

Bill of Rights

Bill of Rights, a formal constitutional declaration or legislative assertion by which a government both defines fundamental rights and liberties of its citizens and establishes their protection against arbitrary or capricious interference or infringement by the government. Specifically, in Western political tradition, the term is used to signify the Bill of Rights (1689) of England, the Declaration of the Rights of Man and of the Citizen (1789) of France, and, in the United States, the first ten amendments to the federal Constitution (1791) and portions of the constitutions of the individual states that establish similar guarantees. (See also **Declaration of the Rights of Man; Constitution of the United States.**)

By extension of meaning, bills of rights sometimes are regarded as including the definition and establishment of rights and liberties through tradition or in documents or enactments prior or subsequent to any formal declaration bearing the name. In Great Britain, for example, many of the rights and liberties safeguarding the citizens are not specified in the Bill of Rights of 1689 but are established in common law or defined in the Magna Carta (1215) and the Petition of Right (1628). In the United States, where the protections of its Bill of Rights derive significantly from English sources, the general term *bill of rights* sometimes is construed to include also those additional or strengthened protections asserted throughout the federal Constitution (importantly in the 14th Amendment) and enunciated in constitutional decisions of the federal courts. (See **Magna Carta; Petition of Right.**)

Formal bills of rights or their equivalents in legislative enactments, although too often disregarded, have been written by the governments of most nations of the world. In 1948 the Universal Declaration of Human Rights was adopted by the United Nations to serve as a standard of definition of rights among the nations. (See **Human Rights.**)

Among provisions most commonly found in bills of rights are those asserting the general right to life and liberty; those defining specific protections for the freedom of speech, press, and religious expression, the right of petition and of peaceful assembly, the right to equal protection before the law, and the right to public trial; and protections against arbitrary arrest or unreasonable search, excessive bails or fines, and cruel or unusual punishment. (See **Civil Rights and Liberties.**)

United States. In American history and constitutional law, the term *Bill of Rights* usually signifies the first ten amendments to the Constitution of the United States. These amendments, more precisely the first eight of them,

specify certain basic freedoms and procedural safeguards of which the individual may not be deprived by governmental power. Taken together, these specified freedoms and protections are the core of American civil liberty and provide the constitutional basis for judicial protection of the rights of the individual. Of particular importance are the provisions of the 1st Amendment (freedoms of religion, speech, press, assembly, and petition); the 4th Amendment (prohibition of unreasonable searches and seizures); the 5th Amendment (prohibitions against double jeopardy and self-incrimination; no taking of life, liberty, or property without due process of law; requirement of fair compensation when private property is taken for public use); the 6th Amendment (procedural safeguards in criminal prosecutions); and the 8th Amendment (prohibitions against excessive bail and cruel and unusual punishments).

The Constitution itself, as submitted to the 13 states for ratification in 1787, contained several provisions of major significance for civil liberties—for example, the clauses in Article I, section 9, forbidding bills of attainder, ex post facto laws, and suspension of the writ of habeas corpus—but it did not include a catalog of individual rights and immunities. The probable explanation for this omission is that the delegates to the Constitutional Convention did not expect the new national government to expand its regulatory activities to any great extent and therefore thought that there would be few occasions when federal power would come into collision with individual interests and concerns. Liberty-conscious Americans of the post-Revolutionary period were, however, unwilling to take the risk that a powerful national government might someday move to impair individual liberty. (See **Constitutional Convention.**)

Indeed, the Bill of Rights tradition was so strong at this time that by 1789, bills of individual rights had been written into eight state constitutions. Of these state documents the Virginia Bill of Rights, drafted in large part by George Mason and adopted in Virginia in 1776, was the most influential model for what would become the Bill of Rights of the national Constitution. A Virginian, James Madison, was a principal draftsman of the first ten amendments to the Constitution, and use of the Virginia Bill as a drafting model is evident from a comparison of the two texts concerned. (See **Mason, George; Madison, James.**)

Throughout the time that the Constitution was before the state conventions for ratification (1787–1788), strong concern was expressed in every state at the absence from that document of a detailed bill of rights. Criticisms were severe in Virginia and Massachusetts, for example, and North Carolina went so far as to make its ratification of the Constitution expressly conditional on the adoption of a bill of rights. Historians are agreed generally that the

Constitution might never have been ratified if its proponents had not given assurance that the proposal of a bill of individual rights would be an early order of business at the First Congress convened under the new Constitution. This pledge was honored, and the first ten amendments, which constitute the Bill of Rights, were submitted together in 1789, and their ratification by the states was completed on Dec. 15, 1791. The first ten amendments are, therefore, virtually contemporaneous with the Constitution itself.

As originally drafted and ratified, the Bill of Rights was understood as having effect only as a limitation on what might be done constitutionally by the new national government. State, county, and municipal officers were, of course, subject to the limitations prescribed by each state's own constitution, but the Supreme Court early decided (*Barron v. Baltimore*, 1833) that the guarantees of the first ten amendments to the Constitution of the United States did not apply as limitations on the power of the states and their subordinate local authorities. Suppose, for example, that a state legislature, at some time before 1868, had enacted a statute calling for the censorship of newspapers within the state. That statute could have been challenged in the courts as violative of some relevant provision of the local state constitution, but no question of federal constitutional law would have been presented. The 1st Amendment's guarantee of freedom of the press, like all the other provisions of the national Bill of Rights, operated, of its own force, only to bar restrictive action by the national government. The states were free, subject only to their own constitutions, to place such restrictions on civil liberties as their legislatures might see fit to impose.

The original constitutional situation was profoundly changed by the adoption of the 14th Amendment in 1868. The key clause of that amendment, in relation to the judicial protection of civil liberties, reads as follows: "nor shall any State deprive any person of life, liberty, or property, without due process of law." In a long series of constitutional decisions, the Supreme Court has interpreted this clause as a general limitation on state power, thus making many of the specific protections of the Bill of Rights as good against the states as against the national government. The "incorporation" of the essential provisions of the first eight amendments into the due process clause of the 14th is one of the most important developments in constitutional history. (See **Supreme Court of the United States; Due Process of Law.**)

As the principal steps in the process of incorporation, the Supreme Court has held (1) that the essential civic freedoms guaranteed against unreasonable federal interference by the Bill of Rights—for example, the free exercise of religion, freedom of speech, and freedom of the press—are aspects of the *liberty* specified in the above quoted clause of the 14th Amendment and

therefore secured to the individual against state as well as federal impairment; and (2) that certain of the procedural safeguards specified in the Bill of Rights—for example, an accused's right to counsel in felony prosecutions and the prohibition of cruel and unusual punishments—are aspects of the due process guaranteed by the 14th Amendment and therefore secured to accused persons in state, as well as federal, adjudicative proceedings.

This is not to say that the due process of the 14th Amendment embodies each and every one of the specific protections recited in the Bill of Rights. The incorporation of the Bill of Rights into the 14th Amendment extends only to such of the safeguards of the first eight amendments as are "of the very essence of a scheme of ordered liberty" (Benjamin Cardozo in *Palko v. Connecticut*, 1937). As applied by the Supreme Court, this text excludes from incorporation procedural safeguards such as the necessity of a grand jury indictment in prosecutions for crime (5th Amendment), the right of trial by jury in criminal cases (6th Amendment), and the right of trial by jury in civil suits at common law (7th Amendment). But the court affirmed the 5th Amendment privilege against self-incrimination in *Escobedo v. Illinois* (1964), concerning the right to an attorney during police questioning, and in *Miranda v. Arizona* (1966), ruling invalid any confession unless the suspect had been warned of his or her rights to be silent and to see a lawyer. (See **Cardozo, Benjamin.**)

Sharp differences of opinion over incorporation developed among the members of the Supreme Court after World War II. Justice Hugo L. Black was particularly critical of the selective approach to "incorporation" and urged repeatedly in dissenting opinions that the 14th Amendment be interpreted to make all the specific protections of the Bill of Rights applicable as fully against the states as against the federal government. Black ultimately lost the battle over full incorporation, but he may have won the war. Certainly the procedural safeguards of the Bill of Rights apply more directly and comprehensively in federal than in state proceedings, and some differences in federal and state practice are therefore to be anticipated. Still, the likelihood that serious differences will exist between federal and state procedures is greatly lessened by the circumstance that almost every state constitution contains in its own bill of rights procedural safeguards substantially coextensive with those specified in the first eight amendments to the Constitution of the United States. (See **Black, Hugo.**)

Britain. The English Bill of Rights, enacted by the Convention Parliament on Dec. 16, 1689, is one of the three great landmarks of the English constitutional tradition, the others being the Magna Carta (1215) and the Petition of Right (1628). The Bill of Rights was the product of the Glorious

Revolution of 1688, whereby the absolutist James II was deposed and replaced with William and Mary; it represents the triumph of Parliament over the crown in the long contest for supremacy that had marked English history. (See **Glorious Revolution.**)

The Convention Parliament's offer of the English throne to William and Mary had been accompanied by a declaration of rights, in which certain governmental principles and legal protections were set out as "the true, ancient, and indubitable rights and liberties of the people of this kingdom." In other words, the Declaration of Rights stated the conditions on which the invitation to the new sovereigns was being extended. The declaration was accepted by William and Mary on Feb. 19, 1689, and the Bill of Rights was, in effect, a recasting of the declaration into the form of an act of Parliament. Thereafter in English political history, claims to royal prerogative were doomed, and parliamentary supremacy was established as the central principle of the English constitutional tradition. (See **Declaration of Rights.**)

The specific clauses of the Bill of Rights can be grouped into three broad categories: (1) provisions confirming and safeguarding the institution of parliamentary supremacy, notably those stating that parliaments are to be held frequently, that freedom of speech and debate in Parliament is guaranteed, that there can be no suspension of laws without parliamentary consent, and that parliamentary consent is required for the levying of money and for the keeping of a standing army; (2) provisions settling the succession to the crown and restricting the succession to Protestants; and (3) provisions guaranteeing certain individual freedoms and procedural safeguards against impairment by governmental power, for example, the right of petition, prohibitions of excessive bail, and reaffirmation of the right to jury trial.

A century later the English Bill of Rights served as an important source for the first ten amendments to the Constitution of the United States. Thus, the clause in the English Bill of Rights prohibiting excessive bail and cruel and unusual punishments was taken over, virtually word for word, in the Virginia Bill of Rights of 1776 and ultimately became the 8th Amendment to the Constitution of the United States.

Canada. The Canadian Charter of Rights and Freedoms is part of the Constitution of Canada as set forth in the Constitution Act proclaimed by Queen Elizabeth II in Ottawa on April 17, 1982. It supersedes the Canadian Bill of Rights that became law in 1960 as an act of Parliament rather than as a formal amendment to the written Canadian constitution (then, the British North America Act of 1867).

The 1960 Bill of Rights had proved less effective than many wished, and its application was limited. Because it originated as federal statutory legislation

and was not part of the Constitution, its provisions extended only to matters coming within the legislative authority of the Canadian Parliament; matters coming under provincial jurisdiction were outside its scope. In addition, the courts were reluctant to accept the bill as an instrument for overriding other federal statutes.

With the passage of the Canada Act by the British Parliament in March 1982 and its receiving royal assent by Queen Elizabeth II, the country acquired the new Canadian Charter of Rights and Freedoms that is binding on both the federal and provincial governments.

The Canadian charter sets forth the fundamental freedoms of conscience and religion; of thought, belief, opinion, and expression, including freedom of the press and other communications media; of peaceful assembly; and of association. It states the democratic right of citizens to vote, the maximum duration of legislative bodies, and the requirements for the annual sitting of Parliament and other legislative bodies. In other provisions the charter sets forth the rights of citizens to move and gain a living; their legal right to life, liberty, and security of the person; the equality of individuals before the law, and their right to equal protection and benefits of the law; the use of English and French as the official languages of Canada; and minority-language educational rights.

A separate part of the Constitution of Canada is devoted to the rights of the aboriginal peoples of Canada, that is, the Indian, Inuit (Eskimo), and Métis peoples of the country.

See also **Democracy; Constitutional Law.**

Harry

Columbia University

Willmer

Jones*

Bibliography

Alderman, Ellen, and Caroline Kennedy, *In Our Defense: The Bill of Rights in Action* (Morrow 1991).

Allan, T. R. S., *Law, Liberty, and Justice: The Legal Foundations of British Constitutionalism* (Clarendon 1993).

Amar, Akhil Reed, *The Bill of Rights: Creation and Reconstruction* (Yale Univ. Press 1998).

Arsenault, Raymond, ed., *Crucible of Liberty: 200 Years of the Bill of Rights* (Free Press 1991).

Beaudoin, Gerald A., and Errol Mendes, eds., *The Canadian Charter of Rights and Freedoms*, 3d ed. (Carswell Legal Pubns. 1996).

Bodenhamer, David J., and James W. Ely, eds., *The Bill of Rights in Modern America* (Ind. Univ. Press 1993).

Bryden, Philip, et al., eds., *Protecting Rights and Freedoms: Essays on the Charter's Place in Canada's Political, Legal, and Intellectual Life* (Univ. of Toronto Press 1994).

Hickok, Eugene W., *The Bill of Rights: Original Meaning and Current Understanding* (Univ. Press of Va. 1991).

Hoffman, Ronald, and Peter J. Albert, eds., *The Bill of Rights: Government Proscribed* (Univ. Press of Va. 1998).

Levy, Leonard W., *Origins of the Bill of Rights* (Yale Univ. Press 1999).

Rossum, Ralph A., *American Constitutional Law: The Bill of Rights and Subsequent Amendments*, 5th ed. (Bedford Bks. 1999).

Stone, Geoffrey R., et al., eds., *The Bill of Rights in the Modern State* (Univ. of Chicago Press 1992).

Turpin, Colin, *British Government and the Constitution*, 3d ed. (Northwestern Univ. Press 1995).

Text of the Constitution of the United States

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE. I.

Section. 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of

that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors and exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and

Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9.

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

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE. II.

Section. 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

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

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or

Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE. III.

Section. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3.

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses of the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

Section. 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of

Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

Go. Washington—Presidt and deputy from Virginia

New Hampshire

John Langdon

Nicholas Gilman

Massachusetts

Nathaniel Gorham

Rufus King

Connecticut

WM SamL Johnson

Roger Sherman

New York

Alexander Hamilton

New Jersey

Wil: Livingston David Brearley.

WM Paterson.

Jona: Dayton

Pennsylvania

B Franklin

Thomas Mifflin

RobT Morris

Geo. Clymer

ThoS FitzSimons

Jared Ingersoll

James Wilson

Gouv Morris

Delaware

Geo: Read

Gunning Bedford jun

John Dickinson

Richard Bassett

Jaco: Broom

Maryland

James McHenry

Dan of St Thos Jenifer

Danl Carroll

Virginia

John Blair—

James Madison Jr.

North Carolina

Wm Blount

Richd Dobbs Spaight.

Hu Williamson

South Carolina

J. Rutledge

Charles Cotesworth Pinckney

Charles Pinckney

Pierce Butler

Georgia

William Few

Abr Baldwin

In Convention Monday, September 17th 1787.

Present

The States of

New Hampshire, Massachusets, Connecticut, MR Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled. Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives

elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the Convention

Go. Washington—Presidt

W. Jackson Secretary.

Amendments of the Constitution

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or

naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT XII.

The Electors shall meet in their respective states and vote by ballot for President and

Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever

source derived, without apportionment among the several States, and without regard to any census or enumeration.

AMENDMENT XVII.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT XVIII.

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT XIX.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XX.

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had

not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

AMENDMENT XXI.

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

AMENDMENT XXII.

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This Article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

AMENDMENT XXIII.

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXIV.

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

AMENDMENT XXV.

Section 1. In case of the removal of the President from office or of his death or

resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take the office upon confirmation by a majority vote of both houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

AMENDMENT XXVI.

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

AMENDMENT XXVII.

No law varying the compensation for the services of the senators and representatives shall take effect until an election of representatives shall have intervened.

United States - Constitution - Amendments



Amendment I [1791 - Religion, Speech, Press, Assembly, Petition]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II [1791 - Right to Bear Arms]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III [1791 - Quartering of Troops]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV [1791 - Search and Seizure]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V [1791 - Grand Jury, Double Jeopardy, Self-Incrimination, Due Process]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI [1791 - Criminal Prosecution]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII [1791 - Common Law Suits]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII [1791 - Excess Bail or Fines, Cruel and Unusual Punishment]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX [1791 - Non-Enumerative Rights]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X [1791 - Rights Reserved to States]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI [1798 - Suits Against a State]**Amendment XI [1798 - Suits Against a State]**

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII [1804 - Presidential Elections]

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; - The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; - The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. - The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII [1865 - Abolition of Slavery]**Section 1 [Abolition Clause]**

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2 [Congressional Power]

Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV [1868 - Privileges and Immunities, Due Process, Equal Protection]

Section 1 [Privileges and Immunities, Due Process, Equal Protection]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2 [Apportionment of Representatives]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3 [Civil War Disqualification]

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4 [Public Debt]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5 [Congressional Power]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV [1870 - Electoral Race Equality]

Section 1 [Right to Vote]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2 [Congressional Power]

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI [1913 - Income Tax]

Amendment XVI [1913 - Income Tax]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII [1913 - Election of Senators]

(1) The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

(2) When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

(3) This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII [1919 - Prohibition]

Section 1 [Prohibition]

After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2 [Congressional and State Power]

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3 [Amendment Procedure]

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX [1920 - Electoral Gender Equality]

Amendment XIX [1920 - Electoral Gender Equality]

(1) The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

(2) Congress shall have power to enforce this article by appropriate legislation.

Amendment XX [1933 - Presidential Office and Congress]

Section 1 [Terms]

The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2 [Congressional Sessions]

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3 [Presidential Succession]

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If the President shall not have been

chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4 [Congressional Succession]

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5 [Enforcement]

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6 [Amendment Procedure]

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI [1933 - Repeal of Prohibition]

Section 1 [Repeal]

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2 [State Prohibition]

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3 [Amendment Procedure]

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII [1951 - Presidential Two Term Limit]

Section 1 [Term Limit]

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2 [Amendment Procedure]

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII [1961 - Presidential Vote in D.C.]

Section 1 [Vote]

The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2 [Congressional Power]

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV [1964 - Poll Tax]

Section 1 [Tax]

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2 [Congressional Power]

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV [1967 - Presidential Succession]

Section 1 [Vice President]

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2 [Vice President Replacement]

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3 [Vice President as Acting President]

Whenever the President transmits to the President *pro tempore* of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4 [Vice President as Acting President]

Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President *pro tempore* of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President. Thereafter, when the President transmits to the President *pro tempore* of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide,

transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI [1971 - Maturity Age for Elections]

Section 1 [Vote at 18]

The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2 [Congressional Power]

The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII [1992 - Compensation of Members of Congress]

Amendment XXVII [1992 - Compensation of Members of Congress]

No law, varying the compensation for the Services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

http://www.oefre.unibe.ch/law/icl/us01000_.html

The Electoral College: How It Works

(From The New Book of Knowledge - NBK News)

When voters cast their ballots in a U.S. presidential election, they aren't electing the president directly. The names of the presidential candidate are on the ballot. But the votes go to choose electors--members of the Electoral College--who are pledged to those candidates. It's the Electoral College that actually picks the president and vice president.

The founders of the United States set up the Electoral College for several reasons. In their day, with no radio or television, it was hard for people to learn about candidates outside their own states. The founders thought that voters should choose electors who would learn about the candidates and make the decision for them.

The Electoral College was also set up to protect the interests of small states. Every state gets one electoral vote for each of its U.S. senators and one vote for each of its U.S. representatives. The number of a state's representatives is based on its population. But the number of senators is not--all states have two. Thus small states have a slightly bigger voice in the Electoral College than they do in the popular vote. No state has less than three electoral votes. (The District of Columbia also has three electoral votes.)

The electors vote weeks after the election, in December. They meet in their state capitals and cast votes for president and vice president. To win, a candidate must get 270 electoral votes, out of the total of 538. If no candidate gets a majority, the House of Representatives picks the president, and the Senate picks the vice president.

These days the Electoral College doesn't work quite the way the founders thought it would. Electors are no longer supposed to make up their own minds when they cast their ballots. They are supposed to follow the wishes of the people who voted for them. It's rare for a "faithless elector" to break ranks and switch his or her vote. That last happened in 1988, when a West Virginia elector voted for Lloyd Bentsen as president and Michael Dukakis as vice president. (In 2004, a Minnesota elector voted for John Edwards as president instead of John Kerry, but in a subsequent vote, all 10 of the state's votes for vice president went to Edwards.)

In nearly all states, the candidate who wins a majority of the popular vote gets all that state's electoral votes. Maine and Nebraska are the only states in which the vote can sometimes be divided among candidates. In 2004,

Colorado voters defeated a measure that would have divided their state's votes among candidates based on their share of the popular vote.

The winner-takes-all rule means that a candidate who narrowly loses the popular vote can still win in the Electoral College. Four presidents have been elected this way: John Quincy Adams (1828), Rutherford B. Hayes (1876), Benjamin Harrison (1888), and George W. Bush (2000).

THE ELECTORAL COLLEGE

by

William C. Kimberling, Deputy Director
FEC Office of Election Administration

(The views expressed here are solely those of the author and are not necessarily shared by the Federal Election Commission or any division thereof.)

In order to appreciate the reasons for the Electoral College, it is essential to understand its historical context and the problem that the Founding Fathers were trying to solve. They faced the difficult question of how to elect a president in a nation that:

n was composed of thirteen large and small States jealous of their own rights and powers and suspicious of any central national government

n contained only 4,000,000 people spread up and down a thousand miles of Atlantic seaboard barely connected by transportation or communication (so that national campaigns were impractical even if they had been thought desirable)

n believed, under the influence of such British political thinkers as Henry St John Bolingbroke, that political parties were mischievous if not downright evil, and

n felt that gentlemen should not campaign for public office (The saying was "The office should seek the man, the man should not seek the office.").

How, then, to choose a president without political parties, without national campaigns, and without upsetting the carefully designed balance between the presidency and the Congress on one hand and between the States and the federal government on the other?

Origins of the Electoral College

The Constitutional Convention considered several possible methods of selecting a president. One idea was to have the Congress choose the president. This idea was rejected, however, because some felt that making such a choice would be too divisive an issue and leave too many hard feelings in the Congress. Others felt that such a procedure would invite unseemly political bargaining, corruption, and perhaps even interference

from foreign powers. Still others felt that such an arrangement would upset the balance of power between the legislative and executive branches of the federal government. A second idea was to have the State legislatures select the president. This idea, too, was rejected out of fears that a president so beholden to the State legislatures might permit them to erode federal authority and thus undermine the whole idea of a federation. A third idea was to have the president elected by a direct popular vote. Direct election was rejected not because the Framers of the Constitution doubted public intelligence but rather because they feared that without sufficient information about candidates from outside their State, people would naturally vote for a "favorite son" from their own State or region. At worst, no president would emerge with a popular majority sufficient to govern the whole country. At best, the choice of president would always be decided by the largest, most populous States with little regard for the smaller ones. Finally, a so-called "Committee of Eleven" in the Constitutional Convention proposed an indirect election of the president through a College of Electors.

The function of the College of Electors in choosing the president can be likened to that in the Roman Catholic Church of the College of Cardinals selecting the Pope. The original idea was for the most knowledgeable and informed individuals from each State to select the president based solely on merit and without regard to State of origin or political party. The structure of the Electoral College can be traced to the Centurial Assembly system of the Roman Republic. Under that system, the adult male citizens of Rome were divided, according to their wealth, into groups of 100 (called Centuries). Each group of 100 was entitled to cast only one vote either in favor or against proposals submitted to them by the Roman Senate. In the Electoral College system, the States serve as the Centurial groups (though they are not, of course, based on wealth), and the number of votes per State is determined by the size of each State's Congressional delegation. Still, the two systems are similar in design and share many of the same advantages and disadvantages.

The similarities between the Electoral College and classical institutions are not accidental. Many of the Founding Fathers were well schooled in ancient history and its lessons.

The First Design

In the first design of the Electoral College (described in Article II, Section 1 of the Constitution):

Each State was allocated a number of Electors equal to the number of its U.S. Senators (always 2) plus the number of its U.S. Representatives (which may change each decade according to the size of each State's population as determined in the decennial census). This arrangement built upon an earlier compromise in the design of the Congress itself and thus satisfied both large and small States.

n The manner of choosing the Electors was left to the individual State legislatures, thereby pacifying States suspicious of a central national government.

n Members of Congress and employees of the federal government were specifically prohibited from serving as an Elector in order to maintain the balance between the legislative and executive branches of the federal government.

n Each State's Electors were required to meet in their respective States rather than all together in one great meeting. This arrangement, it was thought, would prevent bribery, corruption, secret dealing, and foreign influence.

n In order to prevent Electors from voting only for a "favorite son" of their own State, each Elector was required to cast two votes for president, at least one of which had to be for someone outside their home State. The idea, presumably, was that the winner would likely be everyone's second favorite choice.

n The electoral votes were to be sealed and transmitted from each of the States to the President of the Senate who would then open them before both houses of the Congress and read the results.

n The person with the most electoral votes, provided that it was an absolute majority (at least one over half of the total), became president. Whoever obtained the next greatest number of electoral votes became vice president -- an office which they seem to have invented for the occasion since it had not been mentioned previously in the Constitutional Convention.

n In the event that no one obtained an absolute majority in the Electoral College or in the event of a tie vote, the U.S. House of Representatives, as the chamber closest to the people, would choose the president from among the top five contenders. They would do this (as a further concession to the small States) by allowing each State to cast only one vote with an absolute majority of the States being required to elect a president. The vice presidency would go to whatever remaining contender had the greatest number of electoral votes. If that, too, was tied, the U.S. Senate would break the tie by deciding between the two.

In all, this was quite an elaborate design. But it was also a very clever one when you consider that the whole operation was supposed to work *without political parties* and *without national campaigns* while maintaining the balances and satisfying the fears in play at the time.

Indeed, it is probably because the Electoral College was originally designed to operate in an environment so totally different from our own that many people think it is anachronistic and fail to appreciate the new purposes it now serves. But of that, more later.

The Second Design

The first design of the Electoral College lasted through only four presidential elections. For in the meantime, political parties had emerged in the United States. The very people who had been condemning parties publicly had nevertheless been building them privately. And too, the idea of political parties had gained respectability through the persuasive writings of such political philosophers as Edmund Burke and James Madison. One of the accidental results of the development of political parties was that in the presidential election of 1800, the Electors of the Democratic-Republican Party gave Thomas Jefferson and Aaron Burr (both of that party) an equal number of electoral votes. The tie was resolved by the House of Representatives in Jefferson's favor -- but only after 36 tries and some serious political dealings which were considered unseemly at the time. Since this sort of bargaining over the presidency was the very thing the Electoral College

was supposed to prevent, the Congress and the States hastily adopted the Twelfth Amendment to the Constitution by September of 1804.

To prevent tie votes in the Electoral College which were made probable, if not inevitable, by the rise of political parties (and no doubt to facilitate the election of a president and vice president of the same party), the 12th Amendment requires that each Elector cast *one* vote for president and a *separate* vote for vice president rather than casting two votes for president with the runner-up being made vice president.

The Amendment also stipulates that if no one receives an absolute majority of electoral votes for president, then the U.S. House of Representatives will select the president from among the top three contenders with each State casting only one vote and an absolute majority being required to elect. By the same token, if no one receives an absolute majority for vice president, then the U.S. Senate will select the vice president from among the top two contenders for that office. All other features of the Electoral College remained the same including the requirement that, in order to prevent Electors from voting only for "favorite sons", either the presidential or vice presidential candidate has to be from a State other than that of the Electors. In short, political party loyalties had, by 1800, begun to cut across State loyalties thereby creating new and different problems in the selection of a president. By making seemingly slight changes, the 12th Amendment fundamentally altered the design of the Electoral College and, in one stroke, accommodated political parties as a fact of life in American presidential elections.

It is noteworthy in passing that the idea of electing the president by direct popular vote was not widely promoted as an alternative to redesigning the Electoral College. This may be because the physical and demographic circumstances of the country had not changed that much in a dozen or so years. Or it may be because the excesses of the recent French revolution (and its fairly rapid degeneration into dictatorship) had given the populists some pause to reflect on the wisdom of too direct a democracy.

The Evolution of the Electoral College

Since the 12th Amendment, there have been several federal and State statutory changes which have affected both the time and manner of choosing Presidential Electors but which have not further altered the fundamental workings of the Electoral College. There have also been a few curious incidents which its critics cite as problems but which proponents of the Electoral College view as merely its natural and intended operation.

The Manner of Choosing Electors

From the outset, and to this day, the manner of choosing its State's Electors was left to each State legislature. And initially, as one might expect, different States adopted different methods.

Some State legislatures decided to choose the Electors themselves.

Others decided on a direct popular vote for Electors either by Congressional district or at large throughout the whole State.

Still others devised some combination of these methods. But in all cases, Electors were chosen individually from a single list of all candidates for the position.

During the 1800's, two trends in the States altered and more or less standardized the manner of choosing Electors.

The first trend was toward choosing Electors by the direct popular vote of the whole State (rather than by the State legislature or by the popular vote of each Congressional district). Indeed, by 1836, all States had moved to choosing their Electors by a direct statewide popular vote except South Carolina which persisted in choosing them by the State legislature until 1860. Today, all States choose their Electors by direct statewide election except Maine (which in 1969) and Nebraska (which in 1991) changed to selecting two of its Electors by a statewide popular vote and the remainder by the popular vote in each Congressional district.

Along with the trend toward their direct statewide election came the trend toward what is called the "winner-take-all" system of choosing Electors. Under the winner-take-all system, the presidential candidate who wins the most popular votes within a State wins all of that State's Electors. This winner-take-all system was really the logical consequence of the direct statewide vote for Electors owing to the influence of political parties. For in a direct popular election, voters loyal to one political party's candidate for president would naturally vote for that party's list of proposed Electors. By the same token, political parties would propose only as many Electors as there were electoral votes in the State so as not to fragment their support and thus permit the victory of another party's Elector.

There arose, then, the custom that each political party would, in each State, offer a "slate of Electors" -- a list of individuals loyal to their candidate for president and equal in number to that State's electoral vote. The voters of each State would then vote for each individual listed in the slate of whichever party's candidate they preferred. Yet the business of presenting separate party slates of individuals occasionally led to confusion. Some voters divided their votes between party lists because of personal loyalties to the individuals involved rather than according to their choice for president. Other voters, either out of fatigue or confusion, voted for fewer than the entire party list. The result, especially in close elections, was the occasional splitting of a State's electoral vote. This happened as late as 1916 in West Virginia when seven Republican Electors and one Democrat Elector won.

Today, the individual party candidates for Elector are seldom listed on the ballot. Instead, the expression "Electors for" usually appears in fine print on the ballot in front of each set of candidates for president and vice president (or else the State law specifies that votes cast for the candidates are to be counted as being for the slate of delegates pledged to those candidates). It is still true, however, that voters are actually casting their votes for the Electors for the presidential and vice presidential candidates of their choice rather than for the candidates themselves.

The Time of Choosing Electors

The time for choosing Electors has undergone a similar evolution. For while the Constitution specifically gives to the Congress the power to "determine the Time of choosing the Electors", the Congress at first gave some latitude to the States. For the first fifty years of the Federation, Congress permitted the States to conduct their presidential elections (or otherwise to choose their

Electors) anytime in a 34 day period before the first Wednesday of December which was the day set for the meeting of the Electors in their respective States. The problems born of such an arrangement are obvious and were intensified by improved communications. For the States which voted later could swell, diminish, or be influenced by a candidate's victories in the States which voted earlier. In close elections, the States which voted last might well determine the outcome. (And it is perhaps for this reason that South Carolina, always among the last States to choose its Electors, maintained for so long its tradition of choosing them by the State legislature. In close elections, the South Carolina State legislature might well decide the presidency!).

The Congress, in 1845, therefore adopted a uniform day on which the States were to choose their Electors. That day -- the Tuesday following the first Monday in November in years divisible by four -- continues to be the day on which all the States now conduct their presidential elections.

Historical Curiosities

In the evolution of the Electoral College, there have been some interesting developments and remarkable outcomes. Critics often try to use these as examples of what can go wrong. Yet most of these historical curiosities were the result of profound political divisions within the country which the designers of the Electoral College system seem to have anticipated as needing resolution at a higher level.

n **In 1800**, as previously noted, the Democratic-Republican Electors gave both Thomas Jefferson and Aaron Burr an equal number of electoral votes. The tie, settled in Jefferson's favor by the House of Representatives in accordance with the original design of the Electoral College system, prompted the 12th Amendment which effectively prevented this sort of thing from ever happening again.

n **In 1824**, there were four fairly strong contenders in the presidential contest (Andrew Jackson, John Quincy Adams, William Crawford, and Henry Clay) each of whom represented an important faction within the now vastly dominant Democratic-Republican Party. The electoral votes were so divided amongst them that no one received the necessary majority to become president (although the popular John C. Calhoun did receive enough electoral votes to become vice president). In accordance with the provisions of the 12th Amendment, the choice of president devolved upon the House of Representatives who narrowly selected John Quincy Adams despite the fact that Andrew Jackson had obtained the greater number of electoral votes. This election is often cited as the first one in which the candidate who obtained the greatest popular vote (Jackson) failed to be elected president. The claim is a weak one, though, since six of the twenty four States at the time still chose their Electors in the State legislature. Some of these (such as sizable New York) would likely have returned large majorities for Adams had they conducted a popular election.

n **The 1836** presidential election was a truly strange event. The developing Whig Party, for example, decided to run three different

presidential candidates (William Henry Harrison, Daniel Webster, and Hugh White) in separate parts of the country. The idea was that their respective regional popularities would ensure a Whig majority in the Electoral College which would then decide on a single Whig presidential ticket. This fairly inspired scheme failed, though, when Democratic-Republican candidate Martin Van Buren won an absolute majority of Electors. Nor has such a strategy ever again been seriously attempted. Yet Van Buren himself did not escape the event entirely unscathed. For while he obtained an electoral majority, his vice presidential running mate (one Richard Johnson) was considered so objectionable by some of the Democratic-Republican Electors that he failed to obtain the necessary majority of electoral votes to become vice president. In accordance with the 12th Amendment, the decision devolved upon the Senate which chose Johnson as vice president anyway. A really bizarre election, that one.

n **In the 1872** election, Democratic candidate Horace Greeley (he of earlier "Go West, young man, go West" journalistic fame whose nomination makes a good story in itself) thoughtlessly died during that period between the popular vote for Electors and the meeting of the Electoral College. The Electors who were pledged to him, clearly unprepared for such an eventuality, split their electoral votes amongst several other Democratic candidates (including three votes for Greeley himself as a possible comment on the incumbent Ulysses S. Grant). That hardly mattered, though, since the Republican Grant had readily won an absolute majority of Electors. Still, it was an interesting event for which the political parties are now prepared.

n **In 1876**, the country once again found itself in serious political turmoil echoing, in some respects, both the economic divisions of 1824 and the impending political party realignments of 1836, but with the added bitterness of Reconstruction. A number of deep cross currents were in play. After a vast economic expansion, the country had fallen into a deep depression. Monetary and tariff issues were eroding the Union Republican coalition of East and West while a solid Republican black vote eroded the traditional Democratic hold on the South. The incumbent Republican administration of Grant had suffered a seemingly endless series of scandals involving graft and corruption on a scale hitherto unknown. And the South was eager to put an end to Radical Reconstruction which was, after all, a kind of vast political mugging. Against this backdrop, the resurging Democratic Party easily nominated Samuel J. Tilden, the popular Governor of New York, and Thomas A. Hendricks of Indiana (shrewd geographic choices under the circumstances). The Republicans, in a more turbulent convention, selected Ohio Governor Rutherford B. Hayes and William A. Wheeler of New York. A variety of fairly significant third parties also cropped up, further shattering the country's political cohesion.

This is about as good a prescription for electoral chaos as anyone might hope for. Indeed, it is almost surprising that things did not turn out

worse than they did. For on election night, it looked as though Tilden had pulled off the first Democratic presidential victory since the Civil War -- although the decisive electoral votes of South Carolina, Florida, and Louisiana remained in balance. Yet these States were as divided internally as was the nation at large. Without detailing the machinations of the vote count, suffice it to say that each State finally delivered to the Congress two sets of electoral votes --one set for Tilden and one set for Hayes. Because the Congressional procedures for resolving disputed sets of Electors had expired, the Congress established a special 15-member commission to decide the issue in each of the three States. After much partisan intrigue, the special commission decided (by one vote in each case) on Hayes' Electors from all three States. Thus, Hayes was elected president despite the fact that Tilden, by everyone's count, had obtained a slight majority of popular votes (although the difference was a mere 3% of the total vote cast). As a final note, the Congress enacted in 1887 legislation that delegated to each State the final authority to determine the legality of its choice of Electors and required a concurrent majority of both houses of Congress to reject any electoral vote. That legislation remains in effect to this day so that the events of 1876 will not repeat themselves.

n Benjamin Harrison's election in **1888** is really the only clearcut instance in which the Electoral College vote went contrary to the popular vote. This happened because the incumbent, Democrat Grover Cleveland, ran up huge popular majorities in several of the 18 States which supported him while the Republican challenger, Benjamin Harrison, won only slender majorities in some of the larger of the 20 States which supported him (most notably in Cleveland's home State of New York). Even so, the difference between them was only 110,476 votes out of 11,381,032 cast -- less than 1% of the total. Interestingly, in this case, there were few critical issues (other than tariffs) separating the candidates so that the election seems to have been fought -- and won -- more on the basis of superior party organization in getting out the vote than on the issues of the day.

These, then, are the major historical curiosities of the Electoral College system. And because they are so frequently cited as flaws in the system, a few observations on them seem in order.

First, all of these events occurred over a century ago. For the past hundred years, the Electoral College has functioned without incident in every presidential election through two world wars, a major economic depression, and several periods of acute civil unrest. Only twice in this century (the States' Rights Democrats in 1948 and George Wallace's American Independents in 1968) have there been attempts to block an Electoral College victory and thus either force a negotiation for the presidency or else force the decision into the Congress. Neither attempt came close to succeeding. Such stability, rare in human history, should not be lightly dismissed.

Second, each of these events (except 1888) resulted either from political inexperience (as in 1800, 1836, and 1872) or from profound political

divisions within the country (as in 1824, 1876, and even 1948 and 1968) which required some sort of higher order political resolution. And all of them were resolved in a peaceable and orderly fashion without any public uprising and without endangering the legitimacy of the sitting president. Indeed, it is hard to imagine how a direct election of the president could have resolved events as agreeably.

Finally, as the election of 1888 demonstrates, the Electoral College system imposes two requirements on candidates for the presidency:

- that the victor obtain a *sufficient* popular vote to enable him to govern (although this may not be the absolute majority), and
- that such a popular vote be sufficiently *distributed* across the country to enable him to govern.

Such an arrangement ensures a regional balance of support which is a vital consideration in governing a large and diverse nation (even though in close elections, as in 1888, distribution of support may take precedence over majority of support).

Far from being flaws, then, the historical oddities described above demonstrate the strength and resilience of the Electoral College system in being able to select a president in even the most troubled of times.

Current Workings of the Electoral College

The current workings of the Electoral College are the result of both design and experience. As it now operates:

Each State is allocated a number of Electors equal to the number of its U.S. Senators (always 2) plus the number of its U.S. Representatives (which may change each decade according to the size of each State's population as determined in the Census).

n The political parties (or independent candidates) in each State submit to the State's chief election official a list of individuals pledged to their candidate for president and equal in number to the State's electoral vote. Usually, the major political parties select these individuals either in their State party conventions or through appointment by their State party leaders while third parties and independent candidates merely designate theirs.

n Members of Congress and employees of the federal government are prohibited from serving as an Elector in order to maintain the balance between the legislative and executive branches of the federal government.

n After their caucuses and primaries, the major parties nominate their candidates for president and vice president in their national conventions -- traditionally held in the summer preceding the election. (Third parties and independent candidates follow different procedures according to the individual State laws). The names of the duly nominated candidates are then officially submitted to each State's chief election official so that they might appear on the general election ballot.

n On the Tuesday following the first Monday of November in years divisible by four, the people in each State cast their ballots for the party

slate of Electors representing their choice for president and vice president (although as a matter of practice, general election ballots normally say "Electors for" each set of candidates rather than list the individual Electors on each slate).

n Whichever party slate wins the most popular votes in the State becomes that State's Electors -- so that, in effect, whichever presidential ticket gets the most popular votes in a State wins all the Electors of that State. [The two exceptions to this are Maine and Nebraska where two Electors are chosen by statewide popular vote and the remainder by the popular vote within each Congressional district].

n On the Monday following the second Wednesday of December (as established in federal law) each State's Electors meet in their respective State capitals and cast their electoral votes -- one for president and one for vice president.

n In order to prevent Electors from voting only for "favorite sons" of their home State, at least one of their votes must be for a person from outside their State (though this is seldom a problem since the parties have consistently nominated presidential and vice presidential candidates from different States).

n The electoral votes are then sealed and transmitted from each State to the President of the Senate who, on the following January 6, opens and reads them before both houses of the Congress.

n The candidate for president with the most electoral votes, provided that it is an absolute majority (one over half of the total), is declared president. Similarly, the vice presidential candidate with the absolute majority of electoral votes is declared vice president.

n In the event no one obtains an absolute majority of electoral votes for president, the U.S. House of Representatives (as the chamber closest to the people) selects the president from among the top three contenders with each State casting only one vote and an absolute majority of the States being required to elect. Similarly, if no one obtains an absolute majority for vice president, then the U.S. Senate makes the selection from among the top two contenders for that office.

n At noon on January 20, the duly elected president and vice president are sworn into office.

Occasionally questions arise about what would happen if the presidential or vice presidential candidate died at some point in this process. For answers to these, as well as to a number of other "what if" questions, readers are advised to consult a small volume entitled *After the People Vote: Steps in Choosing the President* edited by Walter Berns and published in 1983 by the American Enterprise Institute. Similarly, further details on the history and current functioning of the Electoral College are available in the second edition of Congressional Quarterly's *Guide to U.S. Elections*, a real goldmine of information, maps, and statistics.

The Pro's and Con's of the Electoral College System

There have, in its 200-year history, been a number of critics and

proposed reforms to the Electoral College system -- most of them trying to eliminate it. But there are also staunch defenders of the Electoral College who, though perhaps less vocal than its critics, offer very powerful arguments in its favor.

Arguments Against the Electoral College

Those who object to the Electoral College system and favor a direct popular election of the president generally do so on four grounds:

- n the possibility of electing a minority president
- n the risk of so-called "faithless" Electors,
- n the possible role of the Electoral College in depressing voter turnout, and
- n its failure to accurately reflect the national popular will.

Opponents of the Electoral College are disturbed by *the possibility of electing a minority president* (one without the absolute majority of popular votes). Nor is this concern entirely unfounded since there are three ways in which that could happen.

One way in which a minority president could be elected is if the country were so deeply divided politically that three or more presidential candidates split the electoral votes among them such that no one obtained the necessary majority. This occurred, as noted above, in 1824 and was unsuccessfully attempted in 1948 and again in 1968. Should that happen today, there are two possible resolutions: either one candidate could throw his electoral votes to the support of another (before the meeting of the Electors) or else, absent an absolute majority in the Electoral College, the U.S. House of Representatives would select the president in accordance with the 12th Amendment. Either way, though, the person taking office would not have obtained the absolute majority of the popular vote. Yet it is unclear how a direct election of the president could resolve such a deep national conflict without introducing a presidential run-off election -- a procedure which would add substantially to the time, cost, and effort already devoted to selecting a president and which might well deepen the political divisions while trying to resolve them.

A second way in which a minority president could take office is if, as in 1888, one candidate's popular support were heavily concentrated in a few States while the other candidate maintained a slim popular lead in enough States to win the needed majority of the Electoral College. While the country has occasionally come close to this sort of outcome, the question here is whether the **distribution** of a candidate's popular support should be taken into account alongside the relative size of it. This issue was mentioned above and is discussed at greater length below.

A third way of electing a minority president is if a third party or candidate, however small, drew enough votes from the top two that no one received over 50% of the national popular total. Far from being unusual, this sort of thing has, in fact, happened 15 times including (in this century) Wilson in both 1912 and 1916, Truman in 1948, Kennedy in 1960, Nixon in 1968, and Clinton in both 1992 and 1996. The only remarkable thing about those outcomes is that few people noticed and even fewer cared. Nor would

a direct election have changed those outcomes without a run-off requiring over 50% of the popular vote (an idea which not even proponents of a direct election seem to advocate).

Opponents of the Electoral College system also point to *the risk of so-called "faithless" Electors*. A "faithless Elector" is one who is pledged to vote for his party's candidate for president but nevertheless votes for another candidate. There have been 7 such Electors in this century and as recently as 1988 when a Democrat Elector in the State of West Virginia cast his votes for Lloyd Bensen for president and Michael Dukakis for vice president instead of the other way around. Faithless Electors have never changed the outcome of an election, though, simply because most often their purpose is to make a statement rather than make a difference. That is to say, when the electoral vote outcome is so obviously going to be for one candidate or the other, an occasional Elector casts a vote for some personal favorite knowing full well that it will not make a difference in the result. Still, if the prospect of a faithless Elector is so fearsome as to warrant a Constitutional amendment, then it is possible to solve the problem without abolishing the Electoral College merely by eliminating the individual Electors in favor of a purely mathematical process (since the individual Electors are no longer essential to its operation).

Opponents of the Electoral College are further concerned about *its possible role in depressing voter turnout*. Their argument is that, since each State is entitled to the same number of electoral votes regardless of its voter turnout, there is no incentive in the States to encourage voter participation. Indeed, there may even be an incentive to discourage participation (and they often cite the South here) so as to enable a minority of citizens to decide the electoral vote for the whole State. While this argument has a certain surface plausibility, it fails to account for the fact that presidential elections do not occur in a vacuum. States also conduct other elections (for U.S. Senators, U.S. Representatives, State Governors, State legislators, and a host of local officials) in which these same incentives and disincentives are likely to operate, if at all, with an even greater force. It is hard to imagine what counter-incentive would be created by eliminating the Electoral College.

Finally, some opponents of the Electoral College point out, quite correctly, *its failure to accurately reflect the national popular will* in at least two respects.

First, the distribution of Electoral votes in the College tends to overrepresent people in rural States. This is because the number of Electors for each State is determined by the number of members it has in the House (which more or less reflects the State's population size) **plus** the number of members it has in the Senate (which is always two regardless of the State's population). The result is that in 1988, for example, the combined voting age population (3,119,000) of the seven least populous jurisdictions of Alaska, Delaware, the District of Columbia, North Dakota, South Dakota, Vermont, and Wyoming carried the same voting strength in the Electoral College (21

Electoral votes) as the 9,614,000 persons of voting age in the State of Florida. Each Floridian's potential vote, then, carried about one third the weight of a potential vote in the other States listed.

A second way in which the Electoral College fails to accurately reflect the national popular will stems primarily from the winner-take-all mechanism whereby the presidential candidate who wins the most popular votes in the State wins all the Electoral votes of that State. One effect of this mechanism is to make it extremely difficult for third-party or independent candidates ever to make much of a showing in the Electoral College. If, for example, a third-party or independent candidate were to win the support of even as many as 25% of the voters nationwide, he might still end up with no Electoral College votes at all unless he won a plurality of votes in at least one State. And even if he managed to win a few States, his support elsewhere would not be reflected. By thus failing to accurately reflect the national popular will, the argument goes, the Electoral College reinforces a two-party system, discourages third-party or independent candidates, and thereby tends to restrict choices available to the electorate.

In response to these arguments, proponents of the Electoral College point out that it was never intended to reflect the national popular will. As for the first issue, that the Electoral College over-represents rural populations, proponents respond that the United States Senate -- with two seats per State regardless of its population -- over-represents rural populations far more dramatically. But since there have been no serious proposals to abolish the United States Senate on these grounds, why should such an argument be used to abolish the lesser case of the Electoral College? Because the presidency represents the whole country? But so, as an institution, does the United States Senate.

As for the second issue of the Electoral College's role in reinforcing a two-party system, proponents, as we shall see, find this to be a positive virtue.

Arguments for the Electoral College

Proponents of the Electoral College system normally defend it on the philosophical grounds that it:

- n contributes to the cohesiveness of the country by requiring a distribution of popular support to be elected president
- n enhances the status of minority interests,
- n contributes to the political stability of the nation by encouraging a twoparty system, and
- n maintains a federal system of government and representation.

Recognizing the strong regional interests and loyalties which have played so great a role in American history, proponents argue that the Electoral College system *contributes to the cohesiveness of the country by requiring a distribution of popular support to be elected president.*

Without such a mechanism, they point out, presidents would be selected either through the domination of one populous region over the others or through the domination of large metropolitan areas over the rural ones.

Indeed, it is principally because of the Electoral College that presidential nominees are inclined to select vice presidential running mates from a region other than their own. For as things stand now, no one region contains the absolute majority (270) of electoral votes required to elect a president. Thus, there is an incentive for presidential candidates to pull together coalitions of States and regions rather than to exacerbate regional differences. Such a unifying mechanism seems especially prudent in view of the severe regional problems that have typically plagued geographically large nations such as China, India, the Soviet Union, and even, in its time, the Roman Empire.

This unifying mechanism does not, however, come without a small price. And the price is that in very close popular elections, it is possible that the candidate who wins a slight majority of popular votes may not be the one elected president -- depending (as in 1888) on whether his popularity is concentrated in a few States or whether it is more evenly distributed across the States. Yet this is less of a problem than it seems since, as a practical matter, the popular difference between the two candidates would likely be so small that either candidate could govern effectively.

Proponents thus believe that the practical value of requiring a distribution of popular support outweighs whatever sentimental value may attach to obtaining a bare majority of the popular support. Indeed, they point out that the Electoral College system is designed to work in a rational series of defaults: if, in the first instance, a candidate receives a substantial majority of the popular vote, then that candidate is virtually certain to win enough electoral votes to be elected president; in the event that the popular vote is extremely close, then the election defaults to that candidate with the best distribution of popular votes (as evidenced by obtaining the absolute majority of electoral votes); in the event the country is so divided that no one obtains an absolute majority of electoral votes, then the choice of president defaults to the States in the U.S. House of Representatives. One way or another, then, the winning candidate must demonstrate both a **sufficient** popular support to govern as well as a sufficient **distribution** of that support to govern.

Proponents also point out that, far from diminishing minority interests by depressing voter participation, the Electoral College actually *enhances the status of minority groups*. This is so because the votes of even small minorities in a State may make the difference between winning **all** of that State's electoral votes or **none** of that State's electoral votes. And since ethnic minority groups in the United States happen to concentrate in those States with the most electoral votes, they assume an importance to presidential candidates well out of proportion to their number. The same principle applies to other special interest groups such as labor unions, farmers, environmentalists, and so forth.

It is because of this "leverage effect" that the presidency, as an institution, tends to be more sensitive to ethnic minority and other special interest groups than does the Congress as an institution. Changing to a

direct election of the president would therefore actually damage minority interests since their votes would be overwhelmed by a national popular majority.

Proponents further argue that the Electoral College *contributes to the political stability of the nation* by encouraging a two-party system. There can be no doubt that the Electoral College has encouraged and helps to maintain a two-party system in the United States. This is true simply because it is extremely difficult for a new or minor party to win enough popular votes in enough States to have a chance of winning the presidency. Even if they won enough electoral votes to force the decision into the U.S. House of Representatives, they would still have to have a majority of over half the State delegations in order to elect their candidate -- and in that case, they would hardly be considered a minor party.

In addition to protecting the presidency from impassioned but transitory third party movements, the practical effect of the Electoral College (along with the single-member district system of representation in the Congress) is to virtually force third party movements into one of the two major political parties. Conversely, the major parties have every incentive to absorb minor party movements in their continual attempt to win popular majorities in the States. In this process of assimilation, third party movements are obliged to compromise their more radical views if they hope to attain any of their more generally acceptable objectives. Thus we end up with two large, pragmatic political parties which tend to the center of public opinion rather than dozens of smaller political parties catering to divergent and sometimes extremist views. In other words, such a system forces political coalitions to occur within the political parties rather than within the government.

A direct popular election of the president would likely have the opposite effect. For in a direct popular election, there would be every incentive for a multitude of minor parties to form in an attempt to prevent whatever popular majority might be necessary to elect a president. The surviving candidates would thus be drawn to the regionalist or extremist views represented by these parties in hopes of winning the run-off election. The result of a direct popular election for president, then, would likely be a frayed and unstable political system characterized by a multitude of political parties and by more radical changes in policies from one administration to the next. The Electoral College system, in contrast, encourages political parties to coalesce divergent interests into two sets of coherent alternatives. Such an organization of social conflict and political debate contributes to the political stability of the nation.

Finally, its proponents argue quite correctly that the Electoral College *maintains a federal system of government and representation*. Their reasoning is that in a formal federal structure, important political powers are reserved to the component States. In the United States, for example, the House of Representatives was designed to represent the States according to the size of their population. The States are even responsible for drawing the

district lines for their House seats. The Senate was designed to represent each State equally regardless of its population. And the Electoral College was designed to represent each State's choice for the presidency (with the number of each State's electoral votes being the number of its Senators plus the number of its Representatives). To abolish the Electoral College in favor of a nationwide popular election for president would strike at the very heart of the federal structure laid out in our Constitution and would lead to the nationalization of our central government -- to the detriment of the States. Indeed, if we become obsessed with government by popular majority as the only consideration, should we not then abolish the Senate which represents States regardless of population? Should we not correct the minor distortions in the House (caused by districting and by guaranteeing each State at least one Representative) by changing it to a system of proportional representation? This would accomplish "government by popular majority" and guarantee the representation of minority parties, but it would also demolish our federal system of government. If there are reasons to maintain State representation in the Senate and House as they exist today, then surely these same reasons apply to the choice of president. Why, then, apply a sentimental attachment to popular majorities only to the Electoral College?

The fact is, they argue, that the original design of our federal system of government was thoroughly and wisely debated by the Founding Fathers. State viewpoints, they decided, are more important than political minority viewpoints. And the collective opinion of the individual State populations is more important than the opinion of the national population taken as a whole. Nor should we tamper with the careful balance of power between the national and State governments which the Founding Fathers intended and which is reflected in the Electoral College. To do so would fundamentally alter the nature of our government and might well bring about consequences that even the reformers would come to regret.

Conclusion

The Electoral College has performed its function for over 200 years (and in over 50 presidential elections) by ensuring that the President of the United States has both sufficient popular support to govern and that his popular support is sufficiently distributed throughout the country to enable him to govern effectively.

Although there were a few anomalies in its early history, none have occurred in the past century. Proposals to abolish the Electoral College, though frequently put forward, have failed largely because the alternatives to it appear more problematic than is the College itself.

The fact that the Electoral College was originally designed to solve one set of problems but today serves to solve an entirely different set of problems is a tribute to the genius of the Founding Fathers and to the durability of the American federal system.



Distribution of Electoral Votes

Total Electoral Vote: 538

Needed to Elect: 270

State	1981- 1990	1991- 2000	2001- 2010
Alabama	9	9	9
Alaska	3	3	3
Arizona	7	8	10
Arkansas	6	6	6
California	47	54	55
Colorado	8	8	9
Connecticut	8	8	7
Delaware	3	3	3
D.C.	3	3	3
Florida	21	25	27
Georgia	12	13	15
Hawaii	4	4	4
Idaho	4	4	4
Illinois	24	22	21
Indiana	12	12	11
Iowa	8	7	7
Kansas	7	6	6
Kentucky	9	8	8

Louisiana	10	9	9
Maine	4	4	4
Maryland	10	10	10
Massachusetts	13	12	12
Michigan	20	18	17
Minnesota	10	10	10
Mississippi	7	7	6
Missouri	11	11	11
Montana	4	3	3
Nebraska	5	5	5
Nevada	4	4	5
New Hampshire	4	4	4
New Jersey	16	15	15
New Mexico	5	5	5
New York	36	33	31
North Carolina	13	14	15
North Dakota	3	3	3
Ohio	23	21	20
Oklahoma	8	8	7
Oregon	7	7	7
Pennsylvania	25	23	21
Rhode Island	4	4	4
South Carolina	8	8	8
South Dakota	3	3	3
Tennessee	11	11	11
Texas	29	32	34
Utah	5	5	5

Vermont	3	3	3
Virginia	12	13	13
Washington	10	11	11
West Virginia	6	5	5
Wisconsin	11	11	10
Wyoming	3	3	3