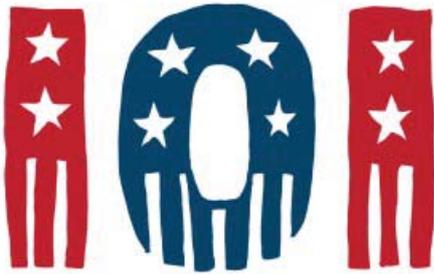


election



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Electoral College

In many ways, the history of the Electoral College reflects the evolution of a persistent problem in American politics, one summarized in political scientist Robert Dahl's succinct question "Who governs?" The answers Americans have given have changed throughout the nation's history. The framers of the Constitution believed the college would balance tensions among the various states and protect the authority of the executive from the influence of Congress and the population at large. More recently, however, debates over the college have centered upon whether it performs these functions too well, and, in so doing, hampers democratic values increasingly important to Americans.

Origins

Many of the delegates to the Constitutional Convention in 1787 initially were convinced that the president should be chosen by majority vote of Congress or the state legislatures. Both these options steadily lost popularity as it became clear the Convention did not want to make the presidency beholden to the legislature or to the states. However, many delegates also found distasteful the most viable alternative—direct election by the populace—due to fears that the public would not be able to make an intelligent choice

and hence would simply splinter among various regional favorite-son candidates.

On August 31, 1787, toward the end of its third month, the convention created the Committee on Postponed Matters, or the “Committee of Eleven,” to solve such problems. Chaired by David Brearley of New Jersey and including Virginia’s James Madison, within four days of its organization, the committee proposed that electors, equal in number to each state’s congressional delegation and selected in a manner determined by the state legislatures, should choose the president. These electors would each choose two candidates; when Congress tabulated the votes, the candidate with the “greatest Number of Votes” would become president and the runner-up vice president. In the case of a tie, the House of Representatives would choose the president and the Senate the vice president. This plan proved acceptable to the convention because it was a compromise on many of the points that had rendered earlier proposals unworkable—it insulated the president from the various legislatures but preserved the process from undue popular influence. Similarly, in basing its numbers on the bicameral Congress, the college moderated the overwhelming influence of the populous states. Though the phrase “Electoral College” was not included in the Constitution, the plan was encoded in Article II, section I.

The College and the States: Solving Problems

Over the first few presidential elections, states experimented with various means of choosing their electors. In the first presidential election, for example, 11 states participated. Four held popular elections to select electors; in five the legislature made the decision. The remaining two combined these methods; the legislature chose individuals from a field selected by general election.

Despite this carefully constructed compromise, the practicalities of electoral politics gradually overtook the college’s system. Most influential was the surprisingly quick emergence of political parties that coalesced around individual candidates. By 1800, the Democratic-Republican Party and its rival Federalist Party had gained control of many state governments and began to manipulate local methods for selecting electors; the Federalist parties of Massachusetts and New Hampshire, for example, were in command of those states’ legislatures and reserved to those organizations the right to select electors. In the next presidential election, the legislature, doubting its ability to secure the states’ electors for the Federalists, switched to a system in which each congressional district selected one elector, only to revert back to legislative control in 1808. Similarly, in Virginia the Democratic-Republican Party shifted the authority to a winner-take-all general election, where favorite-son candidate Thomas Jefferson was assured to gain a majority and sweep the state’s electoral votes. Thus, despite the original expectation that independent

electors would gather and deliberate over the most qualified candidate, they were increasingly selected to represent their parties and to cast their votes accordingly.

The 1800 election also revealed perhaps the greatest flaw in the Electoral College as established by the Constitution. The Democratic-Republican electors chosen in 1800 obediently voted for their party’s choice for president, Jefferson, and vice president, New York’s Aaron Burr. However, the convention had not anticipated such party-line voting, and the tabulation of the electors’ votes revealed an inadvertent tie. In accordance with the Constitution, the election was thrown to the House, where Federalist representatives strove to deny their archenemy Jefferson the presidency. It took 36 ballots before the Virginian secured his election. As a result, in 1804 the Twelfth Amendment was added to the Constitution, providing that electors should cast separate ballots for the president and vice president. Despite several recurrences of such crises in the system, only one other constitutional reform of the college has been adopted; in 1961, under pressure from citizens complaining of disenfranchisement, the Twenty-Third Amendment was added to the Constitution; it granted the District of Columbia three electoral votes.

As the nineteenth century progressed, such manipulations as occurred in Massachusetts and New Hampshire gradually faded in favor of assigning electors to the winner of the general election. The combination of new styles of mass politics that presidential contenders like Andrew Jackson embodied and the allure that the winner-take-all system held for confident parties meant that by 1836 South Carolina was the only state in the Union that clung to legislative choice against popular election, and even that state capitulated after the Civil War. Despite the occasional crisis in which states have resorted to legislative choice—such as Massachusetts in 1848, when a powerful bid by the Free Soil Party meant that no party gained a majority of the popular vote, or Florida in 2000, when the legislature selected a slate of electors in case the heated contest over the disputed popular vote was not resolved—this system has remained ever since.

The Problem of the Popular Vote

This does not mean, however, that it has always worked perfectly. As concerns over regional balance and the fitness of the electorate have receded, debate has centered on the awkwardness of the combination of popular ballots and state selection. For example, the winner-take-all system ensures that the minority in each state is disenfranchised when the electors cast their votes. Indeed, despite the universal desire to empower the general electorate, it remains quite possible for the president to be chosen by a minority of the popular vote. In the three-way election of 1912, for example, Democrat Woodrow Wilson won more than 80 percent of the electoral vote despite winning

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only a plurality of the popular vote—barely 41 percent. Similarly, Democrat Bill Clinton was elected in 1992 when his 43 percent of the popular vote—a plurality—translated into nearly 70 percent in the Electoral College. Though neither of these elections was in danger of being thrown to the House of Representatives, a similar three-way election in 1968 raised such fears; indeed, the independent candidate George Wallace hoped to gain enough electoral votes to force such an event and gain concessions from either Republican Richard Nixon or Democrat Hubert Humphrey. Nixon, however, gained a close majority in the Electoral College.

Despite earning the appellation “minority president” from their weak showing in the popular election, Nixon, Wilson, and Clinton did at least receive pluralities. Several other times, the uneven correlation between the popular vote and the Electoral College resulted in the loser of the former attaining the presidency. In 1888, Republican Benjamin Harrison defeated the incumbent Democrat Grover Cleveland in the Electoral College despite losing the popular vote; Cleveland’s graciousness, however, assured a smooth transition of power. The other such elections—1824, 1876, and 2000—were met with discontent and protest from the losing party. Indeed, though correct constitutional procedure was followed in each case, all three elections were tainted with accusations of corruption and manipulation, allegations exacerbated and legitimated by each eventual president’s failure to win the majority of the popular vote.

In 1824 the presidential election was a contest among several Democratic candidates, and a situation the Convention had hoped to avert occurred: the nation split along regional lines. Andrew Jackson gained a plurality of the popular and electoral vote, primarily in the South and middle Atlantic. Trailing in both totals was John Quincy Adams, whose base was in New England. The other candidates, Henry Clay and William Crawford, won only three and two states, respectively (though both also won individual electoral votes from states that divided their totals). Despite his plurality, Jackson was unable to gain a majority of the electoral vote, and the election was again, as in 1800, thrown to the House of Representatives. There, Clay threw his support to Adams, who was selected. Despite the fact that correct procedure was followed, Jackson denounced Adams and Clay for thwarting the will of the people and subsequently swept Adams out of office in 1828.

In 1876 Democrat Samuel Tilden led Republican Rutherford B. Hayes by more than a quarter million popular votes. However, the results in four states, Oregon and the southern states of Florida, South Carolina, and Louisiana—all three of which were expected to easily go for Tilden—were disputed. Without the electoral votes of these states, Tilden found himself one vote short of a majority. All four states sent competing slates of electors to the session

of Congress that tabulated the votes. In 1865 Congress had adopted the Twenty-Second Joint Rule, which provided that contested electoral votes could be approved by concurrent votes of the House and Senate. However, the rule lapsed in January 1876, leaving Congress with no means to resolve the dispute. In January 1877, therefore, Congress passed the Electoral Commission Law, which established—for only the particular case of the 1876 election—a 15-member commission, consisting of 5 members of the House, 5 of the Senate, and 5 justices of the Supreme Court, which would rule on the 15 disputed electoral votes. Seven seats were held by members of each party; the remaining seat was expected to go to David Davis, an independent justice of the Supreme Court. However, Davis left the commission to take a Senate seat, and his replacement was the Republican justice Joseph Bradley. Unsurprisingly, the commission awarded each disputed vote to Hayes, 8 to 7. Hayes thus edged Tilden in the college, 185 to 184. Though Democrats threatened to filibuster the joint session of Congress called to certify the new electoral vote, they agreed to let the session continue when Hayes agreed to end Reconstruction and withdraw federal troops from the South. The Hayes-Tilden crisis resulted in the 1887 Electoral Count Act, which gave each state authority to determine the legality of its electoral vote but also provided that a concurrent majority of both houses of Congress could reject disputed votes.

The act was invoked to resolve such a dispute in 1969 and again in the first two presidential elections of the twenty-first century. The 2000 election mirrored the Hayes-Tilden crisis; as in 1876, the Democratic candidate, Al Gore, held a clear edge in the popular vote, leading Republican George W. Bush by half a million votes. However, the balance in the Electoral College was close enough that the 25 votes of Florida would decide the election. Initial returns in that state favored Bush by the slimmest of margins but recounts narrowed the gap to within a thousand. Finally, however, the Supreme Court affirmed Bush’s appeal to stop the recounts; the Republican was awarded a 537-vote victory in the state and consequently a majority in the Electoral College. Democrats in the House of Representatives attempted to invoke the 1887 law to disqualify Florida’s slate of electors but failed to gain the necessary support in the Senate to put the matter to a vote. Bush’s successful 2004 reelection campaign against Democrat John Kerry also sparked discontent, and concerns about the balloting in Ohio prompted House Democrats to again invoke the law. This time, though, they were able to gain enough Senate support to force a concurrent vote; it affirmed Ohio’s Republican slate of electors by a large margin.

These controversies have highlighted growing discontent with the intent and function of the Electoral College, and the reasoning behind the Constitutional Convention’s adoption of the institution has

been increasingly marshaled against it. While the founders hoped that electors would select the president based on reasoned discussion, 24 states now have laws to punish “faithless electors” who defy the results of their states’ popular election and vote for another candidate, as has occurred eight times since World War II. While the founders hoped the Electoral College would create a presidency relatively independent of public opinion, it has come under fire since Andrew Jackson’s time for doing exactly that.

Possible Solutions

Multiple measures have been proposed to more closely align the Electoral College with the popular vote. One of the more commonly mentioned solutions is proportional representation; that is, rather than the winner of the presidential election in each state taking all that state’s electoral votes, the state would distribute those votes in proportion to the election results. Such a reform would almost certainly enhance the chances of third parties to gain electoral votes. However, since the Constitution requires a majority of the Electoral College for victory, this solution would most likely throw many more presidential elections to the House of Representatives. For instance, under this system the elections of 1912, 1968, and 1992 would all have been decided by the House. Thus, proportional representation would undo two of the Framers’ wishes, tying the presidency not only closer to the general public but perhaps unintentionally to Congress as well. The Colorado electorate rejected a state constitutional amendment for proportional representation in 2004.

A similar policy is often referred to as the “Maine-Nebraska rule,” after the two states that have adopted it: Maine in 1972 and Nebraska in 1996. It is reminiscent of the district policy that states such as Virginia and Massachusetts implemented in the early years of the republic. Maine and Nebraska allot one electoral vote to the winner of each congressional district, and assign the final two (corresponding to each state’s two senators) to the overall winner of the state’s popular vote. While this technique seems to limit the potential chaos of the proportional method, it does not actually solve the problem: if every state in the Union adopted the Maine-Nebraska rule, it would still be possible for a presidential candidate to lose the election despite winning the popular vote.

A third state-based reform of the Electoral College system gained significant support in April 2007, when the Maryland legislature passed a law calling on the rest of the states to agree to assign their electors to whichever presidential candidate wins the popular vote. This would effectively circumvent the Electoral College, while retaining the elector and Congress’s tabulation of the vote as a symbolic, constitutional formality.

Finally, many commentators have called for a constitutional amendment simply eliminating the Electoral

College entirely, arguing that, in addition to the possibility of presidential victors who have lost the popular vote, the electoral system artificially inflates the value of votes in small states (due to the constitutionally mandated minimum of three votes to every state), discourages minority parties, and encourages candidates to ignore states they believe they cannot win. However, the college is not universally unpopular; its supporters counter that the system maintains political stability and forces candidates to expend effort on states with small populations that they might otherwise bypass. Additionally, supporters of the Electoral College maintain that it is an important connection to the federal system envisioned by the framers of the Constitution.

Some observers have noted that disputes over the college tend to follow fault lines already existing in American politics. Gore’s loss in the 2000 election inspired many Democrats to look at the college with a critical perspective; additionally, more rural states, small in population, that oppose losing the influence the Electoral College gives them tend to support Republican candidates. Heavily urban states with more concentrated populations tend to vote Democratic. Thus, the regional differences the Convention hoped to moderate through the Electoral College have been effectively translated into partisan differences that the college exacerbates. However, the constitutional barriers to removing the college likely ensure it will remain on the American political landscape for the foreseeable future.

See also elections and electoral eras; voting.

FURTHER READING. Richard McCormick, *The Presidential Game: The Origins of American Presidential Politics*, 1982; Arthur Schlesinger, Jr., *The History of American Presidential Elections, 1789–1968*, 1971; Paul D. Schumaker and Burdett A. Loomis, eds, *Choosing a President: The Electoral College and Beyond*, 2002.

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