

CHAPTER I

THE ELECTION OF A PRESIDENT

The Office of President

Presidential campaigns, elections, and the biographies of the winners and losers of those contests, help tell the story of our heritage.

The duties, powers and responsibilities of the President are set forth in Article II of the Constitution of the United States. The nature of this office received substantial attention from the drafters of the Constitution as the inadequacies of the chief executive under the Articles of Confederation were plainly visible.¹ Having quickly decided that the nation's executive power should repose in a single person, the delegates to the 1787 Constitutional Convention considered numerous proposals regarding the manner of electing and the term of office for the President. The initial proposal of a single seven-year term President elected by the national legislature was rejected because of its exclusion of public participation and its conflict with the doctrine of separation of powers. Domination by the national or state legislatures was feared and there was equal distrust of direct popular election by the members of the Constitutional Convention in Philadelphia. The eventual compromise was to create an electoral college, independent of the legislators, charged with the responsibility of choosing a President.²

In creating an electoral college, a mechanism previously used in several states including Maryland,³ the independence of the Presidency was achieved while the role of the individual states was simultaneously preserved by allocating electoral votes among the states according to the number of U.S. Senators and members of the House of Representatives in each of the states. In the event sectionalism or factionalism developed in the electoral college and no candidate received a majority of electoral votes, it was provided that the selection of the President would be made by the U.S. House of Representatives from those five receiving the highest number of votes.⁴ In the event of selection by the House of Representatives, each state casts a single ballot with an absolute majority of the number of states necessary for election of a President.

Despite periodic clamors for the modification or elimination of the electoral college over the past 195 years, the structure has remained unchanged since 1804 when the Twelfth Amendment to the Constitution was ratified providing that each presidential elector cast a single ballot for President and a separate single ballot for Vice President.⁵ The House of Representatives has been required to perform its constitutional role of choosing a President twice—in 1800 and 1824. In 1876, the hotly contested Hayes-Tilden election was decided by one electoral vote after a Congressionally appointed committee was authorized to investigate and rule on challenges to the electoral votes from four states.⁶ On three occasions (1824, 1876 and 1888) the winning candidate failed to receive the most popular votes. In all other presidential elections the electoral college has not frustrated the will of the voting public although the potential for unusual results remains, particularly should a strong third party develop in American politics.⁷