

Electoral College

Is it a dinosaur that should be abolished or a last bastion of democracy?

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The idea that the people of the United States elect a president on the Tuesday following the first Monday in November remains a persistent myth of American politics. In fact, the Constitution prescribes a much more complicated procedure that vests the power to choose the president and vice president not in the people of the United States, but rather in 538 electors chosen in the 50 states and the District of Columbia, who collectively are known, somewhat misleadingly, as the Electoral College.

The founders expressed pride in this institution. Alexander Hamilton said that if “it be not perfect, it is at least excellent.” Others dissent. In 1967, for example, an American Bar Association special commission called it “archaic, undemocratic ... and dangerous,” and others have echoed that refrain. Still, the institution remains a feature of our Constitution, and one that assumes special importance every leap year when a presidential selection must be made.

The Electoral College represented a compromise among the founders of the United States about one of the most vexing questions they faced – how to elect a chief executive. The Constitutional Convention considered more than 15 different proposals, including plans for election by Congress or one of its houses, by various state officials, by electors, or by direct popular vote. The founders changed their minds on several occasions. At some junctures, they actually approved election by Congress. But some delegates feared that election by Congress would not reward merit, would make the president dependent on Congress, and would, in Gouverneur Morris’s words, be “the work of intrigue, of cabal, and of faction.”

Morris and James Madison were among those who favored direct election by the people. Proponents of direct election argued that it had worked well in some states to elect a governor, would establish the independence and high caliber of the president, and was the most appropriate method for a democratic government. Others doubted the capacity of the public to choose its leader. Elbridge Gerry worried about the “ignorance of the people.” George Mason thought the vastness of the country would prevent voters from knowing enough about possible candidates to choose intelligently.

The Electoral College was designed to accommodate these competing concerns. Electors chosen simply to elect a president and vice president would not be susceptible to cabal or corruption as would a legislature, especially if they met in their different states (not together) on the same date. Nor could they dominate the president’s conduct of his office, especially if they could not serve in Congress or hold other office. Since the electors would be of the people, the Electoral College bore some resemblance to direct elections. The electors would be highly competent citizens, likely, according to Hamilton, “to possess the information and discernment” to make the necessary investigations. As such, they would mitigate concerns about an uninformed electorate.

An Original Idea, Modified

The Electoral College that the framers designed contained the following features regarding the election of the president and vice president as set forth in Article II, Section I, of the Constitution:

1. Each state has a number of electors for president and vice president equal to the number of senators and representatives to which the state is entitled in Congress.
2. Each state's legislature may decide how to choose its electors.
3. The electors may not be members of Congress or hold an office of trust or profit under the United States.
4. The electors (a) meet in their respective states and (b) once were to vote by ballot for two persons (superseded by the Twelfth Amendment in 1804), at least one of whom may not be an inhabitant of the same state as the elector.
5. The electors in each state prepare and transmit to the president of the Senate certified lists of the votes, which are opened and tallied in a joint session of Congress
6. The person with the most electoral votes, provided a majority of those appointed, becomes president, and the runner-up, vice president (superseded by the Twelfth Amendment).
7. Provision was made for a contingent election of the president by the House of Representatives (if no candidate received a majority or if a tie resulted) and of the vice president by the Senate (if the second and third candidates received equal votes) (modified by the Twelfth Amendment).

Instead of casting two ballots for president, the Twelfth Amendment required that the electors vote separately for president and vice president. Election as president still required a majority of the electoral vote, but now election as vice president required a majority too.

The initial system operated in the first four elections, 1789-1800. In 1789 and 1792, George Washington was elected president, having been named on all ballots. John Adams became vice president, having received a plurality in 1789 (34 of 69 ballots) and a majority in the next election (77 of 132 votes). The development of national political parties by 1796 transformed the Electoral College. No longer were the electors independent actors authorized to use their discretion. Instead, they were partisan loyalists expected to support their party's choice. In 1796, the system produced a Federalist president (Adams) and a Democratic-Republican vice president (Thomas Jefferson). Four years later, ticketmates Jefferson and Aaron Burr received an equal vote from their party's loyal electors, although most intended Jefferson for president and Burr for the second spot. Some 36 ballots of the House of Representatives were required to resolve the deadlock. The results exposed a defect in the original design as modified by emerging practice. Accordingly, in 1804, the Twelfth Amendment to the Constitution was ratified. It modified, to some extent, the procedures listed in items 4, 6, and 7 above.

In addition to the constitutional provisions, state statutes and political practice have shaped the Electoral College system in important ways. The Constitution left to each state the decision as to how to choose electors. Although some state legislatures chose their state's electors during the early nineteenth century, the predominate method then, and the universal approach during the last 100 years or so, has been for the people to vote for the electors (although most states do not

list the electors on the ballot). Similarly, almost all states decided that electors would be chosen statewide, not by districts, on a winner-take-all basis, not according to percentage of votes. Political parties, which the framers did not anticipate, have continued to choose the slate of electors to run in each state.

Electoral College: Case Against

The Electoral College has been a favorite target for political reformers. Critics typically raise several points. First, many argue that the institution is undemocratic, especially since it could lead to the election of a president and vice president who received fewer popular votes than their opponents. Such a result, some contend, would be unfair and might not be accepted as legitimate by the public. On 16 occasions, a candidate has won an electoral majority through receiving less than 50 percent of the popular vote. In fact, on several occasions, the Electoral College has awarded the presidency to a candidate who lost the popular vote. For instance, in 1876, Rutherford B. Hayes achieved an electoral majority (after being awarded the electoral votes of three disputed states by a special electoral commission), although Samuel J. Tilden won a popular majority (though one, some contend, that was the product of electoral fraud). In 1888, Benjamin Harrison won the presidency, although Grover Cleveland won the popular vote (by a margin of less than 1 percent). In other elections, a shift of relatively few votes in certain states would have produced an Electoral College majority for the candidate with fewer popular votes.

Critics also complain that the Electoral College system is undemocratic in a second respect – it weights the votes of some Americans more than those of others. Since each state, regardless of population, has at least three electoral votes (two for its Senate seats and at least one for each representative), the smallest states have a higher ratio for electors to population than do larger states.

On the other hand, the winner-take-all feature that the states have superimposed on the system tends to magnify the importance of voters in the larger states. A candidate who wins California by one popular vote receives 54 electoral votes; one who wins Delaware gets only three. Accordingly, candidates have reason to commit disproportionate time and resources to, and tailor their platforms to the views of voters in, the largest states, thereby enhancing the influence of groups concentrated in the large industrial states.

Critics also express concern about the lack of accountability of electors. Most electors are relatively anonymous individuals, not the eminent persons the founders envisioned. Although chosen by state parties to support particular candidates, on occasions they have not done so, thereby creating concern about the irresponsible elector.

Finally, the arrangements for contingent election by the House of Representatives and Senate raise some concerns. The House and Senate might elect a president and vice president from different parties. They might deadlock to allow the Speaker of the House of Representatives to act as president under the current presidential succession law.

Reformers have proposed various remedies for these perceived defects. They range from abolishing the entire institution and choosing a president and vice president by a direct popular

vote to the more modest proposal to retain the Electoral College votes with the general ticket and winner-take-all statutory features but eliminate the individual electors. Intermediate proposals include choosing electors in districts in each state rather than statewide or choosing them under a system of proportional representation.

Electoral College: Case For

Others, however, defend the Electoral College and suggest that the reforms would either undermine important principles of American democracy or cause unintended consequences. They argue that the institution has generally worked well for two centuries. Not only has the recipient of the most popular votes almost always won an electoral majority, but the Electoral College usually produces a proportionately greater margin than does the popular vote (John F. Kennedy's official 0.1 percent popular margin in 1960 translated into a comfortable 303-to-219 electoral victory). This tendency not only contributes to the mandate of the new president, but also alleviates, to some extent, the need to recount all votes in elections that are close. Accordingly, the institution contributes to the ability of American presidential elections to produce a clear result, not uncertainty.

The Electoral College has rarely awarded the presidency to the popular vote runner-up; in those rare instances when it may have done so, it has not reversed a clear result. In 1824, for example, few states chose electors by popular vote, and turnout was very small. In 1876, there were charges of massive vote fraud, which made the results questionable. In 1888, the popular vote result was a virtual dead heat. On only two occasions – in 1800 and 1824 – has the Electoral College not produced a president (requiring balloting in the House) and only once – in 1836 – has it failed to produce a vice president (requiring a Senate election).

Moreover, supporters of the Electoral College contend that all visions of democracy do not require that the party with the most votes win control. The House or Senate, they point out, might be controlled by a party whose candidates collectively received fewer votes than their opponents. Nor does democracy always require that all votes be weighted equally. The vote of a person in a small state assumes greater significance in electing a United States Senator, for example, than does that of a person in a large state. Nor is it necessarily a problem that the Electoral College favors majorities in large industrial states. In part, our constitutional arrangements are designed to protect minorities from majority control. Other values are also part of our constitutional structure, such as federalism and protecting minority interests, which the Electoral College system arguably assists.

Defenders of the Electoral College also contend that it helps safeguard the two-party system. The winner-take-all feature makes it difficult for third parties to win electoral votes. A party that could command 15 or 20 percent of the vote evenly distributed across the states would receive no electoral votes and accordingly would have less incentive to run and little appeal to potential supporters. Accordingly, the Electoral College has inhibited the formation of ideological or splinter parties and has encouraged the survival of a two-party system, a feature that lends stability and cohesion to American politics.

Despite the historical controversy surrounding the Electoral College – over the years several hundred constitutional amendments to reform or abolish it have been proposed – there appears no immediate likelihood that any amendments will be adopted. That could change if, for example, the 1996 elections produce a president who does not win the popular vote or if the election must be decided in the House of Representatives. The Electoral College remains, however, a subject worthy of study because it illustrates different theories of democracy and shows the way in which our country has accommodated competing interests to fashion political institutions.

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