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TILLER

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A paper prepared for the SPHEX Club meeting November 2, 2000

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As we near the conclusion of yet another presidential campaign, full of many promises - promises which many doubt can or will be kept, it is intriguing to look back at another campaign and a promise made and kept. I refer to one in the first set of elections after adoption of the U S. Constitution - the 1789 election of a representative from the fifth congressional district of Virginia. I will retell this story, which may already be familiar to you, and will attempt to add a few details that may not be as familiar. As you hear this retelling so near another federal election, I invite you to reflect on how things have changed or have stayed the same and to compare election practices of that era with those of today.

The context of the times is familiar to all; however, because it may not be fresh in mind, I will begin with a brief summary of events leading up to first federal elections.

George Washington and several other leading citizens had become worried that under the ineffective Confederation government the young nation's reputation among other nations was being sullied, that commerce was being thwarted, and that disarray, if not anarchy, suggested by Shays's Rebellion in Massachusetts, was advancing. A convention was called to recommend

remedies for the perceived defects in government under the Articles of Confederation. Just four days after a quorum was achieved in the 1787 Constitutional Convention, Governor Edmund Randolph of Virginia offered fifteen resolutions which established the agenda and shaped debate throughout the remainder of the Convention. Although Randolph presented the resolutions, James Madison is credited with creating them. Instead of mere revisions, the convention built on these resolutions to propose a new form of government, with the proposal to be voted upon by a special convention in each state.

Just before the close of the four-month-long constitutional convention, inclusion of a bill of rights was proposed by George Mason of Virginia and supported by Elbridge Gerry of Massachusetts. Although some rights were guaranteed in the Constitution- for example the privilege of the writ of habeas corpus in Section 9 of Article I, there had been no previous call in the convention for inclusion of a specific bill of rights. This late proposal was dismissed without much consideration, but not without substantial consequence. More about that later.

The constitutional convention concluded its work on September 17, 1787 and forwarded the proposed constitution to the Confederation Congress. That Congress sent the proposed constitution on to the states for consideration in states' ratifying conventions. For almost a year the merits and deficits of the new constitution were debated in the ratifying conventions, in newspapers, in special advocacy pamphlets and papers, such as The Federalist Papers, and in private correspondence. Those who supported adoption of the new Constitution were dubbed Federalists and those who opposed adoption were named Antifederalists - name reversals of what they actually stood for. Finally, following ratification by nine states, the requisite minimum

number , the Confederation Congress on July 2, 1788, declared the Constitution in effect. As an aside, I'll mention that when constitutional issues are raised in our time there is much interest in knowing what the original intent of the founders was. There is evidence in both his private correspondence and his public writings of James Madison's opinion about that. We can talk about his view on this in the discussion period if that is of interest. (I believe he thought that a futile exercise because the Constitution had to be dynamic to serve a changing country. He thought that relying on remarks in the Convention itself an unsatisfactory way to determine intent because frequently delegates were just trying out ideas when they spoke there. Madison believed the best way to determine intent was to look to the ratifying conventions because they authorized the new Constitution, giving it acceptance and power from the people. He did not rely on the Federalist Papers; some of his correspondence reveals that he didn't even keep a copy of The Federalist Papers at hand.)

It then took two and a half months for the Confederation Congress to debate and decide where the new government should meet for the first time and to set the dates for the election of presidential electors, for the electors to vote for the President, and for the new government to meet.

On January 7, 1789, presidential electors were selected and they in turn, on February 2, elected George Washington as president. The way this election was conducted illustrates the point that although a new constitution had been ratified, the institutions and practices of government were yet to be created. "The states made various provisions for the election of

presidential Electors. Four states had popular elections; two had a combination of popular nominations and legislative elections; three provided for election by the legislatures; and in New Jersey the Governor and Council chose the Electors. New York, because of the quarrel between the House and the Senate, did not take part in the election of the President, nor did North Carolina and Rhode Island, because they had not yet ratified the Constitution (Doc. I, xi).” Because George Washington’s election was assumed, much of the political maneuvering concerned the Vice Presidency, about which little guidance had been provided (Doc. I, xi)”.

In Virginia, “(f)ollowing their narrow victory in the state Convention in June 1788, Federalists braced themselves for Patrick Henry’s renewed assault on the Constitution in the fall session of the legislature.there was increasing speculation about what role Henry would play and what form the attack on the Constitution would take. He could, all agreed, virtually dictate the choice of the state’s two Senators. Federalists also feared that he would demand a second convention, and they were not sure how far he would go, in drafting measures to elect Representatives and presidential Electors, to ensure Antifederalist victories in the first federal elections.” (Doc. VIII, 257).” On the other hand, Federalists were determined to get James Madison elected to either the Senate or House of Representatives.

What importance was given the first federal election?

In July 1788, the summer before the election, the Winchester Centinel proclaimed: “The present crisis is the most important that will probably ever happen in this country. Tho’ the

Federal Constitution has been approved ..., yet much work remains to be done before it is put in motion. The election of a President, and Delegates from each state to form the first Congress, are matters of the utmost importance.... On the choice of these persons depends our future well-being and prosperity.”

How did James Madison, considered to be the father of the Constitution, and a person who had authored many of The Federalist Papers, accomplishments for which we assign great stature to him today, get into a position in which it was doubtful that he could be elected to serve in the first Congress?

The answer goes back to the fight between Federalists and Antifederalists and to the fact that even though the Constitution had been ratified, the fight over it was far from over. Antifederalists had many complaints about the document and they still sought remedies to address them. Some hoped to derail implementation of the Constitution altogether, many were dissatisfied about the diminution of the importance or predominance of states in relation to the new national government, many sought addition of statements of rights of individual citizens and had wanted them added before the Constitution was ratified and still wanted them before implementation, some worked for the calling of a second constitutional convention to address such concerns. While the Antifederalists spoke with many voices, on the rights issue many agreed, resulting in strong support from several states for amendments. Federalists, who spoke with a more unified voice, wanted to avoid a second constitutional convention, not knowing, but fearing where it might lead. So even those Federalists who favored adding rights wanted that

after ratification and without a second convention. Each side wanted the election of Senators and Representatives friendly to its positions.

Antifederalist Patrick Henry, who, as Jim Elson eloquently reported in his paper last spring, had declined to attend the Constitutional Convention because “He smelt a rat.”, was in Virginia and was the acknowledged power in the state legislature. Federalist James Madison, on the other hand, was absent from the state serving in the Confederation Congress, which was still the national government until the new government could be implemented. Obviously, Henry did not favor Madison’s election.

What was the nature of the electorate in the fifth district?

I don’t have population figures for 1789 for the fifth district but the census figures for 1790 are available for the counties it comprises:

	<u>Slaves</u>	<u>Total Inhabitants</u>
Amherst	5,296	13,703
Albemarle	5,579	12,585
Orange	4,421	9,921
Culpeper	8,226	22,105
Spotsylvania	5,933	11,252
Louisa	4,573	8,467
Fluvanna	1,466	3,921

Goochland	4,656	9,053
	———	———
Totals	40,150	91,007

In the 1780's suffrage in Virginia was still very restricted: it was limited to male freeholders, over age twenty-one, owning at least twenty-five acres with a house, fifty acres with no building, or a house and lot in town. This meant that the only eligible voters were the one quarter of white males who were landholders. We shall see later what the actual vote in the election under consideration was.

What were the prospects for James Madison being elected to serve in the new Congress?

Letters written in the fall and early winter of 1788-89 to, from, and about Madison reveal just how much concern there was about his chances for election.

Edward Carrington wrote to Madison about the composition of his district: “Your district is composed of the counties of (Counties named) - we wished to get Fauquier but the powers of the Anti’s were too strong for us. [Y]our friends wish you to come into this district at an early period (Doc.II, 318).”

Continuing the theme that the fifth district was intentionally stacked against Madison, Burgess Ball reported to him: “The counties annexed to [Orange] are arranged so as to render your Election, I fear, extremely doubtful, the greater being Antifederal ...Colo. Monroe ... has declared himself for the District (Doc. II, 323).”

George Washington wrote pessimistically to David Street: “Sorry indeed I should be, if Mr. Madison meets the same fate in the district of which Orange composes as he has done in the

Assembly - and to me it seems not improbable (Doc.II, 315-16).”

Charles Lee wrote to G. W. : “I am told Mr. Henry has publicly said that no person who wishes the Constitution amended should vote for Mr. Madison (Doc.,II, 269).”

Even before the selection of Senators, Madison, in a letter to Edmund Randolph, sized up his chances of serving in either the Senate or the House as follows: “I am [not] the least unaware of the probability that whatever my inclinations or those of my friends may be, they are likely to be of little avail in the present case. I take it for certain that a clear majority of the Assembly are enemies of the Gov’t. and I have no reason to suppose that I can be less obnoxious than others on the opposite side. An election into the Senate [cannot be expected and concerning election to the House] there must be great uncertainty, if not improbability of my election (Doc.II, 270).”

Just one month before the election George Nicholas worried to Madison about the election, offering assessments concerning the vote in several counties in the District: Amherst - 3/4 against, Albemarle - a majority for, Louisa - a small majority for, Fluvanna - at best divided, Goochland - a majority against. We see from this report - and there were others like it - that even though there were no polling organizations at that time, the ancient tradition of nose counting was alive and well.

The Reluctant Campaigner

Madison wrote to Carrington: “... I am now pressed by some of my friends to repair to Virginia ... for counteracting the machinations agst. My election into the House of Representatives. To this I am extremely disinclined It will have an electioneering appearance which I always despised and wish to shun (Doc. II, 320).” And to George Washington he wrote: “...I have an

extreme distaste to steps having an electioneering appearance (Doc. II, 320).”

After vacillating for weeks about whether to return to Virginia, James Madison wrote to Thomas Jefferson on December 8, 1788 summarizing the situation and telling his decision: “I shall leave this place [Philadelphia] in a day or two for Virga. Where my friends who wish me to cooperate in putting our political machine into activity ... press me to attend. They made me a candidate for the Senate, for which I had not allotted my pretensions. The attempt was defeated by Mr. Henry who is omnipotent in the present legislature and who added ... a public philippic agst. My federal principles. He has taken equal pains in forming the Counties into districts for the election of Reps. to associate with Orange such as are most devoted to his politics, and most likely to be to be swayed by the prejudices ... against me (Doc. II, 324).” It seems clear that if the term Gerrymandering had been coined by then, Madison and his friends would have used it to describe the congressional districting.

Although the candidates were Madison and Monroe, two future presidents, the larger bodies of partisans were Federalists and Antifederalists and the burning issue was about the new constitution and who favored amending it. For example an appeal was circulated in Amherst County soliciting support for Monroe: “I hope you will consider the necessity of uniting in favor of a Gentleman who has been uniformly in favor of Amendments [-] I mean James Monroe , Esq. (Doc. II, 329).”

By January 1789, with the February election drawing near, to counter charges from Henry and others that he was absolutely opposed to any change in the Constitution, Madison sent letters to

several influential citizens in the District. The following portion of his letter to George Eve, a Baptist minister in Orange County, is characteristic of those letters: "... having been induced to offer my services ..., considerations ... make it proper that ... my principles and views should be rightly understood.

I freely own that I have never seen in the Constitution as it now stands those serious dangers which have alarmed many respectable Citizens. Accordingly, whilst it remained unratified, and it was necessary to unite the States in some one plan, I opposed all ... alterations [previous to ratification] as calculated to to throw the States into dangerous contentions, and to furnish the ... enemies of the Union with an opportunity of promoting dissolution. Circumstances are now changed: The Constitution is established ... and amendments will not only be safe, but may serve the double purpose of satisfying the minds of well meaning opponents, and of providing additional guards in favour of liberty. Under this change of circumstances , it is my sincere opinion that the Constitution ought to be revised, and that the first Congress meeting under it, ought to prepare and recommend to the States for ratification, ... provisions for all essential rights, particularly the rights of Conscience ..., the freedom of the press, trials by jury, security against general warrants, [etc.] (Doc. II, 330-331)."

The Outcome of the Vote

The actual vote was 1308 for Madison; 972 for Monroe, a total of 2,280. Remember that the total number of inhabitants in the District was approximately 90,000. The vote by counties follows:

	<u>Madison</u>	<u>Monroe</u>
Amherst	145	246

Albemarle	174	105
Orange	216	9
Culpeper	256	103
Spotsylvania	115	189
Louisa	228	124
Fluvanna	42	63
Goochland	<u>132</u>	<u>133</u>
Totals	1,308	972

Voting practices of the time were significantly different from ours; one researcher has described it this way: “When a poll was taken ... the voters presented themselves one by one before the table where the election officials sat As each freeholder came before the sheriff, his name was called out in a loud voice, and the sheriff inquired how he would vote. The freeholder replied by giving the name of his preference.” This practice magnified the power of personal influence as voters were reluctant to vote contrary to powerful men in their county.

But what about the promise?

So James Madison had promised support for amendments to the Constitution, but was it a campaign promise made to be kept, or to broken? The opinion of George Mason was clearly stated in a letter to his son, John, in the summer following the election: “You are mistaken in your suggestion that the publication you saw of Mr. Madison’s was a certain indication of proper Amendmendments to the Government being obtained. It was natural enough to think so -- But the fact was, Mr. Madison knew that he could not be elected without making some such promises; by them he carried the election; and in order to appear as good as his word, he has

made some motions in Congress to carry on the farce, -- [and he] is now the ostensible patron of amendments ... but of important and substantial amendments I have not the least hope (Doc. II, 348).”

With the clear advantage of hindsight, we know otherwise. When the new Congress convened, Madison announced his intention of introducing amendments, he did so shortly thereafter, and he vigorously pursued passage of what we know as the Bill of Rights, and what many consider to be the second Constitution. Whether or not he would he have done so without the pressure of the Antifederalists and the campaign for election, once he made the commitment he carried it forward to a successful outcome. Approximately two hundred amendments had been proposed by the states; a much smaller number received serious consideration by the Congress. When Madison drafted a bill of rights, he used George Mason’s Declaration of Rights - part of the Virginia Constitution - as a model. Eventually Congress sent out twelve amendments to be considered by the states. As we all recognize the states ratified the ten amendments we know as the Bill of Rights and they went into effect December 15, 1791. Two proposed amendments were not ratified at that time, but one of them, requiring a layover of laws varying compensation for Senators or Representatives, was ratified more than two-hundred years later in 1992 as the Twenty-Seventh Amendment, with Michigan providing the final needed vote. Ironically, something that James Madison personally was very interested in - application of the Bill of Rights to state governments - was not adopted. That was to come much later via Supreme Court interpretations and rulings concerning the reach of the due process and equal protection clauses in Section 1 of the Fourteenth Amendment.

After election commentary

Can you imagine the commentary on these events if today's media had been in existence in that era? You will be spared all that; instead, I will close by providing a brief comment from each candidate and one of my own.

James Monroe wrote to Thomas Jefferson: "... a competition took place between Mr. Madison and myself. He prevailed by a majority of about 300. It would have given me concern to have excluded him, but ... pressed to come forward ... I yielded. As I had no private object to gratify so a failure has given me no private concern (Doc. II, 347)."

Grigsby's research notes reflect on a very civil and responsible campaign, reporting a claim that Madison and Monroe "travelled together and slept in the same room - and discussed their subjects freely and without remorse." As you know, in later years Monroe served in, and even headed, Madison's Cabinet.

In a statement which has the tone buyer's remorse, Madison wrote to Edmund Randolph: "I am persuaded ... that my appearance in the district was more necessary to my election than you then calculated ... my absence would have left room for the calumnies of antifederal partizans.... ... In Culpeper which was the critical County, a continued attention was necessary to repel the multiplied falsehoods which circulated - whether I ought to be satisfied or displeased with my success, I shall hereafter be better able to judge. My present anticipations are not flattering. I see on the lists of Representatives a very scanty proportion who will share in the drudgery of business. And I foresee contentions first between federal and antifederal parties, and then between Northern and Southern parties, which give additional disagreeableness to the prospect (Doc. II, 347-348)."

The first federal elections were not without elements we recognize in elections today: rumor, innuendo, unsupported allegations and attributions, highly partisan actions by supporters of candidates and fights over districting, for example. Nevertheless, it appears that in the Fifth Congressional District of Virginia the candidates themselves, both future presidents, were more than civil with each other and explained their positions directly and honestly to the voters, few as they were. (It is interesting that Monroe was selected the following year to fill a vacancy in the Senate and later served for years in Madison's Cabinet.

We would be most fortunate today to have the most capable persons in a district available for office and willing to conduct themselves so honorably.

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