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DESIGNING AN ELECTORAL SYSTEM FOR A CONSOLIDATED GOVERNMENT

by

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I commence this paper by suggesting that there is a positive correlation between the electoral system and the responsiveness of a governing body to its citizens. The municipal reform movement in the early part of the twentieth century was convinced that such a relationship existed and sought a complete change in the existing electoral system, including the elimination of partisan elections and ward elections, and the replacement of a large bi-cameral city council by a small uni-cameral one.

Although many students of local government believe that the municipal reform program has improved the caliber of city government, the electoral system prescribed by the reformers is undergoing reassessment in the light of current conditions.

The various objectives of democratic voting can necessitate different electoral systems. In a referendum, a simple "yes" or "no" vote is sufficient. If only two candidates seek election to an office, allowing voters to cast a vote for one candidate obviously is an adequate system. The situation differs considerably, however, when three or more candidates seek election to an office as plurality voting can allow a minority candidate to be elected. To prevent this, a run-off election is held in some cities between the two candidates with the largest number of votes in order to guarantee that the candidate elected is the choice of a majority of the voters.

The election of a city council at-large frequently over-represents the majority, especially the middle class majority, and often results in no direct representation for minorities and thereby aggravates any alienation that exists. Increasingly, political scientists and others are becoming convinced that minorities must be provided with representation and that a council which represents only the majority clearly is an undemocratic body.

PARTISAN OR NONPARTISAN ELECTIONS?

One of the most emotional issues facing charter drafters is the question whether elections should be partisan or nonpartisan. Deletion of the party name and emblem from the ballots, it must be pointed out, does not prevent parties from nominating candidates and conducting vigorous election campaigns. In many cities, Chicago is an outstanding example, the electoral system is nonpartisan in name only.

I will briefly recite the arguments for and against partisan elections--used in approximately forty per cent of the cities in the United States--and leave it to you on the basis of your experience with county partisan elections and city nonpartisan elections to decide whether these arguments are applicable to Charlotte and Mecklenburg County.

PARTISAN ELECTIONS

Advocates of partisan elections on the local level of government maintain that they are essential for the health of the state and national parties since local parties serve as the roots of the state and national parties. Nonpartisan local elections, they contend, weaken state and national parties because there are fewer rewards available to party workers and the parties become inactive during municipal election years.

It is apparent that many programs focusing upon cities are federal-state-local in nature. This means that local officials must deal with partisan state and national officials. Professor Charles A. Beard wrote in 1917 that "not a single one of our serious municipal questions--poverty, high cost of living, overcrowding, low standard of life, physical degeneracy--can be solved, can even be approached without the cooperation of the state and national governments and the solution of these problems calls for state and national parties."[1] However,

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[1] Charles A. Beard, "Political Parties in City Government," National Municipal Review, March 1917, p. 201.

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there is little evidence to support the contention that partisan municipal officials can deal more effectively than nonpartisan officials with state and federal officials.

Do partisan elections on the local level facilitate the recruitment of candidates for state and national office? Charles R. Adrian has written "it is unusual for a successful nonpartisan politician to move up into higher partisan ranks. Thus the fact that personnel for the two ballots are kept largely separate creates a problem for the parties, which ordinarily use local and legislative positions as the training ground for higher offices."[2]

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[2] Charles R. Adrian, "Some General Characteristics of Nonpartisan Elections," The American Political Science Review, September 1952, pp. 766-76.

A somewhat related argument is that partisan elections facilitate the recruitment of candidates for local office because the party assumes much of the responsibility for raising funds needed by candidates for their campaigns. This argument assumes that the cost of conducting a local election campaign is so large that many highly competent citizens will refuse to offer themselves as

candidates in a nonpartisan election because they would be unable to raise the necessary funds to finance their campaigns.

Several students of local politics argue that nonpartisan elections are responsible for a low turnover in the membership of a city council, thereby increasing the prospect that the council will be composed of individuals holding a conservative philosophy. Partisan elections, on the other hand, will result in the election of a council more truly representative of the political philosophy of the average citizen.

Critics of nonpartisan elections maintain that policy issues are avoided in such election campaigns with the result the campaigns focus upon personalities rather than issues. Since issues are not fully discussed and positions are not taken, voters experience serious difficulty in attempting to identify programs and positions with individual councilmen.

Finally, supporters of partisan elections maintain that such elections ensure that there will be collective responsibility since "protest voting" is facilitated. The electors can turn the governing party out of office if it fails to provide good government. This cannot be done under a nonpartisan system in view of the fact there are no clearly identifiable majority and minority groups because most councilmen take a middle of the road position on issues.

NONPARTISAN ELECTIONS

The principal argument in favor of nonpartisan elections is that there is no Democratic or Republican way of performing municipal functions such as street cleaning, fire protection, and sewage disposal. Flowing from this basic argument are several related arguments. The National Municipal Review, in 1951, for example, carried an editorial that states "cities must be emancipated from

the tyranny of the national and state political parties. Good citizens who agree on vital issues should not be divided by blind loyalties that serve only to confuse these issues."[3] Local issues, it is maintained, are obscured when

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[3] National Municipal Review, July 1951.

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national and state partisan issues intrude into municipal affairs.

Richard S. Childs, the founder of the council-manager plan, charges that partisan elections promote voting by citizens who rely upon the party label in voting and have not studied the issues and candidates. He has written as follows:

> If national parties nominate municipal tickets and if the party names appear on the ballots, each local set of party managers thereby can herd an unthinking habit-bound bloc of voters to the polls with the cry for party loyalty.[4]

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[4] Richard S. Childs, The First 50 Years (New York: National Municipal League, 1965), p. 37.

Critics of partisan elections also maintain that the major political parties lack a definite municipal program and that the platforms of the two major parties tend to be general and similar in nature. Hence, critics conclude that parties do not perform the function of offering the voters an effective choice of programs.

Furthermore, few cities have a genuine two party system as a city government usually is dominated by one party and there is no effective opposition. In fact, a weak minority party often cooperates with the majority party in exchange for a few hand-outs. Related to this argument is the contention that highly qualified candidates of the minority party have no chance of winning elections to office even if their opponents clearly are not as qualified.

The final argument in favor of nonpartisan elections is that they facilitate the recruitment and election of successful businessmen and professionals as independent candidates. These are individuals who, for various reasons, would not seek office if the election campaign is partisan.

WARD OR AT-LARGE ELECTIONS?

Ward election of councilmen was the traditional method of electing the city council until the municipal reform movement was generally successful in substituting at-large elections. One of the leading members of the municipal reform movement, Richard S. Childs, offers four major reasons for the general demise of ward elections.

1. Ward elections confined each voter's influence over the governing body to the single member from his ward. He was denied having anything to say about the majority.

2. Ward elections notoriously produced political small fry who intrigued in the council for petty favors and sought appropriations for their wards in reckless disregard of city-wide interests and the total budget.

3. Ward boundaries got deliberately drawn to favor one faction or party or became obsolete by shifts of population, and redistricting was resisted, sometimes for generations, by the beneficiaries, resulting in gross inequalities of representation and elections of a majority of the council by minorities of the population.

4. The obscurities of ward politics eluded scrutiny by press and public and facilitated development of self-serving political cliques.[5]

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[5] Ibid., p. 37.

WARD ELECTIONS?

Today there is growing interest in resurrecting the ward electoral system, especially in large cities, in view of the fact at-large elections generally do

not provide representation for all geographical areas of a city, and basic policy decisions may be made by a city council which is unaware of or insensitive to the problems of particular areas of the city.

I will briefly summarize the arguments for and against ward elections and you can use your experience with at-large city and county elections to evaluate the validity of the arguments.

Proponents advance four basic arguments in support of ward elections. First, a ward councilman is closer to his constituents and this makes it easier for the constituents to judge his performance and to replace him if they are dissatisfied.

Second, citizens are less hesitant to call upon the councilman for assistance since he is more likely to be personally known than any at-large councilman. This argument is particularly important if the primary role of the councilman is viewed as that of an official who performs services for his constituents. On the other hand, this service function can be performed by an information and complaint bureau in city hall and neighborhood city halls.

Third, the ballot is shortened as the voter now has to elect only one councilman instead of a group of councilmen. This means that greater attention can be focused on the ward councilman and voting, therefore, will be more informed. Interestingly, one tenet of the municipal reform program was a short ballot, yet the at-large council adds to the length of the ballot.

Fourth, ward elections guarantee direct representation for geographically concentrated minorities who are in effect disenfranchised by at-large elections. Ward elections do not necessarily represent minority groups in proportion to their voting strength and a geographically dispersed minority group may be unable to elect a single candidate to the council. There are, of course, other electoral systems that provide representation for minorities whether they are

geographically concentrated or dispersed and we will discuss these systems later in the paper.

AT-LARGE ELECTIONS?

Proponents of at-large elections have developed several strong arguments against ward elections. First, it is contended that ward councilmen are concerned only with the needs of their own wards and no one examines overall municipal needs and establishes priorities for municipal action. "Back scratching" is common with one councilman agreeing to vote for a pet project of a second councilman in exchange for his support of a pet project of the first councilman. This means that city-wide needs are neglected. What is needed, according to the proponents of at-large elections, is a council composed of individuals with a city-wide orientation who can develop priorities to ensure that the needs of all areas collectively and individually are taken care of on an objective and rational basis.

Second, the argument is advanced that the quality of the councilmen is lower when they are elected on a ward basis as this system facilitates the election of petty politicians. Successful businessmen and professionals, lacking a political support base in a ward, it is maintained, will not seek election to the city council and the city is the poorer for the failure to secure their services.

Third, ward elections are objected to on the ground they afford the opportunity for deliberate gerrymandering. The majority party or faction may follow the United States Supreme Court's one-man, one-vote ruling, yet still redraw ward lines in such a manner as to concentrate the opposition in as few wards as possible and may even be able to disperse the opposition voters to such an extent that they are unable to elect a single councilman.

Fourth, the one-man, one-vote principle will necessitate continuous redrawing of ward lines to avoid silent gerrymanders which result from population shifts. This means that a councilman will have a shifting rather than a constant constituency over a period of time.

Finally, the argument is advanced that various electoral systems based on at-large elections will more effectively guarantee representation for minorities, especially geographically dispersed minorities. The reference, of course, is to cumulative voting, limited voting, and proportional representation which we will discuss later.

In closing this section of the paper, I call your attention to the fact that many large cities and counties have adopted a combination of at-large and district elections. The usual situation involves the election of a majority of the councilmen at-large to ensure that city-wide needs receive priority and the use of district representatives to ensure that the needs of individual geographical areas are not neglected. The Metropolitan Government of Nashville and Davidson County, however, has a forty member council with five councilmen elected at large and thirty-five elected by districts.[6] And the new City of

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[6] Charter of the Metropolitan Government of Nashville and Davidson County, art. 3, sec. 3.01.

Jacksonville has a nineteen member council with five councilmen elected at large and fourteen elected by districts.[7]

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[7] Charter of the Consolidated Government of the City of Jacksonville, Florida, art. 5, sec. 5.01.

The original charter of Metropolitan Dade County contained a standard provision for the at-large election of all commissioners. On November 3, 1963,

the voters approved a charter amendment providing for the election for a four year term of one commissioner from each of eight districts by the voters of the county at-large and the at-large election of a ninth member, the Mayor.[8] The

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[8] Metropolitan Dade County Charter, art. 1, sec. 1.04.

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proposed charter merging Charlottesville and Albemarle County (Virginia) stipulates that five councilmen "shall be residents of Charlottesville Borough and one shall be a resident of each of the other boroughs, but all shall be voted upon by all qualified voters of the entire consolidated city."[9] The

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[9] Charter for the Consolidated City (Charlottesville, Va.: 1969), Chap. 4, sec. 4.01.

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advantage alleged for this electoral system is that it ensures that councilmen will have a city-wide constituency and orientation at the same time that representation is provided for distinct geographical areas.

ONE-MAN, ONE-VOTE

In deciding whether to elect members of the governing body of the consolidated government by districts or wards, you must give careful consideration to the reapportionment decisions of the United States Supreme Court. Until 1962, it refused to hear malapportionment cases involving state legislatures. In that year, however, the Court ruled that federal courts had jurisdiction in such cases, but did not mandate population as the basis for apportionment.[10] The

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

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following year the Court used for the first time the term "one-man, one-vote"

and ruled unconstitutional Georgia's county unit system for electing state officials.[11] In a 1964 case, the Court rejected the federal analogy of one

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

house apportioned on the basis of area as violating the equal protection of the laws clause of the Fourteenth Amendment to the United States Constitution, and ruled that both houses of a state legislature must be apportioned on the basis of "one-man, one-vote."[12]

[12] Reynolds v. Sims, 377 U. S. 533 (1964).

In a case involving a Michigan school board, the Supreme Court refused to extend its "one-man, one-vote" principle to all local governments, and held that the board's membership was "basically appointive rather than elective," and that the board's functions were "essentially administrative."[13] This case was

[13] Sailors v. Kent Board of Education, 387 U. S. 105 (1967).

unusual in that local district school boards, elected at-large, each sent one delegate to a biennial meeting of the county board.

Since the Fourteenth Amendment to the United States Constitution applies to local governments as well as state governments, it was inevitable that the Court would extend its one-man, one-vote principle to local governments. In April 1968, the Court, in a five to three decision, held that the apportionment of the Midland County, Texas board violative of the federal constitution.[14] The Court

[14] Avery v. Midland County, Texas et al, 390 U. S. 474 (1968).

ruled that population equality must be the basis for precinct equality in view of the fact the commissioners perform legislative functions, including setting a tax rate, equalizing assessments, issuing bonds, adopting budgets, and levying taxes.

HOW EQUAL IS EQUAL?

The Supreme Court has moved in the direction of near population equality as its standard for determining whether the apportionment plan of a state legislature violates the Court's "one-man, one-vote" doctrine. Emphasis is placed on whether an electoral system debases or dilutes the vote of one citizen in relation to the votes of the other citizens voting for the same office.

Although the Court has not defined what is a de minimus deviation from pure population equality, it did provide in 1967 rough guidelines as to what constitutes "substantial" population equality by noting that "variations of thirty per cent among senate districts and forty per cent among house districts can hardly be deemed de minimus."[15] In this case involving the Florida legislature, the

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[15] Swann v. Adams, 385 U. S. 440 (1967).

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maximum district deviations from average for the senate and house were 15.09 per cent and 18.3 per cent respectively. In a simultaneously issued decision, the Court upheld a federal district court ruling nullifying a Missouri plan for the apportionment of seats in the United States House of Representatives which would have allowed a 9.9 per cent maximum deviation in population between districts.[16]

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[16] Kirkpatrick v. Preisler, 385 U. S. 450 (1967).

With respect to local governments, the Court appears to be willing to allow larger deviations from pure population equality than in the case of state

legislatures. The Court has ruled "that variations from a pure population standard might be justified by such state policy considerations as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines.[17] Should the Court require near population equality for districts,

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[17] Swann v. Adams, 385 U.S. 440 (1967).

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gerrymandering may become an increasingly serious problem as traditional political boundaries will have to be ignored.

AT-LARGE ELECTIONS

There are hints that at-large elections may be held unconstitutional on the ground such elections disenfranchise minority groups. In a case involving the Texas legislature, Justice William O. Douglas stated he reserved "decision on one aspect of the problem concerning multi-member districts. Under the present regime each voter in a district has one vote for each office to be filled. This allows the majority to defeat the minority on all fronts....I am not sure in my own mind how this problem should be resolved."[18]

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[18] Kilgarlin v. Hill, 386 U.S. 120 (1967).

Are at-large elections with district residence requirements constitutional? In the Virginia Beach consolidation case (the City of Virginia Beach and Princess Anne County had been consolidated) the Court upheld a plan providing for an eleven member council elected at-large, but stipulating that seven members must be residents of specified boroughs.[19] The boroughs ranged in

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[19] Dusch v. Davis, 387 U.S. 112 (1967).

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population from 733 to 29,048. The Court held the plan made "no distinction on the basis of race, creed, or economic status or location" as all councilmen were elected by all voters of the municipality. The court also has ruled it will allow experimentation unless it cancels out "the voting strength of racial or political elements."[20]

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[20] Fortson v. Dorsey, 379 U.S. 433 (1965).

The District Court for the Northern District of Georgia has upheld an apportionment plan dividing a county into four districts and stipulating that with the exception of the chairman no two commissioners could be residents of the same district. "The residence requirement in effect diffused the representation over the county while giving each elector of the county by virtue of county at-large elections a voice in the selection process."[21]

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[21] Reed v. Mann, 237 F. Supp. 22 (N. D. Ga., 1964).

EXTRA-MAJORITY REQUIREMENTS

Do charter provisions, state laws, and constitutional provisions requiring an extra-majority affirmative vote in referenda violate the "one-man, one-vote" doctrine? The United States Supreme Court has not yet ruled on this question, but the extension of the "one-man, one-vote" doctrine to its logical conclusion would indicate that requirements of an extra-majority for passage of referred matters are unconstitutional. The Supreme Court of West Virginia reached such a conclusion in July 1969.[22]

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[22] Lance v. Board of Education, 170 S. E. 2d 783 (1969).

This case deals with the failure of a tax levy and a bond issue to receive a required sixty per cent affirmative majority in a Roane County Referendum. Each measure, however, did receive a majority affirmative vote. The Court agreed with the plaintiffs that their affirmative votes were debased and diluted "when considered in relation to the negative votes" because each negative vote was the equivalent of one and one-half positive votes.

In a similar case, Idaho District Judge Gus Carr Anderson ruled that "there is no question that the one-third, two-thirds requirement gives the one in the one-third class two votes as compared to the one in the two-thirds class."[23]

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[23] Bogert v. Kinzer (Unpublished Decision, Summer 1969).

MINORITY REPRESENTATION

Concern with the failure of the electoral system in the nineteenth century to provide representation for minority groups led to the development of three new electoral systems--limited voting, cumulative voting, and Proportional Representation.

LIMITED VOTING

Limited voting--used by Boston, Philadelphia, and New York City in the nineteenth century--is designed to prevent the dominant group or party from gaining a disproportionate share of the seats on a legislative body. Under this plan, each voter is not allowed to vote for the same number of candidates as there are seats on the legislative body to be filled. If a city council is a nine member body, the voter may be restricted to a maximum of six votes. The 1893 Boston charter, for example, allowed each elector to cast only seven votes for candidates for the twelve member board of aldermen.

Currently, limited voting is used to elect part of the New York City Council. No party is allowed to nominate more than one candidate for councilman at-large in each of the five boroughs and a voter may not vote for more than one candidate for councilman at-large.[24] This assures that the minority party will elect one councilman at-large in each borough.

Limited voting has been upheld by the New York State Court of Appeals which has ruled that the New York City charter provision limiting each voter to one vote for councilman at-large from his borough does not violate the state constitution's provision relative to qualifications of citizens to vote nor does it violate the Fourteenth Amendment to the United States Constitution.[25] An appeal of this decision to the United States Supreme Court was dismissed "for want of a substantial federal question."[26]

The 1951 Philadelphia charter stipulates that a voter may cast a ballot for only five of the seven councilmen at-large to be elected, and no party may nominate more than five candidates for councilman at-large.[27] Limited voting also is used in thirty-two Connecticut cities and towns. The number of candidates a citizen may vote for is limited in all thirty-two communities and the

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[24] New York City Charter, chap. 2, sec. 22 (1963).

[25] Blaikie v. Power, 243 N.Y.S. 2d 185, 193 N.E. 2d 55.

[26] Blaikie v. Power, 375 U.S. 439 (1964).

[27] Philadelphia Home Rule Charter, sec. 2-100 and 101. (1951).

number of candidates that can be nominated by a party usually is limited in the towns. The charter of Hartford, for example, stipulates that no voter may vote for more than six candidates for the nine member city council. Furthermore, a party is not allowed to nominate more than six candidates.

Limited voting generally will ensure that the largest minority group or party will be able to elect one or more candidates to the city council. However, it does not guarantee that each group or party will be represented in direct proportion to its voting strength.

CUMULATIVE VOTING

Cumulative voting is designed to ensure that the largest minority group or party will be able to elect one or more members of a city council. Under this system, each voter has the same number of votes as there are seats on the city council and may give all the votes to one candidate or apportion them among two or more candidates. In an election to fill the seats on a nine member city council, each voter could give one vote to each of the nine candidates, or give nine votes to one candidate, or apportion the nine votes among two or more candidates in any manner that he desired.

Illinois adopted a constitutional amendment in 1870 providing for the use of cumulative voting for the election of members of the House of Representatives by three member districts.[28] Each voter may give three votes to one candidate,

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[28] Constitution of the State of Illinois, art. 4, sec. 7.

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or one vote to each of three candidates, or one and one-half votes to each of two candidates, or two votes for one candidate and one vote for a second candidate. Experience demonstrates that the majority party usually will be unable to elect three candidates unless it has received more than seventy-five per cent of the votes cast.

Illinois adopted cumulative voting to overcome sectionalism under which the Republicans won most of the seats in the northern half of the state and the Democrats won most of the seats in the southern half of the state with the result a sizeable minority in each section of the state was unrepresented.

In Illinois, cumulative voting was not designed to give proportional representation, but rather to ensure that there would be a strong two-party system. It is possible under this system for the minority party to elect a majority of the members. Such an event occurs occasionally in Illinois when the majority party miscalculates its strength and nominates three candidates instead of two, thereby splitting its vote among three candidates and allowing the minority party to elect its two nominees.[29] Such an event also

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[29] George S. Blair, Cumulative Voting: An Effective Electoral Device in Illinois Politics (Urbana: The University of Illinois Press, 1960) pp. 103-04.

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can happen if the majority party nominates only one candidate and the minority party nominates two candidates. On eight occasions in Illinois the majority party nominated only one candidate. There also have been twenty elections in which the majority party voters gave a substantially larger number of votes to one of its two candidates, thereby allowing the minority party to elect two candidates.

Cumulative voting in Illinois has been criticized on the grounds that it prevents either party from obtaining a working majority in the House and that the House is apt to be controlled by the party in opposition to the Governor. George S. Blair made a study of the Illinois system between 1872 and 1954 and concluded that the evidence does not support these criticisms.[30]

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[30] Ibid., pp. 67-68.

PROPORTIONAL REPRESENTATION

Several early municipal reformers were concerned about the quality of representation that would be produced by plurality voting in at-large elections and urged that the at-large city council be elected by Proportional Representation (P.R.), a system of preferential voting designed to ensure that various groups are represented in proportion to their voting strength. P.R. was adopted by a number of American cities between 1915 when it was adopted in Ashtabula, Ohio, and the late 1940s, including New York City between 1937 and 1945. The system has been abandoned by these cities with the exception of Cambridge, Massachusetts. The system, however, is used by a number of foreign countries, including the Republic of Ireland and the Federal Republic of Germany. The election of thirty-one community school boards in New York City by P.R. in March 1970 no doubt will renew interest in this system in other cities.

Aside from New York City, P.R. has been used exclusively with the council-manager plan in the United States. P.R. also generally has been used as an at-large electoral system although it can be used with a multi-member district system. The California and Michigan Supreme Courts have declared the system unconstitutional, but it has been upheld as constitutional by other courts.[31]

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[31] People v. Elkins, 59 Calif. App. 396 (1922).
Wattles v. Upjohn, 211 Mich. 514 (1920).

In a P.R. election voters indicate their preferences for the various candidates by placing a number after each candidate's name. A voter marks "1" after the candidate of his first choice, a "2" after his second choice candidate, and so on. He may mark only a "1" on his ballot ("Bullet Voting") or he may indicate his preference for each candidate.

A candidate to be elected to the city council under P.R. must receive a number of votes equal to the quota which differs in each election since it is based upon the number of valid ballots cast.

The quota is determined by dividing the total number of valid ballots by the number of councilmen to be elected plus one, plus one ballot. The result is the smallest number of votes that will elect a full council with insufficient votes remaining to elect another member. For example, let us assume that 100,000 valid ballots are cast in a city to elect a nine member council. The quota would be equal to $\frac{100,000}{\text{No. of Councilmen} + 1} + 1 = 10,001$

Subsequent to the determination of the quota, the ballots are sorted by the first choice indicated on them. If any candidate receives a total of number 1 ballots equal to or exceeding the quota, he is declared elected. Should a candidate receive more than the quota, his surplus is divided among the other candidates according to second choices. The critical question is which ballots are to be transferred. Two methods have been used for determining which ballots will be transferred and I will describe them later in this paper.

The next step in the count is to declare defeated the candidate with the fewest number 1 votes and the distribution of his ballots to the other candidates according to the second choices marked on them. If the second choice already has been elected or defeated, the ballot is distributed according to the third choice. A new count is conducted and any candidate who has a total of number 1 and number 2 ballots equal to or exceeding the quota is declared elected. His surplus, if any, is distributed to the remaining candidates. This process of declaring the lowest candidate defeated and transferring his ballots to the remaining candidates according to the preferences indicated on the ballots is continued until nine candidates are declared elected.

During the counting and transferring of ballots, each ballot is marked as it is transferred from one candidate to another so that the entire process of counting the ballots can be retraced. At the end of each count, the running total of ballots and those transferred is checked against the original count of valid ballots to ensure that no ballots have been lost or mislaid.

Either the Toledo or Boulder system is used to govern the distribution of surplus ballots. As soon as a candidate receives enough number 1 votes to reach the quota under the Toledo system, these ballots are locked up and any subsequent number 1 votes for this candidate automatically are transferred to the number 2 choice on the ballots.

The Boulder system distributes surplus number 1 votes according to a formula. All ballots of a candidate who received more number 1 votes than the quota are re-examined to determine the distribution of number 2 votes. The surplus ballots are distributed to second choices proportionally. For example, if candidate A received 12,000 number 1 votes and the quota is 10,000, he has a surplus of 2,000 votes. Assuming that candidate B was the number 2 choice on 6,000 of candidate A's number 1 ballots, candidate B would receive one-half of the surplus or 1,000 ballots.

Arguments in Favor. The principal argument in favor of P.R. is that it assures majority rule while guaranteeing minority representation. The council is a more representative body because P.R. makes it impossible for any political party or faction which has a slight electoral majority to elect all members of the council. A minority group, on the other hand, cannot benefit from a split among opposition groups, as under limited voting and cumulative voting, and elect a majority of the members of the council. P.R. therefore helps to ensure a viable two party system in communities which use partisan elections. A related argument is that a popular name at the head of a party

column under a plurality system can carry weak candidates into office, but this cannot happen under P.R. If nonpartisan elections are used, P.R. will facilitate the election of independent candidates who otherwise would not seek election.

An active opposition is guaranteed if P.R. is the electoral system used by a community since minority groups will be assured of representation in proportion to their voting strength. The minority groups afforded representation will be of various types, including minority parties, groups within a party, ethnic groups, liberals, conservative, and other groups. This means, among other things, that the services of an able councilman will not necessarily be lost if his party fails to win a plurality or a majority in an election as P.R. will enable him to win re-election.

P.R. eliminates the cost of a primary election since one is no longer needed. In addition, P.R. guarantees that councilmen will be chosen in an election in which there is a relatively large turnout of the eligible voters compared to a primary election in which relatively few voters usually participate. A small voter turn-out facilitates control of nomination of candidates by a machine or small clique, particularly if the opposition can be divided.

A related argument is that P.R. generates voter interest, especially among unrepresented minority groups, and results in a higher turn-out of eligible voters on election day. Therefore, P.R. will encourage a popular individual to run for the council even if he lacks the endorsement of a major political party.

Nearly every valid ballot in a P.R. election, through the transfer process, helps to elect a candidate. In a plurality election, nearly one-half of the ballots often do not elect a candidate.

Professors Belle Zeller and Hugh A. Bone analyzed the use of P.R. in New York City elections and concluded it "forced higher caliber candidates on both the majority and minority political organizations."[32] In a similar vein,

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[32] Belle Zeller and Hugh A. Bone, "The Repeal of P.R. in New York City--Ten Years in Retrospect," The American Political Science Review, December 1948, p. 1127.

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supporters of P.R. maintain that the caliber of election campaigns is raised and "mud-slinging" is eliminated since each candidate seeks to be the second preference of the supporters of the other candidates.

Finally, it is argued that P.R. on an at-large basis is a solution for the reapportionment problem and also makes gerrymandering impossible as there are no district lines to be gerrymandered.

Arguments Against. Campaigns to adopt P.R. have been marked by strong emotional opposition. Among other things, it has been charged that P.R. is UnAmerican because it is of foreign origin.

One of the principal charges against P.R. in the United States is that it permitted the election in 1945 of two communists and two American Labor Party candidates to the New York City Council. These two parties accounted for eighteen per cent of the first choice votes and receive 17.5 per cent of the council seats. This election occurred, one must remember, at a time when the Soviet Union was still a friendly ally that recently had helped to defeat Nazi Germany. Most observers are convinced that it is unrealistic to believe that a communist could be elected to a city council in the United States under any democratic electoral system today.

Opponents argue that P.R. promotes civic disunity and strife because it fosters splinter groups and emphasizes ethnic, racial, and religious politics.

Such a system, it is argued, is to be contrasted with a good electoral system that plays down divisive prejudices.

An admitted weakness of P.R. is "bullet-voting;" marking only the number 1 preference on the ballot. An ethnic or other minority group which wishes to be assured of electing a candidate to the city council may persuade its members to cast only a number 1 vote and not mark other choices on the ballot.

A number of opponents of P.R. admit that it gives representation to minority groups, but object to P.R. on the ground it does not guarantee that all geographical areas will be represented. It is theoretically possible under P.R., as under plurality at-large elections, that all councilmen might live in the same neighborhood.

The time required to count the ballots in a P.R. election is considered to be a disadvantage by some citizens and politicians. The first P.R. election in New York City required twenty-eight days to count the ballots, but the count was reduced to nine days in the 1939 election. In an area the size of Mecklenburg county, approximately two and one-half days would be required to count the ballots if paper ballots are used. The use of voting machines and computer cards can overcome this objection to P.R.

The expense of conducting a P.R. election using paper ballots is a frequent charge against the system. If P.R. eliminates a primary election, the cost of a P.R. election will be less than the cost of a primary and general election but more than the cost of a general election. The cost of the first P.R. election in New York City was $701,633, but the cost was reduced in the next election to $256,739 or four cents for each resident.

Perhaps the principal argument advanced against P.R. is that it is a complicated system understood by relatively few voters. The system has been labelled a "lottery" and a "roulette wheel" because of the transfer of ballots.

The devising of an electoral system to guarantee that minority groups will be represented with mathematical precision and yet be understood by the average voter appears to be an impossible task. While the preferential marking of the ballot is not confusing to voters, the method of counting the ballots appears mysterious to a majority of the voters. The Michigan Supreme Court in 1920, for example, declared "an actuary...might work with confidence with this system, but to the non-expert...it appears too intricate and tedious to be adopted for popular elections by the people. To the average voter the destiny of his vote is a mystery, however, easy it may be for him to follow instructions in marking his ballot."[33]

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[33] Wattles v. Upjohn, 211 Mich. 514 (1920).

Mr. P.R., George H. Hallett, Jr., dismisses the charge that P.R. is a complicated and little understood system.

> The comparative complexity of the Hare system count is a matter of trifling concern to the intelligent voter. He does not have to count the ballot any more than he has to make his own watch or repair his own car. The watch is more complicated than the sun dial and the car than the stage coach, but they give better results. All we ask of a modern improvement is that it shall be easy for the user and that it shall give the required results.[34]

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[34] George H. Hallett, Jr., Proportional Representation: The Key to Democracy (New York: National Municipal League, 1940), p. 57.

DIRECT LEGISLATION

Direct legislation, a produce of the progressive movement at the turn of the twentieth century, permits voters to supplement the actions of a city council. Through the initiative they may enact measures which the council has refused to consider or to pass; through the referendum, they may veto

ordinances enacted by the council. Both devices supplement the work of the city council and are not intended to supplant it.

The initiative and referendum as instruments of direct legislation are commonly found together; however, they are separate instruments and one may be used independently of the other.

THE REFERENDUM

The referendum is a type of direct legislation which is negative in character and which permits the voters to pass upon ordinances enacted by the city council. If a city charter contains a mandatory or compulsory referendum provision, certain measures--such as proposed charter amendments and issuance of bonds--must be submitted to the voters. The optional or advisory referendum, on the other hand, permits a city council, at its discretion, to submit an issue to the voters.

The protest referendum permits the voters to delay and possibly prevent an ordinance enacted by the city council from going into effect. A waiting period, usually of sixty to ninety days, is provided before an ordinance is effective. Within this period, objectors to the ordinance may circulate petitions for a popular referendum on the ordinance. If the required number of voters--5 to 10 per cent most commonly--sign the petitions, the measure must be submitted to the voters at a special or general election.

THE INITIATIVE

The initiative is a type of direct legislation which is positive in character; it is a means by which voters may enact ordinances without action by the city council.

The direct initiative allows voters by means of a petition containing the signatures of a specified number of percentage of the voters to place a

proposed ordinance on the ballot at the ensuing general or special election. If adopted, it becomes a city ordinance. The mayor is not permitted to veto initiative measures, and these measures generally cannot be amended or repealed by the city council.

The indirect initiative allows voters by means of petitions to propose measures which must be considered by the city council. If the council fails to enact a proposed measure within a specified period of time, the proposal is submitted to the voters. If approved by a majority, the measure becomes a city ordinance.

EVALUATION OF DIRECT LEGISLATION

Direct legislation has been the subject of considerable controversy, especially in the early decades of this century. The validity of several of the arguments for and against direct legislation is questionable. It has neither lived up to the high expectations of its proponents, nor has it resulted in the dire consequences predicted by its opponents. In fact, the number of unwise ordinances adopted by direct legislation has been small.

Advantages. Proponents of direct legislation believe it has four major advantages. (1) Direct legislation is the purest form of democracy for the people have an opportunity to reverse the actions of their representatives. Through it, citizens are able to initiate and adopt ordinances which pressure groups have blocked in the city council and to veto ordinances that are not in the public interest. (2) Direct legislation stimulates the councilmen to action. They become more responsive to public opinion because they know that if they fail to act, the voters have the power to initiate action. (3) Campaigns associated with the use of the initiative and the referendum generate public enthusiasm and interest in governmental affairs. (4) Direct legislation fosters the movement for shorter city charters for it obviates

the need for detailed restrictions on legislative power.

Disadvantages. The validity of the arguments claimed for direct legislation is challenged by its opponents who believe that it has seven principal disadvantages. (1) The voters may lack the necessary information and training to pass intelligently on proposals of a highly technical nature which appear on the ballot. (2) Initiated measures are often incompletely considered and poorly drafted. Voters are limited to a choice of yes or no. Furthermore, once the petitions are signed, the direct initiative provides no opportunity for amendment or for the reconciliation of conflicting interests, which are important advantages of legislative procedures. (3) Direct legislation adds to the length of a ballot that is already generally too long. (4) The proposals which appear on the ballot may be adopted or rejected by a small minority because many voters, being unwilling to give thorough consideration to measures, prefer to abstain from voting on them. To prevent legislation by a small minority, a provision can be included in the charter specifying that proposed measures shall not become effective unless approved by a specified percentage of those voting in the election. (5) Special or sinister interests may utilize direct legislation for their own advantage. They have greater financial resources than citizens' groups and can better afford the expense of collecting signatures on petitions and conducting campaigns for the adoption or rejection of measures. Thus, direct legislation may permit pressure groups to secure legislation that they could not secure from the city council. (6) Governmental costs are increased by the necessity of printing and distributing the texts of proposals and arguments for and against their adoption, and also when direct legislation necessitates special elections. (7) Ordinances passed by direct legislation tend to be inflexible because they generally cannot be amended or repealed by the city council. Once on the

books, the ordinances remain there until repealed or amended by the electorate through the long and difficult process of amendment by initiative or repeal by referendum.

THE RECALL

Until Los Angeles adopted the recall in 1903, there was no provision contained in city charters to enforce a continuing political responsibility of municipal officials to the electorate. The recall is a means by which citizens may petition for a special election to determine whether a public official should be removed from office prior to the expiration of his term. It differs from other methods of removal in two important respects: (1) the decision to remove a public official is made directly by the voters, and (2) unlike impeachment, removal may be made for reasons other than a crime or misdemeanor--the reasons may be inefficiency or popular disappointment with the official's conduct or program.

Provision for the recall are similar wherever it exists. Public officials generally cannot be removed from office by the recall during the first few months of their terms of office; they are given the opportunity to prove themselves during this period. Furthermore, in several cities an official may not be subjected to a vote for recall twice during his term of office.

Procedure in Recall. The first step in the recall procedure is the circulation of a petition stating the reasons why the official should be removed. The official commonly is allowed to place a statement of defense on the petition or on the ballot. The petition must contain the signatures of a specified per cent of the eligible voters--twenty-five per cent is the most common requirement. If the required number of signatures is obtained, the

petition is filed with a specified official who checks to see whether all requirements of the recall petition have been met.

If the official subject to the recall petition does not resign within a specified period of time, the question of removing him is placed upon the ballot. Unless a general election is scheduled for the near future, a special election is held. In certain cities the voters merely decide whether the official shall be recalled from office. If he is recalled, an election is subsequently held to select a successor. In other cities, the question of whether an official shall be removed from office and the choice of his successor, in the event of his removal from office, are placed on the same ballot. This arrangement permits an official to be removed from office and remain in office simultaneously, for the majority who remove the official may not have wished any candidate to succeed the removed official. Hence, the removed official may be returned to office by a plurality vote. To prevent this occurrence, some cities do not permit the name of the official sought to be recalled to be included in the list of candidates to fill the office in the event of removal.

EVALUATION OF THE RECALL

Although the recall was hailed as introducing a new era of governmental responsibility, it has not lived up to its promise. On the other hand, it has not wrecked government as was predicted by its opponents. It has been rarely used; when it has been used, officials have been removed for both major and minor reasons.

Advantages. Proponents cite four arguments for it. (1) The recall provides a means by which voters may remove officials simply because they have lost confidence in them. (2) The recall improves the performance of public

officials by constantly reminding them that corruption and inefficiency will be punished by removal from office. The theory of the recall is that public officials must be responsive to popular opinion at all times rather than only at election time. This is the "gun behind the door" theory. (3) The recall increases popular interest in public affairs because it permits citizens to participate more directly in them. Citizens are better informed when public officials take pains to explain the reasons for an important governmental action before it is initiated. (4) Political scientists agree that the terms of office of public officials generally are too short and should be lengthened. Voters, who traditionally have been in favor of frequent elections, are inclined to agree to longer and staggered terms if they are able to recall officials. (5) Voters are more willing to grant increased power to the mayor or city manager if they know that he can be removed by the recall. For example, the council in some cities cannot vote an appropriation unless the mayor or city manager has made a recommendation and the council cannot increase the amount recommended.

Disadvantages. Opponents of the recall advance five principal arguments against it. (1) The recall imposes an additional burden upon the voters and lengthens a ballot that already is too long, and also increases the number of elections. (2) Dynamic public officials may be unduly restrained and their independence weakened. The recall forces them to consider the immediate public reaction to a program rather than its long-term effect. An official, for example, may hesitate to initiate an action that is in the public interest for fear that the action may be misunderstood by the voters. Furthermore, competent individuals may refuse to run for public office because they dislike having the recall held over their heads like the sword of Damocles. (3) Governmental expense is increased if special elections are

held. (4) The recall is superfluous since other constitional provisions and laws permit the removal of public officials for cause by less expensive and less fickle methods. (5) The recall may be utilized for partisan purposes. A party which has lost an election by a close margin may be tempted to invoke the recall at the first opportunity in order to win an office.

CONCLUSION

I will conclude my comments by stressing that it would be presumptuous for me, an outsider, to tell you what type of electoral system you should adopt. I hope, however, that my comments have acquainted you with various alternatives that you might not otherwise have considered. If you have questions, I will do my best to answer them.