

# The Electoral College: A Uniquely American, Republican Institution

by Edward Spannaus

Nothing was further from the minds of the authors of the United States Constitution, than the idea that the Electors who were to choose the President of the United States, should be mindless rubber-stamps for parties. On the contrary, the design of the Constitution was to insulate the Electors, insofar as possible, from the pressures of organized factions.

Many students of the Constitutional Convention have remarked, that no question was more troublesome, or more debated, than that of the establishment of the Executive, particularly the mode of selection, and the term of office. The debates over the Presidency went to the heart of the issue of the nature of the Republic that was being created. To reduce the debate in the Constitutional Convention, to a power struggle between the larger and smaller states—as so many of our popular commentators today do—is to perpetrate a lie and a slander against the Founding Fathers.

It is difficult today, to put ourselves in the frame of mind of the men who met in Philadelphia in the Summer of 1787 to write our Constitution; they were creating something totally new. The predominant—some say only—form of an Executive known to them, was a monarchy. Even under the Articles of Confederation, which had carried the new country through the Revolutionary War, there was no Executive, only a Legislature. The Framers in Philadelphia were creating a new, republican institution, and more thought and deliberation was devoted to this question of the Presidency, than to any other aspect of the new Constitution.

The first proposal presented, the so-called “Virginia Plan,” provided that the Executive would be chosen by the Legislature—similar to a parliamentary system. The second comprehensive proposal, the “New Jersey Plan,” provided for a weak, three-person Executive, also selected by the Legislature. Alexander Hamilton then intervened with a proposal for a strong Executive, to be elected by Electors chosen by the people—and thus not dependent upon the Congress.

For weeks, the delegates went back and forth, with various proposals for appointment by state executives, or state legislatures; for direct election by the people, or indirect election by electors chosen by the people. As James Madison described his own argument, made on July 25, 1787, he contended that

appointment of the President, by Electors chosen by the people, would best ensure the independence of the Electors, and that “there would be very little opportunity for cabal, or corruption.”

The next day, George Mason of Virginia reopened the issue, and proposed that the Executive be selected by the national Legislature (Congress), and his motion passed. In that form, the matter was referred to the Committee of Detail, and it was reported out of the Committee on Aug. 6 the same way.

At the end of August, the manner of selection was changed again, by the committee composed of one representative of each state; they proposed that the Executive be chosen by Electors chosen by the people, and if no candidate received a majority of the votes cast by the Electors, then selection would be made by the Senate.

In response to questions posed in the session of Sept. 4, Gouverneur Morris of Pennsylvania explained that having Electors chosen by the people, would minimize “the danger of intrigue & faction,” by making them independent of the national Legislature, and that because they would meet at the same time, but in dispersed locations, the danger of cabal would be avoided.

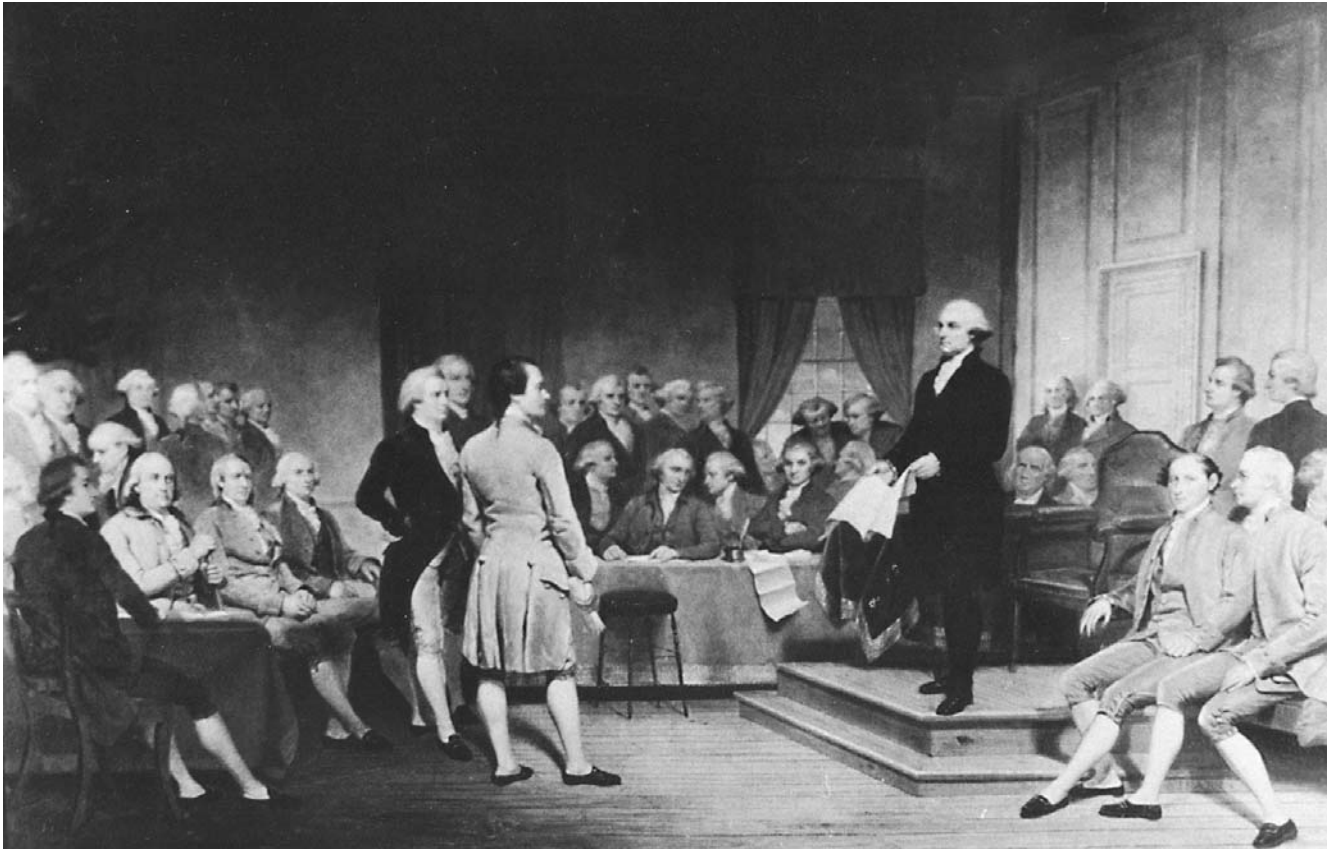
James Wilson of Pennsylvania, one of the leading republican intellectuals of the time, moved to change the final selection (in the event no candidate received a majority of Electoral votes) to the House of Representatives rather than the Senate, one reason being that the House, whose membership was changed more frequently, would be less subject to the influence of faction. Most of the members of the Constitutional Convention believed that the final selection of the President would be made most of the time by Congress, since it was thought that the Electors would tend to vote for candidates from their own state.

Wilson’s proposal was voted down. He revisited the issue the next day, arguing that the provision to have the Senate make the choice of the President—as well as other provisions respecting the Senate in the draft of the Constitution—represented “a dangerous tendency to aristocracy.” He feared that, under the plan as it then stood, “the President would not be a man of the people as he ought to be, but the Minion of the Senate.”

Roger Sherman of Connecticut (who also had reintroduced the General Welfare clause after it had been omitted from some early drafts) moved to make the House, rather than the Senate, the body to make the ultimate choice of the President; and this time the motion passed, with only one state opposing it. This then stood as the final version.

## After the Convention

To aid deliberation, there were no minutes, much less transcripts, made during the Constitutional Convention. In later years, notes from Madison and some other participants surfaced, making it possible to re-create a picture of the de-



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bates; however, even today, there is much concerning the deliberations which is not known. However, one thing that every serious scholar of the Constitutional Convention acknowledges, is that the Electoral College (as it came to be called) was designed as a *deliberative* body, and that the Electors were expected to use their judgment.

Hamilton — a key participant in the Convention, who was certainly in a position to know — wrote in *The Federalist* No. 68, that the plan for the selection of the Chief Magistrate was crafted so that “the immediate election should be made by men most capable of analyzing the qualities to the station and acting under circumstances favorable to deliberation.” He argued that a small number of persons, selected from their fellow-citizens for this purpose, “will be most likely to possess the information and discernment requisite to so complicated an investigation.”

However, already by the third Presidential election, that of 1796, Electors were being selected along party lines; by the election of 1828, all states had popular election of Electors, who were nominated by political parties.

Writing in his *Commentaries on the Constitution* in 1833, the eminent Associate Justice of the U.S. Supreme Court, Joseph Story, remarked that in no respect had the views of the

Framers of the Constitution, and the expectations of the public when the Constitution was adopted, been “so completely frustrated” as in the operation of the Electoral College. In fact, Story asserted, “the whole foundation of the system, so elaborately constructed, is subverted” — so that an Elector was no longer permitted to “exercise an independent judgment” as had been originally expected.

A similar view was expressed more than a century later, in 1952, by Associate Justice Robert Jackson, who wrote: “No one faithful to our history can deny that the plan originally contemplated, [has] implicit in its text, that electors would be free agents, to exercise an independent and nonpartisan judgment as to the men best qualified for the Nation’s highest offices.”

That was, without doubt, the intention. That it quickly became subverted, under the pressures of the development of a party system which was *not* contemplated by the Framers of our Constitution, is no reason that we should not respect the original design and intent of the Constitution. We should once again demand that our Presidential Electors use their “discernment” and judgment, looking to the general interests of the nation, rather than simply acting as the unthinking rubber-stamps which they are expected to be today.