Getting rid of the filibuster would also be in the short-term interest of the Republicans, and in the long-term interest of those among them who are confident of their party's electoral future, and who would like to use government to do something more creative and interesting than cancel itself out—Newt Gingrich, for example. The public fascination with term limits and the line-item veto—whatever one may think of the merits of those proposals—shows that voters are willing to consider systemic explanations as well as moralistic ones for their government's manifest failures. Filibustering the filibuster would be a way for the Democrats, despite their minority status, to get into the act.

—*The New Yorker*, January 9, 1995

THE CASE FOR PROPORTIONAL REPRESENTATION

LAST NOVEMBER 8TH, I did something stupid. Well, maybe it wasn't completely stupid, but it was irrational, sentimental, and politically pointless: I voted. Specifically, I voted in the election for representative in Congress, in which the incumbent Democrat in my district, Jerrold Nadler, was running against a Republican, Michael Benjamin, and a Conservative, George Galip.

As a civic sacrament, this was a pleasant and worthwhile thing to do. I enjoyed the ritual of standing in line with my fellow citizens of every age and size and color. I enjoyed signing my name in the big voters' book, which is like St. Peter's ledger at the gates of heaven. I enjoyed exchanging small talk and smiles with the nice ladies from the Board of Elections behind the card table. I enjoyed going into the booth, and pulling the big lever from right to left to close the curtain, and pulling down the levers next to my choices, and hearing that satisfying chunk sound they make, and then pulling the big lever from left to right to open the curtain again. I'm glad I live in a city that still uses old-fashioned voting machines. No flimsy punch cards for us New Yorkers. As usual, I smiled at my fellow citizens on the way out and thought to myself, "Isn't this nice?"

And it was nice. What it was not was a meaningful political act. Voting gives you a nice warm feeling of being part of something big and great and wonderful—a civic miracle, the beautiful pageant of democracy. It's like

putting a pinch of incense on the altar of our civic religion. But it is a snare and a delusion to confuse that warm, fuzzy feeling with politics or self-government.

The truth is that it didn't make a damn bit of difference whether I voted or not. Nadler got reelected by 82 percent of the vote that day. In 1994 he also got 82 percent. 1992 was a squeaker, though—he only got 81 percent.

But it's not just that it didn't make any difference whether I voted. It's worse than that. We are often exhorted by good government types that it isn't enough just to vote—if you want to make a difference, you have to get out there and get involved in old-fashioned, participatory grassroots politics. Well, let's suppose I followed this advice. Let's say I spent the entire summer and fall going door to door among my neighbors, manning a table on Broadway every weekend, organizing kaffeeklatches, going around to civic groups, making speeches, doing everything I could to reelect Nadler—or everything I could do to defeat him, it doesn't matter which. Let's say my efforts were spectacularly successful, and I managed to convince one out of three anti-Nadler voters in the district to change their minds. In that case, Nadler would have been reelected by 88 percent instead of 82 percent—that's if I was for him. If I was against him, and I succeeded in convincing a like number of voters, he'd have been reelected by 76 percent.

I'm not saying you can't do serious politics if you live in my district. Presidential primaries and campaigns for statewide office are occasionally competitive. But campaigns for other offices—member of Congress, assemblyman, state senator, city council member—offer scope for what we know as politics only on those happily rare occasions when one of our Officeholders-for-Life goes to his or her reward. Otherwise, when I want to do something political, I give money to a Democratic candidate in a borderline Republican district somewhere out west or down south. I'm not the Lippo Group or AIPAC or the Tobacco Institute, but even at my level, which is to say the level of a twenty-five- or fifty- or hundred-dollar giver, my money means more than my vote, because I can send my money where it might do some good, but my vote is stuck right where it is.

You may say, "Well, your situation is unusual. You live in Manhattan, where everybody's a knee-jerk liberal Democrat. Most places aren't like that."

Actually, most places *are* like that. Not that most places are full of knee-jerk liberals—alas, they're not. But most places are just like the good old 8th Congressional District in that the results of their elections are preordained.

Consider 1994, which was the last time people went to the polls to elect

a new Congress without the distraction of a presidential race. This was a much more competitive election than usual, remember—this was the great epoch-making upheaval, with the Republicans sweeping in and the Democrats being swept out after forty years. And yet in that election, one-third of the American people had absolutely no chance of making a difference, because they lived in districts where the incumbent was either running unopposed or where the expected (and actual) margin of victory was more than forty percentage points. Another one-third of us had almost no chance of making a difference, because we live in districts where there might be some slight attempt to mount some semblance of a contest, but one candidate or party is so dominant that the result is as predictable as the outcome of a basketball game between Stuyvesant High School and the Knicks—a lopsided victory by more than twenty points.

So that leaves just a third of us living in congressional districts in which something resembling politics has a chance of taking place—where the top two candidates at least finish within twenty points of each other. And in only a third of that third is there a real contest, a close election, where the winner's winning margin is five points or less.

That's how it was in 1994. With very minor variations, that's also how it was in 1996. And that's how it will be in 1998. That's how it always is and until something is done that's how it always will be.

We have 435 congressional districts in the United States. In any given election year, in at most around 50 of those districts there will be a pretty close election, and therefore in those districts it makes sense to vote and organize and pass out leaflets and be a good citizen. In around another 100 districts there's a chance that given an extraordinary confluence of events—let's say, some massive Vietnam- or Watergate-style upheaval in the country, plus the incumbent being about to go to jail, plus an unusually attractive and well-financed challenger—you might get a meaningful contest. But in around 275 districts at the very minimum—and sometimes it's a lot more (in 1988, for example, it was about 100 more)—one side or the other is certain to get blown away. Crushed. Obliterated. Neutron-bombed. Again, in these districts it doesn't matter which side you're on, because if you're on the losing side your vote is wasted and if you're on the winning side your vote is superfluous. So you may as well stay home. And, of course, that's exactly what a lot of voters do—stay home. Not because they're lazy or apathetic, not because they don't care who wins, and certainly not because they're happy with the status quo. They stay home because they have better things

to do on a nice fall Tuesday than engage in a politically pointless act of civic piety.

Such is the situation that obtains in areas inhabited by a substantial majority of the people of the United States. This may sound like a technicality, a bit of wonkish hairsplitting. But the implications are enormous. For example, one implication is that the kinds of political reforms that many public-spirited people advocate do not hold out anything like as much hope as their sponsors wish they did. You can eliminate all barriers to voter registration. You can have public financing of campaigns and strict limits on money in politics. You can ban thirty-second spots and sound bites. You can have free TV time for candidates. You can have free transportation to the polls. You can let people vote by mail or over the internet. You can send a delegation from the League of Women Voters to ring every doorbell in America and give everybody in the house a totally objective briefing on the issues and the candidates. You can do all this, and these would all be good things to do, and in the 10 or 15 percent of the country where contested elections take place these things would help. But not one of these reforms would make any important difference in the great majority of congressional or legislative districts. Neither would all of them put together. As far as the majority of eligible voters are concerned, they wouldn't change a thing. It still wouldn't be worth their while to vote. It still would be a waste of time and energy for them to get involved in grassroots politics in their local communities. These citizens would still sense a gigantic disconnect between voting on the one hand and having a meaningful political impact on the other. And they would be right.

The problem is built into the very structure of representation in our political system. It's built into the structure of our electoral and constitutional arrangements—the hydraulics of the way our particular system works.

A lot of the political pathologies we worry about in this country—things like low voter turnout, popular alienation from politics, hatred of politicians and politics per se, the undue influence of special interests, and the prevalence of negative campaigning—are not caused by the usual suspects, or not primarily caused by them. They are not caused by the low moral character of our politicians, the selfishness of the electorate, the peculiarities of America's national character and political culture, the power of money, or the ghastliness of television. They are artifacts of a particular political technology. They are caused by our single-member-district, geographically based, plurality-winner-take-all system of representation.

I can't prove this with survey data, but I'd be willing to bet a lot of money that most Americans, including most educated Americans, simply do not know that there is more than one way to have an election. Most Americans are simply unaware that there exists, on the one hand, the single-member plurality winner-take-all approach, which is what we have, and, on the other hand, the many forms and varieties of proportional representation—all of which have in common, essentially, that if a party gets 20 percent of the votes it gets something along the lines of 20 percent of the representatives, and if it gets 60 percent of the votes it gets something along the lines of 60 percent of the representatives.

And I would also guess that even among well-informed Americans who do know about different voting systems, the assumption is that most democratic countries, or at least a good cross-section, have chosen the same model as ours. In fact, the only countries that have this system are Britain and a few former British colonies, such as India, Pakistan, Canada, Jamaica, and the United States, plus one or two former American colonies, such as the Philippines. France, as always, is a special case; it has single-member districts but it also has runoffs. Every other democratic country in the world—including all the new democracies of central Europe—has looked at the options and has decided to go with proportional representation.

I've already mentioned the first flaw in our system: that it essentially disfranchises voters who happen to live in so-called safe districts, a group that includes the great majority of potential voters.

The second flaw: our representatives represent the wrong thing. Our House of Representatives does one thing, and one thing only, well: it represents localities. When you go to the polls to vote for a candidate for the House, you can be absolutely sure that you will have the opportunity to vote for someone to represent your district. In fact, you can be sure that someone will be *elected* to represent your district—even if you *don't* vote. And even the very worst congressmen generally do a good job of representing the district. Your representative may be a budget-cutting conservative or a peacenik liberal, but when it comes to closing a military base inside the district he or she forgets all about ideology and fights to keep that wasteful, warmongering military base open. This isn't hypocrisy. It's just the representative representing what the representative is supposed to represent: the district.

What you cannot be sure of when you go to vote is that you will have a chance to vote for someone to represent your point of view—or anything else about yourself you may consider important.

Two hundred years ago it might have made sense for geography to be the sole basis for designing political constituencies. It doesn't make sense now. Ask yourself: how many of the human and social connections in your own life that you care about are contained within the boundaries of your congressional district—or within any geographical boundaries, for that matter? The communities that count are communities of interest and belief, and these communities are at least as likely to be national as local. Ideology, profession, class, aesthetic taste, racial and sexual identity, shared beliefs about society—these are the ties that bind. And our system, unlike proportional representation, denies us the possibility of choosing to be represented according to those ties.

I didn't think of this point, by the way. John Stuart Mill thought of it. He was a passionate advocate of proportional representation—in fact, he was the very first P.R. bore. Here's Mill, in *Considerations on Representative Government:* Critics of proportional representation, he writes,

> are unable to reconcile themselves to the loss of what they term the local character of the representation. A nation does not seem to them to consist of persons, but of artificial units, the creation of geography and statistics. [The legislature] must represent towns and counties, not human beings. But no one seeks to annihilate towns and counties. Towns and counties, it may be presumed, are represented, when the human beings who inhabit them are represented. Local feelings cannot exist without somebody who feels them; nor local interests without somebody interested in them. If the human beings whose feelings and interests these are, have their proper share of representation, these feelings and interests are represented, in common with all other feelings and interests of those persons. But I cannot see why the feelings and interests which arrange mankind according to localities, should be the only ones thought worthy of being represented; or why people who have other feelings and interests, which they value more than they do their geographical ones, should be restricted to these as the sole principle of their political classification.

Flaws number three and four: A democratic political system should do two things at a minimum: enable the majority to rule—within limits, of course—and enable important minorities to be represented. Our system reliably does neither. And almost by definition it cannot do both.

We do a lot of complaining about the two-party system, but in a winner-take-all environment, where a plurality of votes in any given constituency gets you 100 percent of the representation, a two-party system is the only way to make sure that the majority has a chance of ruling. The alternative is minority rule. The minute you get more than two important parties in a system like ours, minority rule becomes routine. The British have shoehorned three parties into a habitat suited for two, and as a result minority rule has become a way of life. The Tories have run the show for eighteen years, and throughout that time there has been a passionately anti-Tory majority in the electorate. Even under Margaret Thatcher the Conservatives never managed to get as large a share of the popular vote as Michael Dukakis got in 1988.

Even if there are only two parties, it's theoretically possible for a minority, even a small minority, to win it all, if the district lines are drawn right. We have 435 congressional districts. Suppose that in 235 of those districts, the Democrats win by an average of 55 percent of the vote, and that in the other 200 districts the Republicans win by 80 percent of the vote. Dick Gephardt becomes Speaker of the House, with a fairly comfortable margin. But the popular vote would be 61 percent Republican—as big a margin as F.D.R.'s in 1936 or Nixon's in 1972. And even if the split were a little more realistic—if the Democrats won by 55–45 in their 235 districts and the Republicans won by 60–40 in their 200 districts—the Republicans would still have a popular majority, and they would lose the election.

That's theory. What happens in practice? The same thing, only in somewhat less exaggerated form. This past November, as you know, the Republicans retained control of the House of Representatives. What you may not know is that the Democrats, overall, got more votes. It wasn't much of a margin—only around fifty thousand—but it was real, even though there's probably not more than one person in ten thousand who knows about it.

So much for majority rule. What about the other thing we can reasonably ask from an allegedly democratic election—that it allow minorities to be represented in the deliberations of government?

In this, our system is even more inadequate. It does an outrageously bad job of representing minorities—and not just racial minorities, but just about every kind of minority. The sole exceptions are those minorities that happen to be geographically concentrated to the point where they constitute a local majority. But woe betide a minority that is truly national—that is

spread evenly throughout the country. That minority—and I'm talking here about political minorities, but the point holds for minorities of every kind—has no chance of getting itself represented in Congress.

Which brings us to flaw number five—gerrymandering. If you have districts, the districts have to have boundaries, and the boundaries are going to have political consequences. If the boundaries are drawn by some sort of nonpartisan commission, as some reformers would like, the consequences will be unintentional. If they are drawn by politicians armed with powerful computer programs, as they are in this country, the consequences will be very intentional indeed.

The politics of gerrymandering—and there is no such thing as redistricting without gerrymandering—are more than routinely sickening. There is almost always a deal across party lines to protect the seats of incumbents—and if someone has to be thrown to the wolves, it's often the most independent-minded member. (Back in 1970, that's what happened to the late Allard K. Lowenstein, probably the finest one-term congressman since Abraham Lincoln.) The system creates a horrible dilemma for African Americans and their political leaders. If they don't push for racial gerrymandering, they practically guarantee that no black legislators will be elected. If they do push for it, the price they pay can be very high. By condensing black voters into one district, they bleach out neighboring districts, which undermines incentives to build political coalitions across racial lines and, in the end, can result in fewer representatives aligned with black aspirations. It creates a black political class that has a vested interest in the preservation of residential segregation—and a society that can have either integrated housing or an integrated Congress but probably not both.

And of course racial gerrymandering provides the Rehnquist Court with an occasion for truly stomach-turning sanctimoniousness, as it explains why it is immoral and unconstitutional for legislators to use redistricting to give black folks a shot at electing someone to Congress but perfectly permissible to use redistricting to reach a preordained *political* outcome—because we wouldn't want the court interfering in "politics," would we?

If someone speaks out against the whole sordid business (someone like Lani Guinier, for example) and points out that under proportional representation you wouldn't need race-specific solutions, in fact you wouldn't need redistricting at all and therefore you wouldn't be able to have gerrymandering—if someone points out that under P.R. the voters can elect the

politicians they want, rather than letting the politicians elect the voters *they* want—well, that someone finds herself ganged up on by ideological thugs, such as the editorial page editors of the *Wall Street Journal,* and by ignorant politicians (ignorant about P.R., at least) such as President Clinton.

A few more flaws in our geographically based single-member plurality-winner-take-all system:

By making a fetish of geographic provincialism, the system practically guarantees that people of distinguished accomplishment will not hold public office. Even in the metropolis, the choice in the United States always seems to come down to a a couple of banal local lawyers. That's flaw number six. Here's number seven: In our system, the fight for political power takes place in a relative handful of marginal districts. I've already mentioned one of the perverse effects of this—that it makes political activity pointless in most places. But it also magnifies the power of money, because it acts as a lens that collects money from all over the country and focusses it on a few places, where it can have overwhelming impact.

Flaw number eight: Because our electoral mechanisms tend to foster a two-party system, they also tend to make politics a zero-sum game. And the zero-sum game is what makes negative campaigning work. As every political consultant knows, negative campaigning depresses turnout across the board. The reason everybody does it is that it depresses the vote for the candidate who's being attacked more than it depresses the vote for the candidate who does the attacking. But if there are a couple of other viable parties on the scene—and for that to happen you've got to have some sort of proportional representation—a scorched-earth policy can backfire on you. So it doesn't happen as much.

One more flaw, number nine, which happens to be my favorite, because it's so wonderfully perverse.

One of the great mysteries of American politics is this. How is it that even though poll after poll, year after year, shows the public's approval rating of Congress to be roughly on a par with its approval of drug kingpins, that same public keeps reelecting that same Congress? More than 80 percent of incumbents are always reelected. Even in 1994, Year One of the Revolution, more than 90 percent of incumbents were reelected. Why? Why don't the voters throw the rascals out? Because they can't, that's why. A voter can vote to throw a maximum of 1 rascal out of the House of Representatives—and there are 435 of them. Telling a voter who doesn't like Congress that she can

solve the problem by voting against her member of Congress is like telling a voter who is upset about the state of family values in America that she can solve *that* problem by divorcing her husband.

The weirdest paradox of our system is that it doesn't make sense to vote against a long-serving incumbent congressman even if that congressman stands for everything you despise politically. Thanks to seniority, replacing a veteran with a freshman necessarily means electing someone who will have less power. It therefore means voting to deprive your district (and therefore your neighbors and maybe even yourself) of clout. It means depriving your district of the concrete goodies that clout can bring. So if you succeed in defeating your nasty old congressman, you will change the ideological complexion of 1/435th of the House of Representatives—that's a little less than 1/4 of 1 percent. But you will deprive a lot of your flesh-and-blood neighbors of their jobs helping build a new post office. It's a lousy trade, and it's a lousy system that forces us to make it.

When I talk to people about this sort of thing—and as my friends can testify, I talk about it way too much—the immediate reaction I often get is, "Oh, yeah—you want a parliamentary system, like England." Or, "Look, the United States is different. We're a big country with lots of different groups, not like those little homogeneous countries in Europe. Maybe their system is good for them but it wouldn't be good for us." Or, "Oh, yeah, P.R.—that's what they have in Israel, right? Is that really what you want?"

And when I say no, they say, "Well, what *do* you want, then?" And I say, "If you must know, I think we should adopt a system like the one they have in Germany." And they say, "Oh, great, Germany—there's an ideal model. Hello?"

So I say, O.K., if Germany doesn't suit you, how about New Zealand?

Four years ago, the people of New Zealand decided they had had enough of their British-style winner-take-all parliament. So they had a referendum and adopted the German system—which, by the way, was designed under American auspices. There are a lot of ways to do proportional representation, but this one, I think, is the best, and perhaps the one that would be best suited to this country. Each voter gets two votes for the national legislature. You cast one of them for a local candidate and the other for a national party. Once all the votes are counted, the legislature gets filled out with people from the national party lists until the party percentages match up. If your party gets 30 percent of the popular vote but only wins 10 percent of the local seats, your party gets enough of its national candidates

added so that it ends up with 30 percent of the total seats in the legislature. To keep out the lunatic fringe and to prevent a wholesale proliferation of parties à la Israel, there's a 5 percent minimum.

It works. Every election is a close election, because every increment in the popular vote gets your party more seats. Everybody's vote counts equally, no matter where you live. Grassroots politics is worth the effort in every corner of the country. There's majority rule, because the party with the most votes gets the most seats. There's minority representation, because the price of admission to the legislature is only 5 percent of the vote, and it doesn't matter where the votes are cast. Money is less decisive because it has to be spread around so much. Instead of being represented by someone you didn't vote for, as is the case for most Americans, you get to be represented by someone you *did* vote for. And turnout is through the roof. It's routinely in the 80s or low 90s in P.R. countries. If it should happen to drop to, say, 75 percent, which is as high as it ever gets in the winner-take-all countries, that becomes an occasion for national soul-searching and the appointment of blue-ribbon commissions.

If proportional representation is so great, you may be wondering, why weren't the Founding Fathers for it? Well, for the same reason they weren't for railroad regulation: the technology hadn't been invented yet. James Madison was a great supporter of what he *called* proportional representation. What he meant by that was that the more populous states should have more representatives (he prevailed on that point) and more senators (he lost on that one).

Nobody got around to conceiving of the kind of proportional representation I've been discussing here until the second quarter of the nineteenth century. But there's no doubt in my mind that the framers would have been for it. They prided themselves on being on the cutting edge. Here's Hamilton in The Federalist No. 9:

> The science of politics . . . like most other sciences has received great improvement. The efficacy of various principles is now understood, which were either not known at all, or imperfectly known to the ancients. The regular distribution of power into distinct departments—the introduction of legislative balances—the institution of courts composed of judges, holding their offices during good behavior—the representation of the people in the legislature by deputies of their own election—these are either wholly new discoveries or have made their principal progress towards perfection in modern times.

Proportional representation would have appealed to the framers' enlightenment rationalism, their fascination with clockwork—the high tech of its day. If there was any nineteenth century figure who was temperamentally akin to the framers and their hero, Montesquieu, it was John Stuart Mill—and, as we have seen, he was a passionate supporter of P.R. Another honorary Founding Father, you might say, was Alexis de Tocqueville. That's right: another P.R. fanatic.

All right. By now you may be wondering, Why is he telling us all this? Doesn't he realize that this idea is going nowhere? Doesn't he know that American politicians, who don't even want to touch campaign finance reform, are not exactly clamoring to abolish the mechanisms that got them their jobs in the first place? Isn't he aware that this is all just a wee bit academic?

Well, yes, of course I'm aware of all that. But I think that proportional representation is worth talking about and agitating for and organizing around—for two reasons.

One reason is that I don't actually agree that there is no chance we are going to get big structural political change in this country. Ten years ago, the idea that Soviet communism might simply disappear was absolutely unthinkable, out of the question. Yet it happened. I am similarly convinced that sooner or later the other shoe is going to drop in this country as well. Our structure of government might have been fine when we had untold natural resources and a tremendous margin of error—though, to be honest, it has never worked all that well. Fourscore and five years after it was founded, it collapsed into the bloodiest civil war in history because it was unable to find a political solution to the problem of slavery. But leaving that aside, the day will surely come when the United States will need a government that is capable of coherent, decisive action. We haven't got anything remotely resembling that kind of government today. I don't know how the change will come or what will precipitate it, but change is coming. Brothers and sisters, the end is nigh.

In the interim, though, I'm convinced that Americans are going to become steadily more interested in proportional representation and other kinds of fundamental constitutional reform. Right now even the best-informed Americans don't know what the options are. Rob Ritchie, of the Center for Voting and Democracy, recently paid a visit to the *New York Times* editorial board, and while I won't name any names I will say that even

in that temple of civic knowledge ignorance in these matters is rampant. But that is about to change. In two weeks the British will have a general election, and the Labor Party will form a government. Labour is committed to holding a referendum on the adoption of proportional representation for elections to parliament. Polls show that a solid majority of the British people already favor changing to a German-style—make that New Zealand-style—system. When that referendum takes place, it will get the attention of élites in this country. Then the discussion will really begin.*

As noted, there's a second reason I think this stuff is worth talking about. Even if we don't adopt proportional representation anytime soon, even if we never adopt it, it's worth knowing about it as an analytic tool. We are in the habit of jumping to moralistic conclusions about our political and public problems. We automatically blame everything on bad people—bad politicians, bad media moguls, bad voters. Because we take it for granted that our political institutions are perfect, we have no choice but to blame the people who administer them when things go wrong. This is dangerous. It gives rise to a destructive anger against politics per se, a dangerously mindless populism. If we can begin to understand that we are up against a systemic problem, that many of our woes are due to the perverse incentives that our particular political arrangements create, we may at least be better equipped to steer clear of false answers.

We should not be afraid of going back to first principles. We should stop worshipping the framers of our Constitution and start imitating them. They were unafraid of fundamental change. We should be similarly courageous.

—Irwin Mann Memorial Lecture,
New York University, April 15, 1997

* Once in power, Labour slowly backed away from this commitment. Prime Minister Tony Blair appointed Roy Jenkins, one of his political mentors, to head a commission on the subject. The Jenkins commission recommended an ingenious compromise that would have introduced an element of proportionality into the system while retaining single-member districts for most of the seats, but even this proved too much. After 9/11 nothing more was heard about it. The new regional legislatures—the Scottish parliament and the Welsh assembly—are proportional. The system is rapidly spreading to local governments as well. And there is talk of converting the House of Lords into a kind of proportional representation senate. But P.R. for the House of Commons will probably have to await a "hung parliament" in which no party has a majority and the Liberal Democrats demand it as the price of forming a coalition.