

## MY BEST EFFORT AT TRANSLATING HAMILTON'S 18<sup>TH</sup> CENTURY LEGALISE

Hamilton's Federalist #68 is the only extended contemporaneous examination of the Convention's Electoral College provision contained in Article II, section 1. Remember, Hamilton (along with James Madison and John Jay,) wrote the 85 essays contained in the Federalist Papers in the midst of extended, closely contested discussions within the 13 states on whether to ratify the Constitution or to maintain the admittedly imperfect Articles of Confederation. Hamilton is writing as an advocate in support of the novel compromise hashed out in Philadelphia in the summer of 1787.

Paragraph 1 – "The mode of appointment of the Chief Magistrate..." H. asserts (I can't say whether he's accurate or not) that everyone likes the Electoral College. It's "almost the only part [of the proposed Constitution] which has escaped without severe censure . . . from its opponents." He adds his own personal opinion: "If the manner of it be not perfect, it is at least excellent."

Paragraph 2 – "It was desirable that the sense of the people . . ." H. says it's a major positive that the selection of the President won't be made by a "preestablished body" but rather by "men chosen by the people for the special purpose."

Paragraph 3 – "It was equally desirable . . ." Here H. provides a key reason in support of the Electoral College: "A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations." In other words, the ordinary farmer, fisherman or merchant won't have the smarts or worldly knowledge to determine who should be President but WILL know discerning, intelligent folks that can choose the electors to select the President. This idea of knowledgeable disinterested electors serving as a bridge between the masses and presidential aspirants would not last long (hardly any time at all).

Paragraph 4 – "It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder." H. argues that having several electors rather than just one will reduce tension in the body politic. Further, having the electors assemble in the state that chooses them rather than all meeting in one central location will "expose them much less to heats and ferments . . ."

Paragraph 5 – "Nothing was more to be desired . . ." In this lengthy paragraph, H. rails against foreign interference in American elections – that is, "the desire of foreign powers to gain an improper ascendant in our councils." But, he says, not to worry: ". . . the convention have guarded against all danger of this sort, with the most provident and judicious attention." The fact that the electors are not part of a preexisting body – they are "temporary, [with the] sole purpose of making the [presidential] appointment" – will minimize if not eliminate the possibility of corruption. As another safeguard, the Electoral College language specifically bans representatives, senators and others holding government positions from serving as electors.

Paragraph 6 – "Another and no less important desideratum . . ." Essentially a continuation of the argument in the preceding paragraph but adding that the President also benefits from the temporary nature of the Electoral College – he won't "be tempted to sacrifice his duty to his complaisance for those whose favor was necessary" to elect or re-elect him.

Paragraph 7 – "All these advantages will happily combine . . ." Here H. just sums up the language of Article II, Section 1, noting, among other things, that the number of each state's electors equals the total of their senators (2 for each as we know) and representatives. He further points out that if no candidate

receives a majority, the House of Representatives shall choose the President from among the five highest vote getters. (By the way, this previews the elections of 1800 and 1824, both of which we'll look at soon.)

Paragraph 8 – “The process of election affords a moral certainty . . .” H. asserts (trying to be persuasive, indulging in some wishful thinking?) that the electoral college selection process virtually guarantees that the presidency will be filled “by characters pre-eminent for ability and virtue.” His last sentence in this paragraph ends with him saying, “the true test of a good government is the aptitude and tendency to produce a good administration.” This seems pretty circular to me – maybe he was getting tired or, equally possible, I was getting tired of trying to decipher him. What do you think?

Paragraphs 9 & 10 – “The Vice President is to be chosen . . .” In these two paragraphs H. touches briefly on the selection of the Vice President and argues that selecting the person with the second highest electoral vote total is superior to any other approach, such as having the Senate select one of their own members to serve in this position. Note the methodology outlined in Article II for VP selection was almost immediately changed by the 12th Amendment, as we will soon discuss.

#### KEY TAKE AWAYS ON THE ELECTORAL COLLEGE AS WE BEGIN OUR HISTORICAL INVESTIGATION

- The framers left the method of selection of a state's electors up to each state's legislature. That constitutional provision has not changed. In theory, a state's legislature could remove their citizens' right to vote for the president and make that selection themselves. I am not kidding.
- Their notion (outlined in Federalist #68) that electors would be wise, worldly and disinterested “A small number of persons, selected by their fellow-citizens from the general mass . . .” quickly went by the boards -- in a flash, looking at things from an historical perspective.
- With the exception of the 12<sup>th</sup> Amendment that changed an elector's voting for TWO people for president to having the elector cast one vote for president and one for vice president, the Electoral College remains as originally drafted in 1787.
- Other thoughts to add as we begin to look at specific elections in American history?