

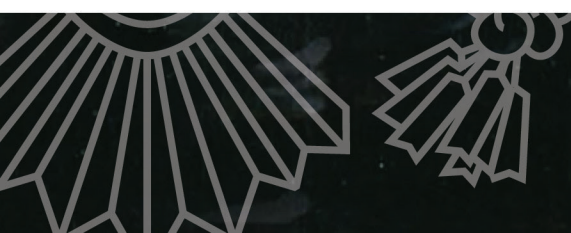


**THE CONSTITUTION,
THE PRESIDENCY, AND
PARTISAN DEMOCRACY:
CONGRESS REVISES
THE ELECTORAL
COLLEGE, 1803-1804**

SEAN WILENTZ



A MADISONIAN CONSTITUTION FOR ALL
ESSAY SERIES



THE CONSTITUTION, THE PRESIDENCY, AND PARTISAN DEMOCRACY: CONGRESS REVISES THE ELECTORAL COLLEGE, 1803-1804

BY SEAN WILENTZ

INTRODUCTION

Hardly anything about the modern presidency would have failed to jolt James Madison and the other Framers, but one thing that would not have surprised them is the rough-and-tumble politics surrounding presidential elections. To be sure, in 1787, the Constitutional Convention designed a lofty, disinterested executive, insulated from popular passions and party strife, in which a high-minded, virtuous president would be chosen by similarly high-minded, virtuous electors. But we misconstrue the Founding if we stop there. What is important to remember is how quickly after 1787 the Framers' system gave way to partisan conflict, necessitating an important change in the Constitution less than a generation after the Constitution was ratified.

As early as 1792, the first glimmering of party divisions began to threaten the Framers' ideal system. Eight years later, presidential politics divided the country so severely that there was serious talk of armed confrontation. In 1804, the ratification of the Twelfth Amendment made the rules governing the selection of the president friendlier to party politics, in ways the Framers could scarcely have imagined in 1787 but then made perfect sense—at least to James Madison and his Democratic-Republican allies.

To be sure, the mechanisms that the Framers installed in 1787-88 to filter talent, to secure the public good, and to enhance national harmony—above all the Electoral College—survived the emergence of party politics, as they survive today. In the wake of recent events, including two elections in which the electoral system thwarted the popular will, these mechanisms have come under intense criticism as dangerously antiquated.¹ Yet this is hardly the first time Americans have seriously questioned the Framers' system for choosing the president. To gain our bearings amid the current clamor, it is important to recall and reflect upon that long history, beginning with the first and, thus far, only successful effort to amend the Framers' electoral system.

The political history of the Twelfth Amendment reveals how rapidly the Framers' consensual conception of national politics proved inadequate to the realities of their own time. It illuminates how a very different conception of politics, rooted in partisanship and party organization, fitfully supplanted what the Framers had originally envisaged. It shows how genuine philosophical differences were always entangled with what today look like battles for partisan advantage. And it highlights an irony of unintended consequences: although the Framers regarded partisanship with horror, they wrote a Constitution which could not suppress it; and soon enough the nation ratified an amendment which all but enshrined partisan conflict in electing the president.

¹ See, for example, "Time to End the Electoral College," *New York Times*, Dec. 19, 2016, <https://www.nytimes.com/2016/12/19/opinion/time-to-end-the-electoral-college.html>.

THE FRAMERS' DESIGN

When they assembled at the Constitutional Convention in 1787, the Framers were as divided over how the new nation's executive ought to be chosen as they were over how much authority the executive ought to have. Some of the ablest and most influential delegates, including James Madison, James Wilson, and Gouverneur Morris, spoke in favor of direct election of the president, "by the people at large," in Morris's words, "by the freeholders of the Country."² But the majority of the convention rejected direct election on the presumption that, as Elbridge Gerry asserted, "the people are uninformed, and would be misled by a few designing men."³ On two separate occasions, the Framers crushed proposals for direct popular election of the president.

Who, then, would select the president if not the people at large? In their early deliberations on the presidency, and then, after a brief interruption, nearly until the Convention's conclusion, a majority of the delegates favored making Congress the electors, a proposal dogged by criticisms that it would render the executive too subservient to the legislature. Some delegates favored that the state legislatures instead of Congress do the choosing; others offered different plans. In July, the Convention briefly scrapped the congressional mode in favor of the elements of what would prove to be the winning alternative: what would become known as the Electoral College. Five days later, the majority switched back to having Congress choose the president, but a dispute arose over procedures, so it was left to a special Committee of Eleven to come up with an agreeable compromise in the waning days of the Convention. Only at the very last minute did the Convention agree to the Committee's recommendation to return to an electoral system, apportioned according to each state's combined representation in the Senate and the House.⁴

A compromise between direct popular election and election by the Congress, the electoral system supposedly had the advantage, as Alexander Hamilton claimed in *Federalist* 68, of relying on "the sense of the people" while placing the "immediate election" in the hands of men "most likely to possess the information and discernment requisite to such complicated negotiations."⁵ How those men would be chosen, the Framers left entirely up to the state legislatures. Each elector would cast two votes; the highest vote-getter, should he receive a majority, would be named president and the second highest would be vice president. Popular sovereignty would be sustained, small states and large states would get a share of power, and the final decision would be left to electors possessed of what James Madison once called "liberality or light"—or, as John Jay observed, "those men only who have become the most distinguished by their abilities and virtue."⁶

² Max Farrand, ed., *The Records of the Federal Convention of 1787* (1911; 4 vols., New Haven, 1966), II, 29.

³ Farrand, *Records of the Federal Convention*, 57.

⁴ A reliable summary of the convention's deliberations on selecting the president appears in Neal R. Peirce and Lawrence D. Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative* (1968; New Haven, 1981), 10-30. In addition to Peirce and Longley's standard work on the Electoral College, I am grateful to two other studies: John J. Turner, "The Twelfth Amendment and the First American Party System," *The Historian*, 35 (1973): 221-37; and Joshua D. Hawley, "The Transformative Twelfth Amendment," *William & Mary Law Review*, 55 (2014):1501-89.

⁵ The *Federalist* No. 68.

⁶ Letter from James Madison to George Washington, Dec. 9, 1785, <https://founders.archives.gov/documents/Madison/01-08-02-0228>; The *Federalist* No. 64.



In *Federalist* 68 Hamilton asserted that the Convention's electoral system was "almost the only part of the [Constitution], of any consequence, which has escaped without serious censure." In fact, at least some Anti-Federalist critics wondered whether it was necessary or rational, as the Kentuckian "Republicus" wrote, "that the sacred rights of mankind should thus dwindle down to Electors of electors, and those again electors of other electors." But Hamilton was basically correct: the electoral scheme was met with general satisfaction at the Philadelphia convention and encountered virtually no resistance in the state ratifying conventions.⁷

The reason there was no greater controversy, as Andrew Shankman has concisely explained, had to do with prevailing late-eighteenth century presumptions that "the public good emerged from a coherent set of values."⁸ Most citizens, the majority of the Framers believed, lacked the learning and the disinterested virtue required to ascertain what the public good actually was. Without guidance from a relatively small group of talented men, popular sovereignty would degenerate into selfishness, corruption, and, inevitably, oligarchic ruin. The Electoral College would stand, above all, as a bulwark against the exploitation of popular passions by designing would-be aristocrats and demagogues. Most delegates to the state ratifying conventions evidently agreed.

There was little doubt that George Washington would be chosen as the first president, which he was in 1789, winning nearly twice as many electoral votes as the majority required to prevail. The real contest was over who would receive the second highest number of votes and thus, according to the Constitution, be named the vice president. John Adams won the post handily, gathering nearly as many votes as the rest of the field combined. The process was less than democratic—only four states permitted the voters to choose the electors—and it was also messy: the New York legislature argued so long about procedures that the state lost its vote completely. Yet the election, with its lack of party alignments, unfolded largely in line with the Framers' expectations. It would be the last one to do so.

To be sure, President Washington was re-elected in 1792, this time unanimously; and Vice President Adams also kept his seat, receiving a larger percentage of the electors' votes than in 1789. But there were also audible rumblings of discontent with the administration's policies, especially over Secretary of the Treasury Hamilton's financial program. In state and local as well as national politics, struggles had begun between what one critic of the administration called "the Treasury department and the republican interest."⁹ Although no one would challenge the great Washington, Adams was a more convenient target. Formal parties had yet to appear, but dissenting electors, chiefly from New York and Virginia, rallied behind a handpicked favorite, New York Governor George Clinton, to put pressure on his administration by in effect challenging Adams for the second spot. It was an early signal of a brewing crisis, not just for the Washington administration but for the electoral system—a crisis that would be shaped by the vagaries of the system itself.

That system's design did foresee a future beyond the great unifying figure of George Washington. Once the republic was established, the Framers had reckoned, many worthy figures would gain support from around the country for the presidency, in which case it was likely that no one notable would garner an outright electoral majority. In a concession to the smaller states—and as a surviving element of earlier proposal to make Congress the immediate

⁷ *Kentucky Gazette*, Mar. 1, 1788.

⁸ Andrew Shankman, "What Were the Founders Thinking When They Created the Electoral College?," History News Network, <https://historynewsnetwork.org/article/164514>.

⁹ Letter from John Beckley to James Madison, Sept. 10, 1792, <https://founders.archives.gov/documents/Madison/01-14-02-0326>. On the election of 1792, see Stanley Elkins and Eric McKittrick, *The Age of Federalism: The Early American Republic, 1788-1800* (New York, 1995).

electors—the Convention had approved a plan, outlined in Article II Section 1 of the Constitution—whereby, in the absence of an absolute majority, the election would move to the House of Representatives, with each state receiving a single vote. In a further concession, the original Constitution stipulated that the House would consider the top five vote-getters, on the presumption that the vote would be widely diffused. Although there were quibbles and compromises, the shape of the system fit well with antiparty republican assumptions: if the indirect electoral system, serving as a restraint and filter on popular passions, could not produce a president, then the Electoral College would serve as another filter, reducing the field to a few well-vetted men.

None of this would work, however, if stronger party interests emerged, as they did, fiercely, during Washington's second term, over foreign as well as domestic policy. And so, in what historian Jeffrey Pasley has called the "absolutely seminal" election of 1796, the more formally organized parties began making a hash of the electoral system.¹⁰ As Pasley demonstrates, the campaign and the results established what would be a pattern in presidential elections for decades to come, pitting New England against the South with the middle states as the battleground states, holding the balance of power. The election also established, Pasley observes, "the basic ideological dynamic of a democratic, rights-spreading American 'left' arrayed against a conservative social-order protecting 'right.'"¹¹ But the electoral system became so tangled in these developments that, among other unforeseen mishaps, it might very well have elected as president someone who was meant to be a runner-up.

THE DESIGN UNRAVELS

As Washington had announced his retirement and Vice President Adams emerged as his anointed successor, Jefferson took his rightful place as the candidate of the emerging Democratic-Republican opposition. Formal party alignments had solidified—a caucus of opposition congressmen selected Jefferson—which further undermined the Framers' presumption that dispassionate, enlightened men would select a man with similar traits. Yet if the parties were emerging, they were yet to become disciplined independent bodies, at least with regard to selecting the president. In combination with the Constitution's double-balloting system, it was a recipe for chaos.

The chief Federalist candidate besides Adams—supposedly destined to be Adams' Vice President—was Thomas Pinckney, a respected diplomat and former governor of South Carolina. Ideally, Adams and Pinckney would both receive more votes than Jefferson, and Adams more than Pinckney. But there was also support among the Federalists for six other candidates, including Pinckney's cousin, Charles Cotesworth Pinckney, who had briefly served as Adams's minister to France. Building on the Virginia-New York axis from 1792, Jefferson's chief supporters' this time backed Aaron Burr over George Clinton, but Clinton also had his supporters as did Samuel Adams of Massachusetts.

Historians are still untangling the mess that resulted and the scheming that lay behind it. Although Federalists electors generally voted for Thomas Pinckney along with Adams, twenty-one of them, almost all in New England, preferred another candidate. The Democratic-Republicans were even less united; although Burr won a majority of their votes, fifteen electors, mostly Virginians, preferred Samuel Adams, while all eight South Carolinians, plus one Pennsylvanian, voted for Jefferson and Pinckney. North Carolina gave eleven of its twenty-five votes to Jefferson, but scattered the rest among six candidates. Adams won the presidency barely, with one vote more than the required majority—but all of the New England electors had, as they might have been expected to do, voted for Pinckney as well as Adams, Pinckney would have been elected instead. In what retrospectively looks like the election's

¹⁰ Jeffrey L. Pasley, *The First Presidential Contest: 1796 and the Founding of American Democracy* (Lawrence, KS, 2013).

¹¹ Pasley, *The First Presidential Contest*, 10.



signal anomaly, Jefferson received the second highest total of electoral votes, making him, and not Thomas Pinckney, John Adams's vice president.¹²

The anomaly did not, to be sure, look so terrible at the time, at least not to Thomas Jefferson, who regarded Adams, despite their soured relations in recent years, as the surest barrier among the Federalists against the man he truly feared would ruin the republic, Alexander Hamilton. "I am his junior in life," Jefferson graciously said of Adams in a letter to Madison, "his junior in Congress, his junior in the diplomatic line, his junior lately in our civil government." Adams, also putting the best face on the situation, cited his "ancient friendship" with Jefferson.¹³

Beyond personal connections, acceptance of the peculiar outcome revealed a stubborn attachment across the political spectrum to an ideal of a politics free of party strife, regardless of how illusory that ideal was proving to be. The divisions of the day were undeniable, but few political leaders could shed their aversion for permanently organized autonomous parties. "Altho' I shun politics as much as I can and wish to avoid them altogether," the Federalist George Cabot complained to an associate, "yet you see I use the terms *us* and *we*, for I am made one of the '*damned Faction*' by the opinions I am known to maintain."¹⁴

Each side, moreover, regarded the other not as a legitimate opponent but a threat to the republic itself—the Jeffersonians viewing the Federalists as "monocrats," the Federalists deeming the Jeffersonians dangerous "Jacobins." Both sides assumed that, once its opponents were vanquished, the nation could return to something closer to what the Framers had foreseen. What one historian has described as an ambivalence that bordered on schizophrenia restrained a full rejection of lofty consensual republicanism in favor of continuing partisan conflict.¹⁵

Yet that ambivalence became increasingly difficult to sustain, as the vicious politics of the late 1790s shattered hopes of accord between Adams's supporters and Jefferson's. Some in the growing Democratic-Republican opposition began claiming that Adams had owed his election to a perversion of the people's will, due to the haphazard system of appointing electors: "Accident alone gave Adams the presidency," one New York newspaper declared early in 1798.¹⁶ The bitter controversies of the ensuing two years would bring those partisan divisions to a head, with powerful repercussions for the electoral system.

The near-debacle of 1796 did provoke some efforts at constitutional reform. Almost immediately after the final electoral votes were tallied, the South Carolina Federalist William Loughton Smith introduced a resolution in the House in favor of an amendment requiring each elector to cast one vote for president and one for vice president. Smith said that he desired nothing more than to make sure the system "would carry into effect the real intention of the Electors."¹⁷ He may also have had political motives: an ardently pro-slavery Federalist, Smith would have been frustrated, first, that his fellow proslavery South Carolina Federalist Pinckney had been thwarted; and second, that

¹² There were numerous other anomalies in 1796. New Hampshire, for example, adopted a system of statewide popular voting for electors, on a general ticket instead of by district, but when no elector candidate won an absolute majority, the legislature chose the electors instead. One Pennsylvania elector, meanwhile, although chosen as a Federalist elector, voted for Jefferson.

¹³ Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York, 2005), 75.

¹⁴ Letter from George Cabot to Rufus King, Aug. 9, 1800 (cited in J.J. Turner, "The Twelfth Amendment and the First American Party System," Vol. 35, No. 2 (Feb. 1973), 228-29).

¹⁵ Turner, "Twelfth Amendment," 228.

¹⁶ *New York Diary*, Feb. 15, 1798 (cited by Neale R. Peirce and Lawrence D. Longley, *The People's President: The Electoral College in America and the Direct Vote Alternative* (Yale University Press: 1981), 36.

¹⁷ Annals of Congress, 4th Cong., 2nd sess., House, 1824.



the new administration would be headed formally by a New England Federalist and a Virginia Republican considered by many slaveholders as unreliable in the matter of slavery. But Congress took no action on Smith's proposal; nor did it follow up on similar proposals advanced in the Senate in 1798 and in the House in 1799.¹⁸ Inaction created the conditions for a genuine crisis at the next presidential contest.

The election of 1800 loomed as a confusing as well as a bitter showdown, with party organization more sophisticated than ever, but with the electoral system still unreformed. Jefferson would later call it the "revolution of 1800 . . . as real a revolution in the principles of our government as that of '76 was in its form."¹⁹ It would also usher in, if not revolution, then a major institutional reform in presidential politics.

Unlike the three presidential elections that preceded it, the contest, which extended into 1801, is familiar to most readers acquainted with American history. Party discipline had tightened, and at least among the Federalist electors, it was perfect: all of them voted for President Adams and all but one voted for the president's running mate, Charles Cotesworth Pinckney to make sure Adams would come out on top. But the Democratic-Republicans were imperfect, as one elector failed to do his duty and throw away his second vote, causing Vice President Jefferson and his repeat informal running mate, Aaron Burr, to tie. As Jefferson and Burr received more votes than their opponents, the House of Representatives was left to decide between the two candidates of the same party. After considerable behind-the-scenes maneuvering and thirty-six House ballots, Jefferson won. By now, though, it had become clear to many that the Electoral College, with its dual vote system, needed fixing.

PARTISAN DEMOCRACY AND THE TWELFTH AMENDMENT

Calls for a constitutional amendment came fast and forcefully, beginning with resolutions passed by the New York legislature in 1801 and 1802. In May 1802, the House approved an amendment by the required two-thirds majority only to see it barely fall short in the Senate. The matter then lay dormant until the first session of the Eighth Congress in October 1803, when the advocates for reform, consisting now entirely of Democratic-Republicans, hoped that Jeffersonian gains in the 1802 midterm congressional elections would assure them a two-thirds majority in both houses.

By the time the issue actually came before Congress, partisan divisions had deepened even further. In winning the so-called revolution of 1800, Jefferson had expected not to enshrine party politics but to suppress once and for all of the extreme elements that had poisoned the Federalists with anti-republican ideas and programs. "To restore that harmony which our predecessors so wickedly made it their object to break up," the new president wrote to one ally, "to render us again one people, acting as one nation, should be the object of every patriot."²⁰ This was the purport of the famous section of Jefferson's inaugural address so often misconstrued as a call for unanimity—"we are all republicans, we are all federalists." In fact, Jefferson's subtext was that the so-called High Federalists attached to Hamilton, the true sources of party strife, were outside the pale and had to be rejected once and for all; instead, he hoped, honorable moderate Federalists could join with Republicans in what we might today call a vital center. He held on to that plan through the early months of his administration, then realized it was no more than self-defeating wishful thinking.

¹⁸ Peirce and Longley, *People's President*, 42.

¹⁹ Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (W.W. Norton & Co., 2006), 97.

²⁰ Letter from Jefferson to Thomas McKean, July 24, 1801, available at <https://founders.archives.gov/documents/Jefferson/01-34-02-0477>.



The Federalist leadership and most of its rank and file around the country not only spurned Jefferson's olive branch; they declared that his election had been irregular and was unworthy of respect. Federalists in Congress made it their objective to thwart him at every turn, including his appointments to patronage posts and the federal judiciary. By December 1801, some Federalists editors were calling for Jefferson's impeachment, on the flimsy grounds that his involvement in settling some of the cases instigated by the Federalists' notorious Sedition Act amounted to a high crime against the Constitution.

Reconciliation was impossible, Jefferson decided, with opponents who regarded his administration as illegitimate. Writing to his attorney general Levi Lincoln as the tallies from the 1802 congressional elections were being announced, Jefferson allowed as how he had once thought that the Federalists "would come over to us by degrees," but as their leaders had proved intransigent extremists, the only choice that remained was "to sink federalism into an abyss from which there shall be no resurrection for it."²¹ Reforming the Electoral College, although necessary in light of the recent confusion, would also help in the sinking.

Opposition to the proposed amendment came in part from representatives of the smaller states who feared that it would diminish the likelihood of the House having to settle the presidency due to an electoral tie, as in 1800—a system which, under the Constitution, gave each state equal voting power. The smaller states also expressed concern that the proposed changes gave presidential candidates from the larger states a strong advantage. But as the debates and votes over the amendment showed, the real division over electoral reform was deeply partisan.

On October 17, 1803, the very first day of the Eighth Congress, John Dawson, a Virginia Republican, offered a resolution to the House to amend the Constitution so that electors would designate one candidate for president and one for vice president. Four days later, the New York Republican DeWitt Clinton proposed a separate resolution in the Senate. During the debates, Federalists raised numerous issues connected to the balance of power in presidential elections, some of them rooted in sectional concerns. Two New England Federalists, for example, Seth Hastings and Samuel Thatcher of Massachusetts, in quick succession raised the issue of the Three-Fifths Clause and how it gave the slaveholding states an extra number of seats in the Electoral College. These objections, though, were isolated rhetorical gestures, made in passing; and like other well-documented contemporaneous attacks on the Three-Fifths Clause they stemmed from partisan calculation that outlasted no doubt sincere but less than strenuous antislavery convictions.²²

More commonly, Federalists favored rejecting the proposed amendment on the grounds, first, that an end to dual voting would prevent any Federalist from assuming the vice presidency as Jefferson had in 1796; second, that it would demote the vice presidency from an independently elected official to an appendage of party; and third,

²¹ Letter from Thomas Jefferson to Levi Lincoln, Oct. 25, 1802, <https://founders.archives.gov/documents/Jefferson/01-38-02-0513>.

²² Annals of Cong., 8th Cong., 1st sess., House, 535, 538. Akhil Amar has argued that when Congress failed to redress Thatcher's complaint, and failed to get rid of the Electoral College in favor of direct election of the president, the electoral "system's proslavery bias was visible to all—an open and festering wound in the American body politic." Yet his argument elides how neither Hastings nor Thatcher seriously bid their colleagues to drop the Twelfth Amendment in favor of abolishing the three-fifths clause; indeed, Hastings asked only that the issue be taken up in 1808, when the Congress would also be able to abolish U.S. participation in the Atlantic slave trade. Thatcher went on to speak at length against the amendment, never returning to the three-fifths clause or slavery. Moreover, as we shall see, there was virtually no support in Congress for scrapping the Electoral College, let alone to substitute direct election, for reasons that had nothing to do with slavery or the three-fifths clause. Apart from some snippets taken out of context, there is no evidence to back Amar's contention that the Electoral College was "purposefully redesigned in 1803-04 to bolster the slaveholding South," and a good deal of evidence to refute it. Akhil Amar, "The Inaugural Abraham Lincoln Lecture on Constitutional Law: Electoral College Reform, Lincoln-Style," *Northwestern University Law Review*, 112 (2017):63-81, quotations on 64, 70.



more broadly, that encouraging the naming of executive tickets, would make running for the presidency a thoroughly political and dangerously democratic exercise. The amendment, as James Hillhouse of Connecticut put it, proposed “to persuade the people that there is only one man of correct politics in the United States.”²³ Hillhouse’s Connecticut colleague Uriah Tracy asked the Senate, “If the gentlemen wish to shake the Constitution to pieces, if majorities must decide everything, why not go at once to a simple democracy?”²⁴

The amendment’s Democratic-Republican advocates made no bones either about the amendment’s demotion of the vice presidency or about their own larger democratic intentions. As Samuel Smith of Delaware declared, while the amendment was designed “to guard against intrigue and corruption,” it also aimed “to place the choice in the power of the people.”²⁵ At one level, these claims were as genuine as they were transformative: because the Democratic-Republicans truly considered the Federalists an illegitimate minority faction, amending the Constitution in order to impede them permanently from regaining power would be the same thing as heeding the people’s voice and securing the republic. Still, the Jeffersonians’ defense also affirmed their opponents’ claims that, as one critic put it, a determination to keep “the people called Federalists” from winning the vice presidency was “in truth . . . the pivot upon which the whole turns.”²⁶

President Jefferson himself was candid about the partisan political aims behind the amendment, and how they jibed with, as he saw it, securing the will of the majority. Shortly after the measure went to the states, Jefferson told his Pennsylvania ally Thomas McKean that the “great opposition is and will be made by federalists,” who “know that if it prevails, neither a President. Or Vice President can never be made but by a fair vote of the majority of the nation, of which they are not.”²⁷ The Georgia Democratic-Republican James Jackson was even blunter: “Never will there be a Federal President or Vice President again elected, to the end of time; if there should ever be any other chosen out of the line of the present politics, it must be from some new sect, which assuming the principles of the republicans, may succeed by carrying their zeal for liberty further.”²⁸

Notably, neither the Democratic-Republicans nor the Federalists displayed any interest in abolishing the electoral system and returning to the idea, rejected by the Framers in 1787, of direct election of the president. One lonely voice, the Virginia Democratic-Republican John Clopton, did describe as “a defect in the fundamental principles of our Government” the absence of “plain and simple modes of immediate election by the people” in every part of the national government except the House.” But Clopton recognized that neither the Republicans nor the Federalists in Congress were interested in the “transmutation of a fundamental principle”—that is, the principle, endorsed by a majority of the Framers, that unmediated direct election of the president would be vulnerable to demagogic incitement of uninformed voters.²⁹ Even Democratic-Republicans, with their widened majoritarianism, weren’t prepared to go that far.

²³ Annals of Cong., 8th Cong., 2nd sess., Senate, 190.

²⁴ Annals of Cong., 8th Cong., 2nd sess., Senate, 206.

²⁵ Annals of Cong., 8th Cong., 2nd sess., Senate 123.

²⁶ Annals of Cong., 8th Cong., 1st sess., House, 87.

²⁷ Letter from Thomas Jefferson to Thomas McKean, Jan. 27, 1804, <https://founders.archives.gov/documents/Jefferson/01-42-02-0266>.

²⁸ Annals of Cong., 8th Cong., 1st sess., Senate, 158.

²⁹ Annals of Cong., 8th Cong., 1st sess., House, 422-23. Clopton represented the 13th district of Virginia, a part of the state heavily invested in slavery. That he should have been the only member to express, even in passing, a preference for direct voting further discredits claims that by affirming the Electoral College in 1803-04, the Congress purposefully bolstered the slaveholding South.

In December, both Houses considered modified versions of the resolutions before them. The Senate passed its version, along almost absolute party lines, with a bare two-thirds of the members present; the House approved the Senate's version, also along party lines and also with a bare two-thirds majority. The proposed amendment then quickly won approval from the states and in June 1804, New Hampshire provided the final vote required to ratify—just in time for the 1804 election.

As it happened, the amendment proved superfluous to the outcome in 1804, as Jefferson and his running mate, George Clinton, crushed their Federalist opponents, carrying every state in New England except Connecticut. And although James Jackson's prediction came true—no Federalist was ever again elected president or vice-president—the Jeffersonians' hegemony over the coming decades rested on more than the redesign of the Electoral College. Still, in combination with state-by-state reforms which the amendment helped encourage—above all the shift from legislative to statewide popular election of electors and the adoption of general ticket voting instead of voting by district—the partisan campaign to sink the Federalists had lasting repercussions.

“OURS IS A COUNTRY OF POLITICIANS”

Although the Federalists did not crumple as rapidly as Jefferson might have hoped, the rapid decline of their party after the War of 1812 ushered in the one-party period in national politics known as the Era of Good Feelings. The presidential election in 1820 was barely a contest at all: every candidate was a Democratic-Republican; the victor, the incumbent James Monroe, received all but one of the 232 electoral ballots cast, while his designated running mate, Daniel Tompkins, received all but fourteen. Although the election was conducted under the electoral rules revised in 1804, and although the Virginian Monroe had little of George Washington's majesty, the outcome came closer to matching that of 1789 than that of the seven intervening elections. In terms of party organization, the difference between a no-party system and a one-party system turned out to be negligible: with the outcome a foregone conclusion, the turnout for the congressional caucus was so pathetic that the group actually declined to make a formal nomination, leaving Monroe and Tompkins to win by default.

But intense national political conflict would resume in the long aftermath of the Panic of 1819 and the Missouri crisis of 1819-21; and with conflict came a return of vigorous national parties. The four-way presidential contest of 1824 brought a crisis of legitimacy far more severe than that in 1800, in the form of the notorious (if merely alleged) “Corrupt Bargain” between John Quincy Adams and Henry Clay that elevated Adams to the White House—even though Adams had lagged behind Andrew Jackson in both the popular and electoral vote. Thereafter, a determined and successful effort led by Martin Van Buren reinstated an updated version of the two-party competition of the Jeffersonian years, this time with no ambivalence about the desirability of political parties as a vehicle for democratic politics.

There was considerable intellectual, as well as political, distance between what the Jeffersonians intended the Twelfth Amendment to accomplish and the full-fledged professional parties and two-party system that emerged in the 1820s and 1830s, and that have lasted (despite the death of one party, the Whigs, and its replacement by another, the Republicans) to our own time. Yet it was possible for at least one informed observer, a Federalist senator from Delaware, Samuel White, to foresee what the Twelfth Amendment would eventually encourage.

White was a genuine conservative who worried about tampering with the electoral system before it had received “a fair experiment.” The impasse of 1800-01 had certainly caused distress, but the fears, he averred, proved, “groundless; in the end, the people were satisfied and here the thing ended.” White also worried about the potential for



mischief were the double-voting system to be dropped: with only four candidates in serious contention, he claimed, the inducement of those men and their friends “to exercise intrigue, bribery, and corruption” would be more than redoubled. But White saw even broader dire implications in the proposed amendment. “The United States,” he declared, “are now divided, and will probably continue so, into two great political parties.” By compelling those parties to discipline themselves even further and openly name an executive ticket for election, the amendment would make an unfortunate situation far worse.

“Ours is a county of politicians,” White remarked, “and from the nature of our Government must continue so;”

every member of society feels such a portion of interest in the affairs of the nation; be his lot humble or exalted, be his sentiments right or wrong, he expresses them, as he is entitled to do, with freedom; but is it abroad in the country that the most important measures of the Government are to be matured and decided upon? Is it in private circles, in caucuses, in clubs, in coffee-houses, streets, and bar-rooms, that the great Constitutional questions are to be settled? And are we convened here but to register the crude decrees of such assemblages?³⁰

To White, it was “we,” the detached, worthy elected officials who should decide the great questions of the day, not the people out of doors, the habitués of taverns and coffee houses, the party men in party caucuses and party clubs. Yet that is precisely the direction where American politics was headed, and the Twelfth Amendment would help make it so.

White’s Democratic-Republican adversaries may not have foreseen the triumph of the kinds of popular partisan politics as he did (although they would have regarded those politics with far less fear); they certainly did not anticipate the kind of professional and permanent party that Martin Van Buren would build to elect Andrew Jackson to the White House in 1828. But beyond their more narrow partisan aims, the Democratic-Republicans acknowledged—indeed, proclaimed—that the Twelfth Amendment would change the very character of the presidency, moving away from the esteemed detached man of virtue the Framers had envisaged to a political figure who embodied the popular majority. “Is it better that the people—a fair majority of the popular principle—should elect Executive power;” John Taylor of Virginia asked the Senate, “or that a minor faction should be enabled to embarrass and defeat the judgment and will of the majority?”³¹ There was still ground to travel, but the Twelfth Amendment pushed the nation’s politics closer to the partisan majoritarianism that defined Jacksonian democracy.

CONCLUSION

All of which leaves a large irony as well as parallels to consider amid the turmoil created by our own recent political history. One set of parallels is political. The reaction, for example, of the Republican congressional minority to the election of Barack Obama in 2008, which led directly to the outcome in 2016, at least bears resemblance to the Federalist minority’s reaction to Thomas Jefferson’s election in 1800. The other parallels are constitutional as well as political: above all, the idea of reforming, and perhaps more than reforming, the Electoral College in order to unfetter “a fair majority of the popular principle” is an old one, nearly as old as the country itself. The irony, wherein may lie the greatest lesson, is that in the case of the Twelfth Amendment, democratic reform came about not with a turn toward our gentler selves and the suppression of partisanship, as one hears so often prescribed today; it came about from the cunning, unapologetic exercise of partisan politics to overcome a zealous faction that could not admit defeat. It was not what the Framers had in mind in 1787, but it was what their Constitution bequeathed, to the point where that their Constitution quickly needed changing.

³⁰ Annals of Cong., 8th Cong., 1st sess. Senate, 141-43.

³¹ Annals of Cong., 8th Cong., 1st sess. Senate, 183.

