

seen as a "filtration of democracy,"²⁵ deserves particular mention because it was retained throughout the revolution.

THE UNITED STATES

Philadelphia

In regard to the franchise, the Philadelphia Convention took a position similar to that of the French in opting for the most open of the solutions considered. The clause of the Constitution alluded to earlier stipulating that "the electors in each state shall have the qualifications requisite for electors of the most numerous Branch of the State Legislature" (Art. I, Sec. 2, cl. 1), applied only to elections to the House of Representatives. For under the draft Constitution of 1787, senators were to be chosen by the legislatures of the different states (Art. I, Sec. 3, cl. 1) and the President was to be chosen by an "electoral college" appointed by the state legislatures (Art. II, Sec. 1, cl. 2). The Presidency and the Senate thus did not require any further decisions concerning the franchise. The most significant debates regarding elections and how they affected the nature of representation focused on elections to the lower chamber. It should also be borne in mind that state franchise qualifications were set by the different state *constitutions*. The federal clause therefore did not amount to leaving regulation of the franchise to the individual state legislatures.

The members of the Philadelphia Convention were fully aware that in some states there were significant franchise restrictions, which meant, in turn, restrictions in the election of federal representatives. However, the decision that the Convention eventually reached needs to be placed in context: it was in fact the most open or, as James Wilson said in the Pennsylvania ratification debate, the most "generous" of the options discussed in Philadelphia. For there was also among the delegates a current in favor of a federal *property* qualification for congressional electors, which would have narrowed the franchise in some states (such as Pennsylvania), where only a

low tax qualification was in force for state elections.²⁶ Gouverneur Morris, for example, asked for a property qualification that would have restricted electoral rights to freeholders. His argument was that propertyless people would be particularly susceptible to corruption by the wealthy and would become instruments in their hands. He presented his motion as a guard against "aristocracy,"²⁷ and on this point, he won the support of Madison. "Viewing the matter on its merits alone," Madison argued, "the freeholders of the Country would be the safest depositories of Republican liberty." As a matter of principle, then, Madison favored the introduction of a freehold qualification. But at the same time he feared popular opposition to such a measure. "Whether the Constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in States where the right was now exercised by every description of people."²⁸ Madison's speech reveals a certain hesitation and, on the basis of the *Records*, it seems that in the end he advocated a property qualification, but not in the form of landed property. In any case, neither Morris nor Madison carried the day, and the general tenor of the speeches pronounced on that occasion shows that a majority of delegates opposed any restrictions other than those applied by the states. The principal argument seems to have been that the people were strongly attached to the right of suffrage and would not

²⁵ The radical Pennsylvania constitution of 1776 had abolished the former property qualification for state elections and extended the right of suffrage to all tax-paying adult freemen who had resided one year in their constituencies, which amounted to a large franchise (small tradesmen, independent artisans, and mechanics could vote). In Virginia, by contrast, the right of suffrage was reserved to freeholders, which of course excluded independent artisans and mechanics. The constitution of Massachusetts, to mention another example, had set up a whole hierarchy of property qualifications, but its actual effect was a fairly large franchise (two out of three, or three out of four adult males were enfranchised). See on this, Pole, *Political Representation*, pp. 272, 295, 206.

²⁷ *The Records of the Federal Convention of 1787*, ed. M. Farrand [1911], 4 vols. (New Haven, CT: Yale University Press, 1966), Vol. II, pp. 202-3. In what follows, references to the Farrand edition will be given as: *Records*, followed by volume and page numbers.

²⁸ *Records*, Vol. II, pp. 203-4. It should be noted that, when Madison prepared his notes on the Federal Convention for publication (probably in 1821), he revised the speech on the franchise that he had delivered in Philadelphia on August 7, 1787, explaining that his viewpoint had since changed. The foregoing quotations are taken from the original speech. The revised version of 1821, generally known by the title "Notes on the right of suffrage," is an extremely important document to which we shall be returning.

"readily subscribe to the national constitution, if it should subject them to be disfranchised."²⁹ But no one in Philadelphia proposed that the federal franchise be *wider* than those of the individual states. Clearly, then, the Convention opted for the widest version of the electoral franchise under consideration at the time.

Turning now to the qualifications for representatives, which are more important for our purposes, we find the following clause in the Constitution: "No Person shall be a Representative who shall not have attained the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen" (Art. I, Sec. 2, cl. 2). These requirements are obviously not very stringent and contain no trace of what I have called the principle of distinction. A more egalitarian culture and a more homogeneous population on this side of the ocean perhaps gave representative government a different character from the one in the Old World, marked as it was by centuries of hierarchical organization. However, a close reading of the *Records* shows that behind the closed doors of the Convention the debates on the qualifications for representatives were actually very complex.

On July 26, 1787, George Mason proposed a motion asking that the Committee of Detail (the body that prepared the work of plenary sessions) be instructed to devise a clause "requiring certain qualifications of landed property and citizenship in members of the legislature and disqualifying persons having unsettled accounts with or being indebted to the US."³⁰ During the debate, Mason cited the example we discussed earlier (see p. 97) of the parliamentary qualifications adopted in England in the reign of Queen Anne, "which [he said] had met with universal approbation."³¹ Morris replied that he preferred qualifications for the right of suffrage. Madison suggested deleting the word "landed" from Mason's motion, pointing out that "landed possessions were no certain evidence of real wealth" and further arguing that commercial and manufacturing interests should also have an "opportunity of making their rights be felt and understood in the public Councils";

landed property should not be granted any special treatment.³² Madison's motion was adopted by an overwhelming majority of ten to one.³³ The Committee of Detail was therefore asked to draft a clause laying down an unspecified property qualification for representatives.

Discussion within the Convention thus focused purely on the *type* of property that ought to be required for representatives. This hesitation aside, all the delegates apparently agreed that a property qualification of one sort or another was proper. Whereas the Convention had opted for the most liberal course regarding the electors, it clearly leaned in the opposite direction with respect to the elected. Two main arguments were advanced. First, it seemed of the greatest importance to guarantee that representatives had sufficient economic independence to be immune to all corruptive influences, especially that of the executive branch. The weight of this concern (to protect the independence of the legislature in relation to the executive) is also reflected in the clause forbidding senators and representatives from holding federal office during their term (Art. 1, Sec. 6, cl. 2). This latter clause was obviously devised to guard against a "place system" along English lines, which was so odious to eighteenth-century republicans. More generally, the idea that economic independence offered one of the best guarantees against corruption was a central tenet of republican thought, and hence the views of the Philadelphia delegates were in keeping with a wider trend of thought.³⁴ In the second place, a property qualification for representatives appeared justified since the right of property was seen by all delegates as one of the most important rights, and its protection a principal object of government. It therefore seemed necessary to take specific precautions to ensure that representatives would particularly take to heart the rights and interests of property. In any case, whether property was regarded as a bulwark of republican freedom or as a fundamental right, the federal Convention felt that representatives should be property owners, and consequently of higher social rank than those who elected them, since no such qualification was

²⁹ *Records*, Vol. II, pp. 123-4.

³⁰ In the *Records*, votes are counted by states. Ten "Ayes" and one "No" mean that ten delegations voted in favor and one against.

³¹ See J. G. A. Pocock, *The Machiavellian Moment*, (Princeton, NJ: Princeton University Press, 1975), *passim*.

²⁹ The formulation is Oliver Ellsworth's (*Records*, Vol. II, p. 201), but it sums up the general tone of a number of speeches.

³⁰ *Records*, Vol. II, p. 121.

³¹ *Records*, Vol. II, p. 122.

required for the right of suffrage. Thus it appears that the principle of distinction was present in Philadelphia too. The question is: why was it not translated into a constitutional provision?

Let us return to the debates to seek an answer. A few weeks later, the Committee of Detail submitted the following clause to the plenary assembly: "The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient."³⁵ The Committee (as explained by two of its members, Rutledge and Ellsworth) had been unable to agree on any precise property requirement, and had decided consequently to leave the matter for future legislatures to settle. Two obstacles prevented the Committee from reaching agreement. First, as Rutledge stated, the members of the Committee had been "embarrassed by the danger on one side of displeasing the people by making them [the qualifications] high, and on the other of rendering them nugatory by making them low." Second, according to Ellsworth, "the different circumstances of different parts of the US and the probable difference between the present and future circumstances of the whole, render it improper to have either *uniform* or *fixed* qualifications. Make them so high as to be useful in the Southern States, and they will be inapplicable to the Eastern States. Suit them to the latter, and they will serve no purpose in the former."³⁶ The proposed clause may have solved the internal problems of the Committee of Detail, but in plenary session it encountered a major objection: leaving the matter to legislative discretion was extremely dangerous, since the very nature of the political system could be radically altered by simple manipulation of those conditions.³⁷ Wilson, albeit a member of the Committee, also pointed out that "a *uniform* rule would probably be never fixed by the legislature," and consequently moved "to let the session go out."³⁸ The vote was taken immediately after Wilson's

³⁵ *Records*, Vol. II, Report of the Committee of Detail, p. 165. The Committee of Detail consisted of Gorham, Ellsworth, Wilson, Randolph, and Rutledge; see J. H. Hutson, *Supplement to Max Farrand's The Records of the Federal Convention of 1787* (New Haven, CT: Yale University Press, 1987), pp. 195-6.

³⁶ *Records*, Vol. II, p. 249; original emphasis.

³⁷ The objection was advanced by Madison, *Records*, Vol. II, pp. 249-50.

³⁸ *Records*, Vol. II, p. 251; my emphasis.

intervention, and the Committee's proposal was rejected by seven to three. The Constitution would include no property qualification for representatives.

This episode shows that the absence of property qualifications in the 1787 constitution was not due to reasons of principle, but of expediency. The delegates did favor the principle of a property qualification, but they simply could not agree on any uniform threshold that would yield the desired result in both the northern and southern states, in both the undeveloped agrarian states of the west and in the wealthier mercantile states of the east. Thus the absence of any property requirements for representatives in the Constitution, which strikingly departs from the English and French pattern, must be seen as a largely unintentional result. Admittedly, when casting their last vote, the delegates were, in all likelihood, conscious that they were abandoning the very principle of property qualifications, and thus the result was not strictly speaking unintentional. It is clear, nevertheless, that the delegates had been led by external circumstances to make a final vote that was different from (and indeed contrary to) their initial and explicit intention. Furthermore, there is no evidence that they had changed their minds on the point of principle in the meantime. One is tempted to say that the exceptionally egalitarian character of representation in the United States owes more to geography than to philosophy.

The members of the Philadelphia Convention made two further decisions regarding elections. The House of Representatives was to be elected every two years, a term short enough to secure proper dependence on their electors. Paramount was the fear of long parliaments which, on the basis of the English experience, were seen as the hallmark of tyranny. Some delegates argued for annual elections, but by and large the agreement on a two-year term was reached without much difficulty. The Convention also resolved that: "The number of Representatives shall not exceed one for every thirty thousand [inhabitants], but each State shall have at least one Representative" (Art. I, Sec. 2, cl. 3). It was decided that the House would comprise sixty-five members until the first census was taken. The ratio between electors and elected was set with a view to keeping the size of the House within manageable limits, even when the expected (and hoped for) increase in the population would

occur. A vast majority of the delegates were determined to avoid the "confusion" of large assemblies. The Committee of Detail had initially proposed a ratio of one representative for every 40,000 eligible voters.³⁹ Some delegates, most notably Mason, Gerry, and Randolph, objected to the small size of the representative assembly.⁴⁰ But on the whole it seems that this question did not provoke a major debate in the Convention, as Gerry himself was to admit in his correspondence.⁴¹ The delegates were apparently more concerned with the relative weights of the individual states in future federal legislatures than with the ratio between electors and elected.⁴²

The ratification debate

Whereas the question of the size of the House of Representatives did not give rise to significant arguments at the Philadelphia Convention, it turned out to be a major point of contention in the ratification debates. Indeed, as Kurland and Lerner note, in the matter of representation, "eclipsing all [other] controversies and concerns was the issue of an adequate representation as expressed in the size of the proposed House of Representatives."⁴³ The question of the size of the representative assembly (which in some ways was a technical problem of the optimal number for proper deliberation) assumed

enormous political importance; it involved the relationship between representatives and represented, that is, the very core of the notion of representation. The argument revolved almost exclusively around the consequences of the ratio between elected and electors. Neither the extension of the franchise nor the legal qualifications for representatives was in question, since the Anti-Federalists (those who rejected the plan prepared in Philadelphia) had no objection to the former, and the Constitution did not contain any of the latter. Another point deserves to be stressed: the debate opposed two conceptions of representation. The Anti-Federalists accepted the need for representation: they were not "democrats" in the eighteenth-century sense of the term, as they did not advocate direct government by the assembled people. This has rightly been emphasized in a recent essay by Terence Ball.⁴⁴

The principal objection that the Anti-Federalists raised against the Constitution was that the proposed ratio between elected and electors was too small to allow the proper *likeness*. The concepts of "likeness," "resemblance," "closeness," and the idea that representation should be a "true picture" of the people constantly keep recurring in the writings and speeches of the Anti-Federalists.⁴⁵

Terence Ball's analysis of the two conceptions of representation that were in conflict in the ratification debates is not entirely satisfactory. Using categories developed by Hanna Pitkin, Ball characterizes the Anti-Federalist view of representation as the "mandate theory," according to which the task of the representative is "to mirror the views of those whom he represents" and "to share their attitudes and feelings." By contrast, Ball claims, the Federalists saw representation as the "independent" activity of "a trustee who must make his own judgements concerning his constituents' interests and how they might best be served."⁴⁶ Clearly, the Anti-Federalists thought that representatives ought to share the circum-

⁴⁴ T. Ball, "A Republic - If you can keep it," in T. Ball and J. Pocock (eds.), *Conceptual Change and the Constitution* (Lawrence: University Press of Kansas, 1987), pp. 144 ff.

⁴⁵ On the importance of this notion of "likeness" among the Anti-Federalists, see H. J. Storing (ed.), *The Complete Anti-Federalist*, 7 vols. (Chicago: University of Chicago Press, 1981), Vol. I, *What the Anti-Federalists were for?*, p. 17.

⁴⁶ Ball, "A Republic - If you can keep it," p. 145. The work to which Ball refers is H. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967).

³⁹ *Records*, Vol. I, p. 526.

⁴⁰ *Records*, Vol. I, p. 569 (Mason and Gerry); Vol. II, p. 563 (Randolph).

⁴¹ Elbridge Gerry to the Vice President of the Convention of Massachusetts (January 21, 1788), in *Records*, Vol. III, p. 265.

⁴² I entirely leave out here the debate on the basis for representation and the question of the apportionment of seats, although both figured prominently in the debates of the Convention. The debate about the basis for representation had far-reaching implications, for it entailed a decision on *what* was to be represented. The major question in this respect was: should the apportionment of seats (and hence representation) be based on *property* or *persons*? As J. R. Pole has shown in detail, the final decision to base the apportionment of seats primarily on numbers (even allowing for the "federal ratio" according to which a slave, considered a form of property, was to be counted as three-fifths of a person) "gave a possibly unintentional but nevertheless unmistakable impetus to the idea of political democracy" (*Political Representation*, p. 365). Those who advocated a specific or separate representation of property were thus ultimately defeated. This aspect of the debate, however, has been studied by Pole with all desirable clarity and persuasiveness. His conclusions are presupposed in the present chapter.

⁴³ P. B. Kurland and R. Lerner (eds.), *The Founders' Constitution*, 5 vols. (Chicago: University of Chicago Press, 1987), Vol. I, p. 386, "Introductory note."

stances, attitudes, and feelings of those whom they represented. It is also true that this concern was virtually absent from Federalist thinking. However, the focus of the debate was not exactly, as is implied by the contrast between "independence" and "mandate," the freedom of action of the representatives with regard to the wishes of their constituents. The charge that the Anti-Federalists repeatedly leveled was not that under the proposed Constitution representatives would fail to act as instructed, but that they would not be *like* those who elected them. The two questions are obviously not unrelated, but they are not the same. The ratification debate did not turn on the problem of mandates and instructions, but on the issue of similarity between electors and elected.

Brutus, for example, wrote:

The very term representative, implies, that the person or body chosen for this purpose, should *resemble* those who appoint them – a representation of the people of America, if it be a true one, must be *like* the people . . . They are the sign – the people are the thing signified . . . It must then have been intended that those who are placed instead of the people, should possess their sentiments and feelings, and be governed by their interests, or in other words, should bear the strongest *resemblance* of those in whose room they are substituted. It is obvious that for an assembly to be a true *likeness* of the people of any country, they must be considerably numerous.⁴⁷

For his part, Melancton Smith, Hamilton's chief adversary at the New York ratification convention, declared in a speech on the proposed House of Representatives: "The idea that naturally suggests itself to our minds, when we speak of representatives, is that they *resemble* those they represent; they should be a *true picture* of the people: possess the knowledge of their circumstances and their wants; sympathize in all their distresses, and be disposed to seek their true interests."⁴⁸ The tireless insistence on the need for identity or resemblance between electors and elected is among the most striking features of Anti-Federalist pamphlets and

⁴⁷ Brutus, Essay III, in Storing (ed.), *The Complete Anti-Federalist*, Vol. II, 9, 42; my emphasis. Hereafter references to Anti-Federalist writings and speeches will be given as: *Storing*, followed by the three numbers employed by the editor, the roman numeral denoting the volume.

⁴⁸ Melancton Smith, "Speech at the New York ratification convention" (June 20, 1788), *Storing*, VI, 12, 15.

speeches.⁴⁹ Certainly the Anti-Federalists did not form an intellectually homogeneous current. However, although some were conservative, others radical, they were virtually unanimous in their demand that representatives resemble those they represented.

The idea that political representation should be conceived as a reflection or picture, the main virtue of which should be resemblance to the original, had found in the first years of independence one of its most influential expressions in John Adams's *Thoughts on Government*. And although Adams did not participate in the constitutional debate of 1787, his influence on Anti-Federalist thinking can hardly be doubted. "The principal difficulty lies," Adams had written in 1776, "and the greatest care should be employed in constituting this representative assembly. [In the preceding passage, Adams had shown the need for representation in large states.] It should be in miniature an exact portrait of the people at large. It should think, feel, reason and act like them."⁵⁰ To use Hanna Pitkin's categories, one could say that the Anti-Federalists were defending a "descriptive" conception of representation. In such a view, the aim is for the assembly, as the people in miniature, to act as the people themselves would have acted, had they been assembled. In this sense, the objectives of the "descriptive" view and of the "mandate" theory of representation are the same. However, in the latter case, identity between the will of the representatives and the will of the people is secured through formal legal provisions (instructions or imperative mandates); while the "descriptive" conception supposes that the representatives will *spontaneously* do as the people would have done since they are a reflection of the people, share the circumstances of their constituents, and are close to them in both the metaphorical and spatial senses of the term.

When Anti-Federalists spoke of "likeness" or "closeness," they meant it primarily in a social sense. Opponents of the Constitution claimed that several classes of the population would not be properly represented, because none of their number would sit in the assembly. Samuel Chase wrote:

⁴⁹ See The Federal Farmer, Letter II, *Storing*, II, 8, 15; Minority of the Convention of Pennsylvania, *Storing*, III, 11, 35; Samuel Chase, Fragment 5, *Storing*, V, 3, 20; Impartial Examiner, III, *Storing*, V, 14, 28–30.

⁵⁰ J. Adams, *Thoughts on Government* [1776], in C. F. Adams (ed.), *The Life and Works of John Adams*, 10 vols. (Boston: Little Brown, 1850–6), Vol. IV, p. 195.

It is impossible for a few men to be acquainted with the sentiments and interests of the US, which contains many different classes or orders of people – merchants, farmers, planters, mechanics and gentry or wealthy men. To form a proper and true representation each order ought to have an opportunity of choosing from each a person as their representative . . . Only but . . . few of the merchants and those only of the opulent and ambitious will stand any chance. The great body of planters and farmers cannot expect any of their order – the station is too elevated for them to aspire to – the distance between the people and their representatives will be so great that there is no probability of a farmer or planter being chosen. Mechanics of every branch will be excluded by a general voice from a seat – only the gentry, the rich, the well born will be elected.⁵¹

Given the diversity of the population of America, only a large assembly could have met the requirements of an “adequate” representation. In a truly representative assembly, Brutus noted, “the farmer, merchant, mechanic and other various orders of people, ought to be represented according to their respective weight and numbers; and the representatives ought to be intimately acquainted with the wants, understand the interests of the several orders in the society, and feel a proper sense and becoming zeal to promote their prosperity.”⁵² The Anti-Federalists did not demand, however, that all classes without exception have members sitting in the assembly. They wished only that the main components of society be represented, with a special emphasis on the middling ranks (freeholders, independent artisans, and small tradesmen).

They had no doubt, however, that representation as provided for in the Constitution would be skewed in favor of the most prosperous and prominent classes. This was one of the reasons why they denounced the “aristocratic” tendency of the Constitution (another focus of their fear of “aristocracy” being the substantial powers granted to the Senate). When the Anti-Federalists spoke of “aristocracy,” they did not mean, of course, hereditary nobility. Nobody ever questioned that America would and should be without a nobility, and the Constitution explicitly prohibited the granting of titles of nobility (Art. I, Sec. 9, cl. 9). What the Anti-Federalists envisioned was not legally defined privilege, but the social super-

iority conferred by wealth, status, or even talent. Those enjoying these various superiorities composed what they called “the natural aristocracy” – “natural” here being opposed to legal or institutional. As Melancton Smith put it in the New York ratification debate:

I am convinced that this government is so constituted, that the representatives will generally be composed of the first class of the community, which I shall distinguish by the name of natural aristocracy of the country . . . I shall be asked what is meant by the natural aristocracy – and told that no such distinction of classes of men exists among us. It is true that it is our singular felicity that we have no legal or hereditary distinction of this kind; but still there are real differences. Every society naturally divides itself into classes. The author of nature has bestowed on some greater capacities than on others – birth, education, talents and wealth create distinctions among men as visible and of as much influence as titles, stars and garters. In every society, men of this class will command a superior degree of respect – and if the government is so constituted as to admit but a few to exercise the powers of it, it will, according to the natural course of things, be in their hands.⁵³

For his part, Brutus noted:

According to the common course of human affairs, the natural aristocracy of the country will be elected. Wealth always creates influence, and this is generally much increased by large family connections . . . It is probable that but few of the merchants, and those of the most opulent and ambitious, will have a representation of their body – few of them are characters sufficiently conspicuous to attract the notice of electors of the state in so limited a representation.⁵⁴

As the Pennsylvania Minority stressed: “Men of the most elevated rank in life, will alone be chosen.”⁵⁵ The Anti-Federalists were not radical egalitarians, denouncing the existence of social, economic, or personal inequalities. In their view, such inequalities formed part of the natural order of things. Nor did they object to the natural

⁵³ Melancton Smith, speech of June 20, 1788, *Storing*, VI, 12, 16; my emphasis. It is noteworthy that Smith places talents, birth, and wealth on the same footing. This is not the place to embark on the philosophical debates that such categorization might raise, but it is worth highlighting.

⁵⁴ Brutus, Essay III, *Storing*, II, 9, 42; my emphasis. On the notion that only the “natural aristocracy” would be elected, see also The Federal Farmer, Letter IX, *Storing*, II, 8, 113.

⁵⁵ The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to Their Constituents, *Storing*, III, 11, 35.

⁵¹ Samuel Chase, Fragment 5, *Storing*, V, 3, 20.

⁵² Brutus, Essay III, *Storing*, II, 9, 42.

aristocracy playing a specific political role. But they did not want it to monopolize power.

The Anti-Federalists did not develop a detailed explanation, let alone a clear and simple one, that could be successfully used in public debate, regarding why only the rich and the prominent would be elected. Their ideas had rather the form of profound but incompletely articulated intuitions. The larger the electoral districts, they claimed, the greater the influence of wealth would be. In small settings, common people could be elected, but in large ones a successful candidate would have to be particularly conspicuous and prominent. Neither proposition was self-evident, but the opponents of the Constitution were unable to explain them any further. This lack of articulation explains in part the weakness of their case when confronted with the clear and compelling logic of the Federalists. The Anti-Federalists were fully aware of the argumentative strength of their adversaries' case. And in the end they fell back on the simple but rather short assertion that the Federalists were deceiving the people. In a statement that captures both the core of the Anti-Federalist position and its argumentative weakness, the Federal Farmer wrote:

the people may be electors, if the representation be so formed as to give one or more of the natural classes of men in the society an undue ascendancy over the others, it is imperfect; the former will gradually become masters, and the latter slaves . . . It is deceiving the people to tell them they are electors, and can choose their legislators, if they cannot *in the nature of things*, choose men among themselves, and genuinely *like themselves*.⁵⁶

The accusatory tone and rhetorical exaggeration could not mask the lack of substantial argument. The Anti-Federalists were deeply convinced that representatives would not be like their electors, but they were unable to explain in simple terms the enigmatic "nature of things" or "common course of human affairs" that would lead to this result.

Such a position lay entirely vulnerable to Madison's lightning retort. We are told, Madison declared in an equally rhetorical passage, that the House of Representatives will constitute an oligarchy, but:

⁵⁶ The Federal Farmer, Letter VII, *Storing*, II, 8, 97; my emphasis.

Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States . . . Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, or religious faith, or of civil profession is permitted to fetter the judgement or disappoint the inclination of the people.⁵⁷

The Anti-Federalists had no objections to the federal franchise, and they admitted that there were no property or tax qualifications for representatives in the Constitution. Thus, they had no effective counterargument.

After this first defense, the gist of Madison's argument in "Federalist 57" states that the Constitution provides every guarantee that representatives will not betray the trust of the people. Because representatives will have been "distinguished by the preference of their fellow citizens," Madison argues, there are good reasons to believe that they will actually have the qualities for which they were chosen and that they will live up to expectations. Moreover, they will know that they owe their elevation to public office to the people; this cannot "fail to produce a temporary affection at least to their constituents." Owing their honor and distinction to the favor of the people, they will be unlikely to subvert the popular character of a system that is the basis of their power. More importantly, frequent elections will constantly remind them of their dependence on the electorate. Finally, the laws they pass will apply as much to themselves and their friends as to the society at large.⁵⁸

Given all these guarantees, Madison turns the tables on the Anti-

⁵⁷ Madison, "Federalist 57" in A. Hamilton, J. Madison, and J. Jay, *The Federalist Papers* [1787-8], ed. C. Rossiter (New York: Penguin, 1961), p. 351. On the qualifications for election as a representative, see also "Federalist 52." There Madison recalls the three qualifications laid down in the Constitution (twenty-five years of age, seven year citizenship in the US, and residence in the state where the candidate runs for Congress) before adding: "Under these reasonable limitations, the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith" (p. 326). Hereafter references to *The Federalist Papers* will indicate only the essay number and the page in the Rossiter edition.

⁵⁸ Madison, "Federalist 57," pp. 351-2.

Federalists and indirectly casts suspicion on their attachment to republican or popular government by asking:

What are we to say to the men who profess the most flaming zeal for republican government, yet boldly impeach the fundamental principle of it [the right of the people to elect those who govern them], who pretend to be champions for the right and capacity of the people to choose their own rulers, yet maintain that they will prefer those only who will immediately and infallibly betray the trust committed to them?⁵⁹

Madison implies that these professed republicans in fact harbor doubts about the right of the people to choose for rulers whom they please and their ability to judge candidates. Although Madison stresses to great effect the popular or republican dimension of representation under the proposed scheme, nowhere in his argumentation does he claim that the Constitution will secure likeness or closeness between representatives and represented. He too knows that it will not.

Madison develops instead an altogether different conception of what republican representation could and should be:

The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust. The elective mode of obtaining rulers is the characteristic policy of republican government. The means relied on in this form of government for preventing their degeneracy are numerous and various. The most effectual one is such a limitation of the term of appointment as will maintain a proper responsibility to the people.⁶⁰

In this characterization of republican government, it is worth noting, there is not the slightest mention of any likeness between representatives and represented. Indeed, representatives should be different from their constituents, for republican government requires as any other that power be entrusted to those who possess "most wisdom" and "most virtue," that is, to persons who are superior to, and different from, their fellow citizens. This is one of the clearest formulations of the principle of distinction in Federalist thinking,

⁵⁹ Madison, "Federalist 57," p. 353.

⁶⁰ Madison, "Federalist 57," pp. 350-1.

but Madison expresses the same idea on numerous occasions. In the famous passage of "Federalist 10," in which Madison sets out his conception of the differences between a democracy and a republic, he notes first that the defining characteristic of a republic is "the delegation of the government . . . to a small number of citizens elected by the rest . . . The effect of [which] is, on the one hand, to refine and enlarge the public views by passing them through the medium of a *chosen body of citizens*, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations."⁶¹ What distinguishes a republic from a democracy, then, is not merely the existence of a body of representatives, but also the fact that those representatives form a "chosen body." Like Guicciardini before him, Madison is clearly playing on two senses of the term "chosen": the representatives are chosen, in the literal sense, since they are elected, but they also constitute the "chosen Few." Thus the complete characterization of the republican mode of designating rulers is that it leaves it to the people to select through election the wisest and most virtuous.

Madison's republicanism, however, is not content with providing for the selection of the wisest and most virtuous; there is no blind faith in wise and virtuous elites. Representatives should be kept on the virtuous path by a system of constraints, sanctions, and rewards. The "most effectual precaution to keep them virtuous" is to subject them to frequent election and reelection. The constant prospect of an upcoming election, combined with the desire for continuing in office, will guarantee their proper devotion to the interests of the people. If, in republican government, the selected and select few serve the common good rather than their own interest, it is not on account of any resemblance to their constituents, but primarily because they are held responsible to the people through regular elections. The Anti-Federalists thought that in order for the representatives to serve the people, the former had to be "like" the latter. Madison responds that representatives may well be different from the people, indeed they ought to be different. They will nonetheless serve the people because they will be kept duly dependent on them

⁶¹ Madison, "Federalist 10," p. 82; my emphasis.

by institutional means. Recurring elections, and not social likeness or closeness, are the best guardians of the people's interests. The full scope of the divergence between the two conceptions of representation is now apparent. The Anti-Federalists did not question the need for recurring elections, but to them, this was only a necessary condition for a genuine representation; similarity and proximity were also required. The Federalists, on the other hand, saw elections as both a necessary and sufficient condition for good representation.

Faced with the objection that the Constitution was aristocratic, the Federalists replied by stressing the difference between aristocracy pure and simple and "natural aristocracy" and by arguing moreover that there was nothing objectionable in the latter. An example of this line of argument can be found in the speeches of James Wilson during the Pennsylvania ratification debate. His defense of the Constitution on this point is particularly significant, because of all the Federalist leaders, he was certainly the most democratically minded. For example, he praised the Constitution for its "democratic" character, something which Madison (much less Hamilton) would never do. Nevertheless, when confronted with the objection that the proposed Constitution leaned in the direction of aristocracy, Wilson was prepared to justify government by a natural aristocracy.

I ask now what is meant by a natural aristocracy? I am not at a loss for the etymological definition of the term; for when we trace it to the language from which it is derived, an aristocracy means nothing more or less than a government of the best men in the community or those who are recommended by the words of the constitution of Pennsylvania, where it is directed that the representatives should consist of those most noted for wisdom and virtue. [It should be kept in mind that the 1776 Pennsylvania constitution was widely seen as one of the most "democratic" state constitutions; and it constituted anyway a reference for Wilson's audience.] Is there any danger in such representation? I shall never find fault that such characters are employed. . . . If this is meant by natural aristocracy, — and I know no other — can it be objectionable that men should be employed that are most noted for their virtue and talents?⁶²

⁶² J. Wilson, speech of December 4, 1787, in John Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as recommended by the General Convention at Philadelphia*, 5 vols. (New York: Burt Franklin, 1888) Vol. II, pp. 473-4.

In his definition of natural aristocracy, Wilson made no mention of wealth, which made his position easier to defend and rendered his argument somewhat more common, but not to the point of triviality. For the argument must be seen in the context of the whole debate and in the light of the other side's accusations. From this perspective, Wilson's argument, in that it explicitly conceded two points made by the Anti-Federalists, is significant. First, representatives would not be *like* their electors, nor should they be. It was positively desirable that they be more talented and virtuous. Second, the representative assembly would consist primarily, if not exclusively, of the natural aristocracy.

After this defense of natural aristocracy, Wilson stressed how greatly it differed from aristocracy proper. An "aristocratic government," he continued, is a government

where the supreme power is not retained by the people, but resides in a select body of men, who either fill up the vacancies that happen, by their own choice and election, or succeed on the principle of descent, or by virtue of territorial possession, or some other qualifications that are not the result of personal properties. When I speak of personal properties, I mean the qualities of the head and the disposition of the heart.⁶³

When confronted with the same objection about the aristocratic character of the Constitution, Hamilton responded first by ridiculing his adversaries' conception of aristocracy.

Why, then, are we told so often of an aristocracy? For my part, I hardly know the meaning of this word, as it is applied. . . . But who are the aristocracy among us? Where do we find men elevated to a perpetual rank above their fellow-citizens, and possessing powers independent of them? The arguments of the gentlemen [the Anti-Federalists] only go to prove that there are men who are rich, men who are poor, some who are wise, and others who are not; that indeed every distinguished man is an aristocrat. . . . This description, I presume to say is ridiculous. The image is a phantom. Does the new government render a rich man more eligible than a poor one? No. It requires no such qualification.⁶⁴

Hamilton came back again and again to the Federalists' favorite

⁶³ J. Wilson, speech of December 4, 1787, p. 474.

⁶⁴ Hamilton, speech of June 21, 1788, in Elliot (ed.), *The Debates . . .*, Vol. II, p. 256.

argument: the people had the right to choose whomever they pleased as their rulers. But he went even further, acknowledging that wealth was bound to play an increasingly important part in elections: "As riches increase and accumulate in a few hands, as luxury prevails in society, virtue will be in greater degree considered as only a graceful appendage of wealth, and the tendency of things will be to depart from the republican standard. This is the real disposition of human nature: it is what neither the honorable member [Melancton Smith] nor myself can correct."⁶⁵ And although Hamilton lamented this ineluctable development, something more than mere resignation sounded in the following remarks:

Look through the rich and the poor of the community, the learned and the ignorant. Where does virtue predominate? The difference indeed consists, not in the quantity, but kind, of vices which are incident to various classes; and here the advantage of character belongs to the wealthy. Their vices are probably more favorable to the prosperity of the state than those of the indigent, and partake less of moral depravity.⁶⁶

More than any other Federalist, Hamilton was prepared to advocate openly a certain role for wealth in the selection of representatives. Rome fascinated him and his paramount objective was that the young nation become a great power, perhaps an empire. He saw economic power as the main road to historical greatness, hence he wished the country to be led by prosperous, bold, and industrious merchants. At Philadelphia, in his speech against the plan put forward by the New Jersey delegation, he had stressed the need for attracting to the government "real men of weight and influence."⁶⁷ In *The Federalist* he replied to the Anti-Federalists that "the idea of an actual representation of all classes of the people by persons of each class" was "altogether visionary," adding: "Unless it were expressly provided in the constitution that each different occupation should send one or more members, the thing would never take place in practice."⁶⁸ Once again, the point was being conceded to the Anti-Federalists: the numerical importance of each of the various classes of society would never find spontaneous reflection in the representative assembly.

Mechanics and manufacturers will always be inclined, with few exceptions, to give their votes to merchants in preference to persons of their own professions or trades. Those discerning citizens are well aware that the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry . . . They know that the merchant is their *natural* patron and friend; and they are aware that however great the confidence they may justly feel in their own good sense, their interests can be more effectually promoted by the merchants than by themselves.⁶⁹

The difference was that Hamilton, unlike the Anti-Federalists, welcomed this "natural" state of affairs.

Not all Federalists shared Hamilton's point of view on the role of commerce and wealth, as the debates and conflicts of the next decade would show. In the 1790s Madison and Hamilton found themselves in opposing camps: Hamilton, then in office, continued to stand up for commercial and financial interests and to defend a strong central power; while Madison joined Jefferson in denouncing what they took to be the corruption associated with finance and commerce, as well as the encroachments of the federal government. The Federalists, however, all agreed that representatives should not be like their constituents. Whether the difference was expressed in terms of wisdom, virtue, talents, or sheer wealth and property, they all expected and wished the elected to stand higher than those who elected them.

In the end, though, the Federalists shared the Anti-Federalist intuition that this kind of difference would result from the mere size of electoral districts (that is, through the ratio between electors and elected). The advocates of the proposed Constitution did not offer an explanation of this phenomenon any more than did their opponents. However, since the Federalists did not usually present it publicly as one of the Constitution's main merits, their inability to account for it was less of a problem for them in the debate than for the Anti-Federalists. The idea, however, occasionally appeared in Federalist speeches. Wilson, for example, declared:

And I believe the experience of all who had experience, demonstrates that the larger the district of election, the better the representation. It is only in remote corners that little demagogues arise. Nothing but

⁶⁵ Hamilton, speech of June 21, 1788, p. 256.

⁶⁶ *Ibid.*, p. 257.

⁶⁷ *Records*, Vol. I, p. 299.

⁶⁸ Hamilton, "Federalist 35," p. 214.

⁶⁹ Hamilton, "Federalist 35," p. 214, my emphasis.

real weight of character can give a man real influence over a large district. This is remarkably shown in the commonwealth of Massachusetts. The members of the House of Representatives are chosen in very small districts; and such has been the influence of party cabal, and little intrigue in them, that a great majority seem inclined to show very little disapprobation of the conduct of the insurgents in that state [the partisans of Shays].⁷⁰

By contrast, the Governor of Massachusetts was chosen by the state's whole electorate, a rather large constituency. Clearly, Wilson went on, when it came to choosing the Governor, the voters of Massachusetts "only vibrated between the most eminent characters."⁷¹ The allusion to the Shays rebellion of 1786 rendered fairly transparent the socio-economic dimension of what Wilson meant by "eminent characters" or "real weight of character."⁷² In his speech of December 11, 1787, Wilson repeated the same argument (with only a slightly different emphasis), before arguing that large electoral districts were a protection against both petty demagogues and parochialism.⁷³

Writing in "Federalist 10," Madison too establishes a connection between the size of the electorate and the selection of prominent candidates. Although he is not dealing in this passage with the electoral ratio and the size of the Chamber, but with the advantage of extended republics over small ones, he uses an argument similar to Wilson's: the more numerous the electorate, the more likely the selection of respectable characters.

As each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people

⁷⁰ J. Wilson, speech of December 4, 1787, in Elliot (ed.), *The Debates* . . . , Vol. II, p. 474.

⁷¹ *Ibid.*

⁷² The Shays rebellion, which broke out in Massachusetts in 1786, exercised some influence on the framing of the Constitution. It contributed to the animus against "democracy" that was expressed in Philadelphia. The small farmers of the western part of the state had revolted against the policy favorable to the seaboard mercantile interests pursued by the legislature in Boston. The legislature had adopted a policy of hard currency and had decided to redeem the public debt, which had led to an increase in the tax burden. In the legislative elections following the rebellion, the forces of discontent scored great successes. On the following the rebellion, the forces of discontent scored great successes. On the Shays rebellion, see Pole, *Political Representation*, pp. 227-41.

⁷³ J. Wilson, speech of December 11, 1787, in J. B. McMaster and F. Stone (eds.), *Pennsylvania and the Federal Constitution* (Philadelphia, 1888), p. 395.

being more free, will be more likely to center on men who possess the most attractive merit and the most diffusive and established characters.⁷⁴

In the "Note to his speech on the right of suffrage" (an elaboration on the speech he had delivered at the Convention on August 7, 1787),⁷⁵ Madison is more explicit about the benefits he expects from large electoral districts. This note reflects on possible solutions to what he describes at the outset as the major problem raised by the right of suffrage: "Allow the right exclusively to property, and the right of persons may be oppressed. The feudal polity alone sufficiently proves it. Extend it equally to all, and the rights of property or the claims of justice may be overruled by a majority without property, or interested in measures of injustice."⁷⁶ The chief objective in matters of suffrage, therefore, is to guarantee the rights of both persons and property. Madison considers five potential solutions. The first two are rejected as unfair: a property qualification for electors in the form of a freehold or of any property; and the election of one branch of the legislature by property-holders and of the other branch by the propertyless. Madison dwells at greater length on a third possibility: reserving the right of electing one branch of the legislature to freeholders, and admitting all the citizens, including freeholders, to the right of electing the other branch (which would give a double vote to freeholders). Madison notes, however, that he is not wholly clear himself about the effects of this third solution, and believes that it could be tried. He then moves to a fourth solution, on which he has apparently more definite views:

Should experience or public opinion require an equal and universal suffrage for each branch of the government, such as prevails generally in the US, a resource favorable to the rights of landed and other property, when its possessors become the minority, may be found in an enlargement of the election districts for one branch of the legislature, and an extension of its period of service. *Large districts are manifestly favorable to the election of persons of general respectability, and of probable attachment to the rights of property, over competitors depending on the personal solicitations practicable on a contracted theatre.*⁷⁷

⁷⁴ Madison, "Federalist 10," pp. 82-3.

⁷⁵ See above, note 28.

⁷⁶ Madison, "Note to the speech on the right of suffrage" (probably 1821), in *Records*, Vol. III, p. 450.

⁷⁷ *Records*, Vol. III, p. 454. My emphasis.

Finally, should even this solution be found unacceptable, Madison sees the final bulwark of the rights of property in a combination of several elements: "the ordinary influence possessed by property and the superior information incident to its holders,"⁷⁸ "the popular sense of justice enlightened and enlarged by a diffusive education," and "the difficulty of combining and effectuating unjust purposes throughout an extensive country." The fourth and fifth solutions are obviously embodied in the Constitution.⁷⁹ Regarding the effects of large electoral districts, Madison no longer speaks (as he did in "Federalist 10") the language of virtue and wisdom; he states more bluntly that large size will work in favor of property and wealth.

It would be superficial, however, to portray Madison and the Federalist leaders in general as hypocritical and shrewd politicians, who introduced into the Constitution a surreptitious property qualification (large electoral districts), and who publicly argued, in order to gain popular approval, that the assembly would be open to anyone with merit. Conversely, it would be naive to focus exclusively on the legal side of the situation and to claim that, since there were no property requirements for representatives in the Constitution, the Federalists were champions of political equality.⁸⁰ The

⁷⁸ In *The Federalist*, Madison alludes to the deference inspired by property-holders. In an argument justifying the apportionment of seats based to some extent on slave property (the $\frac{3}{5}$ "federal ratio"), Madison explains that the *wealth* of the individual states must be taken into account *legally* because the affluent states do not *spontaneously* enjoy the benefits of superior influence conferred by wealth. The situation of the states, he argues, is different in this respect from that of individual citizens. "If the law allows an opulent citizen but a single vote in the choice of his representative, the respect and consequence which he derives from his fortunate situation very frequently guide the votes of others to objects of his choice; and through this *imperceptible channel* the rights of property are conveyed into the public representation" ("Federalist 54," p. 339; my emphasis).

⁷⁹ The status and date of this Note are not entirely clear. Madison writes at the beginning that his speech of August 7, 1787, as reported in the *Records* of the Federal Convention, does not "convey the speaker's more full and matured view of the subject." The most plausible interpretation would seem to be that the Note sets out what Madison retrospectively (in 1821) regarded as the rationale for the right of suffrage laid down in 1787, whereas at the time he had been in favor of a property qualification, as we have seen. It is difficult to date precisely the change in his opinions which he alludes to. It would seem, in the light of the arguments contained in "Federalist 10," that by the end of 1787 at the latest he had realized that large electoral districts would work in favor of property-holders. But he might have discovered this effect earlier (during the debates in Philadelphia, for example).

⁸⁰ The "naive" interpretation is manifestly contradicted by the historical documents and there is no point in discussing it.

extraordinary force of the Federalist position stemmed from the fact that when Madison or Wilson declared that the people could elect whomever they pleased, they were voicing an incontrovertible proposition. In this respect, accusing the Federalists of "deceiving the people" was simply not credible. Defenders of the Constitution were certainly stating *one* truth. But there was another truth, too, or more precisely another idea that both parties held to be true (even if they did not understand exactly why): the people would, as a rule, freely choose to elect propertied and "respectable" candidates. Both propositions (and this is the essential point) could be objectively true at the same time. The first could not then, and cannot now, be regarded as a mere ideological veil for the second.

One cannot even claim that the size of electoral districts was a way of offsetting in practice the effects of the absence of formal qualifications. The Federalists did not rely on two elements of the Constitution that were equally true (or deemed to be true), in the belief that the restrictive element (the advantage bestowed on the natural aristocracy by the size of electoral districts) would cancel the effects of the more open one (the absence of any property requirement for representatives). Such a claim presupposes that the concrete results of a formal qualification would have been strictly identical to those of large electoral districts (or perceived as such by those concerned).

It is intuitively apparent that the two provisions were not equivalent. The general principle that laws and institutions make a difference and are not merely superficial phenomena has gained wide acceptance today. Yet neither intuition nor the general principle that law is no mere "formality" is wholly adequate here. It is also necessary to explain precisely why, in the particular case of parliamentary qualifications, legal requirements would not have produced effects identical to those that both the Federalists and the Anti-Federalists expected from the size of electoral districts.

Large electoral districts were not strictly equivalent to a formal property qualification for two main reasons. First, the notion that they would give an advantage to the natural aristocracy was premised on a phenomenon that experience seemed generally to confirm: "experience demonstrates" (as Wilson put it) that in general only "respectable characters" are elected in large constitu-

encies, or (to use the language of Brutus) this effect occurs "according to the *common* course of human affairs."⁸¹ The connection between large districts and the election of the natural aristocracy thus appeared to obtain *most of the time*. A formal property qualification, by contrast, would have been effective *always*. If the advantage of the propertied classes is assured by a statistically proven regularity of electoral behavior, the system offers a measure of flexibility: circumstances may arise where the effect does not obtain, because an exceptional concern overrides voters' ordinary inclination toward "conspicuous" candidates. The situation is different if legislative position is reserved by law to the higher social classes, because the law is by definition rigid. Obviously, the law can be changed, either peaceably or by violent means, but the process is more complicated.

There is no justification for regarding as negligible the difference between what happens always and what occurs only most of the time. The distinction (which Aristotle developed) between these two categories is particularly relevant in politics. It is an error, and indeed a fallacy, to consider, as is often done, that the ultimate truth of a political phenomenon lies in the form it assumes most of the time. In reality, the exceptional case is important too, because what is at stake in politics varies according to circumstances, and the statistically rare case may be one with historically critical consequences. On the other hand, it is equally fallacious to confer epistemological privilege on the extreme case, that is, the one which is both rare and involves high stakes. In politics, ultimate truth is no more revealed by the exception than by the rule.⁸² Crises and

⁸¹ One might also recall Hamilton's remark, quoted above: "Mechanics and manufacturers will *always* be inclined, *with few exceptions*, to give their votes to merchants in preference to persons of their own professions or trades" (my emphasis). See above n. 69.

⁸² The thought of Carl Schmitt is one of the most brilliant, systematic, and conscious developments of the fallacious principle that the exceptional case reveals the essence of a phenomenon. Schmitt's analyses of extreme cases are for the most part penetrating. But Schmitt unduly (albeit consciously) extends the conclusions that can be drawn from the exceptional case to the general character of the phenomenon under consideration. He writes, for example: "Precisely a philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree . . . The exception is more interesting than the rule. The rule proves nothing, the exception proves everything: it confirms not only the rule but also its existence, which derives only from the exception." (*Politische Theologie: Vier Kapitel zur Lehre der Souveränität* [1922];

revolutions are certainly important; one can say that they define the ordinary in that they determine the boundaries between which ordinary situations take place. But it does not follow that they are the truth of ordinary politics and furnish the key to understanding it. In revolutions or crises some factors and mechanisms come into play that are absent from normal situations and, therefore, cannot serve our understanding of ordinary politics. The most powerful political theories are those that make room for both the ordinary and the extraordinary, while maintaining a distinction between the two and explaining them differently. Locke's thought offers a perfect illustration. Most of the time, Locke remarked, people trust the established government, particularly if they elect it; they are not easily "got out of their old forms." Only when a "long train of abuses, prevarications, and artifices, all tending the same way" unmistakably manifest an intention to betray their trust, do people rise up, "appeal to heaven," and submit their fate (quite rightly) to the verdict of battle.⁸³ It is one of the most notable strengths of the *Second Treatise* that neither the trust of the governed in the government nor the possibility of revolution is presented as *the* truth of politics.

Returning to the American debate, the conclusion must be that, even if large electoral districts and legal qualifications for representatives did favor candidates from the higher social classes, the two cannot be equated. The greater degree of flexibility offered by extended constituencies in exceptional cases cannot be dismissed as insignificant: it is the first reason why the size of electoral districts did not cancel the effects of the non-restrictive electoral clause in the Constitution.

Second, if the advantage of certain classes in matters of representation is written into law, abolishing it (or granting it to other classes) requires a change in the law. That means that a change in the rules has to be approved by the very people who benefit from them, since they were elected under the old rules. Such a system, therefore, amounts to subjecting the demise of a given elite to its

English trans. *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab, Cambridge, MA: MIT Press, 1985, p. 15.)

⁸³ J. Locke, *Second Treatise of Government*, ch. XIX, §§ 221, 223, 242, in J. Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge: Cambridge University Press, 1960), pp. 414, 415, 427.

own approval and consent. If, by contrast, the advantage of a particular social class results only from the electoral behavior of the citizens (as with the advantage of the natural aristocracy resulting from large electoral districts), a simple change in the electorate will be sufficient to overthrow an elite or alter its composition. In this case, then, the demise of the elite in power can be achieved without its approval. This is not to say, however, that the free and deliberate decision of the electorate is sufficient to achieve such a result. For the advantage of the higher social classes in large electoral districts, though a result of the electorate's behavior, actually depends on a number of factors, only some of which are capable of being deliberately modified by voters. For instance, the electoral success of property owners in large districts no doubt owes something to the constraint of campaign expenses. It may also have to do with social norms (deference, for example). Such factors are clearly beyond the reach of the conscious and deliberate decisions of voters; the simple will of the electorate is not in itself enough to do away with the advantage of wealth. Deeper changes in socio-economic circumstances and in political culture are also necessary. Difficult though they may be, such changes do not require the approval of those already in power, whereas that approval would be required under a system of legal qualifications. And there is hardly anything more difficult than inducing an elite to acquiesce in its own diminution of power. This typically requires an inordinate amount of external and indeed violent pressure.

It may be objected that, under a system of legal qualifications, the law that must be changed in order to remove the advantage of the privileged classes is usually not ordinary but rather constitutional. This was certainly the case in the United States. Changing the legal requirements would thus not have depended simply on the approval of the representatives elected under those conditions. The argument put forward here retains its validity, however, since the legislature would have a say in the process of constitutional revision.

On this second count as well, then, legal requirements for representatives and large electoral districts do not have strictly identical effects. The difference is that with a system of large electoral districts, the advantage of wealth could be altered, or possibly even

abolished, without the consent of the propertied elite. This lent itself more easily to political change than did the legal conditions that English and French founders of representative government instituted in their countries.

Thus, the geographical diversity of the American states, which prevented the Philadelphia delegates from reaching an agreement on a wealth qualification for representatives led to the invention of a system in which the distinction of the representative elite was secured in a more flexible and adaptable manner, than on the other side of the Atlantic. In America, following the phases of history and the changes in the social structure of the nation, different elites would be able to succeed one another in power without major upheavals. And occasionally, in exceptional times, voters would even be able to elect ordinary citizens.

We are now in a position to see why the American constitutional debate sheds light on representative institutions in general, and not only on American ones. This broader significance results first from the position defended by the Anti-Federalists. Their views have not been widely studied, but the history of ideas and political theory in general have been wrong to neglect this current of thought. With their unflagging insistence on the "likeness" and "closeness" that must bind representatives and represented in a popular government, the Anti-Federalists actually made an important contribution to political thought. The Anti-Federalists formulated with great clarity a plausible, consistent, and powerful conception of representation. They accepted without reservations the need for a functional differentiation between rulers and ruled. But they maintained that, if representative government were to be genuinely popular, representatives should be as close to their constituents as possible: living with them and sharing their circumstances. If these conditions were fulfilled, they argued, representatives would spontaneously feel, think, and act like the people they represented. This view of representation was clearly defeated in 1787. Thus, the American debate brings into sharp relief what representative government was *not* intended to be. From the very beginning, it was clear that in America representative government would not be based on resemblance and proximity between government representatives and represented. The debate of 1787 also illuminates by contrast the conception of

representation that carried the day. Representatives were to be different from those they represented and to stand above them with respect to talent, virtue, and wealth. Yet the government would be republican (or popular) because representatives would be chosen by the people, and above all because repeated elections would oblige representatives to be answerable to the people. More than in France or England, where in the eighteenth century no significant force defended representation based on social resemblance or proximity, it was in America that the combination of the principle of distinction and popular representative government emerged in exemplary form.

Moreover, beyond the constitutional problem of representation, the ideal of similarity between leaders and people proved to be a powerful mobilizing force during the following century. But it was the Anti-Federalists who had first formulated it. Viewed from a certain angle, the history of the Western world can be seen as the advance of the principle of division of labor. But every time that principle was extended to organizations involved in politics (e.g. mass parties, trade unions, citizens' groups), the ideal of likeness and closeness demonstrated its attractive force. In every organization with a political dimension, substantial energies may be mobilized by declaring that the leaders must resemble the membership, share their circumstances, and be as close to them as possible, even if practical necessities impose a differentiation of roles. The power of the ideal of resemblance derives from its ability to effect a nearly perfect reconciliation between the division of labor and the democratic principle of equality.

There is an additional element of general import in the American debate. On this side of the Atlantic, it was realized early on that the superiority of the elected over their electors could usually be achieved, even in the absence of any legal requirements, through the mere operation of the elective method. It took almost another hundred years before Europeans came to see this property of elections, or at least to rely on it in order to ensure distinction in representatives. Admittedly, the protagonists of the American debate regarded the size of electoral districts as the main factor in the selection of prominent candidates. But the Anti-Federalists recognized that, even in smaller districts, voters would sponta-

neously choose persons whom they regarded in one way or another as superior to themselves. When the Federal Farmer, for example, called for a larger number of representatives, it was "in order to allow professional men, merchants, traders, farmers, mechanics etc., to bring a just proportion of *their best informed men* respectively into the legislature."⁸⁴

There was in Anti-Federalist thinking an unresolved tension between the ideal of likeness and an adherence to the elective principle (which the Federalists did not fail to exploit). In the ratification debate, however, the Anti-Federalist position was not simply inconsistent. For if the Anti-Federalists did accept a certain difference between representatives and their constituents, they were afraid that with vast electoral districts that difference would become too great; they feared that certain categories would be deprived of any representatives from their own ranks, and that in the end wealth would become the prevailing criterion of distinction. In any case, they realized that the elective principle would itself lead to the selection of what they called an "aristocracy." The Federalists undoubtedly shared that belief. The disagreement was a matter of degree: the two sides held different views on what was the proper distance between representatives and represented. Furthermore, they differed on the specific characteristics of the "aristocracy" that it was desirable to select. Reviving, without explicit reference, an ancient idea, both sides believed that election by itself carries an aristocratic effect.

⁸⁴ The Federal Farmer, Letter II, *Storing*, II, 8, 15; my emphasis.

A democratic aristocracy

During the nineteenth and early twentieth centuries, one trend dominated the development of representative institutions: the extension of the right to vote, which eventually culminated in universal suffrage. Another transformation also took place: wealth requirements for representatives disappeared. These two changes gave rise to the belief that representation was progressing toward popular government. Free election of representatives by all adult citizens came indeed to be almost completely identified with democracy. In this context, the hypothesis that elections might include an egalitarian and aristocratic dimension did not even seem worthy of theoretical inquiry. More broadly speaking, the movement toward universal suffrage, without legal constraints on the social origins of candidates, constituted such a manifest advance of political equality that the possible persistence of inequalitarian or aristocratic effects appeared simply irrelevant. It seems that the aristocratic nature of elections has prompted no conceptual investigation or political debate since the beginning of the nineteenth century.¹

The American debate of 1787 was thus the last occasion on which consideration was given to the possible presence of aristocratic features in systems based on free elections. That debate in fact marked both a turning-point and a certain advance in the understanding of what political theorists had long been saying. In the first

¹ One exception should be noted. Carl Schmitt is probably the only contemporary author in whom we find any consideration of the aristocratic nature of election. However, as we shall see, Schmitt attributes that characteristic to factors external to the elective procedure itself. His contribution, important though it is in some respects, sheds no light on the nature of election.

A democratic aristocracy

place, whereas philosophers from Aristotle to Rousseau had argued that election was aristocratic by comparison with lot, neither the Anti-Federalists nor the Federalists had selection by lot in mind. Both camps believed that elections select individuals who are in some way superior to those who elect them. It was in this phenomenon that they saw the aristocratic dimension of the elective method. Election appeared to them to be aristocratic not in relation to lot, but in and of itself.

Moreover, previous theorists merely argued in a general way that an elective system does not give everyone an equal chance of holding office. They did not specify whom the elective method of distribution would favor. In the American debate, by contrast, the beneficiaries of the elective system were identified. Admittedly, the nature of the superiority favored by the elective method was not defined in a clear and unequivocal manner. Election, protagonists argued, would benefit conspicuous or prominent citizens, those who practiced the most prestigious or influential professions, the most talented, or simply the wealthiest. However, the Americans departed from philosophical tradition in discerning, or seeking to discern, precisely which categories of the population would be privileged in electoral competition for office. And it was social standing and affluence that struck them as the attributes destined to play the principal role.

The American debate also spelled out what Guicciardini and Montesquieu, for example, had only hinted at, namely, that the type of aristocracy associated with election had nothing to do with any legally defined and hereditary nobility. If it is true that election favors the great, it is not the great of feudal society, but those who enjoy superior status in society, in whatever terms that superiority is defined.

Finally, the 1787 debate may have made a contribution to the theory of the aristocratic effects of election. By repeatedly emphasizing that electors would choose individuals who were more "conspicuous" or "prominent," that is, more salient and visible than others, and also those who enjoyed superior economic resources, the Anti-Federalists opened up new perspectives for an explanation of the aristocratic effects of the elective procedure.

If the age-old doctrine concerning the aristocratic nature of

election and the intuitions formulated during the American debate were true, neither the extension of the franchise nor the abolition of parliamentary qualifications would be capable of obliterating two phenomena. In governments based solely on election, not all citizens would have an equal chance of holding public office. And the position of representative would be reserved for persons regarded as superior or for members of higher social classes. Representative government might in certain respects become more popular and democratic. It would nevertheless retain an aristocratic dimension, in the sense that those elected would not be similar to those electing them, even if all citizens had the right to vote. Furthermore, not everyone would have an equal chance of exercising political power, even if no one was prevented by law from running for office. We must now turn to the question of whether election does in fact possess these inequalitarian and aristocratic characteristics.

THE ARISTOCRATIC CHARACTER OF ELECTION: A PURE THEORY

We shall ask here whether there are certain elements *intrinsic* to the elective method with inequalitarian implications and leading to the elected being in some way superior to the electors. This way of framing the question is in line with the tradition of political philosophy. Aristotle, Montesquieu, and Rousseau all stated that elections were intrinsically aristocratic. They did not think that the aristocratic effect derived from the circumstances and conditions in which the elective method was employed; they believed it resulted from the very nature of election.

Let us undertake, then, a pure theoretical analysis of the elective mechanism. The hypothesis of the aristocratic nature of election could doubtless be tested empirically. For instance, the composition of elected assemblies might be compared with the composition of the respective electorates to determine whether any pattern of superiority of representatives can be found. Such a test would require a vast amount of data to be truly significant and would run into a great many technical problems, but the result would not necessarily be convincing. Even if the data supported this hypothesis, the objection might be made that such inequality is in fact due

to the circumstances of the elections. And since the countries in which representative government has been in operation for a couple of centuries have always been marked by pervasive social inequalities, this objection would carry a lot of weight.

So we shall take another route. We shall attempt to deduce the inequalitarian and aristocratic effects from an abstract analysis of election. Ideally, the deduction would proceed in purely *a priori* terms in order to uncover what the act of electing logically entails. However, such a transcendental deduction of the properties of election is probably impossible. There may be no way to avoid making some assumptions based on experience, but they should be as few, simple, and uncontroversial as possible. The inequalitarian and aristocratic effects of election are to due to four factors, each of which shall be examined: the unequal treatment of candidates by voters, the distinction of candidates required by a situation of choice, the cognitive advantage conferred by salience, and the cost of disseminating information.

Unequal treatment of candidates by voters

To understand the inequalitarian character of election, we must first shift perspective. Elective governments are generally regarded as political systems in which citizens can choose the leaders they wish. Such a characterization is certainly correct, but it does not embrace every aspect of the situation; more precisely some of its implications are usually not seen.

Let us imagine a system in which not all citizens can govern at the same time, but all are equally entitled to elect those who do govern, and all are eligible for public office. In such a system, citizens are politically equal as choosers. This is the democratic side of the regime under consideration. But choosing is only one aspect of citizenship. Citizens may also desire to exercise public functions and, therefore, may also wish to be chosen. The possibility of holding office, which (as we have seen) pre-modern republicans valued above all, remains one of the components of citizenship. And in our imagined situation all citizens are at the same time choosers and potential choices. So it is also necessary to look at the way in which the system under consideration affects citizens in

their capacity as possible objects of choice, that is, as potential candidates.

If we look at our hypothetical situation from this angle, a different side of the system becomes visible. Running for office is not subject to any restriction, but the distribution procedure entails that candidates *may* be treated in an inequalitarian fashion. Of the candidates for public function, those who attain their goal are those individuals, identified by name, who are preferred over the rest. Positions are allocated not according to abstractly defined attributes or actions, in the light of which all are equal, but according to preferences held by the sovereign people for this or that particular individual. We generally think that equality before the law is assured if a rule attaches obtaining a benefit (or suffering a penalty) to the possession of qualities or the performance of actions defined in an abstract and anonymous way. But election considered as a way of distributing offices does not allocate public functions to anyone, whoever he or she happens to be, who presents feature X or performs action Y. When electing, voters are not required to use impartial standards to discriminate among candidates. They may decide to vote for whom-ever meets some general and abstract criteria (e.g. political orientation, competence, honesty), but they *may also* decide to elect someone just because they like this individual better than another. If the election is free, nothing can prevent voters from discriminating among candidates on the basis of individual characteristics. Free elections, then, cannot preclude partiality in the treatment of candidates. Indeed, the possible influence of partiality is the reverse side of the right of citizens to choose whomever they please as their representatives. Since it is the citizens who discriminate amongst themselves, no one notices that public-functions are being distributed in a discretionary, non-anonymous manner, one which unavoidably opens the door to partiality. In a secret vote, the citizen does not even have to give reasons for his or her preference. In this instant, the voter is sovereign, in the old and narrow sense of the word. He could rightly adopt the motto of absolutist rulers and say: "*Sic volo, sic jubeo, stat pro ratione voluntas*" ("Thus I wish, thus I ordain, my will takes the place of reason").

The use of election carries another, slightly different, implication for candidates. Contrary to what is suggested by the parallel often

drawn between election and sports competitions, the elective procedure is not necessarily meritocratic and does not strictly guarantee what is today conceptualized as equality of opportunity. This is not the place to enter into the complex philosophical discussions to which the concepts of meritocracy and equality of opportunity have given rise over the past twenty years. There seems, however, to be a consensus that a procedure is meritocratic and secures equality of opportunity if the inequalities it generates in distribution of a social good, are at least partly (some would say "wholly") the result of the actions and choices of those who desire that good.² A procedure is not described as meritocratic if the inequalities of distribution it leads to derive exclusively from innate inequalities. A beauty contest, for example, is surely not deemed meritocratic. On the other hand, an academic examination is meritocratic in that, even if the unequal performances of the candidates owe something to the genetic lottery of talent (not to mention inequalities in social background), they are also, at least in part, the result of the candidates' efforts, choices, and actions.

In this respect, it is instructive to compare the selection of rulers by election and their recruitment by competitive examination (which is how political authority was for a long time allocated in China). Alongside lot, election, heredity, and cooptation by those already in power, examination is another possible method of selecting rulers. Let us consider the examination system in its pure form, leaving aside all the external influences that usually vitiate it in practice. If rulers are recruited through competitive examination, candidates must meet standards that are formulated in an abstract and general way. Moreover, those standards are publicly announced in advance, and all candidates are aware of them. Candidates must then apply their energies and resources (some of the latter are of course a function of natural endowments) to meeting those standards, and they have to make a judgment as to what is the best way of reaching that goal. The unequal distribution of posts following an examination thus reflects, at least in part, the inequality of efforts, actions, and judgments of the candidates.

² For a good synthetic presentation of the concept of equality of opportunity in modern philosophy of justice, see W. Kymlicka, *Contemporary Political Philosophy. An Introduction* (Oxford: Oxford University Press, 1990), pp. 55 ff.

This is not necessarily so under an elective system. Here the standards are not defined in an abstract manner and announced in advance. Candidates may try to guess what the voters will require. But even supposing it were possible to reconstitute, on the basis of the votes, a general and abstract definition of the desired qualities, this is something that can only be known *ex post facto*. Furthermore, there is no guarantee that, when casting their votes, electors will take even partial account of the efforts, actions, and choices of the candidates. Nothing in the elective method requires that voters be fair to candidates. Nothing can *prevent* the electorate from preferring a candidate purely on grounds of skin color or good looks. Here again, we must note that voters may not use such foolish criteria. Moreover, they will perhaps learn to their detriment the inanity of such yardsticks. And since elections are repeated, they may, over time, adopt standards of judgment that are less irrational from the point of view of their interests. But there is nothing to prevent voters from deciding, at any given moment, purely on the basis of the candidates' natural endowments, to the neglect of their actions and choices. Again, this is the corollary of freedom of choice.

It might be objected that candidates need at the very least to make themselves known and that, in this respect, election rewards, the efforts and judgments made in the campaign. But that too is not strictly necessary. A person may already be known before any electoral campaigning, simply by virtue of his name or social standing, and voters may decide that these are reasons enough for preferring him to others.

In some respects, it is self-evident (though the fact is not without consequence) that elections do not ensure that all those who desire to hold office have an equal chance. It is perhaps less trivial to note that neither do they guarantee equality of opportunity among those aspiring to public functions.

The preceding argument establishes that election intrinsically opens the possibility of unequal treatment of candidates for public office, but it does not show why it tends to produce representatives who are thought to be in some way superior to those who elect them.

Distinction of candidates required by a situation of choice

To elect is to choose. Although elections have not always been organized as choices (we have seen, for example, that in England before the civil war, there was often only one candidate), and despite the fact that many authoritarian regimes organize untested elections, the element of choice is inherent in the concept of election in modern representative systems. In a situation of choice, voters need at least one motive for preferring one candidate over another. If candidates are indistinguishable, voters will be indifferent, and thus unable to choose in the sense of preferring one to another. To be chosen, therefore, a candidate must display at least one characteristic that is positively valued by his fellow-citizens and that the other candidates do not possess, or not to the same extent. Among the citizens aspiring to office the most capable of meeting that requirement are those who possess a quality that is both positively valued and rare, or indeed unique, in a given population: they are less likely, when all the potential candidates have decided whether to run or not, to be confronted with competitors offering the same or a superior electoral profile. A person whose quality, or combination of qualities, is widely shared among the population is likely to be faced with competitors possessing likewise that quality; he will then be indistinguishable from them. Such a person is also liable to be faced with opponents who possess, in addition to the trait he displays himself, another positively valued quality, in which case he will be defeated. Moreover, potential candidates, or the organizations that select and back candidates, are aware of this. Since running entails expenditures, at least of energy, the potential candidate, or the party selecting a candidate, have an incentive to assess what is likely to happen when he is confronted with actual opponents. Before deciding to come forward as a candidate, the person aspiring to office asks himself whether he possesses some feature that is positively valued by his fellow-citizens and is rare or unique in the population.

But a quality that is favorably judged in a given culture or environment and is not possessed by others constitutes a superiority: those who possess it are different from and superior to those who do not. Thus, an elective system leads to the self-selection and

selection of candidates who are deemed superior, on one dimension or another, to the rest of the population, and hence to voters. It is no accident that the terms "election" and "elite" have the same etymology and that in a number of languages the same adjective denotes a person of distinction and a person who has been chosen.

It must be noted that the distinction requirement inherent in an elective system is entirely structural: it derives from the situation of choice in which voters are placed, and not from their psychology and attitudes. Voters can certainly desire to elect someone who shares some characteristic with them, and often do so. One could think, then, that the candidate who has the best chances of being elected is the person who shares the same quality as most voters, and hence presents the most common quality in a given population. This is not so, however, because among the large number of those who possess a widespread quality, there is also a probably a significant number of potential candidates. Admittedly, not all those sharing a given quality are likely to aspire to office, but there is no reason to suppose that only one of them does. If voters base their decisions on similarity between the candidates and themselves, they will be unable to choose from among the number of persons sharing a widespread quality. The situation of choice constrains voters to elect candidates possessing uncommon (and positively valued) characteristics, regardless of their specific preferences.

It could be objected that voters might choose the candidate whom they find to be most like themselves on a given dimension or combination of dimensions. That is a distinguishing characteristic, but not, it would seem, one that implies any superiority. However, if voters choose the candidate most like themselves on a given dimension, the quality that they value is not that which is measured along that dimension, but closeness to themselves with regard to a given trait. If they choose, for example, the candidate whose competence is most like their own, the quality that they judge favorably is not competence, but the minimal distance between their own (self-esteemed) competence and that of the candidate. For such a standard to operate successfully as a criterion of selection, the statistical distribution of traits among the population must present a particular profile: there must be only a few, and preferably one, person whose position on a given dimension is closest to those of

the other members of the population. If that condition is not met, there will probably be many candidates among whom voters are indifferent. Thus, even in that case, voters are led to select a candidate who is superior to them in that he possesses a quality that they particularly value and that most of them do not possess: closeness to the others with respect to a given trait.

Of course, every individual possesses at least one trait that distinguishes him from everyone else.³ So it might be thought that anybody wishing to hold office could put himself forward in the hope that he might convince voters to judge favorably his distinguishing quality. However, potential candidates are aware that, ultimately, electoral choice is discretionary. So it is rational for the potential candidate to treat voters' values as given, to seek to discern rather than change them, and base their decision to run on what they discern.

It could also be argued that, because of the discretionary nature of electoral choice, potential candidates cannot predict what will be judged positively by the electorate. In this case, anyone aspiring to public office would present himself in the (well-grounded) certainty that he possesses one distinctive feature, but in total uncertainty as to how voters would judge that feature. But in fact, voters' values are strongly determined by the circumstances of society and culture. And these are objective phenomena of which potential candidates are aware. For instance, it is reasonable to believe that, in a society that is frequently at war, physical strength, strategic gifts, and military skills will all stand a good chance of being judged favorably by the electorate. Potential candidates therefore know that, in a given context or culture, this or that distinctive trait will be more likely to attract favorable judgment.

It must be noted that the distinction requirement sets no limits on the programs offered by the candidates and their policy positions, it affects only the selection of persons. The candidates can propose the programs they wish, whereas they are constrained by their personality traits. Any policy position may be preferred by most voters and, thus, be adopted by a candidate seeking to win. But not anyone adopting that position is equally likely to be elected. Election is

³ By virtue of the principle of indiscernibles first formulated by Leibniz: no two beings can be strictly identical in every respect.

indeed irreducibly (let it be stressed again) a choice of persons. Even if voters also compare what the candidates declare, the personalities of the contenders inevitably play a part. Moreover, programs and promises have a particular status in representative governments: they are not legally binding.⁴ By contrast, once persons are elected, it is they who decide on public policy.

Since election involves a choice, it also includes an internal mechanism that hinders the selection of citizens who resemble others. At the heart of the elective procedure, there is a force pulling in the opposite direction from the desire for similarity between rulers and ruled.

Advantages conferred by salience in attracting attention

Election consists in choosing known individuals. To be elected, a candidate needs to attract the attention of the electorate. Cognitive psychology shows, however, that attention primarily focuses on *salient* items or individuals. Moreover, it has been established that salient stimuli have an impact on evaluative perceptions: salient stimuli elicit strong evaluative judgments.⁵ If one applies these results to elections, it appears that in order to both attract attention and elicit strong positive judgments, candidates have to stand out by virtue of a positively valued characteristic. A non-salient candidate will pass unnoticed and have little chance of being elected. And a candidate that stands out on account of his uncommon negative characteristics will be rejected. Cognitive constraints produce an effect similar to that produced by the constraints of the situation of choice. In itself, election favors individuals who are salient (and therefore distinct or different) by virtue of an aspect that people

⁴ We shall return to this point in chapter 5.

⁵ The earliest studies of the effects of salience established that it influenced attributions of cause (people are more inclined to impute the cause of phenomenon X to phenomenon A, rather than to B, C, or D, if A is for whatever reason more prominent – better highlighted, better known, etc. – than B, C, or D). However, it has been shown subsequently that the effects of salience extend well beyond attributions of cause. See S. E. Taylor and S. T. Fiske, "Salience, attention, and attribution: top of the head phenomena," in L. Berkowitz (ed.), *Advances in Experimental Social Psychology*, Vol. II (New York: Academic Press, 1978); see also S. E. Taylor, J. Crocker, S. T. Fiske, M. Sprinzen, and J. D. Winkler, "The generalisation of salience effects," in *Journal of Personality and Social Psychology*, Vol. 37, 1979, pp. 257–368.

judge favorably – in other words, individuals deemed superior to others.

Salience does not, of course, result from universally determined traits. It is a contextual property. Considered universally, any trait may make a person salient. Salience depends on the environment in which a person lives and from which his or her image needs to stand out. Consequently, it is a function of the distribution of traits within the population of which the individual forms a part: an individual is salient in proportion as his particular traits are statistically rare in that population. Since such distribution varies according to time and place, the characteristics that bestow salience will also vary according to time and place. However, that does not mean that, in a given context, anyone may be salient. Salience is a relative, variable property, but in a specific situation it acts as a constraint on both voters and potential candidates.

Furthermore, in a specific situation (and if the distribution of traits in the population in question is therefore regarded as given), voters are not able meticulously to compare all the characteristics of each individual with those of each of the others. The quantity of information that they would need to process in order to reach such a result would be enormous, requiring vast expenditures of time and energy. Voters are unlikely to be willing to incur such costs, because they are aware of the infinitesimal weight their vote will carry in the end. So voters do not undertake a detailed comparison of all their fellow-citizens one by one. Instead, they operate on the basis of an overall perception, and their attention is drawn to those individuals whose image stands out from the rest.

Election campaigns undoubtedly have the effect of drawing the attention of voters to the distinguishing features of candidates they would not otherwise have noticed. And every individual wishing to be a candidate necessarily possesses at least one distinctive trait capable of being highlighted. Election campaigns were in fact instituted (among other reasons) to counteract the advantage that the elective procedure, considered in itself, confers on the particular form of eminence represented by notability. But they can never abolish that advantage entirely. Individuals who are salient in the course of their daily social relations are involved in a sort of permanent election campaign, whereas the spotlight is not directed

on the distinctive traits of the other candidates until the actual campaign opens.

Cost of disseminating information

Mention of election campaigns brings us to the last inequalitarian feature of the elective procedure. The deliberate dissemination of information about candidates does, to some extent, relax the constraints of prior eminence, particularly as enjoyed by the notables. But it is expensive, which means that it favors those able to mobilize greater resources. The candidates (or at least those among them who are not notables) *need to make themselves known*. And there is every reason to suppose that the cost of such an undertaking is not negligible.

If candidates have to finance their election campaigns out of their own pockets, the advantage of the affluent classes of society assumes its most obvious and most immediate form: it is reflected directly in the social composition of the elected assembly. But that advantage does not disappear even if candidates appeal for contributions to finance their campaigns. Organizations financed by their members' dues help mitigate the effects of wealth on the selection of representatives. And in fact, that was one of the explicit objectives of the creation of mass parties in the second half of the nineteenth century.

However, such organizations do not entirely do away with the advantage of wealth: it takes more effort, more organizing, and more activism to collect a given sum through the contributions of poor citizens, than through those of citizens who are better off. It is reasonable to suppose that the political contributions made by citizens (or firms) are more or less proportionate to their income. The number of such contributions may make up for their small amounts, but it is easier to collect a smaller number of substantial contributions. Candidates are therefore more inclined to appeal to the rich than to the poor in order to finance their electoral expenses. And it is reasonable to suppose that, once elected, a candidate will devote particular attention to the interests of those who contributed financially to his election.

Inherently, then, the elective procedure favors the wealthier strata

of the population. But unlike the first three inequalitarian features of election (possible unequal treatment of candidates, the dynamics of choice, and cognitive constraints), this one could be eliminated entirely by having campaigns publicly financed and electoral expenses strictly regulated. Experience seems to indicate that regulation of this sort runs into technical difficulties, but in principle it is not impossible.

It is nevertheless odd that representative governments should have waited until the final decades of the twentieth century before addressing this problem. This is probably (in part, at least) because voters themselves tend to underestimate the costs of electoral campaigns and are unwilling to allocate substantial public resources for such a purpose. Electing governments, however, is an expensive undertaking, even if the people are reluctant to admit the consequences of that fact. It is even more extraordinary that political theory has so neglected the question of electoral expenses. John Stuart Mill was one of the few exceptions, and his work was scarcely followed up on.⁶ With so much attention focused on the extension of the right of suffrage (or on the Marxist critique of the "formal" character of "bourgeois democracy"), political thought failed to look into the complex aspects of election – that seemingly straightforward institution.

Definition of elective aristocracy

We can see now how the dynamics of choice and cognitive constraints usually lead to the election of representatives perceived as superior to those who elect them. However, it is a particular concept of superiority that is employed here, and it needs to be carefully defined. First, when we say that a candidate must be deemed

⁶ Faced with the peculiar features of nineteenth-century British politics (outright bribery⁷ with candidates buying votes and paying for voters to travel – see chapter 3), Mill doubtless had every reason to be particularly alert to the phenomenon of electoral expenses. However, his thinking went beyond corruption and the peculiarities of the British system. He wrote, for example: "Not only should not the candidate be required, he should not be permitted to incur any but a limited and trifling expense for his election." *Considerations on Representative Government* [1861], in H. B. Acton (ed.), *Utilitarianism, Liberty, Representative Government* (London: Dent & Sons, 1972), p. 308. Mill also advocated public financing of electoral expenses.

superior in order to be elected, we are not talking about a global judgment on his personality. To elect a person, voters do not have to believe that person to be better in every respect; they may despise one or even most of his character traits. The foregoing arguments merely show that voters, if they are to elect a candidate, must regard him as superior in the light of the quality or set of qualities that they consider *politically relevant*.

Second, cognitive constraints and the constraints of choice relate only to a *perceived* superiority (the situation is different, of course, concerning wealth). Candidates must stand out, but that does not mean they have to be outstanding by rational or universal criteria. They must be perceived as superior according to the dominant values of the culture. Measured against rational, universal standards, the (culturally conditioned) perception of what characterizes the best may well be mistaken and inadequate. But this is beside the point. The claim here is not that elections tend to select the "true" *aristoi*. Elected representatives only need to be *perceived* as superior; that is to say, they have to display an attribute (or set of attributes) that on the one hand is valued positively in a given context, and that on the other hand the rest of the citizens do not possess, or not in the same degree.

Two consequences follow from this. In the first place, the elective principle does not guarantee that true *political* excellence gets selected (again, if "true" means what conforms to rational, universal standards). Elections operate on the basis of a culturally relative perception of what constitutes a good ruler. If citizens believe that oratorical skills, for example, offer a good criterion of political excellence, they will make their political choice on that basis. Clearly, there is no guarantee that a gift for public speaking is a good proxy for capability to govern. The recurrent nature of elections certainly introduces a measure of objectivity: voters may discover from experience that the criteria they employed at the previous election led to a government which turned out to be extremely bad or incompetent, and they can alter those criteria at the next election. Repetition makes elections a learning process in which voters can discover the objective political value of their criteria for selection. Nevertheless, the fact remains that on each occasion they choose what they perceive to be a relevant political

superiority, their current perception being also based on earlier experience.

Second, nothing in the nature of the elective method guarantees that it will result in the selection of elites in the general (as opposed to purely political) sense that Pareto gave to the term. Although Pareto's formulations are not wholly unambiguous on this point, his concept of elite seems to imply universal criteria. In his *Treatise of General Sociology*, the term "elite" denotes those who have the highest ranking in "capacity" in their sphere of activity.

Let us assume, then, that in every branch of human activity each individual is assigned an index which stands as a sign of his capacity, very much the way grades are given in examinations in the various subjects taught in schools ... To the man who has made his millions – honestly or dishonestly as the case may be – we will assign 10. To the man who has earned his thousands we will assign 6 ... Let us then form a class of those who have the highest indices in their branch of activity, and to that class give the name of elite.⁷

Pareto is very careful to strip his concept of elite of any moral dimension. He explains, for example, that a clever thief who is successful in what he undertakes will receive a high index and will consequently belong to an elite, whereas a petty thief who fails to elude the police will get a low ranking. Moral considerations aside, however, Pareto's elites are apparently defined by universal criteria. The ranking or grading that defines who belongs to an elite is made, in the passage quoted above, by the social scientist himself ("To the man who has made his millions ... we will assign 10. To the man who has earned his thousands we will assign 6"), who is by definition an outside observer. Therefore what defines an elite is not what a given society perceives as the embodiment of success or excellence in each field of activity, but what the social scientist views as such.⁸ If the term "elite" is taken in Pareto's sense, then, the

⁷ Vilfredo Pareto, *Traité de Sociologie Générale* [1916], ch. XI, §§ 2027–31, in *Oeuvres Complètes*, publiées sous la direction de G. Busino (Genève: Droz, 1968, 16 vols.), Vol. XII, pp. 1296–7. English translations: *Compendium of General Sociology*, ch. 8, ed. E. Abbott (Minneapolis: University of Minnesota Press, 1980), pp. 272–3, or *A Treatise on General Sociology*, trans. A. Bongiorno and A. Livingston, four volumes bound as two (New York: Dover Publications, 1935), Vol. II, pp. 1422–3.

⁸ The purely objective or universal character of what defines an elite is not entirely clear in the body of Pareto's writings. It appears to be deduced in the main from the definition given in the *Treatise on General Sociology*. In an earlier work,

constraints of cognition and choice mentioned above do not prove that the elective method inherently favors elites. Voters choose what they perceive as an instance of superiority, but in every sphere their culturally determined standards may be mistaken when compared with criteria of the type employed by Pareto. To return to the example of skill in public speaking, voters may not only be mistaken in thinking that such a characteristic indicates political talents; they may also consider someone a good public speaker who would not be so judged by the social scientist or by the expert in rhetoric. The crucial distinction in the arguments put forward here is not between moral value and success in activity, however immoral (in fact, there is every reason to believe that voters do bring moral criteria to bear); it is between perceived superiority and superiority defined by universal standards. The elective principle leads naturally to the selection of the former but not of the latter.

Finally, it should be pointed out that the attributes which, in a given context, produce the perception of superiority do in all likelihood have objective existence. Since the problem for voters is to find criteria that enable them to distinguish between the candidates, they most probably use easily *discernible* traits to make their choice. If the presence or absence of those traits were open to doubt, the traits would be useless in the process of selection, and they would not have been adopted in the first place. In other words, although voters may very well be mistaken in their belief that oratorical talents are a good proxy for political skills, and may also be mistaken in their conception of what a good orator is, they are unlikely to err in their perception that, with respect to public speaking, candidate X possesses some characteristic that others do not. This last element is of critical importance, because it means that, to get elected, candidates must *actually* possess some attribute that distinguishes them from their fellow-citizens. The superiority of

however, Pareto had defined elites as follows: "These classes represent an elite, an aristocracy (in the etymological sense of *aristos* = the best). So long as the social equilibrium is stable, the majority of the individuals composing these classes appear highly endowed with certain qualities - good or bad as may be - which guarantee power" V. Pareto, *Les Systèmes Socialistes* [1902-3], in *Œuvres Complètes*, Vol. V, p. 8. English translation: *Sociological Writings*, selected and introduced by S. E. Finer, trans. D. Mirfin (New York: Praeger, 1966), p. 131. If elites are defined by the qualities that "guarantee power" in a particular society, the objective or universal character of the definition disappears.

candidates (the positive evaluation of their distinguishing attributes) is merely perceived or subjective, but the difference between them has to be objective. In other words, election selects perceived superiorities and actual differences.

Given this particular definition of superiority, one may wonder whether it is still justified to speak of the "aristocratic" nature of election. The term is indeed conventional and might be replaced by any other ("elitist" for example), so long as we keep in mind the precise phenomenon that it denotes: the selection of representatives different from and perceived as superior to those who elect them. The adjective "aristocratic" is used here largely for historical reasons.

The arguments put forward above offer, at least in part, an explanation of the phenomenon that the Athenian democrats, Aristotle, Guicciardini, Harrington, Montesquieu, and Rousseau had in mind when they claimed that election was inherently aristocratic. The American Anti-Federalists also used the term "aristocratic" to denote the lack of similarity between electors and elected, which is another reason for retaining it. But the only essential point in the argument developed here is that, for reasons that can be discovered and understood, election cannot, by its very nature, result in the selection of representatives who resemble their constituents.

THE TWO FACES OF ELECTION: THE BENEFITS OF AMBIGUITY

However, just as elections undoubtedly have egalitarian and aristocratic aspects, so too are their egalitarian and democratic aspects undeniable, so long as all citizens have the right to vote and are all legally eligible for office. Under a system of universal suffrage, elections give each citizen an equal say in the choice of representatives. In this respect, the humblest and poorest carry the same weight as the wealthiest and most distinguished. More importantly, they all equally share the power of dismissing those who govern at the end of their term. No one can deny the existence of this double power of selection and rejection, and it is sheer sophistry to dismiss it as negligible. The fundamental fact about elections is that they are *simultaneously* and indissolubly egalitarian and inegalitarian, aristocratic and democratic. The aristocratic dimension de-

serves particular attention today because it tends to be forgotten or attributed to the wrong causes. This is why, in what precedes, the emphasis has been placed on that aspect. But this by no means implies that the egalitarian or democratic side of election is any less important or real than its inegalitarian and aristocratic side. We spontaneously tend to look for the ultimate truth of a political phenomenon in a single trait or property. However, there is no reason to suppose that an institution presents only one decisive property. On the contrary, most political institutions simultaneously generate a number of effects, often very different from one another. Such is the case with election. Like Janus, election has two faces.

Among modern political theorists, Carl Schmitt seems to be the only author who notes the dual nature of election. Schmitt writes:

In comparison with lot, designation by election is an aristocratic method, as Plato and Aristotle rightly say. But in comparison with appointment by a higher authority or indeed with hereditary succession, this method may appear democratic. In election both potentialities lie [in der Wahl liegen beide Möglichkeiten]; it can have the aristocratic sense of elevating the superior and the leader or the democratic sense of appointing an agent, proxy, or servant; compared to the elected, the electors can appear either as subordinates or as superiors; election can serve the principle of representation as well as the principle of identity . . . One must discern which sense is given to election in the concrete situation [in der Wirklichkeit]. If election is to form the basis of true representation, it is the instrument of an aristocratic principle; if it merely signifies the selection of a dependent delegate [eines abhängigen Beauftragten], it may be regarded as a specifically democratic method.⁹

This passage can only be understood in the light of Schmitt's distinction between identity and representation, the two principles which can form the political content of a constitution ("election can serve the principle of representation as well as that of identity"). Schmitt describes these principles as two opposite conceptual poles between which every actual constitution falls. Any constitution, Schmitt argues, presupposes a certain conception of the unity of the people. To be considered capable of agency, a people must be seen as unified in one way or another. Identity and representation are the two extreme conceptions of what may make a people a unified agent.

⁹ C. Schmitt, *Verfassungslehre*, § 19 (Munich: Duncker & Humblot, 1928), p. 257.

The principle of identity rests on the notion that the people "may be capable of acting politically by the mere fact of its immediate existence – by virtue of a powerful and conscious similarity [*Gleichartigkeit*], as a result of clear natural boundaries, or for some other reason. It is then politically unified and has real power by virtue of its direct identity with itself."¹⁰ When a group of individuals has a strong sense of being similar in a way that is particularly important, that group thereby becomes a community capable of political action. Their unity is spontaneous; it is not imposed upon them from outside. In such a case, since the members of the community perceive themselves as being fundamentally similar, they set up institutions that treat all members in a similar fashion. Above all, though, because they see one another as sharing essentially the same nature, they tend to abolish, as far as possible, any difference between rulers and ruled. In this sense, according to Schmitt, the principle of identity forms the basis for democracy, and it has found its most profound expression in Rousseau. "Democracy," Schmitt writes, "is the identity of the dominant and the dominated [*Herrscher und Beherrschten*], the ruler and the ruled, of those who command and those who obey."¹¹ In its purest form, democracy is not compatible with representation. However, democracy does not necessarily exclude a functional differentiation between rulers and ruled. What it does exclude is:

that within the democratic state the distinction between dominating and being dominated, ruling and being ruled, is based upon, or gives rise to, a qualitative difference. In democracy, domination and government cannot be based on inequality, and hence not on any superiority of those who dominate or govern, nor on the fact that the rulers are in some way qualitatively better than the ruled.¹²

Rulers may hold a particular role or position different from that occupied by the ruled, but that position can never be the reflection of their superior nature. If they are authorized to rule, it is only because they express the will of the people and have received a mandate from them.

"The opposite principle [that of representation] stems from the idea that the political unity of the people as such can never be

¹⁰ Schmitt, *Verfassungslehre*, § 16, p. 205.

¹¹ *Ibid.*, § 17, p. 235.

¹² *Ibid.*