

Sec. 1—The President

Cls. 2–4—Election

Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

Clause 4. The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

ELECTORAL COLLEGE

The electoral college was one of the compromises by which the delegates were able to agree on the document finally produced. “This subject,” said James Wilson, referring to the issue of the manner in which the President was to be selected, “has greatly divided the House, and will also divide people out of doors. It is in truth the most difficult of all on which we have had to decide.”⁶⁸ Adoption of the electoral college plan came late in the Convention, which had previously adopted on four occasions provisions for election of the executive by the Congress and had twice defeated proposals for election by the people directly.⁶⁹ Itself the product of compromise, the electoral college probably did not work as any member of the Convention could have foreseen, because the development of political parties and nomination of presidential candidates through them and designation of electors by the parties soon reduced the concept of the elector as an independent force to the vanishing point in practice if not in theory.⁷⁰ But the college remains despite numerous efforts to adopt another method, a relic perhaps but still a significant one. Clause 3 has, of course, been superceded by the Twelfth Amendment.

“Appoint”

The word “appoint” as used in Clause 2 confers on state legislatures “the broadest power of determination.”⁷¹ Upholding a state law providing for selection of electors by popular vote from dis-

⁶⁸ 2 M. Farrand, *supra*, p. 501.

⁶⁹ 1 *id.* at 21, 68–69, 80–81, 175–76, 230, 244; 2 *id.* at 29–32, 57–59, 63–64, 95, 99–106, 108–15, 118–21, 196–97, 401–04, 497, 499–502, 511–15, 522–29.

⁷⁰ See J. CEASER, *PRESIDENTIAL SELECTION: THEORY AND DEVELOPMENT* (1979); N. PIERCE, *THE PEOPLES PRESIDENT: THE ELECTORAL COLLEGE IN AMERICAN HISTORY AND THE DIRECT-VOTE ALTERNATIVE* (1968). The second presidential election, in 1792, saw the first party influence on the electors, with the Federalists and the Jeffersonians organizing to control the selection of the Vice-President. Justice Jackson once noted: “As an institution the Electoral College suffered atrophy almost indistinguishable from *rigor mortis*.” *Ray v. Blair*, 343 U.S. 214, 232 (1952). But, of course, the electors still do actually elect the President and Vice President.

⁷¹ *McPherson v. Blacker*, 146 U.S. 1, 27 (1892).