The principles of representative government

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forgotten that, even under conditions where it is not possible for everyone to participate in government, citizens can also be seen as desirous of reaching office. We do not even think, therefore, of inquiring into how offices, seen as scarce goods, are distributed among citizens by representative institutions. The history of the triumph of election suggests that by doing so we would deepen our comprehension of representative government.

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The principle of distinction

As we have seen, the founders of representative government were not concerned that elections might result in an inegalitarian distribution of offices; their attention was concentrated on the equal right to consent that this method made possible. Another inegalitarian characteristic of representative government, however, was deliberately introduced after extensive discussion, namely that the representatives be socially superior to those who elect them. Elected representatives, it was firmly believed, should rank higher than most of their constituents in wealth, talent, and virtue. The fraction of the population constituting the electorate varied from country to country at the time representative government was established. For example, in England only the upper strata of the society could vote, whereas in the United States and in revolutionary France the right to vote extended to more popular elements. But whatever the threshold was, measures were taken to ensure that representatives were well above it. What counted was not only the social status of representatives defined in absolute terms, but also (and possibly more importantly) their status relative to that of their electors. Representative government was instituted in full awareness that elected representatives would and should be distinguished citizens, socially different from those who elected them. We shall call this the "principle of distinction."

The non-democratic nature of representative government in its early days is usually seen to lie in the restricted character of the electoral franchise. In post-civil war England the right to vote was indeed reserved to a small fraction of the population. The French

Constituent Assembly also drew a distinction between "active" and "passive" citizens, with only the former being entitled to vote. In America, the Constitution left it to the states to make these decisions: it stipulated that the qualifications for voting in federal elections would be the same as those applying in each state for elections to the lower house. Since in 1787 most states had established a property or tax qualification for the electors, the decision of the Philadelphia Convention entailed in practice a somewhat restricted franchise for federal elections.[1]

The limits on the right of suffrage in early representative government are well known, and the attention of historians has usually been concentrated on the gradual disappearance of those limits during the nineteenth and twentieth centuries. What has been less noticed and studied, however, is that, independent from these restrictions, there existed also a number of provisions, arrangements, and circumstances which ensured that the elected would be of higher social standing than the electorate. This was achieved by different means in England, France, and America. One can generally say that superior social standing was guaranteed in England by a mix of legal provisions, cultural norms, and practical factors, and in France by purely legal provisions. The American case is more complicated, but also, as we shall see, more revealing.

ENGLAND

It is a commonplace to say that in seventeenth- and eighteenth-century Britain membership in the House of Commons was reserved to a small social circle. Since the beginning of the twentieth century, so many studies have documented this fact that it is unnecessary to underline it yet again.[2] The first revolution to some extent opened the political game, in the sense that, during the revolutionary period contested elections occurred more frequently than before. A recent study has shown that prior to the civil war, parliamentary selection was part of a global and integrated pattern of authority. Returning a

[1] See J. R. Pole, *Political Representation in England and the Origins of the American Republic* (Berkeley: University of California Press, 1966), p. 365.

[2] For a general view of this field, with bibliographical references, see J. Cannon, *Parliamentary Reform 1640–1832* (Cambridge: Cambridge University Press, 1973).

Member was a way of honoring the "natural leader" of the local community. Elections were seldom contested. It was seen as an affront to the man or to the family of the man who customarily held the seat for another person to compete for that honor. Electoral contests were then feared, and avoided as much as possible. Elections were usually unanimous, and votes rarely counted.[3] The civil war deepened religious and political divisions among the elites, and thus made electoral contests more frequent. Elections then assumed the form of a choice, but one between divided and competing elites. Even during the revolutionary period, the social component of selection, although in retreat, never disappeared.[4] Furthermore, after the years of turmoil, the late seventeenth century even witnessed "a consolidation of gentry and aristocracy." "While the social groups that comprised the electorate expanded," Mark Kishlansky writes, "the social groups that comprised the elected contracted."[5] This was even more true after the mid-eighteenth century, when the number of contested elections markedly decreased.[6]

Two key factors account for this aristocratic or oligarchic nature of representation in England. First, there was a cultural climate in which social standing and prestige were exceptionally influential. Respect for social hierarchy profoundly imbued people's thinking: voters tended to take their cue from the most prominent local figures and considered it a matter of course that these prominent figures alone could be elected to the House of Commons. This distinctive feature of British political culture later came to be termed "deference." The term was coined by Walter Bagehot in the late nineteenth century, but the phenomenon to which it referred had long been typical of English social and political life.[7] The second factor was the exorbitant cost of electoral campaigning, which increased steadily following the civil war and throughout the eighteenth century. Members themselves complained in their private correspondence and in parliamentary debates that elections were

[3] See M. Kishlansky, *Parliamentary Selection: Social and Political Choice in Early Modern England* (Cambridge: Cambridge University Press, 1986), esp. chs. 1–4.
[4] *Ibid.*, pp. 122–3.
[5] *Ibid.*, p. 229. [6] Cannon, *Parliamentary Reform*, pp. 33–40.
[7] On the role of "deference" in nineteenth-century elections, see David C. Moore, *The Politics of Deference. A Study of the Mid-nineteenth Century English Political System* (New York: Barnes & Noble, 1976).

too expensive. Historical studies confirm beyond any doubt that electioneering was a rich man's pursuit. This fact was largely due to peculiarities of the English elections. Polling stations were few, which often required voters to travel great distances. And it was customary for each candidate to transport favorable voters to the polling place and to entertain them during their travel and stay. The combination of deference and electoral expenses thus "spontaneously" restricted access to the House of Commons, despite the absence of explicit legal provisions to that effect.

In 1710, a further factor came into play. A formal property qualification was then established for MPs, that is, a property qualification different from and higher than that of the electors. It was enacted (9 Anne, c.5) that knights of the shire must possess landed property worth £600 per annum, and burgesses £300 per annum.[8] The measure was passed by a Tory ministry, and was intended to favor the "landed interest." But the "moneyed interest" (manufacturers, merchants, and financiers) could still buy land, however, and in fact did so. The Whigs, after their victory in 1715, made no attempt to repeal the Act.[9] Indeed, they had long been thinking themselves of introducing a specific property qualification for the elected. In 1679, Shaftesbury, the Whig leader who played a prominent role during the Exclusion crisis, had introduced a bill to reform elections. The bill contained various provisions which aimed at securing the independence of the Parliament from the Crown. The most famous of these provisions affected the franchise: Shaftesbury proposed that in the shires only householders and inhabitants receiving £200 in fee could vote (instead of the forty-shilling franchise, the value of which had been dramatically eroded since its establishment in 1429). The objective of this provision was to reserve voting rights to men who had enough "substance" to be independent from the Crown, and therefore less susceptible to its corruptive endeavors.[10] But the bill also contained a provision establishing a

[8] By "worth" is meant the amount of rent a property was capable of generating, according to assessments by the fiscal authorities.

[9] See Cannon, *Parliamentary Reform*, p. 36; Pole, *Political Representation*, pp. 83, 397. Pole remarks that if the measure was passed and kept, it might have been because the expected "natural" differences between electors and elected were no longer so obvious.

[10] On the bill of 1679, see J. R. Jones, *The First Whigs, The Politics of the Exclusion Crisis 1678–1683* (London: Oxford University Press, 1961), pp. 52–5.

specific property (and age) qualification for the representatives, different from that of the electors. In an unpublished tract (found among his papers after his death), Shaftesbury wrote in defense of his bill:

> As the persons electing ought to be men of substance, so in a *proportioned degree* ought also the Members elected. It is not safe to make over the estates of the people in trust, to men who have none of their own, lest their domestic indigencies, in conjunction with a foreign temptation [the king and the court], should warp them to a contrary interest, which in former Parliaments we have sometimes felt to our sorrow.[11]

Shaftesbury proposed that representatives be chosen only from among the members of the gentry "who are each worth in land and moveables at least £10,000, all debts paid" (and of forty years of age).[12]

Even in England, then, where the franchise was already severely limited, additional restrictions applied to elected representatives. Whigs and Tories agreed, albeit for different reasons, that the elected should occupy a higher social rank than the electors.

FRANCE

In France, the Constituent Assembly established early on a markedly wider franchise. By today's standards, of course, it appears restricted. To qualify as an "active citizen" one had to pay the equivalent of three days' wages in direct taxes. In addition, women, servants, the very poor, those with no fixed abode, and monks had no vote, on the grounds that their position made them too dependent on others for them to have a political will of their own. The exclusion of these "passive citizens" from the franchise attracted a

[11] Antony Ashley Cooper, First Earl of Shaftesbury, "Some observations concerning the regulating of elections for Parliament" (probably 1679), in J. Somers (ed.), *A Collection of Scarce and Valuable Tracts*, 1748, First coll., Vol. I, p. 69. My emphasis.

[12] Shaftesbury, "Some observations concerning the regulating of elections for Parliament," p. 71. The sum of £10,000 seems enormous and almost implausible. This is, however, what I found in the copy of the 1748 edition which I have seen, but it could be a misprint (£1,000 would appear more plausible). I have been unable as yet to further check this point. In any case, the exact amount is not crucial to my argument. The essential point is that Shaftesbury proposes a higher property qualification for the elected than for the electors, on which the author is perfectly clear.

great deal of attention from nineteenth- and early twentieth-century historians. It was certainly not without importance, for it implied that in the eyes of the Constituents, political rights could legitimately be dissociated from civil rights, with the latter only being enjoyed indistinctly by all citizens. Recent studies show, however, that the franchise established by the Constituent Assembly was actually quite large given the culture of the time (which regarded women as part of a marriage unit), and in comparison with contemporary practice elsewhere (notably in England), or later practice in France under the restored monarchy (1815–48). It has been calculated that the French electorate under the qualifications set in 1789 numbered approximately 4.4 million.[13] The decrees of August 1792 establishing "universal" suffrage certainly enlarged the electorate, but this was primarily the result of lowering the voting age from 25 to 21. (Women, servants, and those with no permanent place of residence remained excluded.)[14] Although the proclamation of universal manhood suffrage was perceived as historic, the actual change was limited. After 1794, the Thermidorians, without reviving the politically unfortunate terms "active" and "passive" citizens, returned to an electoral system not unlike that of 1789, while still making the right to vote conditional on the ability to read and write. (The argument being that secret voting required the ability to cast written ballots.) The electorate following Thermidor was still large, probably numbering 5.5 million citizens.[15]

In France, then, the debate over how popular representative government should be did not center on who could vote. Rather, it centered on who could be voted for. In 1789 the Constituent Assembly decreed that only those who could meet the two conditions of owning land and paying taxes of at least one *marc d'argent* (the equivalent of 500 days' wages) could be elected to the National Assembly. It was this *marc d'argent* decree that constituted the focus of controversy and opposition. Whereas the three days' labor tax qualification for the electors disfranchised only a relatively small number of citizens, the *marc d'argent* qualification for deputies seems

[13] P. Guéniffey, *Le Nombre et la Raison. La révolution française et les élections* (Paris: Editions de l'Ecole des Hautes Etudes en Sciences Sociales, 1933), pp. 44–5. This figure represented something like 15.7 percent of the total population and 61.5 per cent of the population of adult males (Guéniffey, *Le Nombre et la Raison*, pp. 96–7).

[14] *Ibid.*, p. 70. [15] *Ibid.*, p. 289.

to have been very restrictive (although there is some uncertainty about where the line of exclusion actually lay).[16] One could say, to use non-contemporary but convenient terminology, that the members of the Constituent Assembly considered the vote a "right," but the holding of office a "function." Since a function was said to be performed on behalf of society, society was entitled to keep it out of unqualified hands. The goal was to reserve the position of representatives for members of the propertied classes, and the Constituent Assembly chose to achieve it by explicit legal means.

The decree provoked immediate objections. Some Constituents argued that the quality of representative should be determined only by the votes and the trust of the people. "Put trust in the place of the *marc d'argent*," one deputy (Prieur) declared;[17] and Siéyès, normally an opponent of democracy, concurred. But such voices were ignored. In 1791, faced with the threat of a radicalization of the revolution and a rising tide of opposition, the Assembly was finally forced to abandon the *marc d'argent* rule. The arrangement that took its place was designed to achieve the same objective by different means. In 1789, the Constituent Assembly had established a system of indirect election that was explicitly conceived of as a mechanism of filtration, which would secure the selection of eminent citizens. It had been decided that voters should gather in "primary assemblies" (*assemblées primaires*) at the *canton* level, and there choose electors (one for every 100 active citizens) for the second stage; these would then meet at the *département* level to elect the deputies.[18] In 1789, the Constituent Assembly had also laid down an intermediate qualification for second-stage electors, namely payment of a tax equivalent of ten days' labor. In 1791, the Assembly dropped the *marc d'argent* rule and the property qualification for representatives, but it retained the system of indirect election and raised the intermediate tax qualification. It was then resolved that only those paying the

[16] Guéniffey estimates that only around 1 percent of the population met that condition (*Le Nombre et la Raison*, p. 100).

[17] Quoted in *ibid.*, p. 59.

[18] Note that the small size of *cantons* (64 sq km) and their large number (4,660) were explicitly designed to limit the distance voters needed to travel to reach their polling place (in the main town of the canton); see Guéniffey, *Le Nombre et la Raison*, p. 276. England probably constituted the countermodel here.

equivalent of forty days' wages could be elected as second-stage electors,[19] a fairly high threshold.[20] Some people denounced "a hidden transfer of the *marc d'argent*."[21] The measure indeed amounted to shifting the barrier of entry from one step of the electoral hierarchy to another. The tacit assumption was that propertied second-stage electors would usually elect representatives from among their ranks, while it could be retorted to the popular movement that these electors were free to select meritorious persons regardless of class. The new regulation did in fact succeed in significantly reducing the number of persons eligible at the second stage (if not in "bringing the revolution to an end," as its promoters hoped). In 1792, any kind of property or tax qualification was abolished, but the principle of indirect election was retained.[22] The Thermidorians went back to the 1791 system: no property or tax qualification for deputies, but a restrictive one for second-stage electors.

Nevertheless, statistical studies confirm that throughout the course of the revolution, including in 1792, second-stage electoral assemblies were dominated by the wealthy classes.[23] This was reflected in the composition of the national representative assembly. The Convention itself was "an assembly of lawyers (52 percent of members) elected by peasants."[24]

The socially selective effect of elections was undoubtedly much less marked than in England, but it was present all the same. In France too, the founders of representative government aimed to establish a system in which the elected would generally be wealthier and more prominent than those who elected them. But whereas in England this result was partly achieved through the silent operation of social norms and economic constraints, in France a similar outcome was achieved by wholly explicit institutional arrangements: the tax qualification for second-stage electors and the principle of indirect election. The system of indirect election, which was

[19] P. Guéniffey, *Le Nombre et la Raison*, p. 61.
[20] On the statistical effects of the forty days' labor wage qualification, see *Ibid.*, pp. 101–2.
[21] The expression was used by Brissot in his journal, *Le Patriote Français*. See Guéniffey, *Le Nombre et la Raison*, p. 61.
[22] *Ibid.*, p. 70.
[23] *Ibid.*, pp. 411–13. [24] *Ibid.*, p. 414.

seen as a "filtration of democracy,"[25] deserves particular mention because it was retained throughout the revolution.

THE UNITED STATES

Philadelphia

In regard to the franchise, the Philadelphia Convention took a position similar to that of the French in opting for the most open of the solutions considered. The clause of the Constitution alluded to earlier stipulating that "the electors in each state shall have the qualifications requisite for electors of the most numerous Branch of the State Legislature" (Art. I, Sec. 2, cl. 1), applied only to elections to the House of Representatives. For under the draft Constitution of 1787, senators were to be chosen by the legislatures of the different states (Art. I, Sec. 3, cl. 1) and the President was to be chosen by an "electoral college" appointed by the state legislatures (Art. II, Sec. 1, cl. 2). The Presidency and the Senate thus did not require any further decisions concerning the franchise. The most significant debates regarding elections and how they affected the nature of representation focused on elections to the lower chamber. It should also be borne in mind that state franchise qualifications were set by the different state *constitutions*. The federal clause therefore did not amount to leaving regulation of the franchise to the individual state legislatures.

The members of the Philadelphia Convention were fully aware that in some states there were significant franchise restrictions, which meant, in turn, restrictions in the election of federal representatives. However, the decision that the Convention eventually reached needs to be placed in context: it was in fact the most open or, as James Wilson said in the Pennsylvania ratification debate, the most "generous" of the options discussed in Philadephia. For there was also among the delegates a current in favor of a federal *property* qualification for congressional electors, which would have narrowed the franchise in some states (such as Pennsylvania), where only a

[25] Guéniffey, *Le Nombre et la Raison*, p. 41.

low *tax* qualification was in force for state elections.[26] Gouverneur Morris, for example, asked for a property qualification that would have restricted electoral rights to freeholders. His argument was that propertyless people would be particularly susceptible to corruption by the wealthy and would become instruments in their hands. He presented his motion as a guard against "aristocracy,"[27] and on this point, he won the support of Madison. "Viewing the matter on its merits alone," Madison argued, "the freeholders of the Country would be the safest depositories of Republican liberty." As a matter of principle, then, Madison favored the introduction of a freehold qualification. But at the same time he feared popular opposition to such a measure. "Whether the Constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in States where the right was now exercised by every description of people."[28] Madison's speech reveals a certain hesitation and, on the basis of the *Records*, it seems that in the end he advocated a property qualification, but not in the form of landed property. In any case, neither Morris nor Madison carried the day, and the general tenor of the speeches pronounced on that occasion shows that a majority of delegates opposed any restrictions other than those applied by the states. The principal argument seems to have been that the people were strongly attached to the right of suffrage and would not

[26] The radical Pennsylvania constitution of 1776 had abolished the former property qualification for state elections and extended the right of suffrage to all tax-paying adult freemen who had resided one year in their constituencies, which amounted to a large franchise (small tradesmen, independent artisans, and mechanics could vote). In Virginia, by contrast, the right of suffrage was reserved to freeholders, which of course excluded independent artisans and mechanics. The constitution of Massachusetts, to mention another example, had set up a whole hierarchy of property qualifications, but its actual effect was a fairly large franchise (two out of three, or three out of four adult males were enfranchised). See on this, Pole, *Political Representation*, pp. 272, 295, 206.

[27] *The Records of the Federal Convention of 1787*, ed. M. Farrand [1911], 4 vols. (New Haven, CT: Yale University Press, 1966), Vol. II, pp. 202–3. In what follows, references to the Farrand edition will be given as: *Records*, followed by volume and page numbers.

[28] *Records*, Vol. II, pp. 203–4. It should be noted that, when Madison prepared his notes on the Federal Convention for publication (probably in 1821), he revised the speech on the franchise that he had delivered in Philadelphia on August 7, 1787, explaining that his viewpoint had since changed. The foregoing quotations are taken from the original speech. The revised version of 1821, generally known by the title "Notes on the right of suffrage," is an extremely important document to which we shall be returning.

"readily subscribe to the national constitution, if it should subject them to be disfranchised."[29] But no one in Philadelphia proposed that the federal franchise be *wider* than those of the individual states. Clearly, then, the Convention opted for the widest version of the electoral franchise under consideration at the time.

Turning now to the qualifications for representatives, which are more important for our purposes, we find the following clause in the Constitution: "No Person shall be a Representative who shall not have attained the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen" (Art. I, Sec. 2, cl. 2). These requirements are obviously not very stringent and contain no trace of what I have called the principle of distinction. A more egalitarian culture and a more homogeneous population on this side of the ocean perhaps gave representative government a different character from the one in the Old World, marked as it was by centuries of hierarchical organization. However, a close reading of the *Records* shows that behind the closed doors of the Convention the debates on the qualifications for representatives were actually very complex.

On July 26, 1787, George Mason proposed a motion asking that the Committee of Detail (the body that prepared the work of plenary sessions) be instructed to devise a clause "requiring certain qualifications of landed property and citizenship in members of the legislature and disqualifying persons having unsettled accounts with or being indebted to the US."[30] During the debate, Mason cited the example we discussed earlier (see p. 97) of the parliamentary qualifications adopted in England in the reign of Queen Anne, "which [he said] had met with universal approbation."[31] Morris replied that he preferred qualifications for the right of suffrage. Madison suggested deleting the word "landed" from Mason's motion, pointing out that "landed possessions were no certain evidence of real wealth" and further arguing that commercial and manufacturing interests should also have an "opportunity of making their rights be felt and understood in the public Councils";

[29] The formulation is Oliver Ellsworth's (*Records*, Vol. II, p. 201), but it sums up the general tone of a number of speeches.

[30] *Records*, Vol. II, p. 121. [31] *Records*, Vol. II, p. 122.

landed property should not be granted any special treatment.[32] Madison's motion was adopted by an overwhelming majority of ten to one.[33] The Committee of Detail was therefore asked to draft a clause laying down an unspecified property qualification for representatives.

Discussion within the Convention thus focused purely on the *type* of property that ought to be required for representatives. This hesitation aside, all the delegates apparently agreed that a property qualification of one sort or another was proper. Whereas the Convention had opted for the most liberal course regarding the electors, it clearly leaned in the opposite direction with respect to the elected. Two main arguments were advanced. First, it seemed of the greatest importance to guarantee that representatives had sufficient economic independence to be immune to all corruptive influences, especially that of the executive branch. The weight of this concern (to protect the independence of the legislature in relation to the executive) is also reflected in the clause forbidding senators and representatives from holding federal office during their term (Art. 1, Sec. 6, cl. 2). This latter clause was obviously devised to guard against a "place system" along English lines, which was so odious to eighteenth-century republicans. More generally, the idea that economic independence offered one of the best guarantees against corruption was a central tenet of republican thought, and hence the views of the Philadelphia delegates were in keeping with a wider trend of thought.[34] In the second place, a property qualification for representatives appeared justified since the right of property was seen by all delegates as one of the most important rights, and its protection a principal object of government. It therefore seemed necessary to take specific precautions to ensure that representatives would particularly take to heart the rights and interests of property. In any case, whether property was regarded as a bulwark of republican freedom or as a fundamental right, the federal Convention felt that representatives should be property owners, and consequently of higher social rank than those who elected them, since no such qualification was

[32] *Records*, Vol. II, pp. 123–4.

[33] In the *Records*, votes are counted by states. Ten "Ayes" and one "No" mean that ten delegations voted in favor and one against.

[34] See J. G. A. Pocock, *The Machiavellian Moment*, (Princeton, NJ: Princeton University Press, 1975), *passim*.

required for the right of suffrage. Thus it appears that the principle of distinction was present in Philadelphia too. The question is: why was it not translated into a constitutional provision?

Let us return to the debates to seek an answer. A few weeks later, the Committee of Detail submitted the following clause to the plenary assembly: "The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient."[35] The Committee (as explained by two of its members, Rutledge and Ellsworth) had been unable to agree on any precise property requirement, and had decided consequently to leave the matter for future legislatures to settle. Two obstacles prevented the Committee from reaching agreement. First, as Rutledge stated, the members of the Committee had been "embarrassed by the danger on one side of displeasing the people by making them [the qualifications] high, and on the other of rendering them nugatory by making them low." Second, according to Ellsworth, "the different circumstances of different parts of the US and the probable difference between the present and future circumstances of the whole, render it improper to have either *uniform* or *fixed* qualifications. Make them so high as to be useful in the Southern States, and they will be inapplicable to the Eastern States. Suit them to the latter, and they will serve no purpose in the former."[36] The proposed clause may have solved the internal problems of the Committee of Detail, but in plenary session it encountered a major objection: leaving the matter to legislative discretion was extremely dangerous, since the very nature of the political system could be radically altered by simple manipulation of those conditions.[37] Wilson, albeit a member of the Committee, also pointed out that "a *uniform* rule would probably be never fixed by the legislature," and consequently moved "to let the session go out."[38] The vote was taken immediately after Wilson's

[35] *Records*, Vol. II, Report of the Committee of Detail, p. 165. The Committee of Detail consisted of Gorham, Ellsworth, Wilson, Randolph, and Rutledge: see J. H. Hutson, *Supplement to Max Farrand's The Records of the Federal Convention of 1787* (New Haven, CT: Yale University Press, 1987), pp. 195–6.

[36] *Records*, Vol. II, p. 249; original emphasis.

[37] The objection was advanced by Madison, *Records*, Vol. II, pp. 249–50.

[38] *Records*, Vol. II, p. 251; my emphasis.

intervention, and the Committee's proposal was rejected by seven to three. The Constitution would include no property qualification for representatives.

This episode shows that the absence of property qualifications in the 1787 constitution was not due to reasons of principle, but of expediency. The delegates did favor the principle of a property qualification, but they simply could not agree on any uniform threshold that would yield the desired result in both the northern and southern states, in both the undeveloped agrarian states of the west and in the wealthier mercantile states of the east. Thus the absence of any property requirements for representatives in the Constitution, which strikingly departs from the English and French pattern, must be seen as a largely unintentional result. Admittedly, when casting their last vote, the delegates were, in all likelihood, conscious that they were abandoning the very principle of property qualifications, and thus the result was not strictly speaking unintentional. It is clear, nevertheless, that the delegates had been led by external circumstances to make a final vote that was different from (and indeed contrary to) their initial and explicit intention. Furthermore, there is no evidence that they had changed their minds on the point of principle in the meantime. One is tempted to say that the exceptionally egalitarian character of representation in the United States owes more to geography than to philosophy.

The members of the Philadelphia Convention made two further decisions regarding elections. The House of Representatives was to be elected every two years, a term short enough to secure proper dependence on their electors. Paramount was the fear of long parliaments which, on the basis of the English experience, were seen as the hallmark of tyranny. Some delegates argued for annual elections, but by and large the agreement on a two-year term was reached without much difficulty. The Convention also resolved that: "The number of Representatives shall not exceed one for every thirty thousand [inhabitants], but each State shall have at least one Representative" (Art. I, Sec. 2, cl. 3). It was decided that the House would comprise sixty-five members until the first census was taken. The ratio between electors and elected was set with a view to keeping the size of the House within manageable limits, even when the expected (and hoped for) increase in the population would

occur. A vast majority of the delegates were determined to avoid the "confusion" of large assemblies. The Committee of Detail had initially proposed a ratio of one representative for every 40,000 eligible voters.[39] Some delegates, most notably Mason, Gerry, and Randolph, objected to the small size of the representative assembly.[40] But on the whole it seems that this question did not provoke a major debate in the Convention, as Gerry himself was to admit in his correspondence.[41] The delegates were apparently more concerned with the relative weights of the individual states in future federal legislatures than with the ratio between electors and elected.[42]

The ratification debate

Whereas the question of the size of the House of Representatives did not give rise to significant arguments at the Philadelphia Convention, it turned out to be a major point of contention in the ratification debates. Indeed, as Kurland and Lerner note, in the matter of representation, "eclipsing all [other] controversies and concerns was the issue of an adequate representation as expressed in the size of the proposed House of Representatives."[43] The question of the size of the representative assembly (which in some ways was a technical problem of the optimal number for proper deliberation) assumed

[39] *Records*, Vol. I, p. 526.

[40] *Records*, Vol. I, p. 569 (Mason and Gerry); Vol. II, p. 563 (Randolph).

[41] Elbridge Gerry to the Vice President of the Convention of Massachusetts (January 21, 1788), in *Records*, Vol. III, p. 265.

[42] I entirely leave out here the debate on the *basis* for representation and the question of the apportionment of seats, although both figured prominently in the debates of the Convention. The debate about the basis for representation had far-reaching implications, for it entailed a decision on *what* was to be represented. The major question in this respect was: should the apportionment of seats (and hence representation) be based on *property* or *persons*? As J. R. Pole has shown in detail, the final decision to base the apportionment of seats primarily on numbers (even allowing for the "federal ratio" according to which a slave, considered a form of property, was to be counted as three-fifths of a person) "gave a possibly unintentional but nevertheless unmistakable impetus to the idea of political democracy" (*Political Representation*, p. 365). Those who advocated a specific or separate representation of property were thus ultimately defeated. This aspect of the debate, however, has been studied by Pole with all desirable clarity and persuasiveness. His conclusions are presupposed in the present chapter.

[43] P. B. Kurland and R. Lerner (eds.), *The Founders' Constitution*, 5 vols. (Chicago: University of Chicago Press, 1987), Vol. I, p. 386, "Introductory note."

enormous political importance; it involved the relationship between representatives and represented, that is, the very core of the notion of representation. The argument revolved almost exclusively around the consequences of the ratio between elected and electors. Neither the extension of the franchise nor the legal qualifications for representatives was in question, since the Anti-Federalists (those who rejected the plan prepared in Philadelphia) had no objection to the former, and the Constitution did not contain any of the latter. Another point deserves to be stressed: the debate opposed two conceptions of representation. The Anti-Federalists accepted the need for representation: they were not "democrats" in the eighteenth-century sense of the term, as they did not advocate direct government by the assembled people. This has rightly been emphasized in a recent essay by Terence Ball.[44]

The principal objection that the Anti-Federalists raised against the Constitution was that the proposed ratio between elected and electors was too small to allow the proper *likeness*. The concepts of "likeness," "resemblance," "closeness," and the idea that representation should be a "true picture" of the people constantly keep recurring in the writings and speeches of the Anti-Federalists.[45]

Terence Ball's analysis of the two conceptions of representation that were in conflict in the ratification debates is not entirely satisfactory. Using categories developed by Hanna Pitkin, Ball characterizes the Anti-Federalist view of representation as the "mandate theory," according to which the task of the representative is "to mirror the views of those whom he represents" and "to share their attitudes and feelings." By contrast, Ball claims, the Federalists saw representation as the "independent" activity of "a trustee who must make his own judgements concerning his constituents' interests and how they might best be served."[46] Clearly, the Anti-Federalists thought that representatives ought to share the circum-

[44] T. Ball, "A Republic – If you can keep it," in T. Ball and J. Pocock (eds.), *Conceptual Change and the Constitution* (Lawrence: University Press of Kansas, 1987), pp. 144 ff.

[45] On the importance of this notion of "likeness" among the Anti-Federalists, see H. J. Storing (ed.), *The Complete Anti-Federalist*, 7 vols. (Chicago: University of Chicago Press, 1981), Vol. I, *What the Anti-Federalists were for?*, p. 17.

[46] Ball, "A Republic – If you can keep it," p. 145. The work to which Ball refers is H. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967).

stances, attitudes, and feelings of those whom they represented. It is also true that this concern was virtually absent from Federalist thinking. However, the focus of the debate was not exactly, as is implied by the contrast between "independence" and "mandate," the freedom of action of the representatives with regard to the wishes of their constituents. The charge that the Anti-Federalists repeatedly leveled was not that under the proposed Constitution representatives would fail to act as instructed, but that they would not be *like* those who elected them. The two questions are obviously not unrelated, but they are not the same. The ratification debate did not turn on the problem of mandates and instructions, but on the issue of similarity between electors and elected.

Brutus, for example, wrote:

> The very term representative, implies, that the person or body chosen for this purpose, should *resemble* those who appoint them – a representation of the people of America, if it be a true one, must be *like* the people ... They are the sign – the people are the thing signified ... It must then have been intended that those who are placed instead of the people, should possess their sentiments and feelings, and be governed by their interests, or in other words, should bear the strongest *resemblance* of those in whose room they are substituted. It is obvious that for an assembly to be a true *likeness* of the people of any country, they must be considerably numerous.[47]

For his part, Melancton Smith, Hamilton's chief adversary at the New York ratification convention, declared in a speech on the proposed House of Representatives: "The idea that naturally suggests itself to our minds, when we speak of representatives, is that they *resemble* those they represent; they should be a *true picture* of the people: possess the knowledge of their circumstances and their wants; sympathize in all their distresses, and be disposed to seek their true interests."[48] The tireless insistence on the need for identity or resemblance between electors and elected is among the most striking features of Anti-Federalist pamphlets and

[47] Brutus, Essay III, in Storing (ed.), *The Complete Anti-Federalist*, Vol. II, 9, 42; my emphasis. Hereafter references to Anti-Federalist writings and speeches will be given as: *Storing*, followed by the three numbers employed by the editor, the roman numeral denoting the volume.

[48] Melancton Smith, "Speech at the New York ratification convention" (June 20, 1788), *Storing*, VI, 12, 15.

speeches.[49] Certainly the Anti-Federalists did not form an intellectually homogeneous current. However, although some were conservative, others radical, they were virtually unanimous in their demand that representatives resemble those they represented.

The idea that political representation should be conceived as a reflection or picture, the main virtue of which should be resemblance to the original, had found in the first years of independence one of its most influential expressions in John Adams's *Thoughts on Government*. And although Adams did not participate in the constitutional debate of 1787, his influence on Anti-Federalist thinking can hardly be doubted. "The principal difficulty lies," Adams had written in 1776, "and the greatest care should be employed in constituting this representative assembly. [In the preceding passage, Adams had shown the need for representation in large states.] It should be in miniature an exact portrait of the people at large. It should think, feel, reason and act like them."[50] To use Hanna Pitkin's categories, one could say that the Anti-Federalists were defending a "descriptive" conception of representation. In such a view, the aim is for the assembly, as the people in miniature, to act as the people themselves would have acted, had they been assembled. In this sense, the objectives of the "descriptive" view and of the "mandate" theory of representation are the same. However, in the latter case, identity between the will of the representatives and the will of the people is secured through formal legal provisions (instructions or imperative mandates); while the "descriptive" conception supposes that the representatives will *spontaneously* do as the people would have done since they are a reflection of the people, share the circumstances of their constituents, and are close to them in both the metaphorical and spatial senses of the term.

When Anti-Federalists spoke of "likeness" or "closeness," they meant it primarily in a social sense. Opponents of the Constitution claimed that several classes of the population would not be properly represented, because none of their number would sit in the assembly. Samuel Chase wrote:

[49] See The Federal Farmer, Letter II, *Storing*, II, 8, 15; Minority of the Convention of Pennsylvania, *Storing*, III, 11, 35; Samuel Chase, Fragment 5, *Storing*, V, 3, 20; Impartial Examiner, III, *Storing*, V, 14, 28–30.

[50] J. Adams, *Thoughts on Government* [1776], in C. F. Adams (ed.), *The Life and Works of John Adams*, 10 vols. (Boston: Little Brown, 1850–6), Vol. IV, p. 195.

> It is impossible for a few men to be acquainted with the sentiments and interests of the US, which contains many different classes or orders of people – merchants, farmers, planters, mechanics and gentry or wealthy men. To form a proper and true representation each order ought to have an opportunity of choosing from each a person as their representative ... Only but ... few of the merchants and those only of the opulent and ambitious will stand any chance. The great body of planters and farmers cannot expect any of their order – the station is too elevated for them to aspire to – the distance between the people and their representatives will be so great that there is no probability of a farmer or planter being chosen. Mechanics of every branch will be excluded by a general voice from a seat – only the gentry, the rich, the well born will be elected.[51]

Given the diversity of the population of America, only a large assembly could have met the requirements of an "adequate" representation. In a truly representative assembly, Brutus noted, "the farmer, merchant, mechanick and other various orders of people, ought to be represented according to their respective weight and numbers; and the representatives ought to be intimately acquainted with the wants, understand the interests of the several orders in the society, and feel a proper sense and becoming zeal to promote their prosperity."[52] The Anti-Federalists did not demand, however, that all classes without exception have members sitting in the assembly. They wished only that the main components of society be represented, with a special emphasis on the middling ranks (freeholders, independent artisans, and small tradesmen).

They had no doubt, however, that representation as provided for in the Constitution would be skewed in favor of the most prosperous and prominent classes. This was one of the reasons why they denounced the "aristocratic" tendency of the Constitution (another focus of their fear of "aristocracy" being the substantial powers granted to the Senate). When the Anti-Federalists spoke of "aristocracy," they did not mean, of course, hereditary nobility. Nobody ever questioned that America would and should be without a nobility, and the Constitution explicitly prohibited the granting of titles of nobility (Art. I, Sec. 9, cl. 9). What the Anti-Federalists envisioned was not legally defined privilege, but the social super-

[51] Samuel Chase, Fragment 5, *Storing*, V, 3, 20.
[52] Brutus, Essay III, *Storing*, II, 9, 42.

iority conferred by wealth, status, or even talent. Those enjoying these various superiorities composed what they called "the natural aristocracy" – "natural" here being opposed to legal or institutional. As Melancton Smith put it in the New York ratification debate:

> I am convinced that this government is so constituted, that the representatives will generally be composed of the first class of the community, which I shall distinguish by the name of natural aristocracy of the country ... I shall be asked what is meant by the natural aristocracy – and told that no such distinction of classes of men exists among us. It is true that it is our singular felicity that we have no legal or hereditary distinction of this kind; but still there are real differences. Every society naturally divides itself into classes. The author of nature has bestowed on some greater capacities than on others – birth, education, *talents* and wealth create distinctions among men as visible and of as much influence as titles, stars and garters. In every society, men of this class will command a superior degree of respect – and if the government is so constituted as to admit but a few to exercise the powers of it, it will, *according to the natural course of things*, be in their hands.[53]

For his part, Brutus noted:

> *According to the common course of human affairs*, the natural aristocracy of the country will be elected. Wealth always creates influence, and this is generally much increased by large family connections ... It is probable that but few of the merchants, and those of the most opulent and ambitious, will have a representation of their body – few of them are characters sufficiently conspicuous to attract the notice of electors of the state in so limited a representation. [54]

As the Pennsylvania Minority stressed: "Men of the most elevated rank in life, will alone be chosen." [55] The Anti-Federalists were not radical egalitarians, denouncing the existence of social, economic, or personal inequalities. In their view, such inequalities formed part of the natural order of things. Nor did they object to the natural

[53] Melancton Smith, speech of June 20, 1788, *Storing*, VI, 12, 16; my emphasis. It is noteworthy that Smith places talents, birth, and wealth on the same footing. This is not the place to embark on the philosophical debates that such categorization might raise, but it is worth highlighting.

[54] Brutus, Essay III, *Storing*, II, 9, 42; my emphasis. On the notion that only the "natural aristocracy" would be elected, see also The Federal Farmer, Letter IX, *Storing*, II, 8, 113.

[55] The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to Their Constituents, *Storing*, III, 11, 35.

aristocracy playing a specific political role. But they did not want it to monopolize power.

The Anti-Federalists did not develop a detailed explanation, let alone a clear and simple one, that could be successfully used in public debate, regarding why only the rich and the prominent would be elected. Their ideas had rather the form of profound but incompletely articulated intuitions. The larger the electoral districts, they claimed, the greater the influence of wealth would be. In small settings, common people could be elected, but in large ones a successful candidate would have to be particularly conspicuous and prominent. Neither proposition was self-evident, but the opponents of the Constitution were unable to explain them any further. This lack of articulation explains in part the weakness of their case when confronted with the clear and compelling logic of the Federalists. The Anti-Federalists were fully aware of the argumentative strength of their adversaries' case. And in the end they fell back on the simple but rather short assertion that the Federalists were deceiving the people. In a statement that captures both the core of the Anti-Federalist position and its argumentative weakness, the Federal Farmer wrote:

> the people may be electors, if the representation be so formed as to give one or more of the natural classes of men in the society an undue ascendancy over the others, it is imperfect; the former will gradually become masters, and the latter slaves ... It is deceiving the people to tell them they are electors, and can choose their legislators, if they cannot *in the nature of things*, choose men among themselves, and genuinely *like themselves*.[56]

The accusatory tone and rhetorical exaggeration could not mask the lack of substantial argument. The Anti-Federalists were deeply convinced that representatives would not be like their electors, but they were unable to explain in simple terms the enigmatic "nature of things" or "common course of human affairs" that would lead to this result.

Such a position lay entirely vulnerable to Madison's lightning retort. We are told, Madison declared in an equally rhetorical passage, that the House of Representatives will constitute an oligarchy, but:

[56] The Federal Farmer, Letter VII, *Storing*, II, 8, 97; my emphasis.

> Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States ... Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, or religious faith, or of civil profession is permitted to fetter the judgement or disappoint the inclination of the people.[57]

The Anti-Federalists had no objections to the federal franchise, and they admitted that there were no property or tax qualifications for representatives in the Constitution. Thus, they had no effective counterargument.

After this first defense, the gist of Madison's argument in "Federalist 57" states that the Constitution provides every guarantee that representatives will not betray the trust of the people. Because representatives will have been "distinguished by the preference of their fellow citizens," Madison argues, there are good reasons to believe that they will actually have the qualities for which they were chosen and that they will live up to expectations. Moreover, they will know that they owe their elevation to public office to the people; this cannot "fail to produce a temporary affection at least to their constituents." Owing their honor and distinction to the favor of the people, they will be unlikely to subvert the popular character of a system that is the basis of their power. More importantly, frequent elections will constantly remind them of their dependence on the electorate. Finally, the laws they pass will apply as much to themselves and their friends as to the society at large.[58]

Given all these guarantees, Madison turns the tables on the Anti-

[57] Madison, "Federalist 57," in A. Hamilton, J. Madison, and J. Jay, *The Federalist Papers* [1787–8], ed. C. Rossiter (New York: Penguin, 1961), p. 351. On the qualifications for election as a representative, see also "Federalist 52." There Madison recalls the three qualifications laid down in the Constitution (twenty-five years of age, seven year citizenship in the US, and residence in the state where the candidate runs for Congress) before adding: "Under these reasonable limitations, the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith" (p. 326). Hereafter references to *The Federalist Papers* will indicate only the essay number and the page in the Rossiter edition.

[58] Madison, "Federalist 57," pp. 351–2.

Federalists and indirectly casts suspicion on their attachment to republican or popular government by asking:

> What are we to say to the men who profess the most flaming zeal for republican government, yet boldly impeach the fundamental principle of it [the right of the people to elect those who govern them]; who pretend to be champions for the right and capacity of the people to choose their own rulers, yet maintain that they will prefer those only who will immediately and infallibly betray the trust committed to them?[59]

Madison implies that these professed republicans in fact harbor doubts about the right of the people to choose for rulers whom they please and their ability to judge candidates. Although Madison stresses to great effect the popular or republican dimension of representation under the proposed scheme, nowhere in his argumentation does he claim that the Constitution will secure likeness or closeness between representatives and represented. He too knows that it will not.

Madison develops instead an altogether different conception of what republican representation could and should be:

> The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust. The elective mode of obtaining rulers is the characteristic policy of republican government. The means relied on in this form of government for preventing their degeneracy are numerous and various. The most effectual one is such a limitation of the term of appointment as will maintain a proper responsibility to the people.[60]

In this characterization of republican government, it is worth noting, there is not the slightest mention of any likeness between representatives and represented. Indeed, representatives should be different from their constituents, for republican government requires as any other that power be entrusted to those who possess "most wisdom" and "most virtue," that is, to persons who are superior to, and different from, their fellow citizens. This is one of the clearest formulations of the principle of distinction in Federalist thinking,

[59] Madison, "Federalist 57," p. 353. [60] Madison, "Federalist 57," pp. 350–1.

but Madison expresses the same idea on numerous occasions. In the famous passage of "Federalist 10," in which Madison sets out his conception of the differences between a democracy and a republic, he notes first that the defining characteristic of a republic is "the delegation of the government ... to a small number of citizens elected by the rest ... The effect of [which] is, on the one hand, to refine and enlarge the public views by passing them through the medium of a *chosen body of citizens*, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations."[61] What distinguishes a republic from a democracy, then, is not merely the existence of a body of representatives, but also the fact that those representatives form a "chosen body." Like Guicciardini before him, Madison is clearly playing on two senses of the term "chosen": the representatives are chosen, in the literal sense, since they are elected, but they also constitute the "chosen Few." Thus the complete characterization of the republican mode of designating rulers is that it leaves it to the people to select through election the wisest and most virtuous.

Madison's republicanism, however, is not content with providing for the selection of the wisest and most virtuous; there is no blind faith in wise and virtuous elites. Representatives should be kept on the virtuous path by a system of constraints, sanctions, and rewards. The "most effectual precaution to keep them virtuous" is to subject them to frequent election and reelection. The constant prospect of an upcoming election, combined with the desire for continuing in office, will guarantee their proper devotion to the interests of the people. If, in republican government, the selected and select few serve the common good rather than their own interest, it is not on account of any resemblance to their constituents, but primarily because they are held responsible to the people through regular elections. The Anti-Federalists thought that in order for the representatives to serve the people, the former had to be "like" the latter. Madison responds that representatives may well be different from the people, indeed they ought to be different. They will nonetheless serve the people because they will be kept duly dependent on them

[61] Madison, "Federalist 10," p. 82; my emphasis.

by institutional means. Recurring elections, and not social likeness or closeness, are the best guardians of the people's interests. The full scope of the divergence between the two conceptions of representation is now apparent. The Anti-Federalists did not question the need for recurring elections, but to them, this was only a necessary condition for a genuine representation; similarity and proximity were also required. The Federalists, on the other hand, saw elections as both a necessary and sufficient condition for good representation.

Faced with the objection that the Constitution was aristocratic, the Federalists replied by stressing the difference between aristocracy pure and simple and "natural aristocracy" and by arguing moreover that there was nothing objectionable in the latter. An example of this line of argument can be found in the speeches of James Wilson during the Pennsylvania ratification debate. His defense of the Constitution on this point is particularly significant, because of all the Federalist leaders, he was certainly the most democratically minded. For example, he praised the Constitution for its "democratic" character, something which Madison (much less Hamilton) would never do. Nevertheless, when confronted with the objection that the proposed Constitution leaned in the direction of aristocracy, Wilson was prepared to justify government by a natural aristocracy.

> I ask now what is meant by a natural aristocracy. I am not at a loss for the etymological definition of the term; for when we trace it to the language from which it is derived, an aristocracy means nothing more or less than a government of the best men in the community or those who are recommended by the words of the constitution of Pennsylvania, where it is directed that the representatives should consist of those most noted for wisdom and virtue. [It should be kept in mind that the 1776 Pennsylvania constitution was widely seen as one of the most "democratic" state constitutions; and it constitued anyway a reference for Wilson's audience.] Is there any danger in such representation? I shall never find fault that such characters are employed ... If this is meant by natural aristocracy, – and I know no other – can it be objectionable that men should be employed that are most noted for their virtue and talents?[62]

[62] J. Wilson, speech of December 4, 1787, in John Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as recommended by the General Convention at Philadelphia*, 5 vols. (New York: Burt Franklin, 1888) Vol. II, pp. 473–4.

In his definition of natural aristocracy, Wilson made no mention of wealth, which made his position easier to defend and rendered his argument somewhat more common, but not to the point of triviality. For the argument must be seen in the context of the whole debate and in the light of the other side's accusations. From this perspective, Wilson's argument, in that it explicitly conceded two points made by the Anti-Federalists, is significant. First, representatives would not be *like* their electors, nor should they be. It was positively desirable that they be more talented and virtuous. Second, the representative assembly would consist primarily, if not exclusively, of the natural aristocracy.

After this defense of natural aristocracy, Wilson stressed how greatly it differed from aristocracy proper. An "aristocratic government," he continued, is a government

> where the supreme power is not retained by the people, but resides in a select body of men, who either fill up the vacancies that happen, by their own choice and election, or succeed on the principle of descent, or by virtue of territorial possession, or some other qualifications that are not the result of personal properties. When I speak of personal properties, I mean the qualities of the head and the disposition of the heart.[63]

When confronted with the same objection about the aristocratic character of the Constitution, Hamilton responded first by ridiculing his adversaries' conception of aristocracy.

> Why, then, are we told so often of an aristocracy? For my part, I hardly know the meaning of this word, as it is applied ... But who are the aristocracy among us? Where do we find men elevated to a perpetual rank above their fellow-citizens, and possessing powers independent of them? The arguments of the gentlemen [the Anti-Federalists] only go to prove that there are men who are rich, men who are poor, some who are wise, and others who are not; that indeed every distinguished man is an aristocrat ... This description, I presume to say is ridiculous. The image is a phantom. Does the new government render a rich man more eligible than a poor one? No. It requires no such qualification.[64]

Hamilton came back again and again to the Federalists' favorite

[63] J. Wilson, speech of December 4, 1787, p. 474.
[64] Hamilton, speech of June 21, 1788, in Elliot (ed.), *The Debates* ..., Vol. II, p. 256.

argument: the people had the right to choose whomever they pleased as their rulers. But he went even further, acknowledging that wealth was bound to play an increasingly important part in elections: "As riches increase and accumulate in a few hands, as luxury prevails in society, virtue will be in greater degree considered as only a graceful appendage of wealth, and the tendency of things will be to depart from the republican standard. This is the real disposition of human nature: it is what neither the honorable member [Melancton Smith] nor myself can correct."[65] And although Hamilton lamented this ineluctable development, something more than mere resignation sounded in the following remarks:

> Look through the rich and the poor of the community, the learned and the ignorant. Where does virtue predominate? The difference indeed consists, not in the quantity, but kind, of vices which are incident to various classes; and here the advantage of character belongs to the wealthy. Their vices are probably more favorable to the prosperity of the state than those of the indigent, and partake less of moral depravity.[66]

More than any other Federalist, Hamilton was prepared to advocate openly a certain role for wealth in the selection of representatives. Rome fascinated him and his paramount objective was that the young nation become a great power, perhaps an empire. He saw economic power as the main road to historical greatness, hence he wished the country to be led by prosperous, bold, and industrious merchants. At Philadelphia, in his speech against the plan put forward by the New Jersey delegation, he had stressed the need for attracting to the government "real men of weight and influence."[67] In *The Federalist* he replied to the Anti-Federalists that "the idea of an actual representation of all classes of the people by persons of each class" was "altogether visionary," adding: "Unless it were expressly provided in the constitution that each different occupation should send one or more members, the thing would never take place in practice."[68] Once again, the point was being conceded to the Anti-Federalists: the numerical importance of each of the various classes of society would never find spontaneous reflection in the representative assembly.

[65] Hamilton, speech of June 21, 1788, p. 256. [66] *Ibid.*, p. 257.
[67] *Records*, Vol. I, p. 299. [68] Hamilton, "Federalist 35," p. 214.

> Mechanics and manufacturers will always be inclined, with few exceptions, to give their votes to merchants in preference to persons of their own professions or trades. Those discerning citizens are well aware that the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry ... They know that the merchant is their *natural* patron and friend; and they are aware that however great the confidence they may justly feel in their own good sense, their interests can be more effectually promoted by the merchants than by themselves.[69]

The difference was that Hamilton, unlike the Anti-Federalists, welcomed this "natural" state of affairs.

Not all Federalists shared Hamilton's point of view on the role of commerce and wealth, as the debates and conflicts of the next decade would show. In the 1790s Madison and Hamilton found themselves in opposing camps: Hamilton, then in office, continued to stand up for commercial and financial interests and to defend a strong central power; while Madison joined Jefferson in denouncing what they took to be the corruption associated with finance and commerce, as well as the encroachments of the federal government. The Federalists, however, all agreed that representatives should not be like their constituents. Whether the difference was expressed in terms of wisdom, virtue, talents, or sheer wealth and property, they all expected and wished the elected to stand higher than those who elected them.

In the end, though, the Federalists shared the Anti-Federalist intuition that this kind of difference would result from the mere size of electoral districts (that is, through the ratio between electors and elected). The advocates of the proposed Constitution did not offer an explanation of this phenomenon any more than did their opponents. However, since the Federalists did not usually present it publicly as one of the Constitution's main merits, their inability to account for it was less of a problem for them in the debate than for the Anti-Federalists. The idea, however, occasionally appeared in Federalist speeches. Wilson, for example, declared:

> And I believe the experience of all who had experience, demonstrates that the larger the district of election, the better the representation. It is only in remote corners that little demagogues arise. Nothing but

[69] Hamilton, "Federalist 35," p. 214, my emphasis.

> real weight of character can give a man real influence over a large district. This is remarkably shown in the commonwealth of Massachusetts. The members of the House of Representatives are chosen in very small districts; and such has been the influence of party cabal, and little intrigue in them, that a great majority seem inclined to show very little disapprobation of the conduct of the insurgents in that state [the partisans of Shays].[70]

By contrast, the Governor of Massachusetts was chosen by the state's whole electorate, a rather large constituency. Clearly, Wilson went on, when it came to choosing the Governor, the voters of Massachusetts "only vibrated between the most eminent characters."[71] The allusion to the Shays rebellion of 1786 rendered fairly transparent the socio-economic dimension of what Wilson meant by "eminent characters" or "real weight of character."[72] In his speech of December 11, 1787, Wilson repeated the same argument (with only a slightly different emphasis), before arguing that large electoral districts were a protection against both petty demagogues and parochialism.[73]

Writing in "Federalist 10," Madison too establishes a connection between the size of the electorate and the selection of prominent candidates. Although he is not dealing in this passage with the electoral ratio and the size of the Chamber, but with the advantage of extended republics over small ones, he uses an argument similar to Wilson's: the more numerous the electorate, the more likely the selection of respectable characters.

> As each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people

[70] J. Wilson, speech of December 4, 1787, in Elliot (ed.), *The Debates ...*, Vol. II, p. 474.

[71] *Ibid.*

[72] The Shays rebellion, which broke out in Massachusetts in 1786, exercised some influence on the framing of the Constitution. It contributed to the animus against "democracy" that was expressed in Philadelphia. The small farmers of the western part of the state had revolted against the policy favorable to the seabord mercantile interests pursued by the legislature in Boston. The legislature had adopted a policy of hard currency and had decided to redeem the public debt, which had led to an increase in the tax burden. In the legislative elections following the rebellion, the forces of discontent scored great successes. On the Shays rebellion, see Pole, *Political Representation*, pp. 227–41.

[73] J. Wilson, Speech of December 11, 1787, in J. B. McMaster and F. Stone (eds.), *Pennsylvania and the Federal Constitution* (Philadelphia, 1888), p. 395.

> being more free, will be more likely to center on men who possess the most attractive merit and the most diffusive and established characters.[74]

In the "Note to his speech on the right of suffrage" (an elaboration on the speech he had delivered at the Convention on August 7, 1787), [75] Madison is more explicit about the benefits he expects from large electoral districts. This note reflects on possible solutions to what he describes at the outset as the major problem raised by the right of suffrage. "Allow the right exclusively to property, and the right of persons may be oppressed. The feudal polity alone sufficiently proves it. Extend it equally to all, and the rights of property or the claims of justice may be overruled by a majority without property, or interested in measures of injustice." [76] The chief objective in matters of suffrage, therefore, is to guarantee the rights of both persons and property. Madison considers five potential solutions. The first two are rejected as unfair: a property qualification for electors in the form of a freehold or of any property; and the election of one branch of the legislature by property-holders and of the other branch by the propertyless. Madison dwells at greater length on a third possibility: reserving the right of electing one branch of the legislature to freeholders, and admitting all the citizens, including freeholders, to the right of electing the other branch (which would give a double vote to freeholders). Madison notes, however, that he is not wholly clear himself about the effects of this third solution, and believes that it could be tried. He then moves to a fourth solution, on which he has apparently more definite views:

> Should experience or public opinion require an equal and universal suffrage for each branch of the government, such as prevails generally in the US, a resource favorable to the rights of landed and other property, when its possessors become the minority, may be found in an enlargement of the election districts for one branch of the legislature, and an extension of its period of service. *Large districts are manifestly favorable to the election of persons of general respectability, and of probable attachment to the rights of property, over competitors depending on the personal solicitations practicable on a contracted theatre.* [77]

[74] Madison, "Federalist 10," pp. 82–3. [75] See above, note 28.
[76] Madison, "Note to the speech on the right of suffrage" (probably 1821), in *Records*, Vol. III, p. 450.
[77] *Records*, Vol. III, p. 454. My emphasis.

Finally, should even this solution be found unacceptable, Madison sees the final bulwark of the rights of property in a combination of several elements: "the ordinary influence possessed by property and the superior information incident to its holders,"[78] "the popular sense of justice enlightened and enlarged by a diffusive education," and "the difficulty of combining and effectuating unjust purposes throughout an extensive country." The fourth and fifth solutions are obviously embodied in the Constitution.[79] Regarding the effects of large electoral districts, Madison no longer speaks (as he did in "Federalist 10") the language of virtue and wisdom; he states more bluntly that large size will work in favor of property and wealth.

It would be superficial, however, to portray Madison and the Federalist leaders in general as hypocritical and shrewd politicians, who introduced into the Constitution a surreptitious property qualification (large electoral districts), and who publicly argued, in order to gain popular approval, that the assembly would be open to anyone with merit. Conversely, it would be naive to focus exclusively on the legal side of the situation and to claim that, since there were no property requirements for representatives in the Constitution, the Federalists were champions of political equality.[80] The

[78] In *The Federalist*, Madison alludes to the deference inspired by property-holders. In an argument justifying the apportionment of seats based to some extent on slave property (the $\frac{3}{5}$ "federal ratio"), Madison explains that the *wealth* of the individual states must be taken into account *legally* because the affluent states do not *spontaneously* enjoy the benefits of superior influence conferred by wealth. The situation of the states, he argues, is different in this respect from that of individual citizens. "If the law allows an opulent citizen but a single vote in the choice of his representative, the respect and consequence which he derives from his fortunate situation very frequently guide the votes of others to objects of his choice; and through this *imperceptible channel* the rights of property are conveyed into the public representation" ("Federalist 54," p. 339; my emphasis).

[79] The status and date of this Note are not entirely clear. Madison writes at the beginning that his speech of August 7, 1787, as reported in the *Records* of the Federal Convention, does not "convey the speaker's more full and matured view of the subject." The most plausible interpretation would seem to be that the Note sets out what Madison retrospectively (in 1821) regarded as the rationale for the right of suffrage laid down in 1787, whereas at the time he had been in favor of a property qualification, as we have seen. It is difficult to date precisely the change in his opinions which he alludes to. It would seem, in the light of the arguments contained in "Federalist 10," that by the end of 1787 at the latest he had realized that large electoral districts would work in favor of property-holders. But he might have discovered this effect earlier (during the debates in Philadelphia, for example).

[80] The "naive" interpretation is manifestly contradicted by the historical documents and there is no point in discussing it.

extraordinary force of the Federalist position stemmed from the fact that when Madison or Wilson declared that the people could elect whomever they pleased, they were voicing an incontrovertible proposition. In this respect, accusing the Federalists of "deceiving the people" was simply not credible. Defenders of the Constitution were certainly stating *one* truth. But there was another truth, too, or more precisely another idea that both parties held to be true (even if they did not understand exactly why): the people would, as a rule, freely choose to elect propertied and "respectable" candidates. Both propositions (and this is the essential point) could be objectively true at the same time. The first could not then, and cannot now, be regarded as a mere ideological veil for the second.

One cannot even claim that the size of electoral districts was a way of offsetting in practice the effects of the absence of formal qualifications. The Federalists did not rely on two elements of the Constitution that were equally true (or deemed to be true), in the belief that the restrictive element (the advantage bestowed on the natural aristocracy by the size of electoral districts) would cancel the effects of the more open one (the absence of any property requirement for representatives). Such a claim presupposes that the concrete results of a formal qualification would have been strictly identical to those of large electoral districts (or perceived as such by those concerned).

It is intuitively apparent that the two provisions were not equivalent. The general principle that laws and institutions make a difference and are not merely superficial phenomena has gained wide acceptance today. Yet neither intuition nor the general principle that law is no mere "formality" is wholly adequate here. It is also necessary to explain precisely why, in the particular case of parliamentary qualifications, legal requirements would not have produced effects identical to those that both the Federalists and the Anti-Federalists expected from the size of electoral districts.

Large electoral districts were not strictly equivalent to a formal property qualification for two main reasons. First, the notion that they would give an advantage to the natural aristocracy was premised on a phenomenon that experience seemed generally to confirm: "experience demonstrates" (as Wilson put it) that in general only "respectable characters" are elected in large constitu-

encies, or (to use the language of Brutus) this effect occurs "according to the *common* course of human affairs."[81] The connection between large districts and the election of the natural aristocracy thus appeared to obtain *most of the time*. A formal property qualification, by contrast, would have been effective *always*. If the advantage of the propertied classes is assured by a statistically proven regularity of electoral behavior, the system offers a measure of flexibility: circumstances may arise where the effect does not obtain, because an exceptional concern overrides voters' ordinary inclination toward "conspicuous" candidates. The situation is different if legislative position is reserved by law to the higher social classes, because the law is by definition rigid. Obviously, the law can be changed, either peaceably or by violent means, but the process is more complicated.

There is no justification for regarding as negligible the difference between what happens always and what occurs only most of the time. The distinction (which Aristotle developed) between these two categories is particularly relevant in politics. It is an error, and indeed a fallacy, to consider, as is often done, that the ultimate truth of a political phenomenon lies in the form it assumes most of the time. In reality, the exceptional case is important too, because what is at stake in politics varies according to circumstances, and the statistically rare case may be one with historically critical consequences. On the other hand, it is equally fallacious to confer epistemological privilege on the extreme case, that is, the one which is both rare and involves high stakes. In politics, ultimate truth is no more revealed by the exception than by the rule.[82] Crises and

[81] One might also recall Hamilton's remark, quoted above: "Mechanics and manufacturers will *always* be inclined, *with few exceptions*, to give their votes to merchants in preference to persons of their own professions or trades" (my emphasis). See above n. 69.

[82] The thought of Carl Schmitt is one of the most brilliant, systematic, and conscious developments of the fallacious principle that the exceptional case reveals the essence of a phenomenon. Schmitt's analyses of extreme cases are for the most part penetrating. But Schmitt unduly (albeit consciously) extends the conclusions that can be drawn from the exceptional case to the general character of the phenomenon under consideration. He writes, for example: "Precisely a philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree ... The exception is more interesting than the rule. The rule proves nothing, the exception proves everything: it confirms not only the rule but also its existence, which derives only from the exception." (*Politische Theologie: Vier Kapitel zur Lehre der Souveränität* [1922];

revolutions are certainly important; one can say that they define the ordinary in that they determine the boundaries between which ordinary situations take place. But it does not follow that they are the truth of ordinary politics and furnish the key to understanding it. In revolutions or crises some factors and mechanisms come into play that are absent from normal situations and, therefore, cannot serve our understanding of ordinary politics. The most powerful political theories are those that make room for both the ordinary and the extraordinary, while maintaining a distinction between the two and explaining them differently. Locke's thought offers a perfect illustration. Most of the time, Locke remarked, people trust the established government, particularly if they elect it; they are not easily "got out of their old forms." Only when a "long train of abuses, prevarications, and artifices, all tending the same way" unmistakably manifest an intention to betray their trust, do people rise up, "appeal to heaven," and submit their fate (quite rightly) to the verdict of battle.[83] It is one of the most notable strengths of the *Second Treatise* that neither the trust of the governed in the government nor the possibility of revolution is presented as *the* truth of politics.

Returning to the American debate, the conclusion must be that, even if large electoral districts and legal qualifications for representatives did favor candidates from the higher social classes, the two cannot be equated. The greater degree of flexibility offered by extended constituencies in exceptional cases cannot be dismissed as insignificant: it is the first reason why the size of electoral districts did not cancel the effects of the non-restrictive electoral clause in the Constitution.

Second, if the advantage of certain classes in matters of representation is written into law, abolishing it (or granting it to other classes) requires a change in the law. That means that a change in the rules has to be approved by the very people who benefit from them, since they were elected under the old rules. Such a system, therefore, amounts to subjecting the demise of a given elite to its

English trans. *Political Theology. Four Chapters on the Concept of Sovereignty*, trans. G. Schwab, Cambridge, MA: MIT Press, 1985, p. 15.)

[83] J. Locke, *Second Treatise of Government*, ch. XIX, §§ 221, 223, 242, in J. Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1960), pp. 414, 415, 427.

own approval and consent. If, by contrast, the advantage of a particular social class results only from the electoral behavior of the citizens (as with the advantage of the natural aristocracy resulting from large electoral districts), a simple change in the electorate will be sufficient to overthrow an elite or alter its composition. In this case, then, the demise of the elite in power can be achieved without its approval. This is not to say, however, that the free and deliberate decision of the electorate is sufficient to achieve such a result. For the advantage of the higher social classes in large electoral districts, though a result of the electorate's behavior, actually depends on a number of factors, only some of which are capable of being deliberately modified by voters. For instance, the electoral success of property owners in large districts no doubt owes something to the constraint of campaign expenses. It may also have to do with social norms (deference, for example). Such factors are clearly beyond the reach of the conscious and deliberate decisions of voters; the simple will of the electorate is not in itself enough to do away with the advantage of wealth. Deeper changes in socio-economic circumstances and in political culture are also necessary. Difficult though they may be, such changes do not require the approval of those already in power, whereas that approval would be required under a system of legal qualifications. And there is hardly anything more difficult than inducing an elite to acquiesce in its own diminution of power. This typically requires an inordinate amount of external and indeed violent pressure.

It may be objected that, under a system of legal qualifications, the law that must be changed in order to remove the advantage of the privileged classes is usually not ordinary but rather constitutional. This was certainly the case in the United States. Changing the legal requirements would thus not have depended simply on the approval of the representatives elected under those conditions. The argument put forward here retains its validity, however, since the legislature would have a say in the process of constitutional revision.

On this second count as well, then, legal requirements for representatives and large electoral districts do not have strictly identical effects. The difference is that with a system of large electoral districts, the advantage of wealth could be altered, or possibly even

abolished, without the consent of the propertied elite. This lent itself more easily to political change than did the legal conditions that English and French founders of representative government instituted in their countries.

Thus, the geographical diversity of the American states, which prevented the Philadelphia delegates from reaching an agreement on a wealth qualification for representatives led to the invention of a system in which the distinction of the representative elite was secured in a more flexible and adaptable manner, than on the other side of the Atlantic. In America, following the phases of history and the changes in the social structure of the nation, different elites would be able to succeed one another in power without major upheavals. And occasionally, in exceptional times, voters would even be able to elect ordinary citizens.

We are now in a position to see why the American constitutional debate sheds light on representative institutions in general, and not only on American ones. This broader significance results first from the position defended by the Anti-Federalists. Their views have not been widely studied, but the history of ideas and political theory in general have been wrong to neglect this current of thought. With their unflagging insistence on the "likeness" and "closeness" that must bind representatives and represented in a popular government, the Anti-Federalists actually made an important contribution to political thought. The Anti-Federalists formulated with great clarity a plausible, consistent, and powerful conception of representation. They accepted without reservations the need for a functional differentiation between rulers and ruled. But they maintained that, if representative government were to be genuinely popular, representatives should be as close to their constituents as possible: living with them and sharing their circumstances. If these conditions were fulfilled, they argued, representatives would spontaneously feel, think, and act like the people they represented. This view of representation was clearly defeated in 1787. Thus, the American debate brings into sharp relief what representative government was *not* intended to be. From the very beginning, it was clear that in America representative government would not be based on resemblance and proximity between representatives and represented. The debate of 1787 also illuminates by contrast the conception of

representation that carried the day. Representatives were to be different from those they represented and to stand above them with respect to talent, virtue, and wealth. Yet the government would be republican (or popular) because representatives would be chosen by the people, and above all because repeated elections would oblige representatives to be answerable to the people. More than in France or England, where in the eighteenth century no significant force defended representation based on social resemblance or proximity, it was in America that the combination of the principle of distinction and popular representative government emerged in exemplary form.

Moreover, beyond the constitutional problem of representation, the ideal of similarity between leaders and people proved to be a powerful mobilizing force during the following century. But it was the Anti-Federalists who had first formulated it. Viewed from a certain angle, the history of the Western world can be seen as the advance of the principle of division of labor. But every time that principle was extended to organizations involved in politics (e.g. mass parties, trade unions, citizens' groups), the ideal of likeness and closeness demonstrated its attractive force. In every organization with a political dimension, substantial energies may be mobilized by declaring that the leaders must resemble the membership, share their circumstances, and be as close to them as possible, even if practical necessities impose a differentiation of roles. The power of the ideal of resemblance derives from its ability to effect a nearly perfect reconciliation between the division of labor and the democratic principle of equality.

There is an additional element of general import in the American debate. On this side of the Atlantic, it was realized early on that the superiority of the elected over their electors could usually be achieved, even in the absence of any legal requirements, through the mere operation of the elective method. It took almost another hundred years before Europeans came to see this property of elections, or at least to rely on it in order to ensure distinction in representatives. Admittedly, the protagonists of the American debate regarded the size of electoral districts as the main factor in the selection of prominent candidates. But the Anti-Federalists recognized that, even in smaller districts, voters would sponta-

neously choose persons whom they regarded in one way or another as superior to themselves. When the Federal Farmer, for example, called for a larger number of representatives, it was "in order to allow professional men, merchants, traders, farmers, mechanics etc., to bring a just proportion of *their best informed men* respectively into the legislature."[84]

There was in Anti-Federalist thinking an unresolved tension between the ideal of likeness and an adherence to the elective principle (which the Federalists did not fail to exploit). In the ratification debate, however, the Anti-Federalist position was not simply inconsistent. For if the Anti-Federalists did accept a certain difference between representatives and their constituents, they were afraid that with vast electoral districts that difference would become too great; they feared that certain categories would be deprived of any representatives from their own ranks, and that in the end wealth would become the prevailing criterion of distinction. In any case, they realized that the elective principle would itself lead to the selection of what they called an "aristocracy." The Federalists undoubtedly shared that belief. The disagreement was a matter of degree: the two sides held different views on what was the proper distance between representatives and represented. Furthermore, they differed on the specific characteristics of the "aristocracy" that it was desirable to select. Reviving, without explicit reference, an ancient idea, both sides believed that election by itself carries an aristocratic effect.

[84] The Federal Farmer, Letter II, *Storing*, II, 8, 15; my emphasis.