

FEDERALIST No. 59
Concerning the Regulation of Elections
Hamilton

From the New York Packet
Friday, February 22, 1788

To the People of the State of New York:

THE natural order of the subject leads us to consider, in this place, that provision of the Constitution which authorizes the national legislature to regulate, in the last resort, the election of its own members. It is in these words: “The TIMES, PLACES, and MANNER of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter SUCH REGULATIONS, except as to the PLACES of choosing senators.” This provision has not only been declaimed against by those who condemn the Constitution in the gross, but it has been censured by those who have objected with less latitude and greater moderation; and, in one instance it has been thought exceptionable by a gentleman who has declared himself the advocate of every other part of the system. I am greatly mistaken, notwithstanding, if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that EVERY GOVERNMENT OUGHT TO CONTAIN IN ITSELF THE MEANS OF ITS OWN PRESERVATION. Every just reasoner will, at first sight, approve an adherence to this rule, in the work of the convention; and will disapprove every deviation from it which may not appear to have been dictated by the necessity of incorporating into the work some particular ingredient, with which a rigid conformity to the rule was incompatible. Even in this case, though he may acquiesce in the necessity, yet he will not cease to regard and to regret a departure from so fundamental a principle, as a portion of imperfection in the system which may prove the seed of future weakness, and perhaps anarchy.

It will not be alleged, that an election law could have been framed and inserted in the Constitution, which would have been always applicable to every probable change in the situation of the country; and it will therefore not be denied, that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded, that there were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the convention. They have submitted the regulation of elections for the federal government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety. Nothing can be more evident, than that an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say, that a neglect or omission of this kind would not be likely to take place. The constitutional possibility of the thing, without an equivalent for the risk, is an unanswerable objection. Nor has

any satisfactory reason been yet assigned for incurring that risk. The extravagant surmises of a distempered jealousy can never be dignified with that character.

If we are in a humor to presume abuses of power, it is as fair to presume them on the part of the State governments as on the part of the general government. And as it is more consonant to the rules of a just theory, to trust the Union with the care of its own existence, than to transfer that care to any other hands, if abuses of power are to be hazarded on the one side or on the other, it is more rational to hazard them where the power would naturally be placed, than where it would unnaturally be placed. Suppose an article had been introduced into the Constitution, empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the State governments? The violation of principle, in this case, would have required no comment; and, to an unbiased observer, it will not be less apparent in the project of subjecting the existence of the national government, in a similar respect, to the pleasure of the State governments. An impartial view of the matter cannot fail to result in a conviction, that each, as far as possible, ought to depend on itself for its own preservation.

As an objection to this position, it may be remarked that the constitution of the national Senate would involve, in its full extent, the danger which it is suggested might flow from an exclusive power in the State legislatures to regulate the federal elections. It may be alleged, that by declining the appointment of Senators, they might at any time give a fatal blow to the Union; and from this it may be inferred, that as its existence would be thus rendered dependent upon them in so essential a point, there can be no objection to intrusting them with it in the particular case under consideration. The interest of each State, it may be added, to maintain its representation in the national councils, would be a complete security against an abuse of the trust. This argument, though specious, will not, upon examination, be found solid. It is certainly true that the State legislatures, by forbearing the appointment of senators, may destroy the national government. But it will not follow that, because they have a power to do this in one instance, they ought to have it in every other. There are cases in which the pernicious tendency of such a power may be far more decisive, without any motive equally cogent with that which must have regulated the conduct of the convention in respect to the formation of the Senate, to recommend their admission into the system.

So far as that construction may expose the Union to the possibility of injury from the State legislatures, it is an evil; but it is an evil which could not have been avoided without excluding the States, in their political capacities, wholly from a place in the organization of the national government. If this had been done, it would doubtless have been interpreted into an entire dereliction of the federal principle; and would certainly have deprived the State governments of that absolute safeguard which they will enjoy under this provision. But however wise it may have been to have submitted in this instance to an inconvenience, for the attainment of a necessary advantage or a greater good, no inference can be drawn from thence to favor an accumulation of the evil, where no necessity urges, nor any greater good invites. It may be easily discerned also that the national government would run a much greater risk from a power in the State legislatures over the elections of its House of Representatives, than from their power of appointing the members of its Senate. The senators are to be chosen for the period of six years; there is to be a rotation, by which the seats of a third part of them are to be vacated and

replenished every two years; and no State is to be entitled to more than two senators; a quorum of the body is to consist of sixteen members.

The joint result of these circumstances would be, that a temporary combination of a few States to intermit the appointment of senators, could neither annul the existence nor impair the activity of the body; and it is not from a general and permanent combination of the States that we can have any thing to fear. The first might proceed from sinister designs in the leading members of a few of the State legislatures; the last would suppose a fixed and rooted disaffection in the great body of the people, which will either never exist at all, or will, in all probability, proceed from an experience of the inaptitude of the general government to the advancement of their happiness in which event no good citizen could desire its continuance. But with regard to the federal House of Representatives, there is intended to be a general election of members once in two years. If the State legislatures were to be invested with an exclusive power of regulating these elections, every period of making them would be a delicate crisis in the national situation, which might issue in a dissolution of the Union, if the leaders of a few of the most important States should have entered into a previous conspiracy to prevent an election. I shall not deny, that there is a degree of weight in the observation, that the interests of each State, to be represented in the federal councils, will be a security against the abuse of a power over its elections in the hands of the State legislatures. But the security will not be considered as complete, by those who attend to the force of an obvious distinction between the interest of the people in the public felicity, and the interest of their local rulers in the power and consequence of their offices.

The people of America may be warmly attached to the government of the Union, at times when the particular rulers of particular States, stimulated by the natural rivalship of power, and by the hopes of personal aggrandizement, and supported by a strong faction in each of those States, may be in a very opposite temper. This diversity of sentiment between a majority of the people, and the individuals who have the greatest credit in their councils, is exemplified in some of the States at the present moment, on the present question. The scheme of separate confederacies, which will always multiply the chances of ambition, will be a never failing bait to all such influential characters in the State administrations as are capable of preferring their own emolument and advancement to the public weal. With so effectual a weapon in their hands as the exclusive power of regulating elections for the national government, a combination of a few such men, in a few of the most considerable States, where the temptation will always be the strongest, might accomplish the destruction of the Union, by seizing the opportunity of some casual dissatisfaction among the people (and which perhaps they may themselves have excited), to discontinue the choice of members for the federal House of Representatives. It ought never to be forgotten, that a firm union of this country, under an efficient government, will probably be an increasing object of jealousy to more than one nation of Europe; and that enterprises to subvert it will sometimes originate in the intrigues of foreign powers, and will seldom fail to be patronized and abetted by some of them. Its preservation, therefore ought in no case that can be avoided, to be committed to the guardianship of any but those whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust.

PUBLIUS.

FEDERALIST No. 60

The Same Subject Continued **Hamilton**

From the New York Packet
Tuesday, February 26, 1788

To the People of the State of New York:

WE HAVE seen, that an uncontrollable power over the elections to the federal government could not, without hazard, be committed to the State legislatures. Let us now see, what would be the danger on the other side; that is, from confiding the ultimate right of regulating its own elections to the Union itself. It is not pretended, that this right would ever be used for the exclusion of any State from its share in the representation. The interest of all would, in this respect at least, be the security of all. But it is alleged, that it might be employed in such a manner as to promote the election of some favorite class of men in exclusion of others, by confining the places of election to particular districts, and rendering it impracticable to the citizens at large to partake in the choice. Of all chimerical suppositions, this seems to be the most chimerical. On the one hand, no rational calculation of probabilities would lead us to imagine that the disposition which a conduct so violent and extraordinary would imply, could ever find its way into the national councils; and on the other, it may be concluded with certainty, that if so improper a spirit should ever gain admittance into them, it would display itself in a form altogether different and far more decisive.

The improbability of the attempt may be satisfactorily inferred from this single reflection, that it could never be made without causing an immediate revolt of the great body of the people, headed and directed by the State governments. It is not difficult to conceive that this characteristic right of freedom may, in certain turbulent and factious seasons, be violated, in respect to a particular class of citizens, by a victorious and overbearing majority; but that so fundamental a privilege, in a country so situated and enlightened, should be invaded to the prejudice of the great mass of the people, by the deliberate policy of the government, without occasioning a popular revolution, is altogether inconceivable and incredible.

In addition to this general reflection, there are considerations of a more precise nature, which forbid all apprehension on the subject. The dissimilarity in the ingredients which will compose the national government, and still more in the manner in which they will be brought into action in its various branches, must form a powerful obstacle to a concert of views in any partial scheme of elections. There is sufficient diversity in the state of property, in the genius, manners, and habits of the people of the different parts of the Union, to occasion a material diversity of disposition in their representatives towards the different ranks and conditions in society. And though an intimate intercourse under the same government will promote a gradual assimilation in some of these respects, yet there are causes, as well physical as moral, which may, in a greater or less degree, permanently nourish different propensities and inclinations in this respect. But the circumstance which will be likely to have the greatest influence in the matter, will be the dissimilar modes of constituting the several component parts of the government. The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors.

As to the Senate, it is impossible that any regulation of “time and manner,” which is all that is proposed to be submitted to the national government in respect to that body, can affect the spirit which will direct the choice of its members. The collective sense of the State legislatures can never be influenced by extraneous circumstances of that sort; a consideration which alone ought to satisfy us that the discrimination apprehended would never be attempted. For what inducement could the Senate have to concur in a preference in which itself would not be included? Or to what purpose would it be established, in reference to one branch of the legislature, if it could not be extended to the other? The composition of the one would in this case counteract that of the other. And we can never suppose that it would embrace the appointments to the Senate, unless we can at the same time suppose the voluntary co-operation of the State legislatures. If we make the latter supposition, it then becomes immaterial where the power in question is placed whether in their hands or in those of the Union.

But what is to be the object of this capricious partiality in the national councils? Is it to be exercised in a discrimination between the different departments of industry, or between the different kinds of property, or between the different degrees of property? Will it lean in favor of the landed interest, or the moneyed interest, or the mercantile interest, or the manufacturing interest? Or, to speak in the fashionable language of the adversaries to the Constitution, will it court the elevation of “the wealthy and the well-born,” to the exclusion and debasement of all the rest of the society?

If this partiality is to be exerted in favor of those who are concerned in any particular description of industry or property, I presume it will readily be admitted, that the competition for it will lie between landed men and merchants. And I scruple not to affirm, that it is infinitely less likely that either of them should gain an ascendant in the national councils, than that the one or the other of them should predominate in all the local councils. The inference will be, that a conduct tending to give an undue preference to either is much less to be dreaded from the former than from the latter.

The several States are in various degrees addicted to agriculture and commerce. In most, if not all of them, agriculture is predominant. In a few of them, however, commerce nearly divides its empire, and in most of them has a considerable share of influence. In proportion as either prevails, it will be conveyed into the national representation; and for the very reason, that this will be an emanation from a greater variety of interests, and in much more various proportions, than are to be found in any single State, it will be much less apt to espouse either of them with a decided partiality, than the representation of any single State.

In a country consisting chiefly of the cultivators of land, where the rules of an equal representation obtain, the landed interest must, upon the whole, preponderate in the government. As long as this interest prevails in most of the State legislatures, so long it must maintain a correspondent superiority in the national Senate, which will generally be a faithful copy of the majorities of those assemblies. It cannot therefore be presumed, that a sacrifice of the landed to the mercantile class will ever be a favorite object of this branch of the federal legislature. In applying thus particularly to the Senate a general observation suggested by the situation of the country, I am governed by the consideration, that the credulous votaries of State power cannot, upon their own principles, suspect, that the State legislatures would be warped from their duty by

any external influence. But in reality the same situation must have the same effect, in the primitive composition at least of the federal House of Representatives: an improper bias towards the mercantile class is as little to be expected from this quarter as from the other.

In order, perhaps, to give countenance to the objection at any rate, it may be asked, is there not danger of an opposite bias in the national government, which may dispose it to endeavor to secure a monopoly of the federal administration to the landed class? As there is little likelihood that the supposition of such a bias will have any terrors for those who would be immediately injured by it, a labored answer to this question will be dispensed with. It will be sufficient to remark, first, that for the reasons elsewhere assigned, it is less likely that any decided partiality should prevail in the councils of the Union than in those of any of its members. Secondly, that there would be no temptation to violate the Constitution in favor of the landed class, because that class would, in the natural course of things, enjoy as great a preponderancy as itself could desire. And thirdly, that men accustomed to investigate the sources of public prosperity upon a large scale, must be too well convinced of the utility of commerce, to be inclined to inflict upon it so deep a wound as would result from the entire exclusion of those who would best understand its interest from a share in the management of them. The importance of commerce, in the view of revenue alone, must effectually guard it against the enmity of a body which would be continually importuned in its favor, by the urgent calls of public necessity.

I rather consult brevity in discussing the probability of a preference founded upon a discrimination between the different kinds of industry and property, because, as far as I understand the meaning of the objectors, they contemplate a discrimination of another kind. They appear to have in view, as the objects of the preference with which they endeavor to alarm us, those whom they designate by the description of “the wealthy and the well-born.” These, it seems, are to be exalted to an odious pre-eminence over the rest of their fellow-citizens. At one time, however, their elevation is to be a necessary consequence of the smallness of the representative body; at another time it is to be effected by depriving the people at large of the opportunity of exercising their right of suffrage in the choice of that body.

But upon what principle is the discrimination of the places of election to be made, in order to answer the purpose of the meditated preference? Are “the wealthy and the well-born,” as they are called, confined to particular spots in the several States? Have they, by some miraculous instinct or foresight, set apart in each of them a common place of residence? Are they only to be met with in the towns or cities? Or are they, on the contrary, scattered over the face of the country as avarice or chance may have happened to cast their own lot or that of their predecessors? If the latter is the case, (as every intelligent man knows it to be,) is it not evident that the policy of confining the places of election to particular districts would be as subversive of its own aim as it would be exceptionable on every other account? The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the TIMES, the PLACES, the MANNER of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature.

Let it, however, be admitted, for argument sake, that the expedient suggested might be successful; and let it at the same time be equally taken for granted that all the scruples which a sense of duty or an apprehension of the danger of the experiment might inspire, were overcome in the breasts of the national rulers, still I imagine it will hardly be pretended that they could ever hope to carry such an enterprise into execution without the aid of a military force sufficient to subdue the resistance of the great body of the people. The improbability of the existence of a force equal to that object has been discussed and demonstrated in different parts of these papers; but that the futility of the objection under consideration may appear in the strongest light, it shall be conceded for a moment that such a force might exist, and the national government shall be supposed to be in the actual possession of it. What will be the conclusion? With a disposition to invade the essential rights of the community, and with the means of gratifying that disposition, is it presumable that the persons who were actuated by it would amuse themselves in the ridiculous task of fabricating election laws for securing a preference to a favorite class of men? Would they not be likely to prefer a conduct better adapted to their own immediate aggrandizement? Would they not rather boldly resolve to perpetuate themselves in office by one decisive act of usurpation, than to trust to precarious expedients which, in spite of all the precautions that might accompany them, might terminate in the dismissal, disgrace, and ruin of their authors? Would they not fear that citizens, not less tenacious than conscious of their rights, would flock from the remote extremes of their respective States to the places of election, to overthrow their tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people?

PUBLIUS.

FEDERALIST No. 61
The Same Subject Continued and Concluded
Hamilton

From the New York Packet
Tuesday, February 26, 1788

To the People of the State of New York:

THE more candid opposers of the provision respecting elections, contained in the plan of the convention, when pressed in argument, will sometimes concede the propriety of that provision; with this qualification, however, that it ought to have been accompanied with a declaration, that all elections should be had in the counties where the electors resided. This, say they, was a necessary precaution against an abuse of the power. A declaration of this nature would certainly have been harmless; so far as it would have had the effect of quieting apprehensions, it might not have been undesirable. But it would, in fact, have afforded little or no additional security against the danger apprehended; and the want of it will never be considered, by an impartial and judicious examiner, as a serious, still less as an insuperable, objection to the plan. The different views taken of the subject in the two preceding papers must be sufficient to satisfy all dispassionate and discerning men, that if the public liberty should ever be the victim of the

ambition of the national rulers, the power under examination, at least, will be guiltless of the sacrifice.

If those who are inclined to consult their jealousy only, would exercise it in a careful inspection of the several State constitutions, they would find little less room for disquietude and alarm, from the latitude which most of them allow in respect to elections, than from the latitude which is proposed to be allowed to the national government in the same respect. A review of their situation, in this particular, would tend greatly to remove any ill impressions which may remain in regard to this matter. But as that view would lead into long and tedious details, I shall content myself with the single example of the State in which I write. The constitution of New York makes no other provision for LOCALITY of elections, than that the members of the Assembly shall be elected in the COUNTIES; those of the Senate, in the great districts into which the State is or may be divided: these at present are four in number, and comprehend each from two to six counties. It may readily be perceived that it would not be more difficult to the legislature of New York to defeat the suffrages of the citizens of New York, by confining elections to particular places, than for the legislature of the United States to defeat the suffrages of the citizens of the Union, by the like expedient. Suppose, for instance, the city of Albany was to be appointed the sole place of election for the county and district of which it is a part, would not the inhabitants of that city speedily become the only electors of the members both of the Senate and Assembly for that county and district? Can we imagine that the electors who reside in the remote subdivisions of the counties of Albany, Saratoga, Cambridge, etc., or in any part of the county of Montgomery, would take the trouble to come to the city of Albany, to give their votes for members of the Assembly or Senate, sooner than they would repair to the city of New York, to participate in the choice of the members of the federal House of Representatives? The alarming indifference discoverable in the exercise of so invaluable a privilege under the existing laws, which afford every facility to it, furnishes a ready answer to this question. And, abstracted from any experience on the subject, we can be at no loss to determine, that when the place of election is at an INCONVENIENT DISTANCE from the elector, the effect upon his conduct will be the same whether that distance be twenty miles or twenty thousand miles. Hence it must appear, that objections to the particular modification of the federal power of regulating elections will, in substance, apply with equal force to the modification of the like power in the constitution of this State; and for this reason it will be impossible to acquit the one, and to condemn the other. A similar comparison would lead to the same conclusion in respect to the constitutions of most of the other States.

If it should be said that defects in the State constitutions furnish no apology for those which are to be found in the plan proposed, I answer, that as the former have never been thought chargeable with inattention to the security of liberty, where the imputations thrown on the latter can be shown to be applicable to them also, the presumption is that they are rather the cavilling refinements of a predetermined opposition, than the well-founded inferences of a candid research after truth. To those who are disposed to consider, as innocent omissions in the State constitutions, what they regard as unpardonable blemishes in the plan of the convention, nothing can be said; or at most, they can only be asked to assign some substantial reason why the representatives of the people in a single State should be more impregnable to the lust of power, or other sinister motives, than the representatives of the people of the United States? If they cannot do this, they ought at least to prove to us that it is easier to subvert the liberties of three millions of people, with the advantage of local governments to head their opposition, than of two

hundred thousand people who are destitute of that advantage. And in relation to the point immediately under consideration, they ought to convince us that it is less probable that a predominant faction in a single State should, in order to maintain its superiority, incline to a preference of a particular class of electors, than that a similar spirit should take possession of the representatives of thirteen States, spread over a vast region, and in several respects distinguishable from each other by a diversity of local circumstances, prejudices, and interests.

Hitherto my observations have only aimed at a vindication of the provision in question, on the ground of theoretic propriety, on that of the danger of placing the power elsewhere, and on that of the safety of placing it in the manner proposed. But there remains to be mentioned a positive advantage which will result from this disposition, and which could not as well have been obtained from any other: I allude to the circumstance of uniformity in the time of elections for the federal House of Representatives. It is more than possible that this uniformity may be found by experience to be of great importance to the public welfare, both as a security against the perpetuation of the same spirit in the body, and as a cure for the diseases of faction. If each State may choose its own time of election, it is possible there may be at least as many different periods as there are months in the year. The times of election in the several States, as they are now established for local purposes, vary between extremes as wide as March and November. The consequence of this diversity would be that there could never happen a total dissolution or renovation of the body at one time. If an improper spirit of any kind should happen to prevail in it, that spirit would be apt to infuse itself into the new members, as they come forward in succession. The mass would be likely to remain nearly the same, assimilating constantly to itself its gradual accretions. There is a contagion in example which few men have sufficient force of mind to resist. I am inclined to think that treble the duration in office, with the condition of a total dissolution of the body at the same time, might be less formidable to liberty than one third of that duration subject to gradual and successive alterations.

Uniformity in the time of elections seems not less requisite for executing the idea of a regular rotation in the Senate, and for conveniently assembling the legislature at a stated period in each year.

It may be asked, Why, then, could not a time have been fixed in the Constitution? As the most zealous adversaries of the plan of the convention in this State are, in general, not less zealous admirers of the constitution of the State, the question may be retorted, and it may be asked, Why was not a time for the like purpose fixed in the constitution of this State? No better answer can be given than that it was a matter which might safely be entrusted to legislative discretion; and that if a time had been appointed, it might, upon experiment, have been found less convenient than some other time. The same answer may be given to the question put on the other side. And it may be added that the supposed danger of a gradual change being merely speculative, it would have been hardly advisable upon that speculation to establish, as a fundamental point, what would deprive several States of the convenience of having the elections for their own governments and for the national government at the same epochs.

PUBLIUS.