it had ever possessed.⁴⁴ Also on December 23 the Council adopted Savonarola's preferred election method, modeled on the Venetian system, whereby the Council itself would elect the major officers from candidates nominated by electors who were drawn from a purse.⁴⁵

The multi-tiered system adopted on December 23, relying on a combination of electors and deliberation – crucially without sortition for major offices in the final stage – was a departure from Florence's traditions and was distinctly Venetian. It provided that the winners in the final elective stage not only had to receive a majority and the greatest number of fava beans (used as ballots), but also had to beat in head-to-head competition the other nominees they were up against (for each particular office). This electoral system was the sophisticated one Ramon Llull had sketched in the thirteenth century (see [Chapter 2](#)) and prefigured Condorcet's pairwise voting of the eighteenth century. Venice's limitation of citizenship severely restricted political participation, but that limitation did not cheapen its electoral methods. Amid a quantity of jealous and competitive nobles, Venice's system was intended to discover not the most popular persons but the candidates most widely preferred; and it was usable, as Savonarola preached, in a political setting markedly more democratic than Venice's. In the days following Christmas, Savonarola praised the new government of Florence, comparing it to celestial harmony, and deprecated its skeptics. He lauded the *Signoria*, who were there, he said, by the grace of God.⁴⁶

Also in December Savonarola intervened forcefully against the *accoppiatori*, that office which the Medici had used to manipulate the bags. On December 2, in the midst of the revolution, oligarchs had managed to get control of the *accoppiatori*, which seems to have been a sally to resist the revolution underway. Savonarola took to the pulpit three times calling for a popular insurrection against the dictatorship by the *accoppiatori*, and a restoration of Florence's ancient customs. It was his intervention which forced the twenty members of that body to resign.⁴⁷

Savonarola in sermons returned frequently to government policies. In October 1495, when evidently something had gone awry in recent elections, he spoke about an obscure detail of procedure. He praised the Council and its great hall, the hall of the people, then said the Council needed yet more polishing. While maintaining the Venetian custom of drawing ballots from the hat, Florence should borrow, as he put it, the Sienese mechanism: namely, not announcing the nominees whose names had been approved and placed in the hats (or bags). He did not explain why this was a good idea, except that it was beneficial for nominees to be chosen without, as he put it, saying who had won or lost. The only reason for secrecy, a good one, was to reduce strife around the voting results. (Florence, as we have seen, had pioneered this secrecy in the fourteenth century, but Savonarola, a newcomer to the city, credited Siena with the invention.)⁴⁸

Savonarola's interest in electoral procedures arose from his view, classically republican, that a well-regulated city was one which prevented the multiple evils to which republics were prone – discord, disunity, a “capo” (boss) who would seize control (as had the Medicis), and “common people” led astray by “vicious and foolish men,” as he put it, men who would seek to “make agreements” with each other and “ask for favors or votes.” It was a city's constant vigilance that avoided the Council's (“or a majority of it,” as he wrote in his political testament) being corrupted and falling into the hands of “the unscrupulous.”⁴⁹ Notable was his reference to “a majority” as something to monitor. A concern of religious orders for centuries already, the risk of majorities was a communal concern as well.

Savonarola was also on record against any form of political organizing. A founding revolutionary order of December 23, 1494, stipulated “no favours or agreements...during the voting process.” Savonarola himself had adjured each citizen to arrive at the Council with the intention to give his *fava* bean “to the candidate that he in good conscience believes will ensure the health of the city and especially the glory of God.”⁵⁰ In July 1495, he called for greater suppression of “*intelligenza*,” or voting agreements. The law passed in the next month complied with his wishes and forbade within the Great Council (and another body) the making of agreements along political lines with the intention of affecting voting or indirectly influencing council members. Later Savonarola said the sanctions were inadequate and called for more severe penalties (in a sermon of May 15, 1496). Some resisted toughening sanctions; only when Savonarola's new ally, Francesco Valori, rose to high office in 1497 was it possible to pass a tougher “*provisione dell' intelligenza*.”⁵¹ In the past, Florence had prohibited secret political caucusing as being fundamentally at odds with the common-good purpose of government. After the Medicean dictatorship, electoral intrigue called again for tighter regulation.

In 1496 a storm broke when it was disclosed that during the Great Council election of the *Signoria* someone had distributed a list of 45 names to be supported in the final balloting. By republican standards, this scandal was major. The incriminating list appears to have been part of an anti-Savonarola

campaign to elect a *Signoria* of his opponents. The ringleaders were arrested and tortured and confessed and it emerged that 200 citizens had caucused to vote for anti-Savonarola candidates; three of them were sentenced to life in prison.⁵² In the election that followed, Savonarola partisans swept the field.

This moment would seem to have been the apex of Savonarola's power in Florence, but in hindsight it probably precipitated the fall. For his opponents spread the word that just as anti-Savonarola people had organized themselves, so Savonarola was organizing his own supporters from the San Marco monastery; and indeed, every major electoral change for two years – the expansion of the Council, scrapping of Florence's traditional lottery choice of highest magistrates, adoption of Venetian election methods, adoption of the Siena technique – were those he had advocated. Savonarola was using his pulpit to rally people behind highly technical reforms and then, apparently, using his *frateschi* to translate that popular feeling into Great Council ordinances. A reaction set in.

By the end of 1496, people were calling for the return of lottery to choose the highest magistrates, as of old; and Savonarola was resisting the call. In a sermon at the end of the year, he said lottery was favored only by those who knew they could never be elected.⁵³ This position may have been ill-advised. The Medicis had also disliked sortition (which tyrant wouldn't?). In 1497, the Great Council began to restore sortition for some of the higher offices.⁵⁴ Suddenly other problems loomed. The exasperated Pope, who had grown tired of Savonarola's revelations and contumacy, excommunicated the friar in 1497 and threatened Florence with an interdict (March 1498), which would have barred any Christian from dealing with Florentines. A people who lived partly on trade and commerce would find an interdict especially painful. When Savonarola incautiously consented to a trial by fire (not for himself but one of his adherents) and when the trial was aborted at the last minute (April 1498), his popular support collapsed. Execution soon followed (May).⁵⁵

The Florentine historian Guicciardini, reserving judgment about this problematic character, said, "if he was good, we have seen a great prophet...if he was bad, we have seen a great man" taking into account his "great judgment, talent, and power of invention."⁵⁶ Many of Savonarola's reforms survived him: both the expanded Council and some of the Venetian rounds of electors and nominees. In 1499, in the final version of the republic's procedures (final until the return of the Medicis), Florence retained the Sienese feature he had recommended about keeping the losers undisclosed. But in a rebuke to the memory of Savonarola, Florence restored sortition for the highest offices.⁵⁷

When Savonarola was arrested, he was tortured repeatedly; so were some of his followers. On the day of his arrest, a mob murdered his chief political lieutenant, Francesco Valori, together with his wife, and dismembered Valori's body and put it on display. The magnetic force initially pulling Florentines into Savonarola's orbit in 1494 was only equaled by the vengeful ferocity of his attackers in April and May 1498. How to explain this oscillation? Some people had long thought him a charlatan pretending to speak with the Virgin

Mary. Before his downfall, Machiavelli commented privately on Savonarola's "lies."⁵⁸ The failure of the trial by fire undoubtedly spread the word more widely than just to the educated that this prophet might be a false one. Florence's threat of interdiction alarmed this commercial city with a stoppage of all intra-regional and foreign transactions. Moreover, Savonarola had natural enemies. The *ottimati* were never enamored of sharing power with lesser citizens, and Savonarola enlarged the Great Council to unprecedented size. Medici were eager to return and their chief obstacle was Savonarola. But sound as these reasons were, they do not account for the ferocity of his attackers.⁵⁹

One suspects his harsh fate was because he was proven not only to have been a false prophet but also to have been a false republican. He had called Florence back to its traditions of a true republic, and then traduced the traditions. Savonarola (a foreigner at that) was suspected of engaging in the very political organizing that he railed against, that he had helped pass laws to suppress, that the Medici were hated for, and that republics had always proscribed. During Savonarola's reign from the pulpit, someone circulating a list of candidates was sentenced to life in prison. Violation of nominating rules came close to becoming a capital crime in 1496.⁶⁰ Five Medici partisans were executed and Savonarola did nothing to save their lives even though they were deprived of the appeal right which Savonarola had recently championed in capital cases.⁶¹ He himself had written in his political testament that those in the Great Council must be severely punished who "make agreements [with each other or] ask for favors or votes."⁶² But by the spring of 1498 it was suspected that he himself, who steadfastly opposed sortition and argued for elections for the highest offices, was a puppet-master manipulating elections from San Marco. This republican preacher was a most unrepublican practitioner, anti-Medici yet Medicean-like, the friar against bosses who did not scruple at being boss himself.

That he was so suspected comes through in the trial transcripts. Political questions dominated the three trials (or more accurately, *processi*).⁶³ His repeated, painful tortures were mainly aimed at uncovering his secret communications concerning the Great Council and his efforts to gain control over it.⁶⁴ Asked whether he had entered into "*intelligenza*," or political agreements, he denied being involved in any such level of detail and spoke about his advocacy of the Venetian model of government and his desire to abolish the *accoppiatori*.⁶⁵ Savonarola did admit learning the names of elected *Signor* members before they were publicly announced.⁶⁶ This was a dangerous admission. By tradition, Florence entrusted the secrecy of scrutiny results to three friars (among them a Dominican), who transported the fava beans to where they could be counted and results entered in the secret notebook of those approved to hold office. It was the most sensitive stage in the electoral operation.⁶⁷ And here Savonarola the friar admitted learning the non-public results from one of his lieutenants.

But the prosecutors failed in the first trial to elicit a confession of his "secret plan" to control government, and as a result there was a second trial,

when again they pressed him on political intrigue, and again he denied personal involvement.⁶⁸ In the third trial, the prosecution got what it wanted, when he confessed that he had sought the majority of the Great Council so that through that body he could control the *Signoria* and the other higher councils (which, at his urging, were seated by elections, not sortition). The day following this confession, Savonarola was executed.⁶⁹

It is not clear from the record what was the legal basis of his conviction and death sentence. The trial transcripts showed both prosecutors and defendants focused on whether electoral procedures had been breached. That would seem an odd evidentiary target in a trial of three friars. But republican procedures were, as one defendant put it, “something sacred.” Savonarola and his co-defendants confessed (whether accurately or not) that they had broken procedures. After decades of Medicean corruption, for the leader of reform to attempt to run Florence by political organizing was a supreme betrayal.

The tragedy of Savonarola was to some degree the tragedy of republics. The great difficulty for republic builders was that it did not come naturally to them, as creators, to become passive. When they saw their creation or themselves under threat (often the two became fused – that, too, was a problem of creators), their instinct was to fight. But at the core of the unforgiving republic were its rules of impartiality – rules requiring one to resign oneself to incomplete victories and uncontrollable outcomes, the renouncing of loyalties and alliances. And the question was, could the state’s defenders live up to the republic’s exacting rules and keep their hand off the tiller of what Polybius called this well-trimmed boat? Could even the best people be as good as the republic they loved? Florence violently concluded that Savonarola could not.

The Buon Governo of Siena

Smaller than Florence, but nonetheless its principal rival for Tuscan hegemony, was Siena, a city whose medieval population was roughly 50,000 inhabitants within the walls (about where it stands today), before the plague of 1348. The cloth industry received a boost from aqueducts and the creation of the Fontebranda fountain (still visible, in almost the form as seen by Boccaccio and possibly Dante). Like Florence, Siena was a city of bankers and merchants conducting business on a European scale by the thirteenth century. Wealthy and rising Siennese, together with lesser nobles, formed an oligarchy that dominated the higher offices of the republic from medieval times through the Renaissance. In this tilt toward the elite, Siena’s polity was similar to her sister republics in northern Italy. What distinguished Siena was the raising of the ideal of good government and self-government to the highest social value.

Nowhere in Italy was public space so ostentatiously dedicated to glorifying the republic as in Siena. The city, built on three hills, was (and remains) connected by concentric circles of streets ever tightening and tending downhill to

the bowl of the public square, the Piazza del Campo, with its shell-designed pavement also sloping further to the grand public palace and the formidable tower that looms over the city, taller than even the churches and most imposing noble palaces. The sloping scallop pavement is divided into nine slices converging before the palace, the nine representing the Noveschi or the Nine members of Siena's highest magistracy. The impression made is that of an outdoor circle theatre, with all Siena as the audience and the republic's headquarters the stage.⁷⁰

The longest unbroken republican reign occurred from 1287 to 1355, but the important procedures continued for centuries thereafter. In the early years the Nine, the highest magistracy (together with a small number of other senior magistrates), chose their own successors, by a super-majority vote, selecting three magistrates from each *terzo*, or division, in the city. Eligibility was confined to the lesser nobles and wealthier merchants and bankers. After a rebellion in 1318, eligibility was expanded and, as happened in Florence, complexity appeared as a companion to expanded participation. The general council voted on a candidate list drawn up by higher magistrates, a two-thirds council vote being required for election. Because each name was voted on separately, and there were hundreds of eligible candidates, voting took days. From the multiple elected names, groups of nine were put on lists, again with three from each of the geographic sections or *terzi* of the city. These future magistrate lists were locked in a box out of which, every two months, a new top magistracy was drawn at random.

After the plague and the overthrow of the Nine, instability set in, but procedures remained similar, but now, and also in the fifteenth century, or *Quattrocento*, new groups were included in the guaranteed allotment of offices, in addition to the sections or *terzi*. Offices were allocated in agreed percentages to varying social/political groups – at various times, to the Nine and their descendants, to the Twelve (*Dodici*) and theirs, to the *Riformatori* and theirs, nobles and theirs, and *popolo*. These were not parties but rather political groupings sometimes with a class character (for example *Riformatori* of lower social strata, the *Dodici* aristocratic). A common distinguishing mark of the groups was that their members or forebears had previously participated in government offices at a certain time. Extant are papers with the rota planned out in the case of one office for the next eleven years, showing in which year would the officeholders be drawn (by lot) from which *terzi* and which political group. Siena's was an intricate and agreed architecture of rotating officeholding among different geographic sections and political groups in much of the *Quattrocento*.⁷¹

By the *Quattrocento*, magistrates no longer did the nominating; now it was the 42 local militia companies which did; they put forward names then the whole council of the people voted on each name. This method, reminiscent of ancient practice, handed the nominating to the local unit, but election to the whole community. Neighborhoods were crucial in providing candidates, but were not in control of who ended up serving – for representation

was not the point; involvement was. The entire council of the people voted on each *terzo's* list.⁷²

Several things stood out about the Siena electoral system, in addition to its intricacy and balance. First, the categories of who was up and who was down varied with decades. Siena's was a complicated narrative of alternating oligarchic and *popolo* ascendancy. But that fluctuation was perhaps less important than was the custom of agreeing new assortments of seats among new or changing categories of citizens (and invariably excluding a former privileged group). No one group could rule by themselves; new allocations involved an agreement between distinctly competitive groups.⁷³ Second, even as an oligarchy-led commune, Siena gave the *popolo minuto* a greater participation in government than other communal cities in the period.⁷⁴ That decision to accommodate a wider strata of citizens may have been related, as was the case in Florence, to the evolving intricacy of Siena's electoral procedures.

Third, with a few intervals of deviation, the great noble houses were barred from the top magistracy (unless, Roman-like, they shed their noble status and became part of the *popolo*) and from the Council of the People. Lesser nobles, merchants, and bankers – characterized as the “middle people” – dominated Siena's highest magistracy. The exclusion of noble magnates was common in medieval Italian communes.⁷⁵ The origin of the commune was in some measure anti-feudal and anti-manorial, but perhaps more importantly magnates were dangerous to the aims of a republic. They were vain glorious, intensely rivalrous, and violent, carrying on vendettas from their high towers (Siena restricted tower height), and, because of their ambition and their wealth, magnates had the desire and the means to rally plebs to their cause. They did so. In 1318 a rebellion coming close to overthrowing the Nine was organized by a combination of the wealthy Tolomei family with the perennially irritable butchers and meat handlers.⁷⁶ There was no end of trouble that could be caused by a wealthy noble family locking arms with a resentful part of the populace. So Siena, while oligarchical, and allowing even major nobles a lesser role in some councils of government (more so than, say, in Florence), was ever vigilant about barring magnates from a position from which they could hold themselves out as leaders and gather popular support.

This regulation of nobles was tied to a deeper principle of the Siennese republic. The amassing of influence was anathema to a system constructed around de-personalized and neutral rules. And who could amass influence more easily than magnates? But all influence was guarded against, not just that of nobles. The *podestà*, brought in from outside the commune, was sworn to strict neutrality, barred even from socializing with local powers. The Nine, when lottery commenced their service, lived day and night in the communal palace for two months, with their own cook and messengers, so they could not be influenced by family members or others lobbying them.⁷⁷

Finally, like Florence, Siena deployed secrecy to suppress strife. Voting was secret, first in the general council in the *Trecento* and then in the Council of the People in the *Quattrocento*. The final lists encapsulated in *pallotti*

(wax balls containing the names to be drawn over many years' time) were also secret. These balls were deposited into locked chests, to be opened when drawings occurred. No one knew what would be the make-up of the next magistracy (or other offices) until the *pallotti* were drawn on the eve of a new two-month term. The names of the losers were also not disclosed, the papers with their names being burned as soon as the vote in council occurred.⁷⁸ This step was the one Savonarola recommended to Florence. The drama of winners and losers was suppressed to preserve the "peaceful state of the city" formulaically mentioned with each new iteration of Siennese electoral procedures.⁷⁹

Experiments in Genoa

Genoa approached the same problems that Florence and Siena did, but uniquely. Genoa was one of the three most important commercial centers in Italy in the tenth and eleventh centuries (with Amalfi and Venice) launching Italy's trajectory as Europe's premier economic power in the late Middle Ages. Genoa in the fourteenth century (and later) had several main parties or voting cleavages: the Guelfs and Ghibellines, nobles and *popolari*, merchant and artisan guilds, and also various prominent families and their friends. Starting at least in the fifteenth century, men nominated for office bore one of these affiliations: one was a candidate of either the Black or the White (Ghibelline or Guelf), noble or not, greater or lesser guild. Lest we think formal party affiliation a modern invention, it was obligatory for a citizen to go to a notary and certify one's party affiliation.⁸⁰

When Genoa went about selecting members of a governing council, it went through a not uncommon multistep process of choosing electors who then chose other electors (both with super-majorities) who then chose office-holders, and the final result had to comply with the quota of seats given to different parties and quarters. For one particular board, the final choice was made by lottery, and candidates' names were put into different purses designated for the different parties. (Purses were renewed each year with a new pool of candidates.) This system was unmistakably party-affiliated; parties were used both to choose electors and to choose nominees and in some cases parties were allocated a percentage of seats. Two-thirds super-majorities were required in Genoa elections. This super-majority made it impossible for a party to elect its candidate *by itself*; rather the party needed the support of its rivals to fill seats on the councils. A Guelf or noble could not be elected without the vote of Ghibellines or *popolari*. The Genoa system had distinct marks of the Roman system: embedding interests in the power structure, and making them utterly reliant on each other for survival; however, Genoa, unlike Rome, utilized nominating and multistep procedures and super-majorities to achieve its ends. Devoted to their system Genoese certainly were. When in 1510 Genoa's French suzerain sought to do away with factionalism in Genoa and proposed abolishing the use of party colors in elections, the

Genoese advised against this step, saying their system had lasted a long time and “great confusion” would follow such a change. Undoubtedly they knew whereof they spoke. They were defending a system that tolerated competing factions which, in other cities, routinely proscribed each other.⁸¹

In the allocation of nominees and sometimes quotas, Genoa was similar to Florence, Siena, and other communes. But Genoa was unique in other respects. First, the Casa di San Giorgio was a Genoese financial institution intimately connected to the governance of the commune: it had charge of Genoa’s finances and also governed some of Genoa’s foreign territories. The Casa was a pioneer in arranging public finance, starting in the twelfth century, decades ahead of other Italian cities and centuries ahead of many nations.⁸² In its internal organization the Casa too, like the commune, was careful to reflect the proportionality of Guelfs and Ghibellines, greater and lesser guilds, and nobles and *popolari*.⁸³ Leaders were chosen by a mix of lot and election, with topmost managers requiring 22 votes of 32 from electors, a super-majority of almost 69%.⁸⁴ Why is San Giorgio important in the area of political procedures? It may not be. But San Giorgio raises the question we have encountered before (we will again), to what extent republican political structures originated in and owed some of their practices to business organizations? The question is underscored more starkly here because the Casa and Genoa were almost merged. At one point the *Signoria*, debating whether to sell itself to a foreign prince as a way out of one of its periodic crises, considered selling itself instead to the Casa. When the ruling families in 1528 changed the regulations for Genoa office eligibility, they adopted the management model of the Casa and used the same book of eligible names as the Casa for nominating officeholders.⁸⁵

The melding together of private pecuniary interest and public good was the key point stressed by Machiavelli about the Casa di San Giorgio (whose name he helped pass down to posterity). In the Casa, wrote Machiavelli, one finds a rare example of “within the same circle, among the same citizens, liberty and tyranny, civil life and corrupt life, justice and license, because that order alone keeps the city full of its ancient and venerable customs. And if it should happen – which in time it surely will – that San Giorgio should take over the whole city, that would be a republic more memorable than the Venetian.”⁸⁶ Here Machiavelli was repeating his theme of the value of discord to republics, but by declaring that Genoa had created the ideal republican “mode of government” by being merged with the Casa, he was also saying that the city’s republican character owed something to these greedy businessmen. In the matter of who influenced whom concerning republican ways, the vagaries outweigh the certainties. We have seen that the guilds of Florence attempted to super-impose their organizations and procedures onto the commune (with partial success). Later, in the seventeenth century, business organizations contributed to transformative political experiments in self-government. Genoa’s republic lasted longer than most republics. The question arises, did the commercial agenda which

united commune and Casa elevate to the highest level a common mission, above the usual rivalries of party, class, and districts, and coax Genoese into co-existing with their differences so as not to derail Genoa's economic success? When Machiavelli made his intriguing comment – a Genoa fully under the Casa di San Giorgio, he said, would put even Venice, the *Serenissima*, to shame as the greatest republic of all – was it just a typically ironic Machiavellian moment or was he putting his finger on a link between republicans and profit seekers aspiring for their separate but related freedoms within the same unit?⁸⁷

There is a final distinction of Genoa. We have seen how the constitution embedded interests then sought to reconcile them through elaborate procedure. But for a brief while Genoa tried the unRoman, rather the Athenian (Cleisthenic), resort of effacing interests altogether. Notwithstanding fairly successful pacifying procedures, prominent families in Genoa continued their age-old competition. To tamp down the conflict further, in 1528 a new list was created of people eligible for office, and coincident with it, the law imposed on Genoese the remarkable requirement that they change their surnames and adopt one of the names of the 28 *alberghi*. The *alberghi* were neighborhood cooperatives formed around large families and were among the entities that were apportioned a role in nominating (also in governing territories) to keep the peace. (*Alberghi* figured as well in the Casa di San Giorgio rulebook for electing company managers in the same manner.)⁸⁸ As Guicciardini observed at the time, this deliberate “confusion of names” fused factions and erased centuries’ old distinctions between *nobiles* and *popolari*. Access to the San Giorgio and the communal government was via the same, reconfigured list of names, emptied of some of their historic and rivalrous content. This change lasted for five decades, whereupon families reassumed their surnames. But for a brief half century, it endured as a remote application of the Cleisthenic principle of effacing interests. It was an example of a Genoese political culture which perfected a kind of managed competition in which, by design, “victory or defeat was never really complete and conclusive.”⁸⁹

Venice

The most storied electoral system of the Renaissance was that of Venice, much admired in the era (and later).⁹⁰ One practice that caught everyone's attention was the unique method of electing the chief magistrate, the Doge. He was not a foreigner, and he had some power, wherefore his election was a labyrinth. When the Doge died, the first random youngster encountered near the Palace was recruited to be *ballotino*, whose job it was to draw lots from an urn. Without further delay, thirty Great Council members were chosen by lot – and from these thirty, nine members were chosen, again by lot, whereupon these nine moved to an isolated room and nominated forty people, each of whom had to receive no fewer than seven votes, or a supermajority of nearly 78%. Thereupon another lottery reduced these forty to

twelve, who convened and nominated twenty-five new people, again with a super-majority required for each nominee – and so forth: an iteration of ten stages, keeping the *ballotino* busy, alternating lottery and super-majority voting, expanding the electoral college by vote, then reducing it by lot, until in the end forty-one electors were left, who elected the new Doge in an election requiring twenty-five votes, a super-majority of 61%.⁹¹

This lengthy procedure has struck modern writers as eccentric. It ought not to do, for it achieved specific premodern goals of a high order: multiple steps (particularly alternating deliberation with lottery) prevented capture of the outcome by a party or clan. Super-majorities and approval voting (both featured in the deliberative moments) were demonstrably anti-majoritarian; that is, the Doge needed to be someone broadly acceptable to Venice, even if he was not the most popular, ie, not the one who might come in first in a multi-candidate field with 25% or 40% or even 51%; he needed to have emerged after super-majorities of between 61% and 80%. The *ballotino* and sequestration of electors hermetically ensured no influence should be brought to bear on the electors. To the extent humans deliberated, they were to deliberate for Venice. Lottery assured unpredictability.

The voting for other Venetian magistrates was unsurprisingly just as complex. Citizens drew lots to become electors and were split into four groups in which no family could have more than one member. Each elector nominated one person for each office, and then all electors in the group voted on each nominee; two-thirds was required for selection, but that was only to be selected as a nominee of that group. Since there were four groups of electors, there were four nominees for each office produced in this first stage (requiring super-majority to get even this far); the final stage was voting in the Grand Council – and there, the Council employed pairwise voting, comparing each nominee with the three others in his category; such a comparison is painstaking and slow but comes closest as one can to establish the most preferred officeholder from a multicandidate field. As in Rome, balloting had to be finished by sunset – to avoid orchestrating the result through the night.⁹²

One similarity to Florentine voting was the mixture of lot and deliberation, but in reverse order. Venice used sortition to choose groups of nominators at the start rather than officeholders at the end. (James Harrington, an admirer of Venice's government, would similarly place sortition at the nominating start of Oceana's electoral process.) Another difference was the size of Venice's franchise. Eligibility for top offices was restricted to the Grand Council, which had as few as 210 members at the end of the thirteenth century increasing to around 2,000 by 1500 (when Venice was one of Europe's most populous cities). In 1297 Venice held the *serrata*, closing entry to the Grand Council and restricting it to certain families, only the descendants of whom, larded by a few additions each year, were eligible to vote and hold office. Venice was a state governed by hereditary aristocrats (and remained such until Napoleon arrived five hundred years later), sharing its political structure with just a sliver of the population. By contrast, many communes

continually added to citizens' rolls, and therefore to the pool of possible candidates for office. As many as 8,000 Florentines were nominated for office one year.⁹³

Yet the small restricted Venetian citizenry did not stop Renaissance republicans from admiring Venice. Venice's complex procedures were thought to have contained ambition, shared power, kept the peace, and sustained the republic for hundreds of years, notwithstanding the presence of rich, jealous, self-important, and grasping nobles. The esteem Venice enjoyed, even with its noble definition of citizenship, was because although citizen participation ranked high among republics' priorities from Aristotle onward, many republicans of the Renaissance era ranked disinterested government a higher priority and were at best reluctant democrats. Guicciardini noted in his *Dialogue* that the aristocratic government of Venice did not diminish the good of the Venetian system; it did not let all inhabitants attend the Council meeting, but, he noted, neither did Florence let plebs vote. A commonwealth organized by careful "orders" and working for the good of all was the more important pursuit.⁹⁴

The meaning of communal procedures

Venice was unusual for its governing, hereditary aristocracy. With its strategies for managing conflict, its Casa di San Giorgio, its Cleisthenic experiment, Genoa was also unusual. Most communes tried more straightforwardly a version of the Florentine and Siennese methods: nominations emerging from city districts, sometimes office quotas for pressure groups, and selection through multi-steps to de-energize the contests. Some cities reversed the Florentine sequence and used lot in the first stage to choose candidates, then election by vote at the Council – but the method was similar: combining neutral chance with human intervention.⁹⁵

Monopoly of office was generally disliked – nearly universal rotation avoided it.⁹⁶ Nobles fighting each other was a problem – magnates were usually barred from the highest offices. Any election of the chief magistrate could trigger division – hence the *podestà*, the outsourced foreigner who could make no friends while serving the commune. Failing approval in the scrutiny could provoke strife – communes used secrecy to abolish the category of losers.

Nominating candidates at the local level (i.e., in quarters of the city) but leaving selection at the commune-wide level was common (and reminiscent of Athenian practice), thereby anchoring localities in the whole communal governance, but not permitting localities to dictate who was to be elected, any more than Athens permitted a tribe to decide which one of their possibly multiple local candidates would be *strategos*; that was for the commune to decide.⁹⁷ Nominating steps were critical. Better nominating – to get better bags, better screening of candidates – was the first port of call when seas grew sloppy.⁹⁸

After nominating, communes preferred handing elections over to electors, or often electors who were chosen by other electors. The reasons varied for the multistep process. One reason was to create a sieve (*vaglio*, in Guicciardini's words) with which to filter the better talent for high office by moving the selection one or two (or more) removes from popular hands.⁹⁹ But he also thought with so many steps and so much "sifting" there was little chance of "partiality or corruption."¹⁰⁰ Savonarola said all prospective officeholders must pass through the "sieve" of the Great Council to prevent people's gaining office "who might be dangerously disruptive."¹⁰¹ In Vicenza, guilds initially nominated candidates, from whom the Council made a random drawing to select an electoral committee, which then chose candidates (for the Council of Elders) from among whom the Council selected four new elders; the elders then made another selection of electors to elect the councils of 40 and 400.¹⁰² This elaborate Vicenza dance was about something more than filtering the best talent; it was mainly about creating indeterminacy. As Guicciardini explained, the advantage of a series of filters was that such a series made "it unclear who the ultimate electors will be and so avoid corruption and ambition."¹⁰³

Sortition was the pre-eminent device for creating indeterminacy.¹⁰⁴ It was used almost universally in late medieval and early Renaissance republics, sometimes to nominate candidates, sometimes elect candidates, and sometimes choose the electors of either candidates or officeholders or both. (Sortition also depersonalized politics, tamping down fires of rivalry and forestalling the emergence of a power group. As Machiavelli said, lot was better than Cosimo's doctored bags.)¹⁰⁵ The thrust of medieval procedures was aleatory – that is, to make outcomes uncertain – and the aleatory principle was the polar opposite of the democratic principle. A majoritarian system bestows power on whoever amasses the most votes. In medieval communes, office selection was demonstrably un-majoritarian – by lottery, three and four-step votes removed from the people, conclaves where no one could interact with the electors, and super-majorities. There was an anti-democratic theme to medieval and early Renaissance procedures (without which the laudation of Venice would be difficult to account for).

Super-majorities were commonly required to prevent one faction or the other barely cobbling together a majority or, even worse, a plurality sweep of offices. High thresh-holds were sometimes required just to be nominated (Siena requiring nominees to receive ten of fourteen electors' votes), in other places to be elected.¹⁰⁶ In the most cautious procedures, where super-majorities were not thought sufficient, pairwise voting (comparing head-to-head each candidate) was the rule. Venice and Savonarolan Florence, among other cities, used pair-wise voting.

Simple majorities were simply dangerous; they could be composed of foolish men, or vicious men, as Savonarola put it, conniving to take control. The "arbitrary will of the multitude," Machiavelli said, "in which one party would live in license and the other in danger" was the main thing to be

avoided, a multitude which “would create magistrates according to its own arbitrary will.” The danger he presented was not that of a mob, but of a voting multitude electing their own partisans, unless proper “orders” and better “bagging” of candidates prevailed.¹⁰⁷ This attitude represents an important Renaissance difference in thinking from the eighteenth-century view. The danger did not come from a “mob,” a populace in the grip of its passions, but rather from organizing by one party to control offices to the disadvantage of others. It was political organizing, not mob incitement, that figured in Savonarola’s prosecution. Hence political organizing was generally outlawed. Alliances, organizing, and electoral agreements were deemed unlawful efforts to divert government from the common good.¹⁰⁸ Florence came close to making it a capital crime to canvass for votes.

A by-product of this essentially anti-political culture was the absence of representative institutions. While in their offices for brief spells, citizens were not there to represent the views of anyone but themselves.¹⁰⁹ Procedures of their election followed this principle. The involvement of neighborhoods or guilds or Guelfs in the nominating process was just that – early involvement – and no more. It was not a matter of interests dictating the nomination and election of their own candidates. In Novara, Treviso, and elsewhere, local or social groups had a role in nominating, but election was made by lot or by commune-wide voting, not by neighborhood or interest.¹¹⁰ In Florence, in the 1430s the important security council (the *Otto* or Eight) was filled by a mixture of lot and election, with six candidates per quarter drawn randomly from one *borsa*. After the drawing, the top council officeholders could add ten additional nominees per quarter, then a commission composed of government officeholders and interest groups (Guelf party and merchants) voted on all the nominees.¹¹¹ In this interesting case, there were indeed local nominees, but local voters did not cast votes for them, did not even nominate them (which was done first by lot then by the *Signoria* and affiliated Colleges), and did not elect them (done by a commune-wide electoral commission). Again in Florence, when a neighborhood’s candidates for certain offices were under consideration at the commune level, the council members from that neighborhood *were not permitted* to vote.¹¹² Neighborhoods and interests, far from controlling their choice of candidates, could not always even vote for them.

Many communes from the mid-thirteenth century onward expanded citizen participation. This study has suggested that the pressure to expand political participation, when acceded to, had the effect of causing communes to add procedural steps, introduce complexity, and yoke sortition into service to create an aleatory structure decisively separating the newly added constituent groups from new officeholders being seated. Such was the case in Florence and Siena.¹¹³ By the early fourteenth century across many communes, what had previously been two steps – nominating and election – became three and four steps, vitally altered by sortition.¹¹⁴ In these communes, democracy was enhanced if by that term one means citizen participation. But it was not

advanced if by democracy one means people choosing their own representatives and rule by majority; that would have put a rapid end to common-good government. The unplanned accomplishment of late medieval procedures was the increase of participation without sacrificing disinterestedness. The key was complexity.

Undemocratic and anti-representational features were the unavoidable by-products of procedures put into service of the main goal – disinterested government. This goal was easy to express but hard to maintain, as republics' peace was vulnerable to disturbance from several directions: from the maneuvering of nobles, ambitious non-noble individuals, clashing economic and social groups, and rivalrous neighborhoods. These formidable threats needed to be contained. Machiavelli observed that the "purpose of a republic is to enfeeble and weaken, in order to increase its own body, all other bodies."¹¹⁵ Unlike a monarchy, a republic did not command a feudatory chain of armed vassals. Its powers were popular attachment, the fondness for communal traditions, and its rulebook. Those were not inconsiderable powers but they were intangible. This was one of the aims of procedural complexity: to supplement the republic's slender powers by severing the cables that might otherwise have connected disruptive energy sources to the officeholders.

Contemporary writers would describe the republic's enemy as "corruption." To modern ears, that word calls to mind private persons bribing a public official; to eighteenth-century writers, it defined the King's ministers' lining the pockets of members of Parliament. In Italian communes, corruption meant something else. It did not require venality. It was rather the failure to put the common good above personal or factional interest. It was corruption for an officeholder whether compensated or not to take any action to reward or benefit a private interest. The communal mindset was unforgiving on this matter of disinterestedness. Machiavelli said the state makes no friends; it would have been enough to expel Cosimo if he was shown to be "benevolent, serviceable to his friends." Those who gain office, he said, "do not consider themselves under obligations to anyone."¹¹⁶ Quintus in his campaign memo to his brother Cicero advised that although their targeted audience felt obligated to him, he must leave them in no doubt that once elected he would now be under obligation to them. That state of affairs in Rome may have been on the mind of the authors of the *ambitus* laws regulating electioneering. Late medieval communes were not so addicted to elections as Romans were. They had more room to experiment hemming elections in and they used it.

Outside communes, in the feudal countryside (particularly in Western Europe), political relations were personal – matters of contract between lords and feudatories which often gave rise to the bargaining, betrayal, and warfare that characterized feudal relationships *ad nauseum*. By contrast, inside commune walls, Italians sought (often failing) to build a government machine that would run with as little personal wear and tear as could be managed. Every effort was bent to depersonalize contest.¹¹⁷ In its ideal form, politics was not intended to be about destroying one's enemy. It could lead to that;

Machiavelli distinguished the salutary interests whose struggle balanced the republic on the one hand, and ambitious individuals organizing followers to destroy opponents on the other. The latter, he said, left no choice but exile or death.¹¹⁸ When those moments occurred, they were moments of failure. They were not the politics republics aimed at achieving.

It would be going too far to say that the communal ideal was one in which haters were expected to convert to lovers. Certainly the exiled Dante would not have endorsed a congenial view of the Guelf faction that hounded him out of Florence and nearly killed him. Still there existed the practice of tolerating discord and sometimes benefiting from it. The Genoese did not wish to eliminate their rivals from the scene in the early sixteenth century, even though there must have existed extreme enmity between greater guilds looking down on lesser guilds, nobles versus plebs, and Guelfs and Ghibellines. These groups did not like each other; but they saw value in the state of the balance of forces, and usually did not seek a permanent vanquishment of each other. They stoutly resisted the French monarch's attempt to remove their party colors. Machiavelli attributed the strength of the Roman republic to conflict – the freedom of Rome was based on the disunion of Rome. He described the mixing of hostile forces in Genoa by means of the Casa di San Giorgio as creating the best of all republics. He quoted the Tuscan proverb that a lean truce was better than a fat victory, which could have been the motto of Italian republics when acting at their best.¹¹⁹

In some Italian communes (Siena and Bergamo), when a proposal was to be debated in council, it was the custom to appoint an in-house skeptic or opponent (the *contradictor*) to argue against the proposal (reminiscent of the Roman contradictors appointed to speak in popular assemblies, the *contiones*).¹²⁰ Discord had its place. In his then-famous praise of Florence, *Laudatio Florentinae*, Leonardo Bruni extolled the harmony that Florence achieved from tightening its strings with “different tones.”¹²¹ The same metaphor was used by the tenth-century playwright Roswitha, who wrote that the world, like man, is composed of “contrary parts” – “no thing is composed of likes” – and harmony itself is made of “discordant elements.”¹²² Here in this world, wrote Savonarola, where we exist between light and darkness, there is neither the highest union nor the highest disunion, particularly in human matters. If we have union, he preached, it is always mixed with disintegration and this is because of the diversity of souls and things. In fact, he said, “contrariety makes union stronger....union becomes more perfect in contradiction.”¹²³ One would not wish to push the point too far, but one senses in the late medieval mind an openness to discord and the acceptance of not only the existence but also the usefulness of contrariety, at least as an ideal, if not put in practice always in reality; and this late medieval mindset possibly played its part in the way early Renaissance communes went about constructing their republics. Something – maybe it was something entirely different – made them negotiate with difference rather than reflexively stamping it out.

Communes were clear: procedures mattered, indeed were at the center of preoccupations. This centrality is evident not only from what communards did but also from what they – and their admirers – said. The voluminous republican literature of republics – by Bruni, Giannotti, Contarini, Guicciardini, later Houssaie, and many more – is much concerned with regulatory details. Rules were the “leitmotif” running through Machiavelli’s works.¹²⁴ About the priority of getting complex rules just right there was unanimity. Some of the Renaissance literature about nominating – which hall for convening, the physical location of the urns, drawing gold and silver balls, where the chosen nominators should seat themselves, where by contrast the unlucky should retire to, the detailed sequence of each discrete step – much of this has, upon reading, the feel of a ritual, the ritual of transitioning power. It is as if the rites were consecrating a near-sacred act. It *was* nearly sacred: the raw anger and ancient animosities permeating the city were being transformed – by a black or white bean, the drawing of paper from an urn – as if by alchemy, into a peaceable town. More than near-sacred, the procedural solution to the age-old problems of self-government was the great Italian contribution to the project begun by Greeks and Romans.

Notes

- 1 *Dialogo del reggimento di Firenze, Opere di Francesco Guicciardini*, vol. 1 (Torino 1970, repr. 1974), 440. Much of the *Dialogo* is taken up with procedures – voting by the city’s quarters, electors, nominating, sorts of councils.
- 2 Niccolò Machiavelli, *Florentine Histories*, trans. Laura F. Banfield and Harvey C. Mansfield, Jr. (Princeton, 1988), 146. Machiavelli also praised the different *virtù* (the quality of daring, decisiveness, and power).
- 3 “O Firenze, per el mal tuo reggimento sono venuti tutti questi mali,” Savonarola, *Prediche Italiane Ai Fiorentini, I. Novembre e Dicembre del 1494*, (Perugia-Venezia, 1930), 256. The sermon was on December 18, 1494. Five days later (p. 326), he warned his auditors not to “confide, man, in any of your virtues.” (“Non ti confidare uomo in alcuna tua virtù.”) (Some of Savonarola’s sermons are not available in translation. See below for more on the puzzle of his word “reggimento” in the first sentence.) Other examples abound: Polybius found wisdom in the complexity of government organization. Polybius 6.10. De la Court in the Netherlands rejected the idea that virtue was the basis of government. Wyger R.E. Velema, “‘That a Republic is Better than a Monarch’: Anti-Monarchism in Early Modern Dutch Political Thought,” *Republicanism*, 1: 15. Felix Gilbert in writing about the influence of Venice on Florence noted that few things mattered to writers so much as Venice’s methods of election and lot. Gilbert, “The Venetian Constitution in Florentine Political Thought,” Nicolai Rubinstein ed., *Florentine Studies: Politics and Society in Renaissance Florence* (London, 1968), 463–500. Spinoza stated that regulating passions was the key to government, creating an administration “so arranged that nothing...is wholly entrusted to...any man.” Jonathan Scott, “Classical Republicanism in Seventeenth-century England and the Netherlands,” *Republicanism*, 1:76–77. Harrington’s preoccupation in *Oceana* was with Oceana’s complex constitutional arrangements (see [Chapter 4](#)). Not virtue but the “form” of government is what made government good, said David Hume. Hume, “That Politics May Be Reduced to a Science,” Knud

Haakonssen ed., Hume, *Political Essays* (Cambridge, England, 1994), 6, 7, 11. Some have supposed that the rise of commerce in the seventeenth and eighteenth centuries caused a rethinking about government and writers such as David Hume and Adam Smith cold-bloodedly to supplant the “classical” republican model of virtuous citizens at its core with new, mechanical procedures; but that view shortchanges the late medieval and early Renaissance concern with governmental mechanics.

- 4 J.G.A. Pocock’s influential *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton and Oxford 1975, repr. 2003) traced the evolution of ancient and humanist concepts of virtue in the republican tradition but did not take much interest, understandably given his theme, in procedures. Acknowledging the importance of structures of decision-making, he said his own interest lay in the citizen’s position in “theoretical terms” and “a republican vision of history,” rather than the “actual” communal procedures (83). Giannotti’s procedural innovations he disparagingly called “mechanized virtù” (284–285, 307–308), and Pocock later described Harrington’s procedural passages as “at wearisome length and in utopian detail” (393). Pocock noted the importance of uniting a person’s “particular virtues” to become “parts of a common pursuit of universal good” and said that this connection was arranged “through the distribution of roles in decision-making” – seemingly this would be the nub of the republican project – but then, given his theme, did not analyze the distribution (115–116). Pocock is outstanding on the parts of the writings that interested him. For a recent and fresh analysis of republican Renaissance writings, see James Hankins, *Virtue Politics: Soulcraft and Statecraft in Renaissance Italy* (Cambridge, Mass., and London, 2019).
- 5 Hagen Keller and Sarah-Louise Raillard, “Electoral Systems and Conceptions of Community in Italian Communes: (Twelfth-Fourteenth Centuries),” *Revue française de science politique*, vol. 64, no. 6 (2014), 29–30. This article is a valuable summary of communal electoral practices. See David Waley and Trevor Dean, *The Italian City-Republics* (Harlow, England, 2010), 37 for communes’ constant experimentation. In their procedural reinventions from the eleventh to the thirteenth centuries, communes borrowed from and imitated each other. Philip Jones, *The Italian City-State: From Commune to Signoria* (Oxford and New York, 1997), 370–371.
- 6 See for example Leonardo Bruni, *Laudatio Florentinae Urbis*, in Hans Baron, *From Petrarch to Leonardo Bruni: Studies in Humanistic and Political Literature* (Chicago and London, 1968), Appendix, Section 4 (not in translation), where magistrates are said to wield sovereign power while important matters were reserved to the council to approve. A recent collection of pertinent essays is Richard Bourke and Quentin Skinner, eds., *Popular Sovereignty in Historical Perspective* (Cambridge, England, 2016), in particular Richard Tuck, “Democratic Sovereignty and Democratic Government,” 115–141.
- 7 For examples of Renaissance affirmation of communal sovereignty, see Francesco Guicciardini, *The History of Italy*, ed. Sidney Alexander (New York and London, 1969), 259; Bruni, *Laudatio Florentinae*, Section 4; Donato Giannotti, *Repubblica Fiorentina: A Critical edition and Introduction*, ed. Giovanni Silvano (Genève, 1990) (here Giannotti’s utopia equates the Grand Council with the republic, incorporating all ranks of people in the former except non-taxpayers – not an uncommon exclusion at the time); Niccolò Machiavelli, *Discourses on Livy*, trans. Harvey C. Mansfield and Nathan Tarcov (Chicago and London, 1996), 117–118 (where Machiavelli contrasts favorably the people as basis of government vs. princes). For recent scholarship on the anchoring of sovereignty in the whole commune, see Jones, *Italian City-State*, 403, 406–407; Mario Ascheri and Fabrizio Ricciardelli, *The City-States in Late Medieval Italy* (Rome 2024), 106.

The concept of popular sovereignty, without the phrase, was articulated by European canonists and jurists in the late medieval period, initially in connection with church fights and often with reference to *quod omnes tangit*. It appears that some writers (such as Marsilius) derived ideas from the actual functioning of Italian communes (where some of them lived), and they also were under the growing influence of Aristotle's *Politics*. On the complex interaction of canonist writing, Aristotle, and the emergence of medieval ideas about popular sovereignty, see preceding chapter, and Ullmann, *Principles of Government*, 217–221, 231, 227–258, 263–272, 291–292; Burns, *Medieval Political Thought*, 20ff, 462–463, 470ff, 525–526; Lewis, *Medieval Political Ideas*, 1: 148, 254; Pocock, *Machiavellian Moment*, 62, 71. For discussion of sovereignty in classical Athens and Rome, see above [Chapter 1](#). In pre-Republic, regal Rome, Mommsen held that the “burgess-community was the real and ultimate basis of the political idea of sovereignty.” Mommsen, *History of Rome*, 1: 110.

- 8 Aristotle, *Politics*, 1275a22–24, 1277a25ff, 1278a35–40, 1278b22–25, 1280b29ff, 1281a30–35, 1281b30ff. For one example of many from the era of Italian communes, see the speech by Piero Capponi in Francesco Guicciardini, *Dialogue on the Government of Florence*, ed. Alison Brown (Cambridge, England, 1994), 26–27.
- 9 Machiavelli, Mansfield trans., *Discourses on Livy*, 80, 125; Guicciardini, *Dialogue*, 21 (del Nero on the “unending competition and ambition that generate disunion”).
- 10 By interest groups, one means semi-organized subsets of citizens petitioning for their own place in the political structure, whether organized along geographic, social, economic, or party lines, wherein “party” refers to a named faction or party (such as Guelfs and Ghibellines, or White and Black Guelfs).
- 11 Ascheri and Ricciardelli, *City-States*, 9, 78, 80, 146; Waley and Dean, *Italian City-Republics*, 34–35, 141–142, 171–183; Scott, *City-State*, 41–42, 51, 74–83, 108–111. Before gaining ascendancy, the *popolo* often created a parallel state (with its own assembly, capitano, militia, and rules) within the communal state. As Waley pointed out (143), with so many overlapping organizations – commune, guild, and *popolo* – there was ample scope for administrative confusion.
- 12 Jones, *Italian City-State*, 403. In the mid-thirteenth century, Siena was rotating 860 offices (not counting military offices), which meant a high proportion of adult males were officeholders. Waley and Dean, *Italian City-Republics*, 64–66 (whose estimate of adult males is possibly low; see n70 below).
- 13 This study mentions procedures in Treviso, Vicenza, Pistoia, Novara, Lucca, Piacenza, Pisa, Malta, Brescia, Bologna, Bergamo, and Ragusa in addition to the four closer treatments of Florence, Siena, Genoa, and Venice. The Order of Malta was not Italian, but its procedures were cited by Renaissance writers. Ragusa (Dubrovnik) was not on the peninsula but was Italianate by virtue of Venice's control. Republican procedures were not confined to Italy and Malta and their colonies. Barcelona, Nuremberg, the cities of southern Netherlands, Poland, and doubtlessly other early-modern polities had their own republican explorations, albeit with limitations imposed by their being within a monarchy. For more on these ex-Italy examples, see in van Gelderen and Skinner, eds., *Republicanism*, vol. 1: Anna Grzékowiak-Krwawicz, “Anti-Monarchism in Polish Republicanism in the Seventeenth and Eighteenth Centuries,” 43–60; Robert von Friedeburg, “Civil Humanism and Republican Citizenship in Early Modern Germany,” 127–146; Wyger R. E. Velema, “‘That a Republic is Better than a Monarchy’: Anti-monarchism in Early Modern Dutch Political Thought,” 9–26; Karin Tilmans, “Republican Citizenship and Civic Humanism in the Burgundian-Habsburg Netherlands (1477–1566),” 107–126; Xavier Gil, “Republican Politics in Early Modern Spain:

- The Castilian and Catalano-Aragonese Traditions,” 263–288. Given the number of communes there were, and the lengthy time span, generalizations herein are bound to be embarrassed by facts somewhere.
- 14 Waley and Dean, *Italian City-Republics*, 40–42; Jones, *Italian City-State*, 412–413; Ascheri and Ricciardelli, *City-States*, 95. The *podestà* regulations mentioned were from various communes, not just Florence.
 - 15 John M. Najemy, *A History of Florence, 1200–1575* (Malden, Ma., 2006), 97.
 - 16 Najemy, *History of Florence*, 35ff.
 - 17 John M. Najemy, *Corporatism and Consensus in Florentine Electoral Politics, 1280–1400* (Chapel Hill, 1982), 9–10.
 - 18 Najemy, *Corporatism and Consensus*, 53ff, 140ff.
 - 19 Gene A. Brucker, “The *Ciompi* Revolution,” in Rubinstein ed., *Florentine Studies*, 336. Although the lowest paid workers were the main drivers of the revolt, those pushing to be eligible for office were likely new guildsmen and would not have included people excluded from tax rolls, who would not usually have been granted political rights. For early Florentine struggles between guilds and Guefts and quarters over office, see Machiavelli, *Florentine Histories*, 56–74; Keller and Raillard, “Electoral Systems,” 44.
 - 20 Najemy, *Corporatism and Consensus*, 274–275.
 - 21 Estimating population is difficult. Lopez put total inhabitants at above 100,000 in the early fourteenth century (before Black Death). Staley, citing Villani, said 90,000 full citizens in 1300, and he gave 180,000 inhabitants in 1336 at the height of prosperity pre-Black Death. This would seem high. Bowsky gave 139,500 total population including the countryside (*contado*), versus Siena’s at 100,000 (same metrics) before the Black Death. Najemy estimates 120,000 Florence proper in 1300, 37,000 in 1427, and 59,000 in 1552. It seems that more than a majority of adult males were being nominated for office in the latter fourteenth and early fifteen centuries. Lopez, *Commercial Revolution*, 93; Staley, *Guilds of Florence*, 199, 555, 556; William Marvin Bowsky, *A Medieval Commune: Siena Under the Nine, 1287–1355* (Berkeley and London, 1981), 7–8, 19; Najemy, *Corporatism and Consensus*, 275; Najemy, *History of Florence*, 97, 100.
 - 22 Najemy, *Corporatism and Consensus*, 11, 20ff, 33, 36, 66, 103–107, 121ff, 140–145, 177–178, 182, 184, 274–284, 299, 301, 305, 315. See also Alison Brown, *Medicean and Savonarolan Florence: The Interplay of Politics, Humanism, and Religion* (Turnhout, Belgium, 2011), 143, 148. To tighten control while increasing the number nominated, the oligarchy could rely on the *accoppiatori* to add names to bags. More effective was creation of the *borsellino*, or little bag, into which the *accoppiatori* placed preselected names for drawing.
 - 23 Najemy, whose *Corporatism and Consensus* supplies invaluable data, is interested in the equity struggle between guilds and oligarchs (which he characterizes as corporatism versus consensus) and less focused on the procedural narrative.
 - 24 Guidubaldo Guidi, *Il governo della città-repubblica di Firenze del primo quattrocento*, 3 vols. (Firenze, 1981), 1: 158–159, 283–285; Najemy, *Corporatism and Consensus*, 136–138. Initially there were twenty *gonfaloni* then sixteen after the reorganization of 1343. Prior to reorganization, the larger administrative unit was the *sesto* rather than the quarter.
 - 25 Guidi, *Il governo*, 1: 160–161, 197, 289. Secrecy was achieved by the voter’s holding the bean in his fist, lest others see its white or black color before dropping it into the receptacle. (Note similarity with covering the axle of voting tokens in Athenian *dikasteria*.) In some venues and some eras, *squittino* or *scrutinium* meant “election” or “voting;” in late medieval communes of Italy it usually had the distinct meaning of sifting the citizenry (or sifting a first set of nominees) to produce candidates eligible for office (who were then selected by subsequent stages), which this author defines as a nominating function. Najemy interprets

the step to be the elective step, but given the steps to follow (assembling tickets, adding names to bags, distributing names into separate bags for quarters and for major and minor guilds, sortition), there was much that still had to happen for a candidate to become an officeholder.

Rubinstein and Guidi incline toward regarding scrutiny as nominating. See Nicolai Rubinstein, *The Government of Florence under Medici (1434 to 1494)* (Oxford, 1966), 5–7; Rubinstein, “Florentine Constitutionalism and Medici Ascendancy in the Fifteenth Century,” Rubinstein ed., *Florentine Studies*, 453–455. Occasionally in Florence the scrutiny threshold was less than two-thirds (Najemy, *Corporatism and Consensus*, 139) but the usual threshold seems to have been two-thirds. In some other venues, “scrutiny” remains obscure: the Hall of the Scrutinio in Venice may refer to nominating candidates but could instead mean voting hall (as, say, the papal conclave, where scrutiny seems to have meant soundings of the cardinals, not nominating). Houssaie (widely read in the eighteenth century, including by some founders of the American government) in his Venice history mentions scrutiny without explaining it. Amelott de la Houssaie, *The History of the Government of Venice [etc.]* (London, 1677), 137–138. Wolfson at the end of the nineteenth century found the term puzzling. Arthur M. Wolfson, “The Ballot and Other Forms of Voting in the Italian Communes,” *American Historical Review*, vol. 5, No. 1 (October 1899), 18, where he described the papal *scrutinium* as “some form of procedure in which special care was taken.”

- 26 Guidi, *Il governo*, 1: 156–157; Najemy, *Corporatism and Consensus*, 138ff, 285–290. Guidi describes yet another stage (collapsed above with scrutiny), when three friars collected the beans and brought them to “secret officers” who counted them whereupon a notary wrote the names in a notebook of those who had passed the scrutiny, with the words, “And so each ‘nominated, in each neighborhood and each banner [local militia organization]’ is listed....” Guidi, *Il governo*, 1: 161. It was this notebook that was transferred to the *accoppiatori*. If this activity does represent a separate stage, then Florence had five, not four, electoral stages.
- 27 Guidi, *Il governo*, 1: 162–164, 208, 290–294. Ghibellines were generally excluded from consideration in fourteenth-century Florence. However, scholars have found evidence of a possible party quota for Guelfs and Ghibellines in Florence in the thirteenth century, allocating offices proportional to these parties’ adherents in the adult male population. Serena Ferente, “Parties, Quotas and Elections in Late Medieval Genoa,” *Cultures of Voting*, 190 n17; Najemy, *History of Florence*, 77. Staley (*Guilds of Florence*, 36–37, 41–42) was of the view that as early as twelfth century, if not earlier, groups of *Grandi* or noble magnates and *popolani* shared allocations of office. See also: Guicciardini, *Dialogue*, 116, wherein he deprecates the system of allocations by quarter and guilds and yearns for appointments by merit; and Machiavelli, *Florentine Histories*, 121, on the mixed-up tumult for office among greater and lesser guilds, Guelfs and Ghibellines.
- 28 Guidi, *Il governo*, 1: 158; Rubinstein, *Government of Florence*, 2–4; Najemy, *Corporatism and Consensus*, 141, 185. In the fourteenth century, new bags were filled every three years, though at times the *Signoria*’s bag was good for eight years. In Treviso, not every five years but every six months a new commission revised the bag. Keller and Raillard, “Electoral Systems,” 44.
- 29 The system, which varied often, was more complex than described in this brief summary. See Guidi, *Il governo*, vol. 1 for detail.
- 30 Najemy, *History of Florence*, 182ff.
- 31 Najemy, *Corporatism and Consensus*, 103–104; Guidi, *Il governo*, 1: 160, 180.
- 32 Najemy, *Corporatism and Consensus*, 23, 105, 159.
- 33 Guidi, *Il governo*, 1: vii.
- 34 Machiavelli, *Discourses on the First Decade of Titus Livius*, 2.2, Allan Gilbert, trans., *Machiavelli: The Chief Works and Others* (Durham, NC and London, 1989), 1: 333.

- 35 Guidi, *Il governo*, 1: 161–162; Najemy, *Corporatism and Consensus*, 106; Brown, *Medicean and Savonarolan Florence*, 143–144.
- 36 The polity of Murano next to Venice had a sophisticated voting system – involving nominees, approval voting – and it too specified that announcement was made only of final results, not interim results. Claire Judde de Larivière, “‘Il fait bon voir de tout leur sénat balloter’: The Ubiquity of Voting in Late Medieval and Renaissance Venice,” *Cultures of Voting*, 249–250. It is possible that wherever in Renaissance communes an announcement could influence the polity, the northern Italians inclined more toward the Greek treatment of announcements than to the Roman. However, even in Rome, in 139 BC or thereafter, possibly around the time of introduction of the secret ballot, tribes moved to simultaneous voting for elections and withheld even the counting of votes (not only the announcement of the count) until all tribes had voted. Ursula Hall, “Voting Procedure in Roman Assemblies,” *Historia: Zeitschrift für Alte Geschichte*, Bd. 13, H3 (July 1964), 290–291. Hölkeskamp argued that centuries employed the same secrecy about winning and losing vote totals in the interests of consensus, but other Roman voting specialists (Staveley, Hall, and Taylor) do not agree. Hölkeskamp, *Reconstructing the Roman Republic*, 104–105.
- 37 Najemy, *Corporatism and Consensus*, 76–77.
- 38 Machiavelli, *Florentine Histories*, 127–128, *passim*. That Machiavelli did not explain the comment was because it was common knowledge that the impartial management of purses played a decisive part in Florentine power transitions. For Medicean partiality to keeping bags always open, and the meaning of “a mano,” see Rubinstein, *Government of Florence*, 23–25, 34–35, 43, *passim*. The Medicean struggle to maintain power was conducted through controlling nominations. The closing of the bags in 1455 against the wishes of the Medici formed “a landmark in the development of the Medici regime.” Rubinstein, *Government of Florence*, 23. C. 1600 the city of Barcelona used lot to fill the city council, drawing names from lists “of each body represented in the council.” The drawing of the lots was called the *insaculación*, which likely (author’s interpretation) referred to taking name tickets out of a saco, or, as called in Italy, the *borsa*. Gil, “Republican Politics in Early Modern Spain,” 271.
- 39 This appears in his *History of Florence*; author’s attention was drawn to it by Brown, *Medicean and Savonarolan Florence*, 110. See also, Guicciardini, *Dialogue*, 54–55, 71.
- 40 Animus was directed against Medicean electoral manipulations, ie, transferring name tickets from a recent bag to older bags (so Medici friends would be drawn sooner) and suborning *accoppiatori* who sometimes convened in Cosimo’s grand palace on the Via Larga and who added and excluded names from bags at Medici instruction. These methods kept the tyranny going for sixty years. Marco Pellegrini, *Savonarola: Profezia e martirio nell’età delle guerre d’Italia* (Roma, 2020), 50; Brown, *Medicean and Savonarolan Florence*, 111, 133, 153; Najemy, *History of Florence*, 272–272, 281–283, 294–296.
- 41 Pellegrini, *Savonarola: Profezia e martirio*, 90; Donald Weinstein, *Savonarola: The Rise and Fall of a Renaissance Prophet* (New Haven and London, 2011), 110–120.
- 42 Savonarola, *Prediche Italiane Ai Fiorentini*, I. *Novembre e Dicembre del 1494* (Perugia-Venezie, 1930), 117–120 (Dec. 7), 125–133 (Dec. 8), 195, 197 (Dec. 14).
- 43 *Prediche*, 1: 238 (Dec. 17); 254–256, 257 (Dec. 18); 267, 270ff (Dec. 19) (wherein Savonarola interwove the Creation story with the Florentines’ need to reform their government); 292–293 (Dec. 21). He said in recommending Venice that if they did not want the Doge, they could dispense with that office; it was the Venetian electoral system they should emulate, the painstaking process of first producing nominees via electors and then comparing them in pairwise voting to find the most preferred candidates. There is an intriguing aside in Rubinstein and

- Raillard (Nicolai Rubinstein and Sarah-Louise Raillard, "The Early Years of Florence's Grand Council (1494–1499)," *Revue française de science politique*, vol. 64 (no. 6), 120) in which they say that by *reggimento* Savonarola meant prominent families frequently in power, a semi-professional political class. This interpretation of a word often on Savonarola's lips would support this writer's view that Savonarola was aiming with his procedural comments to prevent a professional political class (or group, such as the Medici); but against this theory, throughout the November and December 1494 sermons Savonarola seems to be using the term *reggimento* in the conventional meaning of "form of government." In either case, his target would have been the same: reforming nominating procedures to prevent control of high office by an interest or family group.
- 44 The "broader foundation than ever" phrase is Rubinstein's, "Florentine Constitutionalism," Rubinstein ed., *Florentine Studies*, 462.
 - 45 Rubinstein and Raillard, "Early Years," 99–101, 109, 116, 117, 117n2. Rubinstein and Raillard (among others) have stated that in recommending Venice on December 14, Savonarola was referring to the Grand Council of Venice. This writer thinks it more likely he was referring to Venice's multi-step electoral process because Savonarola continued recommending Venice after the Florentine Grand Council was established. Moreover, he specifically made reference to the Doge's not being necessary in the same breath (and the most interesting thing about the Doge was his unique method of election, having nothing to do with Venice's Council), which reference would not have been necessary had he been referring to the Venetian Council. Lastly Savonarola's Great Council was a huge, popular assembly, bearing no resemblance to the closed, aristocratic Venetian body. One who does not share Rubinstein's view that Savonarola was referring to the Venetian Council is Felix Gilbert, "Venetian Constitution in Florentine Political Thought," Rubinstein ed., *Florentine Studies* 480–481.
 - 46 *Prediche*, 1: 356–357, 362, 365.
 - 47 Marco Pellegrini, *Savonarola: Profezia e martirio*, 104–106; Ida Giovanna Rao, Paolo Viti, Raffaella Maria Zaccaria eds., *I processi di Girolamo Savonarola (1498)* (Firenze, 2001), 72 n40.
 - 48 For Siena's use of this technique, see below. Savonarola may have spoken two sermons back-to-back on this topic, on October 11 and October 18. For the first one, see Girolamo Savonarola, *Prediche sopra I Salmi* (Roma, 1969), 218–219; for the sermon of 18 October 1495 see an old edition, *Le Prediche Sopra dil Reverendo Frate Hieromo Sauonarola li falmi...* (Venice, 1539), 210a, 211 (accessed Google books online). It is possible there is a corruption in the texts and there was but one sermon; the passages are similar, but not identical. Parts of the key sentence appear in both texts: "non si sappi chi ha vinto o no. Piglia questo da' Senesi, che e' buono." In an obscure passage in the October 18 text, he referred to nominating tickets (*polizze*) and also to casting ballots, and, consistent with the Siena advice, he appeared to say, if someone asks for your vote, don't disclose it. Although the October sermon(s) are silent on the matter, Savonarola must have been referring to the lesser offices, for under the revolutionary changes of the year before, only these were still allocated by sortition following nomination via the bags; this passage would not make sense if applied to the major offices filled by Venetian-like elections. The step Savonarola prescribed, which he labelled Sienese, would have restored a feature of Florentine procedures from the previous century. In mid fourteenth century, the results of scrutinies were not made public (though first step nominations were). Guidi, *Il governo*, 1: 158–161; Najemy, *Corporatism and Consensus*, 177ff, 273.
 - 49 Savonarola, "Treatise on the Rule and Government of the City of Florence," Anne Borelli and Maria Pastore Passaro eds., *Selected Writings of Girolamo Savonarola: Religion and Politics, 1490–1498* (New Haven and London, 2006), 198–199.

- 50 Rubinstein and Raillard, "Early Years," 120n, citing *Prediche*, III: 220.
- 51 Rao, et al., *I processi*, 83–84n57; Weinstein, *Savonarola*, 199.
- 52 Pellegrini, *Savonarola*, 195; Weinstein, *Savonarola*, 193–198. The scandal of the secret caucus also involved anti-Bigi or anti-Medici partisans.
- 53 Weinstein, *Savonarola*, 212.
- 54 Guicciardini, *Dialogue*, 196–197.
- 55 Francesco Guicciardini, *The History of Italy* (New York and London, 1969), 126–131; Weinstein, *Savonarola*, 259ff.
- 56 Francesco Guicciardini, *The History of Florence*, trans. Mario Domandi (New York, 1970), 148. See also Weinstein, *Savonarola*, 314; Franco Cordero, *Savonarola*, vol. 4, *Agonista perdente*, 1497–1498 (Roma-Bari, 1988), 668.
- 57 Brown, *Medicean and Savonarolan Florence*, 161; Najemy, *History of Florence*, 401.
- 58 Corrado Vivanti, *Niccolò Machiavelli: An Intellectual Biography* (Princeton and Oxford, 2019), 8.
- 59 After his conviction and death sentence had been decided (both by communal authorities and by apostolic commissioners), Savonarola continued to be tortured. Cordero, *Agonista perdente*, 593, 595, 633–634.
- 60 Weinstein, *Savonarola*, 193.
- 61 This breach of a law to benefit a partisan interest "disgusted Machiavelli." Vivanti, *Machiavelli*, 8–9.
- 62 Savonarola, "Treatise on Government," 198–199.
- 63 Rao, et al., *I processi*, LXV.
- 64 Pellegrini, *Savonarola: Profezia e martirio*, 283.
- 65 Cordero, *Agonista perdente*, 525; Rao, et al., *I processi*, 7–8; Robert Klein, *Il processo di Girolamo Savonarola* (Ferrara, 1957), 165–181.
- 66 Rao et al., *I processi*, 20. See note below on Domenico's testimony on the same question.
- 67 For friars' role in Florentine elections, see Guidi, *Il governo*, 1: 161. In city-republics generally, mendicant friars often advised communes on procedures, arbitrated electoral disputes, and protected the integrity of the vote because, among other reasons, they were trusted to be impartial. Roest, "Representative Bodies," 49–50; Jones, *Italian City-State*, 437.
- 68 Pellegrini, *Savonarola: Profezia e martirio*, 287–288; Rao, et al, *I processi*, 25–31; Klein, *Il processo*, 191–196.
- 69 Pellegrini, *Savonarola: Profezia e martirio*, 295; Klein, *Il processo*, 232. By the third trial Savonarola had been so tortured that his personality was dissolved and his words cannot be relied on. Cordero, *Agonista perdente*, 635; Rao, et al., *I processi*, 39. But the point is not the accuracy of his testimony but what the three trials revealed about the magistrates' conception of Savonarola's crime. They were convinced he was orchestrating a political front to control Florence. Before the third trial, they had tortured his followers, including one, Andrea Cambini, who spoke about lists of names which Valori had drawn up of councilors who could be parties to or beneficiaries of a voting agreement. The *Signoria* convened senior councilors to decide the penalty for Savonarola and his followers. When panelists called for leniency, Nicola Rucellai noted that the infractions were not a small thing, and the first infraction he cited was the "*accordi elettorali*" (electoral agreements). Cordero, *Agonista perdente*, 582, 590. The three trials were replete with questions about electoral agreements, and defendants were aware of the gravity of this charge. Fra Domenico, executed with Savonarola, began his confession by denying any "*intelligenza*" made in San Marco. When asked if he knew who was elected to the *Signoria* before public announcement (Savonarola was asked the same question), Domenico replied he would not have listened even if someone did want to tell him because that was "something sacred." Klein, *Il processo*, 201, 210. Only at the end did

- Savonarola confirm electoral intrigue. By then the commissioners were already convinced. See also Pasquale Villari, *La storia di Girolamo Savonarola e de' suoi tempi: con l'aiuto di nuovi documenti*, vol. 2 (Firenze, 1861), 159, 166, 198; doc XLIX (ccxl ff.); Weinstein, *Savonarola*, 291.
- 70 Inside the communal palace, in the hall where the Nine convened, Lorenzetti's frescoes depicted allegories of Good Government and Bad Government: the traits of the one, justice, concord, and peace; those of the latter, tyranny, discord, and vain glory. Bowsky speculated that whereas her rival Florence channeled her energies into art and literature and private monuments, Siena channeled hers into civic-mindedness and public spaces. William Marvin Bowsky, *A Medieval Italian Commune: Siena Under the Nine, 1287–1355* (Berkeley and London, 1981), 292ff. Siena's population was some 50,000 within the walls, but counting the *contado*, the countryside under Siennese control, there were some 100,000 people before the Black Death. After the plague, Siena proper would again reach 50,000 only in the twentieth century. Bowsky, *Medieval Italian Commune*, 7–8, 19. *Contado* residents had no vote in Siena electoral matters.
 - 71 Mario Ascheri, *Siena nel Rinascimento: istituzioni e sistema politico* (Siena, 1985), 17, 27, 28, 45. Ascheri published photographs of *polizze* of candidates selected and, in another instance, the rota for *viarii* (road keepers) for the years 1413–1424 and how the office would be distributed among the three *terzi* and among the four *monti* or political groups – the Riformatori, Popolo, Noveschi, and Nobili. Different from the Florentine system, the Siennese tickets were entire slates already pre-grouped before being entered into bags. (Florentines generally deposited name tickets individually into separate bags.) For the *Trecento*, see Elena Brizio, “L'elezione degli uffici politici nella Siena del trecento,” *Bullettino senese di storia patria* (Siena, 1992), 16–62. As she makes clear, *monti* played key roles in the assortment in 1368 and thereafter, as different political groups contended for power in the aftermath of the 1355 revolution. The *monti* do not seem to have been key to the allotment during the reign of the Nove. Guilds did not play in Siena the same important role they played in Florence. Bowsky's book *Medieval Italian Commune* is excellent on the *Trecento* but not concerned with procedures. His article on procedures sheds light on the social composition of the Nine in the fourteenth century but not procedural detail to the level of Ascheri and Brizio (or Guidi on Florence). Bowsky, “The *Buon Governo* of Siena (1287–1355): A Medieval Italian Oligarchy,” *Speculum*, vol. 37, no. 3 (July 1962), 368–381.
 - 72 Ascheri, “Siena nel primo Quattrocento: un sistema politico tra storia e storiografia,” Mario Ascheri e Donatella Ciampoli eds., *Siena e il suo territorio nel rinascimento* (Siena, 1986), 22–26, 29–41, wherein Ascheri describes in detail the nominating by the 42 military companies, the voting by the Council of the People (the council voted on the three bags of *terzo* candidates), and the assortment by *accoppiatori* to create balanced lists of 9 magistrates by *terzo* and *monti* which would be good for eight years – in all, 432 names (6 times a year x 9 places x 8 years). Rules changed and *monti* changed periodically.
 - 73 Brizio noted that however so often the groups changed, what was important was the political procedure itself. Brizio, “L'Elezione della signoria: provvedimenti inedita (1371–1398),” *Antica legislazione della repubblica di Siena* ed. Mario Ascheri (Sienna, 1993), 140. She referred to a policy of non-irritability and “softening” (“ammorbimento”). Brizio, “L'elezione degli uffici,” 59.
 - 74 María Ángeles Martín Romera, “Popolo and Sindacato in the City of Siena: Rethinking Popular Agency in Medieval Italy,” *Journal of Social History*, vol. 56, Issue 2 (Winter 2022), 265–293.
 - 75 Genoa barred nobles starting in 1339 from the dogeship and command of the fleet. Carlo Bitossi, “Governing in a Republican State: A Case Study of Genoa from Medieval to Modern Times,” 4, ms. sent to the author by Bitossi. Siena involved nobles

- in government but generally barred them from its highest office. Bowsky, “*Buon Governo of Siena*,” 370. At times, Florence did as well. Najemy, *Corporatism and Consensus*, 47, 54, 250. For the general Italian proscription of nobles from highest communal office, see Ascheri, “*Siena nel primo Quattrocento*,” 16; Scott, *City-State*, 18. In some places anti-magnate sumptuary laws curbed ostentation in dress, meals, even number of guests a magnate could entertain. Ascheri and Ricciardelli, *City-States*, 119–120, 124. Sometimes nobles were in the leadership of the *popolo*, sometimes the *popolo* installed a noble family in power, so universal class divisions were not always clear. Waley and Dean, *Italian City-Republics*, 148–149, 152. Nonetheless the prohibition of magnates from serving in the highest councils was common.
- 76 Bowsky, *Medieval Italian Commune*, 133ff. The proscribed major nobles were so important a category as to merit their own name, the *casati*.
- 77 Bowsky, *Medieval Italian Commune*, 26, 58. Ascheri has aptly said that political leaders today are the new nobles, monopolizing office. Ascheri conversation with author, Siena, April 1, 2022.
- 78 This secrecy about council voting was true in both the Trecento and Quattrocento. Bowsky, *Medieval Italian Commune*, 60; Brizio, “*L’elezione degli uffici politici*,” 29; Brizio, “*L’elezione della signoria: provvidimenti*,” 140.
- 79 “*Pacifici status civitatis*” was the phrase. For examples of procedural texts, mostly in Latin but some in Italian, see Brizio, “*L’elezione della signoria: provvidimenti*,” 141ff.
- 80 In using the term “party,” one need not transport backwards the sort of organization with branch offices, manifestoes, and policy programs that have come to characterize parties since the nineteenth century; rather one should imagine collections of citizens loyal to an interest which typically was known by its color and which was entitled to participation in the electoral process.
- 81 Serena Ferente, “Parties, Quotas and Elections in Late Medieval Genoa,” *Cultures of Voting*, 191–198, 200. Unlike Genoa, many city-republics proscribed either Guelfs or Ghibellines.
- 82 Giuseppe Felloni, “The Primacy of Italian Finance from the Middle Ages to Early Modern Times,” trans. of “Dall’ Italia all’Europa: il primato della finanza italiana del Medioevo alla prima età moderna,” in *Storia d’Italia, Annali* 23 (Torino, 2008). See also Felloni, “A Profile of Genoa’s Casa di San Giorgio (1407–1805): A Turning Point in the History of Credit,” speech at launch of computerized inventory of Casa di San Giorgio, November 26, 2008, Palazzo San Giorgio e Archivio di Stato di Genova.
- 83 Christine Shaw, “Principle and Practice in the Civic Government of Fifteenth-Century Genoa,” *Renaissance Quarterly*, vol. 58 No. 1 (Spring 2005), 45–90, esp. 64.
- 84 *Amministrazione ed Etica Nella Casa Di San San Giorgio (1407–1805): Lo Statuto del 1568*, a cura di Giuseppe Felloni (Firenze, 2014), 13–14.
- 85 Bitossi, “Governing in a Republican State,” 10; Shaw, “Principles and Practice in Genoa,” 62–64.
- 86 Shaw, “Principles and Practice in Genoa,” 62; Bitossi, “Governing in a Republican State,” 9–10; Machiavelli, *Florentine Histories*, 351–352.
- 87 One writer has described Genoa as “an uneasy mixture of public and private office-holding.” Scott, *City-State*, 74–77. One wonders if it was so uneasy. In one year, a magistracy of ten citizens was appointed to govern both Genoa and the Casa. As Scott points out, after the fall of Constantinople in 1453, Genoa transferred management of its many colonies to the Casa. Genoa’s fleet was financed by the clan-based neighborhood associations (*alberghi*). People having an economic stake in Genoa had an incentive to sustain Genoa’s republic. Brown makes a different but related point about the distribution of salaried offices (in Florence) giving many people an economic stake in the republic. Brown, *Medicean and Savonarolan Florence*, 160–165.

- 88 Felloni, *Amministrazione di San Giorgio*, 13.
- 89 Bitossi, "Governing in a Republican State," 6. Whether the un-naming of families was aimed more at electors or the elected, the record does not reveal; but in either case, "confusion" was the goal.
- 90 Venice appears in many Renaissance discussions of republics. For its place in Florentine thought, see Gilbert, "Venetian Constitution in Florentine Political Thought," Rubinstein ed., *Florentine Studies*, 463–500.
- 91 There are many descriptions of the Doge election system. One of the clearest is Ascheri and Ricciardelli, *City-States*, 115. Researchers skilled in voting maths have found the Venetian Doge election to have been a competent means of solving the problem of how one discovers the most preferred candidate in a multicandidate field (the Condorcet winner). See Jay S. Coggins and C. Federico Perali, "64% Majority Rule in Ducal Venice: Voting for the Doge," *Public Choice* vol. 97, No. 4 (1998), 709–723; Miranda Mowbray and Dieter Gollman, "Electing the Doge of Venice: Analysis of a 13th Century Protocol," *20th IEEE Computer Security Foundations Symposium (CSF '07)*, Venice, Italy, 2007, 295–310. Voting during the first nine stages was by the approval method (voters' voting for all candidates meeting their approval). Voting in the final tenth stage was not: rather, each elector wrote down the name of one person then the forty-one electors voted on each nominee, and the first to receive twenty-five votes was elected Doge. The variation in how many votes were cast (multiple for nominees and single for election) in this system would be repeated in later centuries in the same sequence as here. Certain other quirks of the Doge election appear in later systems: e.g., a role for a *ballotino*-like figure in the East Jersey constitution (see Chapter 5) and in today's election of the Coptic Pope (Pattenden, "Cultures of Secrecy," 107).
- 92 The Venetian system was a maximalist approach combining pairwise comparison voting (explained by Condorcet centuries later, and proposed by Ramon Llull in the thirteenth century), lottery, approval voting, and super-majorities. It is unlikely that winners were false winners in Venice (that is, not the most preferred candidates), and even though Guicciardini expressed skepticism, this set of procedures was safe from influence, which is probably why the Venice regime was widely admired in the Renaissance, why Savonarola recommended it to Florence, and why Harrington copied it for Oceana. For Venetian non-Doge elections, see: Amelott de la Houssaie, *The History of the Government of Venice [etc]* (London, 1677), 8–10; and a modern summary in Larivière, "il fait bon voir de tout leur sénat balloter," 242–256.
- 93 For Venice's council numbers, see Larivière, "il fait bon voir de tout leur sénat balloter," 243; Coggins and Perali, "64% Majority Rule," 720 n4; Norwich, *History of Venice*, 183–184. For Florence's council, see Rubinstein and Raillard, "Early Years," 110; Weinstein, *Savonarola*, 139; Brown, *Medicean and Savonarolan Florence*, 143.
- 94 Guicciardini, *Dialogue*, 103. Giannotti in a widely read work at the time echoed Guicciardini, saying said that Venice proved an aristocratic system could provide good government for the masses. Gilbert, "Venetian Constitution in Florentine Political Thought," 497. To her many Renaissance admirers, few aspects caught their attention so readily as the complex Venetian methods of nomination and election. Gilbert, "Venetian Constitution in Florentine Political Thought," 476. The earlier writers took pains to speculate where Venetians derived their system. Houssaie (*History of Venice*, 21, 33) referred to the Order of Malta, another aristocratic self-governing entity, which created an electoral college whose functions vaguely resembled those of the Doge electoral college. See *Gli Statviti della Sac Religione di S Gio Gerosolimitano [etc.]* (Rome, 1509), 218–225 (with election by-laws), Collections of Order of Malta, Vienna, Austria; H.J.A. Sire,

The Knights of Malta (New Haven and London, 1994), 80–82. See also Vittorio Conti, “The Mechanisation of Virtue: Republican Rituals in Italian Political Thought in the Sixteenth and Seventeenth Centuries,” *Republicanism*, 2: 73–83, wherein Conti, quoting Contarini and Giannotti, observes that Venice’s embracing of the classical form of mixed government was a “technical device” and a case of “constitutional engineering,” not government mixing by social estate but rather an “instrument of equilibrium” allowing for “the perfect functioning of the machine of state” in order “to stabilize the government thanks to a mechanism that could be defined as ‘checks and balances.’” This is a needed correction of the oft-repeated theory that republics, following Polybius’ analysis, generally embedded three social estates in the structure of government. (Where one may differ with Conti is his portrayal of the Doge electoral procedure as an instance of “mechanization of virtue” studied by foreigners because they saw this complex method as the best way “to help or compel men to be virtuous.”) For more on Polybius and communes, see concluding endnote of this [Chapter 3](#).

- 95 For communes not analyzed in this study, see Keller and Raillard, “Electoral Systems,” 29–51; several essays in Ferente et al. eds, *Cultures of Voting* (Lorenzo Tanzini, “From Discussion to Vote: Practices of Political Deliberation and Written Records in Communal Italy,” 172–186; Pierluigi Terenzi, “The Citizens and the King: Voting and Electoral Procedures in Southern Italian Towns under the Aragonese,” 259–273; Lovro Kunčević, “Political Decision-Making in the Republic of Ragusa (Dubrovnik) in the Fourteenth and Fifteenth Centuries,” 225–241); Wolfson, “Ballot,” 1–21; Vittor Ivo Comparato, “From the Crisis of Civil Culture to the Neapolitan Republic of 1647: Republicanism in Italy between the Sixteenth and Seventeenth Centuries,” *Republicanism*, 1: 169–194. Tanzini notes the thirteenth-century existence of manuals used by notaries to help administer electoral procedures in Italian communes; these manuals helped spread techniques across Italy and beyond (173).
- 96 Some towns changed the council once a year. In Florence, tenure on the *Signoria* varied, in the fifteenth century was sometimes two months. The shortest tenure was chief magistrate of Ragusa (present day Dubrovnik), a new one elected each month. Rubinstein, *Government of Florence*, 34; Kunčević, “Ragusa,” 230. The head of the Athenian *boule* in the classical era changed every day, the tribe in charge every month.
- 97 Among many examples of local nominating/communal election, see Bologna and Vicenza in Keller and Raillard, “Electoral Systems,” 38ff; Wolfson, “Ballot,” 15; Najemy, *Corporatism and Consensus*, 22, 34, 68–69; Ascheri, “Siena nel primo Quattrocento,” 22–26, 29–41.
- 98 Machiavelli, *Florentine Histories*, 154.
- 99 Guicciardini, *Dialogue*, 120–121. This reason was mentioned frequently in the federal convention in Philadelphia in 1787.
- 100 Guicciardini, *Dialogue*, 130–131. One suggestion he made was that forty to fifty people should be nominated (for Gonfalonier, or chief magistrate) by senators and others (the nominators to be chosen by lot), then voted on, and the three with highest votes should be forwarded to the Great Council for final election; if no one attained a majority, the Senate should forward another three candidates to the Council.
- 101 Savonarola, “Treatise on Government,” 198–199.
- 102 Keller and Raillard, “Electoral Systems,” 36ff. Whether the 40 and 400 owed anything to the same numbers cited by Aristotle concerning the Oligarchy’s making of a constitution (in the coup of 411 BC) according to Clesithenes’ “ancestral” ways is a possibility but unknowable. Aristotle, *Athenian Constitution*, 31–32.
- 103 Guicciardini, *Dialogue*, 127. American founders, although making the argument that filtration produced higher quality officeholders, generally did not make the

- argument about indeterminacy in connection with filtration (they did make it in connection with electoral college).
- 104 “The random element was everywhere,” said Ascheri and Ricciardelli, *City-States*, 137.
 - 105 Machiavelli, *Florentine Histories*, 278.
 - 106 Keller and Raillard, “Electoral Systems,” 34, 45, and *passim*; see preceding sections on Florence, Venice, and Genoa.
 - 107 Machiavelli, *Florentine Histories*, 154.
 - 108 Bologna passed an early law forbidding membership in “any corporation for mutual assistance” except the militia and guilds “made for the honor and advantage of the commune.” Waley and Dean, *Italian City-Republics*, 155. On prohibition of political engagement, see Waley and Dean, *Italian City-Republics*, 142; Ascheri and Ricciardelli, *City-States*, 114–115; and above sections on Florence and Siena.
 - 109 Lewis, *Medieval Political Ideas*, 1: 256. As Pocock has perceptively said, the idea was to free magistrates from dependence on the people’s will. *Machiavellian Moment*, 127.
 - 110 Keller and Raillard, “Electoral Systems,” 38, 44, *passim*. See also earlier sections herein on Florence, Siena, and Genoa.
 - 111 Rubinstein, *Government of Florence*, 51 n3.
 - 112 Keller and Raillard, “Electoral Systems,” 46–47. This disability from voting reminds one of Aristotle’s statement (see [Chapter 1](#)) that people living next to the frontier could not have a say on the question of war or peace with a neighboring state on the other side of that border because they could not be impartial. Other anti-representational examples from late-medieval Florence: In 1282, priors (not guilds) appointed which guild members were entitled to sit on the electoral committee. Najemy, *Corporatism and Consensus*, 23. A 1328 reform did not bar guildsmen from being nominated (most nominees must have been guild members) but excluded guilds and their consuls from participating in the first stage of nominating. The scrutiny committee in same year had two delegates from the twelve major guilds, chosen not by the guilds but by lot by the *Signoria*. A 1348 *balia* created a new scrutiny committee which provided for the *Signoria* to choose which minor guildsmen could participate. Najemy, *Corporatism and Consensus*, 104–105, 159. In same period, the Guelf party could nominate its adherents for office but could not vote in the scrutiny committee until 1361. Guidi, *Il governo*, 1: 160, 180. The inability to designate one’s own officeholders extended to the election of guild officers. In 1329 nominations for a major guild’s offices were made by priors and the other major guilds (which meant a major guild did not have control over nominees for its own leadership); scrutiny was confined to priors, colleges, and guild members selected by priors and colleges (which meant the same major guild did not control the approval stage for its own leaders). For nine minor guilds’ offices, scrutiny was by two members of each of the twenty-one guilds chosen by the Five of the *Mercanzia* (the confederation of elite guildsmen). Najemy, *History of Florence*, 130. In the 1292 debate about guilds’ aspirations, one minor guild proposed the priorate should have twelve members, one from each guild selected not by itself but by the other guilds. Another proposal called for twelve guilds nominating 72 candidates; each of the 72 would be voted on, one by one, by all twelve consuls. Najemy, *History of Florence*, 81–82.
 - 113 Venice does not support this theory. Its complexity occurred without democratic enhancement. On the other hand, communes imitated each other in formulating procedures, and Florence appears to have been a model. Jones, *Italian City-States*, 371; Guidi, *Il governo*, 1: vii. It is possible Venice in its magistracy elections emulated procedures in Tuscany where office eligibility increased. But that possibility requires more research.

- 114 In Florence and Siena above, we have seen this increase in steps. Jones noted the change toward complexity generally beginning mid-thirteenth century. *Italian City-State*, 407, 411.
- 115 Machiavelli, Gilbert trans., *Discourses on Livius*, 2.2, 1: 333.
- 116 Maurizio Viroli, *How to Choose a Leader: Machiavelli's Advice to Citizens* (Princeton and Oxford, 2016), 46, 64–65.
- 117 Depersonalization was apparent in prohibitions on campaign activity, absence of head-to-head electoral contests, use of *podestà*, and constant rotation. See also Waley and Dean, *Italian City-Republics*, 150; Jones, *Italian City-State*, 411.
- 118 Vivanti, *Machiavelli*, 214.
- 119 Machiavelli, Mansfield trans., *Discourses on Livy*, 16, 25; *Florentine Histories*, 308.
- 120 Tanzini, “From Discussion to Vote,” 177–178; Taylor, *Voting Assemblies*, 18. See also, on the essentialness of struggle and force in politics, Felix Gilbert, *Machiavelli and Guicciardini: Politics and History in Sixteenth-Century Florence* (Princeton, 1965), 128ff.
- 121 Leonardo Bruni, *Laudatio Florentinae Urbis*, in Hans Baron, *From Petrarch to Leonardo Bruni: Studies in Humanistic and Political Literature* (Chicago and London, 1968), 258–259.
- 122 See Roswitha, *Paphnutius* in *The Plays of Roswitha*, Project Gutenberg. www.gutenberg.org/files/59770/59770-h/59770-h.htm. Dante wrote that if all matter “felt love” and “moved toward harmony,” the world would be “plunged to chaos.” Dante, *Inferno*, trans. John Ciardi, Canto XII, 40–42. See Milton ([Chapter 4](#)) on same topic.
- 123 Savonarola, *Prediche*, 1: 306, 310. Around the same time as Savonarola, Leonardo da Vinci wrote that virtue and envy, pleasure and pain, were inseparable. Charles Nicholl, *Leonardo da Vinci: The Flights of the Mind* (New York 2005, Penguin paperback), 207. See also Alessandro Nova, “The Kite, Envy, and a Memory of Leonardo da Vinci’s Childhood,” in Lars R. Jones, *Coming About... A Festschrift for John Shearman* (Cambridge, Mass., 2001), 381–386 (online: [url https://d-nb.info/121437784X/34](http://url.d-nb.info/121437784X/34)).
- 124 Vivanti, *Machiavelli*, 211. Ascheri and Ricciardelli (*City-States*, 80) describe the communal “culture of rules.” See Bruni, *Laudatio Florentinae*, Section 4 (likely written c. 1403–1404) wherein Bruni goes into the number and tenure of colleges, but not voting; Donato Giannotti, *Repubblica Fiorentina: A Critical Edition and Introduction*, ed. Giovanni Silvano (Genève, 1990), 170 *passim*, on details of choosing nominators (a work written in the 1530s); Gasper Contarino [Contarini], *The Commonwealth and Government of Venice*, trans. Lewes Lewkenor (London, 1599), 23–31 (written in the 1520s and 30s); Amelott de la Houssaie, a later work, based on his observations while posted to the French embassy in Venice, *The History of the Government of Venice [etc.]* (London, 1677), 8–11. These contemporaneous or near contemporaneous works, together with others cited herein (Machiavelli and Guicciardini), may have communicated procedural topics from the early Renaissance to the early modern era. Additional sources, not so famous, provided raw material for Renaissance and later writers, such as *Gli Statuti della Sac Religione di S Gio Gerosolimitano [etc.]* (Rome, 1509), 218–225 (setting out the election by-laws of the Grand Master of the Order of St. John of Jerusalem, otherwise known as the Order of Malta, an admired medieval institution); *Amministrazione ed Etica Nella Casa Di San Giorgio (1407–1805): Lo Statuto del 1568*, a cura di Giuseppe Felloni (Firenze, 2014). By contrast with the sixteenth-century writers’ interest in complex commune voting practices, modern writers have not shared the interest. John Julius Norwich, *A History of Venice* (London, 1983), 166, helpfully described the Doge voting methods yet called them “ridiculous.” Pocock on Giannotti’s

detailed description of Venetian procedures he dismissed as having no “obvious connection with the principle of Polybian balance.” (*Machiavellian Moment*, 278.) One could also say that Polybian balance had no obvious connection to what the Italian comunards were trying to achieve with intricate procedures. The main application of Polybian balance in republics was the tactical use made of the concept in local political fights between factions and sometimes between orders, but in such a variety of ways (with kings, without kings, with multiple classes of citizens or entirely within a single caste of citizens) that one despairs of finding a Polybian pattern across republics except their members were skilled pugilists. See among many examples: Opaliński, “Civic Humanism and Republican Citizenship in the Polish Renaissance,” *Republicanism*, 1:156; Van Gelderen, “Aristotelians, Monarchomachs and Republicans: Sovereignty and *respublica mixta* in Dutch and German Political Thought, 1580–1650,” *Republicanism*, 1: 197; Hans Erich Boedeker, “Debating the *respublica mixta*: German and Dutch Political Discourses around 1700,” *Republicanism*, 1: 219–246; Vittorio Conti, “The Mechanisation of Virtue: Republican Rituals in Italian Political Thought in the Sixteenth and Seventeenth Centuries,” *Republicanism*: 2, 73–83. This heterodoxy about mixed republics does not count the influential republican writers who disavowed the theory of mixed government entirely – Spinoza, Pier Maria Contarini, Marchamont Nedham, Pieter de la Court – which would seem to matter in this context, unless one wishes to exclude them as republican thinkers just on the basis of their rejecting the mixed republic. Polybius in its entirety was not translated until the sixteenth century, the first five books having been translated in the fifteenth century. Renaissance republics owed their origins to communes beginning as early as the late eleventh century, before any of Polybius’ books were available. Of the classical writers, Aristotle was the major influence, and it seems clear from *Politics*, which the Renaissance did have, and from *Athenian Constitution*, which it did not have, that Aristotle’s concern about balance was that a constitution be formed in such a way that one faction or power group or class not be able to convert the polis to its own ends – and this goal, rather than the so-called one, few, and many, was uppermost in his thoughts. By contrast with the historic scholarly general indifference to procedures, a growing number of researchers in recent decades have lavished attention on them, transforming the field (Waley and Dean, Jones, Scott, Brown, Guidi, Najemy, Ascheri, Ricciardelli, Bowsky, Brizio, Bitossi, Keller and Raillard, Christine Shaw, Serena Ferente, and other talented scholars).

4 The Great Detour

The mixed legacy of the interregnum

In the seventeenth century, wealthy Britons began the tradition of the Grand Tour of Europe and continued in the next century, to be followed by droves of Americans in the nineteenth century. So interesting and rich in history, culture, and cuisine did everyone find the old continent that not all the tourists returned home again. When James Fennimore Cooper, then America's most famous writer, was seen in the harbor with his steamer trunks and many children embarking for Europe a passerby on another ship recognized him and called out, "You will never come back." It was an encounter Cooper would not forget.¹ In like manner, the republican project began its tour but in the other direction, from the European continent to England and thence America, the Atlantic tour, only unlike Cooper (who did return) the republic never came back, at least not in the form of its departure.

There was nothing predestined about the evolution. Many republics vanished from the continent under the pressure of imperial conquests, but some European cities carried on with republican practices, even loosely couched within monarchies; and a few managed to break entirely away from kingship, for short or longer spells. Venice continued as an independent republic until 1797. The Dutch managed sporadic years of revolution, independence, and republicanism during the early modern era. The Swiss federation formed itself of thirteen independent mini republics, of which the largest was Berne.²

Even England, however so much its constitutional tradition differed from the precepts of classical republicanism, even there some actual, local political practices in the early modern era should have made, or did indeed make, a promising environment for republicanism. There was, for example, the habit in England (having not much to do with Italian influence probably) of voting and widely shared participation in civic life. In England in the seventeenth century, popular participation in local civic life was prevalent – people serving as jurors, constables, scavengers, beadles, churchwardens, and more. In London, some ten percent of householders occupied an office at any one time.³ Incorporated towns across the realm, run by their citizen-burgers, were famously jealous of their longstanding political and economic rights. To that extent – the extent of popular participation and

urban self-government – England presented fertile ground for the Italian republican procedural model.

But the model ran into other local institutions intensely uncongenial, first a strong and ancient monarchy, and second an almost equally venerable Parliament. It was the latter institution that proved the more implacable for republicanism in the Atlantic world. From the encounter with Parliament, both parties – the republican traveler and Parliament – were in time transformed, and the grand tour turned into the great detour, from which republicanism has yet fully to extract itself. It may be going too far to say the detour was an accident, but the republican deviation had more to do with political dynamics in the early-modern Atlantic world than with anything intrinsic to the traveler.

Unquestionably the crisis of the 1640s, first the Civil War then overthrow of the monarchy and the scramble to replace monarchy with something plausibly public-minded, opened the English window to republican ideas more than at any other time. A diverse set of writers began setting out the principle of popular sovereignty, even sometimes against the claims of Parliament. In his *Areopagitica* in 1644, John Milton made the case that knowledge and truth cannot be licensed, even by Parliament, and implied the time might come when it could be necessary to suppress the suppressors.⁴ Challenges to Parliament became if anything easier after Charles was executed in 1649 because it was then a Rump Parliament, having been purged of its faint-hearted members by the army on the eve of the king's execution. During the next few years, Parliament's credibility dwindled, as MPs competed with army generals for power and struggled to preserve their own sinecures as much as their ancient institution. Parliament's position became even more untenable when Cromwell dissolved the Rump Parliament (1653) and replaced it with the Barebones Parliament, whose unelected members were handpicked by the army.

Even before that latest travesty, Marchamont Nedham, Milton's friend and collaborator on the commonwealth weekly *Mercurius Politicus*, was busy introducing into this crisis the storied republics of antiquity and the Italian Renaissance. (Some of the essays were republished in 1656 as *Excellencie in a Free State*.) Extolling Athens as "the only pattern of a free state," he implied that the House of Commons was equivalent to the Roman Senate, and that England would not be truly free until it had the equivalent of Rome's tribunes and popular assemblies. Nedham in the early 1650s did not wish to improve but to renounce the ancient English constitution and start anew, and by starting anew he meant locating power in the people, as ancient and Renaissance republics had done.⁵ If the Rump Parliament did not disband, wrote Nedham, power would devolve to a clique of "Grandeess" who only purported to protect the people. Echoing Socrates, he opined the best rulers were those who did not want to rule. Only the people "know where the shoe wrings [pinches]" which is why they should be rulers (in a nice English rephrasing of Aristotle).⁶

But it would be an exaggeration to imagine that republican ideology enveloped the anti-monarchical cause in the 1640s. On the contrary, there

was never a doubt that the body invested with the mission of defeating the King and then replacing his government after his execution was the House of Commons. The case for parliamentary supremacy was laid out powerfully by Henry Parker in 1642 and was for sure more easily digested by Englishmen than any counter-suggestion of popular assemblies. When the King was executed, the Commons stepped into the role of sovereign to fulfill the “practical need” that someone had to govern England.⁷

The early 1650s was the high-water mark of republicanism. Like the Levellers, Nedham was too radical for many, and in time too radical even for himself. He made an extraordinary migration from Parliament-man, to republican critic of the Rump Parliament, to Oliverian defender of the Council of State, to anti-Oliverian and Stuart loyalist by the end of his changeable days in the Restoration. His were the moves of an opportunistic scrivener, but in one respect Nedham’s ambivalence was emblematic, shared by others. For as loathsome as Parliament had become, Cromwell was, by the 1650s, even more to be feared. To many commonwealthmen, Oliver Cromwell was a usurper, which without doubt His Highness (as he was called) surely was. Having just executed a king, commonwealthmen were reluctant to accept a new one, even a Puritan one, and so some returned to the safety of Parliament. As the necessary alternative to renewed autocracy, Parliament was the only shelter available in the Cromwellian storm. The natural result by the mid to late 1650s was the eclipse of republicanism – popular assemblies, direct participation of citizens – in favor of a renewed, even if flawed, parliamentarianism.⁸ And the result of that nearly accidental development was, in this most auspicious of all English republican moments, that republican chances were nipped in the bud.

James Harrington’s quandary

No writer trying to make sense of this confusing period was more influential over the long haul than James Harrington, whose *Oceana* appeared in 1656 (a few months after Nedham’s *Excellencie*). *Oceana*, a utopian writing, was a blueprint of the ideal republic. The first word in his long text (after the preface) was “Janotti,”⁹ the name of the sixteenth-century panegyrist of the Florentine republic, and with that opening sentence Harrington signaled his major theme: if England were to put things right, she would have to look deeply into the republics of the past, into those of Florence, Genoa, Athens, Sparta, and Rome, but mainly to that of Venice. He wanted the reader to absorb the maxim that it was the unparalleled “orders” of the Venetian government that made “her immortal commonwealth.” Machiavelli was wrong, said Harrington; Venice had subsisted as long as it had not because of the good luck of its watery location but because of its “good constitution.” “Good laws” were more important than “good men,” he said.¹⁰

What made Venice’s architecture “most pure” was “the purity of the suffrage,” which, said Harrington, “in a popular government is the health, if not

the life of it....” And what made Venice’s suffrage so pure was its “equality.” Venice’s constitution was “the most equal” of all constitutions, the “most democratical or popular of all others,” he said, making of the *Serenissima* an “equal commonwealth.”¹¹ On the face of things, this characterization was incredible. One would be hard-pressed to find a less democratic republic than Venice. Some 2,000 citizens, receiving their privileges by inheritance, ruled over a state containing well over 100,000 inhabitants.¹² By saying its suffrage was “equal,” Harrington meant free – free of influence, free of manipulation, deal-free. Oceana’s Archon (its highest leader) explained: “Our game,” he said, “is *most at a throw*, and that every cast of our dice is in our suffrages...partiality in a suffrage is downright cogging [cheating]....” The only pure vote was an impartial one; all else was fraud. Some candidates will win and others lose, “but whatever a man’s fortune be at the box, he neither knows whom to thank, nor whom to challenge.” The election was “most free,” wrote Harrington, “where it is made or given in such a manner that it can neither oblige nor disoblige another.” That axiom would have satisfied Machiavelli (whom he admired).¹³

The language was Harrington’s but the idea was, as we have seen, as old as the Roman *ambitus* laws, and embedded in late medieval procedures. Elections must not be transactions. Voters must be unbowed and unorganized, and officeholders unbiased. Candidates could not volunteer, canvass, or campaign for office. In Oceana, even political discussion was prohibited in local governing assemblies, and debate was prohibited in the lower house of the national legislature.¹⁴ In his process for filling offices – a process at once anti-political and anti-organizing – Harrington was solidly in the mainstream of the European republican tradition. His view that good procedures could fix bad men but good men could not fix bad procedures was in the same tradition.

Unsurprisingly he also shared with late medieval communes a faith in complexity. Oceana’s regulations were fiendishly complicated. Descriptions of elaborate nominating and electoral procedures took up or were mentioned on about thirty percent of *Oceana*’s pages.¹⁵ That is a high percentage of regulations for a utopia. He divided the state into 50 tribes; each tribe had twenty hundreds; each hundred had ten parishes, making 10,000 parishes. Voters in each parish would elect one-fifth of their number to be “deputies.” These deputies would meet and elect local officers, and at higher levels hundred and tribal officers as well as the national bicameral legislature (the “galaxy”) in what appears to have been an all-tribal meeting. The Senate was reserved for the “horse,” or larger landowners, the lower house mostly for the “foot.” The Senate alone chose national magistrates and councils of state. Sortition commenced the voting at all levels (from parish to tribe to parliament to national magistracy), as each level used lottery to select nominators (called “electors”) who chose candidates. Multiple candidates were considered for each higher office, and selection made by either approval or pairwise comparison voting. Venice provided the model for this aleatory,

multistage system. Even Venice's *ballotino* reappeared collecting secret ballots for deposit in boxes.¹⁶

Harrington's distant model was Renaissance republics with which he was deeply familiar, but his prescriptions addressed a problem closer to home. For Harrington was making war against grandees (as Nedham had called them), a power group (as Aristotle did), the *reggimento*¹⁷ (as Florentines did) – the political class that bedevils all polities, the few who get into power by orchestration and never leave. No better example of a power group existed than Cromwell's council of generals, or the Barebones parliament no one elected – these were immediate Harringtonian targets, just as power groups had been the targets of writers from Aristotle onward. To take them down, Harrington spelled out the one proper way to choose officeholders, and that was with lottery to choose nominators, nominators to choose multiple candidates, electors to vote on all the candidates, and annual rotation in office. There is nothing a power group likes less than an aleatory process. Cromwell tried to suppress *Oceana*.

Oceana was a chain of republican procedural prescriptions linking Florence to Philadelphia, the early Renaissance to the early American republic. But there were respects in which *Oceana* was decisively not republican in its thrusts, and these too were influential. Harrington sacrificed citizen participation because it did not matter so much to him as establishing a superstructure of authority, a superstructure which would be free of factions and divisions. The price was a citizenry which voted for deputies at the parish level and then dropped out of sight. All other levels – hundreds, tribes, galaxy (parliament), national magistracy – had no role for voters. Even at the first parish level, the only time citizens were asked to vote, they voted for candidates selected by nominators chosen by lot, not by voter deliberation. Harrington distrusted the people *en masse* to take decisions. Power needed to be “confined,” he wrote. One way to keep power within its banks was to allow the aristocratic Senate to lead the republic by being the only body in which legislation could be proposed. (To protect the commoners, the Senate could not legislate; that was left to the lower house).¹⁸

We have seen in late medieval and early Renaissance communes that voters were not allowed to send their own handpicked agents to state offices because, it was thought, government ought not be captive to a collection of private interests. Neither were *Oceana*'s voters permitted to do so. But there was a difference. In the republican tradition, citizens were the officeholders – rotating in and out of office, and representation did not exist. In *Oceana*, power was lodged in representative institutions which by definition were removed from the people. Harrington removed them even further by creating a quasi-federal state.¹⁹ This, too, was a departure from the canon. In late medieval republics, multi-stage electoral systems filled offices at a single level of government. *Oceana* had at least four levels (arguably five). That meant that as the pyramid rose, offices were filled with an ever-smaller cohort of deputies being successively refined through a ladder of (non-popular) elections.

As a result, between the voters and their national government there intruded so many stages and lotteries that any possibility of a connection between rulers and ruled was out of the question. In Oceana, the emergent neutral officeholder barely had a relationship with his electors, let alone with the idle people back at the parish.

It logically followed that if officials were elected in this hygienic, elongated machine, the national legislature would be “constituted as can never contract any other interest than that of the whole people....”²⁰ Officeholders were not to represent anyone. In the lower chamber of Oceana’s legislature, secret voting prevailed.²¹ Secrecy barred constituents from monitoring their representative’s behavior; but in Oceana, that was fine. There were no representatives and there were no constituents.

It was not unusual that the national legislature in Britain be far removed from voters. Parliament had never been a representative body, had been founded instead as a tool of the monarchy, not of the voters; and although it emerged in the early modern era as a legislative body, and although some elections were contested, Parliament was not composed of deputies acting for their constituents.²² The MP Sir Thomas Smith famously explained: “Every Englishman is intended to be present” there, whatever his or her rank in the land, and “the consent of the Parliament is taken to be every man’s consent.” This was the bold, oft-quoted Elizabethan statement of “virtual representation” by which Parliament was said to represent everyone in the realm even though few people were consulted (neither about laws nor about who should represent them). It was hard to imagine a less republican conception of government. Smith was not unaware of that inconvenient fact. When he wrote this sentence, he prefaced it saying: “And to be short, all that ever the people of Rome might do either in *Centuriatis comitis* or *tributis*, the same may be done by the parliament of England, which represents and has the power of the whole realm”²³ No matter that primary assemblies ruled Rome, Thomas Smith said, here in England Parliament does, tacitly or virtually representing everyone.

But by the time Harrington wrote *Oceana*, things had moved on from the 1580s. The absolutist monarchs, followed by Cromwell’s power group of army generals, had made it unavoidable to begin exploring the popular foundations of authority. At the same time, Puritans had been openly translating doctrines of conscience and individual responsibility into godly republicanism. Much had changed since Thomas Smith. Harrington reflected the new mental landscape; he anchored the foundation of government firmly in the people.

Wherefore when Harrington introduced his idea of the national “representative” legislature, he did so sheepishly. He said it was required because it would be “unwieldy” to assemble the nation.²⁴ One doubts logistics were a major consideration. After all, his meeting of tribes to elect the galaxy was expected, by his own numbers, to attract at least 100,000 deputies voting, possibly several hundred thousand (his numbers varied), all in one location. His description of

the voting scene bore a striking resemblance to the actual voting in the Campus Martius, which Cicero had described (in the *Saepta*, a building which, as we have seen, likely contained 70,000 voters at one time – the square could hold more outside, waiting their turn). It was not feasibility but distrust that was keeping voters away from power in Oceana.²⁵ The great advantage of the national government chosen in the complex and layered way he proposed was that it did not take orders from the people. His parliament was as virtual as Thomas Smith's, more cut off from the people than it ever had been.

Harrington must have been aware he would face criticism on the matter of empowering a so-called representative body.²⁶ This awareness accounts for the wobbly logistical excuse he made. But he took steps to immunize himself. While making sure the people had no influence over magistrates, he exaggeratedly described the people as the sole source of authority. And here began a long ironic tradition, one that reached its apex in the ratification of the American Constitution: the less people were involved, the more they were held to be all powerful. Oceana put "the sword in the hands of the citizens," wrote Harrington. Sovereignty was the "King People."²⁷ After praising the new government just created (modeled, he said, on Venice's), the Archon likened the creation to a fountain "perpetual, not as lakes or puddles, but as the rivers of Eden; and are beds made...to receive the whole people, by a due and faithful vicissitude, into their current."²⁸ The image, which might be called the river simile of popular sovereignty, was a grandiose way of saying, however layered the structure may be, rest assured that all power in Oceana actually originates with the people. The catch in the bombast was the phrase "due and faithful vicissitude." Although the people were all powerful, it was uncanny how quickly the vicissitudes could remove them from the streams of power. Rhetorically, power in Oceana gushed from the rivers of 10,000 parishes, but in reality the people were dammed up by procedures placed there to protect them – and Oceana – from themselves.

The river simile (which was previously tried out by James I depicting himself as fountain of all authority) would be borrowed by James Wilson in the fall of 1787 to defend the proposed new American government as the people's government. What is striking about the plagiarism was not only the same image but also the same motive: to excuse or compensate for the absence of the people in government's functions by tracing all power back through its theoretical streams to the water's ultimate, popular source.²⁹

In the history of republicanism, *Oceana* stands at mid-passage when late medieval republican procedures were very much alive but married to a new and ill-suited representative structure which by the end of the epoch would overwhelm republican architecture almost completely. During mid-passage the procedural tradition was if anything more necessary than ever. Late medieval communes pioneered elaborate multistage procedures for similar purpose – to keep government disinterested while inviting new citizens to participate. But communes were not saddled with the parliamentary heritage that England had, and communal republics, with all their manifold

challenges, did not have Harrington's particular conundrum – how to reconcile the unreconcilable goals of disinterested government and representative institutions. Its anxious author spent 54 of *Oceana's* pages touching on procedures to accomplish the difficult task. Republican electoral architecture, of deeper interest for Harrington than any other topic in *Oceana*, was the secret of Venice's "immortal commonwealth," but more importantly for him it was the key to maintaining disinterestedness in the coming popular age, the key to making a national representative body safely unrepresentative.

Harrington's was a rough draft of the impending republican demise. In the classical architecture, whether in Florence or Genoa or Venice (or Rome and Athens), officeholders did not represent *anyone but themselves*; rulers were temporary, until they returned to the status of ruled. They were not sent as the agents of a city quarter or a guild; on the contrary, depersonalized and aleatory procedures barred them typically from being selected by their own quarter or interest. The very unrepresentativeness of officeholders was central to the definition of their duties. Harrington breathed that air as if it were his own. Hence in his galaxy, men were not to "contract" anyone's business; partiality was cheating. But the deep illogicalness of a representative institution which did not represent anyone was not sustainable. The claims of even a wispy, theoretical popular sovereignty made such an idea eventually untenable. Representative institutions would in time get around to representing someone. As that occurred, Harrington's contribution would be one of having gifted to posterity the new republican paradox of the modern age: sending people to a legislature to advocate citizens' particular interests contradicted republican ideology; but a government oblivious of people's wants was equally unrepresentative. The more un-representational the system, the more republican it could be; but the more idled and ignored the people, the less republican it could be. This vexing dilemma, singlehandedly created by representativeness, Harrington did not resolve (but *Oceana* set it up for the first time). Rather he covered the quandary over with the rivers of popular sovereignty. His rhetoric was all about the people, but his architecture was all sieves, layers, dice, and distance.

In the next century, *Oceana* became the owner's manual for anyone contemplating a new commonwealth. No other single source gave the framers of the U.S. Constitution so many clues on how to proceed: a kind of federalism, bicameralism, group voting, intermediation in the choosing of national magistrates and representatives, "electors" as nominators, even the grandiose similes for dressing up the awkward result. The Americans who conscientiously followed this earnest blueprint also inherited its contradictions.³⁰

The eighteenth-century commonwealthman

In the immediate decades after Harrington, Whig opposition writers focused on reining in monarchy and reformers turned, as always now, to Parliament for the remedy. Since Parliament in any form, representative or not, was hardly a republican institution, the battles of the Restoration and later

decades pushed classical republicanism even further into the background in the English-speaking world.

The Glorious Revolution of 1688 confirmed Parliament's role as defender of liberty and moreover located sovereignty within its halls. With Parliament's ascent assured, what had previously been episodic struggles between King and Commons settled down into a routinized structure of court and country factions, which dominated English politics for much of the eighteenth century and out of which emerged what became known as commonwealthman ideology. That ideology pitted liberty in a constant struggle with voracious power. Over a number of decades, English and Scottish writers analyzed the ways power conspired and the ways liberty could defend itself, the latter of which included a mixture of frequent parliaments, wider franchise, no standing armies, separation of powers, and no placemen (whereby King's ministers used offices to purchase members of Parliament).³¹ This important ideology extended its influence across the ocean and helped American colonists interpret what was happening to them when Britain began tightening its grip over colonial trade and taxes in the 1760s. These developments – the exalted role of Parliament and the rise of Whig ideology (and its export to America) – were problematic for classical republicanism. The clash of liberty and power, as organizing principle of reform, rendered useless a creed which held that the ruled and the rulers be the same and which had little use for representation.

One of the key planks in the Whig program was bettering the terms of representation. Algernon Sidney, rejecting the argument that would soon be associated with John Locke, of the people's tacit consent to its government, declared no such tacit consent could exist and representatives had to come back continually to the well of their electors, listen to them, and be regulated by them. In the next century, Radical reforms in Britain favored annual parliaments, binding instructions by electors, and election pledges by MPs, demands which began to concretize the program of "actual representation."³² These demands, arising naturally from the incongruous marriage of popular sovereignty with the evolving institution of representation, pointed to a dark future for classical republicanism. If MPs became mere agents of voters, unavoidably office-filling would become transactional, a matter of up-or-down elections producing winners and losers depending on who could win the most votes and promise the most rewards to his voters. Such a result was unwelcome to republics aiming for the common good. It was what Harrington's Archon warned against in *Oceana*. It would make government itself the main source of division in society, when one of the founding purposes of republics had been to unite disparate peoples, not further divide them. Such a prospect was a long way into the future. It was not until the nineteenth century that British men *en masse* were thought entitled to representation in Parliament as a matter of right.³³ Through the eighteenth century, the notion of virtual representation was maintained and eloquently defended in Parliament. But the steady thrust of opposition efforts was toward forging a connection between voter and representative.

But in a curious way, as reformers' tendencies moved in directions threatening to the republican project, the most influential writers of this period could not leave republics alone (just as earlier Nedham and Harrington did not). Whig authors bent on improving Parliament garnished their writings with republican flourishes. Algernon Sidney reminded his fellow commonwealthmen of the Aristotelean core concept that all men being equal, "all should be magistrates." He also reminded them they could change their government if it no longer suited them (for this last observation Sidney was repaid with a trial for treason and execution in 1683).³⁴ There were many others recalling republics. The essayist and playwright (*Cato*) Joseph Addison made a jaunt through Italy (on his grand tour) at the dawn of the eighteenth century and made his comments on the passing scenery. "I know nothing more remarkable," he said, "in the government of Genoa, than the bank of St. George" which placed administration in the hands of "chief citizens," acted as a check on aristocracy, and was the reason the Genoa Senate treated its citizens with more "moderation" than did the Venetian.³⁵ Visiting the small cities of Europe, Addison went on to make a point that soon began to obsess eighteenth-century political thinkers: the impossibility of large republics. No one lives better than the subjects of "little commonwealths," he observed. Presciently he explained why (in a way seldom replicated): in "over-grown states," he said, the ways of good government "may be easily put out of their course in passing through the hands of deputies, and a long subordination of officers."³⁶ Herein, from a republican point of view, was stated a major flaw in the English reform program, the creation of a professional political class.

The Scottish historian David Hume also kept Venice in the foreground of political thinking, as a city whose system managed to avoid disruptive animosities, private feuds, and control by an individual. Hume worried that the election of "chief magistrate" in any republic was of such "great and too general interest, not to divide the whole people into factions."³⁷ This worry, of course, had been one of the several obsessions of older republics and wherefore they feared elections. Electing a king, said Hume, was no better than trusting birth alone for choosing the sovereign because an election would "always induce the candidates to employ force, or money, or intrigue, to procure the vote of the electors." The solution? "Can we ascribe the stability and wisdom of the Venetian government, through so many ages, to anything but the form of government?" Virtue of men had no chance against vice if the institutions were wrong. (Here he was repeating a theme of long-ago republican writers.) Then, good republican student that he was, Hume like Addison and Machiavelli before him turned to the durable Casa di San Giorgio as an example of the importance of the right "forms and institutions" by which the parts of a republic could be "regulated." Citing Machiavelli, Hume wrote that while Genoa was "always full of sedition, and tumult, and disorder, the bank of St. George, which had become a considerable part of the people, was conducted, for several ages, with the utmost integrity and wisdom."³⁸

In another essay, Hume praised the Achaeans as having “the freest and most perfect democracy of all antiquity.”³⁹ In his utopia, “Idea of a Perfect Commonwealth,” Hume, like Harrington, had magistrates chosen by the Senate *a la* Venetian, with members “shut up in a conclave, like the cardinals; and by an intricate ballot, such as that of Venice or Malta, they choose,” among whom is the “protector, who represents the dignity of the commonwealth and presides over the senate....”⁴⁰ Protector was the title of Cromwell, but Cromwell was no hero to Hume. As he would have known from his knowledge of Genoa’s San Giorgio, Protector was the title of the chiefs of the Casa. Differing from the view of Addison, Hume found larger republics better than smaller, because it would be “not easy, for the distant parts of a large state to combine....the parts are so distant and remote, that it is very difficult, either by intrigue, prejudice, or passion, to hurry them into any measures against the public interest.”⁴¹ In arriving at this view, Hume was probably borrowing from Harrington. Both writers seemed to think that size combined with multi-step, intricate nominating and voting procedures solved the dangerous problems posed by elections.

The English and Scottish writers’ habit of populating their essays with Venice, Genoa-San Giorgio, Achaea, and other venerable republics seems almost like an affectation. It reminds one of Dante’s portrayal of the sin of sloth, the lapse of those who love the good, but not enough to do something about it. These writers admired the aleatory electoral procedures of past republics, but rather than work to implement them, as their heroes the Venetians still did, Whigs turned their attention to the lesser reform of preventing the King’s minister from bribing parliament. Far from actually insisting on citizens’ control of government, as in fact existed in the republics they praised, Whigs concentrated their fire on long-sitting parliaments and the limited franchise. A republic was as unthinkable in practice as it was idealized in theory.

Perhaps the mid-century writer most influential on the Atlantic world’s thinking process was not British but French, Montesquieu, in whose *Spirit of the Laws* the same dissonance was present. (The ubiquitous Banco di San Giorgio made its dependable appearance early in this work, too, as giving “the people [of Genoa] a certain influence in government, which brings about their whole prosperity.” In this passage, the author referred to Addison.) Citing Amelot de la Houssaie, he showed begrudging and by now customary respect for the Republic of Venice and its intricate electoral systems. Just as the right to vote, said Montesquieu, was a “fundamental law,” so too was “the way of casting the vote...another fundamental law.” He noted Cicero’s praise of public voting whereby lesser people could be influenced by greater people and thought Rome was “destroyed” when voting became secret. He left no doubt that “the nature of republican government is that the people as a body, or certain families [no doubt thinking of Venice], have the sovereign power....” Attuned to the danger of elections, he saw risk in people’s aspiring to perform the role of magistrates. Like Addison, he warned about the dangers of large republics, where the “common good is sacrificed to a thousand

considerations...[and] depends on accidents. In a small one, the public good is better felt, better known, lies nearer to each citizen.” This famous passage was one that the founders struggled to overcome, and did overcome, in the making and ratifying of the U.S. Constitution. It is not crystal clear that Montesquieu grasped all the methods by which the storied republics he cited, both large and small, sought to protect the public good. He highlighted their multi-stage procedures, the processes of filtration and intricacy and reliance upon one’s betters, but seems to have overlooked how the older states managed warring interests, a management that was indifferent to size. Instead, Montesquieu’s size solution was the federal republic. Since large republics turned to despotism, and small ones were conquered, the answer was federalism, which led him into a discussion, largely repeated by the American framers, of Holland, Switzerland, Lycia, and the Amphyctionic League (a similar but not identical list to Harrington’s and later Madison’s). If we owe anyone for the founders’ belabouring these hardly relevant federations, we owe Montesquieu.⁴²

Missing from Montesquieu, as from his British predecessors, was a serious coming to grips with the main purpose of the aleatory procedures (nominating, lot, secrecy, and indeterminacy) that they purported to admire. As we have seen, these procedures had several aims, and one was to co-opt and then to contain clashing interests. Another was putting up a wall between constituents and officeholders so the latter could devote themselves entirely to the common good. Yet another was sometimes (Athens *boule* and the Genoese name-changing rule 1528) the outright suppression of interests through political structures. These procedural goals were absent from the great Whig debate. What makes this neglect all the more striking is that it was not as though thinkers in the eighteenth century were unaware of clashing interests as the preeminent republican problem. On the contrary many not only saw discord and parties abounding but, like the republicans of the Renaissance, perceived a parcel of benefit in them. Caroline Robbins well catalogued this British acceptance of party differences – by people as diverse as Hume, Milton, Harrington, Bolingbroke, Toland, and others. One writer praised the spirit of opposition as creating balance, and observed that Roman problems emerged only when the divisions between patricians and plebs were destroyed. Milton wrote that the commonwealth was “knit” together by “the resistance of opposed Minds,” William Penn of the “concord of discords.”⁴³ Some of these sentences bear a resemblance to the medieval ruminations about the virtues of contrariety (see [Chapter 3](#)). Though one cannot be sure, what seems to have happened is that all manner of discord and party factions were accepted, even lauded, just as they had been in the late medieval period, but they were thought to be adequately manageable through the structure of court and country tension, and that as long as there was a strong, jealous Parliament standing up to the king and his venal ministers, the resulting balance of forces would be equal to maintaining both stability and liberty. If this was the analysis, and it appears so, it helps explain why

the Parliament (and eventually Commons) emerged in the eighteenth century as the keystone of the British system – not only because it was the guardian of ancient liberties, not only because it was the seat of sovereignty from 1688 onward, but also because it was regarded as necessary to the management of competing interests.

Universally in Britain, whether one was an old Whig or new Whig or Tory, Parliament had emerged by the eighteenth century as the stabilizing force in English politics. Toward that consensus, John Locke made his singular contribution with theoretical arguments justifying the already emergent supremacy of the legislature acting by majority vote.⁴⁴ For even though it was not a representative body, it was representative enough – in its own, virtual way – or at least more representative than was the King and his ministers, so as to suffice as the guardian of Englishmen's liberties. And that did not leave room for a republic.

It took a foreigner to beg to differ. Jean-Jacques Rousseau, parting with John Locke and the idea of a historical contract between government and governed, lost in the distant past, wanted instead active agreement periodically renewed by the governed. For this reason, Rousseau admired the ancient Greek city-states. Like them, he explicitly rejected representative government. People could be represented in executive power, which was purely administrative, but not in legislative. "The moment a people allows itself to be represented, it is no longer free: it no longer exists."⁴⁵ His major point about representation was not that it was undemocratic but that it was impossible. How can anyone truly represent anyone else, let alone thousands?⁴⁶

There is something impossible also about Rousseau's prescription, since his general will was an ineffable substance, not quantifiable, not capable of being alienated or broken down or added up as the totality of individual wants. It was an invisible force, or if not a force, an idea similar to the common good of earlier republics. How exactly to harness it and make it direct the affairs of state was not laid out, except, and here Rousseau was clear, it could not be delegated, it called for frequent popular assemblies, representation was a trap, even majorities were suspect: "How have a hundred men," he asked, "who wish for a master the right to vote on behalf of ten who do not?" The key was participation. "As soon as public service ceases to be the chief business of the citizens, the State is not far from its fall."⁴⁷

Rousseau's was a powerful articulation of older republican thinking in the age of the Enlightenment. But it would be a stretch to say he had great influence on political developments in the Atlantic world. Rather his work now serves as a contrast, showing the yawning gulf that separated British thinking in the eighteenth century and republican doctrine, or put differently, showing how much that doctrine was evolving. The republican canon did not emerge unscathed from its encounter with British parliamentarianism, rather it emerged transformed and even somewhat confused. For just as reformers were pushing hard for an improved Parliament and improved form of representation, they at the same time could not resist delving into the republican

past and dredging up examples and thoughts that could only have been taken as warning signals about the new politics they were successfully constructing.

Calling for more frequent elections, some of the writers, as we have seen, simultaneously recalled from the past the omnipresent danger of elections. Writing in a world where there were no magistrates to be elected – there was a monarchy, after all – writers did not seek immediate applications for the Renaissance careful procedures they purported to admire. Headed inevitably toward majority rule, they talked nostalgically, but only nostalgically, of the aleatory systems of Venice, Genoa, Achaea, and San Giorgio with all those polities' anti-majoritarian and consensus-building purposes. Extolling Aristotle's ruled-shall-be-rulers, the Whig literature with few exceptions did not put people anywhere near the levers of power. In favor of representation more connected to voters, the same writers ignored the fact that the old republics they invoked had done everything to avoid a politics of campaigns, agency, and winners and losers. Some Whig writers were friends with landed aristocrats (some even grandees themselves) who would have been proscribed from politics in the republics they praised. There was a host of irremediable contradictions in the marriage of commonwealthman ideology and republicanism. To the extent writers reminisced about the republican dreamworld, they indulged in a fantasy. The republicanism which had entered Britain as a taut set of Renaissance principles and procedures collided with parliamentarism in its various stages of development, then exited the British Isles mangled. Old republican ideals were not gone, but they were mixed with uncongenial parts, and the mish-mash was left to Americans to try to sort out. They were the first people who had the opportunity to make a commonwealth from this now confused blueprint, and to see what, if anything, could be salvaged of the increasingly anachronistic procedures from the past.

Notes

- 1 David McCullough, *The Greater Journey: Americans in Paris* (New York, 2011), 4–5.
- 2 See van Gelderen and Skinner, eds., *Republicanism*, Anna Grześkowiak-Krwawicz, "Anti-monarchism in Polish Republicanism in the Seventeenth and Eighteenth Centuries," 1: 43–60; Jonathan Scott, "Classical Republicanism in Seventeenth-century England and the Netherlands," 1: 61–84; Edward Opaliński, "Civic Humanism and Republican Citizenship in the Polish Renaissance," 1: 147–168; Xavier Gil, "Republican Politics in Early-Modern Spain: The Castilian and Catalano-Aragonese Traditions," 1: 263–288; Bela Kapossy, "Neo-Roman Republicanism and Commercial Society: The Example of Eighteenth-century Berne," *Republicanism*, 2: 227–248. The late fifteenth-century victory of the Swiss over Charles of Burgundy caught the imagination of republican friends across Europe, from Machiavelli onwards; and the formal Swiss independence from the Empire in 1648 continued to earn admiration for the Swiss in that century and the next, as a people who won their freedom with citizen militias and exercised it through small cantonal republics. Martin van Gelderen observes that the Dutch republic was the model for many republicans in Europe in the seventeenth century, and that moreover, the Dutch and Germans were heirs of the Italian renaissance, not

- just of Erasmian humanism. Martin van Gelderen, "Aristotelians, Monarchomachs and Republicans: Sovereignty and *respublica mixta* in Dutch and German Political Thought, 1580–1650," *Republicanism*, 1: 195–217.
- 3 Derek Hirst, "A Culture of Voting in Seventeenth-Century England," eds. Ferente et al., *Cultures of Voting*, 132–137. London was divided into 26 wards and 242 precincts and 100 parishes, and each had its own set of officers. Francis Sheppard, *London: A History* (Oxford and New York, 1998), 187.
 - 4 John Milton, *Areopagitica, A Speech of Mr. John Milton[etc.]* (London, 1644, reprinted Arc Manor, Rockville, Md., 2008).
 - 5 In one editorial, he wrote that the key was "constant succession of their supreme Assemblies." People, he said, must have the power of "Supreme Assemblies, changing Governments, enacting and repealing Laws." Marchamont Nedham, *The Excellencie of a Free-State; or, the Right Constitution of a Commonwealth*, ed. Blair Worden, Liberty Fund (Indianapolis, 2010), 10 (publication of the 1656 edition, which itself was partly republished editorials from *Mercurius Politicus* from 1651–1652).
 - 6 Nedham, *Excellencie*, xxxviii, 20–21, 25. Between meetings of popular assemblies, it was logical to Nedham that magistrates should have the ability to execute laws, but executive power ought to be purely administrative. (*Excellencie*, 57, 109.) He invoked the "unanimous practice" of all nations of the world of choosing their own government and cited the Italian free states of Naples, Venice, Genoa, Florence, and others. (*Excellencie*, 73.) This disavowal of Britain's ancient constitution and Nedham's affection for popular assemblies made him unpalatable to later Whig writers and to certain American founders, such as John Adams, who looked back on seventeenth-century English writers for inspiration. (*Excellencie*, lxxxv.) See Blair Worden's valuable Introduction to Nedham's work.
 - 7 Quentin Skinner, "Classical Liberty and the Coming of the English Civil War," eds. van Gelderen and Skinner, *Republicanism*, 2: 9–28; Blair Worden, "Republicanism, Regicide, and Republic: The English Experience," *Republicanism*, 1: 307–327. Parliament had its origins in feudal relations, not as a representative body. In a somewhat analogous way, the Polish parliament began its life in the fourteenth century in a dynastic crisis and as a result of a bargain between monarch and nobles over taxes during that crisis, and still later the Polish parliament became the bulwark of king and nobles acting together against the privileged Senate. Opaliński, "Civic Humanism and Republican Citizenship in the Polish Renaissance," eds. van Gelderen and Skinner, *Republicanism*, 1: 147–166. See also Grzékowiak-Krawawicz, "Anti-monarchism in Polish Republicanism," *Republicanism*, 1: 53, wherein she portrays the Diet as not being especially liked by nobles but nonetheless the only thing trusted as a shield against the monarch's absolutism. A political body of an elite in the early-modern period (and later period in the Diet's case here) was the natural tool to be used against over-reaching prerogative (whether noble or kingly), and then, with time, that tool could be transformed into a sovereign body allegedly representing the nation. Milton and Levellers expressed doubts about this transformation but there seemed to be no feasible alternative, or at least not a compelling one. The late eighteenth-century resurrection of the *parlements* of France, which as estates-general had not been convened since 1614–1615, as "representative" of the nation in dealing with a failing king in the 1770s, also comes to mind.
 - 8 Nedham, *Excellencie*, xxix–lvii. When in 1656 Nedham republished in *Excellencie* some of his essays from 1651 and 1652 he toned down the republicanism for the new edition.
 - 9 Otherwise known as Donato Giannotti, the Florentine political leader and writer; see above [Chapter 3](#). James Harrington, *Works: the Oceana and the Other Works, with an Account of His Life by John Toland* (Reprint of the London 1771 edition, Darmstadt, Germany, 1963), 35.

- 10 *Oceana*, 70, 141; J.C. Davis, *Utopia and the Ideal Society: A Study of English Utopian Writing, 1516-1700* (Cambridge, UK, 1981), 213, 216. For Harrington, the problems of producing a stable society, as Davis put it, were not moral ones but problems of political architecture. This study while relying on the Toland *Oceana* edition has modernized some of the Toland script (in particular the letter “s”). Harrington preferred the word “commonwealth,” which was standard English usage for “republic” during the seventeenth century. Rachel Hammersley, *James Harrington: An Intellectual Biography* (Oxford, 2019), 70–71.
- 11 *Oceana*, 111–112, 141, 41.
- 12 Possibly 175,000 in 1575. Norwich, *History of Venice*, 494.
- 13 *Oceana*, 111–112, 51. Machiavelli used similar words (as did Quintus in his memo to his brother Cicero, with opposite intent). In 1803 defenders of the aleatory electoral college made a similar argument when opposing the Twelfth Amendment. Hammersley’s insightful biography does not connect the complex voting methods with the avoidance of a relationship between electors and officeholders. Rather she attributes Harrington’s obsessive proceduralism to his favoring “fair elections...likely to serve the commonwealth well,” and the multi stages to the need to produce “suitable candidates” and “prevent corruption.” Russell Smith, by contrast, was interested in *Oceana*’s procedural details and their possible purpose, and noted contemporary criticism of Harrington’s utopia as providing no scope for people’s choice. See Hammersley, *Harrington*, 80, 139–141; H.F. Russell Smith, *Harrington and His Oceana: A Study of a 17th Century Utopia and Its Influence in America* (Cambridge, England, 1914), 44–46, 50–51, 114, 154.
- 14 *Oceana*, 90, 158.
- 15 After the preface, 54 pages out of 178 pages of *Oceana* touched on or were devoted to balloting procedures. Almost as interesting as Harrington’s extreme attention to procedures is the extreme inattention to this fact by most modern readers, who have glossed over these long, dry, and bemusing procedural sections. See J.R. Pole’s reference to Harrington’s “elaborate procedures,” *Political Representation in England and the Origins of the American Republic* (London and New York, 1966), 10. Pocock called them “wearisome” in one work (*Machiavelian Moment*, 393) and did not discuss them in another (Pocock ed., *James Harrington: The Commonwealth of Oceana and A System of Politics* (Cambridge, England, 1992). Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988), 157, called *Oceana* “tiresome” and “virtually unreadable;” and Caroline Robbins, *The Eighteenth-Century Commonwealthman: Studies in the Transmission, Development, and Circumstance of English Liberal Thought from the Restoration of Charles II until the War with the Thirteen Colonies* (Cambridge, Mass., 1959), 31ff, glossed over them. Simon Schama, referring to similar Venetian-like electoral process laid out at length in Utrecht’s 1784 draft constitution, called it “rigamarole.” Schama, *Patriots and Liberators: Revolution in the Netherlands, 1780-1813* (London, 1977), 89. Not only have scholars tended to ignore the procedural sections; some *Oceana* editions have redacted them. Compare, for instance, the Pocock edition of 1992 with the Toland edition of 1771; several procedural passages in the latter (pp. 77–78, 108, *passim*) do not appear in former. Oliver Cromwell was the first *Oceana* censor but not the last.
- 16 Harrington, *Oceana*, 78–109. See also Harrington, *The Art of Lawgiving: In Three Books*, 370. There were to be four stages of elections – at the parish, the hundred, the tribe, and the galaxy – and at every stage, the first step was the creation of candidates. Candidates could not volunteer themselves; nor did parish voters select them. Rather candidates had to be nominated by “electors” chosen by lottery. At the local level, it was lottery among parish voters which chose nominators; at the higher levels, lottery among deputies; at highest, among Senate

members. The Senate procedure for electing national magistrates had senators drawing gold or silver balls from urns, then the electors so chosen withdrew into four separate conclaves and each elector proposed a “competitor” or nominee for the first office; all electors in the conclave then voted and every nominee receiving a majority became that nominators’ subgroup’s nominee for the first office. As a result, the four groups of nominators returned four candidates for each office, and the Senate as a whole voted. Voting was conducted by silently dropping linen pellets into one part or another of a box borne by pages, or “ballotins,” *a la* Venetian, males between the ages of eleven and thirteen. The Senate voted on each of the four candidates. Results were compared and the candidate with the most votes, over a majority, was declared winner. If the process was not finished by sunset, it started all over again the next day – the better to leave no opportunity for influence or canvassing. Harrington was not clear if it was approval voting or Condorcet-like pairwise voting; it appears more likely the latter. Lottery, gold and silver balls and urns, conclaves, approval or comparison voting, secrecy, ballotins, haste – the process, which Harrington described at length and several times, had the hallmarks of Italian Renaissance procedure, intended to combine deliberation with indeterminacy and insulation from influence or interest. Rotation in office was another Oceana device, aimed at the same target, to cut short the “prolongation of magistracy” which, if not cut short, “destroys the life or natural motion of a commonwealth.” *Oceana*, 51.

- 17 This is using that term as Rubinstein interpreted it, which is not accepted universally. See above [Chapter 3](#).
- 18 Davis, *Utopia*, 212, 221–222; Russell Smith, *Harrington and his Oceana*, 360 Hammersley, *Harrington*, 14. Harrington admired the *centuria praerogativa* in Rome because it allowed informed opinion to influence less informed voters. Oceana’s Archon (or leader) explained that unlike the *boule* in Athens, chosen by lot, Oceana’s Senate would be elected and be the country’s “natural aristocracy,” and its voice of “wisdom” would save the people from being controlled by “demagogues or grandees.” A commonwealth “in which there is no senat... cannot stand.” *Oceana*, 93–94, 129.
- 19 Oceana was only a quasi-federal state because it was not composed of smaller states with their own electoral systems. The electorate for all levels of Oceana came from the same deputy pool. Harrington disdained federalism. He mentioned Holland and Switzerland as object lessons, confederacies of equal and independent provinces that sadly “do not command.” *Oceana*, 181. (Madison repeated this argument in 1787, citing the same confederations, at the Philadelphia convention.) Why, if he disdained federalism, did he redivide the country and erect a pyramid of several layers? First, the redivision cut across traditional borough and county lines and organized the state into new subunits; he might have thought this Cleisthenic re-scrumbling of allegiances would reduce factions and divisions. One scholar has noted that revolutionaries in France adopted this Harrington idea in the 1790s. Russell Smith, *Harrington and His Oceana*, 44–45, 207. Second, Harrington had faith in group voting. He was taken with the use of lot in the twelve tribes of Israel, as well with voting of the centuries and tribes in Rome. Some kind of division of citizens or “methodical collection” was necessary in every government. Harrington, *Art of Lawgiving*, 379–380; *Oceana*, 78, *passim*. Cicero, whom Harrington admired, said how much better it was that Romans met, strolled around, and shared opinions within their group before voting than was the Athenian experience of sitting down and voting without benefit of discussion (not sitting down in assemblies, Cicero thought, was a good Roman tactic). *Pro Flacco* 7.15–16. Aristotle was one of the first to make the argument for group voting. *Politics*, 1305a30–34. Finally, it is also possible that the pyramid of levels in Oceana was, for Harrington, an effective way to remove the people entirely from the political process; see below text.

- 20 *Oceana*, 46.
- 21 *Oceana*, 50–51.
- 22 For an introduction to Parliament's origins, see George L. Haskins, *The Growth of English Representative Government* (Philadelphia and London, 1948), 44–124. For a classic work on the early-modern Parliament, see JE Neale, *The Elizabethan House of Commons* (London, 1949).
- 23 Sir Thomas Smith, *De Republica Anglorum: The Manner of Government or Policy of the Realm of England* (London, 1583) (www.quod.lib.umich.edu, accessed 3/15/2021). The author has modernized English spelling. Smith wrote the work in the 1560s, it was published posthumously in 1583. This Smith is not to be confused with the Thomas Smythe who founded the East India Company and was a prominent City politician and business leader during the first two decades of the next century.
- 24 *Oceana*, 46.
- 25 Russell Smith, *Harrington and His Oceana*, 36; Hammersley, *James Harrington*, 14. Harrington stressed in *Oceana* the need for a natural aristocracy, lodged in the Senate, to advise the lower house, and the dangers of Athens's unchecked democracy.
- 26 See Richard Baxter's contemporaneous criticism on this score. Russell Smith, *Harrington and His Oceana*, 117.
- 27 *Oceana*, 93.
- 28 *Oceana*, 129.
- 29 See [Chapter 7](#) for discussion of James Wilson.
- 30 In addition to the river simile, Harrington gave the American founders the even more consequential simile likening discrete groups to planets orbiting the sun. *Oceana*, 112. The orbit simile in describing a well-ordered commonwealth was convenient because it portrayed a series of objects in harmony with the whole: objects with different interests which might collide and destroy each other or indeed fly out of control were it not for their happy relation to the center, causing peaceful rotations. (In Philadelphia in 1787 John Dickinson used the image to effect.) Plutarch employed a version of the simile (clashing peoples, analogous to the chaos of primeval atoms floating about the universe, being placed into a "cycle of peace" by Roman power). Plutarch, *De Fortuna Romanorum* 2. The difficulty in Harrington's case was, he was not certain which were the objects to be kept in harmony. In one passage, they were the parishes and hundreds and tribes, in another the fickleness of electors, whose choices would be spaced by staggered terms of office, and in yet other passages in orbit were military troops, provinces, elders, and youth. *Oceana*, 94, 159, 176, 189. Striking harmony among discordant factions was his goal, but apart from his proposal for a bicameral legislature – of a wealthier Senate and a commoners' lower house – he was not certain which were the right categories. His lack of precision on this was in contrast with his republican forebears. The late medieval communes which he admired actively managed interests, making quotas for offices, sometimes giving a group a say in nominations but not elections (and vice versa), sometimes one group needing the assent of a rival group, sometimes blurring interest identities. Harrington's feint in the direction of harmonization was rhetorical. Aware of the need to "confine" interests within their "river banks," Harrington built no devices into his elaborate architecture to achieve his end. Instead, he seemed to be relying on multiple tiers which separated deputies into groups; on aleatory, Venetian procedures; on bicameralism; on the distant galaxy to wall off people and their factious spirit from government; and on a distribution of economic power (his "Agrarian") to match and support the regime. In an obscure but possibly important passage Harrington said that it was necessary to organize the "orders" (here he mentioned the three top organs of government, but extended the concept by implication to the rest of his creation) in such a way that

they must not “jostle one another” or such jostling would lead to the dissolution of the commonwealth. Rather than linkages, dependencies, and sinews to unite and hamstring diversity, Harrington hoped that autonomy would keep the peace. (*Oceana*, 74.) In another passage he said Machiavelli was wrong about peace in Rome being attributable to enmities. Enmities ought to be removed entirely from a republic by equality. (*Oceana*, 136–139) He made a similar, possibly mistaken characterization of the role played by Guelfs and Ghibellines in Genoa, which far from beneficent Harrington thought was harmful. (*Oceana*, 265) Harrington missed or discounted the ways republican procedures utilized interests and embedded them into political structures as a conflict-reduction measure, and he over-estimated the ability of a faux representativeness to purge government of divisions. (This or Harrington’s era believed in the homogeneity of the electorate, as Pole and others have mentioned; but this seems doubtful given the England Harrington was witnessing. Pole, *Political Representation*, 20). Widely read in the eighteenth century in the Anglo-American community, this obsessive proceduralist ironically had a not salutary effect on future procedures.

- 31 See Robbins, *Eighteenth-Century Commonwealthman*.
- 32 Pole, *Political Representation*, 15–16, 442.
- 33 Pole, *Political Representation*, 398.
- 34 Algernon Sidney, *Discourses Concerning Government*, ed. Thomas G. West (Indianapolis 1996, Liberty Fund printing based on 1698 edition), 452 (orig. [Chapter 3](#), Section 23).
- 35 Joseph Addison, *Remarks on Several Parts of Italy [etc.] In the Years 1701, 1702, 1703* (London, 1767 ed.), 20–21. Addison later said that the Genoese had “a more inviting form of government” than the Florentines. (229) That Addison was read by American founders there is no doubt. The text reviewed (online) by the author is from John Adams’s copy, Boston Public Library.
- 36 Addison, *Italy*, 251.
- 37 David Hume, “That Politics May Be Reduced to a Science,” ed. Knud Haakonsen, *Political Essays* (Cambridge, England, 1994), 6.
- 38 Hume, “That Politics,” 7, 11.
- 39 Hume, “Of the Original Contract,” 191. Achaia was a common topic beginning with Harrington and Sidney, continued by Hume, and then occasionally on the lips of James Madison, James Wilson, John Dickinson, and others in 1787 and 1788.
- 40 Hume, “Perfect Commonwealth,” 224–225.
- 41 Hume, “Perfect Commonwealth,” 232. See Douglass Adair, “‘That Politics May Be Reduced to a Science’: David Hume, James Madison, and the Tenth Federalist,” *Huntington Library Quarterly* vol. 20, no. 4 (August 1957), 343–360. Madison’s use of Hume is discussed in [Chapter 6](#).
- 42 Montesquieu, *The Spirit of the Laws*, ed. Anne Cohler Basia, Carolyn Miller, and Harold Samuel Stone (Cambridge, England, 1989), 15, 53 n.24, 54 n.28, 116 n.7, 13, 14, 21, 112–114, 124, 131ff.
- 43 Caroline Robbins, “‘Discordant Parties’: A study in the Acceptance of Party by Englishmen,” *Political Science Quarterly*, vol. 73, no. 4 (December 1958), 505–529. Robbins’ argument is more persuasive than J.R. Pole’s statement that in the time of John Locke it was “possible to suppose a homogeneity of interest.” *Political Representation*, 20. That such a time existed then (or ever) is doubtful.
- 44 Robbins, *Eighteenth-Century Commonwealthman*, 370. For all their criticism of corrupt governments in the eighteenth century, Whigs thought English institutions should be improved, not overthrown. Robbins, *Eighteenth-Century Commonwealthman*, 205; Pole, *Political Representation*, 17–18. See also J.H. Plumb, *The Origins of Political Stability: England, 1675–1725* (Boston, 1967).

- 45 Jean-Jacques Rousseau, *The Social Contract and Discourses*, trans. G.D.H. Cole (London and Toronto, 1920, printed, London and Melbourne, 1990), Book 3, Chapter 15, 265–268.
- 46 Like many political thinkers of the century, he paid his respects to the republics of Venice, Genoa, and Rome, but in Rousseau’s case these republics presented live possibilities. They proved, he said, that the people ruling in assembly were not a chimera. *Social Contract*, Book 3, Chapter 10, 257–260 (especially notes); Book 4, Chapters 3–4, 279–291.
- 47 *Social Contract*, Book 1, Chapter 5, 189–190; Book 3, Chapter 13, 262–264, Chapter 15, 265–268. In another essay, Rousseau said that a share in public administration makes people “feel that they are at home.” *Discourse on Political Economy*, ed. Cole, *Social Contract and Discourses*, 146.

5 Experiments in Early America

Long before the transmission of the commonwealth ideology across the Atlantic Ocean, the American colonies had been engaged in creating new societies and new forms of government, and not surprisingly republican techniques surfaced there as well, especially in the corporate and to a lesser extent proprietary colonies, both of which had more scope for innovation than did those immediately under royal control and for that matter than did the Englishmen they left behind in Britain. But although sprouting a few seeds in America, the republican project did not take root in colonial America. Joint stock companies, which provided the organizational structure for settling corporate colonies, played an equivocal role. The requirements of Puritanism did as well. Certain strong-willed individuals, and a social culture of rank and deference, played their part. All these influences came together to shape the early procedures of Massachusetts government and imprint upon them a decidedly unrepublican character. Massachusetts was the model; others looked to her. Nowhere were republican stirrings stronger than in the Bay Colony, but ultimately no single influence had greater force in smothering republicanism in early America than the choices made by the bellwether Massachusetts commonwealth.

Inauspicious beginnings

The bare bones of the Bay Colony tale have been oft told: the immensely well-educated and devout Englishmen coming together to form a company and receive a charter in 1629 for a new colony, the migration led by John Winthrop, his model of Christian charity sermon, the adroit management by Winthrop and others to keep the polity together in the face of diverse threats from dissidents, the petition by towns for representation as the price of rendering tax, emergence of spirited town meetings and an equally spirited bicameral legislature, the passing of the first generation and their legacy of a commonwealth sure of itself and committed to political liberty. Owing to this extraordinary beginning, and in particular to the assertiveness of town meetings and the colony assembly, the Bay Colony became by the mid-eighteenth century the leader among its fellow colonies in the battle for independence from Great Britain.

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The bare bones are good enough, as far as they go. But it pays to look more closely at the evolution of political procedures, for the procedural narrative unfolded in unforeseen ways and for reasons that were not straightforward.

The procedural history began with the corporate entity which founded the Bay Colony. In receipt of its royal charter, the Massachusetts Bay Company was organized as a joint stock company, which was a business entity that had arisen in recent decades and possessed distinct advantages for anyone interested in self-governing organizations run by a society of equals. But joint stock companies in fact were Janus-faced: key features in their structure powerfully advanced republican practices, but other novel features pushed in the opposite direction, toward autocracy, if so exploited by their leaders. They were a flexible instrument. Which face of Janus would predominate depended on the preference of the managers.

We have seen how in the medieval era across Europe guilds helped establish and in some cases take over emerging towns in an era of rapid urbanization. In some market towns, membership in a guild was coterminous with citizenship; and some guild internal practices of self-governance were mimicked by Italian communes. A somewhat analogous borrowing from business by public entities occurred in the early modern era in British overseas possessions. Although it is a crude generalization, there was in Britain a progression in business organizations from the late Middle Ages to the early modern period, from guilds to regulated companies to joint stock companies.¹ All of them in this progression from time to time performed public functions. In the modern era, we have become accustomed to a wall separating public and private activities, but such a hygienic division did not prevail in the early modern era. The delegation of public duties (such as regulating commerce, or planting a colony, or even governing a foreign land) to private corporations was common and typically involved a crown monopoly bestowed on a company, such as the venerable Merchant Adventurers, allowing the latter to control England's valuable foreign cloth trade. The crown made such a grant because it could be sure the adventurers, as self-interested entrepreneurs, would do a capable job developing the market, keeping out interlopers, policing its members, and paying remittances to the monarch. It was because of this crown benefit – both cash and market regulation – that the crown was willing to cede self-governance to trading corporations, even though self-governance usually involved a plainly egalitarian democracy among freemen of the company alien to the customs of kingship.² In the long run, this trade-off was not necessarily in the crown's interest.

Corporate structures changed in the early modern era because of the expansion of foreign trade in the sixteenth century, and soon thereafter the planting of colonies in far-flung places (colonies to facilitate trade but also to exploit resources and claim new lands for the kingdom). British interest in foreign trade had always existed, largely because of the cloth industry, but in the sixteenth century, Spanish and Portuguese success in the New World and in the Spice Islands was both tantalizing and galling to British merchants and

sparked a frenzy in business circles in England. Protestant England was also interested in competing with Catholic Spain. Not a few joint stock companies had wealthy Puritan grandees as founders and shareholders, people who combined the profit motive with English patriotism and Puritan conscience.³ The English were determined to get their share, starting a half-century late. It was at this moment, in mid-sixteenth century, that Londoners pioneered a new corporate vehicle, the joint stock company. Their likely model was the entity we have already encountered, the Casa di San Giorgio of Genoa, and they furthermore adopted for their own use some of the Italian communal voting procedures.⁴

New business requirements called for a new business organization. Trading distances were vast, time-lags enormous – two to three years to outfit ships, collect trading goods, make the voyage, and return with exotic goods and sell them. Partnerships of brief life were inadequate. Nor could old-fashioned regulated companies muster the capital. The capital outlay to mount a serious trading effort to Asia, not to mention planting colonies in the New World, was vastly more than a single merchant or small partnership of merchants could muster. Hence the idea of a joint stock, or joint capital. Joint stock companies were similar to regulated companies (such as the Merchant Adventurers) with one significant difference: whereas the latter provided a platform for merchants to trade for their own account (as they used to do in guilds), joint stock companies pooled capital to trade on behalf of the corporation.

This innovation answered an immediate business need in London, the need for more capital to be utilized at beating the foreign competition in faraway markets; it also gave rise to long-term institutional effects. By pooling capital into one corporate stock, the company could attract passive capital from shareholders who were not in the trade themselves. This capability multiplied the amount of money that could be raised and the number of people participating in each venture; and it also called for a group of expert managers to run the company on behalf of all the shareholders, in much the way that modern public corporate managers do. Having such a professional cadre of managers on hand necessarily created a divide within the company that had not previously existed, namely, between active managers and passive shareholders. This divide had its own effect on corporate governance, and, in time, on politics. It was the cause of the Janus-faced character of joint stock companies. On the one hand, they were self-governing organizations with voluntary and equal shareholders deciding all matters in shareholder meetings (called variously assemblies or General Courts of freemen, adventurers, or purchasers), just as had always prevailed in regulated companies. On the other, joint stock companies pioneered the use of key professional managers, who worked in quite the opposite direction.⁵ This in-bred tension in corporations appeared for the first time at the same moment when colonization efforts got underway, employing the joint stock company structure to organize their activities.

The first English joint stock company to receive a charter was the Russia Company in 1555, formed to find a northeast passage to India in the hopes of finding new markets for English cloth (beating the Dutch and the Portuguese traversing the Cape, and bypassing the Ottomans). Soon others followed in her footsteps, first trading companies (Levant, Guinea, East India Co., and others) then plantation companies (Virginia Company, Somers Island Bermuda Company, and others). There occurred not just interest in but an explosion of interest in the new phenomenon of trading and plantation joint stocks. From 1599 to 1630, 5,000 or more Englishmen invested in some 40 joint stock companies. Investors from all walks of life participated, with a skewing toward merchants, gentry, and the politically well connected. In every Parliament from 1601 to 1626, a hefty one quarter of MPs participated in one or more of these new enterprises.⁶

To launch one of these ventures, an enterprising set of merchants would get together and invite others to join them as “adventurers” in the undertaking, and issue stock or shares worth so many pounds per share. If the venture was to plant a colony, shareholders were entitled to a dividend in acres of land per share subscribed; shares could be subscribed by different means, by pounds paid in or services rendered. A land dividend was common to ventures as varying as the Plymouth colony, Massachusetts Bay, and Virginia. (It was because of his unremunerated investments in the joint stock that Matthew Cradock, the first Massachusetts Bay Co. Governor, asked for 2,000 acres.) With a royal charter usually in hand, which created a chartered corporation, shareholders had the right to control their internal affairs and soon learned to guard this right jealously.⁷ Shareholders fought with each other often, usually those who were managers against those who were passive, with appeals to the crown to intervene.⁸ Disputes tended to revolve around methods of nominating and voting and the extent of manager discretion. From their country seats passive, noble shareholders reacted tepidly to the highhanded, condescending behavior of City-based mercantile management, management which sometimes refused to call general meetings or open the company books. It is an irony that the first stirrings of shareholder democracy were felt by none other than the most privileged Englishmen who looked down on merchants in their City offices and who were accustomed to being more the receivers than the grantors of deference. Irony or not, the pecuniary interests of stockholders of all classes gave shareholders a good reason to pay close attention to the company books, to their voting rights, to procedure, and to the sovereignty of the General Court in company matters. These new-fangled joint stock companies became a laboratory for democratic procedures.

The results of that experimentation affected New England, and because of that one needs to look more closely at what happened in the lab. The most famous corporate brawler of the era was Sir Thomas Smythe (not the Thomas Smith who wrote of Parliament’s virtual representation), founder of the East India Company, Virginia Co., and Somers Island Co.; protégé of King James I; and, falling into the category of professional manager, the adversary

of countless passive shareholders who felt uninformed and unconsulted by the imperious Smythe.⁹ In 1619, passive East India shareholders complained that the Governor and directors were managing the business by themselves, contested Smythe's candidacy at the annual election court, pressed for an audit of the books, and objected to the salaries of the senior managers. Smythe fought back, and with the backing of the King kept his job. When confronting the noble and unhappy passive shareholders, the Smythe faction put the matter simply: certain prominent gentlemen "do aim to get all the government into their hands, which is a business proper for merchants."¹⁰ But dissidents did not give up, renewed the battle, focusing on the call for a secret ballot for elections and on the convening of quarterly General Courts of all shareholders. The fight continued, with the court of committees (or Governor and Assistants) taking the audacious decision in 1634 that no one should be allowed to examine the company's books without their permission, and moreover ended the quarterly General Courts of shareholders because, they alleged, these "beget quarrels and debates." (Management had caused the company to accumulate a certain amount of debt which management would rather not disclose to shareholders.) The Governor attempted to pacify the aristocratic and irritable shareholders by saying he was not trying to exclude them from information, only those who "raise dissension and debates."¹¹ Fighting always came to a head at election time. In 1639, the East India Co. stripped smaller shareholders of their vote for being "the most turbulent and clamorous."¹²

Smythe's principal adversary in this East India Co. fight was fellow shareholder Sir Edwin Sandys, a leading parliamentary and Puritan adversary of James I (no doubt among the reasons the King backed Smythe). Sandys conducted a similar fight with Smythe in 1618-23 for control of two other companies, the Virginia Co. and the Somers Island Co. In the Virginia Co., Sandys said the company was in the hands of "a perpetual dictatorship" and proposed voting by secret ballot on the grounds that Smythe was intimidating shareholders. The controversy continued with such asperity that by 1623 the crown revoked the charter and issued a new one, ending Virginia's brief existence as a self-governing corporation.¹³ One result of Sandys's efforts was an evolution in the rules of voting allocation in the Somers Isles Co.; by the 1620s dissidents had secured the rule that land ownership should determine shareholder stake, and shareholder stake should determine one's voting power. This change was probably aimed at breaking the grip that insiders held on corporate affairs. Over the next few decades, land ownership changed hands and the Somers Island residents became the majority shareholders and the London-based shareholders became the minority, yet still the latter would not yield control.¹⁴ This London-based stubbornness was noteworthy, for it showed that even when shareholding called for local governance, the resolve of a cadre of experienced shareholder-managers to run the company was formidable.¹⁵

The Massachusetts Bay Company was one of the late joiners to the joint stock company rush. For many migrants, it was a religious cause. For the

founding shareholders, it was a religious cause and a business. For both sets of founders, the structure they worked with was that of a joint stock.¹⁶ Among the founders were the most experienced investors in early seventeenth-century joint stock companies, and veterans of the most famous shareholder fights. There were the Earl of Warwick and his cousin Sir Nathaniel Rich (one a peer, the other an MP) who were also leaders of the East India Company, Virginia Company, Somers Island Company, Guinea Company, and Providence Island Co. Warwick had helped the Pilgrims get their land in Plymouth and likewise helped arrange the grant of land to the Massachusetts venture.¹⁷ There was Theophilus Eaton, founder of New Haven, an original patentee of the Massachusetts Bay land grant, and a wealthy merchant. Eaton had been Deputy Governor of the East India Company.¹⁸ Sir Richard Saltonstall, another Puritan aristocrat, Clare College graduate, an investor in the Levant Company (and nephew of a founder of two other joint stock companies), was an early backer whose family would long be associated with the Bay Colony. Matthew Cradock was one of the largest stockholders in the East India Co., an officer thereof, as well as shareholder in the Levant Co. The founders of the Massachusetts venture were thoroughly familiar with joint stock companies, their methods as well as their battles.¹⁹

John Winthrop had his own connection to these corporate tycoons. His son took a voyage on a Levant Company ship. His Cambridge classmate and friend was Nathaniel Rich, cousin of the Earl of Warwick who played a role in the East India Co., Somers Isle Co., Virginia Co., and other companies. The Warwicks, although initially supporting fellow Puritan Sandys in his running battles with Smythe for control of the East India Co. and the Virginia Co., switched sides and backed Smythe against their fellow Puritan Sandys. They did so for pecuniary reasons.²⁰ Warwick would become an investor in New England lands, an occasional ally of John Winthrop in his political struggles, and benefactor of Winthrop's son John Jr. In choosing which ones of the various joint stock company models fitted more comfortably with his goals, Winthrop had ready examples.

While still headquartered in England, the Massachusetts Bay Company managers dutifully followed the procedures of its royal charter, and if the company had continued to do so when its operations moved to the New World, the republican prospects of the commonwealth would have been bright. At the outset, the company held frequent and well-attended meetings of the General Court and took carefully noted decisions. The freemen of the company took all decisions and elected corporate officers. One of the first meetings considered the question of moving the company government and its charter to New England. While the matter was pending, a group of Puritans involved with the company met (on August 26, 1629) in Cambridge (seat of the alma mater of some of them) and pledged the so-called Cambridge Agreement, whereby they committed to move to the new colony, but only if the government and patent went with them. John Winthrop signed this Cambridge Agreement. Four days after that, the General Court elected Winthrop

Governor.²¹ From the goers' point of view, this was a sensible outcome. They were to uproot and move to a wilderness, and they had no interest in risking their lives and the lives of their families if they would be subject to remote decisions made in comfortable English drawing rooms. Winthrop would have been aware of the Virginia Co. and Somers Isles Co. controversies, battles which sometimes pitted London-based managers against local planters; he did not want to see that happen to him. He would have known about these battles from his friends the Warwicks, participants in all three ventures.²² When in the following April Winthrop set sail on the *Arbella* he did so having extracted the key condition from his fellow shareholders: if he was to be their Governor, the government would go with him.²³

But Winthrop accomplished more than liberation from England. Having escaped the clutches of an England-based group of shareholders, Winthrop crossed the ocean and set up a governing regime that escaped the clutches of his fellow migrants as well. In Winthrop's intelligent mind, the two freedoms were related. For he would have known from the experience of Virginia and Somers Isle (later Bermuda) that New World settlers frequently fell out among themselves, and inevitably one faction or the other petitioned back home to their friends in London for redress of grievances. In Winthrop's migratory party were his friends and fellow Puritans, but in addition the migrants included many servants and others he did not know well. Where they were headed was already home to an eclectic mix of Puritans, fishermen, traders, and native Americans. Scope for disagreement was present. He knew that. As well, Puritans were too familiar with robust church and doctrinal disagreements among themselves to be sanguine about harmony. He knew that as well. Winthrop's sermon on departure (or arrival; and whether on the *Arbella* or not is not recorded), the "Model of Christian Charity" speech, stressed the "community of peril" they were now inextricably part of, and the consequent need to hang together, to help each other, and act as one. Its appeal to unity was stronger than its summons to charity. Winthrop made it a condition of his going that he would not have to watch his back across the ocean, and having cut off that London base serving as an appeals court for possibly unhappy, future residents in New England, he was better prepared to deal with the latter as firmly as he could, and do his job. Ever after, Winthrop was touchy, even paranoid, about someone's seeking to go around him and appeal a government decision to London, for although the seat of company government was with him, there remained the Crown, which he did not control. After Parliament replaced the crown as the appeals court (during the English Civil War), even then Winthrop accounted such appeals as treason.

From the very outset in Boston, hyper-sensitive to criticism from fellow settlers, the magistrates pursued a policy of suppression of dissent. One might explain their suppression on the basis that Puritanism was by its nature improvisational and intellectually exploratory and always on the verge of spinning out of control, that conformity was required, and that a prudent leader needed a firm hand to keep things together. Moreover, core doctrines of the

Reformed (Calvinist) tradition were that salvation was tied to being part of a visible church of the godly, that civil officers were commissioned by God, and that government had the responsibility to lead the reformation of manners.²⁴ These claims of the conscience were important. But toleration of dissent was greater in other colonies. Massachusetts was regarded as deviant by many Puritans, including by some of its own founders, in its unrelenting suppression of dissent.²⁵ The severity of the suppression was unique in New England, began several years before the Antinomian crisis, before Roger Williams's disruptive arrival, and extended to all manner of topics, not just articles of congregational doctrine. One historian noted that the Bay Colony pursued its perceived challengers with "a fury approaching outright sadism."²⁶ Punishments ranged from cutting off ears to banishment on penalty of death. Gag orders and loyalty oaths soon followed. The policy of suppression went on for years.²⁷

One of the reasons there was so much dissent to be stamped out was because the government Winthrop created was autocratic, and people objected. He was running Massachusetts the way Smythe had run the East India Co. and Virginia Co. The Massachusetts charter put all major decisions in the hands of men admitted to freemanship of the company. But after being transferred to America, the company never again entrusted its affairs to a meeting of equal freemen. Of the hundreds of residents in Boston in 1630, none was a freeman of the Massachusetts Bay Company who was not also an Assistant. In Boston, there were nine Assistants (counting the Governor and Deputy Governor, who technically were not deemed Assistants). These nine individuals constituted the General Court in the first years of settlement. Undeterred by their small number, they promulgated orders, set rates, and administered justice. Even punishments were meted out by a subset of magistrates. In November 1630, an Assistant was fined for whipping two persons "without the presence of another Assistant," contrary to an earlier order. This fine presumed, evidently, that corporal punishment could be imposed by no higher body than one Assistant witnessed by another. In October 1630, the Assistants ordered that henceforward Assistants should choose the Governor and Deputy Governor. The charter explicitly provided that these officers were to be chosen by the General Court of freemen. This important departure from the company charter they no doubt justified by the fact that they, the Assistants, were the only freemen around; but the order did not say that – it said Assistants should have this highest elective power. In March 1631, the Assistants reduced the quorum (from seven of the original eighteen) to a majority of those present in the Bay Colony. As nine were present, the new quorum meant five. Since a vote could be won with a majority of the quorum, three Assistants gave themselves the power of legislation, election, judging, and inflicting punishment. General Court meetings could take place, and likely did take place, around Winthrop's kitchen table.²⁸

The charter provided for an annual election meeting of the General Court. In the first such meeting in the New World, in May 1631, Winthrop was

re-elected Governor. Named as attending were seven Assistants, and that number meant that four individuals on that day had the power of electing the colony's Governor. On the same day, May 18, 1631, with unnamed "commons" present, an order restricted freemen to church members, but although it was a restriction, this act also allowed 116 residents to become freemen of the corporation entitled to vote in the General Court.²⁹ One would have thought that this move would have begun to restore the democratic decision-making basic to this (and all other) joint stock companies. But it did not. It seems to have been an act of appeasement. The closely held exercise of power carried on as before. In July 1631, the Court of Assistants levied taxes on the several towns, and in the same meeting declared that each Assistant (six being present, including Governor Winthrop and the Deputy Governor) had the power to grant warrants and summons and attachments "as occacon shall require." In October 1631, this small group of men prescribed the death penalty for adultery. In some other corporate colonies, the decision to execute or mutilate a settler had to be referred to the General Court sitting in London. From 1630 to 1660, Massachusetts had only four jury trials for noncapital crimes; all others were tried by magistrates. Conviction rates were around 90%.³⁰

The tax provoked the first revolt. In 1632 Watertown protested, saying the town's consent was required to be taxed. Winthrop pushed back, saying the townsmen were confused, the Governor and Assistants were not some "aldermen" but more like Parliament with full power, and that freemen should be content with the right to propose anything they wished and "declare their grievances." Winthrop noted in his journal that this argument seemed to have availed, for the petitioners went away "full satisfied...and their offence was pardoned." So he thought, but Winthrop was mistaken.³¹ For by May he was hearing that the freemen were not in fact content with things and that they "intended, at the next General Court, to desire, that the assistants might be chosen anew every year, and that the Governor might be chosen by the whole court, and not by the Assistants only." If such a result came to pass, said his ally Roger Ludlow, "we should have no government."³² Nevertheless Winthrop and friends were forced to back down, for in May 1632 it was agreed that henceforward the chief magistrates be chosen by the freemen (as the charter had provided). And moreover, every town was now entitled to choose two men to "advise" and "confer" with the Governor and Assistants on the matter of taxes.³³ These were concessions by the Winthrop camp but with limitations, for the new arrangements fell short of the charter powers of freemen to make laws, and of their right to do more than "confer" about taxes.

But concessions or not, rebellion continued, for the handful of Assistants continued granting land, setting prices, and making orders by themselves. William Coddington complained in 1633 that Winthrop took away people's liberty by taking decisions that were not his to take. Anglican troublemaker Thomas Morton, exiled from New England three times, complained to the Privy Council of the Governor he called "King Winthrop." Deputy Governor

Thomas Dudley resigned and complained in 1632 that Winthrop “took too much authority” and expressed his concern that Winthrop “might gain absolute power.”³⁴ By charter, the Massachusetts Governor had no specified executive duties and no veto. He was not a decision maker, was rather in the tradition of joint stock companies an administrator. At most, the charter provided for him to be the head of the board of Assistants, although not an Assistant himself. It was this vagueness and powerlessness that gave Dudley the foundation to assail Winthrop in 1632 and ask him by what authority he took decisions. Winthrop had not much to say, except that common law and statute generally empowered Governors.³⁵

Large numbers of new immigrants arrived in the next two years, the freemen were emboldened by numbers, and at last, in 1634, four years after disembarkation, they asked to see a copy of the charter. Winthrop had been careful to bring the charter with him from England – it was the condition of his going – and he was just as careful not to have shown it to anyone once arrived in Boston. Winthrop’s withholding the charter from the settlers for four years resembled Smythe’s refusal to show the books to his shareholders in the East India Co. That now changed. When he was forced to produce the charter, freemen learned or had confirmed that they, not the Assistants, had law-making power by the terms of the joint stock company charter.³⁶ In the debate that followed this disclosure, Winthrop made several observations: there were too many freemen now to convene them all (Harrington would say the same of Oceana); they must choose others to act for them; this selection would not be easy, there being not “a sufficient number of men qualified” to legislate; and although the charter did say freemen should make laws, that made sense for a commercial company (which was the charter’s origin) but not for a commonwealth.³⁷

Winthrop recommended that from among the freemen “a certain number should be appointed upon summons from the Governor to revise all laws, etc....but not to make any new laws, but prefer their grievances to the court of Assistants.”³⁸ So he moved, but the court decided otherwise. In May 1634 the General Court reclaimed its stipulated charter rights to legislate, elect officers, grant land, and levy tax. It was also ordered that no one should be banished or sentenced to death except by a jury trial or by order of the General Court. General Courts should be held four times a year (as the charter had provided for). Towns should be allowed to choose two to three deputies to confer and prepare such “business” as they thought fit to be considered at the next General Court. (The same court repealed an earlier assistants’ order about swine, and asserted in a huff that henceforward every town “shall have liberty to make such ordrs aboute swine as they shall iudge best for themselues....”) In the first secret ballot since the company was founded in England, rather than open raising of hands as customarily done, Winthrop was defeated and replaced by Thomas Dudley as Governor.³⁹

This year would seem to represent a revolution of sorts, but like a lot of revolutions it was only semi-successful. Having reluctantly permitted freemen

to send deputies to the General Court, the Assistants next asserted their right to veto acts of the deputies. Cotton preached that three bodies should each have a veto – magistrates, the people, and the ministry.⁴⁰ Some took exception. In 1635, Dorchester deputy Israel Stoughton, observing that Assistants were not magistrates, pointed out that no authority granted them a veto in any case. “All the country” could want something and not get it because of a veto of four Assistants, he said. For his pains, Stoughton was called by Winthrop “an underminer of the state” (in Stoughton’s telling). Without the negative veto, said Winthrop, Massachusetts “would be a mere democracy,” the “meanest and worst of all forms of government” – a “monster.” It would undervalue the higher talents of men in power if “any one of the common rank of people should have equal weight with that of the wisest and chiefest magistrate.” (This language a fellow sometime Governor, Bellingham, called scandalous.)⁴¹ The General Court, accusing Stoughton of having caused “much trouble and offense to the Court” by holding that Assistants were no more powerful than law judges, put on record its desire that his book be burned and barred him from office for three years.⁴² A gag order was apparently put in place prohibiting discussion of the negative vote; at least that is the implication of the order of 1643 removing the offense. In the end, the General Court split into two distinct houses, each with a veto.⁴³ Hence commenced the American tradition of bicameralism, begun in a largely successful coup staged by a group revolving around Winthrop intent on expunging the legislative rights of freemen as granted in their joint stock company charter.

The next move of this indefatigable power group was to create a perpetual Standing Council of prominent figures with powers of magistrates. In 1636 Winthrop and Thomas Dudley, both former Governors, were appointed to this body – “for the terme of life.” This step, too, had no precedent in joint stock companies.⁴⁴ Winthrop cared about the prerogatives of this council of grandees. When at one point the General Court proposed a new commission to manage colony business between General Court meetings (superseding both the Assistants and the new Standing Council for life), Winthrop objected, saying that such an election by the General Court would upend the charter right of freemen to choose their leaders.⁴⁵

A continuing source of tension from the beginning was where to lodge the power to nominate officeholders. In Europe, republics had used nominating to break up power groups, increase popular participation, and make electoral systems difficult to manipulate. In Boston during 1631, Winthrop and the handful of Assistants chose for themselves the right of both nomination and election of magistrates. The next year, when freemen were beginning to assert themselves, the General Court (still closely held) ordered that the Governor be chosen always “out of the Assistants.” (Such an eligibility rule was foreign to the charter.)⁴⁶ In 1635 Winthrop recorded that the Governor should be the person to nominate Assistants, and people should come back with their papers marked in favor of his nominee or blank if against.⁴⁷ Apparently, freemen had a different idea of how nominating should proceed. By at

least 1640, ten years after settlement, freemen had won the right to nominate magistrates. An order that year provided that they, in their towns, should name their choices, the designated names (together with vote totals) should be sent to Boston by the town deputies, those names attaining the highest votes should be returned to towns as candidates, and at the next court of elections none should be voted on except these nominees. (This idea was a Bay Colony revival of the traditional principle of local nominations and national or general elections.)⁴⁸

At least from then on, the power to nominate was no longer held solely by the magistrates, notwithstanding their efforts to keep it. But whether it actually was wielded by freemen or rather by deputies (or by deputies and magistrates) is not clear and was the subject of another battle, one which concerned the nature of representation in Massachusetts (see below). As late as 1649, in yet another order about the always festering topic of nominations, the court ordered that in narrowing down the field of nominees for magistrates, incumbents were to have preference over new names in forming the list of nominees.⁴⁹ This nominating bias in favor of incumbents had no precedent in the charter and benefited people who had by now become a semi-permanent political class.

Leaders themselves did not scruple to say that they ought to, in their opinion, be permanent. In 1639 when he was re-elected Governor, Winthrop wrote it was not an easy campaign because some feared his becoming "a Governor for life," even though others propounded such an outcome "as most agreeable to God's institution" and normal in "all well ordered states." (At the same moment, he wrote it was necessary to reduce deputies to two per town because they had grown too numerous.)⁵⁰ His friend John Cotton likened office to a freehold, and said the burden was upon those who wanted to turn someone out of office. In 1643, Winthrop took offense when a preacher struck up the theme of rotation in office.⁵¹

Rotation was a rare event in Massachusetts. A barely changing cast of politicians (some related to each other) dominated high office in the Bay Colony during the seventeenth century. Simon Bradstreet, husband of poet Anne, was Assistant for almost half a century, from 1632 to 1679, when he became Governor. His father-in law was Thomas Dudley, who began life as one of the Earl of Lincoln's stewards (the same earl in whose country house occurred a formative meeting of the Massachusetts venturers, including Winthrop), occupied one or the other of three main offices (Assistant, Governor, Deputy Governor) for the entirety of his life in Massachusetts. His son Joseph Dudley was the leader of the infamous Dudley council at the end of the century, later royal Governor. Bellingham was Governor continuously from 1665 to 1672, Leverett from 1673 to 1678. John Winthrop (whose daughter married Dudley's son) was Governor for twelve years during the span 1630 to 1648, and in the off years he was either Deputy Governor or Assistant. Winthrop's son John Jr. was Assistant in Massachusetts for eight years in the 1630s and 40s, meanwhile was Governor of the so-called Warwick Patent in Southeastern

Connecticut; in 1651 John Jr. became a magistrate of Connecticut, then Governor, a position he held from 1659 until his death in 1676.⁵² If one leaves aside the two Massachusetts Governors who were one-termers because they departed the Bay Colony in disenchantment almost as soon as they arrived (Haynes and Vane), and leaving aside the unelected Dominion of New England, Massachusetts had but six elected Governors from 1630 to 1692, with an average tenure of almost ten years each. From then until the American Revolution in the third quarter of the eighteenth century the average Governor's tenure was about six years. Gubernatorial rotation was significantly higher when Governors were royally appointed than when they were elected.

Within a few years of settlement, Winthrop and friends managed to transform the pragmatic and egalitarian government of a joint stock company into a government with a powerful upper house armed with a veto and a lower house of deputies – when the charter had not contemplated any representative body, let alone two such bodies – overseen by a perpetual council of the great and the good, and a professional political class. The telling moment was in 1634 when the freemen, having discovered that the charter gave them the rights of decision, were told by Winthrop that democracy was all right for a commercial corporation but would never do for a commonwealth.

Boston diaspora: the mini republics of New England

Others did not accept Winthrop's position. They fled Boston and established a ring of mini republics surrounding the Bay Colony. Nowhere did they create a tyranny. On the contrary, the default government in New England, outside Massachusetts, was republican.⁵³ The main impetus to the proliferating Puritan settlements was Winthrop himself: his regime drove people away, many of them talented, rich, and educated Bostonians, who fled the scene as fast as they could, and in new places erected governments of complex architecture and careful attention to sharing political rights.

The founders of the diaspora communities did not randomly construct their mini regimes but rather founded them on the procedures and terminology of the joint stock companies which Winthrop had said were unsuitable for a commonwealth. The important practices of joint stock companies – of individuals voluntarily associating with each other to form a corporation, of submitting themselves to governance by the general assembly of freemen (sometimes called purchasers) of the corporation, of restricting membership and voting to the admitted, of subscribing to shares in a common stock, and of allocating dividends (normally land) according to shareholding – were the practices adopted. In most cases, the establishment of the corporate body was the first act of settlement.

Whether joint stock practices or not (and most used them), the common theme was getting out of Boston. The first settler in Boston (then known as Shawmut) was William Blackstone, who was there when Winthrop arrived and who promptly decamped for the wilderness to the South, saying, "I left

England to get from under the power of the lord bishops, but in America I am fallen under the power of the lord brethren.”⁵⁴ The next significant attempt at departure was that of Thomas Hooker and friends, the highly respected Puritan divine, alumnus of Queens and Emmanuel Colleges of Cambridge University, client of Warwick, and occasional adversary of Winthrop and John Cotton. Hooker arrived in 1633, settled in Cambridge then Watertown, and the next year together with residents from those towns and two other towns petitioned the General Court for permission to relocate. This petition split the General Court, the deputies siding with Hooker and agreeing to the removal, the Assistants (and Winthrop) opposed; and that political split, in turn, triggered the constitutional debate over whether Assistants had a veto over the decisions of the General Court. The next year, Hooker and company renewed the petition, and this time the Governor, John Haynes, who had crossed the ocean with them, not only backed their petition but himself also moved to the Connecticut Valley. The first migrants moved in 1636 and founded Hartford, which together with two other towns became the incubus for the commonwealth of Connecticut.⁵⁵

The Hartford migrants gave as their reason the need for more land, there being a shortage in Massachusetts. But that explanation was a form of politeness. Massachusetts had many problems in the 1630s but land shortage was not one of them. Nor were religious differences the motive for moving.⁵⁶ Rather it appears that the differences were political, and once outside the jurisdiction Hooker did not hesitate to name them. In his inaugural lecture in Hartford in May 1638 Hooker declared the first doctrine was “that the choice of public magistrates belongs unto the people.” The third doctrine expounded was that “they who have power to appoint officers and magistrates, it is in their power also to set the bounds and limitations of the power.” Then he gave the reasons for these doctrines: “Because the foundation of authority is laid firstly in the free consent of the people.”⁵⁷ Having just left Massachusetts, Hooker laid down a marker for a different sort of government than prevailed in the Bay Colony. The Connecticut *Fundamental Orders* of 1638/9, vastly more republican than Oceana’s fictive constitution two decades later, provided for the ability of freemen to overturn decisions of their own General Court. Annual rotation in the office of Governor was required. The Connecticut constitution permitted freemen to call a general assembly if the Governor failed to do so – so skeptical were these founders of executive power. The *Fundamental Orders* provided that no one should be eligible to be voted upon or elected to the magistracy without having been first proposed in a prior General Court; and toward that end, each town had the right to nominate people “they conceive fitte to be put to election” and the General Court could add other names to the list. This popular right of nominating was in contrast to the Bay Colony’s magistrates’ efforts to control the creation of candidacies.⁵⁸

In Hartford, both the *Fundamental Orders* and Hooker’s sermon emphasized more the “commonwealth” nature than the joint stock company aspects

of their undertaking; but the latter were not absent and possibly influenced the former. The *Orders* defined the franchise as open to “admitted inhabitants, who were admitted by a generall voate.” “Inhabitants” in seventeenth-century New England usage was a defined term normally indicating those belonging to the land corporation of a settlement and therefrom enjoying rights of voting and land distributions.⁵⁹

In 1638, due south of Hartford, Theophilus Eaton established (with friends) the new settlement of New Haven. He too had started in Boston (arriving the year before relocating), but apparently never with the intention of remaining, always rather with the intention of getting out of the Massachusetts jurisdiction. Eaton was as esteemed a businessman as Hooker was a Puritan divine. He had been Deputy Governor of one of Britain’s most famous companies, the East India Company, and with his fellow New Haven adventurers constituted the most opulent group of Puritan migrants. As a prominent and wealthy man, and one of the original venturers who had launched the Massachusetts Bay Company, Eaton was more than Winthrop could handle; it seems the latter did not dare oppose the New Haven move. But Winthrop could not have liked the result, for New Haven was another mini republic. The forms used were those of a joint stock company. Meeting in the “whole assembly of free planters” (a wording likely borrowed from “free men” of the company), the New Haven founders entered into a voluntary association for sharing land and governing the colony. Land divisions were allocated according to the estate of the planter “given in.” That formula suggested a company divided by shares. In making a constitution, the planters first debated whether the election of magistrates should be in the hands of the free planters or of a subset of themselves, those planters who were church members. New Haven chose the church (unlike Hooker’s Hartford, where all inhabitants could vote). Eaton himself spoke up to endorse the policy. He said that in “the companies of London” it was common for the members to create “committees” (designated individuals) or “liveries” with the power to choose magistrates, since every member aspired one day to be a livery himself; therefore, he argued, planters ought not to fear giving this power to church members.⁶⁰ This group of wealthy Puritans, founding a colony and debating how to elect their leaders, did not discuss whether the electors should be magistrates or freemen, as occurred in the Bay Colony, but rather debated which of two voluntary and democratic self-governing bodies – the church or the planters – should have the franchise. The land corporation yielded the right to the church, citing as precedent London corporate practice, never imagining that elections be confined to magistrates.⁶¹

Roger Williams famously fled alone through the snow in 1636 before Bay Colony authorities could arrest and deport him to England where he likely faced death (charitably Winthrop had warned him) and established Providence. The formative act was a compact by which the settlers “incorporated together into a town fellowship, and such others whom they shall admit unto them....” The general meeting, which made orders and appointed officers, also made land grants to the admitted, agreed to decide things by a majority

of this primary assembly, and made no delegation of authority to executives. It was a combination of joint stock company and commune. When they got around to delegation a few years later (to “disposers”), they reserved the right of any inhabitant to appeal a decision to the primary assembly.⁶²

Nearby, the adherents of Anne Hutchinson, similarly expelled from Boston, settled on the island of Aquidneck (later Newport and Portsmouth) in 1637/8. They too were jealous of delegated power and declared themselves (in 1641) “a Democracie, or Popular Government.”⁶³ They signed this declaration as “purchasers.” Two provisions were salient: first, they were forming a “Body of Freemen” to make laws by majority vote; and second, no state or person should “intrude” upon each man’s land, his “Propriety” being his forever. The companionship of political rights and a perpetual stake in the “propriety” was typical of New England satellite republics (and sounded a faint echo of the Casa di San Giorgio’s blending of political and economic rights in Genoa). When the settlements of Aquidneck and Providence (with its surrounding towns) coalesced into Rhode Island and held their first assembly (in 1647) under its first formal charter, it was an assembly of the whole people which convened.⁶⁴ The colony created a General Court with delegates from each town, but its job was more to promulgate or administer laws than to make them, for each law was first discussed and enacted in towns, then passed by the General Court, which law then prevailed only until the general assembly of “all the people” decided to confirm it or not. Hence evolved a three-step legislative process, with people at the center, and no role for executives or Assistants in law-making.⁶⁵

No more “democratical” contrast (as the Rhode Island government styled itself) with the Bay Colony could have been invented. Even when the assembly assumed more discretionary legislative power, by 1650, towns still weighed in on new laws, any freeman could object to an assembly-passed law, and a majority of freemen could overturn assembly-passed laws (which was also a feature of the Connecticut constitution, above).⁶⁶ When the U.S. Constitution was sent to the states for ratification a century and a half later, Rhode Island was the only state which, eschewing a state convention, put the matter before freemen gathered in towns, who soundly rejected the constitution. Democratic law-making had by then a long tradition in the state, beginning with the Massachusetts exile of Roger Williams.

While some Antinomians headed south, Anne Hutchinson’s relative John Wheelwright and fellow seditionists headed north and settled in New Hampshire. They chose a spot along the Piscataqua River just outside the Bay Colony’s boundaries, thinking (incorrectly) they would be safe there from Boston magistrates’ reprisals. In founding the towns of Exeter, Dover, and Portsmouth the settlers entered into written compacts of self-governance. In Wheelwright’s group, laws were made in a popular assembly and the office of Governor changed hands every year.⁶⁷

Plymouth, the first Puritan settlement in New England (and therefore not part of Boston’s diaspora), at first lacked a royal charter formally giving it

the powers of a corporation, but like these other satellites was undeterred from creating a body modeled after joint stock companies. Those admitted to the body received shares paying dividends in land, and were empowered to vote as freemen “of the Corporation.” In Plymouth it was this admission, not church membership, that entitled one to vote. Miles Standish was not a church member, but he was a member of Plymouth’s landholding and vote-wielding corporation. Any act of the deputies could be overturned by the next court of election, and freemen exercised this right frequently.⁶⁸

Although each one small, these mini republics were more than one-village communities. Plymouth was a colony. The Piscataqua settlement included at least four towns, Rhode Island a colony, New Haven a collection of towns in southern Connecticut and across the sound to Long Island, and Connecticut began as three towns on the river. By the latter 1630s, Massachusetts was ringed by a periphery of states made up mostly of its own exiles.⁶⁹

Unsurprisingly Massachusetts authorities regarded this periphery as a threat. In the year Hooker set up the Hartford democracy, Winthrop warned him of the “unsafeness” of referring matters “to the body of the people, quia [because] the best part is always the least, and of that best part the wiser part is always the lesser.” (His wording, possibly derived from the medieval formula *maior et sanior pars* we have encountered, stressed the *sanior* over the *maior*.) Giving as good as he got, Hooker replied that “a generall counsel chosen by all to transact businesses which concerne all” was “most safe” and “most sutable to rule;” and that moreover Winthrop’s course was “a way which leads directly to tyranny.”⁷⁰ (Hooker was paraphrasing the Roman and medieval concept *quod omnes tangit* we have encountered.) “Tyranny” was the word Henry Vane had used, and that also Sir Richard Saltonstall used in 1631 when, writing from England (having lasted in New England no more than a year), he warned Boston ministers not to trust the “infallibilitie of judgment” and noted sadly it was “reported daily of your tyranny and persecutions.”⁷¹ In another passage, Hooker lamented to Winthrop that “inn-keepers entertain their guests with invectives against Connecticut” and asked whether the campaign being waged against Connecticut betokened “brotherly love?....If these be the ways of God...I never preached God’s ways....” He parked these tidings in Winthrop’s “bosom” and prayed against such “wickedness.” In a lawyerly understatement, Winthrop noted in his journal the Connecticut exiles’ “shyness of coming under our government.”⁷² Although understating the matter, Winthrop stated it correctly: Hooker’s differences with Winthrop were more political than religious.⁷³

At times, the exiles felt hounded by their more powerful neighbor. The minister of Dover, New Hampshire, wrote to friends in England that Massachusetts was “more arbitrary than the high-commission court” (in a complaint which, like many other letters having to pass through Boston’s port, ended up in Winthrop’s hands). John Haynes, Connecticut’s Governor, told fellow exile Roger Williams, “I am now under a Cloud and my bro. Hooker with the Bay (as you have bene). We have removed from them thus farr

and yet they are not satisfied.” Striking about this comment was that the Connecticut Puritan orthodoxy and Rhode Island orthodoxy had nothing in common; what they shared was contumely from Massachusetts. One would have thought that after hounding Williams out of the colony, Massachusetts might leave him alone; so he thought. But they did not; in 1651, Williams wrote to his erstwhile friend Gov. John Endicott, “Endicot, Endicot, why huntest thou me?”⁷⁴

An overbearing and undemocratic Massachusetts did more than hunt. A condition of being a neighbor of Massachusetts was to be invaded by her. In 1642, Massachusetts extended its jurisdiction to Pawtuxet, next door to Providence, and harassed that latter town for sixteen years (summoning those to court in Boston who refused to submit to Massachusetts jurisdiction). The next year, the colony tried to annex all of Rhode Island, taking advantage of political chaos back home. Bay Colony authorities dispatched Humphrey Atherton with troops to round up heretical settlers and bring them to Boston for trial. This event was the beginning of a decades’-long campaign by Atherton (who formed the Atherton Company of land speculators) to lay claim to the Narragansett lands, to take them from the eponymous Indians, and to engage in a large land venture which continued through most of the seventeenth century. A mix of religious orthodoxy, annexationism, ethnic cleansing, and land speculation caused Massachusetts and Connecticut men to meddle in Rhode Island endlessly. No better symbol of this potent mixture was the holding of Atherton Company meetings in the house of Simon Bradstreet in Boston, while Bradstreet was Governor, one of the first-generation Puritans still in power in the 1680s.⁷⁵ Even after Rhode Island received a charter, Massachusetts took advantage of the confusion in England in 1650 to seize chunks of her neighbor’s territory. So antagonistic were Massachusetts leaders that they forbade the sale of arms and powder to inhabitants of Rhode Island – this while the Dutch war was being conducted on the latter’s doorstep.⁷⁶ Had it not been for repeated London interventions in the form of two Rhode Island charters and a special mission of Whitehall commissioners, Rhode Island would not have survived.

Annexation by Massachusetts hit all her neighbors. William Bradford noted in his journal that the Bay Colony’s interpretation of its charter boundaries supposed that the Charles River (next to Cambridge) miraculously began south of Cape Cod.⁷⁷ (Eventually, Massachusetts got its way and absorbed Plymouth under its 1691 charter.) In the opposite direction, Winthrop threatened New Hampshire with annexation if she harbored the Antinomians. New Hampshire ignored the threat, and Massachusetts annexed all the towns from the Merrimac to the Piscataqua River, including Wheelwright’s Exeter. Wheelwright decamped once again, this time to Maine. Again, annexation was chanced because of the confusion in England; and again, it took royal intervention decades later to remove the annexed New Hampshire settlements from the grasp of Massachusetts and set them up as a royal colony of its own.⁷⁸

It was not John Winthrop but his gifted son John Jr. who managed the take-over of Hooker's Connecticut. Winthrop family friend the Earl of Warwick, as President of the Council for New England, granted to himself a patent covering much of Connecticut, and Warwick in turn in 1631 assigned the grant to his family members (among them cousin Sir Nathaniel Rich, friend of Winthrop), Viscount Say and Seale, Lord Brooke, Sir Richard Saltonstall, John Pym, John Hampden, Herbert Pelham, and others – a formidable collection of Puritan nobles and prominent MPs interested in New England and, in some cases, in other joint stock company ventures. In 1635, the patentees commissioned John Winthrop Jr as their Governor to take charge of settling this new and large patent for them.⁷⁹ John Jr. played a role in founding both the eponymous Saybrook then New London and interested himself in the Atherton lands to the east in Narragansett. At some moment, John Jr. conceived the idea of graduating from Governor of the Warwick patent to Governor of all Connecticut (to which the patentees had sold their patent), including the River Towns. In 1647 Hooker died, and four years later, John Jr was elected magistrate of Connecticut (having once been magistrate of Massachusetts), then Governor in 1659. The original *Fundamental Orders* of Connecticut in 1639 prohibited a Governor's being elected more than once every two years. This prohibition was repealed in 1660 in order to enable John Winthrop Jr to stand again for election, which he won; and thereafter he served as Governor every year until 1676 when he died.⁸⁰ John Jr. used his position as Governor and his many royalist connections to obtain a new charter for Connecticut in 1662, under which rotation disappeared, as did the right of freemen to convene a General Court themselves and make laws as the supreme power in the Commonwealth.⁸¹ Massachusetts's ways spread beyond its borders by its progeny.

John Jr.'s 1662 charter also annexed the colony of New Haven, and although the latter put up a stout resistance, Hartford hived off bits of the New Haven colony town by town, until by 1665 nothing was left of the idealistic commonwealth Theophilus Eaton had founded thirty years before. One of Eaton's co-founders, still living, John Davenport, returned to Boston, from which he had emigrated, rather than live under the new regime in Hartford.⁸² John Jr was not a devout Puritan.⁸³ His aggrandizing cannot be excused on account of a godly mission. He helped Massachusetts in its campaign to take over Rhode Island, and did so both as Governor of Connecticut and as founding shareholder of the Atherton Company. In several capacities – as Governor, agent in London, and land baron – John Jr implemented with a high degree of success both the political aims and the annexationist policies of his late father.

The Bay Colony's rigidity in orthodoxy played a part in the hostility with which Bay Colony leaders viewed their neighbors (or at least viewed Wheelwright and Williams). But the settlements assailed and annexed were too heterodox in their doctrines for religion alone to have been the reason; in some cases, such as in Hartford and New Haven, the orthodoxies were similar to

that of Massachusetts. Other factors were at work. Massachusetts regarded the democratic stirrings of its neighbors as a dangerous germ needing to be fumigated. Not coincidentally several of the places which the Bay Colony sought to annex were the very refuges where Boston exiles had fled to – Rhode Island, Connecticut, and Piscataqua. The exiles had made a point of getting out of the jurisdiction, and Massachusetts was just as determined to keep them in it. But greed was also a factor. In two annexation projects – Connecticut and the Piscataqua – Warwick patentees, the group of wealthy, well-connected, London-based, Puritan grandees revolving around Winthrop's friend the Earl of Warwick, claimed the areas by patent rights. And Massachusetts supported the patentees. In the third case, the Narragansett, it was the same story – non-resident land claimants enjoying Bay Colony support and Bay Colony assertion of jurisdiction – only the grandees (mainly the Atherton Company) lived in Boston, not London. In two of these cases, John Winthrop had a personal financial interest in the disputed regions (in addition to the larger interests of his son John Jr.).⁸⁴ There was finally the banal desire of every institution for aggrandizement: Massachusetts just wanted more.⁸⁵

It was therefore a combination of motives that launched the Bay Colony on its seventeenth-century course of gunboat diplomacy. Today it is impossible to disentangle the motives and assign greater or lesser weight to each. What is clear is that by the close of the century, with the quasi-exception of Rhode Island (which carried on a tradition of popular participation), the mini republics were gone. Their having existed at all was proof that there was an alternative in New England to the Bay Colony autocracy. It was not predetermined that New England be governed by councils for life, an upper house with a veto, manipulated nominating, recidivist and greedy officeholders, and the solid entrenchment of professional politicians and their offspring. For a limited time, republican procedures thrived in the ring around Massachusetts.

By the end, all that remained of republican practice was the microcosm of the New England town meeting. That hardy institution had its origins in town proprietorships, themselves constructed on the joint stock company model. That the arduous public project of founding towns was handled by for-profit corporations would not have surprised the continental admirers of the Casa di San Giorgio for, like the Casa, early towns were hybrid business institutions, part public, part private, voluntary and egalitarian, where townsmen acquired the habit of asserting political rights while jealously defending their property rights.⁸⁶

The problem of Winthrop

One can have sympathy with Winthrop: dealing with threats of foreign and British invasion, constant conflict with persecuted native Americans, and a community always on the edge of being sundered by intensely debated points of Puritan doctrine. This last source of disruption is not to be minimized.

The migrants in the first fifteen years counted 132 graduates of Oxford and Cambridge. These educated and opinionated individuals were predisposed to arguing with each other and with their Governor all day long.⁸⁷ Winthrop must have exhausted himself navigating between God and his Cambridge classmates.

However, that Puritans had a predilection for independent thinking is different from saying that Puritanism as a set of doctrines required or even was friendly to an autocratic form of government. The satellites of the diaspora were republican and had no difficulty reconciling their government with their religion. If anything the doctrines of Puritanism lent support to democratic government more than to any other kind of regime. As Michael Winship, David Hall, Francis Bremer, and others have shown, Puritan “priorities and anxieties” of the time focused on the danger of power, fear of one-man rule, and a serious commitment to consent of the people. At the heart of every church was a people giving their free, mutual, and voluntary consent. Or as the Separatist thinker John Robinson wrote, any company of men could be a church. That inspiring thought, reminiscent of Nicias’s speech in Sicily (wherever his Athenians settled they would make a polis), encapsulated the democratic thrust of congregationalism, a church polity that resembled, as Robinson himself noted, the popular consent of Athenians. Placing plenary responsibility in the hands of the sovereign individual for his and her own fate and their community’s fate, Puritanism was not only an analog of, but also a fomentor of, republican political doctrine.⁸⁸

Rather than blaming Puritanism for Boston’s deviation from the colony’s own constitution, it appears the chief responsibility lay with Winthrop: with his opinions about government, his bullheadedness, and his perception of his own role in the cosmos.

Winthrop lived amid (as one historian said of classical Greece) a divine hum: God was all about every day, visiting his or her blessings and his or her penalties for the good and the bad that people did. And there was Winthrop center-stage, playing his part in the cosmic drama of salvation, trying to read the portents, keeping his antenna carefully tuned to God’s messages the better to adjust the colony’s course. The smallpox that wiped out the neighboring native Americans Winthrop took to be a sign of God’s favor to the colonists. War, pestilence, snakes, storms, sudden deaths, an unplanned gunpowder explosion, a “monster” born to a woman, spectral ships, a boat seen mysteriously rocking in Boston harbor in calm water – all were divine signs to the godly, if only they would harken and behave better. Winthrop’s *Journal* is in part a catalog of divinely organized catastrophes. The very last entry (on the final page of his two-volume *History of New England*) tells the story of a man who discovered his baby daughter drowned in a well and who explained this traumatic loss as fully deserved (here Winthrop paraphrases the father’s words) for his having worked on the Sabbath. God was forever settling scores with wayward mortals and one of Winthrop’s main duties was to herd his flock in the right direction out of the way of divine wrath.⁸⁹

In rare moments, the divine hum was vibrating with news about himself. In his journal Winthrop mentioned that the creation of the council for life (to which he was named first) was a fulfillment of “the word of God.”⁹⁰ With this revealing observation, he identified godly government with himself. He expounded on the same theme (but with more oblique reference to himself) some years later in a speech to the General Court, telling the assembled that when the people called magistrates to office “we have our authority from God.” If you find infirmities in us, “you should reflect upon your own.” Our covenant is, “we shall govern you and judge your causes by the rules of God’s laws and our own, according to our best skill....[and] you must run the hazard” of the skill and ability of your choice.⁹¹

Winthrop went on to tell the court (which had just acquitted him of exceeding a magistrate’s authority) that human liberty was composed of civil liberty and natural liberty. Natural liberty was that of a “wild beast.” Civil liberty, by contrast, was related to man’s covenant with God and required obedience. This liberty, he said, was “maintained and exercised in a way of subjection to authority.” But “if you stand for your natural corrupt liberties, and will do what is good in your own eyes,” you will defy authority and “murmur, and oppose, and be always striving to shake off that yoke.” On the other hand, if one would be satisfied with the lawful liberties “such as Christ allows you, then you will quietly and cheerfully submit unto that authority which is set over you...for your good.” In this memorable explanation, Winthrop repeated the oft-told Christian justification for government as necessary to curb sinful humans; but he went further and said that liberty consisted in obedience and, moreover, once put into office by people, magistrates were above reproach: they were endorsed by God. He regretted that people did not understand this core principle and as a result opposed the Standing Council and the magistrates’ veto, mistakenly believing these things were a sign of “arbitrary government,” when in fact, he said, they were failing to see that they could be most free by being obedient.⁹² He acknowledged that an irreconcilable tension would always exist. Liberty and authority might be “incompatible,” he speculated; you could preserve the one “but by abasing and abating the honor and power of the other.”⁹³

As a governance principle, Winthrop’s doctrine was similar to the divine right of kings. Stuart monarchs were convinced that opposition to their version of true religion “was equivalent to challenging [their] authority as king.”⁹⁴ In the Puritan version, magistrates’ divine right came from magistrates’ having been chosen by a godly people. It would be hard to construct a sturdier intellectual fortress than this for infallibility. Dissent, even dissent on strictly non-religious matters, brought one to the edge of either heresy or sedition. During the controversy over the Standing Council for life, which young Saltonstall dared to oppose, Winthrop took the view that anyone who disagreed with the government’s policies, he said, was either evil or tempted by evil and, if the latter, he or she might if penitent be led back to the godly path. He had confidence that young Saltonstall could be led back to godly obedience (as indeed Saltonstall was).⁹⁵

One of Winthrop's many adversaries (whom Winthrop accused, as usual, of "sedition") objected to the idea that the Bay Colony government had a monopoly of God's blessing. The law of God, said Mr. Hubberd, "admitted various interpretations," and he was bold to wonder how the magistrates knew for sure that they alone understood God's intentions. For this and other insolences, Hubberd was fined then ordered to be released if he gave a bond for good behavior. Hubberd not unreasonably said he would first like to "know what the good behaviour was."⁹⁶

But it would be a misconstruction to say that Winthrop ruled with an iron hand for no other reason than, Taliban-like, he and his comrades had exclusive access to God's wishes. Winthrop's mental world was also shaped by growing up in the East Anglia gentry and by his unquestioning acceptance of the descending, hierarchical structure of power in England. Reared by a father whose library contained Smith's *de Anglorum republica*, Winthrop was brought up with the manor-house comforts and career expectations of the country gentry. He held a minor court legal sinecure secured by the intervention of a family patron. He cultivated friendships with nobles in an age when being on good terms with the right nobles was key to an aspiring lawyer (or writer or musician). The relative of an MP, Winthrop himself sought a seat in the House of Commons (with a total electorate of just 30 electors); he lost. This was when the Commons was dominated by country gentry and lawyers (such as Winthrop) who were put there often as a favor done them by noble patrons.⁹⁷ Winthrop apparently had eight or nine servants and brought several to Massachusetts.⁹⁸ As crucial as was his Puritanism to understanding Winthrop, his rearing in a world of patrons and their clients, of hierarchy and deference, of honor and dishonor, was no less important. He fawned over nobles. He greeted the arrival of Sir Henry Vane (all of twenty-three years old) as a great moment for New England.⁹⁹ When his son John Jr. was appointed Governor of the new Connecticut patent in 1635/6 the records noted the appointment came "by certaine noble personages and men of quallitie in the said ryvr [Connecticut]...."¹⁰⁰ The ship bearing Winthrop to America, *Arbella*, was named for the wife of Isaac Johnson (who was the largest shareholder in the Massachusetts Bay Company), daughter of the Earl of Lincoln, in whose home Winthrop and other founders gathered in 1629 to plan the migration. (*Arbella* herself was on board and died upon arrival, her husband shortly thereafter.) In a 1644 letter to his friend the Earl of Warwick, Winthrop proudly described how the Bay Colony magistrates and deputies "make all the Lawes...without any Appeale to the people." He added that the ministers "have great power with the people, wherby through the good correspondency between the magistrates and them, they are the more easily gouerned...."¹⁰¹ This letter smacked of a lesser member confirming his common ground with a greater member of the Anglo-American social world. (It also implied that for Winthrop, the people were a problem to be managed.)

The social aspirations of this gentry figure were not negligible. In January 1636 a meeting was convened of ministers and magistrates to consider the

late divisions in politics, and from it emerged ten articles calling for more strictness and unanimity in public life, also including a better observance of pomp and ceremony to accompany the magistrates' public appearances.¹⁰² There had already been a good deal of pomp. Sir Henry Vane inaugurated the practice of the Governor's being escorted by four soldiers bearing halberds (a medieval symbol of royal office). Winthrop recorded in his journal, not without a touch of pride, that when departing from dinner aboard a ship in Boston harbor he had been honored with a three-gun salute.¹⁰³

Winthrop's behavior in government owed something to additional considerations, additional to the demands of religion and the aspirations of rank. Matthew Cradock, the first Governor of Massachusetts, wrote to Winthrop in 1636 asking his help in procuring a court grant of 2,000 acres in Shawshin (what would be Billerica – seemingly a financial destination for Governors; Winthrop and Dudley would also receive land there the next year).¹⁰⁴ Cradock was one of the wealthier original patentees of the Bay Company. Like others in the Bay Colony venture, he was a large stockholder in the East India Co. He never set foot in the New World, but was financially involved as both benefactor of the colony and beneficiary of colony largesse. By becoming leader in Boston, Winthrop found himself at the busy crossroads where nobles and wealthy merchants corresponded and pursued their business objectives in the colonies, with his help. He also engaged in self-help. As the scion of a landowner in East Anglia who had had trouble holding onto the family manorial lands, Winthrop accumulated a vast estate in New England, all except one piece of it in the form of self-dealing gifts from the General Court over which he presided.

Arriving at Boston's Logan airport today, one lands on Winthrop's property (Governor's Island), and taking off one skims over lands at the entrance to Boston's harbor, Pullen Point, where he also had a valuable grant; banking left over Medford and Somerville one looks down on land where Winthrop was gifted 600 acres, the Ten Hills farm; and then heading north the town of Billerica was partly Winthrop land, some 4,200 acres. Winthrop himself lived in Boston, but had tenants and servants strewn around the bay on his lands. At death, Winthrop and his wife had become owners of some 8,000 acres of New England. Back in East Anglia, Winthrop had inherited encumbered property and years of lawsuits upon his father's death, a rather different estate to what he and his four wives (some wealthy) were able to assemble.¹⁰⁵

Winthrop was a complicated mixture: deeply devout Puritan-ruler, aspirant member of the English governing class, recidivist officeholder, and the beneficiary and bestower of lavish public-granted emoluments. In unknown proportions, these various parts of his life led him to the fixed idea that government was best managed by an elite, specialized cadre. At times, in defense of that idea he sounded like James I. In 1644 he complained that deputies, as usual, were agitating and called them (in his journal) "deputies of the smaller towns being most of them mean men, and such as had small understanding in affairs of state."¹⁰⁶ Later, when church elders (whom usually he summoned

to back him up) surprisingly took the side of the dissidents on a point at stake, Winthrop invoked the same concept: they should stay out of matters “being affairs of state, which did not belong to their calling [preaching].”¹⁰⁷ This was not only the same argument but also the same phrase used by James I. Justifying his personal rule against the rebukes of leading Puritans in Parliament, James I had made famous the concept there were such things as “the deep matters of state” which the Commons had no business interfering with.¹⁰⁸ It is a sign of his devotion to autocratic government that Winthrop would resort to “affairs of state” knowing full well the recent history of the concept. The resemblance did not deter him. It did bother some people. In 1637 Sir Henry Vane could find no provision in the charter for magistrates’ having the power to exile people, and he said: if Massachusetts permitted “such unlimited and unsafe a rule, as the will and discretion of men,” he told Winthrop, they would end up a tyranny, much like the Stuart monarchy’s unbridled rule.¹⁰⁹

To assure himself of unbridled rule was the reason Winthrop opposed codifying the laws of the commonwealth because, as he explained, the aim of codification was none other than to reduce the “discretion of the magistrates.”¹¹⁰ In 1641 the freemen chose Nathaniel Ward to preach the election sermon, which choice rankled Winthrop, among other reasons because Ward had been the leader in the codification effort. (Moreover, Assistants, not freemen, should choose the sermon-giver, Winthrop added.) Ward nevertheless preached a political discourse, grounded (as Winthrop put it) in “old Roman and Grecian governments, which is sure an error,” for religion and God make one wiser, as do experience and observation, all of which, Winthrop said, were a better framework for government than “the bare authority of the wisdom, justice, etc., of those heathen commonwealths” of antiquity.¹¹¹

Codification came up in another controversy toward the end of Winthrop’s life. Robert Child was a prominent entrepreneur, doctor, and Cambridge alumnus who was well-connected with MPs in London during the Civil War years. He led a group of colonists wanting to extend the franchise and finally to force the government to codify its laws. Child and friends petitioned the court for redress of wrongs and if this petition were to be unavailing they threatened to appeal to Parliament. This was an awkward moment for the magistrates. Parliament was leading the war against Charles I to vindicate English liberties and defeat the Catholic menace. The Bay Colony had many friends in Parliament; some, such as Sir Henry Vane (former Governor), had returned and become leaders in Parliament and allies of Cromwell. For New England dissidents to suggest an appeal to Parliament was difficult to refuse, but dangerous to allow. So Winthrop did as Winthrop would do: the General Court heard the case of Child in secret, then proceeded against the petitioners citing, as usual, “sedition.” Child was arrested as he was about to sail to England to put his case before Parliament. Word having got to England about the prosecution of Child, Winthrop appealed to a parliamentary Commission headed by none other than his old family friend and investor the Earl of

Warwick (who had spent his own many years battling dissidents in various colonial ventures), and unsurprisingly Warwick backed up the commonwealth in its arrest of the seditious Child.¹¹² In this remarkable case, Winthrop put himself in the role of a Stuart king, denying his Pym-like adversary the right of petition; and one of the issues at stake was whether laws should be codified or Winthrop could continue interpreting unwritten rules as he saw fit.

One would be on thin ice arguing that the autocratic, top-down regime created by Winthrop had as its goal the enrichment of himself and his friends. Winthrop had more important goals than that – saving souls, and that goal led to a series of subsidiary purposes: conducting “affairs of state” with discipline, prudence, and enforcement of conformity; toward that goal, empowering the better sort to lead the meaner sort; and to achieve that crucial result, adopting procedures of nominating and election that kept power in the hands of a small group of people who emerged as the continent’s first professional political class.¹¹³ But his social aspirations and material acquisitions were not absent. The breakdown of motives hardly matters; all led to the same outcome. Maintaining a monopoly on public office is the aim of every power group, for only by a monopoly can officeholders advance their aims over time. Often their aims are public-spirited. Winthrop’s in large part were. Often they are venal or driven by vanity. But the differing aims of passing leaders is irrelevant to assessing a political system. Aims vary, politicians come and go, but customary procedures and models of behavior stubbornly remain. Winthrop created a structure of government that permitted individuals to hold onto office with the tenacity of a wood tick. That fact was of lasting consequence. Over the succeeding generations, the declension of Puritanism, growth of commerce, the rise of colonial legislatures, the quest for independence – all made their transforming marks on the epochs of posterity, but the political procedures begun in the seventeenth century transcended the epochs and were timeless. They created an inurement to a professional political class, an inurement recurring through eternity as long as republics are suppressed. Countervailing forces pushed in a different direction: Puritanism’s essentially democratic beliefs, the colony’s own origin in a democratic corporate structure, and more. It took not a small effort to overcome countervailing pressures and achieve the unrepublican result that Winthrop managed to achieve. But good Puritan that he was, he worked hard at it. At the end of a long career banishing people and cutting ears off, he was asked on his deathbed to sign yet another banishment order and demurred, saying “he had done too much of that work already.”¹¹⁴ Vaguely penitential at the end, it is a pity he did not tire of the work sooner than he did.

Proprietary colonies

We have dwelt at length on seventeenth-century New England corporate colonies because that is where republicanism had its best prospects, meager as they were, on American shores.¹¹⁵ In the proprietary and royal colonies,

there was little to be done in the form of procedural innovation for elections. Governors were by and large appointed by the crown and by lord proprietors. With a few sporadic exceptions, republican procedures were not assayed in the first century in the crown and proprietary colonies, nor in the second century anywhere along the eastern seaboard, once the crown took over the appointment of most executives. With less innovation than in New England, there is less to dwell on. Only does it merit the effort to touch on the occasional resuscitation of Renaissance procedures in these colonies as evidence that such old procedures were still within recall at the turn of the eighteenth century.

Not once did the experience of governance in the proprietary colonies turn out a happy one for either the proprietors or the settlers. The more idealistic the proprietor, the more unhappy he was bound to become. William Penn was a good example. Penn was an admirer of James Harrington and a friend of Algernon Sidney, the famous republican writer executed for treason (two years after Penn received his charter for Pennsylvania). Penn wished to make a home for Quakers, a home where settlers should be governed “by laws of your own making” and could be protected from “the abuse of power.” Toward these ends, he devised a plan (in 1682) for an annual assembly elected by the people and an unimportant Governor. In 1683 the assembly wrote a new charter further reducing the power of Governor and reducing the number of Council to eighteen and creating an assembly of 54. The council framed bills and assembly had only the right to accept or reject them. A division of responsibilities inspired by *Oceana*, this curtailment of the lower house caused unhappiness in the assembly and a struggle that went on for years. Although he believed that representatives were agents of the people and should take instruction from the people, and could even be joined by their constituents in early assemblies, Penn grew tired of squabbling with the settlers, finally appointed a Governor (instead of letting an elected council act as executive), and watched helplessly as legislative power gradually passed to the assembly against his wishes.¹¹⁶ His descendants, less idealistic or committed to the project than he, fared worse. By mid-eighteenth century, Benjamin Franklin was lobbying to have the crown take over Pennsylvania from the proprietors. What useful things emerged from this experience – apart from the certainty that distant proprietors were not going to be accepted as sovereigns by American settlers, a judgment reached in other colonies as well – was a spirited legislative body (with its own serious divisions). Just as the Stuarts brought into being a self-confident and ultimately sovereign Parliament, so the proprietors made their own contribution to creating a robust, demanding assembly.

Another of Penn’s projects was East New Jersey, initially granted to friends of the Duke of York, one of whom sold East Jersey to Penn and a group of Quakers around the time Penn was launching Pennsylvania.¹¹⁷ Following their purchase, in 1683 the Duke of York deeded them the right of government, whereupon the new proprietors sent over a document called

the *Fundamental Constitutions*, in which one sees Penn being influenced not only by James Harrington but also by Venice (which had been a model for Harrington as well). Of all places, East Jersey was the improbable setting for recreating in America the procedures of the Renaissance.¹¹⁸ There was to be a great council of proprietors and freemen, the latter from towns and counties. All inhabitants were eligible to sit in the council. In each county, the names of all (white non-servant males, one presumes) were placed in a box; 50 names were drawn by a boy under the age of ten (the *ballotino* of Venice), these 50 were placed in another box, the first twenty-five drawn from the box were to be eligible to become nominees. The second group of twenty-five drawn were to choose twelve from the twenty-five first drawn (if three seats had to be filled; eight names if only two have to be filled). These twelve or eight were the “nominated” ones, and from among them the three or two councilors were to be chosen by election.¹¹⁹ The Jersey project involved therefore an elaborate Venetian-like process of three lotteries and two deliberations to produce councilors from each county. It was as if someone had taken the excellent road north from Manhattan and driven his carriage twenty-five miles toward Bergen and landed in the late Middle Ages. East Jersey was an example of the stubborn persistence of late medieval political themes into the latter seventeenth century, even in North America, themes of chance to prevent bias and interest from taking command of politics, and of multiple layers of nomination and selection toward that same end. The resulting representative body (here the Great Council of East New Jersey) was, like Oceana’s, not representative (other than geographically) inasmuch as lottery, not constituent preference, controlled the first three stages. *Oceana* was likely the manual used. The proprietary experiment ended in failure when the crown took over New Jersey in 1702.

Proprietors also failed in the Carolinas. In 1663 the crown granted a patent for Carolina to eight proprietors, including the two who would receive the New Jersey grant the next year. This Carolina group included some of the most prominent nobles of England, including Lord Ashley (Anthony Ashley Cooper, later first Earl of Shaftesbury). Ashley was the patron of John Locke, became a leader of Protestant politicians during the Exclusion Crisis, a founder of the Whig party, and was later seen as one of the original commonwealthmen whose Whig ideology so influenced the shaping of American colonists’ political thinking in the mid-eighteenth century. Locke was later identified with his well-known writings expounding the consent of the governed and the supremacy of elected legislatures acting in the name of the people. But his later writings make puzzling reading when set beside the Carolina *Fundamental Constitutions* in 1669 on which he seems to have collaborated (he called the Carolinas his “darlings”).¹²⁰ Instead of a general assembly, there was to be a “Parliament,” which voted by estate, not by individuals. The Palatine court made up of proprietors and their designees had a veto over acts of Parliament; so did the other three estates – two classes of nobles, “landgraves” and “caciques,” who seemed to have the hereditary

right to sit in Parliament – and freemen. All major offices were assigned to the proprietors. Land was divided into counties, counties into seignories held by the proprietors, baronies and manors held by nobility, and precincts by “colonies” of freeholders (who received three-fifths of the land and paid quit-rents to their noble lords).

Ashley said his aim was “to make everyone as safe and happy,” but he did not reckon with the settlers, who in the event turned out to be a collection of ambitious former servants from Barbados who did not have much use for his feudal arrangements and so ignored them. Nor could the Barbadians live in peace and happiness with French Huguenots who settled amidst them and whom the English loathed. The *Fundamental Constitutions* were never ratified because inhabitants would not accept them. Settlers complained frequently to London about their plight, Parliament investigated three times, settlers asked to be taken over as a royal colony, and in 1719 proprietary government was overthrown. As late as 1718, the proprietors were still creating new landgraves and caciques.¹²¹

Altogether South Carolina was an odd experiment. Its government was modeled on Oceana. Land was carefully distributed and political power corresponded to landholding, but in Carolina the Harrington principle produced not a republic but a feudal regime. There were in the *Fundamental Constitutions* the Harringtonian concepts of biennial parliaments and lottery to distribute major offices (solely among proprietors). Harrington had been anxious to wall off representative bodies from constituents; Carolina certainly solved that problem. But one cannot help thinking that the incongruous Carolina in the hands of commonwealthmen raises a question about what exactly were their aims. Or to put it differently, Carolina demonstrates that when the ship of state was diverted from strictly republican procedures – even if the pilot was the reformer John Locke who elevated the idea of expressing the will of the governed to the “grand Whig principle” of the eighteenth century¹²² – even then the ship could drift into any random, hostile port.

An unusual form of representation

The South Carolina constitution, retrogressive in the extreme, was the product of two important founders of commonwealth ideology. A central part of that ideology was legislative supremacy. The following decades in South Carolina were interesting from a procedural point of view mainly because of the way in which that Lockean ideal, the people’s legislature, developed.

We have noted previously that republics both in antiquity and later were not congenial to representation on several counts – because offices were filled with people acting as citizens, not as delegates; and because pains were taken to wall offices off from influence from any quarter (friends, family, economic interests, and local neighborhoods). Such a concept of office had no room for the agency that is implied by being a representative, wherefore in Oceana’s parliament members were to have no connection with constituents

or transact any business on their behalf. Along similar thinking, the Roman republic passed *ambitus* laws to stamp out canvassing and Florence condemned people to long prison sentences for political organizing. Government in a republic was to be neutral. But by the end of the American colonial period, representative institutions became the new basis of free states (for some of the reasons mentioned in the previous chapter and others touched on below). The new procedural question now taking center stage was, what was the marrow of those representative institutions, their purpose and their operational effect; who and what was being represented? If going forward republics would lose their officeholders of disinterested citizens, walled off from interest and influence, what did republics gain in the trade-off?

During the last year of colonial period, Thomas Paine was to write that representatives “are supposed to have the same concerns at stake which those who have appointed them [have and].... never form to themselves an interest separate from the electors.” To achieve this result, Paine said, they should be made to “return and mix again with the general body of the electors in a few months....this frequent interchange will establish a common interest with every part of the community, they will mutually and naturally support each other, and on this (not on the unmeaning name of king) depends the strength of government, and the happiness of the governed.”¹²³ There was a republican downside to agency, but at least there was this promise of an upside: in citizens’ actually being heard and represented. For that to occur, certain procedural efforts had to be made to connect constituents to representatives – particularly in the matters of apportionment and what or whom was being represented. Up and down the seacoast, such procedural efforts were emphatically missing. The loss of the old was clearly registered but the gain from the new was not apparent. And this was one of the reasons that the representative detour away from republican procedures would lead into a cul-de-sac.

In South Carolina, through the eighteenth century, two groups dominated the assembly (known as the Commons House): inter-related planter families from the Tidewater, and Charleston merchants with London connections. Governorship barred to them, it was to this elective legislature that the elite of South Carolina turned for honor and office. The Commons House adhered to good Commonwealthman policy of frequent elections; elections were every three years. However, to serve in office one needed property in the form of 500 acres and 10 enslaved persons (or property worth 1,000 pounds). Parish residency was not required to represent a parish. The nonresidency of assemblymen, which was not consistent with a legislator coming from and returning to his constituency periodically, persisted long into the eighteenth century. During the half-century before the Revolution, 61% of Commons House members were scions of old South Carolina families. From 1773–1775, 51 of 69 members had a relative also a member (i.e., almost three-quarters of members were related). John Rutledge (delegate to the federal convention in 1787) and his kin constituted 18% of the last colonial assembly.¹²⁴

One of the reasons the Tidewater elite wished to dominate the assembly is because the assembly controlled the bestowal of hundreds of local offices, and so was a vehicle for efficient Tidewater domination of the colony. By contrast, settlers in the backcountry were largely unrepresented in the assembly, and had to journey anywhere from ten days to two weeks or more to go to Charleston to, say, register a deed. By the 1770s, the South Carolina backcountry had more grievances with the Tidewater than it did with the British, of which one was the lack of representation in the Commons House. The lopsided dominance by planters in Tidewater parishes triggered royal instructions to the Governor to remedy the malapportionment; the Governor attempted to do so and the legislature ignored him.¹²⁵ This tussle over unequal representation was repeated in other colonies and was one of the issues at stake in the power struggle between lower houses of assembly and the crown government. That struggle in turn played a significant role in the quest for American independence. In part, at the origin of the assemblies' assertion of rights was a bid by local elites to hang onto their power, at the expense of non-elites, and against the unceasing efforts of the crown to equalize representation.

Virginia, having started life briefly as a corporate colony and never being under a proprietor, fell into a category almost by itself. The first colony established by English in America, in 1606, Virginia had a joint stock company for handling trade but not for settling the colony, and when the latter failed, the first Virginia company was reorganized three years later with a second charter creating a joint stock company to facilitate both trading and settlement.¹²⁶ More than 100 members of the Virginia Co. were already members of the recently established East India Co. Vessels for the East India Co.'s third voyage to India and those for the first voyage to Virginia were loading at the London wharves at the same time. Like the East India Co., the Virginia Co. referred all important matters to the meeting of the adventurers, called the general quarter courts. The charter restricted membership to named adventurers and those they admitted to their ranks. This restriction sparked a struggle between Virginia landowners, who wished to cast votes, and those who were free of the company. The latter group stuck to the charter terms, whereby the company was composed of those who were formally granted the freedom of the company by investing, or service, or settling.¹²⁷ Here as in Massachusetts the democratic thrust of joint stock forms did not penetrate to the local colony government, but here the failure was not because a local ruler aggrandized power but because London would not let go (*verbum sap*, Winthrop would have said – a word to the wise).

The first Virginia locally elected assembly convened in 1619, and although it has been justly described as the first elected body of legislators in America, it was subordinate to the corporate general assembly meeting in London.¹²⁸ In the same year as the first assembly, 1619, Edwin Sandys was elected Treasurer of the Virginia Co., in a contest with Thomas Smythe; the election was held in Smythe's house on Philpott Lane in London. For deciding the fate of

Virginia, this was a more consequential electoral event than whatever was occurring in Virginia.¹²⁹ Moreover, even in Virginia, on important matters (security in particular), the company-appointed Governor and council ruled alone. When the charter was vacated in 1624, no assembly had convened for four years. Meanwhile, general quarter courts of the company continued to conduct business and acted as the chief authority of the colony. It would be optimistic to make very much of this first local assembly in the colonies.

After corporate in-fighting between the factions of Sandys and Smythe had made the company ungovernable, the charter was revoked and the crown took over governing Virginia. By mid-century, a bicameral legislature emerged, and Virginia settled down into the pattern that Southern royal colonies adhered to for the next century: counties (elsewhere parishes) became the principal unit represented in the lower house, and there the local gentry dominated the house, notwithstanding a wide distribution of the franchise. By the eighteenth century the House of Burgesses had become a federation of county oligarchies, dominated by a few families. Election was more a matter of social than political selection, more a thing of etiquette than representation.¹³⁰ Initially, tobacco barons predominated in the assembly, and initially the assembly took on the role of defending tobacco interests, sometimes against the crown, and so unfolded a pattern similar to that of South Carolina and other colonies whereby lower houses became instrumentally the equivalent of the House of Commons in struggles with prerogative, even though it was often a relatively small class of Virginians whose interests were in the struggle.¹³¹ At the same time, the largest single expense borne by Virginia's taxpayers was paying the members of the House of Burgesses. As in South Carolina, Virginia's public offices were filled with the well-to-do and well-connected. Bacon's Rebellion in part was about the right to vote being restored to landless freemen, shortened office tenures, and reducing government fees; in part, that is, about the cupidity of the professional political class that controlled the colony.¹³²

After Bacon's Rebellion, the crown sent commissioners to investigate widespread complaints, and in 1677 one thing they singled out was the high pay of burgesses.¹³³ As the Privy Council sought to protect Virginia from its own assembly, the effort by royal Governors to restrain the rapacity of the ruling class degenerated into a contest for power between local legislature on the one hand and distant royal prerogative on the other. It should be no surprise that the educated elite of Virginia warmed to the commonwealthman ideology in the mid-eighteenth century – to the writings of Locke, Harrington, and Sidney, with their stress on legislative supremacy and independence and the dangers of prerogative – because that ideology summarized precisely their personal predicament.¹³⁴ Edmund Morgan has pointed out the ulterior use of slavery, racism, and contempt for the poor in uniting big and small planters around commonwealthman ideology. This analysis seems intuitively correct. It is also likely that the colony-crown struggle, the struggle of assembly against Governors, and commonwealthman ideology had their side benefits

as well for the planter class. For those struggles cast the planters as tribunes of the Virginia people against distant absolutism, when in fact the emissaries of the crown often were doing more than the tribunes were doing for those being fleeced. This legerdemain contributed to the elevation of an unrepresentative legislature to the position of liberty's savior.¹³⁵

One would be hard-pressed to discern a theory of representation underpinning Virginia's colonial legislature, or for that matter underpinning any of the colonies' legislatures. Nowhere in colonial America did people have as a matter of law the right to be represented in a legislature. The thing represented was usually a corporate or geographic unit – town, parish, county, or land itself. There were major discrepancies between population and representation everywhere. Lower houses in the Southern colonies descended into a combination of well-paid sinecures and defensive weapons for local elites. But the assemblies of New England, the region which held the best chance of developing fully fledged representation, did not perform much better. Or to put it more starkly, the concept of deputies' actually representing constituents hardly existed there any more than elsewhere in colonial America.

It is not often noted that representative bodies in New England had their origins in joint stock companies. In the great joint stock companies of England, such as the East India Company, charter documents sometimes placed certain matters in the hands of a Governor, Deputy Governor, and "committees" to be selected by the freemen. The term "committees" has sometimes been interpreted to be equivalent to modern directors of a corporation, but minute books of these companies show the term meant something else. First, the word "committees" generally referred to individuals not to a body, dissonant as that may sound to modern ears. "Committees" was a plural term; the word "committee" generally referred to a single individual. Therein lay a clue to their function. Committees were the individuals chosen by freemen of the company as a subset of themselves to whom was committed the management of ordinary tasks, such as the outfitting of a ship, hiring of factors, or sale of merchandise. They were not charged with making policy or important decisions, nor was theirs an oversight role such as performed by modern corporate directors. Someone had to manage the day-to-day business between shareholder meetings, and that was the job of men known as "committees." Neither directors of the corporation, nor representatives of the freemen, they were freemen delegated to run the day-to-day business between general meetings.¹³⁶

That colonial founders were familiar with this category of officeholding there can be no doubt. Matthew Cradock, the first Governor of the Bay company, was a "committee" of the East India Co. Theophilus Eaton was Deputy Governor of the same English company, and he later referred to "committees" in the founding meeting of New Haven in 1639. In the early going of the Massachusetts Bay Company and the Virginia Co., minutes referred to "committees" as individuals charged with performing certain activities.¹³⁷

It was natural, then, that in the early years of colonization, towns and colonies named “committees” to help manage business between general assemblies (of freemen, inhabitants, and planters, as they were variously called). Thomas Hooker, founder of Hartford, wrote of an early General Court as being composed of magistrates and “committees,” the latter being four people chosen from each of the three River towns. The first deputies in Plymouth were called “committees.” In Rhode Island in 1640 they were called “disposers,” not “committees,” elected to handle affairs between inhabitants’ meetings; and, as we have seen, anyone could appeal one of the disposer decisions at the next general meeting. In neighboring Aquidneck, the elders and magistrates running the settlement between meetings could similarly find their decisions modified or repealed at quarterly general meetings. At Rhode Island’s first assembly under its charter, in 1647, every town was to choose “a committee for the transaction of affairs.” Again, general assemblies could repeal the decisions of these individuals. Later, in 1648, the men sent by each town were sometimes called the Court of Commissioners and sometimes the “Committee.” Only in 1650 did this body begin to call itself the “General Assembly” or “Representative Committee;” but the limitations on its power remained. Freemen could still, then and later, repeal the assembly’s orders.¹³⁸

It was precisely this character of having a limited, interim scope for discretion that defined committees (later styled “deputies” or “delegates” in most colonies) and made them subject to binding instructions. In the Providence example above, in 1647, the towns first met individually and decided a matter, then sent their committees with instructions how to vote in the colony-wide meeting of committees, and then still had the later right of revision.¹³⁹ When Providence inhabitants empowered committees to act, the latter were to act “as if we ourselves were in person.” They could boldly say this not because they trusted their agents but because they had already instructed them how to vote in the general meeting of “committees.” In Plymouth an act of 1640 required committees or deputies to meet with freemen to receive instructions before attending the court.¹⁴⁰ This early quasi-representative system was not based on identifying that person who best distilled, divined, interpreted, and represented a mythical average of opinions of electors; rather it was based on a simple embassy or errand function. One of the equals was sent on behalf of the freemen to vote as he had been instructed.

Instructions are sometimes taken as a sign of the closeness of representatives to their constituents, but they should probably be construed as the opposite. Instructions would not have been necessary if people had trusted their deputies. (In a comparable medieval suspicion of delegation, twelfth-century Italian communes tied the hands of their consuls with detailed, written obligations.)¹⁴¹ Instructions likely emerged as a natural corollary to the function of “committees.” When settlements needed to pool resources with other settlements or form a larger government, a mechanism was needed to assure that the interim, limited mandate of the committees was observed while the ambassador was out of earshot for a period of days. Because the

distances could be great, and days stretch to weeks, the temporary function of committees was stretched, and likely freemen were apprehensive about the jealously guarded sovereignty of their primary assemblies. As the role of deputies became institutionalized, or routinized, by mid-seventeenth century, and took on more than an interim, limited function, freemen back in towns grew apprehensive about letting go of their power. Deputy instructions were an expression of the skepticism with which townsmen greeted the emerging institution of colonial representation, a skepticism exhibited by stockholders of joint stock companies toward their “committees” and shared with republican orthodoxy of even older vintage.¹⁴²

Instructed or not, deputies were distrusted. As we have seen, after freemen in Massachusetts secured their charter right to choose magistrates, in 1634, a long battle ensued about nominations and elections, during which freemen betrayed a decided anxiety about the behavior of deputies purportedly representing them. They had the sense that their deputies were manipulating the creation of candidacies, and possibly manipulating elections.¹⁴³ If there was a theme to representation in the colonies it was the distance of representatives from the electorate, not their closeness to it.¹⁴⁴

Some of the distance may have been connected with what was the thing actually being represented. The Massachusetts institution of deputies had its origins, as we have seen, in 1634 as protection against arbitrary taxation by highhanded Assistants. The tax was levied upon the towns (not people), the complaint was that of a town (Watertown), and the solution for towns was to select a person or two to “confer” about taxes.¹⁴⁵ From then on, towns were the thing represented, not people, in the commonwealth and later the province of Massachusetts and other colonies. That towns played this key part in the linkage from local areas to commonwealth administration was natural, since town corporations played the key part, economically and organizationally, in the settling of the confiscated formerly native-American lands.¹⁴⁶ That two deputies should be the magic number owed much to the customary two knights of the shire and two burgesses who made up the House of Commons for centuries. In New England, some apportionment was parceled according to population, but it was scant. An early General Court allocation provided that a town was entitled to not a single deputy when a town had fewer than 10 freemen, two deputies for more than 20 freemen, and three for more than 40 freemen – with the consequence that a town like Boston was greatly underrepresented, as was every small town; but this disparity was irrelevant in a system where towns, not voters, were represented.¹⁴⁷

This fact – that deputies were sent by towns and not by freemen – guaranteed that many residents would not be represented in the first few generations, for towns had, as have seen, a bifurcated character: towns were not only physical places but also land corporations. Not all residents were admitted to the land corporation. Even taxpayers were excluded in many towns. Town meetings were on occasion held outside the town. Sometimes selectmen were elected who were not town residents. Some deputies to the General

Court did not live in the towns they “represented.” Laws were enacted in the eighteenth century to require deputies to be town residents, but no such requirement existed in the seventeenth century.¹⁴⁸ Rather than representing the residents, the town deputy represented the corporate town, which for a long or short period of time (depending on the pace of each town’s institutional evolution) was tantamount to the land corporation. It is also possible that landownership by itself was thought deserving of representation, as much as or more than were town residents. Such was true in early New England, and then in later Virginia. In Virginia, the 1736 franchise law dropped the requirement that a freeholder need live in a district to be able to cast a vote there. What he did need was a certain amount of land there; land was the thing represented, not the person. As a consequence, one man could vote in more than one Virginia county. If someone did not have sufficient land to qualify, an aspiring voter could join forces with another land-light person to cast together a single vote for their combined freehold.¹⁴⁹

Across different regions of America, and with vastly different social systems, it was possible for assemblymen to be nonresidents of the places they represented; often they were well-to-do and well-connected to political and business circles. Such a major figure could do much to advance the town’s or parish’s interests in the provincial capital, but he was not a vessel embodying the folkways and wishes of village residents. He need not have known them. He was, at least initially in New England, an attorney for the land corporation, and he knew the interests and probably some of the members of that body because he had helped organize it.¹⁵⁰

In Massachusetts, the creation of deputies in the beginning was a concession to towns, but it also was a bargain benefiting magistrates. Once created, deputies enabled Winthrop to win the argument over the magistrates’ executive authority, which, after the 1640s, was never questioned again.¹⁵¹ The trade-off was suboptimal from a popular point of view: the allowance of a faux representative body permitted the continued concentration of executive power in the hands of an elite. In the Southern colonies an oddly similar trade-off occurred. Assemblies acquired great prestige as the foil to royal prerogative but were not working for most colonists. Winthrop’s autocratic methods made some kind of lower house – as weak and unrepresentative as it was – indispensable, just as the exercise of royal power impinged upon vested economic interests in the South and made equally indispensable the consequently energized lower houses there. But in neither case did assembly members represent the populace.

Whatever gulf existed between electorate and assemblymen would not have been narrowed by the legislators’ stubborn refusal to leave office. We have seen the stickiness of Governors to their offices in Massachusetts in the seventeenth century. As the eighteenth century unfolded, there occurred across the colonies a steady decline in turnover rates in colonial legislatures, so that by the eve of the Revolution turnover rates were converging toward the rock bottom rates of the House of Commons (where rates did not decline

but were steadily in the range of 27-35%). Average turnover rates for eighteenth-century elections were 22% for Delaware, 45% for Maryland, 47% for Massachusetts, 39% for New Hampshire, 34% for New York, 47% for North Carolina, 30% for Pennsylvania – and a high for the usual (more democratic) stand-out, Rhode Island, of 62%.¹⁵²

That America had turnover rates trending downwards suggests something was amiss. The American franchise was shared by at least a majority of white adult males in most colonies, in England perhaps one in four at the maximum (some estimates put the proportion lower). Many seats in the House of Commons were controlled by a handful of people, in some cases by a single person. In a nation with a population of some eight million, more than half of the members of the House of Commons were returned by 11,000 electors in the 1780s.¹⁵³ North American colonies, with much more broadly shared suffrage, approached these minuscule turnover rates. With little turnover, individual legislators rose to the top – and stayed there. The Massachusetts assembly was dominated by rural elites, its important committees led by what one historian called “professional politicians.” The Bay Colony’s upper house, elected by the lower, had the same men “returned again year after year.” The same half dozen names appeared on the select committees in Pennsylvania, drafting every major act in that colony over a period of years. In Virginia, a small group of legislators served eight or more terms in the Burgesses in mid-century and chaired the most important committees.¹⁵⁴

Exactly why this evolution occurred is hard to explain and it was probably owing to several unrelated factors. The tradition of land corporations and counties and towns being the things represented played a role; it was not imagined that people enjoyed the privilege of representation. It seems inescapable that another contributing factor was the effect of elections themselves. Since antiquity, elections have advantaged, as Aristotle noted, the most talented and wealthier people in a community, and also the conspicuous, the well known. That last feature favors incumbents at election time, and incumbents then continue their incumbency. A third factor was the English political culture of deference which the emigrants brought to the New World. It seemed perfectly normal in that culture that some people should rule and others should obey. What powerfully strengthened that assumption in America was the social make-up of immigrants. Those peopling America from overseas were mostly either indentured servants or kidnapped and enslaved Africans. Some estimates put the proportion of servants at three-quarters of arriving Europeans. These were generally very poor people who could not find work in Britain and could not pay for their passage to America, so they borrowed the passage fare in return for a contract obliging them to work as servants for generally five or seven years, in some cases ten years.¹⁵⁵ A society composed mostly of enslaved persons, indentured servants, and former servants made it easy, almost required, within a culture of deference for the minority who were not servants or slaves to believe that government must be safely entrusted to the thin upper slice of society.

The colonial period's experience of representative institutions opened with "committees" acting for joint stock companies in narrow, prescribed ways between shareholder meetings, and soon saw town deputies (at least in New England) inheriting this function. Such emissaries were not "virtual" representatives expected to decide wisely – the leash holding them was short – and they were barely "actual" representatives either. Large parts of the populace were unrepresented or drastically under-represented. Large numbers of representatives were members of a permanent or semi-permanent political class. By the end of the period, assemblymen up and down the coast were political barons who preferred not to leave office.

Because the thought seems imperishable with some historians that colonial assemblymen embodied "representative democracy" which emerged in the colonial era and continued its upward march in Revolutionary America, it is worth stressing that both going into and coming out of the Revolutionary era representation bore only a tangential relation to population. Property requirements for voters and sometimes for officeholders were common (and not fully eradicated until the mid-nineteenth century). Virginia's post-Independence constitution left two-thirds of the white male population without the vote because of property qualifications. Before that constitution, a few dozen families controlled political office in eighteenth-century Virginia. Where lopsided malapportionment had long deprived backcountry residents of representation in assemblies (especially Virginia and both Carolinas), those unequal arrangements survived the Revolutionary fervor and carried on until, again, the nineteenth century. Under South Carolina's constitution of 1778, the low country elected about three-fifths of the state legislature but its electorate was one third of the state electorate; the more populous upcountry appointed the remaining two-fifths. North Carolina did not apportion both chambers of its legislature by population until 1868. Towns continued to be the key organizing unit for apportionment in Massachusetts, resulting in unequal popular representation for decades after Independence. Not trusting the people to elect the right senators, Maryland after Independence created a two-stage process whereby voters chose electors (meeting a property requirement) who in turn selected senators meeting an even higher property threshold.¹⁵⁶

The longstanding American malapportionment ran directly counter to the ideology spawned by the conflict with British imperial authorities. In large part, the Revolution was triggered by the Crown's attack on the political institutions of the colonists, their town meetings and assemblies and the right of colonists to have meaningful representation of their own choosing. The Stamp Act, Declaratory Act, Tea Act, Intolerable Acts, the Massachusetts Regulatory Act – the most important acts of punishment and regulation taken by the British government in the 1760s and 70s – provoked a reaction among colonists making their right to representation the paramount American cause. When the Americans made the sensible argument of no-taxation-without-representation, Whitehall made the preposterous rebuttal that the colonies were "virtually" represented in Parliament, just as Thomas Smith

had explained in the 1580s in *de republica anglorum*.¹⁵⁷ This British response brought into focus the problem, namely, what was the proper way to be represented in a legislative body?

In answering that question, Americans devised the theory of “actual” representation, meaning, delegates to a legislative body should be connected to their constituents, come from their midst and resemble them. During the course of the Revolutionary era, this doctrine was worked out and became, by the federal convention in Philadelphia, the generally accepted theory of how at least one part of a legislature should be constituted. In *Common Sense*, as we have seen, Tom Paine wrote that in the new America then dawning, representatives were to mix with their constituents every few months and “establish a common interest in every part of the community.” John Adams in his *Thoughts on Government* in the same year (1776) repeated the mantra: the assembly “should be in miniature, an exact portrait of the people at large. It should think, feel, reason, and act like them....[and] the people should have equal interest in it.” At the federal convention in Philadelphia, James Wilson would repeat this dogma: “The Legislature ought to be the most exact transcript of the whole Society.” The theory of government by a majority of true representatives of the people became the central political doctrine of the Revolutionary era.¹⁵⁸

For reasons to be discussed in the next chapter, the rhetoric was not matched by the deeds of delegates in the federal convention. Faced with the choice of installing a new, untested system of actual representatives – chosen by voters and close to voters – or carrying on with the American tradition of largely excluding people from having their choice and preferring experts and professionals to be legislators, the framers made their choice without compunction: for popular exclusion. This was not surprising. The outcome had something to do with political cross-currents in the Revolutionary era (to be discussed), but also owed something to entrenched colonial customs.

Nor can it surprise one that political barons continued exploiting office for their own pecuniary benefit. We have noted the land interest in the seventeenth century; it was dwarfed in the eighteenth. One of dozens of self-dealing leaders was John Robinson, Speaker of the Burgesses in Virginia, who gathered influential citizens into the Loyal Land Co. and obtained, from Virginia, 800,000 acres of western land for themselves. The tracts were staggering in size; the protagonists were assemblymen and councilors and sometimes Governors, from northern New England through New York and Pennsylvania down to the Southern colonies. Rare was the politically well-connected person from 1710 through the Revolutionary era (and beyond) who did not have his hand in the land-speculation cookie jar. The crown sent repeated royal instructions to put a stop to these ventures, but to no avail. When the South Carolina assembly was reprimanded and told to stop doling out land to Tidewater planters (that is, themselves), the assembly responded by cutting the Governor’s salary and defying the orders.¹⁵⁹ It seems likely that the professionalization of legislatures facilitated this ubiquitous transfer of

public assets to private hands. It may be why that intelligent observer Tom Paine worried about the danger that representatives would form a separate class of their own. He need not have worried for they had done so long before *Common Sense*.

This is not to say that colonial legislatures did not come into their own crucial role as the adversaries of crown prerogative, as mini-Houses of Commons, nor that this protagonist role did not help advance the colonies' quest for self-government. Nor even is it to say that the idea of representation did not seem like the natural and reasonable way to found new governments on the principle of popular consent. All of this is true and has been well argued.¹⁶⁰ Jack Greene (whose research in turn-over rates is invaluable) wrote that the emergence of lower houses in the eighteenth century as the centers of opposition to the domineering crown is the "grand theme of American colonial history."¹⁶¹ Greene's would be one way of looking at the matter. Another would be to focus on representatives up and down the seaboard who were nonresidents of places they represented, on populations angry enough about their unrepresentative legislature that they supported the British side in the war of independence (particularly a problem in the Carolinas), on a long tradition of instructions arising from a deep distrust of deputies, and on the rise of a professional political class exercising power often for its own financial benefit. The erection of legislative supremacy as a useful tool against prerogative was clear, but just as clear was another grand theme of colonial history, the creation of representative institutions that were not broadly representative of people. Rather than being only an upward march of progress toward independence, colonial politics was also a downward spiral into governing systems subject to capture by entrenched politicians, whom imperial authorities tried from time to time to restrain, without effect.

So what in the end did the colonial experience add to the Anglo-American corpus of political procedures? Republican concepts were always bound to hit stony ground in Britain, a country ruled by a monarchy and aristocracy, where top positions were filled by heredity, where filling those positions through aleatory, complex procedures was inherently unattractive, and where Parliament over time managed to acquire the mantle of liberty's defender. When commonwealthman ideology further confirmed a reformed legislature as essential to popular liberty, and that ideology along with the English political culture of deference was exported to the colonies, Britain's own infertile soil was exported to her colonies. Meanwhile, the colonies had been busy experimenting on their own – with mini republics around Boston, joint-stock-company democracy in several locations, and assemblies standing up to royal prerogative. But overall the colonial political experience was a republican wasteland. The mini republics were swallowed up; legislatures were typically malapportioned and controlled by recidivist politicians and, in some colonies, by networks of wealthy families; and beginning in the most unlikely place, Puritan Massachusetts, power groups took off like a rocket. The self-dealing of politicians troubled Whitehall for decades on end, and

although the British tried mostly to stop it (when ministers were not joining it), self-dealing carried on through independence. Even the sainted George Washington had his eye on his 52,194 acres.¹⁶²

By end of the colonial era, thanks to an ungainly mixture of imported and local experience, the available governing possibilities at the time of the Revolution were far removed from republican procedures. Gone was the goal of organizing an apolitical government and of accommodating varying interests while permitting no single one to predominate through elaborate procedures of chance and nominations and multistage elections. Gone were the tools in service of disinterestedness. Those tools were not obviously relevant to a political world dominated by faux-representative institutions and professional politicians. Florence and Venice although fondly remembered were not seriously considered. The republican project limped into the Revolutionary tumult, and what we have sometimes flattered ourselves to think was a grand beginning for democracy was more of a limited salvage operation with regard to classical republican procedural principles. However, in the debates over the Constitution in Philadelphia some of the framers, alarmed at the direction things took during deliberations there, did engage in that salvage operation to a limited degree, and contrived certain protective devices which came from the already far receded republican past.

Notes

- 1 This sentence concerns only Britain. As we have seen ([Chapter 2](#)), Italians pioneered several forms of partnership in the medieval era, partnerships that involved some of the techniques that English joint stock companies later created in England.
- 2 Founded in the thirteenth century, having a monopoly of the foreign cloth trade, the Merchant Adventurers were granted a royal corporate charter in 1564 making it “one perpetual fellowship...and Body Politick and Corporate,” with the legal right to meet in assemblies. W.E. Lingelbach, “The Internal Organisation of the Merchant Adventurers of England,” *Transactions of the Royal Historical Society*, New Series, vol. 16 (1902), 19–67; William Robert Scott, *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720*, 3 vols. (Cambridge, England, 1910–1912), 1: 90. See also “The Laws, Customes and Ordinances of the Fellowshippe of Merchantes Adventurers of the Realm of England,” Add. Ms., 18913 (Western ms.), British Library, London. The company was composed of wealthy merchants, an “aristocratic fraternity of traders,” who conducted their own trading. Since the important part of that trading was conducted overseas, the General Court, as it was called, or assembly, was usually held overseas, where the company governor was chosen. Regulated companies, which were more akin to associations of traders than modern companies, were typically democratic; there was little concentration of power, freemen of the company were equal, and voting was by hands (not by stakes in the company). The cloth industry being the major manufacturing industry in pre-industrial England, this company stood in a class by itself of importance, wealth, and prestige.
- 3 Karen Ordahl Kupperman, *Providence Island, 1630-1641: The Other Puritan Colony* (Cambridge, England, 1993), 1, 5, 18, 21, 82; Theodore K. Rabb, *Jacobean Gentleman: Sir Edwin Sandys, 1561-1629* (Princeton, 1998), 319–326.

- 4 No other entity in Britain or on the continent bore so close a resemblance to the new joint stock company as the Casa. For the debt of English joint stock companies' form and style to Italian business organizations see Scott, *Joint Stock Cos.*, 1: 1–2, 17. Several were the devices the new companies borrowed from Italy: secret ballot, balls for ballots *a la Venetian*, the use of the words “consul” and “scrutiny.” See elections of the early East India Company in *The Court Records of the East India Company: The Dawn of the British Trade to the East Indies as Recorded in the Court Minutes of the East India Company, 1599-1603*, ed. Henry Stevens (London, 1886), 12, 81; Ethel Bruce Sainsbury ed., *A Calendar of the Court Minutes, etc. of the East India Company, 1635-1639* (Oxford, 1907), 72.
- 5 It was this feature of joint stock companies that caused Adam Smith famously to criticize them, for managers would never, he said, be as diligent and competent managing “other people’s money” as they would be managing their own.
- 6 Almost half of the gentry who invested sat in Parliament. 23% of investors were gentry or nobility. Theodore K. Rabb, “Investment in English Overseas Enterprise, 1575–1630,” *Economic History Review*, vol. 19, issue 1 (April 1966) 70–81. See also Rabb, *Jacobean Gentleman*, 324. Rabb’s numbers are invaluable.
- 7 At one moment in the Virginia Company, when two factions fought over elections, the King, taking one side, made so bold as to nominate four individuals and commanded that the shareholders choose one of the four for head. The angry shareholders cancelled the election and declared it would be “a greate breach into their Prevylege of free Eleccion” granted by the charter, and sent a memorial to the King asking that he not deprive them of “their owne choyce to have free elecon.” The King backed down, said he had been misunderstood, he had only recommended four people and not confined the choice to these four, and attributed the misunderstanding to the “messenger haveinge not received his message imeadiately from his owne royall mouth.” *The Records of the Virginia Company of London: The Court Book, from the Manuscript in the Library of Congress*, ed. Susan Myra Kingsbury (Library of Congress, Washington, D.C., 1906), 1: 348, 357, 384.
- 8 Scott, *Joint Stock Cos.*, 2: 139ff.
- 9 See early charters of the EIC in “Charters Granted to the East India Company from 1601,” India Office Records, British Library, Ref: IOR/A/2/3; “East Indies: December 1600,” in *Calendar of State Papers Colonial, East Indies, China and Japan*, vol. 2, 1513-1616, ed. W. Noel Sainsbury (London, 1864), 113–118; Rabb, *Jacobean Gentleman*, 327ff.
- 10 K.N. Chaudhuri, *The English East India Company: The Study of an Early Joint-Stock Company, 1600-1640* (London, 1965), 58, 37.
- 11 *Calendar of Court Minutes East India Company, 1635-1639*, 72. The introduction (viii-xii) to this collection of company papers, by William Foster, well summarizes the tension between shareholders in the years 1634–1635. See also: Chaudhuri, *English East India Company*, 31–35, 58–60; Scott, *Joint Stock Cos.*, 2: 106.
- 12 Scott, *Joint Stock Cos.*, 2: 116. Note that hands versus ballot box was one of the disputes in the company’s third decade, with the ballot box used for “balls” (as was done in Venice, Florence, and Siena), not paper ballots. *Calendar Court Minutes East India Company, 1635-1639*, 72. A recent study of the company (William Dalrymple, *The Anarchy: The Relentless Rise of the East India Company* (London, 2019)) is more useful for the eighteenth century than the EIC’s early years.
- 13 Scott, *Joint Stock Cos.*, 2: 106, 266ff, 287; *Virginia Records Court Book*, 1: 315, 348. Sandys launched his fight against Smythe July 1619 at the same time as he engaged with the latter in the Virginia and Somers Island cos. The fights in all three companies often involved arguments about voting rights and voting

procedures (Sandys introduced a “ballot box” presumably to prevent Smythe from intimidating shareholder voters in open voting.) Maloy has noted the similarity between the Smythe-Sandys corporate accountability fight and the Petition of Right of 1628 (but not drawn Winthrop into the circle of analogies, where he seems to belong). J. S. Maloy, *The Colonial American Origins of Modern Democratic Thought* (Cambridge, England, and New York, 2008), 70, 72.

- 14 Scott, *Joint Stock Cos.*, 2: 290, 293–294.
- 15 Providence Island’s mainly Puritan shareholders maintained a similar London grip on government over that troubled settlement. Kupperman, *Providence Island*, 20.
- 16 Like most joint stock companies, the Governor and Company of the Massachusetts Bay in New England, as it was called in the royal charter of 1629, was composed of individuals “made free of the Company and Society [and to] be...one body corporate and politique....” They were to have a Governor, Deputy Governor, and eighteen Assistants chosen by the freemen. The freemen were to meet in General Court four times a year for making laws. Yearly the freemen were to elect the company’s officers. Nathaniel B. Shurtleff ed., *Records of the Governor and Company of the Massachusetts Bay in New England*, vol. 1, 1628–1641 (Boston, 1853), 10–12.
- 17 He also had the odious distinction of owning the ship that brought the first cargo of kidnapped and soon-to-be-enslaved Africans to Virginia. Arthur Percival Newton, *The Colonizing Activities of the English Puritans: The Last Phase of the Elizabethan Struggle with Spain* (New Haven, 1914), 20–21, 35–36. For more on Warwick’s overseas enterprises, see Rabb, *Jacobean Gentleman*, 322ff.
- 18 Benjamin Trumbull, *A Complete History of Connecticut...*, 2 vols. (New Haven, Conn., 1818), 1: 99–100.
- 19 Francis J. Bremer, *John Winthrop: America’s Forgotten Founding Father* (Oxford and New York, 2003), 161.
- 20 Scott, *Joint Stock Cos.*, 2: 279–283, 285, 290; Newton, *Colonizing Activities*, 20–24, 35; Bremer, *Winthrop*, 160; Rabb, *Jacobean Gentleman*, 343 n50, 356–364, 369–375, 381.
- 21 *Mass Records*, 1: 49–59. The decision to move the government has been of interest to scholars for years, who wondered if the company changed its course, if merchants were increasingly outnumbered by Puritans, or other changes from inception until mid-1629. See William Robbins, “The Massachusetts Bay Company: An Analysis of Motives,” *The Historian*, vol. 32 (November 1969), 83–89.
- 22 When Winthrop had his way in the fall of 1629, it was with a compromise – that the business government should remain in London while the political government should go with the settlers. This compromise underscored the dual nature of this and many other joint stock companies; they were both business and political communities.
- 23 The move of the government overseas while unusual was not unprecedented. The vastly older, established, and famous Merchant Adventurers located governance where the venturers were, overseas.
- 24 David D. Hall, *The Puritans: A Transatlantic History* (Princeton and Oxford, 2019), 20–28, 151, 157.
- 25 Kupperman, *Providence Island*, 221ff, 247–255.
- 26 Stephen Foster, *Their Solitary Way: The Puritan Social Ethic in the First Century of Settlement in New England* (New Haven and London, 1971), 55. Foster contrasts the friendly treatment of the French Catholic La Tour, which Winthrop justified by invoking the rule of mercy, and the “hate” and “fury” with which the authorities confronted those of their own brethren who had fallen out of the “tribe.”
- 27 In March 1631, when present on New England shores for eight months, the Assistants ordered a servant whipped for defaming them. Three months later, another servant was ordered to be whipped and have his ears cut off for “scandalous

invectives against our churches and government.” Another man was ordered (by the six Assistants) whipped and banished from the colony “for writing into England falsely and maliciously against the goumt and execucon of justice here.” This was the first exhibition of the government’s fear of appeals back to England; there would be more. In 1635 John Pratt was disciplined by the court for having sent a letter to England complaining about the quality of the soil. In 1638 the court ordered a woman “whipped for reproaching the magistrates.” In 1639 Winthrop recorded in his journal “it was accounted perjury and treason in our General Courts to speak of appeals to the King.” *Mass Records*, 1: 84; *Winthrop’s Journal “History of New England,” 1630-1649*, ed. James Kendall Hosmer, 2 vols. (New York, 1908), 1: 64, 286, 300; *Mass Records*, 1: 91; Perry Miller, “Thomas Hooker and the Democracy of Connecticut,” *Errand Into the Wilderness* (Cambridge, Mass., 4th printing, 1975), 25. In September 1633 the Assistants fined John Stone and banished him on pain of death (should he return) for “his outrage committed in confronting auuthority, abuseing Mr Ludlowe [one of the Assistants and judges in this case] both in words and behaviour, assalting him & calling him ‘an as[s].’” (The murder by Indians of this same Stone, whose loss no one mourned, was a pretext for the Bay Colony’s launching the exterminatory war against the Pequots in 1637.) In April 1634, the Assistants passed a loyalty oath, whereby all residents should swear to be subject to all laws made by the Governor, Deputy Governor, and Assistants (no mention of freemen or the General Court). Included in the oath was the pledge to give “speedy notice” to the Assistants “of any sedition, violence, treacherie, or other hurte or euill wch I shall knowe, heare, or vehemently suspect to be plotted or intended against them [the Governor, Deputy Governor, and Assistants] or any of them, or against the said Comon-wealth or goumt established. Soe helpe mee God.” A month later, a General Court (of uncertain attendance) passed a new oath for freemen, containing much of the earlier oath with the added requirement to reveal any knowledge of any who would “plot [or] practis evill against it [the government].” These loyalty oaths figured in Roger Williams’s complaints, for he considered them profane, and it was this and his other acts of defiance of the government’s authority, more than for doctrinal differences (which were connected to his views of the profanity), that made him a pariah in Massachusetts. Charismatic and persuasive, he had his town of Salem behind him, which had written to other towns lobbying them for support against the magistrates’ efforts to control the Salem church. Boston reacted badly. In September 1635 the General Court sent home the Salem deputies with instructions to seek satisfaction for their townsmen’s letters sent to churches “wherein they have exceedingly repched [reproached?] & vilified the magistrates & deputies of the Genall Court....” John Endicott (then under the sway of Roger Williams) was dismissed from office by the same General Court. When the General Court banished Williams, it was for not for heresy but for contumacy: In September 1635 he was exiled for his “dangerous opinions, against auuthoritie of magistrates” and “defamacon” of magistrates and churches. Even Salem’s appointment of Williams was “a great Contempt of authority.” Later John Cotton said Williams was banished for objecting to the patent (and therefore the authority of the government) and for launching his campaign against the loyalty oath. It was for “disturbing the peace by divulging their opinions against the authority of the magistrates” that Williams had been banished, Winthrop noted in his journal. *Mass Records*, 1: 108; 115–116, 117, 156, 157, 160–161; John M. Barry, *Roger Williams and the Creation of the American Soul: Church, State, and the Birth of Liberty* (New York and London, 2012), 187, 250; Roger Williams, *The Bloudy Tenent of Persecution for the Cause of Conscience Discussed: And Mr. Cotton’s Letter Examined and Answered*, ed. Edward Bean Underhill (London, 1848), xxx; *Winthrop’s Journal*, 1: 262. The Anne Hutchinson Antinomian uproar (triggered by her concern that clergy were preaching a backsliding covenant

of works) was a more serious crisis for the commonwealth, for she had scores of supporters in Boston, including major figures in the colony (military leaders in the recent Pequot war and initially even Winthrop's own ally, the Boston minister John Cotton). All the more reason that this particular eruption of dissent could not be brooked. In November 2, 1637, the General Court unseated a town deputy for nothing more than having said that John Wheelwright (a defender and brother-in-law of Anne Hutchinson) had told the truth. In the same session, Wheelwright was banished after being convicted of "contempt and sedition." Wheelwright's not unreasonable reaction was to say if it was sedition he was guilty of, he ought to be put to death. But of course it was not sedition, it was contumacy, which, if left unchecked, the court feared would result in the "the Court ruined, wth their posterity." So the court said in the case of Hutchinson. Sedition and "seditious libel" were the formal charges, but the real problem, in addition to Hutchinson's own unexpected confession of divine revelations, was defiance and, as Winthrop put it, the undervaluing of both the magistracy and the ministry. The point is not that heresy played no part in her expulsion; it did, and her particular heresy was expounded with such force and brilliance that she was threatening a dissolution of the community. It was that the actual charges related to her defiance of the state's authority, and that both reflected and helped to solidify the Winthrop view of government as principally a tool for control. After Hutchinson was banished, for good measure the General Court, to suppress the "disorders" occasioned by "contempts...put upon the civill authority," ordered whoever should "defame any court of iustice, or the sentences or pcedings of the same, or any of the magistrates or other iudges of any such court" regarding the recent sentences proscribing 59 Hutchinson supporters should be fined or banished or imprisoned or disfranchised. This alien-and-sedition act was then broadened into a gag order against the magistrates themselves, any one of whom would be subject to similar penalties for making reproachful or "unbeseeing speeches" about his fellow magistrates. The next spring, 1638, for good measure Thomas Starr was fined and jailed for "speaking against the order of Court about swine." *Mass Records*, 1: 205, 207–208, 213, 219–220; *Winthrop's Journal*, 1: 211, 217, 254. For a different and well-argued view, see David Hall, who concluded that on the whole the "response to dissent in New England was tempered." Hall, *Puritans: Transatlantic History*, 338

- 28 *Mass Records*, 1: 73ff, 82, 79, 84. The next month a court of Assistants met with six people present. *Mass Records*, 1: 85. Formally the Governor and Deputy Governor were not Assistants but in interpreting quorum rules on site Winthrop probably counted them to attain quorum threshold.
- 29 *Mass Records*, 1: 86–87. There is a discrepancy about when precisely the General Court seized its electoral rights from Assistants. Osgood has it May 1631 but then later he records conversations about the matter the next year. Herbert L. Osgood, *The American Colonies in the Seventeenth Century*, 3 vols (New York 1904–1907, Gloucester, Mass. reprint 1957), 1: 171–172, 174. Winthrop puts it in 1632, and the *Mass. Records* agrees. See below.
- 30 *Mass Records*, 1: 89, 92; Kupperman, *Providence Island*, 56; John M. Murrin, "Magistrates, Sinners, and a Precarious Liberty: Trial by Jury in Seventeenth-Century New England," David D. Hall, John M. Murrin, Thad W. Tate, *Saints and Revolutionaries: Essays on Early American History* (New York and London, 1984), 154, 163, 164. New Haven and Connecticut shared Massachusetts' suspicion of jury trials.
- 31 *Winthrop's Journal*, 1: 74–75; Osgood, *American Colonies Seventeenth Century*, 1: 174; Bremer, *Winthrop*, 211–212.
- 32 *Winthrop's Journal*, 1: 76–78.
- 33 *Winthrop's Journal*, 1: 79; *Mass Records*, 1: 95; Osgood, *American Colonies Seventeenth Century*, 1: 155ff.

- 34 *Winthrop's Journal*, 1: 114, 84–88; Peter C. Mancall, *The Trials of Thomas Morton: An Anglican Lawyer, His Puritan Foes, and the Battle for a New England* (New Haven and London, 2019), 121; Osgood, *American Colonies Seventeenth Century*, 1: 175.
- 35 Osgood, *American Colonies Seventeenth Century*, 1: 174–175.
- 36 *Winthrop's Journal*, 1: 122; Osgood, *American Colonies Seventeenth Century*, 1: 176; Bremer, *Winthrop*, 218.
- 37 *Winthrop's Journal*, 1:122. According to Winthrop, democratic procedures were suited to business entities, whose influence posed a threat to political governance. In the Child controversy twelve years later, when that dissident alleged that the Massachusetts government was exercising sovereign powers beyond any that an English corporation was entitled to have, Winthrop took exception to his “allowing us no more than any ordinary corporation, and such privileges only as belong to mechanic men.” In its judgment against Child, the General Court went on to note a difference between “corporations within England and corporations of but not within England” (possibly an ironic play on Cotton’s memorable words about Puritans’ being in this world but not of it); though plantations were corporate bodies they were “above the rank of an ordinary corporation.” They like other colonies from ancient times had risen to become “the foundations of great commonwealths.” As such, they were above challenge from the likes of Child and his confederates, among whom, Winthrop noted, were “men of no reason” – servants, fishermen, and, he added, a barber from Boston. *Winthrop's Journal*, 2: 289–290, 297, 300, 303, 304, 307. Just as Child and others objected to autocracy in the commonwealth, there were joint stock company shareholders who disliked manager autocracy when it occurred in business. Both the Russia Co. and the Levant Co., two of the earliest joint stock companies, abandoned the joint stock and converted to the old-fashioned structure of regulated companies. While one cannot be sure why they did so, the conversion of the Russia Co. came amid complaints to Parliament that the fifteen top managers were doing deals on the side and disadvantaging passive shareholders, in what has become known in more recent times as “diversion of corporate opportunity” and which the complainants called the operation of a “monopoly in a monopoly.” By abandoning the joint stock structure, these companies abandoned the concentration of power in management. T.S. Willan, *The Early History of the Russia Company, 1553-1603* (Manchester, 1956), 270, 273, 273n.
- 38 *Winthrop's Journal*, 122; Osgood, *American Colonies Seventeenth Century*, 1: 155ff.; Bremer, *Winthrop*, 218.
- 39 *Mass Records*, 1: 117–119. The same order changing the regime went on to say that deputies should be “deputed by the ffreemen” of the towns “to deale in their behalf, in ye publique affayres of the commonwealth, shall haue the full power & voyces of all the said ffreemen, derived to them for the making & establishing of lawes, graunting of lands, etc. & to deale in all other affaires of the comonwealth wherein the freemen haue to doe, the matter of eleccion of magistrates & other officers onely excepted, wherein evry freeman is to gyve his owne voice.” See below *An unusual form of representation* for more on freemen anxiety about deputies.
- 40 Doubtlessly leaders were convinced that their hold on power was necessary to achieve their godly mission. Or, as Winthrop’s friend John Cotton put it, “If the people be governor who shall be governed?” *Winthrop's Journal*, 125 n.1, 134.
- 41 *Winthrop's Journal*, 1: 147; Bremer, *Winthrop*, 355.
- 42 *Mass Records*, 1: 136. See also Barry, *Roger Williams*, 186–187; Bremer, *Winthrop*, 244.
- 43 *Mass Records*, 2: 40, 58–59; Osgood, *American Colonies Seventeenth Century*, 1: 166. The 1643 repeal permitted speaking one’s mind about the negative vote if done “soberly and peaceably” or writing about it “in any modest or breife way.”

- 44 *Mass Records*, 1: 174; *Winthrop's Journal*, 1: 178; Osgood, *American Colonies*, 1: 179. No precedent if one leaves aside the appointment of Sebastian Cabot as Governor for life of the Russia Company in 1555. Willan, *Russia Company*, 8. Lifetime tenure did have precedent in the UK House of Lords (which was possibly the model) and in ancient republics (the Areopagus in Athens and the Roman Senate). After a certain amount of dismay expressed by Richard Saltonstall and others over a period of years, in 1639 the General Court rescinded the magisterial powers of the Standing Council, and later, when Winthrop died, abolished it altogether. *Mass Records*, 1: 264; 2: 21; Osgood, *American Colonies Seventeenth Century*, 1: 179.
- 45 Bremer, *Winthrop*, 358. (Bremer in his thorough study takes a generally charitable view of his subject.) Winthrop had not previously shown interest in freemen's political rights.
- 46 *Mass. Records*, 1: 95.
- 47 *Winthrop's Journal*, 1: 150.
- 48 *Mass Records*, 1: 293.
- 49 *Mass Records*, 2: 286–287.
- 50 *Winthrop's Journal*, 1: 302.
- 51 Rising to defend his embattled friend years before, John Cotton preached “that a magistrate ought not to be turned into the condition of a private man without just cause.” *Winthrop's Journal*, 1: 124–125; 2: 98; Bremer, *Winthrop*, 242.
- 52 Osgood, *American Colonies Seventeenth Century*, 1: 167–168, 320, 327.
- 53 Williams Coddington tried one-man rule briefly in Aquidneck but backed down in the face of unanimous Rhode Island opposition.
- 54 Samuel Greene Arnold, *History of the State of Rhode Island and Providence Plantations*, vol. 1, 1636–1700, 4th ed. (Providence, R.I., 1894), 98 n1.
- 55 Increase N. Tarbox, “How the River Towns Came to Be Planted,” J. Hammond Trumbull ed., *The Memorial History of Hartford County, Connecticut: 1633–1884*, 2 vols. (Boston, 1886), 1: 19–36.
- 56 The first Hooker petition predated the major religious controversies of Roger Williams and Anne Hutchinson. In this large migrant group, some church leaders pushed against the move; individuals, rather than congregations, moved.
- 57 Tarbox, “River Towns,” 20, 27.
- 58 *Fundamental Orders of Connecticut – 1638/39*, ed. Francis Newton Thorpe, *The Federal and State Constitutions, etc.*, 7 vols. (Washington, 1909), 1: 467–470; Trumbull, *History of Connecticut*, 1: 100–101. For magistrate, the Secretary put names into nomination but he was barred from nominating anyone not proposed earlier by the General Court. Deputies could “nominate” any two men on behalf of their town, to which number the General Court itself could add further names. The Hartford founders showed a Renaissance interest in erecting a nominating system not controlled by a single source.
- 59 Tarbox, “River Towns,” 41–42. See below and John Frederick Martin, *Profits in the Wilderness: The Founding of New England Towns in the Seventeenth Century* (Chapel Hill, NC, 1991), 167ff.
- 60 Edward E. Atwater, *History of the Colony of New Haven To Its Absorption Into Connecticut* (New Haven, 1881), 96–99, 107; Trumbull, *History of Connecticut*, 1: 105–107, 231. Eaton's speech echoed Aristotle's principle that the reason the rulers must be the ruled is because the former know they will end up back in the status of the latter, and the latter can look forward to being someday in the status of the former.
- 61 Benjamin Trumbull opined that the migration by Theophilus Eaton and friends to New Haven was triggered by their not wishing to live under the Massachusetts regime and instead wanting to establish a government of their own. Trumbull, *History of Connecticut*, 1: 97. For rest of the paragraph, see Trumbull, *History of Connecticut*, 1: 95–110; Atwater, *History of New Haven* 96, 98, 99; Osgood, *American Colonies*

- Seventeenth Century*, 1: 322. Unlike Hartford, New Haven did not practice rotation in office. On the democratic character of church formation, see below.
- 62 Letter of Roger Williams to John Winthrop, 1636 or 1637, *The Complete Writings of Roger Williams*, ed., John Russell Bartlett, 7 vols. (New York, 1963), vol. 6, *The Letters of Roger Williams: 1632-1682*, 3-5; Arnold, *History of Rhode Island*, 1: 102-103, 108-109.
 - 63 Arnold, *History of Rhode Island*, 1: 102-103, 124-125, 130-131, 148. One of the Portsmouth founders said they took this step because they were resolved "to get clear of all and be of ourselves." Thomas Williams Bicknell, *The History of the State of Rhode Island and Providence Plantations*, vol. 2 (New York, 1920), 431. In time, freemanship and proprietorship became separate in Rhode Island, just as it did in towns everywhere. The schedule of separation varied from place to place.
 - 64 Arnold, *History of Rhode Island*, 1: 202.
 - 65 Arnold, *History of Rhode Island*, 1: 203, 207, 210.
 - 66 Arnold, *History of Rhode Island*, 1: 232. In 1660, Rhode Island continued the tradition of popular annulment of legislation, but changing the threshold from a majority of towns to a majority of freemen. Arnold, *History of Rhode Island*, 1: 274.
 - 67 Jeremy Belknap, *The History of New Hampshire* (Philadelphia, 1784), 1: 34-37, 51-52, 100, 168-174; Osgood, *American Colonies Seventeenth Century*, 1: 353, 363, 371ff.
 - 68 David Pulsifer, ed, *Records of the Colony of New Plymouth in New England: Laws, 1623-1682* (Boston, 1861), 4ff; Scott, *Joint Stock Cos.*, 2: 307-315; Maloy, *Colonial American*, 111. Bremer does not mention Plymouth's functioning joint stock company structure, nor the profitable enterprises of the settlers. In discussing the colony's pursuit of Thomas Morton he neglects to mention that Bradford and a handful of others were granted a lucrative fur trading monopoly on the Kennebec River which was impinged upon by Morton. Francis J. Bremer, *One Small Candle: The Plymouth Puritans and the Beginning of English New England* (Oxford, 2020), 131-136.
 - 69 Kloppenberg discusses the mini republics without mentioning the joint stock company model and stresses "religious issues...at the center of democratic discourse over the last four centuries." He also depicts New England as containing an "ethic of equity," "consensus about justice and equity...an ethic of mutuality and reciprocity," and land distribution "to ensure fair and honest dealing. Speculation in property was illegitimate." James T. Kloppenberg, *Toward Democracy: The Struggle for Self-Rule in European and American Thought* (Oxford and New York, 2016), 51, 67ff, 74-76, 81.
 - 70 *Winthrop's Journal*, 1: 290; Miller, "Thomas Hooker," 44-45; Baird Tipson, *Hartford Puritanism: Thomas Hooker, Samuel Stone, and Their Terrifying God* (Oxford and New York, 2015), 88, 402.
 - 71 Tarbox, "River Towns," 27.
 - 72 *Winthrop's Journal*, 1: 287.
 - 73 In 1635, Hooker made clear he had no use for Roger Williams' opinions and sided with the Massachusetts orthodoxy. Arnold, *History of Rhode Island*, 1: 56. In contrast to Hooker's democratic creation, when (in 1636) the Massachusetts government, as distinct from voluntary migrants, launched a distant venture near Hartford on the Connecticut River, the Bay Colony authorities created a colony governed by a satrapy. Explaining that the new plantation would be too far from Boston to be administered from home, they appointed eight men, some of them Assistants, to have "full power & auuthoritie" to make decrees and hold courts and inflict corporal punishment. Before long (in 1641), Boston replaced this committee with the single satrap William Pyncheon endowed with "full power & authority to governe the inhabitants at Springfeild." A few years later (1647) the General Court gave him the power, by himself, to "make freemen" there. When

- Hooker's three river towns of Connecticut formed a consolidated government of Connecticut, they pointedly did not invite Springfield to join. *Mass Records*, 1: 171, 321; 2: 224; Tarbox, "River Towns," 40.
- 74 Belknap, *New-Hampshire*, 1: 44–45; Miller, "Thomas Hooker," 26; Tipson, *Hartford Puritanism*, 49; Roger Williams to John Endicott, August 1651, *Letters of Roger Williams*, 214–228.
- 75 Arnold, *History of Rhode Island*, 1: 110–111, 118, 178–192, 275–277. The depredations of the Atherton Company, on behalf of mostly non-Rhode Island shareholders and in the interests of Massachusetts hegemony, at the expense of local Indian and European residents, used to inflame the patriotic passions of Rhode Island historians; but beyond that forgotten Rhode Island feeling of injury, there remains a larger significance of this company in the development of early American political patterns. One of the apparent reasons for the Massachusetts interest in Rhode Island was Winthrop's desire for an outlet to Narragansett Bay. Winthrop was a proprietor in that bay, and it is possible his land ownership there influenced him.
- 76 Arnold, *History of Rhode Island*, 1: 230–231, 258.
- 77 Bradford, *Plimoth Plantation*, 438ff.
- 78 Belknap, *New Hampshire*, 1: 34–37, 55–58, 100, 168–174; Osgood, *American Colonies Seventeenth Century*, 1: 371ff. In addition to the Massachusetts's authorities' obsession with Antinomians and the colony's general annexationist bent, the Piscataqua was the location of yet another Warwick-generated patent benefiting Puritan grandees. Kupperman, *Providence Island*, 326.
- 79 Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (Chapel Hill, N.C., 1975; Norton pbck, New York and London, 1976), 186–201; Robert C. Black, III, *The Younger John Winthrop* (New York and London, 1966), 85–87. Winthrop Sr. caused the General Court to authorize settlement of this Warwick patent, claiming the Pequot country as under Massachusetts jurisdiction pursuant to a treaty which Winthrop negotiated with the Pequot tribe.
- 80 Trumbull, *Connecticut History*, 1: 236; Osgood, *American Colonies Seventeenth Century*, 1: 327.
- 81 *The Charter of Connecticut: 1662*, Tercentenary Commission, Committee on Historical Publications (1933, repr. 1957); Charles McLean Andrews, *Colonial Self Government, 1652–1689* (New York and London, 1904), 53–55.
- 82 Atwater, *History of New Haven*, 452–455, 465, 510–517, 523, 528. One of the major Davenport objections, apart from loss of New Haven independence, was loss of the church-based franchise.
- 83 Black, *Younger John Winthrop*, 9.
- 84 Winthrop Sr. owned half of Prudence Island in Narragansett Bay; Massachusetts jurisdiction in the Narragansett country would have safeguarded his access to the sea and to his island. See endnote 105. In the Pequot country, Winthrop engaged in trading with the Indians for pelts or wampum (or both), and asked John Jr. in London to procure the cloth that the Indians had requested of him. Jennings, *Invasion of America*, 192–193. As to Warwick patents in the Pequot and Piscataqua lands and the Bay Colony support of them, see endnotes 78 and 79.
- 85 For an unvarnished assessment of Bay Colony imperialism, see Jennings, *Invasion of America*. Peterson also well captures the imperialism. Mark Peterson, *The City-State of Boston: The Rise and Fall of an Atlantic Power, 1630–1865* (Princeton and Oxford, 2019), 47, 68, 122ff. He partly attributes this to land shortage in the Bay Colony (51, 138); this author sees land greed as more prominent than shortage. The bigger difference, however, is Peterson's depiction of the "egalitarian puritan culture," the "classical republican ideals," "communitarian ethos," "political balance and economic integration" of the seventeenth century, and the republican strategies "laid out in the first charter." The first charter's republican rules were breached from the beginning and replaced by unrepublican procedures.

- Peterson is focused on his well-developed theme of Boston autonomy and not concerned with internal political procedures. David Hall documents the mini republics surrounding Massachusetts but makes no mention of the joint stock company model being followed in some of them, and conflates the Bay Colony with the diaspora, saying New England was the “fullest embodiment of” animus against monopolies and special privilege, and “any characterization of colonial governments as oligarchic or authoritarian seems astonishingly” wrong. David D. Hall, *A Reforming People: Puritanism and the Transformation of Public Life in New England* (New York, 2011), 39–51.
- 86 Many commentators (Machiavelli, Montesquieu, Addison, and Hume), as we have seen, praised the Casa di San Giorgio for its mixture of a business community and political community. Seventeenth-century towns were the enduring Genoa of New England. Like earlier business entities, proprietorships were egalitarian within their own corporate confines, but the corporate structure made towns exclusive. Nothing is more democratic than a voluntary organization practicing exclusivity (except when run by an autocrat like Thomas Smythe). Martin, *Profits in the Wilderness*, 186–201, 245–247.
 - 87 New England had one university graduate for every 32 families in 1640. Samuel Eliot Morison, *The Founding of Harvard College* (Cambridge, Mass., 1935), 359, 361. It would be generations before that ratio was attained again.
 - 88 Michael P. Winship, *Godly Republicanism: Puritans, Pilgrims, and a City on a Hill* (Cambridge, Mass., and London, 2012), 5, 83, 144, 181. Winship’s valuable book achieves much, including challenging the Pocock view that Puritanism and republicanism were incompatible. This author takes a different view of Cotton’s contribution to a stable and functional relationship among church, electorate, and rulers (Winship, 238). For Puritanism and democracy, see also Maloy, *Colonial American*, 99; Bremer, *One Small Candle*, 33–34, 51–54; and Hall, *Puritans: Transatlantic History*, 225, 354. Although this author disagrees with some of Hall’s conclusions about towns, Hall has made an important contribution in emphasizing the singularity of first-generation New England reformers and the religious foundations of their republican thinking. Perry Miller took the reasonable view that congregationalism had both democratic and undemocratic stirrings in an article in which he advanced the untenable interpretation that Hooker and early Connecticut were no more democratic than Cotton and Massachusetts. “Thomas Hooker and the Democracy of Connecticut,” 16–47. Paying scant attention to the non-religious sources of governance, Miller said that Connecticut with less internal dissension than Massachusetts could live with “milder safeguards” than the latter, but that both colonies’ governing systems came from the same “body of Congregational thought.” For an enlightening alternative view, see Tipson, *Hartford Puritanism*.
 - 89 *Winthrop’s Journal*, 2: 355; for other divine omens, see 1: 84, 268; 2: 346, 347. On the importance of omens, see Hall, *Puritans: Transatlantic History*, 117–119, 145–146.
 - 90 *Winthrop’s Journal*, 1: 178.
 - 91 *Winthrop’s Journal*, 2: 237–238. This language is similar to the wording of Thomas Hobbes in *Leviathan* (1651), which Winthrop’s speech (1645) predated by several years.
 - 92 *Winthrop’s Journal*, 2: 238–240. Liking this theme, he had earlier written in his *Journal*: “when the people have chosen men to be their rulers, and to make laws,” for them later “to combine together...in a public petition to have any order repealed...savors of resisting an ordinance of God,” for people “having deputed others, have no power to make or alter laws.....[It is] plan reproof of those whom God hath set over them...against the tenor of the fifth commandment.” Then for good measure he cited once again an elder’s saying a Governor should be for life. *Winthrop’s Journal*, 1: 303.

- 93 *Winthrop's Journal*, 2: 243. Winthrop was not alone in this thought. Similar thoughts occurred to sixteenth-century humanist writing in the southern Netherlands, which held that elected magistrates, like the monarch, received their power from God. Karin Tilmans, "Republican Citizenship and Civic Humanism in the Burgundian-Habsburg Netherlands (1477-1566)," *Republicanism*, 1: 116.
- 94 Hall, *Puritans: Transatlantic History*, 207.
- 95 *Winthrop's Journal*, 2: 59-60, 86-88, 117, 241.
- 96 *Winthrop's Journal*, 2: 265. To Winthrop's credit, he did not hesitate to record the intelligent ripostes of his adversaries.
- 97 J. E. Neale, *The Elizabethan House of Commons* (London, 1949), 145-146.
- 98 Bremer, *Winthrop*, 117. The number of servants one had was important as a sign of social status in an era when a member of the gentry had a drive to dominate socially and politically. Kupperman, *Providence Island*, 58-60.
- 99 *Winthrop's Journal*, 1: 161-162.
- 100 Here the court record was referring to Winthrop's friends, Warwick, Saltonstall, and other nobles. Tarbox, "River Towns," 37-38. It is not for sure these were Winthrop's words, but given the topic (his son's appointment) and his association with Warwick, it is likely they were.
- 101 John Winthrop to Sir Robert Rich, September 1644, MHS, Winthrop Family Papers, 4: 492. Winthrop's view of ranks in social life was typical not only for English gentry of his era but also for aspiring classes on the Continent. See, for instance, Nuremburg in the sixteenth century as depicted by Robert von Friedeburg, "Civic Humanism and Republican Citizenship in Early Modern Germany," *Republicanism*, 1: 127-146.
- 102 Bremer, *Winthrop*, 245-246.
- 103 *Winthrop's Journal*, 1: 82. By contrast, investors in Providence Island congratulated the Governor for going without an honor guard. Kupperman, *Providence Island*, 62.
- 104 Matthew Cradock to John Winthrop, September 13, 1636, MHS, Winthrop Family Papers, 3: 307-309. He withdrew the request in another letter, MC to JW, February 21, 1637/37, MHS, Winthrop Family Papers, 3: 348-349. Winthrop assisted other London-based Puritans in their land projects; see endnotes 78 and 79.
- 105 Winthrop's Will, October 25, 1639, MHS, Winthrop Family Papers, 4: 146. (The difficult-to-read original is available on microfilm, P350, Reel #3, MHS.) The one piece not granted by the General Court was Prudence Island in Narragansett Bay, some five square miles in the center of the bay. For twenty fathoms of wampum and two coats, Narragansett sachems Miantonomo and Canonicus sold this valuable island to Winthrop and Roger Williams November 1, 1637. Winthrop expressed interest in grazing livestock on his half. This is an example of a business opportunity which Winthrop was able to exploit by virtue of being Governor. In 1637, Winthrop procured neutrality of the Narragansetts as a precondition of launching the Bay Colony's exterminating war against the Pequots. The treaty has been lost; we do not know what he offered the Narragansetts, but it appears one of valuable considerations Massachusetts received was the island sold to Williams (who intermediated with the Narragansetts) and Winthrop. The Pequot war was triggered by a *casus belli* manufactured by Winthrop concerning the long-dead John Stone (whom the Bay Colony had banished). The war's real purpose was to assert the Bay Colony's jurisdiction over lands around the Connecticut River. Jurisdiction mattered because of the valuable fur trade (which Plymouth, Dutch, and Bay Colony individuals competed to monopolize); because of Winthrop's support of his son's and grandees' settlement of the Warwick Patent (around Saybrook); and because of the desire to bring Hooker's settlement under Bay Colony control. For Prudence Island, see RW to JW, October

26, 1637; same November 10, 1637; same November 20, 1637, MHS, Winthrop Family Papers, 3: 503, 503n, 508-509, 511; *Letters of Roger Williams, 1632-1682*, 70, 70 n2, 78, 78 n3; Jennings, *Invasion of America*, 186-217. For rest, see Henry A. Hazen, *History of Billerica, Massachusetts* (Boston, 1883), 3-5; Jacob Bailey Moore, *Lives of the Governors of New Plymouth and Massachusetts Bay* (New York, 1848), 264-265; Black, *Younger John Winthrop*, 17; Bremer, *Winthrop*, 134ff. From 1630 to 1675, Massachusetts alone granted about 130,000 acres of land to individuals, half of them public officials – and this was just General Court grants, not land claims; the figure also excludes township grants in which entrepreneurs owned multiple stakes. Town grants rewarded political insiders. It was not uncommon for petitioners asking for a town grant from the General Court being the same individuals in the court deciding on the petition and awarding the grant. Martin, *Profits in the Wilderness*, 25. Some well-connected individuals owned shares in ten to twenty towns. By contrast, land grants to Virginia and Providence Island insiders were on a smaller scale than the grants to Bay Colony politicians. Kupperman, *Providence Island*, 45, 62; Morgan, *American Slavery*, 97. It would be difficult to name a prominent seventeenth-century New England political figure not invested in land schemes. When Joseph Dudley (son of the magistrate-for-life Thomas) ran the eponymous Dudley Council (replacing the charter government in 1686, whose charter he helped get revoked), that Council confirmed the largest, and most bogus, land claims across the region. Sitting on that council were the beneficiaries, his friends. As a royal official remarked, whenever that council adjudicated a land dispute, the judges were also the litigants. The Dudley council's land grants and confirmations were the culmination of a long unfolding business strategy by professional politicians who kept filling and trading offices for decades and seamlessly mixed their private business and public business with Medicean skill. The avarice was so out of control that when London sent a Governor from London (the imperious, tone-deaf, truculent Sir Edmund Andros), he vacated most of the larger claims, reporting back to Whitehall that they were a "great hindrance to settlement." Andros was despised in New England for his military bearing, his allowance of Anglicanism, his challenge to land grants and to the corporate character of towns; but he was especially loathed by the grandees whose self-dealing in lands he reversed. When the news arrived in 1689 that James II had fled the throne, Boston wasted no time to pack Andros up in a ship and dispatch him back to England. The leaders in that audacious rebellion numbered the self-dealing land engrossers. Martin, *Profits in the Wilderness*, 260ff. The Andros attack on land speculation ventures is generally overlooked; usually his overthrow is interpreted as an egalitarian, communitarian society's coming together to rid New England of the kleptocracy of Whitehall officials, rather than a local elite (among others) ridding themselves of Whitehall officials who, among other misdeeds, had blocked the elite's engrossing activities. See for example Peterson, *City-State of Boston*, 166-170; Kloppenberg, *Toward Democracy*, 175-176.

106 *Winthrop's Journal*, 2: 170.

107 *Winthrop's Journal*, 2: 190.

108 Reply of James I December 3, 1621, to the Commons' interference in foreign affairs, forbidding them to "meddle with anything concerning our government or deep matters of state." J.P. Kenyon, *The Stuart Constitution, 1603-1688: Documents and Commentary* (Cambridge, England, 1969), 29. What makes Winthrop's "affairs of state" invocation all the more striking is that during this same era both Puritans and republicans – Milton, Nedham, and Sidney – were making arguments precisely against "reason of state" doctrines. Jonathan Scott, "Classical Republicanism in Seventeenth-century England and the Netherlands," *Republicanism*, 1: 70.

- 109 Miller, "Thomas Hooker," 42.
- 110 *Winthrop's Journal*, 1: 151; 2: 241.
- 111 *Winthrop's Journal*, 2: 36.
- 112 Bremer, *Winthrop*, 365–371.
- 113 Members of a dominant political class do not need to agree with each other on policy to form a privileged class. But they do agree on their indispensability in office. Winthrop and Dudley opposed one another throughout their decades of co-governance, but that did not stop them sitting side by side in the council for life created for grandees, nor prevent them calling themselves "brothers" when their children married, nor prevent their receiving adjacent land grants encompassing much of the towns of Billerica and Bedford.
- 114 Robert C. Winthrop, *The Life and Letters of John Winthrop, 1630-1649* (Boston, 1867), 393.
- 115 Osgood also said that Massachusetts was the trend setter for all New England (Osgood, *American Colonies Seventeenth Century*, 2: 437.) What Osgood neglected to stress was that the adaptation of corporate colonies to the Massachusetts model was a second stage, preceded by a first stage of independent and republican experimentation by the smaller corporate ventures before they succumbed to the Massachusetts hegemony. The outlier in Massachusetts emulation was Rhode Island, whose electorate down through the Revolution continued to be jealous of its rights against authority.
- 116 Andrews, *Colonial Self Government* 167, 179, 183, 184, 193, 196–198; Pole, *Political Representation*, 77–80, 90.
- 117 Andrews, *Colonial Self Government*, 101–102. The proprietors granted settlers the right to elect representatives from "each division, tribe or parish" to join the Governor and his appointed council to make laws. *The Concession and Agreement of the Lords Proprietors of the Province of New Caesarea, or New Jersey, To and with All and Every the Adventurers and all Such Settle or Plant there in 1664*, ed. Thorpe, *Federal and State Constitutions*, 5: 4–12.
- 118 *The Fundamental Constitutions for the Province of East New Jersey in America, Anno Domini 1683*, ed. Thorpe, *Federal and State Constitutions*, 5: 36–37. See also Russell Smith, *Harrington and His Oceana*, 163–164.
- 119 This document is seldom remembered, just as *Oceana* is largely unread in its entirety. Andrews said no more than that it was "lacking in directness and simplicity" and that "fortunately" it was never implemented. *Colonial Self Government*, 125–126.
- 120 We do not know if the Carolina document was written by Locke or Shaftesbury or someone else, but that Locke was involved is certain. Among other things he was named a hereditary Carolina landgrave, entitling him to an estate of 48,000 acres. Russell Smith, *Harrington and His Oceana*, 159–161; Andrews, *Colonial Self Government*, 142.
- 121 Bartholomew Rivers Carroll ed., *Historical Collections of South Carolina [etc.]*, 2 vols (New York, 1836, reprinted Ams Press, New York, 1973), 2: 362–389; Walter Edgar, *South Carolina: A History* (Columbia, S.C., 1998), 39, 41–46, 82–106; Andrews, *Colonial Self Government*, 133–140, 145ff; Osgood, *American Colonies Seventeenth Century*, 2: 208–229; Morgan, *Inventing*, 129–130.
- 122 The apt phrase is Pole's, *Political Representation*, 17. He was specifically referring to the will of people as expressed by their legislature.
- 123 Thomas Paine, *Common Sense* (1776), sec. 1.
- 124 Edgar, *South Carolina*, 116, 120, 121, 123; Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776* (Chapel Hill, 1963), 32ff. Greene said that from the 1690s on South Carolina began to develop "a strong tradition of representative government." Given how unrepresentative it was, by his own valuable data, he must have been referring to the Commons House's drive for power, not to its representativeness.

- 125 Edgar, *South Carolina*, 127, 129, 205, 213, 223, 262–263. The apportionment fight rumbled on into the nineteenth century. The 1739 attempt by the crown to curtail the elite's legislative predominance was repeated in 1751 with the same result. An identical dynamic occurred in North Carolina, where the Albemarle precincts dominated the lower house, three royal Governors attempted to expand representation to newer settlement areas, and all were stymied. Greene, *Quest for Power*, 174–183.
- 126 Scott, *Joint Stock Cos.*, 2: 246–249. Probably the first of the plantation efforts organized as a joint stock company was the failed Raleigh colony in Virginia in 1584. Scott, 2: 244.
- 127 Edward P. Cheyney, "Some English Conditions Surrounding the Settlement of Virginia," *AHR*, vol. 12, no. 3 (April 1907), 514; *Virginia Records, Court Book*, 1: 22, 71, 75. This controversy may have been among the lessons Winthrop absorbed when six years later he insisted the Massachusetts government be moved to New England.
- 128 *Virginia Records, Court Book*, 1: 211–212; Wesley Frank Craven, *The Virginia Company of London, 1606-1624* (Williamsburg, Va., 1957 (ebook #28555, release date April 11, 2009, Gutenberg Project), 47–48; Pole, *Political Representation*, 127.
- 129 *Virginia Records, Court Book*, 1: 211–212.
- 130 Pole, *Political Representation*, 127, 137ff, 147, 154–56.
- 131 Morgan, *American Slavery*, 144–145. Although the preceding section has focused on malapportionment in Southern states, a similar malapportionment prevailed in mid-Atlantic colonies as well, fueling a similar tension between backcountry and eastern capitals in Pennsylvania, Delaware, and elsewhere. In 1751, the Delaware Assembly had 36 members, of whom 26 came from the home counties, and ten from the more populous back counties of mainly German and Irish immigrants. Charles Janeway Stillé, *The Life and Times of John Dickinson, 1732-1808* (Philadelphia, 1891), 48–49, 126.
- 132 Morgan, *American Slavery*, 209–210, 263.
- 133 As Morgan put it, the focus was on the ways in which the "few were fleecing the many." Morgan, *American Slavery*, 275–277.
- 134 Morgan, *American Slavery*, 281–282, 290, 347–348, 369–372, 375.
- 135 It would also have resonated with Virginia's elite that although commonwealthmen spent much time extolling Parliament, they spent not so much effort extolling the electorate. On the contrary, a flavor of what commonwealthmen thought of the electorate can be gathered from the Septennial Act of 1715, when Whigs stretched out the interval between elections from every three years to every seven years, so little did Whigs trust the fickle electorate and so much had they come to regard elections as tricky. Pole, *Political Representation*, 408–409. See also Charles Seymour and Donald Paige Frary, *How the World Votes: The Story of Democratic Development in Elections*, 2 vols. (Springfield, MA, 1918), 1: 229–230, for eighteenth-century struggles over apportionment in several colonies.
- 136 See "East Indies: December 1600," in *Calendar of State Papers Colonial, East Indies, China and Japan*, vol. 2, 1513-1616, ed. W. Noel Sainsbury (London, 1864), 113–118 (this is the charter to Thomas Smythe as first Governor of the East India Co, and names the twenty four "committees," men helping him). See also Ethel Bruce Sainsbury ed., *A Calendar of the Court Minutes, etc. of the East India Company, 1635-1639* (Oxford, 1907), 72.
- 137 *Mass Records*, 1:58–59; Atwater, *History of New Haven*, 98. The Virginia Co. after 1612 was governed by quarterly great or quarter courts of all adventurers, but created a group called the "committees" of 12 (later 16) members chosen to deal with such practical matters as procurement and outfitting ships. *Virginia Records, Court Book*, 1: 73, 213, 295.

- 138 Tarbox, "River Towns," 41 n2; *The Charter, Compact and Laws of the Colony of New Plymouth*, ed., William Brigham (Boston, 1836), 35; *Plymouth Records, Laws, 1623-1682*, ed. David Pulsifer, 36 and *passim*; Arnold, *History of Rhode Island*, 1: 109, 124-125, 202-203, 219, 230-232, 274. In the 1647 Rhode Island case above, although not certain, it appears the word "committee" in this instance referred to a single person, one from each of the six towns of the new colony. In the Plymouth case, in 1636 four committees were chosen, two from each town, to confer with the Governor and Assistants about revising the commonwealth's laws (any such revision to be done at General Court of the freemen). In a matter of discussion between Plymouth and Massachusetts, William Bradford spoke in 1635 of "Comities" being sent as agents or ambassadors to treat for the two colonies. *Bradford's History "Of Plimoth Plantation"* (Boston, 1898), 400.
- 139 Arnold, *History of Rhode Island*, 1: 203. This Rhode Island method prefigured the Leveller who said to Parliament a decade later, "we are your principals, and you our agents." Quoted in Maloy, *Colonial American*, 41-42.
- 140 *Plymouth Records, Laws 1623-1682*, ed. Pulsifer, 36. The start of instructions is open to debate. This author has found them in use in the 1630s, as in the Providence example. By contrast, the earliest record of English MPs' being instructed by constituents was 1681, with the exception of the Long Parliament. (For 1681, Sheppard, *London*, 168; for Long Parliament and other discussion of instructions, Morgan, *Inventing*, 211-213, 223.) The Massachusetts 1641 Body of Liberties mentioned them. Maloy, *Colonial American*, 134-135, 168-169. Instructions were used by Boston for its deputies to the Massachusetts assembly eighteen times before 1689. Morgan, *Inventing*, 212. Alison Olson focuses on instructions in the next century in both Massachusetts and Pennsylvania. Alison G. Olson, "Eighteenth-Century Colonial Legislatures and Their Constituents," *Journal of American History*, vol. 79, no. 2 (September 1992), 556.
- 141 Ascheri and Ricciardelli, *City-States*, 82.
- 142 Grzékowiak-Krwawicz notes that instructions were used to bind seventeenth-century nuncios in the Polish parliament because republican ideology rejected the delegation of legislative power. Anna Grzékowiak-Krwawicz, "Anti-Monarchism in Polish Republicanism in the Seventeenth and Eighteenth Centuries," *Republicanism*, 1: 52. In the Netherlands, delegates participating in the States of Holland in the seventeenth century similarly could act only in conformity with their instruction and commission, received from their principals, the states of nobles and towns. Van Gelderen, "Dutch and German Political Thought," *Republicanism*, 1: 200-201. William Penn thought people should instruct their delegates in Pennsylvania. Pole, *Political Representation*, 77-80. This fact is interesting because Penn also modeled his proprietary government after Harrington, but agency and instructions would have been anathema to Harrington. 25 years after *Oceana*, thoughts about representation had evolved to move past the Harringtonian idea of agency-less representatives, which although unworkable was proposed by Harrington as conforming to republican thoughts about neutral officeholders. Possibly the early American colonial experience first with "committees" (from corporate origins) and then instructions played a part in the evolution from Harrington to actual representation.
- 143 In 1642 the General Court provided that every town should choose one or two freemen to meet and agree upon "fit men...to bee put to nomination for magistrats at the next" court of election, and only those names nominated and certified could be voted upon. This change likely was a victory for deputies, but was not apparently seen as a victory for their constituents. At least, that is what one can deduce from the next year's events. In 1643 the court, referring to an earlier order of 1640 about deputies' carrying freemen's nominees' votes to be

counted, issued this clarification: the “intent of the said clause,” the court said, referring to the original 1640 order, “is not that the deputies should have the sole liberty of nomination, but that all the freemen should have equall liberty wth them therein.” In the same year, in 1643, the General Court ordered a change to balloting for Assistants. Instead of using paper ballots the new rule required using “Indian beans, the white beans to manifest election, the black for blanks.” There appears to have emerged the suspicion that deputies, perhaps together with Assistants, were manipulating both nominating and voting. The next year, still anxious about protecting freemen’s “full liberty in voting” in the matter of magistrates’ nominations, the General Court ordered that on the day of voting, every freeman should “put in his vote for whom hee thinketh fit” and all such paperwork should be sealed and delivered to shire towns on the same day, and thence to Boston to be opened by magistrates (explicitly without having the seals broken until delivery). The order’s nominating language continued past this point to spell out other procedural detail, much in the Renaissance tradition. In 1647 the matter was still unresolved. Winthrop noted that year that freemen objected to deputies’ delivering papers to the court with votes for Governor. Towns petitioned for repeal of this procedure, saying when they agreed to appoint deputies “with full power” they had reserved “to themselves the matter of election.” The order was duly repealed. Freemen seemed to have had little confidence in their own deputies to carry out voters’ preferences. Beans were also used, as we have seen, in some late medieval and early Renaissance republics, the “favas” Savonarola mentioned. The author is interpreting the word in the text “paps” as referring to paper ballots. *Mass Records*, 2: 21, 37, 42, 87–88; *Winthrop’s Journal*, 2: 327.

Connecticut townsmen, perhaps even more skeptical than their Massachusetts peers, did not allow their votes to be carried to Hartford but, by contrast, counted their ballots in towns. Seymour and Frary, *How the World Votes*, 1: 222. Seymour in his catalog of global voting practices believed that the system of towns’ nominating colony magistrates in the autumn and sending the sealed papers Boston where they lay unopened through the winter, to be opened at election time in the spring, constituted “one of the peculiar contributions of New England to American institutions.” *How World Votes*, 1: 216–217. Seymour’s main purpose was to show the “continuous growth of the people’s control as expressed at the polls” and he began this long work by mentioning the defeat of the “Hohenzollern” as having “assured the victory of democracy.” Although Seymour’s theory that there has been a steady ascent of progress from autocracy to democracy through centuries of political development is common (albeit not often stated so robustly as he does), Seymour was likely wrong in saying the Massachusetts technique was innovative. As we have seen, local nominating and national electing from a pool of nominees was an ancient and late medieval republican practice. In the Massachusetts’ case, it would seem that townsmen wished to prevent a handful of magistrates and deputies from controlling the choice of candidates – and they were defeated in their efforts, frustrated by deputies and Assistants. Other actions followed that would similarly have triggered freemen’s jealousy. In 1641 the General Court proposed, for towns to consider, ending the practice of freemen’s convening annually to vote for magistrates and replacing it with freemen’s choosing one elector for every ten freemen, with the result that the electors should “make election for all the rest.” In 1644, the court made a proposal to choose twenty deputies from the shires and allocate them among the towns, which in effect would have shires, not towns, be represented. *Mass Records*, 1: 333–334; 2: 88–89, 286–287.

Deputies and Assistants wrangled with each other constantly, as we have seen, but less observed, the two sets of leaders began cooperating against townsmen

- from time to time. In 1643 the General Court posed the question whether, to save “mens time” and reduce costs, it would not be better if deputies were chosen for the whole year (instead of sent to General Court meetings as convened), and if magistrates and deputies for each shire should combine and meet before each General Court to prepare the business to be determined. *Mass Records*, 2: 47. This suggestion was a decisive step on the road not only to permanent so-called representation but also to creating or blessing a political class of Assistants and deputies who would take decisions in hand outside the venue of the General Court. In 1649, the General Court, observing that the multiplication of officers may “prove burthensome” to some towns, further recommended that the commonwealth consider a trial whereby the towns would permit the General Court (“whose honour is principally concerned therein”) to choose the General Court Secretary, rather “than the people.” This recommendation might have arisen from lack of interest by the towns or could have been a further aggrandizement of the center. In either case, the phrase “honour” of the court, which only 19 years before had been the freemen’s assembly and now was the preserve of a bicameral, quasi-representative body, stood out. *Mass Records*, 2: 285.
- 144 Gordon Wood suggests this suspiciousness was a new appearance at the time of the Revolution. Wood, *Creation*, 264–266. Analysis here suggests it started early in seventeenth-century settlements.
- 145 Not only were towns taxed, they were also the payors fined by the General Court for not paying tax. *Mass Records*, 1: 136. Like tax levies, the levying of troops was also by towns. *Mass Records*, 1: 192.
- 146 Martin, *Profits in the Wilderness*, 186–216.
- 147 *Mass Records*, 1: 178. Proportions were adjusted periodically; in 1639, for example, a ceiling was made of two deputies per town. *Mass Records*, 1: 254.
- 148 Martin, *Profits in the Wilderness*, 171–179.
- 149 Pole, *Political Representation*, 140–141. Plural voting and nonresident voting were common in Massachusetts towns in the seventeenth century. Martin, *Profits in the Wilderness*, 175–183. In the late Tudor Parliaments, nonresidence of MPs in districts they represented was common. A medieval statute required residence, and when a bill was tabled in Elizabeth’s reign to change this requirement, to bring actual circumstances into compliance with law, the bill was defeated, although nonresidence persisted for a long while. The letter of the law in some of the colonies, therefore, was more favorable to nonresidence of representatives than was English law. In both places, irrespective of law, the practice continued of a patron’s serving as the representative, or attorney, for a town or county (or land corporation), and he was no less effective in that role for being a foreigner to inhabitants. See J. E. Neale, *The Elizabethan House of Commons* (London, 1949), 147–162.
- 150 Martin, *Profits in the Wilderness*, 181–182. The political remoteness of some deputies from residents was replicated by a similar occasional cleavage within town meetings, wherein sometimes voting was conducted on behalf of nonresident proprietors by proxy (proxy voting was finally banned in 1739 in Massachusetts). Sometimes voting in meetings was by shares owned, not by hands raised, as in some commercial joint stock companies of the era. Occasionally in mid seventeenth century a dispute would arise about voting and the General Court would invariably step in to enforce voting on land matters by shares, on behalf of proprietors. Martin, *Profits in the Wilderness*, 182–185. Pole, Hall, Kloppenberg, and others argue that in towns a culture of equity and consensus prevailed.
- 151 Osgood makes this important observation of a connection between deputies brought into being and a solidification of magisterial authority. Osgood, *American Colonies Seventeenth Century*, 1: 182.

- 152 Jack P. Greene, "Legislative Turnover in British America, 1696 to 1775: A Quantitative Analysis," *William and Mary Quarterly*, vol. 38, No. 3 (July 1981), 442–463. Greene's work here is invaluable. However, he attributed the decline in turn-over to "more settled, coherent, and stable political systems with more continuous, experienced, and secure leadership, and, second, greater political socialization among the electorate as represented by apparently declining levels of voter discontent with leaders."
- 153 Pole, *Political Representation*, 515; Morgan, *Inventing*, 137; Robin Reilly, *William Pitt the Younger* (New York, 1979), 74, 83.
- 154 See Alison G. Olden, "Eighteenth-Century Colonial Legislatures and Their Constituents," *Journal of American History*, vol. 79, no. 2 (September 1992), 543–567; Peterson, *City-State of Boston*, 358–359. Olson looked on the bright side of this story, as the legislatures could function "more efficiently" thanks to the "cumulative political experience" and the "steadily declining turnover of members" in the eighteenth century.
- 155 Five to seven may have been normal, but longer contracts occurred. Plymouth colony records mention a servant indentured for ten years. Nathaniel B. Shurtleff, *Records of the Colony of New Plymouth in New England* (Boston, 1855), 1: 23. The same day, January 2, 1633/34, the court felt obliged to order that when servants receive their land allotment (usually 20 to 25 acres), the land should be in Scituate or "or some other convenient place, where it may be usefull." This order would suggest that masters had been in the custom of distributing wasteland at the conclusion of their servants' five- or ten-year contracts. Even when master did not cheat servants at the end of the term, the bargain between servant and master was onerous for the former. The fare in the seventeenth century for crossing the Atlantic was about six pounds. Unskilled wages for farm workers in England were ten to fifteen pounds per year. The young single men and women who entered these contracts borrowed a sum equal to six or seven months of a worker's wage (if indeed they were employed in England, and many were not) in return for assuming the obligation to work (without pay) for many years. (The bargain was worse than that once he/she got to America and found that wage rates were considerably higher than in Britain; and it got worse with time – passage fares dropped to three to four pounds toward the end of the colonial period.) For the first 170 to 200 years, most immigrants to America who were not slaves were exploited serfs. Agents or ship captains would advance the fare then sell the contract – in reality, sell the person – upon arrival in the colonies to farmers and others who were generally short of labor. Neither party was incentivized to treat the other well. Servants did not gain anything by working hard, and masters did not profit by treating them well. Many servants absconded. Violence was the principal means by which masters persuaded servants to perform their duties in seventeenth-century Virginia. Many were the advertisements to track down a runaway servant. David W. Galenson, "The Rise and Fall of Indentured Servitude in the Americas: An Economic Analysis," *Journal of Economic History*, vol. 44, no. 1 (March, 1984), 1–26; Morgan, *American Slavery*, 126; Bernard Bailyn, *Voyagers to the West: A Passage in the Peopling of America on the Eve of the Revolution* (New York, 1986), 166–167; Farley Grubb, "The End of European Immigrant Servitude in the United States: An Economic Analysis of Market Collapse, 1772-1835," *Journal of Economic History*, vol. 54, no. 4 (Dec. 1994), 794. Craven estimated three-fourths of immigrants in Virginia in the seventeenth century were servants. Wesley Frank Craven, *White, Red and Black: The Seventeenth-Century Virginian* (Charlottesville, 1971), 5.
- 156 Rosemarie Zagari, *The Politics of Size: Representation in the United States, 1776-1850* (Ithaca and London, 1987), 33; Edgar, *South Carolina*, 229–230, 254–258; Pole, *Political Representation*, 292, 318; Paul S. Clarkson and R. Samuel Jett,

Luther Martin of Maryland (Baltimore and London, 1970), 68; Jeff Broadwater, *George Mason: Forgotten Founder* (Chapel Hill, N.C., 2006), 13, 97–98; Ulmer, “South Carolina Delegates,” 69–70, 165. One source estimated that in South Carolina apportionment was even more out of balance than above stated, and that one-fifth of the white population made laws binding the other four-fifths. (Edgar, *South Carolina*, 257.) The North Carolina 1776 constitution did not redress the traditional imbalance in the assembly or in the Senate between East and West. Eastern control was maintained by apportioning legislative seats by county and creating new counties and dividing old ones in the East but creating fewer counties per populace in the West. Efforts were made in North Carolina beginning in 1787 to rectify the Eastern domination by large landowners and large slaveholders, but these interests successfully blocked reapportionment until 1835. Even in 1835, the imbalance in the Senate was not rectified. That only occurred in yet another reform effort in 1868. John V. Orth, “North Carolina Constitutional History,” 70 *N.C. L. Rev.* 1759, 1770–71 (1992); Blackwell P. Robinson, *William R. Davie* (Chapel Hill, 1957), 151. Madison as late as 1829–30 was still defending malapportionment in Virginia’s constitutional convention by backing the compromise of counting slaves as three-fifths of whites (he lost and 100% prevailed), continuing the assembly dominance by Tidewater slaveowners. Ralph Ketcham, *James Madison: A Biography* (Charlottesville and London, 1990), 638–639. Ketcham’s view was that Madison’s case was undermined by his needing to abandon his majoritarianism to make it. The exception to the usual state constitutions was what Gouverneur Morris called “the Don Quixote constitution” of Pennsylvania of 1776 (with weak executive, unicameral legislature, and the requirement that representatives reside in the area they represented). Thorpe ed., *Federal and State Constitutions*, vol. 5: 3081–3092; William Howard Adams, *Gouverneur Morris: an Independent Life* (New Haven and London, 2003), 228. Edmund Morgan described the various strategies whereby newly independent states sought to populate the upper houses of their legislatures with a natural aristocracy, which often, as in Maryland’s case, meant the propertied. Morgan, *Inventing*, 249–252. Gordon Wood suggested that actual representation made headway in states in the 1780s and at the federal convention, citing New England towns and their equal representation in the General Court (which he cited as an example of “actual representation”). Wood, *Creation*, 183, 188, 189. Having a corporate unit be the thing represented, irrespective of population, does not fit the standard definition of “actual representation.”

- 157 The Privy Council’s dictum that the “inferior assemblies” of North America “must not be compared in power or privileges to the House of Commons” was deeply offensive. Walter Isaacson, *Benjamin Franklin: An American Life* (New York, 2004), 194. The British assault on local assemblies could do nothing but reinforce the colonists’ attachment to those same assemblies. This dynamic was analogous to the British one in the seventeenth century, when Stuart absolutism began raising the House of Commons to the pinnacle of liberty-protective institutions.
- 158 Thomas Paine, *Common Sense* (Philadelphia, 1776), sec. 1; John Adams, *Thoughts on Government*, April 1776, *Founders Online*, National Archives, <https://founders.archives.gov/documents/Adams/06-04-02-0026-0004> (original source: *The Papers of John Adams*, vol. 4, February–August 1776, ed. Robert J. Taylor (Cambridge, Ma., 1979), 86–93; Farrand, 1: 132–133. Soon after the federal convention, Wilson expounded a different theory of representation; see [Chapter 7](#).
- 159 The gargantuan eighteenth-century land speculation projects, abetted by colonial legislators, have been more extensively narrated than their seventeenth-century antecedents. A brief summary can be found in Ray Allen Billington, *Westward Expansion: A History of the American Frontier* (3rd ed., New York

and London, 1967), 83–87, 93–94, 136; and Frederick Merk, *History of the Westward Movement* (New York, 1978), 67–124. For seventeenth-century New England versions of similar cupidity, see Martin, *Profits in the Wilderness*, and above endnotes 84 and 105. The historian J. E. Neale in his history of the Elizabethan House of Commons stated that the English court was “exquisitely organized for powerful begging.” American colonial legislatures were no less well organized for powerful begging; the thing most begged was land. Neale, *Elizabethan House of Commons*, 145, 147–148.

- 160 Greene, *Quest for Power*, 450–453; Pole, *Political Representation*, 508.
- 161 Greene, *Quest for Power*, vii. Post 1688 America “saw the steady rise of representative democracy” as the colonists “effectively expressed their power through their legislative assemblies,” said Kloppenberg (*Toward Democracy*, 188).
- 162 The amount of acreage (not counting numerous urban plots) in GW’s will executed in 1800. Library of Congress, Digital Collections, George Washington Papers (<https://www.loc.gov/collections/george-washington-papers/articles-and-essays/george-washington-survey-and-mapmaker/washington-as-land-speculator>). A somewhat lower figure, 50,975 acres (excluding town lots), is calculated by adding acreage given in Enclosure: Schedule of Property, 9 July 1799, *Founders Online*, OS: *The Papers of George Washington, Retirement Series*, vol. 4, 20 April 1799–13 December 1799, ed. W.W. Abbot. Charlottesville: University Press of Virginia, 1999, pp. 512–527.

6 The Republican Procedural Tradition and Philadelphia

Since George Bancroft and Jared Sparks in the nineteenth century, historians have been picking apart the deliberations of the federal convention in Philadelphia, and although they have had their disagreements (some major) about the delegates' motives there is a general consensus today about the origins of the big decisions.¹ Differences between big states and small states and between slave and non-slave states were the major drivers. Differing sentiments about westward expansion also were a factor and intersected to some degree with the slave and non-slave state conflict. The purpose here is to examine the extent to which classical republican procedures (and the principles and concerns which gave rise to them) also influenced voting behavior as the delegates pursued their competing interests.

Or to put it differently, what would a Harrington or Guicciardini or a Genoese merchant of the early Renaissance have thought about the choices the convention was facing? We can imagine the answer. They would have disliked the representation element in the plan because it would bring agency and interests into the heart of government, would have deprecated making law or electing officeholders by majorities, and would have preferred typical republican procedural complexity to prevent the aggregation of power in the hands of this or that interest or region and to ward off the threat of disunion. The question here is, did some of the framers have similar attitudes from time to time and, if so, did those attitudes influence their decisions?

Although the federal convention is generally not analyzed from this procedural perspective, it repays the effort to do so. In some cases, the resort to older procedures helped the framers achieve the interest-based goals that were their main motive; and in other cases, irrespective of their own regional interests, delegates expounded old-fashioned procedural principles and moved them to the top of their concerns.

This chapter is confined to the two major structural choices the framers struggled with –legislative apportionment and presidential selection. In debating how to apportion the national legislature, some delegates expressed their concern about the efficacy of proportional representation as a fit and proper means of structuring a fair government. Although some expressed such anxiety at the outset, it was only after weeks of debates, as the regional

divisions sharpened and threats became more stark, that a growing number of delegates expressed concerns about the operations of a national legislature organized solely upon popular representation and acting by majority. The opposing camp made the sensible case that there was no other way to organize a free government than by the will of the majority. What ensued was the long-delayed argument that had to occur after James Harrington bequeathed to the Anglo-American world the image of a representative government that expressed the people's will but nonetheless remained safely insulated from the people putatively represented. He left unanswered the question how this legerdemain would operate, how government could be actually representative of people and neutral at the same time. And that is because it is not self-evident that there is an answer to this riddle.

The delegates' comments by themselves on this vexing matter are worth reviewing. That they do not get more attention than they have done is because they have been overshadowed by the major sectional and economic interests and scholars' assiduous efforts to understand voting outcomes connected to those interests; because the anti-proportionalist rhetorical efforts were at first diffuse and disorganized and not always easy to follow (even for the delegates listening); and possibly because it takes viewing the proceedings through the today-unused prism of old republican procedures to see that some of the delegates were looking, at least sometimes, through that same prism.²

Seen through that prism, the Great Compromise of the summer was the result not only of a compromise between different classes of states but also of the resolve by some delegates to make at least one part of the legislature anti-representational. Theirs was a grappling with Harrington's riddle. Loyalty to region and state was the strongest determinant of votes during the convention. But several important votes on apportionment cannot be explained solely by reference to the major divisions between big and small states and slave and free states, or by a will to compromise, but can be accounted for by reference to republican procedural principles (as expressed by the delegates). That some delegates came to the equal-vote-in-Senate camp belatedly in order to protect what they saw as a threat to their sectional interests, while others came to that view earlier out of esteem for republican procedures, is indifferent. Republican procedural concepts surfaced both as a motive and as a tool at key voting moments in mid-summer.

Before the seventeenth century, republics had by and large kept their toolkit closed to the implements of representation and majorities. The arrival of commonwealthman ideology disarranged procedural concepts, and those calling themselves republicans adopted representation as the new "great principle" of republics, as Madison called it.³ But there had never been a major debate, at least not in a nationwide convention of educated delegates, about how well the two things could fit together, one a series of procedures aimed at walling government off from interests, and the other a method of bringing those interests directly into the heart of government. The first such extensive debate probably occurred in Philadelphia.

Familiarity with the republican canon

Typical well-educated Americans of the late eighteenth century had a familiarity with ancient languages and texts which today is held only by classical scholars. They were familiar with major classical authors, with Machiavelli and Guicciardini, Harrington and the early commonwealthmen, and with the Scottish and Continental Enlightenment writers developing the emergent science of government. A handful of delegates – James Madison, James Wilson, John Dickinson, William Samuel Johnson, Luther Martin, Gouverneur Morris, and probably others as well – more than just familiar with texts, fancied themselves scholars or at least avid students of ancient and modern republics. For these connoisseurs, as well as for the generality of educated men, the *mentalité* of someone interested in politics – the historical reference points, the assumed common knowledge – was a world away from ours. Their intellectual moorings were anchored deep in the past. Both chronologically and culturally, they were closer to the early modern era than we are to their era. The oldest delegate to the federal convention was Benjamin Franklin, whose grandfather was born in 1598, during the closing years of Queen Elizabeth, when Venice was still being extolled as the *Serenissima* of republics and the Casa di San Giorgio was riding high in Genoa. Franklin's father was born one year after Harrington's *Oceana* was published.⁴

John Witherspoon, influential president of the College of New Jersey (now Princeton University), thought it a duty of his students to learn about republics from Cicero, Livy, Machiavelli, and Hume, among others.⁵ One of his students was James Madison, and the student took the duty seriously. As an adult member of the Continental Congress, Madison was appointed to gather a collection of works on republics and confederations. Diligently fulfilling the assignment, Madison imported troves of books and made his report in early 1783.⁶ Several years later, Madison, having read many of the works he collected, wrote a memo about failed federations of past republics – the Amphyctionic, Achaean, Helvetian, Dutch, and more – and discussed his findings on the convention floor in 1787. Others took up the topic, and multiple times the names Athens, Rome, and Venice passed the delegates' lips. The obscure Amphyctionic League was mentioned by Madison, Wilson, and others a surprising twenty times, thanks to Madison's memo, giving that Delphi-centered organization more press than it had enjoyed since the classical era.⁷ John Dickinson referred often to republican history, but in contrast to Madison Dickinson did so approvingly. He was later to say that Americans had a unique chance to resuscitate the best of the classical world, lamenting that "for more than two thousand years, the illuminating genius of that glorious nation [Greece] has been lost to the world," but now "from Greece, through the long lapse of ages...we have received the sacred train of thoughts, that have wrought out such amazing deliverances in the old and the new world."⁸

Certain procedures of old republics surfaced on occasion in floor motions in the State House. James Wilson proposed that the president be elected by

electors chosen by lottery among national legislators. This proposal, seconded by Daniel Carroll and debated on the floor, had merit in the opinion of Gouverneur Morris – “better that chance sd. decide than intrigue.” It involved an urn or basket with 90 balls of which only 15 would be “gilded,” and those legislators drawing the gilded balls would be the electors.⁹ Wilson’s Venetian proposal was never put to a vote, and the presidential selection solution ultimately agreed was different from what he suggested. But the adopted solution bore its own ancient republican stamp and included its own element of chance – in fact, it owed more to old republican procedural principles than did any other mechanism in the Constitution.

Cross-currents in the revolutionary moment

Well informed about the record of ancient and more recent republics, leaders among the framers focused particularly on one set of challenges that republics had always tried to manage with structured solutions: namely, how to control interests and popular passions and prevent their centrifugal force from destroying the community. They were focused on this standard threat because of the unusual chaos Americans were experiencing in the Revolutionary era.

The Revolution generated a feeling of empowerment among citizens – and no wonder, since a people’s army had taken on the British empire and (with the help of others) had won. After waging an eight-year difficult war, filled with hardship and tremendous loss of life, many ordinary Americans thought they had earned the right to be heard; and if their occasionally unheeding government ignored them, they did not hesitate to take action.

Frequently citizen action turned into mob action. Violence at polls on election day in Delaware was common in the early days of Independence. Mob action with a touch of class warfare flared up periodically in next-door Pennsylvania. James Wilson’s house was attacked by an angry group in 1779 as he and thirty-five businessmen barricaded themselves within what soon became known as “Fort Wilson” on Third and Walnut Streets. (The rioters, several of whom were killed, were frustrated over inflation, food shortages, and the Republicans’ effort to rewrite Pennsylvania’s 1776 constitution)¹⁰ The Continental Army mutinied for pay, marched on Philadelphia, and Congress fled across the river to New Jersey. A mob briefly took legislators prisoners in the New Hampshire statehouse around the time of Shays’s rebellion.¹¹

South Carolina had its own special turmoil. The restive South Carolina backcountry, which had been in the hands of a vigilantes’ “reign of terror” in the third quarter of the century, had been reluctant to support the cause of Independence; rustic and mistreated farmers hated the Tidewater aristocracy more than they hated the British. Charleston had class riots in the 1780s. African Americans were another source of constant fear for Southern planters. They periodically staged revolts in the eighteenth century, including one while the federal convention was underway in Philadelphia.¹² Georgia at the

time of the federal convention was living under martial law as a result of conflict between Europeans and Creek Native Americans.¹³

Shays's Rebellion in rural Massachusetts, when hundreds of armed men closed courts and took over towns, alarmed political leaders everywhere, just a few months before delegates convened in Philadelphia.¹⁴ Up and down the seacoast, there was the sense of "anarchy," as writers called it, of a populace not under control.¹⁵ Many political leaders thought that popular empowerment had gone too far. Shays's was a tipping point, but long before then leaders were expressing concerns about their fellow citizens. In 1774 Gouverneur Morris called his fellow Americans "poor reptiles," who were beginning "to think and reason" and would soon learn to bite. The merchant Elbridge Gerry told his friends, delegates to the Continental Congress in 1775, that the people "now feel rather too much their own importance." He thought it necessary to educate and train people to be more subordinate to their natural leaders. Not long before this letter, Gerry and other merchants had paid for a new hospital in his hometown of Marblehead as part of a campaign to vaccinate residents against smallpox. In 1774 a mob, convinced that a recent outbreak of the disease was caused by the vaccine, burned down the new hospital.¹⁶

A particular source of popular grievance was the economic crisis sweeping the states, beginning with the hyper-inflation of the war years. Wars typically spark inflationary pressures by ramping up demand and stretching productive capacities (people, capital, factories, transport) to the utmost. In the American Revolution, this typical upward price pressure was magnified by the way Americans paid for the war: by issuing paper money, which rapidly lost value. During one year, 1779, the price of foodstuffs in Pennsylvania increased eight times.¹⁷ Such a staggering financial blow to families led to price controls, which sometimes led to withholding of goods from the market, and that in turn led to food riots. The postwar years were characterized by a severe depression. Everyone was out of money – planters, farmers, workers, merchants, and states themselves – owing to the disruption caused by a long war, demobilization, the lack of specie, and the loss of traditional trade outlets and credit facilities, which had been linked to the British empire.

Political divisions deepened during the economic downturn of the mid-1780s, often between backcountry farmers and Eastern merchants, as well as between debtors and creditors. Creditors refused to be repaid in paper money, which they regarded as nothing more than a disguised transfer of wealth from themselves to the people who owed them money. As John Witherspoon said, the unusual spectacle occurred of debtors chasing their creditors and paying them without mercy. One of the more influential political events was, in the spring of 1786, the capture of the Rhode Island government by the paper money party. There merchants reacted by raising prices and simply closing up shop – and then were hit with penalties by angry legislators. Rhode Island, which declined sending delegates to Philadelphia for fear of joining any effort that might revoke the state's paper money policy

(which the convention indeed did – Rhode Islanders were not wrong), and which later refused to ratify the Constitution until after it had gone into effect, became for most delegates a warning of what American government was becoming if something did not change.¹⁸

By 1787, when it came to building a new national government, the conflict between the intensely felt democratic fervor of the Revolutionary era on the one hand and a rising alarm about the people as fit political actors on the other became, for the delegates in Philadelphia, the supreme intellectual challenge that had to be overcome. It was a challenge faced continent-wide for the first time. The confederation created in 1777 was one of states and derived no authority from the people. Up until 1787, states were the entities that wrestled with the central, emerging contradiction of the era. Now convening in Philadelphia, the organizers of the convention confronted the challenge for the first time as a national one: how to anchor a government in the authority of the people without the government's being over-run by people, their ill-considered passions, and their unshared interests.

Filtering the people

Madison had thought long and hard about this problem and he had three solutions: two structural and one theoretical. The first was to filter the people's choices through layers of intermediate electoral steps. The second was to endow the central government with maximum authority and additionally with the specific power to veto state laws. The third was his theory of the safety to be found in large republics. The first was mostly uncontroversial. The second was mostly uncontroversial (except with a handful of delegates) until mid-July by which time the apportionment fight had soured the convention on the veto. The third, the theory, was never accepted, even when first pronounced, and it helped spark a debate about the logic and efficacy of representation.

Delegates reached for filtration tools because even if ancient history had not instructed them, their own fellow citizens had convinced them in recent years that ordinary citizens were not fit to be political decision-makers. Such was the view not only of the wealthier and more famously anti-popular delegates (such as Gouverneur Morris, Alexander Hamilton, and John Rutledge); it was also shared by James Madison, George Mason, Elbridge Gerry, and many others.¹⁹ Most delegates at the convention believed that the people's will needed to be filtered through layers of intermediate steps if better leaders were to be chosen.

At the outset of the federal convention, when debate began on the Virginia Plan, Madison introduced the topic by pronouncing himself "an advocate for the policy of refining the popular appointments by successive filtrations."²⁰ Thereafter the theme of successive "filtrations" recurred all summer in the debates about elections. Gerry favored electoral filtration to prevent the ill effects of widespread suffrage in America.²¹ Several delegates floated the idea that electors were a safer bet for electing the chief executive than were the

people. George Mason, who remarked with disapproval that he thought the New Englanders present were almost antirepublican, had his own concerns about the people, saying at one point that the people were not qualified to choose their president.²² “The people,” said Roger Sherman, “...(immediately) should have as little to do as may be about the Government. They want information and are constantly liable to be misled.”²³

The most important filter was the institution of representation itself. Even if all Athenians had been like Socrates, the assembly would still have been a mob, said Madison after the convention.²⁴ Primary assemblies having their problems, he said, representation was the cure.²⁵ But although representation was a necessary filter, it was not water-tight insulation against the people’s will. After all, as George Washington said, the mob had peaceably taken control of Rhode Island’s elected government.²⁶ Delegates were aware of the permeability of this filter. Even some representatives should, in their view, be selected indirectly.

There were moments during the summer when various delegates – at different moments, Madison, Gouverneur Morris, George Mason, and James Wilson – stated that the “people” should elect the president or the lower house. Several of those most determined to avoid the weakness of the Confederation saw direct election as a means to forge the tie between citizens and center and thereby add strength to the new national government.²⁷ But it was a long summer and at other times, these same delegates said contrary things, and voted for multistage electoral procedures.²⁸ What matters more than shifting statements is the conclusion the delegates reached: that the Senate was to be chosen by state legislatures, president by the House of Representatives from nominees proposed by the Electoral College, and the House by the people. What mattered was the resort to multistage elections as an added precaution to the main filter of representation.

Even the lower house, the popular assembly in the new structure, was not certain to be free of filtered selection. Elbridge Gerry, John Rutledge, and Charles Pinckney early on tried to change the Virginia Plan so that electors of some sort, rather than the people, should elect even that popular branch.²⁹ As things turned out, Article 1 of the Constitution provided that the manner of holding elections for the House was to be determined by state legislatures. This proviso was not casually inserted. Those delegates who believed in their mastery of their own statehouses evidently wished to influence the election of congressmen. In many states in the early decades of the republic, congressmen were elected on statewide tickets of nominees placed before the voters. This method decoupled House members from congressional districts and local constituents. Voters did not receive the right as a matter of national law to send representatives to Congress from their own districts until 1842.³⁰

Multistage elections were just one way to filter the electorate in the search for safer officeholders. Another technique was to use large, not small, congressional districts, on the grounds that sizable districts would send wiser and better men to the capital than smaller, more parochially-minded districts. In *Federalist* #56, Madison extrapolated from the argument of *Federalist* #10

about the safety to be found in large republics to argue for similar safety to be found in large congressional districts. Defending the figure of 30,000 inhabitants per representative, he said a “moderate number of representatives” would be sufficient in Congress. It was fine, Madison said, for a representative to be ignorant of constituents’ “interests and circumstances” when and if such matters did not relate to federal legislation. To regulate commerce, taxation, and militia – the high tasks of national leaders – these required no local knowledge. Rather what was really needed to handle the complex problems of federal lawmaking was “a very few intelligent men.” (Madison cited Great Britain and its citizen-representative ratio similar to the American ratio.) James Wilson was to say much the same during Pennsylvania’s ratification debate.³¹ Alexander Hamilton praised the efficacy of large electoral districts, composed of men unknown to each other, and looked forward to the day when population growth would make the districts even larger, and “the best men and of probity” would be elected.³² This topic would be hotly debated in ratification, and even at the end of the convention, the last item agreed was a reduction of congressional districts from 40,000 to 30,000 per representative. But even 30,000 was a big congressional district at a time when Georgia had 27,000 white inhabitants.³³

Not only were large districts desirable, so also were long congressional terms. In the opening days of the convention, Madison advocated three-year terms to reduce instability in the lower house and seven-year terms in the Senate. He later said nine years would not be too long for the Senate which needed to be “sufficiently respectable for its wisdom & virtue” to combat the “leveling spirit” which was sure to be present in the lower house. Others proposed three or four years for the Senate and one or two for the House. But Madison feared that with such a short Senate term the “popular branch would still be too great an overmatch for it.” Even though the national legislature was safer than local ones, within the national legislature the branch further from the people was safer than the one closer to them. Madison’s plan for stability depended on sending to the capital enlightened individuals who, once in place, ought not be rotated out.³⁴

Heightened concerns about the safety of elections also played a role in the push for filtration. Electoral results had, already in the space of ten short years of independence, caused uneasiness among many prominent citizens. In Massachusetts Mercy Otis Warren and Elbridge Gerry shared their dismay at the election of John Hancock, whom they considered a dim-witted demagogue. Thomas Jefferson and his protégé Madison shared an intense dislike of the gifted Patrick Henry whose electoral successes did not deepen their respect for voters or legislators. Alexander Hamilton could only interpret the unparalleled officeholding of his New York nemesis George Clinton as an indictment of voters. If republics in the past knew elections to be dangerous – because of influence, interest, nobles, and all the usual perils undermining the public good – elections were especially dangerous in the Revolutionary era of insurrections and mob violence.³⁵

In the Revolutionary era, when the specter loomed of a virtually limitless electorate, when civil unrest was common, and when elections were regarded with uneasiness, filtration had the narrow and specific mission to ring-fence voters and entrust offices to cooler, wiser heads. In the delegates' lengthy August 7 debate about suffrage, Gouverneur Morris stated: "Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them....Children do not vote. Why? Because they want prudence, because they have no will of their own. The ignorant & the dependent can be as little trusted with the public interest." Madison, backing up Morris, worried about the coming day when "a great majority of the people will not only be without landed, but any other sort of, property. These will either combine under the influence of their common situation; in which case, the rights of property & the public liberty, (will not be secure in their hands:) or which is more probable, they will become the tools of opulence & ambition...."³⁶ Keeping reins of power in the hands of professionals had been the colonial practice; it was even more exigent to follow the tradition in 1787 when the framers could foresee, as Madison warned, more people would be knocking on the suffrage door. The framers knew the door was likely to open ever more, and that eventually those crowding to get in would look like the ragged crowd that mobbed Wilson's house, rioted in Charleston, kidnapped New Hampshire legislators, and closed down Worcester and Springfield in Shays's rebellion. Filtering people out of the job of directly choosing their rulers was the response.

Multistep processes had always been a feature of classical republican architecture: from complex nominating in Venice, to scrutiny and drawing lots in Florence, to the complexities of *klerosis ek prokrito*n in Athens. But excluding citizens was not the major procedural goal in old republics. In a one-tier system of government, lacking the institution of representation, where citizens were the rulers, multistage electoral processes were not about removing citizens from the point of decision but, instead, about preventing agency, collusion, power groups, conflict, and inviting ever wider participation without sacrificing disinterested government. By contrast, a tiered, federal system was a *mille feuille* of layers, and filtration's major effect was to remove essential choices farther from the people with each new layer ascended. The difference was subtle and possibly not observed when the Philadelphia framers acclaimed the virtues of filtration, but it was crucial. The old version aimed principally at disinterested government. The Philadelphia version was aimed mostly at exclusion, and rather than preventing a professional political class it was, in intent and in effect, lending support to that class.³⁷

To some extent the framer's objectives with filtration did include a more standardly republican goal: that of not letting government become the agent or captive of this or that parochial or private interest. The records of Philadelphia are filled with mentions of "cabal and intrigue" and the danger of "combinations." These phrases were the delegates' way of expressing concerns about deal-making among interest groups and its baneful effect on the

common good. It was in part with this risk in mind that they argued for large districts, which ought to produce leaders with a national vision rather than the tunnel vision of a small district; for Senators with a long term in office; for indirect elections; and for representation in a large republic, which might make combinations unlikely (on which more below).³⁸ In other words, the exclusion of people from the electoral process was not only to exclude people because they were ignorant and purchasable (as Madison and Morris said) but also because they could hardly avoid caring about their own interests more than the national interest. To the extent that the framers were not seeking just to implant the professional political class (which they partly were), and not reacting just to social unrest (which they surely were), but in addition were protecting government from the dangerous clash of interests and regions, the delegates' affection for filtration was in the best republican tradition.

Harrington had similar expectations from his electoral processes; and he similarly employed a federal or layered system to achieve it. But Harrington, closer to the Renaissance models, went a step further and used lottery in every electoral sequence. There was to be no connection between elector and office winner, let alone between citizen and the latter. "Partiality" was cheating, he said. Not prepared to go that far, the framers sought safety in multiple stages, in the size of districts and size of the country and, most of all, in the institution of representation itself, to filter out provincial bias and keep the national eye on the national interest.

Before long, two problems would emerge from this decision (about which there was little initial disagreement). First, the strategy of expanding, not reducing, the space between voters and their government directly contradicted the triumphant doctrine of actual representation, the doctrine that said the only good system was one in which representatives were close to the people. This stark mismatch of Philadelphia's procedural results with the country's ascendant political doctrine would be made jarringly apparent during the debates over ratification, and it would come close to derailing the constitutional project post-Convention. But during the convention, it did not create a stir.

What did create a stir in the State House was the second question. Were the representation remedies equal to the task? Big districts, long terms, multistages – would these solvents be enough to wash out interests and conflict? Or might representativeness itself be part of the problem? This topic would soon take over the discussion almost as soon as everyone agreed that filtration was a good idea.

The central government as hammer

After filtration, there was a second weapon to deploy against the threat of divisive interests. Madison conceived the danger of majorities to be a state and local one, and his remedy was a powerful national government to umpire narrow, local disputes arising from the hinterland. The Madisonian solution

was to aggregate power in the center, where, because of filtration, it would be safe in the hands of the wise.

For ten years, the country had witnessed states acting in selfish and puerile ways to tax each other, refuse national levies, and even refuse to ratify the national Articles of Confederation, through four long years of war, because of a squalid fight between Maryland and Virginia over land speculation. Meanwhile, the Continental Army starved. The delegates' desire to decrease drastically the scope of state discretion was understandable and initially largely uncontroversial.

When Governor Edmund Randolph opened "the main business" of the federal convention on May 29, 1787, he listed as reasons for urgent action "the havoc of paper money," the uprising in Massachusetts, and the "prospect of anarchy from the inherent laxity of the government." He stressed the lack of any credible power to check "rebellion" and "seditions" within states. A new national power was needed to provide what states had not done themselves, "sufficient checks against the democracy."³⁹ His comments were not disputed. No one had been more frustrated by the obstructionism of the states' governments than Madison. On June 6 he rose to echo Randolph's theme. He said that only a larger national government could dissolve "the inconveniences of democracy," in particular, the inconvenience that a majority will seek to impose its will on minorities. Small states were always given to more "faction and oppression" than large ones.⁴⁰ Wherefore, said Madison later, the national legislature needed an outright veto power over state law-making to "prevent instability and injustice in the legislation of the States."⁴¹

Later identified as among the so-called "small states" camp, John Dickinson of Delaware agreed with Madison's analysis. The danger posed by states to the national government was greater, said Dickinson, than the danger the latter posed to the former. He voted for the national veto.⁴² On the same day, James Wilson Pennsylvania spoke of a government powerful enough to exercise "an effectual control" over the states.⁴³ Benjamin Franklin later said, looking back on their proceedings, that America was less in danger "from an excess of power in the Governors, than from the Defeat of due Obedience" of the people, "even to their own good Laws."⁴⁴

For Madison the ideal model was, ironically, the British Crown. In July, when the national veto idea met headwinds, Madison cited the merits of "the British System. Nothing could maintain the harmony & subordination of the various parts of the empire, but the prerogative by which the Crown, stifles in the birth every Act of every part tending to discord or encroachment."⁴⁵ The veto, he said, was "essential to the efficacy & security of the Genl. Govt" because of "the propensity of the States to pursue their particular interests in opposition to the general interest." Others invoked the British example. On June 16, James Wilson said the lesson of Great Britain was "that the smallest bodies...are notoriously the most corrupt."⁴⁶ Madison was still using the analogy a half-century later, when he explained that the national government created in Philadelphia was intended to act like the British government,

reining in dangerous, local factions. Experience in both countries, he wrote, America and Great Britain, “had shown the practicability of popular Govts. in a larger sphere,” which acted as “cure” for the “evils” of smaller spheres.⁴⁷

At least one delegate, Luther Martin, recoiled at the invoking of the “British System” in a land that had just overthrown that same imperial power.⁴⁸ But the positive example of British central control, although seemingly an odd analogy for Revolutionaries to cite, was anything but anomalous to this generation of Americans. For decades, the somewhat disinterested higher power of Whitehall, as we have seen, tried to root out the favoritism, corruption, and self-dealing of colonial elites (see [Chapter 5](#)). Adam Smith, in 1776, repeated what must have seemed a truism of the time, so confidently did he state that, for the colonies, union with Great Britain would “deliver them from those rancorous and virulent factions which are inseparable from small democracies....” By separating from the mother country, “factions would be ten times more virulent than ever,” said Smith. “Before the commencement of the present disturbances, the coercive power of the mother-country had always been able to restrain those factions from breaking out into anything worse than gross brutality and insult. If that coercive power were entirely taken away, they would probably soon break out into open violence and bloodshed.”⁴⁹ At the time Smith was writing, some colonists, even those who were not Loyalists, shared his concerns about who would keep the peace in America following separation from Britain.⁵⁰

Smith was accurate about the past and prescient as to the future; the country *did* break out in discord and violence unmoored from the British empire. The Philadelphia delegates sensed, as Smith had forecasted, that a controlling power was missing. And the national veto was, although the most important tool, not the only one they proposed. They also wanted the national government to have enforcement power over states. Dickinson on the convention floor said that the national government should be able to introduce military force into the states to suppress domestic violence, even if the state legislature objected, especially if it did, because such violence “may proceed from the State Legislature itself.”⁵¹ Wilson said the same. In the fall of 1787, he explained that Congress must have the “power to prepare for the defence and safety of our country....[and not] be restricted from arming....I believe the power of raising and keeping up an army, in time of peace, is essential to every government.”⁵² The “in time of peace” was the operative phrase. Theirs was a unique preoccupation for people creating a new government. It was not unusual for disparate states – Swiss cantons, United Provinces, and ancient city-states – to form a federation government the better to face common adversaries. Such was also one of the purposes in Philadelphia. But in this case, another avowed purpose was to create a central government capable of suppressing, even invading, their own states when these got out of control. This purpose was unusual for framers creating a government of the people.

The heart of this wisdom was that the center was better than the periphery, large better than small, and the center needed the hammer of veto over

reckless state actions. There was a necessary deduction flowing from the theory, which was that for the center to have authority to discipline wayward states, it needed to derive its authority from the people. It needed to be able to speak for the whole American people. Having a legislature that was less than representative of the whole people – that did not come from them and therefore be able to “operate on them,” in the phrase of the time – would not be deemed sufficiently empowered to act as it must. Having a legislature that represented states would defeat the project, for neither would it have sufficient authority nor could it be counted on to act as needed, because the states, who needed to be disciplined, would have their fingers on the hammer.

This set of considerations made Madison and Wilson and their allies committed partisans of proportional representation. Proportional representation gave larger states more voting weight in Congress than any other apportionment method, but that was only one of its benefits, perhaps a side benefit at that. Proportional representation was key to the requisite authority, and authority was key to suppressing local disobedience. Although Locke’s name was mentioned only once in the convention, their preoccupation with constructing the government hammer made of Madison and Wilson pure Lockians. To do its job properly, the legislature had to exist in the name of all the American people and act through their representatives deciding, as Locke had prescribed, by majorities. There was no other way for the national government to make law and be umpire. The rule of majorities also had a plausible fairness, or at least it seemed intuitively more fair than minorities ruling over majorities.

On June 6, Madison laid out for the convention his third cure for dangerous interests derailing a republic. He said the old problem of interests was worse in a small republic but was eliminated in a large one. Majorities will always threaten minorities in a republican government, Madison said, but there is a remedy: “to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2^d place, that in case they shd. have such an interest, they may not be apt to unite in the pursuit of it.”⁵³

This theme of diversity-cures-the-problem-of-interests, repeated in *Federalist* #10, was a theory only, not a procedure (like the national veto and filtration techniques), posed no guardrails or restrictions, and was not subject to proof. It did not stay on the stage for long. During the debate over representation in late June, the theory was rejected as patently unrealistic, and Madison himself implicitly soon disavowed it. The safety-in-size theory played a not insignificant role in Philadelphia, but it was a negative role. Its persuasive failure contributed to undermining the arguments of the Virginia Plan backers.

These were the three plinths on which Madison founded the plan to protect the republic from divisive forces: filtering the people’s will, ruling from

the center, and expounding the theory of large republics. The middle one called for a legislature resting its authority on the people, which one way or another required it be apportioned by population. That requirement triggered the Great Debate of the convention.

Conflicting interests

The rancorous argument, which ensued in June and early July ramified the convention into several warring camps: big states and small, slave and non-slave, frontier backers and seaboard partisans. One needs to summarize briefly the major interests in order to follow the unfolding debate on representation.

The brightest dividing line ran between Southern and Northern (or Eastern, as they often were called) states; and slavery made the difference.⁵⁴ Several Eastern states had taken steps to end the slave trade since the Revolution. Some had abolished slavery. Integrated units existed in the Continental Army, which counted four to five thousand black soldiers.⁵⁵ Antislavery societies had sprung up, of which one was based in Philadelphia where the federal convention met and which had Benjamin Franklin, a delegate, as its head. At the time of the convention, there was a sense that things were changing, that slavery might be reaching the end of its days. The tobacco industry had had difficult times; prices were low. Rice and indigo plantations cut off from their traditional markets and short of cash and credit were struggling in the post-war years, and that raised the question whether the economic payback of slaveholding any longer justified living with the constant threat of slave rebellions and reprisals.

At the federal convention, these questions about the durability of slavery gave Southern slaveholders, in spite of their intense nationalism, a reason to be apprehensive about joining a union with those who were actively dismantling the institution. As troubled as was the Southern economy, Charleston per capita (of whites) was the wealthiest city in America. It was in their swamps with their slaves that slaveholders made their fortunes. In Philadelphia, the South Carolinian delegates defended slavery with vehemence.⁵⁶ The inflexible position they took betrayed how threatened they felt by the trends in the country and by their imminent accession to a union with mostly anti-slavery states. The trouble Southern delegates faced was they had concerns about their own restive populaces (white and black), about Native Americans, and about foreign powers on their borders, and they wanted a strong national government.

A second dividing line ran between big states and small ones. At the time of the convention, states were sovereign and state loyalty was strong. For a very few delegates, protecting state sovereignty and independence of action mattered more than anything. But there was no reason that a small state should be more protective of itself than a big state was, or should more treasure its sovereignty than a big one did, and that simple fact did not make the

small states' insistence on sovereignty especially intelligible. A more readily understood argument, which small states also made, was that proportional representation would leave some states with very little say and others states with a very large say in national councils. Most delegates wanted to build a strong national government, but those from small states did not want to be dictated to by a handful of large states. For years, they had experienced exploitation by their large neighbors, and they did not relish submitting to more of it.

The exploitation took at least two forms: charging taxes or duties on goods, goods which first arrived in the ports of large states and were then transhipped to the small states; and dictating prices to small state agricultural producers which large states could do by virtue of their market power. It was a sorrow to have the misfortune to be the neighbor of Massachusetts, Pennsylvania, Virginia, or New York. In the seventeenth century, Massachusetts levied imposts on goods from Connecticut, New Haven, and Plymouth. In the eighteenth century, the Bay State imposed duties on commodities brought in by Rhode Island, Connecticut, and New Hampshire originating from other sources. Virginia prohibited the importation of tobacco from North Carolina, and set prices for the food stuffs that the latter was permitted to export to Virginia. Pennsylvania prohibited the import of tobacco from Maryland.⁵⁷ The oppressors tended to be big states (except the oppressive middling New York) and the victims small (except the victimized middling-to-large North Carolina). Feelings of aggrievement were intense. They help explain why small states should appear to feel more keenly their loyalty to their states than did the big states; they probably did not feel more so. But they did feel an aversion to putting themselves into a union dominated by their haughty neighbors.

A third dividing line separated those who wished to admit new states to the union on an equal basis with the existing thirteen states and those who advocated keeping the seaboard states in perpetual control of the union. This issue was partly (not entirely) related to and drew energy from the contest over slavery because it was believed most expansion would occur in the Southwest and would bring more slaveholding states to the union. In recent decades, growth in the backcountry in the South had been phenomenal. Topography favored crossing the Alleghenies through gaps to the South; but more importantly, the Seven Years War and the Revolutionary War checked the Northwestward migration more resolutely than they did the Southern route because of the enemies' (first French, then British) control of the Great Lakes and upper Mississippi, and their constant threat in the upper Ohio Valley and the regions from northern New York south to western Pennsylvania. The shifting alliances of the French and British with Native American tribes also placed a formidable barrier northwards. By contrast, migration from the South was less impeded and was hastened by the discovery of the Cumberland Gap in 1750 and then again by the Treaty of Paris (bringing to a close the Seven Years War) in 1763. Already by 1780, Kentucky and Tennessee had 20,000 settlers.

Stories of the rich and rolling pasture lands of the Bluegrass region along the Kentucky River had lured settlers west, and more were on their heels.⁵⁸

This disproportionate expansion of North and South created tensions. The Mississippi River was one bone of contention. People moving to the Southwest had to sell their produce somehow. They could carry their harvest back across Alleghenies, but that was a slow and arduous way to market. If the Southwestern settlements were to prosper, they needed access to the sea. On behalf of the Continental Congress (but Southerners thought really on behalf of Eastern merchants), John Jay negotiated a treaty with Spain in 1785–86, which gave up for twenty-five years Americans' free navigation of the Mississippi River (in exchange for liberal trading rights with Spain and its territories). Those of the South and Southwest reacted with fury at this Northerner's cession of an interest vital to their region. Some settlers accepted Spanish citizenship to trade on the Mississippi.

Tension arose also because disproportionate Southern growth was sure to strengthen the hand of the South over national deliberations, whether concerning the Mississippi, slavery, or other areas of disagreement. The matter of regions' relative weight in national councils was a preoccupation all through the Confederation days. It did not escape anyone's notice that when the Congress voted on the infamous Jay-Gardoqui treaty, the split was five (all Southern) to seven (all Northern or mid-Atlantic). (Delaware was absent.) This alignment prefigured some of the major vote alignments in the federal convention. Some years earlier (in 1782), South Carolinian Pierce Butler wrote about Northern efforts to create Vermont as a state "which will give them another vote, by which the balance will be quite destroyed." Butler was not wrong. When Vermont became a state in 1791, the fourteenth state, it outlawed slavery in its constitution.⁵⁹ It was with good reason that Southerners watched state accession carefully. At the time of the federal convention, the North predominated in population and in states. But most Northerners and Southerners thought time was on the side of the latter. Southern delegates looked forward to the day when, thanks to filling up the Southwest with settlers, their region would reach parity in national councils and then, in time, predominance.

An event outside the Convention affected delegates' deliberations on frontier expansion. The Confederation Congress, meeting in New York, was finalizing the Northwest Ordinance in the spring of 1787. It provided for the admittance of new states from that territory on equal terms with the existing states. Article Six prohibited slavery in the territory. News of the imminent passage of this act arrived in Philadelphia the evening of July 12, and it likely influenced important convention proceedings the following day.⁶⁰

There was a final feature to this complex expansion problem, which was the whirlwind of land speculation that swept up most prominent politicians and merchants. Land fever was present in previous American eras; it was present again, playing its part in Philadelphia. States did not all have claims on lands west of the Appalachians. Some states that did have claims refused after Independence to cede them to the united states (wanting to keep them

for themselves). States without claims bridled at this refusal, said that their soldiers were dying in the war along with soldiers from other states, and all land claims ought to go into a common pot. Among the states without claims was Maryland, which refused to sign the Articles of Confederation until 1781 when other states finally ceded their claims. Maryland citizens might not have cared one way or the other, but Maryland's government was dominated (from governor on down) by land speculators, who were allied with Pennsylvania entrepreneurs, among whom were James Wilson, Robert Morris, and Benjamin Franklin (convention delegates). The stubbornness of these entrepreneurs about lands (some purchased from Native Americans contrary to imperial edict as well as colonial law) held up putting into effect the Articles of Confederation, at a time of war, until they thought their chance of realizing their land schemes was improved by states' cessions. It would not be amiss to consider this obstruction by a vested financial interest to be unpatriotic. One of the largest land companies involved in this maneuvering was the Illinois-Wabash Company, claiming 60,000,000 acres. The president of the company was James Wilson, whose stake in the venture entitled him on paper to more than one million acres and who controlled three and a half shares, the largest block of stock under one person's control in that venture.⁶¹

Land ventures were essentially a marketing exercise. Having secured rights to land (by illegal Indian purchases, or bribery of state officials, or other means), often with no cash down, land companies turned their attention to marketing the distant lands to two distinct audiences: would-be migrants to be settlers, and investors to pay for the acquired lands, surveys, and roads. (Both audiences were sometimes found in a less informed, more gullible Europe.) In flogging their fantasy, the ventures were selling the dream of large profits to one audience and of rich farmlands to the other. Many transactions involve a degree of marketing to credulous people, but a lot of credulity was needed to buy into a vast wilderness populated with hostile indigenous inhabitants. Those dreams were notably less credible if settlers in the new frontier would be anything other than full-fledged citizens.

As a result of this particular business interest, delegates at the federal convention who were shareholders in land ventures had what in modern terms one would call a conflict of interest when it came to deciding on the political rights of settlers in new states. That most settler migration had recently occurred in the South made the conflict of interest all the more problematic for Northern delegates. On the one hand, Northerners looked askance at the idea that someday the current Northern majority in national councils would be supplanted by slaveholding states as a result of rapid frontier expansion in the Southwest. On the other hand, the land ventures in which some Northerners were interested could hardly prosper if settlers would be second-class citizens in their new homes, lacking the voting and representation rights they had enjoyed back east.⁶²

There were other interest-based camps in the convention delegations. One was the differing economic interests of staple producers of the South and merchant shippers of the East. This difference affected voting mostly toward

the end of the summer, when a bargain was struck over navigation acts and the slave trade. It probably did not have a great bearing by itself on the apportionment debate,⁶³ but it did so indirectly, for staple producers relied on slave labor, and the issues of slavery and Southwest expansion did drive many votes in mid-summer. Anything that underpinned economically or demographically the differences between slave and free states contributed to the contentious debate over apportionment.

Such were the major economic and social factors that were background to convention deliberations – slavery under threat, Mississippi closed off, an evident lack of sympathy from Eastern states on either topic, Northern predominance both in population and in number of states, a rapidly expanding populace in the Southwest auguring Southern ascendancy in national affairs, small-state resentment of historic big state exploitation, and a healthy dose of land speculation.

An alliance is formed

These trends and differing interests were not new to delegates. But they were bound to be exceptionally difficult to manage when it came to deciding how to apportion power in the new government. The principal organizers of the convention (mainly from the Virginia delegation) knew that apportionment would be a challenge, and on the convention's eve, they undertook to coordinate steps among several state delegations.

Before many delegates arrived in Philadelphia, most of the Virginians were present and caucusing several hours a day in Mrs. House's boardinghouse on Fifth and Market streets, where many of them lodged. Separately, but in close touch with Madison, James Wilson and South Carolina's John Rutledge conferred in Wilson's house, where Rutledge was a house guest. We do not know the details of what was discussed in these coordinating venues, nor who were the participants, but it was likely the topics included both the plan as well as tactics for managing the convention.⁶⁴

It is hard to exaggerate the importance of this undocumented coordination. For the three states involved – Virginia, Pennsylvania, and South Carolina – formed the core of a voting alliance on apportionment-related matters that emerged early in the convention and sustained itself to the very end. They were joined by others soon, and then lost the support of most of these others by mid-summer, but these three states remained steadfast. They voted alike on major issues more often than did any group of delegations.

Several causes bound them together. We have identified already some of the motives of Madison when it came to apportionment – his frustration with state obstructionism, his certainty about the disciplining role of central power, and his view that such a power could only have the requisite authority if it were derived from the people. Moreover, Virginia, like Pennsylvania, as a large state would have greater weight in Congress if representation were apportioned by population.

The Pennsylvanians, having been host to the Confederation Congress (before it moved), had witnessed first-hand the imbecility of states' voting equally and hobbling Congress from acting forthrightly during the war. But something else was motivating the Pennsylvanians. The Pennsylvania delegation was uniquely dominated by wealthy merchants, financiers, and land speculators who would profit from a transformed constitutional system.⁶⁵ Among them was Robert Morris, one of the wealthiest Americans, the financier of the Revolution, with extensive trade operations extending from North to South and from America to Europe, West Indies, and China. James Wilson was head of the largest land speculation enterprise in the country. Thomas Fitzsimons was in both the tobacco trade and in Wilson's land company. Thomas Mifflin and George Clymer were Philadelphia merchants. Gouverneur Morris was the son of a wealthy family engaged in both commerce and, later, in land speculation and had little use for state government. The delegation was mostly composed of people who had significant businesses and even vaster business plans for the post-Revolutionary America – in trade and in land speculation – and for whom the creation of a stable national constitutional framework was vital. Their business activities bound them to the South, and that connection may have influenced their voting at critical moments. Staples they marketed to Europe were grown on Southern plantations. Some of them heavily borrowed money from wealthy Southern planters. Some had slaves working in their Philadelphia townhouses. Trade networks, land speculation, and personal ties connected the merchants to Southern interests.⁶⁶

Moreover, the Philadelphia elite of merchants had been routed from office in 1776, when the Constitutionals, including mechanics and backcountry Presbyterians, took power.⁶⁷ They did so under what Gouverneur Morris called their "Don Quixote constitution" with its unicameral legislature and weak executive.⁶⁸ Through the war years, the well-to-do merchants, now forming the Republican opposition to the government, were determined to rewrite the state constitution. But they also set their sights on reshaping the national constitutional order.⁶⁹ They had a vision of a great and prosperous nation arising which they wanted to help build and profit themselves from the building thereof. Their pursuit of that quest in which patriotism and avarice were mixed in unknowable proportions caused them to accept or overlook the drawbacks of proportionalism – drawbacks such as incentivizing the growth of slavery (with three-fifths) and handing the government over to a Southern and Southwestern hegemony in future (if demographic predictions were realized) – which other Northerners could not overlook or accept. In what proportions did these Eastern merchants' tolerance of problematic issues have to do with their deep commercial connections to the Southern states, to their hyper-anxiety about states' having any meaningful role, or to their simple avarice is impossible to know; but the commitment of these hardheaded businessmen to an untrammelled national government was so great as to outweigh all other scruples and made them indifferent to the ruminations about the proper

architecture of republics. When later in the convention, Northern members of the majoritarian alliance began to desert the cause, Pennsylvania singularly among Northern delegations remained loyal.

No state was more ably represented at the convention than South Carolina. Its delegation was composed of four men, related to each other, as was typical of the state's political elite, hailing from the Tidewater planter aristocracy.⁷⁰ The dean of the South Carolina delegation, former Governor Rutledge, fretted about how long the state could keep a lid on its unhappy people and welcomed national assistance. Both of its two major racial groups were prone to rebelling against domination by the planter class. Wealthy Charleston had experienced a class riot of the poor soon after the war. Slave revolts were periodic, including one (August 8) during the federal convention.⁷¹

South Carolina did not practice proportional representation in the construction of its own legislature; there was no ideological commitment to popular government among the delegation.⁷² But the delegates did not see proportional representation as a high price to pay for getting a strong central government, for several reasons. First, Rutledge and others made sure that state governments would decide how members of the lower house of Congress would be elected, and in South Carolina the elite kept a firm grip on state government. Second, South Carolina expected to grow, as all Southern states expected to do, and would benefit from proportional congressional allocation. Third, once it was agreed to count slaves at three-fifths the value of whites for apportionment, that provided a powerful adhesive for this delegation of elitists to sign up to proportionality. South Carolina had more slaves than white inhabitants (almost 50% more in 1775).⁷³ Finally, whatever scruples the elite may have had about proportional representation, it was an elite desperate for help. No state's leadership more relished the idea of receiving support from a strong national union than did South Carolina.

There were limits, however, to how far South Carolinians would go. Rutledge broke with Madison and Wilson on the matter of whether state legislatures or people should elect Senators; he evidently had more confidence in his relatives' choices for Senate than the people's. He supported Gouverneur Morris on the principle of counting wealth somehow in apportioning seats to new Western states, worrying that the wealthy states would be overwhelmed by the new, poor frontiersmen. He disliked extending the national legislative veto to "all" matters. The biggest defenders of slavery worried how Madison's national veto might someday be exercised.⁷⁴ So he would never be the completely consistent team member that Wilson was. His wealth, his defense of slavery, his innate distrust of his own South Carolinians drew limits around his commitment. However, once three-fifths was arranged, Rutledge became a diehard advocate of proportional representation, and he was joined by most of his fellow Southerners.

To this alliance of Virginia, Pennsylvania, and South Carolina were added two other Southern states, Georgia and North Carolina, which stood to benefit in the same way that South Carolina did from proportional representation:

particularly in the matter of expected future growth. Also joining was Massachusetts. As one of the three largest states, Massachusetts would find its size rewarded by congressional seats allocated proportionally. In addition, some of its delegates were involved in commerce and shipping. One of them, Nathaniel Gorham, had a keen interest in western lands, and like James Wilson welcomed a burgeoning and equally treated West.

Herein we call this voting group the majoritarian or proportionalist alliance, and the opposing camp the structuralists. We do not refer to them as big states and small states because their votes on apportionment do not line up along such a line. Nor do we call the first group “nationalists” because in Philadelphia that summer nearly all the delegates were nationalists (except John Lansing, Robert Yates, Luther Martin, and one or two others), including many of those who battled against Madison on proportional representation (more on this below). However, there existed a small subset of Northern proportionalists who had ambitious business interests, and who, with Madison, remained the most reliable and stalwart members of the majoritarian alliance. Their outlook – that of Wilson and fellow merchants in his delegation, of Gorham from Massachusetts, and possibly one or two others – was shaped by a businessman’s partially self-serving vision of a powerful and growing nation which outweighed all other issues, including the scruple about three-fifths and the possibility of a Southern and Southwestern hegemony in the future.⁷⁵ They could not scruple at three-fifths because without that glue the alliance would have been hard to hold together or form in the first place. Even with this incentive, Southerners wobbled in their commitment to the alliance, as we shall see.⁷⁶

From the start of the convention, the record of proceedings suggests that at least the three founding delegations of the voting alliance – Virginia, Pennsylvania, and South Carolina – had reached agreement on the principle of counting blacks at three-fifths of whites for apportionment. The Virginia Plan, introduced on May 29, provided that unlike the Articles of Confederation the new constitution should apportion seats in the national legislature not equally but “proportioned to the Quotas of contribution, or to the number of free inhabitants.” According to his own notes, the next day, Madison proposed the words “or to the number of free inhabitants” be struck as they “might occasion debates” distracting them from their main business of changing the mode of representation. Whereupon Hamilton moved in precisely the opposite direction to strike “quotas of contribution,” thereby apportioning representation according to “free inhabitants.” A motion to postpone this controversial matter was then passed.⁷⁷

The same opening session when Randolph presented the Virginia Plan, Charles Pinckney (who owned 2,000 enslaved persons in 1787 in seven plantations)⁷⁸ tabled a plan that was not discussed on the floor but was shared in advance among some or all delegates and taken into account by the Committee of Detail later in the summer. In this plan, Pinckney introduced the concept that the lower house be apportioned according to population, “3/5

of Blacks included,” and that the Senate also be apportioned in an unspecified manner “to give to each its due weight.” Pinckney’s plan having been tabled, it is likely that delegates were familiar with the linking of voting apportionment to the ownership of enslaved persons at the time they had the initial dust-up on May 30 about “free inhabitants.”⁷⁹ In 1783 congress had voted to assess taxes on the states based on population, counting three-fifths of slaves. There was at that time no hint of connecting representation to that formula; states each had an equal vote in the Congress.⁸⁰ But extending the concept from the apportionment of taxation to the apportionment of voting took no leap of imagination. South Carolina justified its malapportionment in the state legislature on the basis of the extraordinary wealth of the Tidewater, much of which wealth was owned in the form of enslaved persons.⁸¹

That Hamilton struck out “quotas of contribution” and Madison struck out “free inhabitants” while they had in hand Pinckney’s not obscure or surprising proposal tying representation to slaveholding, all on the first day of debate, suggests that the quotas of contribution concept was itself introduced to give scope for counting enslaved persons.⁸² Randolph in introducing the Virginia Plan possibly made a gesture (or a pose) of evenhandedness – it was either free inhabitants *or* it could be quotas. This draft plan would not have included this evenhanded phrase about such a vital topic except by concurrence by the Virginia delegation; yet it was Madison who moved to strike out the free inhabitants part on the first day of debate.⁸³ This sequence of events possibly indicates an intention to convey flexibility on the part of the Virginia Plan and its backers, who suddenly switched to what they really wanted (counting slaves).⁸⁴

The surest sign that the quotas of contribution was a wedge to advantage slaveholders was that John Rutledge moved it.⁸⁵ Rutledge did a lot in Philadelphia, but not much that did not have Southern interests as his object. He and his relative Charles Pinckney were the most vehement defenders of slavery at the federal convention. It was Rutledge who at a critical moment in late August warned the Southern states would bolt the convention if barred from importing slaves. “Religion & humanity had nothing to do with this question – Interest alone is the governing principle....The true question at present is whether the Southn. States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the carriers.”⁸⁶ The highest paid lawyer in Charleston, owner of five plantations (with 4,640 acres) and many slaves, erstwhile governor, Rutledge was both esteemed by and probably a little feared by his fellow delegates.⁸⁷ He was one of two men who had the honor of conducting George Washington to his seat as president of the convention (the other was the wealthy Robert Morris in whose home Washington lived that summer). Rutledge came into the convention with the sort of reputation that few could equal (Dickinson comes to mind) – a generation older than Madison, Wilson, Gouverneur Morris, and Hamilton; multiple terms as governor; well educated; sure of himself; and determined. The difference with

Dickinson is the latter was ill for much of the summer and absent; Rutledge was on the job fulltime, and found himself appointed the chairman of the crucial Committee of Detail charged with taking the resolutions passed by mid-summer and making the first draft of the constitution.

On the same day that Rutledge moved quotas of contribution, June 11, Roger Sherman of Connecticut moved that the lower house be apportioned by free inhabitants, whereupon Rufus King (Massachusetts) and one other (sources say either Wilson or Rutledge) introduced a resolution that apportionment ought not be done as under the Confederation but by “some equitable ratio of representation.” Taking up the concept, John Dickinson proposed that the proposed contributions be “actual,” which was a polite way of calling the Southern bluff – it allowed contributions as the basis of representations (a la Lycia) but only if they were actually paid as taxes, not represented by a quota that might include property (as in slave property). Rutledge, sensing a threat in the Dickinson gambit, moved to add to the “equitable ratio” formula the words “according to the quotas of Contribution.” At this particular moment, James Wilson, seconded by Charles Pinckney, introduced for the first time in debate the formula of counting three-fifths of slaves, and specifically cited the Congressional vote of 1783 in favor of this formula for “apportioning quotas of revenue.” The motion passed 9 to 2, with only New Jersey and Delaware in the negative.⁸⁸

This moment, June 11, was important. It saw the talkative James Wilson of Pennsylvania join hands with his house-guest John Rutledge to forge an alliance in support of extra seats in the lower House for slaveowners. Wilson, of Philadelphia, was friendly with Southerners. Probably more importantly, Pennsylvania merchants and land speculators, wishing to construct a strong national government on the principle of proportional representation, were willing to cooperate with Rutledge on the question of three-fifths to advance that shared national goal. It is also not clear whether Wilson himself thought three-fifths was a high price to pay; he could not have been that averse to slavery with a slave working in his Market Street kitchen. The Pennsylvania elite’s business reasons were probably the principal motive behind this delegation’s attachment to the majoritarian alliance, and the alliance seems to have enlisted these merchants in the campaign for three-fifths. Whether Wilson was simply sympathetic to the Southern perspective, or whether he made a bargain to support three-fifths in exchange for a popularly elected lower House, which he favored but which some Southerners needed the impetus of three-fifths to come around to, or made some other bargain, is not known. But agreement on the two matters was clear: a lower House apportioned by population, counting slaves as three-fifths of a non-slave.⁸⁹

From the Southern point of view, the advantage was clear. Even though Southern states did not practice proportionality in their own legislatures, and even though most Southern states were not large and therefore not immediately advantaged by proportionality in Congress, they nonetheless

became stalwart defenders of the principle in the federal convention. The large Southern states stood to benefit, the small ones thought they would soon become large, and the vision of hegemony in national councils for the South could only be achieved with proportional representation. That vision was more readily achievable with the added boost of counting three-fifths of enslaved persons. Early in the proceedings, there emerged a formidable group of mostly larger Northern states (steadily Pennsylvania and Massachusetts) and Southern states of all sizes (smaller South Carolina and Georgia and larger Virginia and North Carolina) which together voted for proportional representation once the federal ratio of three-fifths seemed likely.

Debate on apportionment

Discussion of apportionment commenced during the convention's first day of debate, when Madison and Gouverneur Morris of Pennsylvania joined hands to move a resolution that the equality of suffrage prevailing in the Confederation ought not to prevail in the national legislature and some other "equitable ratio" should be found. This formula generally was commended until George Read of Delaware declared his state could not accept any change to the existing rules of suffrage. Madison countered there must be some proportionality in the new government. He raised the difference between large and small states for the first time, implying it was not appropriate in the new, national government for large and small states to have the same weight. Delaware remained unsatisfied, the matter of suffrage was postponed, and the proceedings ended therewith, the convention's first debate.⁹⁰

Three days later, on June 2, John Dickinson of Delaware said one branch should be constituted by counting "the sums paid" and the other should give an equal voice to each state. He (and everyone else probably) had arrived at the convention knowing there would be tension on the vital matter of apportionment, and he believed that splitting the Congress into two branches, constituted differently, was a means of achieving what he called a "mutual concession."⁹¹ On June 11, Roger Sherman repeated Dickinson's concept and moved that the second branch, the Senate, be one where states should be represented equally. This motion was put to a vote and rejected (five against six). By the same vote totals, the delegates voted that the upper house should be apportioned by the same method as the lower. On the same day, as we have seen, three-fifths was approved as part of proportional representation. Two days later, a package of resolutions was put together and reported by the Committee of the Whole, which amounted to almost a rough draft of the constitution. It included proportional representation and three-fifths for constituting both houses of Congress. This was a powerful achievement for the majoritarian voting alliance of North and South (Pennsylvania, Massachusetts, Virginia, North Carolina, South Carolina, and Georgia).⁹²

The structuralists were dismayed. Some had been instructed by their states not to agree to any change in the apportionment rules of the Articles. In a

spirit of “mutual concession” Dickinson had suggested using two apportionment methods for the Congress, which from the perspective of Delaware and New Jersey and most of the New York delegation, was already exceeding their instructions. Sherman formalized it into a motion, and the concession was rejected. The structuralists caucused and came back with the New Jersey Plan (named for the state whose delegate, William Paterson, presented it) on June 15, which in turn startled the proportionalist camp, for no longer suggesting a compromise apportionment, the New Jersey Plan called for a unicameral legislature with an equal vote for each state. It was possibly at this moment that John Dickinson said to James Madison, “You see the consequence of pushing things too far.”⁹³ Dickinson was not a fan of the New Jersey Plan; he thought its plan for the government lacked “energy.” His comment to Madison was in the way of both entreaty and warning.⁹⁴

The proportionalist alliance barreled forward notwithstanding the warning. On June 19, the delegates rejected the New Jersey Plan and voted to report the Virginia Plan from the Committee of the Whole to the convention, providing proportional representation in both chambers, and slaves counted at three-fifths of whites. The vote was even more lopsided than on June 11: seven to three, the seven being the same mixture of Northern and Southern states (with now the addition of Connecticut).

But this was the high water mark for the majoritarian voting alliance. From June 19 onward, the majoritarian alliance started shedding state delegations with each new vote count, until it lost the final vote on July 16 to the supporters of equal vote in the Senate. What happened from the third week of June to the middle of July? The answer requires an analysis of the debate. The facts did not change – states did not get bigger or smaller – but the debate did.

At the outset of proceedings, those who opposed proportional representation – the structuralists – were notably less well organized than their opponents. They ranged over a variety of unconnected and unconvincing topics. Some said they had no authority to agree to such a scheme as the Virginia Plan, that their states had bound them to make no change to the equal voting system of the Articles. Some said that in a proportional system the small states would be “swallowed up” by the big states. Several said that the three big states would require just one of the remaining ten states to join them to carry a vote against the wishes of the other nine states. Some said that the states were sovereign entities and needed a say in national affairs to protect their sovereignty. Some wanted a unicameral legislature with an equal vote for each state (such as the New Jersey Plan provided) and others wanted a bicameral legislature with two different apportionment plans.⁹⁵ A mixture of confusion and paranoia emanated from the structuralists’ speeches: confusion because the structuralists did not agree among themselves on what they wanted. Lansing, Yates, and Martin had no desire for a strong national government or proportionality in any form. Dickinson, Sherman, and most others wanted a new strong government and were open to some degree of

proportional seating of lawmakers. Moreover, it was not clear why a small state should care more about state identity than a large one would; was Virginia actually less proud of its history and traditions than, say, Maryland was? Paranoia seemed to be operating on some, for no reasonable person would believe in the midst of a national crisis that big states had nothing better to do than tyrannize small states.

By contrast, Madison and Wilson were clear about their goals and, moreover, they founded their plan on a theory of good government. On June 6, Madison stated his doctrine of the safety of large states. Majorities will always oppress minorities, and “the only remedy is to enlarge the sphere,” he said, “& thereby divide the community into so great a number of interests & parties” that a majority will not take hold. “In a very small State,” he said, “faction & oppression sd. prevail.”⁹⁶ The following day the proportionalists continued the theme of largeness, but now in favor of creating new and large districts from which to elect a small number of Senators. This plan, supported by Wilson, Morris, and Madison, had the three-fold purpose of (a) defeating Dickinson’s proposal that the states should elect the Senate and defeating therewith state agency in the national government, (b) making sure both chambers were derived from the people, and (c) making the districts large and the senators few, so that the Senate would have “more wisdom” than the “popular branch,” said Madison. “The more the representatives of the people therefore were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves.” Here Madison and friends laid out two of their core theories of why popular representation could be made safe: diversity of interests would prevent majorities, and “election by the people in large districts...wd. be most likely to obtain man of intelligence & uprightness.”⁹⁷

In the coming days Wilson stressed that all authority must be derived from the people, with “numbers as the best criterion.”⁹⁸ People were looking to the center, to the national government, for relief, said Wilson, and the attachment to state governments and state sovereignty was interfering. Letting states, and not the people, send representatives to either branch of Congress would destroy the delegates’ plans to supply that needed relief.⁹⁹ This argument hooked back to the opening premise of the convention, which Randolph had laid out on the first day of proceedings: the need to rescue the country from chaos in the states.

While structuralists were making somewhat baffling paeans to the dignity of small states, the proportionalists sketched out a plan of government built around well-argued theories of how a free government can be made to function. The diversity-of-interests concept was the keystone in their argument. When structuralists said that the three largest states (Massachusetts, Pennsylvania, and Virginia) only needed a fourth small state to join with them in order to control the legislature and out-vote all the others,¹⁰⁰ the proportionalists easily rebutted this fantasy. Devising a highly useful corollary to the diversity-of-interests thesis, Hamilton noted the vast differences

between the three big states, both geographically and in their interests, and said there existed no danger of a combination among them. The only considerable distinction in America, he said, was the one between the carrying and non-carrying states, and that distinction divided, rather than united, the three big states.¹⁰¹ Madison was emphatic on this point. "Where is the probability of a combination? What the inducements? Where the similarity of customs, manners or religion" among states as diverse as Massachusetts, Pennsylvania, and Virginia?¹⁰² This was the proportionalists' most powerful retort. They were pleased with it. On June 30, James Wilson told the convention that "no answer has yet been given to it."¹⁰³

However, as attractive as this forensic sally was, it gave an opening to the other camp's delegates which, when entered by them, changed the course of the debate. Everyone knew that "combinations" were not imaginary, said Oliver Ellsworth on June 29. They could occur even among states that "may not have a common interest for combination, yet they may be partially attached to each other for mutual support and advancement."¹⁰⁴ Gunning Bedford was more explicit than Ellsworth. He said the delegates had witnessed just such a combination of opposites being formed in their own midst. "Our deliberations here are a confirmation" of the fact that everyone is acting from "interested, and many from ambitious motives. Look at the votes which have been given on the floor of this house, and it will be found that their numbers, wealth and local views, have actuated their determination...." Although delegates were being told the small and big states, slave and free, "can never, from interested views, form a coalition, we find [them] closely united in one scheme of interest and ambition...."¹⁰⁵ It was not lost on the delegates that Northern and Southern delegations had joined forces on proportional representation, nor that a Pennsylvanian and South Carolinian had been the two sponsors of counting slaves in apportionment, nor that a South Carolinian and Madison had been the two sponsors of the national veto.

Around this same time, structuralists began to pick apart the central thesis that there was nothing to fear from interests. Initially, they used sarcasm. If there were no divisive interests capable of forming a threat to the small states, they said, there would also be no divisive interests capable of threatening the big states either. And if that were true, said the structuralists, what was the harm of apportioning representation by giving an equal vote to each state in the Senate? If big could not hurt small, then small could not harm big.¹⁰⁶

But they were merely calling the other camp's bluff. Structuralists' principal argument was that interests did exist, did clash, and were a problem. Toward the end of June, for the first time in a series of coordinated speeches, sometimes using identical phrases, they attacked the idea that a Congress based on proportional representation would somehow be cleansed of interests and spared combinations. On June 20, Lansing rebutted the notion that a Senate appointed by legislatures would be beholden to state prejudices but that one elected by the population would not be. "Will not any other body whether chosen by the Legislatures or people of the States, also represent

their prejudices?" On June 25, Ellsworth said that "whoever chooses the member [of the Senate], he will be a citizen of the State he is to represent & will feel the same spirit and act the same part whether he is appointed by the people or the Legislature. Every State has its particular views & prejudices, which will find their way into the general councils, through whatever channel they may flow."¹⁰⁷ Five days later, William Davie of North Carolina, who seldom spoke, made the same point using identical language to Ellsworth's.¹⁰⁸ Luther Martin on June 28 said howsoever Senators are elected, they will not forget their interests. Their "prejudices cannot be eradicated. Your general government cannot be just or equal upon the Virginia plan, unless you abolish state interests."¹⁰⁹ Gunning Bedford asked "if political Societies possess ambition avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it let him look at the votes" taken during this convention. "Have they not been dictated by interest, by ambition?...and are we to act with greater purity than the rest of mankind."¹¹⁰

The convention had chosen filtered elections to screen people's passions and interests. But in carefully coordinated remarks, the structuralists said in late June that it did not matter how many filters one used, one would still end up with the people's biases transmitted into Congress. This was an important insight and it was not rebutted by the other side. The proposed government efficiently got rid of the people but not their causes.

The speakers at the end of June used similar words and arguments in the realization that they had landed on a new polemical frontier, namely, there was something defective about the representative institution on offer. Sending deputies to the capital would never wash out the people's passions. All the filtration in the world would make no difference. The largeness of territory and diversity between states, the heart of Madison's argument, were beside the point. Large districts or small ones would not solve the problem. Passionately defended and clashing interests would make their way to Congress one way or the other. It did not matter if large states combined or competed with each other (said Bedford), nor did it matter if legislatures did the electing or the people did. That interests be allowed to infuse Congress posed an insuperable threat to good government which somehow had to be managed.

The first commentary along these lines had been made early and privately, not by a structuralist but by a loyalist to the proportional cause. On June 6 the ever alert Alexander Hamilton made notes to himself as Madison first laid out his important thesis about diversity and safety in a large republic. Acknowledging some "truth" in Madison's points, Hamilton was broadly skeptical that the mixture of filtration and a *mélange* of interests would accomplish its crucial goals: "The Assembly when chosen will meet in one room if they are drawn from half the globe – & will be liable to all the passions of popular assemblies. If more minute links are wanting others will supply then[m?] - Distinctions of Eastern middle and Southern states will come into

view....Paper money is capable of giving a general impulse. It is easy to conceive a popular sentiment pervading the E[astern] states....” Hamilton was saying to himself, far from neutralizing interests, this proposed government would be wired with interests, via the circuitry of representation.

As for large territories being less vulnerable to factions than small ones, Hamilton said: small portions of large districts can “carry elections,” so what is the merit of large districts? “An influential demagogue will give an impulse to the whole.”¹¹¹ Here he was raising the possibility that successive filters and large territories did little to mitigate the core problem, and that representation injected into the center of government the passions and clashing interests that everyone knew were anathema to republics. If that was true, no amount of filtration was capable of washing voters’ cares out of the system.

His were private notes. The structuralists took up his topic later in the month, goaded by being told there was no danger of interests combining, and they went further than Hamilton had. When James Wilson said that every man will give his vote and therefore all will be “equally represented,” Dickinson noted that this was precisely the problem. For “the Representatives chosen in Virginia will carry into the public Councils that Momentum of Attention to Virginia which animated their Electors. This can only be counteracted by a supposition that the Citizens of Virginia are as ardently attached to the Interests of New Hampshire or Delaware as those of Virginia a supposition which the Honorable Gentleman will not make especially as two Interests may sometimes be opposite.”¹¹² (These comments were made by Dickinson in notes for speeches that he did not deliver but likely shared with others. See below *The thinking of John Dickinson*.) Under arraignment by the so-called “small states” delegates was not only tyranny by big states but also the theory that proportional representation would magically leave no one harmed.

At his most pessimistic when considering representation (in the spring of 1787), Madison had said there was a danger that representatives could hive themselves off from their constituents and pursue their own, separate interests. Dickinson said the problem was deeper than that: representatives could do damage by *faithfully representing* their constituents. How could the republic be safe when representatives carried their different interests into the councils of government and made alliances, whether temporary or permanent, with other representatives having either similar or quite different interests but willing to join forces at the expense of third parties or indeed of the public good? This was truly a republican problem posed uniquely by representation, and at this moment, in late June and early July 1787, for one of the first times it was subjected to serious commentary.¹¹³

The nub of the problem was the rule by numbers alone, for which two possible remedies were advanced. Both involved using the Senate as a body representing something other than people. The first idea was for the Senate to represent states – partly to preserve the states but more critically to save the national government from runaway legislative majorities and demagogues.

The second was for the Senate to represent property – partly to protect property but also to perform the same blocking function.

Dickinson laid out the first proposition beginning in the first week of June. “He hoped that each State would retain an equal voice at least in one branch of the National Legislature....” Four days later, Madison made a speech reversing Dickinson’s emphasis: at least one branch of congress should be elected by the people directly, he said, as by that means the agency of states, with all their potential for trouble-making, would be reduced in the national government. It was on this occasion that Madison repeated his themes of the spring memos (and later of *Federalist* 10), to wit, the key to preventing majorities from ganging up on minorities was a large, extensive republic.¹¹⁴

Dickinson responded the same day, repeating his earlier suggestion: it was fine to draw one branch from the people, he said, but the other should be “chosen by the Legislatures of the States.” He was for “a strong national Government,” but was equally for the states’ possessing “a considerable agency in the system.”¹¹⁵ Nothing was more unattractive to Madison and Wilson than for states to possess “agency in the system.” But from Dickinson’s perspective, the problem of interests that Madison had identified needed a mechanical fix, a founding of the legislature on two different plinths, rather than a reliance on a general melting pot of interests in a large republic. The two returned to the debate the next day, June 7, when Dickinson moved that the second branch be chosen by the state legislatures. For both branches to be founded on “Numbers” is “unreasonable & dangerous.”¹¹⁶ Wilson disagreed, and said the Senate should “flow from the people at large” (an ambiguous choice of words. During ratification – see below [Chapter 7](#) – when Wilson developed his sovereignty-of-the-people argument, it became evident that the people might be far removed from the filling of government offices even though all power “flowed” from them.) Gouverneur Morris seconded Wilson. (Morris was to change his view of the Senate before this debate was over.) Then Madison spoke and said this Dickinson idea would be a departure “from the doctrine of proportional representation.”¹¹⁷

Gerry spoke up for Dickinson, and then the latter said this: “The preservation of the States in a certain degree of agency is indispensable.” Beginning to flesh out his thinking, he went on: “It will produce that collision between the different authorities which should be wished for in order to check each other.” With this comment, Dickinson was saying that Madison’s invisible hand of interests’ canceling each other was not realistic, and needed, instead, was a mechanical solution that would cause a clash of forces, and that the way to do that was by empowering states with their own weapon in the legislature. He then employed the simile of planets (borrowed from Harrington) in orbit to depict a scene of harmony.¹¹⁸ Comparing the states to planets orbiting the sun-central-government, Dickinson said that if the planet states were extinguished, “and all power derived from the people at large, the consequence would be that the national Govt. would move in the same direction as the State Govts. now do, and would run into all the same

mischiefs.” Without state agency, the government would “only unite the 13 small streams into one great current pursuing the same course without any opposition whatever.”

Madison retorted that since state legislatures were responsible for paper money and other problems, how did it make sense to look to them to supply a proper check on the national legislature?¹¹⁹ This was an intelligent retort, but when Wilson moved to postpone Dickinson’s motion (to elect the Senate by state legislatures) and substitute his own providing for a popular election, Wilson was defeated ten to one (only Wilson’s state voting for). Then, notably, Dickinson’s motion passed unanimously.¹²⁰ It is not obvious how to explain this unusual vote. Easier is to say what it was not: it was not a victory of small states protecting themselves from big ones; the vote was unanimous. It was probably not a vote about how best to construct a strong nation. That architectural point – that giving states an electoral role would blend their particular interests with the general interest of the nation and thereby strengthen the union – was a core argument Dickinson would make in a few weeks’ time in connection with the presidential selection system (see below); but it was not the argument he made on June 7 before the duel with James Wilson over the election of the Senate. Then he talked about designing a salutary collision to spare the nation “one great current pursuing the same course without any opposition whatever.” People voting in a stampede, failing to deliberate, had been a republican concern since antiquity. Cicero and Aristotle recommended taking votes in groups and counting group totals, rather than collective totals, as a remedy.¹²¹ They were thinking of popular assemblies, not representative assemblies, but Dickinson’s remarks suggested that a republic ran as much a risk from an unchecked legislature as from an unchecked popular assembly. The analogy was not far-fetched for delegates who had endured the rule of a tyrannous and sometimes impulsive Parliament. Possibly the esteem of Dickinson also played a role in the vote that day. His simile about the harmony of orbiting planets had hit home with delegates and would be recalled several times (including by Madison the next day).

The use of “agency of the states” in the national system (and not just to protect the states themselves) was repeated by Ellsworth in June.¹²² But, as we have seen, for the most part the structuralists veered off into confusing and unconnected arguments for several weeks. It is possible that they lost Dickinson’s thread; soon after June 7 Dickinson fell ill and was out of action for several weeks. He made no floor speeches from June 21 to July 25, the critical period during which the proportional representation debate abruptly shifted gears and was finally concluded. But he had influence on the debate from his quarters in Mrs. House’s boardinghouse. His notes for speeches not delivered by him were reflected in the structuralists’ late June critical appraisal of representation and the inability of filtration to eliminate the problem of interests (see below *The thinking of Dickinson*). But he could not prevent structuralist speakers from wandering off into the desultory argument about small states feeling threatened by big ones. By the time structuralists regained

their sea-legs and focused on the central flaw in the opposing argument, the idea of using property to check majorities suddenly emerged for extraneous reasons and briefly took center stage.

Checking legislative majorities with a Senate representing property was not a novel idea in American governance. Some states had upper houses for which the eligibility of electors and occupants required substantial wealth. But a Senate based on property suddenly received a fillip during the convention proceedings during the apportionment debate. In his major address on June 19 in support of shelving the New Jersey Plan and proceeding with the Virginia Plan (which the convention took the decision to do), Madison ended his long remarks by saying the “prospect of many new States to the Westward was another consideration of importance.” This was the first time apportionment and the West were linked as problems to be sorted out together. He went on: if inhabitants of new states “shd. be entitled to vote according to their proportions of inhabitants, all would be right & safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.”¹²³ One wonders if he knew the firestorm he was igniting by introducing this hot topic into the apportionment debate.

Some delegates had by then already proposed neutralizing the noxious issue by distributing western lands among all the states, even if non-contiguously, as the Romans had done with their thirty-five tribes, and thereby not disturb whatever current voting ratios could yet be agreed. The New Jersey Plan proposed just that, a division of all vacant lands, whether within states or not, into “thirteen or more integral Parts.”¹²⁴ In notes for a speech around this time, Dickinson suggested the same.¹²⁵

The advocates of proportional representation did not take this suggested redivision of the nation seriously. They saw it as a diversion or a bluff by the same people who were, at this time, proposing an equal vote in the Senate. The redivision concept abandoned, the question of bringing in new states on the same basis as the existing ones began to unsettle some delegates. Some of them were Southerners whose state delegations had been reliable members of the proportionalist voting alliance throughout June.

On June 28, Hugh Williamson of North Carolina said that any new states to the West would be poor and they would “combine” and lay “burdens” on the commerce and consumption of the old states.¹²⁶ John Rutledge of South Carolina, one of the stalwarts of the proportionalist alliance, on July 5 said property was the “principal object of Society,” and “if numbers should be made the rule of representation, the Atlantic States will be subjected to the Western” states.¹²⁷ Rutledge’s fellow state delegate, Pierce Butler, agreed with Rutledge the next day. The more the subject was examined, he said, the less he was persuaded “that the number of inhabitants would be a proper rule of proportion.” He thought property was the “only just measure of representation” and agreed with those calling for “some balance” between old and new states.¹²⁸ Davie of North Carolina chimed in the same day, saying wealth or property ought to be “represented” in the second branch.¹²⁹ Without

mentioning the Atlantic states' fear of being overwhelmed, but focusing on property as needing protection, another delegate from the South, Abraham Baldwin of Georgia, objected to proportional representation. He stated that the Senate "ought to be the representation of property."¹³⁰ Up until this moment, all three of these Southern states had been integral to the proportionalist voting alliance for weeks.

To the North, there too stalwarts of the Madison camp were concerned about the operation of proportionality in new states. On July 5, Gouverneur Morris argued that new states would involve the nation in wars (he was thinking of the Spanish and the Mississippi River) which the older states would pay for, so provision should be made "to prevent the maritime States from being hereafter outvoted by them." Observing that "property then was the main object of Govt.," Morris proposed "irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have."¹³¹ About these remarks, John Rutledge said the last speaker "had spoken some of his [Rutledge's] sentiments precisely." On July 6, the day after Morris's speech, Rufus King of Massachusetts descanted at length on the topic. He foresaw that in a century and a half of time, the growth of the population would be enormous and "that ye. number of inhabitants was not the proper index of ability & wealth; that property was the primary object of Society [Rutledge's precise phrase]" and needed to be factored into apportionment. He disliked the possibility that ten new states could soon be added diluting the voting power of the original thirteen.¹³² Later King and his fellow state delegate from Massachusetts, Elbridge Gerry, expressed their concern about the Atlantic coast being subjugated to new states.¹³³ Originating as a concern about Eastern subjugation, these cross-regional pronouncements focused on the core concept of the proportionalist camp, "the rule of numbers," which had been the target of the structuralist camp for weeks. Some of these individuals remained loyal to the proportionalist camp on the crucial vote of July 16 – King, Butler, and Rutledge did – but others (from both North and South) did not.

These developments caused alarm amid the leadership of the proportionalist camp. The convention's majority voting alliance had been founded on uniting small and medium-size Southern states with big states to support proportional representation (with three-fifths as one of the incentives). When the two Southern delegates, Abraham Baldwin of Georgia and William Davie of North Carolina, expressed opposition to proportional representation in the Senate, in speeches of June 29 and 30, James Wilson scrambled to propitiate them. To Baldwin, Wilson acknowledged there might be some adjustment possible in the second branch and not apportion the body strictly according to population. To Davie, he said possibly the delegates could agree on a minimum of one Senator for every state, even the smallest states, and above that number one Senator for every 100,000 inhabitants.¹³⁴ These proposals went nowhere but were evidence that Wilson saw the tide turning against his camp at the end of June.

But it was Madison who, on the same critical day of June 30, made the boldest move to disarrange the opposing camp, and he sought to do so by shoring up the solid South. He stated that the division in America was not really between big states and small ones after all, but between “their having or not having slaves.” He went on to cut the gordian knot by a sharp new proposal: apportioning seats in one house according to “free inhabitants only; and in the other according to the whole no. counting the slaves as (if) free. By this arrangement the Southern Scale would have the advantage in one House, and the Northern in the other.”¹³⁵ His speech was one of the major intellectual turning-points of the convention. Rather than debate the structuralists’ point about the flaws of representation, Madison conceded it. The region’s differing interests, rather than dissolving into thin air as he had been maintaining, posed a distinct threat to the republic and he had a procedural remedy to address it. Laden with racism as it was, his proposal of June 30 was Madison’s most republican moment in a convention during which he otherwise operated as a majoritarian.

Madison’s specific remedy – counting 100% of slaves in one house and not in the other – left the small Northern states more vulnerable than ever and these latter would never agree to it. Madison must have known that and hoped rather with this formula to stiffen the weakening resolve of the Southern delegates who were evincing doubts about proportional representation. If so, that attempt, too, failed of its goal. But this speech had a radically clarifying effect. From then on, the protagonists in the proportional representation fight spoke mainly and frankly about their regional concerns (with rising asperity), and increasingly the regions were North and South. Southerners articulated their anxiety that even if numbers entitled them to majority in Congress, Northerners would never relinquish their domination. And Northerners looked at a future Congress controlled by slaveholders with foreboding.

The asperity appeared immediately, in a speech on the same day as Madison’s, when Gunning Bedford delivered the harshest remarks of the summer. Addressing the state delegations of the proportionalist camp, he said: “Impartiality, with them, is already out of the question....Even the diminutive state of Georgia has an eye to her future wealth and greatness – South Carolina, puffed up with the possession of her wealth and negroes, and North Carolina, are all, from different views, united with the great states.” The members of this alliance, he said, “endeavor to amuse us with the purity of their principles and the rectitude of their intentions....” They allege (said Bedford) that the government will be conducted “for the good of the whole.... *I do not, gentlemen, trust you.* If you possess the power, the abuse of it could not be checked.” Sooner than be “ruined” by the Virginia Plan, finished Bedford, “there are *foreign powers who will take us by the hand.*”¹³⁶

Although Bedford’s remarks were the most caustic, over the following two weeks many delegates made similar speeches deriding the regional ambitions of each other. A tone of worry and distress entered the hall as the debate

shifted to become a regional contest for hegemony in the new republic. Some of the Southerners who had expressed concern about Eastern subjugation fell back into line with the proportionalist camp because of this new sectional focus, but some did not. And more Northerners began to re-appraise the virtue of representation by the “rule of numbers.”

July 10 was particularly combative. Discussion began with consideration of a revised version of the initial allocation of House seats for each state. Southerners wanted to reduce New Hampshire by one seat and called for an increase in Southern allocation. The report they were considering already allotted the South more seats than proportionally it was entitled to, even when counting slaves at three-fifths.¹³⁷ Rufus King of Massachusetts in presenting the latest allocation on July 10 said as much. He was all for giving the South more seats than population would justify, said King, but “no principle could justify the giving them a majority.” General Pinckney mentioned the superior wealth of the South and “insisted on its having its due weight in the Government.” Morris then commented that he “regretted the turn of the debate,” lamenting that there seemed to be more representatives of states in the convention than there were “Representatives of America,” and opined that the South had in this latest report more than its fair share of seats.¹³⁸ From there the conversation returned to the equally prickly future apportionment formula. Randolph of Virginia proposed a census every few years and alterations in apportionment be made accordingly. Morris objected to putting “Shackles” on a future legislature and wished in any case “to put it in the power of the [Atlantic States] to keep a majority of votes in their own hands.”¹³⁹ Morris had previously pushed to fix the ratio of Atlantic and western states for all time, but now he moved to a fallback, to wit, rather than a strictly numerical formula, the matter should be left to future congresses to decide.

On July 11, the next day, George Mason made a typically unvarnished and aggressive response to Morris. The contest was between North and South, he said, and precisely because the two regions were at odds, Mason said, the constitution required “some permanent & precise standard as essential to ye. fair representation required in the 1st branch.” At present, said Mason, “the Northn. part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter when the reason no longer continued. From the nature of man we may be sure, that those who have power in their hands will not give it up while they can retain it....If the S. States therefore should have $\frac{3}{4}$ of the people of America within their limits, the Northern will hold fast the majority of Representatives. $\frac{1}{4}$ will govern the $\frac{3}{4}$. The S. States will complain: but they may complain from generation to generation without redress.”¹⁴⁰

Southerners then proposed that the future apportionment rule should say that the census be taken of the “free white inhabitants and three-fifths of those of other descriptions,” just to ensure that the proportional representation contemplated for the future was to include counting slaves. This rule had been approved in June for apportionment but now was associated

with perpetual reapportionment. Butler and General Pinckney then proposed that three-fifths be replaced by five-fifths. (The motion lost, but undoubtedly grated on some.) Morris returned to the topic of fixing a formula for the future and added to his earlier observations that “he could not persuade himself that numbers would be a just rule at any time.”¹⁴¹

This sentence was a new one for Morris. He had previously argued for counting wealth in apportionment and previously had supported simple proportionality, but had not before July 11 echoed Dickinson (and others) on the fallibility of numbers as the way to apportion power. He went on to object to “admitting blacks into the census” at all. This too was a new stance for him. He was sounding like William Paterson now, who had two days before, on July 9, said that the apportionment by numbers alone with three-fifths of slaves counted would lamentably give “an indirect encouragement of the slave trade....”¹⁴² It would seem that the Southern efforts to rally their delegates in the battle over reapportionment, invoking regional loyalty and three-fifths (even five-fifths), while possibly bearing fruit with some Southern delegates, were alienating Northern adherents to the majoritarian alliance. Morris concluded by asking the delegates to trust future congresses to do the right thing, bound by “their duty, their honor & their oaths,” and if we cannot trust that, “let us have no Govt. at all.”¹⁴³

Madison, who had formerly counted Morris as a principal ally, had fun with that line of argument and responded in a mocking tone. He was surprised to hear Morris speak of honor and duty, said Madison, after all of Morris’s speeches about man’s depravity and the need to check vices and interest. Moreover, while Morris “recommended this implicit confidence to the Southern States in the Northern Majority,” said Madison, “he was still more zealous in exhorting all to a jealousy of a Western majority. To reconcile the gentl’n. with himself it must be imagined that he determined the human character by the points of the compass.”¹⁴⁴ Madison extolled the great future of the West and the need to fix a universal standard for representation for the future. Mason followed Madison, repeating his theme that South and West would become the majority in a few years yet be kept in perpetual minority unless the Constitution fixed the rules of apportionment. In reply, Rufus King, who had never before sounded like a structuralist (and remained loyal to the proportional cause on July 16), said he was “much opposed to fixing numbers as the rule of representation...particularly so on account of the blacks.” He repeated that in the temporary allotment for the first Congress, “the Southern States had received more than the number of their white & three fifths of their black inhabitants entitled them to.”¹⁴⁵ James Wilson concluded this contentious day (July 11) by saying that although he could not understand why blacks should be counted in representation (forgetting that he was the delegate who first moved the resolution granting this gift to the South), his concerns were “overruled by the necessity of compromise.” His next point was the timely one: Wilson said he differed with Morris about the West and representation. He “had seen the Western settlemts,” was

impressed by the wealth therein, and did not doubt they would contribute their share of taxes.¹⁴⁶

The convention having reached a stalemate on the vexing question of how to determine future allocation of congressional seats, on July 12 Morris proposed linking taxation to the number of representatives each state was allotted; his proposal passed, and this seemed to break the logjam.¹⁴⁷ Why he made the proposal is not clear; he soon regretted his motion. Possibly he thought it would be “a bridge,” as he called it, to a more comprehensive inclusion of property North and South in the apportionment formula.¹⁴⁸ In the event, it had the opposite effect. By linking tax to representation, the scheme made it tolerable in the North to grant extra congressional seats to slaveholders because they would be made to pay for this privilege with higher taxes, and that in turn got the convention over the controversy of three-fifths that had endured for weeks. Getting that problem behind them, the delegates rushed and adopted Randolph’s resolution the next day, July 13, to make numbers alone the rule for apportioning representatives in the lower house. That formula uniquely benefited the South if the Southwest grew as expected.¹⁴⁹

This decision brought all eyes back to the Senate. It was becoming clear for at least some Northerners (such as Morris) that the regional contest was now the pre-eminent one and the Senate must be structured to counterbalance the adopted reapportionment formula for the lower house. If the lower house would be apportioned by numbers alone and uniquely benefit the Southern version of property, it would little help the North if the Senate were structured around property (which would benefit property owners North and South). The idea of a property-based Senate was no longer attractive to some Northern delegates. The only other tool to hand was a Senate voting by states. On July 13 Morris rose and switched his position on the Senate, announcing he had no choice but to embrace the “vicious principle” of equal voting in the Senate.¹⁵⁰

As if he needed more reason to take this radical step, other forces were possibly operating on Morris that day. News arrived in Philadelphia the evening of July 12 that the Northwest Ordinance, having had its second reading that day in the Congress sitting in New York, would be enacted the following day (July 13). One would have thought that the exclusion of slavery in the territory, inserted in the final draft, would have comforted antislavery delegates such as Morris; but the Ordinance applied only to lands north of the Ohio River and by implication Congress regarded lands south of the Ohio as open to slavery (which indeed already had slaves). The Ordinance also provided for between three and five states as the maximum to be carved out of the Northwest territory; no such limit existed south of the river. That Congress was able to pass this act was owing to proslavery members who were also delegates to the federal convention and needed to leave Philadelphia to make up a quorum in New York.¹⁵¹

For Morris and others of his thinking, the events over the previous two weeks must have seemed like a crescendo of woes now reaching an ugly

climax: limitless and slavery-fueled expansion in the Southwest, a cap on states in the Northwest, and a reapportionment rule that counted no one's property except slaveholders' property. When one of the visitors from New York met with Benjamin Franklin, Franklin showed him a snake with two heads which he had in a jar. Franklin mentioned that events in the convention that day (July 13) had made him think about the snake as a metaphor for America, but was stopped from explaining his meaning to the visitor by another delegate reminding him of the convention's secrecy rule.¹⁵²

In his remarks that same day, Morris portrayed a two-headed America as he explained why he switched his position on the Senate. He said he had long thought the distinction of North and South "groundless" and "heretical," but the "Southn. Gentleman[sic] will not be satisfied unless they see the way open to their gaining a majority in the public Councils." The resulting "transfer of power" posed a distinct threat to his region, and he would vote for equality in the Senate to protect the North.¹⁵³ The launch of the controversy over future apportioning powerfully re-energized the existing tensions over three-fifths and the precise allocation of seats in the first Congress. It was capable of doing so because the issue of future apportionment was even more important than the current ratios.¹⁵⁴ Currently the North was in the majority but presently it would not be. The more Morris (and other Northerners) stressed that there should be no change in ratios, particularly a change fueled by expanding slavery, the more the South insisted there be one. And this dynamic led Morris, for one, to change his mind on the "rule of numbers."

When Morris sat down, Wilson rose to rebut his fellow Pennsylvanian: "all men wherever placed have equal rights," he said, and he was not apprehensive that "a few States should contain the superior number." "The majority of people wherever found ought in all questions to govern the minority. If the interior Country should acquire this majority they will not only have the right, but will avail themselves of it whether we will or no." Those of the interior will rebel, just as we did against Britain, if deprived of their just rights. Taking aim at the new line Morris was taking, Wilson said, "...if numbers be not a proper rule, why is not some better rule pointed out."¹⁵⁵ Wilson had a point: no one had come up with a better rule. But that was because there was no evident rule that could make representation reconcilable with neutral government. The closest the structuralists could come to formulating a rule was to say anything – property or states – to block a majority was better than nothing.

Turning to three-fifths, Wilson said it was agreed a long time ago that counting heads was pretty much the same as counting numbers and wealth when it came to representation. Property by itself was not the main aim of government; in this he had to differ with Morris, he said. Rather "the cultivation & improvement of the human mind was the most noble object. With respect to this object, as well as to other personal rights, numbers were surely the natural and precise measure of representation." Here was Wilson at his oleaginous best. Morris had expressed concern about the South's overwhelming the North in national councils thanks to future reapportionment by numbers

alone and to three-fifths. Butler had just as bluntly replied, keep your hands off our slaves. Wilson, in a rehearsal of his performance later that year in ratification, turned to bombast. He invoked popular sovereignty, majority rule, and equality for all, even for the unschooled frontiersmen, and the cultivation of the human mind. In the name of these “noble” principles, all the while disparaging the rank protection of property, Wilson defended giving representation to slaveowners’ property in human beings, as well as expressed indifference to the likely unbalancing of the union. Probably no one in his audience was unaware of his presidency of the country’s largest land speculation venture, the Illinois-Wabash Company – some in the audience were shareholders – which benefited from any policy favoring the West.¹⁵⁶

On the next day, July 14, Morris tried one last time to protect the North, moving that in the future new states should never be able to outvote the existing states in the lower house. This measure lost narrowly, 5 to 4, with the noes being exclusively the four Southern states joined by New Jersey. The ayes were Massachusetts, Connecticut, Delaware, and Maryland. (Pennsylvania, Morris’s own delegation, divided.) This vote tally again showed that the proportionalist alliance had shed some of its crucial adherents (Massachusetts siding with the structuralists, and Wilson’s own Pennsylvania divided). But the South remained solid for this vote on future expansion. Had the intervening sectional division not occurred over the past two weeks, had reapportionment (with three-fifths) not further cemented the South to the proportional alliance, it is possible that Morris’s proposal would have found favor with Rutledge, Butler, and Williamson who had all previously expressed concerns about the frontier dominating the seaboard. But the battle between the South and North had so intensified that the proportionalists were successful maintaining Southern loyalty.

Having won the crucial fight over future apportionment, Madison and Wilson were concerned that their achievement would be undone by equality in the Senate; it was perhaps for this reason that the Senate debate took on the asperity it did in the days after the July 13 vote on reapportionment. The winners had run the race and thought the trophy was about to be snatched away.

A Senate composed of equal states would create in “perpetuity” the “preponderance” of the North over the South, warned Madison on the eve of the crucial vote.¹⁵⁷ He had earlier in the convention said it was manifestly unjust that a minority should rule the majority.¹⁵⁸ Now it was manifestly unjust to a likely future Southern majority. One historian has persuasively argued that for Madison the expansion of the nation was a cure for majority tyranny, and that this cure became urgent a few years later when John Adams’ administration began its spiral into autocracy.¹⁵⁹ But during July in the federal convention, Madison did not scruple to hide his ambition for a Southern majority, a majority which could be attained only with expansion and now was threatened by equal vote in the Senate.¹⁶⁰ The change would not have been unnoticed by his fellow convention delegates. Madison had spent a part of

June arguing that majorities could not be formed in a big republic and the big states had no common interests. Now he was advocating building a Southern majority. The debate had been transformed over the past six weeks: first, by the structuralists' dissection of representation – pointing out the inadequacy of filtration to eliminate interests and prevent dangerous majorities; and second, by the re-apportionment struggle – which had the effect first of weakening the hold of proportionality on many delegates North and South, and latterly the effect of sharpening the North-South divide. By the end of this evolution, Madison was defending a case that directly controverted the case he started out with.

As the debate changed from the third week of June onward, in lockstep with it the vote outcomes also changed. One needs to look at the sequence of key votes. It was not the case that equal vote in the Senate suddenly triumphed on July 16 in a spirit of compromise to save the convention. There was a steady erosion in proportionalist totals from their highwater mark of June 19 (when they racked up seven states against three for the structuralists).

On June 29, the majority alliance won a vote that the first branch ought not be apportioned according to the equal vote rule of the Articles of Confederation, but now the vote was six to four rather than seven to three, Connecticut having switched to opposition (Maryland divided). The proviso about three-fifths, perennially revisited, was postponed, as was the method of apportioning the Senate. The voting alliance of Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia held firm, but postponements possibly signaled a lack of confidence in the Virginia Plan.¹⁶¹

On July 2, the postponed tally on equal vote in the Senate occurred and had the surprising result of a tie: five to five. Georgia broke with the proportional alliance which had dominated apportionment votes thus far in the Convention. Abraham Baldwin voted in favor of the Connecticut motion for equal vote, his vote divided his delegation, and Georgia cast no vote. On this important day, Maryland moved from being divided to voting aye on equal Senate vote (thanks to Luther Martin's sole vote being counted owing to Jenifer's absence). This day's vote was a turning point. The convention stood at a deadlock.¹⁶²

Immediately the delegates appointed a committee to find a solution for deadlock on the Senate. Three days later, on July 5, the committee reported back recommending proportional representation for the lower house and equal vote in the Senate. On July 7, the convention took a preliminary vote on the committee's recommendation. Six states voted yes (to equal voting in the Senate). Only three states stuck by full proportionality, the core alliance members – Virginia, Pennsylvania, and South Carolina. Georgia and Massachusetts each divided and cast no vote.¹⁶³

On July 14 two votes occurred that augured ill for the proportionalists. Massachusetts, as we have seen, voted to cap representation of new frontier states. And a last-minute compromise for the upper chamber was defeated. This motion was moved by South Carolina and Pennsylvania and endorsed

by Madison; it would have granted large states more Senate seats than the smallest states, but not in proportion to population and was therefore decidedly better for small states than proportional representation. It is of interest that in defeating this compromise, the structuralist camp carried six states: Massachusetts, North Carolina, and Georgia all joined with Connecticut, New Jersey, and Delaware to defeat the plan. The usual troika of Virginia, Pennsylvania, and South Carolina voted aye (together with Maryland). Gerry prevailed in throwing Massachusetts in with structuralists in the absence of Gorham. And evidently Baldwin swung Georgia while Davie and Williamson brought North Carolina into the structuralist camp.¹⁶⁴

The final vote on equality in the Senate came on July 16, and the proportionalist camp lost four to five. In this tally, North Carolina voted for equality thanks to William Davie and Hugh Williamson, and Massachusetts divided its delegation (casting no vote) thanks to Elbridge Gerry and Caleb Strong. The equal vote camp carried five states (New Jersey, Delaware, Maryland, Connecticut, and North Carolina) while the majoritarian alliance was now composed of Pennsylvania, Virginia, South Carolina, and Georgia. The majoritarians carried two large states and two small states, one Eastern and three Southern. One of the four was not a dependable vote for the proportionalists, as Baldwin had proven on July 2, again July 7, and yet again July 14. By the end, there remained only three dependable states for Madison and Wilson: their own states plus South Carolina, which were the founding members of the alliance. On the matter of proportionality, the majoritarian alliance had gone from majorities of seven and six in June, to a tie with five votes in early July, to three votes on July 7, and final defeat with four votes on July 16, commanding in the end only three stalwart delegations and a wobbly Georgia.¹⁶⁵

The apostates

In analyzing the steady erosion in the majoritarian strength from June 19 to July 16, it is worth considering the apostates, those who switched sides during the debate.

Gouverneur Morris

The most documented switch was that of Gouverneur Morris, most documented because verbose as he was, he left a record of his spoken thoughts. On the same day as the tie vote on the Senate composition, July 2, Gouverneur Morris made one of his more provocative speeches of the convention, one with an echo of the past. Morris said the Senate had to be a separate entity entirely from the lower house because, he said, one "branch must have a personal interest in checking the other branch. One interest must be opposed to another interest. Vices...must be turned agst. each other." Saying he feared "the schemes of the Rich," he proposed the upper house to be the chamber of the rich alone, where they could be safely sequestered and not

allowed to contaminate “the democracy” or take control, with their better means and knowledge, of “the poor.” By being set apart the rich and the poor in their own proprietary chambers, “The two forces will then control each other....There will be a mutual check and mutual security.” Saying history was strewn with examples, he observed, “Let the rich mix with the poor” and “they will establish an Oligarchy” and “liberties” will perish. “A Senate for life will be a noble bait,” a place where the rich could safely perform their function of checking the other branch. “Give them the second branch, and you secure their weight for the *public good*.”¹⁶⁶

His was an allusive and witty speech, touching on ancient themes of balance and the perils of mixing political units indiscriminately. But twelve days later, Morris’s tone sharpened, the wit was gone, and he changed his position about the vicious principle of equality in the Senate. This was a seismic move for him. Morris had begun the summer on May 31 reproving Delaware’s George Read for failing to understand the importance of proportional representation in creating a new national government.¹⁶⁷ On July 5 he called the importance of states “the bane of our Country” and implied it would be all right with him if they were “annihilated.”¹⁶⁸ As late as July 7, Morris opposed equal vote in the Senate as sacrificing “the great objects of the nation...constantly to local views.”¹⁶⁹ Then only six days later, he came out, reluctantly, for equality among states in the Senate and began to condemn the rule of numbers.

As we have seen, the explosive argument over westward expansion drove him into the opposing camp. Like a bull introduced to humans for the first time in the bullring – where unfolds a race between the speed of his education and of preparations for his slaughter – Gouverneur Morris after six weeks of education with the Southern toreadors suddenly realized Northerners had to change their tactics to survive. Starting as a proportional representation man, moving on to a Harringtonian formula of checking the democracy in one house with rich senators in another, he landed at last on a Senate as the home of non-slave, commercial states of the North, substituting suddenly that particular group as being more in need of a refuge than the noble, baited rich. The blocking role was similar, but with different, more threatened constituents, and it had (in his mind) nothing to do with states’ rights. Nor did equal vote have anything to do with compromise; in his mind, it had to do with survival.¹⁷⁰

Abraham Baldwin

That Abraham Baldwin, a Georgian, abandoned the Southern voting alliance was perhaps not surprising inasmuch as he was a transplanted Yale-educated New Englander who had moved to Georgia from his native Connecticut only four years before the federal convention. He was friends with members of Connecticut’s delegation.¹⁷¹ He left no papers, not even correspondence, so unraveling why he broke with the voting alliance can only be conjecture. Apart from pleading for property to be represented (as did Morris), his only

comments on equal vote in the Senate were as spare as his archive. The second branch "ought not to be elected as the first," he said on June 29.¹⁷² Brief as it was, this comment was disturbing to the majority voting alliance.

On July 2, when the Senate composition was put to vote once again, Georgia voted last. Ten states had already voted when Georgia's vote was called for: five had voted against equality of states in the Senate, and five had voted for it (the largest tally for equal voting since the proceedings had begun). In this tense moment of a draw in the tally, the Georgia delegation was polled. William Houstoun voted with the majoritarians, Baldwin against them, the tie between them rendered Georgia's vote null, the convention-wide tie dramatically was sustained, and the convention deadlocked on this crucial matter.¹⁷³ Convention delegates selected Abraham Baldwin to be Georgia's delegate to the special committee formed to find a solution.

It may be easier to name the motives that can be ruled out rather than ruled in concerning Baldwin's vote that day. Because the proportionalist alliance was increasingly identified with the proslavery forces, one could imagine that this transplanted minister (he was appointed professor of Divinity of Yale and declined the position) voted out of a distaste for the proslavery arrangements embedded in proportional representation (because of three-fifths). However, on August 22 in one of his few substantive remarks in Philadelphia Baldwin said Georgia opposed a national restriction on the slave trade.¹⁷⁴ It can also be ruled out that Baldwin voted as he did on July 2 out of a concern for state sovereignty. Throughout the convention, Baldwin voted consistently for "a strong national government."¹⁷⁵ On July 14 he voted against limiting new states' representation in the lower chamber, so he did not share with some others the fear that frontier expansion would dilute the Eastern congressional vote.¹⁷⁶

In addition to his statement that the Senate ought not be seated proportionally to population and that property ought to be represented there, Baldwin left us other clues. His July 2 vote was not his only one along those lines. On July 7, he voted the same way. On July 14, he caused his state to vote with the structuralists and against a Southern compromise that would have deprived the states of equal votes in the Senate.¹⁷⁷ In other words, he seems to have been determined on the subject of equal vote in the Senate. (Given his consistency on both July 2 and July 14, it would seem that the reason Georgia fell back into the proportionalist camp on July 16 was evidently because Baldwin was joined by the two members of the delegation who must have returned from the New York Congressional session by then.)¹⁷⁸ Baldwin may have been lobbied and influenced by the Connecticut delegation; he considered the structuralist Oliver Ellsworth his "chum."¹⁷⁹

In Baldwin's remarks on June 29, when he said the Senate should represent property, he also said that although it was agreed the convention must make a government energetic and formidable, "I would guard against the danger of becoming too formidable."¹⁸⁰ It is likely he saw the equal vote as a block or check to prevent the legislature's "becoming too formidable" in the same way that Dickinson wished for that body, so constituted, to prevent "one great

current” from occasionally being formed. There is no record that he cast his vote because he believed compromise was necessary to save the Constitution.¹⁸¹

William Davie

William Davie was the next apostate, from North Carolina (fourth largest state). When he spoke up about the Senate’s composition on June 30 (the day after Baldwin spoke), Davie said he did not like equal vote but disliked proportional representation even more. He said that owing to the latter, the Senate would become too “numerous,” “multitudinous,” or “tumultuous.” He then went on to lament the “local prejudices & interests which...would find their way into the national Councils.” These words were not casually inserted in his remarks; they were nearly identical to those used by Ellsworth. It would appear he was convinced about what he called “the insuperable difficulties” of proportional representation and was part of an organized effort to stop it. In light of his expressed skepticism about equal vote in the Senate, he seems to have been against representation in any form – which led him to say that as of that date, “he could not vote for any plan for the Senate yet proposed.”¹⁸²

Davie should have been a consistent backer of the proportionalist camp. He was a Southerner, owner of numerous enslaved persons, supporter of three-fifths, and hailing from a large state – all facts that would have inclined him to stay loyal to the majority voting alliance.¹⁸³ But he did not remain loyal, and caused North Carolina to side with the equal vote camp on the final decisive vote of July 16. Previously on July 7 in a preliminary vote on the same matter, he threw North Carolina in with the structuralists. On July 14 North Carolina voted with its fellow Southerners not to restrict new states’ representation in the lower chamber. But on the same day his state (which meant he and Williamson) voted against his fellow Southerners by defeating the compromise offered on Senate composition and sticking with equal vote in the Senate.¹⁸⁴ Why did he vote against North Carolina’s parochial interests and persuade others to join him?

He was not a fan of using proportional representation in North Carolina’s own apportionment battle and in 1787 voted against diluting the extra apportionment favoring Eastern districts of his state.¹⁸⁵ But other Southerners did not scruple to join the proportionalist bloc in Philadelphia while undermining the cause back home. One cannot be sure but certain biographical facts probably influenced Davie. He came from a farming area of North Carolina with only a single market for their production, that of Virginia, whose merchants set prices. This region had a history of bristling at “subservience” to Virginia.¹⁸⁶ Davie likely imbibed this grudge against Virginia early on. His colleague from North Carolina, whom he persuaded to join him on this critical vote on July 16, did mention on the convention floor Virginia’s financial exploitation of their state (see Williamson below).

In later years, during a long political career, the evils of Virginia became an obsession with Davie. He lamented “the low degraded situation of No.

Carolina,” caused by being a mere satellite of Virginia. The Constitution itself, he wrote, was flawed, “moulded” to the views of Virginia’s leaders.¹⁸⁷ He regretted Virginia’s “present ascendancy in the Confederacy. ...our political liberties and our prosperity depend upon our raising up a competent rival to her ambitious pretensions.” He wrote that the “the towering pretensions of Virginia” should be “repressed forever.”¹⁸⁸ He had a particular animus against the Virginia leaders, especially Thomas Jefferson and James Madison.¹⁸⁹ Owing to the “tyranny of the Virginia Administration,” without some change the confederacy would dissolve in two years, he wrote in 1814, and “Mr. Madison will end his long political career amidst the ruins of his country.”¹⁹⁰ The Federalists, among whom he counted himself, were “weary of the Tyranny of Virginia, and disgusted with a Government in which they had no practical share and of course no influence.”¹⁹¹ He wished there were a way to “wrest the sovereignty of the Union out of the hands of Virginia;” rotation would help so as to prevent the president’s being chosen from the same state more than once every twelve or sixteen years.¹⁹²

Given his origins in a state which harbored feelings of resentment toward the overbearing Virginia, and his later obsession with the “ascendancy” of that same state, it is plausible that this North Carolinian voted against the Southern region’s position on July 16 out of a concern about the amassing of power by Virginia – or by any set of actors – dominating government, and such domination was more likely with proportional representation than without. After the crucial vote of July 16, when North Carolina was the only Southern state to desert the proportionalist voting alliance, one can imagine that Madison reacted with hostility toward the person who had led his delegation in its defection. We have no record of an exchange. But Davie left Philadelphia on August 13, more than a month before proceedings were finished, and never returned.¹⁹³

Hugh Williamson

Hugh Williamson was a doctor who moved to North Carolina from Pennsylvania and later moved back North to New York. He voted with his colleague Davie on July 16 and caused North Carolina to cast the decisive fifth state vote for equal voting in the Senate.¹⁹⁴ Earlier in the convention, however, Williamson supported proportional representation, speaking up against the anti-proportionalist position as unreasonable as late as June 28.¹⁹⁵ He supported creating the committee of July 2 to look for a compromise, but did not like its recommendation when it reported three days later.¹⁹⁶ We do not know if he objected to the recommendation therein of equal vote in the Senate or of House apportionment strictly by number of inhabitants. It is possible it was the latter. On June 28 Williamson had advised his fellow delegates to keep in mind the “expected addition of new States from the Westward.” They will be small and poor, he said, and lay burdens on the rest of the nation, “with greatest weight on the old States.”¹⁹⁷ Although he did not support Morris’s position

that future apportionment should be at the discretion of future Congresses, he agreed with Morris's goal: new poor states ought not be equal with the older states.¹⁹⁸ He was also as conscious of Virginia's hegemonic behavior as William Davie later would be, mentioning it on the convention floor.¹⁹⁹

North Carolina's desertion of the proportionalist cause occurred before the last vote. Already by July 7 and 14 North Carolina was voting with the structuralists on equal vote in the Senate.²⁰⁰ Possibly the influence of Davie, possibly a reflexive hostility to Virginia, and probably also the discussion about westward expansion affected Williamson. What was he worried about? He was after all a Southerner (though not for long) and the South stood to benefit from expansion. He gave us only two clues: first, his opinion (shared by others) that wealth ought somehow be counted in apportionment; without that he saw new, poor states saddling the East with taxes to pay for the things they could not afford. Second, his words as a Congressman some years later echoed one of the main arguments for equal vote, when he explained that the Philadelphia delegates had crafted "many articles" of the Constitution with the intention "to guard against the dangerous bias of interests, and the power of numbers." Without these "guards," he said, "the present Constitution had never been adopted."²⁰¹ The disliked rule of numbers had become a refrain with structuralists by mid-July.

Elbridge Gerry

Elbridge Gerry, as delegate from one of the largest states, had no compunction about voting for proportional representation for both chambers during the early days of the convention. He was also someone who did mention "compromise" as a reason to concede equal voting in the Senate to the smaller states. But he had a set of political beliefs that would have, at the same time, made him wary of the government which the majority alliance was constructing. He had a lifelong fear of "uncontrolled, centralized power" – the very thing James Madison put his trust in to save the polity from local factions.²⁰² He voted against equal vote on the June 29 tally, then reversed himself July 16, and in the interval participated in the debate about westward expansion. On July 7, Massachusetts divided (as it would July 16) on equal vote in the Senate. On July 14, Massachusetts cast its lot with those states voting to put a ceiling on new states' representation in the lower house. And on the same day Massachusetts voted against a compromise to compose the Senate somewhere between equal voting and proportionality.²⁰³ Gerry's consistency in several votes running up to the final vote suggested that conviction on the matter of preventing proportionality in the Senate (and limiting it in the House) was motivating him, not a last-minute desire for compromise.

The theory that Gerry nobly sacrificed his state's interest by dividing the delegation on July 16 vote and saving thereby the Constitution (the standard theory) ignores another piece of the voting record: during the summer, Massachusetts split (and nullified) its vote fifteen times (probably a record among

the delegations). In about half of those occasions, the split was identical to the one recorded on July 16 (Gerry and Strong against King and Gorham).²⁰⁴ When the issue causing the divided outcome was not proportional representation it was often the power of the presidency (for example, length of term), which Gerry wished to contain. There was evidently a fault line running through the delegation on the topic of controlling power.²⁰⁵

Gerry was concerned about expansion and he opposed three-fifths. Two days before the crucial vote on the Senate, he spoke about the “dangers apprehended from Western States” and moved that the new states be limited in such a way that they should never be able “to outnumber the Atlantic States.” It seems probable that, as with Gouverneur Morris, the intervening and contentious debate about westward expansion compounded his concerns about three-fifths and about Southern political ambitions and may have played a role in his switching position.²⁰⁶

Gerry was made head of the committee of July 2 that recommended to the convention equal vote in the Senate. It is not clear that he believed equal vote in the Senate was a high price, or any price at all, to pay for peace. Eight days after the vote, on July 24, on an unrelated matter, he sketched a plan for presidential election whereby if no candidate received a majority (from state legislatures), the lower house of Congress would choose two persons from the top four candidates and the Senate would make the final selection.²⁰⁷ This formula was a classic old-style, republican, multistage process, involving local nominating and ultimate selection at the center. At the center, under Gerry’s suggestion, the final vote would be cast not in a body peopled by proportional representation but in the Senate. Gerry made the proposal after the decision was taken on equal vote in the Senate. He could not have thought the Senate woefully disfigured by the need to find a compromise on July 16 if he wished to entrust it on July 24 with presidential selection.

George Mason

George Mason does not qualify as an apostate: we do not know how he voted July 16, and he disliked intensely the idea that the South might be held in permanent subjugation to the North if settler expansion should one day entitle her to the mastery of Congress. He on occasion spoke up for proportional representation in both chambers, taking a position consistent with Virginia’s size and her benefiting from three-fifths as the largest slave-holding state.

But his resolute independence made him an untrustworthy ally of the majoritarian alliance. In early June, he defied Madison, who was opposing Dickinson’s motion to have state legislatures select senators, by speaking up soon after Madison and Wilson and announcing himself in favor of Dickinson’s proposal.²⁰⁸ That speech, coming from a fellow highly regarded Virginian, may have played a role in the unanimous adoption of the proposal. One month later, when Madison and Wilson were unwilling to cede the equal vote issue, Mason defied them again, saying on July 5 that “there must be some accommodation on this point.”²⁰⁹

More importantly, Mason's opinions had much in common with those of the structuralists. He was not doctrinaire about proportional representation. Like John Rutledge of South Carolina, Mason had little use for the principle back in his home state. In writing Virginia's constitution in 1776, he did not address the entrenched malapportionment of that state in favor of the Tidewater districts.²¹⁰ Moreover, Mason was skeptical of the rule of majorities. At least since John Jay's negotiation of the Gardoqui treaty in 1785–86 closing the Mississippi to American navigation, Mason was apprehensive about Northern oppression of Southern interests by means of a majority vote in Congress. He was as suspicious of Northern majorities as some structuralists were of Southern majorities.²¹¹

While Madison and Wilson argued that there was no need to fear majorities in Congress, Mason's view was "a majority when interested will oppress the minority," as he said when advocating a ban on taxing exports. Mason favored a constitutional ban to protect Southern staple production in the event that Southerners did not command a majority in future and could not protect themselves.²¹² Mason was not so certain as others were that the South would necessarily overtake the North numerically, and he feared that if it remained in the minority, the majoritarian parts of the constitution posed a threat. He thought the deal struck at the end of the convention between Southerners and Northerners to extend the slave trade and protect Eastern shipping was not in the public interest. It was precisely the kind of bargain made between vastly different legislative interests – shippers and slaveholders – that Madison and Hamilton had said could not occur in a large republic and structuralists said could. Mason excoriated it. He ended up refusing to sign the Constitution and campaigning against ratification, for multiple reasons, the slave trade deal being one of them. Although a staunch regional loyalist – more staunch than was Davie – Mason evinced a concern about the functioning of legislative majorities identical to the concern of the structuralists who advocated equal vote in the Senate. Mason was a Southern adherent of the proportionalist camp who nonetheless worried about simple majorities in legislative bodies.

Mutiny

By late June if not before then, a sense emerged among delegates that there existed an orchestrated campaign to push the convention in a planned direction, and some delegates expressed resentment at being manipulated.

Evidence of orchestration appeared at the outset. We noted earlier that, in presenting the Virginia Plan, Randolph and Madison danced a duet on the matter of counting slaves in seating the Congress (see above, *An alliance is formed*). The sponsoring of three-fifths by James Wilson and Charles Pinckney of the South Carolina delegation was evidently pre-coordinated, and likely was discussed between Wilson and his house-guest John Rutledge, dean of the South Carolina delegation. Madison arranged for the same Pinckney to move Madison's own cherished national veto on June 8, and Madison was the seconder.²¹³ The proportionalist camp was well organized and efficiently

ran proceedings in the first weeks. It took them only four days to analyze and assail the New Jersey Plan (June 16), then kill it and cause the delegates (acting as the Committee of the Whole) to report a rough draft of the Constitution (June 19), providing for proportional representation and counting of slaves in constituting both chambers of Congress – all this in just four days.

Structuralists were not shy about complaining of the over-orchestration: Dickinson's warning to Madison about pushing "things too far," the several comments of Bedford and Ellsworth about the "combination" visible in their midst, and occasional objections to the secrecy rules of the convention. Midway through the convention, Luther Martin asked for a copy of the resolutions thus far agreed to study them while the Committee of Detail began its work and was barred from receiving it. He later complained that the secrecy of the proceedings and the journal's being locked up were evidence of the delegates' being railroaded. Both he and Paterson at different moments of deadlock with the proportionalists proposed breaking up the convention, rescinding the gag rule, and informing the public of what the majority had tried to do, "and leave it to judge."²¹⁴

Suddenly, however, the tables were turned, the proportionalists who had been masters of the convention fell into disarray, and the structuralists who had been haplessly uncoordinated took charge of the proceedings. The day was July 2, when the deadlock of five-to-five on equal vote in the Senate occurred. As we have seen, a call went up to name a committee to resolve the deadlock. What happened next was revelatory. Both Madison and Wilson opposed the appointment of such a committee and they lost.²¹⁵ The convention proceeded to appoint the committee and it did so choosing one delegate from each state by "ballot" among the convention delegates, which meant that the named committee members were not so much representatives of the state delegations as participants desired by the whole assembly (and chosen by secret ballot). The result showed an extraordinary degree of coordination among the structuralists. Nearly all members selected were against proportional representation or were recent apostates of the proportional camp or would become apostates in the next fourteen days. Only one person elected, John Rutledge, was a loyal voter for proportionality, and that was because his delegation had no dissenter from the majoritarian alliance. This special committee was stacked in favor of equal vote in the Senate or otherwise larded with people known for their independence. One could describe the biased committee appointment as an instance of compromise overtaking the convention, but it had more the whiff of a well-organized mutiny.²¹⁶

The mutiny, if that is what it was, turned into a full-fledged rout the day after the July 16 vote on the Senate, when the delegates rejected Madison's legislative veto of state laws. This was the power that Madison thought was the single most important one for the new government to possess. Before the vote was taken, Madison said the veto power was "essential to the efficacy & security of the enl. Govt." He returned to his argument of early June, that the states were the source of mischief with their "propensity...to pursue their

particular interests in opposition to the general interest.” Nothing short of the national veto on their laws would do, he said. Morris, who had likely early on supported the national veto, demurred, and made two speeches against it. First, he said the veto was unnecessary and “likely to be terrible to the States.” Second, immediately following Madison’s last-ditch plea, Morris said he “was more & more opposed to the negative. The proposal of it would disgust all the States.” Before mid-July Morris had never expressed solicitude for the welfare of states. Now he did. His change on this and the Senate composition the day before underscored the tectonic shift that had occurred in the convention by mid-July. Madison’s veto was put to a vote and lost seven to three.²¹⁷

As of this moment, there was nothing left of Madison’s main cure for the problem of interests. He had theorized that divisive interests were uniquely formed in the states and needed control from the center. The legislative veto was the powerful hammer that the center would wield. But delegates had weakened the instrument the day before, for it was not certain that two chambers of Congress organized on different principles would easily agree to use it. Moreover, the veto would have had greater authority if the Congress were popularly elected. Now the hammer was withdrawn entirely. This loss was Madison’s greatest disappointment of the summer.²¹⁸ By this vote, however, delegates did not intend to weaken national power. Immediately Luther Martin moved a resolution stating that the acts of the legislature “shall be the supreme law of the respective States,” which was agreed without debate.²¹⁹ Implied by the motion made by this experienced lawyer was that it was fine for national law to prevail over states’ laws but it should be left to the courts to assure compliance, not to legislative majorities.

By mid-July, it was clear that Madison had not formulated adequate procedures to tame the country’s interests and conflicts. In back-to-back voting over two days, delegates evinced a concern about legislative majorities, a concern to some degree running through the convention regardless of region and slavery and big and small states. It was a feeling probably intensified by the witnessing of a majority in their own midst which ably controlled convention voting until July 2. Delegates not unreasonably thought if majorities could be assembled in their own midst from disparate sources, they could be assembled in Congress. If so, filtration by itself might not provide sufficient assurance of disinterested government, and representation as the keystone might have some cracks in it.

The meaning of establishing states’ equality in the Senate

The decision to establish equality of states in the Senate was pregnant with meanings. There existed a desire for compromise to save the convention. That fact has made it appear that the so-called Great Compromise was the product of opposing camps finally making concessions to reach a deal. But that portrait of essentially static, opposing camps coming to their senses misses the complexity of the six-week debate, a debate with an unpredictable and

powerful internal dynamic. As the debate evolved, things became clearer to delegates which they had not seen in the beginning. Some changed their position in response to new arguments advanced; but the changes were not all for the same reason. Some ended up making arguments nearly the opposite from where they had begun. Discussion began with proportionalists advancing theories about the science of government and their opponents protesting the raw exercise of power, and it ended with the proportionalists speaking mainly about power and the second group raising questions about the efficacy of representation. Over the course of six weeks, power shifted within the delegate group, as one well-organized cohort lost its suzerainty to its suddenly better-organized rival. The federal convention was a rare instance in which the complex evolution of the debate affected voting outcomes. This evolution has not received the attention it deserves and that is because of how the disputants have usually been described.

Commonly it is said the struggle was between “nationalists” and “small states men” or “states rights men.”²²⁰ This depiction is inaccurate – no one was more ardently nationalistic than Morris and Dickinson – and this mislabeling has partly obscured the major argument that roiled the convention delegates. The main issue at stake was not whether to place more or less power in the states but how to share power at the national level. It was a fight over apportionment, not federalism.²²¹ Years after the fact, Madison said that once it was agreed to give states an equal vote in the Senate, the small states “exceeded all others in zeal for granting powers to the general government.”²²² What he did not say was that even before the Senate vote, the so-called “small state” camp included enthusiastic nationalists. Ignoring the nationalism of most men in the structuralist camp has led to an occluding of multiple and complex motives at play.

There is one respect, however, in which the title “nationalist,” used narrowly, does shed light on voting behavior. One of the enigmas of Philadelphia was why Pennsylvania continued to vote with Virginia and South Carolina in favor of proportional representation in all its permutations through the summer, as others peeled away from the majoritarian alliance. It did so on apportionment, reapportionment, and the electoral college (see below). At the outset of the convention, as we have seen, there were large voting majorities for proportional representation. It seemed self-evident that one way to cure the problems of the dysfunctional Articles of Confederation Congress, with its equal voting, was by proportional representation. But then the representation debate ensued, raised new concerns about interests, ramified the delegates into regional and economic camps, and caused (for these and other reasons) proportionalism to become controversial (having at the outset been controversial only with a handful of Delaware, New Jersey, and New York delegates). One group so affected was composed of Northerners concerned about Southwestern expansion and slavery. In this inflection moment, as some in this group began expressing their concerns about the rule of numbers, Pennsylvania stood alone; its delegates (except for Gouverneur Morris

and Benjamin Franklin) remained faithful to a voting alliance that was causing distress to fellow Easterners and Northerners. No other Northern state was so consistent as Pennsylvania in voting with Virginia and South Carolina on the proportionality votes. No other Northerner was so reliable as James Wilson in backing Madison and Rutledge on these votes.²²³

It seems likely that for the merchant-dominated delegation from Pennsylvania, the forming of a strong and stable national constitutional system was so vital as to outweigh all other matters. The odd delegate in another delegation – Nathaniel Gorham in Massachusetts, for example – had similar business ambitions well served by a strong government and a pro-westward expansion policy. (When Strong and Gerry switched to the structuralist camp, Gorham and King remained loyal to the majoritarians). But no other delegation was so heavily populated with businessmen of a similar mindset as Pennsylvania's. In this narrow sense and when applied to a very limited number of delegates, one can distinguish a subset of delegates as nationalist businessmen.²²⁴

The Great Compromise is often described as the conclusion of a struggle between big and small states, and up to a point that description is accurate. At the convention's start, it was John Dickinson of the tiny Delaware who first suggested one house be seated with an equal vote for each state; and it was the small state of New Jersey that presented the eponymous plan on June 15 providing for replicating the equal voting of the Articles of Confederation. That small states favored equal voting was arithmetically sensible, when the big states would have a greater say in any legislative body apportioned proportionally to population. After the convention was finished, Madison described the compromise as one of balancing small and big states by assigning each of them a chamber in Congress.²²⁵

But the shorthand description of a big state-small state fight was more accurate at the outset of the debate than it was by the time debate was finished. (Even in the opening days, the characterization overlooked the arguments of Dickinson.) During the late June discussion of representation, it was a large state delegate, Davie, who expressed doubt about proportional representation, and two weeks later Gouverneur Morris of another large state joined the equal vote camp. Oliver Ellsworth, in explaining his support for equal vote in Senate, refuted the notion that his state's size had anything to do with this vote, saying Connecticut was not a small but a middle-rank state.²²⁶ On the crucial last vote of July 16, one big state divided (Massachusetts), another big state voted for equality in the Senate (North Carolina), and two small/middling-sized states (Georgia and South Carolina) voted for proportional representation.²²⁷ These outcomes were not consistent with a big state/small state struggle. The big-state-small-state shorthand is misleading.²²⁸

By the debate's end (but not at its beginning), it would be more accurate to describe the principal struggle as one between the regions. That much was clear from the speeches in July, when Northerners and Southerners took to the floor to protect the regions from their rival's someday taking over, or

someday not relinquishing, majority control of the legislature. The more the delegates aired their differences with each other, in increasingly vituperative terms, the more the differences seemed to be plainly irreducible. The voting by some Southern states ostensibly against their own interests (to the extent their interests were measured by their size) and in favor of proportionality was actuated by their expectation of growth in the future and their benefiting from three-fifths. By contrast, said Oliver Ellsworth in late June, “to the Eastward” no state would consider giving up the equal vote in the Senate (except possibly Massachusetts, he said, but even that delegation divided when the moment came). Much had changed since mid-June, when three states of the North (including his own) voted for proportional representation in both chambers.²²⁹ To some degree, therefore, the Great Compromise was a division of spoils between North and South, free and slave states, whereby the North was to receive a majority of the Senate (because free states outnumbered slave) and the South was likely to reach parity in the House, with the near certainty of eventual preponderance there thanks to population growth and counting three-fifths of slaves.²³⁰

But only “to some degree,” for even this characterization of the controversy is incomplete. Georgia’s desertion from the proportionalists’ camp on at least three votes and North Carolina’s lasting desertion were instances of Southern states’ acting against Southern interests. The Southern delegates who led those apostasies were otherwise defenders of three-fifths, slavery, and the slave trade. Although generally defenders of the South’s main cause, they were not acting as such when they shifted their votes on apportionment in the Senate. On July 16, two slave states (Maryland and North Carolina) voted with three non-slave states for equal vote in the Senate. These anomalies occurred because another factor entered the State House discussion, namely, the concerns raised about representation itself – about the permeation of interests and passions in a legislature of popular representatives, the fallibility of the large territory thesis (whereby dangerous combinations were said to be impossible to form), and the need to check the rule of numbers alone, as an increasing number of delegates were calling it.

These topics entered the State House during the intelligent early June speeches of John Dickinson then were further developed by his colleagues in late June. In the long history of republican procedures, this appraisal of representation was a notable moment. But could this structuralist attack on representation by itself have carried a majority of the Convention and led to equal voting in the Senate? It is unknowable if it could have done so (though the June 7 unanimous vote for Dickinson’s insertion of state agency indicated a general hesitation about popular representation). It received a powerful fillip from the next and wholly unpredictable turn of events: when the apportionment discussion was suddenly widened to encompass reapportionment in future decades and the allocation of congressional seats to new states.

This question had a decisively destabilizing effect on the proportionalist alliance, for two very different reasons. First, some Southern adherents to the

alliance were alarmed at the idea that their bastions of power and privilege on the Eastern seaboard might be outvoted in future by poor frontiersmen to the West (whom they had been battling for years anyway within the borders of their own states). Suddenly a few Southerners began to wonder about the rule of numbers as the apportionment principle, absent a wealth criterion or other means to protect the wealthy East. Second, because most people thought expansion of settlement was more likely to be faster in the South than in the North, certain Northern delegates for purely regional reasons also began to question the rule of numbers principle. These considerations entered into the debate in late June and lent strength to the already emerging argument that structuralists had concocted about the inefficacy of proportional representation.

To have Southerners who were key to the proportional alliance begin to question proportionality set off alarm bells among the alliance leaders. In reaction, Madison, Mason, and Randolph made speeches to shore up their solid South in starkly regionalist terms. The regionalization of the debate was the death-knell to the proportionalist case. When Madison abandoned his own theory about majorities being impossible and became a champion of an impending regional majority, the structuralist appraisal of representation and its shortfalls seemed prescient, almost clairvoyant.

Their premises now uncontested, structuralists took command of the convention for the crucial mid-July votes. And yet even as the convention ramified into competing regional blocks, blocks which waged a contest with rising asperity for control of the future government, certain Southern delegates (Davie, Williamson, Baldwin), as we have seen, voted against their regional interest in order to sustain equality of voting in the Senate. In addition to these voters, others were expressing outright opposition to the “rule of numbers” as the sole criterion for seating a legislative body. By the end of the great debate, many more delegates mentioned the “rule of numbers” as a thing to be prevented than as a principle to be implemented.²³¹ The debate had evolved in such a manner that by July the arraignment of representation was a compelling argument in its own right.

The precise push driving delegates away from proportional representation varied. For some delegates, such as Dickinson, the creed of republican complexity was in their bones, but for most delegates it probably was not. Some ducked into the structuralist camp only belatedly, as a safe port in the coming storm. Others registered concerns about proportional representation and voted against it even though proportionality would surely benefit their region or their state. Deliberately chosen architecture or safe port in the storm, it little matters which of varying motives drove a delegate’s decision. By the end, the sole common denominator on each side of the voting division was if a delegate favored or opposed majoritarianism as the proper way to run a government. Did he agree with Wilson that “the majority of people wherever found ought in all questions to govern the minority,” or with Dickinson for whom the reliance on “Numbers [was] unreasonable and dangerous?” The

separation of the delegates into majoritarians (or proportionalists) and structuralists is a more accurate short-hand, though not perfect, to describe the voting camps by the end of the contest.

Why did delegates choose state equality in the Senate as the block against out-of-control majorities? It was not their only option. They also considered constituting the Senate as the redoubt of property holders. This proposal rapidly gained adherents across regions, North and South, in the wake of the westward expansion discussion. It probably came close to being adopted. But equality of states had been the blocking mechanism Dickinson proposed in the convention's first days. What mattered as much (or even more) were the events of July 13. When Randolph's reapportionment motion (including three-fifths) was passed, it was a victory of the South and Southwest and underscored in the minds of some Northern delegates the priority of protecting their region. Equality of states more efficiently advantaged the North than would a Senate of property-holders, for property would also include slave property, which was already to be represented in the lower house.²³²

Is it correct to call the outcome the result of a compromise? Dickinson later said July 16 was not a compromise but rather the optimal way to form a strong, large republic (see *Thinking of John Dickinson*). The vote that day did help strike a balance between big and small states, as well as slave and non-slave states. But from an older republican perspective, there was nothing concessionary about assigning major interests their special roles in the architecture. It was a requirement, even the point, of older architecture to balance groups and prevent any single interest from amassing power. The fact that one legislative chamber was given over to a region and larger states and the other chamber to another region and smaller states could be seen as a compromise but just as easily could be seen as the fulfillment of a typical republican idea of building interests into the structure. Such complex structuring was precisely what much of the debate had been about. It was strenuously resisted by the proportionalists. But they lost the argument. It is possible that rather than being mainly a compromise, July 16 was mainly a triumph of the structuralists over the proportionalists.²³³

The internal divisions of James Madison

Madison had his share of about-faces over his long public life. In Philadelphia, he was devoted to building a strong central government, and three years later was the congressional leader against the consolidation of financial power in the central government. His congressional arguments about the "necessary and proper clause" of the Constitution while opposing Hamilton's first national bank contradicted his analysis in *Federalist* #44.²³⁴ Then when it was his turn to be president and worry about capital markets, he switched again and oversaw the rechartering of the same bank.²³⁵

Madison cannot be held accountable for the fact that the Federalists and Republicans swapped horses by the second decade of the nineteenth century

to such an extent that the Republican of the 1790s was hardly recognizable in the era of good feelings. The exigencies of war, of a growing national economy, and of a rapidly growing West having quite different needs from those of the nation in its first decade made the original Republican program untenable. Politicians must swerve to stay in office, as well as to serve.

Where Madison can be arraigned is on the yawning gulf that widened between his republican professions and his un-republican actions during the federal convention. In the spring of 1787, Madison famously detailed not only the case for a new government but also the case for that new government's being capable of curing the problems that have always bedeviled republics. In several works that spring (letters to Washington and others and at least two memos, which he disseminated), he demonstrated a firm grasp of, and deep concern about, the subject.²³⁶ He wrote that the unrestricted power of majorities in states to pass legislation was a danger and questioned what he called "republican Theory" that a "majority" was always right. The "injustice of the laws" brings "into question the fundamental principle of republican government, that the majority who rule in such governments, are the safest Guardians both of public Good and of private rights." For the current deplorable state of affairs, he placed the blame squarely where it belonged: on "the Representative bodies" and on "the people themselves." As to representatives, Madison said they were men who sought the office to satisfy personal ambition more than to pursue good, and they often formed a league with others in office to pass legislation "contrary to the interest, and views, of their Constituents." Once in office, it was hard to un-elect them, "masked by pretext of public good" and repeating "the same arts and industry" that got them in office in the first place. And once there, they were liable to become the "dupe of a favorite leader, veiling his selfish views under the professions of public good, and varnishing his sophistical arguments with the glowing colours of popular eloquence."

Still more fatal were the people themselves: different factions and regions and interests would combine and form a majority, and in a republic nothing could restrain that majority "from unjust violations of the rights and interests of the minority, or of individuals." In his letter to Washington one month before the convention, Madison repeated these points: stressing the "aggressions of interested majorities" against minorities and individuals in the states, asserting that "the great desideratum which has not yet been found for Republican Governments, seems to be some disinterested & dispassionate umpire in disputes between different passions & interests in the State. The majority who alone have the right of decision, have frequently an interest real or supposed in abusing it."²³⁷

These opinions were well formulated and perceptive. That Madison cared deeply about them seems apparent. He distrusted elections, as any good republican should, having been defeated for re-election to the Virginia legislature on his first try (which humiliation he attributed to his unwillingness to bribe voters with liquor).²³⁸ He was particularly censorious of the behavior

of state legislatures, his own included; Virginia was the leader among the thirteen states in issuance of paper money (which he, Washington, and most delegates condemned as expropriation of creditors by debtors). He had his own first-hand experience of demagogues, and the sentence above about the dupes of a favorite leader and his phrase “glowing colours of popular eloquence” was likely written with his much resented rival, the gifted Patrick Henry, in mind.²³⁹

Madison’s memos were not only deeply felt; they also constituted a penetrating criticism of the *cul de sac* into which republicanism had detoured since representativeness took the reins. Elections were dangerous (as republics had always understood), but now even more than before when voters sent representatives to government who became a class apart from voters themselves, who pursued their own interests, who combined with others to aggregate a majority that might act against the public good, and who could become prey to demagogues in their midst. Madison did not carry this analysis so far as he could have and should have done had he wished to be faithful to the ancient canon: the problem was not only that ruling representatives became a separate class from the ruled – that indeed was a major problem – but also that even when they did not pursue their own “personal interests” (as he put it) but instead pursued their constituents’ personal interests, they were carrying into government the agency, bias, and interest that republics were seeking always to mediate, blend, or nullify. He did not make this point; Hamilton did, and so did Martin and Dickinson and others. But as far as it went, his indictment of modern republicanism as it had evolved – fickle electorates, majorities out of control, interests running wild, demagogues galore – was probing, intelligent, and a nuanced correction to commonwealthman ideology, which tended to revolve around legislatures’ standing up for the people against royal prerogative without generally focusing on how those same legislatures could undermine a republic’s core purpose. His target was a large one, the eighteenth-century’s apparition of a new “republican Theory,” as he called it.

Taking the floor of the convention in the State House, Madison repeated these themes and laid out his remedies – filtration, central government as umpire, and safety-in-diversity. During the federal convention, the diversity theory was the proportionalists’ best argument against the structuralists. When structuralists attacked the Virginia Plan, Madison pointed out, as we have seen, that the big states were so different from each other that it was not reasonable to expect them to share an interest and combine against other states. It was this sensible argument that James Wilson said the other side had failed to answer. In recent decades, Madison’s connection to the theory has been resuscitated as a result of attention scholars have paid to *Federalist* #10 and to Madison’s intellectual sources.²⁴⁰

People in older republics had occasionally made the challenging attempt to atomize interests – Cleisthenes in classical Athens, the Genoa republic of the Renaissance. It was not an easy thing to achieve. Few republics actually undertook the chore; most tried to manage conflicting interests, rather than

dissolve them. Those who did try understood it required drastic regulatory reform to redirect interest groups away from traditional allegiances. Madison's idea had none of that; it prescribed no procedures, no guardrails. It had a polemical and rhetorical usefulness, not a practical, procedural one in the forming of a government. That he was likely more interested in the polemical rather than the practical uses of the argument was apparent in his own determined efforts to advance particular regional and economic interests.

Those efforts were foreshadowed in the private correspondence with Washington in the spring of 1787, wherein Madison was demonstrably less guarded than in the (to be distributed) "Vices" memo. The longest single paragraph in the letter to Washington concerned the divisive question of where to site the new capital, and how unhappy it would make Easterners to remove it from the current home of New York. "A thorn in the minds of many of the Southern members" was that the upcoming assembly should be in Philadelphia, he told Washington. He thought proportional representation would be accepted at the convention, favored by "Northern States" because of their "present populousness" and by the "Southern" because of "their expected [ie, future] advantage." Madison closed with a cryptic reference to a possible upcoming vote concerning Vermont, saying he was not sure it would pass. Vermont had long since been identified by Southern partisans as a threat to the equilibrium in the states between North and South.²⁴¹ At the same time Madison was making his intelligent analysis of the republican disease of dangerous majorities, and calling for dissipating interests through mingling them together, he drew the attention of his fellow Virginian to the fate of uniquely Southern and Southwestern interests and how they were tracking in the run-up to the federal convention.

Once on the floor of the convention, Madison did more than track those interests. On June 30, in his speech at the federal convention already cited, Madison proposed that one house be apportioned according to free inhabitants and the other to those plus 100% (not 60%) of slaves "as if free." By this "arrangement," he said, "the Southern Scale would have the advantage in one House, and the Northern in the other."²⁴² From that June 30 speech on, it was difficult for him to maintain that interests would dissolve into harmless channels because if that were true, why was there a need to balance their power in the radical way he proposed? A few days later, when delegates were discussing the precise numbers to award each state in the first Congress, Madison said that he would prefer one additional seat being awarded to each of South Carolina and North Carolina instead of another seat for Virginia because the "S. States" were outnumbered by the Northern.²⁴³ With this comment, he was putting his region's interest above his state's (and for that matter above any public interest).

On July 14 Madison warned that if the equal vote in the Senate prevailed, it would create the "preponderance of the Northn. agst. the Southn." in perpetuity.²⁴⁴ This observation was similar to that expressed by Wilson that a Senate thus constituted would enable the minority to prevail over the majority

(Madison repeated that argument as well on July 14), only Madison's version was more pointed; it was delivered from the perspective of a Southerner. A Senate reapportioned periodically based on population was the Southern hope for legislative equality and eventual majority. This approach was different from the one he had taken when launching the convention proceedings. Now, instead of theorizing about the impossibility of majorities, he was angling to assemble one.²⁴⁵ Like those who were signing up to the structuralist camp in late June, Madison underwent his own evolution under the pressure of the convention debates: beginning the convention with his determination to suppress majorities (in the states); expounding his theory of the impossibility of majorities emerging at the national level; then formulating (following Hamilton's lead) its corollary that big states were too different to join forces; and finally landing as a foot soldier in the battle for Southern "preponderancy." This last position he held until the close of the proceedings.

It is understandable how he ended up in this uncomfortable role. Not only was he a loyal Southerner, he also seemed to have genuinely believed that legislative majorities were the only just vehicle for expressing the people's will. He *was* a majoritarian. No doubt this belief was one of the reasons he was incensed at Morris's attempt to deny the South its chance to reach a majority in the future. Toward the end of his life, Madison wrote a memo declaring the "will of the majority" to be "the vital principle of republican government."²⁴⁶ But the Madison who was openly pitching for a Southern majority in July was certain to lose credibility with some Northern delegates who had been his stoutest allies in June.

It would appear that by the time of these July speeches, Madison put no more faith in the diversity theory than did the people he was arguing with. By contrast, Madison did invest real hope in the power of the central government to attack the problem of clashing interests. He deeply regretted the loss of the national veto and averred by summer's end that without it the new constitution would be a failure.²⁴⁷ One senses that Madison's belief in the special role of the national government as umpire was genuine and hailed, at least in part, from his personal experience of disappointing local politics. The need for such an umpire had also become conventional wisdom in the Revolutionary era, having been spelled out by Adam Smith and then borne out in actuality by the breakdown in law and order in the 1780s. A distant hand, said Smith, was the only broker for local squabbles. Madison returned to this argument several times, before the convention, after it, and late in life.²⁴⁸

But Madison, fixated on local tyrannies, seemed blind to or willing to accept the majorities risk at the national level. In fact, for Madison the national majorities not only had to be risked but also were required, for if the government was to be strong enough to suppress local, divisive interests, it must possess sufficient authority to be that umpire; and such overwhelming authority could only be derived from the whole American people acting through their representatives taking decisions by majority. This chain of logic was incontrovertible – if the filtration he and others desired actually would

produce the better, disinterested representatives he said it would. But hopes of filtration being equal to its task were hard to keep alive in the riven federal convention, populated as it was with some of the most talented and patriotic Americans who nevertheless did not hesitate to let their interests guide their votes, including Madison's.

Therein lies the other explanation why he ran the risk of majorities nationally. It is possible that Madison accepted the risk because he and others thought that the South before long would have its day in the sun. His most passionate contributions to the reapportionment and Senate equality debates were on the theme of unfairness to majorities if they are outvoted by minorities and the unfairness of not enabling the South to fulfill its destiny. Madison's apprehension about majorities' overriding minorities was surpassed by his apprehension about minorities' overriding majorities when he considered his South was in the ascendance.²⁴⁹

Thus was Madison's contribution to the Great Compromise. It is possible his was the most influential role of all the delegates roles because his about-face on interests and majorities and his outspoken lobbying for his region must have had a strong effect, perhaps a shocking effect, on the attendees and probably pushed some of them – Davie, Williamson, Morris, Gerry, and maybe others – into the structuralist camp, whose ranks were swelled enough to pass an equal vote in the Senate and defeat the national veto. A revealing exchange occurred when he and Morris were debating whether to create a formula for reapportionment or leave it to the future Congresses to sort out. Morris argued for leaving the matter to future Congresses. Madison nimbly replied that although Morris had throughout the proceedings been unwilling to trust the patriotism of representatives and wanted procedures to protect different interests, now, said Madison, Morris was asking the "Southern States" to have an "implicit confidence" in "the Northern majority," when the "truth was," said Madison, "all men having power ought to be distrusted."²⁵⁰ Here Madison was sounding like the acerbic Gunning Bedford of June 30 who had told the Southerners to their face: "*I do not, gentlemen, trust you.*" One wonders how his speech must have sounded to his listeners who a few weeks earlier had been assured by him that no power group could emerge in the diverse legislature he was proposing.

Later in the convention, concerning the electoral college (which we come to presently), Madison moved provisions that would place a plurality winner in the White House if such a winner emerged from the proportionally structured Electoral College, rather than throw the election to the Senate where the eight Northern states (as he called them on July 14) would prevail. Madison was aware of the unreliability of plurality wins. In 1788 he wrote to Edmund Randolph: "I have also in hand for you the Marquis Condorcet's *essai* on the probability of decisions resulting from plurality of voices...."²⁵¹ Familiar with Condorcet, Madison nonetheless promoted plurality wins as a better alternative than throwing the election to the Senate (later House). It is possible that he did so because he believed it was better to have a president

elected by electors than a president chosen by legislators. But given his grasp of the problems (chiefly random outcomes) posed by plurality wins and his appreciation of Northern preponderance in the Senate, his Electoral College motions pointed to regional bias playing the key role. In the closing days of the convention, Madison tried twice to provide for less than a majority to be sufficient to elect a president in the proportionally organized, and Southern-weighted, Electoral College; and twice he lost.²⁵²

Although sometimes called the father of the constitution, from mid-July onwards, Madison was outvoted on the most important decisions (national veto, proportionality in the Senate, property basis of suffrage, and presidential selection). But no one got his way at the convention. Madison's personal inversions were more striking than his failures. He went into the convention believing that a strong national government, with a veto over reckless states, was needed to douse the factions and majorities so threatening to republican ideals. He came out of the convention as the champion of majorities and pluralities. If he had had his way, the play of interests would have been even larger, and balances even fewer, than in the vulnerable national councils that emerged. And yet after the convention, in the *Federalist* papers, Madison continued to warn against popular passion, interests, and majority tyranny.²⁵³

In the autumn of 1787, Madison wrote Jefferson in Paris describing the new constitution and, among other things, portrayed what he construed as the bargain between big and small states constituting the Great Compromise. Jefferson, in reply, criticized the presidency as overly powerful, said Shays's rebellion had been exaggerated to make a "very energetic government" (which could become "oppressive"), but praised the compromise of big and small states. "I am captivated by the compromise," wrote Jefferson about the balancing act that Madison had worked assiduously to prevent.²⁵⁴

Inconsistencies are to be found in all politicians' utterances. Still, in this case, Madison's contradictory behavior on a subject he cared deeply about – the operation of interests which, left unregulated, would produce either tyranny or disunion – was notable. It poses the old question: are republics too good for even the best republicans? Do republics demand more sacrifice on the altar of disinterestedness than able politicians can offer, more surrender of will than even the most committed, public-minded people are capable of? Madison's was the ancient flaw of acedia: he loved the idea of a republic made safe from its own destructive tendencies, but like Savonarola did not love the idea enough to adhere to its exacting rules.²⁵⁵

The thinking of John Dickinson

When the proportionalists' over-orchestration of the Convention produced the extreme reaction embodied in the New Jersey Plan and John Dickinson went up to Madison and said, "you see the consequence of pushing things too far," the reprimand must have hit Madison hard. The

two men were a generation apart, and Dickinson by far the more distinguished and accomplished – former chief executive of not just one state but two (Delaware and Pennsylvania), chair of the Annapolis convention that preceded the one in Philadelphia, drafter of the key documents remonstrating with the crown on behalf of the oppressed colonies from the 1760s onwards, and author of the famous *Farmer's Letters* (praised by many, among others Voltaire).²⁵⁶ He was the most, or among the most, erudite of the framers who thought carefully about political problems and government structures.²⁵⁷ For some delegates, Philadelphia was their debut on the national stage; for Dickinson, it was twenty years since *Farmer's Letters* had made him well known. The Philadelphia delegate James Wilson began his career as an apprentice in Dickinson's law office.²⁵⁸ When Princeton awarded Dickinson an honorary degree, for having articulated the colonists' case against Parliamentary tyranny, Madison was in the audience, a first-year student who wrote home to his father about the ceremony.²⁵⁹

Few if any delegates were a match for Dickinson's erudition, none for his stature among the delegates save Franklin and Washington. The next year, in 1788, during ratification Hamilton publicly cited as a reason to ratify the fact that Dickinson (along with Washington, Rutledge, Franklin, and Livingston, five "distinguished Patriots") backed the document. Late in life, recalling the Congress of 1774, Adams wrote in a mellow tone to his erstwhile nemesis Jefferson, "There was a little Aristocracy, among Us, of Talents and Letters. Mr Dickinson was *primus inter pares* [first among equals]; the Bell Weather; the leader of the Aristocratical flock."²⁶⁰

Although ill for much of the summer of 1787, Dickinson involved himself in the key decisions and it is likely that no single delegate had a greater influence than he on the result. It was he who first suggested that one branch give an equal voice to each state and that the Senate be chosen by state legislatures, who probably was responsible for the presidential selection system more than anyone else, and who behind the scenes fed ideas and sentences into the debate leading up to the Great Compromise. That Americans ended up with a hybrid creation, part confederation of states and part consolidation of national power, was to some substantial but unknowable degree because of Dickinson. Some wanted a single legislative chamber with equal voting by states, some wanted bicameral with both seated proportionally, and Dickinson not only pushed for the mixture of the two, but articulated a theory why the mixture was better for the union. Dickinson was far from a states' rights advocate; his motives arose from a different quarter.

To Dickinson, the power of the strong was a constant danger.²⁶¹ In his speech notes, he expressed his fear that the smaller states would be "swallowed up" by the big states, and recommended that as between big and small states, "Let neither dictate to the other."²⁶² But although that observation was about as far as some delegates ever got in analyzing the problem, it was only the beginning for him. The key defense against overweening power was

striking a balance of organs wherever such a balance could be struck. In a federal government the needed balance was between the different levels. Therefore in Dickinson's mind, the first role of "state agency" (as he called it early in the convention, on June 6) was, as we have seen, to induce a necessary "collision" of forces and to prevent thirteen streams being merged into one undifferentiated "great current." This blocking role was one of his arguments when he proposed that states, not voters, be the electors of Senators; and the delegates agreed.²⁶³

The second purpose of his state agency concept was more intricate. He believed that by harnessing the power of states, and people's loyalty to states, to the purposes of the national government the latter would be infinitely strengthened. This was the aim of his planetary simile which he articulated in early June. As he later explained, in a confederation "the whole is interested in the safety of every part – in the agreement of the parts – in the relation of parts to one another – to the whole...the will of the whole must be co-extensive with its interests...."²⁶⁴ He admired the architecture of ancient republics because it knitted together the local with the national units. Citing Polybius, Dickinson said that the whole Achaean league got its "energy" from the combination of its parts. The model of ancient republics was one of life and vigor "communicated through the whole, by the popular representation of each part, and by the close combination of all, that the true spirit of republicanism predominated...." As we have seen, complex architecture was of primary importance to ancient and medieval republics and Dickinson was cognizant of that fact: carefully tying local constituencies to the national structure, republics derived strength from connecting the whole to the loyalties of the parts.²⁶⁵

What is often not noticed when one thinks of the so-called "small state" men is that Dickinson was seeking to involve the states not just, or even principally, to benefit the states, but mainly to make more stable the national government. It was said that "varied representation of sovereignties and people" was sometimes construed as "a mere compromise," Dickinson wrote later. "It was not a mere compromise." It was a question of making the whole greater than the sum of the parts.²⁶⁶

A procedural structure that required mutuality was essential. It was fatal to Rome, he said, when the aristocratic and democratic parties persecuted each other and sought each an "iron domination." What was the lesson for those like us with similar "parties"? "Above all things, each party is to refrain from such measures, as will inevitably tend to irritation." Do not try to vanquish your opponent, he said, sounding like a Genoese merchant of the fifteenth-century. But Dickinson did not rely on human kindness to work this result. With Hume, he believed virtue was no match for vice without good rules. Sulla and Cromwell were not lacking in virtue before they became tyrants, Dickinson noted to himself. Both the large and small states are filled with "every public and private Virtue," but "power Grandeur and Prosperity mingle an intoxicating Draught" too strong for the "fallible Virtue of Mortality." The answer was architecture: "a better organized Government."²⁶⁷

“Let us rouse up all our faculties, and generously strive to discover, how much happiness may be produced by political institutions.”²⁶⁸

Discounting the primacy of virtue, extolling government architecture, aiming for mutuality, opposing anyone’s ability to vanquish his foes – these were late medieval and Renaissance procedural principles. Dickinson even reached back to a Cleisthenic solution and suggested that if the Virginia Plan backers were intent on overthrowing the voting arrangements of the Confederation, they should really start over, and “throw all Governments and Territories into Common Stock and divide de novo. Then we shall have the Equity and Equality talked of not otherwise.”²⁶⁹ In other words, really to abolish local bias and interest would require a reshuffling of the territories into new and equal political jurisdictions, as Cleisthenes had done c. 508 B.C. (and Harrington proposed in *Oceana*).²⁷⁰ Short of that, the remedy was inserting states with equal votes through the Senate to communicate to the center their energy and their interest, and be a blocking force in one branch of the legislature, which would then give rise to negotiated outcomes.

To this concept, Wilson reacted with a simple retort: the minority would rule the majority if each state had an equal vote.²⁷¹ It is not certain that Wilson understood Dickinson’s argument. In ratification, Wilson said the challenge facing the convention had been how to divide up the national and state responsibilities. The problem was, Wilson said, where the “line can be described between the two.” From Dickinson’s point of view, the argument was not about drawing a line or saving the state governments’ operations, but about saving the new national government.²⁷² He was as much as Wilson in favor of a strong national government: for the legislative veto of state laws, for use of federal force to compel state compliance with national law, and a critic of the New Jersey Plan as producing too weak a national state.²⁷³ For Dickinson, good architecture in the federal system was aimed at making a stronger national government, not a weaker one.

Of Dickinson’s two major premises – that the parts would strengthen the whole if constructed properly, and that state agency could block tyranny – the second one mattered the most to him during the convention, while the first was more on his mind when writing his *Fabius* pamphlets post-convention. It was the states acting as blocking mechanism that he emphasized in his convention remarks. In his private contemporaneous notes for speeches he developed the concept further. “Representation in both Branches founded on Numbers – unreasonable and dangerous,” he wrote in mid-June. He wrote that representatives would indeed *represent* their constituents and that was the difficulty. One could only be complacent about the functioning of representation if citizens across this large country cared about other regions’ interests as much as they cared about their own, he said. Since this was evidently not the case, he foresaw tyranny being hatched from a government constructed of majorities. If proportional representation were the convention’s decision, “We shall only be pioneers for succeeding Tyrants. If they follow our steps, they must obtain the summit of their Wishes.” The prospect was especially alarming to him when

looking into the future. If numbers only were used, “new States...may rule the present states as Vassals.” He called for “Reciprocity” and “Compact,” as against a government structured upon “Numbers only.”²⁷⁴

Around June 18 Dickinson prepared his own draft of the Constitution, which attempted to bridge the two competing drafts – the Virginia and New Jersey Plans. He thought the defect in the New Jersey Plan was, like the ancient confederations, it lacked sufficient “Energy.”²⁷⁵ His remedy (outlined in his draft plan) was a strong executive. His remedy for the Virginia Plan was one legislative chamber elected by the states, the other by the people, but he went further and provided staggered terms for the members in both houses so that no more than one-seventh of the members were elected in the same year.

His executive was even more complex. It was composed of three persons, one each from the three regions of the nation. They would be elected by the legislature and serve staggered terms so they would not (except in the first instance) be elected in the same year. What was the point of staging the elections of both the legislature and the executive? It was to break up that same “great current” of a majority opinion he had warned about on June 6 in discussing the election of the Senate. As time moves, sentiment changes, and a Congress composed of people elected in different moments would be less likely to share a transient opinion. The forming of majorities was his concern. The remedy was typical republican complexity.

The three-headed executive was aimed at his other major goal of involving the lesser units in the government to prevent any one region from dominating the others. A note he made (not in his own Plan but on a copy of the Virginia Plan) stated that the states should send their nominees to the legislature which then would elect the executive. This local nominating and national electing system was an old republican way of filling executive offices, and it reappeared a month later in the electoral college. Its purpose was to bind a disparate community together with a mix of nominating and electing.²⁷⁶

Because all the structuralists, Dickinson included, spoke about their small states being swallowed up by the larger states, the more nuanced arguments have not always been remembered. The apportionment dispute appeared sometimes then, and more so since then, to be about no more than the fate of small states. Two other things intervened to obscure Dickinson’s more important arguments. First, the majoritarians did not want to deal with these arguments; they preferred safer ground. They preferred to argue that big states had not enough in common to tyrannize over small ones, and that in any case it would be patently unfair for a minority of the population as represented by small states to rule the majority contained in the big states. The flaws arising from proportional representation posed questions they preferred not to delve into. Second, Dickinson was ill for much of the convention, and although he launched the debate on his important themes in early June, the speeches he prepared for himself were not delivered, at least not delivered by him.²⁷⁷ (Probably for the same reason, he never submitted the plan he drafted.) Parts of his speeches were delivered by others in the structuralist camp. They were

not framed so artfully and forcefully as they were in his notes, but his themes made it to the floor.²⁷⁸

One has the impression of an indisposed Dickinson holding court in his lodgings at Mrs. House's boardinghouse on Fifth and Market and doling out his talking points to his younger comrades from mid-June to mid-July.²⁷⁹ Had it not been for Dickinson's intellection, the anti-proportionalists would have put up a robust defense of small states but might not have canvassed the additional topics of representation and the rule of numbers so much as they did.

There is no evidence that Dickinson favored equal vote in the Senate out of an aversion to the slaveholders' cause (as, for instance, Gouverneur Morris disclosed was among his motives during debate). However, Dickinson did not support slavery. Once his state's largest owner of slaves, the Quaker Dickinson unconditionally released his slaves the year before the federal convention.²⁸⁰ Privately during the convention, Dickinson expressed his disgust at three-fifths: "What will be said of their new govt [?] of foundg a Right to govern Freemen on a power derived from Slaves themselves incapab[le] of govg....The omittg the word ["slaves," absent from Wilson's motion] will be regarded as an Endeavour to conceal a [illegible] of wh we are ashamed."²⁸¹ It was Dickinson who early on had suggested apportionment be based on "actual" contributions rather than "quotas of contributions," seeking to tie apportionment to real money contributed, not human property owned – or so it would seem was his intention from what followed, for later that day James Wilson and Charles Pinckney, having had the ulterior motive behind the vague formula "contributions" smoked out by Dickinson, made their motion that the fair ratio of representation should count free inhabitants and "three fifths of all other persons."²⁸² Dickinson left no doubt that he shared with Northerners a deep apprehension about the addition of new states and the prospect of Southern domination under Randolph's proposal for re-apportioning Congress.²⁸³

It is possible but not proven that for Dickinson the fight against the rule of numbers in apportioning Congress was waged, in part, to prevent the takeover of the country's national councils by representatives of slaveholders and their friends in the South and Southwest. To some extent, his was a fight to protect states (especially small states). To some extent, he was motivated by his knowledge that republican complexity was better than simple majorities. And to some extent, it was a fight for an architecture of interdependence between greater and lesser federal units the better to knit together a sprawling republic. That last goal was on his mind when the convention turned its attention to the other major procedural challenge of the summer, designing a presidential selection system.

Electoral college

The matters under review thus far concerned how to constitute the legislative branch, and since representation itself was alien to the republican canon, there were no direct analogs from the distant republican past to guide the delegates

in dealing with this challenge. Rather the convention borrowed the republican technique of filtration and adapted it awkwardly to a representative system. Enough delegates had an aversion to majorities and rule by numbers to create a blunt blocking instrument in the Senate, and for similar reasons they designed two differently founded chambers of the legislature which required habitual cooperation between adversarial interests (to the extent that the two chambers were weighted differently in favor of Northern and Southern interests). Such was the improvisation that resulted from the collision occurring in the Convention between the representative idea on the one hand and the prevention of agency and interests on the other, which latter endeavor took on urgency as the debate evolved and descended into a brawl.

When the convention turned to the choosing of chief executive, it turned to a very different matter, and here the procedural models of the past were clear and direct. Every old republic had to create some kind of administrative or executive body – whether the *boule*, *Signoria*, or *Doge*. As republics tackled this challenge, they faced several practical chores: how to generate a pool of candidates from the citizenry, how to prevent a monopoly by a group or clan, and how to run a selection process that would unite the community rather than sunder it. These problems, always vital to a republic, had not been so directly raised by the electing of representatives to a federal legislature but they called out for solution when the convention turned to presidential selection. As if these old problems were not sufficient worry, delegates had the added problems of relating the executive in some way to the legislature. They did not want the executive to be the lackey of the legislature. Nor should it be overly powerful and corrupt the legislature. In almost any form, a strong executive was antithetical to republican concepts, as Alexander Hamilton correctly noted on the floor.²⁸⁴

Grappling with these multiple issues, delegates found themselves challenged on a technical level more by the executive selection system than they had been by any other matter. They said as much – nothing, they said, had confounded them more than this task.²⁸⁵ A spate of suggestions issued onto the Convention floor: election by the national legislature, by state legislatures, by state executives, by the people, and by electors chosen by one or another of these bodies. Delegates were quite perplexed how to proceed.

At the start of the convention there had been several obvious ways to arrange the presidential choice. Each had its drawbacks. Election by the people made sense in the context of creating a new national government acting directly on the people, less intermediated by states. But popular election was not likely to garner a majority of delegates who tended to regard voters with deep skepticism and had taken painstaking steps already to filter them out of the draft government. Moreover, in widely dispersed states it was not likely that national figures would easily emerge and be well-known to voters.²⁸⁶

There was a third problem with popular election which was even a more serious obstacle than skepticism about the electorate. Early in the proceedings,

delegates had decided to privilege the South with extra seats in the lower house because of that region's slaves. In a popular election of the president, that advantage would be lost, because slaves could not vote. As Madison said, although he favored popular election of the president, such a system did not favor the South. Electors could be a useful alternative, he said euphemistically, "on the score of the Negroes."²⁸⁷ Williamson of North Carolina made the same point when (on July 17) Morris opposed the national legislature as elector and insisted that freeholders should choose the president. The largest state would control the presidency if freeholders decided, but it would not be Virginia, Williamson said, because her slaves could not vote.²⁸⁸ Popular election of the president was never a serious contender in the convention. Steadily advocated by Gouverneur Morris and occasionally also James Wilson, it was defeated nine to one, only Pennsylvania (their state) voting for it on July 17.²⁸⁹

The other logical seat to place the decision was the national legislature. For those wanting to create a strong central government (which included most delegates, both those who favored a role for states and those who did not), the legislature was a natural venue for choosing the national leader. Both the Virginia and New Jersey Plans provided as much. However, everyone was aware of the drawbacks. Election by the legislature would risk intrigue between executive and legislators, and corruption of the latter by the former, which colonists had witnessed at the level of both colonial and imperial governments. A strict separation of powers had become, by the mid-eighteenth century, commonwealthman orthodoxy.²⁹⁰ Yet this objection did not prevent its being revived again and again through the summer, for it was the least unattractive among unattractive options. And, therefore, legislative appointment became the default solution.

But as hardy as this default was, the detailed way in which it was intended to operate became highly controversial once the Great Compromise was struck apportioning the House and Senate differently from each other. The principal argument was over whether the legislature would vote concurrently or jointly for president; in other words, would each of the lower and upper houses have to agree on the presidential choice (or otherwise exercise a veto), or would instead the total number of votes in the combined legislature be sufficient. Here the same alliance of Southerners and James Wilson, which had successfully cooperated on three-fifths and reapportionment rules (and unsuccessfully on the equal vote in the Senate) cooperated on the similarly majoritarian effort in favor of joint congressional balloting for president. They did not want a Senate representing states (or a Senate composed of a majority of small and non-slave states) to veto the lower chamber's choice.

The carrying over of the principles in the apportionment fight to the presidential selection debate demonstrated a notable consistency in outlook by this influential group. One of the first votes occurred on July 26, when mostly Southerners, led by Mason and joined by the Southern bellwether Rutledge,

voted in favor of presidential selection by the legislature.²⁹¹ The Committee of Detail was appointed the same day to make the first draft of the constitution, and the version of the system referred to the committee was presidential selection by the national legislature.²⁹² It was important that Rutledge was named to head the Committee of Detail. (His friend James Wilson was also on it.) Among the documents he caused the committee to take under consideration was the heretofore ignored Pinckney Plan, introduced in May by his fellow South Carolinian (and relative) Charles Pinckney. This plan also provided for election of the president by the national legislature “by joint Ballot.”²⁹³ Rutledge, as head of this committee, reported the first draft constitution in early August with wording that implied but did not spell out joint ballot: the draft simply said the executive should be “elected by ballot by the Legislature.”²⁹⁴ The next day the matter was among the first items triggering debate on the new draft constitution. Gorham and Wilson (of large states) argued for joint ballot for president; Sherman for concurrent; Gouverneur Morris for confining the Senate veto to “legislative acts;” and several Southerners pushed in the opposite direction to remove any reference to vetoes by one chamber or the other.²⁹⁵

The matter unresolved, on August 24 John Rutledge moved the insertion of the word “joint” before the word “ballot.” Several delegates opposed him and sensing they were on the verge of losing they proposed giving up the veto of one house but adding that each state should have a single vote. This motion failed, Madison backed Rutledge, describing joint balloting as a compromise (which it was not), and Wilson joined their effort, saying joint balloting would give the larger states a greater share in the presidential choice, which, he said, they deserved. This comment reflected the extent to which the presidential selection argument was tracking the apportionment argument of early summer. Delegates passed the motion for presidential selection by national legislature acting jointly (not concurrently), with the preponderance of Southern delegations favoring.²⁹⁶ It was this Rutledge motion that was referred to the Committee of Eleven on August 31 to resolve the presidential conundrum. Compared with how the delegates had laboriously structured the Senate five weeks before, the presidential solution was headed in a very different direction, in the direction of letting majorities rule.

In John Dickinson’s mind, the arrangement was not acceptable. In one note (for a speech) he wrote that the executive be chosen by “the Members of both branches by maj of Ballot.” At another moment that summer, he said the legislative election should require a two-thirds vote to elect the (three-headed) executive, which guaranteed a substantial role for the upper house where each state had an equal vote.²⁹⁷ Almost immediately following the Rutledge victory for joint balloting, Gouverneur Morris warned gravely of “Legislative tyranny” which would ensue. The matter was far from over.²⁹⁸

Delegates had floated other ideas over the summer. Electors came up in various forms, attractive because they would intermediate voters, filter out passions, and (in theory) lead to a more informed choice. They were an old

device. Marsilius of Padua had extolled the use of electors in Italian communes during the late medieval period, where they had been used to drain the passion out of politics. In Harrington's *Oceana*, electors chosen by lot from villagers were the key, first step in constituting the national legislature. In the Philadelphia proceedings, electors surfaced early (on June 2), when Wilson floated the idea of electors selected by voters divided into districts within each state as being preferable to the national legislature on the one hand and the people directly on the other. (It lost out to national legislature in a same-day vote, the first of many times the convention returned to the Congressional solution.)²⁹⁹ In his long speech on June 18 laying out his alternative plan of government, Hamilton proposed electors to elect senators (for life) and the executive (also for life). In the latter case, one version of his plan provided for three stages of voting: people choosing electors, electors choosing another set of electors, and these last electors choosing the executive – so eager was Hamilton to filter out the “imprudence of democracy.”³⁰⁰ Later in the summer, Wilson proposed a different set of electors, this time proposing fifteen electors chosen from the national legislature by lot who would elect the executive. Elbridge Gerry proposed state executives act as electors. Gouverneur Morris and Rufus King favored electors chosen “by the people” as better than giving this power to the legislature, and Morris revived the idea on August 24 as a rejoinder to Rutledge's successful joint balloting vote. Also, like the national legislative solution, the electors solution had the advantage of being capable of being structured to replicate one or more of the Great Compromise apportionment arrangements (for instance, three-fifths).³⁰¹

The dialogue all summer had a curious blend of good government nostrums mixed with intensely felt sectional and ideological passions. The most fertile discussion occurred on July 25. The usual stand-off between Madison and Ellsworth took place, in which the former argued for people at large or electors chosen by the people, and the latter objected that since the citizens of the large states would inevitably vote for a citizen of their own state, any such method would hand the presidency to the large states. In sketching out the case for electors, Madison described how they could be selected just for this purpose, would meet at once, and proceed “immediately to an appointment, [so] there would be very little opportunity for cabal, or corruption. As a further precaution, it might be required that they should meet at some place, distinct from the seat of Govt....”³⁰² These technical precautions, used to thwart political organizing in premodern republics, were incorporated in the presidential selection system ultimately adopted by the delegates.

Madison and Ellsworth were then followed by Gouverneur Morris who expressed interest in an idea previously advanced by James Wilson that lottery should be employed to choose electors from the legislature, which would, he said, “diminish, if not destroy both cabal & dependence.” By “cabal & dependence,” Morris had in mind the same political organizing Madison was targeting with his technical proposal. Then Williamson put forward the

idea that small states would not object to election by the people if each voter should vote for three “candidates” because, he said, it was likely that only one of those candidates would hail from his own state, and the other two from other states, which could as easily be small as large. Morris quickly expressed support, refining the proposal to say that each voter should vote for two people, one of whom at least not of his own state. Madison chimed in with his support.³⁰³ The idea of using plural votes to create multiple candidates from the states was suddenly born.

It was at this interesting moment that Dickinson launched his own thought (which he had previously sketched in private notes). He said that the greatest difficulty with popular election arose from the “partiality of the States to their respective Citizens. But,” he went on, “might not this very partiality be turned to a useful purpose. Let the people of each State chuse its best Citizen. The people will know the most eminent characters of their own States, and the people of different States will feel an emulation in selecting those of which they will have the greatest reason to be proud – Out of the thirteen names thus selected, an Executive Magistrate may be chosen either by the Natl Legislature, or by Electors appointed by it.”³⁰⁴

From practical experience in their own states as well as from literature, delegates were familiar with nominating systems.³⁰⁵ At various moments through the summer, nominating proposals had surfaced.³⁰⁶ What was unusual about July 25 was that Dickinson said that rather than regarding local differences as a nuisance, the convention should take advantage of them by incorporating them into a nominating stage, the better to bind the disparate community together. This was the heat exchanger of late medieval city-republics: to use nominating in the first stage to absorb local passions, co-opting groups, then move the final decision up to a higher, national level. What also was unusual on July 25 was Williamson’s thought, amended by Morris, to give each elector two votes, one of which must be cast for someone not of one’s own state. This too would address jealousies between states, and it had the further benefit of introducing chance into the process. The insertion of chance was also in the air. Just before Williamson spoke, Morris observed that Wilson’s idea of lottery in presidential selection had merit.³⁰⁷

Nothing was agreed July 25 but by then at least several things were clear. The preceding weeks of wrangling indicated that some arrangement would have to be found between big state and small states, between majoritarians and structuralists, and between North and South. The delegates had not gone through all the combat over apportionment only to abandon their positions when it came to filling the new nation’s most important office. Somehow their prior understandings would need to be reflected in the outcome.

But a full-fledged solution addressing these now evident interests was not tabled. Instead proportionalists and structuralists carried on a low-intensity warfare over how to structure the presidential selection in Congress – would the method favor the proportional House or contain a veto by the Senate? That was a poor choice. If decided on those lines, it meant someone would

be giving up more than they had given up in mid-July. And besides, the legislative election was flawed and everyone knew that. Yet still, it remained the default, wherefore the convention appointed the Committee of Eleven on August 31 finally to come up with a solution.³⁰⁸

Dickinson was appointed to the Committee of Eleven, and one morning he arrived in the Library Room of the State House late (indisposed, as he had been frequently) and his fellow committee members briefed him on the progress they had been making. When they reported that they had not advanced beyond the usual congressional appointment, Dickinson said this would not do and delivered his “sentiments” about a different approach. Gouverneur Morris said, “Come, gentlemen, let us sit down again, and converse further on this subject.” The group returned to their seats and with Madison acting as secretary sketched out in one sitting the plan which was duly presented to the convention on September 4.³⁰⁹

The plan as reported back to the convention was as follows: each state would be assigned a number of electors equal to its number of senators and representatives; these electors would be selected “in such a manner” as state legislatures chose. Electors would each cast two votes for president (but at least one for someone not of their state), and if no candidate’s total reached a majority of electors, the Senate should convene and choose the president from the top five vote getters (or break a tie).³¹⁰ After just three days of discussion, delegates accepted the plan with minor changes, this after three months of desultory arguing. Some students since have said it was a hurried, *ad hoc* decision made at the last minute by weary delegates. It *was* made at the last minute, and they *were* weary, but it was not *ad hoc* and not casually crafted; it had been in the making for months, and parts of it for centuries.

The Committee of Eleven plan incorporated the nominating concept and used it to replicate the political compromise that had been reached on apportionment in July. It transferred to the Electoral College the arithmetic of the national legislature and therefore had embedded in it a bias in favor of slave and large states.³¹¹ But it gave the final decision to the Senate, which had a bias in the opposite direction, tilting toward Northern and smaller states. Operationally the plan balanced the bias toward large and slave states in the first stage of voting by favoring small and free states in the second, in a similar way to the operations of the Congress whereby the decisions of both the Senate and the House were required for legislation. It was the replication of this key balance of interests embedded in the July 16 apportionment outcome that very likely won the new proposal almost immediate acceptance.³¹²

Not everyone since then has understood that the Electoral College was intended to be just the first step in a two-step process. If delegates had thought that the Electoral College would make the final decision and only rarely would the Senate decide the president, the committee plan would not have replicated the Great Compromise, and the small and free states (and all those skeptical of majoritarian solutions) would have given up in the choice of president precisely what they were unprepared to give up in the makeup of

Congress. In fact, delegates did not think the Senate's role was contingent. They thought it was the decisive one. During the ensuing floor debate, sixteen delegates spoke up. Of the sixteen, eleven took it as an assumption that no candidate would reach a majority of the Electoral College, given the great extent of the country and how little known were political figures across state lines. Nineteen out of twenty times, said Mason, the decision would go to the Senate.³¹³ Three delegates did not express a view one way or the other.³¹⁴ One delegate, Baldwin, said that although the Senate would possibly be the decisionmaker in the early going of the republic, in later years, as the country's dispersed people became more familiar with each other, the Electoral College would decide.

When presenting the plan to the delegates on behalf of the Committee of Eleven, Gouverneur Morris started off saying that the Electoral College would likely make the final decision. One suspects he made this argument half-heartedly (to blunt the delegates' immediate hostility to investing the "aristocratic" Senate with so much power). In one of the most efficient retorts of the summer, the terse Mason replied, "those who think there is no danger of there not being a majority of the same person in the first instance, ought to give up the point to those who think otherwise." Morris did give it up. Years later, when opposing the Twelfth Amendment, Morris argued for the double vote for electors because, he said, with the double vote "the chance of an absolute choice [in the electoral college] is greatly diminished... and the decision among five candidates is preserved to the States" acting in the second stage.³¹⁵ On the floor, Madison said the election "would in fact be consigned to the Senate altogether" and "the nomination of the candidates to the largest States." Years later he wrote a friend: the agreed solution was "a compromise between the larger and small States, giving to the latter the advantage in selecting a president from the candidates, in consideration of the advantage possessed by the former in selecting the candidates."³¹⁶ Dickinson put the matter differently during the ratification debate. Because of the manner of the executive's selection, said Dickinson, in the president "the sovereignties of the several states and the people of the whole union, may be considered as conjointly represented." Such a description only made sense if the selection mechanism required action by both the college and the House.³¹⁷

Thus did the founders construct the nation's first nominating machine in the form of the Electoral College. But, as usual at this convention, it was not agreed without a fight. Madison, Rutledge, and Wilson were the principal opponents of the draft plan in early September, fighting the same rear-guard action they had fought in July against equal vote in the Senate. They portrayed the Senate as a bad venue for the designated role, but that was only one part of their complaint. They were for anything that anchored the decision in proportional representation.

On the first day of debate, Wilson proposed substituting the legislature for the Senate, saying the proposed plan would make the president "the Minion of the Senate."³¹⁸ On the second day, Rutledge revived his longstanding

proposal that election, instead of by the Senate, be “by joint ballot by the legislature.” (His motion was defeated eight to two.) Immediately Mason moved that the Electoral College should elect the president even if no one achieved a majority; the highest number of electors’ votes should be sufficient. (Motion defeated nine to two.) Wilson’s motion to replace the Senate with legislature was also defeated (seven to three). Madison and Williamson then combined forces to back Mason’s idea that no majority be required to elect, as long as the winner had at least “one third” of electors. (Defeated nine to two.) They then moved the majority be changed to the majority of those voting to further reduce the threshold. (Defeated seven to four.) So ended the second day of presidential selection debate. On the third day, Hamilton raised again the idea that the highest number of votes should be sufficient, even if not a majority. Toward the end of this third day, Sherman proposed that since the Senate was posing such a major problem the delegates should substitute the House for the Senate, but the House voting by states. This passed and effectively ended the rebellion against the presidential selection plan.

The rebellion is open to varying interpretations. The Senate *did* pose the problems the delegates dwelt on; it was already empowered with approval of Cabinet, ambassadors, justices, and treaties. Even Dickinson thought the legislature better (but with a super majority or concurrent vote). As well, to the extent the Electoral College might itself be elected by the people (this was not clear), putting the final decision in the college was more democratic and closer to the people than letting it reside in the hands of a few Senators (or of House representatives voting by state). These would be the disinterested reasons for the flurry of motions made in early September. But there was an unavoidably obvious regional connection: most of the motions to amend were by Southerners – Mason, Madison, Williamson, and Rutledge. Wilson weighed in too, but he had been the ally of South Carolina and Virginia on key votes throughout. Apart from the regional alignment, a striking feature of the closing days was Madison’s iron determination to keep the matter out of the hands of the Senate or the House (voting by states), so determined was he that he advocated, as we have seen, election by a plurality, by a minority, even by one-third of electors. (Three times a motion was tabled by a Southerner, once Mason, twice Madison, to make a minority of electors in which the South had a decided advantage the threshold for electing the president.) Before the convention, even more important (in Madison’s memo) than stopping a majority from tyrannizing a minority was preventing a minority’s cobbling together a majority to run roughshod over the interests of others. That was pre-convention. In September Madison and others favored a minority of electors choosing the chief executive.

Notwithstanding Madison and Rutledge’s efforts, the arrangement held whereby large states (with a certain advantage for the South and slaveholders) were to nominate and small states (with a certain tilt toward the North) were to elect. But it was more than just a compromise (as Madison and others characterized it). The contrived procedure had distinctly republican features.

It created a process that was to be hermetically protected against influence, what the delegates called cabal and intrigue – that is, political organizing. It did so with three different devices: first, the plan called for electors to meet on the same day, each group in its own state. The journey time from New England to Georgia was about three weeks by stage-coach;³¹⁹ it would not have been easy to arrange collusion across state lines among electors voting on the same day in far-flung locations. Most older republics had steadfastly proscribed political organizing in seating the executive; so would this one. Second, the careful attention to counting, certifying, sealing, and then opening all at once the lists in the public chamber of the Senate was aimed in the spirit of early Renaissance procedures at preventing manipulation. But for the missing *ballotino*, this section of Article 2 of the Constitution was reminiscent of the liturgical rituals of balloting in past republics (and *Oceana*).

Third, the scheme provided for each elector's casting two votes for president. The proximate origin of this rule was to address the problem already described – big country, no nationally known figures, and the certainty (as the delegates thought) that states would vote for their favorite sons. It also owed something to the related fear of small states that in any system remotely related to proportional representation, they would be forever barred from the presidency unless safeguards were erected.³²⁰ To deal with these concerns, one of the two votes was to be for someone not of one's own state. But the double vote had another origin. It went far toward preventing the dreaded organizing and campaigning for office, for by giving each elector two votes the framers exponentially increased the difficulty of orchestrating a result.

Because of the double vote, under the delegates' scheme arithmetically three people could meet the threshold of a majority of electors. Across a large territory, with simultaneous voting, it would not be easy to control the outcome when three people in theory could pass the necessary threshold. The scheme went further in the direction of unpredictability by permitting the top five vote getters to go to the Senate for consideration in the event no one's having a majority (or tie). The combination of double voting and five candidates' making it through to the final round enhanced the chances that small states would not be counted out; and it reduced the effectiveness of plotting. Wilson had creatively introduced the idea of chance in July; Morris picked up on it; and the final plan embraced it. As one delegate said in his ratifying convention, because of the aleatory procedures, "...no man could say to himself, *I am to be the man*." That lack of knowledge had a high value.³²¹

By structuring the process to make it difficult for anyone to predict, let alone dominate, the outcome, the framers built the aleatory purpose of ancient electoral systems into presidential selection. The bifurcation of the process was also reminiscent of premodern republics: the first step of local nominating followed by a decision at the center. It was important that the venue of the first step was the college apportioned by population and the venue of the second step was the group of states voting equally, for that division meant that, as of old, nominating involved and co-opted the heterogeneous parts of

the community but nominators could not control the final choice. Bifurcation was also the means of treating equally and combining the two contending political principles that had divided the convention throughout its life – the rule of numbers modulated by deliberation by states’ agents. Many modern observers have found the selection system overly complex, to the brink of seeming bizarre. But complexity was the point. For only with the complexity of two stages differently organized, of hermeticism, and of a role for chance could the procedure replicate the political balances struck at mid-summer, foster unity, and be itself beyond the possibility of capture by organized effort. It was the most republican output of the summer.

* * *

Considering the outcome of the two great battles of the summer – one to arrange apportionment in the Congress, the other to design a presidential selection system – Dickinson had a better convention than Madison, Guicciardini better than Locke, and republican procedures better than majorities. John Locke had articulated the case for government by consent of the people, who formed a political community and acted as one body “only by the will and determination of the majority.” This doctrine provided a powerful political alternative to absolutism, and, in the Revolutionary era, seemed to prescribe instructions to the Americans about how to construct their legislatures. Time and again speakers in Philadelphia (among them Mason, Madison, and Wilson) invoked the principle that majoritarian rule was always the right answer (though they mentioned Locke himself hardly at all).³²² But the majoritarian doctrine did not prove decisive in resolving the major floor fights over apportionment and presidential selection. In the end, the delegates constructed a block on legislative majorities in the form of an upper house seated without regard to population. They provided for an executive chosen in the lower house voting, again, without regard to population, after a filtered process in which the anti-majoritarian (but solidly republican) principle of chance played its part. And they made the Constitution in certain respects (such as the equal Senate vote) unamendable, unamendable even if a majority of, or even super-majority of, citizens wanted to amend it – all evidencing that popular majorities received an uneven reception in Philadelphia.³²³

But the ascendant majoritarian ideology, although girdled by procedures framed within the State House, survived with undiminished force outside those halls. This was one of the stranger results of Philadelphia: a procedural outcome at odds with the rising political culture.

That this anomaly occurred was owing in part to the confused seas of contrary political currents. First, there was the invigorating effect of fighting then winning the hard-fought war and creating new and independent states. Next followed the growing recognition that the people did not always behave well and neither did their chosen representatives. After ten years of reciprocating waves of conflicting sentiments, there existed a latent contradiction between the two major movements of the Revolutionary era – a powerful democratic

upsurge matched by an equally strong impulse to stifle it. The more the revolution progressed, the more the contradiction beckoned for resolution. It was inevitable that somehow the federal convention would have to address it.

The two major camps of proportionalists and structuralists discussed in this chapter were not neatly on one side or the other of this intellectual divide. They were together in viewing the people with skepticism, as we have seen, and both supported heavy electoral filtration. Filtration caused no uproar when the Virginia Plan first broached it. Representation and other filtration devices were acceptable to delegates as a sieve to protect government from an unpredictable voting public. However, representation became controversial during the convention when Madison, Wilson, and others argued that the sieve was so effective at isolating government from the people that proportional representation would produce a disinterested, patriotic national assembly.

The other side was convinced that representation was unequal to the task of neutralizing interests. Not differing with Madison on filtration, structuralists did differ with him on its effects. Far from dissolving interests, said structuralists, representation would hard-wire interests into the heart of government. And they passed equal vote in the Senate. It would be hard to describe the equal vote in the Senate as a republican procedure. (It would be hard to describe any feature attached to a representative body as consistent with the premodern procedural canon, which had no place for representative institutions.) But to the extent the states' equality was intended to block the "one great current" of opinion, intended to disrupt the agency of interests transmitted by representation, and intended to avoid the outright rule of numbers – to this extent, structuralists were inserting a feature to thwart unrepresentative tendencies of the draft plan.

Harrington had faced the same challenge the century before: how to create a government based on the people which nonetheless was resolutely neutral. In Oceana's arrangements, the solution was a representative institution that was plainly unrepresentative – created out of lottery, "scrutiny" nominations, and all the other Venetian procedures that prevented officeholders from "contracting" anyone's business. The worst thing an officeholder could do in an old republic was become a national ventriloquist for private interests. The more agency entered government, the less republican it would be.

Now in the 1780s, the federal convention faced the same conundrum. Nothing conveyed more agency into government than actual representation. No provision under consideration by the delegates came closer to actual representation than representation apportioned by population. By giving states an equal vote in the Senate, the delegates were throwing sand in the gearbox of representation. It was not fair. Madison and Wilson harped on the unfairness, and they were not wrong. Today a state of thirty million has the same number of Senators as a state with six hundred thousand – a fifty-fold difference. For every grain of sand in the gearbox thrown by a citizen in the largest state, the smallest state citizen throws fifty grains. Not logical or fair

or efficient or amendable, it was a crude device, but it shared a key goal with Oceana's methods: it was anti-representational.

But that was as far as the convention could go. Since Harrington, a century and more of political shocks had moved the cog-train of representation ever upwards toward the summit of government, one cog at a time. Colonial assemblies "contracting" for the interests of tobacco planters and shipowners had had the same energetic effect. The momentum of the Revolution called for more representation, not less. The idea of a legislature not answering to an electorate was unthinkable now. That the federal convention could not have resorted to Harrington's lotteries and impenetrable walls was incontestable. Yet the delegates could not quite get republican concerns out of their minds when they saw what representation really portended, any more than Harrington could imagine a truly representative assembly when for him the ideal republic was Venice.

Harrington was writing in mid-passage of the procedural arc from the early Renaissance to the modern democratic state. The delegates were writing toward the finish. In their convention, representation and majorities were subjected to serious debate, the delegates inserted mitigating features into a structure generally hostile to republican aims, and they built a complex, multistage presidential selection system to prevent the raw amassing of power from capturing the presidency. Vestiges of the republican procedural canon were unmistakable in Philadelphia. The handprints of the premodern era were visible, still are now, on the document produced. Without reference to that vanished past of procedural complexity, the imprints are undecipherable.

Even so, the framers did not alter the direction of the great detour, did not slow down the majoritarian momentum of the Revolutionary era, and in the generations since then there has not been a serious reconsideration of the problem of how to reconcile the ideal of disinterested, neutral government with representation and majority rule. That makes Philadelphia unique in republican procedural history: the first and the last attempt seriously to reframe the architecture of a modern republic. For twenty centuries, majorities and representation were shunned; they have prevailed in the last two centuries, but not without a fight in Philadelphia.³²⁴

Notes

- 1 See last endnote of this chapter for a note on historiography summarizing this chapter's major departures from and agreements with previous histories.
- 2 A further reason is because the private notes of Hamilton and Dickinson on the topic are not always consulted and are helpful in reconstructing the prism.
- 3 *Federalist* #14, Bernard Bailyn ed., *The Debate on the Constitution*, 2 vols. (New York, 1993), 1: 432.
- 4 Franklin's father Josiah was born in 1657 (in England) during the Interregnum. Josiah's father would have been 59 years old when he sired Josiah, the youngest of nine children. Benjamin was born in 1706. George Goodwin, *Benjamin Franklin in London: the British Life of America's Founding Father* (London, 2017), 11, 109–110; Walter Isaacson, *Benjamin Franklin: An American Life* (New York,

- 2003), 15. Thirty-eight of the fifty-five delegates (mostly the more active participants) were students at a major college or university at a time when a college education usually required proficiency in Greek and Latin. Eleven of the 55 delegates attended Princeton (then College of New Jersey). The other institutions attended were Harvard, Yale, Columbia (formerly King's College), William & Mary, Pennsylvania (formerly College and Academy of Philadelphia), Oxford, St. Andrews, Edinburgh, Glasgow, St Omer, Inner Temple, and Middle Temple or their predecessors. In some of his pamphlets, intended for a wide, educated audience, John Dickinson quoted Latin texts in the original (with translation in footnotes). When George Mason arrived at the federal convention in May 1787 and found not much happening, he wrote a friend, *festina lente*, knowing his recipient needed no translation of this sardonic Latin expression (everything hurrying along slowly). Joe W. Kraus, "The Development of a Curriculum in the Early American Colleges," *History of Education Quarterly*, vol. 1, no. 2 (June 1961), 69ff; Lawrence Goldstone, *Dark Bargain: Slavery, Profits, and the Struggle for the Constitution* (New York, 2005), 80; Fabius V. John Dickinson, *The Political Writings of John Dickinson*, 2 vols. (Wilmington, 1801), 2: 115–126; George Bancroft, *History of the Formation of the Constitution of the United States of America*, 2 vols (second edition, New York, 1882), 1: 278 (for Washington's Montesquieu reading); 2: 425 (for George Mason *festina lente* letter June 1, 1787). See also David J. Bederman, *The Classical Foundations of the American Constitution: Prevailing Wisdom* (Cambridge, England and NY, 2008), 3–4, 6–7 (on Revolutionary era American classical education); and Carl J. Richard, *The Founders and the Classics: Greece, Rome, and the American Enlightenment* (Cambridge, Mass., 1994), 9 (on the transmission of ideas).
- 5 Although his first library was burned, a second Witherspoon library contained works of Hume, Addison, Plato, Livy, Cicero, Isocrates, and Thucydides. See (online): www.library.princeton.edu/special-collections/topics/witherspoon-john-1723-1794; and www.librarything.com/catalog/JohnWitherspoon. For Witherspoon's influence on Madison the student, see Ralph Ketcham, *James Madison: A Biography* (Charlottesville and London, 1990), 25–50.
 - 6 "Report on Books for Congress," The Papers of James Madison Digital Edition, Rotunda, JCA Stagg, ed. (Charlottesville, 2010), Original Source: Congressional Series, vol 6: 62–115; url 01-06-02-0031 (hereafter cited as JM Papers (or other collection), Rotunda, vol., pg., url). The list of works in JM's hand included Guicciardini, *History of Italy*, two histories of Venice, histories of Greece, Plato's *Republic*, Aristotle, Locke, Machiavelli, and Montesquieu. In November 1775 the Continental Congress appointed a similar committee to study ancient and modern confederacies. Bancroft, *Formation of the Constitution*, 1: 11.
 - 7 James Madison, "Notes on Ancient and Modern Confederacies," (April–June (?) 1786), JM Papers, Rotunda, OS, Cong. Ser., 9 (9 April 1786–24 May 1787), 3–24, url: 01-09-02-0001. Madison's research effort was tendentious: he was looking for historical evidence that internal weakness brought down ancient and modern confederations in order to justify the need for a strong national government. For example, the Amphictyonic League, founded to protect the sacred site Delphi and later becoming a kind of early Hellenic United Nations, was never intended to pool the sovereignty of its members and was not relevant to the American enterprise, except as a straw man. During ratification some Antifederalists, including James Monroe, pointed out the irrelevance of these ancient leagues, saying that they died being over-run by their more powerful neighbors not through internal combustion and that nothing useful could be learned from them. Rotunda, Documentary History of the Ratification of the Constitution Digital Edition, John P. Kaminski, et al. eds. (Charlottesville, 2009), Ratification by States, Virginia Debates, 9: 1104–1106; url 02-09-02-0004-0011-0001

- (hereafter cited as Rotunda, Ratification Constitutional Docs, or Ratification by States, or Commentaries, or Amendments, vol., pg, url.). For James Wilson's use of ancient confederations, see James Wilson, *Collected Works of James Wilson*, ed. by Kermit Hall and Mark David Hall, 2 vols (Indianapolis, 2007), 1: 99. Another resource available to delegates in Philadelphia was the Library Company of Philadelphia, which served as a kind of lending library for the framers, two blocks from where they met in the State House (now Independence Hall). In the Library Company's collection around the time of the federal convention were the major classical authors (Aristotle, Appian, Cicero, Diodorus, Livy, Plato, Plutarch, Polybius, Strabo, Thucydides, Tacitus, and Xenophon), major Renaissance authors (Machiavelli and Guicciardini), and British writers transmitting parts of the republican procedural canon to the Anglo-American world (Harrington, Addison, and Hume), in addition to Harrington, Lilburne, Milton, Nedham, and Sidney. *Catalogue of Books Belonging to The Library Company of Philadelphia [1789 edition]*, Collections, Library Company of Philadelphia (hereafter LCP). As Jack Greene has stated, we do not know which books were consulted by the framers. Jack P. Greene, *The Intellectual Heritage of the Constitutional Era: the Delegates' Library* (Philadelphia, 1986), 5. For an alternate view of this matter, see Shlomo Slonim, "The Electoral College at Philadelphia: The Evolution of an Ad Hoc Congress for the Selection of a President," *Journal of American History*, vo. 73, no. 1 (June 1986), 57, who states that not once did founders in Philadelphia refer to Greece, Rome, and Venice. Otherwise Slonim's treatment is concise and valuable.
- 8 Fabius V, in Dickinson, *Political Writings* 2: 123–124, 124n. Dickinson had an attachment to classical literature.
 - 9 Max Farrand ed., *The Records of the Federal Convention of 1787*, 4 vols. (New Haven and London, 1937 ed.), 2: 97–106 (hereafter Farrand, vol: pg.). Elbridge Gerry and Rufus King spoke in opposition. The delegates did not defeat the motion but voted to postpone it.
 - 10 Rotunda, Ratification by States, 3: 37–41; url 02-03-02-0001-0001. In 1787 in Delaware an armed mob disrupted voting in elections in Sussex. Carol E. Hoffecker, *Democracy in Delaware: The Story of the First State's General Assembly* (Wilmington, Del., 2004), 55. See Joseph S. Tiedemann, "A Tumultuous People: The Rage of Liberty and the Ambiance of Violence in the Middle Colonies in the Years Preceding the American Revolution," *Historical Society of Pennsylvania, Pennsylvania History: A Journal of Mid-Atlantic Studies*, vol. 77, no. 4 (2010), 1–45; Rotunda, Ratification by States, 2: Pennsylvania; url 02-02-01-0009; Charles Page Smith, *James Wilson: Founding Father, 1742-1798* (Chapel Hill, 1956), 129–139; Wilson, *Collected Works*, 1: xviii; C. Page Smith, "The Attack on Fort Wilson," *Pennsylvania Magazine of History and Biography*, vol. 78, no. 2 (April 1954), 180–188; John K. Alexander, "The Fort Wilson Incident of 1779: A Case Study of the Revolutionary Crowd," *William and Mary Quarterly*, vol. 31, no. 4 (October 1974), 589–612. In the attack on Ft. Wilson, had not reinforcements arrived in time, it is likely more would have been killed. One was killed, several wounded in the house; five in the mob were killed and many wounded. More than a decade before, Benjamin Franklin's house was almost destroyed by a mob protesting the Stamp Act. Isaacson, *Franklin*, 224.
 - 11 The New Hampshire legislature members were taken "prisoners" for four hours by an armed mob. Bancroft, *Formation of the Constitution*, 2: 398.
 - 12 South Carolina had experienced a slave revolt in 1739, the Stono rebellion, and other less organized revolts after that (one just before the Philadelphia convention and one during it). South Carolina's legal oppression of enslaved persons was extensive. It was illegal to teach slaves to read and write. Any slave resisting examination by a white person could be killed on the spot. Shirley Sidney Ulmer, "The South Carolina Delegates to the Constitutional Convention of 1787: An

- Analytical Study,” Ph.D. thesis (Duke University, 1956), 34ff, 38, 42, 125–126; Thomas Pinckney to South Carolina Senate, March 19, 1787, Rotunda, The Papers of the Revolutionary Era Pinckney Statesmen Digital Edition, ed., Constance B. Schulz (Charlottesville, 2016), url 01-01-02-7252 (hereafter Rotunda, Pinckney Papers, url). As to backcountry impatience with Tidewater political monopoly, see Ronald Hoffman et al. eds., *An Uncivil War: The Southern Back Country During the American Revolution* (Charlottesville, 1985); Ulmer, “South Carolina Delegates,” 11, 14–17, 20, 21.
- 13 David O. Stewart, *The Summer of 1787: The Men Who Invented the Constitution* (New York, 2007), 21.
 - 14 Shays’s had a galvanizing effect on Gerry, Madison, King, and Hamilton, and many others. Andrew Shankman, *Original Intent: Hamilton, Jefferson, Madison, and the American Founding* (New York and Oxford, 2018), 43–45; Ketcham, *Madison*, 186; Robert Ernst, *Rufus King: American Federalist* (Chapel Hill, 1968), 82–83; and citations in next two notes.
 - 15 Rufus King to Elbridge Gerry, January 7, 1787, January Folder, Carton 2, Elbridge Gerry Papers, Massachusetts Historical Society (hereafter Gerry Papers, MHS); same to same, February 11, 1787, February Folder, Carton 2; Elbridge Gerry to James Monroe, June Folder, Carton 2, Gerry Papers, MHS; Wilson, *Collected Works*, 1: 189, 275–276; Bancroft, *Formation of the Constitution*, 2: 220, 402, 221, 398, 404. George Washington said to Henry Knox, “There are combustibles in every State, which a spark might set fire to.” GW to Knox, December 26, 1786, Rotunda, Ratification by States, 8: xxix; url 02-08-01-0010.
 - 16 William Howard Adams, *Gouverneur Morris: an Independent Life* (New Haven and London, 2003), xvi; George Athan Billias, *Elbridge Gerry: Founding Father and Republican Statesman* (New York, 1976), 33, 37–41, 57–58. Gerry in the 1770s thought only local government and local assemblies, with the same interests as their constituents, could protect the colonies. His was a normal reaction to the overbearing British attack on Massachusetts political institutions. Yet this idea was at odds with his own rising concerns about the dangerous assertiveness of average Americans. Some of the confusion that was to come at the 1787 convention about representation was also occurring within Gerry’s own mind. See his correspondence with Rufus King in early 1787 and his letter to James Monroe in which Gerry said “such an anarchy as now exists cannot last long.” He hoped a new compact “will secure us against domestic as well as Foreign Invasion.” EG to James Monroe, June 11, 1787, June Folder, Carton 2, Gerry Papers, MHS.
 - 17 Thomas M. Doerflinger, *A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia* (Chapel Hill, 1986, Norton paperback ed., 1987), 211.
 - 18 No state had more paper money than Virginia, and this fact made the Rhode Island statehouse capture by paper money people alarming to Virginians. Bancroft, *Formation of the Constitution*, 1: 237. South Carolina could not pay its debt to an Amsterdam bank, wrote Governor Thomas Pinckney to the state’s delegates gathered in Philadelphia. Thomas Pinckney to Federal Convention Delegates, August 30, 1787, Rotunda, Pinckney Papers, url. PNKY-01-01-02-7238.
 - 19 For Madison, see, Farrand, 2: 203–204; for others, text below.
 - 20 He stated in this speech of May 31 that the first branch alone should be directly elected. Farrand, 1: 50. Madison thought Virginia’s constitution lacked sufficient filtration mechanisms. Ketcham, *Madison*, 182.
 - 21 Billias, *Gerry*, 116.
 - 22 Stewart, *Summer of 1787*, 37 for comment on New Englanders; Farrand, 2: 119 and *Electoral college* below for more on Mason and presidential selection.
 - 23 Farrand, 1: 48. Speaking next, Gerry agreed: “the people...are the dupes of pretended patriots.” Dickinson, according to Hamilton’s notes, made his own

- contribution to the filtration argument around June 6 or 7, favoring state legislators' election of senators not only for reasons given below but also "because the more respectable choices would be made." Alexander Hamilton Papers Digital Edition, Harold C. Syrett, ed. Charlottesville: University of Virginia Press, Rotunda, 2011, AH Notes on speeches, OS 4: 161–176; url 01-04-02-0093 (hereafter AH Papers, Rotunda, vol, pg, url.). In *Fabius II*, he called the Senate a "council" with superior knowledge, evidently because it was chosen by people already vetted in state legislative elections. Dickinson, *Political Writings*, 2: 86.
- 24 *Federalist* 55, Bailyn, *Debate on the Constitution*, 2: 204.
- 25 Dickinson agreed, saying representation protected against the "rashness" of the people and would have saved Athens and Rome had they had it. *Fabius VIII*, Dickinson, *Political Writings*, 2: 147. Note that this was Dickinson during ratification; at the convention he differed sharply with Madison on representation. The passage about representation in *Fabius VIII* is reprinted in this text but is missing in other standard versions of this pamphlet. Compare the *Political Writings* version with Bailyn, *Debate on the Constitution*, 2: 424–429, wherein the representation passage has been omitted on 426.
- 26 George Washington to Theodorick Bland, August 15, 1786, *Founders Online*, National Archives, <https://founders.archives.gov/documents/Washington/04-04-02-0198> (OS *The Papers of George Washington*, Confederation Series, vol. 4, 2 April 1786–31 January 1787, ed. W. W. Abbot. (Charlottesville, 1995), 210–211).
- 27 Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988), 272. At various times, Mason, Morris, Madison, and Wilson among others made or implied this point.
- 28 One example among many was Wilson, ardent supporter of direct popular elections, who made an early motion calling for creation of presidential electors (June 2) and later greeted the electoral college plan as a "valuable improvement" of previous proposals (September 4). Farrand, 1: 80; 2: 501.
- 29 Farrand, 1: 130–132. Elbridge Gerry's view was that people should nominate candidates (double the number of lower house members needed) and state legislatures should make the election. Billias, *Gerry*, 160–161.
- 30 In the early national period, pursuant to this clause in Article 1, many states did not create congressional districts and congressmen were elected on a statewide ticket. (Some at-large states argued that a district system was unconstitutional.) Other states created districts but enabled every voter to cast a vote for representatives in all the districts. By this means, Baltimore could elect the Congressman for the Eastern Shore regardless of how the Eastern Shore voted. See Rosemarie Zagarrri, *The Politics of Size: Representation in the United States, 1776–1850* (Ithaca and London, 1987), 108–114, 119–133, 140. On June 6, Pinckney moved (and Rutledge seconded) that even the first branch, the House, should be elected by state legislatures, leaving no part of the government chosen by the people. Farrand, 1: 132. In a multiple filtration process, the draft Virginia Plan had the lower house electing the upper house from nominees created by the state legislatures. Farrand, 1: 20. John Rutledge of South Carolina as head of the Committee of Detail insisted on the clause which ended up in Article 1.
- 31 *Federalist* #10, Bailyn, *Debate on the Constitution*, 1: 404–411; *Federalist* #56, Clinton Rossiter ed., *The Federalist Papers* (New York, 1961), 346–350. For Wilson, see [Chapter 7](#) below.
- 32 Hamilton's comments were made in the New York ratifying convention, June 21, 1788, AH Papers, Rotunda, OS vol. 5: 45–349; url. -01-05-02-0012-0012.
- 33 Farrand, 2: 644. At the start of the convention Gouverneur Morris and James Wilson proposed special purpose districts (presumably larger than states) for electing a small distinguished Senate. Farrand, 1: 148–149, 151.

- 34 Farrand, 1: 214–221, 423. This discussion was on June 12 and then again June 26. Madison thought the Virginia constitution gave too much power to the lower house, favored a strong Senate with six-year terms, and a higher property qualification. He admired the Maryland system of electors' (not people) electing state senators. Ketcham, *Madison*, 182. Hamilton wanted Senators to serve for life; George Read proposed nine-year terms, which Madison was responding to in his comments on June 26. Farrand, 1: 289, 421.
- 35 Warren saw Hancock's election as governor in 1783 as a blow to liberty, that a man without abilities could be "idolized by the multitude...people trifling with the privilege of election, and throwing away the glorious opportunity of establishing liberty and independence...." Billias, *Gerry*, 145. Jefferson and Madison were so frustrated by Henry's hold over the Virginia assembly that the only remedy they could imagine, said Jefferson, was "devoutly to pray for his [Henry's] death." Ketcham, *Madison*, 160. Much of Hamilton's cynicism about politics was owing to the success of Clinton, elected seven times as governor and twice as vice president. Chernow, *Hamilton*, 220–221. Hamilton listed many reasons for his three levels of electors selecting the president (on June 18, 1787): to avoid a "demagogue" or "maddling politician;" because "the people are turbulent and changing; they seldom judge or determine right;" and because elections "cause Tumults" – the better to avoid them altogether. AH Speech June 18, 1787, Yates version, Farrand, 1: 294–301; Lansing version, AH Papers, Rotunda, OS vol. 4: 202–204; url. 01-04-02-0098-0005. Adams in his *Defence* also said that elections had not worked out as one had hoped they would, did not produce the best leaders, and there was nothing special about those who reached the top except their ability to get there. Gordon S. Wood, *Creation of the American Republic, 1776–1787* (Chapel Hill, 1969), 573.
- 36 Farrand, 2: 202–204.
- 37 Although in older republics filtration was not primarily anti-democratic in its effect, that purpose did occur to the patrician Guicciardini and others from time to time. Guicciardini, *Dialogue*, 120, 127. But one cannot explain the richness and variety of late medieval procedures in non-federal government structures as being principally about marginalizing unwanted participants. Procedures were indeed used in late fourteenth-century and early fifteenth-century Florence to reduce the proportion of minor guildsmen officeholders. But this proportional decrease was occasionally accompanied by an absolute increase in *minori* officeholders. Najemy, *Corporatism and Consensus*, 263–300. In any case, participation (via the nomination stage) soared. Meanwhile, the Florentine system of scrutiny and sortition carried on with its primary, aleatory objective.
- 38 This is the thrust of Madison's speech of June 26 about the need for a strong Senate to tame the passions of a republic. See Farrand, 1: 421–423, especially 423; note 34 above.
- 39 Farrand, 1: 18–19, 26–27. The reporters of Randolph's speech (in this case Madison, Yates, McHenry) used varying language to summarize it; no formal minutes of proceedings were kept.
- 40 Farrand, 1: 134. One senses that this argument was not original with Madison and that Madison was likely stating a truism, just as Adam Smith had done. Everyone was familiar with the school-headmaster role Whitehall had played for scores of decades: composing fights, disciplining aggressors, and, most importantly, doing its best to rein in local oligarchies and thwart their monopolies of land and office. For more on *Federalist 10*, see below *The internal divisions of James Madison*.
- 41 JM to TJ, October 24, 1787, JM Papers Rotunda, OS, Cong. Ser., 10: 205–220; url. 01-10-02-0151; also in Farrand, 3: 131–136. See also David S. Schwartz and John Mikhail, *The Other Madison Problem*, 89 *Fordham L. Rev.* 2033 (2021), 2068–2070.

- 42 Farrand, 1: 167. Privately Dickinson noted that the country's distress was caused by "the want of greater power." Notes for Speeches at the Federal Convention, John Dickinson Papers, Library Company of Philadelphia, Box 6, Folder 28 (hereafter cited as JD Papers, LCP).
- 43 Farrand, 1: 167.
- 44 BF Letter to Charles Vaughan, February 12, 1788, American Philosophical Society, *A Rising People: The Founding of the United States 1765 to 1789* (Philadelphia, 1976), 287.
- 45 Farrand, 2: 27–28.
- 46 Farrand, 1: 164, 253–254; 2: 27. The people look to "national councils" for relief from state governments, said Wilson.
- 47 Nearly fifty years after the 1787 convention, Madison wrote a memo in which he said people have forgotten that the "abuses" in states of "interested or misguided majorities, were among the prominent causes of its [the Constitution's] adoption." James Madison, "Majority Governments", 1833, in Gaillard Hunt, *The Writings of James Madison*, 9 vols (New York and London, 1900–1910), 9: 520–528.
- 48 Luther Martin later complained that as delegates "we were eternally troubled with arguments and precedents from the British government." Martin, "Genuine Information," November 29, 1787, Farrand, 3: 203; Bill Kauffman, *Forgotten Founder, Drunken Prophet: The Life of Luther Martin* (Wilmington, Delaware, 2008), 53–54.
- 49 Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations* (London, 1776; Modern Library, ed. Edwin Cannan, New York, 1937), 897–898. In the fifteenth century, Star Chamber was created as a central, disinterested umpire to whom the less powerful could appeal the injustices of their more powerful neighbors.
- 50 Quaker merchants, among others, worried about Presbyterian radicals' taking control of Pennsylvania and being bad not only for business but also for liberty of conscience. Two years before *Wealth of Nations*, the merchant Thomas Wharton wrote in a private letter, "What is to be the Next step if England should be Overcome?...What redress is to be Expected, what Civil or religious Liberty Enjoyd, should others gain the Ascendancy." The "others" were the rising Presbyterians. Doerflinger, *Vigorous Spirit*, 195.
- 51 Farrand, 2: 466–467.
- 52 Wilson, *Collected Works*, 1: 275–276. In 1781, Madison had drafted a provision empowering congress to use armed force to compel delinquent states to fulfill their obligations to the confederation. Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York, 1997), 37.
- 53 Farrand, 1: 136.
- 54 Five states fell into the category of pro-slavery, even though some members within their delegations were not pro-slavery, and even though most of the other states had a small complement of enslaved persons. The five were Maryland, Virginia, North Carolina, South Carolina, and Georgia. Delaware was not among them; in Delaware slaves were roughly 15% of population compared with Virginia and South Carolina (more than 40%). Delaware abolished the slave trade in its 1776 constitution and in the year of the federal convention outlawed the sale of blacks sold out of state. Hoffecker, *Democracy in Delaware*, 44–45, 52. The figures are from the 1790 census.
- 55 Jason Butler, "Down But Not Out: How American Slavery Survived the Constitutional Era," thesis, dept history, George State University, 2015 ([utts://scholar-works.gsu.edu/history_theses/99](https://scholar-works.gsu.edu/history_theses/99)), 16.
- 56 Ulmer, "South Carolina Delegates," 329; see below floor speeches.
- 57 William Hill, "Colonial Tariffs," *The Quarterly Journal of Economics*, vol. 7, No. 1 (October 1892), 78–100.

- 58 The expansion discussion here follows Frederick Merk, *History of the Westward Movement* (New York, 1978); Thomas Perkins Abernethy, *Western Lands and the American Revolution* (New York, 1937, repr. 1959); and Ray Alan Billington, *Westward Expansion: A History of the America Frontier* (New York and London, 1967).
- 59 Merk, *Westward Movement*, 135; Ulmer, "South Carolina Delegation," 92; Paul Finkelman, "How the Proslavery Constitution Led to the Civil War," *Rutgers Law Journal*, vol. 43, no. 3 (Fall/Winter 2013), 411.
- 60 Much has been written about the relationship of the Northwest Ordinance (NWO) and the federal convention deliberations, covering bargains or agreements concerning land speculation, slave trade, three-fifths, and more. Some of the conjectures are unprovable. However, it is hard to overlook the timing coincidence of the NWO on the one hand and the hardening of regional divisions in the federal convention on the other, with the latter's knock-on effects on reapportionment formulas and the vote on equality in the Senate. See below text, and also: *Journals of Continental Congress*, April 25, 1787 vol. 32: 238–242, 333–343; Merk, *Westward Movement*, 102–108; Christopher Collier and James Lincoln Collier, *Decision in Philadelphia: The Constitutional Convention of 1787* (New York, 1986; Ballantine, 2007), 207–218. Collier's treatment of this topic is based on Staughton Lynd, *Class Conflict, Slavery and the United States Constitution: Ten Essays* (Indianapolis, 1967). Lynd's 1966 article started much of the discussion. Lynd, "The Compromise of 1787," *Political Science Quarterly*, vol. LXXXI, no. 2 (June 1966), 225–250. For the timing of news coming from New York to Philadelphia, see diary entry by Manasseh Cutler, lobbyist for the Ohio Company, and his arrival at the delegates' boardinghouse the evening of July 12. Farrand, 3: 58–59, also Farrand, 1: 606n about his encounter with Franklin July 13. Final endnote to this chapter has more on this topic.
- 61 Merk, *Westward Movement*, 98–101; Smith, *Wilson*, 160; Illinois-Wabash Land Company Minutes, Am .4096, Historical Society of Pennsylvania (hereafter HSP). For more on this company and Wilson, see endnotes 62, 66, and 156.
- 62 Rufus King noted that those politicians most solicitous of western settlers' interests were the same politicians who were invested in western lands. Ernst, *Rufus King*, 59–61. No delegate was more invested in land schemes than James Wilson, and no delegate was more loyal to settlers' political rights. The French minister in writing to his superiors in Paris noted James Wilson's conflict of interests in general but optimistically observed that Wilson's "affaires publiques" stopped him from following his "grandes entreprises" with an evident disturbance to his "fortune." Appendix A, CLIX, Farrand, 3: 236–237 (reprint of French Archives, Ministère des Affaires Étrangères. Archives. États-Unis. Correspondance. Supplément, 2e Serie, vol. XV, 314ff). Farrand gives "entreprise" as "enterprise," evidently a typo. Based on voting detailed below, this author is not so sure that his "affaire publiques" stood higher in his opinion than his "grandes entreprises." Southern delegates had the same conflict. George Mason was influenced in his voting on the states' admission issue by his endless involvement with a vast land speculative effort. Jeff Broadwater, *George Mason: Forgotten Founder* (Chapel Hill, 2006), 19, 60–61, 127, 130, 145ff, 207. Forrest McDonald described the major fault line in the convention as running between the landed and the landless states. (*E Pluribus Unum: The Formation of the American Republic, 1776-1790* (Boston, 1965, 2nd ed., Indianapolis, 1979), 274.) The apportionment votes do not seem to corroborate that analysis. North Carolina and Virginia each had huge land claims but voted differently; the same was true of Pennsylvania and Georgia. However, McDonald was right to put stress on the land issue. To this author, whether a delegate had a large personal interest in land ventures could affect how he regarded westward expansion and admitting new states on equal terms. One thinks of Gorham and Wilson and Mason, all land adventurers.

- 63 Forrest McDonald held otherwise; see historiographical note at conclusion of endnotes.
- 64 George Mason to George Mason, Jr., May 20, 1787, Farrand, 3: 22–24; Richard Barry, *Mr. Rutledge of South Carolina* (New York, 1942), 315–322; Smith, *Wilson*, 203; McDonald, *E Pluribus*, 265–266, 273; Irving Brant, *James Madison: Father of the Constitution, 1787–1800* (Indianapolis and New York, 1950), 11, 17, 23. Madison wrote to Randolph the month before the convention opened urging him to come early to prepare materials. On May 14, two weeks before the opening, the Pennsylvania and Virginia delegations met at the State House and soon thereafter the Virginia delegation met every day (apparently with select other delegations on some or all days).
- 65 The author relies on Thomas Doerflinger's analysis of the attitude of the Philadelphia merchants at the federal convention. Doerflinger, *Vigorous Spirit*, 275–288. Among delegates, the Philadelphians were unique: a group of fortune builders, materialistic, hard-driving, upwardly mobile, and patriotic. Hammered by war-time depression, attacks on their Bank of North America, the return of paper money, the inability of Congress to regulate commerce or pay its debts or maintain law and order, and the reign of a government in their state they regarded as a popular tyranny, the Pennsylvania delegates represented a mercantile interest group determined to create “a stable constitutional framework within which they could prosper.” Doerflinger, *Vigorous Spirit*, 280.
- 66 See *The apostates* below and James Wilson in [Chapter 7](#). Robert Morris dominated the French tobacco market in the mid-1780s, which made him a regular counter-party to Southern growers. Fitzsimons was also active in the tobacco trade. Some Philadelphia firms entered Kentucky-Mississippi commerce. Doerflinger, *Vigorous Spirit*, 288, 290, 294. Rufus King expressed anxiety in private correspondence that Pennsylvania and New Jersey “will be entirely under a Southern Influence.” King seems to be referring to the new Congress in New York, but that is not sure (he refers to the new “Assembly”). One suspects such a “Southern influence” originated in business ties. Rufus King to Elbridge Gerry, February 18, 1787, Carton 2, February 1787 Folder, Gerry Papers, MHS. James Wilson is a special case. He had significant financial relationships with key Southerner slaveholders. Rutledge, the leader of Southern interests at the convention, was his house guest. Wilson became deeply indebted to Rutledge's fellow South Carolina delegate Pierce Butler. That debt arose from Wilson's commitment to land speculation in the West, a business activity that gave him a self-interested stake in proportional representation and pro-settler interests. (Rufus King remarked on the connection between land speculation and certain delegates' advocacy of western settlers' rights. Ernst, *Rufus King*, 60–61.) Wilson, the initial proposer of three-fifths in the proceedings, seemed untroubled by slavery. Wilson had a slave himself. Some Northern delegates in the anti-proportional representation camp excoriated three-fifths in the debate over apportionment. It is not obvious that Wilson regarded three-fifths as a high price to pay, or even a Northern concession. On balance, the most generous interpretation of Wilson's advocacy for proportional representation (including in new states) is the one in the text above – in the interests of patriotism and of his own financial ambitions, a strong national government was the supreme goal, at any price. A less generous view would link Wilson's pecuniary interests directly to a pledge of support of Southern interests; but for that, there is no evidence. For Wilson's indebtedness to Pierce Butler of South Carolina, see Smith, *Wilson*, 385–386; for his friendship and business relationship with John Rutledge, Smith, *Wilson*, 203; Barry, *Rutledge*, 315ff. Regarding delegate Benjamin Franklin: he was no longer engaged in commerce, having retired from his printing-media business with a fortune. But he had previously been involved in land company ventures in the 1770s. Isaacson, *Franklin*,

- 270–271. Of all the state's delegation, he was probably the least influenced by the business advantages of a powerful central government.
- 67 Robert F. Williams, "The Influences of Pennsylvania's 1776 Constitution on American Constitutionalism During the Founding Decade," *Pennsylvania Magazine of History and Biography*, vol. CXII, No. 1 (January 1988), 48.
- 68 William Howard Adams, *Gouverneur Morris: an Independent Life* (New Haven and London, 2003), 228.
- 69 The merchants' quarrels with the Constitutionalists of Pennsylvania, as well Robert Morris's difficulties financing the Revolutionary War in spite of the unreliability of state governments, made the Philadelphia delegates especially uninterested in the speeches of Paterson, Ellsworth, and Martin about the role of state government in the national system. On Morris, see Doerflinger, *Vigorous Spirit*, 275ff.; Charles Rappleye, *Robert Morris: Financier of the American Revolution* (New York, 2010), 385–411. In joining the Republican cause, Wilson with his fellow businessmen sought to replace the most populist state government in America.
- 70 Ulmer, "South Carolina Delegates," 46.
- 71 See endnote 12 above.
- 72 Charles Pinckney did make speeches extolling popular government. But in the reconstructed version (not his spurious version) of his plan for the Constitution, the people have less to do with the election of the key officers than even the final draft of the Constitution permitted (and it did not permit much). See the plan, Farrand, 3: 604–609. For South Carolina's own malapportionment, see [Chapter 5](#) *An unusual form of representation*.
- 73 Edgar, *South Carolina*, 78.
- 74 Farrand, 1: 359, 534; 2: 391.
- 75 For Gorham's motives, see endnote 205.
- 76 For Southerners' oscillating in late June and July, see *Apostates* below; for Rutledge and his wavering on other parts of the Madison program, see above text.
- 77 Farrand, 1: 15–44.
- 78 Ulmer, "South Carolina Delegation," 55.
- 79 Regarding Senate, Pinckney's "each its due weight" referred to districts into which states would be placed for this purpose; therefore, indirectly states' populations would influence their share of the Senate, as well as of the House. There is uncertainty about what Pinckney's Plan actually said and reason to suspect he doctored his plan when he handed his papers to John Quincy Adams in 1818 to form part of the nation's archival records. Madison considered the Pinckney paper of 1818 spurious. Around Charleston, Pinckney was jocularly referred to as "Constitution Charlie." See Farrand, 1: 16; 3: 601–609. See also Margie Burns, "The Mystery of Charles Pinckney's Draft of the U.S. Constitution Revisited," *The South Carolina Historical Magazine*, vol. 117, no. 3 (July 2016), 184–204, for a valiant effort to resuscitate CP's battered reputation. Several oddities suggest that Pinckney constructed his "draft Constitution" not at the outset of the proceedings but years later, holding a pen in one hand and the finished Constitution in the other. However, there is no doubt there was a Pinckney Plan shared with delegates before the opening session, and a reconstructed version of the likely actual document includes the words cited above, counting slaves in apportionment at the rate of three-fifths of whites. See Farrand, 3: 502, 504, 534–535, 602, 605.
- 80 As early as 1775 the Continental Congress had debated counting slaves when raising taxes. (See Earl M. Maltz, "The Presidency, the Electoral College, and the Three-Fifths Clause," *Rutgers Law Journal*, vol. 43 (2013), 441–442.) When the vote was taken in 1783 counting three-fifths of slaves for apportioning taxes, it was Madison who moved the resolution in Congress, "in order to give a proof of the sincerity of his professions of liberality" (liberality presumably that a slaveholder such as himself volunteered a contribution on account of his slave

- property). John Rutledge, slavery's arch defender in 1787, seconded Madison's motion. James Wilson, who in the convention played a role in creating three-fifths, said he "would sacrifice his opinion to this compromise" ("compromise" presumably because he would have preferred a larger Southern contribution). Rotunda, *Ratification Constitutional Docs*, 1: 148–150; url 01-01-02-0004-0005. The 1783 tax rule was not implemented failing to reach super-majority.
- 81 From 1778 to 1790 allocations entitled the low country to three-fifths of lower house and two-thirds of senators, with about one quarter to one third of the state's white families. Two-thirds of whites in South Carolina had no slaves. Of the 107,094 slaves, Charleston had almost half, 50,633. 67% of families in the parish Charles Cotesworth Pinckney represented (cousin of Charles Pinckney) owned slaves. The upcountry had 19,000 white families, Tidewater 7,000 or fewer; latter had 78,000 slaves vs. 29,000 in upcountry. The slaveowning disparity contributed to wealth disparity, which in turn contributed to representational disparity. Ulmer, "South Carolina Delegates," 69–70, 163–165. Edgar (*South Carolina*) gives slightly different figures. Massachusetts allocated state Senate seats by taxes paid; Virginia made land of a certain size a prerequisite to voting; in the early days of New England some town proprietors had political rights in multiple towns. On eve of the convention, Madison wrote a memo which among things extolled the linking of voting power to taxation contribution among the twenty-three cities that composed the ancient Lycian League. Several Enlightenment writers had similarly praised the Lycian system and their writings drew his attention to it. One is tempted – if one wants to find support for one of the recurring themes of this study – to see the Lycia discussion as yet another example of the durable linkage of economic and political rights in fledgling republics. But although there is a scent of this theme in Madison's memo (and in *Federalist* 54), the stronger scent comes from a different direction, namely, the desire of Southerners to gain more sway in government by virtue of their slaves.
 - 82 This sentence is likely accurate even if Pinckney's reconstructed plan is wrong and the original contained no reference to three-fifths (contrary to the reconstructed version, Farrand, 3: 605); for it would have behooved slaveholders to count their human property in apportioning the national legislature, just as they already did in apportioning their state legislatures.
 - 83 Lawrence Goldstone, *Dark Bargain: Slavery, Profits, and the Struggle for the Constitution* (New York, 2005), 93, 204 n9. Madison's memo "Ancient and Modern Confederacies" opened with a sentence about ancient Lycia: "In this confederacy, the number of votes allotted to each member was proportional to its pecuniary contributions." Madison then noted that the magisterial Montesquieu "prefers this mode." "Ancient and Modern Confederacies," JM Papers, Rotunda, OS, Cong. Ser., 9 (9 April 1786–24 May 1787), 3–24, url: -01-09-02-0001. He invoked the Lycia example (and Montesquieu again) in his important speech on June 30. Farrand, 1: 485, 497, 504.
 - 84 The foregoing passage on the first day is the author's analysis, though Finkelman, Goldstone, and Waldstreicher, discussing other convention proceedings, have made the point exhaustively and well that the protection of slavery was foremost in the thinking and actions of the Southern delegates. Goldstone also describes some of the events of the first day. Goldstone, *Dark Bargain*, 102. Further circumstantial evidence that the Virginia Plan's evenhandedness on the matter of apportionment was a ruse was that Madison was almost certainly the author of the Virginia Plan, according to his biographer Irving Brant, yet it was Madison the next day who proposed removing "free inhabitants." Brant, *Madison*, 27. Madison never acknowledged paternity of the Virginia Plan because by the time it was made public, in 1819, its nationalism would have embarrassed him (according to Brant). Note furthermore that Madison was the congressman who moved the resolution in 1783 counting three fifths of slaves for taxation purposes.

- 85 He was seconded by his relative Butler. Farrand, 1: 193.
- 86 Farrand, 2: 364. He returned to the theme the next day, August 22, and said: South Carolina, North Carolina, and Georgia “will never agree to the plan, unless their right to import slaves be untouched....The people of those States will never be such fools as to give up so important an interest.” Farrand, 2: 373.
- 87 Goldstone, *Dark Bargain*, 75–76; Ulmer, “South Carolina Delegates,” 72. The French Foreign Ministry description of him was “the proudest and most imperious” man in America. (“...*en général employé dans toutes les grandes occasions. L’homme le plus éloquent, mais le plus fier et le plus impérieux des Etats-Unis.*”) Appendix A, CLXI, Farrand, 3: 238.
- 88 Farrand, 1: 192–201; Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, NY and London, 1996), 9. Finkelman, whose work is invaluable, is single-minded on the issue of slavery’s influence on the Constitution-writing. Elsewhere he argued that taxation and three-fifths linkage was only raised in July to placate Northerners unhappy with the federal ratio, ignoring the lengthy history of three-fifths and taxation dating to 1775, 1783, and mentioned by Wilson on June 11, 1787. See Finkelman, “The Founders and Slavery: Little Ventured, Little Gained,” *Yale Journal of Law and the Humanities*, vol. 13, Issue 2 (2001), 428. Only New Jersey and Delaware dissented in the June 11 three-fifths vote. They may have done so because of their already stated opposition to proportional representation in any form; this is the likeliest explanation.
- 89 Several writers have stated that John Rutledge and James Wilson worked together closely to frame key parts of the Constitution. Barry, *Rutledge*, 315ff; McDonald, *E Pluribus*, 265–266; Stewart, *Summer of 1787*, 67–81; Goldstone, *Dark Bargain*, 104. Most writers acknowledge there is no evidence of an explicit bargain between Wilson and Rutledge (or Wilson, Madison, and Rutledge) concerning proportional representation and three-fifths. Nevertheless, bargain or not, agreement between them seems without doubt. One of the reasons not to believe there existed an explicit bargain is, if the Northerners paid the price of three-fifths, what price did the Southerners pay in return? It was not their support of a strong central government – Madison, Rutledge, and other Southerners wanted that, too. Was it in return for proportional representation, which Southern legislatures did not practice? Possibly. On the other hand, since proportional representation strengthened the government’s authority to maintain order in the country, Southern elites may not have considered that a high price to pay, just as Wilson, a slave owner, was not so obviously unsympathetic to the institution of slavery that he would have considered three-fifths a high price either. When later in the summer Pierce Butler and General Pinckney moved the fugitive slave clause be adopted (that fugitives “be delivered up like criminals”), Wilson’s only comment was, “This would oblige the Executive of the State to do it, at the public expence.” (Farrand, 2: 443). Hence: agreement on proportional representation and three-fifths for sure, bargain possible but not proven. Farrand noted long ago that much happened in Philadelphia beneath the surface, in the taverns and lodgings of the delegates, and that there were “evidently motives at work that are not observable on the surface.” Max Farrand, *The Framing of the Constitution of the United States* (New Haven, 1913), 103. Rutledge’s papers have unfortunately been lost to a fire in mid-nineteenth century.
- 90 The day was May 30. Farrand, 1: 20, 35–38. Telling about this first debate was not only that the issue of proportionality vs. some other means was broached, but also that Madison indicated his interest in not excluding slaves from the count.
- 91 Farrand, 1: 87.
- 92 Farrand, 1: 195, 223–225.
- 93 Farrand, 1: 242n.

- 94 Farrand, 1: 242n; Notes for convention speeches, Dickinson Papers, Box 6, Folder 28, LCP.
- 95 See Read speech May 30, Farrand, 1: 37; Sherman, June 6, 1: 133; Read June 6, 1: 136–137; Bedford June 8, 1: 167; Brearley June 9, 1: 176–177; Paterson June 9, 1: 177–178; Lansing June 16, 1: 249; Paterson June 16, 1: 250–251; Martin June 19, 1: 324; Martin June 20, 1: 340–341; Sherman June 20, 1: 341–343. Lansing did engage on the theoretical subject of whether the government acted on the people or on the states (a topic the proportionalists frequently raised); see June 16, 1: 259. Dickinson also called for the “preservation of the States,” but in his case he linked the goal to the necessary collision in the national government and not solely or mainly for the sake of states. Farrand, 1: 152–153.
- 96 Farrand, 1: 134–136.
- 97 Farrand, 1: 148–154.
- 98 Farrand, 1: 180, 183.
- 99 Farrand, 1: 252–254.
- 100 Farrand, 1: 440.
- 101 Farrand, 1: 325, 464, 466. Hamilton was first to make this argument on June 19; he returned to it June 29. “Carrying” referred to shipping and mercantile activity as opposed to agricultural production.
- 102 Farrand, 1: 455–456. The speech was June 28.
- 103 Farrand, 1: 483.
- 104 Farrand, 1: 475.
- 105 Farrand, 1: 500.
- 106 Lansing made this point on June 20. Farrand, 1: 320. Luther Martin did as well in his much derided, lengthy remarks on June 28 (his second day of a single speech). Farrand, 1: 445. Martin was possibly replying to Wilson’s statement of June 21 in which Wilson said “the States having in general a similar interest,” it was unlikely that one set of states would be harmed in a way that would not damage all states. Farrand, 1: 356.
- 107 Farrand, 1: 337, 406.
- 108 “The fact was that the local prejudices & interests which could not be denied to exist, would find their way into the national Councils whether the Representatives should be chosen by the Legislatures or by the people themselves.” Farrand, 1: 488.
- 109 Farrand, 1: 453–455.
- 110 Farrand, 1: 491. These words are from Madison’s notes of the Bedford June 30 speech. Structuralists did not abandon the theme of small states’ being oppressed by big ones, and a few continued to focus on state sovereignty; but their analysis of representation’s defects was a shift of their argument in the latter days of June.
- 111 Farrand, 1: 145–147; AH Notes, “Constitutional Convention. Notes Taken in the Federal Convention. June 1–26, 1787,” AH Papers, OS, 4: 161–176; url 01-04-02-0093. Two weeks later, listening to his fellow New Yorker Lansing make this same argument more pointedly, Hamilton noted Lansing’s words. Farrand, 1: 351. Some writers have interpreted AH notes to mean that he was mostly persuaded by Madison’s arguments that day. James T. Kloppenberg, *Toward Democracy: The Struggle for Self-Rule in European and American Thought* (Oxford and New York, 2016), 400.
- 112 Notes for Convention Speeches, “Virginia Plan Papers,” JD Papers, Box 6, Folder 30, LCP; James H. Hutson, “John Dickinson at the Federal Constitutional Convention,” *William & Mary Quarterly*, vol. 40, no. 2 (April 1983), 273. These notes refer to numbers introduced by Wilson on June 30 (Farrand, 1: 488) in a speech against equal vote in the Senate, and that reference indicates JD made these notes that day. On the other hand, other references may relate to speeches of June 9. Hutson, “Dickinson,” 272–273 n48.

- 113 The shortcomings of representation were debated in various struggles to form a Dutch Republic. In one such struggle, eight to nine years after Philadelphia, the National Assembly of the Batavian Republic held debates on the merits and drawbacks of representation (leading one participant to say in 1796, "the people would be dead and buried after the election of its representatives"). The late eighteenth century was an inflection moment for the Dutch republic, as radicals and moderates favored either primary assemblies or representative assemblies; the moment did not last long. See Wyger Velema, "Dead and Buried after the Election: Voting and Citizenship in the Batavian Revolution," *Cultures of Voting*, 141–156; Simon Schama, *Patriots and Liberators: Revolution in the Netherlands, 1780–1813* (London, 1977), 246ff. (In describing the complex, multistage, and aleatory electoral procedure in Utrecht in the 1784 draft constitution, similar to the Venetian Doge election, Schama characterized it as "rigmarole." Schama, 88–89.)
- 114 Farrand, 1: 134–136.
- 115 Farrand, 1: 87, 136.
- 116 Farrand, 1: 150. It is not certain he used the words "unreasonable and dangerous" on the floor; they are in his speech notes around this time. Dickinson Notes for Speeches at Federal Convention, n.d., JD Papers, Box 6, Folder 28, LCP. In these same notes, he wrote the first house "to be chosen by Numbers," second "by the Legislatures" of states, and the "Executive by the Members of both branches by maj of Ballot." As things unfolded, given the replication of congressional apportionment in the electoral college, this early June forecast was accurate.
- 117 Farrand, 1: 151.
- 118 Farrand, 1: 152–153. Although generally structuralists in the early stage of the debate stressed the simple arguments described above, two of them backed up Dickinson's analysis at this moment. Sherman did so seconding Dickinson's motion that state legislatures should elect Senators; June 7, Farrand, 1: 150 (saying it was key to involve states at the national level to lend support to the central government). Paterson did so in recommending the same Dickinson proposal; June 9, Farrand, 1: 187 (invoking Dickinson's simile of the solar system, and extolling the "check" each level could impose on the other).
- 119 Farrand, 1: 154. For more of Madison on state agency, see Farrand, 1: 86.
- 120 Farrand, 1: 155–156. Bringing "into the general government the sense of the state Governments" was in Hamilton's notes of Dickinson's speech and is also found in Hamilton's papers (AH Notes on speeches, AH Papers, OS 4: 161–176; url 01-04-02-0093). The vote was 10 to 0, New Jersey not recorded as voting. Rakove interprets this moment (differently from the interpretation here) as Dickinson's accepting Mason's argument that the states needed some way to protect themselves against the national government. Rakove, *Original Meanings*, 62.
- 121 Aristotle, *Politics* 1305a30–34; Cicero, *Pro Flacco* 7.15–16.
- 122 See Ellsworth's speech June 25. Farrand, 1: 406. Paterson of New Jersey made a related point but with a different analogy. He said that during the Revolution some had proposed that America be represented in the British Parliament as a way to protect itself against unjust imperial rule. But, said Paterson, America would have had at most one third of the House of Commons if seats were apportioned by population, and, he asked, "would American rights & interests have been safe under an authority thus constituted?" Farrand, 1: 179. In seconding Dickinson's motion about state legislatures' electing Senators, Sherman made the Dickinsonian point that this would cause the two levels of government to be supportive of each other. June 7, Farrand, 1: 150. Paterson in his remarks on June 9 invoked Dickinson's simile of the orbiting planets and called for an organization of the legislature whereby the states and national governments would "check" each other. June 9, Farrand, 1: 187.

- 123 Farrand, 1: 322. Madison was saying that equal vote for states would be doubly unfortunate with regard to frontier because frontier states would be sparsely populated and would therefore be unjustly empowered. This was a disingenuous statement; everyone thought the rapidly filling up Kentucky and Tennessee would be anything but sparsely peopled when acceded to statehood. In the next three weeks, proportional representation for new states was insisted on by Madison, Mason, and Wilson.
- 124 New Jersey Plan, Appendix E, Farrand, 3: 613. On June 16, Paterson on the floor made a similar suggestion, redrawing state lines and creating equal districts. Farrand, 1: 251. George Read of Delaware proposed that rather than giving "the common lands" to certain states, they be used to discharge the common public debt. Farrand, 2: 412. Elsewhere Delaware supported the national government take-over of western lands and sharing lands equally with all states. Rotunda, *Ratification by States*, 3: 37–41 (Delaware Introduction), url 02-03-02-0001-0001. Luther Martin likewise regretted the giving up of common lands to big states. Farrand, 2: 441.
- 125 Hutson, "Dickinson," 277; Notes for Speeches at the Federal Convention, n.d., Box 6, Folder 27, Dickinson Papers, LCP. Certain delegates with extensive land claims in the West opposed this idea. Gorham did so June 25, Farrand, 1: 405. Wilson opposed a motion of August 30 to reserve for the U.S. "vacant lands ceded to them by the treaty of peace," which was a much less sweeping proposal for sharing Western lands than the one made by structuralists in June. Farrand, 2: 465.
- 126 Farrand, 1: 445–446.
- 127 Farrand, 1: 534. To protect the East, he proposed that suffrage be linked to taxes paid. Mason objected to treat the frontier settlers with such "unfavorable discriminations;" Rutledge's motion was defeated.
- 128 Farrand, 1: 542.
- 129 Farrand, 1: 542.
- 130 Farrand, 1: 469–470.
- 131 Farrand, 1: 533–534.
- 132 Farrand, 1: 541.
- 133 Farrand, 2: 2–3.
- 134 Farrand, 1: 488, 495.
- 135 Farrand, 1: 486–487.
- 136 Farrand, 1: 500–501. Italics in the original. Madison's notes left out the most important sentence: "I do not, gentlemen, trust you," which Yates included in his notes.
- 137 The July 9 and 10 allocations allotted the Southern states 45% of house seats when proportionality would have been less. The June 9 allocation was 43%. See the tables in Farrand, 1: 190, 557, 563. The final Constitution continued 45%, a ratio not changed until the first census in 1791, after which the Southern proportion went to 43%.
- 138 Farrand, 1: 566–567.
- 139 Farrand, 1: 571.
- 140 Farrand, 1: 578.
- 141 Farrand 1: 583.
- 142 Farrand, 1: 561.
- 143 Farrand, 1: 583–584.
- 144 Farrand, 1: 584.
- 145 Farrand, 1: 586. Although King on July 10 and 11 was showing signs of bolting from the majoritarian alliance, he voted with that alliance on the critical vote of July 16. Farrand, 2: 15.
- 146 Farrand, 1: 587–588.

- 147 Farrand, 1: 591–597. When the motion passed, New Jersey and Delaware voted against, South Carolina and Massachusetts divided, the rest of the South voted for, as did Pennsylvania. Why some of South Carolina voted against this pro-Southern formula was probably because that delegation still favored counting 100% of slaves in the formula. Just before the vote, Charles Pinckney moved five-fifths be counted. He said he was “alarmed” by Morris’s speech of July 11 about blacks. Davie expressed his own disapprobation as well. Only two states voted aye on Pinckney’s motion (South Carolina and Georgia). On this extreme Southern position, Pennsylvania just barely remained in the Northern column, voting three to two against. It is likely that Gouverneur Morris and Benjamin Franklin were among the three, both passionately anti-slavery; who were the two voting for this extreme pro-slavery measure is a mystery (at least to this author) – possibly Robert Morris and James Wilson, both with financial and business ties to the South. Wilson was a sizeable debtor to Pierce Butler of South Carolina and friend of John Rutledge. Wilson first moved three-fifths in June, then on July 12 said that three-fifths be applied to taxation and representation be tied to taxation so that “less umbrage would perhaps be taken agst. an admission of the slaves into the Rule of representation.” It remains a puzzling vote division for a generally anti-slavery state. Farrand, 1: 595.
- 148 Farrand, 1: 591–592; 2: 106, 223. Morris expressed his regret on July 24 and again August 8. Although he moved the motion, others had brought up linking taxation to representation before he did: King on July 9, Madison on July 11. Farrand, 1: 562, 584.
- 149 Farrand, 1: 598–599.
- 150 Farrand, 1: 604
- 151 On July 12 in the evening, Manasseh Cutler arrived from New York where he had been lobbying (and seemingly bribing) the Congress on behalf of the Ohio Co. land venture. He would have brought news of the details of the Northwest Ordinance agreed, which had its second reading July 12 and passed Congress July 13. (*Journals of Continental Congress*, 1787, vol. 32: 238–242, 333–343). Another feature of the NWO, in addition to those mentioned in the text, provided that new states made from the territory were to be admitted on equal terms with existing states. This had been longstanding policy at least since 1774 (Merk, *Westward Movement*, 102–108) but which Morris, King, and Gerry fought against vigorously in the convention during the first two weeks of July. For Manasseh Cutler’s lightning visit to Philadelphia, see Farrand, 3: 58–59. Nathaniel Gorham and Rufus King, delegates, were both members of Congress participating in 1787 debates on the NW Ordinance. (*Journals of Continental Congress*, April–May 1787, vol. 32: 274ff.) King was on the committee handling the NWO. (vol. 32: 311.) For the second reading, see *Journals*, July 12, vol. 32: 333ff; for passage and congressmen present, see *Journals*, July 13, vol. 32: 334–343. Signatories included Few, Pierce, and Blount, the Georgia and North Carolina federal convention delegates who dashed off to New York to help make up the congressional quorum. See also endnote 60.
- 152 Farrand, 1: 606n.
- 153 Farrand, 1: 604.
- 154 On July 12, Davie of North Carolina said “it was high time now to speak out,” and said that “some gentlemen” wanted to deprive the South of “any share of Representatives for their blacks.” He was sure his state would never join the union unless blacks were counted at least at three-fifths. Morris replied, noting it had been said it was “high time” to speak out, and said he came to enter a compact, but he did not think his state would grant representation to slaves, and if a general compact proved impossible he was ready to enter in a compact with any states that were willing. Back-to-back votes were taken on July 11 and

12 on three-fifths and five-fifths (or 100% of blacks to be counted). Farrand, 1: 542, 596. These intransigent exchanges and votes on issues the delegates had held multiple times previously were examples of the re-energizing effect of the future reapportionment controversy. Moreover, the allotment of seats in the first Congress had not proved intensely controversial on June 9, nor even again a month later, until in the days July 10-13 it became entangled with the future apportionment controversy. See n137 about proportions in the first allotment. Not surprisingly, in 1803 while in the Senate, Gouverneur Morris voted to block slavery in the Mississippi territory. Adams, *Gouverneur Morris*, 278.

155 Farrand, 1: 605-606.

156 Farrand, 1: 605-606. For shareholders in Illinois-Wabash company, see Illinois and Wabash Land Company, Minutes, 60, 61, 74, 75, 78, 82, 96-98, 100, 102, Am .4096, HSP. (Pages 96-98 are misnumbered.) These entries cover meetings from 1780 to 1787. At least three federal delegates are listed as attending meetings: Robert Morris, James Wilson (variously "chairman" and "president"), and Thomas Fitzsimons (the latter attending as attorney for Maryland shareholders.) The Maryland government was the corrupted body which held up ratification of the Articles of Confederation for three years because Virginia required that land claims (in particular this company's) be quashed in the enormous territory which Virginia ceded to the United States. Other names appearing in the Minute book are of interest: Charles Carroll of Maryland, cousin of Daniel, delegate to the convention; Thomas Johnson, governor of Maryland; "Mons. Gerrard," who can only be Conrad Alexandre Gérard, first secretary to Minister of Foreign Affairs and key person in procuring French arms for the Americans and the treaty of 1778; Silas Deane, one of those in Paris assisting with the procuring of arms, later accused of selling arms to the United States which had been donated by the French (and/or were useless), and of being a traitor in the pay of the British (it was likely Deane who interceded with Wilson to arrange that a share be given to Gérard in return for favors done to the United States and/or Deane); Samuel Chase, another prominent Maryland politician, later Supreme Court justice (first to be impeached); and Tench Coxe, a prominent Pennsylvanian who became an advisor to Alexander Hamilton in the Treasury department then switched to the Democratic Republicans and became a party operative in frequent correspondence with Madison over national party fortunes. During the three-year battle between Maryland and Virginia in the Congress over Virginia's land cession, whenever an opponent of Virginia objected to the Virginia demand, a member of the Virginia delegation would rise and ask if the speaker had an interest in a land company. Members refused to answer the question. Abernethy, *Western Lands and the American Revolution*, 365. (The Silas Deane treason statement is from same source, 277. For more on Deane's treason, see Carl van Doren, *Secret History of the American Revolution* (Garden City, NY, 1941), 62-63, 417.) The secretiveness of land speculators makes it uncertain exactly how many delegates to the federal convention were invested in land companies. Besides those mentioned above, George Washington, George Mason, James Madison, Benjamin Franklin, and Gouverneur Morris were participants in land company ventures; but likely others. During the federal convention, one delegate who was familiar with his fellow Marylanders and probably fed up with their undisclosed land interests was Luther Martin, who reproached Wilson during the convention's final major discussion of the western land conundrum. Apportionment having been decided (in favor of expansionists), an argument occurred on whether the constitution would give to the nation the rights to the lands ceded in the peace treaty, over and above the claims of states and others. Madison and Wilson were opposed. Luther Martin virtually alone led this unpromising attack on land speculators. During the exchange, Martin proposed that to admit a new state

from the territory of an old one, the Constitution ought not require the consent of the mother state. His reasoning was that the nation ought not to guarantee that a backcountry population should be forced to live "in subjection" to a distant part of their own state, even when the backcountry "should become the majority." This was a creative argument; it was taking the majoritarian ideology to its logical conclusion and granting powerful rights of secession to backcountry settlers. Targeting the person who had consistently advocated the cause of westward expansion and settler rights, all in the name of majority rule, Martin "wished Mr. Wilson," he said on the floor, "had thought a little sooner of the value of political bodies. In the beginning, when the rights of the small States were in question, they were phantoms, ideal beings. Now when the Great States were to be affected, political Societies were of a sacred nature. He [Martin] repeated and enlarged on the unreasonableness of requiring the small States to guarantee the Western claims of the large ones." Farrand, 2: 463–465. Martin's implication was that the devotion of his adversaries to the rights of majorities was really a devotion to financial interests and not to a political theory. So ended the western lands debate. Mason was another who shared Wilson's dislike of Martin's proposal. It was not lost on delegates that Mason's tireless efforts on behalf of land ventures in western Virginia only had the chance of success if Virginia maintained control over the contested lands. Broadwater, *George Mason*, 127. For the same reason, Gorham rose instantly to oppose Read's suggestion that western lands be used to fund the common debt. Speculators had a fondness for state government when it benefited their projects, but not always in other circumstances. Farrand, 1: 405.

- 157 Farrand, 2: 19. See also Bancroft, *Formation of the Constitution*, 2: 86–87 on the regional influences of the Senate fight.
- 158 See his remarks on June 7 and Wilson's on June 9. Farrand, 1: 152, 179–180, 183. In this early phase, the position was fairness to the majority of people; later it became fairness to a likely Southern majority. Later in life, Madison would later call majoritarianism "the fundamental principle" of a republic. Madison, "Majority Governments," 9: 520–528.
- 159 Shankman, *Original Intent*, 51–52.
- 160 See Madison's letter to Monroe's son-in-law in 1823, in which he said the admission of new states with just one or two House members is "evil," but will be cured by population growth. "At the present period, the evil is at its maximum." JM to George Hay, August 23, 1823, JM Papers, Rotunda, OS, Retirement Ser., 3: 108–111, url -04-03-02-0109. What Madison meant was that when a new state came in with two senators and one representative it was unhelpful – a growthless state would be empowered – but in time, with growth, representatives would be increased, and as he and his interlocutor understood, that growth was expected to be Southern. George Mason was equally devoted to westward expansion on terms of equality, but expressed more concerns about slavery's expansion than did his fellow Virginian. "The Western people are already calling out for slaves for their new lands; and will fill that Country with slaves if they can be got thro' S. Carolina & Georgia [which still allowed importation]." Mason evidently foresaw the destabilizing influence of this slavey-connected expansion, but rather than Morris's solution of subordinating future states to the old states, Mason's remedy was to prohibit slave importations immediately and forever. He thought the convention's extension of the slave trade till 1808 in exchange for majority decisions on trade matters one of the grave errors which would lead to further division ahead. Farrand, 2: 370.
- 161 Farrand, 1: 461ff.
- 162 Farrand, 1: 509; Paul S. Clarkson and R. Samuel Jett, *Luther Martin of Maryland* (Baltimore and London, 1970), 106.

- 163 Farrand, 1: 509, 510, 524, 551.
- 164 Farrand, 2: 11–12. King blamed his state's vote on the absence of Gorham, which would mean that Strong and Gerry both voted against the compromise and carried the state's vote.
- 165 Madison's notes (Farrand, 2: 19–20) on this vote and the postmortem discussions were disingenuous and likely intended to shape the history of the crucial vote. He dwelt on the inflexibility "of the smaller States" and the caucusing of the "larger States" in the aftermath. This nomenclature bore minimal relation to the states' voting choices on July 16; nor to the several related votes of July 2, July 7, and July 14; nor to the way in which the contest had partly been converted into a regional struggle, which his speech of June 30 had helped to ignite.
- 166 Farrand, 1: 511–519. Italics in original.
- 167 Farrand, 1: 36–37.
- 168 Farrand, 1: 530.
- 169 Farrand, 1: 552.
- 170 In 1832 Jared Sparks wrote that Morris wished the Senate to be a counterweight to "the representative branch" and could not therefore be constituted as the lower house was, "imbued with local and State prejudices." Jared Sparks, *The Life of Gouverneur Morris [etc]*, 3 vols. (Boston, 1832), 1: 287. In his later years, Morris did not temper his hostility to majoritarianism, nor his skepticism about Madison's theory of large republics. Writing in 1804, Morris said, "That numerical majority not only may but frequently does, will what is unwise and unjust...in order to please the people...regardless alike of what conscience may dictate or reason approve." Adams, *Gouverneur Morris*, 157. In 1812, Morris spoke about the divisive effects of the War of 1812 on the union, and said that if a political change were to occur, a new arrangement ought to avoid "the consolidation of too great a mass...republican spirit is liable to ferment, when in a large vessel, and be changed to the corroding acid of despotism." Gouverneur Morris, *Discourse Delivered Before the New-York Historical Society, at the Anniversary Meeting, 6th December 1812* (James Eastburn, New York, 1813), 40. In 1791 as US ambassador to France, Morris criticized the draft French constitution on the grounds of the untrammelled power which it assigned to the assembly and which, he thought, would lead to legislative tyranny. Adams, *Morris*, 230.
- 171 Henry Clay White, *Abraham Baldwin: One of the Founders of the Republic, and Father of the University of Georgia, the first of American State Universities* (Athens, Georgia, 1926), 35, 107.
- 172 Farrand, 1: 475; White, *Baldwin*, 42.
- 173 Farrand, 1: 510; White, *Baldwin*, 110–111; Bancroft, *Formation of the Constitution*, 2: 66. Two of the Georgia delegation were in New York attending Congress and did not vote.
- 174 Farrand, 2: 372.
- 175 White, *Baldwin*, 112.
- 176 Farrand, 2: 2.
- 177 Farrand, 1: 551; 2: 2.
- 178 William Few and William Pierce of Georgia departed Philadelphia to take part in the Congressional session in New York finalizing the Northwest Ordinance. They were signatories of the document voted on July 13. (*Journals of the Continental Congress*, July 13, 1787, vol. 32: 343.) This work having been accomplished, they evidently returned to the federal convention in time to restore Georgia to the proportionalist voting alliance on July 16. William Blount of North Carolina was in New York working on the Northwest Ordinance, of which he was a signatory July 13 (*Journals of the Continental Congress*, July 13, 1787, vol. 32: 343), but unlike Few and Pierce of Georgia, he must have tarried in New York past the July 16 vote, for Spaight voted with the proportionalist alliance, and if

- Blount had been present North Carolina's delegation might have split down the middle; but without him, Davie and Williamson outvoted Spaight. Farrand, 2: 15. Alex Martin either was absent, abstained, or voted with the majority. Robinson, *Davie*, 186.
- 179 William R. Casto, *Oliver Ellsworth and the Creation of the Federal Republic* (New York, 1997), 46–47.
- 180 Farrand, 1: 475.
- 181 Luther Martin later said that Baldwin voted as he did July 2 against proportional representation “not, I believe, because he was against the measure, but from a conviction, that we would go home, and thereby dissolve the convention” if a compromise were not achieved. (Martin’s *Genuine Information*, Farrand, 3: 188.) Martin was speculating here. It is evident that his speculation was wrong. Three days before the vote, Baldwin did say that he was against proportional representation. Moreover, if Baldwin was voting just to save the convention, why did Baldwin change his vote two weeks later – was he less convinced that the structuralists would close down the convention on July 16 than on July 2? Or was he just outvoted on the latter date by William Few and William Pierce back from New York? Because Baldwin believed property should be counted in apportionment, Baldwin might have been affected by the westward expansion argument, as Morris, Gerry, and Williamson were, and concerned that representation based just on numbers would disadvantage older and wealthier states. But this, too, is speculation, only it is suggested by his property remarks. This conjecture is contradicted by Georgia’s vote on July 14 not to limit representation for new states joining the union; that was a pro-westward-expansion vote. (Farrand, 2: 2.) It is possible that he voted against the rest of his delegation that day, but then Few and Pierce would have to have made it back from signing the Northwest Ordinance on July 13 in time to outvote Baldwin on the next day. In later years, as a Congressman then Senator, Baldwin became a Republican loyalist, ally of Madison, opponent of the Alien and Sedition Acts, supporter of the Louisiana Purchase, opponent of Alexander Hamilton, backer of siting the capital on the Potomac (White, *Baldwin*, 122–123, 127–128, 136–137) – in other words, the transplanted New Englander followed a common political path for a Southern politician which would have made him a logical adherent to the proportional representation alliance in 1787; but he was not one.
- 182 Farrand, 1: 488. Davie, like Baldwin, was chosen to join the committee to find a way out of the deadlock of July 2. The delegates could easily have chosen a North Carolina delegate supporting proportionalism – that state voted proportionalist on July 2 – but they chose Davie. By July 16, the latter had managed to convert all or most of all his fellow delegates except William Spaight. Forrest McDonald observed that the delegates from North Carolina voted “unaccountably” for equal vote on July 16. *E Pluribus*, 285. That comment is itself unaccountable in light of what Davie and Williamson said on the floor of the convention.
- 183 Davie made one of the more heated Southern speeches on July 12 in defense of three-fifths; if Northerners wanted to deprive Southerners of any representation for their slave ownership, “the business was at an end.” Farrand, 1: 593; Blackwell P. Robinson, *William R. Davie* (Chapel Hill, UNC Press, 1957), 154, 188.
- 184 Farrand, 1: 551; 2: 2, 11–12.
- 185 Robinson, *Davie*, 193.
- 186 Robinson, *Davie*, 141.
- 187 Robinson, *Davie*, 374.
- 188 Letter WD to John Steele, Oct 15, 1812, Robinson, *Davie*, 389.
- 189 Robinson *Davie*, 362.
- 190 Robinson, *Davie*, 390.

- 191 Robinson, *Davie*, 390.
192 Robinson, *Davie*, 391.
193 Robinson, *Davie*, 189.
194 His personal vote was not recorded that day, but Madison (Farrand, 2:15) named Spaight as the only vote against North Carolina's position. *Davie's* biographer states it as a fact. (Robinson, *Davie*, 186.)
195 Farrand, 1: 180, 445.
196 Farrand, 1: 515, 532.
197 Farrand, 1: 446.
198 Farrand, 1: 560, 579.
199 Farrand, 2: 360. Galling to him was Virginia's slapping a duty on tobacco shipped through the Old Dominion to get to market.
200 Farrand, 1: 551; 2: 2, 11–12.
201 Hugh Williamson speech in House of Representatives, February 3, 1792, Appendix A, CCLXV, Farrand, 3: 365–366.
202 Billias, *Gerry*, 21, 101–105. Gerry in early 1780s worried about despotism, even as it might be created around the figure of George Washington. He distrusted both standing armies and the formation of a single and powerful capital city.
203 Farrand, 1: 551; 2: 2, 11–12.
204 This estimate is derived from individuals' votes recorded when given (June 1, June 12, July 16) and, when individuals' votes are not recorded, from floor statements of the same parties speaking against one another, followed by a divided delegation vote (June 5, June 23, July 6, July 19). In the other half of divisions, the fault line might have been the same but the record is silent. Farrand, 1: 72, 122, 125, 213, 217, 219, 371, 375, 385, 387–388, 539–540, 543, 547, 549, 591–596; 2: 15, 51, 56, 57, 59. The standard theory about Gerry's motives is also weakened by Gerry's being one of only three delegates who refused to sign the Constitution because he thought it would lead to "a government of force and fraud." EG to?, October 18, 1787, October Folder, Carton 2, Gerry Papers, MHS. It is not clear why he would sacrifice to save a document he was soon to denounce.
205 Of the other three delegates, **Caleb Strong** seems in Philadelphia to have followed Gerry's lead.

Nathaniel Gorham remained loyal to the majoritarian alliance when Strong and Gerry departed from it on July 16. Gorham was heavily involved in land speculation (going bankrupt from it eventually) (Billington, *Westward Expansion*, 252–254) and shared with James Wilson the land speculator's advocacy of granting settlers in the West full and equal political rights. Gorham may have also been involved in the Ohio Co. and/or the Scioto Company, two ventures that lobbied Congress and bribed Congressmen while Gorham was a member and indeed was president of Congress (1786–1787) at a critical moment between the 1785 Land Ordinance and the passage of the Northwest Ordinance in July 1787 when Congress parceled out millions of acres of western land. (Merk, *History of the Westward Movement*, 104–106.) Gorham instantly rose to speak against Read's June 25 proposal that states should throw into a common pot all their western lands for the benefit of the union. Farrand, 1: 405. Read's suggestion would have been unattractive to someone who was buying a part of what became central New York from (his own) Massachusetts state government. Sounding like James Wilson, at the height of the equal vote fight, when his own delegation was divided, Gorham said he "supported the propriety of establishing numbers as the rule" (as long as blacks were not counted equally with whites, he said). Farrand, 1: 587. He shared Wilson's enthusiasm for a strong national government for business purposes even if it meant tolerating a constitution containing clauses inimical to his region (three-fifths and reapportionment thought

to benefit the South). Gorham falls into that small subset of delegates for whom the term “nationalist businessmen” best describes their behavior. **Rufus King** was altogether different and more complicated. He did not come to his final position on July 16 naturally: he disliked slavery, had doubts about three-fifths and westward expansion, favored perpetual majority for the thirteen seaboard states, disavowed the principle of the “rule of numbers” (July 11), and thought the South over-represented in initial apportionment (of July 10) – all of which positions would make him a candidate for apostasy from the proportionalist camp. Farrand, 1: 492–493, 541, 566–574, 586, 595. Eventually as a leading Federalist in the early national period, fighting the Virginia dynasty, King defended “the equality of the states in the Senate.” Senate Speech, March 18, 1824, in Charles R. King, *The Life and Correspondence of Rufus King*, 6 vols, vol. VI, 1816–1827 (New York, 1900), 707. During the first two decades of the nineteenth century he (like Davie) was convinced that the Virginia grip on the presidency would ruin the country. Rufus King to Christopher Gore, September 19, 1812, Rufus King Papers, New York Historical Society (hereafter NYHS); Ernst, *Rufus King*, 289, 319–320. But on July 15, 1787, he expressed his “mortification” that his fellow Massachusetts delegates did not support a compromise that would have prevented equal vote in the Senate from prevailing, and on July 16 King voted with the majoritarian alliance. Farrand, 2: 12, 15. Rufus King’s vote on that key day is difficult to understand in light of his floor statements which sounded alternately like those of Gerry and Morris. His biographer does not solve the problem and, in one place, mistakenly states that King favored proportional representation in both chambers of Congress. Ernst, *Rufus King*, 108. King did do so on June 30 and July 16, but not July 5, July 11, or July 14. This author can find but one explanation (which is conjecture): although a wealthy man, King consistently favored popular voting. In the July 19 debate over how to choose presidential electors, when some argued for state legislatures or state executives (the latter being Gerry’s position), King said he was “of opinion that ...electors chosen by the people for the purpose, would be liable to fewest objections.” Farrand, 2: 56. Many years later, when objecting to the caucus system of nominations, King came back to favoring a popular role. Letters of Rufus King to Charles King, January 1, 1824, and March 16, 1824, Rufus King Papers, NYHS. It could be that just as some Southerners acted against their own region’s interest on July 16 because they saw flaws in representative institutions King may have acted against his own region’s interests because he believed in the central electoral role being filled by people. King might have been the Northern version of William Davie or Abraham Baldwin: placing political procedure on a higher plane than his (and his region’s) own interests.

206 Billias, *Gerry*, 178–179; Farrand, 1: 205; 2: 2–3.

207 Farrand, 2: 98–99. For more on Gerry’s equivocal views, see note 16 and associated text.

208 Farrand, 1: 155–156.

209 Farrand, 1: 544, 532–533. He said he was for proportional representation in both branches on July 6, the day after he called for “some accommodation on this point.”

210 Broadwater, *George Mason*, 93.

211 Broadwater, *George Mason*, 152–153, 157, 160, 208, 215.

212 Farrand, 2: 362–363.

213 Farrand, 1: 164. In his speech, Madison invoked the Dickinson simile (of the day before) of states orbiting the central government, and said the veto “must controul the centrifugal tendency of the States; which, without it, will continually fly out of their proper orbits and destroy the order & harmony of the political system.” Not liking Dickinson’s triumph on June 7 on the matter of state

legislatures' electing Senators, Madison took careful note of the metaphor with which Dickinson pulled off that unanimous vote, and used it to expound the national veto the next day.

- 214 Farrand, 1: 459; 2: 18; 3: 151–154; Clarkson and Jett, *Martin*, 78 n32, 79, 122. The Martin threat appeared in Paterson's notes of LM speech; Madison's notes did not mention the threat. More than one delegate pointed to what he characterized as a pose by the majoritarians, pretending to act from the purest motives when nothing more than "ambition and the lust of power" drove their behavior. Gunning Bedford said the members of the other camp "endeavor to amuse us with the purity of their principles and the rectitude of their intentions...." Luther Martin, June 27, Farrand, 1: 441; Bedford, June 30, Farrand, 1: 500. The allocation of congressional seats further irritated not only structuralists but also several Northerners who, in early July, were evincing sympathy for the structuralist arguments. The committee performing the allocation used distinctly biased arithmetic, recommending on July 9 Georgia (with a population of 27,000 whites) should receive two House seats, Delaware (37,000 inhabitants) one seat, and Rhode Island (58,000) one seat. This skewing in favor of Georgia increased the next day when the numbers were changed, and Georgia went from two to three seats (Delaware and Rhode Island staying at one each). We do not know why this marked favoritism toward Georgia occurred, but it is noteworthy that only the week before Georgia had divided its vote on Senate equal vote. The Georgia boosted allocation (which made it into the final Constitution and was only down-ratcheted from three to two seats following the nation's first census) may have been a bribe. All allocation committee members were (as of July 10) against equal vote in the Senate. The allocation committee was Gouverneur Morris, Gorham, Randolph, Rutledge, and King, all of whom were on record as against equal vote. Morris underwent his conversion to equal vote only on July 13. Farrand, 1: 557, 563. Elbridge Gerry later explained to the Massachusetts ratifying convention that this over-allocation for Georgia (3 seats vs. 8 for Massachusetts, when the latter's notional tax assessment was 13 times greater than Georgia's) was in anticipation of rapid in-migration and because of some "compromise" the details of which he did not mention. Proceedings in the Massachusetts Convention, January 19, 1788, Appendix A, CLXXVII; Belknap to Hazard, January 20, 1788, CLXXIX, Farrand, 3: 261–262.
- 215 Farrand, 1: 515, 519. Wilson's unusual argument was that the committee (with an equal vote for each state) would "decide according to that very rule of voting which was opposed" by his side. It was unusual inasmuch as the convention rules provided for states' voting with an equal voice.
- 216 Farrand, 1: 509, 510, 524. The delegates *en masse* elected Elbridge Gerry from Massachusetts (rather than Rufus King or Nathaniel Gorham, both steady proportionalist voters), Mason from Virginia (not Madison or Randolph), Yates from New York, who was so hostile to the Virginia Plan that he soon after left the convention not to return (rather than Hamilton), Paterson of New Jersey (the leader of the New Jersey Plan), the compromise-inclined Benjamin Franklin from Pennsylvania (rather than Wilson or Morris or any of the merchants in the delegation), Bedford of Delaware (Delaware probably had no proportionalist member but Bedford was the most caustic in his floor speeches toward the proportional camp), Luther Martin of Maryland (rather than Jenifer), Davie of North Carolina (rather than Spaight who later continued voting for proportionality), and Baldwin of Georgia (rather than William Houston, who had split the Georgia vote with him on the same day by voting against equality in the Senate). (William Houston not to be confused with the similarly named William Houston, delegate of New Jersey.) Although Rutledge of South Carolina was a proportionalist, he demonstrated his independence from the Madison-Wilson

alliance about the national veto, state legislatures' electing the Senate, and the danger of the frontier overwhelming the Eastern seaboard.

A subset or facsimile of this special committee began convening on an informal basis in August to discuss what could be done to improve or oppose the draft Constitution. Attendees included Elbridge Gerry, George Mason, Luther Martin, and unnamed delegates from New Jersey, Connecticut, Delaware, and one member each from South Carolina and Georgia. (Luther Martin's "Reply to Landholder," March 14, 1788, Farrand, 3: 282.) It is not certain that these August evening meetings were composed solely of structuralists who disliked the rule of numbers. The fact that South Carolina members attended casts doubt on that possibility. One must be cautious about attributing a set of common positions to these attendees. A different but overlapping group of delegates joined in discussions in June which resulted in the launch of the New Jersey Plan. So said Luther Martin after the convention. (*Genuine Information*, Farrand, 3: 178–179.) The states from which delegates joined that discussion were New Jersey, Delaware, Connecticut, New York, and Maryland. Although Martin did not say so, not all structuralists who might have joined these talks backed 100% of the New Jersey Plan's clauses; Dickinson noted his own differences on the draft plan itself. (JD Notes for speeches, "Objection to New Jersey Plan," Box 6, Folder 28, wherein he notes the insufficient "Energy" of it; and his more extensive revisions in "Notes on the New Jersey Plan, Federal Convention," Box 6, Folder 31, LCP.) In both cases of informal caucusing, it is possible the delegates so convened knew others were also holding what Luther Martin called "private meetings" and decided to be as organized as their opponents.

- 217 Farrand, 2: 27–28. That Morris likely supported the veto early on is based on his having moved consideration and strengthening of Randolph's Virginia Plan on May 30, stressing the national legislature's having "supreme authority" and the impossibility of there being "two supremes." Farrand, 1: 33–34, 43. Until July 17 Morris had nothing friendly to say about states and their role in the government. His wording on July 17 – "more & more opposed" – implied an evolving position.
- 218 See his letters reporting to Jefferson, who was in Paris, in September and October 1787 in Farrand, 3: 77–78, 131–136; and JM Papers, Rotunda, OS, Congressional Series, 10: 205–220; url JSMN-01-10-02-0151. In his longer October letter, unaccountably Madison informed Jefferson that the national veto was rejected "by a bare majority." The vote was 7 to 3.
- 219 Farrand, 2: 28–29.
- 220 See final endnote in this chapter.
- 221 The New Jersey Plan provided, as we have seen, for a new national government (with a judiciary, an executive, and a congress having power to raise revenue, regulate trade, and enforce obedience to its laws within the states, which laws were to be "the supreme law of the land.") Farrand, 1: 244–245. John Dickinson, the intellectual leader of the anti-proportionalists, supported the national legislative veto of state laws and the national government having power to send troops into states to enforce the law. Dickinson's remarks in favor of the national veto occurred June 8. As to the danger states posed to the national government or national to states, the states posed the greater risk, he told the convention. (Farrand, 1: 167, 172; Charles Janeway Stillé, *The Life and Times of John Dickinson, 1732-1808* (Philadelphia, 1891), 263; Milton E. Flower, *John Dickinson: Conservative Revolutionary* (Charlottesville, 1983), 244.) Dickinson's private complaint about the New Jersey Plan was that it did not grant the federal government even more power than it did, not that it granted too much power. Notes Fragment, n.d., June (?) 1787, JD Papers, Box 6, Folder 28, LCP. Elbridge Gerry favored the grant of coercive power against states. (Billias, *Gerry*, 159.) Luther

Martin, one of the most zealous in the cause of equal vote, said the problem with the existing Congress was not the equal vote of the states but “the want of power” and this problem could be solved by adding powers to the central government, not by changing how votes were counted there. Martin’s biographers noted that at the federal convention Martin favored forming “a strong and energetic federal government.” (Farrand, 1: 436–441; Clarkson and Jett, *Luther Martin*, 103.)

Opponents of proportionality who came from small states mixed several arguments into a bundle: protecting states from annihilation, avoiding being outvoted, inserting state agency to improve national operations, and addressing evolving concerns about representation as an institution. Luther Martin’s idea of a federal system differed from Dickinson’s. Martin identified the states as the sole constituents of the system. (See in particular Martin’s speech of June 28; Farrand, 1: 453–455 as reported by Yates.) Dickinson did not. Yet even Martin was in favor of granting new, vast powers to the national government. Such complexity is missed when the camp is described as the “small states” or “states’ rights” camp objecting to the “nationalism” of the other side. Labels have confounded understanding.

- 222 The words quoted are George Bancroft’s paraphrasing of Madison’s statement to him. Bancroft, *Formation of the Constitution*, 2: 88. See also Ketcham, *Madison*, 215.
- 223 For additional discussion of the Pennsylvania delegation and its motives, see above text *An alliance is formed*.
- 224 For more on Gorham and King, see endnote 205 above.
- 225 This was how Madison depicted the bicameral legislature as well as the dual roles of Electoral College and House presidential voting by states. JM to Thomas Jefferson, 24 October 1787, Rotunda, Ratification by States, 8: 98–109; url 02-08-02-0001-0067; JM speech in Virginia Ratification Convention, June 1788, Rotunda, Ratification by States, 10: 1371–1387. It was in part the simple and uncoordinated comments by structuralists that contributed to the reputation of their camp as being the “small states” or “states rights” camp, pitched in battle with the nationalists. That portrait of camps also made sense at the time (and since) when one listened to Gouverneur Morris and Alexander Hamilton, who barely could hide their disdain for state government. Madison’s own notes of the proceedings concentrated on them as the small states contingent, ignoring their diverse motives and arguments. But Madison’s notes need to be read with caution and in conjunction with the other notetakers’ records, where the latter exist. On occasion he left out arguments made by structuralists that were embarrassing to proportionalists or difficult to answer. Although this was true in many instances (Martin’s biographers have noted it; Kauffman, *Forgotten Founder*, 27–28, 39–40), no better example, not frequently noted, was Madison’s tendentious summary of the meeting held the day after the Great Compromise, from which, if one did not know better, one would have thought the fight was solely between small states and big states. Farrand, 2: 19–20. On Madison’s influence as source, see final endnote in this chapter.
- 226 Dickinson Notes for Speeches at the Federal Convention, n.d., JD Papers, Box 6, Folder 27, LCP. Referring to the Virginia Plan, he wrote “Let the safety of the larger states be secured,” and “Let the safety & Liberty of the lesser be also secured.” If both houses are based on proportional representation, congress will be in the “absolute power of the larger” states, and smaller states will be in danger of being “swallowed up.” See also Hutson, “Dickinson,” 259, 271–272; Farrand, 1: 484–485. Because there were different issues at stake in these weeks voting alignments were not strict, apparent inconsistencies appeared, and any interpretation of motives must be advanced with caution. See, for example, the

- voting alignment on the June 19 rejection of the New Jersey Plan and adoption of a radical Virginia Plan (radical because it had three-fifths and proportional representation in both chambers, and executive chosen by a legislature so constituted). In this vote, the South as expected voted solidly for proportionality, so did Massachusetts (explained by size, evidently), but so did Connecticut (not readily explainable). New York, New Jersey, and Delaware voted against, as one would expect. Farrand, 1: 313. Also see “The Amended Virginia Resolutions, 13-19 June” 1787, Rotunda, Ratification, Constitutional Docs, 1: 247–250; url 01-01-02-0007-0004.
- 227 Farrand, 2: 15.
- 228 Defying the fault line between big and small states, some delegates from big states, such as Gerry of Massachusetts and Mason of Virginia, caucused in evenings with small state delegates to discuss strategy. Rotunda, Ratification by States, Luther Martin: Address No. 1, *Maryland Journal*, 18 March 1788, 11: 396–403; url 02-11-02-0003-0098; Farrand, 3: 282. One later writer created the phrase “large state moderates” to describe one class of delegates, which indicates the vacuity of the nomenclature. Broadwater, *Mason*, 175. One person responsible for the confusion was Madison. See above endnote 225 and final endnote in this Chapter 6.
- 229 Farrand, 1: 469 for his comment on June 29. The vote to report Randolph’s resolutions on June 19 won three Northern ayes, Massachusetts, Pennsylvania, and Connecticut. Farrand, 1: 313.
- 230 Excellent recent scholarship has focused on slavery’s part in this and other important decisions. See final endnote.
- 231 The delegates explicitly criticizing “the rule of numbers” included: **Gouverneur Morris** (“could not persuade himself that numbers would be a just rule,” July 5 and 11; Farrand, 1: 536, 583); **Rutledge** (“if numbers shall be made the rule” the Atlantic states will be subjugated, July 5, Farrand, 1: 534); **Butler** (the more he examined it, “the less it would appear that the number of inhabitants would be a proper rule of proportion,” July 6, Farrand, 1: 542); **Dickinson** (representation “founded on Numbers – unreasonable and dangerous,” Speech Notes, Box 6, Folder 28, LCP); **King** (thought “ye number of inhabitants was not the proper index of ability and wealth,” opposed “fixing numbers as the rule of representation,” and objected to “the rule of numbers,” July 6, 11, and 12, Farrand, 1: 541, 586, 595.); and **Williamson** (who voted with structuralists on equal Senate on July 16 and criticized the “power of numbers” on House floor, February 3, 1792, Farrand, 3: 365–366). In addition, others spoke up against constituting the second branch as the first branch: **Baldwin** (second branch ought not be constituted as first branch, danger of government “becoming too formidable;” June 29, Farrand, 1: 470, 475); and **Davie** (“proportional representation” was “impracticable;” “local prejudices & interests” will make their way into a representative body however constituted, June 30, Farrand, 1: 487–488, 498). **Gerry** voted at least twice for equal vote in the Senate (July 7 and 16) and argued for departing from proportional representation in the lower house to protect Atlantic states (as did King, Morris, and Rutledge) (Farrand, 1: 549, 2: 2–3, 15). In addition there were nine others – **Paterson**, **Sherman**, **Johnson**, **Bedford**, **Ellsworth**, **Martin**, **Brearley**, **Lansing**, and **Yates** – who delivered most of the speeches and proposed the motions against proportional representation throughout the convention’s first six weeks. The aforementioned delegates totaled eighteen. Those who defended the doctrine “the rule of numbers” were four: Wilson, Mason, Madison, and Gorham. Not by his words but by his action (on July 13, striking out wealth in the reapportionment formula (Farrand, 1: 603)), Randolph belonged to this group of four spokesmen. Hamilton expressed skepticism about representation being able to filter out interests (Farrand, 1: 145–147), agreeing

- with one of the structuralists' complaints, but he was absent during the critical debate on equal vote and unable to vote on July 16 because New York's delegation lacked a quorum (Ron Chernow, *Alexander Hamilton* (London and New York, 2004), 235–236).
- 232 What reinforced this unhappy vision for some Northerners was, on the same day, the passage of the Northwest Ordinance with certain provisions that were alarming to Morris and others. See endnotes 60 and 151 and accompanying discussion in the text.
 - 233 Proving a theory of voting motives cannot be done. It is possible that a will to compromise and a will to block popular majorities were both present. One thing is sure, the vote on July 16 did not find the various regional camps neatly divided on either side of the question. Proportionalist backers that day included Southerners, Northerners, big states, and small states, and the structuralist voters were a similar amalgam.
 - 234 Ketcham, *Madison*, 319–322.
 - 235 Two decades earlier, Jefferson had confided to Madison that any Virginia functionary cooperating with Alexander Hamilton's new Bank should be charged with treason and executed. Chernow, *Hamilton*, 351–352. Madison was the state's rights man of the Kentucky and Virginia Resolutions while in opposition to John Adams, then under Jefferson was anything but a state's rights man: he helped enforce the trade embargo in American ports with armed soldiers, and defended the Louisiana Purchase against the Federalist, strict constructionist argument.
 - 236 JM to GW, April 16, 1787, *Founders Online*, url: founders.archives.gov/documents/Madison/01-09-02-0208; "Vices of the Political System of the United States," spring 1787, *Founders Online*, archives.gov/documents/Madison/01-09-0187; "Ancient and Modern Confederacies," JM Papers, Rotunda, OS, Cong. Ser., 9 (9 April 1786–24 May 1787), 3–24, url: 01-09-02-0001.
 - 237 Pole among others noted that Madison's concern about majorities was a classical republican concern, well stated. Pole, *Political Representation*, 9.
 - 238 "Defeated for Election to Virginia House of Delegates," statement of his brother-in-law John C. Payne, c. 1832, JM Papers, Rotunda, OS, Cong Ser., 1: 192–193; url 01-01-02-0062.
 - 239 See also Rakove, *Original Meanings*, 218, on Madison's wish to "dissipate the populist pressures of the people" and get a better class of lawmakers than he saw peopling state assemblies.
 - 240 Douglass Adair delivered an influential paper in 1957 arguing Madison got his idea from Hume of many interests in a large territory making a large state, rather than a small one, best suited for republics. Hume's more insistent point in "That Politics May Be Reduced to a Science" (1752) was that in a large government there was room to "refine the democracy, from the lower people, who may be admitted into the first elections or first concoction of the commonwealth, to the higher magistrates, who direct all the movements." This was the filtration thesis that Madison also subscribed to. Hume attributed much of his thinking to Harrington, who, as we have seen, devoted a large part of *Oceana* to the mechanics of office selection by lottery and multistage deliberations. Harrington was not the first but one of the last in a long chain of writers who found merit in the "sieve" of filtered elections. Douglass Adair, "That Politics May Be Reduced to a Science": David Hume, James Madison, and the Tenth Federalist," *Huntington Library Quarterly* vol. 20, no. 4 (August 1957), 343–360. Rakove (*Original Meanings*, 54) takes the view that Madison found in his clashing-interests theory protection for minorities and small states. Shankman (*Original Intent*s, 51–52) states that Madison dealt with the majority tyranny problem through filtration, the variety of interests, and better people being elected by larger constituencies.

- 241 JM to GW, April 16, 1787, *Founders Online*, url: founders.archives.gov/documents/Madison/01-09-02-0208; Ulmer, "South Carolina Delegates," 92.
- 242 Farrand, 1: 486–487.
- 243 Farrand, 1: 602.
- 244 Farrand, 2: 9. This Southern concern was increased when the convention passed a provision that no state could be deprived of its equal vote in the Senate without its consent.
- 245 Farrand, 2: 9–10. See also Bancroft, *Formation of the Constitution*, 2: 86–87.
- 246 Madison, "Majority Governments," Hunt ed., *Writings of Madison*, 9: 520–528.
- 247 He wrote privately to Jefferson, saying that because of certain decisions, which he would explain later, the Constitution would "neither effectually answer its national object, nor prevent the local mischiefs which everywhere excite disgusts agst. the State Governments." This he wrote September 6, 1787. In his longer letter to TJ on October 24, he explained the importance of the loss of the national veto. Farrand, 3: 77–78, 131–136; JM Papers, Rotunda, OS, Congressional Series, 10: 205–220; url JSMN-01-10-02-0151.
- 248 Smith, *Wealth of Nations*, 897–898. (For a healthy corrective about founder influences, see Samuel Fleischacker, "Adam Smith's Reception Among the Founding Fathers, 1776–1790," *William & Mary Quarterly*, 59, no.4 (2002), 897–924.) For scores of years, British commissioners sent by Whitehall had stepped in to resolve boundary disputes, curb land speculators, and try (unsuccessfully) to equalize statehouse apportionment in colonial legislatures. Madison returned to the theme often, usually invoking the Whitehall example. Writing to Washington about the national veto of state laws, Madison cited the "Kingly prerogative" as his model, a model needed to control "the aggressions of interested majorities on the rights of minorities and individuals." "In Monarchies the sovereign is more neutral to the interests and views of different parties...." He concluded saying that the union of thirteen states would never have passed a paper money bill. (Madison probably repeated this statement on the convention floor, because Hamilton noted to himself, contradicting Madison's speech: "Paper money is capable of giving a general impulse.") JM to GW, April 16, 1787, *Founders Online*, archives.gov/documents/Madison/01-09-02-0208; Farrand, 1: 146. For his return to the theme late in life (three years before he died), see Madison, "Majority Governments," Hunt ed., *Writings of Madison*, 9: 520–528.
- 249 For more examples of his majoritarian advocacy at convention, see Farrand, 1: 37ff; 2: 8–10; Bancroft, *Formation of the Constitution*, 2: 15–16; and above passages in this chapter. Shankman's excellent work puts Madison's shedding concern about the danger of majorities at a later date (1792) than does this author. Shankman, *Original Intent*, 123–124. As to the Southern stamp on Madison's character, see *Federalist* #54 wherein he argued that chattel slavery was property deserving to be represented. He defended the principle again in 1829 in the Virginia constitutional convention. In his will, Madison promised freedom to his enslaved persons but financial ruin intervened and he sold sixteen enslaved persons in 1834. Bailyn, *Debate on the Constitution*, 2: 199; Ketcham, *Madison*, 629, 638–639. That was not the first time finances caused him to look to liquidate his chattel property. He wrote his father that unless he received a congressional pay raise, "I shall be under necessity of selling a Negro." Chernow, *Hamilton*, 175. This comment may have been sarcastic; few things were more disgraceful in antebellum South than for a slaveholder to be compelled to sell his enslaved persons.
- 250 This speech was an echo of fellow Virginian Mason's speech earlier the same day (July 11) when the latter said that the North at the moment "preponderate," but he "wished it not to preponderate hereafter," and the way to make sure of that was a formula, rather than trust future legislators, for "those who have power in their hands will not give it up while they can retain it." Farrand, 1: 578–586.

- 251 He was referring to Condorcet, *Essai sur l'application de l'analyse à la probabilité des décisions rendues à la pluralité des voix* (Paris, 1785). JM to Edmund Randolph, August [or July] 2, 1788, JM Papers OS Cong. Ser., 11: 214; url 01-11-02-0148. JM sent the Condorcet and other works to Randolph. JM to Randolph, August 11, 1788, JM Papers, Rotunda, OS, Cong. Ser., 11: 227–229; url 01-11-02-0160. Condorcet and his works appeared in additional JM correspondence. See Philip Mazzei to JM, 14 August, 1786, OS, Cong. Ser., 9: 100–104, url 01-09-02-0027; JM to Edmund Randolph, Oct 28, 1788, OS, Cong. Ser. 11: 320; url 01-11-02-0235; TJ to JM August 2, 1787, OS, Cong. Ser., 10: 124–131, url 01-10-02-0080; same, Jan 12, 1789, OS, Cong. Ser., 11: 412–414; url 01-11-02-0302 (all JM Papers, Rotunda). Condorcet and his works crop up similarly in the diaries and correspondence of Gouverneur Morris, Jefferson, Hamilton, and others. Many years later, when the presidential voting system was yet again up for discussion, Madison said (in 1823) that it might be wrong to send just the top two names to the Congress for selection of president (under his then newly formulated idea for an amendment) “inasmuch as it not unfrequently happens, that the Candidate third on the list of votes, would in a question with either of the two first, outvote him, and consequently be the real preference of the Voters.” JM to George Hay, August 23, 1823, JM Papers, OS, Retirement Ser., 3: 108–111, url -04-03-02-0109. This was a typical Condorcet problem. Madison seems to have had a life-long concern about the problem of pluralities, except at the moment it mattered most.
- 252 Farrand, 2: 514, 515 (and see below, *Electoral college*). In 1800, again on presidential selection matters, Madison helped organize the election of Virginia’s electors by statewide ticket in order to deprive the opposing party of any Virginia electors (which Federalists were likely to win in the five districts they had recently carried). Far from watching out for minorities, Madison in this instance helped extirpate the minority presidential vote in Virginia. He did so for the sound political reason that he thought Federalists were doing the same to the East. See [Chapter 7](#) below.
- 253 See *Federalist* 10, 49, and 50. Bailyn, *Debate on the Constitution*, 1: 404–411; 2: 142–146; Clinton Rossiter, *The Federalist Papers* (New York, 1961), 317–320.
- 254 Madison to TJ October 24, 1787, JM Papers, Rotunda, OS, Cong. Ser., 10: 205–220; url 01-0-02-0151; TJ to Madison, December 20, 1787, Papers of Thomas Jefferson Digital Edition, ed., James P. McClure and J. Jefferson Looney (Charlottesville, Rotunda, 2008–2018), OS Main Ser., 12: 438–442, url 01-12-02-0454 (hereafter cited as TJ Papers, Rotunda, vol, page, url).
- 255 Most scholars are more charitable and take Madison at his word. They make a plausible case for doing so. See Rakove, *Original Meanings*, 290; Shankman, *Original Intent*s, 51–52; Ketcham, *Madison*, *passim*.
- 256 Farrand, 1: 242n; Flower, *Dickinson*, 243. Re Voltaire, Stillé, *Dickinson*, 92. Dickinson was the unanimous choice to chair the Annapolis convention of 1786 (Rotunda, Ratification, Constitutional Documents, 1: 181–184; url 01-01-02-0005-0003; Stillé, *Dickinson*, 256); was the principal author of the draft Articles of Confederation ten years earlier (“Draft of Articles of Confederation, 12 July 1776,” Rotunda, Ratification, Constitutional Documents, 1: 79–86; url 01-01-02-0002-00020; Stillé, *Dickinson*, 257–258; the first draft apparently written in his hand (“apparently” because JD’s script is close to unreadable)); was the author of the Resolutions of Stamp Act Congress (1764), First Petition to the King (1774), Olive Branch Petition (1775), and Declaration for Taking Up Arms (1776) (Stillé, *Dickinson*, 72–74, 140, 161; Jane E. Calvert, “Liberty Without Tumult: Understanding the Politics of John Dickinson,” *Pennsylvania Magazine of History and Biography*, Philosophical Society of Pennsylvania, LXXXI, 3 (July 2007), 234.); was inventor of the name of the new nation, the United

- States of America ("To the Inhabitants of the United States of America," May 26, 1779, *John Dickinson, The Political Writings of John Dickinson*, 2 vols. (Wilmington, 1801), 2: 53, and called the new government, "the Government of the United States," the name adopted by the supporters of the Virginia Plan (Bancroft, *Formation of the Constitution*, 2: 51–52).
- 257 When a student in London, he read Tacitus, Cicero, and Sallust. H. Trevor Colbourn, "A Pennsylvania Farmer at the Court of King George: John Dickinson's London Letters, 1752–1756," *Pennsylvania Magazine of History and Biography*, vol. 86, no. 3 (July 1962), 246. His later writings were filled with classical analogies and contained quotations on occasion not in translation. See *Political Writings*, *passim*.
- 258 JH Powell, "John Dickinson and the Constitution," *Pennsylvania Magazine of History and Biography*, vol. 60, no. 1 (January 1936), 9.
- 259 Letter JM to James Madison, Sr., Sept 30, 1769, JM Papers, Rotunda, OS, Cong Ser., 1: 45–46; url 01-01-02-0005. At the time, Princeton's name was the College of New Jersey.
- 260 AH Papers, Rotunda, "New York Ratifying Convention. Notes for Second Speech of July 17 [1788]," OS 5: 174; url 01-05-02-0012-0073; JA to TJ, Nov 12, 1813, TJ Papers, Rotunda, Retirement Ser., 6: 612; url 03-06-02-0473. George Bancroft wrote that Dickinson "controlled the counsels of the country" following the Boston Port bill. Stillé, *Dickinson*, iv.
- 261 Powell, "Dickinson," 12.
- 262 JD Speech Notes, Box 6, Folder 27, LCP.
- 263 The date was June 6. See above *Debate on apportionment*.
- 264 *Fabius III, Political Writings*, 2: 95–97.
- 265 *Fabius II, V, Political Writings*, 2: 80, 87, 124–125, 124n.; Stillé, *Dickinson*, 262. In *Fabius VII* he blamed the Achaean and Amphycyonic leagues for failure because of no "close connection of its parts." No one has ever tried "the strong combination of truly democratical republics." *Political Writings*, 2: 137. In his *Code de l'humanité*, Fortuné Barthlémy de Felice advocated the same federal architecture which Dickinson recommended to join together "ils intérêts particuliers dans un intérêt général." *Code de l'humanité*, 13: 91. De Felice's work was familiar to those delegates who read Madison's "Ancient and Modern Confederacies," in which Madison cited him.
- 266 *Fabius VIII, Political Writings*, 2: 147–148.
- 267 He went on to say, "To give, is to gain," to love our neighbors "is to love ourselves in the best manner." Letter XIV, *Political Writings*, 2: 267–268; *Fabius III, Political Writings*, 2: 91; JD Notes for Speeches, fragments, Box 6, Folder 27, LCP; see also Hutson, "Dickinson," 271–272, 278. The vices of bad constitutions, he said, are a matter of life and death, having many times "wasted the blood of patriots." (*Fabius V: Political Writings*, 2: 121n.) It is possible this sentence was written while still smarting from John Adams's harsh attack on Dickinson during the war, when Adams attributed the loss of Charlestown and Quebec and Montgomery's life (the hero killed in Quebec) to Dickinson's "unceasing...efforts against independence." Dickinson refused to sign the Declaration in July because he believed the colonies (becoming states) needed greater unity before taking this step. His refusal cost his reputation dearly for several years. Stillé, *Dickinson*, 160.
- 268 *Fabius V, Political Writings*, 2: 122n. See also undated essay, *Political Writings*, 1: 350n; *Fabius VII, Political Writings*, 2: 138; and *Fabius VIII, Political Writings*, 2: 143–156; Notes for Speeches, fragments, Box 6, Folder 27, LCP; Hutson, "Dickinson," 278–279; Hume, "That Politics May be Reduced to a Science," Haakonssen ed., *Hume: Political Essays*, 11.

- 269 Hutson, "Dickinson," 277; Notes for Speeches at the Federal Convention, n.d., Box 6, Folder 27, Dickinson Papers, LCP. Several other structuralists proposed the same. Certain delegates with extensive land claims in the West opposed this idea. Gorham did so June 25, Farrand, 1: 405. Wilson opposed a motion of August 30 to reserve for the U.S. "vacant lands ceded to them by the treaty of peace," a less sweeping proposal for sharing lands than the one made by structuralists in June. Farrand, 2: 465.
- 270 Hutson, "Dickinson," 276–277. These notes for a speech, from around June 30 or early July, reveal Dickinson at his most incensed and were in response to repeated remarks by Wilson and Madison about "necessity" – sometimes necessity of majority rule, other times necessity of compromise – and the "inconvenience" of equal voting. Dickinson said that "convenience" and "pretended Necessity," rather than justice, would lead to tyranny. "We shall only be pioneers for succeeding Tyrants." (For the speeches wherein Madison and Wilson introduced "necessity" and "inconvenience," see Farrand, 1: 215, 322, 343, 447, 587–588.) What seems to have galled Dickinson was he understood his antagonists to be invoking a pseudo-science of politics with iron-clad laws and implying that there was nothing to debate and negotiate in their current convention. Dickinson would probably have been familiar with Aristotle's words about the value of things "not because it is useful or necessary" and Aristotle's constant return to virtuous acts; and probably familiar with Guicciardini's disapproval of "necessity" as justifying tyranny. *Politics* 1338a32–34, 1338b2–4; Guicciardini, *Dialogue on Government of Florence*, 85. Decades after Dickinson, Lincoln attacked slavery and "its arguments of necessity." Speech on the Kansas-Nebraska Act at Peoria, Illinois, *Abraham Lincoln: Speeches and Writings, 1832–1858* (New York, 1989), 339–340.
- 271 Farrand, 1: 503. Ellsworth in turn replied that it was normal for a minority to block a majority. Farrand, 1: 469. Madison earlier had made the point Wilson did, in words that perhaps Wilson was emulating. Farrand, 1: 322.
- 272 Wilson, *Collected Works*, 1: 188. Wilson's remarks were made to the Pennsylvania Ratifying Convention, November 26, 1787. Bancroft captured Dickinson's meaning, concluding his work by saying that the national and state governments do not divide powers but distribute them. The states "form the federal republic; and the system can have life and health and strength and beauty only by their harmonious action," an "organized unity." Bancroft, *Formation of the Constitution*, 2: 332.
- 273 For Dickinson's devotion to a strong national government, see above *Central government as hammer* and *The meaning of establishing states' equality in the Senate*.
- 274 JD Speech Notes, Box 6, Folder 28, LCP; Hutson, "Dickinson," 270, 272–273, 277, 279. Dickinson would likely have been familiar with Aristotle's warnings about decisions made by "greater numbers" and "majorities." *Politics* 1281a15–20.
- 275 Dickinson Speech Notes, Box 6, Folder 28, LCP.
- 276 For the Dickinson Plan, see Box 6, Folder 42, JD Papers, LCP; and Hutson, "Dickinson," 264–266. For JD's notes on Virginia Plan about presidential selection, see "Virginia Plan Papers," Box 6, Folder 30. His handwriting in this passage is close to indecipherable. In his own Dickinson Plan, he did not say how nominees would be found for the legislature to choose from, but one supposes he would have had them nominated locally, since this was his comment on the Virginia Plan, and this was his proposal to the convention early on and repeated in the Electoral College (see *Electoral college* below). Hutson, in referring to Dickinson's "complicated procedures," called his executive plan "a Rube

- Goldberg magistracy.” (“Dickinson,” 260.) Hutson’s work in deciphering JD’s notes is invaluable; that comment betrayed an impatience with typical, republican “complicated procedures.”
- 277 Dickinson was ill-disposed enough that he did not speak from June 21 until July 25, the interval in which the development of the representation debate occurred. Hutson, *Supplement*, 145; Hutson, “Dickinson,” 262.
- 278 Hutson mentions one such borrowing by Gouverneur Morris on July 11 of words from Dickinson’s notes of June 30 (Hutson, “Dickinson,” 261), but there were others: Cf. Morris’s “rule of numbers” statement July 11 (Farrand, 1: 583). Morris in these remarks was opposing the domination of the Atlantic states by the South and Southwest, and in that connection objected to including slaves in the census. This was the first occasion Morris mentioned the rule of numbers. JD had made the rule of numbers a theme of his speech notes, and in particular prepared a speech on this same topic – the rise of the South and South-West and the distinct danger that the Eastern states would be dominated in future by “fouthern ftates.” (Speech Notes, Box 6, Folder 28, LCP). In this same series of speech notes complaining about “Numbers” as the apportionment “principle” casting a cloud over the future, JD took aim at three-fifths with language similar to Morris’s speech on the floor (see text below). Cf. Luther Martin of June 27 on the problem with the Confederation not being that small states had an equal vote but being the “the want of power” (Farrand, 1: 441) and JD making the same point using the words “the Want of greater powers” (Box 6, Folder 28, LCP); Gouverneur Morris on August 8 on slave representation (the slaveholder who deprives a human of his freedom “shall have more votes in a Govt. instituted for protection of the rights of mankind”) with JD notes of mid- July (see text below); Ellsworth on “agency of the States” June 25 (Farrand, 1: 406) and JD on the States’ “considerable agency in the System” June 6 (Farrand, 1: 136); speeches on the useless filtration of representation made by several delegates – Bedford June 30 (Farrand, 1: 491), Ellsworth June 25 (Farrand, 1: 406), Davie June 30 (Farrand, 1: 488) – all sound the same theme as JD’s speech notes of uncertain date (June 30 or possibly June 9) (JD Notes on Speeches, Box 6, Folder 28, LCP; see text above for quotation). Wilson had said nothing could be wrong about every man having his vote and being equally represented, and JD noted that that was the problem – that representatives from one region could not be said to represent people from another – which point appeared in several structuralist speeches in last days of June.
- 279 The author is not positive JD stayed at Mrs. House’s boardinghouse on Fifth and Market, but his fellow delegate George Read nabbed him a room in that establishment adjoining his own following JD’s request for help finding a berth. Farrand, 3: 24–25; 4: 61–62; *Supplement*, 20–21. See also Stewart, *Summer of 1787*, 28, 30, 36–37.
- 280 Hoffercker, *Democracy in Delaware*, 30; “History of John Dickinson Plantation,” National Park Service, url <https://www.nps.gov/frst/learn/historyculture/jdp-history.htm>. Delaware’s constitution forbade the slave trade, and in 1787 the legislature prohibited black people from being sold out of state. Hoffercker, *Democracy in Delaware*, 44–45, 52.
- 281 The illegible word in Dickinson notes is possibly “thing” or “crime.” JD Notes for Speeches, n.d. JD Papers, Box 6, Folder 28, LCP. (Text above slightly adjusted to modern conventions.) Dickinson’s handwriting is indecipherable in places. Hutson has a slightly different and perhaps more faithful rendering (his de-encrypting is impressive) and dates the notes as of July 9–14. Hutson version: “The omitting the word will be regarded as an Endeavour to conceal a principle of which we are ashamed. Every importation of Slaves will increase the power of the state over things. This principle I wish to avoid.” Hutson, “Dickinson,” 279–280.

- 282 Farrand, 1: 196–201.
- 283 JD Notes for Speeches, Box 6, Folder 28, LCP.
- 284 AH speech of June 18, 1787 (Robert Yates and John Lansing Versions), AH Papers, Rotunda, OS, 4: 195ff, 202ff; url 01-04-02-0098-0004-0005. For the same reason, there was a considerable effort in the convention to create a plural executive composed of several individuals. Such was the proposal of the New Jersey Plan, and such also of John Dickinson's sketch (which likely was the source of the New Jersey Plan's executive). (JD Papers, "On a Plan of Government to Replace the Articles of Confederation," n.d., in JD's hand, Box 6, Folder 42, LCP.) "The Executive lodged in a single person," said Dickinson, has never been "done with safety." (JD Papers, Notes for Speeches, n.d., Objection to the N.J. Plan, Box 6, Folder 28, LCP; also Hutson, "Dickinson," 270.) Benjamin Franklin endorsed the plural concept. It would seem that some of the older delegates, who had had first-hand experience of "irritable ministers" and arrogant proprietors, were the ones most keen to split the executive up among several individuals and not permit any single person vast authority. The major republican boards of the past had been composed of plural executives whose individuals served brief terms in office. The Doge was an outlier among republics, but the Doge did not have much power. In a lopsided convention vote early on, the plural executive lost to a single executive seven states against three (NY, Md, and Dickinson's Del. Farrand, 1: 93–95.) The leaders for single executive in the days before the vote were James Wilson, Charles Pinckney, and John Rutledge in another instance of alignment of Wilson with South Carolina, predating his three-fifths alliance of the following week.
- 285 Wilson's comment, September 4 (later repeated by Madison). Farrand, 2: 501.
- 286 As George Mason put it, with his usual acerbity, to have the people "at large" elect the president would mean 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." Farrand, 2: 119.
- 287 Farrand, 2: 56–57. At a later moment Madison made the same point, but said that he would favor popular presidential election even though "as an individual from the S. States he was willing to make the sacrifice." Farrand, 2: 111. Knowing popular election would never be accepted, he likely offered this "sacrifice" as a gesture to advance the cause of electors who would advantage the South.
- 288 Farrand, 2: 29–32.
- 289 Farrand., 2: 22, 24.
- 290 Many delegates stressed this objection to legislative appointment of the president. Two examples were Madison (Farrand., 2: 109) and Gouverneur Morris (Farrand., 2: 403–404.)
- 291 Farrand., 2: 118–121.
- 292 Also that day, Mason, feeling his oats after this signal victory, moved that the newly appointed committee insert a provision that the constitution should bar the siting of the new national government in any city where a state had its capital. This pointed motion was aimed at only two places, Philadelphia and New York City, the leading contenders for the new capital. That Southerners were unhappy with these two choices we have already seen from Madison's letter to Washington before the convention. Mason's spontaneous motion, unconnected to the other matters just concluded, set the opposing sections on a whole new fight, and Mason quickly withdrew it. He "did not mean to press the motion at this time, nor to excite any hostile passions" and withdrew it "for the present." Farrand, 2: 127–128.
- 293 Farrand, 2: 135. It is possible the text of this document as we have it now is spurious, created by its author long after the convention. However, the same Pinckney, in line with his relative and senior delegate member Rutledge, backed

- national legislature as the presidential elector at least by July 17 (Farrand, 2: 30) so at least this part of his plan was partly or wholly consistent with the debate record (unlike other parts of his spurious draft).
- 294 Other sections of the draft suggested otherwise, but were bracketed, as if not agreed. Farrand, 2: 185. See also "Draft Constitution by the Committee of Detail, 6 August," Rotunda, Ratification, Constitutional Docs., 1: 260-269; 01-010-02-0007-0008, wherein the lower house was apportioned by population counting slaves at three-fifths, and the president elected by national legislature. Ulmer points out that Rutledge began the convention supporting Senate appointment of the president (this before the Senate was constituted as it was in mid-July) then switched to legislative appointment by joint ballot in July (this would have been after three-fifths and proportional representation in the lower house). Ulmer, "Southern Delegates," 203. Ulmer also states unambiguously that the Committee of Detail's draft constitution reported on August 6 called for election by joint ballot, which is a reasonable interpretation of the ambiguous wording in that document. Ulmer, 244.
- 295 Southerners here being Madison, Mason, and CC Pinckney, presumably pushing against veto either because of their belief in the virtues of majority rule or because of the ascendant Southern majority. Farrand, 2: 196-197.
- 296 Pennsylvania, as usual, backed Rutledge; Massachusetts, which frequently divided on proportional/sectional votes, did as well, probably because of Gorham and his state's benefiting from size in joint balloting. South Carolina and North Carolina, as small states, should not have backed joint action but for expected growth and three-fifths. Why Delaware voted yes is not clear. With some exceptions, this line-up on joint balloting replicated the alignment of mid-July on equal voting in the Senate. Farrand, 2: 399-404; Bancroft, *Formation of the Constitution*, 2: 174-175.
- 297 JD Papers, Notes for Speeches, fragment, n.d., Box 6, Folder 28; "On a Plan of Government," n.d., Box 6, Folder 42, LCP; Hutson, "Dickinson," 269. Hutson dates this plan as at June 18, 1787.
- 298 Morris revived at this moment the idea of electors and won five state votes (versus the four noes on Rutledge's motion), including Delaware which had just voted anomalously for joint ballot and seemingly switched back to its normal position. Farrand, 2: 403-404. It was Bancroft's view that Morris' intervention may have been the catalyst for the creation of the Committee of Eleven to resolve at last the presidential selection conundrum. Bancroft, *Formation of the Constitution*, 2: 176. To this author, it would not be surprising if Morris had such influence; he had previously been influential on the appointment of the July 2 committee to break the deadlock over the Senate and probably helped the July 16 vote with his dramatic reversal speech of July 13. Farrand, 1: 511-512, 603-605.
- 299 Farrand, 1: 81.
- 300 Farrand, 1: 282-311; 3: 617-618.
- 301 Farrand, 2: 103, 1:149, 175-176, 2: 404, 2: 56-57. This was why Madison had suggested a useful alternative to popular voting could be electors, "on the score of the Negroes," as he put it. Madison's remark was made July 19. That day and the next a debate about electors occurred as electors emerged as a possible half-way point between the position of those for the national legislature (composed proportionately) and those for states (with theoretically equal votes). But on July 20 Madison objected to a method of apportioning presidential electors among the states that "would make in time all or nearly all the States equal" and called for a system of altering the ratio to adjust "to the growing population of the States." Farrand, 2: 63. The voting record is ambiguous. On July 19 the delegates voted for electors chosen by state legislatures. Debate occurred then and next day in which Madison and Randolph spoke up in favor of advantaging large states, and

Mason and Rutledge reiterated their support for the national legislature's role, which would have the same effect as giving large states more electors than small states. On July 20 another vote was taken which seemed to have reversed the vote of the day before, in that the delegates passed a motion of Gerry's for apportioning electors among the states according to a fixed formula, but also approved an amendment by Williamson confining this apportionment to the first election and further providing thereafter elector allocation should track the number of representatives each state had in the lower house. The formal record is not clear but this amendment appears to have been approved as part of Gerry's motion. This vote, July 20, then was the first time the weighting of electors' votes was tied explicitly to House representation (with its proportionality and three-fifths), and was achieved following strong advocacy on that day and day before by Madison, Mason, Rutledge, and Randolph. Farrand, 2: 50–70. Finkelman said the Electoral College received its major boost from the need to protect slavery. Finkelman, *Slavery*, 174, n. 62. There is little doubt he is right – Madison said as much – that slave interests were an important factor in the fight over how to allocate electoral votes; there were other factors at play as well. Stewart among others is in agreement that the July 20 vote was one for allocating electors according to House membership. Stewart, *Summer of 1787*, 156.

302 Farrand, 2: 110–111.

303 Farrand, 2: 113.

304 Farrand, 2: 114–115; JD Papers, Virginia Plan Papers, n.d., Box 6, Folder 30, LCP. Dickinson's remarks were July 25. Some weeks before he had written in speech notes the plan that states should produce thirteen nominees from which the national legislature should elect the executive. Hutson ("Dickinson," 272–273, n48) dates the speech notes as no later than June 30, a month before Williamson's speech, and no earlier than June 9. But JD made his notes on the back of the Virginia Plan, introduced May 29. The earliest extant version of the Plan was made June 13. It seems likely that the undated notes were made either on June 13 or soon thereafter, four to six weeks before the July 25 debate, and that he would have found other note paper by June 30.

305 Among many sources swirling around in the 1770–1780s recapitulating this old concept was de Felice's well-known encyclopedia *Code de l'humanité* (cited by Madison in his "Ancient and Modern Confederacies") which described the special glue of local nomination and national choice in the United Provinces, where every year the Stadtholder elected magistrates in towns based on "une double nomination, qui lui eft présenté par chaque ville." As result, said de Felice, the Stadtholder's role was a unifying force in the republic, joining "les intérêts particuliers dans un intérêt général." Fortuné Barthélemy de Felice, *Code de l'humanité, ou La Legislation Universelle, Naturelle, Civile et Politique*, 13 vols (Yverdon, 1778), 13: 89, 91. New Hampshire experimented with local (town) nominations followed by county election of the nominees to the house of representatives; this was done to avoid local bias, that is, depriving towns' of their own representatives. Morgan, *Inventing the People*, 246–247, 251. Although Morgan does not mention it, the New Hampshire device was much in the Italian communal tradition (of empowering local nominators and then depriving them of the final say). In the seventeenth century, as we have seen (above, Chapter 5), Massachusetts townsmen fought for the local right to nominate colony magistrates.

306 When debating the Virginia Plan on May 31, delegates had considered having the second branch (Senate) be elected by the first "out of persons nominated by the State Legislatures." Farrand, 1: 51. On July 17, Wilson had argued for popular presidential elections saying that even if no one could gain a majority (which seemed likely given the extent of the country), at least they could

- produce “a good nomination” for the legislature to decide from. Farrand, 2: 30. Elbridge Gerry had raised the possibility of “letting the Legislatures nominate, and the electors appoint.” This was June 2. Seven weeks later, he returned to the nominating theme and suggested state legislatures should vote and if no one person reached a majority (which seemed likely), the House should select two of the four candidates with most votes, and from these two the Senate should choose the executive. Farrand, 1: 80; 2: 101. This was July 24. Gerry’s proposal was similar to Dickinson’s of the next day, though the latter would emphasize “nominations.” Local nominating, with its long tradition – in Florence, Venice, and stretching back to classical Greece – was in the air at the Convention.
- 307 Farrand, 2: 113. Dickinson also liked chance in selection systems. Before the convention, he sketched out an “equalizing court” or “umpire” to sort out differences between states and the national government, which would be composed of people nominated by states then selected nationally by lottery. Dickinson [apparent author], pamphlet, *Fragments on the Confederation of the American States* (Philadelphia, 1787), AAS copy, #20367, LCP.
- 308 Farrand, 2: 473.
- 309 Letter JD to George Logan, January 16, 1802, Logan Family Papers, Box 5, Folder 34, #379, LCP (spelling modernized as given in Hutson ed., *Supplement*, 300–302). Dickinson’s recollections in this document written fifteen years after the convention have a different interpretation of the college compared with the actual plan, the debate on the plan, and JD’s own contemporaneous explanation in the *Fabius Letters*. (See [Chapter 7](#).) What is important about the 1802 letter is that it revealed JD’s role in guiding the committee toward a solution combining elements that he and others floated on July 25.
- 310 Farrand, 2: 493–494.
- 311 Kuroda drew attention to the fact that this transfer to the electoral college was a repetition of the arithmetic of the convention’s vote of August 24 (see above) in favor of joint balloting for president, which Rutledge had orchestrated, backed by Madison. Tadahisa Kuroda, *The Origins of the Twelfth Amendment: The Electoral College in the Early Republic, 1787-1804* (Westport, Ct., 1994), 13–14.
- 312 The Committee of Eleven’s plan, although embodying Dickinson’s idea of a two-step process replicating the political calculations of the Great Compromise, swapped the positions Dickinson had assigned to the two political camps and put nominating in hands of proportional representation (Electoral College) and election in hands of the states (Senate), whereas on July 25 he had proposed the other way around (states nominate and legislature elects). The composition of this committee had much to do with its reversal of Rutledge’s successful motion of August 24. Committee head was Brearley of New Jersey who on June 9 had advocated equal vote for the states. Farrand, 1: 176–177. Dickinson’s views were well known and his personality was forceful. Morris had decried “legislative tyranny” when the August 24 motion passed. He and King (also on the committee) had made the convention’s most anti-slavery speeches. Sherman had been a leading advocate all summer for equality for the states. Madison and Butler, also on the committee, seem to have been overpowered without Rutledge, Mason, Randolph, and Wilson to back them up.
- 313 Farrand, 2: 500. In ratification debates, Mason increased the odds to 49 out of 50. Rotunda, *Ratification by States, Virginia Debates*, 10: 1375; url 02-10-02-0002-0007-0001.
- 314 Spaight, one of the three, probably thought the Senate would be the decider, at least such is what his comments implied.
- 315 Farrand, 2: 499–536; Letter from Gouverneur Morris to Lewis R. Morris (Dec. 10, 1803), Farrand, 3: 404–405.

- 316 Farrand, 2: 500; 3: 464. Roger Sherman said the same on the convention floor (Farrand, 2: 512–513). Moreover, the proposed system (and Article 2 of the Constitution) provided that states decide how electors were to be chosen. It is unlikely the delegates would have left this step to the random decisions of states if they had thought electors were actually the decision-makers. For more analysis of the nominating features of the system, see Martin, “Fixing the Nominating System,” 737–741. The author made an error in that article in which he said that the delegates in September were not arguing about whether the decision would take place in Washington but about whether the Senate would be the venue. While that is true on the surface of things, and also true that the Senate was almost universally considered to be the wrong venue, the deeper fight was about the Senate or *any body constituted as the Senate* was, versus a body resulting from proportional representation (and three-fifths); and one sentence in the above article (“During the final September....,” p. 740) obscures that important point.
- 317 *Fabius IV*, Dickinson, *Political Writings*, 2: 107–108. He repeated this wording in *Fabius VIII*, wherein he said the president represented the “sovereignities” of states and of the people “conjointly represented in a president.” *Political Writings*, 2: 144–145. Dickinson and others believed, when he said this, that the states’ sovereignities were expressed in the House voting by states, and the popular will was expressed by the Electoral College apportioned proportionately to population. This point is worth stressing because some authors reverse the positions and see the House as representing the people and the Electoral College the states. See the contemporaneous correspondence of Timothy Pickering in which he said that the large states had a voice proportional to numbers in the choice of president, unless no majority resulted, when the “federal principle is again to operate, and the president is to be elected by the votes of the states....” Timothy Pickering to Charles Tillinghast, 24 December 1787, Bailyn, *Debate on the Constitution*, 1: 294–295. Madison similarly wrote of “the president who represents the people and the states in a compounded ratio....” In this formula, similar to Dickinson’s “conjointly,” the people could only have referred to electors and the states to the House voting by states. Rotunda, Ratification by the States, JM to George Nicholas, 17 May 1788, 9: 943–969; 02-09-02-0004-0007-0001. Tench Coxe referred to the House’s role in the election as preserving the “sovereignty” of states. Tench Coxe, “A Freeman I,” *Pennsylvania Gazette*, 30 January 1788, Rotunda, Commentaries on Constitution 15: 453–458; url. 03-15-02-0122. Presidential selection figured little in the ratification debate, and when it did come up Federalists tended to obscure the matter by averring generally that the people elected the president. Occasionally, someone said Article 2 was a “compromise” between big and small states. Thus, Madison defended it to the Virginia ratifying convention on June 18 (not adding that the compromise was one he had worked to prevent). In these same remarks, he mischaracterized Article 2 by saying “the people choose the electors.” JM Papers, Rotunda, OS, Cong. Ser., 11: 153–155, url. 01-02-0096; Farrand, 3: 330. In *Federalist* 39, Madison came close to using Dickinson’s language about the states and the people “conjointly” choosing the president in a two-stage process, but did so obscurely without describing the process. JM Papers, Rotunda, OS Cong Ser., 10: 377–382; url 01-10-02-0234; *Federalist* 39.
- 318 Farrand, 2: 523.
- 319 Henry Adams, *The United States in 1800* (Ithaca, N.Y., 1955), 8, 11. In 1800 it required three days for a “highly equipped traveler” to transit from Boston to New York at an average speech of four miles per hour.
- 320 Both these concerns had been raised by the time Williamson first suggested three votes per elector and Morris reduced the three to two. Slonim, “Electoral College,” 46. His is one of the best summaries of the complex debate leading to the electoral college.

- 321 Speaker was William Davie, North Carolina, Farrand, 3: 347. Italics in original. After the convention, Wilson made the same point about the double vote, saying it forbade cabal and intrigue, for “the precise operation of his [the elector’s] vote is not known to himself at the time when he gives it.” Plans are defeated, therefore, “by the joint and unforeseen effect of the whole.” Wilson, *Collected Works*, 2: 876–877. In *Federalist* #68, Hamilton said the mode of electing the president was almost the only part of the Constitution without “severe censure;” if not perfect, “it is at least excellent,” he said, then mentioned that it avoided tumult by not having electors caucus at same place and time and instead created a transient, intermediate body to meet in far-removed places, all of which thwarted “cabal, intrigue, and corruption.”

The double vote for consuls in the Roman Republic had equally unpredictable results and from time to time led to one consul unhappily co-existing with an adversary (e.g., Caesar and Bibulus). There is uncertainty whether the double vote was exercised by individual voters in each Roman century in addition to being cast by each century (it is certain that the latter cast two votes). Hall, “Voting Procedure,” 297–298.

- 322 Madison continued advocating the efficacy of majorities right through to the end of his failing effort to keep the presidential election out of the House. See his warning on September 7 that “a Minority [in the House] might reverse the choice of a majority of the states and of the people. He wished some cure for this inconvenience might yet be provided.” Farrand, 2: 536. At the same time, a minority in the electoral college did not disturb him. It is hard to reconcile the inconsistency except by reference to which region predominated in the two venues.
- 323 Equal voting in the Senate could be amended only with the consent of the states losing their equal vote. In spirit, Locke was present in the State House all summer, even if his name was mentioned only once in the proceedings. Farrand, 1: 437–442. That he was not mentioned more often likely was because the principle of government by consent as expressed in elected legislatures and exercised by majority was so engrained that there was no felt need to discuss the theorist. (Locke’s *Two Treatises* were not stocked by the Library Company of Philadelphia, the library of the delegates, until 1828, four decades after the delegates had decamped. Jack P. Greene, *The Intellectual Heritage of the Constitutional Era: The Delegates’ Library* (Philadelphia, 1986), 15.) But Locke was present in another way. Locke was probably the author of the 1669 Fundamental Constitutions of Carolina, that nostalgic fantasy of *caciques* and landgraves, whose reliance on property as the basis of the franchise and apportionment was replicated in successive forms of the South Carolina constitution through the colonial period and into the nineteenth century. (Ulmer, “South Carolina Delegates,” 31–33; Edgar, *South Carolina*, 262–263.) At the federal convention, the South Carolina delegation (which was also a stout defender of majoritarianism) insisted that one specific form of property (slaves) be counted in federal apportionment (which Madison later endorsed in *Federalist* 54), and thus transmitted into the Constitution his state’s long tradition, begun by Locke and Shaftsbury, of linking rulership to property.
- 324 *Note on historiography*: This note summarizes departures from and agreements with select previous treatments of the major topics covered in this chapter.

A. Debate on apportionment

This chapter argues that the debate over apportionment evolved over six weeks and by its end hinged in part on a difference of opinion about proportional representation, the efficacy of representation, and the anxiety, which increased through the debate, about the rule of numbers in the nation’s councils; that these concerns contributed to key apportionment votes alongside the standardly mentioned motives (the desire to save the convention through compromise and share

power between big and small states and slave and nonslave states); and that they were consistent with traditional republican loathing of majorities, representation, and agency. (For more on the argument herein, see above *The meaning of establishing states' equality in the Senate*.) The history of the literature on this subject has generally taken a different direction.

The misconstruing of the apportionment debate began with the principal notetaker, **James Madison**, who usually characterized the struggle as being between big and small states. He did so in his notes (especially his summary note the day after the equal vote was taken (Max Farrand, ed., *The Records of the Federal Convention of 1787*, 4 vols. (New Haven and London, 1937 ed.), 2: 19–20 (hereafter Farrand, vol: pg.)), in the Federalist papers (*Federalist* #62), and in his correspondence (e.g., JM to TJ, October 24, 1787, JM Papers, Rotunda, OS, Cong. Ser., 10: 205–220; url 01-10-02-0151). Evidently Madison's purpose was to avoid crediting the structuralist argument with any other purpose than the self-interest of small states. The role of race and three-fifths, the sectional aspirations of opposing regions, the reapportionment controversy in relation to westward expansion, the flaws of representation and of the rule of numbers – these matters he usually ignored when explaining what the debate was about; and it appears the unitary emphasis he placed on state size has been influential on historians who have understandably relied upon the most copious notetaker. Comparing JM notes of the structuralist speeches (Martin, Bedford, Lansing, Paterson, among others) with the notes taken by Yates, Lansing, King and others of the same speeches reveals a frequent redaction by JM of the most nuanced arguments. (See for example the reportage of Bedford's remarks on June 30 and of Martin's dual speeches of June 27–28. Farrand, 1: 444–459, 490–492, 500–502.) One must read with caution JM notes on the matters in which he was most concerned. He wrote Jefferson that his cherished national veto was “rejected by a bare majority” when the actual tally was 7 to 3 and occurred only a few weeks before he wrote this letter. (Letter JM to TJ, October 24, 1787, JM Papers, Rotunda, OS, Congressional Series, 10: 205–220; url 01-10-02-0151.) Farrand noted that thirty years after the convention JM revised his own notes extensively. (Farrand, 1: xviii.) Madison omitted from his notes his own June 1 suggestion that the president's term be for life; Rufus King's notes disclosed it. (Farrand, 1: 66–67, 70.) He omitted his own denial of state sovereignty on June 29; Yates's notes disclosed it. (Farrand, 1: 463–465, 472–474.) (For more on JM and his notetaking concerning apportionment, see Paul S. Clarkson and R. Samuel Jett, *Luther Martin of Maryland* (Baltimore and London, 1970), 120–121, *passim*; Bill Kauffman, *Forgotten Founder, Drunken Prophet: The Life of Luther Martin* (Wilmington, Delaware, 2008), 28–29, 40–41; however, both of these valuable sources are so biased in favor of their subject as to be prejudiced against Madison, their subject's nemesis, and must be treated with caution.) The question is, why did he do it? For years Madison's political opponents tried to make political life uncomfortable for him by stressing his advocacy in the federal convention for a strong national government and against state sovereignty; hypocrisy was their line of attack. The pressure increased with publication of Robert Yates's Notes in 1821, the year after the Missouri Compromise, which Madison had denounced as unconstitutional on the grounds that nowhere did the Constitution empower the federal government to interfere with slavery within states, and now Yates showed Madison to be the staunchest nationalist in Philadelphia. While attacking Yates's notes as inaccurate, he refused to release his own, and he revised them in preparation for posthumous release. It would seem that on the major floor fight in the convention – that over apportionment – it was inconvenient for him to be seen as leading the majoritarian camp against a camp raising intelligent concerns about the operations of majorities and representative institutions, because that description of the convention struggle jarred with his

leadership of the Democratic-Republicans. Madison opposed publication of the convention debates strictly on political grounds. So he told Jefferson, saying he would explain in person (not in writing) where the peril lay. (Letter JM to TJ, February 8, 1799, *Founders Online*, govdocuments/Madison/01-17-02-0147.) His sensitivity on this score increased in step with the nation's growing sectional cleavage. More convenient was it to describe the biggest fight of the convention as a quotidian tussle between big and small states.

In dividing the delegates into opposing camps (which is the trickiest, most danger-filled exercise in analyzing the apportionment debate), **George Bancroft** (*History of the Formation of the Constitution of the United States of America*, 2 vols (second edition, New York, 1882) 1: 66) called the proportionalists "nationalists," and many historians have followed. Interestingly Bancroft did not consistently name the other camp "small states men" or "states' rights men," as most others have done. His was a conundrum that has dogged scholars ever since: how to characterize the opponents of the Virginia Plan and the Madison-Wilson-Rutledge alliance pushing it.

Max Farrand (*The Framing of the Constitution of the United States* (New Haven, 1913)): was formerly the standard and invaluable one volume over-view of the convention, replaced in recent decades by Christopher Collier and James Lincoln Collier, *Decision in Philadelphia: The Constitutional Convention of 1787* (New York, 1986; Ballantine, 2007) and Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (New York, 2009), which have the benefit of recent research. One reason still to read Farrand is because many historians' views were derived from his work. In addition, Farrand identified the issue of "proportional representation" itself as lying at the center of the dispute (112). As much as they derive concepts from Farrand, many modern writers have overlooked this statement. *Departures herein*: Identifying the key issue as proportional representation, Farrand did not track the evolution of the representation debate or analyze key votes in any way other than big and small states arguing over nationalism. Farrand followed the Bancroft lead and described the backers of the Virginia Plan as the advocates of a "strong national government." (81.) Farrand also recounted the vote of July 16 as one between "the large states" or "large-state men" and "smaller states" and the "small-state men" (88, 91, 98, 107). Many writers not focusing on the apportionment fight but writing general histories of the convention or biographies of key people have tended to follow Farrand and to identify the two contending camps as divided by state size with, in addition, the added notion that the big state delegates were more nationalist. This essential spine of the story, having some (but not sufficient) basis in fact, was emphasized by Madison in his notes (excluding the "nationalist" angle) to the disadvantage of the truth (see, in particular, Madison notes the day after the July 16 vote, Farrand, 2: 19–20). It has led to a certain confusion in explaining the convention. One historian used the phrase "the large state moderates" siding with the small states on July 16 to explain that critical vote. (**Jeff Broadwater**, *George Mason: Forgotten Founder* (Chapel Hill, 2006) 175.) His is one of numerous examples of the nomenclature being stretched beyond reasonable relationship to the thing described.

Forrest McDonald (*E Pluribus Unum: The Formation of the American Republic, 1776-1790* (2nd ed., Indianapolis, 1979)) did a great service demolishing the notion that the three largest states were more nationalistic than the others. *Overlap herein*: He rightly stressed the New Jersey Plan's new powers assigned to the central government (280). He blamed Madison for starting the idea of the large-state and national camp versus the small state and states' rights camp. He discounted the value of the nationalist label. McDonald stated that John Rutledge and James Wilson worked

together closely to frame key parts of the Constitution (265–266), for which he relies mostly on Barry (*Richard Barry, Mr. Rutledge of South Carolina* (New York, 1942), 315ff). McDonald well argues the coordination by Rutledge and Wilson at the Convention's outset, when they made "plans for 'managing the convention'" and when James Wilson also "conspired with Madison and with the two Morris." (265–266).

Departures herein: After his needed corrections, McDonald posited his own notion that what separated the two camps in the debate was the landed versus the landless states. (274) One searches hard to find a voting alignment in June and July that pitched those states with endless land claims against those without land claims. North Carolina and Virginia each had huge land claims but voted differently; the same was true of Pennsylvania and Georgia. However, McDonald was right to put stress on the land issue. To this author, whether a delegate had a large personal interest in land ventures did seem to affect how he regarded the matter of westward expansion and admitting new states on equal terms. One thinks of Gorham and Wilson and Mason, all land adventurers, in this regard. In addition, although McDonald correctly discounted the value of the term "nationalist" as a description, he used the word "nationalist" every so often to characterize a voter (261–271, 302, *passim*), calling James Wilson, John Rutledge, Oliver Ellsworth, and Nathaniel Gorham "arch nationalists" (287). McDonald does not analyze the floor speeches on representation issues or the thoughts of Dickinson about the rule of numbers. McDonald observes that the delegates from North Carolina voted "unaccountably" for equal vote on July 16 (285); he does not take into account what Davie and Williamson themselves said on the floor of the convention, nor how their North Carolina background possibly influenced them. (See *Apostates* above.) McDonald puts emphasis on a Rutledge dinner on June 30 whereby Williamson joined the equal vote camp as part of a land deal/slavery deal between Connecticut and South Carolina. However, although North Carolina began voting with structuralists on July 7 and 14 and again July 16, it did not do so on July 2, two days after the dinner.

Rakove's (Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York, 1997)) highly intelligent work corrects many of the misunderstandings about the dynamics of the federal convention. *Overlap herein:* In summarizing the "small state" position, he focused on the threat small states faced from proportional representation (which undoubtedly they did) and on their perceived need to protect themselves (which also figured in some of the early convention speeches of the anti-proportionalists). (66.) Rakove makes the point that the apportionment debate put paid to the theory of extended republics dissolving interests. (75) Rakove identifies Dickinson as Madison's principal foil and as playing a major role in the early going (59ff).

Departures herein: Rakove did not delve into the evolution of the debate, its arraignment of representation, and the Dickinsonian emphasis on blocking legislative majorities. Rakove interprets the June 7 vote in favor of state legislatures' electing the Senate as Dickinson's and the convention's acceptance of Mason's argument that the states needed some way to protect themselves against the national government. (62.) (Dickinson's remarks suggest it was more than that.) Rakove found the small states' arguments unconvincing (66) and agreed with James Wilson (Farrand, 1: 483) that the anti-proportionalists' response to the diversity of interests argument "lacked conviction." (67) (It is the contention here that the structuralists' response was persuasive and contagious.) Rakove said small states gave up making convincing arguments post July 2 and relied on numbers. (70) He saw the Randolph reapportionment victory and three-fifths as leading to one-man-one-vote and therefore more liberal than Gouverneur Morris's unequal vote to protect the Atlantic states from impecunious frontiersmen. (74) (Rakove may be right when judging the matter from our own era, but not

from the view of another era which regarded popular majorities with skepticism.) Rakove explains the July 16 vote as the result of two compromises (small/big and free/slave states). (92–93) (A balancing of power between types of states for sure occurred; but the contention here is that other forces, in addition, were at work.) Rakove counts Gouverneur Morris among the large state and proportional representation faction at the federal convention (81), which he was, until he switched (on July 13).

Beeman (Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (New York, 2009)) is the best recent narrative of the convention's proceedings. *Departures herein*: he takes no account of the representation arraignment and anxiety about rule of numbers, speculates why Baldwin and Davie would change their votes without considering their announced opposition to proportional representation, subscribes to the standard explanation of a “compromise” between different classes of states, and in describing the opposing camps falls back on the short-hand of “nationalists” and “small statesmen.” (162, 171, 187, 219–220)

Zagarri (Rosemarie Zagarri, *The Politics of Size: Representation in the United States, 1776–1850* (Ithaca and London, 1987)): *Departures herein* from this creative and very useful study: She states that sectional allegiance had no effect on apportionment debates in the federal convention. (77)

Gordon S. Wood (*Creation of the American Republic, 1776–1787* (Chapel Hill, N.C., 1969)): *Departures herein*: did not probe the sinews of the Great Compromise but credited Charles Pinckney with having a democratic moment when he argued for proportional representation in the Senate on the grounds that in America people are all the same and there is no aristocracy. (*Creation*, 555) (Pinckney, a slavery defender, proposed first three-fifths and then five-fifths; that advantage for slaveholders may have influenced his preference for proportional representation.)

David Brian Robertson (*The Original Compromise: What the Constitution's Framers Were Really Thinking* (New York, 2013)): *Overlap*: His analysis of two categories of nationalists (“broad” and “narrow”) is a useful tool and helps further dispel, as McDonald did, the idea that the structuralists (or small state men) were anti-nationalist. *Departures*: taking political compromise as his theme, Robertson has a different approach to the one herein.

Staughton Lynd (“The Compromise of 1787,” *Political Science Quarterly*, vol. LXXXI (June 1966), no. 2, 225–250) wrote an influential analysis of the coincidence of the passage of the Northwest Ordinance and critical votes at the federal convention, which still today historians have to reckon with. It is almost surely correct: compelling but entirely circumstantial evidence pointing to a likely co-operation between Congress and the federal convention affecting the NWO and apportionment decisions happening within hours of each other in New York and Philadelphia. *Departures*: The idea of cooperation helps explain the equal vote decision but it is not sufficient. It does not account for Southern delegates who broke with the Southern position and cast their votes for equality in the Senate. And if there was a bargain, it does not account for the failure of three Southern states and Pennsylvania to honor the bargain on July 16. Lynd's article is called “The Compromise of 1787.” But it is not clear what is the “compromise” he is explaining. The “Compromise” is commonly understood to refer to the decision to apportion the two houses of Congress on different principles. Lynd does not analyze the votes leading up to and including the equal vote decision on July 16, nor relate the votes to floor statements. To accept Lynd's explanation as the sole explanation of July 16 one would ignore the complex interaction between the sectional struggle he rightly focuses on, the evolving floor debate on representation, and delegates' changing positions.

Irving Brant (*James Madison: Father of the Constitution, 1787-1800* (Indianapolis and New York, 1950): *Departures*: adopts the opinion of his subject-Madison that the fight over apportionment was “the fierce battle between large and small states.” (32, 57ff.) Brant explains the “compromises” that accounted for convention decisions of mid-summer (91, 98) and argues Madison’s revisions of his notes were modest and inconsequential. (20–22, 85–86)

B. Presidential selection system

Argument here is that Article 2 bore the closest resemblance to ancient and early Renaissance models of any mechanism the founders created, both in its purposes and in technical details – binding the country together with local nominating and national electing, preventing organizing by power groups with hermeticism and chance, compelling differently weighted bodies to come to terms with each other in a multistage process. The literature has not taken this possibility into account.

Farrand: *Overlap*: stated that the delegates created the Electoral College to be the body nominating, not electing, candidates. (167–168) *Departures herein*: He did not explain why they did this or their model.

McDonald: *Departures herein*: does not explain how presidential selection system emerged, nor its antecedents, and characterized it as “irrational almost to the point of absurdity,” a “half-baked compromise.” (304)

Slonim (Shlomo Slonim, “The Electoral College at Philadelphia: The Evolution of an Ad Hoc Congress for the Selection of a President,” *Journal of American History*, vo. 73, no. 1 (June 1986)) is the best concise chronology of the creation of the presidential selection system. *Departures herein*: Slonim does not explore the nominating mechanism or background. He states that the Electoral College resulted from an alliance of slave states and small states (56), which does not seem correct.

Rakove: *Overlap*: said few delegates expected the Electoral College to do more than “nominate candidates” and that the system was built on the metrics of July 16 with large states having the role of “promoting candidates” and small states with greater influence in “the final choice” in Senate.

Departures herein: Rakove does not explore the nominating mechanism and its antecedents, nor the hermeticism and role of chance, nor Dickinson’s thinking about the intricate system. Rakove holds that the electoral system resulted from the failure of the alternatives and not from “any great confidence” in the solution. (265, 267). He noted the sectional component of the July 16 equality in Senate vote but said the advocates of equal Senate vote “did not extend the implications of this principle to other questions” and does not comment on the sectional component of the Electoral College battle. (76, 170, 256ff) He said that unlike the equal vote in Senate, the presidential debate was not a “clash of naked wills” or interests. (82) (By contrast, note the intense fight in September over limiting the decision to the Electoral College, as well as the several votes (July 20, July 24, August 24) dominated by sectional difference. Farrand, 2: 50–70, 97ff., 396–407) He notes large states in first round, small in second (which Madison stressed in ratification) but does not note the North-South split between the two rounds. (90) (Lest doubt remain about the sectional component of the Great Compromise and its emulation in the presidential selection system, see the ratification debates, among several examples, Grayson-Madison exchange in Virginia. Regarding the president, “I presume the seven Eastern States will always elect him,” said Grayson, speaking disparagingly of the House voting by states. Rotunda, *Ratification by States, Debates Virginia*, 10: 1371–1387; url 02-10-02-0002-0007-0001. Similarly, the Iredell- Bloodworth exchange in North Carolina, in Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York, 2010), 420;

and Jonathan Elliot, ed., *Debates in the Several State Conventions*, (2nd edition Philadelphia, 1861), 4: 185–187, wherein Bloodworth countered Iredell’s assurance about Southern preponderance in the House by pointing out Northern preponderance in the Senate (and by implication in House voting by states). (Cecilia M. Kenyon, ed., *The Antifederalists* (Boston, 1985), 287, includes similar remarks of Bloodworth.). Also note Patrick Henry’s warning that the vital matter facing the South was the danger posed by the North’s seven states against the South’s six. Bernard Bailyn, ed., *The Debate on the Constitution: Federalist and Antifederalist Speeches, Articles, and Letters During the Struggle over Ratification*, 2 vols. (New York, 1993) 2: 686. For a Northern perspective warning of the danger in the opposite direction, that is, the Southern advantage in the lower house and Electoral College, see *Independent Chronicle*, 10 January 1788, Rotunda, Ratification by States, 5: 678–684; url 02-05-02-0002-0122.)

Kuroda (Tadahisa Kuroda, *The Origins of the Twelfth Amendment: The Electoral College in the Early Republic, 1787-1804* (Westport, Ct., 1994)): *Overlap*: notes the Electoral College was a replication of the arithmetic of the convention’s vote of August 24 to conduct balloting for president in the Congress by joint balloting (as opposed to concurrent), which Rutledge orchestrated. This is an important observation, and highlights the Southern stake in any body – college or Congress – constituted proportionally (because of expected Southern growth and three-fifths).

Finkelman’s several books and articles revising standard views of Philadelphia are invaluable and overdue. *Departures herein*: Finkelman (Paul Finkelman, “The Proslavery Origins of the Electoral College,” *Cardozo Law Review* 23 (2002)) nonetheless had anomalous views about the Electoral College: that framers did not distrust the people and knew voters were not a rabble; and that small states as an interest to protect never came up as a topic. He said that soon after Madison said he favored electors (because in a popular election slaves could not vote) the “convention quickly moved to accept” the Electoral College. (1147) (The August 24 victory by Rutledge for joint balloting by the Congress contradicts this statement.) This author agrees with him that the Electoral College was a gift to the South (Finkelman, “The Founders and Slavery: Little Ventured, Little Gained,” *Yale Journal of Law and the Humanities*, vol. 13, Issue 2 (2001), 430), but Finkelman then does not explore the gift to the North in the second stage of the election. He says the Electoral College was not created out of fear of popular vote or preference for filtered decision, nor to protect small states. (“Founders and “Slavery,” 441n), none of which seems accurate except the last point, but then the role of the House voting by states is worth mentioning. His work is spirited and valuable but tendentious.

Maltz (Earl M. Maltz, “The Presidency, the Electoral College, and the Three-Fifths Clause,” *Rutgers Law Journal*, vol. 43 (2013)): *Overlap*: is a valuable correction of Finkelman, as valuable as is Finkelman’s own correction of others. Maltz on the line-up of voting on the Committee of Eleven’s plan in the early days of September, especially role of Rutledge and Pinckney, is very helpful and, to this author, correct. (460–462) *Departures herein*: In seeing the Electoral College as a result of an alliance of Southern and small states (440), he follows Slonim (and this seems in error. They were large states that benefited from the proportionality embedded in the college, a point Madison made during ratification.) Maltz minimizes the importance of three-fifths in presidential selection. (463–464)

Beeman *Departures*: does not explore the nominating purpose of the Electoral College or other republican traits embedded in Article 2. (299–305)

Ceaser (James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton, 1979)): *Overlap*: has shed valuable light on parties in the early

national period. *Departures herein*: Ceaser states the Constitution made no provision for nominating. (41)

Bederman (David J. Bederman, *The Classical Foundations of the American Constitution: Prevailing Wisdom* (Cambridge, England, and New York, 2008)): *Departures herein*: sees the Electoral College as a “delicate balance between populism (direct election) and elitism (filtration of the people’s desires through preexisting governmental institutions and leaders).” He interprets Madison speaking about the compromise as implying the state role resides in the college and the national role is the House (203ff), whereas Madison, Dickinson, and others held the reverse. He does not write about the origins of nominating traditions in classical or late medieval practices.

Stewart (David O. Stewart, *The Summer of 1787: The Men Who Invented the Constitution* (New York, 2007)) on the Philadelphia convention is one of the most readable treatments. *Departures herein*: He said the Twelfth Amendment “rescued” presidential elections (259) from the “clumsy” job of the founders, done in a hurry – as they were “worn down” and “pressed for time” – but finally fixed in 1803 (215–216) (the amendment passed in 1804). This is the standard view.

C. Republicanism in the revolutionary era

Caroline Robbins (*The Eighteenth-Century Commonwealthman: Studies in the Transmission, Development, and Circumstance of English Liberal Thought from the Restoration of Charles II until the War with the Thirteen Colonies* (Cambridge, Mass., 1959)), **Bernard Bailyn** (*Ideological Origins of the American Revolution* (Cambridge, Mass., 1967)), and **Gordon S. Wood** (*Creation of the American Republic, 1776-1787* (Chapel Hill, N.C., 1969)) in doing their pathbreaking work in the 1950s and 1960s launched a debate by suggesting that commonwealthman ideology was the key political thought pattern in the era and that republicanism was, as one said, no more than “window-dressing” for the Revolutionists. **J.A.G Pocock** took exception and argued for the continuation of the powerful themes of classical republicanism during the Revolution and beyond (*The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975), 519ff). Since Pocock’s landmark study, others have added valuable detail to the story, among them **David Bederman** (*The Classical Foundations of the American Constitution: Prevailing Wisdom* (Cambridge, England, and NY, 2008)); **Carl J. Richard** (*The Founders and the Classics: Greece, Rome, and the American Enlightenment* (Cambridge, MA, 1994)); and **Paul A. Rahe** (*Republics Ancient and Modern*, 3 vols. (Chapel Hill, 1994)).

Overlap: Pocock, Richard, Bederman, and Rahe are valuable correctives of the view that America began the world over again in Philadelphia and that the federal convention marked the “end of classical politics.” Pocock made clear that republican teachings influenced the founders and survived well into the early nineteenth-century America. This current study’s approach is in alignment with the idea that republicanism (as herein defined, concerning architecture: see Introduction) continued to have influence in the late eighteenth century.

Departure herein: This study is focused on the architecture of republics, not on ideology or vocabulary.

European research since the 1960s on the internal organization of republics, especially research in the past twenty years, has made it unlikely that scholars would advance today the arguments once made about American procedural exceptionalism. It once was argued that the founders made strides toward modernity by transforming the architecture of old republics – that the founders “violated” traditional ideas of “homogeneity” in society “on which republicanism was based,” recognized competing “interests,” converted “the classic meaning of mixed

government,” and replaced the three social estates with three branches representing the people. (Wood, 20, 57–58, 62, 221, 584–586; J.R. Pole, *Political Representation in England and the Origins of the American Republic* (London, 1966), 530.) Recent scholarship (summarized in [Chapters 1–3](#)) has revealed premodern republican architecture to be more complex than this cartoon-like portrait. Set against that premodern background, at least some Americans at the founding were trying something more difficult than innovation; they were making a heroic effort to re-invent and keep alive republican ground rules in an environment increasingly hostile to those rules because of majorities and representation.

Some recent historians have said that the “ideological view” (of Bernard Bailyn and Gordon Wood) of the Constitution as the last stage of Revolutionary republicanism is flawed since it does not adequately take into account the key role of slavery in Philadelphia. See, in addition to Finkelman above, Waldstreicher (*Slavery’s Constitution*, 11, 14, 19), who states that compromises over slavery “played a central part in the creation of the U.S. Constitution” and are imperfectly described in many traditional works of scholarship. Of this, there can be no doubt. However, it is argued herein that republicanism (as defined herein) was nevertheless employed by the framers in their battles over apportionment and in decisions about presidential selection. The fact that the procedures involved arrangements between slave and non-slave states did not make the solutions any the less republican. The republicanism at work in Philadelphia was related to classical republican techniques in ways not fully sketched out, neither in works concerned with classical humanism (for instance, in Pocock) nor in the more recent slavery-focused works – neither of which for understandable reasons had interest in procedural matters.

Billias (George Athan Billias, *Elbridge Gerry: Founding Father and Republican Statesman* (New York, 1976)), keenly interested in his subject’s republicanism, is critical of what he takes to be Wood’s exaggerated argument that the ruler and ruled became one in the drama of the people’s becoming sovereign. He moreover suggests that it would be useful to consider republicanism as “a more concrete concept” than typically presented and that Gerry’s version was highly “practical and non-theoretical.” (335, 338–339) Although Billias’ definition of republicanism (332, *passim*) excludes procedures and proceduralism, he is one of the few authors concerned with the pragmatic frame of mind of those he deems to be republican.

Slonim takes the view that the influence of the republican tradition was minimal, stating that not once did founders in Philadelphia refer to Greece, Rome, and Venice. (57).

D. Representation problems

Rakove: *Departures*: said colonial experience of assemblies demonstrated a close connection between electors and their representatives. (212) ([Chapter 5](#) and this chapter argue otherwise.) Rakove said it was established “republican belief” “that a representative assembly could mirror society and pursue the public good.” (217) (He does not cite the origin of this belief but is likely referring to commonwealthman ideology, and not to the classic republican procedural canon.)

Wood: *Departures*: argued that actual representation made headway in states in the 1780s and in Philadelphia. He mentions the borrowing from the example of New England towns and their equal representation in the General Court, which he cites as an example of “actual representation.” (183, 188, 189) (Having a corporate unit be the thing represented, irrespective of population, cannot be said to be an example of “actual representation.” If it were, equal vote in senate was an example of actual representation.) Wood stated that Americans in the Revolutionary era were

being pushed “reluctantly” to endorse property as the best indicator of talent or distinction, that this “isolation of property as a distinct ingredient of the society that must be separately embodied in the government marked an extraordinary change in American thinking, reflective of a general reappraisal of the nature of American society taking place in the 1780s.” (218–219) (This view is hard to reconcile with property requirements and property-weighted apportionment in American colonies and states for a long time; see [Chapter 5](#) and this chapter.) Wood (239) suggests John Rutledge was on the losing side of the battle over representation in 1778 when Rutledge said the upper house might not be elected by the people, for in Wood’s telling the development of the double representation had “momentous implications for men’s understanding of politics” which JR was oblivious of. (239) (It does not appear that Rutledge lost the battle over representing wealth in South Carolina, which continued its privileged position into the nineteenth century, or in the Constitution (see *Federalist* 54 wherein Madison justifies three-fifths as a representation of property). Wood states there was an American Whig suspicion of legislators and representatives that emerged in 1776 and in the early 1780s. (266, 364–365, 376–383) (There was a longstanding suspicion dating from seventeenth-century colonial days: hence instructions.) Wood rightly points out the resort to filtration in state constitutions and in the federal constitution to filter talent. (502, 507, 512, 599) (This observation is hard to reconcile with his main theme that the crowning innovation of Americans in the Revolutionary era was their concept that the rulers and ruled were one and that the people never surrendered their powers to legislate.)

NB: See last section of [Chapter 5](#) (and its endnotes) for discussion of colonial representation and its historians.

E. Role of slavery in federal convention

Bancroft (*Formation of the Constitution*, 2: 32–33) described well the North-South divide on the matter of the Senate composition.

Farrand (*Framing*) *Departures*: said three-fifths was not part of the Great Compromise because three-fifths as a formula for taxes and representation was long accepted. (108–109) While this is technically true, the fact that proportional representation was boosted in the South by three-fifths helped make Southerners ardent supporters of proportional representation in many votes, including during the Great Compromise; one need only look at Madison’s speeches, particularly June 30 and July 14 (Farrand, 1: 485–487; 2: 10).

Lynd’s major argument is that July 16 represented a bargain between regions in which three-fifths played a role (225–226), which seems correct, albeit not complete as an explanation.

Finkelman (“Founders and Slavery,” 413–431; “Proslavery Origins of the Electoral College,” 1145–1157) has brought much needed attention to the subject. *Departures*: he misses the importance of the voting weights in the Electoral College and House voting by states. Elsewhere he argued that taxation and three-fifths linkage was only raised in July to placate Northerners unhappy with three-fifths and representation (ignoring the lengthy history of three-fifths and taxation dating to 1775, 1783, and mentioned on the floor by James Wilson on June 11, 1787.) See Finkelman, “The Founders and Slavery: Little Ventured, Little Gained,” *Yale Journal of Law and the Humanities*, vol. 13, Issue 2 (2001), 428.

Goldstone (Lawrence Goldstone, *Dark Bargain: Slavery, Profits, and the Struggle for the Constitution* (New York, 2005)): *Overlap*: has plotted regional voting with great care. (107, 110)

Waldstreicher (David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York, 2009)): *Departures*: did not associate the presidential selection solution to the Great Compromise method of apportioning voting power (but he does note that three-fifths gave an edge to the South in the Electoral College). (57–105)

Maltz: *Departures*: following Slonim, sees an alliance of Southern and small states (not large states, which seems more likely the pattern) behind the Electoral College and said three-fifths was not seen as giving a major boost to Southern states in the college (and by implication not in the lower house). (439–470) (About the role of sectionalism in the debate over presidential selection system, see note above under *Presidential selection system*, under Rakove.)

F. Madison

Brant (Irving Brant, *James Madison: Father of the Constitution, 1787–1800* (Indianapolis and New York, 1950)): *Overlap*: ably discusses JM's extensive revision of his convention notes and explains that by the time convention documents were released in 1819 JM found the record of his early convention contributions at odds with his political position from the 1790s onwards. By 1819, he wished not to be discovered as an erstwhile nationalist little concerned with particularist, state, and minority interests (27, 86). *Departures*: Brant nonetheless praised Madison's revised notes for their "completeness, accuracy, and lack of bias." (Especially embarrassing was when Yates's notes were released. JM denied their accuracy (inaccurately) but refused to release his own notes until after his death. When released, his notes were substantially doctored from his original version. Cf. Yates's version of JM's June 29 speech denying that states were or ever had been sovereign, and JM's version of same (Farrand, 1: 470–472, 463–465).) Brant describes JM's speech on June 6 (enlarge the sphere, safety in diversity) as "the most significant speech of the convention." (44–45) This was possibly true only because JM abandoned this high ground in the following weeks and thereby strengthened the structuralist camp (but this is not what Brant meant).

Shankman (Andrew Shankman, *Original Intent: Hamilton, Jefferson, Madison, and the American Founding* (New York and Oxford, 2018)): *Overlap*: he argues Madison dealt with the majority tyranny problem through filtration, the variety of interests, and better people being elected by larger constituencies. (51–52) (This is certainly correct, to which one would add Madison's faith in the central government as hammer was more important to him than was the need to curb national majorities.) Shankman's analysis of Madison's fixation with westward expansion and the place of rural life and values in the country's politics is intelligent and unanswerable. *Departures*: Shankman dates Madison's shedding concern about the danger of majorities at a later date (1792) than does this author. (123–124.) (For a few examples among many of Madison's beginning majoritarian advocacy on the first full day of the convention, May 30, and continuing thereafter, see earlier sections of this chapter; Bancroft, *Formation of the Constitution*, 2: 15–16; Farrand, 1: 37ff; 2: 8–10.)

Rakove *Overlap*: notes that for Madison representation was itself a filter. (236) He notes Madison's wish to "dissipate the populist pressures of the people" and get a better class of lawmakers than he saw peopling state assemblies. (218) *Departures*: charitably takes Madison at his word on his theory of the safety to be found in large republics owing to the clash of interests. (54, 290). In this Rakove has company in Shankman (51–52) and Ketcham (239–242). (Madison's dramatic switch in becoming a champion of a particular regional interest (the South and Southwest), commencing June 30 and continuing to convention's end, casts doubt on whether Madison believed in the theory any more than his opponents did.)

Ketcham (Ralph Ketcham, *James Madison: A Biography* (Charlottesville and London, 1990)): *Overlap*: catches some of Madison's contradictions – for instance, on the necessary and proper clause (319–321) – but not the central contradiction between Madison's pronouncements about majorities and his behavior as delegate. Not surprisingly **Chernow** (Ron Chernow, *Alexander Hamilton* (London and New York, 2004)) is more critical of Madison and worth reading alongside Ketcham and Brant.

G. Dickinson

Jane Calvert (*The John Dickinson Writings Project*): *Overlap*: launched a long overdue and valuable re-examination of John Dickinson, bringing together a vast collection of writings of this under-studied founder. Her biography arrived just after this ms. was completed and has not been taken into account herein.

Rakove: *Overlap*: identified JD as Madison's principal foil in the early going of the Convention.

Hutson (James H. Hutson, "John Dickinson at the Federal Constitutional Convention," *William & Mary Quarterly*, vol. 40, no. 2 (April 1983)): *Overlap*: this article played an important role in bringing attention to JD's role in Philadelphia, in deciphering JD's impossible handwriting, and in pointing out JD's influence on Gouverneur Morris.

Departures: There were multiple instances of speakers benefiting from JD's private speech notes, not only Gouverneur Morris on July 11, cited by Hutson. In describing JD's "complicated procedures" in his plan for the government and in calling JD's executive plan "a Rube Goldberg magistracy" (260), Hutson did not analyze JD's republican models and, in particular, the value JD attributed to complex republican architecture.

Brant: *Departures*: states that when John Dickinson advocated Senate election by the states JD "was working for government by the rich, wise and good." (46)

H. James Wilson

Charles Page Smith (*James Wilson: Founding Father, 1742-1798* (Chapel Hill, 1956)): *Departures*: this balanced biography is credulous about Wilson's political pronouncements (222, 257), misconstrues the fight over apportionment as one between nationalists and "guardians of the states" (230), and does not track the numerous votes wherein it is unmistakable that Wilson was part of a rock solid voting alliance with South Carolina and Virginia. He notes Wilson's extensive land speculation activity (159ff) but does not relate the activity to his voting behavior in the convention (especially on the reapportionment/expansion fight).

Wood: *Departures*: admires JW's rhetorical formulas (ruled being rulers in America, the distinction between reserved and granted powers in the Constitution, and more). (520ff, 539–540)

Rakove: praises JW speech of Oct 6, and his "powerful case for popular sovereignty" at Pa.'s ratifying convention (144, 155). (This study highlights Wilson's likely pecuniary interests in several key votes of the convention, and draws attention to inconsistencies in his ratification remarks. See discussions in this chapter and [Chapter 7](#).)

James T. Kloppenberg (*Toward Democracy: The Struggle for Self-Rule in European and American Thought* (Oxford and New York, 2016)) stated that James Wilson's influence was second only to James Madison's in Philadelphia and credits them together with inspiring "American democracy" (370).

7 Two Consequences of Philadelphia

The divisions in Philadelphia were as much procedural as sectional, or possibly intellection was forced upon the delegates by the fierce clash of sectional interests and then procedural ideas assumed an importance of their own. For every push in the direction of majorities, there had come an equal push in the opposite direction – toward complexity and confounding that same rule of numbers. Dickinson and friends had had their victories. The intellectual door had swung both ways in Philadelphia, but at this interesting hinge-moment, in the aftermath of the convention, it was about to swing with full force against the procedural ideas of older republics.

Ratification and obfuscation

Although its influence cannot be measured precisely, the debate over ratification of the Constitution was crucial in pushing in that direction. In the privacy of the federal convention's State House, the delegates had expressed nearly uniform support for filtration in elections. Few would go so far as Hamilton to propose a president for life, but Hamilton said no more than most delegates probably thought when he warned against popular participation in directing the affairs of state. Keeping people at several removes from office-filling was, in fact, what the delegates wanted and what they did. Erecting a presidential selection process of complexity had, as one of its goals, to spare the country executives chosen merely for being popular with a random majority. But now out of doors, the Federalists seeking ratification had to defend their handiwork, and it would have been challenging to argue the unsuitability of people as political actors when addressing the people. Federalists had no choice but to make the democratic and majoritarian case.

Even if the thought had not occurred to them to do so, the Antifederalists cornered them. The Antis put the Federalists on their back feet by saying that the Constitution, as Patrick Henry cleverly put it, “squints toward monarchy.”¹ Richard Henry Lee said the Constitution was “dangerously oligarchic.” The widely distributed writings of *Centinel* stated the proposed government was too complex and too far removed from popular control to be acceptable.² When Madison in the Virginia convention ventured to defend

filtering people's passions through a sieve of a few high-minded legislators, Henry had fun with the concept, replying if filtering through a small number is better than through a large number, why not just filter them down to a single person, say, a king?³ To Antifederalists, the Constitution's extensive filtering arrangements threatened to produce a mandarin political class, separated from and beyond the control of the people, walled off in its own, new capital city.⁴

Accused of founding a government of and by the few, the Constitution's defenders sensibly chose not to wage the ratification battle on the unpromising ground of filtered elections and procedural complexity. The terrain they chose was solidly democratic. Given the document they had created, Federalists had their work cut out for themselves. Their explanations involved a fair degree of obfuscation. They took their lead from the articulate, resourceful James Wilson.

The inventions of James Wilson

Three weeks after the convention was over, Wilson formulated his first rhetorical defense against the charge of undemocratic government in what became a "fundamental text" for the rest of the debate.⁵ In remarks outdoors next to the State House, where the federal convention had lately met, Wilson rebutted the need for a bill of rights, which Antis had said should be a condition of ratification. Wilson maintained that unlike state Constitutions, wherein "every thing which is not reserved, is given," the federal document provided that "every thing which is not given, is reserved," and to enumerate liberties would imply that the government did have the power to invade those rights. The framers, he said, had thought that a bad principle, and in any case it would be dangerous to make a list which would inevitably be partial and incomplete.⁶

Hearing this unpersuasive explanation, Antis pounced. The draft Constitution already did enumerate some rights – the right to habeas corpus and to import slaves, for instance – but left out others. It also included the "necessary and proper clause," adding without limit to the powers of Congress. One writer said Wilson's speech had "the quaintness of a conundrum ... this play of words," another called it the "most flimsy sophistry," another referred to "the deceptive powers of Mr. Wilson," and still another to "the immense heap of trash."⁷ This invective could be dismissed as propaganda (though it was pretty strong stuff), but more telling were withering private comments. One writer told his correspondent the "doctrine of the celebrated Mr. Wilson [was] ... grossly absurd" Jefferson wrote Madison that Wilson's doctrine "might do for the Audience to whom it was addressed" but not for him.⁸ A bill of rights was insisted on by many states and formed the first ten amendments to the Constitution.

Wilson's next major speech was before the Pennsylvania ratifying convention on November 26, 1787. This and his subsequent efforts were more

effective than the first. At length, he spoke of the many difficulties the framers had faced. The first problem was, left without “guide or precedent,” he said, the framers had to strike out on their own, addressing the task of creating a confederate republic and finding precisely where to draw the line between the national and state entities.⁹ This statement, dismissing the architecture of apportionment and electoral college as merely a matter of jurisdictional line-drawing, was consistent with how Madison was also describing the convention’s major decisions. As we have seen, and as Dickinson made clear in his *Fabius* letters and convention notes, the convention did have precedents for its architecture, did make use of them, and the emergent architecture was not so much about where to draw a line as about how to compose a sensible national structure. This point either escaped Wilson or he did not like it, for it never cropped up in his remarks.¹⁰

After describing the difficulties overcome, Wilson turned to the major innovation of the convention, as he conceived it: the founding of the government on the people. “In our governments,” he said, using the plural because he included the states in this thought, “the supreme, absolute, and uncontrollable power remains in the people.” Said Wilson, “If we take an extended and accurate view of it, we shall find the streams of power running in different directions, in different dimensions, and at different heights, watering, adorning, and fertilizing the fields and meadows, through which their courses are led; but if we trace them, we shall discover, that they all originally flow from one abundant fountain. In this Constitution, all authority is derived from the people.”¹¹ The simile, borrowed from Harrington, who himself had borrowed it from James I, had a long and adaptive history.

In other speeches that fall, he elaborated on this theme, invoking it to belittle the Antis’ analysis: since the ultimate authority in this new government was the people, it was absurd to fear that the government could be a threat to the people, because why would the people do harm to themselves? The fact that the people were the ultimate and supreme authority, he said, cured all objections. All officers of government, even the judges, were their creatures. All laws flowed from their representatives. If they did not like what government was doing to them, they had the power to change the government, and if they did not like the Constitution, they had the power to change that too – all was at their disposal, because they were sovereign. “On my principle,” he said on December 4, “the people never part with their power.” Sovereignty “resides in the people, as the fountain of government,” this last being a phrase picked up by other Federalists soon in various states. “In their hands it remains secure.” Locke had pointed the way, Wilson said, but this country, with this Constitution, was the first one to found its government on the people’s supreme authority.¹²

Wilson’s speeches that fall were influential, probably more so than the *Federalist* papers. Madison parroted him in those papers; scholars have also praised the power of his argument.¹³ Powerful as he was in doggedly connecting the new Constitution with popular sovereignty, and thereby helping to

shape a ratification debate, Wilson did not think up the idea of popular sovereignty. It was not a new concept and he was not a visionary.¹⁴ Wilson's formula was not original, but it was necessary to invoke at the moment, given the Antis' onslaught on the Constitution of filtrations. It was also necessary because notwithstanding the undemocratic thoughts given expression within the State House, the people's hard-earned sense of entitlement, described in the last chapter, continued undiminished.¹⁵

Popular expectations of empowerment had been mentioned within the State House walls. In one of the more powerful exchanges at the federal convention, concerning whether there should be a wealth or property criterion for the franchise, Madison made his pitch for freehold land as the key criterion, in a backward-looking, nostalgic nod to the Virginia countryside. His fellow Virginian George Mason countered with the sensible point that property can come in many forms and what mattered was that voters have a stake in society, any stake, not just a farm. Benjamin Franklin, taking an altogether different tack, recalled the seamen in the late war whose refusal to "redeem themselves from misery or to seek their fortunes, by entering on board the Ships of the Enemies to their Country" led them "in great numbers into the British Prisons." He contrasted their patriotism with the British seamen who joined the American ships when offered a share of the prizes, and thought the difference in the two reactions arose from "the different manner in which the common people were treated in America & G. Britain. He did not think that the elected had any right in any case to narrow the privileges of the electors The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised"¹⁶ As convinced as was this privileged group of Philadelphia delegates of the merits of elites' running government, Franklin won his point and the Constitution left the property requirement, if any, to the states.

By the time of the federal convention, there was really no alternative to founding a new national government than upon the principle of popular sovereignty. But the framers had been convinced, as we have seen, of the efficacy of filtration – of brokering, blunting, circumventing people's preferences. Some or most of them had been convinced of the need for procedures to block majorities.¹⁷ Wilson had had no scruples signing up to the first set of principles, the filtration, and felt constrained in ratification to defend the structures that emerged from the second. But at the same time, he knew he had no choice – especially as the Antis were attacking the "aristocratic" draft – but to make the Constitution's filtration and removal of the people from the levers of government palatable; somehow reconcile the document with the fiction of popular power.¹⁸

As he quickly grasped in the ratification debate, that fiction was the key argument to get across. The more removed people were from their government, the more Wilson had to assert they were in charge. (Harrington had done the same in *Oceana*.) His laborious work toward that end was Wilson's main contribution to the cause of ratification. It involved a skill with euphemism.

In his delicate performance, Wilson gave the impression of someone picking his way through the minefield of his own defense, choosing his words with extreme care, and when he was done the impression left was of a verbose speaker not always believing what he had argued but relieved he had made it through to the other side.

The euphemisms were multiple. In introducing popular sovereignty as his topic, Wilson said that, as the world knows, there are three kinds of government, each with its advantages and its inconveniences: monarchy, aristocracy, and democracy. "What is the nature and kind of that government, which has been proposed for the United States, by the late convention? In its principle, it is purely democratical: but that principle is applied in different forms, in order to obtain the advantages, and exclude the inconveniences of the simple modes of government."¹⁹ (The operative part of that sentence was the beginning: "In its principle," reminiscent of Harrington's "vicissitudes" in the analogous passage.)²⁰ The people's power was supreme, he later wrote, but had to be "formed, arranged, proportioned, and organized ... [so] as to exclude the inconveniences, and to secure the advantages" of the three classic forms of government.²¹ What was this abstraction all about? Wilson was adverting to the filtration mechanisms of the Constitution: the complex multistage nominating and election process for president (which he forbore describing), election of the Senate by state legislatures (which he did mention, but in the context of proving state sovereignty was intact, not in the context of popular sovereignty), the mixed representation of the bicameral legislature, and the presidential appointments of major officeholders with the advice and consent of the Senate. He did not delve into these mechanisms. He did not want to. Rather his emphasis was on the popular principle. All parts of the government have "a chain of connection with the people," he said. "To every suggestion concerning a bill of rights, the citizens of the United States may always say, We reserve the right to do what we please."²²

Not spelled out by Wilson was how, in practical terms, the citizens could exercise that right. Nor made clear was how even intermediately could the people control the choice of officeholders. Instead he opaquely said: all these offices will be "elected either immediately by the people, or in such a manner that their appointment will depend ultimately on such immediate election."²³ His was a theory of popular sovereignty, not a plan for popular participation. Although the people were the ultimate authority in his scheme, they were invisible. In one speech that autumn, he said they should actually, physically, be invisible. Antifederalists having attacked the large size of congressional districts and said representatives would be too far removed from their constituents (little did they know that representatives would not even be chosen by their constituents for many decades in some states), Wilson defended large districts as follows: "I apprehend it is of more consequence to be able to know the true interest of the people than their faces, and of more consequence still to have virtue enough to pursue the means of carrying that knowledge usefully into effect."²⁴ "In making our choice of a proper

character to be a member of the House of Representatives, we ought to fix on one whose mind and heart are enlarged; who possesses a general knowledge of the interests of America, and a disposition to make use of that knowledge for the advantage and welfare of his country." Large districts enabled "enlarged information in our representatives," he said. "The larger, therefore, the district is, the greater is the probability of selecting wise and virtuous characters, and the more agreeable it is to the Constitutional principle of representation."²⁵ Although he never said what that Constitutional principle was, it seemed to be mixture of an ultimately and supremely powerful people who were nevertheless unseen.

Verbose, ambitious, not untouched by narcissism, and in the fall of 1787 not completely straightforward in his making his case, Wilson had a gift for seriously annoying adversaries.²⁶ His rhetorical formulations about all-powerful but invisible people especially irritated Antifederalists. *Cincinnatus* V (Arthur Lee) tried to return the conversation to practicalities. Pointing out that Wilson was arguing that because states nominated electors and states chose the Senate it meant that states retained their "sovereignty" (so Antis should be relaxed about the sanctity of states under the new Constitution), *Cincinnatus* said that this line of reasoning would mean that the actual making of laws, commanding the militia, and other exercises of national power "do not constitute sovereignty." *Cincinnatus* asked, "Did you think, Sir, that you was [*sic*] speaking to men or to children?"²⁷

Cincinnatus was touching on a key part of Wilson's strategy, namely, to exploit a natural ambiguity or confusion which attended the word "sovereignty." Over many years' time, the word was used sometimes to refer to ultimate authority and just as often to refer to how and where power was exercised. Wilson chose to shift attention to the "ultimate" and "supreme" authority of "the people," to discuss structures and procedures in a vague way, and then only for the purpose of showing that the structures kept intact the sovereignty of the people (and also sometimes, he said, the states' sovereignties). By emphasizing the "ultimate" authority, he minimized what the Renaissance writers had called the "orders" of government, the rules and regulations by which power in a republic was exercised. In many eras, from the classical era forward to Harrington, it was assumed by some writers that in a republic ultimate authority lay with the citizenry; that was not the subject of major investigation in communes. What was debated intensively, and not the least bit assumed, was the best set of orders to distribute and exercise power for the public good (and for social peace). This preoccupation had led political thinkers to the fixation with procedure. Wilson reversed the points of emphasis. He dwelt on popular sovereignty, but when it came to mechanics he glided over the details because the details, in this case, did not obviously demonstrate popular involvement in government. This strategy exasperated Antifederalists like *Cincinnatus*, who took the view that Wilson surely knew that theoretical sovereignty was worthless if practical power lay elsewhere.²⁸

Occasionally, Wilson ranged beyond euphemism toward obfuscation. On December 1, without explaining the presidential selection procedures, he said the president “will be chosen in such a manner that he may be justly styled *the man of the people*.”²⁹ We have benefit of knowing that this is not what he thought would happen, for unlike his listeners in December, we have access to what he said on the federal convention floor a few weeks earlier. Earlier, Wilson was sure that the presidential decision would occur in the second stage (in the Senate, then House), not in the first.³⁰ Although in December he said in public the president would be the man of the people, in September he said in the privacy of Independence Hall, “... the president will not be the man of the people, as he ought to be, but the Minion of the Senate.”³¹

For the same reason – because it seemed undemocratic – he disavowed any knowledge of bargains struck in the federal convention. Expressing surprise at an Anti’s statement that the Constitution was a compact or series of deals between parties, he said: “I believe it cannot be said that they [the delegates] thought they were making a contract, because I cannot discover the least trace of a compact in that system. There can be no compact unless there are more parties than one. It is a new doctrine that one can make a compact with himself. ‘The Convention were forming compacts!’ With whom? I know no bargains that were made there. I am unable to conceive who the parties could be.” Then: “This, Mr. President, is not a government founded upon compact; it is founded upon the power of the people. They express in their name and their authority – ‘*We, the people, do ordain and establish*’ &c.” One begins to see how Wilson had a unique way of exasperating his adversaries. Several bargains were struck at the federal convention; if they had not been, there would have been no result from Philadelphia.³² On the bill of rights, Wilson said the topic was not mentioned until the last three days of the convention. Again, the convention records, not available to his listeners, contradicted him.³³

Pennsylvania was one of the centers of antislavery sentiment, and Wilson assured the Pennsylvania ratifying convention that although slave importing could continue until 1808, in the meantime “the *new* states which are to be formed will be under *the control* of Congress in this particular, and slaves will never be introduced amongst them.” There had been no agreement at the convention on this matter and it would vex the nation for decades to come. The next day, he went further. In a few years, he said, importing will stop, “& Congress will have power to exterminate slavery within our borders.”³⁴ Howsoever one interpreted his first remark about slavery’s being barred from new states, this second statement was an outright falsehood. Nowhere in the Constitution was Congress granted the authority to regulate slavery within the states.

Wilson did not scruple to speak misleadingly on these matters, and that raises the question, what did Wilson think of the core concept he was propounding, the concept of empowering the people in more than a rhetorical way? It is hard to say. He was among the few in the federal convention who

proposed direct election of the president, and did so more than once; but on another occasion during the summer he also proposed a college of electors, on another lottery to choose electors from among the national legislature, and several times he supported Rutledge's efforts to put the matter in the hands of the legislature acting by joint ballot. It would be risky to read confidence in the people as electors in his changing positions on presidential selection. He stated in law lectures that although democracy was sound it had to be implemented in ways giving "as small a share as possible [to] the bad propensities in our nature," ways that would "lessen, discourage, and correct those bad ones [propensities]" and "make it advantageous even for bad men to act for the publick good."³⁵ The mob of 1779 that came close to killing him, in the battle of "Ft. Wilson," he could not have venerated. During the ratifying debates, he acknowledged that he had been accused of having "contempt of the people" (which he denied).³⁶ To his detractors, it was not plausible that Wilson believed in the beneficent rule of the people, or even liked them very much. One of Wilson's most determined opponents was the Pennsylvanian Samuel Bryan who, writing as *Centinel*, depicted the Federalists as a band of monopolizing plutocrats, and whose father George had helped write the state Constitution of 1776 which Wilson and wealthy Philadelphians were leading the long effort to overhaul. To adversaries such as Bryan, thoroughly familiar with Wilson's local politics, Wilson's love of the people was a pose.³⁷

In one important area of political thinking, Wilson was remarkably consistent. That was the matter of majority rule. He (and Madison with him) had defended majority outcomes on the convention floor as the only possible results in a government organized by consent of the people. It was their principal retort to Dickinson, the New Jersey Plan, and equal vote in the Senate. In the fall of 1787, Wilson returned to the theme when the Antis took up the cause of minorities, whose rights would be threatened, they said, by a "consolidated" national government. "The minority, sir," he said on December 11, "are contending for the rights of mankind; what, then, are the majority contending for? If the minority are contending for the rights of mankind, the majority must be contending for the doctrines of tyranny and slavery. Is it probable that that is the case? Who are the majority in this assembly? – Are they not the people? are they not the representatives of the people, as well as the minority? Were they not elected by the people, as well as the minority? Were they not elected by the greater part of the people? Have we a single right separate from the rights of the people? On what fancied distinction shall the minority assume to themselves the merit of contending for the rights of mankind?"³⁸ It seems evident that he deeply believed in organizing government by majorities, if done so through representation (once or twice removed from the people).

Wilson also had, as noted before, a financial interest in extending the majoritarian principle to the frontier. Like many politically well-connected Americans of the era, he was dazzled by the baubles of land speculation,

becoming the president of a large land company. Not rich, he wished to become so, and liked the company of rich people – including America’s possibly richest man, fellow Philadelphian Robert Morris (who ended up in bankruptcy prison), and Pierce Butler, of the South Carolina delegation to the federal convention. Butler lent Wilson an eye-watering \$197,000 (equivalent today to over \$4,000,000) either to invest in land speculation or bail him out of land deals gone sour.³⁹ Unable to repay his debt, Wilson, having begun his career as a law apprentice to John Dickinson in Philadelphia, fled from the bailiff. His creditors pursued him and jailed him twice. He was at the time a justice of the U.S. Supreme Court. (It is not apparent another justice has ever been jailed while on the bench.) Earlier in life Wilson had imagined that judges should be “agents of human perfection.”⁴⁰ This imperfect agent ended his days in a rented room over a tavern in rural North Carolina where he had fled to, out of reach of the sheriff.

Being without honor in his sticky end, Wilson was not without lasting influence. His verbal dexterity in reconciling the doctrine of popular sovereignty with the incongruous Constitution helped ratification prevail, and elevated that doctrine to be the regnant myth of the new republic. By the end of ratification, the whole Federalist camp was singing from the popular sovereignty hymnbook; that was a serious achievement. In New York’s debate Alexander Hamilton, of all people, said the president “will be himself the representative of the people” (without explaining how). “A President elected by the People,” read Hamilton’s speech notes in June 1788; if not, elected by the House: “Here is a Republican Magistrate.” Melancton Smith recorded Hamilton’s spoken words as being even more outspokenly democratic: the president will be “chosen immediately by ye people,” Smith reported Hamilton as saying. Warming to the larger Wilsonian theme, in the next month Hamilton speech notes had him saying: “Democracy in my sense where the whole power of the government is in the people (1) whether exercised by themselves or (2) by their representatives chosen by them either mediately or immediately.”⁴¹ In the federal convention, Hamilton had made clear his distaste for republicanism, had suggested a president for life and Senate for life, had even said that events “must soon cure the people of their fondness for democracies.” Later he would compare the people to a shapeless, blind monster.⁴² Now he declared himself for democracy, and he defined democracy as one “where the whole power of the government is in the people,” as Wilson had explained. “Permit me to proceed,” Wilson had said the previous December, “to what I deem another excellency of this system: all authority, of every kind, *is derived by REPRESENTATION from the PEOPLE, and the DEMOCRATIC principle is carried into every part of the government.*”⁴³ It was to this solid mast that Federalists nailed their flag.

But if even Hamilton was on board, what did the words really mean? In the long run, it is a question the country still wrestles with. In 1788, the words facilitated ratification of the Constitution and invented the people, as Edmund Morgan put it, as not just the source but also the wielders of

sovereignty. Whereas the Constitution-drafting was partly won by Guicciardini and Dickinson, ratification was entirely won by Locke and Madison.

Changing the constitution: The Twelfth Amendment

Having abandoned the quasi-republican preoccupations of the federal convention, the defenders of the Constitution won the battle of ratification on intellectual terms that gave a fillip to the country's already ascendant, majoritarian political culture. In post-ratification America – where the people were said to be sovereign in all respects – one particular contrivance of the federal convention seemed oddly jarring and out of step. That was the intricate, aleatory procedure for electing the president spelled out in Article 2, the document's most republican mechanism, which did not seem remotely related to the nation's emerging political culture. This undeniable mismatch was the facilitating moral context for attacking Article 2. The more proximate motive for changing the clause was that Article 2 had got seriously in the way of politicians trying to organize presidential campaigns. It was not surprising that it did; one of the clause's purposes was to do just that. But the unanticipated intensity of political warfare in the 1790s gave political leaders an irresistible motive to change the Constitution, and a technical error in Article 2 gave them an opening.

Madison and Hamilton had cooperated closely in the ratification of the Constitution; in less than two years, they were at each other's throats. When Alexander Hamilton as Treasury Secretary presented his plan to assume state debts in January 1790, Madison's reaction was instant, negative, and region-based. Madison imagined that this massive national debt was a swindle; the swindlers would be Northern, he thought, and the swindled would be Southern. From then on, through the rest of this tempestuous decade, partisan combat was normal; but the terms of attack were abnormal, exaggerated, personal, and hysterical. Commonly one side accused their opponents of being "monarchists" who wished to re-unite the country with Great Britain, and the other accused their opponents of being anti-Christian and Robespierres in the making. In time, the sexual indiscretions of Hamilton and Jefferson were explored with zest in partisan newspapers. Politics was nasty and personal. The framers of the Constitution did not anticipate that within 36 months the gentlemen scholars of Philadelphia would be transformed into a pack of snarling dogs.⁴⁴

The framers did not anticipate the brawl that was about to commence nor could they imagine that a brawl would focus on presidential selection, because they thought they had created a mechanism for preventing "cabal and intrigue" in that zone. Generally, those who debated ratification agreed with the framers on this point. During ratification debates, the presidential election system merited little discussion. Mason and other Antifederalists occasionally took a swipe at the heavy filtration – four and five times removed from people – as one Anti said. *Cato* in New York said "the president cannot

represent you, because he is not of your own immediate choice.” One writer (demonstrating how familiar educated people were with ancient republican methods) suggested states should nominate their candidates every year, lottery would decide which state held the office, and presidential rotation would change the occupant annually.⁴⁵ But most of the debate over the Constitution was about other matters, and when people did discuss the presidential selection, usually it was to praise the proposed system.

The part they liked the best was its hermetic quality: that electors met on the same day each in their own state, far from other such meetings, that electors could not be federal officeholders and therefore subject to influence from the executive, that they had two votes each and could not possibly divine which candidate they bestowed their votes upon would win, that votes were sealed up and delivered to the Senate and opened all at the same moment and counted, putting the result beyond manipulation. As Hamilton said, the system was almost the only part of the Constitution that escaped severe censure and if not “perfect” it was “at least excellent.”⁴⁶ That the system won such widespread acclaim (or silence mostly from the Antis) was because with it the founders had created a tight redoubt that made almost impossible entry by parties, factions, and ambitious individuals.

They left an unguarded pass, however. Article 2 said that Electoral College members would be chosen by whatever means the individual states decided to choose them. (This among several features emphasized the college’s character as a nominating body; it is unimaginable that the framers would have left it randomly to the states how to select the final electors of the president.) Article 2 furthermore specified no date on which electors were to be chosen by the states; it left that up to future Congresses. The result of this procedural vagueness was, although organizing electors in their meetings and influencing their voting and the vote count would be nearly impossible under the meticulous rules, there was no procedural bar to organizing the election of friendly electors *before* they assembled in their separate, hermetic meetings. In fact, and ironically, the very stout hermeticism of the process forced partisans to rush into this prologue stage. Being blocked by the anti-cabal rules from orchestrating the vote once electors were convened, partisans needed to do their organizing and communicating well in advance. Given distances up and down the seaboard, they needed to write, compare notes, and canvass weeks and months before. This period before electors convened became in the 1790s the period of intense party organization. When the Constitution was debated during ratification, a handful of people (but only a handful) noted this loophole.⁴⁷

The Virginia ratifying convention delved more deeply than any other state convention into the presidential selection process, and that is where this mistake was pointed out. Madison found himself defending the process against Patrick Henry, George Mason, James Monroe, and William Grayson – a formidable array of talent. Monroe pointed to the danger created by the lack of detail about how and when electors would be chosen. Without safeguards,

said Monroe, any sort of “combination between the electors might easily happen – which would fix on a man in every respect improper.”⁴⁸ George Mason agreed, saying that although meeting separately in their own states, the electors “may be easily influenced.”⁴⁹

One of the most perceptive appraisals was by the Virginian William Grayson, who observed that Article 2 created a presidential selection “rather founded on accident, than any principle of Government I ever heard of.”⁵⁰ Because election would fall to the House voting by states, he lamented that “the seven Eastern States will always elect him.” The result, he warned, “will be a Government by faction” – in his version, the faction of the Northern and Eastern states engaged in manufacturing and the carrying trade – to the certain disadvantage of the South. Having a majority in the House (voting by states), “they may do as they please.” His solution was to require a two-thirds majority for re-election of a president past two terms and, focusing on Monroe’s and Mason’s concern, electors not to be chosen more than twenty days before they vote.⁵¹ Outside Virginia, the *Federal Farmer* (who possibly was New Yorker Melancton Smith), drew attention to the same issue as Monroe, that nothing would stop corruption or influence from working its way with electors “after appointed electors, and before they give their votes.”⁵²

Monroe had expressed a fear of “improper” combination fixing on a single man; such a combination was, in fact, already underway when this small group of Cassandraes were issuing their warnings. While ratification still was being debated, Federalists were organizing electors. According to their correspondence, they did so in self-defense, for Antifederalists had begun before them. In October 1788, George Washington wrote to Alexander Hamilton, his friend and supremely talented organizer: Antifederalists planned to stand for electors, he wrote. They might not advertise their opposition to himself, but their “seeming moderation ... at present is neither more nor less than a finesse to lull and deceive. Their plan of opposition is systemized, and a regular intercourse, I have much reason to believe between the Leaders of it in the several States is formed to render it more effectual.”⁵³ The fear was mounting that Antifederalists would field elector candidates who would vote against Washington or his choice for vice president. The next month William Duer wrote Madison asking his help in ensuring Southerners back Adams as Vice President, lest Antifederalists manage to seize that office.⁵⁴

In 1792, Madison bravely wrote the Olympian Washington that if he was thinking of retiring he should announce that fact no later than six weeks before electors were to be chosen so there would be sufficient time for the “people [to] make their choice” about electors with his non-candidacy in mind.⁵⁵ Cross-state organizing over vast distances was laborious and required advance notice.⁵⁶

In these same febrile years, political leaders also manipulated state electoral laws to advance their party interest. In the first three elections for president, states used various methods for selecting electors: some chose them by the legislature, others chose them by popular vote but on a statewide basis

(elector slates sometimes presented to voters by the legislature), and a small minority by popular vote by districts. Only the last version was thought to be more or less democratic and aiming at expressing the people's will. The first two were considered top-down methods for party leaders or legislative leaders to influence the outcome, and usually resorted to when a majority party in a state had the power to shut out entirely the minority party.

The presidential selection system having been defended in ratification as founded on the people's will, it was orthodoxy to advocate election of electors by the people voting by district. Among a handful of states (mostly or entirely Southern) that used this more democratic method, Virginia was one – until 1800. In that year, faced with the brutalist regime of John Adams that seemed intent on stamping out all political dissent, James Madison helped orchestrate the difficult task of changing Virginia's law to turn Virginia into a statewide-ticket state, and he did so because without a statewide ticket, Adams's party would have won between five and eight electoral votes (of Virginia's twenty-one), and because states to the North and East mostly kept their statewide systems to disadvantage Republicans. As he put it to Jefferson, although against Republican orthodoxy, the change was necessary to "give Virginia fair play," by which he meant give Virginia's dominant political party fair play by depriving Virginia Federalists of any electors, as New England had shut out New England Republicans with the like system.

This might be seen as another Savonarola moment. In this year of crisis, 1800, this leading figure of the federal convention had his most famous, professed doctrines – the priority in a free government of protecting minorities from the tyrannies of a majority – put to the test, and in that testing moment Madison did not scruple to disenfranchise roughly one-third of Virginia's voters in the interests of "fair play" for his party. Federalists in those few states to the North that did not already have statewide systems scrambled to "counteract the Artifices" of their enemies in Virginia. They lamented doing so but found it "just and necessary" that the friends of Adams should "employ the same weapon in defending themselves." Virginia, having upped the arms race, had to be matched.⁵⁷ But the most lasting significance of these events is what they tell us not about the mortal soul of James Madison but rather about the rapid loosening of the republican grip on the presidential selection system. A survivor's mentality had by 1800 pushed out of mind any thoughts a former delegate to the federal convention once had had about the danger of cabals and intrigues in presidential selection. 1800 was a year of struggle for survival, the kind of struggle republics tried like the plague to avoid, but avoiding it was beyond reach.

A drafting loophole, the failure to regulate the timing and method of electors' selection, had let the organizers into the inner sanctum of presidential selection. Whether they would have gotten there anyway without the loophole is unknowable today, but the loophole helped. However, once inside the sanctum organizers ran up against a roadblock that they could neither organize nor legislate around. They hit the implacable double vote of Article 2.

Under that crucial rule, each elector cast two votes for president. It was extremely difficult to organize a campaign for a single candidate when each elector had two votes. That was one of the double vote's purposes: the creation of laudable uncertainty.

Delegates at the federal convention had liked the double vote because it gave states' a role in nominating and at the same time required electors to vote for at least one candidate not of their own state, the latter which requirement was intended to aid the search for continental leaders and help forge a union from disparate collection of states. The double vote also introduced the element of chance – an elector could not know which one of his two favorites would prevail – and that in turn was a block against the dreaded “cabal and intrigue.” But in the unexpected era of partisan hatred now dawning, political organizers no longer found uncertainty so laudable.

Hamilton complained about the double vote to his then-ally Madison in the first presidential campaign. In the fall of 1788, Hamilton wrote there were at least three candidates for vice president and two of them were Antifederalists; only Adams was not, and therefore Hamilton reluctantly supported the latter. However vigilance was needed, he said, because “the Constitution has not provided the means of distinguishing [in voting for president and vice president] ... & it would be disagreeable even to have a man treading close upon the heels of the person we wish as President. May not the malignity of the Opposition [those opposing the ratification of the Constitution] be in some instances exerted even against him?” He was referring to the danger that Antifederalists would gather votes for someone other than Washington – possibly even the running-mate Adams – and deprive the country of everyone's favorite. He added in guarded language, “Of all this we shall best judge when we know who are electors and we must in our different circles take our measures accordingly.”⁵⁸ To James Wilson the indefatigable Hamilton wrote: “Every body is aware of that defect in the Constitution which renders it possible that the man intended for Vice President may in fact turn up President. Every body sees that unanimity in Adams as Vice President and a few votes insidiously withheld from Washington might substitute the former to the latter,” thanks to the “machinations of Antifoederal malignity.” He advised Wilson to arrange the throwing away of three or four electoral votes in Pennsylvania as part of what he projected to be the Federalists' plan to “throw away a few votes say 7 or 8; giving these [not to Adams but] to persons not otherwise thought of.” Even if we lose Adams as vice president, he said, it would be better than losing Washington as president and have Adams in his seat. Hamilton exceeded his own expectations; in the result, Washington received 69 votes and Adams 34.⁵⁹

In Philadelphia, when delegates (Williamson and Morris) first raised the idea of three and two votes for president, Madison expressed his enthusiasm and went on to extemporize how one need not be concerned about “insincere” voting. The only drawback he could see to the Morris idea was that after a citizen would cast his first vote for his favorite, he would “throw away

his second on some obscure Citizen of another State, in order to ensure the object of his first choice.” But he thought it unlikely, he said that summer, that anyone would be so “sanguine” of having his favorite elected “as not to give their second vote with sincerity.”⁶⁰ Now, soon after the federal convention, he and his friends were busy throwing away second votes to protect their leader. How different was the path to the presidency to what the framers had imagined it should be. What had been unlikely “insincere” voting was now required by party disciplinarians, Madison included. What had been in Monroe’s words in “every respect improper” was, within a short span of time, routine canvassing.⁶¹

As the decade wore on, the double vote became a nightmare for organizers. If a party exercising maximum discipline procured all of its electors to cast each of their two votes for both the party’s candidates (informally ranked for president and vice president), one of two unwanted outcomes could occur: the two might tie, which was not the goal; or the opposing party might procure that a handful of its members vote for the second choice of its opponent causing the top candidate in the targeted ticket to lose to his running mate (which is what Washington and Hamilton feared would occur in 1788/89). If on the other hand, again exercising maximum discipline, parties prevailed upon electors to cast all their first votes for the top candidate and to throw away some second votes to protect the first choice, a likely unwanted outcome was that the opposing party would gain the Vice Presidency, as Jefferson did in 1796. In that case, at least Adams could console himself that he had eliminated the possibility that his running mate would supplant him. But this strategy risked hard feelings within the party. Balancing tickets was from the beginning a matter of regional balance, and when the top candidate’s backers destroyed the vice presidential aspirations of his running mate, they were irritating not only the loser but also their own party’s loyalists in an entire region.

In addition to this risk, the other unwanted outcome was the party discipline might not be ironclad, and it could happen that some agreed to throw away their votes then reneged in the moment of truth. Such is what occurred in 1800. Republicans voted 100% for Jefferson and 100% for his running mate Aaron Burr, notwithstanding assurances given to Jefferson’s forces that some Republicans would divert their votes away from Burr (none did). Each of Jefferson and Burr received 73 electoral votes (enough to be elected); and the tie was referred to the House of Representatives, where Federalists were in the vast majority, and they tended to prefer Burr over Jefferson. It was a closely run race to persuade enough reluctant and unfriendly Federalists to abstain so that Jefferson could squeak by after 36 roll calls to be elected president. Madison forever ascribed this near-disaster to betrayal in the use of the second vote.⁶²

The drafting loophole which left unregulated the method of presidential electors’ election had allowed partisans to coordinate efforts across the country on behalf of presidential candidates, and parties jumped into the fray with

determination; then the double vote confounded their efforts. The problem bedeviled both parties. Federalists had tried to remove the double vote after the misfortune of Jefferson's election as vice president in 1796 (thanks to Adams's insistence that New Englanders throw away votes from his own Southern running mate); but they lacked the votes to push it through. When the Republicans gained two-thirds of the Senate in 1803, they were determined to dismantle the double vote. The fight over the Twelfth Amendment began.⁶³

As proposed the amendment made two changes: first, it said electors would still cast two votes, but one vote would be designated for president and one vote designated for vice president. Second, the amendment provided that rather than the top five vote getters' going to the House (whose voting mechanism was left unchanged) for resolution, only the top three would go. Both changes were, in theory, proposed to bring the outcome closer to the people whose will, in theory, was expressed by electors. That is, without the double vote, electors could concentrate their votes on the one person they wanted to be president, and the results would not be skewed by the uncertain consequence of a second vote. To Jefferson's party, the election of 1800 was a fiasco, a most undemocratic result narrowly avoided. It was a moment when the minority party, having just lost the national election, was in the privileged position of choosing the president because it was the old House, not the new one, which cast the presidential vote; the old one was dominated by Federalists and they loathed Jefferson. Designation (as it was called) was designed to prevent such a travesty happening again. By each casting a single vote, electors of the majority party could organize efficiently and win the office. Reducing the number referred to the House to three (down from the top five) similarly was aimed at confining the final choice to the most popular candidates, rather than possibly having the House pluck from the back of the pack a low-polling candidate who for whatever reasons struck the fancy of the party that controlled the majority of state delegations in the House. Such was the theory.

But from another perspective, these changes were the surest means to dismantle the most republican mechanism of the Constitution. Their target was the Venetian-like architecture that had been erected, albeit with a flaw, to insulate the selection process from cabal and intrigue, from influence and organizing; their target was the removal of the barricades, especially the operation of chance, blocking the path of whoever could amass the numbers to win.

The opponents of the Twelfth Amendment variously described their concerns. Sometimes they spoke for small states fearing a presidency always in the control of large states. Sometimes they defended the rights of a minority against the tyranny of majorities. Sometimes they spoke as Easterners fearing the growing power of the South. The fluidity of these identities was markedly similar to the fluidity in the major battles in Philadelphia. Everyone agreed that the elimination of the double vote and reduction from five to three candidates going to the House would advantage large states and the majority party, but sometimes regional loyalty and being part of the majority party

mattered more than the size of one's state (just as in the Philadelphia fight over proportional representation). Senator James Jackson said in debate that although coming from a small state (Georgia) he nevertheless backed the amendment.⁶⁴ No one needed to have explained that the Senator supported the change because of his party affiliation and his hailing from the South. The South was advantaged in the Electoral College because of three-fifths (in a way similar to its advantage in the House), and if the Twelfth Amendment could help confine the election to the Electoral College, that result would be an improvement for the South and for whoever was the majority party (which Republicans then were). The congressional debate of 1803 involved similar complex alignments to alignments of Philadelphia, only now politicians had been through a decade of bruising combat; there had emerged a winner and a loser party; and a sense of remorse and foreboding, which had not characterized the proceedings in Philadelphia, was felt in Congress.

Federalists opposing the draft amendment focused on the fact that the Constitution had created the Electoral College as the nominating, not the electing, venue. In the Senate debate, New Jersey's Jonathan Dayton said that small states could never go along with a change that would "give power to the large States exclusively to nominate and choose your President."⁶⁵ The delegates "not only foresaw that a scene might take place" such as the tie of 1800, said Gouverneur Morris in 1803; delegates even foresaw that in resolving such a tie the House might vote for the less qualified person – "this was calmly examined," Morris said, and accepted, because the "great object" of the Constitution was that "contending parties" give "both votes to men fit for the first Office" in this first stage of the two-stage process. Casting two votes for the best people was the key part, for Morris, of defeating the "fraud, the force, and the corruption, which may be used to place bad men in high authority."⁶⁶

The double vote could defeat fraud and corruption because it made the outcome uncertain. Uncertainty, as we have seen, was esteemed in ancient and Renaissance republics, an earthly regulator of the overly ambitious strivings of mortals. If one strove too hard to master fate, said Federalist Samuel White of Delaware on the Senate floor, one would pay a high price. With the double vote, "it is totally uncertain which of the gentlemen may succeed to the high office," he said. Without designation, it was left "to circumstances not within his power to control which shall be the man." Because of that uncertainty, it was incumbent upon electors to vote for two superior people, regardless of party. But that is not what Republicans did in 1800, White said. The majority party did not honor the uncertainty principle, over-reached in the effort to secure both top jobs, leaving nothing for the minority, their scheme back-fired, and the matter went to the House to be resolved by the minority party: the system worked, he said.⁶⁷ Hubris was punished.

"Nothing can be more obvious," said Connecticut's Uriah Tracy the same day, "than the intention of the plan adopted by our Constitution for choosing a President. The electors are to nominate two persons, of whom they

cannot know which will be President.”⁶⁸ The framers knew there would be majorities and minorities, said Tracy, and to protect the latter “they placed the majority in jeopardy.” (Here Tracy was retracing an old thought of mutual dependence.) “If they [the majority] should attempt at grasping all the benefits of a President and a Vice-President within themselves, to the total exclusion of the minority,” the Constitution had a remedy, he said, and remedy was applied in 1800 when Republicans sought both offices. Punishing the majority party for over-reaching, Federalists had voted overwhelmingly in the House for Burr through 35 ballots, not for Jefferson. It was only the Herculean efforts of Burr’s fellow New Yorker Alexander Hamilton, who loathed Burr, that persuaded enough Federalists to abstain and let Jefferson win. (As Hamilton said of the Hobson’s choice, better a man with bad principles than one with no principles.) When people behave as the Republicans had, said Tracy, “The language of the Constitution to such majorities is ‘take care that you aim not at too much, for if you do, it is put into the power of the minority to check you, and by a judicious disposition of their few votes, determine the choice of President.’” To avoid this result, “the majority will probably be cautious in the exercise of power.”⁶⁹

In defense of the current intricate system, Federalists were extolling uncertainty, compulsory mutual dependence of hostile forces, and a bifurcation which put nominating in one venue and electing in the other, with the possible result that (as happened in 1800) the two venues would be under control of two opposing parties – these were good things, they said. They were techniques of old republics. Such was their brief for the system in place.

In forecasting the likely effect of the Twelfth Amendment, Federalists also predicted a coming dystopia. Under the system as amended by the Twelfth Amendment, said White, all attention will be focused “in making one great man. The eyes of each contending party will be fixed exclusively upon their candidate for this first and highest office; no surrounding object can be viewed at the same time, they will be lost in his disc. The office of President is, in point of honor, profit, trust, and influential patronage, so infinitely superior to any other place attainable in this Government, that, in the pursuit and disposal of it, all minor Considerations will be forgotten, everything will be made to bend, in order to subserve the ambitious views of the candidates and their friends.”⁷⁰ Hillhouse made a similar point: the result will be “champions of two opposite parties” to be carried to the House. Better would be a lottery, he said, than a contest of parties producing their own gladiators.⁷¹ Pierce Butler, who had been a delegate to the federal convention, said the framers were “apprehensive of an elective chief magistrate ... the putting up of any powerful man,” which was why they had electors choose two, and not vote for just one.⁷² The unattractive scenario these Senators sketched – of ambitious aspirants, champions with their loyalists and obligations, vanquishment without quarter – became commonplace in the century which was then beginning, but to them in the early national period it was a dystopia, so different were expectations still influenced by republican traditions.

To the other side, to the Jeffersonian Republicans, chance, mutuality, comity were antique concepts of no interest to a majority party. In a revealing moment of truth, a pro-Twelfth Amendment speaker derided the idea “of a minor faction, having political rights.” Referring to the seventeenth-century parliamentary act excluding Catholics from the throne, he said: “Election is our exclusion bill.” “It is against minority that election is intended to operate”⁷³ At another moment in the debate, Georgia’s Senator Jackson said: “Never will there be a federal president or vice president again elected to the end of time.”⁷⁴ (He was referring to the Federalist party.) He was right, but this speech did not speak well of the unifying properties of elections. In this understanding, elections were about extirpation.⁷⁵ The fair-minded William Plumer noted in his journal that the country’s reliance on elections “alone forms a strong objection to our form of Government.” “Democracy,” he said, “must overrun us.”⁷⁶

Federalists also saw a sectional issue raised by the Twelfth Amendment. Large states will gang up on small, said White of Delaware, the South and West will form an alliance to control perpetually the White House, and in the end events may lead to “a civil war ... and a separation.”⁷⁷ His was one of several Federalist speeches wherein large and small states were almost synonyms for slave-owning and free states.⁷⁸ Senator Dayton raised the three-fifths ratio and said if the Republicans wished to change the Constitution with the Twelfth Amendment, the Eastern states wanted it changed to represent their wealth just as Southern representation benefited from slavery.⁷⁹

Fear of being over-run by the South and West, by large states, by the majority party and sheer force of numbers – all were among the Federalist enumerated fears – and all came back to the same procedural matter: this amendment “is avowedly intended to secure a choice by Electors, and to prevent a resort to the House,” when the federal convention had structured the selection as a two-stage process, with electors nominating and House electing. The federal convention had devised this mechanism, said Tracy, because it had wanted to make it hard for a majority to control the presidential choice by “oppressive” conduct.⁸⁰ A tone at once plaintive and alarmist entered the Federalist speeches. The Constitution, Tracy said, because it afforded “protection of the weak against the strong; the security of the small against the great” was “the last, best hope of man, with a view to stability in a free government, and to the preservation of liberty in a republic.”⁸¹ This unusual phrasing occurred six years before Lincoln was born. Small states are being sacrificed now, said Tracy, but next it will be liberty, overwhelmed by the “potent magic of numbers and wealth.”⁸²

To some degree, this apocalyptic rhetoric was exaggerated and yoked to the service of purely Federalist partisan advantage. After all, some Federalists had backed a similar change to the Constitution only four years before after watching Jefferson beat their candidate for vice president because of the same unpredictable double vote. But other things were happening at this same fraught time destabilizing the Federalists and weakening their attachment to

the union. The congressional debate on Louisiana took place simultaneously with the debate on the Twelfth Amendment.⁸³ Federalists generally opposed the acquisition of Louisiana, as something not contemplated by the Constitution, as a measure likely to increase Southern weight in Washington, and as a tool for expanding slavery. (The third storm hitting Federalists at this time was the impeachment of Judge Pickering, which Federalists regarded as unconstitutional.) One must take the Federalist rhetoric with a grain of salt; a losing party will always claim the high moral ground when it cannot claim the votes. Still, the elegiac tone of their 1803 speeches has a certain sincerity to it, as they marked the obliteration of the most republican procedure of the Constitution.

If anyone could be taken for his word, it was the unbought Senator William Plumer of New Hampshire, whose independence made him a difficult ally. A Federalist, he was suspicious of party (even his own); he had an openness toward, and tolerance of, the opposition that were unusual in this era of deep division. He more or less befriended Jefferson, the Federalists' idea of an arch-villain, and yet notwithstanding his interest in bridging partisan gaps, in 1803 and 04 Plumer was deeply worried by what he saw. The Twelfth Amendment, on which he spent more time than any other single issue during his brief Senate tenure, crystallized his forebodings. In his two-hour floor speech on December 2, 1803, Plumer asked what better presidential selection system than the existing one "will so effectually secure the right in the people, & at the same time so powerfully guard against the views & designs of the ambitious? An intriguing, ambitious, aspiring man finds the difficulties" insurmountable presented by the double vote. Praising "this complex system, wisely established by the Constitution," Plumer said it was established because "*parties* exist, & in a government like ours they must exist," and under this system "each of the two great parties, will succeed in the election of one of those high offices. And if both succeed, that success will tend to moderate the range of party, & check the too sanguine views of the party that is most predominant. We are now called upon to destroy this complex system, & to establish a *new & simple* principle." By voting for just one man, "This will enable the most ambitious candidate to concentrate his whole force to a single point, & with greater ease secure his election." Only big states will win; and only the varying interests – whether agricultural or commercial – of the winner's state will then prevail. The amendment "gives increased power to the powerful," in particular to the powerful "dominant party" prevailing in the largest states.

Plumer next moved to the sectional theme, noting that the South and West were set to grow faster than the rest of the union, and when Louisiana was added to those states, the Western and Southern states "will, on all occasions, decide the election just as they please." Touching the most sensitive issue, he said Southern states had sixteen additional seats in the House and in the Electoral College because of their slaves. They now intend to "destroy the *complex system* of election – a principle which gives weight & influence to the small states, & to the eastern portion of the Union, & still retain

the right, on consequence of your slaves, to the extra number of Electors & Representatives.” Measuring the apportionment attributable to enslaved persons, Plumer said, “negro Electors exceed those of four states, & their representatives are equal to those of six states.” The compromise of three-fifths was tough enough for the North to swallow; greatly to increase the effect of three-fifths now by placing the election in the Electoral College will produce, he said, an effect in New England of a nature “time alone will unfold.” Those of East “have too much pride to be reduced tamely to a state of insignificance.” How will this change “cement the Union of the United States?” It will “give power to the strong & weaken & enfeeble the small, states ... I therefore hope the Constitution, which has been declared [quoting Tracy] *the world’s best hope*, will not be impaired”⁸⁴

Plumer’s long speech, sounding like a eulogy, touched on old principles now suddenly threatened. To be safe, election systems needed to be complex, not simple. (Privately he was not sure that elections could ever be safe.)⁸⁵ Things should be made difficult, not easy, for the ambitious. Parties are a fact of life in a free society, and guard rails need to be erected to keep the temporary majority from over-running the interests of others. All these concerns were triggered in his mind by the Twelfth Amendment, and they were bound up with additional concerns about the party that happened then to be in majority and had its regional stronghold in the slaveholding South. One month later, the Senate had a rancorous and ugly debate about whether slaves were needed in the new territory of Louisiana. Plumer noted in his diary that one Southerner assured the chamber they were; “white people cannot cultivate it,” he said of the new territory; it was too hot and the work too hard. Plumer despaired. Whether because of the increase of slave power thanks to three-fifths, which he called a “real grievance,” or the issue of slavery by itself, Plumer noted to himself, “This very subject of Negro slavery will I am convinced eventually produce a division of the United States.”⁸⁶

In fact, a secessionist movement was underway. Plumer was a conspirator but not its leader. That role fell to Timothy Pickering, helped by Tracy, Fisher Ames, Roger Griswold, and James Hillhouse. This was a regional, New England-based movement. The Twelfth Amendment was probably the catalyst, together with the Louisiana acquisition. Plumer justified his own thoughts about secession by citing the aggrandizing of Virginia, the belittling of New England, and more: “the negro votes made Mr Jefferson president” and those same votes passed the Twelfth Amendment, which “destroys one of the first principles of our Constitution.” The votes of New England “will be swallowed up in those of slave-holders.”⁸⁷ The secession plot petered out when one person the conspirators hoped to enlist, Aaron Burr, was defeated at the election in New York, and another, Alexander Hamilton, was killed (by Burr). The movement was revived, but without Plumer, a few years later during the War of 1812.

The Twelfth Amendment passed narrowly in the Senate and the House. With regard to the latter, Plumer wrote a friend that “if we could take from the House

of Representatives the negro representation, that rotten part of the Constitution, the resolution would not tomorrow pass.” The vote was largely along party and regional lines. Madison, the erstwhile critic of majorities, helped organize the partisan passage of this amendment.⁸⁸ Republicans’ argument was straightforward and the same as Madison’s and Wilson’s in 1787: the minority ought not to be able to govern the majority. Or as Senator Cocke said, “I am ... for a government of the people ... not of checks and balances”⁸⁹ The Amendment was adopted in 1804 in time for Jefferson’s re-election.

Thus the most republican plank of the Constitution was replaced. This moment was a procedural inflection point of significance, when the bands were loosened, and interest, influence, and ambition set more free in the divisive pursuit of national office. With the Amendment, the strictures of hermeticism and disinterestedness became anomalous and irrelevant. As federal convention delegate Rufus King said years after the Twelfth Amendment, we all know that our Philadelphia plans to prevent “undue agency or influence” and “combination” have failed.⁹⁰ The system had not worked efficiently, as we have seen, but the most inefficient part was the most important part: the double vote throwing uncertainty into the process to frustrate the best organized efforts. The Electoral College as nominating venue with the double vote was a procedural expression, the last one, of the ideal of a hermetic and neutral political process hailing from an old tradition. It had formed a part, perhaps the most important part, of the framers’ efforts to balance and make mutually dependent the major competing interests of big and small states, agricultural and commercial, slave and free, and, as Tracy had said, to put incentives in front of the momentary majority not to push things too far. That it survived no longer than fifteen years and was replaced eventually by outright competition of parties, interests, and ambitious individuals was owing in part to the procedural shortcomings of the original drafting, in part to the less than full-throated republicanism of politicians who when faced with party or principle tended to veer toward party, and in part to something else more ineffable having to do with the rapidly changing American political mind in which the ideas of popular majorities and rule by numbers had gained predominance.

Nothing better illustrated the intellectual sea change which occurred from the federal convention to the Twelfth Amendment than the new words used by John Dickinson to describe Article 2. One of the principal inventors of the article, Dickinson wrote a letter to a kinsman in 1802, recalling his role at the federal convention, in particular the meeting of the Committee of Eleven when he took an active part in redesigning the plan. He said (in 1802) it had been their intention that the electors would be chosen by the people who “would be more immediately concerned in his Election.” The “only true and safe Principle on which these [presidential] powers could be committed to an Individual, was – that he should be in a strict sense of the Expression, the *Man of the People*.” (The bulk of this reminiscence was that the framers did not intend state legislatures should control the electors’ selection and that

this feature should now be abolished.) Then he proceeded: "By the Constitution it was designed, that the President should entirely owe his Elevation to the will of the people directly declared through their Organs the Electors. This was a broad and solid Base for him to stand upon. There was no Cloud interposed between him and the people, to Obscure Objects." He ended by saying how vast is the power given to the states if they choose not only the Senate but also effectively the president by selecting the electors, and by "not specifying who is Voted for a President, and who is Vice President may cause Confusion"⁹¹

This 1802 recollection was different to his words of the time. In 1788 Dickinson had written in *Fabius IV* the Senate represented the sovereignty of the states, the House the people, and in the president "the sovereignties of the several states and the people of the whole union, may be considered conjointly represented." His purpose in this and other *Fabius* letters was to draw attention to the "close connection of the parts" with the whole, the "strong combination of truly democratical republics," the priority that "the interest of each part [be] consulted." In *Fabius VIII*, he returned to the Presidency: the "sovereignties" of states (through the House voting by states) and of the people (through electors) were "conjointly represented in a president."⁹² In addition to *Fabius*, his private notes during the convention stressed the danger of numbers and simple majorities, and on the convention floor he made his crucial suggestion for nominating by states and electing nationally. All that was fifteen years earlier. What happened between 1787 and 1802? Dickinson was older, sicker, and said he was recalling the deliberations of the Committee of Eleven without notes, from recollection. Dickinson was a Jeffersonian Republican and Republicans were leading the charge for abolishing the nominating role of the Electoral College and the electing role of the House.

Perhaps most importantly, the mental landscape of the country had altered. The ratification debate, with its full-throated expounding of popular power, had intervened. So too had four presidential campaigns, in which organizing and canvassing unexpectedly mattered more than deliberations by closeted electors and closeted House members. And lastly, so too had intervened a politics of pure pugilism in which it was irresponsible for a political leader not to dedicate himself to destroying his opponent, irresponsible not to try to assemble popular and legislative majorities by any means at his disposal. In this desperate setting, the federal convention delegates' resort to filtration, their cautions about the rule of numbers, about interests seeping through even with the sieve of filtration, about the danger of cabal and intrigue – their driving preoccupations, by the time of Jefferson's first administration, looked almost quaint, a whole other world away. A mental sea change had occurred. By 1804 it was no longer tenable, it was even embarrassing (except for alarmed Federalists), to defend the presidential choice as the product of two different sovereignties, as the harmonious, early Renaissance mixture of nominating, chance, and deliberation. When Dickinson had himself so evolved as to write to his kinsman that the president should

be the *man of the people*, using the phrase (in his italics) which Wilson had made popular in 1787, the republican thinking of the federal convention, to the extent it had an airing even there, was truly a thing of the past.

Other than the Thirteenth Amendment abolishing slavery, no amendment has so manifestly transformed a major Constitutional arrangement as did the Twelfth Amendment, substituting a purpose with its very opposite. The original Article 2 and the changed Article 2 were different in both technique and goals: the one hermetic and deliberative, carefully shielded from influence and interest, spiced with chance; the other, which replaced it, reliant on campaigns, organizing, influence, and numbers.

It is hard to over-estimate the influence on a polity of the methods used to fill high office. Left unregulated, the competition for that office gives scope to ambition and sectional and economic and social interests all focused on individuals – heroes and villains– who form a drama of more than passing interest to the public. Few events can energize more efficiently the division of people into separate warring camps than such a personal drama, told and retold periodically, and occurring within the narrow, high-pressure confines of a short campaign. Unchecked, the pursuit of highest office can release centrifugal energies spilling over the bounds of the campaign itself and threatening the unity of the country. It was such drama that well-constructed old republican procedures were designed, among other things, to prevent, or at least blunt and moderate. The early republic made a stab at regulating elections with such procedures, and then abandoned the effort.⁹³

A disfigured electoral college

Although the amenders eliminated the aleatory feature in presidential selection, the Twelfth Amendment left intact other provisions of Article 2 that had been integral to the Electoral College's role as the nominating venue but were now at odds with its newly appointed electing role. This contradiction – this mangling of the core mechanics of Article 2 – became more pronounced with the passage of time.

In the early years of the nation, state legislatures had assigned the task of elector selection generously to themselves. Only four states in 1789 permitted the popular election of presidential electors. Then with the passage of the Twelfth Amendment, and likely influenced by the majoritarian momentum gaining speed in the early years of the century, states gradually bestowed this right on voters (sometimes taking steps backward too). By 1832, only two states used their legislatures for electors' selection; twenty-two deferred to voters.⁹⁴ This migration to popular voting was a partial culmination of the majoritarian agenda set out by the framers of the Twelfth Amendment.

However, it was only partial, because states, using the portions of Article 2 still giving them control over the manner of selection, could mandate general or statewide tickets for electors and winner-take-all results. The winner-take-all

resort cannot be blamed on the Twelfth Amendment; it began, as we have seen, before then. As soon as organizers (such as Madison and Hamilton) began canvassing for elector votes they began thinking about maximizing their parties' weight by delivering the entire elector slate of states which their parties controlled. There was a rational reaction to party and regional competition which was enabled by the framers' drafting loophole, the failure to prevent pre-college organizing. In the first elections of the new century, states applied winner-take-all in some cases where legislatures elected electors, and in some cases where voters did. By 1832 nearly all states used winner-take-all to enhance the states' weight (and the weight of the party that controlled the state).⁹⁵

These developments were working against each other. More and more voters were being asked to participate in presidential elections, while more and more states were adopting winner-take-all. The result was that it was easy for the states to vote one way and a majority of the nation's people to vote another. Someone could be elected president without reaching a majority of the popular vote, and it could not be guaranteed that he (they were all hes) even needed to win the highest popular vote. In a nation with a rising faith in democracy, such a bizarre prospect was not the product of careful design. Rather it was the vestigial states' discretion in the process, inherited from the college's origin as the nominating venue, clashing with the ascendant majoritarian doctrine, that made the college a home to ill-fitting procedures.

Plurality wins might not have greatly disturbed most of the framers – if the outcomes had been achieved by the intended process: by nominations followed by deliberation by the states (voting in the House). In a consensus-oriented selection process, numbers mattered less than deliberation. The framers would not have stipulated that the top five candidates from the college go to the House for final selection had they not been prepared to accept as president a plurality winner – or not even the winner; any of the five was eligible for election. But that result would have been a deliberative one, made in the House, by members voting as state delegations in an indirect sounding of the states. That is different from a plurality won by counting heads.

The founders explicitly did not approve presidential selection by popular voting (let alone the possibility of pluralities won from popular voting). When Madison and others at the last minute in the convention tried to change the final plan by allowing a plurality of electors to be sufficient, he was defeated. Framers could contemplate a consensus choice being not the most popular candidate, but they would not permit a plurality winner in a head-count choice. It is highly unlikely that the federal convention delegates would have approved as a sufficient presidential threshold a plurality won among citizen voters, whom they generally distrusted, having voted down a plurality won by state electors whom they considered more capable than average voters; and if that is the case, it is likely they would have been dismayed by the system that emerged after the Twelfth Amendment.⁹⁶

The reformers could have avoided the confusions of the college if they had handed the election over to a popular vote. They did not do that because they

did not want to do that. As much as the majority party wanted an unblocked path to the presidency, it still did not trust voters and preferred to mediate voters with more informed electors. Therefore, the Electoral College was not abolished; it was disfigured. The amenders made substantial strides toward converting the college into the electing forum by making organizing easier, but they maintained the centrality of states.

The unsuitability of the reformed college became apparent during the presidency of James Monroe, less than two decades after the Twelfth Amendment was enacted. Hamilton and Adams had managed to so divide the Federalist Party that it never recovered after the election of 1800; Jefferson and Madison completed the demolition job thanks to policy expropriation by the Democratic-Republicans and to Andrew Jackson's miraculous military victory in New Orleans in 1814. But the Jeffersonian Republican triumph almost destroyed the Republicans' own party. Without its *metus hostilis*, as Romans had famously called Carthage, without the Republicans' unifying fear of an enemy, Republican coherence collapsed. President Monroe complained privately to his predecessor Madison of his predicament. With peace and prosperity, he wrote, one would have thought the nation would have had a "common effort to promote the public good," but alas, "There is no division of that kind [prevailing before the war], to rally any persons, together, in support of the administration. The approaching election ... is still much to be dreaded." ⁹⁷ Having an opposition was bad enough; not having one was worse.

He was right to dread the upcoming election of 1824. The Virginia dynasty having come to its end of suitable progeny, both parties having lost strength (the one collapsed, the other disunited), there was no obvious successor to Monroe. Four principal aspirants emerged, all of them Republicans (or Democratic-Republicans), and all four received substantial votes from the Electoral College. As no contender reached a majority, the election was decided in the House. There John Quincy Adams won, though he was not the winner of the plurality of votes, neither popular nor Electoral College votes. Thanks to the Twelfth Amendment, only the top three candidates emerging from the Electoral College fought it out in the House. Adams as Senator, twenty years before, had opposed this part of the Twelfth Amendment in 1803 and had advocated the top five (as in the original Article 2) in order not to deprive small states and minority parties of their chances in the presidential election. Ironically, if Adams had prevailed in 1804, Henry Clay, who came in fourth in the electoral vote in 1824, would likely have been elected instead of Adams. Clay was the able and popular speaker of the House that chose the president that year. Instead, Adams won and made Clay his Secretary of State in what Andrew Jackson and friends considered a bribe. The Adams presidency never recovered from the smell of illegitimacy, and Adams was not the unhappiest man about when his presidency came to an end after, as his father's had, a single term.

It was apparent to professionals that something like this debacle would occur before it happened. Without a cohesive political party able to organize electors around a presumptive leader, multiple candidates would arise and the election would inevitably be thrown to the House. That was the outcome the amendment had sought to avoid. Months before the election of 1824, knowing the disarray in the Republican party, the Virginia aristocracy flew into action to try to avoid another mess like that of 1800.

On January 10, 1823, Virginia Senator John Taylor introduced a resolution calling for changing Article 2 so that if the Electoral College did not succeed on the first vote, it should convene and conduct a second vote among just the top two candidates, and if a tie occurred one of the two should be chosen by the House of Representatives.⁹⁸ Monroe's son-in-law, George Hay, took up the cause and began lobbying for a version of the same, appealing to Jefferson and Madison (among others) and writing articles. Jefferson responded that he was too old and sick to involve himself in "ancient animosities," but privately he thought the House voting by states was "the most dangerous blot in our Constitution" and he favored the House voting by capita (bad as that was, he said).⁹⁹

Possessing more energy than Jefferson, Madison threw himself into the Electoral College conundrum once more. It is fortunate he did, because he left a record of his thoughts; and his thoughts evinced the confusion, contradictions, and bafflement of this most intelligent politician trying to think through once again, almost 40 years after first tackling the problem, how to elect a president.

Madison said he agreed with Jefferson (and Taylor) that the House or legislature voting per capita was an improvement. It will be recalled that this position was not different from his position and that of Wilson and Rutledge in the federal convention, and tended to favor both larger states and the majority party, and to some degree also the South because of three-fifths. Madison also wanted to lessen the chance that the second stage should have to be resorted to, and to increase therefore the chance that the Electoral College would make the decision. This goal had also been the Republicans' goal in amending the Constitution in 1804. His primary aim was that the president be "the real choice of a majority of his Constituents." Thus far, he was clear: against the House's role, and for identifying the preference of the "majority" of voters.¹⁰⁰

But how divine that magic "majority of his Constituents?" Madison continued to be dead set against popular election. When some proposed reducing or eliminating the role of electors and replacing it with direct election, Madison, speaking of the "advantages in the intervention of Electors, and inconveniences in a direct vote by the people," said that even though electors were "generally the mere mouths of their Constituents, they may be intentionally left sometimes to their own judgement, guided by further information" than voters had to hand. Moreover, electors could on occasion ascertain that "the first choice of their Constituents is utterly hopeless If an election be referred immediately to the people, however, they [the people] may be liable to

an excess of excitement on particular occasions.” With “millions” of votes being cast, “active partisans [will] push up their favorites to the Upper places on the list, and by that means force a choice between candidates, to either of whom, others lower on the list, would be preferred.” Madison was exhibiting a concern about the Condorcet problem of false winners, and in Madison’s example, the danger lay with popular voting and political organizing.¹⁰¹

So he was for a majority outcome, but against popular voting, and that left him with improving the Electoral College. But it was not clear how the Electoral College could be the venue for marshaling the people’s majority opinion when Madison still regarded the Electoral College as it had been originally conceived, as a hermetically sealed, neutral venue, safely removed from “partisans.” There, in the college, he said, individuals more informed than voters would make selections based on their superior knowledge. There speed and stealth would reduce the dangers of agency and influence, he said. Madison disapproved of Taylor’s proposal that there be a second vote by electors if the first one failed to produce a majority, for such a second convening of electors “relinquishes” the “policy of the Constitution in allowing as little time as possible for the Electors to be known & tampered with. And beside[s] the opportunities for intrigue furnished by the interval between the first and second meeting, the danger of having one electoral Body played off against another ... would be at least doubled.” He cited as an exhibit the “false assurances” conveyed “at the critical moment” in 1801 which led to the crisis with Aaron Burr.¹⁰²

The most striking evidence of his fealty to the old college was his surprising recommendation to re-introduce the double vote for president. Madison had loathed the double vote after it alone had almost elected Aaron Burr. He had successfully abolished it by passing the Twelfth Amendment. Now he proposed to give each elector two votes, as Article 2 had originally provided, but the second-place finisher would not end up as vice president; rather the two votes were intended purely to maximize the chance that someone would win a majority and a detour to the House could be avoided.¹⁰³ It was a desperate thought. It was a sign of the durability of republicanism in this one corner of the Constitutional structure, but also a sign of a certain confusion. Madison had dismantled the aleatory system and now wanted to restore a part of it. The double vote would have brought chance back into the system, which he and his partisans, and Hamilton and *his* partisans, had strived so hard to work around in the 1790s. He and Hamilton had excelled in presidential campaign organizing and now he wanted to prevent it. They had jointly pierced the hermetic walls of the Electoral College, and decades later Madison was suggesting to re-erect them. He wanted to smooth the way for a majority to gain the presidency without, however, handing the matter over to the people and not to political organizers either.

Meanwhile another 1787 veteran, Rufus King, was proposing his own reforms. King wrote privately on January 1, 1824, that what mattered was

not “who shall be the president, but whether the People are free to decide that matter for themselves ... the presumed Intelligence and probity of the People, demand that the choice of Electors be placed in their power” He was alarmed by the “unconstitutional Caucuses” and “cunning and dangerous Intrigues” which deprived the people of their choice.¹⁰⁴ Three months later King took to the floor of the Senate to denounce private meetings – not confined to legislators but including foreign ambassadors, court justices, heads of departments, governors, and candidates “with their favorites” who “supersede the separate powers of the states” in presidential elections. “A new, extraordinary, self-created, central power, stronger than the power of the Constitution,” has arisen, he said. He compared these secret conclaves to “a sort of freemasonry, the sign and the password,” to nominate their choice, and thereafter through “arranging” and “combining” control the election. All of this, said King, was illegal, and violated the intent and purpose of Article 2. He proposed laws be passed to suppress pre-electoral college organizing. This step would close the loophole which Monroe had identified that the framers had left in Article 2, permitting organizing before the electoral college met. King also wished to rescind the Twelfth Amendment to restore the founders’ plan of avoiding “intrigue, combination, and corruption” and allow “a free and pure election.”¹⁰⁵

Madison and King did not like each other.¹⁰⁶ But in 1824 they had a similar reaction to the unfolding electoral chaos. (King more railed at caucuses than did Madison, whose party had used caucuses adroitly to perpetuate the Virginia dynasty of presidents.) They both wanted to restore the hermeticism of the process which now had fallen prey to “the ablest, and most adroit Intriguers throng” in the country. Madison wanted to go further and reinstate the double vote. King wanted to rescind the Twelfth Amendment. But their thinking largely coincided. They thought the founders’ intention had been lost and they wanted to restore it. These aging founders knew that they had by their own partisan efforts unleashed something powerful and uncontrollable in the organizing of presidential campaigns, were not quite sure what to do about it, and now in the collapse of parties were struggling to lash it down by reviving a version of the hermetic system originally created.

In hindsight, the thought appears unrealistic. It was difficult to imagine that after three decades of political organizing and presidential campaigns, a depoliticized process of presidential selection was remotely possible. Moreover, the thought called for combining two irreconcilable goals: giving “the real choice” to the people on the one hand and excluding organizing and campaigning on the other. (It reminds one of the late Roman *ambitus* effort to run a democracy while suppressing voter contact.) Achieving this ill-suited pair of goals within the walls of the Electoral College was bound to fail. The college had made sense as a nominating body, in its original form, but was not easily converted to elections. In the best of times, when there were but two candidates promoted by well-organized parties, it had a reasonable chance of reflecting the majority’s preference (a preference, that is, confined

to and between just two party nominees). In the worst of times, when there were multiple candidates or intensely felt national division (or both), the college had little chance of divining the majority's opinion and reverted to its vestigial nominating function of representing states (and regions). In moments of extreme division, the college's reversion to its nominating character, while nonetheless still electing, could be destructive in its effect.

One of those moments was 1860. The Twelfth Amendment, as we have noted, although removing the double vote, left intact the states' discretion in how to conduct balloting, including the decision whether a name was even presented to electors for consideration. In 1860, states used their discretion. None of the four principal candidates was on the ballot in all states. Voters in at least ten states were not given a ballot with Abraham Lincoln or the Republican Party written on it; voters in three or four other states could not cast a ballot for Stephen Douglas. Lincoln and his vice presidential running-mate Hannibal Hamlin did not receive a single vote in the ten Southern states.¹⁰⁷ The electoral process in this year of crisis had more the character of states' (and regions') backing their favorite sons, which had been the original nominating idea of the college, than it had of a national election system. It was this regional character of the college output that Southerners focused on in their formal secession statements in the fall of 1860. They declared that Lincoln was a sectional victor, not a national one.¹⁰⁸

Contributing to the crisis was Lincoln's plurality win of under 40%.¹⁰⁹ The slender mandate occurred against a decades-long prologue of Southern predominance when Southern political leaders became habituated to managing national councils. They passed a gag order in the House forbidding even the discussion of slavery, passed the accession of Louisiana and Texas, defeated the Wilmot Proviso, and passed a fugitive slave law much despised in the North. Eighteen of 31 antebellum justices of the Supreme Court were slaveholders. Nearly all presidents were slaveholders, and the few who were not moderated their slavery positions (except John Quincy Adams). "The South was in the saddle of national politics" from the beginning of the republic through the 1850s – and then Lincoln arrived.¹¹⁰ For Southerners, long used to their out-sized role in national councils, the elevation to the presidency of their regional enemy, with 39% of the popular vote, was unacceptable. The evil of slavery was plain, the immorality of defending slavery was plain, the immorality of breaking up a nation to protect this evil was plain. Those truths are so self-evident and glaring that one can lose sight of the part played in this monumental crisis by a half-reformed nominating system ill-suited to the task of electing.

In medieval and Renaissance republics, nominating systems were heat exchangers, taking hot local and personal interests and feeding them into a complex multistage machinery out of which flowed cooled-down national selections – cooler because the local originators did not control the national outputs and usually chance played a role in doing so, and sometimes so did formulas for apportionment. Importantly, the nominating – the hot part – was distinct from the electing, the cold part. In 1860, the two functions

occurred in the same over-freighted stage, with calamitous result. The Electoral College was a bellows, not a heat exchanger, in 1860.

A version of the calamity had been foreseen by the opponents of the Twelfth Amendment. In the Senate debate in 1803 over the proposed Amendment, Federalists, whose words must be taken with a grain of partisan salt, portrayed the aleatory procedures of Article 2 as the bulwark to the republic's survival, the removal of which would usher in a new harsh politics of regional champions, of vengeful winners and vanquished losers. They predicted the subjection of one region to another, in terms similar to those used by the secessionists of 1860 (with whom they would have had nothing in common). In 1803, they said this transformation of American politics would end in civil war.¹¹¹

The dangerous dynamo of territorial expansion

The problems created by electoral procedures were inadvertent; they arose from the unanticipated difficulties of adjusting an aleatory presidential selection process to a political culture in the midst of being rapidly transformed by an unstoppable majoritarian momentum. By contrast, the other great procedural failure of Philadelphia was deliberate. That was the decision by the convention to encourage perpetual competition between sections of the country for voting power in Congress (and for votes in the Electoral College), as each region strove to increase its weight in national councils. This decision was not taken lightly. It was heavily contested. It had more consequence for the breakdown of the Union than the procedural problems of electing, grave as those were.

The problem of how to deal with expansion was debated on the convention floor (see [Chapter 6](#)). Gouverneur Morris took the lead in arguing first that new states should not enter the union on equal terms with the original thirteen, and next that no formula should be fixed for future apportionment but rather the matter be left to later Congresses (at a time when Northern states held a majority in both houses). On both counts, he lost. Some delegates were not unaware of the history of this topic. William Samuel Johnson recalled that republics of antiquity and of more recent vintage had been careful not to destabilize the political structure by altering painstakingly arranged apportionments of power. The Roman Republic added non-contiguous new accretions of land to the same existing 35 tribes after 240 B.C., a time of great territorial expansion. Some republics (including Rome) created a class of unequal citizenship: citizens without suffrage or with a lesser suffrage. City-republics of late medieval Italy generally did not admit as voters those subjects outside the city walls. Both of these remedies— adding new lands more or less equally to existing sub-units of the republic, and creating a second-class citizenship — were proposed at the federal convention as ways of facilitating the country's expansion.¹¹² They were defeated. Delegates were not unaware of the risk they were running when they opened the doors to regional competition, but they chose to run it. They might have chosen one of the alternatives could they have foreseen the consequences of their decision.

Tension over future apportionment was apparent before the ink was dry on the draft Constitution. During the ratification debates, Northern Federalists, defensive about three-fifths and the increase that clause promised for Southern voting power, tried to put their audiences at ease by saying slavery was a dying institution. Congress would bar slavery from new states, promised James Wilson, and slavery eventually would die. Their comments were mirrored by Southern Antifederalists, opposing ratification, who said the same thing – that the North would wipe out slavery and control Congress and Electoral College to eternal Southern disadvantage, so the Constitution ought not be ratified.¹¹³ By contrast, Federalists in the South gave assurances to their audience on the “Negroe Business,” as Charles Cotesworth Pinckney put it. The East is full of people, he said; “we Must increase largely – to the southward & southwestward,” and he vowed slaves would be imported as long as South Carolina had one remaining tree left in its swamplands. As a result, the more we import slaves, he said, “the greater is our influence to be in their government by representation of three-fifths.” Northern Antifederalists painted the same picture, but as a horror rather than a paradise.¹¹⁴ On the whole during ratification the Southern debate was more consumed than was the Northern with the entwined issues of slavery, westward expansion, three-fifths, and control over the national government, because it was the South, not the North, that found its institutions under attack; and a tone of worry surfaced. But in both regions, defenders of the new Constitution had to explain the matter away, with directly opposite arguments.

Once ratified, the Constitution gave two avenues for a region to enhance its weight in the national government. One was by adding states in either the North or South. The other was by the decennial reapportionment following each new census. It was an augury of what was to come over the long travail of the next 60 years that the first census, that of 1790, triggered a bitter contest over apportionment in Washington’s first administration.

Article 1 did not spell out the formula for allocating congressional seats; it did no more than state that the number of representatives should not exceed one for every 30,000 people. Congress was therefore free to formulate allocation in any one of several ways.¹¹⁵ One method of calculation in 1792 favored larger and Southern states and theirs was the method passed by the House. Another method favored smaller and Northern states and theirs was passed by the Senate. After a long while, the two houses compromised in a way that distinctly favored Northern and smaller states. One of the arguments made by Northerners was that three-fifths already advantaged Southerners and therefore if there were to be any discretion applied in interpreting apportionment rules, the North was owed a favor. President Washington consulted his five closest advisors – three Southern and two Northern. Those five divided along sectional lines. Washington sided with the Southern camp and vetoed the apportionment bill, the first presidential veto. The bill he signed was somewhat less advantageous to the North than the vetoed one.¹¹⁶

One must ask whether Washington acted as a Virginian. In the federal convention, Washington, as presiding officer, had not spoken up in debate a single time, all summer, until the convention's last day, September 17, when, noting this was his first intervention, he asked if the delegates would replace the figure 40,000 with 30,000, referring to the minimum number of inhabitants entitled to a representative in the lower house. The convention accepted the change without debate. Although there is no certainty, it is likely that this change was thought to advantage rising states, and the "East being full," those were expected to be in the South. This unusual eleventh-hour convention intervention, and his siding with his Southern advisors against his Northern advisors on the veto, suggests Washington was not indifferent to the South's stake in political apportionment.¹¹⁷

This early confrontation over apportionment pivoted on the fact that House representation was principally a matter of representing states and regions. Constituents and the districts where they lived did not figure always in apportionment. States were under no requirement to divide themselves into districts and allocate congressional representatives to individual constituencies. Many did not place congressmen under the control of constituencies. As a consequence, states, not districts and their voters, were represented in this, the only popular, branch of government.¹¹⁸ The reform of 1842 made that no longer possible. Like nearly everything touching apportionment, the reform was driven by the competition for power between North and South, as the latter saw itself being overwhelmed by general ticket voting in the Northern states (growing faster than anyone had expected in founding days) and so backed the mandate for congressional districts.¹¹⁹

As a result of the 1792 apportionment, the three-fifths ratio gave to the Southern states anywhere from twelve to fourteen additional congressmen and the same additional Electoral College votes. These numbers would grow in time and cause acute anxiety among Northern politicians. All of South Carolina's increase in congressional seats from 1790 until 1820 was attributable solely to the increase in the state's slave population. From the beginning of the republic until the Civil War, that state's enslaved (and nonvoting) population accounted for between 23% and 33% of South Carolina's congressional representation.¹²⁰ Members from five Southern states (excluding Maryland) constituted some 46% of the lower House, whereas had there been no three-fifths rule that figure would have been about 41%. In the Senate, those five states accounted for 38% of Senate seats. When new states were added, two of the first three were spin-offs of Southern states, Kentucky and Tennessee (the third was Vermont), and as a result the electoral math was tilted even more toward slaveholding states than was reflected in the first national census. When Jefferson was inaugurated, Federalists began calling him the "Negro President" on the grounds that he would not have been elected had it not been for the three-fifths clause. John Quincy Adams said, "The election of Mr. Jefferson to the presidency was, upon sectional feelings, the triumph of the South over the North – of the slave representation over the purely free."¹²¹

In 1800 a new census was held, there was a new apportionment of the house and electoral college, and a further increase in slavery-related seats and votes. It was in the aftermath of that election, amid growing concern in New England about its dwindling weight in the Union, that Jefferson began his efforts to amend Article 2 with the Twelfth Amendment. The simultaneous acquisition of Louisiana confirmed in Federalist minds that they were becoming strangers in their own land. They imagined with the admission of many new states from the territory of Louisiana – roughly twice the land mass of the original thirteen colonies (excluding their most ambitious frontier claims) – that the free states would be swallowed up by slave states and the presidency would remain in Southern hands forever.

Senator William Plumer took Dickinson's simile from the federal convention and foresaw the planets crashing out of their orbits. States were now nothing more than "so many satellites moving round and subordinate to Virginia." This, he said, will only get worse.¹²² Timothy Pickering (of Massachusetts) and Roger Griswold (of Connecticut) held that the Louisiana Purchase broke the "regional compromise" on which three-fifths was based.¹²³ Former convention delegate Gouverneur Morris said that the Constitution he helped write did not grant the president the power to purchase Louisiana.¹²⁴ Former delegate William Samuel Johnson said it was so obvious that the government could not do what Jefferson was doing that the topic had not merited discussion on the federal convention floor.¹²⁵

Another former convention delegate, Rufus King, noting the Congress had the power to admit new states, asked whether the president could do so by entering binding agreements obligating the Congress to act? He asked a question that would preoccupy Americans for the next six decades: could Congress put conditions on the admission of the new states or not? If not, the treaty signed by the executive required the country to protect the property of the inhabitants; that property included slaves; and as a result, he asked, will not the "present inequality, arising from the Representation of Slaves, be increased?" The country would not want to extend this (three-fifths) mistake, "one of its greatest blemishes," so should we not try to limit representation to "free inhabitants only"?¹²⁶ Some years later, Madison's friend Tench Coxe looked back on this moment and called it "this Crisis of our country," prompted by admission of new states, "particularly of Louisiana," and the likely augmentation of representation of slaves.¹²⁷

The next crisis, triggered by the War of 1812, produced a list of sectional grievances. Convening in Hartford in 1814 to formulate desired changes to the Constitution, Federalists listed as their first demand abolition of the three-fifths clause. They also called for a vote of two-thirds, rather than majority, for admission of new states. Andrew Jackson's surprising victory in New Orleans caused the Federalists to decamp in disarray, put paid to the New Englanders' rebellion, and contributed to the demise of their party. But the hex of expansion continued to weigh heavily on Northern politicians. The admission of Missouri a few years later reprised the same arguments which

by now were familiar to the protagonists. Northerners in Congress said that three-fifths unfairly distributed power to the South, and Southerners held that Northerners were breaching the understanding of 1787 by threatening slavery and angling to keep the South in permanent, political subordination.

The Missouri Compromise, allowing no slaves above the latitude 36.30 (except in Missouri), bought a period of peace but left no one happy, including surviving founders. James Madison wrote his successor Monroe that he had “been truly astonished” by the declarations tossed around in connection with the Missouri matter. The clause the framers had written restricting migration of slavery related only to importing “into the U.S.” not within it. Nothing in the Constitution (the late James Wilson’s interpretation notwithstanding), said Madison, permitted Congress to control the movement of slaves between states.¹²⁸ It was left as usual to a South Carolinian, Charles Pinckney, to make the case aggressively, on the floor of the House. He said it was untrue that in the convention three-fifths was wrung from the North as a concession to the South. The North is as “fully represented as they ought to be; while we, the Southern members, are unjustly deprived of any representation for a large and important part of our population ...” (referring to the two-fifths of slaves not represented). It is the North and East who are “fully endeavoring, by every effort in their power, public and private, to take from the Southern and Western States, which are already so greatly and unjustly deprived of an important part of the representation, a still greater share; to endeavor to establish the first precedent, which extreme rashness and temerity have ever presumed, that Congress has a right to touch the question and legislate on slavery; thereby shaking the property in them, in the Southern and Western States, to its very foundation, and making an attack which, if successful, must convince them that the Northern and Eastern States are their greatest enemies” Instead they should be “highly pleased at the dexterity and management of their members in the Convention, who obtained for them this great advantage” and they should be pleased with the “moderation and forbearance with which the Southern and Western States have always borne their many bitter provocations on this subject” The real reason for the attack on slavery right now, he said, was “to gain a fixed ascendancy in the representation in Congress” and the “flimsy excuse” the North gives is “that they have been hardly treated in the representation of this House, and that they have lost the benefit of the compromise they pretend was made”¹²⁹

Congressman Joshua Cushman of Maine put the Northern case with equal directness: the argument over Missouri was simply “a contest for power,” he said.¹³⁰ If the Northern states yield, they yield “a portion of their relative importance in this Union.” The North made a bad bargain in 1787: “By the accession of new States on the South or West, with the privilege of holding slaves, by the power thus derived, the scale of empire is there more than on the poise. Every State added, with the like privilege, increases the weight in the preponderating scale.” At the federal convention when the deal was struck, said Cushman, the nation was bounded by the Mississippi River

and little was to be apprehended from an “overgrown power” arising from the “slave population. But could it have been foreseen that a territory west of that river, larger than the old thirteen United States, would have been added to our country, out of which new states, almost to infinity, were to be formed, with the privilege of holding slaves, I am persuaded that neither Massachusetts, nor any part of New England, and perhaps none of the now free States then extant, would have consented, on such terms, to have come into this Union.”

From the Missouri Compromise in 1820 until the Civil War, every new opportunity to add land to the nation brought a new political crisis. One of the principal goals of the Tyler administration in seeking annexation of Texas was to protect and extend slavery, and the 1845 annexation set off a firestorm.¹³¹ The war against Mexico followed and was, in the opinion of Ulysses Grant, fought mainly to extend slavery to yet more states. Pennsylvania’s Wilmot proposed the famous (and unpassed) proviso bearing his name, barring slavery from states formed in lands acquired by that war. Whether slavery would be permitted in the large Mexico Cession (amounting to the western one-third of the nation today) roiled national politics from the 1840s all the way to the outbreak of the Civil War. These continuing fights, year in and year out, over the admission of new states and therefore ultimately over control of the national government, constituted a remarkably efficient way to destroy a polity. Arguments were similar from decade to decade, only more vituperative as time went by; the conflict over expansion less susceptible to compromise. Drawing the Missouri line across the continent satisfied neither side. No solution was apparent.

Then in the 1850s Stephen Douglas (famously, but not alone) introduced what he characterized as a panacea – the doctrine of popular sovereignty. James Wilson and fellow Federalists had made good use of the doctrine during ratification, and then it had dropped out of sight for decades because it was, after all, just a theory without practical effect. (It took Congress until 1842, as noted, to mandate that states create congressional districts and enable voters finally to pick their own representatives in the one branch of government close to the people.) Stephen Douglas resuscitated the doctrine brilliantly, and made it concretely useful for the first time; he proposed a compromise cure for disunion by saying that the two great opposing blocs need not fight this out any more, the slavery problem was for the people in the territories to decide. “... the people shall do as they please,” said Douglas in Alton, Illinois; “if they want slavery let them have it; if they do not want it, allow them to refuse to encourage it.” Who could argue with that?

Lincoln and popular sovereignty

Lincoln did, for one. In the same Alton debate in 1858, Lincoln took aim at this new “policy,” as he called it, said the country’s crisis had only worsened since its introduction, agitation and turmoil had only increased since

the attempt to “clothe the people of the Territories with a superior degree of self-government, beyond what they had ever had before.” Fraud, intimidation, and violence had resulted in Kansas. The idea that the people there were involved in self-government “has been nothing but a living, creeping lie.” But even if it had not been a lie, he said, popular sovereignty as a policy “carefully excludes the idea that there is any thing wrong with the institution of slavery.” Douglas had recently said he did not care if slavery was voted up or down in the territories, said Lincoln, “but he must logically have a choice between a right thing and a wrong thing. He contends that whatever community wants slaves has a right to have them. So they have if it is not a wrong. But if it is a wrong, he cannot say people have a right to do wrong.” “That is the real issue.”¹³²

In Lincoln’s cogent argument, popular sovereignty was incompatible with the public good when popular sovereignty was spreading slavery. And it was spreading slavery, he said. Because a corner of Missouri had recently experimented with the doctrine, and then failed to stop slavery, you “threw up your hats and hurraed for Democracy.” Not once, said Lincoln, had slavery been barred from a territory because of popular sovereignty. Where slavery had been contained was exclusively the result of laws passed in the Congress, the Northwest Ordinance, or clauses in the Constitution, all arrangements resulting from negotiation and compromise. They put slavery on the path to eventual extermination, Lincoln argued, and they were better tools to rely upon in this national crisis than the miracle of popular sovereignty.

The implications of Lincoln’s argument were deep. He elevated the slavery issue to the highest peak in the political landscape and necessarily, then, in response to Douglas, subordinated popular sovereignty to it. His mocking words “hurrae for Democracy” conveyed the message that that chimera was unimportant. In his scheme, the antislavery cause was on the level of the public good, the pursuit of which was the supreme purpose of government and mattered more than any particular doctrine. In fact, it had formerly been thought (by designers of older republics) that the public good required protection from badly conceived electoral practices, none more poorly conceived than up-or-down popular voting. This analytical mid-century politician was revealing that he had his own concerns about the powerful political ideology that had gathered momentum during ratification and been revived in the current crisis. Lincoln thought the antislavery cause needed protection from popular sovereignty.

This was an important denouement to the 60-year struggle for power between slave and non-slave states. That struggle had proved to be unwinnable. When a community contained within itself such implacable divisions as existed between North and South, fueled by hatreds, Lincoln’s sensible view was that deciding slavery by numbers – by out-competing the other side with migrants and votes – would never bring peace, would only deepen the discord. The ante-bellum period ended with a notable arraignment of the doctrine that majorities cure all.

In the list of causes of the Civil War, a procedural breakdown would rank toward the bottom.¹³³ The major centrifugal forces were political, economic, and moral. But the point of old republics' procedures was precisely to contain the centrifugal forces pulling a community apart. A chief such force was the corroding struggle for political power which was driven by ceaseless expansion. Here the founders had faced procedural choices and they deliberately chose the path of struggle. In the matter of presidential selection, they had adopted an older republican model, into which they inserted a design flaw, then disfigured their creation so thereafter it complied with neither older republican rules of hermeticism nor the ascendant political doctrines of majority rule. Together the two procedures bequeathed by the founders worked in perfect harmony, forming an efficient machine that contributed to national breakdown.

Notes

- 1 Rotunda, *Ratification by States*, 9: 963; url 02-09-02-0004-0010-0001.
- 2 Rotunda, *Ratification by States*, 8: 62; url 02-08-02-0001-0045-0001; Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York, 2010), 76.
- 3 Maier, *Ratification*, 270–272.
- 4 Electoral filtration in the document gave Antifederalists ample ammunition. So did the Federalists' own comments: Wilson made his speech about wise leaders and their invisible electorate. Hamilton in New York repeated Wilson's argument that better men will be elected from larger districts. Madison's *Federalist* 53 advanced the theory that legislating required specialized knowledge – ranging over difficult policy subjects such as foreign trade, taxes, and organizing the militia – which could be acquired only with time. Wilson speech, Dec 4, 1787, *Collected Works*, 1: 231; AH speech June 21, 1788, NY Ratification Convention, Rotunda, AH Papers 5: 45–49; url 01-05-02-0012-0012; Madison, *Federalist* 53, Bailyn, *Debate on the Constitution*, 2: 190–191. Antifederalists opened fire on multiple fronts. Patrick Henry said the large districts made certain that voters would not know the candidates and that the elected “will be careless of the interest of the electors.” He attacked “the charms of the ten miles square,” the mandated, new national capital, where the same men will be re-elected to “your rich, snug, fine, fat Federal offices.” Patrick Henry speeches in Virginia Convention, June 7 and 12, 1788, Bailyn, *Debate on the Constitution*, 2: 627, 673–688. He said he would prefer a government of “king, lords, and commoners” to government by “a man of ambition” who will “render himself absolute.” Henry speech in Virginia Convention, June 5, 1788, *Debates and Other Proceedings of the Convention of Virginia [etc.]*, transcr. David Robertson, 2nd ed. (Richmond, Va., 1805), 50, 52. Cato worried about the new national capital, which will assume “the language and the manner of this [a] court.” Cato, Nov. 8, 1787, Cecilia M. Kenyon ed., *The Antifederalists* (Boston, 1985), 305. Gilbert Livingston in New York foresaw senators elected for life, cut off from the people, living in the “federal town” surrounded “by an impenetrable wall of adamant and gold; the wealth of the whole country flowing into it.” Bailyn, *Debate on the Constitution*, 2: 790; Maier, *Ratification*, 358. Mary Otis Warren wrote simply: We “wish for no federal city.” Otis, “A Columbian Patriot,” February 1788, Bailyn, *Debate on the Constitution*, 2: 298. She also attacked lack of rotation, officeholders “for life,” and making Aristotle's point that the nation risked the “over-bearing insolence of office” because

an officeholder would not be returned to private life, a return which “teaches him the feelings of the governed, and better qualifies him to govern in his turn.” (She began her essay attacking the dissembling and “insidious arts” of the Federalists, naming James Wilson.) Bailyn, *Debate on the Constitution*, 2: 287–303. Most often Antifederalists focused on representatives as a separate class of people. Melancton Smith said the new representatives would be “of the few and the great,” those with “pride of family, of wealth, of talents.” The plan of government will “confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery.” Melancton Smith speech, NY Convention, June 1788, Kenyon, *Antifederalists*, 384–385. New York delegates Yates and Lansing in their letter to Gov. Clinton spoke of representatives’ “remoteness from their constituents” and their “permanency of office.” (Robert Yates and John Lansing Jr., to Gov. George Clinton, January 14, 1788, Bailyn, *Debate on the Constitution*, 2: 5.) The corollary to the new political class was an intermediated people. “Few of you will have a chance of sharing even in this [the popular] branch of the legislature,” said Cato, which was dangerous, because the chance to “participate in government” is “one of the principal securities of a free people.” Cato, Nov 8, 1787, Kenyon, *Antifederalists*, 312. For other examples, see Brutus, I, Oct. 18, 1787, Bailyn, *Debate on the Constitution*, 1: 170–175; Brutus III, Nov 15, 1787, Bailyn, *Debate on the Constitution*, 1: 321–323 (“a distance” will open up “between the people and their representatives”). The Pennsylvania radical George Bryan said: it was alarming to think “that common people have no business to trouble themselves about government.” An Old Whig I, Oct. 12, 1787, Bailyn, *Debate on the Constitution*, 1: 125. See also *Letter of Montezuma*, fall 1787, and Letter of John DeWitt, fall 1787, on the emergence of a separate, professional political class. Kenyon, *Antifederalists*, 62, 105–107. Tom Paine warned in *Common Sense* that pains must be taken to avoid representatives’ becoming a separate interest unto themselves. The second amendment in the initial draft bill of rights provided that salary increases for Congressmen applied only to the next batch of Congressmen to prevent this privileged class from feathering their own nest. (This second amendment plus the first one fixing a formula for maintaining lower ratio of inhabitants to representatives failed to pass at the time.) The logic of this provision assumed a healthy turn-over in representatives from one congress to another (if not, it would not have had the desired effect). Morgan (*Inventing the People*, 304–305) stated that Madison did not foresee the rise of America’s professional political class. The thesis that the Constitution would give rise to a distant mandarin class was perhaps the strongest argument made by the Antis. Rakove (*Original Meanings*) does not include the argument in his summary of Antis’ views (182–183) but does quote *Federal Farmer* (XIV) that senators would aim to be elected “for life,” would get office and then wish “to keep it; to gain friends and votes;” and Hamilton’s (*Federalist* #72) statement that a great incentive for a man to work for public benefit is “if he could flatter himself with the prospect of being allowed to finish what he had begun” rather than being forced to “quit the scene.” (273, 285)

5 Characterization of this October 6, 1787 speech, known as his State House Yard speech, is Maier’s, *Ratification*, 81.

6 Wilson, *Collected Works*, 1: 171–172.

7 The authors in sequence were: *Cincinnatus* (Arthur Lee), *Centinel II* (Samuel Bryan), *An Officer* (possibly William Findley), and *Agrippa* (James Winthrop). Bailyn, *Debate on the Constitution*, 1: 80, 93, 102; Kenyon, *Antifederalists*, 141. For additional scathing reactions to Wilson, see *Helvidius*’ broadside December 1787, making fun of Wilson’s declaration that ours was the first federal republic ever, causing *Helvidius* to ask if ours was the first in 6,000 years should that not make one pause? Rotunda, Mass. Ratification, *Helvidius Priscus I*, *Independent*

- Chronicle*, 27 December 1787, 5: 534–539; url 02-05-02-0002-0028. See also Mary Otis Warren on the same topic, “A Columbian Patriot,” February 1788, Bailyn, *Debate on the Constitution*, 2: 287–303. William Davie, the North Carolina delegate who broke with the Wilson camp over equal vote in the Senate and may have conceived then a dislike of Wilson, years later described Justice Wilson’s opinion in the Chisholm case as nothing more than a “contemptible play upon words.” This was five years after *Cincinnatus* had characterized Wilson’s speech (above) as word play. (Davie introduced a resolution in his state calling for a Constitutional amendment overturning the Supreme Court’s decision, which occurred in the form of the Eleventh Amendment.) Robinson, *William Davie*, 285–286, 290. Some historians have found merit in Wilson’s remarks about reserved vs. granted powers. Wood, *Creation*, 539–540.
- 8 Thomas B. Wait to George Thatcher, January 8, 1788, Bailyn, *Debate on the Constitution*, 1: 728; TJ to JM, December 20, 1787, Bailyn, *Debate on the Constitution*, 1: 210.
 - 9 Wilson, *Collected Works*, 1: 184.
 - 10 Although ignoring Dickinson’s purpose, Wilson did borrow Dickinson’s simile of the planetary system “where each part moves harmoniously within its proper sphere.” *Collected Works*, 1: 238. Madison conceived of their challenge in much the same way: it was a two-fold challenge, how to infuse the government with energy, yet still be republican, he said, and also a matter of “tracing a proper line of demarcation between the national and State authorities.” JM to Edmund Pendleton, 20 September 1787 Rotunda, Ratification by States, 8: 12–13; url 02-08-02-0001-0006.
 - 11 Wilson, *Collected Works*, 1: 191, 193.
 - 12 Wilson, *Collected Works*, 1: 212–214.
 - 13 Maier is among several able scholars who admired Wilson’s ratification speeches that fall, describing his enunciation of sovereignty of the people as “one of the great theoretical innovations of the ratification debates,” and calling his Dec. 11 speech a “heroic oration.” Maier, *Ratification*, 109, 115. See Wood, *Creation*, 530ff, extolling the contributions of James Wilson at this time. Wood suggested (372) that the Wilson version of popular sovereignty, originating with the people but not exercised by the people, kept intact the principle that the ruled remained the rulers. Rakove praised both Wilson’s Oct 6 and his “powerful case for popular sovereignty” thereafter, which was not a “rhetorical sleight of hand.” *Original Meanings*, 144, 155, 190. Kloppenberg is laudatory of these speeches but notes the ridicule which greeted Wilson. (On a separate matter, he argues, as does this study, that from the ratification process “a sort of democratic sensibility emerged.”) Kloppenberg, *Toward Democracy*, 412–423, 435, 453.
 - 14 As the proper basis for a non-monarchical government the concept of popular sovereignty “was taken for granted” by the eighteenth century, as Edmund Morgan has said. Morgan, *Inventing the People*, 143, 56–57. Not only Locke (whom Wilson credited) but also many writers before him had made the case: from Harrington, the Levellers, and others in the Interregnum, to Marsilius of Padua and his successors in the fourteenth century, to writers of antiquity. The Roman *Digest*, rediscovered in Europe in the eleventh century, based the emperor’s authority on the popular grant of sovereignty to him. Millar, *Roman Republic in Political Thought*, 53–55. Italian communes founded their governments as early as the late eleventh century on the whole citizenry (usually narrowly circumscribed). It was in them, the communes, that Marsilius likely found his model. John Winthrop based his regime on election by the people (whose choice, once made, was sanctioned by God and in JW’s view final). The mini-republics of New England, originating in mixed models of Puritan churches and joint stock companies, had no other premise for authority except the authority of the people

- (usually shareholders or “inhabitants”). Ten years before Wilson laid out his case, the states had based their Constitutions upon it, none more democratic than his own state of Pennsylvania (whose Constitution he abhorred). See also *Popular Sovereignty in Historical Perspective* ed. Richard Bourke and Quentin Skinner (Cambridge, England, and New York, 2016), in particular essays by Serena Ferente, “*Popolo and Law: Late Medieval Sovereignty in Marsilius and the Jurists*,” 96–141, and Lorenzo Sabbadini, “*Popular Sovereignty and Representation in the English Civil War*,” 164–186.
- 15 See [Chapter 6](#), *Cross-currents in the revolutionary moment*. Although this upsurge is important in its effect on republican procedures, it is beyond the scope of this study to do more than suggest its likely causes: the role of voluntarism and entrepreneurship in the colonies, particularly in settlement and town-planting in the seventeenth century; the near constant warfare of the colonial period imposing on people (both Europeans and native Americans) the self-reliance of personal defense and in the case of Europeans the building of egalitarian militias; the overthrow of imperial rule and assumption of powers of self-government and making of state Constitutions; and a long history of independent political action in the backcountry – the Carolina Regulators, Pennsylvania Paxton Boys, Shays’s Rebellion in Massachusetts, and more – these very same grassroots eruptions of discontent that had scared the states into convening the federal convention to get control over their populations were themselves proof that the discontented in America did not think it was their deferential duty to put up with inferior status any longer.
 - 16 Farrand, 2: 204–205. Franklin would have known of Herodotus’ stress on the role of Athenian sailors in defeating Xerxes.
 - 17 “Some” if one thinks most delegates supported equal vote in the Senate and the presidential selection system out of a spirit of compromise; “most” if one thinks, as this author does, that they saw merit in procedural complexity.
 - 18 Edmund Morgan described it as a necessary “fiction.” *Inventing the People*, 13ff.
 - 19 Wilson, *Collected Works*, 1: 193. Speech Nov 26.
 - 20 See [Chapter 4](#), *James Harrington’s quandary*.
 - 21 Wilson, *Collected Works*, 1: 711–712.
 - 22 Wilson, *Collected Works*, 1: 279, 1: 196.
 - 23 July 4, 1788, Wilson, *Collected Works*, 1: 291.
 - 24 December 4, 1787. Wilson, *Collected Works*, 1: 231. Contrast this speech with his remarks at the federal convention: “the legislature ought to be the most exact transcript of the whole Society.” Farrand, 1: 132–133.
 - 25 December 11, Wilson, *Collected Works*, 1: 263, 264. Morgan has perceptively noted that for elites representation – especially Wilson’s version -- had the advantage of draining popular sovereignty of its danger. Morgan, *Inventing the People*, 237.
 - 26 In his State House Yard speech, 54 times he used the first person pronoun, almost all of these occasions the singular “I,” not counting the occasions when the plural meant “one” or “the country.”
 - 27 November 29, 1787, Bailyn, *Debate on the Constitution*, 1: 118.
 - 28 The Antis made his work easier by using the term “aristocratic” to describe the Constitution. This was a tactical blunder which Wilson soon exploited by pretending that they were arguing that “ultimate” power lay in the hands of a noble group endowed with the privilege of governing by descent whereas, on the contrary, under the Constitution the franchise was not limited and power lay with all the people. (Dec 4, 1787, Wilson, *Collected Works* 1: 230–231.) What the Antis meant with the phrase was not ultimate authority but the other meaning of sovereignty, the Constitution’s orders or regulations, which, in their view, removed from people filling offices and this removal, Antis said, would give rise to an entrenched political class actually in possession of power over long periods of time.

- But with the ill-chosen word “aristocracy” they opened the door to where Wilson most liked to go: to the popular fountain.
- 29 Wilson, *Collected Works*, 1: 205. Italics in original. Similarly, “the people may elect [the president] with only one remove” from the people, he said that fall. *Collected Works*, 1: 267. This comment was in response to the Antis’ view that the president was to be chosen by a process four or five times removed from the people. *Cato IV*, *New York Journal*, 8 November 1787, Rotunda, Ratification by States, 19: 195–199; url 02-19-02-0002-0073. Earlier, on Oct. 28, Wilson did say that the president would be “chosen” by electors appointed by states in a manner legislatures should direct. This was not an accurate statement, nor what he believed (see below), and was said to argue that state sovereignty was unimpaired, not as evidence of popular involvement with the selection. *Collected Works*, 1: 197.
 - 30 Farrand, 2: 501–502, 513, 522, 530. On Sept 6, he said that the presidential selection system would be “throwing a dangerous power in the hands of the Senate....”
 - 31 Farrand, 2: 522–523.
 - 32 December 11, 1787, *Collected Works*, 1: 253–254. Madison was simultaneously portraying the electoral college-House scheme as a bargain between big and small states. (Virginia Debates, June, 1788, Rotunda, Ratification, 10: 1376–1377; url 02-10-02-0002-0007-0001; on same compromise, see also JM to Henry Lee, January 14, 1825, Farrand, Appendix A, CCCLII, 3: 464.) George Mason was lamenting the Faustian bargain between New England and South Carolina exchanging slave importation for majority control over navigation. (Debate in the Virginia Convention, June 21, 1788, Appendix A, CCXVII, Farrand, 3: 334; Madison outlined this bargain in a letter of Nov 27, 1819, JM to Robert Walsh: Appendix A, CCCXXXII, Farrand, 3: 436–438; so did the North Carolina delegation in its report to their Governor, September 18, 1787, Appendix A, CXV, Farrand, 3: 83–84.) Wilson had played his own horse-trading role in the convention moving the adoption of three-fifths, which was not obviously in the interests of a mid-Atlantic state. On July 11 Wilson said at the convention he did not understand why count blacks in representation – are they people or property? – but thought his concerns “overruled by the necessity of compromise.” (Farrand, 1: 587.) Alexander Hamilton more honestly told the New York convention that three-fifths was a price that had to be paid without which no union was possible, among other bargains he mentioned. Rotunda, Ratification by States, Convention Debates, June 20, 1788, 22: 1727–1728; url 02-00-02-0002-0006-0001.
 - 33 October 28, 1787, Wilson, *Collected Works*, 1: 194. The Pinckney Plan of May included an enumeration of rights (Farrand, 3:122.). Even accepting that this plan was a spurious production from years later, its author submitted a bill of rights August 20, 1787, which was referred to the Committee of Detail, on which Wilson had one of the five seats. Farrand, 2: 106, 340–342.
 - 34 December 3, 1787. Wilson, *Collected Works*, 1: 210; Farrand, 3: 437n., Appendix A, CCCXXXII.
 - 35 Wilson, *Collected Works*, 1: 694–696.
 - 36 December 4, Wilson, *Collected Works*, 1: 217.
 - 37 Doerflinger, *Vigorous Spirit*, 277–278; Kenyon, *Antifederalists*, 1–2; and see *Centinel #I* and *#III*, Kenyon, *Antifederalists*, 1–25; XII, XVI, Bailyn, *Debate on the Constitution*, 2: 81–85, 237–240. The distance between appearance and reality in Wilson’s presentations is the theme of *Centinel #II*, Bailyn, *Debate on the Constitution*, 1: 77–91.
 - 38 December 11, 1787, Wilson, *Collected Works*, 1: 251–252.
 - 39 The intriguing relationship of Wilson with South Carolinians, covering both pecuniary and political matters, deserves more analysis, in light of apparent cooperation during the federal convention on three-fifths and proportional representation,

- Rutledge's staying with Wilson, and Butler's loan to and then hounding of Wilson for repayment. See [Chapter 6](#) *An alliance is formed*.
- 40 Wilson, *Collected Works*, 1: xxvi.
 - 41 Rotunda, Ratification by States, Convention Debates, 21 June 1788, 22: 1769; url 02-22-02-0002-0007-0001; Rotunda, AH Papers, New York ratifying Convention, remarks, June 27, 1788, 5: 105, 109; url 01-05-02-0012-0035-0036; 12 July 1788, 22: 2151–2163; url 02-22-02-0002-0025-0001. Note Hamilton's similarity to Wilson's wording on December 4, 1787, Wilson, *Collected Works*, 1: 235. Author has made minor alteration to punctuation in text above.
 - 42 The "fondness" statement was in his lengthy floor speech June 18, 1787, Farrand, 1: 291. The people-as-monster allusion was in a private letter AH wrote, quoting (in the original) a passage from Virgil's *Aeneid*, line 659. AH to Rufus King, 3 June 1802, *Founders Online*, archives.gov/documents/Hamilton/01-26-02-0001-0011.
 - 43 December 4, 1787, Wilson, *Collected Works*, 1: 238. Italics and capitals in original. In *Federalist* 39, Madison wrote that a republic derives "all its powers directly or indirectly from the great body of the people." The Senate, the president, "even the judges" are indirectly chosen by "the people themselves." Bailyn, *Debate on the Constitution*, 2: 27, 28. He repeated the theme of "ultimate authority" in the people in *Federalist* 46. (Bailyn, *Debate on the Constitution*, 2: 109.) In Virginia ratification, the esteemed George Wythe made much of the people's right to reclaim the gift of power to government. Maier, *Ratification*, 294.
 - 44 The remarkably caustic tone of politics was captured in reactions to Hamilton's death in 1804. Adams wrote, "No one wished to get rid of Hamilton in that way" but nevertheless he should not be forgiven "because the guilty wretch repented in his dying moments." Madison wrote Monroe, sending news of "the adventure between Burr and Hamilton." He went on: "You will easily understand the different uses to which the event is turned." Post duel, Jefferson invited Burr to dine at the White House. Chernow, *Hamilton*, 714, 718.
 - 45 *Cato IV*, *New York Journal*, 8 November 1787, Rotunda Ratification Commentaries, 14: 7–11; url 03-14-02-0004; *Cato V*, *NY Journal*, 22 Nov. 1787, Rotunda, Ratification by States, 19: 277; url 02-19-02-0002-0096; Benjamin Palmer, 10 December 1787, draft article, Rotunda, Ratification by States, NY, 23: 2486–2488; url 02-23-02-0003-0002-0056. Although different from Dickinson's design, Palmer's had similarities of state nomination, chance, and national selection – but added as well annual change. In Athens, *boule* members were proposed by demes/tribes and lottery decided which tribe ruled for thirty days as *prytaneis* and another lottery deciding daily presiding officer.
 - 46 *Federalist* 68, Bailyn, *Debate on the Constitution*, 2: 333–337.
 - 47 In the articles, speeches, and letters from fall 1787 and 1788 as examined in the papers of Madison, Jefferson, Hamilton, Pinckney Family, and Washington (UVA Rotunda series); Dickinson Papers, LCP; Gerry Papers (MHS), King Papers (NYHS), Documentary History of the Ratification, UVA (divided into four parts: Constitutional Documents and Records, 1776–1787; Ratification of the Constitution by the States; Commentaries on the Constitution; Amendments to the Constitution From Ratification by the States); Dickinson, *Political Writings*, 2 vols.; Wilson *Collected Works*, 2 vols.; Kenyon, *Antifederalists*; Maier, *Ratification*; and Bailyn, *Debate on the Constitution*, 2 vols., this author has found four statements relating to this drafting oversight.
 - 48 "Some Observations on the Constitution," c. 25 May 1788, pamphlet, Rotunda, Ratification by States, 9: 844–876; url 02-09-02-0003-0076; Ratification by States, 9: 1092–1139; url 02-09-02-0004-0011-0001. Monroe in debate also criticized comparison with ancient leagues of Greece by Madison and Federalists generally in justifying a strong central government, making the point (more accurate historically than was Madison's famous memo) that the leagues of the past were over-run by powerful neighbors and did not self-destruct because of internal flaws.

- 49 Rotunda, *Ratification by States*, 10: 1365; url 02-10-02-0002-0006-0001; Bailyn, *Debate on the Constitution*, 2: 719. Mason also called it “a mere deception – a mere *ignus fatuus* [delusive hope]” that the people had anything to do with the president’s election. The electoral college, said Mason, would actually select the chief executive only one out of fifty times (decreasing the odds he gave in Philadelphia of one out of twenty). Rotunda, *Ratification by States*, 10: 1375–1376; url 02-10-02-0002-0007-0001. At a minimum, Mason told Virginia’s ratifying convention, the number of candidates being nominated should be reduced from five to two, so that the House voting by states should be confined to choosing among the larger vote getters, and thereby the people at least “would have some agency in the election.” In reply to Monroe and Mason, Madison’s defense was typical of the Federalist treatment of this thorny topic, which was to keep the discussion as general as possible (as Wilson had done in Pennsylvania) and to assert that the president “will be the choice of the people at large” because they will choose the electors (which was not what Article 2 said). At one moment in the Virginia convention, Madison said: “His [the president’s] eventual vote is an advantage too obvious to comment upon.” This dodge was a reference to the voting by states in the House, which had drawn comment by Antifederalists, and not “advantageously” in Southern states because Northern states outnumbered Southern states, which Henry, Grayson, Bloodworth, and others were wont to point out. *Ratification by States*, 10: 1368; url 02-10-02-0002-0006-0001. Although his wording was ambiguous here (likely on purpose), Madison generally referred to the election of the president in the House as his “eventual” election, until, that is, his correspondence in the 1820s when he began calling it the “final choice.” At other moments in the Virginia ratifying debate he was constrained to defend why the House voting by states was not a problem for the South. In reply to Grayson (below) Madison said the arrangement was a “compromise” between large and small states, in which the former had the first advantage and the latter had theirs “in the eventual election.” Rotunda, *Ratification by States*, 10: 1376–1377; url 02-10-02-0002-0007-0001. Regarding presidential selection, few Federalists described how the system would actually function. Bowdoin was one in Massachusetts. (See James Bowdoin speech, 1 February 1788, Rotunda, *Ratification by States*, 6: 1,92, 1,401; url 02-06-0002-0025-0001.) A handful – Dickinson in *Fabius* letters and Madison (sometimes but not always) – used abstractions and said the president was chosen “conjunctly” by the people and the states, the people acting through the Electoral College, and the states voting state-by-state in the House, with the happy result that although the Senate represented the states and the House represented the people, the presidency was where both – the national and the federative – were joined felicitously together. This portrait was as close as Federalists generally came to acknowledging the multistage process of presidential selection. More commonly, in ratification they prevaricated (wherefore Mason referred to the “deception” that people had anything to do with presidential election). Randolph replied to Henry by saying the executive was “dependent for its election on the people.” “How is the President elected?” he asked the ratifying convention. “By the people – on the same day throughout the United States – or by those whom the people please.” (Rotunda, *Ratification by States*, 9: 1098; url 02-09-02-0004-0011-0001.) His was the standard obfuscatory Federalist formula: short, vague, and wrong. Edmund Pendleton said: the president “is produced still in the Representa[tive] Character, since what the man I elect For the purpose does, is done by me....” (Rotunda, *Ratification by States*, 10: 1627; url 02-10-02-0003-0050.) Hamilton in New York’s ratification debate said we have “A President elected by the people;” if not, then he is elected by the House – “Here is a Republican magistrate.” (Rotunda, *Ratification by States*, 22: 1961; url 02-22-02-0002-0012-0001.) Another account had Hamilton stating to New Yorkers, the president “will be himself the representative of the people.” (Rotunda, *Ratification by States*, 21 June 1788, 22: 1769; url 02-22-02-0002-0007-0001.) A Federalist

- pamphleteer in New York wrote, the president “is mediately dependent upon the People” – no more explanation given. (*Curtius I*, New York Daily Advertiser, 29 Sept. 1787, Rotunda, Ratification by States, 19: 63–67; url 02-19-02-0002-0021.) Tench Coxe told the same audience that “all the powers of the foederal government flow, through a very short channel, from THE SACRED FOUNTAIN OF THE PEOPLE.” (“A Pennsylvanian to the New York Convention,” *Pennsylvania Gazette*, 11 June 1788, Rotunda, Ratification by States, 20: 1141; url 02-20-02-0004-0198. Capital letters in original.) Coxe’s phrase he got from James Wilson (whom he accompanied to shareholder meetings of the Illinois-Wabash Land Company). Many repeated this phrase, or otherwise said, as Charles Pinckney did in South Carolina’s ratification debate, “all power of right belongs to THE PEOPLE.” (Charles Pinckney Opening Convention speech, 14 May 1788, Rotunda, Ratification by States, 27: 325; url 02-27-02-0005-0005-0004.)
- 50 Grayson did not display deep familiarity with early Renaissance sources – but he was right in identifying chance as a key cog in the machine.
 - 51 Rotunda, Ratification by States, 10: 1371–1387; url 02-10-02-0002-0007-0001. (Bloodworth in North Carolina had a similar concern about Northern domination of the state count.) Madison’s rebuttal (same citation) was to state that electors were to be chosen by “the people” – this was the common Federalist euphemism– and in a notable choice of words to transmutate Grayson’s conflict of Southern and Eastern (Northern) states into the large and small state conflict. Reading the two camps’ speeches in the Virginia convention confirms that although big-small was not always code for South-North (and pro- vs. anti-slavery), it sometimes was.
 - 52 *Federal Farmer*, “An Additional Number of Letters to the Republican,” pamphlet, Rotunda, Ratification by States, 20: 976–1085 *passim*, and espec. 1037; url 02-20-02-0004-0139. Date of this letter appears to have been January 17, 1788. In the same *Federalist* 68 wherein Hamilton stated that the presidential system was “excellent” he opined that the *Federal Farmer’s* criticism of the same was “the most plausible.” Harrington had avoided the problem Monroe fingered – of politics interfering with selection of nominators (whom Harrington like the framers called “electors”) – by having them be chosen by lottery, a device he copied from Venice. Had the framers done the same and used lottery in the first stage, they would have come closer to achieving their aim of presidential selection free of political organizing.
 - 53 GW to AH, Oct. 3, 1788, Papers of George Washington Digital Edition, Theodore J. Crackel, Charlottesville, Virginia. Rotunda, 2008. Presidential Series, 1: 31; url 05-01-02-0020 (hereafter GWP, vol, pg, url number).
 - 54 William Duer to JM, ca. Nov 25, 1788, JM Papers, Rotunda, OS, Cong. Ser. 11: 367–368; url 01-16-02-0246.
 - 55 JM to GW, June 20, 1792, Rotunda, GWP, Pres. Ser., 10: 478; url 05-10-02-0318-0001.
 - 56 See among canvassing instances: John Beckley to JM, Oct 17, 1792, about need to coordinate whom republicans will vote for in the states to increase “at least the probability of success” in ousting Adams as vice president and replacing with Clinton or someone else. He wrote “a nomination of Electors by the republican party here [Pa?], accompanied with circular letters will be dispatched this day, by Expresses, to every part of the State.” Beckley urged Madison do the same in Virginia, for Hamilton, “this extraordinary Man,” is everywhere. (Rotunda, JM Papers, OS, Congressional Series, 14: 383–385; url 01-14-02-0349.) See John Beckley to JM four years later, Oct. 15, 1796: Hamilton and Jay do not want Adams to win, he reported (seemingly from Pennsylvania); therefore he was hard at work to carry the state for Jefferson and Burr. He worried about Burr and proposed as a result that some of Virginia’s electors vote for Clinton. (Rotunda, JM Papers, OS, Cong. Ser. 16: 408–410, url 01-16-02-0265.) See Gabriel Duval (of Maryland) to JM, June 6, 1800: although Jefferson and Adams were the chief

- rivals, he wrote, Pinckney was strong, and if he collected votes in the South, and also Eastward (which Hamilton was orchestrating), "he may be a dangerous rival" (presumably to Jefferson). On the other hand, he said, those who would vote for Pinckney would probably also vote for Jefferson, "and thus his election is certain." (Rotunda, JM Papers, OS, Cong. Ser., 17: 392; url 01-17-02-0240.)
- 57 JM to TJ, January 18, 1800, JM Papers, 1723-1859, Digital Collections, Library of Congress, url [loc.gov/item/mjm013555](https://www.loc.gov/item/mjm013555); "Bystander; or a Series of Letters on the Subject of the 'Legislative Choice' of Electors in Maryland," 1800, Broadside, #37074, marked NYPL copy, LCP. Virginia Federalists themselves held their nose and fielded their own statewide slate of elector candidates, telling their voters they unfortunately were being compelled "to vote for as Electors... [people] generally unknown to you." "Address to the Voters for Electors in Virginia," n.d. 1800, Broadside, #36773, LCP (LOC copy). See also Ostrogorski, "Rise and Fall of Nominating Caucus," 266, 266n; and Richard R. Beeman, *The Old Dominion and the New Nation, 1788-1801* (Lexington, Kentucky, 1972), 215-216.
- 58 AH to JM, November 23, 1788, AH Papers, 5: 235-237; url 01-05-02-0055.
- 59 AH to James Wilson, Jan. 25, 1789, AH Papers, 5: 247-248; url 01-05-02-0075.
- 60 Farrand, 2: 114.
- 61 For accounts of intense partisan activities beginning in the early 1790s and carrying on thereafter, see: M. Ostrogorski, "The Rise and Fall of the Nominating Caucus," *Legislative and Congressional*, AHR, vol. 5, no. 2 (December 1899), 253-283; Arthur M. Schlesinger, Jr. ed., *American Presidential Elections, 1789-1968*, 4 vols. (New York, 1971), 1: 18ff., 27ff., 71ff., 105ff, 161ff., 190ff.; Tadahisa Kuroda, *The Origins of the Twelfth Amendment: The Electoral College in the Early Republic, 1787-1804* (Westport, Ct., 1994), 47ff; Lolabel House, *A Study of the Twelfth Amendment, of the Constitution of the United States* (Philadelphia, 1901), 10-51; see endnote 56.
- 62 "It is a fact within my own knowledge," the elderly Madison wrote to the even more elderly Jefferson in 1824, "that the equality of votes which threatened such mischief in 1801 was the result of false assurances despatched at the critical moment, to the Electors of one State [Virginia?], that the votes of another [New York?] would be different from what they proved to be." While a most interesting letter, it seems odd that these two brothers in political trenches for 40 years would need to retell the tale of the most important political fight of their lives, details of which they had lived through and thoroughly discussed years before. JM to TJ, Jan. 14, 1824, JM Papers, OS Ret, 3: 201-202; url 04-03-02-02-0217. Burr for his part was of the view that in 1796 he had done his job for Jefferson but that the latter had not delivered as promised all his Southern votes to Burr. Given that Burr received 0 electoral votes in Jefferson's own state of Virginia (to Jefferson's 20) in 1796, Burr had a point. See John Nicholas to JM, Nov. 28, 1800 (might be October), reporting that Aaron Burr was worried that Virginia would withhold votes from him once again, as it had done in 1796, and warning of the disappointment and jealousy that would result if Virginia did not back the whole ticket. Such feelings would not help, Nicholas said, when the battle got to the House. Nicholas also speculated that some Federalists might support Burr (presumably in the House), which they did. He used the word "nomination" referring to electors' votes being cast for Burr. JM Papers, OS., Cong. Ser., 17: 439-441; url. 01-17-02-0288. See also David Gelston to JM, Nov. 21, 1800, wherein he says it would be a "sacrilege" if Virginia electors withheld votes from Burr, that it was a matter of "honor" that both New York (Gelston's state) and Virginia should vote for both candidates. JM Papers, OS, Cong. Ser, 17: 438; url. 01-17-02-0286. Federalists had their own troubles with the double vote. See Theodore Sedgwick to Jonathan Dayton, Nov 19, 1796, in which he said better to have "Constitutional mischief" (Pinckney chosen

over Adams) than “the mischief of a breach of faith” (by Northerners failing to vote for Pinckney and Adams equally). (AH Papers, 20: 404–407; url 01-20-02-0267-0004.) A side effect of the double vote conundrum was it put stress in both parties on the need to keep faith with regional allies. With the end to double vote, regional balancing of tickets continued, but it took no exercise of loyalty or good faith or honor to cast one’s vote for the two regions’ candidates, as it did do before 1804. One wonders if that change made its own minor contribution to sectional cleavage. Among Federalists, in the delicate handling of the double vote, Hamilton was the master. His operations especially irritated John Adams, who was not amused that whenever he, Adams, was second on the ticket, Hamilton was organizing to throw away votes (to protect Washington, who received 69 votes to Adams’s 34 in 1789) and when Adams was top of the ticket, Hamilton urged equal voting for both Federalist candidates because it did not matter so much, he said, if the president was Pinckney or Adams, but it did matter that Jefferson not get in. Hamilton continued his handiwork in 1800 and Adams was so offended yet again that Hamilton wrote a public letter defending his tactics and denouncing Adams’s “extreme egotism of the temper” and “vanity” and unfitness for office. “Letter from Alexander Hamilton, Concerning the Public Conduct and Character of John Adams, Esq. President of the United States,” October 24, 1800, AH Papers, 25: 186–234; url 01-25-02-0110-0002. Roman centuries had a double vote for consul and it had a similar, unpredictable effect. See [Chapter 1](#).

- 63 As to the amendment’s overtly partisan origin in Jefferson’s first administration, see Albert Gallatin to TJ, Sept 14, 1801, TJ Papers, Main Ser., 35: 284–289; url 01-35-02-0222; TJ letter to Thomas Sumter, Sr., February 11, 1804, TJ Papers, 42: 459–460; url 01-42-02-0395; Bill for Settling Disputed Presidential Elections, in TJ’s hand, 1800, TJ Papers, 32: 377–379; url 01-32-02-0269; TJ to Thomas McKean, January 17, 1804, TJ Papers, Main Ser., 42: 307–308; url. 01-42-02-0266.
- 64 Everett Somerville Brown, ed., *William Plumer’s Memorandum of Proceedings in the United States Senate, 1803-1807* (New York and London, 1923), 42. This journal by an independent-minded Federalist who later switched to Republican is essential reading for anyone interested in this formative political period.
- 65 *Plumer’s Memorandum*, 42.
- 66 Gouverneur Morris, Public Letter to Speaker of New York Assembly, Dec. 25, 1802, *New York Evening Post*, February 1, 1803; url: nyshistoricnewspapers.org/lccn/sn83030385/1803-02-01/ed-1/seg-2.
- 67 Speech by Samuel White, December 2, 1803, *Abridgment of the Debates of Congress from 1789 to 1856*, ed. Thomas Hart Benton, vol. 3 (New York and Chicago, 1857), 27–29; *Annals of Congress*, 8th Congress, 1st Session, Senate Journal, December 2, 1803, 141, 144. These both are imperfect records of floor statements of the period.
- 68 Senate Journal, 164. In the course of his remarks that day, Tracy mentioned three times the uncertainty principle.
- 69 “Mr. Tracy’s Speech in the Senate of the United States, Friday, December 2, 1803,” 13, S5387, MWA copy, LCP.
- 70 Speech by Samuel White, December 2, 1803, *Benton Abridgment*, 3: 27–29.
- 71 William Duane, *Report of a Debate, in the Senate* (Philadelphia, 1804), 66, S6195, MWA copy, LCP.
- 72 Duane, *Report*, 153. He worried about the effects of electioneering. With this amendment, “you plant the seed of discord – the dissolution of federalism.” The animating motive behind the amendment was, he said, “resentment.” It “paved the way for a revival of heats and animosities which ought to have been buried, but which may lead to a separation of the union.” Duane, *Report*, 154. Although a Southerner (with a house and family in Philadelphia) Butler opposed the amendment and was one of several who forecast disunion.

- 73 Duane, *Report*, 133–134, LCP.
- 74 Duane, *Report*, 95.
- 75 Maybe worse than political extirpation: When Federalists explained to the Senate in December 1803 that the system had worked in 1801 exactly as it had been designed to work, a Republican Senator's retort was, if Burr had been elected by the Federalists in the House over Jefferson, "his head would not have remained on his shoulders for twenty-four hours." Duane, *Report*, 17, LCP.
- 76 Plumer's *Memorandum*, 41, 514; William Plumer Junior, *Life of William Plumer*, ed., A.P. Peabody (Boston, 1857), 319.
- 77 *Annals of Congress*, 8th Congress, 1st Session, Senate Journal, December 2, 1803, 146.
- 78 *Annals of Congress*, 8th Congress, 1st Session, Senate Journal, 155.
- 79 Duane, *Report*, 140. Dayton then spoke of the image Dickinson had made well known of the states "like planets moving in their orbits, equal in dignity but disproportionate in size, revolving in one great system round the federal centre," an orbit that would be thrown out of kilter by this amendment.
- 80 Uriah Tracy speech, Dec 2, 1803, *Annals of Congress*, 8th Cong., Senate Journal, 170, 172.
- 81 *Annals of Congress*, 8th Cong., Senate Journal, 165; "Tracy's Speech," 8, LCP. Tracy appears to have said "last, best hope of man" first, then Plumer appears to have quoted him in his own remarks later the same day December 2. *Plumer's Memorandum*, 72.
- 82 *Annals of Congress*, 8th Cong, Senate Journal, 179. Tracy's choice of words was not unique at the time. William Davie, disgusted with the Virginia tyranny (as he called it) in 1802, said "all Constitutions are useless...that celebrated instrument vaunted as 'the world's best hope' is no more than an old woman's story." Letter to John Steele, Robinson, *Davie*, 362. JQ Adams, in the chamber, praised Tracy's speech as "peculiarly excellent." *Memoirs of John Quincy Adams*, ed. Charles Francis Adams, 12 vols. (Philadelphia, 1874-1877), 1: 276. Tracy's language echoed the Dickinsonian notes in Philadelphia, the distrust of numbers and the fealty to reconciling interests through structure. Others in the Senate painted a dire picture to come. "I fear for my country," said Pierce Butler, a rare Southerner voting against the amendment in the Senate. *Plumer's Memorandum*, 23. Senator Hillhouse foresaw a one party-government, and "blood will flow." Duane, *Report*, 18–19. Senator Jackson for the Republicans and Pickering for Federalists both mentioned "civil war." Duane, *Report*, 33, 64.
- 83 In the Senate, both occurred October 1803. See *Memoirs of John Quincy Adams*, 1: 265–266; *Benton Abridgment*, 3: 6, *passim*. The Purchase was signed April 30, 1803, announced July 4, and debate occurred in the fall. Both Plumer and Tracy voted against the Treaty. The passage in the House for funding the purchase was 59 to 57, by a margin close enough that it would not likely have passed without three-fifths.
- 84 Plumer speech of December 2, 1803, *Plumer's Memorandum*, 61, 63, 66–68, 72. Italics in original. Electoral votes attributed to slaves differs here from Duane, *Report*, 91, version of same speech, wherein he has Plumer saying eighteen additional seats by virtue of three-fifths.
- 85 Toward end of his Senate tenure, Plumer worried about "wild" public opinion, wondered how a leader of integrity can always or ever win "in a popular election agt a cunning time serving candidate? This circumstance alone forms a strong objection to our form of Government." *Plumer's Memorandum*, 514.
- 86 *Plumer's Memorandum*, 112, 250–251. He repeated the sentiment the following spring when Judge Pickering was about to be convicted on a straight party vote. Plumer wrote, "I fondly hope I shall live to see the righteous separated from the

wicked by a geographical line.” (Lynn W. Turner, *William Plumer of New Hampshire, 1759-1850* (Chapel Hill, NC, 1962), 130.) Plumer was far from an extremist Federalist. Plumer’s regret about political divisions, his growing concern about the violence of his Federalist fellow boarders, and his growing admiration for Jefferson, all recorded privately, compelled him to change lodging and get away from his overly partisan Federalist friends. He was especially critical of Uriah Tracy, as “too wild, too extravagant – & he has too strong a prejudice – & too much disposed to exaggerate & misrepresent to be entitled to full credence. The rate of party has perverted his mind, & blinded him to truth.” *Plumer’s Memorandum*, 453, 454, 458, 635.

- 87 Turner, *Plumer*, 137. When JQ Adams made public the plot in 1828, it was a shocking disclosure. His friend Plumer wrote him, confirming Adams’s account and saying he too had been “in favor of forming a separate government in New England” and recruited others to support the cause. Plumer said the reasons were because slaveholding states thanks to three-fifths had acquired too much power, and because Louisiana would destroy the influence of the North. Plumer Junior, *Plumer*, 290–292.
- 88 Turner, *Plumer*, 120; Plumer Junior, *Plumer*, 266. After success in Congress, Madison wrote Monroe that ratification seemed likely in the states given the rising fortunes of the Republican Party. JM to James Monroe, July 21, 1804, Rotunda, JM Papers, OS, Secretary of State Ser., 7: 498–499; url 02-07-02-0487. Madison’s concerns about majorities tyrannizing minorities deserted him in the debate over the Twelfth Amendment.
- 89 Duane, *Report*, 28–29, *passim*, 88.
- 90 Rufus King speech, March 20, 1816, Farrand, 3: 422–423.
- 91 Italics in original. JD to George Logan, January 16, 1802, Logan Family Papers, Box 5, Folder 34, #379, LCP; Hutson, *Supplement*: 300–302. Spelling modernized.
- 92 Dickinson, *Political Writings*, 2: 107–108, 144–148. See *The thinking of John Dickinson* in [Chapter 6](#).
- 93 This change to the Constitution is not always given its due regard. An important exception is Kuroda, *Origins of Twelfth Amendment*. Kuroda makes the case that partisan organizing began with the first presidential election when electors already were being seen as loyalists of one faction or the other and not as disinterested patriots left to their own best judgment. Kuroda, however, finds the double vote origin in the delegates’ wish to help create majorities (129); this author traces the Electoral College/House process (including double vote) to a more intricate set of considerations. Kuroda rightly said that the rise of parties made the double vote “archaic” (172). However, more important than archaic, the double vote was the main hurdle for the majority party and was bound to be dismantled once that party had the votes to dismantle it. Still, Kuroda puts the horse before the cart, unlike some students of this period who have seen the Twelfth Amendment as the major impetus to the forming of parties, rather than the other way around. James W. Ceaser published an important study of the rise of American parties (*Presidential Selection: Theory and Development* (Princeton, 1979), which this author leans on for the latter decades of that rise) and takes a different view to Kuroda’s on the relationship of party activity and the Twelfth Amendment. See Ceaser, 106. Stewart (*Summer of 1787*, 259) states the Twelfth Amendment rescued presidential elections. Garry Wills implies (Wills, “*Negro President*,” *Jefferson and the Slave Power* (New York, 2005), 113), as others have, that the amendment required the creation of a nominating system rather than, as this author thinks, it extinguished one nominating system requiring a replacement to be found.
- 94 For the sequence of legislative and popular selections of electors from 1800 to 1832, Schlesinger, Jr. ed., *American Presidential Elections*, 1: 105, 161, 260, 264–270, 308, 315, 371, 421, 432–433; Zagarri, *Politics of Size*, 132–133.

- 95 *American Presidential Elections*, 1: 432–433; Zaggari, *Politics of Size*, 132–133.
- 96 See [Chapter 6](#) for the eleventh-hour unsuccessful attempts by Madison and others to change the plan. Madison was on record several times noting the Condorcet false winner problem of plurality wins. The counter to the argument advanced here is that, in theory, throughout the history of presidential electing, even before the Twelfth Amendment, one could have achieved a majority of the Electoral College without a majority of popular votes. This is true. But in the system as created by Article 2, which did not mandate popular voting, such an outcome was not contemplated. Those empowered to vote under Article 2 were state electors, and among them the delegates insisted on a majority.
- 97 Rotunda, JM Papers, Monroe to JM, May 12, 1822, OS, Retirement Ser., 2: 52–24; url 04-02-02-0445.
- 98 *Annals of Congress*, 17th Congress, 2nd Session, Senate Journal, January 10, 1823, 78.
- 99 TJ to George Hay, 17 August 1823, TJ Papers, Retirement Ser., *Founders Online*, national archives; url Jefferson/98-01-023707 (spelling here modernized). He seems to have been referring to the much criticized congressional caucuses intermittently used.
- 100 JM to George Hay, August 23, 1823, JM Papers, Rotunda, OS Retirement Ser., 3: 108–111; url. 04-03-02-0109.
- 101 JM to Robert Taylor, January 30, 1826, JM Papers, Rotunda, OS, Retirement Ser., 3: 677–679. Several times in his correspondence on presidential selection during the 1820s (letters cited herein) Madison referred to the false winner problem, a problem he had been aware of for decades (see [Chapter 6](#) endnote 251). The Condorcet problem concerned him throughout his long career, which makes all the more incongruous his late-convention attempts in 1787 to make a plurality win (even one as small as 33%) sufficient for presidential election.
- 102 JM to TJ, January 14, 1824, JM Papers, Rotunda, Retirement Ser., 3: 201–202; url 04-03-02-0217.
- 103 JM to George Hay, August 23, 1823, JM Papers, Rotunda, OS, Retirement Ser., 3: 108–111; url 04-03-02-0109; JM to George McDuffie [SC Congressman], January 3, 1824, JM Papers, Rotunda, OS, Retirement Ser., 3: 195–198; url. 04-03-02-0212. However much he abhorred it, Madison at moments in the 1820s seemed still to think of the college as the nominating body. In the college, “Electoral Lists” would be made and sent to the legislature, where the “final choice” would be made, he wrote in the 1820s.
- 104 Letters Rufus King to Charles King, January 1, and March 16, 1824, Rufus King Papers, NYHS.
- 105 Rufus King Speech to the Senate, March 18, 1824, in Charles R. King, ed., *The Life and Correspondence of Rufus King*, 6 vols. (New York, 1900), vol. 6, 1816–1827, 703–710.
- 106 In 1812 King, a Federalist leader, thought the political system ruinous for the nation and hoped Madison, whom he loathed, would win re-election because the latter would be such a disaster that it would finally be possible to change the Constitution peacefully; otherwise he feared the “sword.” RK to Christopher Gore, September 19, 1812, RK Papers, NYHS. His biographer says he had no Southern friends. Ernst, *Rufus King*, 409.
- 107 David Herbert Donald, *Lincoln* (New York, 1995), 256.
- 108 See secession ordinances of first state to secede: *Journal of the Convention of the People of South Carolina [etc.]* (Columbia, S.C., 1862), 465, 473.
- 109 Lincoln’s below 40% plurality of the popular vote would have been even lower if South Carolinians had been permitted to cast a vote that year. If Lincoln had fallen short of a majority in the Electoral College, and the election been thrown to the House, where voting would have been by states, it would have been the old House of the 36th Congress that would have decided, where Republicans

did not have a majority. It is possible (maybe likely) that the House would have elected someone with an even smaller vote total than Lincoln's. In the divisive conditions of 1860, that result would perhaps have been as unacceptable to Northerners as Lincoln's plurality win was to Southerners. In a moment of national crisis, with multiple candidates contending for the presidency, the various possible outcomes in 1860 point to the unsuitability of using a half-reformed nominating system to elect the president.

- 110 Richard H. Brown, "The Missouri Crisis, Slavery, and the Politics of Jacksonianism," *The South Atlantic Quarterly*, 65 (1966), 55; Wills, "Negro President", 5–7. The phrase in the text is Brown's.
- 111 Given his opposition to secession, it was ironic that Lincoln borrowed key phrases from the Federalists of the first part of the century who themselves plotted secession. In his memorable message to Congress of 1862 – describing the duty to save the union, "the last best hope of earth" – Lincoln used the phrase that was uttered by not one but two of the Federalist Senators in 1803 in their elegiac defense of the aleatory presidential selection system. Senators Uriah Tracy and William Plumer used the "last, best hope" phrase on the same day in the December 1803 debate on the Twelfth Amendment. Federalist Senator Pickering used the phrase in 1810 but identified Great Britain, not the Constitution, as "the world's last hope." He did so pointedly; by then the phrase must have been commonly associated with the founders' work, of which he was not a fan. Lincoln's borrowings also included the "house divided," a phrase used by Plumer, but not in connection with the Twelfth Amendment procedures fight of 1803 but instead in connection with his support for the administration's stand against Great Britain leading to the war of 1812. Elbridge Gerry also said "a house divided against itself cannot stand" in 1810 in opposing the rise of parties. See Plumer and Tracy speech excerpts above in *Changing the Constitution*; also Turner, *Plumer*, 207–208; Billias, *Elbridge Gerry*, 314.
- 112 William Samuel Johnson, letter to [?], August 1804 (?), Hutson, *Supplement to Farrand*, 303–304. See [Chapter 6](#) for more on these two proposals advanced in Philadelphia. As have seen (see [Chapter 1](#)), Johnson was right: ancient and early modern republics had a tradition of not upsetting internal balances of interests and voting groups – or if departing from that tradition, doing so at their peril. The reason was practical: by negotiating voting apportionments and nominating procedures, republics achieved a measure of harmony and were careful not to disturb these arrangements notwithstanding the tides of time. They tried to keep organizational continuity in spite of shifts in population and expansion of territory. Classical-age Athens created the powerful Delian League, exacted tribute from its members, and grew into an aggressive empire; but Athens the polis did not expand. Tribes' allocation in the *boule* remained fairly fixed over two hundred years notwithstanding people moving in and out of demes. The Roman Republic was chary about establishing new tribes – from c. 500 BC to c. 240 BC, 35 tribes were created, into which Rome allocated its citizens. From c. 240 BC onwards no new tribes were created. Rather, in this era of territorial expansion, new lands and new citizens were added to existing tribes in a process that left no record of its method but the results of which are somewhat apparent. Lily Ross Taylor performed a valuable study of these allocations and found that as a result, Roman tribes in the latter centuries of the Republic were composed of multiple, non-contiguous parts – sometimes five or six such parts – annexed to them and arrayed in a counter-clockwise pattern with Rome at the center. By the republic's end, each tribe was a quilt of patches spread across the Italian peninsula, some far away from the original tribal area. (Dickinson, Paterson, and others in Philadelphia suggested an equal distribution of lands among the thirteen states.) In one sense, it would not have mattered if new citizens were disproportionately

added to one or two tribes, since tribes each had an equal vote; the quantity of each tribe's members did not determine the outcome of elections and legislation in the Roman system of group voting. However, it must have mattered to Romans because of internal tribal politics. The method of adding new members to tribes was hotly debated whenever citizenry greatly expanded. Harrington devoted several pages to the perils of expansion for ancient republics, and explained the Roman solution of granting Italian and Latin rights, including in some cases a form of citizenship without suffrage. *Oceana*, 242–243, 245ff. In the Roman republic, the custom was routine enough as to have become a category of citizenship: *cives sine suffragio*. Oakley, “Early Republic,” 13. Machiavelli (*Discourses* 1.6) discussed the perils of admitting foreigners to citizenship. Guicciardini had some of his dialogue participants favor granting privileges to many without, however, the right to participate in government. Pocock, *Machiavellian*, 226–227. See also Nikola Regent, “Machiavelli: Empire, ‘Virtù’ and the Final Downfall,” *History of Political Thought*, vol. 32, no. 5 (Winter 2011), 751–772; William Connell, “Machiavelli on Growth as an End in Itself (telos) for the State,” *Revista de Estudios Políticos* 167 (January–March 2015), 13–32. In the Italian communes of the late medieval era, residents outside the walls of republic, in the so-called *contado*, did not vote in communal affairs. These sometimes outnumbered the residents inside who did vote. Marsilius of Padua in his *Defender of the Peace* in 1324, quoting Aristotle, said that if one part of the community outgrows the others and threatens the symmetry of the body, it was a principal duty of government to bring all parts “back to their appropriate equality or proportion.” Marsilius of Padua, *Defender of the Peace*, 95–96, xliii, l. Sidney, Montesquieu, Hume, and Adam Smith descanted on the danger of expansion without adequate Constitutional provisions. David Armitage, “Empire and Liberty: A Republican Dilemma,” *Republicanism*, 2: 31, 36, 38, 42–43, 45. These ancient, early Renaissance, and eighteenth-century writers were well known to the more educated members of the federal convention.

- 113 Wilson remarks in Pennsylvania, *Collected Works*, 1: 210; and Farrand, Appendix A, CCCXXXII, 3: 437n; Virginia debate, June 1788, Rotunda, Ratification by States, 10: 1371–1387; url 02-10-02-0002-0007-0001, in particular Grayson, Mason, and Henry remarks 1374, 1375, 1379–1383; remarks by Patrick Henry, Virginia Ratifying Convention, Bailyn, *Debate on the Constitution*, 2: 686; Lowndes, Edward Rutledge, and Dr Fayssoux in South Carolina debate in Rotunda, Ratification by States, 27: 108–112; url 02-27-02-0002-0008-0003; 27: 336–349; url 02-27-02-0005-0005-0005; “A Georgian. Gazette of the State of Georgia, 15 November” 1787, Ratification by States, 3: 236–243; url 02-03-02-0003-0007; Lachlan McIntosh to John Wereat, 17 December, 1787, Ratification by States, 3: 259–261; url 02-03-02-0003-0007. See speech by the North Carolina delegate William Davie in his state’s ratifying convention, July 24, 1788. Rebutting Anitfederalists about the danger to the Southern states’ interests, Davie said: the Eastern states wished (he told his fellow North Carolinians) to have their cows and horses represented in Congress, so “It became our duty on the other hand, to acquire as much weight as possible in the legislation of the union; and as the northern states were more populous in whites, this only could be done by insisting that a certain proportion of our slaves should make a part of the computed population.” *Proceedings and Debates of the Convention of North-Carolina, Convened at Hillsborough, on Monday the 21st Day of July, etc.* (Edenton, North Carolina, 1789), 51 (Digital edition, *Documenting the American South*, url <https://docsouth.unc.edu/nc/conv1788/conv1788.html>).
- 114 Pinckney Notes for speech in South Carolina House of Representatives, 17 January 1788, Rotunda, Ratification by States, 27: 139–142; url 02-27-02-0002-0009-0004. Variously he was reported as saying “one acre left,” though his

- notes said “one tree left.” Brutus III, *New York Journal*, 15 November 1787, Rotunda, Ratification by States, 19: 252–257; url 02-19-02-0002-0083.
- 115 The two most important variables were: does one start by fixing the total number of seats as an input to the calculation or is that an output; and what to do with the left-over population unrepresented in each state –known as “fractionals” at the time – since only whole numbers are usable.
 - 116 The bill signed used 33,000 as the threshold for a representative; that had been the Northern and Senate preference. But in eliminating the allocation of additional representatives to states with the largest “remainders” or “fractionals,” as included in the vetoed bill, it reduced the bonus representatives which mostly would have benefited Northern states. See Edmund J. James, “The First Apportionment of Federal Representation in the United States,” *Annals of the American Academy of Political and Social Science*, 9 (January 1897), 1–41, esp. 24–25.
 - 117 See *Benton Abridgment*, 1: 321, Nov 10, 1791, for a flavor of the debates in the Congress on the census. For GW’s veto message April 5, 1792, *Benton Abridgment*, 1: 374. Washington’s Southern advisors were Jefferson (Secretary of State), Madison (Congressman), and Edmund Randolph (Attorney General) – all, like the president, Virginians. The Northern advisors were Secretary of War Henry Knox (Massachusetts) and Secretary of Treasury Alexander Hamilton (New York). Washington was also a claimant to significant western lands which might have influenced his apportionment thoughts (see [Chapter 6](#)). Madison’s letter to GW in April 1787 was written in the confidential manner of one *paisano* to another about issues dear to Southerners and is further collateral support for the idea of the president’s regional loyalty’s playing a part in the presidential veto. (JM to GW, April 16, 1787, *Founders Online*, founders.archives.gov/documents/Madison/01-09-02-0208) As to 30,000 (versus 40,000) helping South more than it did the North, so said Luther Martin in ratification; his view was that the smaller ratio advantaged those states with plentiful lands, and he named only three – Virginia, North Carolina, and Georgia. LM, “Genuine Information V,” *Baltimore Maryland Gazette*, 11 January 1788, Rotunda, Ratification Docs, 11: 169–174; url 02-11-02-0003-0034. Martin was not alone in this view. A broadside published in Georgia argued the ratio should be decreased from 30,000 to 15,000 for Southern states (and 20,000 for Northern); the lower the ratio, the better it was for the South. “A Georgian. Gazette of the State of Georgia, 15 November,” 1787, Rotunda, Ratification by the States, vol. 3: 236–243; url. 02-03-02-0003-0007. Rosemarie Zagarri (*Politics of Size*, 134–135) takes a different view of the 1792 apportionment battle as being one primarily between large and small states. See James, “First Apportionment of Federal Representation,” 1–41, esp. 24–25.
 - 118 Between one third and almost two thirds of states used at large systems (or a combination of at large and district systems), rather than districts, for electing congressmen from 1789 to 1841. See Appendix 3, Zagarri, *Politics of Size*, 154–157. New Hampshire did not subdivide until 1824; Connecticut kept a single ticket till 1835; New Jersey had districts but then switched to a statewide general ticket from 1813 to 1842. Two states mixed at large system with congressional district system: they allowed all state voters to cast votes for candidates running in all the districts, so, for instance, Baltimore could elect a Congressman for the Eastern Shore who might not have received a majority of votes cast in the Eastern Shore. Zagarri, *Politics of Size*, 106, 114, 119, 129, 140; James, “First Apportionment of Federal Representatives,” 6n.
 - 119 Zagarri, *Politics of Size*, 140.
 - 120 Ulmer, “South Carolina Delegates,” 301.
 - 121 Quoted in Wills, “*Negro President*”, 1. The arithmetic is not straightforward and is open to debate. Some states, including slave states, voted by districts in

1800, most states elected statewide slates of electors either by popular vote or by the legislature. Some states – notably Maryland and North Carolina – split their votes between the two parties; in theory, Adams owed some of his 65 votes to the three-fifths clause. Students have differed about whether Adams would have won had it not been for three-fifths. See Garry Wills, “*Negro President*”, 2-3; Paul Finkelman, “Founders and Slavery,” 443; Donald L. Robinson, *Slavery in the Structure of American Politics, 1765-1820* (New York, 1971), 179–180; William W. Freehling, *The Road to Disunion* (Oxford, 1990), 1: 147; and Stewart, *Summer of 1787*, 262 for plausible arguments wherefore Adams would have won but for three-fifths. Sean Wilentz has said that Jefferson would have won anyway in 1800 if the election had been conducted by popular vote. But that is different from saying that he would have won under the prevailing system (wherein many states did not involve voters and where voting by district was rare) without three-fifths. The odds of that’s having occurred are slight. Maltz, “Presidency, Electoral College, and Three-Fifths,” 468–469, disagrees with Wills, et al., citing Wilentz. What seems undeniable is that under the system prevailing in 1800, Jefferson surpassed the 70-vote threshold thanks, in part, to slavery-derived votes. His own state yielded five electoral votes based on slaves. He needed but three of those five to reach 70 votes. Thanks to Madison’s hard work, Virginia that year had a winner-take-all system and Jefferson won all 21 Virginia electoral votes, equal to a staggering 30% of the needed number to be president. See *1790 Census: Return of the Whole Number of Persons Within the Several Districts of the United States* (Philadelphia, 1793), url www2.census.gov/library/publications/decennial/1790/number_of_persons/1790a-02.pdf. It can be no surprise with this arithmetic that four of the first five presidents were Virginians and that Plumer said New England states were destined forever to be satellites orbiting the Virginia hub. Davie of North Carolina, King of New York, and others felt the same way.

122 Turner, *Plumer*, 115, 137.

123 Wills, “*Negro President*”, 130–131.

124 In 1803, Morris asked in a letter, can Congress admit as a new state territory which did not belong to the United States when the Constitution was made? “In my opinion they cannot. I have always thought that, when we should acquire Canada and Louisiana it would be proper to govern them as provinces, and allow them no voice in our councils. In wording the third section of the fourth article, I went as far as circumstances would permit to establish the exclusion. Candor obliges me to add my belief, that, had it been more pointedly expressed, a strong opposition would have been made.” Gouverneur Morris to Henry W. Livingston, Dec 4, 1803, Appendix A, CCCIV, Farrand, 3: 404. Morris and Johnson (see next endnote) remembered the situation differently – Morris that he went as far as he could go in prohibiting unlimited citizen accessions, Johnson that it was so obviously prohibited that the topic was not worth discussing – but both said the topic arose in 1787, and Johnson thought ancient and republican doctrines gave a roadmap as to where the convention should steer.

125 William Samuel Johnson, letter to [?], August 1804 (?), Hutson, *Supplement to Farrand*, 303–304. “The subject occurred to me,” he said, “in my comparing the government we were about to form with existing & antient republic’s. & particularly that of Holland, which I observed had acquired territory but did not admit it into their union but governed it as a subordinate territory. And this as far as I can discover was the case with all the antient republic’s [*sic*], and Rome we know in this manner governed almost the whole of the then known world, by her pro-consuls; though indeed she had the indiscretion to admit all Italy to the privileges of the city & thereby sowed the seeds of her ruin.” Johnson raised the matter with his Connecticut colleagues. He asked them, if we had a

war with Great Britain and conquered Nova Scotia, would we bring it into the union? They answered no “without hesitation,” it would be held and governed as a subordinate territory. He asked if they should bring the matter up in the convention. “They both agreed it was a matter so obvious that it was not worth the while to trouble the convention with it.” Johnson sounded out others, and always got the same reply. “...it was the universal sense that our greatest danger of failure was from the great extent of the union” and had it been broached to the convention it would have been unanimously agreed that the Constitution did not grant Congress the power to take a territory from its owner and declare it a “free and independent state & thus bring it into the union” with its inhabitants as citizens. Although the specific topic of the nation’s acquiring new lands to be made into states was not debated on the floor, the delegates did debate its sister topic: what to do with the unsettled lands already ceded by treaty to the new nation.

- 126 Rufus King to Colonel Pickering, Nov 4, 1803, Appendix A CCXCVIII, Farrand, 3: 399–400. If we had only known in 1787, said King, that we could amply fund the government’s coffers with indirect taxes, as we have done, the slave-free states would not have agreed to three-fifths (the political benefit of which the South in theory was to pay for in taxes that were never levied).
- 127 Tench Coxe to JM, Nov. 17, 1814, Rotunda, JM Papers, OS, Presidential Ser., 8: 387–388; url. 03-08-02-0325.
- 128 JM to Monroe, Feb 10, 1820, Appendix A, CCCXXXIII, Farrand, 3: 439. See also JM to Robert Walsh, Nov 27, 1819, Appendix A, CCCXXXII, Farrand, 3: 436–438.
- 129 In this typically aggressive speech, Pinckney went on to say that the South produced most of the exports and did so with slaves; exports paid for most of the country’s imports, which in turn provided the government with all its revenue – and, said Pinckney, the South was not close to being represented to the extent of these same valuable slaves producing all this national wealth. The movement to bar slavery in Missouri was based on sec 9 of Article 1 allowing the banning of slaves’ being imported after 1808, but that article, Pinckney said, had nothing to do with the internal movement of enslaved persons. Appendix A, CCCXXXVI, Farrand 3: 439–445.
- 130 *Annals*, 16th congress, 2nd session, February 2, 1821, House Journal, 1015–1020. See John Tyler’s reply same day on subject of “balance of power” in the Union, pp. 1022–1024.
- 131 The propaganda organized by Secretary of State John Calhoun in the annexation cause was virulently racist. See Frederick Merk, *Slavery and the Annexation of Texas* (New York, 1972), 68–69, 85–87. The “slave power won” again, said JQ Adams, about annexation, “slave power” referring to the extra votes in Congress Southerners were entitled to by virtue of their slave ownership. In 1843 Adams introduced a resolution in the House for the repeal of the three-fifths ratio. Adams said that it was to prevent any consideration of three-fifths that Southerners had passed the House gag rule in the 1830s forbidding discussion of slavery. Adams’ Speech to his Constituents, Dedham, Mass., Oct 21, 1843, in Merk, *Slavery*, 237–244; Wills, “*Negro President*”, 3, 222, 224. Mexico, when it still had Texas, abolished slavery in 1829.
- 132 *Abraham Lincoln: Speeches and Writings, 1832-1858*, ed. Don E. Fehrenbacher (New York, 1989), 800, 809–810; Nicole Etcheson, “‘A Living, Creeping Lie’: Abraham Lincoln on Popular Sovereignty,” *Journal of the Abraham Lincoln Association*, vol 29, issue 2 (September 2008), 1–26. Lincoln also took aim at slavery “and its arguments of ‘necessity.’” Speech on the Kansas-Nebraska Act at Peoria, Illinois, October 16, 1854, *Abraham Lincoln Speeches and Writings*, 339–340. This attack reminds one of the ire which “necessity” provoked in John

- Dickinson at the federal convention of 1787. See [Chapter 6](#) n270. Neither political doctrine nor necessity ranked high in the value scale of Dickinson or Lincoln.
- 133 This study is not capable of analyzing the causes of the Civil War, nor does the author wish to pull the bow too far back on the effects of procedural choices. Many were the war's causes. In a recent study by Andrew Delbanco, *The War Before the War: Fugitive Slaves and the Struggle for America's Soul from the Revolution to the Civil War* (New York, 2018), Delbanco ably lays out the importance of the fugitive slave issue, particularly in the North, where antislavery populations found it intolerable that they were forced to be complicit in the crime of slavery by returning fugitives. This present study takes up the expansion factor not because it was the most important driver of disunion (though this author thinks it probably was) but because it along with the dangers of pluralities and of simple electoral systems were matters that republics of the distant past had addressed with procedures, the founders knew about that experience, and nonetheless the latter failed to adopt procedures for managing the divisions obviously apparent in the State House and certain to become centrifugal forces in the union being created.

8 Aftermath

After passage of the Twelfth Amendment, which was expected to transform the electoral college from nominating body to electing body, the country still needed a nominating body. A combination of circumstances brought parties into this vacuum; and parties' assumption of the nominating function, in turn, played a significant role in the rise of modern parties. This change was important in one respect not usually stressed. Under the original Article 2, nominating had been a government function. In ancient and medieval and Renaissance republics, the same was true – nominating was a key government activity to create acceptable regimes. Soon nominating would become a purely partisan activity.

Efforts were made to organize presidential campaigns around a leader as early as 1788, as we have seen. To accommodate those efforts, frustrated by the double vote in Article 2, Republicans arranged the passage of the Twelfth Amendment. But it took several decades for parties to develop sophisticated machinery for taking command of the nominating process. The first national convention of Democrats was 1832, for Whigs 1839. From 1840 to roughly 1912, national conventions, run by party professionals, dominated presidential nominating. From the early twentieth century until the 1970s, a mixture of state party bosses and direct primaries in a few states co-existed in an improvised but not ineffective hybrid system of nominating. From the 1970s until the present day, plebiscites have taken over as parties have abandoned the mission and handed over nominating to delegates chosen (mostly) by popular vote in primaries and caucuses in nearly every state. Because these evolving nominating sequels have been well described elsewhere, it only remains here to touch upon the salient similarities with and differences from republican procedural principles.¹

As to similarities, in the Democrats' first conventions in the age of Martin van Buren, votes were apportioned among the states in the same manner as in electoral college (according to the number of House representatives and senators).² It no doubt seemed natural for a nominating convention to replicate the apportionment principle that had prevailed in the electoral college previously charged with nominating. In a highly consequential rule, a winning candidate needed to attain two-thirds of the Democrats' convention's votes

to be selected the party's nominee. This rule, the two-thirds rule, lasted until Franklin Roosevelt. It had the salutary effect of requiring a consensus among delegates the better to hold the party together across the diverse regions of the nation. What mattered under this rule was not who was most popular but who was the least unacceptable among contenders.

The goal of broad acceptability was a venerable one for republics (and was one of the reasons behind approval voting, pairwise voting, and super majorities in many late medieval and early Renaissance republics). It in part motivated Martin van Buren when in the 1830s he devised a party mechanism for seizing control of the nominating process. Van Buren took the view that ambitious men were not the ones to be entrusted with their own selection as presidential nominees, and the country would do better to lay on the constraining hands of party.³ In this outlook, van Buren shared with Renaissance and classical architects of republics a wariness about personal ambition. The two-thirds rule, while laudable in keeping popular rogues at bay, had the corollary effect of producing sometimes bland, undistinguished, even untalented national leaders. When Nathaniel Hawthorne wrote a campaign biography of his college friend Franklin Pierce as the latter ran for president, Horace Mann said if he could make Pierce out to be a great man it would be Hawthorne's greatest work of fiction.⁴ Pierce was one of more than a dozen beneficiaries of the two-thirds rule.

In the convention system of the nineteenth century national delegates (selected from a multitiered selection process) emerged unpledged to a candidate. Pledging was not logical when candidates did not campaign for the nomination but rather indicated their availability; nor did it come naturally to delegates who were prominent citizens and party professionals (the survivors of a filtered, layered process from county to state to national convention). Delegates considered themselves a political elite who should exercise their vote as they thought best for the party and country, and in this theory of disinterestedness they resembled the theory of electors in the Electoral College. It was not until primaries began to dominate the process that delegates began to assume the role of candidate agents.

However, the other theory behind the unpledged status of delegates was a transactional one. Unpledged delegates were frequently the tools of party bosses, and party bosses not seldom exercised their clout for venal purposes. In both major parties during the nineteenth century, the nomination process got entangled with, to some degree dependent upon, the business strategies of corporations. Such corruption of politics by business interests was durable for decades, but eventually reformers inveighed against it, and the call to reform nominating practices got swept up in the civic-minded Progressive reform movement during the last quarter of the nineteenth century. The leader of the reform cause was Robert LaFollette of Wisconsin; his slogan, let the people rule; his remedy, the direct primary. Or, as he put it in a speech in 1898, "Good government ... can only be secured through good nominations If bad men control the nominations we cannot have good government."⁵ LaFollette

understood well the key part that nominating systems played in government, and he made their reform his cause.

Left to its own beneficent self, this reform effort might have failed, but it was joined by a wave of anti-immigrant sentiment following the large arrival of first Irish, then Italian and Eastern European, immigrants. It might seem strange that such a reform cause seeking to break the undemocratic nexus of business and parties would be also the passion of bigots, but it was not the least strange to the latter. They saw party nominations for statewide and national office being decided by big city bosses who ruled vast political machines and whose constituents were newcomers to America, many non-English speakers, dependent on the machines for patronage and social services and, in the bigoted view, hardly capable of making (or being asked to make) informed decisions. The reform movement aimed in part at disintermediating the bosses and their corporate sponsors, and in part at whittling down the immigrants' new-found part in politics.⁶

Reformers gathered at an unprecedented national conference in New York in 1898 to consider changes to the nominating system. Nothing like this had occurred since the 1804 Twelfth Amendment. Party officials, elected officers, and reformers came from distant parts of the country. Most participants backed the direct primary, saying it would raise turnout, reduce the influence of money, break the power of the machines and their corporate paymasters, and produce better candidates. The reform view was that nominating control was the key to the bosses' power, that voters were apathetic because they knew their involvement mattered not in the least, that democracy was withering away, and that the remedy was involving the people again by putting them in charge of nominations through the direct primary.⁷ These opinions were unexceptionable to reform-minded people.

Presciently a few speakers questioned the emerging orthodoxy. The doubters, such as Thomas Johnson of Cleveland, said that open, direct primaries would be expensive and therefore favor rich candidates; they would be decided by largely uninformed voters; the party could not stop non-party members from voting; and there was no assurance that the winner would be favored by a majority, or supermajority, of voters, since in a multi-candidate field, a simple plurality was all it would take to win.⁸ These were perceptive comments. Notwithstanding the warnings, the reform effort took off. In the first two decades of the twentieth century, more than half the states proceeded to enact direct primaries. LaFollette's promise – that through direct primaries “the will of the people will prevail” – was realized at last, at least briefly. Jumping on the primary bandwagon late in life, Theodore Roosevelt generated new interest in the cause in 1912 by winning newly created primaries in a host of large states, nearly unseating his chosen successor, William Howard Taft, who nonetheless was renominated. Taft was one of many who managed to win nomination in spite of losing the popular primary vote.⁹

Then, just as suddenly, in the late teens and 1920s, states rebelled against the direct primary; eight states repealed direct primary laws. The reasons for

this reversal had something to do with a rebellion by party professionals having lost control of the process, but also were related to the arguments made by the doubters in the convention of 1898. Primaries produced unelectable nominees, it was alleged; this had been one of the reasons Madison cited for favoring electors over popular vote, to spare the nation “utterly hopeless” choices, as he put it. Primaries also favored wealthy candidates, it was said, and impeded the making of balanced tickets. After 1916 and through the next few decades, the proportion of states holding Democratic direct primaries declined from about half or more to fewer than a third of states.¹⁰ It is hard to think of many instances in American history when the country turned the dial down on democracy, but in the early twentieth century, with regard to nominating, it did.

What unfolded next was a curious, unplanned, hybrid system in which candidates sought to win the backing of party bosses and interest group leaders, and adapted political positions to persuade these leaders, while at the same time needing to demonstrate to these bosses that they had one extra, essential quality: the ability to win votes. The handful of remaining primaries became proving grounds, sample tests of electability. When some look back on the era of “smoke-filled rooms” and imagine bosses plotting who should be the nominee, they imagine a conspiracy that rarely unfolded in so straightforward a fashion. Mostly, what bosses did in this mid-twentieth-century system was sit on the sidelines and watch. Stingy with their political clout, determined to avoid embarrassment, they would wait to see who could win votes.¹¹ Primaries by themselves did not nominate the candidate, but they presented an unavoidable hurdle that the candidate had to pass on the road to nomination. But bosses were still crucial. Many times in 60 years the two major parties nominated people who had not won the most primary votes – including William Howard Taft, Woodrow Wilson, Dwight Eisenhower, Adlai Stevenson, and Hubert Humphrey – because the primary winners in those years – Theodore Roosevelt, Champ Clark, Robert Taft, Estes Kefauver, and Eugene McCarthy – could not persuade the bosses and their unpledged delegates to go along.¹²

This system, of passing them through the gauntlet of bosses, forced candidates to modulate their positions to gain the support of, or at least not alienate, party leaders. (In this way the gauntlet was the functional equivalent of the abandoned two-thirds rule.) When, for example, Tennessee Senator Estes Kefauver began winning primaries in 1952, he alarmed Southerners with his pro-civil rights stance, and both they and President Truman (who disliked Kefauver, privately referring to him as “Cowfever”) looked around for someone to stop him and settled on Adlai Stevenson, who had not even entered the primaries. Because Stevenson was more moderate on civil rights than Kefauver (yet nonetheless acceptable to labor and urban machines), an unlikely coalition of Southern, urban, and labor leaders fell in behind his candidacy in Chicago.¹³

This hybrid system came to an abrupt end after 1968, when the Democratic convention nominated Hubert Humphrey (who had won just 2% of

the popular vote) instead of Eugene McCarthy (who had won 38%). The party, imitated by the Republicans soon, passed a series of reforms greatly expanding primaries and caucuses and tying delegate totals to voting outcomes. Voter participation exploded from twelve million voters in 1968 to twenty million four years later. By 1976, thirty states held primaries (versus an average of around fifteen in midcentury), and three-quarters of delegates were chosen in primaries (versus 30–40% in midcentury). The expansion of voting has continued since; the democratic imperative is inexorable. By 2008, nearly every state had a primary or caucus and the number of voters rose to some 57 million. The people might not have ruled, as LaFollette had said they should do at the turn of the century, but they voted.

Intentions were all for the best when the Democratic Party led this revolt of conscience after 1968. The question nevertheless was whether the results were as good as the intentions, and more especially how they measured up against longstanding principles of good nominating practices (not to mention republican principles – that comes next). Van Buren launched the parties into nominating to wrest control of the process from ambitious men (aspirants were all men then). In recent decades, van Buren's purpose has been thwarted. The nominating process has become candidate-centric since primaries took over. Parties, in turn, have been no more than event organizers, without a say in the decision. In 2015, the Republican National Committee Chairman found himself chasing the candidates to secure a pledge that each would support the eventual Republican nominee. It used to be candidates who sought the party's endorsement, not the other way around. Today the main drivers of the nominating process are the candidates, who select themselves to run.

Self-selection for this line of work is not ideal. The modern process of running for president – twenty-four months of nonstop fundraising, travel, and relinquished privacy – is so unpleasant and demeaning that it requires on occasion a personality disorder to submit to it. Rather than a selection process the country has an adverse selection system: the individuals volunteering for president are often precisely the sort of person one would never want near that office – narcissistic, insecure, consumed with the need to prove him – or herself. The pursuit of high office to redeem a defective personality through honor and fame is not new. It is why Socrates recommended that magistrates should be confined to those who do not want the job. Patrick Henry, not fond of Great Britain, looking at the new constitution and spying in it an avenue for the well-connected to rise through office, said as bad as it was, he preferred an aristocracy of birth to an aristocracy of ambition. The control of ambition was one of the achievements of republics in the past; ambition's free run over the office landscape today is one of the results of replacing procedures with plebiscites in nominating.

This is the first unforeseen consequence of the 1972 reforms: a candidate-centric system that produces candidates who are sometimes quirky, odd, and immature. The second is that, for a system born in the post-1968 desire for

democratic instauration in nominating, the result has been paradoxically oddly undemocratic. Having to reach millions of voters, candidates must raise millions of dollars, and those who fail drop out. In every cycle, many candidates drop out before a single ballot is cast. This expensive prologue to voting would not have surprised Thomas Johnson who warned of the danger in the 1898 conference on nominating.

When voting does start in modern primaries, problems worsen. Only a few contests need occur before candidates begin withdrawing from the race, depriving later voters of their say. But that is possibly the lesser problem. The larger (and closely related) problem relates to whoever is catapulted forward on the basis of slender results. In late February 2000, after only a handful of primaries, George W. Bush became unstoppable after winning in South Carolina, and Al Gore after just four contests, in both cases before the vast majority of voters had had their say. In 2004, John Kerry locked up the nomination on Super Tuesday, by which time less than 3% of the nation's electorate had voted for him. Jimmy Carter was set on the path to the nomination in 1976 with under 28% of Iowa's votes, less than "Uncommitted." Donald Trump became the break-away leader in the Republican group of 2016 after just three contests, in which his highest vote total was 35%.

People have known for centuries that plurality wins are unreliable. In a field of five or more candidates, the plurality winner has no better chance of being the most preferred than if he or she had been chosen by lottery.¹⁴ One may have, for instance, three moderate candidates each winning 24% of the vote, and an extremist who wins 28% and is declared the winner, even though a large preponderance expressed their favor for moderation. If it is an early primary (it normally is early when several candidates are competitive), that misleading, early plurality victory can send him or her on their way to the White House. It was because of its randomness that Condorcet proposed plurality outcomes as the ideal way to choose a jury. In the 1820s, Madison worried about plurality wins in the Electoral College. Medieval church leaders devised complex pairwise voting and ranked choice methods to get around the problem in selecting abbots. Since the twelfth century, a two-thirds majority has been the threshold for electing a Pope. The famous Venetian system involved ten stages of super-majorities to produce a Doge. After a millennium of familiarity with the problem of pluralities, that such an accident-prone system as the modern American one could be created is an instance of costly procedural amnesia.

Deeply compounding the problem is the sequential character of modern primary contests. It is because contests are sequential that some candidates drop out before most voters have voted, and others are catapulted toward victory; and because pluralities are having this effect it is impossible to know whether the ones dropping are the more preferred and the ones catapulted less preferred. Organizers of voting procedures have long been cognizant of the power of early results. The Romans used it purposefully to enhance the influence of the *centuria praerogativa*. Greeks hid from each other voting in

the *dikasteria* for the opposite effect, so voters would cast their votes safe from the influence of example. After years of struggle with patricians, Roman tribes finally pushed through electoral reforms to protect the sanctity of each vote, and the two major changes were that votes be secret and that no counting could begin until all votes had been cast.¹⁵ The American founders were emphatic that the original nominators, the electors of the college, should meet simultaneously each in their own state, hundreds of miles from each other and vote on the same day – so as not to be affected by each other. In ratification, hermeticism, of which timing is a key part, was the most praised feature of the presidential selection system. The modern sequential primary voting is a sloppy, ramshackle affair compared with those thoughtful systems. It ensures that early results have a powerful influence on the outcome, but without rhyme or reason. Its principal effect is to accentuate the random, unreliable results of plurality wins. The combination of the two procedures – sequential voting and plurality wins – makes a formidable recklessness.

This is the most recent version of nominating, but for a long while before, through the various iterations of nominating, ever since 1804 the purpose of the system has been, as Senator White predicted it would become, to produce a champion from one party and hurl him or her against the gladiator from the opposing party in a great, mesmerizing personal combat. Few spectacles can match a presidential contest for creating a national drama. Through that drama, candidates stir up the country's passionate differences to energize their adherents. One would be a sleepy candidate not to do so. All weapons are reached for. The language is that of war, "campaign" is a military word. But as a result, the nominating and electoral procedures of 1787 intended to build national comity were replaced by voting which efficiently achieves, and intentionally so, the opposite. The contrast with older republics is even starker. Whereas Renaissance republics tried to nominate their way to stability, modern democracies have the capability to nominate their way to civil strife. This was the result of transforming the nominating function from a government tool to make peace into a party tool to make war.

The electoral college has its own well-understood dysfunctionality. Pluralities have been sufficient to elect nearly one-third of presidents. Several times the electoral winner has been the loser of popular votes. In any system, ancient or modern, where counting numbers is the key action, it is inconceivable that a plurality is the right threshold. In older republics, when head counting was resorted to, pairwise comparison and ranked choice were typically used to find the most preferred choice. Majorities, let alone pluralities, anciently were scorned; two-thirds was the minimum usually required in republican settings. That pluralities suffice in the modern hyper-democratic age is an extreme anomaly and is owing to the electoral college's having been only half reformed by the Twelfth Amendment and become a hybrid institution, partly a disfigured nominating machine, partly a hobbled voting machine.

Not trusting a straightforward popular vote, the 1804 reformers maintained the centrality of states in the college. Nearly all states use winner-take-all

methods to enhance their influence on the outcome. Ancient Rome counted votes by groups as well, by tribes and centuries, and also employed the winner-take-all rule. In fact, winner-take-all is the only sensible rule in any voting system organized by groups. But the modern era – the era beginning at the start of the nineteenth century when the college was reformed – places a higher value on the individual’s vote than did ancient Rome. The current arrangements would be tolerable if, as in ancient Rome, a consensus of groups were deemed more important than counting heads. It would be fine if presidential selection were the consensus-oriented, multi-stage process designed by the framers, and, too, if the majoritarian doctrine (which revolves around people, not entities) had not become the regnant political doctrine. But the rule of numbers triumphed a long while ago, and the disfigured electoral college remains. The college’s utility is exponentially worsened by the fact that it is deciding between candidates produced by an equally dysfunctional nominating system. The piling on of incompetent stages one on top of the other would have astonished the framers, complicit as they inadvertently were in their origin.¹⁶

Notes

- 1 James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton, 1979); Alan Ware, *The American Direct Primary: Party Institutionalization and Transformation in the North* (Cambridge and New York, 2004); John F. Reynolds, *The Demise of the American Convention System, 1880-1911* (Cambridge and New York, 2006); Frederick W. Dallinger, *Nominations for Elective Office in the United States* (New York, 1897); James W. Davis, *Presidential Primaries: Road to the White House* (Westport, Ct., 1980); Geoffrey Cowan, *Let the People Rule: Theodore Roosevelt and the Birth of the Presidential Primary* (New York, 2016); Elaine C. Kamarck, *Primary Politics: How Presidential Candidates Have Shaped the Modern Nominating System* (Washington, D.C., 2009); Steven S. Smith and Melanie J. Springer, eds., *Reforming the Presidential Nominating Process* (Washington, D.C., 2009); Nelson W. Polsby and Aaron Wildavsky, *Presidential Elections: Contemporary Strategies of American Electoral Politics* (eighth ed., New York and Toronto, 1988); John Frederick Martin, “Fixing the Presidential Nominating System: Past and Present,” *NYU Law Review*, vol. 93, no. 4 (October 2018); Bruce E. Cain, *Democracy More or Less: America’s Political Reform Quandary* (New York, 2015). Cain has said (*Democracy More or Less*, 20-21) with all the haphazard “tinkering” through the years it is a wonder the political system can “still function as well as it does.”
- 2 Seymour and Frary, *How World Votes*, 1: 291.
- 3 Ceaser, *Presidential Selection*, 29–30. William Plumer had predicted in 1803 among the many drawbacks of the proposed Twelfth Amendment was it would result in ambitious men’s seeking the presidency “with avidity.” *Plumer’s Memorandum*, 65. See also White and Hillhouse speeches in [Chapter 7](#).
- 4 James M. Lundberg, “Nathaniel Hawthorne, Party Hack,” *Slate*, Sept. 14, 2012.
- 5 Robert M. LaFollette, “*Primary Elections for the Nomination of All Candidates by Australian Ballot*,” address at University of Michigan, Ann Arbor, March 12, 1898 (offprint Madison, Wisconsin, July 16, 1900).
- 6 It was the same time that Boston Protestants decided to erect a statue to Leif Erikson, coming up on the 400th anniversary of Columbus’ voyage, to emphasize that

it was not an Italian Catholic but a Norseman who discovered America. Some of these same people were reform-minded civic activists. Today Erikson still stands on the end of the Commonwealth Avenue Mall, his hand shading his eye as he gazes west (at the Kenmore-Fenway viaduct).

- 7 "Primary Election Reform," *New York Times*, January 21, 1898. See also Ware, *American Direct Primary*, 81–82.
- 8 Reynolds, *Demise of Convention System*, 191–194; Ware, *American Direct Primary*, 114–116. Frederick Dallinger, the first historian of the American nominating system, raised similar questions to Johnson's at the same time. Writing in the 1890s, he was in part influenced by his bigotry and anti-immigrant bias; Dallinger worried that in urban areas direct primaries would be dominated by the wrong kind of voters. Dallinger, *Nominations*, 146.
- 9 Davis, *Presidential Primaries*, 44; LaFollette, "Primary Elections"; Cowan, *Let People Rule*, 140, 176–177, 179, 249–252.
- 10 Ceaser, *Presidential Selection*, 227; Davis, *Presidential Primaries*, 141–142.
- 11 For examples, see Martin, "Fixing Nomination System," 751.
- 12 Davis, *Presidential Primaries*, Appendix A.
- 13 Martin, *Civil Rights and the Crisis of Liberalism: The Democratic Party, 1945–1976* (Boulder, Co., 1979), 98–113.
- 14 Samuel Merrill, III, *Making Multicandidate Elections More Democratic* (Princeton, 1988), 25.
- 15 Hall, "Voting Procedure," 291–293. The secret ballot was 139 B.C., and the counting delay until votes were cast was possibly at the same moment or thereafter. See [Chapter 1](#).
- 16 The damage to democracy by plurality wins was not confined to presidential nominating and electing. See James M. Cox, *Journey Through My Years: An Autobiography* (New York, 1946), the thoughtful memoir of the Democratic presidential candidate in 1920, in which (401) Cox describes the plurality and unit voting system exploited by the Georgia mini-dictator Eugene Talmadge in Georgia. Talmadge, a racist, won 65 of 84 black counties without winning a majority in any of them.

Conclusion

It is hard to look on the consequences of Philadelphia as other than unintended. The purpose in convening the federal convention was to form a tighter union; that union exploded within seven decades and the Civil War cost the lives of more than 700,000 people. The delegates generally were poor predictors. Among things occasionally forecasted in 1787 were that slavery would wither away, a large republic would be more stable than a small one, interests would dissolve in the diversity of themselves, turnover would be high in Congress, Southern growth would outstrip that of the North, the House would be the protector of the South, the Senate that of the North, and the president would be above faction and party, the fortuitous choice of disinterested electors and deliberative House members. None of that was right.

Years after the Constitution was ratified, Madison and Jefferson were aghast at the Missouri Compromise – nowhere did they think the Constitution allowed Congress to regulate slavery in states. Gouverneur Morris and William Johnson were aghast at the Louisiana purchase – nowhere in the document did they think a president was allowed to expand slavery by purchasing new territory. Rufus King lamented the “agency and influence” which had captured presidential selection contrary, he said, to the framers’ plans. The framers had done their reading, gone head-to-head with each other in the State House, knew first-hand the animosities dividing the union, installed a few procedures to mitigate them – and failed, their work product overwhelmed by the very partisan and regional divisions that the procedures were meant to control. Had they seen what was coming, the framers should have, would have, as Morris suggested at a critical moment, taken friendly leave of one another; for it is not self-evident that there could be a procedural solution to such fundamental schisms as existed in the community.

Another forecast was that the electoral college would nominate candidates and the House would elect the President; 49 out of 50 times, Madison had predicted, the final choice would be the House’s. Instead, it has been three times out of 60.¹ As a result, a body intended to vet candidates has ended up electing presidents. This, too, was unintended.

But it was not just a failure of prediction that led the founders astray. There was what can be called the Savonarola syndrome: loving your theory

enough to preach it but not always enough to practice it. This syndrome hit James Madison hard. No one of the founders analyzed better than he the risks to a minority in a free society, and no one did more procedurally to magnify those risks for whoever happened to fall outside the majority of the moment. In his defense, there were reasonable, countervailing, exonerating arguments about popular sovereignty and the majoritarian principle. But his embracing those arguments meant he either did not believe his statements about the tyranny of majorities, or he did believe them but, caught in the crucible of power, jettisoned his beliefs to protect his party, his region, and its immoral institutions. At a critical pass in Philadelphia, he argued for reapportioning congressional seats in perpetuity (counting whites and three-fifths of slaves) because to do otherwise would deprive Southerners of their eventual legislative majority. Madison's was a case of a stern Calvinist creed being preached by a weak Arminian clergy.² But at least he was not hanged and had his ashes scattered upon the Arno.

It is unfair to blame Madison alone. There was a mental confusion seeping into the deliberations in Philadelphia: on the one hand, a rising miasma of popular sovereignty, borne along by the successful revolution, forming of state governments, a powerful and leveling war experience, and the simple fact that in making a new government where else, in the eighteenth-century Anglo-American world, could one locate the foundation except upon the people? And on the other hand, a profound distrust of the people and a long colonial experience of entrusting public matters to a professional political class. That was one distinct source of confusion. Another was that the Constitution was written at an inflection moment in a longer political history, a moment when mental habits oscillated between the common good sought through republican architecture on the one hand and the emergent doctrine of majority rule on the other. Living in these two different mental worlds, the delegates produced ill-fitting parts. The quasi-republican, aleatory, multi-stage, presidential selection process was undermined by the majoritarian impulse dominating the other half of the political mind, and the country ended up with a hybrid, a mangled nominating machine performing the electing role and producing plurality wins, than which no single procedural outcome could have been less desirable.

Madison's changing positions on this matter revealed his confusion. He participated in the convention's final committee that devised Article 2 then led the effort to reform the Electoral College in 1803 and 1804 and make the college more controllable by whichever was the majority party, then twenty years later still wondered if the nation ought not to reinstate the double vote for president, maintain the college's hermeticism, and keep the people at bay. He was looking for a magic potion for expressing the will of the majority of the people (without, however, asking the people), but the image of a disinterested body of wise men would not desert him.

The mental tug of war was most clearly displayed in the federal convention's fight over how to apportion the Senate. Defenders of proportional

representation believed that only a legislature speaking for the American people would have the requisite authority to discipline unruly states and their occasionally lawless residents. They said the country's great size and diversity would prevent alliances from being formed which could threaten a minority. It is not likely anyone placed much confidence in this theory. Hamilton and Dickinson did not, judging from their notes made during the Philadelphia convention. Nor did Madison himself. He and others worked hard to maintain a majority voting alliance within the convention. This work, at first successful, had a decisive impact on the floor debate. By mid-summer, delegates were under no illusion that if alliances could be forged in the State House to win clauses in the draft Constitution, they would be forged in the Congress to pass legislation. It was to stop or slow down these majority tides from rolling over others that Dickinson and structuralists created the breakwater of equal vote in the Senate and the complex presidential election system. It was said they were representing small states. That was only partly true. Dickinson was as much a nationalist as Madison and Wilson. More aptly could it be said they were republicans, in the sense that they were resorting to procedural techniques to build a barrier against "the one great current," as Dickinson put it. The equal vote outcome was as much (or more) a vote against popular representation in the national government as it was a vote for protecting sovereignty in states.

The structuralists in the federal convention debates proved more prescient than the proportionalists. One of the points this analytical group made was that even though the average voter's will was filtered through his representative (sometimes by two and three steps), such indirect elections did not take the edge off narrow interests. The filtering of representation did not dull passions about slavery; it merely sent the rabid Pinckneys and Calhouns into the heart of the national government on their disruptive mission. Representation successfully got the people out of government, but not their passions. In fact, divisions were likely made worse in society because of the intermediaries' exploiting them, riding into office on the back of local resentments.

The structuralists' analysis was correct; their remedy, however, was inadequate. The Senate as a blocking mechanism did not stop the clash of interests from tearing the country apart. The scale of America's differences was too vast, the ventriloquism of representation too efficient, and the dynamo of expansion too destructive for any set of procedures to contain the dislikes. Their complex presidential selection system generally did produce executives broadly acceptable to the different regions, and helped to delay outright war, until in the crisis of 1860 the electoral college reverted to its nominating character, and was more an accelerant than a retardant of the fire.

The structuralists' arraignment of representation as an institution died with the convention; it was not carried on and did not become the basis of a new political doctrine. That is because it was mostly negative; the structuralists were set on blocking the takeover of national councils by majority coalitions. At the climax of the debate, when it was clear that the proportionalists

were about to lose the battle, James Wilson complained that the other side had never rebutted “the justice of the principle of proportional representation.”³ He was correct; they had not done so. That was because their advocacy was by its nature anti-representational. They had offered no alternative theory of representation because the sally they were embarked upon was not to make representation work better but to make it not work well. In subsequent decades there was no place or occasion to resuscitate the structuralists’ arguments of Philadelphia and build a platform from them.

But they left their example. At the dawn of the democratic revolution, a debate took place, and representation was appraised and found wanting.⁴ The related question the structuralists raised – about the danger of the rule of numbers – did re-appear during the debate over the Twelfth Amendment; then it too was sublimated, only to appear briefly, but noticeably, when Lincoln assailed popular sovereignty (“a living, creeping lie”) during the fight over slavery. These critical comments about majority rule – at the federal convention, during the Twelfth Amendment debate, and from the mouth of Lincoln – were not the expressions of illiberal people but the flickers of a mindset that once ruled republics before the rule of numbers took over.⁵ In the age of majorities, the structuralists did not bequeath an alternative ideology; the institutions they fashioned were unwieldy; but their questions remain unanswered: in what way can a popularly elected legislature be trusted to pursue the common good?

Is the modern representative an ambassador, carrying messages, or is he or she a visionary looking out for the country as a whole? They have been both, in theory. If there are but two inhabitants in a congressional district and one wants higher taxes, the other lower, in what way can it be said that the congressperson represents them both? Rousseau was of the view that it is impossible for one person to represent another person. The problem is not made smaller when districts have 700,000 inhabitants. The representatives’ agency can only be partial. To the extent a representative is acting as an agent, someone is for sure not being represented; that was the point of the structuralists in the debates of Philadelphia. When officeholders dutifully serve the particular interests of their constituents, they are inescapably not serving the common good, which is why one can say that a conscientious representative is a menace.

On the other hand, a government that ignores the people and takes decisions by the lights of an experienced, professional cadre is a democracy in name only. For modern times, there was the dilemma. States wanting to be republican were damned if they did and damned if they did not tie the hands of representatives to the desires of constituents. If they did, disinterested government ceased. If they did not, professionals took over. The dilemma arose because representation in any form was a difficult fit with republican procedural goals. In muddling through to a solution, modern government has managed to achieve the worst outcome: fractious government run by professionals.

When Madison made the case for entrusting government to wiser “masters of public business,” he reassured people about the risk of a professional political class by predicting a high turnover in elective office.⁶ He was mistaken in this prediction. Turnover in the U.S. House of Representatives was reasonably high before the Civil War, an average of some 40% of representatives not seeking re-election. Then things changed, turnover dropped abruptly, and by the twentieth and twenty-first-centuries, only 11.5% of representatives on average have not sought re-election, nearly a four-fold decrease from ante-bellum days. Before 1887, the number of senators serving more than two terms was never higher than 10%. In the early 1990s, that number was 47%, almost five times as many. House members served an average of 2.5 years in the nineteenth century and almost ten years on average in the present century; senators under five years in the one century and more than eleven years in the second. The average age of senators in the 117th Congress was 65 – that was the average.⁷ Officeholders have become what Antifederalist James Warren predicted they would become, a “self-Created Nobility.”⁸

These recidivist patterns are a continuation, although a hardening, of pre-revolutionary ruts of political behavior. Only a few hands controlled the levers of Massachusetts government in the seventeenth century and excessively low turnover rates prevailed in colonial legislatures in the eighteenth century. Except for a short spate of higher turnover in the first decades of the new nation, the reluctance of officeholders to let go in America has been the consistent pattern through four consecutive centuries, one shared with the House of Commons in the age of placemen and rotten boroughs. This professionalization – across sectarian differences, across imperial and post-Independence regimes, across governments of the left and the right – has been one of the great undemocratic constants in American politics.⁹

Installing a professional political class was not an American invention. What was new was justifying the installation in the name of the people, which made the class especially hard to dislodge. People voting (even indirectly) for representatives sanitized the professional class because, however long the officeholders remained, they were there apparently by the people’s command. This laundering of an old unrepugnant feature was the modest American contribution to Anglo-American statecraft. Popular sovereignty was not new, professionals were not new, but their combination was, made possible by representation.¹⁰

In 1922, the anthropologist Bronislaw Malinowski, conducting research in New Guinea, described the village headman who collected a portion of villagers’ agricultural production, stored it next to his dwelling then redistributed it to families at festival times and reconfirmed seasonally his position.¹¹ Modern representatives cast themselves in a similar, transactional role. They are powerful beggars: lobbying each other and government agencies, securing money to carry back to their constituencies, pieces of the same breadfruit which were collected from village-taxpayers in the first place – and requesting therewith re-election. This is the modern representative function in its benign

form. Less benignly they rouse an angry subset of their constituency hell-bent on harming another subset, and perform the same breadfruit-roundtrip with stops along the way to pick up a check from special interests. By comparison, the Western Pacific headman looks like Cincinnatus.¹²

In a political system organized around candidates' strenuous efforts to stay in office, business plays its munificent part. This narrow role is a change. It has been one of the observations of this study that business organizations contributed to the creation of republican architecture, beginning in the late medieval period and continuing into the seventeenth century in the Anglo-American world. No group is more jealous of rights, more fussy about voting rules, more determined to block a monopoly on internal offices than people looking out for their money. The more exclusive and privileged a group is, the more republican it will be. But just as the modern, representational model put paid to republican architecture in the public space, it also put paid to the dynamic relationship which had existed for centuries between business activity and fledgling republics. There was no longer a need for a procedural incubus for procedures that had become obsolete. At the moment of inflection, during the eighteenth century, admiring comments about the *Casa di San Giorgio* by Addison, Hume, and Montesquieu still were made. In the American Revolutionary era, the resort to business analogies was common when people debated the limits of suffrage.¹³ The invoking of business examples to advocate political procedures was an echo still ringing in the ears of the eighteenth century of the profound but finished part that business had formerly played in self-government's emergence centuries before. The business role as experimenter and collaborator had ended, and the business involvement with politics has been mostly rerouted to the area of legalized bribery.

Representation, with its corrosive effects of politicized government, idle citizens, and professional politicians, was not a feature in city-republics of the medieval era and early Renaissance nor in antiquity. It took flight in the Anglo-American world, when a Parliament of grandees pushed the republican locomotive onto a siding from which it has yet to re-emerge. By becoming the standard bearer of those who fought against royal absolutism, Parliament earned for itself and its copiers the first place among defenders of liberty. At the critical moment, when Charles I was overthrown and Parliament took charge and exhibited its own taste for absolutism, some observers began to wonder if a representative body of grandees was really safe after all; but with the Restoration, Parliament again became the default protector against prerogative. America's colonial assemblies were not slow to emulate the model and do battle with royal governors. It was almost unimaginable when new governments were formed after Independence to think of them without elected legislatures at their core.

But none of this chain of events was predestined; it looked rather more like a haphazard flow of semi-connected forces, and political institutions might not have unfolded in the same way if, say, the republics of Florence or Genoa instead of Englishmen had founded the North American colonies. Without

the Parliamentary privileged position as the foil of monarchy, without the deliberate but contested autocracy of Winthrop and other colonial leaders, without the deadening Anglo-American culture of political deference, without the need to drain popular sovereignty of its threat to elites, one might have had a different outcome.¹⁴ Whether things could have turned out differently does not deeply matter, except in this sense: to recognize that accident has taken its hand in history removes at least one hurdle to making change, the hurdle of believing that history has a purpose and a logic redolent of destiny.

Change is possible, even immanent. As much as republican procedures have disappeared, the republic's idea – of government for the common good – is solidly intact. What else can one desire of government but the common good? The clash of that timeless desire and the transactional character of officeholders makes the modern political system inherently unstable. One senses instability increasing with time. Nearly a century ago, the French essayist Julien Benda wrote that his own era was “the age of the intellectual organization of political hatreds.” People had always had their biases and dislikes but what Benda saw as new was the organization of these hatreds into efficient groups by mass newspapers focusing on complaints of aggrieved races, classes, and nations. Being so organized, people felt themselves empowered by belonging to a self-conscious movement of haters.¹⁵

Benda thought mass media was a solvent breaking down society. He did not live to see the more caustic solvents of television and internet. Stirring up resentments has always been a logical way to campaign for office. In old republics, it was the election of magistrates, as much as anything that communes worried about, for elections energized division even when conducted intelligently. Although plurality victories were shunned, premodern republicans knew there was nothing salutary about majority elections either. It is one of several differences with older republics that modern polities organize themselves around elections. Today, in society unprecedentedly organized into pockets of anger, that device is riskier than ever.¹⁶

An equal source of instability is the side-lining of citizens, which may be reaching the point of historical exhaustion. A polity purporting to be democratic, but whose people's participation in government is limited to re-electing mostly the same officeholders, is counting on a lot of credulity. It would not be surprising if the hypocrisy of political arrangements one day provokes a long-idled citizenry, whose frustration may drive them to respond to almost any summons for change, any challenge to authority, or any random person looking for trouble.

An intelligent scholar thought that the models of Greece and Rome “have become irrelevant” since the forming of the American Constitution.¹⁷ One wonders if he was right. Premodern republics were more disciplined than is a modern democracy about aligning goals with methods. To achieve the common good, European republics required officeholders to be disinterested. For them to be disinterested, complex selection rules were devised disallowing a claim by constituencies upon officeholders. Groups in late medieval communes

nominated members for office but could not control who from their group was selected. That depended on other voters and chance. An exquisite uncertainty surrounded office-filling. Not-knowingness was key to fulfilling the goal that the republic should belong to no one, because it was meant to belong to everyone. We believe today no less than our forebears did in the morality of disinterested action, but we have lost the procedural way to find it.¹⁸

Political history is sometimes written as a story of progress, of origins and ascents – from the balance of social estates to the separation of powers, from kings and nobles and Parliament to the sovereignty of the people, thanks to a people's Constitution. This study has been a story of descent, from the heights of republican complexity to a cruder political world of amassing power; a story not of beginnings but of endings. The ending is not without its irony. Republics that did an effective job of dispersing power have been replaced by representative structures that have re-concentrated power into a form that is difficult to break down again or resist because it is power putatively exercised in the name of the people, the people for whom republics were invented in the first place. A deeper irony is how in this current age of reason, the trappings of democracy are accepted for the real but missing thing, and in the medieval age of superstitions, people were hardheaded and pragmatic about matching their goals with the details of a well-functioning state.

The question is, can one start the climb back up? It will not be easy, for we have become inured to believing that the Constitutional arrangements made by our founders are sacred and that solving problems by simple voting is providentially ordained. Republics of old, by contrast, tried many selection systems and revamped them repeatedly. One commune of the early Renaissance changed its system with every election.

Virtue and theories are useful, but procedures are better, for making good government. Popular sovereignty has led us to rely on voting which, as Lincoln said, has its limits. Better than a theory would be practical orders that involve citizens in their own governing. It may not be possible to undertake procedural reform short of a national calamity delivering its shock, but equally it may not be possible to avoid calamity without changing procedures. That is the near choiceless *cul de sac* history has led us into; but there must be a way out.

Notes

- 1 1876 is counted among the three, when the election was decided by commission, not by the House. It might have been more than three times but for the Twelfth Amendment.
- 2 The phrase is Chatham's (Pitt's father). Reilly, *William Pitt the Younger*, 38. Calvinism placed salvation solely in the hands of God, Arminianism more hopefully gave scope to human will. The automaticity of depersonalized republican procedures could save the community as long as republicans could keep their hands off the tiller and resist the temptation to take over the vessel, even having the best of intentions, as Madison sometimes had.

- 3 Farrand, 2: 10.
- 4 A similar debate took place in the Dutch republic in the decade after the federal convention.
- 5 Occasionally a politician appears who criticizes representative government. James Cox, who ran for president in 1920 (and recruited FDR as his running mate), wrote about the dangers of parliament sliding into dictatorship. Cox, *Journey Through My Years*, 361.
- 6 It was the high so-called “mutability” of the House, Madison said, which argued for a more steady, sober Senate with longer terms for its members. *Federalist* 62 and 63, Bailyn, *Debate on the Constitution*, 2: 246ff, 318ff.
- 7 Congressional Research Service, *Congressional Careers: Service Tenure and Patterns of Member Service, 1789-2021* (Washington, D.C., updated January 5, 2021).
- 8 Billias, *Elbridge Gerry*, 217. The Renaissance scholar Mario Ascheri has said that politicians today are the like nobility of old, a class aspiring to monopolize office. (Conversation with author, Siena, Italy, April 1, 2022.)
- 9 Why stickiness of officeholders is increasing is not clear. Larger electorates make even more exigent than before the value of money and name recognition (both advantaging incumbents). The lengthening tenures may owe something to an internal reinforcing mechanism. The self-delusion of officeholders that they are indispensable likely grows in proportion to their tenure, after years of accustoming themselves to the perquisites of office, and years of staff and donors pumping the bellows of their vanity (as Dante put it). The longer they are there, the more convinced they are that they are irreplaceable. When they finally move off stage, sometimes their children take their place. Benjamin Franklin said “hereditary legislators” made as much sense as “having Hereditary Professors of Mathematicks.” Morgan, *Benjamin Franklin*, 218–219. George Mason called the idea of being born a legislator “unnatural and absurd.” Broadwater, *Mason*, 82.
- 10 During Ratification federalists made much of the American invention of representation. Madison extolled its advantages over “pure democracy” as primarily residing in a filtration to “refine and enlarge the public views, by passing them through the medium of a chosen body of citizens” possessing “wisdom,” “patriotism,” and “love of justice” with a result that was “more consonant to the public good, than if pronounced by the people themselves.” (Madison, *Federalist* 10, Nov. 22, 1787, Bailyn, *Debate on the Constitution*, 1: 405–409.) Not Plato nor Harrington got it right, said *Americanus*, but the Americans did: “Representation is the grand secret in the formation of republican Government.” (*Americanus* VI, January 12, 1788, Bailyn, *Debate on the Constitution*, 1: 787–788.) Noah Webster: “the moderns have invented the doctrine of representation, which seems to be the perfection of human government.” (*A Citizen of America*, Oct. 17, 1787, Bailyn, *Debate on the Constitution*, 1: 130–131.) These authors praised the filtration achieved by representation, but one wonders how they would regard the professional political class which resulted. (The joining of representation with a theory of popular sovereignty had occurred before in Europe, notably in later sixteenth-century Dutch states and certain seventeenth-century German territories. Van Gelderen, “Dutch and German Political Thought,” ed. van Gelderen and Skinner, *Republicanism*, 1: 200, 207.)
- 11 Bronislaw Malinowski, *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea* (London, 1922), 49.
- 12 “Powerful beggars” is JE Neale’s phrase (*Elizabethan House of Commons*, 145). One suspects the decline of politics into its transactional trance is the reason oratory has collapsed. Transactions do not require analysis or for that matter explanation. They are straightforward in their meaning, and require from politicians

- the talents of a sales clerk (with the vanity of a movie star). The common political speech, no longer a vehicle for making an argument, makes offerings – a list of things done and things to be done. It is anticipated by listeners and washes over their backs without leaving a trace.
- 13 In 1776 John Witherspoon argued for equal voting under the Articles of Confederation, citing the shareholders of the East India Co, who voted by hands, not shares. John Adams argued to opposite effect from a similar business analogy, saying it was not just in a partnership that investors should have an equal vote with different investments and the same was true in politics. In 1787 when John Dickinson proposed redistributing America into new and equal sized units, he used a business metaphor: “Throw all into common stock & divide de novo.” As late as 1829, a Virginian conservative made Adams’s argument against apportionment on the basis of population alone. Pole, *Political Representation*, 348–350, 325; Dickinson Papers, Notes for Speeches, June 30 (?), 1787, Box 6, Folder 28, LCP. The echo in these remarks indicates how much closer the founders were to the early modern age than we are to the founders’ age. Who today would invoke the practices of a modern Casa di San Giorgio or East India Company in defense of extending or narrowing the franchise?
 - 14 The Dutch explored different systems to our own, in which at various times representation played a lesser role, direct assemblies larger role, and strong executives more avoided than was the case in North America. See Jonathan Israel, *The Dutch Republic: Its Rise, Greatness and Fall, 1477-1806* (Oxford, 1995). Edmund Morgan makes the observation that the filtration of representation and indirect elections had the merit of draining popular sovereignty of the threat which that doctrine posed to elites, for representatives were likely to be elites intermediating the people for control of offices. *Inventing the People*, 49–50, 237.
 - 15 Julien Benda, *The Treason of the Intellectuals* (New York, 1928), 15, 129, 135. The world was entering a “new Middle Ages,” said Benda, when barbarity would know no bounds; the slaughter of whole nations and classes would soon occur in the “greatest and most perfect war ever.”
 - 16 At the nation’s founding several expressed anxiety about elections. “Elections, my dear Sir,” Adams wrote to Jefferson, “Elections to Offices which are great objects of Ambition, I look at with terror.” William Grayson in Virginia, asked, “Was not Caesar himself the choice of the people?” Melancton Smith in the New York ratifying convention, naming birth, education, and wealth, said “the influence of the great will generally enable them to succeed in elections.” David Hume wrote the election of the chief magistrate “is a point of too great and too general interest, not to divide the whole people into factions.” (John Adams to Thomas Jefferson, December 6, 1787, Bailyn, *Debate on the Constitution*, 1: 473; Grayson in Virginia ratifying convention, Kenyon, *Antifederalists*, 285; Smith in New York ratifying convention, Bailyn, *Debate on the Constitution*, 2: 760; Hume, “That Politics May be Reduced to a Science,” *Political Essays*, 6.) Some Founders would also have known of the warning with which Polybius concluded his history: rivalry for office would become intense, shame of losers would increase, people become convinced they are being cheated, their resentment and anger rise, they cease obeying, and democracy collapse into mob rule – the chain triggered by elections. Polybius 6.57. For more on election anxiety, see Ch.6 *Filtering the people*.
 - 17 Millar, *Roman Republic in Political Thought*, 132.
 - 18 “The criterion of the morality of an act is its disinterestedness,” Benda wrote (*Treason*, 73). Not its necessity, utility, popularity, or any other worldly object but its being shorn of loyalties is the essence of moral behavior. That super-human standard is why republics’ demands of their citizens were always hard to meet. Machiavelli wrote “of all hard slaveries, the hardest is that subjecting you to a republic.” *Discourses on Livy*, 2.2 in Gilbert, *Machiavelli: Chief Works*, 1: 333.

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