

SECTION TEN

ON ELECTIONS— TIMES, PLACES, AND MANNERS



These papers are about one small line of the Constitution. Article 1, Section 4 states: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” Simply put, elections for members of Congress are controlled by the state legislatures, unless Congress intervenes by passing a law.

On the surface, this short provision may seem unworthy of being the dedicated topic of several essays of *The Federalist* and numerous Anti-Federalist writings. To those engaged in the battle over the Constitution, however, the stakes were high.

Publius argues that this line is essential as a self-defense mechanism for the federal government. What if, he argues, the states would conspire to inhibit or even shut down the central government by not calling elections? With no Congress, there would be no laws and no funds to operate the rest of government. Such a result, he argues, might be in the interest of some ambitious men in the states or a foreign power, but it would not be in the interest of the United States. Publius states that “every government ought to contain in itself the means of its own preservation” and argues Article I, Section 4 is such a provision.

On the other hand, the Anti-Federalists saw this provision as profoundly dangerous. To give Congress the power to control the timing, location, and manner of the elections of its own members is tantamount to giving up the right to fair and free elections. The rulers, they argued, should not oversee the rules for electing themselves. Such power, Brutus articulates, is “almost always exercised to the oppression of the people.” Several Anti-Federalists paint the same general scenario: What if Congress decides to tell the states that they are each just one big district and can only hold one polling location in the entire state? While the top vote-getters will be elected to represent the state, they

will likely all be from the area where the voting takes place. Such an outcome, they argue, will surely be unrepresentative of the people as they would likely be comprised of the “the wealthy and the well born.”

Publius’ counterargument is that a Congress powerful enough to force such an injustice on the states and their citizens will have much more efficient means of being tyrannical. For instance, to enforce such an injustice against the states would require a strong military force, and that army could more easily be used to achieve Congress’ aim than simply by manipulating elections.

QUESTIONS FOR OUR TIME

1. In *Federalist 59*, Publius asks “would any man have hesitated to condemn” a provision in the Constitution that would allow the federal government to intervene in state elections? Sounding almost like an Anti-Federalist, he says such a proposal would be a “premeditated engine for the destruction of the state governments.” And yet, as America has evolved, the federal government has exercised a power over state elections to ensure voting rights, such as the Voting Rights Act of 1965. What happened to bring about this change, and should one level of government be able to interfere with the elections of another level? What are the implications, if any, for federalism?
2. The Anti-Federalist Brutus fears that Article I, Section 4 of the Constitution puts our political rulers in charge of their own elections. The same argument has been used against state legislatures being able to gerrymander or draw their own district lines and those of their fellow party members in Congress. Some argue that judges or a non-political entity should be empowered to draw the lines. What do you think?
3. Article I, Section 4 grants Congress the power to intervene in state decisions regarding the time, place, and manner of elections. The one exception is that Congress was given no power to interfere with the place of choosing senators. Why do you think such an exception was made? You might note that the passage of the Seventeenth Amendment to the Constitution (1913) federalized the process of choosing senators by guaranteeing popular elections in every state. Originally, it was assumed the state legislatures would select a method for choosing senators with most legislatures doing it themselves. Though it is more than 100 years old, some continue to object to the Seventeenth Amendment on the grounds that moving to a popular election of senators removed an important power from the state legislatures and has reduced their national influence. What do you think?

FEDERALIST NO. 59

CONCERNING THE REGULATION OF ELECTIONS

The natural order of the subject leads us to consider, in this place, that provision of the constitution which authorizes the national legislature to regulate, in the last resort, the election of its own members.

It is in these words: “The *times, places*, and *manner* of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter *such regulations*, except as to *places* of choosing senators.”³⁷ This provision has not only been declaimed against by those who condemn the constitution in the gross; but it has been censured by those who have objected with less latitude, and greater moderation; and, in one instance, it has been thought exceptionable by a gentleman who has declared himself the advocate of every other part of the system.

I am greatly mistaken, notwithstanding,

if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that *every government ought to contain in itself the means of its own preservation*. Every just reasoner will, at first sight, approve an adherence to this rule in the work of the convention; and will disapprove every deviation from it, which may not appear to have been dictated by the necessity of incorporating into the work some particular ingredient, with which a rigid conformity to the rule was incompatible. Even in this case, though he may acquiesce in the necessity, yet he will not cease to regard a departure from so fundamental a principle, as a portion of imperfection in the system which may prove the seed of future weakness, and perhaps anarchy.

It will not be alleged, that an election law could have been framed and inserted

37 1st Clause, 4th Section of the 1st Article.

in the constitution, which would have been applicable to every probable change in the situation of the country; and it will, therefore, not be denied, that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded, that there were only three ways in which this power could have been reasonably organized; that it must either have been lodged wholly in the national legislature, or wholly in the state legislatures, or primarily, in the latter, and ultimately in the former. The last mode has with reason been preferred by the convention. They have submitted the regulation of elections for the federal government, in the first instance, to the local administrations; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

Nothing can be more evident, than that an exclusive power of regulating elections for the national government, in the hands of the state legislatures, would leave the existence of the union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say, that a neglect or omission of this kind would not be likely to take place. The constitutional possibility of the thing, without an equivalent for the risk, is an unanswerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk. The extravagant

surmises of a distempered jealousy, can never be dignified with that character. If we are in a humour to presume abuses of power, it is as fair to presume them on the part of the state governments, as on the part of the general government. And as it is more consonant to the rules of a just theory, to intrust the union with the care of its own existence, than to transfer that care to any other hands; if abuses of power are to be hazarded on the one side or on the other, it is more rational to hazard them where the power would naturally be placed, than where it would unnaturally be placed.

Suppose an article had been introduced into the constitution, empowering the United States to regulate the elections for the particular states, would any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the state governments? The violation of principle, in this case, would have required no comment; and, to an unbiassed observer, it will not be less apparent in the project of subjecting the existence of the national government, in a similar respect, to the pleasure of the state governments. An impartial view of the matter cannot fail to result in a conviction, that each, as far as possible, ought to depend on itself for its own preservation.

As an objection to this position, it may be remarked, that the constitution of the national senate would involve, in its full extent, the danger which it is suggested might flow from an exclusive power in the state legislatures to regulate the federal elections. It may be alleged, that by declining the appointment of senators,

they might at any time give a fatal blow to the union; and from this it may be inferred, that as its existence would be thus rendered dependent upon them in so essential a point, there can be no objection to intrusting them with it, in the particular case under consideration. The interest of each state, it may be added, to maintain its representation in the national councils, would be a complete security against an abuse of the trust.

This argument, though specious, will not, upon examination, be found solid. It is certainly true, that the state legislatures, by forbearing the appointment of senators, may destroy the national government. But it will not follow, that because they have the power to do this in one instance they ought to have it in every other. There are cases in which the pernicious tendency of such a power may be far more decisive, without any motive to recommend their admission into the system, equally cogent with that which must have regulated the conduct of the convention, in respect to the formation of the senate. So far as that mode of formation may expose the union to the possibility of injury from the state legislatures, it is an evil; but it is an evil, which could not have been avoided without excluding the states, in their political capacities, wholly from a place in the organization of the national government. If this had been done, it would doubtless have been interpreted into an entire dereliction of the federal principle; and would certainly have deprived the state governments of that absolute safeguard, which they will enjoy under this provision. But however wise it may have been, to have submitted in

this instance to an inconvenience, for the attainment of a necessary advantage or a greater good, no inference can be drawn from thence to favour an accumulation of the evil, where no necessity urges, nor any greater good invites.

It may also be easily discerned, that the national government would run a much greater risk, from a power in the state legislatures over the elections of its house of representatives, than from their power of appointing the members of its senate. The senators are to be chosen for the period of six years: there is to be a rotation, by which the seats of a third part of them are to be vacated, and replenished every two years; and no state is to be entitled to more than two senators: a quorum of the body is to consist of sixteen members. The joint result of these circumstances would be, that a temporary combination of a few states, to intermit the appointment of senators, could neither annul the existence, nor impair the activity of the body: and it is not from a general and permanent combination of the states, that we can have any thing to fear. The first might proceed from sinister designs in the leading members of a few of the state legislatures: the last would suppose a fixed and rooted disaffection in the great body of the people; which will either never exist at all, or will, in all probability, proceed from an experience of the inaptitude of the general government to the advancement of their happiness; in which event, no good citizen could desire its continuance.

But with regard to the federal house of representatives, there is intended to be a general election of members once in two years. If the state legislatures were

to be invested with an exclusive power of regulating these elections, every period of making them would be a delicate crisis in the national situation; which might issue in a dissolution of the union, if the leaders of a few of the most important states should have entered into a previous conspiracy to prevent an election.

I shall not deny that there is a degree of weight in the observation, that the interest of each state to be represented in the federal councils, will be a security against the abuse of a power over its elections in the hands of the state legislatures. But the security will not be considered as complete, by those who attend to the force of an obvious distinction between the interests of the people in the public felicity, and the interest of their local rulers in the power and consequence of their offices. The people of America may be warmly attached to the government of the union, at times when the particular rulers of particular states, stimulated by the natural rivalry of power, and by the hopes of personal aggrandizement, and supported by a strong faction in each of those states, may be in a very opposite temper. This diversity of sentiment between a majority of the people, and the individuals who have the greatest credit in their councils, is exemplified in some of the states at the present moment, on the present question. The scheme of

separate confederacies, which will always multiply the chances of ambition, will be a never failing bait to all such influential characters in the state administrations, as are capable of preferring their own emolument and advancement to the public weal. With so effectual a weapon in their hands as the exclusive power of regulating elections for the national government, a combination of a few such men, in a few of the most considerable states, where the temptation will always be the strongest, might accomplish the destruction of the union; by seizing the opportunity of some casual dissatisfaction among the people, and which perhaps they may themselves have excited, to discontinue the choice of members for the federal house of representatives. It ought never to be forgotten, that a firm union of this country, under an efficient government, will probably be an increasing object of jealousy to more than one nation of Europe; and that enterprises to subvert it will sometimes originate in the intrigues of foreign powers, and will seldom fail to be patronized and abetted by some of them. Its preservation therefore ought in no case, that can be avoided, to be committed to the guardianship of any but those, whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust.

PUBLIUS

FEDERALIST NO. 60

THE SAME SUBJECT CONTINUED

We have seen, that an incontrollable power over the elections for the federal government could not, without hazard, be committed to the state legislatures. Let us now see what are the dangers on the other side; that is, from confiding the ultimate right of regulating its own elections to the union itself. It is not pretended, that this right would ever be used for the exclusion of any state from its share in the representation. The interest of all would, in this respect at least, be the security of all. But it is alleged, that it might be employed in such a manner as to promote the election of some favourite class of men in exclusion of others; by confining the places of election to particular districts, and rendering it impracticable for the citizens at large to partake in the choice. Of all chimerical suppositions, this seems to be the most chimerical. On the one hand, no rational calculation of probabilities would lead us to imagine that the disposition, which a conduct so violent and extraordinary would imply,

could ever find its way into the national councils; and on the other hand, it may be concluded with certainty, that if so improper a spirit should ever gain admittance into them, it would display itself in a form altogether different, and far more decisive.

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

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

As to the senate, it is impossible that any regulation of "time and manner," which is all that is proposed to be submitted to the national government in respect

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

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

If this partiality is to be exerted in favour of those who are concerned in any particular description of industry

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

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

In a country consisting chiefly of the cultivators of land, where the rules of an equal representation obtain, the landed interest must, upon the whole, preponderate in the government. As long as this interest prevails in most of the state legislatures, so long it must maintain a correspondent superiority in the national senate, which will generally be a faithful copy of the majorities of those assemblies. It cannot therefore be presumed, that a sacrifice of the landed to the mercantile

class, will ever be a favourite object of this branch of the federal legislature. In applying thus particularly to the senate a general observation suggested by the situation of the country, I am governed by the consideration, that the credulous votaries of state power cannot, upon their own principles, suspect that the state legislatures would be warped from their duty by any external influence. But as in reality the same situation must have the same effect, in the primitive composition at least of the federal house of representatives; an improper bias towards the mercantile class, is as little to be expected from this quarter or from the other.

In order perhaps to give countenance to the objection at any rate, it may be asked, is there not danger of an opposite bias in the national government, which may produce an endeavour to secure a monopoly of the federal administration to the landed class? As there is little likelihood that the supposition of such a bias will have any terrors for those who would be immediately injured by it, a laboured answer to this question will be dispensed with. It will be sufficient to remark, first, that for the reasons elsewhere assigned, it is less likely that any decided partiality should prevail in the councils of the union, than in those of any of its members. Secondly, that there would be no temptation to violate the constitution in favour of the landed class, because that class would, in the natural course of things, enjoy as great a preponderancy as itself could desire. And, thirdly, that men accustomed to investigate the sources of public prosperity, upon a large scale, must

be too well convinced of the utility of commerce, to be inclined to inflict upon it so deep a wound, as would be occasioned by the entire exclusion of those who would best understand its interests, from a share in the management of them. The importance of commerce, in the view of revenue alone, must effectually guard it against the enmity of a body which would be continually importuned in its favour, by the urgent calls of public necessity.

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

But upon what principle is the discrimination of the places of election to be made, in order to answer the purpose of the meditated preference? Are the wealthy and the well born, as they are called, confined to particular spots in the several states? Have they, by some miraculous

instinct or foresight, set apart in each of them a common place of residence? Are they only to be met with in the towns and the cities? Or are they, on the contrary, scattered over the face of the country, as avarice or chance may have happened to cast their own lot, or that of their predecessors? If the latter is the case, (as every intelligent man knows it to be³⁸) is it not evident that the policy of confining the places of elections to particular districts, would be as subversive of its own aim, as it would be exceptionable on every other account? The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect, or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon another occasion, are defined and fixed in the constitution, and are unalterable by the legislature.

Let it however be admitted, for argument sake, that the expedient suggested might be successful; and let it at the same time be equally taken for granted, that all the scruples which a sense of duty, or an apprehension of the danger of the experiment might inspire, were overcome in the breasts of the national rulers; still, I imagine, it will hardly be pretended, that they could ever hope to carry such an enterprise into

38 Particularly in the southern states and in this state.

execution, without the aid of a military force sufficient to subdue the resistance of the great body of the people. The improbability of the existence of a force equal to that object, has been discussed and demonstrated in different parts of these papers; but that the futility of the objection under consideration may appear in the strongest light, it shall be conceded for a moment, that such a force might exist; and the national government shall be supposed to be in the actual possession of it. What will be the conclusion? With a disposition to invade the essential rights of the community, and with the means of gratifying that disposition, is it presumable that the persons who were actuated by it, would amuse themselves in the ridiculous task of fabricating election

laws for securing a preference to a favourite class of men? Would they not be likely to prefer a conduct better adapted to their own immediate aggrandizement? Would they not rather boldly resolve to perpetuate themselves in office by one decisive act of usurpation, than to trust to precarious expedients, which, in spite of all the precautions that might accompany them, might terminate in the dismissal, disgrace, and ruin of their authors? Would they not fear that citizens not less tenacious than conscious of their rights, would flock from the remotest extremes of their respective states to the places of election, to overthrow their tyrants, and to substitute men who would be disposed to avenge the violated majesty of the people?

PUBLIUS

FEDERALIST NO. 61

THE SAME SUBJECT CONTINUED, AND CONCLUDED

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

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

If those who are inclined to consult their jealousy only, would exercise it in a careful inspection of the several state constitutions, they would find little less room for disquietude and alarm, from the latitude which most of them allow in respect to elections, than from that which is proposed to be allowed to the national government in the same respect. A review of their situation, in this particular, would tend greatly to remove any ill impressions which may remain in regard to this matter. But, as that review would lead into long and tedious details, I shall content myself with the single example of the state in which I write. The constitution of New York makes no other provision for *locality* of elections, than that the members of the assembly shall be elected in the *counties*; those of the senate, in the great districts into which the state is, or may be divided: these at present

are four in number, and comprehend each from two to six counties. It may readily be perceived, that it would not be more difficult for the legislature of New York to defeat the suffrages of the citizens of New York, by confining elections to particular places, than for the legislature of the United States to defeat the suffrages of the citizens of the union, by the like expedient. Suppose, for instance, the city of Albany was to be appointed the sole place of election for the county and district of which it is a part, would not the inhabitants of that city speedily become the only electors of the members both of the senate and assembly for that county and district? Can we imagine, that the electors who reside in the remote subdivisions of the counties of Albany, Saratoga, Cambridge, &c. or in any part of the county of Montgomery, would take the trouble to come to the city of Albany, to give their votes for members of the assembly or senate, sooner than they would repair to the city of New York, to participate in the choice of the members of the federal house of representatives? The alarming indifference discoverable in the exercise of so invaluable a privilege under the existing laws, which afford every facility to it, furnishes a ready answer to this question. And, abstracted from any experience on the subject, we can be at no loss to determine, that when the place of election is at an *inconvenient distance* from the elector, the effect upon his conduct will be the same, whether that distance be twenty miles, or twenty thousand miles. Hence it must appear, that objections to the particular modification of the federal power of regulating elections, will, in substance, apply with equal force

to the modification of the like power in the constitution of this state; and for this reason it will be impossible to acquit the one, and to condemn the other. A similar comparison would lead to the same conclusion, in respect to the constitutions of most of the other states.

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

should, in order to maintain its superiority, incline to a preference of a particular class of electors, than that a similar spirit should take possession of the representatives of thirteen states, spread over a vast region, and in several respects distinguishable from each other by a diversity of local circumstances, prejudices, and interests.

Hitherto my observations have only aimed at a vindication of the provision in question, on the ground of theoretic propriety, on that of the danger of placing the power elsewhere, and on that of the safety of placing it in the manner proposed. But there remains to be mentioned a positive advantage, which will accrue from this disposition, and which could not as well have been obtained from any other: I allude to the circumstance of uniformity, in the time of elections for the federal house of representatives. It is more than possible, that this uniformity may be found by experience to be of great importance to the public welfare; both as a security against the perpetuation of the same spirit in the body, and as a cure for the diseases of faction. If each state may choose its own time of election, it is possible there may be at least as many different periods as there are months in the year. The times of election in the several states, as they are now established for local purposes, vary between extremes as wide as March and November. The consequence of this diversity would be, that there could never happen a total dissolution or renovation of the body at one time. If an improper spirit of any kind should happen to prevail in it, that spirit would be apt to infuse itself into the new members, as they come forward in succession. The mass would be likely

to remain nearly the same; assimilating constantly to itself its gradual accretions. There is a contagion in example, which few men have sufficient force of mind to resist. I am inclined to think, that treble the duration in office, with the condition of a total dissolution of the body at the same time, might be less formidable to liberty, than one-third of that duration subject to gradual and successive alterations.

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

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

PUBLIUS

THE ANTI-FEDERALIST PERSPECTIVE

BRUTUS IV

For the *New York Journal*

By section 4, article 1, the Congress are authorized, at any time, by law, to make, or alter, regulations respecting the time, place, and manner of holding elections for senators and representatives, except as to the places of choosing senators. By this clause the right of election itself, is, in a great measure, transferred from the people to their rulers. —One would think, that if any thing was necessary to be made a fundamental article of the original compact, it would be, that of fixing the branches of the legislature, so as to put it out of its power to alter itself by modifying the election of its own members at will and pleasure. When a people once resign the privilege of a fair election, they clearly have none left worth contending for.

It is clear that, under this article, the foederal legislature may institute such rules respecting elections as to lead to the choice of one description of men. The weakness of the representation, tends but too certainly to confer on the rich and *well-born*, all honours; but the power granted in this article, may be so exercised, as to secure it almost beyond a possibility of controul. The proposed Congress may make the whole state one district, and direct, that the capital (the city of New-York, for instance) shall be the place for holding the election; the consequence would be, that none but men of the most elevated rank in society would attend, and they would as certainly choose men of their own class; as it is true what the *Apostle Paul* saith, that “no man ever yet hated his own flesh, but nourisheth and cherisheth it.”—They may declare that those members who have the greatest number of votes, shall be considered as duly elected; the consequence would be that the people, who are dispersed in the interior parts of the state, would give their votes for a variety of candidates, while any order, or profession, residing in populous places, by uniting their interests, might procure whom they pleased to be chosen—and by this means the representatives of the

state may be elected by one tenth part of the people who actually vote. This may be effected constitutionally, and by one of those silent operations which frequently takes place without being noticed, but which often produces such changes as entirely to alter a government, subvert a free constitution, and rivet the chains on a free people before they perceive they are forged. Had the power of regulating elections been left under the direction of the state legislatures, where the people are not only nominally but substantially represented, it would have been secure; but if it was taken out of their hands, it surely ought to have been fixed on such a basis as to have put it out of the power of the foederal legislature to deprive the people of it by law. Provision should have been made for marking out the states into districts, and for choosing, by a majority of votes, a person out of each of them of permanent property and residence in the district which he was to represent.

If the people of America will submit to a constitution that will vest in the hands of any body of men a right to deprive them by law of the privilege of a fair election, they will submit to almost any thing. Reasoning with them will be in vain, they must be left until they are brought to reflection by feeling oppression—they will then have to wrest from their oppressors, by a strong hand, that which they now possess, and which they may retain if they will exercise but a moderate share of prudence and firmness.

I know it is said that the dangers apprehended from this clause are merely imaginary, that the proposed general legislature will be disposed to regulate elections upon proper principles, and to use their power with discretion, and to promote the public good. On this, I would observe, that constitutions are not so necessary to regulate the conduct of good rulers as to restrain that of bad ones. —Wise and good men will exercise power so as to promote the public happiness under any form of government. If we are to take it for granted, that those who administer the government under this system, will always pay proper attention to the rights and interests of the people, nothing more was necessary than to say who should be invested with the powers of government, and leave them to exercise it at will and pleasure. Men are apt to be deceived both with respect to their own dispositions and those of others. Though this truth is proved by almost every page of the history of nations, to wit, that power, lodged in the hands of rulers to be used at discretion, is almost always exercised to the oppression of the people, and the aggrandizement of themselves; yet most men think if it was lodged in their hands they would not employ it in this manner.

VOX POPULI

For the *Massachusetts Gazette*

By this clause, the *time, place and manner* of choosing representatives is *wholly* at the disposal of Congress.

Why the Convention, who formed the proposed Constitution, wished to invest Congress with such a power, I am by no means capable of saying; or why the good people of this commonwealth should delegate such a power to them, is no less hard to determine. —But as the subject is open for discussion, I shall make a little free inquiry into the matter.

And, first. What national advantage is there to be acquired by giving them such a power?

The only advantage which I have heard proposed by it is, to prevent a partial representation of the several states in Congress; “for if the time, manner and place were left wholly in the hands of the state legislatures, it is probable they would not make provision by appointing time, manner and place for election; in which case there *could* be no election, and consequently the federal government weakened.”

But *this* provision is by no means sufficient to prevent an evil of *that* nature; for will any reasonable man suppose, that when the legislature of any state, who are annually chosen, are so corrupt as to break thro’ *that* government which they have formed, and refuse to appoint time, place and manner of choosing representatives—I say, can any person suppose, that a state, so corrupt, would not be full as likely to neglect, or even refuse, to choose representatives at the time and place and in the manner prescribed by Congress? Surely they would. —So it could answer no good national purpose on *that* account; and I have not heard any other national advantage proposed thereby.

GENUINE INFORMATION IV, BY LUTHER MARTIN

For the *Maryland Gazette* and *Baltimore Advertiser*

But even this provision *apparently* for the *security* of the *State governments*, *inadequate* as it is, is *entirely left* at the *mercy* of the general government, for by the fourth section of the first article, it is *expressly provided*, that the Congress shall have a power to *make* and *alter* all regulations concerning the *time* and *manner* of *holding elections for senators*; a provision, *expressly looking forward to*, and *I have no doubt designed for the utter extinction and abolition of all*

State governments; nor will this, I believe, be doubted by any person, when I inform you that some of the warm advocates and patrons of the system in convention, *strenuously opposed* the choice of the senators by the *State legislatures*, insisting that the *State governments ought not to be introduced in any manner* so as to be *component parts of*, or *instruments for carrying into execution*, the general government: Nay, so far were the friends of the system from pretending that they meant it, or considered it as a *federal* system, that on the question being proposed, “that a union of the States, merely federal, ought to be the sole object of the exercise of the powers vested in the convention;” it was negatived by a majority of the members, and it was resolved, “that a *national* government ought to be formed”—afterwards the word “*national*” was struck out by them, because they thought the word might tend to *alarm*: and although *now*, they who *advocate* the system, pretend to call themselves *federalists*, in convention the distinction was quite the reverse; those who *opposed* the system, were *there* considered and styled the *federal party*, those who *advocated* it, the *antifederal*.

FEDERAL FARMER III

For the Poughkeepsie *Country Journal*

The branches of the legislature are essential parts of the fundamental compact, and ought to be so fixed by the people, that the legislature cannot alter itself by modifying the elections of its own members. This, by a part of Art. 1. Sect. 4. the general legislature may do, it may evidently so regulate elections as to secure the choice of any particular description of men. —It may make the whole state one district—make the capital, or any places in the state, the place or places of election—it may declare that the five men (or whatever the number may be the state may chuse) who shall have the most votes shall be considered as chosen—In this case it is easy to perceive how the people who live scattered in the inland towns will bestow their votes on different men—and how a few men in a city, in any order or profession, may unite and place any five men they please highest among those that may be voted for—and all this may be done constitutionally, and by those silent operations, which are not immediately perceived by the people in general. —I know it is urged, that the general legislature will be disposed to regulate elections on fair and just principles: —This may be true—good men will generally govern well with almost any constitution: but why in laying the

foundation of the social system, need we unnecessarily leave a door open to improper regulations? —This is a very general and unguarded clause, and many evils may flow from that part which authorises the congress to regulate elections—Were it omitted, the regulations of elections would be solely in the respective states, where the people are substantially represented; and where the elections ought to be regulated, otherwise to secure a representation from all parts of the community, in making the constitution, we ought to provide for dividing each state into a proper number of districts, and for confining the electors in each district to the choice of some men, who shall have a permanent interest and residence in it; and also for this essential object, that the representative elected shall have a majority of the votes of those electors who shall attend and give their votes.

FEDERAL FARMER XII

For the *Poughkeepsie Country Journal*

I think we are all sufficiently acquainted with the progress of elections to see, that the regulations, as to times, places, and the manner merely of holding elections, may, under the constitution, easily be made useful or injurious. It is important then to enquire, who has the power to make regulations, and who ought to have it. By the constitution, the state legislatures shall prescribe the times, places, and manner of holding elections, but congress may make or alter such regulations. Power in congress merely to alter those regulations, made by the states, could answer no valuable purposes; the states might make, and congress alter them ad infinitum: and when the state should cease to make, or should annihilate its regulations, congress would have nothing to alter. But the states shall make regulations, and congress may make such regulations as the clause stands: the true construction is, that when congress shall see fit to regulate the times, places, and manner of holding elections, congress may do it, and state regulations, on this head, must cease; for if state regulations could exist, after congress should make a system of regulations, there would, or might, be two incompatible systems of regulations relative to the same subject.

It has been often urged, that congress ought to have power to make these regulations, otherwise the state legislatures, by neglecting to make provision for elections, or by making improper regulations, may destroy the general government. It is very improbable that any state legislature will adopt measures

to destroy the representation of its own constituents in congress, especially when the state must, represented in congress or not, pay its proportion of the expence of keeping up the government, and even of the representatives of the other states, and be subject to their laws. Should the state legislatures be disposed to be negligent, or to combine to break up congress, they have a very simple way to do it, as the constitution now stands—they have only to neglect to chuse senators, or to appoint the electors of the president, and vice-president: there is no remedy provided against these last evils: nor is it to be presumed, that if a sufficient number of state legislatures to break up congress, should, by neglect or otherwise, attempt to do it, that the people, who yearly elect those legislatures, would elect under the regulations of congress. These and many other reasons must evince, that it was not merely to prevent an annihilation of the federal government that congress has power to regulate elections.

It has been urged also, that the state legislatures chuse the federal senators, one branch, and may injure the people, who chuse the other, by improper regulations; that therefore congress, in which the people will immediately have one, the representative branch, ought to have power to interfere in behalf of the people, and rectify such improper regulations. The advocates have said much about the opponents dwelling upon possibilities; but to suppose the people will find it necessary to appeal to congress to restrain the oppressions of the state legislatures, is supposing a possibility indeed. Can any man in his senses suppose that the state legislatures, which are so numerous as almost to be the people themselves, all branches of them depending yearly, for the most part, on the elections of the people, will abuse them in regulating federal elections, and make it proper to transfer the power to congress, a body, one branch of which is chosen once in six years by these very legislatures, and the other biennially, and not half so numerous as even the senatorial branches in those legislatures?

Senators are to be chosen by the state legislatures, where there are two branches the appointment must be, I presume, by a concurrent resolution, in passing which, as in passing all other legislative acts each branch will have a negative; this will give the senatorial branch just as much weight in the appointment as the democratic: the two branches form a legislature only when acting separately, and therefore, whenever the members of the two branches meet, mix and vote individually in one room, for making an election, it is expressly so directed by the constitutions. If the constitution, by fixing the

choice to be made by the legislatures, has given each branch an equal vote, as I think it has, it cannot be altered by any regulations.

On the whole, I think, all general principles respecting electors ought to be carefully established by the constitution, as the qualifications of the electors and of elected: the number of the representatives, and the inhabitants of each given district, called on to chuse a man from among themselves by a majority of votes; leaving it to the legislature only so to regulate, from time to time, the extent of the districts so as to keep the representatives proportionate to the number of inhabitants in the several parts of the country; and so far as regulations as to elections cannot be fixed by the constitution, they ought to be left to the state legislatures, they coming far nearest to the people themselves; at most, congress ought to have power to regulate elections only where a state shall neglect to make them.