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THE MECHANISM OF THE PRESIDENTIAL ELECTION

by

CARTER M. BRAXTON.

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"The mode of appointment of the Chief Magistrate of the United States", said Alexander Hamilton in "The Federalist" (No. LXVII), "is almost the only part of the system of any consequence which has escaped without severe censure or which has received the slightest mark of approbation from its opponents..... I hesitate not to affirm that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which are to be wished for." Yet never has a President been chosen exactly as the Constitution provides. Not even in the first election was the much-admired contrivance put into operation; within twelve years of the founding of the Federal Government it was universally recognized that the chief electoral clauses of the Constitution were nugatory; and to-day, while extolling the wisdom of the Constitutional Fathers, we are inclined to wonder that they should have failed to foresee the immediate fiasco to which their clever device was doomed.

It was a matter of great difficulty for the Constitutional Convention, which met in Philadelphia in the

summer of 1787, to decide how the Chief Magistrate of the proposed Union should be selected. The two obvious possibilities were first considered: choice by the legislature and election by the people. To the former were opposed the prevailing political theories, which were derived from Montesquieu's "Esprit des Lois"; those who believed that the very foundation of free government was the separation of powers would not hear of such an intimate connection between the legislative and executive branches as would necessarily result from the choice of the President by Congress. And popular election was even less acceptable to the delegates. They did not believe that the masses of the people were competent to perform this highly important function: first, because they lacked discernment to recognize men of merit; and, secondly, because their acquaintance would be confined to local leaders for whom they would naturally vote without regard to other, and perhaps abler, candidates from different sections. Moreover, it was felt that this mode of election would give a decided advantage to the larger states in contravention of the cherished principle of sovereign equality.

Finally, an electoral college was proposed. The idea was suggested by a provision in the constitution of the State of Maryland under which the members of the upper

branch of the legislature were selected by a body of electors chosen by the people quinquennially. Here was a happy solution of the vexatious problem. It was decided that each State should choose, in such manner as its legislature should prescribe, the same number of electors as of Senators and Representatives to which it was entitled in Congress, and that these electors should meet and ballot for President and Vice President. In order to preclude any administrative control, the Constitution forbade the Senators and Representatives and all persons in the service of the United States to be appointed electors. The framers of this article fondly believed that the most eminent men who were not connected with the Federal Government would be chosen as members of the electoral college, and that they would carefully survey the field of possibilities, very deliberately weigh the merits of the outstanding personages, and then select the finest of the lot for President and Vice President.

It was a pretty scheme and it might have been realized if the very thing had not come to pass which the makers of the Constitution feared and sought to prevent. "Let me now warn you in the most solemn manner", said Washington in his "Farewell Address", "against the baneful effects of the spirit of party generally". But when those

words were uttered, there were already two clearly defined parties in the United States and the electoral machinery was being operated by partisan hands. It was the development of parties that metamorphosed the mode of election. The Constitutional Convention, while deprecating it as an evil, doubtlessly realized that the party was a probable concomitant of republicanism, but no one foresaw the inevitable relation between parties and elections.

The elector was never the free agent that the Constitution intended him to be. From the very first he was largely controlled by circumstances, and now he is simply an automaton to record the will of the people as manifested in their choice between the candidates that have been designated by the national parties.

In the first election of 1788 the choice of George Washington was a foregone conclusion; no other person was even considered. And as it was thought advisable to take the Vice President from New England, and John Adams of that section had written a book in defense of the Constitution, public opinion gradually centered upon him as the logical candidate for the second place. So it is obvious that the discretion of the electors was closely circumscribed at the very outset. In the electoral college 103 of the 146 votes were cast for Washington and Adams.

By 1792 parties had developed, based upon the antagonism between Jefferson and Hamilton; and the anti-Federalists, or Republicans, decided to support Clinton of New York as a candidate for the Vice Presidency in opposition to the incumbent, Adams. All parties agreed, however, that Washington should be reelected President. This time but five of the 270 electoral votes were given to candidates other than the above-mentioned three who received the party indorsement - conclusive indication that the electors were fast losing the latitude with which they had been invested by law.

Upon the retirement of Washington the struggle between the parties became open and fierce, and candidates were formally nominated and publicly proclaimed. In 1796 forty-eight ballots out of the total 276 were scattered among various unofficial candidates; but in 1800 only one vote escaped the regular nominees of the Federalist and Republican parties. Hence, we may say that by the close of the century the rule had been well established that the electors should vote for one or the other of the party tickets; in other words, they were chosen as Federalist or Republican partisans, and simply registered the preference of the body that chose them.

In the election of 1796, one of the two electors supported by the Federalists of Pennsylvania cast his

ballot for Jefferson and Pinckney, the Republican candidates, whereupon an indignant communication of protest was sent to "The United States Gazette". "What!" said this irate Federalist voter, "Do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No; I chuse him to act, not to think." Since then, there has been no well-authenticated instance of the exercise by an elector of his discretionary power in defiance of his party's preference. The Constitution gives him the absolute right of choice; in practice, he possesses no option at all. The custom which requires an elector to vote according to the will of those who elect him has in reality a sanction much stronger than that of the law. The furious contempt of the party which he had betrayed would be harder to bear than any punishment that a statute would be likely to inflict for this breach of faith.

As the elector is chosen by the people to vote for a particular candidate, his personality being practically ignored, we may say that the President of the United States is popularly elected. The intermediate cog of the electoral college does not alter the fact of direct democracy, though it does give rise to a complication with some very serious consequences.

The mode of election of Presidential electors is now, and has ever been, far from satisfactory. The Constitution gives to the legislatures of the several States the right to determine the way in which the electors shall be chosen. At first, there was a confusing diversity; now, there is a most unfortunate uniformity.

The Constitution was ratified by the required number of States by June, 1788, but the old Continental Congress wrangled for so long over the question of the seat of the government that not until September did it pass a resolution providing for the choice of electors. Then, it assigned the first Wednesday in January, 1789, as the day on which the electors should be chosen. So short was the interval that it was generally believed that Congress intended for the State legislatures themselves to appoint the electors. And in six States this was done. In two others there was a nomination by the people and an election by the legislature. One State lost its electoral vote through a deadlock of the two branches of the legislature. In only three States was a popular election held.

Until 1800 it was the practice in the majority of the States for the legislature to appoint the electors: in that year twelve States employed a legislative election.

as against four, a popular choice. But at the next election in 1804, thirteen States delegated this function to the people, while only seven legislatures retained the power in their own hands. This was the turning point. A growth in democratic ideas and the introduction of party campaigns led the people to demand the privilege of electing the electors, which was tantamount to electing the President. By 1832 South Carolina was the only State which followed the old aristocratic mode. She continued it until the Civil War. Since then, there have been only two instances of legislative choice of electors - Florida in 1868 and Colorado in 1876.

Now there are two forms of popular election. Each State is entitled to so many electors: therefore, the State may be divided into districts and one or more electors chosen from each district, as is the case with Representatives in Congress; or the whole number of electors may be chosen from the State at large, as are United States Senators.

District election was practised by a few of the States in the early days of the Union, but the political disadvantages of such a system are so evident and so considerable that by 1836 the general ticket had become the rule wherever the electors were popularly chosen. Of course, when electors are chosen in districts, some will

be of one party and some of another unless the State is overwhelmingly of one political faith, and so the vote in the electoral college will be divided among the presidential candidates; in other words, the opposing ballots will countervail one another. Now, when some States are voting for their electors on a general ticket and consequently taking them all from a single party, and casting their electoral votes in a solid block, the States which employ the district mode and scatter their ballots are bound to be politically dwarfed and to suffer a material loss of prestige and power in the partisan councils. Small wonder that popular election from the State at large has become the universal practice.

The predominant party in the legislature may prescribe the method of election that favors it, and usually a choice of electors on a general ticket is decidedly to its advantage. But it may happen that the majority of the voters are not of the same persuasion as the majority of the legislators, a political revulsion having occurred since the election of the latter. Then the party in power will profit by a district election.

In the first few elections under the new republic, there was a deal of oscillation between the two methods of popular choice, now one and now the other, according as the

legislature was or was not in harmony with the people of the State. Thus we hear of Alexander Hamilton in 1800 writing to Governor Jay of New York to propose that the old legislature, which was a Federalist body, be called together in a special session to provide for the choice of electors in districts, since the election of Republican assemblymen in New York City had shown that the Republican party was numerically superior in the State at large, though not in control of all the localities. Governor Jay refused to resort to what he regarded as contemptible chicanery and the entire electoral vote was captured by the Republicans under the general-ticket system. But political leaders in other States were not troubled with such scruples. In Virginia, where the Federalist party had developed some local strength, the district system, which had previously prevailed, was superseded by election on a general ticket, and all of the twenty-one electoral votes of the State were secured for Jefferson.

This sort of manipulation, however, did not continue to be practised. Soon it became the established custom in all the states that the electors should be chosen from the state at large regardless of the political relation between the legislature and the people. There has

been but one departure from this rule since the early part of the nineteenth century, and that more than thirty years ago. In 1891 a Democratic landslide legislature in the State of Michigan, which is normally Republican, adopted the district system with a view to obtaining a share of the electoral votes, and in five of the fourteen districts Democratic electors were returned.

Any party in a State may nominate candidates for the electoral college. Where the convention system still obtains, they are usually nominated at the regular State convention of the party for the nomination of State officers; or if no State officers are to be nominated that year, at a specially summoned State convention. It is customary to select at least one candidate from each Congressional district. Sometimes the two candidates for electors-at-large are chosen by the State convention, and a convention in each Congressional district selects one. Under the direct primary which has been introduced in a number of states, the nominees of the parties are elected directly either in districts or from the State at large; or the candidates for electors-at-large may be nominated by a special state convention while the rest are chosen in districts. Because of certain complications in the election of 1912,

Pennsylvania has provided by law for the nomination of the electors by the Presidential candidates of the various parties - a good illustration of the insignificance of the office of elector and the indifference of the people to the way in which the candidates are presented. Vacancies occurring on the electoral ticket of a party before the election are usually filled by the other nominees or the State committee.

But however the candidates for the office of elector are nominated, they are grouped together on the general ticket and all or none of any one party are practically certain to be returned. The voter, as a rule, cares nothing for the personality of the mechanical elector; it is the party, or the party candidate for the Presidency, that he considers. So the name of the Presidential candidate of the national part is usually placed at the head of each group of nominees on the electoral ticket. Two States, Nebraska and Iowa, even omit the names of the candidates for the position of elector and print only the names of the Presidential candidates.

Of course, the voter has a perfect right to vote for some of the electoral candidates on each of the party tickets; and if any of those nominated are personally odious, their names may be scratched by enough of the voters in one

party to cause a division of the electoral vote. In the election of 1912, the State of California gave two of its thirteen electoral votes to Governor Wilson as a result of the fact that a number of the Republican voters objected to the presence of two individuals on the Republican ticket and refused to support them. Usually the party candidates are acceptable to the rank and file because nearly everyone understands the purely ministerial function of the elector and sees the absurdity of voting against the electoral nominee of the party that he wishes to win. In every election some names on each ticket are scratched by a few voters who are so anxious to satisfy a personal grudge that they are willing to sacrifice their party; but the result is rarely affected because the balance between the two parties is not apt to be so exact as to feel the vote of this petty minority. In fact, the instance of California mentioned above is the only exception to the rule of State unanimity that has occurred in recent years. The people generally vote a straight party ticket and the State casts a solid block of ballots in the electoral college.

As a result of the general ticket system which causes a State to give all of its electoral votes to one of the Presidential candidates, regardless of the relative strength of the competing parties, it may happen that the

candidate who obtains a majority in the electoral college will have a minority of the popular vote. Lincoln, for example, in 1860 received the votes of 180 electors; Breckenridge, Douglas, and Bell, of 123: yet the popular vote for Lincoln was 1,866,000 as against 2,813,000 for his three opponents. Likewise, in 1912 Woodrow Wilson polled 435 electoral votes and Roosevelt and Taft together but 96, while the ballots of the people at large numbered 6,293,000 for the former and 7,600,000 for the latter.

This, however, is only one, and the less significant, kind of minority President. There is the possibility of one candidate carrying the electoral college while a single opponent obtains a majority of the popular vote. Let a candidate win by meager pluralities in those States that he captures, and be overwhelmingly defeated in those States that he loses, and the disparity between the electoral and the popular vote will be striking indeed. Twice in the history of our country there has been seated in the Chief Magistrate's chair a man who was really defeated by the opposing candidate, but through the accidental distribution of his support obtained a predominance in the electoral college. Hayes in 1876 won over Tilden by a lone electoral vote while 250,000 behind him in the popular ballot, and Harrison in 1888 was 65 votes ahead of Cleveland

in the electoral college though in a minority of 100,000 through the country at large.

Naturally there is a concentration of political activity in the large doubtful States and very little organization in States which are constantly controlled by one party. Moreover, it is customary to select the Presidential and Vice Presidential candidates from the so-called pivotal States in the hope that local pride will turn the election. Of fifty candidates of the major parties in the period from 1676 to 1920, thirty-three were taken from the three States of New York, Ohio, and Indiana.

Thus we see that the general-ticket system permits the election of minority Presidents and gives to a few of the larger States a controlling influence in the choice of both nominees and incumbents. From the very first the evils of this scheme have been recognized, and repeated attempts have been made to establish district election. Alexander Hamilton in 1801 drafted an amendment to the Constitution which provided that Congress, and not the State legislatures, should divide each State into districts from which a single elector should be chosen by those qualified to vote for the more numerous branch of the State legislature. This proposal was indorsed by the New York legislature, but never received the attention of Congress or the

country. Thomas H. Benton, when advocating a similar amendment in the Senate in 1826, said of the general-ticket system which then prevailed in ten States: "It was the offspring of policy and not of any disposition to give fair play to the will of the people. It was adopted by the leading men of those States to enable them to consolidate the vote of the State. It contributes to give power and consequence to the leaders who manage the elections; but it is a departure from the intention of the Constitution and violates the right of minorities".

To-day the demand for change is directed towards the abolition of the ossified college of electors and the institution of a direct popular vote upon the party candidates, rather than towards a general rehabilitation of the district system. Many are opposed to direct election by the people on the ground that the large, populous States of the Union would dominate the choice; and an amendment to this effect would certainly fail to secure a ratification by three-fourths of the States, though the position of the smaller States under direct popular election could hardly be more disadvantageous than it is at present under the general-ticket system.

However, as all are agreed that the electoral college is a cumbersome piece of unworkable machinery and the general-ticket system an evil, indefensible device, and as many are insistent that the original relation between

the States in voting strength should be preserved, it seems that the solution would be an amendment to the Constitution abolishing the office of elector and providing for the translation of the popular ballot into electoral votes. Thus each party in the State would obtain a number of the electoral votes in proportion to its standing at the polls. There would then be a more general distribution of the Presidential campaign because under this scheme of minority representation a group in a State which was preponderantly of some other political complexion would have exactly the same voting strength as a similar group in a State where the parties were approximately even. In each State there would be an electoral quotient determined by dividing the whole number of popular votes by the number of electoral votes to which that State was entitled. A party which secured this electoral quotient would be given one electoral vote, no matter how overwhelmingly it was outnumbered by the other party or parties. So the exaggerated influence of the doubtful States would be destroyed. As a result would come a greater freedom in the choice of party nominees, which in turn would lead to an improvement in the caliber of our Chief Executives.

It should be noted that this scheme of trans-

lating the popular ballot into electoral votes is preferable to a division of the States into districts for the choice of electors. The former requires just a simple mathematical calculation without possibility of favoritism, while the latter is a complex problem which offers a fair field to political chicanery. There would be in the creation of Presidential electoral districts the same opportunity for gerrymandering that there is in the case of Congressional districts - an arbitrary demarcation of districts, so as to give the party predominant in the legislature a majority in every division.

Furthermore, this apportionment of the electoral vote of a State among the parties of a certain numerical strength would reduce to a negligible minimum the chance of a popular minority electing a President. Now as long as we allot to the States a number of votes in the election of a President not strictly in proportion to population - as is the case when we give to each State one vote for every Senator and Representative in Congress - there is a possibility of a popular minority becoming an electoral majority. Hence, as it seems desirable to recognize the individuality of the State in the Presidential election to the extent of giving it a certain voice irrespective of population, we must be prepared for this peculiar

contingency. But there is no reason to allow such a gross disparity between popular and electoral vote as may and does frequently occur under the present system of choosing electors whereby a plurality of one in a ballot of hundreds of thousands will give to the leading candidate the entire electoral vote of a State. Under the scheme of allocation proposed, the standing in the electoral college must follow closely the distribution of the total popular ballot since within each State the electoral vote is directly proportioned to the polling strength of the candidates.

Another advantage of such an amendment would be the obviation of most of the doubts and difficulties with respect to the counting of the electoral votes. The Constitution is most unfortunately vague upon this point: it says merely that the electors in each State "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 difficulty arises from the ambiguity of the words, "and the votes shall then be counted". There have been advanced three interpretations of this

clause, which are summarized as follows in McKnight's treatise upon "The Electoral System of the United States": "The first is that the President of the Senate shall count the votes; the second, that there is a casus omissus in that regard; and the third is that the two Houses present shall count".

For many years the question persisted without any definitive answer for the reason that no vital dispute arose demanding a clearcut decision. At the time of the admission of Missouri into the Union in 1821 and of Michigan in 1837, the validity of their electoral votes was impugned on the ground that their electors had voted before the act of annexation was passed by Congress; but in both cases a resolution was adopted by the two Houses which provided for an alternative counting - that is, a declaration that if the votes of the doubtful States were counted, the poll would be such and such, if not, so and so. This easy evasion was possible because the ballots in dispute were not sufficient to affect the outcome of the election.

Again in 1857 a set of electoral votes was questioned. The Wisconsin electors had been prevented by a violent snow-storm from reaching the State capital on the day appointed by Congressional statute and had assembled

instead on the following day and voted. While the electoral votes were being counted in Congress, an objection was offered to the vote of Wisconsin, but the presiding officer ruled that debate was not in order, nor would he hear any discussion after the result was announced by the tellers, saying "nothing can be done here, but to count the votes by tellers, and to declare the vote thus counted to the Senate and the House of Representative sitting in this chamber". As the vote of Wisconsin could not alter the result of the election, this action was allowed to stand, though a vehement debate took place in each House when the joint session was dissolved.

Finally, during the Civil War Congress asserted its right to pass upon the validity of electoral votes. It was feared that the Southern Confederacy might send to the President of the Senate enough electoral votes to bring about the defeat of President Lincoln by General McClellan, who was supposed to be more in sympathy with their views. To guard against this contingency, it was provided by joint rule in January of 1865 that if upon the reading of any certificates in the united session of the two Houses, a question should be raised as to the vote therein certified, "the Senate shall thereupon withdraw and said question shall

be submitted to that body for its decision; and the Speaker of the House of Representatives shall in like manner submit said question to the House of Representatives for its decision; and no question shall be decided affirmatively and no vote objected to shall be counted, except by the concurring votes of the two Houses".

This was the famous twenty-second joint rule - the first effort of Congress to regulate by general law the electoral count. In effect, it gave to either House the power to disfranchise any State, and with its denial of discussion permitted the most egregious mistakes to occur. Illustrating the gross injustice of this rule, we may note the case of Arkansas in the election of 1873, whose vote was rejected as a result of an adverse decision in the Senate based upon the want of a State seal to the electoral certificate, when it happened, as was later discovered, that the State of Arkansas had no official seal. In the words of a Senator of this period it was "the most dangerous contrivance to the peace of the nation that has ever been invented by Congress". After ten years of its operation, all were convinced of its thoroughly vicious character, and in January of 1876 the Senate passed a vote of rescission which virtually repealed it.

The necessity of some sort of a general law was

apparent, and many remedies were offered, but to every proposal some cogent objection was made. Thus it came to pass that when a great controversy developed in the Presidential election of the succeeding year, no rule or custom was in existence to determine the action of Congress.

The earliest returns in the election of 1876 indicated that the Democratic candidate would receive without question 184 out of a total of 369 electoral votes, just one short of the majority required to elect. But the vote of four States was in doubt. In Oregon the governor had adjudged one of the Republican electors ineligible and given the certificate to the highest candidate on the Democratic list. In Louisiana two governments were contending for power and each had remitted a set of returns. And in Florida and South Carolina, where it was asserted that the Republican electors had been fraudulently elected, the Democratic candidates had met and voted for Tilden.

Now as the Senate was Republican and the House Democratic, it was realized that when the votes came to be counted before the joint session of Congress a perilous situation would result if no agreement had been reached beforehand. So in January of 1877 a bill was

passed by the two Houses and signed by the President which prescribed the method of counting. First, it was declared that when a single return was received from a State the votes should be counted unless specifically rejected by the concurrent action of the two Houses. Secondly, it provided for a commission composed of five Senators, five Representatives, and five Justices of the Supreme Court, which should decide all questions in relation to plural returns from a State and render a report that should stand as the determination of Congress unless overruled by the two Houses. The act designated four Justices of the Supreme Court to sit on the Commission and gave them the power to select a fifth, while the Senators and Representatives were to be chosen by their respective Houses.

Three Republicans and two Democrats were appointed by the Republican Senate, and two Republicans and three Democrats by the Democratic House; and the four Justices, of whom two were Republican and two Democratic, picked from the bench a fifteenth member who had a Republican leaning. Thus the composition of the Electoral Commission was favorable to the Republican cause by a majority of one, and in every disputed case the electoral

ballots were given to the Republican candidate by a vote of eight to seven. And likewise, in each instance, when the report was made to the two bodies of Congress, theRepublican Senate voted for acceptance and the Democratic House for rejection, which under the terms of the electoral law meant that the ruling of the Commission prevailed. So Mr. Hayes, the Republican nominee, was declared elected over Mr. Tilden by 185 votes to the latter's 184, and the country ultimately acquiesced in the verdict, though for a time it seemed that the crisis might precipitate a civil war.

The Commission in adjudicating the disputes refused to go behind the returns, that is, to inquire into the fairness of the election if the returns from the State were certified by the proper authority. According to this construction of the Constitution, when once the ultimate State authority has determined the results of the vote for electors, whether it be a State canvassing board as in Florida, Louisiana, and South Carolina, or a state canvassing officer as in Oregon, its decision cannot be overruled by the Federal Government. This opinion, though bitterly impugned at the time of its enunciation, has met with increasing approval. A somewhat different

interpretation, however, is now established by Congressional statute.

The Electoral Commission law was a piece of emergency legislation, and as soon as the crisis had passed, discussion was resumed as to the power of Congress over the tale of the electoral votes. The debate was continued for many sessions, but finally in 1887 a law was enacted under which the votes of the Presidential electors have ever since been counted. It provides that each State shall set up an authority to canvass the electoral ballots, and that the votes given by electors who are certified by such authority shall be received and counted unless the two Houses of Congress, acting apart, shall decide that the votes were unlawfully given; but that in case there shall arise the question of which of two or more bodies certifying electors is the lawful tribunal of a State, only the votes of those electors shall be admitted whom the two Houses separately and concurrently declare to be the regular representatives of the State. In other words, the appointment of electors is held to be primarily a matter of State determination, but Congress by joint action of both Houses may reject a set of returns which has been certified by State authority, and if more than one set of returns are submitted

by contending authorities, the vote of the State shall be lost unless the two Houses can agree upon the electors. While the two Houses are assembled in joint session for the counting of the votes, no debate is allowed and no motion will be put by the presiding officer except upon the question of the withdrawal of either House. When the two Houses separate to decide upon any objection to the counting of certain votes, two hours of debate are permitted, after which the question of acceptance or rejection is voted upon.

It may be added that this statute substituted the second Monday of January for the first Wednesday of December as the day on which the electors should meet in their respective States to ballot for President and Vice President, in order that there might be ample time for the settlement within the State of any disputes concerning the appointment of electors. Under the various acts of Congress, the Presidential electors are now chosen by the people on the Tuesday following the first Monday of November; their ballots are cast on the second Monday of the following January and counted on the second Wednesday of February; and the President-elect is inaugurated on the fourth of March.

As was suggested above, the abolition of the

office of elector with the retention of the scheme of electoral votes would greatly simplify the Presidential election. Complications and confusion would be less likely to develop if the farcical candidatures of the electors were done away with, and little ground would be left for any dispute in Congress concerning the electoral count.

Now the Constitution provides that the candidates who receive a majority of the electoral votes shall become the President and Vice President of the United States; but as it may happen that no one will obtain the stipulated number, or that two or more will obtain the same number, provision is made for election by Congress from the higher candidates in such an event.

At first, according to Section 1 of Article II of the Constitution, each elector voted for two persons without distinguishing between the Presidency and the Vice Presidency, and the two candidates with the highest number of votes acceded to these offices respectively. In case of a tie between two or more candidates having a majority, the House of Representatives, voting by States, chose one of them for President, while the next highest candidate on the electoral list became Vice President, or if several remained with the same number of votes, the Senate

elected from than the Vice President. The purpose of this scheme, which was designed to preclude any distinction between the candidates for the Presidency and those for the Vice Presidency, was to prevent the election of mediocre men to the inferior office of Vice President. But once again the good intentions of the Constitutional Fathers were frustrated by the rise of political parties.

In the earliest elections it was universally understood that certain individuals were nominated for the Presidency and certain others for the Vice Presidency, in spite of the Constitutional ban upon discrimination, and the party leaders by correspondence with the electors sought to arrange that the vote for the Vice Presidential nominees should be below that for the Presidential nominees in order that the election might not devolve upon the House of Representatives, where their opponents might contrive to effect the choice as President of the party candidate for the Vice Presidency. Notwithstanding their efforts to avert an unfortunate tie between candidates of the same ticket, Jefferson and Burr, the Republican nominees, each secured 73 votes in the election of 1801 as against 65 and 64 respectively for Adams and Pinckney, the Federalist nominees, and, consequently, the House of Representatives

was called upon to choose one of the former two for President.

Now never for a moment had anyone considered Burr as a candidate for the Presidency, and a man of sensibility and honor in his position would have discouraged any attempt to raise him to the Chief Magistrate's chair; but Burr, if he did not actually intrigue for this end, countenanced all that was done in his behalf by the enemies of his party. Many of the Federalists were bitter against Jefferson and willing to resort to any expedient to worst him. Had it not been for Hamilton who disliked Jefferson but despised Burr, and urged his followers to take the lesser evil, the latter would probably have been chosen by the Federalist Congressmen. For six days and thirty-six ballots the fight continued; then, at last, the Speaker declared that Jefferson had been given the votes of ten of the sixteen States and was elected President of the United States.

The election of 1801 demonstrated the danger of a tie vote and the preceding election had shown the unfortunate possibility of the President and Vice President being taken from antagonistic parties - John Adams, a Federalist, and Thomas Jefferson, a Republican, having

been chosen President and Vice President respectively in 1796. Consequently, agitation developed for a change in the method of election, and in 1804 the Twelfth Amendment was added to the Constitution to remove those grosser evils. It provides that the electors "shall name in their ballots the person voted for as President and in distinct ballots the person voted for as Vice President"; that if no person receives a majority of the electoral votes, "then from the persons having the highest numbers, not exceeding three, the House of Representatives shall choose immediately by ballot the President", the vote being taken by States with a majority required for the choice; and that if no candidate for the Vice Presidency is supported by a majority of the electors "then from the two highest numbers on the list the Senate shall choose the Vice President".

Only once has a President been elected by the House and a Vice President by the Senate since the adoption of the Twelfth Amendment. In 1825 the electoral votes were divided among four candidates - Jackson, 99; Adams, 84; Crawford, 41; and Clay, 37 - and so it fell to the House of Representatives to choose the President from the upper three. On the first ballot Adams was

elected, receiving the votes of thirteen States, as against seven for Jackson and four for Crawford. There was a feeling in many quarters that Jackson ought to have been given the Presidency because of his large plurality in both the electoral and the popular vote. Some even went so far as to say that the American people had been flagrantly cheated. The New York Senate, for example, passed a series of resolutions condemning the choice of John Quincy Adams by the House of Representatives as a defiance of the undoubted will of the nation and urging an amendment to the Constitution establishing direct popular election. It is, of course, obvious that the House was acting altogether within its purview when it selected that one of the three candidates that it preferred. If there was any obligation to choose the leading candidate, why did not the Twelfth Amendment rather declare that a plurality should elect? However, the masses were not disposed to reason and the popular pique engendered by the action of the House was largely responsible for Andrew Jackson's overwhelming triumph in the next election. In 1837 for the first and only time, the Senate elected a Vice President, choosing Richard M. Johnson, the Republican candidate, over

Francis Granger of the Anti-Masonic Party, each of whom had polled 147 electoral votes.

For nearly a century, then, the election has devolved upon neither the House nor the Senate. This is due to the fact that at practically all times the country has been almost exclusively divided between two major parties; very seldom has a third party developed enough strength to win any electoral votes. Hence, the leading candidate in the ballot of the electors has invariably had a majority, which under the circumstances is just a simple plurality. It is probable that if the election of a President or of a Vice President were thrown into Congress at the present time and either House of that body were bold enough to choose some other than the highest candidate on the electoral list, such a clamor of resentment would rise that an amendment would be speedily passed to provide for direct election by the people with a more plurality requisite for a choice.

We have been speaking thus far of the mode of election proper of the President and Vice President of the United States, and we have seen that, in spite of the elaborate machinery provided by the Constitution, the

choice is in effect a popular one, though the vote is often distorted by the artificiality of the poll. However, the range of choice that can be exercised by the people is extremely limited because they must necessarily pick between those candidates that have been nominated by the national parties, or, rather, between those groups of electors that have been presented by the parties with the inviolate understanding that they will support the party nominees. Hence, the selection of the candidates for the Presidency and Vice Presidency is a matter of great interest and moment - perhaps, from the standpoint of the welfare of the nation, of even larger importance than the choice between the candidates themselves.

As explained above, the framers of the Constitution intended for the electors to enjoy absolute discretion in their balloting, and so there is no mention in this document of the way in which candidates shall be offered. The whole scheme of nomination is an extra-Constitutional development - an inevitable outgrowth of the system of parties that the Constitution was designed to ignore.

In the first two Presidential elections under the new government of 1789, George Washington was the

only Person considered for the office of President, and a formal nomination would have been superfluous. And the candidates for the Vice Presidency were selected by correspondence among the influential men of the times. But in the election of 1796 there came into being an institution to present candidatures for the political parties, which had arrived at a considerable degree of strength and solidarity.

For some time past the Federalist Congressmen had been holding caucuses - so called by analogy with the secret meetings of the Caucus Club of Boston in existence prior to the Revolution - which debated questions arising in Congress and took decisions that were binding upon the members of the party. Alexander Hamilton saw the possibilities in such a conclave and suggested that candidates for the Presidency and Vice Presidency should be nominated therein to effect a concentration of the party vote. This was done, and Adams and Pinckney made the nominees; but the proceedings were huggermuggered.

W. Duane, the famous journalist of the opposition, learned of the action of the caucus through a private letter and attacked it in his paper, "Aurora", as a "Jacobinical conclave", whereupon he was called before the bar of the

Senate for his "false, defamatory, scandalous, and malicious" assertions, and barely escaped punishment. Also the Anti-Federalist press of Boston protested against "the arrogance of a number of Congress to assemble as an electioneering caucus to control the citizens in their Constitutional rights". However, the Republicans themselves, seeing the advantages of this innovation, resorted to a similar gathering to nominate Jefferson and Burr, with precautions to prevent the fact from becoming publicly known.

Thus did the Congressional caucus originate. By 1804 it was so well established that the Republicans dispensed with secrecy, and in 1812 there was provided a corresponding committee composed of one member from each State which advertised and enforced its decisions. It even undertook through its agencies to prepare lists of electors to be used in the States under the general-ticket system.

The caucus, though discount from the spirit of the Constitution, was a natural and not unreasonable institution. The leading men of the party were assembled in Congress, and were therefore in a position to bring about that concert which was required for success at the polls, while because of the difficulties of travel, it was impracticable to collect another group of representative parti-

sans for the purpose of nomination.

However, the growth of democratic sentiment gave rise to vehement attacks upon the caucus. As early as 1808, we find Clinton of New York deprecating in a published letter the very gathering by which he had been nominated as the Republican candidate for the Vice Presidency. And in 1816, when the caucus met to choose a successor to Madison, Henry Clay moved that the nomination of the President in a party caucus was inexpedient and ought to be discontinued.

The downfall of the caucus was hastened by the disintegration of the Republican party. Since the collapse of the Federalist organization, consequent upon the election of 1800, the Republicans had encountered little or no opposition and factions had naturally developed within the fold. By 1824 the line of cleavage had become so wide and so deep that the party was riven by the election. It was Monroe's wish that Crawford, his Secretary of the Treasury, should be nominated for the Presidency by a caucus, and the other aspirants knew that a caucus would certainly result in the nomination of the President's choice. Hence, the widespread opposition to the Congressional caucus. The managers of the various political cliques eagerly fomented the agitation against the so-called domination of Congress, in order that candidates of their own picking might enter the

Presidential race.

Popular meetings were staged in all parts of the country. As an illustration of the feeling aroused in the masses, we may quote the resolution adopted by the citizens of Jefferson County, Ohio, on the second of December, 1823: "The time has now arrived when the machinations of the few to dictate to the many, however indirectly applied, will be met with becoming firmness by a people jealous of their rights....The only unexceptional source from which nominations can proceed is the people themselves. To them belongs the right of choosing; and they alone can with propriety take any previous steps". Many of the States, especially the newer ones in the West, formally condemned the Congressional Caucus by legislative vote. Everywhere there was popular hostility to nomination by Congress.

Nevertheless, the call for the customary caucus was issued by certain of the Republican leaders. In order to obviate the criticism based upon the secrecy of the proceedings, it was decided to hold the meeting in the hall of Congress, and on the appointed night the galleries of the House chamber were crowded with spectators. But only 66 members of Congress appeared on the floor, nearly all of whom were supporters of Crawford; the other 150 that had been summoned absented themselves to protect the interest

of their candidates. In spite of the meagor attendance, the caucus proceeded to make nominations, and to issue a manifesto in defo.nseof its action. By an almost unanimous vote Crawford was chosen as the candidate for the Presidency, and Gallatin for the Vice Presidency.

Then there followed a great debate in the Senate on the subject of the caucus, which lasted for three days and was participated in by more than twenty speakers. There were some able defenses offered, but so overwhelming was the sentiment against this institution that the discussion may be said to have administered a death blow. At any rate, no further attempts were made to nominate a party ticket in a caucus of members of Congress, either in that election or in any subsequent ones.

The other candidates in the election of 1824 were presented by state legislatures and popular meetings: Clay by the legislatures of Kentucky with ratification by Missouri, Illinois, Ohio, and Louisiana; John Quincy Adams by the legislatures of most of the New England States; and Jackson by a mass convention of the people of Blount County, Tennessee, with indorsement by similar gatherings in all parts of the country.

After the failure of the Congressional caucus, nominations flowed from all quarters. Ostrogorski says:

"They proceeded alike from semi-official gatherings of the members of legislatures meeting in caucuses, from mixed caucuses, from State conventions composed solely of delegates, and, finally, from large meetings of citizens. Everywhere people expressed their opinions, declared their preferences; and they did so with a feverish eagerness, as if they wished to make up for the long abstention enforced upon them by the exclusive power which the Congressional caucus had wielded. The grand jury and the petty jury proceeded in courts 'in their private capacity' to vote for a President; companies of militia did the same as soon as the drill was over; people attending public auctions, passengers on steamers took advantage of being together to record a vote on the election which absorbed the whole country more than any previous election".

In the election of 1828 much the same situation occurred. The Tennessee legislature as early as 1825 nominated for the Presidency General Andrew Jackson, who thereupon delivered a speech of acceptance before that body and resigned his seat in the Senate to prosecute the campaign. Indorsements of his candidature were voted by legislatures, conventions, caucuses, and public meetings in great profusion. It was assumed, of course, that Adams, the President, would be a candidate for reelection.

But this confusing irregularity soon gave place to a mode of nomination more in accordance with the party system - an agency for consolidating the strength of a national party in support of one nominee. The Congressional caucus effected a concert within the party; nomination by

State legislatures and popular meetings gave to the people and the localities a larger part in the choice of nominees; the new method combined the advantages of both, harmonizing party unanimity with popular representation. This improvement was the national convention, which was first employed in the election of 1832.

In 1826 a certain William Morgan of western New York had declared his intention of publishing a book exposing the secrets of Freemasonry, and shortly afterwards had mysteriously disappeared. It was generally believed that he had been murdered by the order which he had intended to betray. So bitter and so widespread was the opposition to Freemasonry that a party sprang into existence to battle against it, the sole purpose being to prevent the Freemasons from obtaining the political power that they were supposed to be seeking. In September, 1830, there was a gathering of some ninety-six Anti-Masonic delegates from all sections of the country in the City of Philadelphia. This meeting drew up a lengthy report in which it invited the citizens of each State that were antagonistic to secret societies, to send delegates, equal in number to their representatives in Congress, to a convention in Baltimore one year from that date, for the purpose of nominating suit-

able persons for the offices of President and Vice President. And in September of the following year, the convention assembled with 114 delegates, chiefly from the East, and chose the candidates of the party by a three-fourths vote. This was the first national convention in the United States.

Immediately the idea was adopted by the major parties. On the invitation of a caucus in the Maryland legislature, a convention of the National Republican, or Whig, party was held at Baltimore in December, 1831. There were 156 delegates present from eighteen States and the District of Columbia. The representation was very unequal, the State of Tennessee having but one delegate, while the District of Columbia was allowed to send five. Henry Clay was unanimously nominated, and a deputation, composed of one delegate from each of the eighteen States in the Convention, journeyed to Washington to inform him of the nomination.

In May of 1832 the Democratic-Republicans met in Baltimore, with a total of 344 delegates representing every State in the Union. It was decided that the majority of the delegation of each State should appoint some one of themselves to cast the entire vote of that State, which was equal to the number of its electoral votes, and for the choice of a candidate or the settlement of any question con-

nected therewith, a majority of two thirds was required. Jackson and Van Buren were nominated.

Since this election the national convention has been almost invariably employed by both the major and the minor parties for the nomination of Presidential and Vice Presidential candidates. We will briefly consider the character and work of this institution, particularly as it is maintained by the Democratic and Republican parties of to-day.

At the head of the party organization is a national committee composed of one representative from each State and each Territory. These men are chosen every four years by the national convention - nominally elected by the whole body of delegates, but actually appointed by their respective delegations. The criticism has been preferred that the committees thus selected are not truly representative, and in an effort to improve their composition, the Democratic convention of 1912 directed, and some States have consequently provided by law, that the national committeemen be chosen in direct primaries. The chairman of the committee is supposed to be elected by the members of the committee, but in reality is picked by the party candidate for the presidency who is naturally most interested in the

campaign which it is the primary function of the national committee to manage.

Now in December or January preceding the presidential election, which comes in November of the leap year, the National committee of the party meets in Washington and issues a call for a convention at a time and place that it has selected - usually a large city such as Chicago or Baltimore, in June or July. The summons will also allot a number of delegates to each State and Territory.

In the Democratic convention every State is represented by twice as many delegates as it has Congressmen with one vote for each. Prior to 1852 the delegates were the same in number as the Congressmen, and between 1852 and 1872, though the number was double as it is at present, each delegate possessed only half a vote. Six votes are allotted to Hawaii, Alaska, Porto Rico, the Phillipines, and the District of Columbia.

The Republicans from the founding of the party in 1860 down to 1912 allowed each State to send a delegation twice as large as its quota in Congress, as do the Democrats to-day. So in 1912 a group of Southern States which cast in the preceding election 50,000 popular votes for the Republic candidate, and not a single electoral

vote, were represented by eight-eight delegates, that is to say, one for every 600 voters, while such states as Ohio, Illinois, and Indiana had in the convention one delegate to represent from 10,000 to 15,000 voters. This flagrant inequality had been for years a source of much complaint, and after the election of 1912 the national committee decided to correct it, in spite of the risk of alienating a part of the Republican element in the south. A new scheme of allotment was submitted to the State conventions with the announcement that it would go into effect when approved by as many States as could together cast a majority of the votes in the electoral college. These recommendations were accepted, with the result that the Southern representation was reduced from 33% to 16%, and the convention of 1916 had ninety-five fewer delegates than that of 1912.

Under this reformed plan, which was slightly modified in 1921, each State is entitled to four delegates for its two Senators and two for each Congressman-at-large, as heretofore; to two additional delegates if it gave its electoral votes, or a majority thereof, to the Republican presidential nominee in the preceding election; and to one delegate for each Congressional district maintaining a

Republican district organization and casting 2,500 votes for any Republican elector or the Republican nominee for Congress, with an additional delegate for any district which polls 10,000 Republican votes in such elections, or returns a Republican Congressman. Two delegates are sent by Hawaii, Alaska, Porto Rico, the Phillipines, and the District of Columbia; but they have no vote unless it is specifically granted by the convention itself.

Delegates are generally active party men, locally or nationally known - Senators, Representatives, Governors and the like. For every delegate there is an alternate ready to substitute for the principal if the latter should be prevented from attending the session. These alternates sit on the main floor of the convention in back of the delegates. The regular national convention of one of the major parties is a colossal concourse - in the neighborhood of a thousand delegates and as many alternates in the auditorium proper, with thousands upon thousands of spectators thronging the galleries.

The chairman of the national committee calls the convention to order, whereupon the session is opened with a prayer by a minister of any of the standard denominations. Then a slate of temporary officers, prepared by the national

committee, is submitted by the chairman, and, as a rule, adopted without debate. However, some opposition may be offered on account of a very decided difference of opinion within the party, as occurred in the Democratic convention of 1896 when the committee candidate for the temporary chairmanship, who represented the "gold faction", was rejected by the majority which had been won over to the "silver cause". The temporary chairman receives the gavel from the chairman of the national committee and delivers a carefully prepared speech.

Now the regular business begins. The first item on the agenda is the selection of the four great committees: the Committee on Credentials, the Committee on Permanent Organization, the Committee on Rules and Order of Business, and the Committee on Platform or Resolutions. Formerly it was the practice to call the roll of the States and have the chairman of the delegation announce the names of the four members chosen to serve on the four committees; now it is coming to be common for the chairman of each delegation simply to furnish the Secretary of the convention with a list of the members selected for this work. The convention adjourns after the appointment of the committees and reconvenes the following morning to hear their reports.

The first to report is the Committee on Rules and Order of Business. Usually it recommends that the rules of the last convention be adopted along with those of the national House of Representatives so far as they are applicable.

Then comes the Committee on Credentials. The national committee has already investigated the claims of contending delegations and made up a temporary roll of members for the convention; the function of the Committee on Credentials is to settle the matter. The convention almost invariably ratifies the decisions of this committee. Delegates are admitted who are supported by the regular local organization of the party, and if two complete delegations appear, both may be allowed to sit on the floor of the convention with a half a vote for each delegate.

The Committee on Permanent Organization merely reports a list of officers picked by the national committee; and so certain is it that these recommendations will be accepted, that the prospective chairman writes out a lengthy speech which he delivers as soon as he is installed in office.

Finally, the Committee on the Platform offers a series of resolutions for the approval of the convention. These resolutions are frequently drafted beforehand by

prominent members of the party and given to the Committee for incorporation in the platform. In 1920 the Republicans, prior to the convention, set up a committee of inquiry to canvass public opinion upon questions likely to be considered in the platform. Questionnaires were disseminated and the tabulated answers placed before the Committee on the Platform appointed by the convention.

The document drafted by the committee is apt to be accepted without change because everybody knows that, as one writer expresses it, "the sole object of the platform is to catch votes by trading on the credulity of the electors". It is quite immaterial what goes into the platform since the administration elected upon it is not regarded as bound by its provisions. The real manifesto, or prospectus, is given in the "speech of acceptance" delivered by the candidate when the committee of notification appointed by the convention tenders him the nomination at his home or some other appointed place, and also in a lengthy "letter of acceptance" that usually follows.

Having heard and acted upon the reports of the committees, the convention is now ready to take up the task which constitutes its raison d'etre. The roll of

the States is called in alphabetical order and some member of each delegation that wishes to offer a candidate will make a lengthy speech of nomination, followed by one or two less elaborate performances for seconding. If a State has no desire to nominate anyone, it may yield its place on the list to another State below it which is anxious to introduce a name as early as possible. The speakers are chosen with great care - men with stentorian voices and a sensational style - in the hope that their oratory will arouse the galleries to enthusiasm for that particular candidate.

The average number of nominations is eight, and rarely are more than twelve candidates presented. Some of them are the so-called "favorite sons", or men prominent within the State whom the delegates wish to honor by nominating for the Presidency. And one or two will be known as "dark horses", that is, candidates who, though without any large support at the outset, may be swept into the nomination by the reaction from a deadlock between two of the more conspicuous candidates.

The balloting is done orally through a roll call of the States, the chairman of each delegation announcing the vote of his State. The proportion of votes required

for a nomination may be obtained on the first ballot, but usually the delegates are well divided among several prominent candidates and a number of ballots is necessary. Thus in 1852 General Scott was nominated by the Whig convention on the fifty-third ballot, and in 1912 Woodrow Wilson by the Democratic convention on the forty-sixth. Very few ballots, however, are required for the selection of the Vice Presidential nominee. The choice is limited by the fact that he must be taken from some other section than the candidate for the Presidency in order to balance the ticket, and, furthermore, the convention is by that time too exhausted to wrangle over this relatively unimportant matter.

In the Republican convention an ordinary majority is required for nomination. With the Democrates two thirds of the whole number of votes must be polled by the winning candidate. Some say that the two-thirds rule was established by the Southern States, during the struggle over the extension of slavery, to prevent the free States of the North and West from forcing a prohibitionist candidate upon them. Others believe that the purpose of the rule is to insure harmony between the President and the Senate for which elections are held in two thirds of the States in the same year in which the Chief Magistrate is

chosen. As the first reason is a thing of the past, and as the second is so vague as to be inconsiderable, if not fanciful, it would seem that this is an arbitrary requirement which ought to be abolished. One would think that its operation, by rendering it more difficult to effect a choice, would encourage the nomination of compromise candidates. However, the existence of another peculiar rule necessitates its retention.

From the very first the Democratic convention has held that the whole vote of a State may be cast as a unit if the majority of the delegates so decide, or if instructions to that effect have been given by the State convention. Any delegate may challenge the declaration of his chairman, whereupon the roll of the delegation is called by the clerk of the convention, and each delegate announces his preference among the candidates; but this does not affect the vote of the State. The unit rule, as it is called, was intended to recognize the sovereign character of the State by upholding its right to iron out the differences within it and vote as an entity.

Republican State conventions have tried repeatedly to introduce the unit rule by instructing their delegations to vote solidly as the majority decided, but the national convention has generally sustained the right of the individual delegate to vote as he pleased. In 1912

the Democratic convention slightly modified its position to adapt itself to the direct primary: it will now enforce "a unit rule enacted by a State convention except in such States as have by mandatory statute provided for the nomination and election of delegates and alternates in Congressional districts, and have not subjected delegates so elected to the authority of the State committee or convention of the party, in which case no such rule shall be held to apply". But we may say that, in general, the unit rule still prevails in the Democratic convention.

Now it is evident that if the two-thirds rule is abandoned while the unit rule is continued, a few of the large States with delegations almost equally divided may effect the nomination of a candidate when only a minority of the delegates favor. And, after all, a two-thirds ballot is not difficult to secure when the delegations are required to vote as a unit, since a well-distributed majority may easily control the necessary proportion, if not actually all, of the delegations. So the two-thirds rule and the unit rule, which now obtain in the Democratic convention, should, and most probably will, stand or fall together.

Compromises nominations have been rather common in either party. After a score of more of ballots two candidates will be running neck and neck, and it will be-

come evident to the convention that neither can secure a sufficient lead over the other to win the nomination. Then a few of the delegations will shift their support to some candidate who has remained in the background, or, perhaps, has not heretofore been mentioned, and others will follow their example until the electoral quota has gathered about the fortunate one. Often a stampede will occur; the convention becomes frenzied with enthusiasm for the new candidate and the delegations go over to his standard with a mighty rush, those who have already given their votes to some other candidate interrupting the roll call to record a change in their support. Quite naturally all of the delegates are anxious to ride on the band-wagon, that is, to be numbered among the supporters of the victorious one.

There is no better illustration of the stampede for a compromise candidate than that which occurred in the Democratic convention of 1868. On the twenty-first ballot the contest had apparently resolved itself into a struggle between Hancock and Hendricks. On the twenty-second trial a few votes were given to Horatio Seymour, the president of the convention. He declined to be a candidate, but the votes were repeated in spite of his objection, and when he withdrew from the chair, his nomination

was effected in a trice by a unanimous vote. This seems to have a spontaneous movement, but often the stampedes are ingeniously plotted by the political bosses. The nomination of Franklin D. Pierce in the Democratic convention of 1852, after Cass and Buchanan had led the field for thirty-six trials, is said to have been the result of pre-convention scheming on the part of Senator Bradbury of Maine, a friend and college mate of the nominee.

Repeated attempts have been made to prevent stampedes by various regulations. In the Republican convention of 1876 the chairman refused to allow any delegation to transfer its vote in the course of a ballot, and the Democratic conventions of 1884 and 1888 incorporated a similar provision in their regular rules of procedure. However, as long as the viva voce vote is employed and demonstrations are permitted in the galleries, a stampede is likely to occur.

It is a moot question to what extent the delegates are manipulated by the silent chieftains behind the scenes or influenced by the turbulent spectators in the gallery, but, at any rate, no one would contend that the choice of a national convention was the product of unadulterated deliberation. Ostrogorski concludes his description of the convention with this caustic paragraph:

"At last after a session of several days the end is reached; the convention adjourns sine die. All is over. As you step out of the building you inhale with relief the gentle breeze which tempers the scorching heat of July; you come to yourself; you recover your sensibility, which has been blunted by the incessant uproar, and your faculty of judgment which has been held in abeyance amid the pandemonium in which day after day has been passed. You collect your impressions and you realise what a colossal travesty of popular institutions you have just been witnessing. A greedy crowd of office-holders, or of office-seekers, disguised as delegates of the people, on the pretence of holding the grand council of the party, indulged in, and were the victims of, intrigues and manoeuvres, the object of which the Chief Magistracy of the greatest republic of the two hemispheres....Cut off from their judgment by the tumultuous crowd of spectators, which alone made all attempt at deliberation an impossibility, they submitted without resistance to the pressure of the galleries masquerading as popular opinion, and made up of a clique and of a roving mob, which, under ordinary circumstances, could only be formed by the inmates of all the lunatic asylums of the country who had made their escape at the same time... In the fit of intoxication they yield to the most sudden impulses, dart in the most unexpected directions; and it is blind chance which has the last word. The name of the candidate for the Presidency of the Republic issues from the vote of the convention like a number from a lottery. And all the followers of the party, from the Atlantic to the Pacific, are bound on pain of apostasy to vote for the product of that lottery. Yet when you carry your thought back from the scene which you have just witnessed and review the list of Presidents, you find that if they have not all been great men - far from it - they were all honorable men; and you cannot help repeating the American saying: 'God takes care of drunkards, of little children, and of the United States.'"

In the last decade or so there has been a considerable demand for a greater popular participation in

the choice of Presidential and Vice Presidential nominees. The movement has been supported both by students of politics who believe that the convention is a faulty institution, and by the masses of the people who naturally desire more power of whatever description. The agitation has been directed for the most part towards a change in the method of selecting delegates to the national convention.

Prior to the election of 1912, all of the States regularly chose their delegations in party conventions. The Republicans, as a rule, elected their district delegates, two for each Congressional district, in district conventions, and the delegates-at-large, four for the two Senators and two for each Congressman-at-large, in State conventions. The Democrats, on the other hand, frequently chose the whole number of delegates in a State convention, in accordance with their ideal of the party integrity of a State.

In 1910 the State of Oregon, in response to the cry for reform, provided by law for the direct election of district delegates by a vote in the Congressional districts, and of delegates-at-large by a State-wide vote. Also it arranged for a preference vote upon the Presidential candidates with the understanding that the delegates

to the national convention should support the choice of the State. Similar schemes were instituted by the progressive elements in other States, so that in both conventions of 1912, Democratic and Republican, there were some 360 delegates from twelve States operating one form or another of the Presidential primary. And in the conventions of 1916 and 1920, the number was increased to about 600 delegates from twenty States.

There is great diversity among the States in the type of Presidential primary employed. Three of them, Vermont, Michigan, and North Carolina, provide merely for a preference vote upon the candidates for the Presidential nomination and leave the parties to appoint and instruct their delegates in any way that it pleases them. Two, Indiana and Maryland, retain the State convention, but accompany the election of the delegates to this assembly with a preference vote on Presidential aspirants, which is supposed to guide that body in the choice of delegates to the national convention. On the other hand, three, New York, New Hampshire, and California, provide for a direct election of delegates, but omit the preference vote. However, the same end is accomplished in New Hampshire and California through a provision in the former for delegates to pledge themselves to support some name.

and in the latter, to group themselves with the sanction of the Presidential aspirant or his State organization. Illinois combines the old and the new in establishing the direct election of district delegates and the choice of delegates-at-large by a State convention, along with the customary preference vote. The rest of the States provide for the election of their quota of delegates either with all by a vote at large, or with some by a district, and some by a State-wide, ballot; and, at the same time, permit the voters to express their preference among the candidates for the party nomination. In about a dozen States there is a preference vote for the Vice Presidency.

The Presidential primary has fallen far short of the expectations aroused by its successful inauguration in 1912. At the last election, in only five States did three or more of the candidates for the Republican nomination submit their names to the voters, and the highest number of States entered by any one candidate was fourteen, while the nominee of the convention offered himself in but three. Worse still, only one Democratic aspirant participated in the primary of more than one State, and he in just two.

But it will not do to condemn the primary system as an institution on the basis of this limited experience. Thus says Boots, a careful student of the question:

> "The charge that the primary has failed is beside the point. A presidential primary has not been tried.....One would hardly assert that a State employed a direct primary for the nomination of governor if only half the counties took a direct vote on a candidate and certified the returns to a convention that was in no way bound by them. And so long as a candidate may elect to run only where his chances are good, and argue as to the rest of the field that the voters had no opportunity to support him, there is hardly a real primary."

Moreover, the difference in the dates of the primaries encourages what are known as migratory campaigns. The earliest primary is held in New Hampshire on the second Tuesday in March; the latest in North Carolina on the first Saturday in June. When weeks and even months elapse between elections in various State, it is possible for a regular troop of campaigners to travel from section to section. And, of course, the people in one State will be influenced by the outcome of the primary in another so that the ballot may not express their normal and natural preferences.

In summary, then, not only do more than half of the States still select their delegates in conventions, but the laws are confusingly diverse in the States which have instituted primary election of delegates. An aspirant to the party nomination may enter the preference vote in just as few or as many States as he desires, and as the primaries are scattered over a long period of time, he may

move from place to place for intensive campaigning and utilize as propaganda in one State the results of the primary in another.

It is evident that the primary will remain an inconsiderable factor in the nomination of Presidential candidates until all of the States have adopted it, and some degree of uniformity prevails as to both the type and the time. There is to-day no general supervision of the choice of delegates. The States elect their representatives in any way that it suits them, for the convention, though it controls absolutely its own operation and may refuse to seat the delegates, cannot positively determine how the States shall choose them. The necessary uniformity in the election of delegates is not to be accomplished without some central direction, and, therefore, it has been urged that Congress be given complete power over the matter.

But there is a serious difficulty inherent in the conjunction of the primary and the convention which not even the uniformity effected by Congressional regulation would obviate. How are the delegates to be instructed? Of course, the people themselves have little voice in the nomination if the delegates are simply elected by them and go to the convention to vote as they please; it is necessary to determine the preference of the voters among the aspirants to the

nomination. But how are the delegates to be compelled to carry into execution the wishes of the people? If all of the delegates are pledged to support the preferences of their constituencies to the very end, it will usually be impossible for the convention to make any nomination at all, for seldom does any candidate have a majority of the votes at the outset. No compromise; no nomination. Yet where is the line to be drawn between simply recommending the local preference to the delegate and requiring him to follow unswervingly the wish of the people. It often happens that delegates are chosen who are not in sympathy with the candidate at the top of the preference vote, and if any discretion whatsoever be left to them, they will contrive to desert him at the very start of the balloting. A possible solution seems to be the appointment by the Presidential aspirant of the quota of delegates allotted to him on the basis of the preference vote in the State, such delegates being certain to support him as long there is any chance of his nomination. But the people would never forgo the election of the delegates, even though the apparent sacrifice insured a better recognition of their desires.

Some students, dissatisfied with the national nominating convention and convinced of the impossibility of perfecting it by the popular election and instruction of dele-

gates, have advocated its abolition and the substitution of direct nomination of Presidential candidates in the primary. President Wilson in his first message to Congress on December 2, 1913, indorsed this proposal in substance, saying:

> "I feel confident that I do not misinterpret the wishes or the expectations of the country when I urge the prompt enactment of legislation which will provide for primary election throughout the country at which the voters of the several parties may choose their nominees for the Presidency without the intervention of nominating conventions. I venture the suggestion that this legislation should provide for the retention of party conventions but only for the purpose of declaring and accepting the verdict of the primaries; and I suggest that these conventions should consist, not of delegates chosen for this single purpose, but of the nominees for Congress, the nominees for vacant seats in the Senate of the United States, the Senators whose terms have not yet closed, the national committees, and the candidates for the Presidency themselves, in order that platforms may be framed by those responsible to the people for carrying them into effect."

However, weighty objections have been urged against the direct primary as a means of nomination. In the first place, experience in State and municipal government has shown that it is well-nigh impossible to prevent the voters of one party from participating in the primary of another without at the same time incidentally excluding some of the bona fide members. Again, the ignorance and indifference of the rank of the voters would militate against the success of the primary. The people, knowing little of the respective merits of the candidates, would frequently vote for a favorite son who was hopelessly out of the running, or else for some conspicu-

ous person who, more likely than not, would be of inferior stamp. Then, as it is exceedingly difficult to get the voters to the polls, there is no certainty that the man who obtained the greatest number of votes in the primary would be the real choice of the majority in the party. Finally, competition in a national primary would be extremely expensive. The man who advertised himself most widely would be apt to secure the nomination. Hence, capable men of moderate means could not afford to run in the primaries, or if they attempted to do without the enormous expenditures for publicity, would inevitably meet with defeat.

Yet with all of its defects and dangers the direct primary for the nomination of Presidential candidates would probably be preferable to the national convention of to-day. In theory, the latter is composed of eminent partisans who, after a painstaking survey of the field, select some outstanding individual whom their deliberate judgment pronounces the best fitted of all to lead the party to victory and conduct the administration thereafter. As a matter of fact, candidates are often foisted upon the convention and many other nominations are the result of a paroxysmal enthusiasm. Of course, the convention is capable of much better selections than the direct primary, but, on the other hand, it can easily make a slip which the latter would never allow. We may liken the national convention to the proverbial little girl who

"when she is good, is very, very good; but when she is bad, is horrid". It is probable that the average nominee under the direct primary system would surpass the average product of the national convention.

However, whether we decide to retain the convention with full power to nominate, or to substitute the direct primary as the agency of nomination, or to compromise between the two methods by allowing the primary to influence the convention without absolutely controlling it, whatever be the plan adopted, one great desideratum is apparent: central regulation of the process. The Constitution did not give to Congress power to regulate the nomination of Presidential candidates because it never contemplated a formal candidature presented by a political party. The fretting need of the present is logical organization in the selection of nominees. It is high time to amend the Constitution so that Congress may exercise control over this vital function: "That amendment", says Professor Ogg in a recent article, "is the sine qua non for the success of any plan of reform, however meritoriously and however widely supported".

And so after a careful examination of our electoral machinery and a survey of its operation over a period of nearly a hundred and fifty years, we conclude that radical changes are necessary, which can be effected only by the amendment

of our Constitution. Inequalities and inconsistencies abound in the scheme of election; confusion prevails in the procedure of nomination. Speaking in prospect, Alexander Hamilton says of the mechanism of our presidential election, "if the manner of it be not perfect, it is at least excellent"; now, in retrospect, we would pronounce judgment upon it by changing his adjectives so that the sentence will read, "if the manner of it be not impossible, it is at least wretched".

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