

The Electoral College and the Development of American Democracy

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The contemporary idea that the electoral college is undemocratic is fostered (1) by the understanding that “democratic” is what (or who) most voters want, in contrast to the Founders’ view that “democratic” combines as much as possible popular consent with “justice and the common good,” and (2) by the idea that “one person one vote” for president within each state is undemocratic because democracy requires “one vote, one value” nationally. Both developments discredit the electoral college’s “federal” means of electing the president and work toward replacing it with a “national” means, that is, “direct popular election.” Because direct election would abolish the states as presidential electoral districts, it was and is advocated by those in favor of strengthening the national and weakening the federal character of our political system.

WHAT IS THE ELECTORAL COLLEGE?

Strictly speaking, “the electoral college” is the name given to the U.S. Constitution’s provisions for electing the president through fifty-one simultaneous state elections, rather than through one nationally consolidated election.¹ The Constitution leaves to each state legislature such questions as how to choose the electors and whether to give all their electoral votes to the candidate who receives the most popular votes in that state. Hence, changing how states

apportion their electoral votes would leave the electoral college intact, as long as the president is elected by state, rather than by a consolidated, national popular vote.

The words “electoral college” are not in the Constitution. Nor have I found them in the debates in the Constitutional Convention. They are a later development, and that is important for this reason: Both originally and today, the Constitution provides that “the electoral college” does not meet as one body but as fifty-one. Thus in 1800, Charles Pinckney, a prominent member of the Convention, described the Constitution’s system of electors meeting in their respective state capitals as “different Electoral Colleges.”² The plural accurately reflects the Constitutional fact that the system is not one college but many. In contrast, the term “the electoral college” silently consolidates these many into one, thus misleadingly suggesting that a federal process (one in which the president is popularly elected state by state) is actually a national process (in which the president is elected by a consolidated, national popular election and in which state boundaries are abolished for purposes of that election).

In this essay, I argue instead that the electoral college was originally, and remains, more democratic than any practical alternative. In particular, it is more democratic than “direct popular election.”³

THE CANDIDATE WHO GETS THE MOST POPULAR VOTES MIGHT NOT BECOME PRESIDENT

A common objection holds that the electoral college enables a candidate to receive “more votes” and yet lose the election, as in “Al Gore won the popular vote but lost the electoral college vote.” But this is not quite a fact. Rather, it is a preference that appears to be a fact. It is not false, but it is debatable. Actually it is three preferences, each suppressed

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rather than defended. Only if the preferences are true is the statement factual.

That a candidate can get more popular votes and yet lose the electoral college vote is not a fact because it is not a fact what "more" is. The objection assumes that "more" popular votes means "more" votes counted as a national total. Count up every vote cast in the country and whoever receives the most has "more." That is not an unreasonable definition of "more." It is what "more" means in most elections. But it is factually not what "more" means in the presidential election. In this election, and only in the presidential election, the Constitutional system does not throw all the popular votes into one national pot and then count them. Rather we count them by fifty-one, separate election districts. And the candidate who gets more popular votes when the popular votes are counted by states (federally) wins. Always. No exceptions.

But is it not a fact that Gore had 500,000 more popular votes than Bush? No, that is a preference because it presupposes that "more" means "counted as a national rather than as a federal total." Because the Constitution requires popular election of the president in each of the states, it is a fact that Gore received more votes than Bush only if one thinks that the Constitution's federal method of counting should be replaced by the national method of counting. And "should" is the language of opinion and preference, not fact. Counting the popular vote federally, George W. Bush had "more" popular votes than Gore.

So the alleged fact that Al Gore received more popular votes conceals the preference that "more" should mean "more of the popular vote counted as a national total." This is preference number one. It implies preference number two, namely, that the present Constitutional fact that popular votes are counted by state (that is, federally) should be replaced by a different fact, namely, that they should not be counted by state. And both number one and number two imply preference number three, namely that states should be abolished for the purpose of electing the president. It prefers replacing our present *direct* but *federal* popular election of the president with *direct* but *national* popular election. The present federal system of election is direct because the popular vote decides who wins in each state and hence who wins the presidency.

But perhaps there are good reasons that justify the preference for replacing direct federally counted popular elections with direct nationally counted popular election. The appeal of the argument is that it simply presupposes as a fact that direct national election is more democratic than is direct federal election. It does so by assuming the truth of another preference, masquerading as a fact: Direct federal popular election is not direct popular election. But this is true only if direct popular election is the same thing as national counting of the popular vote. The foregoing argument has shown this to be false.

Thus Al Gore did not receive "more" popular votes when those votes are counted by states, as the Constitution provides. He received "more" popular votes only if they are counted as a national total. And that is how pollsters, the national news media, and opponents of the electoral college

prefer to count them and teach us to count them. Gore did not win the popular vote unless it is assumed that the Constitution's federally counted, direct popular election should be done away with. If one assumes, with the Constitution, that popular votes should be counted by states, then Constitutionally there is no national popular vote to get. Constitutionally, the only popular vote to get is the most popular votes in enough states to get a majority of electoral college votes.

The role of pollsters and the news media in Constitutionally miseducating the people on this matter is massive. The news media report the pollsters findings as the election approaches much like a horse race: "Coming around the turn it's Bush by a nose . . . they're neck and neck coming down the stretch." This way of reporting the polls teaches the public the factual mistake that popular election of the president is the result of one national "horse race," whereas the Constitutional fact is that popular election of the president is the result of fifty-one distinct but simultaneous horse races.

A different sports analogy more accurately and persuasively conveys how the electoral college determines who wins the presidency. The winner of the World Series must win four games out of seven, not score the most total runs in the seven games. Both the World Series and the presidential election go to those who win a majority of the separate contests, not to those who get the most total runs/votes. Replacing the electoral college with direct national election would be exactly like replacing four out of seven games with the most total runs. Moreover, the argument in favor of this change would be exactly the same: It is not fair that the World Series system might let a team win with fewer runs than the team that loses; the team that has the most runs is supposed to win. To which the answer is exactly the same concerning the electoral college: The team that wins the World Series is already the team that has the most runs, *in a majority of games*.⁴

Electoral college opponents sometimes argue that the Constitution's federal way of counting the popular vote violates the principle "one person, one vote." As evidence, they allege great disparities in the worth of popular votes in, for example, Florida versus North Dakota. The votes of those few hundred thousand Dakotans are supposed to count a lot more per electoral college vote than the votes of those millions of Floridians. This is presented as a straight forward fact.

However, it is a preference not a fact, because it assumes that we should not count the popular votes as if states existed. Instead we should count them as if they did not exist. But if we do not assume this, then we already have "one person, one vote" within each state. The North Dakotans vote is already equal to the other North Dakotans in determining who wins their state's electoral college votes. The same is true for the Floridians. So what we do not have is "one person, one vote" between the North Dakotans and the Floridians, and *that*, not "one person, one vote" as such, is what the electoral college reformers actually want. But why should we prefer "one person, one vote" within the nation as a whole, rather than within each state? Answer: because we should prefer direct national popular election over direct federal popular election. The argument is nicely circular.

The seemingly factual statement that the Dakotans' votes

count more than Floridians' reveals itself as classic question begging. The assertion is that, because the Constitution does not count popular votes nationally, the Dakotans count more than the Floridians. The begged question is "why should we count popular votes nationally?" Thus, the seeming *fact* that the electoral college counts the votes of Dakotans more than Floridians turns out to be not a fact but an *artifact* of the concealed preference that we should not count popular votes the federal way that we do.

The electoral college reformers, like their forbearers in the Constitutional Convention, want our government to be more national and less federal.⁵ They do not have to defend that preference, because they hide it behind the apparently factual value judgment that someone can get more popular votes and yet lose the electoral college.

WHY THE CONSTITUTION GAVE US A FEDERAL SYSTEM FOR ELECTING THE PRESIDENT

Anyone who takes the trouble to actually read the debates in the Constitutional Convention will see that what was behind the electoral college was not a hostility to popular election of the president. Virtually all the Founders wanted to encourage coalescence of a popular majority, or as close to it as possible, behind one presidential candidate. But they were aware of significant practical problems about how to do that. Their solution to these problems was to require a nationally distributed popular majority to discourage geographically concentrated popular majorities, that is, those formed primarily out of the most-populous states and the big cities of the Northeast. They wanted popular election but did not want to encourage sectional, including rural-urban, conflict. In particular, they recognized the importance and the justice of small-state concerns that they might be swallowed up by the raw numbers in the larger states.

The Founders' electoral college knowingly gave greater weight to presidential candidates who made broad appeals to all parts of the country and across the inevitable small state-large state, rural-urban, and agricultural-commercial conflicts of interest. They regarded choosing a president as more about reconciling interests, or at least not exacerbating the natural and inevitable conflicts of interest, than about simple arithmetic equality. In contrast, the electoral college reformers regard the occasional, very slight disparity between the electoral college and the national popular vote as more important than an electoral system structured to reconcile conflicting interests.

The Founders' electoral college rests on an argument about what that common good is. I have never seen a critique of the electoral college that appealed to much more than grade school arithmetic, certainly not to the common good of the country as a whole. The persuasiveness of these criticisms comes rather from the assumption that complicated matters of political life can be solved with arithmetic. It is a powerful argument because it is easily understood. In contrast, any defense of the electoral college requires at least the ability to follow a somewhat long argument. But not so many can do that, or want to. And that is its persuasive weakness.

HAS THE SUBSEQUENT DEVELOPMENT OF AMERICAN DEMOCRACY MADE OBSOLETE THE FOUNDERS' ELECTORAL COLLEGE?

The small states feared that direct national election would mean that the president would always come from large states. They thought that "election by the people at large" would tip the Constitution's balance too far in a national, and even in a kingly, direction.

The subsequent development of American democracy has made the Founders' electoral college obsolete only if the problem of majorities' ignoring the interests of minorities has been made obsolete. But has this happened? What states in general have the highest per capita rate of federal spending? Answer: States with large populations and corresponding electoral clout. Conversely, if Medicare reimbursement standards for hospitals, established for the cities, mean closing small town hospitals, should the cities care? If cities establish garbage dumps in rural areas near small towns, should the urbanities care? If nuclear- or coal-burning power plants are built in rural areas to feed electricity-hungry urban areas, who suffers the health and environmental consequences? Are nuclear-waste dumps going to be built in cities? How about new prisons? Does military spending predominate in sparsely populated or heavily populated states? Florida not only gets enormous Social Security and Medicare transfer payments but with Texas owns the government-funded space industry. And what do rural, less-populated states get? Has not agriculture been ravaged by the decline of government subsidies, beginning with the Reagan administration? Is government economic development policy redistributing growth to sparsely populated areas? No, more counties lost than gained population in the last census. Does not energy policy favor the large states of California, Texas, Florida, and New York? Do not people in rural areas pay more for gas and electricity? Does mass transit benefit travelers from Boston to New York to Washington or from Yankton to Fargo? Many sparsely populated areas no longer even have intercity bus service. Where will they be if you take away their electoral college advantage?

We have become a more urban nation than we were in 1787, but that does not change the fundamental political situation between the big and small states and between agricultural and commercial/industrial ways of life. And we have expanded the voting base. But that does not change the fundamental problems and nature of government by consent of the governed, either.

The Constitution's federal features promote the common good, because smaller states have as much a right to protect their interests against national majorities as large states have a right to their greater influence in electing the president. Neither numerical minorities nor majorities have an absolute right either to protect their interests or to rule. In particular, the minorities' right to be protected qualifies and limits pluralities' majorities' right to choose the president. Constitutionally, "the most votes" have a right to prevail in the presidential election. And they do. Absolutely and always. But constitutionally "most" means "as sufficiently broadly dis-

tributed in our federal way of counting the popular vote” as to constitute a national electoral college majority.

HOW THE ELECTORAL COLLEGE STRENGTHENS POPULAR ELECTION OF THE PRESIDENT

The electoral college is an “alloy” of popular will. That means popular election of the president through the electoral college makes popular election fairer to the interests of geographical minorities (small states), and hence elects presidents by broader and more diverse interests than would direct national election. It produces presidents more likely to govern for “the general good” instead of the will of “more” of the national popular vote. The Founders gave us the electoral college in accordance with the thought that democracy is not as much what simple, abstract, national majorities want as it is what preserves democracy.

This alloy also makes the popular choice of the president stronger. It does so by structuring the popular vote to encourage substantial popular support behind the winner of the election. It does this so well that we take for granted that the victorious candidate will have a majority of the popular vote, if not at least approach one.

But we can take this for granted, because the Constitution requires the winner to have a majority of electoral college votes. Because that is hard to do, the electoral college narrows the field of candidates considerably from what it would otherwise be. That is better for democracy, if substantial popular support behind the winner is better for democracy.

Now, take away the electoral college and with it the Constitutional requirement of a majority of electoral college votes and replace it with a new Constitutional requirement of whoever gets the most popular votes nationally. Immediately, anyone with a significant numerical following has an incentive to run. The governors of large states are automatic candidates, as are movie stars, rock musicians, and ethnic leaders. The more candidates who run, the more the popular vote will be divided, and the lower the number and percentage of votes needed to win will become. Since 1828, only one candidate has won with as little as 40 percent of the national popular vote. But that is largely because the electoral college has made it futile for very many candidates to run. Without the electoral college, there would be incentives for many Ross Perots, Jesse Jacksons, Barbara Streisands, governors of California and New York, and even junior Senators from New York to run. The reason is that 15 percent, 30 percent, or even 5 percent might win.

Because direct national election is a recipe for disintegrating popular support for any one candidate, serious proposals include a run-off election if no candidate gets at least 40 percent. But why is it more democratic to elect someone with as little as 40 percent of the national popular vote, when the electoral college already consistently gives us winners with more than that? Both Bush and Gore received about 48 percent in 2000. Clinton had a modern low of 42 percent in 1992. Kennedy and Nixon in 1960 both had 49 percent. Moreover, we know from the example of France that presidential run-offs between the top two candidates

produce lower turnouts than at the initial election, as the candidates some voters cared about are no longer running. What is more democratic about a popular majority of a smaller turnout?

Electing by national popular vote, without any minimum percentage required, gives incentives to produce presidents with lower levels of the popular vote. But perhaps the two major parties will see to it that there is substantial popular backing for one of the two candidates. Yes, but they can do that now because of the electoral college. Now, no one can become president without the parties because the electoral college majority requires organization in almost every state to have any realistic chance of winning. Getting rid of the electoral college majority, especially with no minimum percent of popular votes to replace it, undermines the parties’ ability to perform that function.

But electing by national popular vote with a minimum percentage requirement (say 40 percent) predictably lessens the percentage we already get and elects presidents with the support of fewer voters. Furthermore, a run-off between the top two candidates of the initial election may be between candidates with single-digit voting percentages, depending on how far the disintegration goes, a situation which we cannot know in advance or over the long run.

So the electoral college, even with the possibility that every hundred years or so a difference of a few tenths of a percentage of the popular vote will produce a winner with an ever-so-slightly lower national popular vote total, actually strengthens popular choice of the president. It does so by encouraging, and almost always producing, greater voter support behind the eventual winner. This alloying of the popular vote produces a democratic outcome that is stronger than the popular vote alone could produce. This makes democracy more broadly representative, more consensual, and hence more governable.

CONCLUSION

It is not easy to determine how to elect the president through popular election, while still consolidating something close to a majority of popular support behind one candidate. Election by separate states solves that problem but requires something like the electoral college.

The Founders’ analysis is deeper, and hence better political science, than that of their critics, and their remedy better preserves democracy. But their system was not perfect. Their electoral college failed to prevent what they regarded as one great and divisive evil of popular government, one that they had designed it to prevent: “caballing,” which we call “campaigning.” But anyone is entitled to say that they incorrectly identified that problem; who can say with a straight face that the way we now conduct our presidential elections is seldom characterized by prostitute and daring venality, or corrupted by unbelievable amounts of money, and does not create hostility and rancor among the citizens. Although the Founders’ remedy failed, their analysis continues to instruct us better than does that of their contemporary critics.

NOTES

1. The District of Columbia was given electors by the Twenty-Third Amendment (1961).

2. Speech in U.S. Senate, 23 January 1800 in Max Farrand, ed. *The Records of the Federal Convention of 1787*, Vol. 3 (New Haven, Conn.: Yale University Press, 1966) 383.

3. I will argue that this is a question begging misnomer. The electoral college already is direct popular election. What it is not is direct national

election.

4. I am indebted for this analogy to Judith Best of the State University of New York at Cortland.

5. "Those who wished as far as possible to establish a national instead of a federal government, made repeated attempts to have the President chosen by the people at large." Luther Martin, "The Genuine Information," Delivered to the Legislature of the State of Maryland, 28 December 1787, in Farrand IV, 217. Martin was a leading anti-Federalist delegate to the Constitutional Convention from Maryland.

