

# THE AMERICAN ELECTORAL COLLEGE

Ellis Katz [1](#)

Commenting on his experience as a delegate to the Constitutional Convention of 1787, James Wilson of Pennsylvania said: "The subject of presidential selection has greatly divided the House, and will also divide people out of doors. It is in truth the most difficult of all on which we have had to decide." So intense was the debate over presidential selection that Max Ferrand, in his account of the Constitutional Convention, wrote that all other issues "paled into insignificance in comparison with the problem before the Convention in determining a satisfactory method of electing the executive."

Yet, shortly after the Convention, Alexander Hamilton, in *Federalist Number 68*, described the Constitution's provisions dealing with presidential selection as "the only part of the Constitution not condemned by its opponents." One hundred and seventy-five years later, Lewis Koenig, one of America's greatest students of the presidency, wrote that:

The existing electoral vote arrangements have long been the object of heavy criticism and dire warnings. The critics hold that the electoral system violates basic tenets of democracy and that its many mechanical flaws invite breakdown and the eruption of a presidential election into a nightmare of civil strife.

It may be that Wilson, Ferrand, Hamilton and Koenig are all correct. The Convention was badly divided over the question of presidential selection, and more than once the delegates despaired over the possibility of creating a workable and acceptable system. The Electoral College system that emerged during the very last week of the Convention did seem to satisfy all the diverse factions, however. Thus Hamilton was correct in his observation that this provision was no longer controversial. As the presidency became a more democratic institution, however, new arguments about presidential selection emerged, so that even today, the Americans continue to debate the merits of the Electoral College.

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## Presidential Selection at the Constitutional Convention

At the Convention, both the Virginia Plan of James Madison and the New Jersey Plan of William Patterson provided that the executive should be selected by the legislature. Madison expressed no strong commitment to election by the legislature, commenting that "I have made up no final opinion whether the first magistrate

should be chosen by the Legislature or the people at large." The New Jersey Plan, however, was predicated on the Whig notion of a weak chief executive. Speaking in support of the New Jersey proposal, Roger Sherman of Connecticut stated:

The Executive magistracy is nothing more than an institution for carrying the will of the legislature into effect. The person or persons ought to be appointed by and accountable to the Legislature only, which is the depository of the supreme will of the society.

Thus at the Convention, legislative appointment of the chief executive became equated with Whig notions of legislative supremacy. As a consequence, Madison quickly changed sides and began to favor other methods of executive selection.

James Wilson made the first proposal for popular election of the President, maintaining that the power and independence of the chief executive could be guaranteed only if his power "flowed from the people at large." Whigs, on the other hand, believed in legislative supremacy and continued to favor selection by the legislature. Wilson and the other Federalists believed in the balanced separation of powers and became advocates of some form of popular selection.

The method of presidential selection was more than a theoretical debate, and the issue was complicated by practical political considerations. Delegates from the smaller states opposed direct election of the President because they feared that such an election would be dominated by the larger states. Thus even after the delegates became convinced of the need for a strong and independent chief executive, they still needed to devise an electoral system that would allay the fears of the smaller states as well as guarantee that the President's authority would be derived from the people at large.

This was no easy task. At least seven different proposals for presidential selection reached the floor of the Convention, and votes taken were often reversed by later votes. Finally, it was decided to leave the matter to the Committee on Style, headed by Gouverneur Morris of Pennsylvania. That Committee's proposal, accepted by the Convention on September 8, 1787, provides that:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress....The Electors shall meet in their respective States, and vote by ballot for two persons....[These votes shall be certified and sent to the seat of Government where they shall be opened and counted by the President of the Senate.] The person having the greatest number of votes shall be the President, if the number be a majority of the whole number of the Electors appointed; and if no person have a majority, then from the five highest on the list, the House shall choose the President. But in choosing the President, the representation from each state shall have one vote.

Given the theoretical and practical debates that took place at the Convention, coupled with the actual language that was finally adopted, three things are clear:

- The Convention rejected presidential selection by the Congress because it believed that such a system would make the chief executive too dependent on the legislature – a violation of separation of powers.
- The concern of the smaller states was ameliorated because most delegates firmly believed that the Electoral College would rarely produce a President; that election would ultimately be thrown to the House of Representatives where the power of the small states was guaranteed because each state, regardless of size, would have one vote.
- Direct election of the President by the people never received much consideration, probably for two reasons. First, direct election would not have safeguarded the power of the small states. Second, most delegates doubted the capacity of the people to evaluate talented and capable leaders beyond the borders of their own states.

### Development of the Electoral College

The Constitution authorizes each state to appoint its electors "in such manner as the legislature thereof may direct." In the first three presidential elections (1788, 1792 and 1796), state legislatures themselves chose the electors in most states. Thereafter, popular choice gradually took hold so that by 1832, electors were chosen by popular vote in all states except South Carolina, which clung to legislative election until 1864.

At first, the most frequent method of popular election was within legislative districts, the method apparently favored by many of the Founders. As a consequence, a state's electoral votes were often divided among two or more presidential candidates. But with the rise of political parties during the 1830s, the states began to use at-large, winner-take-all elections to choose presidential electors. In the winner-take-all system, the party carrying the state, by however small a popular plurality, wins all of the state's electors. The minority party, or parties, gets none. Today, all states except Maine and Nebraska use this at-large, winner-take-all system.

Political parties were irrelevant in the first presidential election of 1788; every presidential elector voted for George Washington, a reflection of popular sentiment at the time. But elite and popular division over Washington's successor led to a contested contest in 1796. While John Adams defeated Thomas Jefferson in that election, Jefferson and his allies worked to organize the electorate and Jefferson was elected President four years later.

The political party system has affected the Electoral College in at least three ways. First, it gave rise to the winner-take-all system for electing the electors. Second, because the electors were pledged to support a particular candidate or party, they served merely to reflect the popular sentiment of their state's electorate, and exercised no discretion in deciding how to cast their votes. Finally, the party system, coupled with the two-party nature of American presidential competition, has made the possibility of election by the House of Representatives unlikely. In fact, only three times (1800, 1824 and 1876) has the popular vote failed to produce an Electoral College majority.

### The Contemporary Electoral College

The Constitution provides that each state shall have "a number of electors equal to the whole number of Senators and Representatives to which the state may be entitled to in the Congress." <sup>2</sup> Thus California (the largest state with almost 30,000,000 inhabitants), because it has two Senators and 52 Representatives has 54 Electors (one for every 544,000 inhabitants). Wyoming (the smallest state with less than 450,000 inhabitants) has two Senators and only one Representative, entitling it to three electors (one for every 151,000 inhabitants).

Soon after the political parties select their presidential and vice-presidential nominees, each state political party names a slate of electors committed to the party's nominee. For example, in 1996, the Democrat Party of California selected 54 electors pledged to the Clinton-Gore team, and the Republican Party of California selected 54 electors pledged to the Dole-Kemp team. Various third and other minor parties in California similarly chose their slates of electors. The process was the same in all the other states. The position of elector is largely honorific, often a reward for past service to the political party.

When American voters go to the polls on November 7, 2000, many of them will be unaware of the fact that they are actually voting for a slate of electors rather than for President and Vice President directly. Usually, in fact, only the names of the presidential and vice presidential candidates appear on the ballot. After the voting is over, all Americans will know who will be their next President and Vice President.

The Constitution, however, requires that another step be taken before the results are official.

The winning slates of electors will meet in their respective state capitols in December and cast their votes for President and Vice President. These votes will then be certified by state authorities and sent to Washington where they will be opened and counted by the President of the Senate in the presence of all the Senators and Representatives. It is only then that the candidate officially becomes the President-elect.

Why go through this ritual if, in reality, the winners of the presidency and vice presidency are known in November after the people vote? Critics of the Electoral College point out two serious problems with the system and urge modifying it, or even eliminating it altogether.

### Proposals for Change

The first problem is the 1952 decision by the United States Supreme Court in *Roy v. Blair*, holding that a state cannot constitutionally require its electors to vote for the candidates to whom they are pledged. Consequently, critics of the Electoral College suggest the possibility of some enormous mischief by which a significant number of electors would vote for some other candidate, thus frustrating the will of the voters. There have been at least four instances in which individual electors failed to vote for the candidate to whom they were pledged. One occurred in 1820, when an elector pledged to James Monroe voted for John Quincy Adams instead. His rationale was that his vote would have made the election of Monroe unanimous and that no President other than George Washington was deserving of unanimous support. The other three instances – one in 1956, one in 1960 and one in 1968 – were equally peculiar to the individual elector. None affected an election's outcome. While reformers argue that a simple constitutional amendment could remedy this potential problem of the "unfaithful elector," others hold that some carefully restricted elector discretion should be maintained. They point out that while the Twenty-Fifth Amendment to the Constitution addresses the situation in which a President becomes disabled, and various statutes deal with the situation in which a presidential candidate becomes disabled after receiving his party's nomination but before the general election, no provision is made for a disability that occurs between the general election and the meeting of the electors. At this time, the only constitutional solution is elector discretion.

The second charge against the Electoral College points out that it is possible for a presidential candidate to win a plurality of the popular vote but to lose in the

Electoral College. This possibility results from two features of the system. First, each state, no matter how small, is guaranteed three electors. Second, the at-large, winner-take-all system means that a victorious candidate, no matter how narrow his margin of victory, is awarded all of a state's electoral votes. There have been three cases in which it appears that the winner of the popular vote lost the presidency because of these mathematical problems with the Electoral College.<sup>3</sup> The more normal pattern, however, is for the Electoral College vote to exaggerate the margin of victory in the popular vote.

Because of this mathematical problem, critics of the Electoral College tend to advocate one of two types of reforms. First, they often seek a system of awarding electors according to the distribution of the popular vote within a state, either by some system of proportional representation or by the election of electors within electoral districts. Either reform would require ending the current at-large, winner-take-all system. Proposals of this sort might encourage the formation of third parties and even throw presidential elections into the House of Representatives, where each state has one vote regardless of population. Attempts to address this issue by constitutional amendment have been defeated, largely because of the fear of third parties.

The other type of reform proposed by critics of the present Electoral College system is even more far-reaching. Some see the Electoral College as an eighteenth century anachronism, having no role in a modern nation state. These reformers would eliminate the Electoral College altogether and substitute a system of direct popular election. Direct election of the President, of course, would be a major departure from the federal character of the American republic

## Conclusion

The American Electoral College was conceived as a democratic institution and, more importantly, has functioned as a democratic institution. The real question is, do Americans want a system compatible with national democracy or with federal democracy. Taken as a whole – from the first primary election in New Hampshire through the opening of the electors' ballots – American presidential selection reflects a delicate balance between national and federal conceptions of democracy. Whether Americans decide to keep, change or even eliminate the Electoral College, democracy itself is not at stake – only the question of how to channel and organize the popular will.

NOTES:

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2. This provision was changed slightly in 1961 to provide for electors for the District of Columbia, the Nation's capitol.  
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3. 1824, John Quincy Adams over Andrew Jackson; 1876, Rutherford B. Hayes over Samuel Tilden; 1888, Benjamin Harrison over Grover Cleveland  
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