



University of Tennessee, Knoxville
**TRACE: Tennessee Research and Creative
Exchange**

Chancellor's Honors Program Projects

Supervised Undergraduate Student Research
and Creative Work

Spring 5-1998

The Electoral College: What Is It Good For?

Jason D. Spain

University of Tennessee - Knoxville

Follow this and additional works at: https://trace.tennessee.edu/utk_chanhonoproj

Recommended Citation

Spain, Jason D., "The Electoral College: What Is It Good For?" (1998). *Chancellor's Honors Program Projects*.

https://trace.tennessee.edu/utk_chanhonoproj/282

This is brought to you for free and open access by the Supervised Undergraduate Student Research and Creative Work at TRACE: Tennessee Research and Creative Exchange. It has been accepted for inclusion in Chancellor's Honors Program Projects by an authorized administrator of TRACE: Tennessee Research and Creative Exchange. For more information, please contact trace@utk.edu.

**Appendix D - UNIVERSITY HONORS PROGRAM
SENIOR PROJECT - APPROVAL**

Name: Jason D. Spain

College: Business Department: Public Administration

Faculty Mentor: Anthony Nownes

PROJECT TITLE: The Electoral College: What Is It

Good For?

I have reviewed this completed senior honors thesis with this student and certify that it is a project commensurate with honors level undergraduate research in this field.

Signed: Anthony J. Nownes, Faculty Mentor

Date: May 11, 1998

Comments (Optional):

This is good. Congratulations.

The Electoral College: What Is It Good For?

Jason D. Spain
Honors Thesis
Spring 1998

TABLE OF CONTENTS

INTRODUCTION.....	1
WHAT IS THE ELECTORAL COLLEGE?	1
WHY DOES THE UNITED STATES HAVE AN ELECTORAL COLLEGE?	2
DOES THE ELECTORAL COLLEGE WORK AS INTENDED BY THE FOUNDERS?.....	4
HOW DOES THE ELECTORAL COLLEGE WORK TODAY?	5
CRITICISMS OF THE ELECTORAL COLLEGE	6
THE FAITHLESS ELECTOR	6
THE CONSTANT TWO ELECTORAL VOTES	8
THE CONTINGENCY ELECTION PROCEDURE.....	9
THE WINNER-TAKE-ALL SYSTEM.....	10
UNCERTAINTY OF THE WINNER WINNING	13
SIGNIFICANCE	15
REFORM PROPOSALS	17
THE AUTOMATIC PLAN.....	17
THE DISTRICT PLAN	19
THE PROPORTIONAL PLAN	21
DIRECT POPULAR ELECTION	22
CONCLUSION	23

“Every boy and girl should go to college and if they can’t afford Yale or Harvard, why, Electoral is just as good, if you work.”

“I’ve heard some very nice things said about Electoral. It’s here in the neighborhood somewhere. I think it’s that bunch of red-brick buildings about three blocks farther down.”

“The guys at the bar poor-mouth Electoral somethin’ awful. Wasn’t they mixed up in a basketball scandal or somethin’?”

“I think every kid should go to Electoral...whether they want to or not.”

Man-on-the-street interviews¹

Introduction

What is the Electoral College?

The electoral college is the system prescribed by the Constitution for selecting the president and vice-president of the United States. Article II, Section 1 of the U.S. Constitution prescribes that each state must choose a number of electors equal to the number of that state’s Congressional delegation, or the number of representatives it has plus two senators, by a method chosen by the state’s legislature.² The electors must then meet in their respective states on a day chosen by Congress to cast their ballots for the presidential candidate of their choice. A record of the vote is then transmitted to the president of the Senate, who tabulates the votes from all of the states.

Originally, electors voted for two candidates without distinguishing between a vote for president and vice-president. The candidate who received the highest number of electoral votes was the president as long as he received a

majority of all electoral votes. If two candidates were tied for first place, the House of Representatives would choose between them, with each state's delegation receiving one vote. If the candidate receiving the highest number of votes did not have a majority, the House, again voting by state, selected the president from among the top five vote-getters. After the choice of a president, the remaining candidate receiving the highest number of electoral votes was the vice-president with the Senate being authorized to make a selection in case of a tie.³

However, Amendment XII, passed in 1804, changed the system so that electors now cast votes for president and vice-president separately. Further, if no presidential candidate receives a majority, the House of Representatives now selects from only the top three vote-getters. If no vice-presidential candidate receives a majority, the Senate chooses the vice-president from the top two candidates.⁴

Why does the United States Have an Electoral College?

The Constitutional Convention, which met in Philadelphia from May 25 to September 17, 1787, was not so much a meeting of the minds of the founding fathers as one might be led to believe. In fact, the delegates to the convention had to face "massive tensions and rivalries as [they] sought to draft a new constitution". The delegates were attempting to achieve consensus on such issues as the degree of centralized power to give to the new federal government, the separation of powers among the branches of government, and the method of

allotting representation to the several states in the new congress in spite of profound differences of opinion. As the convention moved to determine the method by which the president would be elected in late August, "there was little wish to see the conflicts and tensions that had plagued the preceding months of the convention renewed".⁵

Two plans for selecting the president were originally taken into consideration by the delegates. The first, direct election of the president by popular vote, had little support. Proponents of the plan argued that the president, senators, and representatives should be elected by popular vote so as to keep them as independent of each other as possible. Supporters also felt that if the president was to represent the people, he should be elected by the people. Opponents of the plan, however, did not want the president to be selected by the uneducated public at large. The delegates defeated the plan by a vote of two to nine. The second plan proposed that the president be elected by Congress. While this plan passed three votes, it failed the final hurdle by a count of two to eight after opponents convinced the convention that a president chosen by Congress would necessarily become subservient to Congress.

In the end, a Committee of Eleven was appointed by the convention to come up with a compromise on how to elect the president. Since they had seen plans both for direct popular election and for election by Congress fail, the members of the committee set out to find another alternative. What the committee returned to the delegates was a plan providing for an intermediate

electoral body, known today as the electoral college.⁶ The plan was adopted by the convention after only brief debate on September 7, 1787.⁷

Does the Electoral College Work as Intended by the Founders?

When the founding fathers decided to include this intermediate electoral body in the Constitution, they had a vision of how they intended it to function. They based this vision on the assumption that a presidential candidate would rarely be able to achieve the necessary majority in the electoral college; an assumption which, over time, has proven to be false.

The founders assumed that, since no candidate would be able to achieve an electoral majority, the electors would, in effect, nominate a few prominent individuals from which the House of Representatives would elect the president. Based on this belief, the founders also intended for the electoral college to be a system that balanced the principles of representation based on population and equal representation among the states similar to the Connecticut Plan, or the "Great Compromise". While the number of electors allotted to each state is based on population, each state would have an equal voice in the House election. However, this balance of interests was based on the assumption that the House contingency plan would normally be employed to decide the outcome of the election. In fact, only twice, in 1800 and 1824, has a candidate failed to receive an electoral vote majority.⁸

The delegates to the constitutional convention assumed that candidates for a national office would be unable to satisfy diverse state and regional

interests. What the founders did not foresee was the rise of national political parties, whose almost sole purpose is to create a national consensus in support of their candidate. Nor did the founders anticipate the rise of a national media which would allow presidential candidates to reach virtually every home in America.

How Does the Electoral College Work Today?

The electoral college now consists of 538 electors: 435 corresponding to the number of representatives in the House, 100 corresponding to the number of senators, and, since the ratification of the Twenty-third Amendment in March of 1961, an additional three for the District of Columbia.⁹ While the popular election determines which slate, or group, of electors casts its votes for president, candidates for elector are usually nominated by party conventions, in primary elections, or by party organizations.¹⁰ The electors are chosen by popular election on the Tuesday after the first Monday in November. The slate of electors for the presidential candidate receiving the most popular votes is recorded on a Certificate of Ascertainment.¹¹

The next step is for the electors to meet in their respective states and cast their votes. Following the ratification of the Twentieth Amendment in 1933, which moved inauguration day from March 4 to January 20, Congress changed the meeting day for the electors from the first Wednesday in December to the first Monday after the second Wednesday in December, which it has remained ever since.¹² When the electors meet, usually in their respective state capitols,

Certificates of Vote are prepared listing all candidates voted for as president and as vice-president and the number of electors voting for each.¹³

The certificates are opened on the following January 6 by the president of the Senate, presiding at a joint session of Congress. The votes are counted by tellers and the election is decided by a majority of the total electoral college vote. In the event that no candidate for president receives an electoral majority, the House of Representatives elects the president from the three candidates standing highest in electoral votes. Each state's delegation casts only one vote, which is determined by a majority of its representatives. A majority of all the states is required for election. For vice-president, the senate elects from the two highest candidates if a majority is lacking in the electoral college. Again, a majority of the states is required for election.¹⁴

Criticisms of the Electoral College

The Faithless Elector

The problem of the faithless elector refers to the possibility that an elector may not cast his vote in accordance with the will of the state's electorate. The Constitution does not prescribe that electors must give their votes to the winner of their states' popular elections. In fact, the founding fathers did not foresee the popular election of electors based solely on the candidate for which they were expected to vote, but rather they thought that electors would be chosen because of their intelligence and status to cast their votes as they saw fit. "[T]he electoral

college today is not the gathering of wise and learned elders as envisioned by its creators, but is rather little more than a motley state-by-state collection of political hacks and fat cats usually selected because of their past loyalty and support for their party.”¹⁵

In an effort to correct the problem of the faithless elector, fifteen states have passed laws requiring their electors to vote for the presidential candidate of their party.¹⁶ However, these are in practice unenforceable and almost certainly unconstitutional. “The language of the Constitution directs that ‘the electors shall vote’—which suggests that they have discretion as to how they cast their votes.”¹⁷

The problem of the faithless elector is neither theoretical nor inconsequential. While there have been a number of unfaithful electors throughout American history, the exact number is in dispute. The estimates range from five to seventeen, but most sources agree that there have been eight faithless electors in seven of the last twelve presidential elections dating back to 1948. While no occurrence of the faithless elector problem has ever affected the outcome of an election, “the possibility of such action on a multiple basis in the case of an electoral vote majority resting on one or two votes proves its potential importance”.¹⁸ For instance, if about 5,560 votes had shifted from Jimmy Carter to Gerald Ford in the state of Ohio in the 1976 presidential election, Carter would have lost that state and been left with only 272 electoral votes. With Carter having only two more votes than the absolute minimum needed of 270, “two or three Democratic individual electors seeking personal recognition or attention to

a pet cause could withhold—or threaten to withhold—their electoral votes from Carter, and thus make the election outcome very uncertain”.¹⁹

The Constant Two Electoral Votes

Under the constitutional formula, a state receives one electoral vote per senator and representative. Therefore, a state can have no less than three electoral votes, one each for its representative and two senators, even if its population would entitle it to only one or two votes. Thus, as Table 1 and Table 2 illustrate, voters in small states actually control more electoral votes per voter than citizens who cast their votes in larger states.²⁰

Table 1: Electoral Votes per Inhabitant -- 5 Largest States

State	# of Electoral Votes	Estimated Population as of 7/1/97	# of Electoral Votes per Inhabitant
California	54	32,268,301	0.00000167
Texas	32	19,439,337	0.00000165
New York	33	18,137,226	0.00000182
Florida	25	14,653,945	0.00000171
Pennsylvania	23	12,019,661	0.00000191

*Population estimates from U.S. Census Bureau; electoral votes from Federal Register.

Table 2: Electoral Votes per Inhabitant -- 5 Smallest States

State	# of Electoral Votes	Estimated Population as of 7/1/97	# of Electoral Votes per Inhabitant
Delaware	3	731,581	0.00000410
North Dakota	3	640,883	0.00000468
Alaska	3	609,311	0.00000492
Vermont	3	588,978	0.00000509
Wyoming	3	479,743	0.00000625

*Population estimates from U.S. Census Bureau; electoral votes from Federal Register.

The Contingency Election Procedure

Another aspect of the electoral college system that is the target of much criticism is the contingency election procedure. The Constitution prescribes that, in the event that no candidate receives an absolute majority of electoral votes, the House of Representatives chooses the president from among the top three candidates.²¹ The House has only been called upon to decide two elections. In 1800, the House elected Thomas Jefferson over Aaron Burr, and in 1824, it elected John Quincy Adams over Andrew Jackson.²²

While the contingency system has fallen into disuse since 1824, relatively small vote shifts in several recent elections would have sent the choice of president into the House of Representatives. For instance, a switch of less than 9,000 votes from John F. Kennedy to Richard Nixon in the two states of Illinois and Missouri would have prevented either candidate from receiving an electoral college majority in the election of 1960. Similarly, in 1968, a 53,000 popular vote shift in New Jersey, Missouri, and New Hampshire would have left Nixon with only 269 of the necessary 270 electoral votes. Finally, in the election of 1976, if about 11,950 voters in the states of Delaware and Ohio had cast their votes for Ford instead of Carter, the result would have been an exact tie of 269 to 269 in the electoral college.²³

One criticism of the contingency election procedure is that, should the election be decided by the House of Representatives, each state has only one vote, regardless of its population. Thus, in theory, the twenty-six smallest states,

with only seventeen percent of the population of the United States, “could impose on the nation a president of their choosing”.²⁴ For example, in the 1990s, “the seven Representatives from the seven single member smallest states could outvote the 177 House members from the six largest states”.²⁵

There are other problems with the contingency election plan, as well. First, since the Constitution requires that the election go into the House of Representatives to select the president and into the Senate to select the vice-president in the event that the electoral college fails to reach a majority, “[t]here might be a paralyzing delay in determining the victors, and the president-elect and vice-president-elect could be members of opposing political parties”.²⁶ Also, voters residing in the District of Columbia would have no representation at all in the election of the president. In addition, there is the possibility that the House of Representatives could be unable to agree on a president. While this would be unlikely in a two-candidate race, three-candidate elections such as 1968, 1980, and 1992 could create “enormous difficulties in getting a majority of states behind one candidate as House members agonized over choosing between partisan labels and support for the candidate (such as George Wallace, John Anderson, or Ross Perot) who might have carried their district”.²⁷

The Winner-Take-All System

An additional problem of the electoral college is the winner-take-all system. Every state except two (Maine and Nebraska) has a statutory provision

giving all of the state's electoral votes to the winner of the state's popular vote plurality.²⁸ This seemingly simple provision has several adverse consequences.

First, the winner-take-all system makes it nearly impossible for a third-party candidate to affect, much less win, a presidential election. Since each state's votes are awarded as a unit to the candidate receiving a plurality in that state's popular election, all other votes are in effect wasted. For example, in 1968, George Wallace, candidate of the American Independent party, received about five million votes outside the South but won electoral votes only in the five southern states he carried. Running as an independent in 1980, John B. Anderson received no electoral votes in spite of receiving nearly six million popular votes, or 6.6 percent of the total vote. In 1992, Ross Perot received nearly twenty million popular votes, winning more than twenty-seven percent of the vote in Maine, Alaska, Idaho, Utah, and Kansas, and yet did not receive a single electoral vote. Perot was again shut out in the electoral college in 1996, in spite of receiving 8.4 percent of the total vote, or eight million popular votes.²⁹

Also, this method of awarding electoral votes has a tendency to exaggerate or magnify the strength of the winner. For example, Dwight D. Eisenhower received approximately fifty-five percent of the popular vote in the presidential election of 1952 but won over eighty-three percent of the nation's electoral votes. Similarly, Franklin D. Roosevelt received ninety-eight percent of the electoral votes in 1936 but received only sixty percent of the popular vote.³⁰ In the most recent election of 1996, Bill Clinton received seventy percent of the electoral votes but only fifty-five percent of the total popular vote.

Yet another criticism of the winner-take-all system, also known as the unit rule, is that votes for a candidate who fails to win a state's popular election are not only not credited to the candidate for whom they were cast, but are actually given to the winning candidate. As stated by Senator Thomas Hart Benton of Missouri in 1824, "[t]o lose their votes is the fate of all minorities, and it is their duty to submit; but this is not a case of votes lost, but of votes taken away, added to those of the majority, and given to a person to whom the minority is opposed".³¹ Thus, the unit rule has the effect of transferring all votes to the winning candidate, regardless of how the voters actually cast their ballots.

Finally, the winner-take-all system tremendously magnifies the power of the larger states, and thus the relative voting power of residents of those states, in electing the president. A voter in one of the larger states "might, by a vote cast, decide not just one popular vote, but how a bloc of 33 or 54 electoral votes are cast".³² Obviously, this fact affects candidates' campaign strategies. As Table 3 illustrates, a candidate needs only to win pluralities in the eleven largest states to achieve an electoral majority.

State	Electoral Votes
California	54
New York	33
Texas	32
Florida	25
Pennsylvania	23
Illinois	22
Ohio	21
Michigan	18
New Jersey	15
North Carolina	14
Georgia	13
Total	270

*Data from National Archives and Records Administration.

Thus, the remaining thirty-nine states would have no voice whatsoever in the election of the president. The fact that a candidate can win the presidency with pluralities in only the eleven largest states also leads to another major criticism of the electoral college.

Uncertainty of the Winner Winning

Because a candidate needs only to win a plurality in a state's popular election in order to receive all of that state's electoral votes, it is possible for a candidate to lose the popular election but still win in the electoral college, and thus become a "minority" president. If a candidate loses the popular elections in the smaller states by large margins but wins in the large states by slim margins, it is possible for that candidate to win an electoral majority without even winning a plurality in the popular election.

In fact, three times in the history of the United States has a president been elected by the electoral college in spite of losing the popular vote.

Election Year	1824		1876		1888	
	President	Main Opponent	President	Main Opponent	President	Main Opponent
	John Q. Adams	Andrew Jackson	Rutherford B. Hayes	Samuel J. Tilden	Benjamin Harrison	Grover Cleveland
Popular Votes	108,740	153,544	4,036,298	4,300,590	5,439,853	5,540,309
Electoral Votes	84	99	185	184	233	168
Total/Majority	261/131		369/185		401/201	

*Data from National Archives and Records Administration.

As Table 4 shows, Rutherford B. Hayes won by one vote in the electoral college in spite of losing the popular election of 1876 by nearly 265,000 votes. Similarly, Benjamin Harrison won fifty-eight percent of the electoral votes in 1888 despite Grover Cleveland's lead of over 100,000 votes in the popular election. In the election of 1824 in which no candidate received an electoral majority, the House of Representatives elected John Quincy Adams over Andrew Jackson in spite of the fact that Jackson defeated Adams in both the popular and the electoral vote.³³ More recently, a shift of 0.0167 percent of the national votes cast in the 1960 election from Kennedy to Nixon would have given Nixon the win in the popular vote, while still leaving Kennedy with the presidency.³⁴ Also, if 9,245 votes had shifted from Carter to Ford in Ohio and Hawaii in the election of 1976,

Ford would have been elected president with 270 electoral votes despite Carter's fifty-one percent of the popular vote and lead of 1.7 million votes.³⁵

Significance

Perhaps these criticisms of the electoral system in the United States seem to be obscure technicalities and problems only for political scientists. After all, if the founding fathers included it in the Constitution, the system must be fundamentally sound. The fact is that these issues should trouble every American citizen because, while they may appear inconsequential when examined one at a time, when taken as a whole, these factors combine to create three very serious problems and can lead to only one conclusion.

First, the electoral college does not give all Americans equal voice in electing their president. Small states have the advantage of the constant two electors, giving their residents more electoral votes than their populations alone would dictate. On the other hand, residents of large states have control over more total electoral votes, making their popular votes count more than those in other regions. Finally, the contingency election procedure does not take population into account at all, but rather treats each state as having an equal voice in selecting the president.

In addition, the electoral college does not accurately reflect the will of the American people. One of the great aspects of the American political system is that the minority has the right to be heard. However, the electoral college not

only disregards the votes of the minority, it combines them with those of the majority and gives them to a candidate that the minority opposes. Also, the system magnifies the margin of victory, distorting the preferences voiced by the American people in the popular election. In fact, electors are not even bound by law to vote for the candidate for whom they were chosen by their parties to cast their votes. Above all, it is possible under the current electoral system for a candidate to become president in spite of losing the popular election. “[T]he electoral college inherently—by its very nature—is a distorted counting device for turning popular votes into electoral votes. It can never be a faithful reflection of the popular will, and will always stand between the citizens and the people’s president.”³⁶

Finally and perhaps most importantly, the electoral college threatens the legitimacy of the office of the President of the United States. A president who gains office because of a faithless elector cannot effectively govern. Similarly, “the effect upon the legitimacy of a contemporary American presidency would be disastrous if a president were elected by an obscure electoral college after losing in the popular vote”.³⁷ While the magnifying effect of the electoral college may seem to create legitimacy, it is a false legitimacy, not mandated by the American people. The chief executive is given very few powers by the Constitution. The president is the Commander in Chief of the armed forces, he has the power to grant pardons, and he can make treaties and federal appointments with the consent of the Senate.³⁸ The true power of the president comes not from the Constitution, but from his ability to wield influence, influence which depends on

legitimacy. Without legitimacy, the president has no influence and, thus, no real power.

In short, the electoral college must be abolished. It is “a flawed means of determining the president”.³⁹ As a special commission of the American Bar Association reported in 1967, “[t]he electoral college method of electing a President of the United States is archaic, undemocratic, complex, ambiguous, indirect, and dangerous”.⁴⁰ However, in order to abolish the electoral college, the Constitution of the United States must be amended. In order for a proposed amendment to become part of the Constitution, it must pass by a two-thirds majority in both the House of Representatives and the Senate. Then, it must be ratified by three-fourths of the state legislatures.⁴¹ While there are several reforms which have been proposed to replace the electoral college system, it is yet to be seen which, if any, can survive the process of Constitutional amendment.

Reform Proposals

The Automatic Plan

The automatic plan is the least drastic of all the reform proposals. “[T]he automatic plan essentially is a ‘housekeeping plan’ designed to take care of a couple of rough edges of the electoral college system...while not changing the

basic system in any fundamental way.”⁴² This plan is aimed only at correcting the problems of the faithless elector and the contingency election procedure.

The automatic plan would abolish the electoral college while maintaining the electoral system. In other words, electoral votes would still be allotted to each state and the District of Columbia based on their Congressional representation, and each state would continue to award all of its electoral votes as a unit to the presidential candidate who wins a plurality in the state’s popular election. However, the office of elector would be abolished and each state’s electoral votes would be transmitted automatically to Congress, thus bypassing an intermediate electoral body.⁴³

Also, most automatic plans include a provision for modifying the contingency election process. Some plans still send the election to Congress in the event that no candidate receives an electoral majority, but instead of the election going only to the House of Representatives with each state’s delegation having only one vote, the election would be decided by a joint session of both the House and Senate with each member having one vote.⁴⁴ Since the top three candidates would be involved in the election, it is possible that no candidate would receive a majority in the joint session, either. Some plans provide for this occurrence by allowing a candidate to win the contingency election with only a plurality. Another problem of the joint session is that the District of Columbia would have no representation, even though it has a larger population than eleven states. Later versions of the plan correct this problem by proposing that when the joint session convenes, the number of electoral votes allotted to the

District of Columbia be automatically awarded to the candidate that carried the District in the popular election. However, the District would still have no living people representing it in the joint session, and it is possible that the candidate who carried the District in the popular election would not be included in the contingency election. Other versions of the automatic plan avoid sending the election to Congress altogether. These plans specify that a candidate could win the electoral college with only forty percent of the electoral votes, and if no candidate gained that percentage, a run-off election would be held between the top two contenders.⁴⁵

While the automatic plan eliminates the problem of the faithless elector and at least makes the contingency election procedure more equitable, it completely fails to address the other problems of the electoral college system. Small states would continue to have a minimum of three electoral votes, regardless of their population. Also, not only would this plan not solve the problems of the winner-take-all system, it would make the unit rule a permanent addition to the Constitution, rather than simply a creation of the state legislatures.⁴⁶ Clearly, since the unit rule is not addressed by this proposal, the automatic plan would not eliminate the possibility of the winner of the popular election not being elected president, either.

The District Plan

The district plan's main revision focuses on the almost universal (forty-eight states) practice of awarding all of a state's electoral votes to the winner of

the popular election in that state. While the electoral vote allotment to the states and the District of Columbia would be retained, the votes would be awarded to candidates in a new way. Instead of the state as a whole deciding the fate of all of its electoral votes, the state would be divided into districts and each district would award its electoral votes to the winner of its popular election. Some plans propose using the existing congressional district lines to divide a state, while others call for each state's legislature to determine the district boundaries. Two electoral votes, corresponding to each state's two senators, would still be decided at large by the statewide popular vote.⁴⁷

The district plan also includes a provision requiring electors to pledge to vote as their district or state voted. Since the provision would, if the plan is ratified, become part of the Constitution, it could be enforced by law. If an elector voted contrary to his pledge, "such vote would be ignored and 'counted as a vote cast in accordance with his declaration'".⁴⁸

Also, some versions of the district plan address the possibility of no candidate receiving a majority in the electoral college. If two candidates split the electoral votes evenly, the candidate who had carried the most individual districts would be the winner. If no candidate attained an electoral majority, the election would be decided by a joint session of Congress with each member having one vote. However, if no candidate received a majority in the joint session, a second ballot carrying only the names of the top two candidates from the first ballot would be voted upon by the Senators and Representatives.⁴⁹

Like the automatic plan, the district plan would remove the problem of the faithless elector and make the contingency election more equitable. The district plan, however, does not eliminate the winner-take-all system. Rather the plan simply changes the unit rule from a state basis to a district basis. In effect, the nation would be composed of 436 small states. Thus, the winner of the popular vote still would not necessarily win in the electoral college.⁵⁰ Also, the district plan would allow the state legislatures to gerrymander, or draw the district boundaries to affect the outcome of the election.⁵¹ Finally, the district plan gives a huge advantage to small states by maintaining the constant two electoral votes but breaking up the large electoral blocs of the more populous states. In a state with the minimum of three electoral votes, those three votes would always constitute a unified bloc because the single district results would also be the statewide results.⁵²

The Proportional Plan

The proportional plan would retain the electoral system, but would abolish the unit rule, or the winner-take-all system. The electoral votes allotted to each state would be divided among the candidates in proportion to the popular vote in that state to the nearest one-thousandth of an electoral vote. Since electors cannot be divided into one-thousandths, the plan also would abolish the electoral college and provide for the automatic casting of electoral votes.

Since this plan would result in “the total elimination of the multiplier effect of the electoral vote percentage exceeding the popular vote percentage because

of the winner-take-all feature”, most versions of the proportional plan include a provision requiring the winner of the electoral vote to accumulate only forty percent of the total electoral vote. If the winning candidate were still required to achieve a majority of the electoral vote under the proportional system, the contingent election procedures would probably have to be employed quite frequently. Most versions of this plan call for a joint session of Congress to decide the election if no candidate receives the prescribed forty percent of the electoral vote.⁵³

The proportional plan addresses all but two of the problems of the electoral college system. The plan eliminates the faithless elector problem by employing automatic transmission of electoral votes. It also makes the contingency election process more equitable and abolishes the unit rule. However, by abolishing the unit rule and preserving the principle of the constant two electoral votes, this system gives a great advantage to small states in electing the president. Also, a candidate could still win the presidency in the contingency election by a joint session of Congress without winning the popular vote.⁵⁴

Direct Popular Election

The plan for direct popular election of the president abolishes the electoral system altogether and in its place provides for the election of the president and vice-president by a plurality of the total popular votes cast in the United States.⁵⁵

“The only factor that would be involved in electing a president would be the

actual number of votes cast throughout the nation.”⁵⁶ In addition, the direct election proposal requires that a party ticket must receive a nationwide forty percent plurality for election. In the event that no ticket receives the forty percent minimum, the proposal calls for a runoff election between the two pairs of candidates, or tickets, who received the highest number of votes in the first election.⁵⁷ Thus, “no future elections could ever be thrown in the House, or into a joint session of the House and Senate”.⁵⁸

Direct election is the only proposal that totally eliminates all of the problems of the electoral college system. “Specifically, individual electors, the unit rule, the constant two, the present House contingent procedure, and the possibility that the winner in popular votes might not win the election would be eliminated.”⁵⁹ This plan, with the runoff contingent procedure, is the only plan that would ensure that the popular vote winner would always be the winner of the election.⁶⁰

Conclusion

The electoral college inherently contains several problems. Electors are not bound by law to cast their votes for their party’s candidate. States are entitled to a minimum of three electoral votes no matter how small their populations. Should the election go into the House of Representatives, each state has but one vote with no regard for the size of its population. The winner-take-all system completely disregards votes for “minority” candidates and gives

the larger states much more importance in electing the president. Finally, under the electoral college system, it is possible for a candidate to become president in spite of losing the popular election.

When examined as a whole, the electoral college has three major flaws. First, it does not give all voters an equal voice in electing the president. Second, it fails to accurately represent the will of the American people. Finally, the electoral college threatens the legitimacy of the office of the President of the United States.

In short, the electoral college must be abolished. Four plans have been proposed to take the place of the electoral college system: 1) the automatic plan, 2) the district plan, 3) the proportional plan, and 4) direct popular election. Of these four proposed reforms, the direct popular election of the president is the only system that eradicates all of the problems of the electoral college.

In eliminating the problems inherent to the electoral college system, the direct popular election proposal also addresses the three major flaws of the existing electoral system. First, every vote would count the same under this plan, no matter where it was cast. Second, the direct election plan would eliminate an intermediate counting system and would be based solely on actual votes cast.⁶¹ Lastly, under the direct election proposal, citizens would “vote according to a system all of whose parts they understood, which yielded clear-cut results, and which enhanced the visible legitimacy of the succession to the Presidency”.⁶²

Finally, the electoral college is “undemocratic and therefore indefensible”.⁶³ The current system must be replaced with one that allows the voters to choose the President of the United States, the people’s President. According to Senator Margaret Chase Smith, “the electoral college is doomed to be replaced by the direct popular election system. It is only a matter of time. For the American people will ultimately assert themselves and demand that the will of the majority prevail”.⁶⁴ Hopefully Senator Smith’s prediction will come to fruition sooner than later. If the electoral college is replaced by direct election in the near future, it will be because people finally realize that the electoral college is an archaic system designed by men who did not trust the general public to take an active role in its government and that direct election is the only way to select a president “of the people, by the people, and for the people”. If, on the other hand, citizens do not force their elected representatives to address this problem, the electoral college will probably persist until the next time it yields a president that did not win the popular election.

Notes

-
- ¹ Michener, James A., Presidential Lottery, (New York: Random House, 1969), pp. 43-44.
 - ² U.S. Constitution, Article II, Section 1, Clause 2.
 - ³ U.S. Constitution, Article II, Section 1, Clause 3.
 - ⁴ U.S. Constitution, Amendment XII.
 - ⁵ Longley, Lawrence D. and Braun, Alan G., The Politics of Electoral College Reform, (New Haven: Yale University Press, 1975), p. 23.
 - ⁶ Michener, pp. 68-71.
 - ⁷ Longley, p.25.
 - ⁸ Rose, Gary L., ed., Controversial Issues in Presidential Selection, (Albany: State University of New York Press, 1994), pp.202-203.
 - ⁹ Burrill, Richard L., Controversy Over the Presidential Electoral System, (San Francisco: R & E Research Associates, 1975), p.3.
 - ¹⁰ Encyclopedia Americana: Electoral College, www.grolier.com/presidents/ea/side/eleccllg.html.
 - ¹¹ Electoral College Procedures, www.nara.gov/fedreg/proced.html.
 - ¹² Burrill, p.5.
 - ¹³ Electoral College in General, www.nara.gov/fedreg/ec-artcl.html.
 - ¹⁴ Encyclopedia Americana: Electoral College.
 - ¹⁵ Rose, p. 204.
 - ¹⁶ Burrill, p. 15.
 - ¹⁷ Rose, p. 204.
 - ¹⁸ Longley, p. 18.
 - ¹⁹ Rose, p. 205.
 - ²⁰ Ibid., p. 208.
 - ²¹ Ibid., p. 209.
 - ²² Electoral College Election Statistics, www.nara.gov/fedreg/ec-boxsc.html.
 - ²³ Rose, p. 209.
 - ²⁴ Burrill, p. 16.
 - ²⁵ Rose, p. 210.
 - ²⁶ Encyclopedia Americana: Electoral College, www.grolier.com/presidents/ea/side/eleccllg.html.
 - ²⁷ Rose, p. 210.
 - ²⁸ Ibid., p. 206.
 - ²⁹ Keefe, William J., Parties, Politics, and Public Policy in America, (Congressional Quarterly, 1998), p. 58.
 - ³⁰ Burrill, pp. 14-15.
 - ³¹ Longley, p. 19.
 - ³² Rose, p. 206.
 - ³³ Electoral College Election Statistics.
 - ³⁴ Burrill, p. 16.
 - ³⁵ Rose, p. 209.
 - ³⁶ Ibid., p. 211.
 - ³⁷ Ibid., p. 208.
 - ³⁸ U.S. Constitution, Article II, Section 2.
 - ³⁹ Rose, p. 200.
 - ⁴⁰ Longley, p. 65.
 - ⁴¹ Ibid., p. 129.
 - ⁴² Ibid., p. 44.
 - ⁴³ Michener, p. 105.
 - ⁴⁴ Longley, p. 44.

-
- ⁴⁵ Michener, pp. 106-107.
⁴⁶ Ibid., p. 110.
⁴⁷ Burrill, pp. 22-23.
⁴⁸ Michener, pp. 111-112.
⁴⁹ Ibid., p. 112.
⁵⁰ Ibid., p. 113.
⁵¹ Ibid., p. 115.
⁵² Longley, p. 57.
⁵³ Ibid., pp. 49-50.
⁵⁴ Ibid., pp. 54-56.
⁵⁵ Burrill, p. 22.
⁵⁶ Michener, p. 122.
⁵⁷ Burrill, p. 22.
⁵⁸ Michener, p. 122.
⁵⁹ Longley, p. 64.
⁶⁰ Ibid., p. 66.
⁶¹ Ibid., pp. 66-67.
⁶² Michener, p. 123.
⁶³ Abbott, p. 153.
⁶⁴ Michener, pp. 128-129.