

**James Madison to George Hay, August 23, 1823.
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TO GEORGE HAY MAD. MSS.

Montpellier, August 23, 1823.

Dear Sir I have received your letter of the 11th, with the Newspapers containing your remarks on the present mode of electing a President, and your proposed remedy for its defects. I am glad to find you have not abandoned your attention to great Constitutional topics.

The difficulty of finding an unexceptionable process for appointing the Executive Organ of a Government such as that of the U. S. was deeply felt by the Convention; and as the final arrangement of it took place in the latter stage of the Session, it was not exempt from a degree of the hurrying influence produced by fatigue and impatience in all such Bodies, tho' the degree was much less than usually prevails in them.¹

¹ On January 3, 1824, Madison wrote to George McDuffie who had introduced a joint resolution in Congress December 22 (*Annals of Cong.*, 18 Cong., 1st Sess., Vol. I, p. 851) for amending the provision of the Constitution relative to the election of President and Vice-President:

"I agree equally with them in preferring an eventual choice of Presidt. & V. Presidt. by a joint ballot of the two Houses of Congress, to the existing provision for such a choice by the H. of Reps. voting by States. The Committee appear to me to be very right also in

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linking the amendments together, as a compromise between States who may mutually regard them as concessions.

“In the amendment relating to District elections of representatives it is provided that the Districts shall not be alterable previous to another Census, and the ‘Joint Resolution’ extends the prohibition to the Electoral Districts. As the return of a Census may not be within less than ten years, the regulation may become very inconvenient & dissatisfactory especially in new States, within different parts of which the population will increase at such unequal rates. It would be a better provision that no change of Districts should take place within a period of preceding elections next in view; and to apply the rule to cases where Congress may have a right to interfere, as well as to the ordinary exercise of the power by the States.

“The power given by the ‘Joint Resolution’ to the Electors of P. & V. P to fill up their own vacancies, & to appoint the two additional Electors, is liable to the Remark, that where there may be but a single Elector, casualties to him might deprive his State of its two additional Electors; and that a single Elector with a right to appoint two others, would have in effect three votes; a situation exposing him in a particular manner, to temptations of which the Constitution is jealous. The objection to such an augmented power applies, generally, with a force proportioned to the powers of Electors allotted to a State. There may be some difficulty in finding a satisfactory remedy for the case. In States entitled to but one Representative, the single district might choose the three Electors. In States having two Reps., each of its two Districts, by choosing two Electors, would furnish the quota of four. In all other States the difficulty would occur. And as uniformity is so justly an object, it would seem best to let the State Legislatures appoint or provide for the appointment of the two additional Electors, and for filling the Electoral vacancies; limiting the time within which the appointment must be made.

“Would it not be better to retain the word ‘immediately’ in requiring the two Houses to proceed to the choice of P. & V. P., than to change it into ‘without separating.’ If the

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change could quicken and ensure a final ballot, it would certainly be a good one. But as it might give rise to disputes as to the validity of an Election, after an adjournment and separation forced by a repetition of abortive ballotings, the existing term might perhaps as well remain & take its chance of answering its purpose. The distinction between a regulation which is directory only, and one a departure from which would have a viciating effect, is not always obvious; and in the delicate affair of electing a Chief Magistrate it will be best to hazard as little as possible a discussion of it.

“In the appeal to the second meeting of Electors, their choice is limited to the *two* names having the highest number of votes given at the first meeting. As there may be an equality of votes among several highest on the list, the option might to be enlarged accordingly, as well with a view to obviate uncertainty, as to deal equally with equal pretensions.

“The expedient of resorting to a second meeting of the Presidential Electors, in order to diminish the risk of a final resort to Congress, has certainly much to recommend it. But the evil to be guarded as it would lose not a little of its formidable aspect, by the substitution of a joint ballot of the members of Congress, for a vote by States in the Representative branch: which the prolonged period during which the Electors must be in appointment before their final votes would be given, relinquishes the contemplated advantage of functions to be so quickly commenced and closed as to preclude extraneous management & intrigue. The increased trouble and expence are of minor consideration, tho' not to be entirely disregarded. It may be more important to remark, that in cases where from an equality of votes in the Electoral List, more than two names might be sent back to the Electors, very serious embarrassments & delays might happen from miscalculations or perverse dispositions in some of so many distinct meetings, and that after all, no perfect security would exist agst. an ultimate devolution of the choice on Congress. Still it may be a fair question whether a second meeting of Electors, with its prospect of preventing an election by the members of the Legislature, would not be preferable to a single meeting

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with the greater probability of a resort to them.”—Copy kindly loaned by W. H. Gibbes, Esq. of Columbia, S. C.

On January 30, 1826, he wrote to Robert Taylor, concerning the proposed amendment to the Constitution introduced in the Senate Dec. 15, 1825.

“It seems to be generally agreed that some change in the mode of electing the Executive Magistrate is desirable, that would produce more uniformity & equality, with a better security for concentrating the major will of the nation, and less risk of an eventual decision in the national Legislature.

“The amendment reported by the Committee of the Senate is very ably prepared & recommended. But I think there are advantages in the intervention of Electors, and inconveniences in a direct vote by the people, which are not sufficiently adverted to in the Report.

“One advantage of Electors is, that as Candidates, & still more as competitors personally known in the Districts, they will call forth the greater attention of the people: another advantage is, that altho' generally the mere mouths of their Constituents, they may be intentionally left sometimes to their own judgment, guided by further information that may be acquired by them: and finally, what is of material importance, they will be able, when ascertaining, which may not be till a late hour, that the first choice of their constituents is utterly hopeless, to substitute in the electoral vote the name known to be their second choice.

“If the election be referred immediately to the people, however they may be liable to an excess of excitement on particular occasions, they will on ordinary occasions and where the candidates are least known feel too little; yielding too much to the consideration that in a question depending on millions of votes individual ones are not worth the trouble of giving them. There would be great encouragement therefore for active partizans to push up their favorites to the upper places on the list and by that means force a choice between

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candidates, to either of whom others lower on the list would be preferred. Experience gives sufficient warning of such results.

“An election by Districts, instead of general tickets, & State Legislatures, and an avoidance of a decision by the House of Representatives voting by States, would certainly be changes much for the better: and a combination of them may be made perhaps acceptable both to the large and to the small States. I subjoin the sketch of an elective process which occurred to me some years ago, but which has never been so thoroughly scrutinized as to detect all the flaws that may lurk in it.”— *Chic. Hist. Soc. MSS.*

The part of the arrangement which casts the eventual appointment on the House of Reps. voting by States, was, as you presume, an accommodation to the anxiety of the smaller States for their sovereign equality, and to the jealousy of the larger towards the cumulative functions of the Senate. The agency of the H. of Reps. was thought safer also than that of the Senate, on account of the greater number of its members. It might indeed happen that the event would turn on one or two States having one or two Reps. only; but even in that case, the representations of most of the States being numerous, the House would present greater obstacles to corruption than the Senate with its paucity of Members. It may be observed also, that altho' for a certain period the evil of State votes given by one or two individuals, would be extended by the introduction of new States, it would be rapidly diminished by growing populations within extensive territories. At the present

period, the evil is at its maximum. Another Census will leave none of the States existing or in Embryo, in the numerical rank of R. I. & Del, nor is it impossible, that the progressive assimilation of local Institutions, laws & manners, may overcome the prejudices of those particular States against an incorporation with their neighbours.

But with all possible abatements, the present rule of voting for President by the H. of Reps. is so great a departure from the Republican principle of numerical equality, and even from the federal rule which qualifies the numerical by a State equality, and is so pregnant also

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with a mischievous tendency in practice, that an amendment of the Constitution On this point is justly called for by all its considerate & best friends.

I agree entirely with you in thinking that the election of Presidential Electors by districts, is an amendment very proper to be brought forward at the same time with that relating to the eventual choice of President by the H. of Reps. The district mode was mostly, if not exclusively in view when the Constitution was framed and adopted; & was exchanged for the general ticket & the legislative election, as the only expedient for baffling the policy of the particular States which had set the example. A constitutional establishment of that mode will doubtless aid in reconciling the smaller States to the other change which they will regard as a concession on their part. And it may not be without a value in another important respect. The States when voting for President by general tickets or by their Legislatures, are a string of beads; when they make their elections by districts, some of these differing in sentiment from others, and sympathizing with that of districts in other States, they are so knit together as to break the force of those geographical and other noxious parties which might render the repulsive too strong for the cohesive tendencies within the Political System.

It may be worthy of consideration whether in requiring elections by districts, a discretion might not be conveniently left with the States to allot two members to a single district. It would manifestly be an important proviso, that no new arrangement of districts should be made within a certain period previous to an ensuing election of President.

Of the different remedies you propose for the failure of a majority of Electoral votes for any one Candidate, I like best that which refers the final choice, to a joint vote of the two Houses of Congress, restricted to the two highest names on the Electoral lists. It might be a question, whether the *three* instead of the *two* highest names might not be put within the choice of Congress, inasmuch as it not unfrequently happens, that the Candidate third on the list of votes would in a question with either of the two first outvote him, and, consequently be the real preference of the voters. But this advantage of opening a wider

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door & a better chance to merit, may be outweighed by an increased difficulty in obtaining a prompt & quiet decision by Congress with three candidates before them, supported by three parties, no one of them making a majority of the whole.

The mode which you seem to approve, of making a *plurality* of Electoral votes a definitive appointment would have the merit of avoiding the Legislative agency in appointing the Executive; but might it not, by multiplying hopes and chances, stimulate intrigue & exertion, as well as incur too great a risk of success to a very inferior candidate? Next to the propriety of having a President the real choice of a majority of his Constituents, it is desirable that he should inspire respect & acquiescence by qualifications not suffering too much by comparison.

I cannot but think also that there is a strong objection to undistinguishing votes for President & Vice President; the highest number appointing the former the next the latter. To say nothing of the different services (except in a rare contingency) which are to be performed by them, occasional *transpositions* would take place, violating equally the mutual consciousness of the individuals, & the public estimate of their comparative fitness.

Having thus made the remarks to which your communication led, with a frankness which I am sure you will not disapprove, whatever errors you

may find in them, I will sketch for your consideration a substitute which has occurred to myself for the faulty part of the Constitution in question

“The Electors to be chosen in districts, not more than two in any one district, and the arrangement of the districts not to be alterable within the period of — previous to the election of President. Each Elector to give two votes, one naming his first choice, the other his next choice. If there be a majority of all the votes on the first list for the same person, he of course to be President; if not, and there be a majority, (which may well happen) on the other list for the same person, he then to be the final choice; if there be no such majority on either list, then a choice to be made by joint ballot of the two Houses

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of Congress, from the two names having the greatest number of votes on the two lists taken together." Such a process would avoid the inconvenience of a second resort to the Electors; and furnish a double chance of avoiding an eventual resort to Congress. The same process might be observed in electing the Vice President.

Your letter found me under some engagements which have retarded a compliance with its request, and may have also rendered my view of the subject presented in it more superficial than I have been aware. This consideration alone would justify my wish not to be brought into the public discussion. But there is another in the propensity of the Moment, to view everything, however abstract from the Presidential election in prospect, thro' a medium connecting it with that question; a propensity the less to be excused as no previous change of the Constitution can be contemplated, and the more to be regretted, as opinions and commitments formed under its influence, may become settled obstacles at a practicable season.

Be pleased to accept the expression of my esteem and my friendly respects.