

Constitutional Corner – Restoring the Electoral College

The 2000 presidential election put the Electoral College squarely in the gunsights of the Left; how could a candidate (Al Gore) get 500,000 more popular votes and not attain the Executive Office? This just won't do, time to get rid of the Electoral College once and for all!

In 2004, the New York Times editorial staff called the Electoral College “a ridiculous setup, which thwarts the will of the majority.”¹

Just a year ago, University of Maryland sophomore Tyler Lewis attempted to make the case once again.²

Yet the Electoral College survives, barely, in form if not in function. Actually, it's on life-support.

Understanding the difficulty of amending the Constitution to replace the Framers' preferred election process, the [National Popular Vote](#) project is attempting to use state-level legislation to change the way Electors cast their ballots. Thanks to a growing love affair with “democracy” (however ill-understood), they are making great progress in the state legislatures. Their National Popular Vote bills will ensure whichever candidate secures the greatest number of votes nationally will also obtain all of that state's electoral votes. Bingo; problem solved, without Constitutional amendment; all perfectly legal. The Electoral College's days are truly numbered, despite being the preferred method of electing the President in a 2002 poll of political scientists.³

More than 700 proposals for changing the Electoral College system have been introduced over the years in Congress -- some even received committee hearings -- but none received the requisite 2/3 vote in both Houses in order to be sent to the states for ratification. In 1956 and again in 1969 proposed amendments passed the House but died in the Senate. The last time any changes were made constitutionally to the Electoral College was in 1804 (with the 12th Amendment).⁴

Although various schemes to select the Chief Executive were debated throughout the summer of 1787, what we now know as the Electoral College was not added to the draft Constitution until 4 September, 1787, two weeks before adjournment. The final plan was mostly the brainchild of the Committee on Detail. The initial proposal for the Executive (in the Virginia Plan) had the President appointed by the Legislature. But this was rejected because it might render the President too dependent on Congress. How about direct election by the people?

¹ “Making Votes Count: Abolish the Electoral College,” August 29, 2004.

² http://www.huffingtonpost.com/tyler-lewis/why-we-should-abolish-the_1_b_8961256.html

³ Paul D. Schumaker and Burdett A. Loomis, “*Choosing A President*,” 2002, Chatham House Publishers, p. 176.

⁴ *Ibid*, p. 2.

During debate on this question, several delegates expressed concern over the ability of the general electorate (i.e., the people) to identify “worthy” presidential candidates. One need only canvass this season’s Presidential hopefuls, and the excitement some generate, to see that the American people have lost complete sight of what qualities a Chief Executive should have. Seriously, are there no Washingtons, Adams, Jeffersons, or Madisons to call upon today?

Add to this paucity of statesmanship and decorum in the candidates, the fact that only a third of today’s voters are able to name the three branches of government; America is in deep trouble. But I digress.

Here’s how the Electoral College was intended to work (and worked well for all of two elections): Electors equal to a state’s combined total of Representatives and Senators were selected through a process devised by each state. They could be elected by the citizens of the state or appointed by the state legislature or some combination of process. Qualifications of the Electors were to be the same as Electors of the “most populous house” of the state legislature (i.e., anyone allowed to vote for their state assemblyman could qualify as an Elector), but to render them totally independent, they also could not be a U.S. Senator or Representative, or hold any “Office of Trust or Profit under the United States.”

On a given day the Electors would meet, in their states (“safe from interference from Congress and national cabals”), and each Elector would nominate two individuals to the office of president, one of whom had to reside in another state than the Elector himself. Each nomination represented a vote for that person. The nominations were recorded and sent to the U.S. Senate. The President of the Senate (i.e., the Vice-President of the U.S.) opened the ballots from each state, tallied the nominations/votes for each nominee, and declared the person with the most votes, provided a majority of the Electors had voted for him, to be the President. Whoever received the second-most votes became the Vice-President. The Electors never met in a “college,”⁵ instead they met in 13 state “colleges.” The design of the Electoral College system made it clear that “the President was to be, like the Senate, a creature of the states and not of Congress”⁶ (or, I might add, the people).

As Hamilton explains in Federalist 68, the process was meant to ensure “that every practical obstacle should be opposed to cabal, intrigue and corruption.”⁷

As I said, this worked well for two elections. Once Washington decided against a third term, flaws in the design soon became evident. In the election of 1796, John Adams and Thomas Jefferson received the most and second-most votes respectively (Adams received one vote

⁵ Derived from the Latin: collegium, meaning an association or guild.

⁶ Ibid, p. 39.

⁷ Alexander Hamilton, Federalist 68, March 14, 1788.

more than needed for a majority) and thus became the President and Vice-President. Problem: by that time political parties had arisen and Adams and Jefferson were affiliated with different parties, leading Adams to essentially ignore his Vice-President (as he himself had been largely ignored by Washington, for different reasons), which led Jefferson to conclude he was wasting his time in Washington and that tending to his vines at Monticello would be more productive.

The election of 1800 revealed yet another flaw, this time it could not be ignored: since Electors nominated/voted for two people, if all the Electors of one political party voted for the same two people, those two people would end up with the same number of votes. A tie in the most number of votes threw the election into the House of Representatives. To settle the tie, the House delegations would choose the President from one of the top five nominees, voting by state. A majority of the state votes would settle the matter, unless no candidate obtained a majority of the state votes, which was precisely what happened.

A flaw in the execution of the plan of the Democrat-Republican Electors to seat Jefferson as President and running mate Aaron Burr as Vice-President resulted in a tie vote for both, a tie vote the lame-duck Federalists in the House of Representatives saw no reason to resolve. Thirty-five ballots later, the recalcitrant Federalists would still not budge and neither candidate had received the nine state votes needed. Alexander Hamilton was finally able to work a deal that broke the tie in Jefferson's favor, much to Aaron Burr's chagrin. The animosity this produced was at least partly responsible for Burr and Hamilton's later "interview" on the Heights of Weehawken, which resulted in Hamilton's untimely death.

The 12th Amendment reduced the likelihood of a tie by requiring Electors to cast separate ballots for President and Vice-President. Despite the high theater created by the 1800 election, the idea behind the 12th Amendment was still very contentious and did not gain sufficient political support until the imminent election of 1804 provided sufficient to push it through Congress and out to the states for ratification.

Today, however, the operation of the Electoral College little resembles the original. Instead of Electors nominating candidates from a potential pool of 213 million persons,⁸ as they would following the original design, political parties nominate candidates through primary elections and a convention. Even though the name of the party's candidate appears on the ballot, citizens are in fact voting for Electors who have previously committed themselves to a particular candidate. The original action of Electors as "screeners and selectors" of Presidential candidates has been obliterated.

⁸ The voting age population of 2012, minus the 535 members of Congress and the approximately 2.2 million federal employees..

About the only thing retained from the original design is that a successful candidate must receive a majority (270) of the total electoral votes available (538).⁹ Due to the fact that a candidate need generally only win 50.1% of the popular vote in a state to receive that state's electoral votes, it is possible for a candidate to receive the most popular votes nationally¹⁰ and still win insufficient electoral votes to gain the office. Indeed this is what happened in 2000.

In the 2000 election, Bush/Cheney received 50,456,002 popular votes (47.9% of the total), but carried a majority of votes in 30 states and thus received their combined 271 electoral votes (notice, only one more electoral vote than needed). The Gore/Liebermann ticket received 50,999,897 popular votes (48.4% of the total)¹¹ but only carried 20 states (+ District of Columbia) and were awarded only 266 electoral votes. Gore's large vote margins in New York (1,704,323), California (1,293,774) and Illinois (569,605) contributed greatly to his popular vote victory, but were meaningless in the electoral vote count.

The lesson of this election was that you only needed to win 50.1% of the popular vote in any state, any more than that has no effect on the electoral vote count (wasted?).

In Florida, a 537 vote margin for Bush gave him the Presidency! Ralph Nadar took 97,488 Floridians' votes, presumably away from Gore; Pat Buchanan took 17,484 votes (presumably from Bush, and Libertarian Harry Browne garnered 16,415 votes, which either major party would have loved to have. Even the 1,371 votes of Constitution Party candidate Howard Phillips or the 2,281 votes cast for Natural Law Party candidate John Hagelin would have been enough to change the outcome in the state and thus nationally; so would have the 3,028 votes cast for write-ins. Who says one vote (or even 537 votes) isn't important? After the election, the Supreme Court stopped the dubiously legal recount of Florida votes and the rest, as they say, is history. The Left is yet to recover, leading to the "National Popular Vote" movement, discussed earlier.

So why not chuck the Electoral College and elect the President solely through a popular vote?

First and foremost, the Framers saw the office of President far differently than we do today. Today the President is "the leader of the free world," the "Commander in Chief of the most

⁹ Maine and Nebraska allow electoral votes to be split between parties based on district voting. In both states, two electoral votes are awarded to the winner of the statewide race and one electoral vote is awarded to the winner of each congressional district. Maine has only two congressional districts while Nebraska has three, thus neither state makes a meaningful contribution to the total. In 2000, Gore took all of Maine's electoral votes and Bush took all of Nebraska's.

¹⁰ Until 1828 a national vote was not even tallied since some states still allowed the state legislature to select the Electors.

¹¹ Note that neither team received a majority of the popular votes cast, Gore only obtained a plurality.

powerful military in the world.”¹² In addition, Presidents in the modern era have worked hard to create the “Imperial Presidency” (the subject of next week’s essay, so I won’t dwell on it here).

In 1789 however, one did not “run” for the Presidency, one was pushed into it, sometimes reluctantly. Anyone actively seeking the office would have been viewed with suspicion. George Washington has often been called “The Reluctant President,”¹³ as has John Quincy Adams.¹⁴ Some are calling Barack Obama such,¹⁵ but they focus very narrowly on his foreign and wartime policy. Obama showed no reluctance in setting about to “fundamentally transform America.”

The Framers saw a very limited role for the President: faithfully executing the laws, negotiating treaties, and protecting the nation from attack. When you read Article 2, that’s about all you encounter, save some administrative responsibilities. Thus, candidates for the office were expected to be good administrators as well as proven statesmen,¹⁶ but they were not expected to be flamboyant or self-aggrandizing. People with such qualities would have been ignored by the Electors.

Make no mistake, the movement to replace the Electoral College with a National Popular Vote is not just a move to replace an archaic or overly complicated methodology, it is not an attempt to replace a system that is today not operating in harmony with its original intent, this movement is part and parcel of a scheme to replace our constitutional republic with a pure democracy.

But could we still go back to the original Electoral College process (or something close to it)?

Imagine this: On Election Day, Electors are selected, by name, in a popular vote of the people. The Electors were nominated by their state legislatures for their life experience, maturity, and sound judgement. The ballot contains only a brief resume of each person to guide the people’s votes, but no party affiliation is shown.

A day after the election, the results of the voting are announced (at this point the Electors would be advised to disconnect their home phones, for their sanity). On a prescribed day in December, Virginia’s 13 Electors meet in Richmond (as other state’s Electors meet in their state capitols) and each Elector writes down the names of two men or women they think are qualified to hold the high offices of President and Vice-President of the United States,

¹² Despite these glowing accolades, Forbes magazine named Barack Obama as only the third most powerful person in the world in 2015, behind Vladimir Putin and Angela Merkel. See <http://www.forbes.com/powerful-people/>

¹³ <http://www.smithsonianmag.com/history/george-washington-the-reluctant-president-49492/>

¹⁴ <http://archive.wilsonquarterly.com/book-reviews/reluctant-president>

¹⁵ See: <http://www.nationalbcc.org/news/beyond-the-rhetoric/2546-the-reluctant-president>

¹⁶ As opposed to first-term Senators.

respectively -- “statesmen who had proven themselves through service and dedication to their communities, states, and country.”¹⁷ The guidance from the Bible is similar: “But select capable men from all the people--men who fear God, trustworthy men who hate dishonest gain...”

Political parties would have been allowed to nominate preferred candidates if they wished, but the Electors would have no pressure or commitment to choose any party’s nominee. The names the Elector’s nominees will eventually become public, so each Elector would be prepared to explain/defend their choices. Electors not taking their responsibility seriously would expect to face the wrath of the community upon their return from nominating.

The Electors’ nominations are forwarded to the U.S. Senate, which opens them on a designated day a few days later. The nominations for each office are tallied and, in the unlikely event that a single nominee obtains votes from a majority of the Electors, they automatically become the President or Vice-President, providing they are found to meet the qualifications found in Article 2 of the Constitution. A more likely outcome is that no person achieves a majority of the Electors’ votes for their office. In this case, the House of Representatives immediately convenes and, from the three individuals¹⁸ receiving the highest number of votes for President, chooses the President, voting by states, one vote per state. The Senate does likewise for the Vice-President.

We could re-instill this process in short order, without Constitutional amendment. In many states, legislation governing how Electors are required to vote would have to be modified.

Notice that the people are still involved, in two significant ways: by voting for the Electors, as well as selecting their Representatives and Senators (unless we also repeal the 17th Amendment) who will likely cast the deciding votes for President and Vice-President respectively. The states are involved by selecting the potential Electors and, through their Congressional delegations, in actually selecting the President and Vice-President. The Electors themselves are under great public scrutiny for nominating individuals of integrity and experience.

The influence of political parties over at least the two highest offices in the land would be broken; such influence would remain in races for the Senate and House; presidential debates would be unnecessary, presidential elections would cost a few thousand dollars (the expense of bringing the Electors to the capitol) instead of millions; robocalls (for President at least) would cease; Presidential candidate “promises” would be a thing of the past – the only promise would be made during the swearing in: to “preserve, protect and defend the Constitution of the

¹⁷ Gary & Carolyn Alder, *“The Evolution and Destruction of the Original Electoral College”* 2011, GCA Ventures, LLC. p. 6.

¹⁸ Reduced from five to three by the 12th Amendment.

United States.” Political parties could continue to hold primaries and/or conventions if they wished, but the importance of these would be greatly diminished, there would be no assurance that their candidate would be even considered by the Electors. Of course, the individuals voted into office by the House and Senate, once notified, would retain the right to decline to serve. Doing so would move the selection to the candidate receiving the next highest state votes in each Chamber.

The President and Vice-President would be watched carefully by the public to see that they are honestly working together for the good of the nation, or they would be impeached and replaced in accordance with the rules of the Constitution. Impeachment for mal-administration would become a real constitutional remedy again, no longer suppressed by partisanship. The Executive “team” would have to work together to achieve consensus and gain the support of Congress.

Aren’t you tired of the endless “low theater” that characterizes presidential campaigns and debates today? Aren’t you tired of Presidents breaking their campaign promises? Aren’t you tired of the bitter partisan fights between the Executive and Congress? Aren’t you tired of the billions spent on electing the President? Aren’t you tired of the robocalls? I am.

It’s time we returned to the original Electoral College.

We will be discussing this topic on “We the People, The Constitution Matters” on WFYL radio Friday morning, 12 March, 7-8am. You can “Listen Live” at www.1180wfyl.com, or, if you are fortunate enough to live in the station’s broadcast area, on the radio as you drive to work that morning.

You can later download the podcast of the show and listen at your leisure, or you can listen to one of the rebroadcasts during the weekend. I would love to hear your ideas on this topic. Hope you’ll join us.

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