The electoral college system for the election of the President of the United States on trial

Evelyn Hartzell Latham

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THE ELECTORAL COLLEGE SYSTEM FOR THE ELECTION OF
THE PRESIDENT OF THE UNITED STATES ON TRIAL

A Thesis
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts
in
Social Sciences

by
Evelyn Hartzell Latham

March 2003
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ABSTRACT

The Electoral College system for selection of the chief executive of the United States has been described as undemocratic, archaic, complex, ambiguous, indirect, and dangerous, by the American Bar Association. Other noted scholars, politicians and political scientists have made numerous attempts to amend the Constitution to any number of revision plans, notably the proportional plan, the district plan, and currently, the direct vote plan. In addition to all the dozens of reform movements introduced in Congress each year, numerous commissions, private studies, and institutes have issued a prodigious amount of reports. In 1969 a constitutional amendment to abolish the Electoral College came within a few votes of passing Congress.

This thesis briefly reviews the content of Article II, section 1 of the Constitution which established the Electoral College (modified by Amendment XII), and the principal reform plans that have developed over the years. A serious examination of these reform efforts is examined, together with their possible effects on the entire political system.

The Electoral College acts as leverage in a presidential election, by enhancing the status of minority
groups. Changing to a direct plan would damage minority interests since a national popular majority would overwhelm their votes. The Electoral College contributes to the political stability of the nation by encouraging the two-party system, while the direct vote system would destroy it. A direct popular election would result in an unstable political system characterized by a multitude of parties, with more radical changes from one administration to the next. The recent election for president in France, which has a direct election system for president bears witness to this.

The Electoral College maintains the federal democratic system, and is a paradigm for the whole system of government. To abolish the Electoral College in favor a direct popular election for president would strike at the very heart of the federal structure established by the founding fathers, and lead to the nationalization of the central government, to the detriment of the states.
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CHAPTER ONE

THE ELECTORAL COLLEGE ON TRIAL

The 2000 Election

The last lever has been pulled. The last card has been punched. The curtains have been drawn across the voting booths. The cards have been packed in boxes to be sent to the electoral officials at each state capital to be tabulated. Therein begins a procedure, the Electoral College system, to determine who shall become the next President of the United States.

What should have been a straightforward procedure was turned into a hotly contested race for the presidency between Vice President Al Gore and Governor George W. Bush of Texas. As early as October, the daily tracking showed it to be a distinctly close race. The Gallup Poll charted nine lead changes during the fall campaign. As election night wore on, claims and counter claims were made for one winner or another. By 10:06 p.m. Dan Rather commented on CBS news that it was beginning to look like the advantage was going to George W. Bush. As votes filtered in from other states, the lead shifted from one to the other candidate, until the drama of Florida unfolded. At one time, Vice President Gore called Governor Bush with a
congratulatory message, but as Bush's lead dwindled, he sent another message with a disclaimer. On the morning after the election, the contest in Florida showed Bush leading Gore by only 926 votes, prompting an automatic recount. Counts, recounts, and appeals to the courts continued for five weeks, until finally the Supreme Court ruled that the recounts be stopped, giving the victory to George W. Bush. Thus ended the most disputed election since 1867, when Rutherford B. Hayes defeated Samuel J. Tilden.

After eighteen months of campaigning, and expenditures of more than a billion dollars, it seemed that Gore was the popular vote winner with a 222,880 vote lead. As of November 20th, Gore had amassed 49,252,780 popular votes, Bush, 49,036,35 (Caeser & Busch, 2001). The predictions of the Electoral College reformers had come true; for the first time since 1888 the popular vote winner had lost the presidency.

While the year 2000 election controversy was not the complete disaster for the Electoral College system that its opponents had predicted, it provoked the same questions that have plagued political scientists and politicians since the Constitution of 1787 was adopted.
The Electoral College, a general-ticket, winner-take-all system, has been repeatedly attacked, almost from the day it was adopted, by politicians demanding a democratic one-man, one-vote plan for choosing the president. The general-ticket, winner-take-all system for selection of the president was not constitutionally mandated, but arose later with the growth of political parties. Under this system, the state delivers all of its electoral votes to the popular winner, giving it significant influence on the final outcome of an election. To quote Thomas Jefferson, "If ten choose....by the general ticket, it is worse than folly for the other six not to do it" (Hardaway, 1994, p. 90). In the winner-take-all plan, a plurality magnifies the winner’s majority of victory in the electoral vote. It rewards a candidate who creates a broad, inclusive national coalition, and eliminates candidates who do not.

Is the present election system undemocratic, or does it remain the best system for choosing the chief executive of the world’s most prestigious nation? Should the Electoral College system be revised to more accurately portray the democratic mood of today’s citizens?
Democracy Versus Republicanism

The term democracy is derived from the Greek word "demokratia", demos meaning people, and kratia meaning rule. It is a form of government in which citizens rule the state. The essential features of democracy are that citizens are free in speech and assembly, free to form competing parties, and that voters are able to choose among the candidates of those parties in regularly held elections. Democracy is a government by the many, instead of by the few. It is based on the belief that all should have the same basic rights and freedoms, and that people should be free to govern themselves. Rights and responsibilities are not unlimited, however. Some restrictions are necessary. People may not infringe on the rights of others, confiscate their property or injure them.

Citizens of a democracy have freedom of speech and the press - this is essential to the survival of democracy. Freedom of speech includes freedom of expression in all forms of communication including television, radio, films, theater, dance, music, literature and painting. The right of free speech, press and thought includes the right to publish and read newspapers, magazines, and books, as long as there is no
libel of others. It includes the right to differ, and to express opinions even though they may be contrary to the opinions of others.

Democracy confers upon its citizens the freedom of assembly. They may meet to support, criticize, to debate governmental policies, to pass resolutions or send petitions to their elected officials.

At the heart of democracy is the supremacy of the people, not its governmental officials. Voters have popular sovereignty - they may keep their officials in office or remove them by voting them out. Under a democracy people have political freedom, full civil rights, independence of movement, religious freedom, free economic opportunity, and equal educational opportunities without regard to race, creed, color, or social position. Democracy is a system of government in which the power to make important political decisions rests with the community; a government of the people, by the people, and for the people. Direct democracy refers to a system of government whose citizens decide issues by their votes.

With all the above benefits, why was it that the Founding Fathers in 1787 feared democracy, and elected to choose a republican form of government?
Alexander Hamilton, referring to the Constitutional Convention in 1787 said, "We are now forming a republican form of government. Real liberty is not found in the extremes of democracy, but in moderate government. If we incline too much to democracy, we shall soon shoot into a monarchy, or some other form of dictator" (Williams, 2002).

James Madison wrote, "democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with security or the rights of property; and have in general been as short in their lives as they have been violent on their deaths" (Publius, no. 10, 1996, p. 49).

Madison’s (1961) answer to the dangers of a direct democracy was a representative democracy, a system of government in which the sovereign holds authority granted by the people, and ruled according to law. Power is derived from the people through the process of the vote, and government then operates within, and under the control of law (In the United States, the Constitution). The Founding Fathers created the Constitution according to this concept (Publius, no. 10, 1961.)

The Constitution is the grant of authority for the government; it is the law of the people for the control of
the government. Madison (1961) interprets a republic as a government in which a scheme of representation takes place, or a delegation of the government to a smaller number of citizens elected by the rest. "The effect," Madison (1961) writes, "is to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will beat least likely to sacrifice it to temporary or partial considerations....In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to a republican government" (p. 50, 52).

The democratic republican form of government as we know it in the United States, utilizes the democratic principle, but limits it by the rule of law, the Constitution. The people vote for representatives who then choose those who will govern, and vote on appropriate laws and measures. The House of Representatives is the most democratic, being directly chosen by the voters. The Senate has two members who represent all the voters in his state, a republican concept. The executive is chosen by electors, two from each state, the winner then receiving
all the votes of that state, a decidedly republican concept.

The most important difference between a democratic and a republican form of government is the subordination of the power of the majority to the rule of law. There must be rules of law to prevent the majority from imposing their will on the minority through the election process. The Constitution not only diffuses the powers of government within the federal government, but also divides the powers of government between two independent and sovereign entities, the federal and the fifty states.

The democratic republican form of government establishes a system of checks and balances, a separation of powers, and may not be changed by the majority, but only by an amendment process requiring extraordinary majorities to propose and ratify. In addition, these requirements can not be exercised directly by the people, but only by their elected representatives. By establishing these safeguards against the absolute rule of a majority, the Founding Fathers created not a democracy, but a republic in which the people have a voice, yet circumscribed by fixed laws, i.e. the Constitution. The Electoral College was established by these republican
principles, and remains a viable system even in the twenty-first century.

The Electoral College - A Novel System

The members of the Federal Convention meeting in the summer of 1787 met with no problem as difficult as that of choosing the method for selecting the chief executive of the United States. James Wilson, a representative, speaking on the floor of the Convention, said that the subject had "greatly divided the House....It is in truth the most difficult of all on which we have to decide" (Publius, 1961, p. 3).

Senator Plumer of Massachusetts felt that the Electoral College system was decided upon because it was the least exceptionable than any of the others proposed. But Abraham Pickering, a member of the formulating committee, said that, "late in their session the present complex mode of electing the president was proposed, that the mode was perfectly novel, and viewed as the most pleasing feature of the Constitution" (Publius, 1961, p. 4).

The framers of the Constitution were striving in 1787 to devise a government that would allow the states to retain certain local powers, but to agree to surrender
some of the powers necessary to establish the sovereignty of a nation. It was necessary to create an almost perfect balance between retained and delegated powers in order to form the framework of federalism necessary for democracy to flourish. They were familiar with the history of large countries with strong central control, as well as those without enough central power, soon torn by internal rivalries. The true genius of the American Constitution was a system of federalism within which democracy could survive and thrive. Any notion that a sovereign nation could be founded without taking cognizance of states was unthinkable. The states were sovereign functioning governments, each with its own culture and history. Agreement, compromise, and consensus with the states was an absolute necessity if the Constitution was to come into existence (Publius, 1961). The federal democratic system which emerged was the result of such accommodation and consensus.

How the executive was to be chosen was a much disputed matter. Wilson was for a direct election by the people. George Mason was fearful of leaving the choice directly to the people. John Rutledge favored the selection being made by the second branch of the legislature. Later, Wilson offered the first proposal of
an electoral college; he proposed that states be divided into districts, with qualified voters of the national legislature electing from their respective districts the person who would be the chief executive. This plan was at first rejected, but a consensus later developed in favor of electors making the actual selection. The issue was reconsidered, scrapped, and eventually given to the Committee on Detail, who could come to no agreement. The issue was then sent to the Committee on Unfinished Portions, argued, disputed clause by clause, and finally agreed upon, and sent to the Committee on Style and Arrangement for final refinement. On September 17th, 1787, the Constitution, including the Electoral College system for selection of the president, was finally adopted by unanimous consent of all the states present.

The mode of appointment of the chief magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the president is pretty well guarded. I venture to say somewhat further and hesitate not to affirm, that in the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages the union was to be wished for. (Publius, no. 10, 1961, p. 23)
Madison (1961) interprets a republic as a government in which a scheme of representation takes place, or the delegation of the government to a smaller number of citizens elected by the rest. "The effect," Madison writes, "is to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations....In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to a republican government" (1961, p. 50).

There have been, in its 200-year history, a number of critics who have proposed reforms to the Electoral College system, most of them trying to eliminate it. But there are also staunch defenders of the Electoral College who, although perhaps less vocal than its critics, offer very powerful arguments for it.
The Electoral College system was established in Article II, Section 1, of the Constitution, and modified chiefly by the 12th Amendment. Each state is allocated a number of electors equal to two senators, and the number of representatives allowed for each state. This number for each state may change according to the state's population as determined by the census. The political parties in each state submit to the state's election official a list of individuals pledged to their candidate for president and equal to the state's electoral vote. States have absolute authority over the method for selection of electors. These individuals are usually chosen in state party conventions, or through appointment by state party leaders, while third parties and independent candidates merely designate theirs. Members or employees of the federal government are prohibited from serving as electors. After caucuses and primaries, the major parties nominate their candidates for president and vice president in national conventions. The names of those nominated are then submitted to each state's chief election official so that they may appear on
the general election ballot. On the Tuesday following the first Monday in November, the people vote by ballot for the party slate of electors representing their choice for president and vice president. The presidential ticket winning the most popular votes in the state, (except for Maine and Nebraska, who have two votes for the entire state, the rest for each congressional district vote), is awarded all the state’s electoral votes.

On Monday following the second Wednesday of December, each state’s electors meet in their respective capitals to cast their electoral votes; one for president and one for vice president. In order to prevent favoritism, at least one of their votes must be for a candidate from a state other than their own. The electoral votes are then sealed and transmitted to the President of the Senate, who opens them on January 6th and reads them before both houses of Congress. The candidate with a majority of electoral votes is then declared President of the United States. In the event that no one wins an absolute majority of electoral votes for president, the House of Representatives selects the president from the three topmost candidates receiving electoral votes, with each state casting one vote, and an absolute majority being necessary to elect. If no one receives an absolute majority for vice president, the
Senate selects from the two topmost candidates for that office. On January 20th the duly elected President and Vice President are sworn into office (Publius, 1961).

Controversies surrounding the Electoral College are as old as the Constitution itself. More amendments have been offered on this subject than any other section of the Constitution. Lawrence D. Longley describes the Electoral College system as:

A deplorable political institution....if the Electoral College were only a neutral and sure means for counting votes, and aggregating votes, it would be the subject of little controversy. The Electoral College, however, is neither certain in its operation nor neutral in its effects....In short, the Electoral College is a flawed means of determining the President. Its workings at best are neither smooth nor fair, and at its worst contain the potential for constitutional crisis....It must be abolished. (Yunker & Longley, 1976, p. 193)

The American Bar Association has called the Electoral College system archaic, undemocratic, unambiguous, indirect, and dangerous (Gossett, 1967). Critics find most troubling the unit-vote, or general-ticket system for choosing the president and vice president, the faithless elector, and the contingency election in the House of Representatives, in the event no majority is achieved on the first ballot.
The Proportional Plan

In 1906, J. Hampden Dougherty published a comprehensive account of specific reform measures to avoid these perils, and a proposed remedy by amendment to the Constitution. His suggested remedy, the proportional plan, provides that the vote in every state would be as it is now in electing the governor. Each person's vote would count equally in the electoral result in the state in the ratio to the total number of votes. State authorities would have the duty to count all the votes for president and vice president, and to apportion the presidential electoral votes in the same ratio between the popular vote and the total vote for all the candidates. Each state would have the same number of votes in the election of the president as in the whole number of senators and representatives to which they have in Congress. The person having the highest number of electoral votes, including decimals, in all the states would be declared president, the vice president to be chosen in the same way. In the event of a tie, the candidate having the largest number in the aggregate of all qualified voters in all states shall be awarded the presidency (Dougherty, 1906). Dougherty believes that his resolution is an answer to the several defects in the present Electoral College system. It allows
each person an equal vote in the presidential election. It settles all controversy in case of a tie without assigning the decision to the House of Representatives. It solves the difficulties encountered in the present mode (or lack thereof) in counting the electoral votes. The state continues to be an important part of the electoral process, as intended by the framers of the Constitution. State officials would settle any problems arising in the electoral count. No amendment thus far has entirely eliminated the probability for election of a minority president, but proportional plan lessens the possibility (Dougherty, 1906).

Best thinks that the proportional plan could produce fundamental changes in political alignments. Allan Sindler believes that the proportional plan would lead to one-party domination in elections, and an increase in the South’s political influence (Best, 1975). Lucius Wilmerding, Jr. concedes that the proportional system is a reasonably accurate device for taking the sense of the people and much superior for that purpose than the general-ticket system, but has doubts on other grounds (Wilmerding, 1958, p. 332).

First, disputed elections would become more frequent, possibly extending to every state, delaying prompt
selection of the chief executive. Second, the possibility exists that the House of Representatives would be of a different party than the president. The chief objection is that equal ideological masses of people, rather than geographical masses are entitled to equal votes, and this principle should not become a part of governmental institutions (Wilmerding, 1958).

The District Plan

In 1832 James Madison wrote to John Jay that the single-member district plan was the plan of choice when the Constitution was framed and adopted. In 1834 he emphasized that it would be a great improvement if electoral districts and eventual decision by joint ballot of both Houses could be established (Publius, 1961).

The district plan divides each state into districts equal to the number of representatives that each state is entitled to in Congress. Districts shall be contiguous and compact, containing approximately the same number of persons each state is entitled to in Congress, and may not be altered until after the next census. Inhabitants of districts qualifying for electors to the House of Representatives shall choose two electors each for president and vice president, none holding an office of
profit or trust under the United States government. Electors meet in their respective states and vote for president and vice president. Lists of all persons voted for shall be certified, sealed, and transmitted to the President of the Senate, who shall open them and count the votes. The candidate with the most votes shall be declared the winner. If no candidate has the required forty percent, then the combined Senate and the House with a majority of members present and voting makes the selection. Votes are to be taken by states, not by individual voters.

Proponents of the district system argue that the sentiments of the people would be taken by districts, instead of by states, thereby more accurately representing the will of the people; the president would then be the choice of the people. They disagree with the general-ticket system that permits the minority to be counted for the majority, possibly resulting in the defeat of the popular choice. An important difference in the two plans is that the district plan gives the presidential election a national character, while the present general-ticket plan gives it a federal one.

Opponents to the district plan cite the distribution of state votes among several candidates as possibly
reversing the order of the leaders. A candidate could receive a majority of district votes, but lose the state votes unless he could win over half of them. It is also argued that the district system is inevitably subject to gerrymandering; it cannot and will not be operated fairly.

A congressman in 1816, commenting on the district system said:

I had, Mr. Chairman the honor of a seat in the legislature of New York, when that state last divided into districts for the purpose of electing members of this House. How were they laid off? With the sole view of returning as many as possible to this House....counties were cut and slashed in every direction; districts, singles, double, and treble, of every shape and of every size, were manufactured....In short, no device, however shameful, was omitted to obtain the result, and the result was obtained.
(Wilmerding, 1958, p. 151, 152)

The district plan would encourage the formation of minority parties, thus destroying the two-party system, which has proved to be effective in all but a few isolated cases of deciding presidential elections in a clear-cut and prompt manner. A minority party would fight to win seats in the House of Representatives hoping that the election would devolve on that body. There is considerable doubt, however, about the prospects of a district plan amendment being approved by Congress. The larger states would never relinquish the power they now hold under the
general-ticket plan. Neither would the smaller states abandon their power to elect their candidate by the equal vote they now hold in the House of Representatives (Wilmerding, 1958).

Serious objections have been raised to both the district plan and the proportional plan; either would weaken the presidency, localize presidential elections, compromise the two-party system, and give advantages to the smaller states. By the late 1960’s, demands for a direct popular vote took center stage. Polls indicated between seventy-eight and eighty-one percent of the electorate favored the more democratic one-person one-vote system (Best, 1975).

Direct Popular Vote Plan

The direct popular vote plan has the approval of a significant number of politicians and citizens, who cite it as being as being sensible, democratic, and straightforward. It allows the people, each having an equal vote to choose his preference for the chief executive of the United States. Its proponents believe the direct popular vote system provides the most direct and democratic way for selecting the president. In this plan, the people of the several states and the District of Columbia shall cast
a single vote for the two persons who have joined their names as candidates for the office of president and vice president. The joint-team candidates for president and vice president having the greatest number of votes, providing such numbers are at least forty percent of votes cast, are declared the winners. If none of the candidates receive more than forty percent, a runoff election would be held between the two highest on the list. State legislatures shall determine the times, places, and manner of holding such elections. Congress could at any time make or alter such regulations, and would have the power to enforce this article by appropriate legislation (Gossett, 1958).

The case for direct election has a strong foundation. Proponents claim that it is the only reform system proposed thus far that remedies all the defects specified in the current general-ticket system. Plus, it is the only reform that has a chance of being adopted in Congress, judging by the close votes that have occurred in past attempts. In 1969, the House passed a direct election amendment by more than the two-thirds majority, and was supported by a majority, although not by the necessary two-thirds of the Senate (Best, 1975). Supporters of direct election point out that this plan solves the
"faithless elector" problem, in that electors are completely eliminated from the amendment. Because they are not now constrained by the Constitution, they could possibly play the role of spoiler, influencing the outcome of an election.

Supporters of direct election claim that this amendment will reduce propensity for fraud, because it will reduce the potential for reward. They argue that less leverage means less fraud, and that the direct election system has the less leverage of all.

Direct election prevents a contingency election in the House of Representatives, a practice long condemned and feared by many. George McDuffie said in 1826, "there cannot be a greater solecism than that which is involved in the idea of commencing the election of the president upon one principle, and ending it according to another....Nothing can be more absurd than to abandon it entirely as soon as the people at the first effort, fail to give a majority of vote to one candidate" (Wilmerding, 1958, p. 185). Thomas Jefferson told his friend George Hay that he had "ever considered the Constitutional mode of election ultimately by the legislature voting by states as the most dangerous blot in our Constitution, and one which some unlucky chance will someday hit, and give us a pope
and an anti-pope” (Publius, 1961, p. 3). Direct plan advocates suggest that the simplest remedy to this problem is the instant runoff election whereby the voter selects his first and second choices on the first ballot. The candidate with the fewest first place votes is eliminated, then the second choices on those ballots are counted until a winner is obtained.

Finally, advocates assert, the direct-vote system provides for preservation of federalism, in that it allocates to state legislatures the time, places, and manner of holding presidential elections, and entitlement on the ballot (Best, 1975).

Charges against the direct popular vote plan are wide-ranging. Alan Sindler cites the insurmountable problem of gerrymandering (Best, 1975). Best alludes to the dangers of fraud under the direct system, because it would increase the number of close elections. Under the contingency provisions, there is a possibility of fraud, both in the general election and the runoff (Bickel, 1971). It is possible that the direct-vote plan could invite non-regional interests that have hopes of amassing enough votes to be a bargaining influence in a runoff. With votes aggregated nationwide, numerous contenders would force a runoff with regularity. The majority party
would count for much less than it does now. Party unity would cease to exist; everything would be a preparation for later coalitions. More open, multi-party politics, praised by direct-vote adherents, would also offer opportunities for pressures on one or another causes or prejudices. The present system allows for coalitions to be formed in two-party conventions, but under a direct system, coalitions would be relegated to a few candidates and their managers, between the election and the runoff. They would become weaker, with less ability to arrive at well-founded decisions. There would be less access to the election process. A direct election would have a profound effect on the kinds of men who would become president. If the national party convention system is superceded by a national primary, as is foreseen by the direct system, then party leaders could lose control over the nomination process. Demagogues, self-nominated, individualistic leaders of prejudicial factions, charismatic leaders beleaguering a single issue, might replace the candidate presently conscripted because of their moderate experience, records of electoral success, and service to permanent party organizations. In short, the prospects are that the direct election plan would increase the incidence of party-splits, and encourage the development of minor
parties. It would undermine party control over the crucial task of nomination, and postpone compromise. It would increase the importance of homogeneous regions and one-party states, and disturb the geographic distribution of party support. It would reduce the influence of state party leaders, and encourage the formation of doctrinaire and single-issue parties, simplifying and dramatizing issues (Best, 1975).
Best has developed a set of standards by which to judge the merits of an electoral process. First, it should fill the office; it should produce a swift, sure, clean, and clear decision. It should produce a president who can govern because of sufficient popular support, and who is independent, thereby supporting the separation of powers. It should reduce the premium on fraud, and produce moderate winners who are tolerable to losers. Last, but not least, it should preserve the federal system. The present Electoral College system comes very close to fulfilling all these requirements.

The president fills an unparalleled role in the government of the United States. He is the Head of State, the Commander-in-Chief of the nation’s defense forces, the only person who can speak for the entire nation, and, in recent times, he has become the leader of the free world. In the selection of a leader to fill these important positions, it becomes evident that the election process “should produce a swift, sure, clean, and clear decision” (Best, 1975). An election in doubt would prolong the
process, giving the incoming Head of State little time to organize the new government. Numerous recounts, or elections tied up in courts increases the possibility of fraud, crippling the effectiveness of the office. Any uncertainty would invite intrigue, not only at home, but also among foreign enemies. An election in doubt would prolong the process, giving the incoming Head of State little time to organize the new government. This not to say that the present system is devoid of the possibility of fraud, but it provides for the best practical defense against it.

The president must not be chosen by Congress, except as a last resort, because of the strong likelihood that Congress would control the executive branch of government. The possibility of conspiracies between the two branches would be a decided detriment to the people. The president should command at least a plurality, or better still, a majority of the voters, in order to have a mandate to govern. This becomes all the more important when one considers the complex structure of the nation - the diverse population, ethnic groups, religions, races, and economic status. Support for the president must be broad and deep, widely distributed across the nation. The present selection procedure is one that can structure and
shape the majority, forcing the candidates to build a broad cross-sectional base.

In Defense of Federalism

Federalism is a very important element in the election process. "The proper name for the form of government established by the constitution is a democratic-federal republic" (Best, 1996, p. 39). It maintains the balance of power between the president and Congress, between national and regional interests. Methods of selection for both institutions should be the same; if Congress has a federal base, so should the presidency. If the president were chosen from the electorate at large, that office would claim a more authentic mandate than that of Congress, affording it more power and prestige than that of Congress, and at the expense of local interests.

John F. Kennedy, in his now famous quote, says, "It is not only the unit vote for the presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider the others" (Hardaway, 1994, p. 1).

The delegates to the Constitutional Convention of 1787 had created this "solar system," a federal-democratic
form of government, through a process of compromise and accommodation. They were constrained by the era in which they lived, by the sentiments of a variety of peoples, each with their own persuasions and desires. They were a people recently freed from the yoke of the British, and carrying with them an intolerance of any person or group who would infringe upon their new-found freedoms. The framers were realists, not idealists, who saw the very real necessity of forging from this hodge-podge of peoples and ideas, a framework of government, if not a perfect system, at least, one that had the fewest imperfections; a government that could satisfy the majority without totally alienating the minority.

The Constitution itself was adopted under the federal principle of state equality. The people in each of the thirteen states were to determine for themselves to adopt or reject the Constitution as presented by the Convention. The state equality principle treats all states with equal respect and fairness; the federal districting system divides the nation into smaller districts, and requires that votes be cast for national officers in states or parts of states. The whole is composed of distinct parts; votes may not be combined across state lines; the majority of states could not decide for the minority.
Today, as then, the common rights of people in states are recognized. The state equality principle is recognized in the Senate with two elected officers from each state, no matter what the population size. The same principle is recognized ratifying amendments to the Constitution, where states are granted only one vote, regardless of size. The federal principle is the base on which all three branches of government are founded. The federal principle limits the will of the majority, since it places barriers around votes, adding a distribution requirement to that of a simple majority.

In a large nation with diverse populations, there must be a balance between national and local interests. Local governments with local problems, a part of a larger society, could not be protected by a simple majority representation of one-man, one-vote. An unstructured majority will tend to overlook local interests. Creating a government on the federal principle, one made up of representatives who speak for the interests of people in separate states, means that the government will be sensitive to local needs and rights. Applying these principles to the office of president is important in keeping a response to state viewpoints. A candidate cannot win a simple majority of the popular votes, he must win
states. He must seek consensus by building a broad coalition of local interests.

The inclusion of the federal principle is essential to create political majorities, which are open to all voters. Compromise is essential in a large heterogeneous society, such as the United States. States must compromise at the state level with the many and varied interests to form state and local majorities. The federal principle reminds people that they live together in community, that they have civic interests that transcend private interests. They must compromise to elect representatives to the national government. The national interest is defined by the representatives of public minorities. To use the federal districting system rather than a one-man, one-vote plan means that the results will come closer to the common good.

An important concept of the federal principle is that it protects the separation of powers. "Without the federal principle, the separation of powers will fail" (Best, 1975, p. 39). One-man, one-vote is not enough to keep the representatives faithful to the majority or plurality of the people. If everyone had the same interests, or if government decisions affected all alike, there would be no problem, but what is a benefit to some is a burden to
others. To avoid conflict or revolution, the burdens must be reasonable. Since representatives are responsible to those who elect them, they may be faithful to "an unjust master, to a majority who would act like a band of robbers" (Best, 1975, p. 40). In a proper federal system, one party will not control the whole government, since members of government do not owe allegiance to a national party, but rather to local and state parties, which will tend to protect minorities from majorities.

Although one party may nominally control the government, the separation of powers will still work. The controlling party must compromise with the minority party, even within his own party, to achieve success in getting his programs passed.

The will of the majority to be rightful must be reasonable. Reasonable majorities are created by a process of opposite and rival interests by representatives who have both the means and the motives to check each other, and the federal principle structures the popular vote in such a way as to supply a goodly part of the motives. The federal principle balances the national and local interests, gives us a moderate, inclusive, political definition of national interest, and supports the separation of powers, thereby prevents majority tyranny. (Best, 1975, p. 41)

An example of compromise between majority and minority parties appeared in a recent periodical entitled: Senate Votes to Ban Drilling in National Monuments. The Democrat-led Senate voted
Wednesday to bar coal mining, and oil and gas drilling inside federally protected National Monuments in the West, dealing a fresh blow to President Bush’s energy production plans. The 57-48 roll call aligned the Senate with the House which voted last month to ban mineral extraction from the Monuments after Democrats (minority) there won support from moderate Republicans (majority), (The Desert Sun, 2001)

Madison details the real character of the new government by outlining the foundation on which it was to be established, the sources, extents and operation of its powers, and the authority by which future changes in the government may be made. First, the Constitution is to be ratified by the people, but not as individuals, but by states to which they belong, thus establishing that the Constitution will not be a national, but a federal act. Ratification is to result, not from a majority of the people, nor from a majority of the states, but must result from the unanimous agreement of the several states. Each state is considered a sovereign body, independent from all others. The new constitution will then be a federal, not a national constitution. The government appears to be of mixed character, presenting at least as many federal as national features. He concludes:

The proposed Constitution, therefore, when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal constitution, but a composition of both. In its foundation it is
federal, not national; in the sources from which the ordinary powers of government are drawn, it is partly federal, and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and finally, in its authoritative mode of introducing amendments, it is neither wholly federal nor wholly national. (Publius, 1961, p. 214)
CHAPTER FOUR
IS THE ELECTORAL COLLEGE UNDEMOCRATIC?

Critics of the Electoral College emerge from two distinct camps. First, those who condemn tangible elements of the system, as faithless electors, the contingency election, or the unit-vote principle. Such denunciations are based on actual events and happenings with real causes and effects. These can and should be addressed by a citizenry that has experienced many changes since the ratification of the Constitution in 1788. Second, there are those who assault the intangibles, the principles, indulging in such name-calling as undemocratic, ambiguous, archaic, even dangerous. Subjective opinions are more difficult to analyze and assess as one attempts to separate bias and prejudice from logical thinking.

Martin Diamond has attempted to do just this, providing answers to The American Bar Association’s charges that the Electoral College is archaic, undemocratic, complex, indirect and dangerous. Whatever is old is not necessarily archaic. Not only is the Electoral College not archaic, it is the very model of up-to-date
flexibility. Since its ratification, the Electoral College has shown great adaptability.

Electors have become nullities; presidential elections have become dramatic national contests; the federal elements in the process have been strengthened by the general-ticket practice; modern mass political parties have developed; campaigning moved from rather rigid sectionalism to the complexities of a modern technological society - all occurring tranquilly and legitimately within the original constitutional framework, as modified by the Twelfth Amendment. (Diamond, 1977, p. 46)

It is remarkable that, while it now operates in transformed ways, it still operates as the founding fathers intended. From the very beginning, the Electoral College was intended to operate democratically. Independent electors as a substitute for direct popular election were chosen as a nationalizing substitute for the state legislatures. Confederalists had fought to have the president selected by state legislatures. Madison, James Wilson and Gouvernor Morris devised the Electoral College system to fend off the confederalizing threat. Thus, it was not an undemocratic, but an anti-states-rights stratagem to give the election to the people instead of to the politicians.

Given the poor communications of the country at that time, it was feared that the people could not have the information necessary to make an intelligent choice of
available candidates. Another fear was that ordinary voters, lacking broad knowledge of candidates, would vote for favorite sons, making large-state candidates the winners.

Substituting electors precluded the difficulty of the wide discrepancies in suffrage laws in the states. The right of suffrage was much more dispersed in the North than the South, where the slaves were not counted as "persons". Again, the intention of the founding fathers was to find the most practical means for the selection of the president, not to subvert democracy.

The essential spirit of the Electoral College, as that of the Constitution, was democratic from the start. The Electoral College is not an archaic institution; because of its adaptability to change, it remains the most valuable means for selecting the chief executive.

Reformers who abhor the federal aspect of the Electoral College fail to see that democracy is not the question; the choice is whether to select the president in a partly federally democratic, or a wholly nationally democratic way.

The discrepancy between the electoral and popular votes exists in all districted forms of election. Because populations are not evenly distributed in numbers or
political sentiments, then it is possible that a winner of a majority of the districts may not always be the winner of the popular vote. When considering the advantages to be gained by the present system, the chance of a "wrong winner" is worth taking. First, there is democratic responsiveness to local interests, needs, and sentiments. The American idea of democracy includes responsiveness to local majorities. A nation of a multiplicity of interests, ethnic groups, religions and races must be responsive to minorities. Americans cherish the guarantee that the districting principle provides; they accept the risk of a national popular-vote district-vote discrepancy because the advantages are many, and because the House and Senate are nationally democratic enough to sustain a reasonable standard of democracy (Diamond, 1977). Elections in the United States House of Representatives, as in the California Assembly and Senate, are districted elections.

The fundamental premise of American democracy is that democracy, as in all other forms of government, cannot be a completely ideal system. The political system must be democratic enough, and then modified to include other vital considerations important to all its citizens.

The undemocratic threat of the Electoral College posed by its detractors, then, is that the possibility of
50 percent minus one would win over 50 percent plus one. The direct vote plan contains the provision that 40 percent of the votes would be enough to declare a winner.

Which, then, is the more democratic?

Democracy is not at stake in our elections, only the decision as to which of the shifting portion of an overall democratic electorate will temporarily capture executive office. What serious difference does it make to any fundamental democratic value if, in such elections, 50 percent minus one of the voters might—very infrequently—win the presidency from 50 percent plus one of the voters. (Diamond, 1977, p. 57)

To revise the Constitution for such a reason would deplete democracy of all socioeconomic significance.

In answer to the charge of complexity, it should be pointed out that complexity characterizes the entire political system. The bicameral nature of Congress is complex, federalism is complex, judicial review is complex, executive veto is complex, and the Bill of Rights contains numerous complexities. Are these to be condemned also? The American idea of government is not as concerned with a majoritarian democracy as it is with a system, which, while being democratic enough, albeit complex, still fulfills other worthwhile purposes.

The Electoral College has delivered exceptionally clear and unambiguous electoral decisions. No electoral
system can be totally free of ambiguities, especially in closely divided elections, but the present system, when a realistic, rather than an ideal standard is applied, must be rated as highly successful. Compared to the direct plan, it appears to be less ambiguous. The direct plan, with its single electoral district, provides for a runoff election, if the candidate receives less than 40 percent of the total vote. The problem of error and fraud could very well be enhanced under this system; every precinct would come under minute scrutiny, as candidates fought for winning votes. Under the Electoral College system, challenges are infrequent, and limited in scope. The outcomes of elections are always accepted by the losing candidate and by all the American people as legitimate.

Dangers in the Electoral College system, cited by reformists are faithless electors, or the contingency election in the House of Representatives, but the main fear is the popular-vote, electoral-vote discrepancy. This has been alluded to as a loaded pistol pointed at our heads. However, in 1888, when it did go off, the country didn’t turn a hair; the country was rewarded with a strong, stable, tranquil, legitimate government. And in the 2000 election, the day after the inaugural of George W. Bush, who lost the popular vote to Al Gore by a small
percentage, the administration began the task of governance, the citizenry returned to its business of earning a living, and once again the federal democratic form of presidential election was safe and secure, at least for another four years.

The democratic foundations of the political system are not endangered by the remote possibility of a popular-vote electoral-vote discrepancy.
CHAPTER FIVE
ELECTORAL COLLEGE SURVIVAL

Since the Convention of 1787, none of the hundreds of reform efforts to abolish the Electoral College system has succeeded. Whether this is due to the benevolent wisdom of government dignitaries, or to political expediency is a moot question; nevertheless, the federal democratic-republic, including the method of selecting the chief executive has survived. The district plan, the proportional plan, the direct plan, plus a myriad of hybrid plans have all been found wanting in one element or another; today, the direct popular vote system is the only plan still promoted. "None completely preserves the basic elements of federalism and the constitutional compact; and none would preserve the two-party system, discourage factionalism, and still produce, at the possible risk of a constitutional crisis, a clear result in a presidential election" (Hardaway, 1994, p. 163). Yes, it is possible that a minority candidate may win an election. However, before the 2000 election, there had been only three elections, (1824, 1876, 1888), where the winner lacked both the greatest number of popular votes, as well as a majority of popular votes. One of these, that of 1876, is
doubtful because of fraud. There have been only two elections, in 1800 and 1824, decided in a contingency election in the House of Representatives. The likelihood of winning the popular, but not the electoral vote prompts candidates to seek the support of broad, nation-wide groups (Best, 1996).

The faithless elector still has protection under the Constitution; he has freedom of choice in the election process, yet is constrained by popular opinion and party loyalty. Faithless electors have never yet stolen an election or defeated the will of the people. Out of 16,000 votes cast, only eight have ever voted against the candidates to whom they were pledged; not one has had any effect whatsoever on the outcome of an election. Twenty-four states bind their electors, and five states assess penalties for breaking pledges. As long as states have undisputed power for choosing electors, and stay within the confines of the Fourteenth Amendment, they may exercise the right to refuse any unpledged elector (Best, 1996).

In 1958, a period of upheaval and confrontation in American life, Walter Lippman wrote that, "the country has entered a period of revolutionary change of which no one can foresee the course or the end or the consequences"
Bickel, 1971, p. 90). He was discussing the obsolescence of the two-party system. Bickel has a more positive attitude toward the revolutionary factions which were quite vociferous at that time. "The work of politics in the United States, and the work of politics even for those who set radical goals, is most effectively and enduringly done within the regime, not in opposition to it as such; within the system whose improvement I advocate, but which I praise" (Bickel, 1971, p. 90, 91). In the years following the radical sixties, the Electoral College remains alive and well; elections are decided in a timely, consistent manner without the occurrence of revolutions.

We are well served by an attachment to institutions that are the products more of accident than design, or that no longer answer to their original purposes and plans, but that offer us comfort of continuity, and challenge our resilience and inventiveness in bending old arrangements to present purposes with no outward change....We have, of course, many institutions which no longer conform to the original scheme, and we have bent most of them quite effectively to purposes of our present society....The fact that we have used them without modifying their structures has lent stability to our society and has built strength and confidence in our people. (Bickel, 1958, p. 3)

The Electoral College has been charged as no longer performing according to the intentions of the framers. The procedures in place today, built on the system outlined in the Constitution are a product of tradition and trial and
error over the last two centuries. The courts, state legislatures, Congress, and the major political parties have all been instrumental in adjusting the electoral system to the changing times and moods of today's citizens, but within the system, not in procedures yet untried. In spite of changes, the federal nature of the Constitution as Madison expressed it succinctly in 1787 still resounds forcefully today:

Cool and candid people will at once reflect that the purest of human blessings must have a portion of alloy in them; that the choice must always be made, if not of the lesser evil, at least of the greater, not the perfect, good; and that in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is whether such power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment. (Publius, 1961, p. 213, 214)

Madison realized that the Electoral College system for electing the president was not perfect, but the issue is comparative merit, not absolute merit. Compared to the other selection processes offered to date, the present method seems to contain less imperfections.
Conclusion Mending the Flaws

Although it is preferable to the many reform propositions offered, the Electoral College system is not without flaw. There are six areas which need to be addressed. First, and most often cited, is the faithless elector, which could be remedied by an automatic plan, that eliminates the office of elector by automatically awarding electoral votes to the candidates receiving a plurality of votes within a state. Additionally, a less intrusive method to manage the faithless elector problem would be by an amendment which would give Congress the right to change the faithless elector’s vote to the candidate to which the elector was pledged.

Secondly, the Constitution should be amended to require each state to adopt the general-ticket ballot. The general-ticket, winner-take-all procedure has provided the Electoral College with a means for maintaining and nurturing the two-party system, discouraging factionalism, and producing a clear and timely winner for over two centuries, and should be made mandatory for all the states. This would eliminate the potential danger of states manipulating the electoral system for political ends.
Third, the contingent election in the House of Representatives should be retained (this is not in agreement with some reformers), but should be more specifically interpreted. Should the incumbent House of Representatives or the incoming House elect the president? There should be a clear-cut decision between the two, not leaving it to chance. Also, there should be a clarification with each state delegation as to whether the winning votes should be by majority or plurality. The present choice of three should be changed to the two top candidates, reducing the possibility that the vice president chosen in the Senate would be of the opposition party.

The quorum requirements in both Senate and House contingency elections should be reduced. With no quorum requirement, most, if not all members of Congress would choose to attend the contingency election of the president. There should be a specific date for the election, both in the Senate and in the House, holding the House election first. All votes should be open, rather than by secret ballot. These changes would reduce the inducement for political mischief or fraud.

Fourth, all American citizens should be enabled to cast their votes for electors. At present, only the fifty
states and the District of Columbia may appoint electors. The District of Columbia could be designated as storehouse for the votes of all citizens not now citizens of a state, and the District of Columbia should count all these votes according to Constitutional rules.

Fifth, although states have adopted the popular election method for choosing electors, it should not be left to the choice of states. The Constitution should be amended to provide that electors be chosen by popular election in each state.

Sixth, in the certification of electoral votes, each state should be required to provide a method for settling controversies over electoral votes within the state. A decision should be made between the incumbent governor, or governor-elect as to whom should certify electoral votes. "The electoral votes as certified by the government should be absolutely final; Congress should not to second-guess the governor of a State" (Hardaway, 1994, p. 167).

Best recommends the automatic plan of selecting the president by eliminating altogether the Electoral College, but retaining the electoral votes. In addition to solving the problem of the faithless elector, the automatic plan would be instrumental in clarifying problems that might arise because of the death or resignation of a
presidential candidate. If a candidate dies, or resigns after the general election in November, and the meeting on the first Monday following the second Wednesday in December, there is no provision for this contingency. If a Constitutional amendment abolishing the office of elector, and the electoral votes were awarded automatically, this defect would be eradicated, and the vice president-elect would succeed to the office automatically (Best, 1975).

These changes could be made without altering the basic federalist composition of the electoral process, or reducing its advantages. They would eliminate the possibility of conflict and uncertainty in the event of unusual or unanticipated occurrences in the election process.

Glennon suggests that the objective, or value sought should determine the means of selection of the chief executive. He believes that the principle objective should be enhanced legitimacy, together with the reinforcement of the values of federalism (Glennon, 1922). The objectives decided upon, then, should be determined by their effects upon a particular system. If all essentials, such as Glennon discusses are seriously considered, then it is wise to err on the side of caution, to retain a system
that has been tried and found to be exemplary in its comportment.
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