

10-1-1968

## An analysis and evaluation of the American electoral college

Norma N. Williams  
*Portland State University*

Let us know how access to this document benefits you.

Follow this and additional works at: [http://pdxscholar.library.pdx.edu/open\\_access\\_etds](http://pdxscholar.library.pdx.edu/open_access_etds)

---

### Recommended Citation

Williams, Norma N., "An analysis and evaluation of the American electoral college" (1968). *Dissertations and Theses*. Paper 583.

[10.15760/etd.583](https://pdxscholar.library.pdx.edu/etd/583)

This Thesis is brought to you for free and open access. It has been accepted for inclusion in Dissertations and Theses by an authorized administrator of PDXScholar. For more information, please contact [pdxscholar@pdx.edu](mailto:pdxscholar@pdx.edu).

AN ABSTRACT OF THE THESIS OF  
Norma N. Williams for the Master of Science in Teaching  
degree in General Social Science.

Date thesis presented: October 31, 1968.

Title: An Analysis and Evaluation of the American  
Electoral College.

APPROVED BY MEMBERS OF THE THESIS COMMITTEE:

  
Dr. David A. Smeltzer, Advisor

  
Dr. Howard E. Dean

  
Dr. Charles M. White

  
Dr. Ralph A. Smith

The Constitutional Convention of 1787 was greatly divided over the question of how to select the new nation's chief executive. The method finally adopted was a compromise between direct election and election by the national legislature and provided that individual states, as they saw fit, choose electors equal to the total number of Senators and Representatives. From the beginning, most

of the delegates considered the proposal awkward and irrational almost to the point of absurdity, but as they argued about it, they became convinced that it was then the only plan which could overcome the objections raised by other methods.

The Convention had barely adjourned, however, when dissatisfaction over election of the President arose once again. Reform efforts began in the earliest Congresses. In the past one hundred and eighty years, more than 1000 amendments--perhaps more than on any other subject--have been introduced. These may be divided into two distinct classifications--direct and indirect methods of election.

From the district system proposed in the early 19th century to the proportional system advanced most prominently after World War II, each of the direct proposals has had its day and has been found wanting. It has become clear that other indirect methods of election would merely turn in some old problems for some new ones.

The present system, however, is in serious need of reform. Its dangers are well documented. Failure of electors to vote in accordance with the desires of the voters and the present allocation of electoral votes makes it possible that under the present system a President can be elected who is not the choice of a majority of the citizenry. Furthermore, the present system provides for an election in the House of Representatives if

no candidate receives the necessary 270 electoral votes. In a House election, each state casts one vote regardless of population. In view of these factors, the electoral college is an undemocratic institution, an historic remnant of a nation vastly different from the United States in the twentieth century.

Through this nation's years of development, the ideal of popular choice has become the most deeply ingrained of our governmental principles. Through our national experience we have learned that there is no safer or better way to elect our public officials. No matter how wisely or foolishly the American people choose their President, he is still their President. The electoral college should therefore be amended to insure that the chief executive is the voice of all 200 million Americans in practice as well as in theory.

Only one type of proposed reform can claim to give the people this voice without creating other problems in the election of the President. It is the direct popular vote proposal under which each citizen's vote, regardless of where it is cast, would count equally with all other votes. The candidate receiving a majority or plurality, as decided by Congress, would be the new President. A run-off election would replace election by the House of Representatives if no candidate received the specified number of votes.



No one, of course, can guarantee that direct election would never involve risks in the election of the President, but if one's premise is based upon an overriding consideration of democracy, the risk seems worth taking.

**AN ANALYSIS AND EVALUATION OF THE AMERICAN ELECTORAL COLLEGE**

**by**

**NORMA N. WILLIAMS**

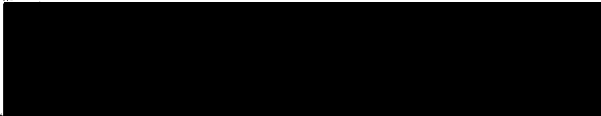
**A thesis  
Submitted to  
Portland State College**

**In partial fulfillment of requirements  
For the Degree of  
Master of Science in Teaching**

**October, 1968**

**PORTLAND STATE COLLEGE  
LIBRARY**

APPROVED:

  
Dr. David A. Smeltzer, Associate Professor  
of Political Science, Thesis Advisor

  
Dr. Howard E. Dean, Head, Department of  
Political Science

  
Dr. Charles M. White, Professor of History,  
Division of Social Science

  
Dr. Ralph A. Smith, Associate Professor of  
Education

  
Dr. Frederick J. Cox, Dean of Graduate  
Studies

Date thesis presented: October 31, 1968

Typed by: Norma N. Williams

## TABLE OF CONTENTS

CHAPTER		PAGE
I	INTRODUCTION.....	1
II	THE CONSTITUTIONAL CONVENTION OF 1787.....	9
III	THE TWELFTH AMENDMENT OF 1804.....	20
IV	PROPOSALS FOR CHANGE.....	24
	The Direct Popular Vote.....	24
	The Automatic System.....	45
	The District Method.....	49
	The Proportional Plan.....	61
V	HYPOTHETICAL RESULTS OF PAST ELECTIONS....	74
VI	CONCLUSION.....	80
	NOTES.....	92
	BIBLIOGRAPHY.....	108

LIST OF TABLES

<u>TABLE</u>		<u>PAGE</u>
I	POLL OF 766 POLITICAL SCIENTISTS ON ELECTORAL COLLEGE REFORM.....	6
II	PRESIDENTS ELECTED WITH FEWER POPULAR VOTES THAN THEIR OPPONENTS.....	29
III	1960 ELECTION RESULTS AND HYPOTHETICAL RESULTS OF VARIOUS REFORM PROPOSALS.....	76
IV	COMPARATIVE ELECTORAL VOTES: CURRENT AND PROPOSED DISTRICT SYSTEM.....	78
V	COMPARATIVE ELECTORAL VOTES: CURRENT AND PROPOSED PROPORTIONAL PLAN...	79

## CHAPTER I

### INTRODUCTION

The delegates to the Constitutional Convention in 1787 had barely returned to their homes when dissatisfaction began to be voiced regarding the method of electing the President and Vice-President of the United States. The passing years have aggravated the defects and anomalies of the electoral system. The election of at least three "minority" Presidents ("minority" in the sense that they received less than half of the nation's popular votes), the concern over power advantages of large and small states in presidential elections, the feeling that bargaining power of splinter parties and pressure groups is inflated, the chance of possible fraud in key states, and the possibility of an election thrown into the House of Representatives, have been only some of the reasons for attempting to institute reform. The closeness of the 1960 election particularly served to increase awareness of the subject and to produce a whole new series of questions. The main question seems to be whether as a professed democratic nation we can afford to retain this particular institution. Could we today afford the repercussions--nationally and inter-

nationally--of electing a President who was not the choice of the people? And has the nation perhaps outgrown its original method of electing its highest officials? In 1787 ours was a nation of less than four million, 3.2 million of whom were white adults and therefore eligible voters.<sup>1</sup> We were then a rural economy; now we are an industrial one. We were then a land of open spaces, but today a nation of surging metropolises. Our once stationary populace has moved on to "peripatetic pursuits";<sup>2</sup> we are a nation on wheels and enjoy universal suffrage. When the constitution was drafted, education was haphazard at best; today we have free public education, and illiteracy has been practically stamped out. The distinct aristocracy in education and wealth from which our founders sprang has been replaced by a dominant middle class. Technology, particularly in the fields of transportation and communication, has altered the nation beyond even the wildest imaginations of those delegates present in Philadelphia in 1787.

The magnitude of controversy surrounding the electoral college may perhaps best be illustrated by the fact that over one thousand amendments on the subject have been proposed in the past ninety Congresses.<sup>3</sup> The electoral college may indeed be described as a unique institution. As one author describes, the "college" consists of 538 members (the same representation as both

houses of Congress, plus three electors from the District of Columbia;) it has no specific location and no permanent existence as a continuous body; and it has never assembled as a whole.<sup>4</sup> Surveys indicate that it is the least understood and the most misunderstood of our political institutions.<sup>5</sup>

Like the British monarch, who reigns but does not rule, the electoral college votes but does not decide—to the perplexity of each generation of students of American Government.<sup>6</sup>

The author of the above passage, Robert G. Dixon, asserts in the Western Political Quarterly that a more cumbersome procedure could hardly be imagined or consciously designed for electing the President and Vice-President of the United States.<sup>7</sup> He continues:

. . . the electoral process has been amended into meaningless anachronism and preserved by the inertia surrounding all things Constitutional—one more instance of Burke's observation that Constitutions are not made, but grow.<sup>8</sup>

The American Bar Association, one organization attempting to effect change, has condemned the electoral college as "archaic, undemocratic, complex, indirect, and dangerous."<sup>9</sup>

Other writers on the subject have been even less kind. The Washington Post has acknowledged the electoral college as "a crude and bumbling mechanism in modern politics" whose electors are tolerated only because they are "puppets or dummies" who merely record the wishes of



their parties at the polls.<sup>10</sup> The November, 1967, issue of Reader's Digest warned its millions of readers that the present "winner-take-all" practice of the electoral college is "totalitarian"--the "taproot from which many political evils grow."<sup>11</sup> The New Republic has labeled the electoral college a "humpty-dumpty" institution, "designed for a totally different age."<sup>12</sup> The New York Times, a frequent commentator on the subject, has called the electoral college "silly" and "dangerous". The Times has also referred to "two unnoticed sticks of dynamite lying around in the U.S. Constitution."<sup>13</sup> (By this they mean the required 270 vote electoral majority required for election and what they consider the inequality of an election in the House of Representatives.) A Times editorial once labeled electoral votes as "entrance tickets" to the House of Representatives "madhouse".<sup>14</sup> When the editorial appeared in July of 1967, its author was fearful of the necessity of a House vote to decide the outcome of the 1968 presidential election. He incorrectly foresaw a Johnson-Humphrey/Rockefeller-Reagan contest in which neither would receive the necessary 270 electoral majority. He further predicted that third party candidates Wallace and Thurmond might carry as many as six states and capture 53 electoral votes,<sup>15</sup> and he feared that the major candidates might then be forced to make sizeable concessions to the third party in exchange

for valuable electoral votes. Also, he pointed out that there would be no guarantee that a House election would represent the will of the people and that under present provisions where the Senate would choose the Vice-President, it might be possible to elect a President and a Vice-President from differing political parties.

Reform of the electoral college has been the topic of numerous public opinion polls. In the fall of 1948, the American Institute of Public Opinion reported that 58 per cent of the American people polled favored changing the method of electing the President so that each candidate would receive the same proportion of the electoral votes of each state that he received in the popular vote. Fifteen per cent of those polled favored maintaining the present system, while 27 per cent expressed no opinion.<sup>16</sup>

In 1960, a Gallup Poll showed that 57 per cent of the people polled favored the Lodge-Gossett proportional vote amendment while 22 per cent opposed it.<sup>17</sup> In April of 1960, Gallup reported that 50 per cent of the people polled favored a change, 28 per cent opposed, and 22 per cent expressed no opinion.<sup>18</sup> A poll taken among 766 political scientists by the Senate Subcommittee on Constitutional Amendments pursuant to its 1961 hearings in the 87th Congress received 254 answers which are revealed in Table I on the following page.

TABLE I  
 POLL OF 766 POLITICAL SCIENTISTS  
 ON ELECTORAL COLLEGE REFORM

	<u>Per cent in favor</u>	<u>Per cent opposed</u>
Changing the method of electing the President	90.6	9.4
Abolishing electors	71.7	24.4
Retaining present electoral strengths of the states	60.7	33.4
Direct national election	34.2	63.0
Proportional system	46.9	48.8
District system	16.2	78.3
Changing system of contingent election by the House	55.9	37.8
Contingent election by joint meeting of House/Senate	51.2	27.2

A 1966 Gallup Poll revealed 63 per cent of the American people polled that year favored elimination of the electoral college and substitution of the direct popular vote.<sup>20</sup>

In 1966, Senator Quentin N. Burdick of North Dakota polled 2200 state legislators and found 59 per cent of these replying in favor of a direct popular vote.<sup>21</sup> In the same year, a sampling of his North Dakota constituents also found 59 per cent in favor of direct popular election with only 9.7 per cent in favor of the present system.<sup>22</sup> A similar 1967 poll in Oregon by First Congressional

District Representative Wendell Wyatt indicated 76.1 per cent in favor of the direct popular vote method and 14.8 per cent opposed.<sup>23</sup>

In a membership referendum during December, 1965, and January, 1966, the local, state, and regional Chambers of Commerce and their associated trade and professional organizations voted 91.5 per cent in favor of electoral college reform, either the nationwide popular vote proposal or the district method.<sup>24</sup> Similarly, 91 per cent of members surveyed in 1967 by the National Small Business Association favored direct popular election.<sup>25</sup>

While no scholar would advocate electoral reform on the basis of evidence gathered from polls alone, it should be stated that considering the history of electoral reform, passage of any proposed amendment in the future will undoubtedly depend on broad public support. Enough attention has been directed toward the undemocratic aspects of our presidential election process that even those who fear no real potential dangers from the present system would want to be guaranteed that any change is truly a democratic one.

In the following pages this paper will attempt to analyze and evaluate the American electoral college. It will begin by discussing the Constitutional Convention of 1787--what really happened there and what the founders really intended, as we can ascertain through the conven-

tion records. It will then discuss briefly the Twelfth Amendment passed and ratified in 1804--the only substantial constitutional change made in the method of presidential election. The paper will then attempt to analyze and compare the various changes which have been proposed over the years. Emphasis will be given to the reasons why none of the proposed changes was able to generate enough interest to be acted upon by the required two-thirds of Congress. After a few examples showing hypothetical results of past elections under the various proposals, the paper will conclude by considering the present political disposition toward the electoral college and what changes should be expected in the future.

## CHAPTER II

### THE CONSTITUTIONAL CONVENTION

Although there was little difficulty in agreeing that the President and Vice-President should be elected officials, the Constitutional Convention of 1787 disagreed widely on the method of election. Speaking on the floor of the convention, Pennsylvania delegate James Wilson said, "The subject has greatly divided this house. . . . It is in truth the most difficult of all on which we have had to decide."<sup>1</sup>

At least five distinctive proposals for selecting the President were made at the Constitutional Convention: (1) direct popular election, (2) election by Congress, (3) election by the state legislatures, (4) election by intermediate electors, and (5) appointment by lot. Each proposal had vigorous adherents and opponents. Of these proposals, those incorporating direct popular election and election by the national legislature received the most debate.

Most vocal among the delegates favoring a direct popular vote were Wilson, Gouverneur Morris, and Benjamin Franklin of Pennsylvania, and John Dickinson of Delaware. They maintained that direct popular election of officials

in New York and Massachusetts had shown it a convenient and successful mode. Arguing with proponents of state election, who feared parochial interests would produce inconclusive results, the Wilson faction pointed out that the best men would be known to the people if they were known to their state legislatures.<sup>2</sup> But while many of the delegates approved the direct vote in principle, many, such as George Mason of Virginia, thought it impracticable.<sup>3</sup> Representative Eldrige Gerry of Massachusetts said he liked the principle but wanted the people to feel the necessity of it.<sup>4</sup> Wilson, who presented the idea to the convention on June 1, admitted that he was almost unwilling to propose it, ". . . apprehensive that it might appear chimerical."<sup>5</sup>

As debate continued, direct election of the President began to lose ground. Some delegates worried that large northern states such as Massachusetts and Pennsylvania might have an advantage as compared with Virginia whose slaves had no suffrage. Reflecting this sentiment, Hugh Williamson of North Carolina stated, "The people will be sure to vote for some man in their own state, and the largest state will be sure to succeed. . . ."<sup>6</sup> Colonel Mason asserted that leaving the election of the President to the people would be as unnatural as referring "a trial of colors to a blind man."<sup>7</sup> He was joined by Gerry who believed that the evils of the time flowed from "the excess of democracy" and that the people were "dupes of pretended

patriots."<sup>8</sup> "The people at large," said Roger Sherman of Connecticut, "could never be sufficiently informed to make the proper choice."<sup>9</sup>

Advocates of election by the national legislature cautioned against "the well-meaning, but uninformed people," a phrase once used by Thomas Jefferson.<sup>10</sup> This method, it was argued, would be little better than the quickly eliminated proposal for appointment of the President by lot. Why not adopt a plan whereby the people, easily distinguishing among their own neighbors, would elect members to the House of Representatives, or to the state legislatures, which would in turn elect Senators who would appoint the executive?<sup>11</sup> Mason, however, feared two evils in the system: "false complaisance on the side of the legislature towards unfit characters," and "temptation on the side of the executive to intrigue with the legislature for a reappointment."<sup>12</sup> Others agreed that this method of election would conflict with the principle of executive independence; the President would lose the role of protector against legislative tyranny.<sup>13</sup> According to Madison:

A dependence of the Executive on the Legislative would render it the executor as well as the maker of laws; and then, according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner.<sup>14</sup>

Some delegates hoped to avert these difficulties with a suggestion that the President be named by the national



legislature but that he be ineligible for reappointment and thus free from future temptations. In this vein, a longer presidential term was favored: seven years. But the majority found this suggestion repugnant in that it might create an undesirable rotation and form "a political school in which we were always governed by the scholars and not by the masters."<sup>15</sup> A few delegates feared that the President might get too old before the end of a seven year term and asked their fellow delegates to "consider. . . the first magistrate saddled on [the country]. . . should it be found on trial that he did not possess the qualifications ascribed to him, or should he lose them after his appointment."<sup>16</sup> Roger Sherman advised, "He who has proved himself to be most fit for an office ought not to be excluded by the Constitution from holding it."<sup>17</sup> In addition, Morris believed that a President ineligible for re-election might fix his sights on a position in the legislature, consequently performing poorly in the last years of his presidency.<sup>18</sup>

An alternative to election of the President either by direct popular vote or by the national legislature was the suggestion that the executive be chosen by the state legislatures. It was argued that this would preserve harmony between the nation and state governments. Under this plan the state governments would elect the Senate and House members as well as the executive. Each state would

be allotted a certain number of votes "according to some equitable ratio,"<sup>19</sup> and electors would cast the votes. This plan would conciliate state partisans who were already professing alarm that a new constitution would supersede state authority. The plan was quickly eliminated, however, with the argument that the states would look out for themselves rather than national interests and that the executive might be rendered subservient to the states. Furthermore, it was felt that the states would act as rivals and therefore undermine or oppose the national government. It was pointed out that the states then in existence had, in fact, shown lack of harmony with federal proposals.<sup>20</sup> By late July, Madison had "converted" from the group originally favoring election by the national legislature and remarked that only two options remained: electors chosen by the people or immediate appointment by the people.<sup>21</sup>

Voting on August 24, the delegates defeated both the elector plan (6-5) and the direct election proposal (9-2).<sup>22</sup> Five days later, on August 31, the problem was referred to a "Grand Committee" for study. Selected by ballot, this committee was comprised of one member from each state represented.<sup>23</sup> Of the eleven members, six were known to favor direct election (Gouverneur Morris, Madison, Dickinson, Rufus King of Massachusetts, Daniel Carroll of Maryland, and Abraham Baldwin of Georgia). Only Sherman

of Connecticut was said to be unreservedly opposed.<sup>24</sup> It is therefore surprising to note that when the "Grand Committee" reported back to the convention on September 4, 1787, it did not recommend election of the President by direct vote of the people. Also rejected was election by the national legislature, for it was felt that this proposal was inconsistent with the recommendation for a four year presidential term, at the end of which the President would be eligible for re-election.<sup>25</sup>

What the "Grand Committee" did recommend was that each state appoint, as their legislature directed, a number of electors equal to their total number of Senators and members in the House of Representatives.<sup>26</sup> This modification of popular election had been altered in detail to take care of the difficulties of Negro representation and state favoritism. The chosen electors were to meet in their respective states and vote for two persons for President. The provision that one of these must not be an inhabitant of that state was designed to remove stale-mates which might result from backing "favorite son" candidates. The sealed electoral votes were to be sent to the President of the Senate for counting. If no candidate received a majority, the Senate would choose one from the top two or three whose votes comprised a majority, or if necessary from the five highest candidates.<sup>27</sup> As further safeguards, it was agreed that no member of the

national legislature and no United States officer could serve as an elector; the number of votes required for election must equal a majority of the actual electors appointed; the electors' sealed certificates were to be counted in the presence of both the House and Senate; and the Senate was to ballot "immediately" if it were forced to choose the President.<sup>28</sup>

When the "Grand Committee" report was brought to the convention floor for debate, it was attacked mainly on one ground: that the Senate was the improper body to make the eventual selection. Many delegates feared that electors would seldom come to a definitive choice, that they would make the candidates but the Senate would make the President. Colonel Mason estimated that nineteen times out of twenty the President would be chosen by the Senate.<sup>29</sup> In his words, the President would be "the minion of the Senate."<sup>30</sup> Therefore, at the suggestion of Sherman, election by the House of Representatives was substituted for election by the Senate; and to maintain the equality of suffrage enjoyed by the several states in the Senate, the vote of the House was to be taken by states and not by individuals--each state having one vote.<sup>31</sup>

On September 12, the final plan was sent to the Committee on Style and Arrangement, which made no substantial change, and on September 17 the entire constitution was agreed to by unanimous consent of the states

present.<sup>32</sup> New York delegate Alexander Hamilton, writing in the 68th Federalist, voiced the opinion that this manner of electing the President "if it be not perfect, is at least excellent."<sup>33</sup>

In any discussion of the Constitutional Convention, the question invariably arises just what the founders intended when they established the electoral college method of selecting the President. Their actions are frequently attacked as undemocratic, as representing a contempt toward the common man. Was it the delegates' intention that electors should use their own will without the slightest control from the people, and did they perhaps intend to exclude the people from all participation in election of the nation's executive?

Apparently some charges that the method of selecting the President was a "conspiracy" against the common people had begun to be heard long before the convention adjourned in September, 1787. During the convention, more than one delegate spoke of the goal to protect the executive from radical elements in society, particularly those which sometimes expressed themselves through the medium of popular elections. The desire to prevent factions (parties and pressure groups) from playing a major role in the selection of the President was also voiced in the convention. A general distrust of political parties characterized that era and is nowhere more clearly expressed than by George

Washington in his First Inaugural Address.<sup>34</sup>

Princeton Professor Lucius Wilmerding, until recently the only author of a comprehensive book on the electoral college and a person who on a number of occasions offered testimony on the subject before the Senate Judiciary Committee, asserts that it is the fashion nowadays, and has been for over a century, to answer "conspiracy" charges in the affirmative. Wilmerding contends, however, that a majority of the founders, as we know them through the convention records, had no such intentions.<sup>35</sup>

Robert Eldon Brown agrees with this position in A Re-interpretation of the Formation of the American Constitution:

We have tended to think of the founding fathers as men coldly motivated by their economic interests. . . but we find Madison, a Virginia planter, believing that commercial and manufacturing interests had equal claims to protection and participation in government, and if the showdown ever came, property rights would have to be sacrificed to universal suffrage.<sup>36</sup>

Nathaniel Gorham, a delegate to the Constitutional Convention from Massachusetts, felt compelled to state that in his opinion there was "no evidence in the convention debates to support the statement that there was a mass of disfranchised men."<sup>37</sup> William Paterson, New Jersey delegate, advised that "the democratick spirit" ran high.<sup>38</sup>

In the Virginia ratifying convention, Madison was careful to explain that the President was to be the choice of

the people.<sup>39</sup> He further explained that the method of election was the result of a compromise between the larger and smaller states, giving to the latter the advantage of selecting the President from the candidates ". . . in consideration of the advantage possessed by the former in selecting the candidates from the people."<sup>40</sup> Edmund Randolph also defended the electoral plan in Virginia and emphasized the importance of electors "elected by the people at large."<sup>41</sup> In the 68th Federalist, Hamilton repeatedly stated that the appointment of the President was to be referred in the first instance to an "immediate act of the people,"<sup>42</sup> even though in the 45th Federalist he conceded that electors might constitutionally be chosen by state legislatures, a plan taken for granted in 1789 by Eldridge Gerry.<sup>43</sup> Wilson told the Pennsylvania ratifying convention that the choice of the President was brought as nearly home to the people as was practical, stating that the people "retain supreme power. . . by representation."<sup>44</sup> As Wilmerding concludes, ". . . we must look upon them [electors] as a medium for ascertaining the public will."<sup>45</sup>

There appears to have been little criticism of the electoral method during the debates in the various state ratifying conventions. As Alexander Hamilton noted:

The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system of any consequence which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents.<sup>46</sup>

Brown suggests that the silence of the delegates on this matter when they returned to their respective states may have stemmed from embarrassment.<sup>47</sup> It is known that some years after the Constitutional Convention, Senator William Plumer of New Hampshire told his colleagues that he had been "repeatedly assured [by several of the delegates] that this subject had embarrassed them more than any other" and that the method of electing the President was "less exceptional" than other principles devised at the convention.<sup>48</sup> Forrest McDonald, author of E Pluribus Unum: The Formation of the American Republic, strongly disagrees, however. He has recorded that the electoral college system was the only real governmental innovation devised by the convention.<sup>49</sup>

It was an awkward scheme, irrational almost to the point of absurdity, and it was so greeted by most of the delegates; and yet as they argued about it, it became increasingly clear that this was a system that would overcome every objection that had been raised against every other method.<sup>50</sup>

Above all, it must be remembered that the electoral college system of choosing the President was a political expedient arrived at after all other proposals had encountered a great amount of political opposition. James Madison later admitted that the delegates' fatigue after a "long, hot summer" of negotiations in Philadelphia had a lot to do with the quick adoption of the system "with virtually no substantive debate."<sup>51</sup>



## CHAPTER III

### THE TWELFTH AMENDMENT

Except for one minor change, brought about by the passage of the Twelfth Amendment in 1804, the method of electing the President has remained unchanged during the one hundred eighty years since the Constitutional Convention. The Twelfth Amendment changed Article II of the constitution to provide that electors cast two ballots, as distinguished from one with two names. One ballot is to designate the person voted for as President, the other the person voted for as Vice-President. If no person receives a majority of the total votes of appointed electors, the House (in a state by state vote) immediately chooses the President from the three persons having the highest numbers of electoral votes (reduced from the previous five persons). The amendment further provides that the person having the greatest number of electoral votes for Vice-President, if that number be a majority (changed from plurality), becomes the Vice-President. If no one qualifies under this provision, a Senate majority selects the Vice-President from the top two candidates. A quorum for this purpose must consist of two-thirds of the whole number of Senators.<sup>1</sup> The amendment contemplates the old,

or "lame duck", House of Representatives selecting the President.

The Twelfth Amendment may be viewed as a direct result of the presidential election of 1800. By the end of Washington's first term, party spirit had reached a degree of bitterness not surpassed for a century. A deep, two-way cleavage of thought began to breed disaster for the electoral college system. Conflict over the nature and power of the federal government pitted against each other such men as Alexander Hamilton, John Adams, and Thomas Jefferson. Election issues became subordinated to the merits of the candidates who made the issues. Electors became mere tools for the agencies selecting them. The function of electors as intended by the Constitutional Convention was eliminated, and from that point on electors almost never exercised independent judgment.<sup>2</sup> Party spirit, non-existent in 1787, created an electoral college in practice much different from that in theory. In the words of one author, the electoral college "died before it was mature."<sup>3</sup> By 1796 political parties were assuming the responsibility of nominating electors, and there was a popular feeling that electors were morally obligated to vote for the national candidates of the party.<sup>4</sup> In a sense, then, the Twelfth Amendment served to confirm parties.

In the election of 1800, the Republican electors

voted for Thomas Jefferson and Aaron Burr. They intended that Jefferson be President and Burr Vice-President, but Burr received as many electoral votes as Jefferson since, under the original method, there was no separate ballot for Vice-President. Thirty-five voting sessions in one week in the House of Representatives were necessary to decide the election.<sup>5</sup> Had the electors voted according to their own convictions, Burr would probably never have been a real contender, but instead the electors voted for the ticket.

It must be emphasized that the unit rule ("winner-take-all") method of counting electoral votes is not a part of the Constitution. States are free to adopt other methods of selecting their presidential electors, but considerations of political power have established the unit rule as a general practice for more than a century. Before 1804, a majority of states chose electors from districts, in a manner similar to election of Congress. When it soon became apparent, however, that a state which could deliver its entire electoral vote was politically more powerful than one whose vote was split, legislatures began to drop the district system in state after state. After 1804, states could not afford to return to the district system, and from that time on little attention was paid to electors.<sup>6</sup> James Madison, writing to a friend in 1823, said that the district method of choosing electors "was mostly, if not exclusively, in view when the Constitution was framed and

adopted," but he added that it was exchanged for the general ticket because "it was the only expedient for baffling the policy of the particular states which have set the example."<sup>7</sup> He and Jefferson, in fact, influenced Virginia to switch from the district method to the general ticket in 1800 so that their party might secure all its electors.<sup>8</sup> The election of 1824 insured the death of the district system in all states. In that election, John Quincy Adams received fewer popular votes than Andrew Jackson, but Adams won the presidency when the election went to the House.<sup>9</sup>

## CHAPTER IV

### PROPOSALS FOR CHANGE

Since the Constitutional Convention in 1787, approximately one thousand amendments have been introduced to change the method of electing the President and Vice-President of the United States. Basically, however, the amendments fall into two categories: (1) complete abolition of the present system and (2) alteration of the present system. In the first category is the direct popular vote; in the second, the automatic, district, and proportional vote plans. Each will be discussed in detail in the following portion of this paper.

#### DIRECT POPULAR VOTE PROPOSALS

As evident from the records of the Constitutional Convention, direct popular election of the President was from the beginning a serious proposal but lost in the compromise already discussed in Chapter II. The direct vote method would simply award the presidency to the candidate receiving a majority or plurality, as may be provided, of the nationwide popular vote without regard to state boundaries and excluding any electoral vote considerations. Direct amendments proposed prior to the middle of this

century generally favored election by a plurality, more recent resolutions by a majority, although the most recent detailed proposal from a special study committee of the American Bar Association again favors a plurality.

The first plan for direct popular election was of the plurality type and was introduced into the House of Representatives in 1826 by William McManus of New York.<sup>1</sup> Since the McManus proposal, at least one hundred similar ones have been introduced into the House and Senate. Interest in electoral reform seemed to diminish after the defeat of several amendments in the 1950's but was rekindled when the 87th Congress convened in 1961-- apparently stimulated by the closeness of the 1960 election between John F. Kennedy and Richard M. Nixon. Although Nixon lost that election by 136 electoral votes, there was only a fraction of one per cent difference in the popular vote totals.<sup>2</sup>

S.J. Res. 1 in both the 87th and 88th Congresses and S.J. Res. 6 in the 90th Congress, all sponsored by Maine's Senator Margaret Chase Smith, would have completely abolished the electoral college system. Under this plan, a state's popular vote tally for each candidate would be sent to the Secretary of State for opening and counting, and the person receiving a majority of the total votes would be President.<sup>3</sup> Congress would be authorized to legislate in respect to possible ties in either the

primary or general election. Voters in each state would be required to have the same qualifications requisite for election to the most numerous branch of the state legislature, and Congress would be authorized to alter any state regulations on the place and manner of holding the primary and general elections.<sup>4</sup>

In the 88th Congress, S.J. Res. 73, introduced by New York Senator Kenneth B. Keating, called for a direct national vote for President and Vice-President running together on single tickets with the election awarded to any ticket with a plurality. This amendment would also have moved the inaugural day of the new President to December 1 from January 20.<sup>5</sup>

Direct election proposals in the 90th Congress drew heavy support from the American Bar Association's Commission on Electoral College Reform. In early 1966, the Bar Association's House of Delegates authorized a one year study of the subject. Suggestions from the February, 1967, report were incorporated into S.J. Res. 2 sponsored by Indiana's Senator Birch Bayh and 19 others.

S.J. Res. 2 would have provided for election of the President by a nationwide direct popular vote of at least 40 per cent and would have called for a national run-off between the top two candidates if no one received 40 per cent of the votes on the first ballot. The American Bar Association's Commission on Electoral College Reform con-

cluded that more than a 40 per cent vote was neither feasible nor necessary since election statistics show that 12 U.S. Presidents in 14 elections received less than 50 per cent of the popular vote.<sup>6</sup> S.J. Res. 2 would have also required that the President and Vice-President be voted for jointly, and Congress would have been empowered to determine the dates for the original and/or run-off, which would have been uniform throughout the nation. The places and manner of the election and the names on the ballot were to be prescribed by each state legislature, and voters in the states would have been expected to have the same qualifications as required when voting for Senators and Representatives.<sup>7</sup>

Anticipating possible Congressional action on uniform age and residence requirements for voting, S.J. Res. 2 recommended that should such action occur, states be permitted to continue to adopt their own residence requirements, possibly less strict than the national.<sup>8</sup> This would aid new residents or ones who have moved and have not yet become full residents of another state.

In addition, the American Bar Association report recommended that appropriate provisions be made to cover the possible death of a candidate. It mentioned no specific proposals but suggested that Congress work out necessary details.<sup>9</sup> Like similar proposals in past years, however, Congress adjourned before S.J. Res. 2 could be brought to the floor for a vote.



### Arguments in Favor of Direct Election

Those in favor of direct election, including the American Bar Association, argue that the results of a direct election would give a more accurate picture of relative party strength than do electoral vote results. When a party with the most popular votes in a state wins all the electoral votes in that state, the strength of the winner tends to be needlessly exaggerated. "The system creates 'landslides'."<sup>10</sup> For instance, in 1952 Eisenhower, with about 55 per cent of the total popular vote, won over 83 per cent of the nation's electoral votes; in 1936 Roosevelt received 60 per cent of the popular vote, but 98 per cent of the electoral vote.<sup>11</sup> In fact, in eleven instances since 1824, including the 1948 and 1960 elections, the present system has given a majority of the electoral votes to a candidate with only a plurality of the popular vote.<sup>12</sup> One question which has yet to be resolved among those who favor direct vote is the importance and feasibility of having a President elected by a majority. As already noted, the American Bar Association favors a 40 per cent plurality be required for election and feels that requiring more than that amount would introduce the undemocratic prospect of a House election where states receive equal votes. Others, such as California's Senator Thomas H. Kuchel, believe that national strength depends upon the solidarity of the American people behind a Presi-

dent who is clearly a majority favorite.<sup>13</sup>

Advocates of direct election proposals are quick to point out that three Presidents actually trailed their opponents in popular votes received. If the winning party carries many states by bare pluralities or narrow majorities while the opposing party acquires most of its votes by wide margins, the candidate with a minority of popular votes could win a majority of the total electoral votes. Statistics concerning the "winners" of the 1824, 1876, and 1888 elections are shown in the following table,<sup>14</sup>

TABLE II  
PRESIDENTS ELECTED WITH FEWER  
POPULAR VOTES THAN THEIR OPPONENTS

<u>Year</u>	<u>Elected</u>	<u>Chief Opponent</u>
1824	Adams 30.54%	Jackson 43.13%
1876	Hayes 48.04%	Tilden 50.99%
1888	Harrison 47.86%	Cleveland 48.66%

A frequent argument for direct election is that it would be simpler for voters to understand than the present complex system. Writing in the New Republic, Neal Peirce, political editor of the Congressional Quarterly, states that abolishing the electoral college would simply confirm a direct relationship of the American people to their President that most Americans think exists anyway.<sup>15</sup> In fact, in recent years there has been a trend among states to drop electors' names from state ballots, providing in-

stead a square beside the names of the candidates--each mark counting as a vote for electors of that party on file with the respective secretaries of state.<sup>16</sup>

"Presidential U.S.A. and Congressional U.S.A. are, electorally speaking, two different countries within one boundary,"<sup>17</sup> say supporters of direct election. Since adoption of the 17th Amendment in 1913, the President and Vice-President remain the only elective officials in the United States not chosen directly by the people.<sup>18</sup>

Advocates of direct election also believe that the system would invigorate the two-party system, particularly in sections of the country where one party is now so firmly entrenched that other parties have no incentive to try to win. "Instead of Republican votes in certain Southern states being relatively useless to the national party, they would be added to the national total."<sup>19</sup> The same would be true for Democratic votes in heavily Republican states.

In sifting through the arguments used to support direct popular vote, it becomes apparent that direct vote amendments are supported by various groups for several different reasons, some of which are contradictory. This is best illustrated in the concern over power advantages of large and small states.

Senator John D. Pastore of Rhode Island is among supporters of direct election who would like to see the importance of large, doubtful, so-called "pivotal" states

diminished. It has been said that a vote counts more in a "close" state than in a "sure" state, that a few voters in key states may possess the power to elect or defeat their candidates.<sup>20</sup> In a state where the result is more or less preordained, the possibility of a similar group of voters swinging an election is almost non-existent. A direct election, advocates feel, would almost certainly encourage more people to vote. Only 60.5 per cent of the eligible voters throughout the United States exercised their franchise in the 1964 election and only 63.8 per cent in the closer 1960 election.<sup>21</sup>

Many feel that adoption of the direct vote would allow campaigning to be more evenly distributed throughout the nation and that candidates could seek out "rich sources" of votes outside the large metropolitan areas within large states.<sup>22</sup> They further feel that direct election would reduce the premium now placed on choosing candidates from the large key states. It is said that presidential aspirants from "pivotal" states have a disproportionate chance of receiving their party's nomination, for by choosing a candidate from one of the large states, a party may possibly attract the few votes it needs to carry the state. In the past fifty years both major parties have generally limited presidential nominations to men from the eight largest states. Exceptions include Landon of Kansas in 1936, John Davis of West Virginia (though a Wall Street lawyer) in

1924, Truman of Missouri (who was already President when nominated) in 1948, Goldwater of Arizona in 1964, and Humphrey of Minnesota in 1968.<sup>23</sup>

The idea that large states monopolize presidential nominations and reduce residents of small states to "second class citizenship" led the State of Delaware to legal action in early 1964. Financed by the Small Business Association, Delaware named the State of New York as chief defendant.<sup>24</sup>

Delaware's Attorney-General David P. Buckson argued that the unit vote or "winner-take-all" system deprives minority voters (often as much as 49 per cent of a state) of an effective voice in an election and that the voters instead see their votes applied to the opposing candidate. Buckson called "arbitrary misappropriation of minority voting strengths" a deprivation of the 14th Amendment guarantee of equal protection under the law.<sup>25</sup> Citing the 1963 U.S.

Supreme Court decision which struck down Georgia's "little electoral college",<sup>26</sup> Delaware sought to have the unit vote declared unconstitutional. Delaware was encouraged by judicial comment in the Gray case that the ideology of the electoral college itself belongs to a "bygone day".<sup>27</sup>

Delaware was joined in the effort by ten other states (Pennsylvania, Oklahoma, Kentucky, Iowa, North and South Dakota, Arkansas, Wyoming, Florida, and Utah), but the controversy ended quickly in October of 1966 when the court refused to hear the case.<sup>28</sup>

On the other hand, some direct election supporters believe that small states exercise an unfair advantage over large states in that small states have more electors relative to population and therefore fewer voters who control the electoral votes. As Harry Louis Seldon commented in an article in American Heritage, "The electoral college is based on a mathematical inequality."<sup>29</sup> For example, a review of the 1960 census figures indicates that Alaska's three electors represent only 21,000 voters while distribution of New York's 45 electors averages out to approximately 161,000 voters per elector.<sup>30</sup> Seldon has questioned whether or not an Alaskan is worth eight times as much as a New Yorker. James and Virginia Eisenstein, in a pamphlet produced for the Center for Information on America, also expressed concern over this "inequality". Comparing the states of Nevada and New York in the 1960 election, they found that New York had nearly 70 times as many votes cast as did Nevada but only 15 times as many electoral votes.<sup>31</sup> These statistics, they say, illustrate one reason why the smaller states have generally opposed direct election proposals in the past. Direct election would give every vote, regardless of where it was cast, equal weight. This argument has been especially prominent ever since the Supreme Court handed down the Baker v. Carr (one man, one vote) decision in March, 1962.<sup>32</sup>

Many supporters of direct election, in both large and

small states, would like to end the system of referring an election to the House of Representatives when no candidate receives the 270 electoral vote majority. They point out that the political make-up of the House might make it unable to give a majority to one candidate. Russell Baker of the New York Times has fantasized this situation in Our Next President, published in early 1968.<sup>33</sup> The book describes the violence, chaos, disunity, and anarchy which might result should the country be without a President on inaugural day and the Vice-President took command.

Even if the House were unable to elect a President, under the existing system (since the Senate chooses the Vice-President) it is possible that the two highest officials of the country might be of differing political parties. This could be disastrous in a nation accustomed to a close relationship between its two top executives. It could be even more disastrous if the President died and the Vice-President changed policies at a time when political continuity was of critical concern. The American Bar Association has pointed out that election of a President and Vice-President from differing political parties is not an unreasonable concern, particularly if the political make-up of the two houses of Congress is different. Election of a President and Vice-President in Congress might involve political deals and pressures that would place the elected in a position of indebtedness to those who voted for them.<sup>34</sup>

Concern over power advantages of the states also appears when discussing a House election since voting would be conducted by states, each state having one vote regardless of size or population.

The possibility of unpledged electors is another concern of those who favor direct election. At the present time only nine states have statutes specifically requiring electors to vote for the candidates nominated by the national party.<sup>35</sup> Oregon is one of these states, but its law specifies no penalty should an elector vote for other than his party's choice.<sup>36</sup> Although only eight of 14,018 electors between 1820 and 1960 are alleged to have voted contrary to the intentions of their supporters,<sup>37</sup> critics of the present system say they have no faith that the trend will continue. They cite the 1960 Republican elector from Oklahoma who voted for Senator Byrd for President and Senator Goldwater for Vice-President because he maintained the Oklahoma statute covering electors was unconstitutional.<sup>38</sup> Additional concern was aroused when the elector, Henry D. Irwin, testified later before a Senate subcommittee hearing of a "coalition movement" he planned between the November 8 general election and the December 19 meeting of electors. The purpose of the coalition was "to induce sufficient Republican electors to join with unpledged and Democratic electors. . . [to] elect a President other than Kennedy or Nixon."<sup>39</sup> In both his 1965 and 1966 State of



the Union messages, President Lyndon B. Johnson urged the Congress to pass a constitutional amendment requiring all electors to vote for candidates receiving the greatest number of votes, but thus far no action has been taken.<sup>40</sup>

Critics of the present system also fear accidents and frauds which they believe would be much less likely under direct election. The American Bar Association, for instance, cautions against fraud ". . . since a slight change in the popular vote may determine the whole vote."<sup>41</sup> Another source explains, "close states may be won or lost by such extraneous circumstances as rainy days or blizzards."<sup>42</sup>

Finally, advocates of direct election believe the system would relieve the major parties of having to make excessive concessions to minority groups. In 1950, Senator Henry Cabot Lodge acknowledged that the present system not only permits but actually invites the domination of presidential campaigns by small, organized, well-disciplined pressure groups.<sup>43</sup> For example, the Liberal Party of New York, with a slate of elector candidates identical to the Democrats, determined the outcome of the 1960 election in that state even though the party's power was concentrated only in a few districts in New York City.<sup>44</sup>

#### Arguments Against Direct Popular Vote

A chief argument against the various direct election proposals is that the system would permit the growth of minor parties which would likely have a divisive effect on

national politics. Although proponents of direct election point out that the two party system has been preserved in the direct election of Senators, members of the House of Representatives, and state governors, opponents argue that this is no assurance that the system would not break down with direct election of the President. In Electing the President, Daniel M. Ogden and Arthur L. Peterson suggest that because the two major parties are of nearly equal strength in the "pivotal" states, "direct election. . . would wipe them out as decisive factors in the election."<sup>45</sup> Those who argue in this vein are apparently convinced that third party power is always necessarily bad and perhaps disregard the positive effects various third parties have had in our history.

Closely related to the above argument is the idea that direct election of the President might impair the "unifying" function of the two major parties.<sup>46</sup>

It can be argued that the essential feature of our party system is that each major party recognizes and protects the legitimate interests of all substantial economic, sectional, religious, racial and other groups in the Nation/sic. The unifying function might be impaired by reducing the pressure upon the major parties to heed the interests of minority, factional, or sectional groups.<sup>47</sup>

Some who argue against direct election say it would also deprive small and sparsely populated states of the slight advantage they enjoy through distribution of electoral votes according to the size of the congressional

delegation. This opinion was voiced by Richard C. Welty in the Midwest Quarterly.<sup>48</sup>

Because of the vastness of the country and the economic importance of sparsely settled states [especially in agricultural matters] it would be unfair of states large in area but small in population to adopt the direct vote.

Stephen Graubard writes in Commonweal:<sup>49</sup>

In time abolition of the electoral college would be a blow to the moderation which makes any candidate realize that New York State is a collectivity of workers and farmers, city dwellers and town people, Negroes and Jews, and many who fall into none of these categories. . . avoiding the more grandiose images invented by advertisers and public opinion polls.

Graubard fears a direct popular election would be nothing better than a "circus dressed up and parading as a referendum."<sup>50</sup>

Yale Law Professor Alexander M. Bickel has been a major critic of direct popular election, particularly the reform proposed by S.J. Res. 2 in the 90th Congress. Bickel believes that before the 1963 reapportionment the electoral college did give a heavy vote to cities and minority groups but that this was justified because Congress and the state legislatures were just the opposite. "Rather than being given a disproportionate share of power, the big cities were merely being rewarded a due share of countervailing power."<sup>51</sup> Quoting James M. Burns, Bickel points out that each of our major parties is really two parties: "a Congressional party, moderate to conservative in orientation, and a Presidential party, which is pretty

much urban liberal."<sup>52</sup> A proposal such as that of the American Bar Association, says Bickel, would change this situation--removing the President's incentive to be a counterweight for Congress and, while a national leader, a particular spokesman for urban and minority groups. The result, he says, would be "complex and essentially undemocratic."<sup>53</sup>

The Bar Association proposal . . . wildly overestimates the immediate impact of the reapportionment decisions and the durability of that impact. . . . The court has never insisted on mathematical equality of the districts; and it has never suggested that districting itself is unlawful. Nor has it tackled the practice of Gerrymandering, which is quite capable of achieving all that the most sophisticated system of malapportionment could produce. . . . Neither the court nor the Bar Association has yet proposed abolition of the Senate. . . . the ultimate in malapportionment.<sup>54</sup>

Direct election would almost inevitably bring pressure for national laws governing qualifications for voting and would therefore cause great resentment among the states and undoubtedly raise a loud cry of "states' rights". In the words of Welty, federal control over such matters would be "counter to the theory and practice of American government since the Articles of Confederation."<sup>55</sup> Similarly, he feels that direct election of the President could result in enlarged regulatory authority over political parties. He expressed shock and concern over Senator Smith's statement before Congress in early 1961 that the "fostering of national uniform laws on elections

is an objective to be sought rather than opposed."<sup>56</sup>

Clarence Davis, a member of the American Bar Association but a dissenter from its electoral proposals, says direct election "obviously results in the vesting of power to the metropolitan areas and destroys the identity of the states."<sup>57</sup> Washington Post writer Merlo J. Pusey, who supports the Bar Association proposal, recognizes that a "symbol of federalism" would be lost but believes that this symbolism has long since lost its meaning.<sup>58</sup>

The President is not a neutral figure emerging from an imaginary collectivization of state interests but the vibrant champion of the popular majority. What would be lost. . . is only a shadow from the past.<sup>59</sup>

Davis' criticism does not seem to take into account the fact that state identity is dependent upon many larger factors than election of the President--geographical, economic, social, and ethnic factors, to cite a few.

Opponents of direct election maintain that the risks inherent in the present system have been exaggerated and point out that only twice in the history of this country, and never in this century, has it been necessary to refer an election to the House of Representatives because no candidate received a majority of the electoral votes. The New Republic voiced this sentiment in its March, 1968, issue when it labeled arguments in support of S.J. Res. 2 as "a parade of all sorts of horrible things that can supposedly happen in a Presidential election . . . most of which are ex-

tremely unlikely and wouldn't be all that horrible if they did."<sup>60</sup> The magazine urged adoption of an amendment introduced by Representative Jonathan B. Bingham of New York (H.J. Res. 1086) "which will do a nice job without stirring the controversy."<sup>61</sup> Although Bingham says he dislikes the present system, he suggested that for the time being it be kept except for one minor change: provision for a run-off between the two leading candidates if neither obtains a majority.<sup>62</sup> Bingham's reasoning was two-fold. First, he had grave, but correct, doubts that any major electoral proposal would be passed by Congress before the 1968 November general election. Secondly, he feared that third party candidate George Wallace would receive enough votes to keep either the Democratic or Republican candidate from winning an electoral majority. Under separate legislation, Bingham sought to move the general election date into October, shortening presidential campaigns and leaving time for possible run-offs.<sup>63</sup>

Another argument against direct election is that it would tend to increase campaign expenditures, which are already enormous. Tienken states, "The major parties could not undertake much more campaigning than they do now without the costs becoming prohibitive."<sup>64</sup> It is argued that because highly populated states and large cities would continue to be good sources for votes, parties might be tempted to limit campaigning to those areas only, and principal

candidates might have difficulty reaching all parts of the country. While television has practically eliminated this last difficulty, the high costs of advertising have re-introduced the problem in a different form.

To the statement that the present system exaggerates election results, Attorney Tienken argues that this is not always bad, that appearance of strength may be a "useful, perhaps even necessary," prestige and moral force in leading the country, particularly during difficult transition periods accompanying changes of administration.<sup>65</sup>

Opponents of direct election indicate that it is the most drastic remedy for the shortcomings of the present system. Bickel cautions against those who seek "purity of ideology in politics at the cost of workability."<sup>66</sup> University of California Professors Nelson W. Polsby and Aaron B. Wildavsky remind those who point out something wrong in a system permitting a President to be elected by less than a majority that they should not forget "the extent to which our Constitution is in fact designed to thwart majority rule."<sup>67</sup> "We want majority rule," they say, "but we also want all sectors of the population to have equal voice in government."<sup>68</sup> Their interpretation of the intentions of the "Founding Fathers" at the Constitutional Convention of 1787 apparently disagrees with the conclusions reported in Chapter II of this paper. So does that of Welty who castigates those who see no need today for protection from the

"radical masses". Welty asks those who cite direct election of Senators to support direct election of the President to remember that there are one hundred Senators but only one President; the risk may be greater, he says.<sup>69</sup> While Welty acknowledges that direct election would be the most simple method and the easiest understood by the voters, he questions whether or not the country is too large and diversified for a uniform electoral system. He further questions a failure to recognize regionalism and sectionalism which do exist and foresees a possible election concentrating power in one or two sections of the country, most likely the Northeast and Pacific Coast areas.<sup>70</sup> The logic of his argument is difficult to follow. In light of his latter arguments, it is hard to understand how he can still advocate election of one executive for the entire nation. Furthermore, it should be noted that five of the ten most populous states (Illinois, Ohio, Texas, Michigan, and Florida) are in neither the Northeast or Pacific Coast areas.<sup>71</sup>

Graubard opposes direct election for yet another reason--that of breaking tradition. He has stated that the results of direct popular election might be more hazardous than failure of the present system and quotes the former British Conservative Prime Minister, Lord Salisbury, who asserted, "When it is not necessary to change, it is necessary not to change."<sup>72</sup> Graubard and other opponents of direct election relate experiences in France and Italy to



show how electoral reform might come to be "manipulated" with various parties competing for the system under which they could most likely win.<sup>73</sup> As Charles A. O'Neil observed nearly a century ago, "Many good measures fail to pass, and often bad measures succeed, on account of the near approach of a presidential election."<sup>74</sup> "Changing the fundamental law of the land," he advised, "and thereby shifting political power, is a most delicate act... ."<sup>75</sup>

Lastly, and perhaps most realistically, opponents of direct election point out that it is doubtful any such amendment could be approved by the necessary two-thirds of both houses of Congress and ratified by three-quarters of the states. At least four major barriers would stand in the way: (1) some states would be unwilling to lose or risk losing control over voting; (2) the small and sparsely populated states would oppose relinquishing what they consider an advantage in the present system; (3) likewise, large states would be unwilling to surrender what they consider present power; (4) political parties would fear, and therefore oppose, a change in political power. It is interesting to note that no major political party seems ever to have supported a proposal for direct election.<sup>76</sup>

Clarence Davis has recorded:

. . .when the report [American Bar Association] was received in Washington, it was greeted more or less with smiles because the proposal has never been able to muster nearly enough votes in the Senate to pass the proposed amendment.<sup>77</sup>

However, a more recent notation by Senator Birch Bayh, Chairman of the Senate Judiciary Subcommittee on Constitutional Amendments, indicates otherwise.

It appears that the proposal that has the greatest chance of receiving affirmative action in the Senate is the proposal recommending a direct national election. Although in the past this proposal has lacked support, it is now evident that a substantial amount of Congressional and private support is present.<sup>78</sup>

The 1967 head of the American Bar Association, Orison S. Marden, agrees with Bayh and cites recent favorable response from both Congress and the press. He believes that the fact that the American Bar Association's Commission on Electoral Reform was able to reach a consensus is strong evidence of changing attitudes.<sup>79</sup>

In addition to the American Bar Association and the American Small Business Association, already mentioned, other large organizations which have been active in promoting direct election include the National Grange, the Chamber of Commerce of the United States, the National Association for the Advancement of Colored People, and the United Auto Workers. All of these offered testimonies before the Senate Judiciary Subcommittee on Constitutional Amendments during the 90th Congress.

#### THE AUTOMATIC SYSTEM

(Proposals to Abolish the Office of Elector)

President Johnson's electoral college recommendations

to Congress in 1965 and 1966 could probably best be embodied in the first of three indirect election proposals to be considered next. It is the so-called automatic system which would amend the constitution to retain the electoral college but abolish the office of elector. Under this system, the candidate winning the highest number of popular votes in a state would automatically be credited with all of the electoral votes in that state. Distribution of votes would be on the same basis as the present system and a majority, or 270 votes, would be necessary for election. Voters in each state would cast a single ballot for President and Vice-President.

Because it would involve the least amount of change of any of the major proposals, this method is sometimes called the "minimal proposal". It would provide for a Congressional election if no candidate received a majority. Such an election, decided in a joint meeting of the House and Senate, would be an improvement over the present system whereby the House chooses the President and the Senate the Vice-President and which involves the risk of electing a President and Vice-President from different political parties.

Variations of this proposal have had a long history. James Madison recognized the difficulties in the present system as early as 1823.

The present rule of voting for President by the House of Representatives is so great a departure from the republican principle of numerical

equality, and even from the Federal rule, which qualifies the numerical by a state equality, and is so pregnant also, with a mischievous tendency in practice, that an amendment to the Constitution on this point is justly called for by all its considerate and best friends.<sup>80</sup>

Three years later, in 1826, a proposal to abolish the office of elector was introduced into Congress by Representative Charles E. Haynes of Georgia.<sup>81</sup>

President Andrew Jackson, who feared the power of electors and the probability of a House election, spoke of the need for Congress to consider such an amendment in his first message to Congress in 1828: "There is a danger of [the people's] wishes being frustrated; some [electors] may be unfaithful, all are liable to err."<sup>82</sup>

In 1878 a special House committee proposed to dispense with electors and allow the citizens to vote directly, although states would possess presidential votes equal to the number of former electors and those would be multiplied by the candidates' popular votes. The results would then be divided by the entire popular vote.<sup>83</sup> The proposal was confusing and could not arouse enough interest to get to the floor of the House for discussion.<sup>84</sup>

While the automatic proposal would eliminate the human factor--the independent elector--many critics of the present system would not be expected to vote for it since it preserves the unit vote and would tend to "freeze" this principle into the constitution, changing it from a matter of custom to a constitutional mandate.<sup>85</sup> As Welty points

out, critics of the present system are less worried about the possible irresponsibility of electors than the present method used for counting electoral votes.<sup>86</sup>

Because a proposed amendment of this type would require the least amount of change in the present system, it perhaps has a better chance of passing than other more drastic proposals. Its opponents, however, state that it would only tend to gloss over the problem. While the "man in the street" might feel more comfortable knowing the office of elector had been eliminated, the new system could offer no other remarkable changes from the present system. It could still permit election of a President who received less votes than an opponent; it could continue to disfranchise millions of minority voters; it could perhaps magnify the possibility of fraud or accident in elections. As Dr. Paul J. Piccard, government professor at Florida State University, told a Senate subcommittee in 1961, "An amendment should not restrict itself to remedying merely potential evils."<sup>87</sup>

Proposals of the automatic type were introduced repeatedly in the 80th through 88th Congresses by Estes Kefauver of Tennessee, more recently in the 90th Congress by Wyoming's Senator Gale W. McGee (S.J. Res. 20) and by several members in the House. None of the proposals has been able to emerge from the House or Senate judiciary subcommittees. Interest in electoral reform in the past

two years has seemed to move away from this type of amendment toward the direct popular vote or one of the two indirect proposals which will be discussed next.

#### THE DISTRICT METHOD

Most district method amendments would retain the electoral college but would eliminate the present procedure of giving a state's entire electoral vote to one candidate. Electors, equivalent to the number of representatives in the House, would be chosen by state voters. Two electors-at-large, corresponding to a state's two Senators, would also be elected. An effort would be made to coordinate electoral districts with congressional districts. Each candidate for elector would be required to declare the persons for whom he would vote, and the declaration would be binding, eliminating the danger of the independent elector. Tallies of votes within each state and the District of Columbia would be sent to the President of the Senate, and the candidate receiving the highest number of total votes would be elected, providing he received a majority. In the absence of a majority, most district plans recommend that the election go to the Senate and House, meeting jointly, and that the President be chosen from the top three candidates.

The district method is not a new suggestion. When state legislatures began in the late 1700's and early 1800's to provide for popular choice of presidential electors, it

was normal for electors to be chosen in districts similar to congressional districts. James Madison has been quoted as saying that the district system was the one "mostly, if not exclusively" in view when the constitution was adopted.<sup>88</sup>

As noted earlier, however, the district method was abandoned when parties saw that they could win more votes for their candidates by choosing electors on general, state-wide tickets.

Four times between 1813 and 1824 amendments containing varieties of the district system were passed by the Senate. In 1820 the House also voted in favor of a district plan, but the 92-54 vote fell short of the required two-thirds majority.<sup>89</sup> Opponents of the plan at that time saw it as unsettling one of the compromises of the constitution: the federal principle. Many proposals using the district method also appeared during the winter of 1823-24 but were indefinitely postponed in committees. Especially vocal on the matter was Senator Thomas Hart Benton, who waged a 24 year effort to have a district method amendment approved. It has been stated that his speeches on the subject were "characterized by deep historical research and broad nationalism."<sup>90</sup> As noted earlier, President Andrew Jackson, who feared electors and a House election, is said to have at one time declared himself in favor of the Benton plan.<sup>91</sup> In 1823, Benton wrote: "Every reason which induced the Constitutional Convention to institute electors has failed. They are no

longer of any use and may be dangerous to the liberties of the people."<sup>92</sup> And in 1824 he said:

. . . the general ticket system, now existing in ten states, was the offspring of policy and not of any disposition to give fair play to the will of the people. It was adopted by the leading men of those states . . . to give power and consequence to the leaders who manage the electors, but it is a departure from the intentions of the Constitution . . . to give to each mass of persons, entitled to one elector, the power of giving that electoral vote to any candidate they preferred.<sup>93</sup>

Author Charles A. O'Neil suggests that a district election amendment might have passed in the 19th Congress (1827-28) had that body not been marked by strong personal and sectional feeling.<sup>94</sup> Men who supported John Quincy Adams in the 1824 presidential election (decided in the House of Representatives) were apparently on the defensive and felt compelled to defend the system by which Adams had obtained office. It is interesting to note that some years later, in 1842, Adams served as chairman of a Select Committee in the House of Representatives, during which time he stated that the representation of the people by single districts "is undoubtedly the only mode by which the principle of representation in proportion to numbers can be carried into execution . . ."<sup>95</sup>

The election of 1876, in which Rutherford B. Hayes scored a one electoral vote victory over Samuel J. Tilden, led to a "plethora of proposals"<sup>96</sup> but because Congress was divided on the means to achieve the end, none could gain momentum. In fact, no floor vote on a district plan has



been held in the House of Representatives since 1826.<sup>97</sup>

In the late 1940's, President Harry S. Truman submitted a statement proposing a district system utilizing congressional districts, but it received little attention.

In recent years the main spokesman for the district method has been Senator Karl Mundt of South Dakota. In every Congress since and including the 83rd (1953-54), Senator Mundt has introduced an amendment on electoral reform. His resolution in the 89th Congress received only the minimal consideration in subcommittee, but he and eleven other Senators introduced S.J. Res. 12 when the 90th Congress convened. This bill was still in subcommittee, with several other similar proposals, when the House and Senate adjourned in October, 1968.

#### Arguments in Favor of the District Plan

One of the arguments offered by Senator Mundt and others who favor the district plan is that it would more accurately reflect the popular election results than does the present "winner-take-all" system. The following descriptive passage by Senator Mundt illustrates the disdain of many toward the present system:

. . . one sodden drunk can fall off a park bench in Battery Park of New York City and hitting the ground wake up and stagger and stumble into a voting booth on election day, not knowing where he is, and, in the heat of the election booth, to keep from falling on his face in his drunken stupor, reach for an election lever as a support and accidentally pull the election lever down, thereby determining the entire outcome of a

national Presidential election. . . . That one vote cast by Mr. Stumble Bum . . . can put in action 45 electoral votes which mean more than all of the votes cast by intelligent people voting unanimously in 12 or 13 separate states of the United States. . . .<sup>98</sup>

Mundt and other advocates of district election assert that it would prevent the election of "minority" Presidents. To the extent that popular strength was reflected in electoral votes, the possibility of a wide disparity between popular and electoral votes would be reduced. A popular minority in a state would not be wasted. Evidence to be presented in Chapter V of this paper shows, however, that a President with fewer popular votes than a rival could have been elected in the close presidential contest of 1960 had a district plan been in effect.

Under the district system, each voter would vote for only three electors rather than for all the electors in his state as under the present system. This would reduce the difference in the value of each voter's vote among states. It is felt that a district vote would also limit the possible effects of local fraud, bad weather, intense local issues, and accidental circumstances. As for fraud and intense local issues, however, it seems probable that a district election would intensify, rather than limit, these.

The district plan would preserve the present provision for relating electoral votes to population; the total electoral strength of a state would not vary with

the relative size of the popular vote. Elimination of the present unit rule would save large blocs of voters in a state from being disfranchised for having amassed a total state-wide vote for a candidate less than that of the winner.<sup>99</sup>

Supporters of the district plan generally seem to be concerned that the present two party system in this country be maintained.

In any areas of a so-called 'one party' state which are now sometimes represented in Congress by members of another party, the other party would be encouraged by the district amendment to seek electoral votes for its Presidential candidate.<sup>100</sup>

Since the district plan would not give electoral votes to minority groups thinly scattered throughout a state, it is argued that the district plan would tend to discourage the growth of third parties or splinter parties. Few minorities, however, are thinly scattered throughout a state; they are more likely to be highly concentrated in small rural or urban areas.

Advocates of the district plan are among those who would like to reduce the power of large cities and doubtful states which they believe exert excessive political influence. Likewise, the district plan would make it less important that presidential candidates be chosen from the "pivotal" states. Small or sparsely populated states would not be deprived of the advantage they believe they now possess, and each state would continue to receive three

electoral votes regardless of population.

J. Harvie Williams of the American Good Government Society feels that the district system would foster needed harmony between the President and Congress inasmuch as votes would be cast for President and Vice-President and for members of Congress by the same voters in the same district at the same time. Williams points out that this would end the "ideological conflict" between the White House and Congress within a party and that the executive branch would rightly be subjected to the same political pressures that are brought to bear on Congress.<sup>101</sup>

In an attempt to placate states' righters, proponents of the district plan illustrate that by preserving electors the district system would not involve any threat to the role of the states or to state control over voting. The amendment would, however, eliminate state control over the method of choosing electors. In the 90th Congress, states' rights champions admitted that this would be wise in order to prevent possible manipulation from one election to another.<sup>102</sup> Also, the system would bind presidential electors, eliminating the sometimes feared independent elector and guaranteeing an expression of the popular will. In the Mundt proposals, only if a candidate died before the electors met would an elector be free to vote for someone else.

#### Arguments Against District Election

Because the relationship between popular votes and

electoral votes would depend partly on the geographic distribution of party strength, opponents of district election feel it would not invariably reflect popular vote results any more accurately than the present system. (See Table IV) Moreover, as long as the electoral college system remains and each state has at least three electoral votes regardless of population, distortion would be built into the system. Although each voter would vote for only three electors, population disparities among states would reduce the value of a vote for statewide electors in large states as compared to small ones. Also, a district plan might continue to permit election of a President with less votes than his opponent if the winning candidate won most of his electoral votes by bare majorities or pluralities while his opponent received large numbers of his votes by huge margins.<sup>103</sup>

It seems clear that several factors other than the present unit rule could contribute to the election of a "minority" President. A switch in the electoral votes of one of the smallest states from the Kennedy to Nixon column in the 1960 election could have resulted in Kennedy's receiving less popular votes than Nixon. Only .18 of one per cent separated Kennedy's and Nixon's popular vote totals in that election.<sup>104</sup>

Arguments challenge the fact that the district system would diminish present inequalities in state laws. It could continue to permit states to restrict their suffrage without loss of electoral power, and the states would cast

the same number of electoral votes regardless of the size of the popular vote.

Although some opponents of the district method concede that it might give minorities a better chance to be heard, the plan would in general reduce the influence of the big city vote with the possibility that the system could permit a candidate to win an election without the support of major metropolitan areas. Neal Peirce has written:

As for the claim that the district method would not disfranchise voters as does the present system, districts would use the unit rule as the states now do; therefore it seems only to be a question of at what level the disfranchising occurs.<sup>105</sup>

As Thomas Jefferson said in 1800 (basing his comments on the then-existing size of the nation and the number of districts), "It is merely a question of whether we will divide the United States into 16 or 137 districts."<sup>106</sup>

Rather than strengthen the two parties, the district system might impair them. The Eisensteins, for example, believe that the district system would be unlikely to invigorate second parties in one-party states, but if it did, it might increase the likelihood of no candidate receiving a majority.<sup>107</sup> "In all probability," say the Eisensteins, "the district system would concentrate presidential campaigning to marginal districts."<sup>108</sup>

Even though Senator Mundt and other supporters of district election have attempted to assure that electoral

districts and present congressional districts would be coordinated, opponents are not satisfied that this could be easily achieved. It would not be a simple task deciding where district lines should be drawn. The prospect of gerrymandering would also have to be considered, even though Senator Mundt insists that his proposal, in inserting a heavy rural bias, provides a "counter-gerrymander" provision.<sup>109</sup> Perhaps Senator Mundt has forgotten that this nation is no longer a rural one and that metropolitan areas are exerting more and more influence in presidential elections.

Welty has opposed district election of the President because, like the present system, it is confusing—a factor which he deems neither necessary nor desirable in twentieth century America.<sup>110</sup> He asserts that a presidential election in districts corresponding to House of Representatives districts would "probably and unfortunately" result in election of a President and members of the House of the same political party.<sup>111</sup> He is one who believes that the interests of the country are best served when the power of political parties in Congress is more equally balanced than at the present time and when a President may be elected from either party. This is impossible, he believes, under the district system.

The most vigorous attack upon a district election proposal occurred in 1956 when 52 Senators were criticized

by the then Junior Senator from Massachusetts, John F. Kennedy, for supporting the Mundt-Daniel "package deal."<sup>112</sup> Kennedy called the bill a "hybrid monstrosity" and was convinced that liberals in both parties should fight it.<sup>113</sup> His reaction was fortified by a letter from Arthur Holcombe, one of his government professors at Harvard, who called for "Madisonian balance".<sup>114</sup>

Under the present conditions, the preponderant influence of the big close states on the executive branch of the government checks the disproportionate influence of the small and often one-sidedly partisan states in the Senate.<sup>115</sup>

Senator Paul Douglas of Illinois joined Kennedy in opposing S.J. Res. 31, dragging onto the Senate floor "the skeletons that most of the Senators were hiding behind in their torrents of oratory."<sup>116</sup> The amendment, said Kennedy and Douglas, was really directed against Negroes, Jews, labor unions, and Catholics. Kennedy argued that a district plan would not help the Republican minority in the South because the reason for Republican weakness there was not the "winner-take-all" system but the social, economic, and political structure which held down the vote and kept Negroes from voting.<sup>117</sup> Kennedy cautioned that the proposed district system could change the whole political habits of the country "with results which are hard to predict now."<sup>118</sup> He added, "One should not take down a fence until he knows why it was put up."<sup>119</sup>

In his American Heritage article, Seldon points out



that the proposed district amendment in 1956 probably looked dangerous to the Kennedy camp and other Democrats in what they knew was predicted as a close election, that they undoubtedly felt safer following tradition and hoping that electors followed their general tradition of not ignoring the popular choice of their states.<sup>120</sup> Seldon's analysis makes Kennedy appear as an opportunist concerned only with the results of a particular election year. In view of the extensive arguments in the 1956 Congressional Record, this cannot be considered an honest appraisal. Both Kennedy and Douglas were deeply concerned with the future effects of the amendment they opposed; they repeatedly asked their colleagues in the Senate to view the electoral college in the whole perspective of the political system, as one would view a planet in the solar system.<sup>121</sup>

Within a few days of the Kennedy-Douglas attack, ten of the original sponsors deserted the bill, and it failed to muster the necessary two-thirds vote.<sup>122</sup>

In the past decade support for district election amendments outside of Congress has stemmed mainly from the American Good Government Society under the directorship of J. Harvie Williams. The Chamber of Commerce of the United States has declared itself in favor of either a district plan or direct election. It should be noted, however, that both Senator Bayh and Mr. Wilmerding, former enthusiastic defenders of district method amendments, have in the past

two years swung their support to direct election amendments.

### THE PROPORTIONAL PLAN

Since 1947 various proportional plans have dominated electoral reform proposals, over 70 having been introduced into the House and Senate in a twenty year span.<sup>123</sup>

Like the district plan, the proportional plan would abolish the electoral college but retain electoral votes. However, the electoral votes in each state would be apportioned among the candidates in accordance with the number of popular votes they received, thereby abolishing the current "winner-take-all" practice. For example, a candidate who received 60 per cent of the popular vote in the state of Oregon would receive 3.6 of Oregon's six electoral votes. The candidate with the most electoral votes throughout the nation would be elected President if he received a certain percentage of the total vote. Most amendments, such as S.J. Res. 3, 7, and 84 introduced into the 90th Congress by Senators Smathers, Holland, Sparkman, Ervin, and Dodd, would require a 40 per cent plurality. In case no person received the required vote, the Senate and House would jointly choose the President from the persons having the two highest numbers of electoral votes.

The first proportional type amendment was proposed in 1877 by Representative Levi Maish of Pennsylvania.<sup>124</sup>

Several times in the nation's history a proportional type amendment has nearly passed. Vigorous debate in the subcommittee sparked a 1930-32 effort by Representative Clarence F. Lea of California, but like countless other amendments on electoral reform could not be brought to the floor of Congress for vote. Perhaps the best known single amendment was S.J. Res. 2 and H.J. Res. 2 in 1950, the Lodge-Gossett plan, which passed by a two-thirds vote of the Senate in February of that year but was blocked in the House Rules Committee.<sup>125</sup> Reaction to the Lodge-Gossett amendment was a reversal of traditional attitudes. Conservatives of both parties supported the amendment while liberals of both parties opposed it.<sup>126</sup> The amendment had been introduced simultaneously in the Senate and House by Massachusetts Republican Senator Henry Cabot Lodge and Texas Democratic Representative Ed Gossett. Gossett reintroduced the bill in the 82nd Congress<sup>127</sup> (1951-52, H.J. Res. 19) and a similar bill (S.J. Res. 52) was introduced into the Senate. Both were reported favorably in their respective bodies but received no further action.<sup>128</sup>

In 1956, Senator Price Daniel combined a proportional amendment with a district election plan initiated by Senator Mundt. S.J. Res. 31 of that year became known as the "Daniel Substitute" or Mundt-Daniel plan.<sup>129</sup> Over 50 Senators co-sponsored the amendment which would have

permitted each state to adopt either a district or a proportional plan. A state could then have distributed its electoral votes among the top three candidates according to the statewide popular vote, or, if the state legislature preferred, the electors could be chosen as Senators and Representatives are now chosen--two by statewide vote and the rest by congressional districts.

Senator Kennedy's and Senator Douglas' vigorous opposition to the bill and its consequent failure has already been discussed.

In early May, 1968, a suit was filed in the U.S. District Court in San Francisco attacking the electoral college and asking the court to issue an order requiring each state delegation of electors to cast votes in proportion to the results of the popular election. The four plaintiffs, two Democrats and two Republicans, alleged that the present method of selecting the President violates the due process guarantees of the constitution. They asked for formation of a special three-judge court and for a speedy scheduling of arguments so that a decision could be reached before the November general election.<sup>130</sup> The four were apparently fearful that in 1968 America might again elect a President with fewer popular votes than his opponent. Like the Supreme Court in Delaware v. New York in 1966, the District Court took no action on the suit.<sup>131</sup>

### Arguments in Favor of the Proportional Plan

Those who favor amendments which would institute a proportional plan point out that of the indirect election proposals it would come closest to electing a President in accordance with the popular votes, but at the same time it would preserve a state's relative electoral strength. Here again, the argument of illusory electoral strength is brought up--"a feeble basis for the exercise of power [which] may lead to abuse of authority."<sup>132</sup>

As for the possibility of electing a President having fewer votes than his opponent, McBride states that a proportional system would end all chance of this "undemocratic possibility".<sup>133</sup> With a proportionate distribution of electoral votes, a candidate with a majority of popular votes could not lose the election because he won most of the electoral votes by large majorities while his opponent received his votes by bare majorities or pluralities. Other statistics, however, do not support this argument. In a careful state-to-state analysis of the 1960 election, the Virginia Commission on Constitutional Government estimated that under a Lodge-Gossett type proportional plan Kennedy would have received 265.623 electoral votes and Nixon 266.075,<sup>134</sup> both short of the 270 electoral votes needed for election.

As far as the present unequal weighing of states is

concerned, backers say the proportional plan would give equal weight to individual popular votes cast in pivotal states and in states where one party is almost certain to win by a wide margin.

Proportional distribution of electoral votes would give even a hopeless minority . . . a chance of crediting their candidate with some electoral votes.<sup>135</sup>

This plan would calculate electoral votes to the nearest one-one-thousandth, and abolition of the position of elector would guarantee that no complication would arise from the inability of electors to meet and vote as expected. Furthermore, confusion created by long lists of electoral college candidates, still shown on some state ballots, would be eliminated.

Although proponents of every type of amendment claim theirs would tend to break up solid or one party states, such as in the South, proponents of proportional election speak loudest on this point. Because a Republican vote would count even in a strongly Democratic state, every effort would be made to bring as many voters to the polls as possible. Likewise, Democratic activity in parts of New England and the Middle West would be stimulated. It would not, however, "unduly encourage splinter parties or aid one party at the expense of others."<sup>136</sup> The 40 per cent provision necessary for election should check any tendency towards the breakdown of the two party sys-

tem. Also, if an election were thrown into the House, the President would be chosen from the top two candidates only.

Those who favor a proportional plan point out that it would free major parties from having to make concessions to minorities in key states; the minorities would be deprived of any power they may now possess to "throw" electoral votes in a pivotal state to whichever party offers them the best terms.

McBride believes that the proportional system would establish a more equitable balance of power among states in presidential elections. A candidate who can carry six or seven of the largest states under the present system is almost certain of election.<sup>137</sup> Candidates cannot now afford to spread thin their time and money and must concentrate on those few states. McBride believes that two large evils result from this situation: (1) citizens in other states are deprived of the educational value of a campaign, resulting in a lessened concern for national affairs; (2) domination of large states makes them able to dictate terms to parties in return for state support, which is morally degrading.<sup>138</sup> Under these same circumstances, presidential candidates are picked from the large states. Elimination of the electoral college and adoption of a proportional amendment, says McBride, would widen the

field and establish greater equality among presidential contenders. An analysis of McBride's arguments is not as fool-proof as he makes it sound. It would seem logical that even with proportional splitting of electoral votes candidates would be inclined to first seek out those large areas which possess the most votes. Furthermore, in an age of widespread television, which reaches into 94 per cent of American homes,<sup>139</sup> it is difficult to accept the theory that a citizen of any state is really deprived of a campaign education. McBride should look further to discover the reasons for what he labels as a lessened concern for national affairs.

Lastly, proportional advocates believe that the method would not likely threaten the powers of the states to regulate voting requirements. They are realistic in acknowledging that an amendment opening the door to national control would have difficulty being passed by the necessary two-thirds of Congress and ratified by three-fourths of the states.

#### Arguments Against the Proportional Method

One opposition to proportional plans is the belief that they would have an undesirable effect on the nation's parties. By allowing a minority group to win electoral votes, proportionate distribution would give minor parties more incentive to build up strength than they have under



the present system. Requiring the winning candidate to receive at least 40 per cent of the electoral vote would provide only a partial deterrent to the rise of new political groups, and splintering would be encouraged.

Tienken has written:

The fact that the two-party system has generally survived in Congressional, gubernatorial, and other Senate and local elections does not prove that it would endure indefinitely in national elections. New parties would not have to win the Presidency in order to exercise political power; they could exert great influence by holding the balance of power.<sup>140</sup>

Several Congressmen expressed this fear when they voted against the Ledge-Gossett amendment in 1950, stating that it would create a multi-party "Frankenstein".<sup>141</sup>

Opponents to proportional plans have pointed out that such a system might result in less activity by the major parties to unify diverse political groups. Since the existing system gives the major parties an incentive to seek the votes of minorities in key states, it helps assure that interests of these groups will be represented.

As long as both major parties give recognition to the interests of minority groups, the members of such groups have little incentive to rally behind extremists and form special interest blocs or parties.<sup>142</sup>

A proportional method, by reducing the political importance of minority groups in the large doubtful states, would make it possible for major parties to give less attention to the interests of the minority groups--

economic, sectional, national, religious, racial. As Tienken indicates, many opponents feel national unity would be jeopardized under the proportional system if any minority groups were "systematically under-represented."<sup>143</sup>

Herbert Wechsler, Columbia University law professor, voiced the opinion that such a plan as the Lodge-Gossett proportional amendment "would work a major alteration in our Presidential politics."<sup>144</sup>

There is no reason why a scattering of electoral votes should give new parties more appeal or more capacity for growing than the popular votes they now obtain. A mere electoral showing can do nothing more than change the mathematics of failure.<sup>145</sup>

Wechsler warned that the amendment might work to solidify adherence to one party, that reducing the influence of states with large electorates accustomed to close voting would correlatively raise the power of single-party states.<sup>146</sup>

Polsby and Wildavsky argue that proportional distribution would provide no assurance that the popular will would prevail in presidential elections. The electoral vote, including the two votes for each Senator, would continue to be weighed in favor of small states. A single vote in a small state where the number of total electoral votes relative to population was high would have more influence than a single vote in a large state. These authors suggest that large states would, in effect,

be "neutralized" by dividing the electoral vote proportionally between candidates.<sup>147</sup>

It is also argued that an election by both houses of Congress, if no candidate received the specified number of votes, would not guarantee a more accurate expression of the peoples' wishes. Also feared are deadlocks and the possibility of a third party or faction of a major party dictating the results of an election or obstructing the decision altogether. Large states would be expected to oppose a congressional election where, as previously mentioned, states would vote by units and where Nevada's three electoral votes would carry the same weight as New York's 43 electoral votes.<sup>148</sup>

Opposition to proportional amendments frequently centers around concern that states would lose importance. According to Tienken:

Now a state is 'carried' by one party or another, and State political organizations win power and prestige on the strength of having 'delivered' a State to their Presidential candidate. It can be argued that this helps to maintain a desirable dispersion and decentralization of political power in the United States.<sup>149</sup>

Critics of proportional amendments have illustrated that the amendments would not reduce the present inequality of voting qualifications in states and that "no penalty would be attached to low voting participation."<sup>150</sup> Furthermore, with electoral votes of the states divided

percentage-wise between various candidates, competing groups in the states would probably tend to be merged into national groups. State party organizations would be unable to claim credit for any more electoral votes than they could win by their share of the popular vote. Likewise, proportionate distribution might cause campaigns to be organized too exclusively on a national basis, whereas the present system encourages campaigning on a state-by-state basis. It has been suggested that campaigns oriented around states may take the issues to the people more effectively than campaigns directed toward the whole country. This attitude seems hard to accept, however, in a country whose national problems transcend state boundaries.

Proportional opponents play down the idea that the present system, which is accused of exaggerating the winner's majority, is an "unmitigated evil".<sup>152</sup>

After a bitterly-fought election campaign, an appearance of nation-wide backing . . . may help to win general acceptance for a victorious candidate. Under proportionate distribution the winner would almost never have more than a bare majority of electoral votes.<sup>153</sup>

One reason for opposing a proportional amendment seems to be that it might act as an "opening wedge" for most drastic changes, one of which might be pressure for proportional representation in Congress.<sup>154</sup> If a proposed amendment gave electoral votes to a small party

which could not elect a member to Congress, the small party might be encouraged to demand that state congressional delegations be divided according to the number of popular votes received by various parties in the state. This would involve a shift from single to multiple member districts and a less direct relationship between member and constituent.

Harry Louis Seldon has acted as spokesman for opponents of proportional amendments who assert that the constitution should not be amended unless it is certain that the general welfare will benefit as a result. Seldon points out that the present method has been reasonably satisfactory.<sup>155</sup> This was a stand taken by Kennedy in 1956:

. . . no urgent necessity for alteration has been proven . . . no breakdown in the electoral system, or even a widespread lack of confidence in it can be shown.<sup>156</sup>

In his defense of the status quo, Kennedy called to attention the fact that no "minority" Presidents have been elected in the twentieth century.<sup>157</sup> The word "minority" applied to a President is a confusing term. Kennedy undoubtedly meant that no Presidents in this century have trailed their opponents in the number of popular votes received. Actually, however, Wilson in both his terms and Truman in 1948 were "minority" Presidents in the sense that they received less than half of the

popular vote; and ironically in 1960, though Kennedy won with 303 (62 per cent) electoral votes, he received only 49.54 per cent of the popular vote.<sup>158</sup>

## CHAPTER V

## HYPOTHETICAL RESULTS OF PAST ELECTIONS

All serious analyses of electoral college reform eventually include a discussion of the hypothetical effects the various types of proposed amendments would have had in particular election years. Such speculation is frequently used as a "two edged sword".<sup>1</sup> Where it is shown that a proposed system would not have altered past results, it is argued that an amendment would be useless. On the other hand, if it can be shown that a system would have caused a different result and elected the "wrong man", this too is argued against a proposed change. The classic example of this, which appears in numerous sources, is that Abraham Lincoln would probably have not been elected President of the United States and would certainly have not been re-elected had a proportional or district plan been in effect.

Lengthy research projects and computerized studies of past elections have been included in the various publications concerned with the electoral college. However, writers are in disagreement as to the importance of studying hypothetical election results. To this writer, it seems wise to follow the advice of election analysts

and political scientists who testified before the Senate Subcommittee on Constitutional Amendments in 1961. They cautioned that it is generally not realistic to apply a proposed change to a past election without strong qualifications and with the understanding that the statistics illustrate only hypothetically the operation of a particular plan.<sup>2</sup>

Any different system would have produced much different party platforms, campaign strategy, and techniques of voter appeal. Voting patterns and participation would vary. Indeed, the nominees might not have been the same in any given election if a different system had been in use.<sup>3</sup>

At least some credibility, however, must be given to hypothetical results, for many have been carefully researched and have tried to take into consideration factors which might have been at work in an election utilizing one of the proposed amendments. Such results are illustrated in Tables III, IV, and V in this chapter. The reader will note the wide divergency in the numbers of electoral votes which candidates would have likely received under the various proposals.

In Table III on page 76, the reader will note that two figures are given for Kennedy's popular vote totals because analysts disagreed on how to calculate these due to the "defection" of one of six unpledged Alabama electors. The Associated Press attributed to the Democratic



candidate (Kennedy) the highest number of votes cast for any Kennedy elector; the Congressional Quarterly took the highest vote cast for any Alabama elector and gave Kennedy 5/11 of that figure. It may be argued that neither method is satisfactory. Counting votes by the first method would involve counting most of the Alabama votes twice. The second method bases the popular vote on the electoral votes rather than the other way around.<sup>4</sup> As Felix Morey has stated, calculating the Alabama vote in 1960 was "beyond the abilities of an Einstein."<sup>5</sup> Tom Wicker, New York Times Washington Bureau Chief, has commented, "Nobody knows to this day, or ever will, whom the American people really elected President in 1960."<sup>6</sup>

TABLE III  
1960 ELECTION RESULTS AND HYPOTHETICAL RESULTS  
OF VARIOUS REFORM PROPOSALS<sup>7</sup>  
(270 electoral votes required to win)

	<u>Popular Vote</u>	<u>District (Mundt plan)</u>	<u>Proper- tional*</u>	<u>Current System</u>
Kennedy	34,050,341 (AP) 34,221,349 (CQ)	245	265.623	303
Nixon	34,108,546	278	266.075	219

(\*Lodge-Gossett variety)

Neal Peirce has written:

The basic fact of 1960 was that it was an ex-  
ceedingly close election, and the fact that some  
other systems of counting the vote show a slight  
Kennedy margin and others a slight Nixon margin  
is primarily an illustration of the element of  
pure chance in any system under which two candi-

dates receive virtually the same number of votes cast out of almost 69 million.<sup>8</sup>

Had the direct popular vote been in effect in 1960 and had the election not been confused by the Alabama vote, Kennedy would have received more votes than Nixon, but neither would have obtained a majority. The election would have then been referred to Congress where a vote by states would probably have elected Nixon 26-23.<sup>9</sup> Under a popular vote amendment such as S.J. Res. 2 in the 90th Congress, both men would have qualified under the 40 per cent plurality stipulation, but Kennedy's slight edge would have catapulted him to the presidency.

Had the district method of counting votes been in effect in 1960, Nixon would have been elected by a 33 vote margin, considerably out of proportion to his popular vote totals. It seems clear that the district method of vote counting would not correspond to the popular vote totals any more closely than does the current "winner-take-all" practice. (See Table IV)

Although the proportional method comes closest to reflecting the popular vote totals, proportional voting in 1960 would have also resulted in the election of Nixon although he would have been nearly four votes short of the minimum 270 needed to win. In a House election, however, that body would have probably sustained Nixon's victory by two votes. As Senator Paul Douglas estimated

in his extensive 1956 study of electoral reform measures, proportional splitting of electoral votes would frequently prevent any candidate from receiving the required 270 vote minimum and election of the President in the House of Representatives would become a common occurrence.<sup>10</sup>

Table V on the following page documents that in at least six instances in this century, besides the 1960 election, neither major candidate would have received the necessary electoral vote majority.

TABLE IV

COMPARATIVE ELECTORAL VOTES  
CURRENT AND PROPOSED DISTRICT SYSTEM<sup>11</sup>

<u>Year</u>	<u>Popular Vote %</u>	<u>Actual Electoral Votes Received</u>	<u>Probable Electoral Votes--District Plan</u>
1952	55.1	Eisenhower 442 (83%)	375 (70%)
	44.4	Stevenson 89 (16%)	156 (29.5%)
1956	57.4	Eisenhower 457 (86%)	411 (76.8%)
	42.0	Stevenson 73 (14%)	120 (22.4%)
1964	61.0	Johnson 486 (90%)	466 (86.6%)
	38.5	Goldwater 52 (10%)	72 (13.4%)

TABLE V  
 COMPARATIVE ELECTORAL VOTES  
 CURRENT AND PROPOSED PROPORTIONAL PLAN<sup>12</sup>

<u>Year</u>	<u>Popular Vote %</u>	<u>Actual Electoral Votes Received</u>	<u>Probable Electoral Votes--Proportional*</u>
1900	51.7	McKinley 292 (65%)	217.3 (48.62%)
	45.5	Bryan 155 (35%)	217.2 (48.59%)
1904	56.4	Roosevelt 336 (71%)	268.5 (55.6%)
	37.6	Parker 140 (29%)	179.0 (37.1%)
1908	51.6	Taft 321 (66%)	230.8 (47.8%)
	43.1	Bryan 162 (34%)	226.9 (47.0%)
1912	41.9	Wilson 435 (82%)	246.7 (46.5%)
	23.2	Taft 8 (1%)	113.9 (21.5%)
1924	54.0	Coolidge 382 (71%)	258.8 (48.7%)
	28.8	Davis 136 (26%)	191.4 (36.0%)
1948	49.5	Truman 303 (57%)	258.0 (48.6%)
	45.1	Dewey 189 (36%)	221.4 (41.7%)

\*Lodge-Gossett type

## CHAPTER VI

### CONCLUSION

After all of the arguments have been heard, this writer believes that it is impossible to justify maintaining an electoral system which can thwart the desires of the citizens. The criticisms and possible dangers of the present system are clear and are used by supporters of all proposed plans. Yet, intricate speculative research indicates that none of the indirect proposals can offer a better, or even equal, guarantee of voter equality in the election of the President. From the district system proposed in the early 19th century to the proportional system advanced most prominently after World War II, each plan has had its day and has been found wanting. In the words of Tom Wicker, "Each system has come out of the pack like challenging horses only to fall back in the homestretch."<sup>1</sup>

Arguments used to support each of the various alternatives to the present system are strikingly similar; only the interpretations of the "facts" differ. A review of the arguments makes one feel that each group is merely standing at a different vantage point, sometimes blinded by how close their positions really are. Each group has

its own "pet delusions" for justifying why a particular system should be instituted, either not willing or not able to see the real cause behind what Senator Douglas once identified as "torrents of oratory"<sup>2</sup>--that which when stripped of all the niceties may be reduced to one cause: power. It seems that leaders of the various reform efforts have often put state or personal interests before national interests. This is inexcusable in the election of one chief executive for the entire nation.

Furthermore, it cannot be stated too emphatically that the "evidence" called forth on behalf of the various electoral reform proposals must, in the final analysis, be viewed as what it is--highly speculative. The 1956 Senate debates on electoral reform clearly pointed up this problem. We simply do not and cannot know for certain what the political results of the various proposals might be. This writer believes, however, that the direct election proposal would in no foreseeable way harm the nation. In a recent series of interviews with managers of presidential campaigns--former Postmaster General Lawrence O'Brien, Senator Thruston B. Merton, and others--Neal Peirce found that they also expected that the direct vote, unlike other proposed reforms, would have little impact upon the existing strategy of presidential campaigns, including the role of political parties in presi-

dential elections.<sup>3</sup>

On the other hand, the dangers inherent in the present system constitute real evidence which, like a dormant volcano, could spring to life in any presidential election. Most feared are the election of a President who is not the peoples' favorite, a House election, and the possibility of unpledged electors. All of these would be incongruous with a democratic government which purports to emphasize the value of its individual citizens. The nation cannot afford to retain this undemocratic institution. Should the present system fail to elect the candidate with the most popular votes, the repercussions both at home and abroad could be unimaginably damaging. As Peirce has indicated, the problems under the present system are most intense in a close election, "and then we simply cannot gauge the havoc it [the present system] might cause."<sup>4</sup> It could weaken the authority of the President or disrupt continuity in turbulent times; and in the event of a House election, there would probably be "wheeling and dealing" before the electors voted in mid-December if someone tried to force a "deal" upon one of the major candidates. Even if he could not force a bargain, the presidency might be cheapened by his efforts, and the only decent solution would be for the House to select the man who received the most popular votes. If this were the case, a direct vote

might just as well have been in effect. And inasmuch as approximately one-third of our Presidents have been elected by less than a 50 per cent vote with no apparent problems, the American Bar Association's recommendation of a 40 per cent plurality seems wise.

Direct election is perfectly understood by the people and, as already indicated, a majority of Americans thinks it already exists. It is the system wanted by them, and it has proved workable in electing every other officer of the United States, including governors of states with millions of inhabitants. Senate Majority Leader Mike Mansfield has stated:

[The] Federal system is not strengthened through an antiquated device which has not worked as it was intended to work when it was included in the Constitution and which, if anything, has become a divisive force in the Federal system by pitting groups of states against groups of states. As I see the Federal system in contemporary practice, the House of Representatives is the key to the protection of district interests as district interests, just as the Senate is the key to the protection of State interests as State interests. These instrumentalities, and particularly the Senate, are the principal constitutional safeguards of the Federal system, but the Presidency has evolved, out of necessity, into the principal political office, as courts have become the principal legal bulwark beyond districts, beyond States, for safeguarding the interests of all the people in all the States. And since this is the case, in my opinion, the Presidency should be subject to the direct and equal control of all the people.<sup>5</sup>

In the words of one of the earliest advocates of the national plebiscite system:



What could make us so much one people, as to give all the people this general equal privilege? It would produce in the national habits, manners, and love of country, more harmony than any other political measure which could possibly be adopted.<sup>6</sup>

Former Representative Lea once said:

I know of no legitimate reason why every candidate should not receive all votes cast for him. These are just basic requirements of a just system of election.<sup>7</sup>

As John Banzhaf has recorded in the Villanova Law

Review:

Indeed, if the choice were simply between the existing unit-vote system and the proposed proportional or district systems, one would simply be deciding which group of voters--those in the large states or those in the small--would be given an unfair advantage in the election of the President. . . . But there is an alternative: a direct vote of all the people . . . the only plan that would give every citizen a fair and equal voice in electing the chief executive.<sup>8</sup>

Since the Constitutional Convention, debates on the election of the American President have become bogged down in a consideration of big state versus small state interests. Banzhaf maintains, however, that such arguments have been completely irrelevant.<sup>9</sup>

None of the great battles of American political history--in Congress, or in Presidential elections--has been fought on the basis of small versus large states. The arguments have had ideological, economic, and regional points of departure--but never has the line of demarcation been based on the size of the states.<sup>10</sup>

Banzhaf points out that only in the "aethereal realms"<sup>11</sup> of constitutional debate have the differences between big

and small states been vital. He accuses those who defend plans other than the direct vote of ignoring one basic factor--the individual citizen's interest in combining his vote with other voters who share his feelings.

No matter how great his theoretical power may be in a Presidential election, a voter is effectively disfranchised if he happens to be in the minority in his state in his choice for President. Under the unit-rule system, his vote (or the electoral vote representing him) is then actually cast for the candidate he opposes. And this is true whether he is liberal or conservative, white or black, John Birchler or new Left, or a small-state or large-state citizen.<sup>12</sup>

Ultimately, of course, this voter's preferred candidate may win the election; even so, his enthusiasm must be somewhat dampened by the realization that his vote cast in a "losing" state played no role in that victory.

Banzhaf also lashes out against apologists of special big state power in the electoral college, saying that they have really been trying to defend the ability of liberally-oriented minority groups--Negroes, Jews, union members, and assorted "ethnics"--to exercise special weight in presidential elections.<sup>13</sup>

But in the era of white 'backlash' and organized groups of the militant right, it is no longer certain that the 'bloc' vote in the big states--if it ever was as malleable as some depicted--will be liberal in complexion.<sup>14</sup>

Certainly, there should be a firmer theoretical justification than we presently have for the system by which we elect a man with the national and global powers

of a modern President. In The American Presidency,<sup>15</sup> historian Clinton Rossiter lists ten major roles of the modern President: (1) he is the chief of state, a one man distillation of the American people; (2) he is the chief executive, the manager of the gigantic federal apparatus; (3) he is the commander-in-chief; (4) he is the chief diplomat; (5) he is the chief legislator; (6) he is chief of his party; (7) he is the protector of our national peace; (8) he is the leader of a coalition of free nations; (9) he is the manager of prosperity; and (10) he is the voice of the people. Electoral reform must be instituted, however, if the President is really to be the voice of all 200 million Americans in practice as well as in theory. As a Senate Judiciary Subcommittee observed in 1964, "We cannot continue to send U.S. Presidents of the space age into office in the oxcart furnished by the electoral college."<sup>16</sup>

Change is needed in the method of electing our President, but is it possible?

In 1895, Charles A. O'Neil wrote in The American Electoral System:

Reform is not possible in these quiet times.  
Some great and grievous wrong must be perpetrated before a change can be effected.  
The people must be legally robbed of the Presidency. . . .<sup>17</sup>

Although few people today would label ours "quiet times", anyone who analyzes the hundreds of electoral reform

measures submitted over the past one hundred eighty years must be struck with the futility of any change. In 1958 Lucius Wilmerding echoed O'Neil's sentiments:

. . . perhaps nothing will be done until misfortune strikes--the system fails and a choice in the House of Representatives is plainly obnoxious to a majority of the people.<sup>18</sup>

And Richard C. Welty has said:

Constitutional changes . . . are often possible only after a crisis resulting from some inadequate procedure. . . perhaps the American people will demand a change before such a crisis occurs.<sup>19</sup>

As previously indicated, direct popular vote seems to have gained momentum within Congress in the past two years, particularly in the Senate. Several Congressmen have come to realize that adoption of a district or proportional plan would most likely turn in some old problems for some new ones. In late January, 1968, the New Republic indicated that Senator Sam Ervin, who has for years been a major force behind proportional amendments, seemed to be "softening" toward direct popular vote.<sup>20</sup> If this is true, the direct vote may indeed stand a better chance than it has for years, for Senator Ervin is said to have influence over approximately 15 to 20 other Senators on constitutional questions.<sup>21</sup> Senator Bayh reported that direct election had the support of seven of ten members of the 90th Congressional Subcommittee on Constitutional Amendments.<sup>22</sup> Bayh feels

that if the subcommittee gives its approval, there will be little difficulty getting an amendment to the Senate floor "where it would stand a good chance."<sup>23</sup> Hope of its passing the House, however, is thought to be much more dim.<sup>24</sup>

At the present time, it seems apparent that any impetus toward electoral reform will have to come from within Congress. Despite the high percentage of Americans said by public opinion polls to favor electoral college reform, and despite articles in such popular magazines as Reader's Digest, Newsweek, and Saturday Evening Post, there is very little motivation for electoral reform among most common people. This may be attributed to a number of factors including a misunderstanding of the present system or the fact that our fortuitous history of electoral victories coincides so closely with the popular votes. As Stephen R. Graubard wrote in Commonweal, there is a public lack of interest on the subject and no real fears of the evils of the present system.<sup>25</sup> For most Americans, any "evils" in the present system lie outside the realm of experience and therefore wield little, if any, power. "Discretion and common sense recommend we spend our time and energy on more critical concerns."<sup>26</sup> This attitude is reflected in a number of civic groups. The League of Women Voters, for example, has mentioned the topic for consideration in the past several years but

has chosen other subjects for study.<sup>27</sup> Other groups who have recommended change, such as the Chamber of Commerce of the United States, may have actually neutralized their impact by not being specific enough in their recommendations. The Chamber's announced support of either a nationwide popular vote amendment or the district method amendment could cause some to view their actions as merely change for the sake of change. In view of the many analyses of the strengths and weaknesses of various reform proposals, it is very difficult and disconcerting to try to understand how the Chamber can consider a district and direct reform proposal equally acceptable.

A word should be said, however, about those citizens, both in and out of Congress, who do recognize the potential dangers of the present system, who approve the principle behind the direct vote proposals, and who are still reluctant to encourage a change. Many are understandably concerned that should one of the proposed plans be instituted and later be found lacking, change might then be even more difficult than now. Anthony Lewis has said that "government is not an abstract entity;"<sup>28</sup> the validity of a theory, in politics or any other field, can only be proved by adequate testing, but we all might reasonably ask whether a needed reform under a new system might take another nine decades. This was one problem which the political realist in Kennedy pondered before

his vigorous attack upon the Mundt-Daniel Bill in 1956.

No one, of course, dare conclude that risks would never develop under direct popular election, but if one's premise is based upon an overriding consideration of democracy, the risk seems worth taking. The ideal of popular choice is the most deeply ingrained of our governmental principles,<sup>29</sup> and even the knowledge that democratic elections cannot always guarantee that the best man will win should not alter our course. As Peirce has stated:

Even when we have shed the barnacles of the electoral college from the ship of state, there is no guarantee that we or our descendants may not one day elect a charlatan or an ideologue to the Presidency.<sup>30</sup>

He goes on to add that under the present system we have already elected "some pretty grim mediocrities to that office."<sup>31</sup>

But even when one admits that the vox populari may err, the fact remains that through our entire national experience we have learned that there is no safer, no better way to elect our public officials than by the choice of the people, with the man who wins the most votes being awarded the office. This is the essence of 'the consent of the governed.' And no matter how wisely or foolishly the American people choose their President, he is their President. No one has been able to show how the . . . quaint 18th century voting device . . . with all its potential 'wild cards' can serve to protect the Republic. The choice of the Chief Executive must be the peoples', and it should rest with none other than them.<sup>32</sup>

James C. Kirby, Jr., law professor, member of the

American Bar Association's Commission on Electoral Reform, and chief counsel for the U.S. Senate's Judiciary Subcommittee on Constitutional Amendments, has remarked: "The instances when the present system very nearly misfired. . . indicate that the law of averages may be ready to catch up with us."<sup>33</sup> We can only hope that the price we may eventually have to pay for change will not be too great.



## NOTES

Chapter I

<sup>1</sup> Dan Golenpaul, ed., Information Please Almanac, (New York: Simon and Schuster, 1966), p. 261.

<sup>2</sup> Harry Louis Seldon, "The Electoral College: Does It Choose the Best Man?" American Heritage, Vol. XIII, No. 6, October, 1962, p. 94.

<sup>3</sup> Ibid., p. 95.

<sup>4</sup> Felix Merley, "Democracy and the Electoral College," Modern Age, Vol. VI, No. 4, Fall, 1961, p. 374.

<sup>5</sup> National Association of Attorneys-General, Extract from Proceedings of the Fifty-ninth Annual Meeting, June 29-30, 1965, (Reprint, Washington: American Good Government Society), p. 2.

<sup>6</sup> Robert G. Dixon, Jr., "Electoral College Procedure," The Western Political Quarterly, Vol. III, No. 2, June, 1950, p. 215.

<sup>7</sup> Ibid., p. 223.

<sup>8</sup> Ibid., p. 224.

<sup>9</sup> "Electing the President," American Bar Association Journal, Vol. LIII, March, 1967, p. 220.

<sup>10</sup> Merle J. Pusey, "Old and Dangerous, Our Presidential Electors," Washington Post, May 28, 1967, p. A-11.

<sup>11</sup> Ed Gossett, "Will We Elect the President We Vote for in 1968?" The Reader's Digest, Vol. 91, No. 547, November, 1967, p. 218.

<sup>12</sup> Neal R. Parce, "The Case Against the Electoral College," The New Republic, Vol. 156, No. 6, February 11, p. 12.

<sup>13</sup> Richard L. Strout, "A Funny Thing Could Happen on the Way to the White House," New York Times Magazine, Sunday, July 23, 1967, p. 5.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

<sup>16</sup>Robert L. Tienken, Proposals to Reform Our Electoral System, (Washington: Library of Congress Legislative Reference Service, 1966), p. 134.

<sup>17</sup>Ibid.

<sup>18</sup>Ibid., p. 135.

<sup>19</sup>U.S. Congress. Senate. Committee of the Judiciary, The Electoral College, Memorandum prepared by the staff of the Subcommittee on Constitutional Amendments, 87th Congress, 1st sess., 1961, (Washington: Government Printing Office), pp. 52-54.

<sup>20</sup>"Electing the President: Should the Electoral College System Be Changed?" Vital Issues, Vol. XVI, No. 8, April, 1967, p. 2.

<sup>21</sup>Congressional Quarterly Fact Sheet on Electoral Reform, (Washington: Congressional Quarterly News Service), December 16, 1966.

<sup>22</sup>Ibid.

<sup>23</sup>Representative Wendell Wyatt, "Tabulation of 1967 Congressional Questionnaire Results," Washington Spotlight, August, 1967, p. 1.

<sup>24</sup>"National Chamber Again Calls for Abolition of Electoral College," Business News Service, No. 468, Wednesday, May 17, 1967, p. 1.

<sup>25</sup>"NSBA Members Want President Elected by Popular Vote," Small Business Bulletin, Vol. 30, No. 9, September, 1967, p. 4.

## Chapter II

<sup>1</sup>Max Farrand, ed., The Records of the Federal Convention of 1787, (4 Vol.), (New Haven: Yale University Press, 1911), II, p. 501.

<sup>2</sup>Lucius Wilmerding, Jr., The Electoral College, (New Brunswick, N.J.: Rutgers University Press, 1958), p. 10.

- <sup>3</sup>Farrand, op. cit., I, p. 69.
- <sup>4</sup>Ibid., p. 80.
- <sup>5</sup>Ibid., p. 68.
- <sup>6</sup>Ibid., II, p. 32.
- <sup>7</sup>Ibid., p. 31.
- <sup>8</sup>Ibid., p. 48.
- <sup>9</sup>Wilmerding, op. cit., p. 18.
- <sup>10</sup>Ibid., p. 5.
- <sup>11</sup>Ibid.
- <sup>12</sup>Farrand, op. cit., I, p. 68.
- <sup>13</sup>Ibid., II, p. 403.
- <sup>14</sup>Ibid., p. 34.
- <sup>15</sup>Ibid., p. 53.
- <sup>16</sup>Ibid., p. 118.
- <sup>17</sup>Ibid., I, p. 68.
- <sup>18</sup>Ibid., II, p. 133.
- <sup>19</sup>Ibid., I, p. 57.
- <sup>20</sup>Wilmerding, op. cit., p. 9.
- <sup>21</sup>Farrand, op. cit., II, p. 109.
- <sup>22</sup>Ibid., p. 399.
- <sup>23</sup>Ibid., p. 480.
- <sup>24</sup>Wilmerding, op. cit., p. 14.
- <sup>25</sup>Farrand, op. cit., II, p. 497.
- <sup>26</sup>Ibid.
- <sup>27</sup>Ibid.

<sup>28</sup>Ibid., pp. 517-521.

<sup>29</sup>Ibid., II, p. 500.

<sup>30</sup>Ibid.

<sup>31</sup>Ibid., p. 522.

<sup>32</sup>Ibid., pp. 590-603.

<sup>33</sup>Alexander Hamilton, John Jay, and James Madison, The Federalist, (New York: E.P. Dutton and Company, 1911), p. 347.

<sup>34</sup>James Richardson, ed., Messages and Papers of the Presidents, (5 Vol.), (Washington: Government Printing Office, 1896), I, p. 41.

<sup>35</sup>Wilmerding, op. cit., p. 19.

<sup>36</sup>Robert Elden Brown, A Reinterpretation of the Formation of the American Constitution, (Boston: Boston University Press, 1963), p. 48.

<sup>37</sup>Farrand, op. cit., II, pp. 201-202.

<sup>38</sup>Ibid., p. 203.

<sup>39</sup>Jonathan Elliott, ed., The Debates in the Several State Conventions on the Adoption of the Federal Constitution, (5 Vol.), (Philadelphia: J.B. Lippincott, 1901), III, p. 494.

<sup>40</sup>Wilmerding, loc. cit.

<sup>41</sup>Hamilton, Jay, Madison, op. cit., p. 237.

<sup>42</sup>Ibid., pp. 347-349.

<sup>43</sup>Ibid., pp. 237-238.

<sup>44</sup>Elliott, op. cit., II, pp. 433, 511.

<sup>45</sup>Wilmerding, op. cit., p. 22.

<sup>46</sup>Hamilton, Jay, Madison, op. cit., p. 347.

<sup>47</sup>Brown, loc. cit.

<sup>48</sup>Wilmerding, op. cit., p. 3.

<sup>49</sup>Forrest McDonald, E Pluribus Unum: The Formation of the American Republic, (Boston: Houghton-Mifflin Company, 1965), p. 185.

<sup>50</sup>Ibid.

<sup>51</sup>Neal Peirce, The People's President, (New York: Simon and Schuster, 1968), p. 52.

### Chapter III

<sup>1</sup>The Constitution of the United States of America, (Reprint, New York: Allyn and Bacon, 1967), Art. I, Sec. 4, Cl. 2.

<sup>2</sup>Roger Lea McBride, The American Electoral College, (Caldwell, Idaho: The Caxton Printers, Ltd., 1963), p. 29.

<sup>3</sup>Ibid.

<sup>4</sup>"State Power to Bind Presidential Electors," Columbia Law Review, Vol. 65, No. 4, April, 1965, p. 699.

<sup>5</sup>Wilmerding, op. cit., p. 67.

<sup>6</sup>McBride, op. cit., p. 31.

<sup>7</sup>U.S. Congress. Senate. The Electoral College, op. cit., p. 20.

<sup>8</sup>Ibid.

<sup>9</sup>Results of the 1824 presidential election, Reprinted in Election of President and Vice-President, A paper inserted into the Congressional Record by Illinois Senator Paul H. Douglas relative to S.J. Res. 31, 84th Congress, 2d sess., (Washington: Government Printing Office), March 26, 1956, p. 5564.

### Chapter IV

<sup>1</sup>Tienken, op. cit., p. 33.

<sup>22</sup>Committee on Electoral College Reform, How Should the President Be Elected? (Washington: American Good Government Society, 1961), p. 1.

<sup>3</sup> U.S. Congress. Senate. A Joint Resolution Relating to Nomination of Candidates for President and Vice-President, S.J. Res. 1, 87th Congress, 1st sess., (Washington: Government Printing Office, 1961), p. 196.

<sup>4</sup> U.S. Congress. Senate. A Joint Resolution Proposing an Amendment to the Constitution of the United States Relating to the Term of Office of President and Vice-President and Providing for Election of Candidates for President and Vice-President by Popular Vote, S.J. Res. 73, 88th Congress., 1st sess., (Washington: Government Printing Office, 1963), p. 7173.

<sup>5</sup> Ibid.

<sup>6</sup> Commission on Electoral Reform, American Bar Association, op. cit., p. 46.

<sup>7</sup> Ibid., p. 3.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Tienken, op. cit., p. 39.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> U.S. Congress. Senate. The Electoral College, op. cit., p. 29.

<sup>14</sup> Commission on Electoral Reform, American Bar Association, op. cit., p. 45.

<sup>15</sup> Peirce, "The Case Against the Electoral College," op. cit., p. 13.

<sup>16</sup> Dixon, op. cit., p. 217.

<sup>17</sup> J. Harvie Williams, "The Declaration of Independence--Then and Now," speech before the Descendants of the Signers of the Declaration of Independence, (Reprint, Washington: American Good Government Society, 1967).

<sup>18</sup> Seldon, op. cit., p. 12.

<sup>19</sup> Tienken, op. cit., p. 43.

- <sup>20</sup> Ibid., p. 45.
- <sup>21</sup> Golenpaul, op. cit., p. 15.
- <sup>22</sup> Tienken, op. cit., p. 44.
- <sup>23</sup> Committee on Electoral College Reform, How Should the President Be Elected, op. cit., p. 7.
- <sup>24</sup> Neal Peirce, "The Electoral College Goes to Court," The Reporter, Vol. 35, No. 3, October 6, 1966, p. 34.
- <sup>25</sup> Ibid.
- <sup>26</sup> Gray v. Sanders, 372 U.S. 368, (1963).
- <sup>27</sup> Ibid.
- <sup>28</sup> Ibid.
- <sup>29</sup> Seldon, op. cit., p. 94.
- <sup>30</sup> Ibid.
- <sup>31</sup> James Eisenstein and Virginia Eisenstein, The Electoral College, (Washington, Conn.: The Center for Information on America, 1965), pp. 12-13.
- <sup>32</sup> Baker v. Carr, 369 U.S. 186, (1962).
- <sup>33</sup> Russell Baker, Our Next President, (New York: Atheneum Publishers, 1968).
- <sup>34</sup> Committee on Electoral College Reform, How Should the President Be Elected, op. cit., p. 13.
- <sup>35</sup> "State Power to Bind Presidential Electors," op. cit., p. 700.
- <sup>36</sup> "Three States Vie For Oregon's Electoral Votes," Election Extra, (Portland: League of Women Voters, 1968), p. 1.
- <sup>37</sup> Committee on Electoral College Reform, How Should the President Be Elected, op. cit., p. 13-14.
- <sup>38</sup> "State Power to Bind Presidential Electors," loc. cit.

- 39 Ibid.
- 40 Fred Israel, ed., State of the Union Messages of the Presidents, 1790-1966, (3 Vol.), (New York: Chelsea Publishing House, 1966), III, pp. 191,203.
- 41 "Electing the President," op. cit., p. 220.
- 42 Tienken, op. cit., p. 50.
- 43 Committee on Electoral College Reform, How Should the President Be Elected? op. cit., p. 8.
- 44 Ibid., p. 7.
- 45 Daniel M. Ogden, Jr., and Arthur L. Peterson, Electing the President: 1964, (San Francisco: Chandler Publishing Company, 1964), p. 22.
- 46 Tienken, op. cit., p. 55.
- 47 Ibid.
- 48 Richard C. Welty, "Who Really Elects Our Presidents?" The Midwest Quarterly, Vol. II, No. 1, October, 1960, p. 31.
- 49 Stephen R. Graubard, "The President's Electors," Commonweal, Vol. LXXIII, No. 17, January 20, 1961, p. 432.
- 50 Ibid.
- 51 Alexander M. Bickel, "The Case for the Electoral College," The New Republic, Vol. 156, No. 4, January 28, 1967, p. 16.
- 52 Ibid.
- 53 Ibid.
- 54 Ibid.
- 55 Welty, loc. cit.
- 56 U.S. Congress. Senate. The Electoral College, op. cit., p. 46.
- 57 Clarence A. Davis, personal letter, January 17, 1968.
- 58 Pusey, op. cit., p. B-5.



- <sup>59</sup> Ibid.
- <sup>60</sup> "Answer to Wallace," The New Republic, Vol. 156, No. 10, March 9, 1968, p. 8.
- <sup>61</sup> Ibid.
- <sup>62</sup> U.S. Congress. House. A Joint Resolution Proposing an Amendment to the Constitution of the United States Relating to the Election of the President and Vice-President, H.J. Res. 1086, 90th Congress, 2d sess., (Washington: Government Printing Office, 1968), p. E776.
- <sup>63</sup> "Answer to Wallace," op. cit., p. 61.
- <sup>64</sup> Tienken, op. cit., p. 62.
- <sup>65</sup> Ibid.
- <sup>66</sup> Bickel, op. cit., p. 16.
- <sup>67</sup> Nelson W. Polsby and Aaron B. Wildavsky, Presidential Elections, (New York: Charles Scribner's Sons, 1964), p. 171.
- <sup>68</sup> Ibid., p. 172.
- <sup>69</sup> Welty, op. cit., p. 23.
- <sup>70</sup> Ibid., pp. 29-30.
- <sup>71</sup> Golonpaul, op. cit., p. 397.
- <sup>72</sup> Graubard, op. cit., p. 433.
- <sup>73</sup> Ibid.
- <sup>74</sup> Charles A. O'Neil, The American Electoral System, (New York: G.P. Putnam's Sons, 1895), p. 256.
- <sup>75</sup> Ibid., p. 260.
- <sup>76</sup> Tienken, op. cit., p. 63.
- <sup>77</sup> Davis, loc. cit.
- <sup>78</sup> Birch Bayh, personal letter, March 26, 1968.
- <sup>79</sup> "Electing the President," op. cit., p. 220.

- <sup>80</sup> Tienken, op. cit., p. 125.
- <sup>81</sup> O'Neil, op. cit., p. 254.
- <sup>82</sup> Ibid.
- <sup>83</sup> Ibid.
- <sup>84</sup> Ibid.
- <sup>85</sup> Welty, op. cit., p. 32.
- <sup>86</sup> Ibid.
- <sup>87</sup> U.S. Congress. Senate. The Electoral College, op. cit., p. 57.
- <sup>88</sup> Tienken, op. cit., p. 66.
- <sup>89</sup> Electoral College Reform, Referendum No. 98, (Washington: Chamber of Commerce of the United States, 1965), p. 11.
- <sup>90</sup> O'Neil, op. cit., p. 251.
- <sup>91</sup> McBride, op. cit., p. 41.
- <sup>92</sup> Seldon, op. cit., p. 18.
- <sup>93</sup> Committee on Electoral College Reform, How Should the President Be Elected? op. cit., p. 6.
- <sup>94</sup> O'Neil, op. cit., p. 253.
- <sup>95</sup> National Association of Attorneys-General, op. cit., p. 4.
- <sup>96</sup> McBride, op. cit., p. 42.
- <sup>97</sup> U.S. Congress. Senate. The Electoral College, op. cit., p. 51.
- <sup>98</sup> James MacGregor Burns, The Deadlock of Democracy: Four Party Politics in America, (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1963), p. 296.
- <sup>99</sup> Tienken, op. cit., p. 71.
- <sup>100</sup> Ibid., p. 76.

101 J. Harvie Williams, Coalition Now, (Washington: American Good Government Society, 1966), p. 38.

102 U.S. Congress. Senate. A Joint Resolution Proposing an Amendment to the Constitution of the United States Providing for Election of President and Vice-President, S.J. Res. 12, 90th Congress, 1st sess., (Washington: Government Printing Office, 1967), p. 264.

103 Tienken, op. cit., p. 82.

104 Gelsenpaul, op. cit., p. 399.

105 Peirce, The People's President, op. cit., p. 163.

106 Wilmerding, op. cit., p. 145. (Letter to James Monroe, January 12, 1800.)

107 Eisenstein, op. cit., p. 13.

108 Ibid.

109 Burns, op. cit., p. 303.

110 Welty, op. cit., p. 31.

111 Ibid., p. 33.

112 U.S. Congress. Senate. Floor Debates on S.J. Res. 31, An Amendment to the Constitution of the United States Providing for Election of President and Vice-President, 84th Congress, 2d sess., (Washington: Government Printing Office, 1956), p. 5239.

113 Ibid., p. 5241.

114 Ibid., pp. 5241-44.

115 Ibid.

116 Burns, op. cit., p. 305.

117 U.S. Congress. Senate. Floor Debates on S.J. Res. 31, op. cit., p. 5536.

118 Ibid.

119 Ibid.

120 Selden, op. cit., p. 96.

121 U.S. Congress. Senate. Floor Debates on S.J. Res. 31, op. cit., p. 5537.

122 Ibid., p. 5673.

123 Electoral College Reform, op. cit., p. 10.

124 Peires, The People's President, op. cit., p. 165.

125 U.S. Congress. Senate. Floor Debates on S.J. Res. 2, Proposing an Amendment to the Constitution of the United States Providing for Election of President and Vice-President, 81st Congress, 2d sess., (Washington: Government Printing Office, 1950), p. 10413.

126 Selden, loc. cit.

127 U.S. Congress. Senate. Floor Debates on S.J. Res. 52, Proposing an Amendment to the Constitution of the United States Providing for Election of President and Vice-President, 82nd Congress, 1st sess., (Washington: Government Printing Office, 1951), p. 1102.

128 Ibid.

129 U.S. Congress. Senate. Floor Debates on S.J. Res. 31, op. cit., p. 5673.

130 "Electoral College Attacked," Oregon Journal, Thursday, May 7, 1968, p. J-15.

131 J. Abrahamson, clerk, San Francisco District Court, telephone conversation, October 10, 1968.

132 McBride, op. cit., p. 44.

133 Ibid.

134 Reform the Electoral College, (Richmond, Virginia: Virginia Commission on Constitutional Government, 1966), p. 9.

135 Tienken, op. cit., p. 103.

136 Welty, op. cit., p. 34.

137 McBride, op. cit., p. 46.

138 Ibid.

- 139 Luman H. Long, ed., The World Almanac and Book of Facts, (New York: Newspaper Enterprise Association, Inc., 1968), p. 905.
- 140 Tienken, op. cit., p. 111.
- 141 McBride, op. cit., p. 46.
- 142 Ibid., p. 112.
- 143 Tienken, op. cit., p. 112.
- 144 Herbert Wechsler, "The Lodge-Gossett Plan," Fortune, Vol. 39, June, 1949, p. 140.
- 145 Ibid., p. 142.
- 146 Polsby and Wildavsky, op. cit., p. 171.
- 147 Ibid.
- 148 Eisenstein, op. cit., p. 13.
- 149 Tienken, op. cit., p. 115.
- 150 Ibid., p. 117.
- 151 Ibid.
- 152 Ibid.
- 153 Ibid., p. 118.
- 154 Ibid.
- 155 Selden, op. cit., p. 96.
- 156 U.S. Congress. Senate. Floor Debates on S.J. Res. 31, op. cit., p. 5240.
- 157 Ibid.
- 158 "Electing the President," op. cit., p. 43.

#### Chapter V

- <sup>1</sup>U.S. Congress. Senate. The Electoral College, op. cit., p. 49.

<sup>2</sup>Ibid., p. 50.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Morley, op. cit., p. 374.

<sup>6</sup>Peirce, The People's President, op. cit., p. 201.

<sup>7</sup>Ibid., pp. 303-7, 315-6; Golenpaul, op. cit., p. 397.

<sup>8</sup>U.S. Congress. Senate. The Electoral College, op. cit., p. 51.

<sup>9</sup>Golenpaul, op. cit., p. 534.

<sup>10</sup>Ibid., p. 397; Peirce, The People's President, op. cit., pp. 304-7, 316.

<sup>11</sup>U.S. Congress. Senate. Election of President and Vice-President, op. cit., p. 5536.

## Chapter VI

<sup>1</sup>Preface by Tom Wicker in Peirce, The People's President, op. cit., p. 12.

<sup>2</sup>U.S. Congress. Senate. Floor Debates on S.J. Res. 31, op. cit., p. 5674.

<sup>3</sup>Peirce, The People's President, p. 97.

<sup>4</sup>Neal Peirce, personal letter, April 27, 1968.

<sup>5</sup>Commission on Electoral College Reform, Electing the President, op. cit., pp. 6-7.

<sup>6</sup>U.S. Congress. Senate. Statement by Lucius Wilmerding on Electoral Reform, Senate Judiciary Subcommittee on Constitutional Amendments, 90th Congress, 1st sess., (Washington: Government Printing Office, June, 1967), p. 5.

<sup>7</sup>McBride, op. cit., p. 44.

<sup>8</sup>John F. Banzhaf III, "Reflections on the Electoral College," Villanova Law Review, Vol. 13, No. 2, Winter, 1968, p. 335.

- <sup>9</sup> Ibid., p. 344.
- <sup>10</sup> Ibid.
- <sup>11</sup> Ibid.
- <sup>12</sup> Ibid.
- <sup>13</sup> Ibid., p. 345.
- <sup>14</sup> Ibid.
- <sup>15</sup> Clinton Rossiter, The American Presidency, (New York: Harcourt, Brace and Company, Inc., 1956), pp. 4-25.
- <sup>16</sup> U.S. Congress. Senate. Constitutional Amendments, Report of the Committee on the Judiciary pursuant to S. Res. 57, 88th Congress, 1st sess., (Washington: Government Printing Office, 1964), p. 20.
- <sup>17</sup> O'Neil, op. cit., p. 260.
- <sup>18</sup> Wilmerding, op. cit., p. 212.
- <sup>19</sup> Welty, op. cit., p. 34.
- <sup>20</sup> "What Dirksen Knows," The New Republic, Vol. 158, No. 4, January 27, 1968, p. 10.
- <sup>21</sup> Ibid.
- <sup>22</sup> Ibid.
- <sup>23</sup> Ibid.
- <sup>24</sup> Ibid.
- <sup>25</sup> Graubard, op. cit., p. 431.
- <sup>26</sup> League of Women Voters of Portland, telephone conversation, March 4, 1968.
- <sup>27</sup> Anthony Lewis, "The Case Against Electoral Reform," The Reporter, Vol. 23, No. 10, December 8, 1960, p. 33.
- <sup>28</sup> Peirce, The People's President, op. cit., p. 297.
- <sup>29</sup> Ibid.
- <sup>30</sup> Ibid.

<sup>31</sup>James C. Kirby, "Turmoil on the Electoral College Campus," The Progressive, Vol. XXXII, No. 10, October, 1968, pp. 13-16.



## BIBLIOGRAPHY

Books and Pamphlets Cited

- Baker, Russell, Our Next President, New York: Atheneum Publishers, 1968.
- Brown, Robert Eldon, A Reinterpretation of the Formation of the American Constitution, Boston: Boston University Press, 1963.
- Burns, James MacGregor, The Deadlock of Democracy: Four Party Politics in America, Englewood Cliffs, N.J.: Prentice Hall, Inc., 1963.
- Commission on Electoral College Reform, Electing the President, Chicago: American Bar Association, 1967.
- Committee on Electoral College Reform, How Should the President Be Elected? Washington, D.C.: American Good Government Society, 1961.
- Eisenstein, James and Virginia, The Electoral College, Washington, Conn.: The Center for Information on America, 1965.
- Electoral College Reform, Referendum No. 98, Washington, D.C.: Chamber of Commerce of the United States, 1965.
- Elliott, Jonathan, ed., The Debates in the Several State Conventions on the Adoption of the Federal Constitution, 5 Vol., Philadelphia: J.B. Lippincott Company, 1901.
- Farrand, Max, ed., The Records of the Federal Convention of 1787, 4 Vol., New Haven: Yale University Press, 1911.
- Golenpaul, Dan, ed., Information Please Almanac, New York: Simon and Schuster, 1966.

- Hamilton, Alexander, John Jay, and James Madison, The Federalist, New York: E.P. Dutton and Company, 1911.
- Israel, Fred, ed., State of the Union Messages of the Presidents, 1790-1966, 3 Vol., New York: Chelsea Publishing House, 1966.
- Long, Luman, ed., The World Almanac and Book of Facts, New York: Newspaper Enterprise Association, Inc., 1968.
- McBride, Roger Lea, The American Electoral College, Caldwell, Idaho: The Caxton Printers, Ltd., 1963.
- McDonald, Forrest E., E Pluribus Unum: The Formation of the American Republic, Boston: Houghton-Mifflin Company, 1965.
- Ogden, Daniel M., Jr. and Arthur L. Peterson, Electing the President, San Francisco: Chandler Publishing Company, 1964.
- O'Neil, Charles A., The American Electoral System, New York: G.P. Putnam's Sons, 1895.
- Peirce, Neal B., The People's President, New York: Simon and Schuster, 1968.
- Polsby, Nelson W., and Aaron B. Wildavsky, Presidential Elections, New York: Charles Scribner's Sons, 1964.
- Reform the Electoral College, Richmond, Virginia: Virginia Commission on Constitutional Government, 1966.
- Roseboom, Eugene H., A History of Presidential Elections, New York: The Macmillan Company, 1958.

Rossiter, Clinton, The American Presidency, New York: Harcourt, Brace, and Company, Inc., 1956.

The Constitution of the United States, New York: Allyn and Bacon, Reprint, 1967.

Tienken, Robert L., Proposals to Reform our Electoral System, Washington, D.C.: Library of Congress Legislative Reference Service, 1966.

Williams, J. Harvie, Coalition Now, Washington, D.C.: American Good Government Society, 1966.

Wilmerding, Lucius, Jr., The Electoral College, New Brunswick, N.J.: Rutgers University Press, 1958.

#### Periodicals Cited

"Answer to Wallace," The New Republic, Vol. 158, No. 10, March 9, 1968, p. 8.

Banzhaf, John F. III, "Reflections on the Electoral College," Villanova Law Review, Vol. 13, No. 2, Winter, 1968, pp. 303-346.

Bickel, Alexander M., "The Case for the Electoral College," The New Republic, Vol. 156, No. 4, January 28, 1968, pp. 15-16.

Commission on Electoral College Reform, "Electing the President," American Bar Association Journal, Vol. 53, March, 1967, pp. 219-224.

"Congressional Quarterly Fact Sheet on Electoral Reform," Washington, D.C.: Congressional Quarterly News Service, December 16, 1966.

Dixon, Robert G., Jr., "Electoral College Procedure," The Western Political Quarterly, Vol. III, No. 2, June, 1950, pp. 214-224.

"Electing the President: Should the Electoral College System Be Changed?" Vital Issues, Vol. XVI, No. 8, April, 1967, pp. 1-4.

"Electoral College Attacked," The Oregon Journal, Vol. 67, No. 50, Tuesday, May 7, 1968, p. J-15.

Gossett, Ed., "Will We Elect the President We Vote for in 1968?" Reader's Digest, Vol. 91, No. 547, November, 1967, pp. 211-218.

Graubard, Stephen R., "The President's Electors," Commonweal, Vol. LXXIII, No. 17, January 20, 1961, pp. 431-433.

Kirby, James C., "Turmoil on the Electoral College Campus," The Progressive, Vol. XXXII, No. 10, October, 1968, pp. 13-16.

Lewis, Anthony, "The Case Against Electoral Reform," The Reporter, Vol. 23, No. 10, December 8, 1960, pp. 31-33.

Morley, Felix, "Democracy and the Electoral College," Modern Age, Vol. 5, No. 4, Fall, 1961, pp. 373-386.

"National Chamber Again Calls for Abolition of Electoral College," Business News Service, No. 468, Chamber of Commerce of the United States, Wednesday, May 17, 1967, pp. 1-2.

"NSBA Members Want President Elected By Popular Vote," Small Business Bulletin, Vol. 30, No. 9, September, 1967, p. 4.

Peirce, Neal R., "The Case Against the Electoral College," The New Republic, Vol. 156, No. 6, February 11, 1967, pp. 12-13.

. "The Electoral College Goes to Court," The Reporter, Vol. 35, No. 5, October 6, 1966, p. 34.

Pusey, Merlo J., "Old and Dangerous, Our Presidential Electors," Washington Post, May 28, 1967, p. A-11.

Seldon, Harry Louis, "The Electoral College: Does It Choose the Best Man?" American Heritage, Vol. XIII, No. 6, October, 1962, pp. 12-19, 92-96.

"State Power to Bind Presidential Electors," Columbia Law Review, Vol. 65, No. 4, April, 1965, pp. 696-709.

Streut, Richard L., "A Funny Thing Could Happen on the Way to the White House," New York Times Magazine, Sunday, July 23, 1967, pp. 24-25.

"Three States Via for Oregon's Electoral Votes," Election Extra, League of Women Voters, 1968, p. 1.

Tobin, Richard L., "Why 1968 Is a Dangerous Year," editorial, Saturday Review, Vol. L, No. 4, October 7, 1967, p. 26.

U.S. Congress. Senate. Proposed Constitutional Amendment to Abolish the Electoral College, S.J. Res. 2, 81st Cong., 1st sess., Washington: Government Printing Office, 1949.

. Floor Debates on S.J. Res. 2, Amendment Proposing an Amendment to the Constitution of the United States, 81st Cong., 2d sess., Washington: Government Printing Office, 1950.

---

. Floor Debates on S.J. Res. 52, Proposing an Amendment to the Constitution of the United States Providing for Election of President and Vice-President, 82nd Cong., 1st sess., Washington: Government Printing Office, 1951.

---

. Floor Debates on S.J. Res. 31, An Amendment to the Constitution of the United States Providing for Election of President and Vice-President, 84th Cong., 2d sess., Washington: Government Printing Office, 1956.

---

. Election of President and Vice-President, A paper inserted into the Congressional Record by Illinois Senator Paul H. Douglas relative to S.J. Res. 31, 84th Cong., 2d sess., Washington: Government Printing Office, 1956.

---

. A Joint Resolution Relating to Nomination of Candidates for President and Vice-President, S.J. Res. 1, 87th Cong., 1st sess., Washington: Government Printing Office, 1961.

---

. Committee on the Judiciary, The Electoral College, Memorandum prepared by the staff of the Subcommittee on Constitutional Amendments, 87th Cong., 1st sess., Washington: Government Printing Office, 1961.

---

. A Joint Resolution Proposing an Amendment to the Constitution of the United States Providing for Nomination of Candidates for President and Vice-President, and for Election of Such Candidates by Popular Vote, S.J. Res. 1, 88th Cong., 1st sess., Washington: Government Printing Office, 1963.

---

. A Joint Resolution Proposing an Amendment to the Constitution of the United States Relating to Term of Office of President and Vice-President and Providing for Election of Candidates for President and Vice-President by Popular Vote, S.J. Res. 73, 88th Cong., 1st sess., Washington: Government Printing Office, 1963.

. Constitutional Amendments, Report of the  
Judiciary Subcommittee on Constitutional Amendments  
pursuant to S. Res. 57, 88th Cong., 1st sess.,  
Washington: Government Printing Office, 1964.

. A Joint Resolution Proposing an Amendment to  
the Constitution of the United States Providing  
for the Election of the President and Vice-  
President, S.J. Res. 12, 89th Cong., 1st sess.,  
Washington: Government Printing Office, 1965.

. A Joint Resolution to Provide for Direct  
Election of President and Vice-President of the  
United States, S.J. Res. 2, 90th Cong., 1st sess.,  
Washington: Government Printing Office, 1967.

. A Proposed Amendment to the Constitution  
Relating to Election of President and Vice-  
President, S.J. Res. 3, 90th Cong., 1st sess.,  
Washington: Government Printing Office, 1967.

. A Joint Resolution to the Constitution Re-  
lating to Election of President and Vice-  
President, S.J. Res. 6, 90th Cong., 1st sess.,  
Washington: Government Printing Office, 1967.

. An Amendment to the Constitution Relating  
to Election of President and Vice-President,  
S.J. Res. 7, 90th Cong., 1st sess., Washington:  
Government Printing Office, 1967.

. A Joint Resolution Proposing an Amendment to  
the Constitution of the United States Providing  
for Election of President and Vice-President,  
S.J. Res. 12, 90th Cong., 1st sess., Washington:  
Government Printing Office, 1967.

. A Joint Resolution Providing an Amendment to  
the Constitution of the United States Relating to  
the Election of President and Vice-President, S.J.  
Res. 21, 90th Cong., 1st sess., Washington:  
Government Printing Office, 1967.

. A Joint Resolution to Provide for Election of President and Vice-President, S.J. Res. 84, 90th Cong., 1st sess., Washington: Government Printing Office, 1967.

. Statement by Lucius Wilmerding Before the Senate Judiciary Subcommittee on Constitutional Amendments, 90th Cong., 1st sess., Washington: Government Printing Office, 1967.

U.S. Congress. House. A Joint Resolution Proposing an Amendment to the Constitution of the United States Relating to Election of the President and Vice-President, H.J. Res. 1086, 90th Cong., 2d sess., Washington: Government Printing Office, 1968.

Wechsler, Herbert, "The Lodge-Cossett Plan," Fortune, Vol. 39, June, 1949, pp. 138-140.

Welty, Richard C., "Who Really Elects Our Presidents?" The Midwest Quarterly, Vol. II, No. 1, October, 1960, pp. 21-34.

"What Dirksen Knows," The New Republic, Vol. 158, No. 4, January 27, 1968, p. 10.

Wyatt, Representative Wendell, "Tabulation of 1967 Congressional Questionnaire Results," Washington Spotlight, August, 1967.

#### Other Sources

Baker v. Carr, 369 U.S. 186, (1962).

Bayh, Birch, Chairman of the Senate Judiciary Subcommittee on Constitutional Amendments, personal letter, March 26, 1968.



Davis, Clarence A., Board of Governors, American Bar Association, Lincoln, Nebraska, personal letter, January 17, 1968.

Gray v. Sanders, 372 U.S. 368, (1963).

League of Women Veterans of Portland, telephone conversation, March 4, 1968.

National Association of Attorneys-General, Extract from Proceedings of the Fifty-Ninth Annual Meeting, San Antonio, Texas, June 25-30, 1965, Reprint, American Good Government Society, Washington D.C.

Peirce, Neal R., Political Editor, Congressional Quarterly, personal letter, April 27, 1968.

San Francisco District Court, telephone conversation with J. Abrahamson, Clerk, October 10, 1968.

Williams, J. Harvie, "The Declaration of Independence--- Then and Now," speech before the Descendants of the Signers of the Declaration of Independence, Annapolis, Maryland, October 28, 1967, Reprinted by American Good Government Society, Washington, D.C.

Books Consulted

Aly, Bower, ed., Selecting the President: The Twenty-Seventh Annual Debate Handbook, Columbia, Missouri: Artercraft Press, 2 Vol., 1953.

Bowen, Catherine Drinker, Miracle at Philadelphia, Boston: Little, Brown, and Company, 1966.

Burnham, W. Dean, Presidential Ballots: 1836-1892, Baltimore: The James Hopkins Press, 1955.

Butamer, Jane, ed., Constitutional Chaff, New York: Columbia University Press, 1941.

Campbell, Angus, and Robert L. Kahn, The People Elect A President, Ann Arbor: Survey Research Center, Institute for Social Research, University of Michigan, 1952.

Cornell, Margaret, The Machinery of the United States Presidential Election, Oxford, England: Oxford University Press, 1960.

Daniels, Walter M., Presidential Election Reforms, The Reference Shelf, Vol. 25, No. 4, New York: H.W. Wilson Company, 1953.

Farrand, Max, The Framing of the Constitution of the United States, New Haven: Yale University Press, 1913.

Gray, Lee Learner, How We Choose A President, New York: St. Martin's Press, 1964.

Jennings, M. Kent, and L. Harmon Zeigler, eds., The Electoral Process, Englewood Cliffs, N.J.: Prentice Hall, Inc., 1966.

Johnson, Julia E., ed., Direct Election of the President, The Reference Shelf, Vol. 21, No. 4, New York: H.W. Wilson Company, 1949.

Kallenbach, Joseph E., The American Chief Executive, New York: Harper and Row, 1966.

Leedham, Charles, Our Changing Constitution, New York: Dodd, Mead, and Company, 1964.

Proposed Amendments to the Constitution of the United States, Washington: Government Printing Office, 1957.

Robinson, Edgar Eugene, The Presidential Vote: 1896-1932, Stanford, California: Stanford University Press, 1947.

Stanwood, Edward, A History of the Presidency, New York: Houghton, Mifflin Company, 1898.

Thorpe, Francis Newton, The Constitutional History of the United States, 3 Vol., Chicago: Callaghan and Company, 1901.

Tugwell, Rexford G., The Enlargement of the Presidency, Garden City, N.Y.: Doubleday and Company, 1960.

U.S. Constitution Sesquicentennial Commission, History of the Formation of the Union Under the Constitution, Washington: Government Printing Office, 1941.

Van Doren, Carl, The Great Rehearsal, New York: Viking Press, 1948.

Young, Alfred, ed., The Debate Over the Constitution, Chicago: Rand, McNally, and Company, 1965.