

Relic of the Past or Tool for Unity?

America Considers the Electoral College

By Richard E. Shugrue
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The 2000 presidential election spotlighted an ancient institution and focused attention on the question of whether it should be altered or abolished as America enters the 21st century.

The institution, of course, is the Electoral College, which isn't even a college, but a process by which the American people choose their president and vice president.

The 2000 election was one of those rare occasions when the winner of the electoral vote garnered fewer popular votes than his rival. The nature of the electoral system is that the popular vote in each state determines the winner of the entire membership of the state's "college." Each state is allowed one electoral vote for each representative in the House and one for each of its United States senators.

While Americans were waiting for the resolution of the Florida recount, and first became acquainted with terms such as "hanging chad" and "butterfly ballot," some were saying that the time had come to abandon the Electoral College. These critics said America should elect the president by direct, popular vote. Indeed, two states — Nebraska and Maine — had tinkered with the electoral system, adopting systems in which the candidate who carried each congressional district earned that vote, and the candidate who carried the state earned the two "senatorial" votes. Since Nebraska's new law was approved in 1991, the winner of the state-wide popular vote also has carried every congressional district.

The Origins of the Electoral College

How did America come to adopt the Electoral College? How does the system work, in reality? Is it, as one author suggested, an 18th century device to solve 18th century problems or an enduring instrument of American unity? Will lawmakers be hospitable to altering the manner in which the nation's top executive is chosen after two centuries of experience?

The Electoral College was established by the framers of the United States Constitution as a compromise between the choice of the chief executive by the legislative body and popular election. The College consists of 538 electors — one for each of the 435 members of the House of Representatives and 100 senators, and the other three for the District of Columbia. The 23rd Amendment, which was ratified in 1961, gave the nation's Capitol three votes, although it has no senators or real representatives. While state statutes vary on the process by which electors are chosen, the slates are usually determined by the political parties. On election day, voters choose a candidate by name — Al Gore, George W. Bush or Ralph Nader — but, in fact, they are choosing the slate of electors representing the candidate who wins

the most popular votes. These electors meet at the state capitol on the first Monday after the second Wednesday in December (Dec. 18 this past election) to vote formally for the top office holders in the land. A majority of 270 electoral votes is necessary for any candidate to be chosen president.



Photo by Erin Photography

Professor Shugrue: The 2000 presidential election sparked renewed interest in an old process — the Electoral College.

When the electors gather at their respective state capitols, they prepare six original Certificates of Vote and add a Certificate of Ascertainment to each one. The former lists all persons voted for as president and the number of electors for each. It separately lists the persons voted for as vice president, along with the number of electors voting for each. The Certificate of Ascertainment is prepared by the governor. This document is a list of the slate of electors for the person receiving the most popular votes. Three of the certificates are sent to the National Archives. The archivist, in turn, transmits the originals to the Office of Federal Register, which then forwards one copy to each house of Congress.

In late December, House and Senate staff members go to the Office of Federal Register to inspect the certificates. The formal Certificates of Vote to be sent to the president of the Senate have to be held until Congress opens in January when the votes are opened and counted before both houses.

In 2001, the Congress met in joint session to conduct the official tally. Vice President Gore, the presiding officer until the new administration was sworn in on Jan. 20, had the duty of declaring the official result of the election: That George W. Bush and Richard B. Cheney were elected president and vice president.

Why Did the Framers Choose the Electoral College?

The authors of the American Constitution had to decide not only what form of leadership the new nation was to have, but how to make the selection. Remember your first political science course: the post-Revolutionary War states were sovereigns; some were big and some were small, but all were jealous of their own sovereignty. There were only about 4 million souls populating some thousand miles of coastline. Transportation was tediously slow and a national campaign out of the question. Many of the Enlightenment thinkers who met at the Philadelphia convention thought that political parties were bad and that genteel citizens ought not engage in the rough and tumble of politics.

William C. Kimberling, deputy director of the Federal

Election Commission, has written a wonderful history of the Electoral College — which can be found on the Internet at <http://freedom.house.gov/electoral/fecmemo.asp> — recounting the four choices the framers discussed:

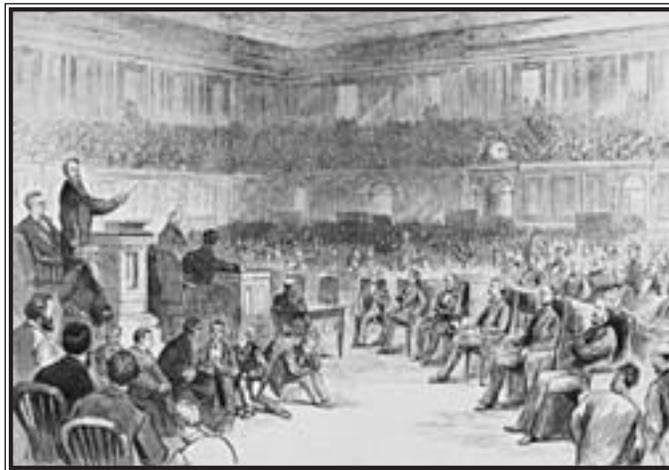
- Congress could select the president;
- The state legislatures could choose;
- The people could directly vote for the chief executive; or
- The task could be accomplished by a College of Electors.

Kimberling notes that the structure of the College “can be traced to the Centurial Assembly system of the Roman Republic.” In ancient Rome, adult male citizens were divided into groups of 100. Each group was entitled to cast one vote on issues presented by the Senate. In America’s Electoral College, the states would act as these groups did. The number of votes each state was entitled to would be determined by the size of its congressional delegation.

The American Electoral College also is like the College of Cardinals when it acts to select a new pope. The electors in the United States were supposed to be the most knowledgeable citizens. The choice of president was supposed to be based on merit.

Article II, Section 1 of the Constitution describes the organization and operation of the College. But since the American Constitution is a “work in progress,” it didn’t take long for the original system to be tinkered with. Political parties came of age in the early days of the country. In the 1800 election, the electors of the Democratic-Republican Party gave Thomas Jefferson and Aaron Burr — both members of that party — the same number of votes. It took the House of Representatives 36 votes to choose Jefferson.

The 12th Amendment was quickly adopted by September 1804. It mandates that each elector cast one vote for president and a separate one for vice president. The original system called for casting two votes for president. The runner-up was declared the vice president. That amendment also called upon Congress to choose the president if no one received an absolute majority. The choice would be from among the top three contenders, with each state casting only a single vote.



This illustration depicts the counting of the electoral votes in the 1800s.

Illustration: Bethmann/Corbis

The System Changes and Breaks Down

Many changes have been made to the electoral system since 1804. By legislation both Congress and the state legislatures have altered specifics of the system. Today, the common practice is that voters, in effect, choose the electors of the party whose candidate receives the greatest number of votes. The individual candidates for the office of elector rarely are seen on modern ballots.

Twelve years later, Democratic-Republican Martin Van Buren won a majority of the electors. His opposition was three Whig candidates, selected to run in different parts of the United States. Historian Kimberling states that the Whigs thought the regional popularity of the candidates would guarantee a majority of electoral votes. They miscalculated.

In 1872, Horace Greeley died during the period of time between the balloting and the meeting of the electors. Greeley's electors split their votes among other Democrats, but U.S. Grant had won a majority and became president.

One term later, when the Democrats nominated Gov. Samuel Tilden of New York and the Republicans chose Gov. Rutherford Hayes of Ohio, pundits projected Tilden would be the winner. However, three southern states sent two sets of electoral votes to Congress, one for each candidate. A special commission was created to resolve the question of who won in each state. The commission picked the Hayes slate from each state, and he was chosen president, despite Tilden's victory in the popular vote.

When incumbent Grover Cleveland ran for re-election in 1888, he received huge majorities of the popular vote in states supporting him. Republican Benjamin Harrison received only small majorities in many states favoring him. The difference in the popular vote was only about 1 percent, but Harrison won the electoral vote.

Keep It, Change It or Abolish It?

Why should the Electoral College be retained?

1. America's is a federal government, recognizing the importance of each state, large or small. The guarantee that each state is entitled to the votes representing the two senators, plus its congressional members, balances this feature of the American system.

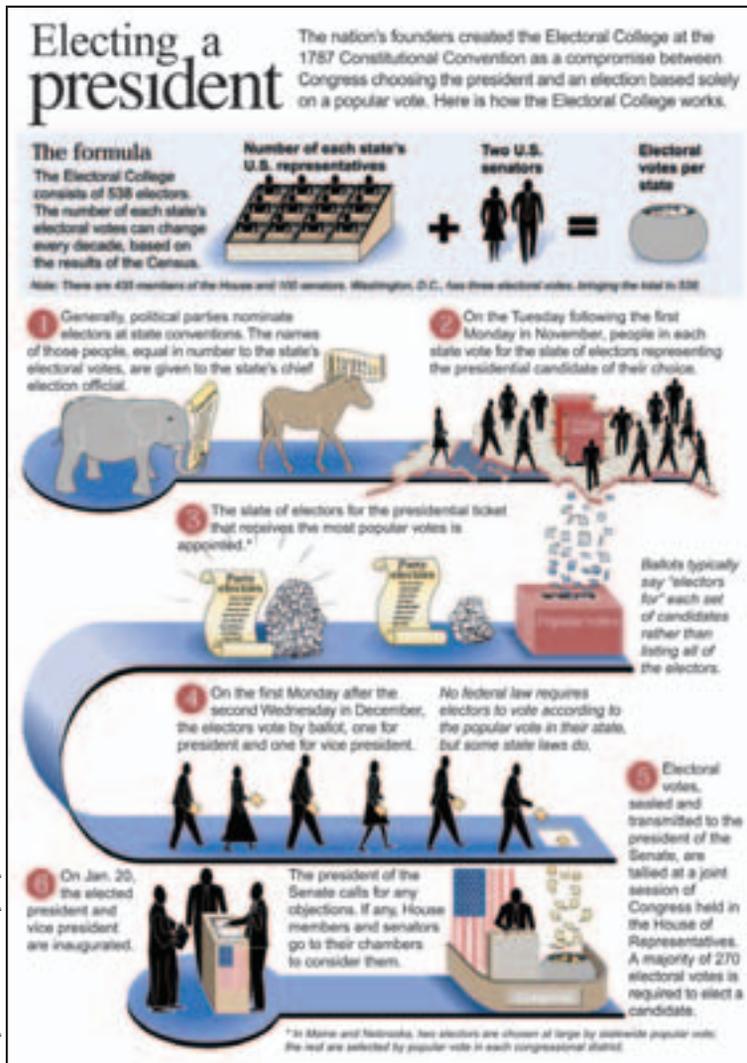
2. It encourages the two-party system, for it is virtually impossible for a third party to win

enough votes to carry any state.

3. It requires a distribution of popular support for a candidate to be chosen president. Without the college, either blocs of populous states or metropolises could run roughshod over the rural, less-populated regions.

4. Minorities can act as a leverage, by making the difference between the candidate's ability to secure all or none of a state's electoral vote. Thus, the presidency may be more responsive to the interests of minority groups.

Many interest groups have urged elimination of the



Emilly Holmes, S. Salsbery Meyer/AP Sources: National Archives and Records Administration; Federal Election Commission

In 1845, Congress adopted a single day when states must conduct their presidential elections. That date is the Tuesday following the first Monday in November in years divisible by four.

In earlier elections in American history, the winner of the popular vote did not become president. John Quincy Adams received fewer popular votes than Andrew Jackson in 1824. Since Jackson did not win a majority of electoral votes, Adams was chosen by the House of Representatives.

Electoral College. The League of Women Voters of the United States, for example, in 1970 supported direct election of the president “by popular vote as essential to representative government.”

One group analyzed the electoral votes of the states and pointed out that “[I]f a candidate wins a slim majority in California and grabs its 54 electoral votes, he or she is one-fifth of the way [to victory].” The same organization noted that while California accounts for 11 percent of the nation’s population “its electoral votes are an even greater prize — 20 percent of the necessary votes.”

The opponents of the Electoral College point to this arithmetic and these other arguments against the institution:

1. A president with the minority of the popular votes could be (and has been) elected.

2. Faithless electors could vote for candidates other than those who won the popular vote in each state. (See box on rogue electors.)

3. The College discourages voters from turning out. In states like Nebraska, for example, a Democrat has won the electoral vote only once in 60 years.

This spring, the states will be reapportioned, following the year 2000 census mandated by the Constitution. Arizona, Georgia, Florida and Texas will gain two seats each in the House of Representatives. That means the four will gain two more electors each. California, Colorado, Nevada and North Carolina will each gain one.

There are losers in this formula. New York and Pennsylvania will each lose two congressional seats and two electors. Connecticut, Illinois, Indiana, Michigan, Mississippi, Ohio, Oklahoma and Wisconsin will each lose one. As *The Washington Post* reported, if George W. Bush won exactly the same states in 2004 as he won last November, he would win the Electoral College 278 to 260, rather than 271 to 267.

Proposals to alter or eliminate the Electoral College include: 1) choosing electoral votes by districts (as Nebraska and Maine currently do); 2) elimination of individual electors but retention of the electoral college principle; and 3) substitution of direct popular vote.

Even before the new Congress convened in January, formal bills were introduced in each house calling for reforms of the electoral system. Sen. Dick Durbin of Illinois offered a Joint Resolution that would propose an amendment to the Constitution calling for direct election of the president and vice president. In Durbin’s scheme, if no candidate received at least 40 percent of the popular vote, there would be a runoff election 21 days after the general election.

Congressman Edward Markey’s “Voters’ Bill of Rights for the 21st Century” called for 10 citizen guarantees,

including “The right to have an Electoral College which reflects the preferences of voters in a fair and accurate manner.” At the heart of the Massachusetts Democrat’s elaborate plan is the creation of the “21st Century Bipartisan Electoral Commission,” which would be assigned with developing a uniform ballot format for presidential elections and establishing standards for military voting and absentee ballots.

The commission would reassess the Electoral College and evaluate strategies to reflect voters’ intentions for electing the top office holders in the United States.

Any national change in the system would require a constitutional amendment. That fact alone makes it less probable that the Electoral College will be scrapped, because three-quarters of the states must ratify any amendment. Small states, which benefit the most from the current system, would undoubtedly vote “no.”

One thing is certain: In an era of 24-hour news channels and instant communication by way of the Internet, Americans learned more about the 18th century device called the Electoral College than the framers of the Constitution ever would have dreamed!

—*About the Author: Professor Shugrue has been a member of the Creighton faculty since 1966 and is frequently contacted by the news media for his views on the political scene both locally and nationally.*



Rogue Electors

Nothing in the Constitution or federal statutes requires electors to cast their ballots in accordance with the popular votes in their state. Rare, rogue or faithless electors have, indeed, cast their ballots for a candidate other than the winner in a given state. For example:

— In 1820, an elector in New Hampshire voted for John Quincy Adams and not James Monroe, who was entitled to his ballot;

— In 1956 in Alabama, an elector failed to vote for Adlai Stevenson, who had won the popular vote, but cast his ballot for a circuit judge instead;

— In 1960, an Oklahoma elector was supposed to vote for Richard Nixon. He voted for Harry F. Byrd;

— In 1968, George Wallace got the vote of a North Carolina elector even though Richard Nixon was entitled to it;

— In 1988, a West Virginian chose Lloyd Bentsen rather than the popular winner, Michael Dukakis. 