

COMPROMISES OF THE CONVENTION

CONNECTICUT (OR GREAT) COMPROMISE

Disputes between small states and large states spurred intense debates over how the states were to be represented in the new government.

Two key delegates—James Madison and James Wilson—were central to these debates, although they lost on many key issues. Even so, they were among the intellectual heavyweights at the Convention and helped drive the debate—even when they were outvoted.

Madison had experience in *both* the Virginia state government *and* the national government under the Articles of Confederation. His experience in Virginia convinced him that the 1776 Virginia state constitution had given too much power to the lower house of the state legislature—the elected body closest to the people. Madison remained committed to popular self-government, but came to believe that a constitution must set up ways of slowing politics down, allowing time for debate, and refining public opinion. For Madison, this deliberative process would lead to better policies—policies that promoted the public good, *not* factional interests.

At the same time, Madison’s experience in the national government as a member of Congress convinced him that America needed a stronger national government, one with the power to regulate commerce, raise funds, and protect the interests of political minorities.

Turning to the debates over Congress at the Convention, Madison and Wilson supported a national legislature based on proportional representation. In other words, states with more people would receive more seats in the national legislature than those with fewer people. This differed from the Articles of Confederation, which was organized under the principle of state equality. Each state—regardless of its population—received one vote.

These ideas culminated in the “Virginia Plan”—which framed the Convention’s debates over Congress. The Virginia Plan was presented by Edmund Randolph in the early days of the Convention, but it was the brainchild of Madison.

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VIRGINIA PLAN

- A legislative branch consisting of two chambers. (This differed from the Confederation Congress, which included only one House.)
- Each of the states would be represented in proportion to their size. (So, in both houses of the national legislature, populous states, like Virginia—the most populous state at the time—would have more representatives than smaller states.)
- The national legislature would have the power to address issues that were beyond the ability of any single state government to handle.
- And the legislature could also have the power to veto state laws that it found to be against the national interest.

William Paterson and his allies countered with the New Jersey Plan, which grew out of small-state fears that the Virginia Plan would lead to domination by the large states.

New Jersey Plan:

- A one-house legislature with each state—regardless of its population—receiving one vote. (So, just like the Articles of Confederation.)
- At the same time, the New Jersey Plan *would* expand the powers of the national government to address the needs of a growing nation in certain ways.

The delegates spent a great deal of time in the early part of the Convention debating how to structure Congress. These competing proposals led to intense debates—pitting small states against large ones and raising questions about how much power the national government should hold.

Eventually, Roger Sherman and Oliver Ellsworth—both from Connecticut—proposed the Connecticut (or Great) Compromise.

CONNECTICUT PLAN:

- Congress would consist of *two* houses—a House of Representatives and a Senate.
- The House would be elected on the basis of proportional representation—giving more populous states more seats than smaller states.
- At the same time, the Senate would be elected on the basis of equal representation, with each state—regardless of its population—receiving two senators.

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The Great Compromise eventually passed by a single vote. In the end, Madison and Wilson won the fight over representation in the House, but they suffered a major defeat over representation in the Senate. They were devastated.

But they would, of course, live to fight another day, and Madison himself would even defend the Senate—equal state representation and all—in the *Federalist Papers*, written during the battle over the ratification of the Constitution.

THE ELECTORAL COLLEGE

Let's turn from Congress to the presidency—focusing on the compromises that led to our method for selecting a president, the Electoral College. So, what's the Electoral College?

Today, many democratic nations elect their executives by direct popular vote. We don't. Instead, we use a system known as the "Electoral College." How does it work?

Today, the Electoral College is made up of 538 electors drawn from the states and the District of Columbia.

Under Article II of the Constitution, the states are given a number of electors equal to their congressional delegation, and the 23rd Amendment granted Washington, D.C., three electoral votes.

Today, the American people vote for president and vice president on Election Day. But these votes don't directly determine the outcome of the election. Technically, these popular votes determine which electors will be appointed to the Electoral College from each state. The electors eventually meet in December to cast their votes for president and vice president. If a candidate receives a majority of these votes in the Electoral College, she wins—even if she lost the popular vote.

So, how did we end up with this system? It's a very interesting story. To understand the debate over the Electoral College, it's important first to understand a bit about the framers' debates over the presidency itself.

It's fair to say that the framers struggled with how to structure the presidency. This was driven, in part, by the lack of historical examples to follow.

- When the framers looked to Europe, they saw powerful kings.
- When they looked to their own state constitutions, they saw executives too weak to govern effectively.

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- When they looked to their own Congress under the existing Article of Confederation, they saw a body inadequate to the executive tasks necessary to shepherd a young (but growing) nation down its path toward greatness.

At the same time, the framers feared executive power. They remembered the abuses of King George III and his officials in colonial America—abuses that helped lead to the American Revolution.

Turning to the Convention itself, the framers as a whole had a range of opinions when it came to the new executive.

- On one end of the spectrum, Alexander Hamilton and John Dickinson voiced admiration for the limited monarchy of Great Britain—and a single, strong national executive.
- On the other end of the spectrum, Roger Sherman viewed the executive as “nothing more than an institution for carrying the will of the Legislature into effect.”

In the end, the debate over the Electoral College was closely connected to these broader debates over the presidency itself. (And James Wilson played a key role throughout these debates.) Over time, the delegates wrestled with four big issues:

- How to elect the president
- How long the president’s term should be
- Whether the president should be allowed to run for reelection
- And the question of impeachment and removal

And the framers repeatedly learned that a decision taken on one of these issues would affect what they thought about all of the others.

So, how *did* we get the Electoral College?

The Electoral College was a compromise—between those like James Wilson who wanted the direct popular election of the president and those who supported other presidential selection systems.

Over time, the framers debated a range of ways to select the president, including direct election by popular vote (Wilson’s preference), by members of Congress (the preference of many framers), by electors selected by lottery (Wilson’s radical suggestion), by state governors (Elbridge Gerry’s idea), or by an electoral college (a compromise).

For much of the Convention, the election of the president seemed like an unsolvable problem. Each idea had its own problems.

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- Election by Congress had the advantage of placing the decision in the hands of some of the nation's most knowledgeable leaders. However, the concern was, as Gouverneur Morris warned, that the result would eventually be the “work of intrigue, of cabal, and of faction,” producing a president who would become a mere tool of his supporters in Congress.
- Election by popular vote—proposed by Wilson—had the advantage of rooting the presidency in popular sovereignty.
 - Some framers opposed this idea based on sheer elitism.
 - However, others (like George Mason) didn't so much fear that the American people would be easily duped by demagogues, but instead were concerned that the size of the country would make it difficult to carry out a national election—and for the average voter to know anything about an out-of-state candidate's record. In other words, everyone would know (and love) Washington. But in the future, there probably wouldn't be many—or any—other Washingtons. For delegates like Mason, it wasn't a question of competence, but one of information. (The United States was a larger republic than any ever built. Many citizens were on the frontier, spread out in the country. Information at the time spread slowly and usually to cities first. Many rural areas didn't have newspapers. Therefore, the concern would be that these voters would rely on bad information, and this might lead them susceptible to manipulation—especially by demagogues.)
- The third—and final—key idea was the Electoral College.
 - The key advantage of this proposal was that it would keep the president independent of the legislature.
 - He would have his own independent base of support that would dissolve after the election.
 - Key disadvantages were the logistics of how to get the electors to meet and the related expenses.
 - Some framers also feared whether they'd be able to attract electors “of the 1st or even the 2nd grade in the States.”
 - The framers settled on the Electoral College in the closing weeks of the Convention, and they supported it for a range of reasons.
- For James Wilson—who supported the popular election of the president—the Electoral College was a second (or third) best option.
- For those who shared some of Wilson's support for popular democracy, but also shared some of the concerns of the other framers about its dangers (and limits), the Electoral College offered a balance between popular input, congressional (and elite) input, and federalism.

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- For those who supported congressional election, the Electoral College would still have the U.S. House—voting by state, not by individual members—decide the president among the top vote-getters if no candidate received a majority in the Electoral College. And many framers assumed that—after Washington—many elections would go to the House. (In other words, that no candidate would have a big enough national reputation to secure a majority of the electoral vote.) As Mason put it, the electors would fail to generate a winner “nineteen times in twenty.”
- For some slaveholding delegates, the Electoral College represented a way of boosting their power over presidential selection—with the Constitution counting enslaved persons as three-fifths of a person for purposes of congressional representation and, in turn, for determining the voting power in the Electoral College.
- And, finally, for some founders like Alexander Hamilton, the Electoral College represented a way of guarding against dangerous demagogues and leaving the presidential election, ultimately, to the votes of national elites serving in the Electoral College.
 - This theory had its roots, in part, in experiences like Shay’s Rebellion.
 - Hamilton in *The Federalist Papers*, No. 68 (1788): “Men chosen by the people for the special purpose” of selecting the president “will be most likely to possess the information and discernment requisite to such complicated investigations.”

THE DEBATES OVER SLAVERY

Let’s end with one of the most controversial (and troubling) aspects of the Convention—the delegates’ compromises over slavery.

Slavery is obviously older than the U.S. Constitution. Slavery itself was written into colonial law as early as the 1660s in places like Virginia and the Carolinas. The British Empire secured a monopoly over the slave trade in 1713, and in the 1700s, American slavery expanded.

To give just the example of Virginia—enslaved people grew from just 7% of the population in 1680 to 28% in 1700 and, finally, to a whopping 46% (nearly half of the Virginia population) in 1750. So, well before the Constitutional Convention, slavery became a massive part of the Southern population—and white Southern wealth.

Let’s fast forward to 1787 and return to the Constitutional Convention in Philadelphia. What role did slavery play there?

All told, 25 of the Convention delegates held enslaved people, and slavery was critical to many of these delegates’ wealth—and to the economies of their home states.

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At the Constitutional Convention, the framers refused to recognize the right to property in men. However, they *did* compromise over the issue of slavery, enshrining protections for slaveholders in the Constitution.

Three-Fifths Clause

Text of the Constitution:

[The “Three-fifths Clause,” Article I, Sect. II, Cl. 3](#)

“Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.”

As discussed earlier, the U.S. House of Representatives draws up districts based on a state’s population—the larger the state, the greater the number of districts it gets. And the greater the number of districts for each state—and for each region of the country (North versus South)—the greater the political power.

The key question in the debate over the Three-Fifths Clause was how to count enslaved people as part of this process.

The delegates borrowed language from a proposed 1784 amendment to the Articles of Confederation. It counted enslaved people as three-fifths of a person. But this clause was debated multiple times during the Convention—as the delegates struggled over how best to structure Congress.

At the Convention, pro-slavery Southerners argued that enslaved people should count as a full person—five-fifths, but anti-slavery Northerners shouted hypocrisy. How could the Southern delegates treat enslaved people as full persons for purposes of representation in the national government but at the same time deny their humanity by treating them as property?

New York delegate Gouverneur Morris called slavery a “nefarious institution— . . . the curse of heaven on the states where it prevailed.” Morris then attacked the Three-Fifths Clause for giving “the inhabitant of Georgia and South Carolina who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections and damns them to the most cruel bondages, . . . more votes in a government instituted for the protection of the rights of mankind, than the citizen of Pennsylvania or New Jersey who views with a laudable horror so nefarious a practice.”

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The Convention rejected Southern attempts to count enslaved people as a full person, and Northern attempts to exclude them from the count altogether.

Ultimately, Roger Sherman of Connecticut secured support for the Three-Fifth Clause. (The Southern delegates were unhappy that Northern reps would have a 36–29 advantage in the House, but they accepted the compromise as a key protection against future Northern attempts to limit slavery.)

Of course, the framers avoided using the word “slave” in the clause.

This clause had a huge impact over time.

The Three-Fifths Clause increased pro-slavery strength in Congress (by counting enslaved people as three-fifths of a person), in the presidency (through the Electoral College), and at the Supreme Court (through electing pro-slavery presidents, who appoint those justices).

Slave Trade Clause

Text of the Constitution:

[Slave Trade Clause: Article 1, Section 9, Clause 1:](#)

“The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.”

By the founding, even many slaveholders opposed the inhumane Atlantic slave trade. Only delegates from South Carolina and Georgia were determined to continue this brutal practice.

George Mason, John Dickinson, and Rufus King proposed an outright ban on the Atlantic slave trade, but the delegates rejected it. Instead, the Convention reached a compromise over the slave trade. Congress could ban the international slave trade, but only 20 years after the ratification of the Constitution—January 1, 1808.

In other words, this clause protected the brutal slave trade until 1808.

And between 1788 and 1808, the number of enslaved people imported into the United States exceeded 200,000—only roughly 50,000 fewer than the total number of enslaved people imported into America in the previous 170 years. In 1808, Congress had the power to abolish it, and so it did.

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In the end, the anti-slavery Northern delegates wanted to block the expansion of slavery and did not want to write explicit protection for slavery—recognition of the right to property in man—into the Constitution.

Many framers hoped that enough states in the North would move toward emancipation that slavery might die out in a generation or two.

Connecticut's Oliver Ellsworth said, "Slavery, in time, will not be a speck in our country."

However, the delegates were also open to protecting the existing property rights of the slaveholders and were willing to compromise with Southern slaveholders in order to form a new Union, ratify the Constitution, and create a new national government stronger than the government under the Articles of Confederation.

At the same time, Southern slaveholders fought to build in protections against future anti-slavery Northerners' attempts to restrict (and even abolish) slavery.

In the end, the legality of slavery—whether to permit it or to abolish it—was left to the states, where it stayed until the ratification of the 13th Amendment after the Civil War.