Should the Electoral College be Replaced by the Direct Election of the President? A Debate

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Introduction

In many ways the presidency is the center of the American political process. The four-year term of office of the president makes a kind of cyclical calendar of political events. The legislative process often begins with presidential proposals and ends with presidential approval or veto of the bills passed by Congress. The media coverage of the office is massive; greater by several times than the attention paid to the Supreme Court, the Congress, or the bureaucracy. The president is clearly dominant in making foreign policy and rivals the Congress for power in domestic matters.

In this debate we will examine the process by which the American president is elected. If the presidency is central to our political system, the method of filling the office must surely be a central concern of those who wish to understand American politics. The presidential selection process is extremely complex; involving a multitude of primary elections, seemingly chaotic conventions; nationwide voting, and the Electoral College. It is this last element in the process we have chosen to debate.

The provisions of the original Constitution (written in 1787), the Twelfth Amendment, and the extra-constitutional

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development of the two-party system combined to produce the election system usually referred to as the Electoral College. This arrangement provides that the president is chosen by presidential electors. Each state is entitled to as many electors as it has U.S. Senators (two) and U.S. Representatives (at least one each). The electors from each state go to their own state capital to cast their votes for president and vice-president. If no candidate obtains a majority of these electoral votes, the House of Representatives decides who is to be president from among the three people who received the most electoral votes, with each state delegation in the House entitled to one vote. The Senate selects the vice-president in such cases.

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Although the Constitution permits each state to determine for itself the method by which presidential electors are to be chosen, all states (except Maine) have used the winner-take-all at-large election method for over 100 years. Under this procedure each political party designates a slate of electors to run in each state and the slate that receives the most popular votes constitutes the electors from that state. The electors that are chosen on the winning slate are supposed to vote automatically for the nominee of their party. Indeed, this tradition is so strong that in most states the names of the party nominees for president and vice-president appear on the ballot instead of the names of the electors on the slate. In the post-World War II period, however, six electors failed to vote for their parties’ nominee and in 1960 Mississippi and Alabama elected 14 people who ran as unpledged electors.

With two exceptions (1800 and 1824) all the candidates elected president obtained a majority of the electoral vote, and thus there was no need to turn to the House of Representatives to choose the president. In 1824, 1888, and probably in 1876 the candidate who was elected president secured fewer popular votes than one of his opponents.

Constitutional amendments for the direct election of the president have been introduced in Congress throughout American history, but it wasn’t until the late 1960s that such an amendment had a chance of adoption. A number of events occurred in 1966 and early 1967 that aided the direct election cause. Prominent among them was the support for the direct election concept by Senator Birch Bayh (D-Indiana and Chairman of the key Constitutional Amendment Subcommittee of the Senate Judiciary Committee), Congressman Emanuel Cellar (D-New York and Chairman of the House Judiciary Committee), and the distinguished Electoral College Reform Commission of the American Bar Association.

In 1969 a constitutional amendment (House Joint Resolution 681) was introduced in the House of Representatives which provided for the direct election of the president. It also provided for a runoff election between the top two candidates in the event no candidates obtained at least 40 percent of the popular vote. The amendment was passed by the House on September 18, 1969, by a vote of 338 to 70, with 41 of the opposing votes coming from Southern Democrats. In 1970 virtually the same measure was introduced in the Senate (Senate Joint Resolution 1) by Senator Bayh, but it was the victim of a filibuster. By a narrow margin the Senate refused to invoke cloture and thereby end debate on the amendment. Almost all the votes against ending debate came either from Southern Senators or from Senators from states with eight or fewer electoral votes.

In March, 1977 President Carter introduced a four-part electoral reform package, one part of which called for the direct election of the president. On September 15, 1977, Carter’s proposal was passed by the Senate Judiciary Committee, but no action was taken that year or in 1978 by the Senate as a
whole. No action on this matter has occurred since 1978.

In November of 1980, a Gallup Poll found that 67 percent of the American people favored the direct election of the President, 19 percent opposed, and 14 percent were undecided. In this debate Arrington will argue for Senate Joint Resolution 1 (S.J. Res. 1), while Brenner will defend the present Electoral College system.

Affirmative

In this affirmative argument I will show that: (1) the Electoral College is undemocratic because it can, and has, thwarted the expressed will of the people; (2) the system is undesirable because it encourages regionally based third parties to seek undemocratic election results and thus influences the presidential candidates to attend to regional instead of national concerns; and (3) it is undemocratic because the electoral vote system results in some votes counting more than others. I will also show that only a direct popular vote system can correct these defects.

The Wrong Choice. Why does the Electoral College sometimes select as president a person who comes in second or third in the popular vote? The answer is found in the winner-take-all provisions of the system. A candidate who gets the most votes in a particular state will obtain all of the electoral votes of that state. Yet that candidate will not have received all of the popular votes in that state. Indeed, he or she may have received less than half of them. Because of this mechanism, there is never a one-to-one relationship between popular and electoral votes. Indeed, the votes can be distributed in such a way that one candidate wins a majority of electoral votes by slim margins while the other wins a minority of electoral votes by wide margins.

At first this unfortunate result seems unlikely. After all, it has failed to occur since 1888. In fact, we simply have been lucky. In any close election the chance of the popular winner being the election loser is great. The last two times it happened occurred within twelve years of each other, during a period when the parties were closely competitive. From 1896 to 1948, however, one party or the other was overwhelmingly dominant in presidential elections. Only since 1948 have the parties again been closely competitive. An analysis of recent elections shows how close we have repeatedly come to having the Electoral College and the popular vote disagree. In 1948, for example, Truman beat Dewey by over 2.2 million popular votes. Yet a shift of only 30,000 votes in Illinois, California, and Ohio would have made Dewey the fourth popularly rejected president in our history. A switch of less than 12,000 votes in five states would have made Richard Nixon the fifth popularly rejected president in 1960. Gerald Ford would have been the sixth in 1976 with a change of a mere 5,558 votes in Ohio (.14 percent of the vote cast there) and 3,686 votes in Hawaii (1.2 percent of the vote cast in that state). This shift in votes in 1976 would have given Ford a majority of the electoral votes (270), but still would have left Carter with over 1.5 million more popular votes than Ford and an absolute majority of such votes (50.4 percent).

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The problem is not just that the Electoral College can reject the popular choice of the nation, but that it can do so in an essentially random fashion in close elections. If the current system were to pick the best candidate in an election where the popular choice was not really the best for the country, then there would be a rational, although undemocratic, excuse for keeping the system. But there is no principle or rationale for deviation between popular and electoral votes. It is just a matter of luck. And such deviation is a moral travesty, for it violates the principle that the people should select those who govern them. To be sure, there is no requirement that the people elect every government official. The president, however, is now at the very center of
American government. This office is much too important to be filled in any way except by direct popular vote. Certainly we want our presidents to be more than popular. We want them to be moderate, effective, and careful not to abuse their powers. But the Electoral College does not improve the chances that the president will be any of these other things.

The Electoral College winner-take-all system greatly exaggerates the attention paid to some states and causes candidates to ignore other states completely.

Additional problems arise in any election system when there are more than two candidates and none of them receives more than half of the popular votes. Neither philosophers nor political scientists agree on the best or the most democratic way to handle this situation, but there are two practical methods of solving this problem: electing the candidate who obtains the most votes (the plurality solution) or requiring a runoff election between the top two candidates. The reform proposal in S.J. Res. 1 uses both these procedures. If a candidate secures more popular votes than any of his or her competitors and garners at least 40 percent of the total popular vote, he or she is elected. If, however, no candidate receives 40 percent, a runoff is held between the two most popular candidates in the first election. The chances that none of the candidates would get at least 40 percent appear to be slim. This has happened only once in American history (1860). But, when it occurs there is a need for a runoff election to build support for the president. This is clearly illustrated by the election of 1860 which led to the Civil War. Lincoln won a majority in the Electoral College but only 39 percent of the popular vote. The deep divisions among voters at that time were not caused by the election system and could not have been cured by it. But the process of having a runoff election to assure that the president is supported by a substantial portion of the American people can be important. True, such circumstances are rare; but the election system should still provide for them.

On the other hand, how does the Electoral College system handle multiple-candidate contests? In a multiple party race, as in the two-candidate contest, the person who receives the most votes in a sufficient number of states to attain an electoral vote majority will win. This may or may not be the person who obtained the most popular votes (the plurality winner) and it may or may not be the person who could win a runoff election. The Electoral College fails to deal well with the situation of high factionalism. As the election of 1860 shows, the Electoral College may select as president a candidate who is supported by less than 40 percent of the people, while on other occasions it fails to award the office to those with plurality support far above 40 percent (as in 1824, 1872, and 1888). In short, it is a crazy system in which victory is related to popular support only on most occasions.

For those of us who believe in the democratic ethos, the above argument is sufficient to demonstrate the foolishness of the Electoral College. But there is more. The election of the popularly rejected candidate these days would undermine the president's legitimacy and possibly produce a constitutional crisis. In the period since our last popularly rejected president (Benjamin Harrison in 1888) the American people have come to accept democratic values which include the belief that the president ought to be the candidate that most people prefer. This is apparent in the Gallup Poll results reported in the Introduction. And the Gallup organization has also been asking Americans to explain the Electoral College in polls since 1951. They have found that only about one-third of the people can even correctly identify the Electoral College. Will these people, who accept popular election as right and do not realize that the Constitution fails to provide for it, recognize the legitimacy of a president who lost the popular vote?
Would the losers in the Electoral College recognize the legitimacy of a president, when their own candidate received a greater number of the popular votes? I maintain that a large proportion would not.

A person has the legitimate claim to the presidency when virtually all of the people believe that he or she has the right to be president. When some substantial proportion of the people reject such a claim, the president would find it exceedingly difficult to carry out the duties of the office. Foreign leaders, bureaucrats, interest groups, and Congress would ignore presidential wishes. The government would be leaderless. I contend that the loss of the popular vote to another candidate would create sufficient doubt about the president’s legitimacy to produce this kind of a crisis. When Gerald Ford was president, some observers claimed that his apparent failure to lead the country was, in part, the result of his lack of an election mandate from the people. Yet his claim to the office was firmly grounded in the Constitution. Think what would happen if the president were the candidate who was actually defeated in the popular vote election, but won the office through the mathematical peculiarities of the Electoral College.

Do we have to wait until the Electoral College again selects a popularly rejected candidate before we act to replace this irrational system with the only alternative that makes sense?

**Regional Third Parties.** Minor parties are a valuable part of the American two-party system. As long as there are free, competitive elections, there will always be some people who are dissatisfied with both major parties. These people should be free to form their own political organizations and contest the presidency. In American history, such third parties have been important outlets for new political ideas. Some of these new concepts have been adopted by one or both of the major parties.

However, third party activity is undesirable if its aim is to “spoil” the chances of some other candidate winning a majority of the votes. It is particularly un-wanted if it is pursued to blackmail the major party candidates into making concessions to regional or local interests. The Electoral College encourages such unfortunate third party activity, but direct popular election would not do so. To understand why this is true we must look at the majority vote requirement of the current system.

In one sense the Electoral College arrangement is a plurality system. In each state the candidate who receives the most popular votes is awarded all of the electoral votes of that state. This aspect of the system discourages third parties in general or, to be more precise, broadly based, national third parties (such as the John Anderson Party). This is obvious from American political history. Since the Civil War, only one election has been fought between more than two broadly based strong candidates. This was the election of 1912, when Theodore Roosevelt ran for the presidency on the Progressive Party ticket. In other words the winner-take-all plurality vote features of the Electoral College permits third parties to form and have their say, but does not allow them to prevent the people from making their choice between the two major parties.

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The Electoral College, on the other hand, provides that if no one receives a majority of the electoral votes, the election is thrown into the House of Representatives. Thus regional or specific state-based third parties, by commanding enough popular votes in one or more states to receive a plurality there, can capture electoral votes. It is possible for such regional groups to capture electoral votes by winning only a very small fraction of the total national popular vote. By
withholding electoral votes from the major party candidates they may be able to prevent anybody from getting a majority in the Electoral College. This can be useful in three ways. First, the regional third party could instruct its electors to vote for one of the two major party candidates in exchange for specific promises on future presidential actions. This strategy is explicitly what is planned when a party runs a slate of unpledged electors. But even if the electors are listed on the ballot as favoring a specific candidate, they are legally free to bargain, with or without that candidate’s approval. Second, if the Electoral College bargaining fails, the regional Congressmen in the House of Representatives could make a deal during the complicated one-vote-for-each-state procedures that must be followed in the House in such cases. Lastly, regional third parties might find contesting the presidency useful even if it fails to prevent one of the major parties from obtaining a majority of the electoral votes. The fear that a similar effort might be successful in future elections can influence the major parties to make deals with regional interests.

Some claim that certain minority groups are advantaged by the Electoral College, but this is clearly incorrect.

The history of presidential elections clearly confirms the way in which the current system encourages such regional third party behavior. Since World War II such parties have received electoral votes in 1948, 1960 and 1968. In all three cases their avowed aim was to bargain with the major parties for presidential concessions, and they almost succeeded each time. In 1948 Strom Thurmond’s States Rights Party would have held the balance of power if 12,486 votes had shifted from Truman to Dewey in California and Ohio. In 1960 a switch of about 9,400 popular votes in Illinois and Missouri would have left Ken- nedy four electoral votes and Nixon twelve short of a majority. Nixon and Kennedy then might have started bargaining for the fourteen available unpledged electors from Mississippi and Alabama. The 1968 election was almost a replay of 1948. A change of 43,000 votes from Nixon to Humphrey in Missouri, New Jersey, and Alaska would have put the American Independent Party Candidate, George Wallace, in the position of deciding who would be president. Or, as an alternate scenario, a shift of 55,000 votes in Ohio and Missouri would have produced the same kingmaker role for the Alabama governor. Nor does this election by bargaining necessarily require regional forces to run their own candidate. In 1976 a switch of the 5,558 votes in Ohio (mentioned above) along with 6,390 popular votes in Delaware (2.7 percent of the total vote cast there) would have produced an electoral vote tie (269 votes both for Carter and for Ford). But what if even one of the electors were unfaithful? Indeed, one of the Ford electors in 1976 violated his promise and failed to vote for his party’s candidate. Think of the pressure on these 538 people, when any one of them could make history by deciding who would be the next president. What kinds of deals might they make in that situation?

If attaining the presidency is the result of bargains and tawdry, under-the-table deals with regional interests, it is even less legitimate than in the case where the mathematical peculiarities of the Electoral College produce a popularly rejected president. Indeed, even a candidate who receives a majority of the popular votes might be perceived as illegitimate if he or she gets the office through a shabby deal with a regional third party. John Quincy Adams was made president in 1824 through such a process. As a result, he was unable to be effective. And, as 1824 clearly shows, we have no reason to expect the House of Representatives to necessarily choose the popular vote choice, especially given the one-state-one-vote system that is used in such cases.

In recent years this threat of regional parties disrupting the Electoral College
system has come from the Southern states. This particular region may be less likely to play these kinds of games in the next few years, since the South is now much closer to the American political mainstream. But no one can predict the future. Regionalism is a recurring part of politics in this country and throughout the world. In the late 1800s in the U.S. it was the populists in the Great Plains and Mountain states who mounted third party efforts. In the early 1900s it was the progressives of the Middle West. In recent years we have seen regionalism grow in Canada (Quebec) and in Great Britain (Scotland and Wales). Where and when will regionalism again become strong in the U.S.? The truth is that we don’t know; but it is clear that when regionalism becomes a factor in American politics, the regional forces have a strong tool in the Electoral College. I advocate that we deny small regional minorities this tool before they use it to disrupt the presidential election system.

Unequal Votes. The ideals of democracy and recent Supreme Court rulings have emphasized the concept of one-person, one-vote, that all people should be counted equally in elections. Because the popular vote is filtered through the Electoral College, all votes are not counted equally in our presidential contests.

The first inequality is derived from the allocation of electoral votes. Each state is entitled to as many electoral votes as it has representatives in Congress. Because each state has two Senators and at least one Representative, no matter how small its population, the electoral vote distribution itself is somewhat unfair. This suggests that the smallest states (those with three electoral votes) are favored in the current system.

The second problem is that the Electoral College winner-take-all system greatly exaggerates the attention paid to some states and causes candidates to ignore other states completely. For example, Ronald Reagan might have been faced with a choice of campaigning in Louisiana or in Illinois during the last week of the 1980 campaign. Suppose Reagan believed that by campaigning he could gain 20,000 votes in Illinois or 40,000 votes in Louisiana by going there. Where would he go? At first, the answer seems to be Louisiana. But it is not so simple. Suppose the polls showed that Reagan would win Louisiana in any event, and it only has 10 electoral votes. Illinois was close, according to the polls, and had 26 electoral votes. Thus, Reagan goes to Illinois. In this case 20,000 votes in Illinois are more important than 40,000 people in Louisiana.

Third-party candidates cannot win under the Electoral College but under the right conditions can be victorious under the direct election scheme.

This example also points up the third type of inequality in the Electoral College. Once a candidate has a plurality of the popular votes in a particular state, additional popular votes are not useful to him or her in capturing the presidency. These votes are wasted. They are not counted toward the candidate’s total in the real count: the Electoral College. Similarly, the votes of those who lose in a state do not affect the candidate’s overall totals in the Electoral College. They too are wasted votes. In short, the extent of a candidate’s victory in a state is not measured in the Electoral College.

A fourth inequality in the current system arises from differences in voter turnout. All the electoral votes of a state are awarded to the victor in that state, regardless of how many people voted. Thus those who vote in low turnout states have a greater say in the outcome than those who vote in states with a higher rate of citizen participation. Since this idea is complicated, an historic example is in order. In 1980 both Kansas and Mississippi had the same number of electoral votes. In Mississippi only about one-fourth of the eligible voters turned out. Thus, each Mississippi electoral vote accounted for 37,271 voters. In Kansas the turnout was over 70 percent and
each electoral vote represented 116,103 voters. In other words, voters in Mississippi were three times as powerful as voters in Kansas. Shouldn’t a vote in Kansas count the same as a vote in Mississippi?

Which states are favored by the Electoral College? Most scholars argue that it is the populous states with the large electoral votes that are benefited.

From these arguments it can be seen that the Electoral College distorts the significance of votes. People become valuable to a candidate depending on where they live. It is a mistake, however, to think that the same groups are always favored by this arrangement. Specific circumstances of specific candidates make one or another state or group more or less important in specific campaigns. The Electoral College, for example, does not give advantage to the people of the big states just because they have more electoral votes. For all the people of the big states to use any electoral vote power they must act together for common goals. But states are just arbitrary geographic units under the Electoral College. The populous states have not voted the same in recent close elections: quite the reverse. Where their electoral vote clout could have affected the outcome (as in the close elections of 1960, 1968, or 1976), the big states’ electoral votes have been divided between the candidates. And these states are also divided internally. To illustrate, think of it this way: if you were a Carter voter in California, then the Electoral College actually worked against your interests in 1976. Although your candidate got 49 percent of the votes in your state, his opponent (Ford) got all 45 of your state’s electoral votes.

Some claim that certain minority groups are advantaged by the Electoral College, but this is clearly incorrect. In order for some minority group to be advantaged by the system the group must first be so concentrated in the most populous states that it can sway the vote of those states by having the members of the group vote as a bloc. And second, the group must be so small in national terms that such bloc voting would not be equally effective in a direct popular election. One is hard pressed to find a group that meets these criteria. Take blacks and poor people, for example. According to the 1980 Census, the U.S. population is 12 percent black. The 14 biggest states (which together have a majority in the Electoral College) are also 12 percent black. Similarly 12 percent of the people in the U.S. in 1980 were classified as living below the “poverty level.” In the 14 biggest states 12 percent had incomes this low. The point here should be obvious: if an election is close, then blacks or poor people could decide the outcome in the states with a large number of electoral votes. But in such close elections, bloc voting by these groups would be equally effective in determining the outcome of a direct election, for these groups constitute about the same proportion of the population at large. In non-competitive elections such as 1964, 1972 or 1980 these voting blocs are irrelevant under either election arrangement, since they are too few in number to change the outcome.

I do not contend that the present system is defective because one group or another benefits from the system. Rather, I argue that the Electoral College arrangement causes some votes to count more than others. And this special weighting is arbitrary and irrational. Why should a person who lives in Louisiana be less important than one who lives in Illinois? Why should one who lives in Mississippi be more important than one who lives in Kansas? Why should the California resident get more attention than the resident of Alaska?

Conclusion. I have shown that the Electoral College is undemocratic because it sometimes fails to elect the popular choice as president, violates the one-person, one-vote principle, and encourages regionally based third parties to seek undemocratic outcomes and thus causes presidential candidates to be
more attentive to regional interests than to national concerns.

The direct popular vote alternative, as proposed in S.J. Res. 1, solves all of these problems. Since the president would be directly elected by the voters, the popular choice would always prevail. And all votes would be equally counted, no matter where the voter lived. The potential constitutional crisis of legitimacy would cease to worry us. Regional third parties would be no more encouraged than nationally based ones. They could not prevent the popular choice from being elected, nor could they bargain or blackmail the major party candidates into special concessions.

In some ways reform of the Electoral College is like a leaky roof. The roof doesn’t leak until it rains, but then it is hard to fix the leak. When the sun is out the leak would be easy to repair, but it isn’t leaking. So, too, we don’t need to get rid of the Electoral College as long as it continues—by luck—to select the candidate who is also favored by most voters. When the water floods into our house, it will be too late to fix the roof. Let’s not wait until this reform is “needed” before we act.

Negative

In defense of the Electoral College and in opposition to the direct election scheme I will show that (1) the direct election plan will result in the election of candidates preferred by a minority of the voters; (2) it is highly unlikely that a regional third party candidate will be able to do mischief under the Electoral College; and (3) the direct election proposal will create an uneven balance between the larger and the smaller states.

Direct Elections: The Danger of an Unrepresentative Result. What standards ought to be used in a democratic society for selecting a president? Clearly, in a two-candidate race the person who receives the most votes ought to be chosen. My opponent is so concerned that a presidential candidate with fewer votes than his or her adversary might be elected under the Electoral College that he is willing to scrap the Electoral College to make sure that this result cannot happen. Yet, since 1888, in the course of 22 two-person races (defined as elections in which the two leading candidates garnered at least 80 percent of the vote) the presidential candidate who obtained the most votes always won the election. My opponent attempts to explain this result in two different ways. First, he asserts that the popular will can be thwarted only in “closely competitive” elections and many of the elections in the post-1888 era were held during periods when one party was dominant. Seven of these elections, however, were “closely competitive” (defined as elections in which the winning candidate’s margin of popular victory was 5 percent or less). Nevertheless, the man who received the most votes always won. Indeed, in 1960 John Kennedy’s popular margin was only .2 percent and in 1968 Richard Nixon’s was only .7 percent. Second, my adversary claims that the conformity of the elections under the Electoral College to democratic principles is a matter of luck. A professional gambler would reply to this argument by saying, “When you win 22 times in a row, or even 7 times in succession, you are likely to have more than luck in your favor.”

The above discussion pertains to one way democratic principles can be violated. A far greater threat to these principles can occur when there are more than two major candidates seeking the presidency. In that situation a much higher percentage of the voters can be denied their choice. It can be expected that the direct election scheme, with its 40-percent runoff provision, will generate elections of this kind.

To show how this can occur let us examine the presidential election of 1964. In that year the Republicans nominated Senator Barry Goldwater of Arizona and the Democrats selected President Lyndon Johnson. The early polls (and the late ones as well) indicated that Goldwater was an exceedingly weak candidate. A Roper Poll published the day before the Democratic National Convention (August 24, 1964) showed that Goldwater was favored by only 28 percent of the voters, Johnson was preferred by 67 percent, and 5 percent were undecided. Based
upon this poll it was likely that Goldwater would fail to garner 40 percent of the two-party vote and, indeed, he obtained 39 percent to Johnson's 61 percent.

We ought to view the disadvantages received by the people in the smaller states under the Electoral College as being roughly balanced by the advantages they obtain in the Senate and in the House. Indeed, the system of checks and balances established by the authors of the Constitution is based in part upon the expectation that different branches of the federal government will have different constituencies.

If the election were held under the direct election plan, Goldwater's weakness might have encouraged another Democrat to run as a third-party candidate with a reasonable hope of winning the presidency. Possibly, the popular Robert Kennedy, former attorney general under President Kennedy and brother of that martyred President, might have been induced to join the race in 1968. How is it possible that a third-party candidate such as Kennedy could have won? The best guess is that Goldwater would have obtained no more than the 39 percent of the popular vote that he secured in his two-man race. The people who voted for Goldwater mainly supported him either because he was the Republican nominee or because they were attracted by his conservative stands on issues. Since Kennedy would have been perceived as a Democrat (even if he had run on a third-party ticket) and since Kennedy was known as a champion of liberal causes, he could hardly attract the support of would-be Goldwater voters. Kennedy, on the other hand, would have had wide popular appeal among potential Johnson supporters. It was he, and not Johnson, who was viewed as the heir of the Kennedy tradition. Indeed, it is conceivable that Kennedy could have garnered more votes than Johnson. If Goldwater retained 39 percent of the vote and if Kennedy obtained more votes than Johnson (but less than 40 percent of the total vote), then Goldwater and Kennedy would have been in a runoff. In such a runoff Kennedy would probably win. Yet, most Goldwater voters would have preferred the moderate Johnson to the liberal Kennedy. Thus, the candidate favored by a minority of voters, the candidate who would have lost to one of his opponents (Johnson) in a two-way race, would have won the election.

If, however, Kennedy had run under the Electoral College and if Johnson's vote had been divided in each state between Kennedy and Johnson, then Goldwater would have won with 80 percent of the electoral vote. The moral is clear. Third-party candidates cannot win under the Electoral College but under the right conditions can be victorious under the direct election scheme. Since the voters know this to be true (or will be so informed by the people of the media during the campaign) they will not vote for such candidates under the Electoral College. They do not wish to waste their votes. No such wasting, however, will occur under the direct election proposal.

There is another possible danger of the direct election plan which also can be illustrated by the 1964 election. In a three-person race Goldwater might have won the most votes and also obtained 40 percent of the vote, instead of 39 percent. If that occurred he would have been elected President. This result is even worse than the selection of Kennedy as president, for Goldwater would have lost to either Kennedy or Johnson in two-person races.

The election of 1964 is not unusual. In any election in which one of the two major party candidates is unlikely to achieve 40 percent of the vote, a major third-party candidate may be persuaded to enter the race. As a consequence, an unrepresentative result may occur. And,
indeed, in 8 of the 21 presidential elections held in the twentieth century 1 of the 2 major party candidates failed to attain 40 percent. The last such race took place in 1972, when the Democratic nominee, George McGovern, received only 38 percent of the vote.

In recent years the ability of a major third party candidate to challenge the two established parties has been enhanced by the substantial decline in party identification and party voting. And the third party candidate need not fear the lack of a permanent, long-term party organization to support him or her, for parties are increasingly becoming less important in electing presidential candidates. Candidates for the presidency now seek popular support through television instead of through party workers; receive advice and intelligence from media people, pollsters, and management experts, instead of from party leaders; and secure campaign funds from special interest groups, rock stars, and the federal government, instead of from the party. In the words of David Broder, "The party is over."

In short, the only element preventing the entry of a major third-party candidate into the presidential race is the Electoral College. Change the Electoral College to the direct election plan and a major third-party candidate will run whenever conditions are favorable. The result: the wrong person, the person preferred by a small minority of the voters, may be elected.

Regional Third Parties Under the Electoral College: A Dead Issue. In his second argument my adversary claims that under the Electoral College regional third parties have run in the past and will be encouraged to run again in the future. Candidates from such parties will seek electoral votes in regions in which they are strong and hope that neither of the two major party candidates will obtain a majority of the electoral vote. If both these goals are achieved, the election will be subject to some kind of bargaining.

This sounds terrible, and if there were a real chance that these events could happen, I, too, would favor changing the Electoral College system to eliminate the threat. I, of course, would still oppose the direct election scheme. Rather, I would urge that the electoral votes be cast automatically, with the candidate receiving the most electoral votes declared the winner. But the Constitution should not be amended to guard against remote possibilities.

Why is the scenario pictured by my opponent so remote? The answer is that it requires three conditions to be met, all of which are unlikely. The first condition is that a regional third-party candidate must obtain electoral votes. In the post-World War II period regional third-party candidates have been successful in securing such votes only in the deep South. The last regional candidate to receive electoral votes was George Wallace of Alabama, who in 1968 garnered electoral votes from 5 deep South states. But the South, and even the deep South, has changed substantially since 1968. Integration has been accepted. Racism has been denounced. Prosperity has come to the South. And in 1976, a born-again peanut farmer from rural Georgia was elected president on a major party ticket. In view of these events, even my adversary admits that it is less likely that the South will want to play the regional third party games of past. He argues, however, that we do not know when and where other kinds of regionalism might flourish in the United States.

Although anything or almost anything is possible, there is no reason to believe that regionalism (or regional third parties) are the wave of the future. Most social scientists talk about the growing nationalism of America and not about increasing regionalism. A recent survey showed that people in all parts of the country now have similar attitudes on most of the major political issues. There are no longer any one-party regions in the United States. Income levels in the South, which used to be lower than in the rest of the country, are now approaching national norms. There is extensive movement of people and industry between regions. In short, the United States is increasingly becoming a national society.

The second condition that must be satisfied is that no candidate receive a majority of the electoral vote. This has not happened since 1824, over 150
years ago. Indeed, the Electoral College inflates the margin of presidential victory. Since 1868 only two winners (Hayes in 1876 and Wilson in 1916) failed to obtain at least 55 percent of the electoral vote, despite the presence in 6 of these elections (1892, 1912, 1924, 1948, 1960, and 1968) of third party candidates who obtained electoral votes. In view of the difficulty of preventing one of the two major parties from securing a majority of the electoral vote, voting for a third party candidate is perceived by the overwhelming majority of the voters as wasting one’s vote. In 1968, for example, the Republican, Strom Thurmond, was able to hold South Carolina for Nixon primarily because of his argument that, ‘A vote for Wallace is a vote for Humphrey.’ Indeed, Wallace’s support during the campaign declined from 21 percent to 13.5 percent mainly because of the wasted vote argument. The wasted vote argument also explains the decline in support for John Anderson in 1980.

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The final condition that must be met is that the third party regional candidate is able to bargain either its electoral votes or its votes in the House of Representatives for policy commitments. As my opponent so ably argues, such an agreement would be perceived by most Americans as an unholy bargain and, if it occurred, would severely undermine the legitimacy of the new president. In 1968 both Nixon and Humphrey announced that they would not make any deals in the Electoral College for Wallace’s electoral votes. It is doubtful if Wallace would have had much clout in the House of Representatives, for a majority of only one state delegation (Alabama) supported him during the campaign. One wonders how many members of the House of Representatives would be willing to bargain with this delegation in 1968 or with similar groups in future years. Rather, the members of the House would simply vote along straight lines for their respective party candidates.

**Direct Election: Unequal Balance.**

Which states are favored by the Electoral College? Most scholars argue that it is the populous states with the large electoral votes that are benefited. There are two reasons for this result. First, the winner-take-all provision makes the populous states a bigger prize. If a presidential candidate wins in California, he or she receives all 47 California electoral votes. If, on the other hand, the same candidate wins Alaska the reward is a mere three electoral votes. Second, most of the states with the large populations can be captured by the presidential candidate of either of the two major parties. Thus, the prize is not only large, but is also available.

If the large states are advantaged by the Electoral College, then the people who live in these states are benefited as well. More specifically, any group in the population whose voting percentage in the populous states exceeds its percentage in the country as a whole is favored by the Electoral College. In the 1980s people who lived in urban areas, Catholics, Jews, and Hispanics had this characteristic, while in the 1960s blacks and possibly low-income people were in this category as well.

At first glance the advantage received by these groups appears to be unfair and seems to suggest that the direct election plan, which treats all votes the same, ought to be adopted. But prior to changing one element of the federal system we ought to consider the workings of the other parts of that system. When we examine the distribution of the seats both in the Senate and in the House of Representatives it is clear that the less populous states are favored in these two bodies and, thus, the very same groups that are benefited by the Electoral College are disadvantaged in Congress. In the Senate it is obvious that the small states are advantaged, for there are two Senators from each state regardless of population.
As a consequence, in the 1980s each Senator from the smallest state (Alaska) represents 401,851 people, while those from the largest state (California) represent 23,667,902 people. The people of Alaska were thereby favored by a ratio of 59 to one. In the House each state is entitled to at least one seat, no matter how small its population. As a result, in the 1980s the one House member from Alaska represented the same 401,851 people, while each of the 45 members of California represented approximately 525,953. Thus, the people from Alaska had one and a third times the voting power of the people of California.

Now that we know the relevant statistics, the question arises: how should we use them? Perhaps, we ought to favor both the distribution of the seats in the Senate and House and the selection of the president on the basis of the one-person, one-vote principle. This certainly is a consistent and reasonable position. Alternatively, we ought to view the disadvantages received by the people in the smaller states under the Electoral College as being roughly balanced by the advantages they obtain in the Senate and in the House. Indeed, the system of checks and balances established by the authors of the Constitution is based in part upon the expectation that different branches of the federal government will have different constituencies. As a practical matter, however, there are not two choices open to us, but only one; for it is unrealistic to believe that the Senate or the House will ever be altered to conform to the one-person, one-vote standard. Article V of the United States Constitution states that, “...no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.” The people in the smaller states, certainly will not agree to give up their voting power in the Senate. The distortions in the House can be remedied by increasing its size. In the 1980s, for example, each member could represent 400,000 people (i.e., the population of Alaska). California, under this plan, would have 59 seats instead of 45. But this solution will not be adopted because the people in the smaller states would be unwilling to reduce their power and also because it would result in a House much larger, and therefore less effective, than the present one.

Since the distribution in favor of the people in the smaller states in the Senate and House will not be modified, it is unfair to ask the people in the larger states to abandon their advantage in the Electoral College. It would result in an unequal balance.

Conclusion. My adversary claims that the Electoral College contains three major defects: (1) the unrepresentative result in the two-candidate race; (2) the participation of a regional third-party candidate in the selection of the president; and (3) the unequal votes generated by the winnertake-all system within each state. I have shown that both the first and the second results are highly unlikely to occur, and the third phenomenon is an advantage instead of a defect. I have also demonstrated that the direct election plan may foster unrepresentative results in multiple-candidate elections and will create an unequal balance between the less and the more populous states.

In short, a new roof is neither needed nor desirable. Our old, well-built, slate roof has withstood the heavy rains of the past and has held tight.

Selected Bibliography

In Favor of Direct Election


Forum

In Favor of the Electoral College


