The Electoral College: Should it be abolished?

The Electoral College has become an extremely unpopular feature of our Constitution in recent decades, especially after the 2000 election, when Democrat Al Gore won the largest number of popular votes (though still less than 50 percent), but George W. Bush won the presidency because he won more electoral votes. The modern liberal complains that the Electoral College method of choosing the president is anti-democratic. The Founders would have answered: Precisely.

The logic of the Electoral College needs to be understood within the broader logic of the Founders’ main concern with avoiding the tyranny of the major - the historic downfall of most democracies. While the president was conceived as a counterweight to the majoritarian tendencies of Congress, the Founders also worried that the president himself could be the focus of popular majoritarianism if he were a directly and popularly elected figure. The Founders believed that presidents who were concerned with popularity - as all modern presidents are - would be more prone to demagoguery. There was little debate at the Philadelphia Convention on this question: the Founders most emphatically did not want the president chosen by direct popular election.

The Electoral College system, in which each state gets one vote for each of its senators, should be seen as one more of the many subtle checks to tyranny of the major in the Constitution - like the separation of powers and the indirect election of senators. (Remember that at the time of the Founding and up until the early twentieth century, the Senate was chosen by state legislatures rather than by popular election. It is no accident that the move to direct election of U.S. senators coincided with the transformation of the presidency during the Progressive Era).

Just as it was thought - correctly, for the most part - that state legislatures would choose eminent men for the Senate, the Founders believed that an electoral college would prove a “filtering” mechanism by which eminent men of sound disposition and broad appeal would be chosen for president.

Modern critics of the Electoral College fail to understand that the Founders wanted to create a certain type of democratic republic, one that did not run by simple majority rule, but rather one whose institutions would create a certain type of major - a deliberative major - a major that is not prone to the unsound populist passions of the moment, and to self-interest. In simple language, the Founders wanted to generate majorities that think. This is one reason for the many constitutional limits on government power, the deliberate procedural and institutional roadblocks to hasty lawmaking, our independent judiciary, and American federalism.

The Electoral College is entirely consistent with the Founders’ aim of creating what might be called, in contrast to a simple majority, a constitutional major. The electoral college assists in generating a deliberative major by compelling candidates to get votes distributed among all states - large and small; north, south, east, and west; industrial and agricultural; urban and rural - and not just in big cities or a handful of populous states. A presidential candidate has to keep the diverse interests of different states and populations in mind to win a truly national major. Candidates with only regional appeal, such as Strom Thurmond in 1948 or George Wallace in 1968, cannot succeed in winning the constitutional majority required by the Electoral College.

The controversial 2000 election actually shows the logic of the Electoral College playing out as the Founders intended. While Al Gore won about 500,000 more popular votes than George W. Bush, Bush won majorities in thirty states, while Gore won majorities in twenty. In fact, the entire margin of Gore’s popular major came from just a single large state - California - meaning that he actually received fewer votes than Bush in the other forty-nine states. Bush’s votes were more evenly distributed throughout the nation than Gore’s - which is exactly the logic of a constitutional major, as opposed to a mere popular major. In other words, Bush was more widely acceptable to the nation than Gore was. The 2000 election showed the Electoral College system at its best, ensuring that the interests of small states could make a difference - something the delegates from small states worried about in 1787.

Al Gore lost the traditionally Democratic state of West Virginia in part because of his well-known hostility to the coal industry, one of the state’s major economic sectors. Had Gore won West Virginia as Democratic presidential candidates typically have, he would have won the Electoral College, and the fracas in Florida would not have mattered. (Gore also lost his home state of Tennessee, in part because of his hostility to coal and also because of his ambivalence about gun control).

The Constitution did not specify how the individual states were to select their electors for the Electoral College, but most adopted some scheme of popular election, the the winner-take-all format that we know today. This method of
choosing electors has the advantage of transforming a small majority or even a mere plurality in the popular vote into a large constitutional majority in the Electoral College vote.

Political parties, which developed rapidly in the early years of the American republic, came to perform some of the same “filtering” function as the Electoral College, especially in the long-time practice of party bosses meeting and compromising on what candidate a party should put forward for the presidency. Although the Electoral College has survived, the rise of primary elections and the decline of parties has moved our presidential selection closer to the kind of populist demagogic system the Founders feared.\(^1\)

In order to appreciate the reasons for the Electoral College, it is essential to understand its historical context and the problem that the Founding Fathers were trying to solve. They faced the difficult question of how to elect a president in a nation that:

* was composed of thirteen large and small States jealous of their own rights and powers and suspicious of any central national government
* contained only 4,000,000 people spread up and down a thousand miles of Atlantic seaboard barely connected by transportation or communication (so that national campaigns were impractical even if they had been thought desirable)
* believed, under the influence of such British political thinkers as Henry St John Bolingbroke, that political parties were mischievous if not downright evil, and
* felt that gentlemen should not campaign for public office (The saying was "The office should seek the man, the man should not seek the office.").

How, then, to choose a president without political parties, without national campaigns, and without upsetting the carefully designed balance between the presidency and the Congress on one hand and between the States and the federal government on the other?

**Origins of the Electoral College**

The Constitutional Convention considered several possible methods of selecting a president. One idea was to have the Congress choose the president. This idea was rejected, however, because some felt that making such a choice would be too divisive an issue and leave too many hard feelings in the Congress. Others felt that such a procedure would invite unseemly political bargaining, corruption, and perhaps even interference from foreign powers. Still others felt that such an arrangement would upset the balance of power between the legislative and executive branches of the federal government.

A second idea was to have the State legislatures select the president. This idea, too, was rejected out of fears that a president so beholden to the State legislatures might permit them to erode federal authority and thus undermine the whole idea of a federation.

A third idea was to have the president elected by a direct popular vote. Direct election was rejected not because the Framers of the Constitution doubted public intelligence but rather because they feared that without sufficient information about candidates from outside their State, people would naturally vote for a “favorite son” from their own State or region. At worst, no president would emerge with a popular majority sufficient to govern the whole country. At best, the choice of president would always be decided by the largest, most populous States with little regard for the smaller ones.

Finally, a so-called "Committee of Eleven" in the Constitutional Convention proposed an indirect election of the president through a College of Electors.

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The First Design

In the first design of the Electoral College (described in Article II, Section I of the Constitution):
Each State was allocated a number of Electors equal to the number of its U.S. Senators (always 2) plus the number of its U.S. Representatives (which may change each decade according to the size of each State's population as determined in the decennial census). This arrangement built upon an earlier compromise in the design of the Congress itself and thus satisfied both large and small States.

- The manner of choosing the Electors was left to the individual State legislatures, thereby pacifying States suspicious of a central national government.
- Members of Congress and employees of the federal government were specifically prohibited from serving as an Elector in order to maintain the balance between the legislative and executive branches of the federal government.
- Each State's Electors were required to meet in their respective States rather than all together in one great meeting. This arrangement, it was thought, would prevent bribery, corruption, secret dealing, and foreign influence.
- In order to prevent Electors from voting only for a "favorite son" of their own State, each Elector was required to cast two votes for president, at least one of which had to be for someone outside their home State. The idea, presumably, was that the winner would likely be everyone's second favorite choice.
- The electoral votes were to be sealed and transmitted from each of the States to the President of the Senate who would then open them before both houses of the Congress and read the results.
- The person with the most electoral votes, provided that it was an absolute majority (at least one over half of the total), became president. Whoever obtained the next greatest number of electoral votes became vice president -- an office which they seem to have invented for the occasion since it had not been mentioned previously in the Constitutional Convention.
- In the event that no one obtained an absolute majority in the Electoral College or in the event of a tie vote, the U.S. House of Representatives, as the chamber closest to the people, would choose the president from among the top five contenders. They would do this (as a further concession to the small States) by allowing each State to cast only one vote with an absolute majority of the States being required to elect a president. The vice presidency would go to whatever remaining contender had the greatest number of electoral votes. If that, too, was tied, the U.S. Senate would break the tie by deciding between the two.

In all, this was quite an elaborate design. But it was also a very clever one when you consider that the whole operation was supposed to work without political parties and without national campaigns while maintaining the balances and satisfying the fears in play at the time. Indeed, it is probably because the Electoral College was originally designed to operate in an environment so totally different from our own that many people think it is anachronistic and fail to appreciate the new purposes it now serves. But of that, more later.

The Pro's and Con's of the Electoral College System

There have, in its 200-year history, been a number of critics and 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, though perhaps less vocal than its critics, offer very powerful arguments in its favor.

Arguments Against the Electoral College

Those who object to the Electoral College system and favor a direct popular election of the president generally do so on four grounds:

- the possibility of electing a minority president
- the risk of so-called "faithless" Electors,
- the possible role of the Electoral College in depressing voter turnout,
Opponents of the Electoral College are disturbed by the possibility of electing a minority president (one without the absolute majority of popular votes). Nor is this concern entirely unfounded since there are three ways in which that could happen.

One way in which a minority president could be elected is if the country were so deeply divided politically that three or more presidential candidates split the electoral votes among them such that no one obtained the necessary majority. This occurred, as noted above, in 1824 and was unsuccessfully attempted in 1948 and again in 1968. Should that happen today, there are two possible resolutions: either one candidate could throw his electoral votes to the support of another (before the meeting of the Electors) or else, absent an absolute majority in the Electoral College, the U.S. House of Representatives would select the president in accordance with the 12th Amendment. Either way, though, the person taking office would not have obtained the absolute majority of the popular vote. Yet it is unclear how a direct election of the president could resolve such a deep national conflict without introducing a presidential run-off election -- a procedure which would add substantially to the time, cost, and effort already devoted to selecting a president and which might well deepen the political divisions while trying to resolve them.

A second way in which a minority president could take office is if, as in 1888, one candidate's popular support were heavily concentrated in a few States while the other candidate maintained a slim popular lead in enough States to win the needed majority of the Electoral College. While the country has occasionally come close to this sort of outcome, the question here is whether the distribution of a candidate's popular support should be taken into account alongside the relative size of it. This issue was mentioned above and is discussed at greater length below.

A third way of electing a minority president is if a third party or candidate, however small, drew enough votes from the top two that no one received over 50% of the national popular total. Far from being unusual, this sort of thing has, in fact, happened 15 times including (in this century) Wilson in both 1912 and 1916, Truman in 1948, Kennedy in 1960, Nixon in 1968, and Clinton in both 1992 and 1996. The only remarkable thing about those outcomes is that few people noticed and even fewer cared. Nor would a direct election have changed those outcomes without a run-off requiring over 50% of the popular vote (an idea which not even proponents of a direct election seem to advocate).

Opponents of the Electoral College system also point to the risk of so-called “faithless” Electors. A “faithless Elector” is one who is pledged to vote for his party's candidate for president but nevertheless votes for another candidate. There have been 7 such Electors in this century and as recently as 1988 when a Democrat Elector in the State of West Virginia cast his votes for Lloyd Bensen for president and Michael Dukakis for vice president instead of the other way around. Faithless Electors have never changed the outcome of an election, though, simply because most often their purpose is to make a statement rather than make a difference. That is to say, when the electoral vote outcome is so obviously going to be for one candidate or the other, an occasional Elector casts a vote for some personal favorite knowing full well that it will not make a difference in the result. Still, if the prospect of a faithless Elector is so fearsome as to warrant a Constitutional amendment, then it is possible to solve the problem without abolishing the Electoral College merely by eliminating the individual Electors in favor of a purely mathematical process (since the individual Electors are no longer essential to its operation).

Opponents of the Electoral College are further concerned about its possible role in depressing voter turnout. Their argument is that, since each State is entitled to the same number of electoral votes regardless of its voter turnout, there is no incentive in the States to encourage voter participation. Indeed, there may even be an incentive to discourage participation (and they often cite the South here) so as to enable a minority of citizens to decide the electoral vote for the whole State. While this argument has a certain surface plausibility, it fails to account for the fact that presidential elections do not occur in a vacuum. States also conduct other elections (for U.S. Senators, U.S. Representatives, State Governors, State legislators, and a host of local officials) in which these same incentives and disincentives are likely to operate, if at all, with an even greater force. It is hard to imagine what counter-incentive would be created by eliminating the Electoral College.

Finally, some opponents of the Electoral College point out, quite correctly, its failure to accurately reflect the national popular will in at least two respects.

First, the distribution of Electoral votes in the College tends to over-represent people in rural States. This is because the number of Electors for each State is determined by the number of members it has in the House (which more or less reflects the State's population size) plus the number of members it has in the Senate (which is always two regardless
of the State’s population). The result is that in 1988, for example, the combined voting age population (3,119,000) of the seven least populous jurisdictions of Alaska, Delaware, the District of Columbia, North Dakota, South Dakota, Vermont, and Wyoming carried the same voting strength in the Electoral College (21 Electoral votes) as the 9,614,000 persons of voting age in the State of Florida. Each Floridian’s potential vote, then, carried about one third the weight of a potential vote in the other States listed.

A second way in which the Electoral College fails to accurately reflect the national popular will stems primarily from the winner-take-all mechanism whereby the presidential candidate who wins the most popular votes in the State wins all the Electoral votes of that State. One effect of this mechanism is to make it extremely difficult for third-party or independent candidates ever to make much of a showing in the Electoral College. If, for example, a third-party or independent candidate were to win the support of even as many as 25% of the voter’s nationwide, he might still end up with no Electoral College votes at all unless he won a plurality of votes in at least one State. And even if he managed to win a few States, his support elsewhere would not be reflected. By thus failing to accurately reflect the national popular will, the argument goes, the Electoral College reinforces a two-party system, discourages third-party or independent candidates, and thereby tends to restrict choices available to the electorate.

In response to these arguments, proponents of the Electoral College point out that it was never intended to reflect the national popular will. As for the first issue, that the Electoral College over-represents rural populations, proponents respond that the United States Senate -- with two seats per State regardless of its population -- over-represents rural populations far more dramatically. But since there have been no serious proposals to abolish the United States Senate on these grounds, why should such an argument be used to abolish the lesser case of the Electoral College? Because the presidency represents the whole country? But so, as an institution, does the United States Senate.

As for the second issue of the Electoral College’s role in reinforcing a two-party system, proponents, as we shall see, find this to be a positive virtue.

Arguments for the Electoral College

Proponents of the Electoral College system normally defend it on the philosophical grounds that it:

✴ contributes to the cohesiveness of the country by requiring a distribution of popular support to be elected president
✴ enhances the status of minority interests,
✴ contributes to the political stability of the nation by encouraging a two-party system, and
✴ maintains a federal system of government and representation.

Recognizing the strong regional interests and loyalties which have played so great a role in American history, proponents argue that the Electoral College system contributes to the cohesiveness of the country by requiring a distribution of popular support to be elected president. Without such a mechanism, they point out, presidents would be selected either through the domination of one populous region over the others or through the domination of large metropolitan areas over the rural ones. Indeed, it is principally because of the Electoral College that presidential nominees are inclined to select vice presidential running mates from a region other than their own. For as things stand now, no one region contains the absolute majority (270) of electoral votes required to elect a president. Thus, there is an incentive for presidential candidates to pull together coalitions of States and regions rather than to exacerbate regional differences. Such a unifying mechanism seems especially prudent in view of the severe regional problems that have typically plagued geographically large nations such as China, India, the Soviet Union, and even, in its time, the Roman Empire.

This unifying mechanism does not, however, come without a small price. And the price is that in very close popular elections, it is possible that the candidate who wins a slight majority of popular votes may not be the one elected president -- depending (as in 1888) on whether his popularity is concentrated in a few States or whether it is more evenly distributed across the States. Yet this is less of a problem than it seems since, as a practical matter, the popular difference between the two candidates would likely be so small that either candidate could govern effectively.

Proponents thus believe that the practical value of requiring a distribution of popular support outweighs whatever sentimental value may attach to obtaining a bare majority of the popular support. Indeed, they point out that the Electoral College system is designed to work in a rational series of defaults: if, in the first instance, a candidate
receives a substantial majority of the popular vote, then that candidate is virtually certain to win enough electoral votes to be elected president; in the event that the popular vote is extremely close, then the election defaults to that candidate with the best distribution of popular votes (as evidenced by obtaining the absolute majority of electoral votes); in the event the country is so divided that no one obtains an absolute majority of electoral votes, then the choice of president defaults to the States in the U.S. House of Representatives. One way or another, then, the winning candidate must demonstrate both a sufficient popular support to govern as well as a sufficient distribution of that support to govern.

Proponents also point out that, far from diminishing minority interests by depressing voter participation, the Electoral College actually enhances the status of minority groups. This is so because the votes of even small minorities in a State may make the difference between winning all of that State's electoral votes or none of that State's electoral votes. And since ethnic minority groups in the United States happen to concentrate in those States with the most electoral votes, they assume an importance to presidential candidates well out of proportion to their number. The same principle applies to other special interest groups such as labor unions, farmers, environmentalists, and so forth.

It is because of this "leverage effect" that the presidency, as an institution, tends to be more sensitive to ethnic minority and other special interest groups than does the Congress as an institution. Changing to a direct election of the president would therefore actually damage minority interests since their votes would be overwhelmed by a national popular majority.

Proponents further argue that the Electoral College contributes to the political stability of the nation by encouraging a two-party system. There can be no doubt that the Electoral College has encouraged and helps to maintain a two-party system in the United States. This is true simply because it is extremely difficult for a new or minor party to win enough popular votes in enough States to have a chance of winning the presidency. Even if they won enough electoral votes to force the decision into the U.S. House of Representatives, they would still have to have a majority of over half the State delegations in order to elect their candidate -- and in that case, they would hardly be considered a minor party. In addition to protecting the presidency from impassioned but transitory third party movements, the practical effect of the Electoral College (along with the single-member district system of representation in the Congress) is to virtually force third party movements into one of the two major political parties. Conversely, the major parties have every incentive to absorb minor party movements in their continual attempt to win popular majorities in the States. In this process of assimilation, third party movements are obliged to compromise their more radical views if they hope to attain any of their more generally acceptable objectives. Thus we end up with two large, pragmatic political parties which tend to the center of public opinion rather than dozens of smaller political parties catering to divergent and sometimes extremist views. In other words, such a system forces political coalitions to occur within the political parties rather than within the government.

A direct popular election of the president would likely have the opposite effect. For in a direct popular election, there would be every incentive for a multitude of minor parties to form in an attempt to prevent whatever popular majority might be necessary to elect a president. The surviving candidates would thus be drawn to the regionalist or extremist views represented by these parties in hopes of winning the run-off election.

The result of a direct popular election for president, then, would likely be a frayed and unstable political system characterized by a multitude of political parties and by more radical changes in policies from one administration to the next. The Electoral College system, in contrast, encourages political parties to coalesce divergent interests into two sets of coherent alternatives. Such an organization of social conflict and political debate contributes to the political stability of the nation.

Finally, its proponents argue quite correctly that the Electoral College maintains a federal system of government and representation. Their reasoning is that in a formal federal structure, important political powers are reserved to the component States. In the United States, for example, the House of Representatives was designed to represent the States according to the size of their population. The States are even responsible for drawing the district lines for their House seats. The Senate was designed to represent each State equally regardless of its population. And the Electoral College was designed to represent each State's choice for the presidency (with the number of each State's electoral votes being the number of its Senators plus the number of its Representatives). To abolish the Electoral College in favor of a nationwide popular election for president would strike at the very heart of the federal structure laid out in our Constitution and would lead to the nationalization of our central government -- to the detriment of the States.
Indeed, if we become obsessed with government by popular majority as the only consideration, should we not then abolish the Senate which represents States regardless of population? Should we not correct the minor distortions in the House (caused by districting and by guaranteeing each State at least one Representative) by changing it to a system of proportional representation? This would accomplish "government by popular majority" and guarantee the representation of minority parties, but it would also demolish our federal system of government. If there are reasons to maintain State representation in the Senate and House as they exist today, then surely these same reasons apply to the choice of president. Why, then, apply a sentimental attachment to popular majorities only to the Electoral College?

The fact is, they argue, that the original design of our federal system of government was thoroughly and wisely debated by the Founding Fathers. State viewpoints, they decided, are more important than political minority viewpoints. And the collective opinion of the individual State populations is more important than the opinion of the national population taken as a whole. Nor should we tamper with the careful balance of power between the national and State governments which the Founding Fathers intended and which is reflected in the Electoral College. To do so would fundamentally alter the nature of our government and might well bring about consequences that even the reformers would come to regret.²

² William C. Kimberling, The Electoral College