



# The Electoral College: How the Republic Chooses its President

With a statistical three-way tie in the presidential popularity polls as we began to research this article, the drums have been beating once more for change in the electoral college system of selecting the U.S. chief executive, with even direct popular elections being touted. Ominous scenarios have been raised to show the imminence of a constitutional crisis. This constitutional crisis, incredibly, would supposedly occur were we to continue following the Constitution which, in the wisdom of the Founding Fathers, has for more than two centuries provided quite proficient means to handle elections.

Much of the dilemma has been caused by a general ignorance of history, as well as through willful deception by generations of demagogues who have misled the American people into thinking this is a “democracy,” which is exactly what the founders opposed. While modernists may consider them semantic tosses of a coin, the differences between a republic and a democracy were vital in the embryonic days of the Constitution — which was established as a system of restraints against what government could do — and should be even more compelling today. Indeed, it is because the United States was founded as a republic that an electoral college was created.

## A Republic, If You Can Keep It

James Madison, often called the Father of the Constitution, described the decisions of representative, or republican, government — as opposed to democracy — as the required filtration before government action should take place. In *The Federalist Papers*, Madison ventured that “it may well be that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves.” Elsewhere in those remarkable essays advocating ratification of the Constitution, Madison observed that pure “democracies have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.” It was because of the tendency for majorities to become tyrannical that Madison argued for separation of powers.

Thus it is, as has been noted by Clarence Manion, former dean of law at Notre Dame University, that the term “democracy” is not found in the text of the Declaration of Independence, the Constitution of the United States, nor in any of the state constitutions. On the other hand, Article IV of the Constitution guarantees “to every state in this Union a republican form of government.” Harvard Professor Drew McCoy, in his 1989 biography of Madison entitled *The Last of the Fathers*, said that Madison “wanted to protect republican government as much as possible from the disruptive and unsettling effects of immediate popular influence — precisely because in America, as elsewhere, the large body of the people were not always or even ordinarily guided by enlightened reason.”

When William Paterson of New Jersey, at the Constitutional Convention in 1787, said that “the democratic spirit beats high,” that was intended to be derisive. So it was when Edmund Randolph of Virginia said he wanted “to restrain the fury of democracy.” The people were assuredly not the “voice of God” to Alexander Hamilton, who called them “that great beast.” Conservative Gouverneur Morris described them as a “reptile”; Elbridge Gerry of Massachusetts asserted that “the evils we experience flow from the excess of democracy,” urging his colleagues to be “taught by experience the danger of the leveling spirit.” And George Washington urged the avoidance of “leveling principles.” In his retirement, the early and determined conservative John Adams reflected in writing: “Remember, democracy never



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lasts long. It soon wastes, exhausts and murders itself. There never was a democracy that did not commit suicide.”

The rationale for electors was explained by Hamilton in *The Federalist Papers*, when he perceived that “the immediate election should be made by men most capable of analyzing the qualities adapted to the station and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choices. A small number of persons, selected by their fellow citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation.”

It was because of distrust of the mobs that the founders established the electoral college and the election of senators by the state legislatures, the latter being banefully overturned by the 17th Amendment in 1913. (That was also the year that the income tax was introduced, as well as the Federal Reserve System, all of which greatly undermined the Republic.) It was because of fears of such evils as incipient democracy that, at the close of the convention, when Benjamin Franklin was asked what the delegates had produced, he answered: “A republic, if you can keep it.”

How to elect the president was a greatly vexing matter, and the electoral college was assuredly a compromise. That of course makes it no less consequential. It was virtually on a par with what became known as the “Great Compromise,” balancing the rights of states in the Senate and the rights of people in the House of Representatives in a federal system. Balance was critical. As Madison put it in *The Federalist Papers*: “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.” Equality wasn’t in the works. As former Supreme Court Justice Joseph Story explained in his classic 1859 work, *A Familiar Exposition of the Constitution of the United States*, the small states gave up equality of representation in the House of Representatives while the large states conceded to equality in the Senate. This principle was to hold in the selection of president as well.

The delegates needed to make sure that their states’ interests were represented in the proceedings. Yet the states were of widely divergent sizes, with Delaware having 37,000 people compared to 420,000 in Virginia. Massachusetts, Pennsylvania, and Virginia represented some 1,140,000 compared to 1,641,000 in the other ten states combined.

### **Choosing the Executive**

Among the methods debated for selecting a chief executive were election by the national legislature, by the state legislatures, by the freedmen at large, by the people in districts, and by electors. A multiple executive was considered, as were tenure for life and one seven-year term. Eventually decided upon was the concept of a strong executive, but one who could be impeached by Congress.

Sixty ballots were needed just to decide the method for selecting a president. Finally, a committee was chosen with one representative of each state, and from this committee, with Pierce Butler of South Carolina authoring the basic design, the method of selecting the president was finalized. Distinguished historian Forrest McDonald, in *Novus Ordo Seclorum*, has ably described the features of the complex resolution:

It provided for both a president and a vice president; this feature satisfied those who had been concerned about the succession in the event of death or disability of the president. It provided that electors be appointed in such manner as the several legislatures should direct; that took care of the objections of those who feared popular election, for it meant that the legislatures could elect the



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electors if they chose to do so. Each state was allotted the number of electors equal to the combined number of senators and members of the House of Representatives to which it was entitled; this effected a compromise between proportional and equal allocation. The proposal provided that the electors meet in their respective states, which overcame the problem of distance of travel and also reduced the possibility of intrigue, and provided that they vote for two candidates, one of whom must be the resident of another state. The person receiving the most votes, if a majority, would become president, and the one with the second most votes would become vice-president.

Those provisions held in 1800, when the election resulted in an electoral tie between Thomas Jefferson and Aaron Burr and required the House of Representatives to decide the outcome — and was indicative of the strengthening of political parties. The two were considered to be running on a ticket together; the deadlock resulted because one elector did not withhold a vote from Burr so he would finish second. It necessitated the 12th Amendment, which, among other changes, stipulated the separate voting by electors for president and vice president.

For a time during debate in 1787, the decision in the event of a lack of a majority was going to be settled by the Senate, but it was thought that such a provision put too much power with the Senate (it already passed on treaties, for example), so that possibility finally was placed in the House, closer to the people. (The Senate retains the authority to choose the vice president from the top two candidates, if the electors fail to produce a majority.)

When it looked as though the Senate would be the body for resolving the presidency, George Mason thought that after Washington served, the next 19 of 20 elections would be decided in the Senate. Mason was not alone in concluding that no man, save Washington, would be able to get a majority of the electoral college. The Convention believed that Congress, with each state voting as an equal, would normally decide who would be president. That eventuality (which only proved true twice — in 1801 and 1825) is what many commentators have been decrying as a possible constitutional crisis for the next election. What would happen, they moan, if a man who doesn't get the most popular (or even electoral) votes were elected as president by the House? That is exactly the choice the Constitution intended. Otherwise, why would there be a specific provision to select the president from among the top three finishers?

### **Role of Electors Erodes**

What the founders didn't foresee was the growth of political parties that would take away voting discretion from electors. But just because political parties perverted part of the way the system was supposed to be run should not lead to the junking of the electors altogether. Moreover, the undemocratic nature of the Constitution still needs to be stressed, along with the founders' warranted distaste for majoritarian rule.

Important matters, such as constitutional amendments, presidential vetoes, impeachments, treaties, and the limiting of debate in the legislatures were all established with super-majorities being required. The young were undemocratically excluded from voting (the age has since changed), as were foreigners, not to mention women and slaves, whose status has since been changed by amendment. As Lord Acton observed, "the views of pure democracy ... were almost entirely unrepresented in that convention." Professor M.E. Bradford is on target in commenting that, in one sense, the "fear of democracy and of the despotism that was likely to come after it is the 'given' of the Great Convention."



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After Washington was twice elected, however, partisan splits developed. Whereas the founders expected independent judgment from the electors, by 1796 the election between Thomas Jefferson and John Adams effectively ended that. That year, as Roger Lea McBride has pointed out, in six states the electors were chosen by the people, and in ten states by the legislatures, but in every case the electors “were picked as men pledged to one candidate or the other.” Thus, as McBride shows in his valuable study, *The American Electoral College*, the electoral college died before it was mature, and after Washington’s election “the decision was made for them, and eventually no man was chosen for the job unless he were certain to conform to the dictates of the party.”

Also becoming prevalent was another means for the state parties to exert even more power: adoption of the unit rule, as opposed to splitting electors by districts. If all of a state’s electoral votes went to a general ticket, that state would be more powerful than one that divided its electors, so states began to drop the latter system. Gradually, also, the states began to choose their electors as a result of popular voting, not through state legislatures. For the 1824 election, which was won by John Quincy Adams after a vote of the House of Representatives, all but six of the states chose electors by popular vote; the next election, only South Carolina was a holdout (its state legislature continued to choose electors until the Civil War).

Also, by the 1824 election, over which Andrew Jackson’s supporters were to complain exceedingly, the states were rapidly adopting the general-ticket plan for their electors. By 1836, that system was in use in all states but South Carolina, with exceptions in Florida in 1868 and Colorado in 1876 (legislatures chose), and in Michigan in 1892, when there was a district system plus two electors at large. Currently, Maine and Nebraska have changed their allocation of electoral votes to the winner of the popular vote in the district (plus at-large votes), not winner-take-all, with Florida on the verge of so doing, and bills having been introduced to that end in another seven states.

In actuality, these changes to district voting are moving back toward the direction from which the system was distorted, which is to the good. It is hard, however, to conceive of the people ever giving up what they see as their personal “right” to vote for president. Though the modes of recording the electors’ votes have changed several times, those votes are rarely independent. As long ago as 1859, Justice Story, in his *Exposition of the Constitution of the United States*, expressed dismay that their judgment was not utilized, saying the electors were “almost all universally pledged to support a particular candidate, before they receive their appointment; and they do little more than register the previous decrees, made by public and private meetings of the citizens of their own State.” Despite deviations, however, a faulty electoral system is far better than direct popular voting.

Today the proponents of a direct popular vote would have you believe that a crisis would occur should a president be chosen without the mandate of a majority of the voters. Disregarding the fact that more voters than not usually stay home, there have been minority presidents elected several times without catastrophe, sometimes because of multiple candidates, and sometimes not. In the early days of the Republic, the popular vote was impossible to measure, but minority presidents have included John Quincy Adams, James Polk, Zachary Taylor, James Buchanan, Abraham Lincoln, Rutherford Hayes, James Garfield, Grover Cleveland, Benjamin Harrison, Woodrow Wilson, Harry Truman, and Richard Nixon. In addition, in the elections of 1824, 1876, and 1888, the winners of the popular voting (Andrew Jackson, Samuel Tilden, and Grover Cleveland, respectively) did not win a majority of the electoral votes.

In the 1824 elections, in a four-way race, Andrew Jackson won the plurality of popular votes (153,544 to



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108,740) over John Quincy Adams, who was next. Jackson also had 99 electoral votes to 84 for Adams, but not enough to win since an electoral majority is required. William Crawford had 41 votes and Henry Clay 37. Crawford, however, suffered a relapse from a stroke. Clay gave his support to Adams and the Massachusetts man was elected, with Clay becoming Secretary of State.

### **Cheating Democracy**

One heard similar scenarios — until he dropped from the race — of Ross Perot being placed in the role of Clay (George Wallace was supposed to do the same in 1968). How, the timid asked, could justice be done if the peoples' wishes were frustrated by having, say, Bush not elected because of a Perot deal with Clinton? Similarly, if Clinton were not to be elected? What if Perot were to get the most votes and did not become president?

The charges undoubtedly would be made that democracy had not been honored. So it was in 1824, when the events unfolded just as they had been prescribed in the Constitution. Historian James Truslow Adams, in *The March of Democracy*, states:

The Jacksonites' claim that because their candidate had received the greatest number of Electoral votes the House should therefore have elected him so as not to thwart the will of the people was obviously absurd, and like the Clay-Adams story was merely used to stir up popular resentment and feeling. Had it been the intention of those who framed the Constitution that the House, in a contested election when no candidate received the majority of the votes in the Electoral College vote, was merely to vote for the one who had received the highest number, there would have been no sense in providing the machinery of an election by the House at all. The Constitution should have provided that the candidate receiving the highest number of Electoral votes would, without further proceedings, have become President.

One wonders: Had Perot stayed in the race, and had Clinton subsequently failed to get an electoral majority, would Clinton (as an heir to Jacksonian Democracy) simply have dropped out? Of course, should a presidential race fail to provide an electoral majority, the undemocratic Constitution allows for House selection from the top three finishers.

### **Fearing the Constitution**

An unnatural veneration of democracy has made some fear the Constitution. Senator Slade Gorton (R-Wash.), who has offered what is by no means the most radical way around the Constitution (not elimination of the electoral college, but a popular runoff if necessary), says that in 1824 "the people's will was flouted." Can you imagine, he asks, "the consequences of such an outcome today? I tremble for the future of our country and its system of government when I consider the reaction of the American people if Congress, under the current 12th Amendment, chose someone for President who had not received the most votes." But one need only recall the 1860 election of Abraham Lincoln, who did not even have electors favorable to him on ballots in nine of 33 states and whose opposition polled 66 percent of the popular vote. Presumably the people's will was flouted then, also.

In 1876 another unusual election took place in an extremely close race between Rutherford Hayes and Samuel Tilden. Tilden was one short of a majority with 184 electoral votes, to 163 for Hayes, with a total of 22 votes contested in four states. Charges of fraud were leveled on all sides, and the four states submitted two sets of electoral votes, unable to choose which party had won. A congressional commission, which had a one-man Republican edge, determined along strictly party-line voting that all disputed electoral votes should go to Hayes, giving the Republican an electoral victory, 185 to 184. "The



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significance of the 1876 election,” observed historian Roger McBride, “concerns not so much the Electoral College as the extent to which the votes submitted to Congress as valid electoral votes may be counted or not counted at its discretion. Clearly, if Congress or any agency it designates (such as the electoral commission of 1876) has an absolute right to reject electoral votes, the power to elect really lies with it. On the other hand, if it has no such power, there can be no protection against fraudulent electoral votes from that score.”

Other opponents of the electoral-college system have pointed to the election of 1888, in which Grover Cleveland narrowly (by seven-tenths of one percent) won the popular vote, but lost the electoral vote to Benjamin Harrison, 233 to 168. Professor Judith Best was quoted in a 1979 Senate report on direct popular elections as saying: “The republic’s only undisputed runner-up President, Benjamin Harrison, won because his opponent, Grover Cleveland, ran a sectional campaign. The electoral count system discriminates against candidates who rely too heavily on a sectional base. Consequently, it is the electoral count system that provides the presidential parties with the incentive ‘to widen and flatten out’ their vote.”

Having Congress name the president, especially in this year of congressional scandals, is considered proof of why our electoral system should be scrapped. A potential scenario was described in the *New York Times* earlier this year, where, say, Senator Bill Bradley (as a vice-presidential candidate) might be named acting president or even president, a role that presumably now might be filled by Al Gore. Or how Bush could wind up with a Democratic vice president. Or how Speaker of the House Foley or Secretary of State Baker might get the top job. Of course, such events would be unusual. But eventualities are provided for in the Constitution for the extraordinary. In fact, in addition to the Jefferson-Burr election, the Congress also selected a vice president in 1837, when Martin Van Buren’s running mate, Richard Johnson, failed to receive an electoral majority. Virginia’s electors withheld their votes, apparently because of Johnson’s relationship with a slave woman who bore him two children; Johnson was nonetheless chosen by the Senate 33 to 16.

As we researched this article, we were predicting that Ross Perot’s presumptive candidacy, viewed by some as the strongest since Teddy Roosevelt’s Bull Moose effort, might well wither away. Certainly third-party efforts — even those with general broad support usually don’t have deep backing — are always at a disadvantage in a winner-take-all electoral system. But Perot’s effort has nonetheless changed the strategies of the Democrats and Republicans and could be cited as a reason to change the electoral-college system itself.

Woodrow Wilson, one recalls, was the beneficiary of Teddy Roosevelt’s efforts, and Wilson helped change the way Americans saw their country — to the detriment of constitutional government. George Stimpson, former president of the National Press Club, has noted: “It was Woodrow Wilson more than any other one person who popularized democracy in the sense of the republican form of government in the United States.” It was Wilson, well before he became president, who tipped his hand to how he saw the head of the executive branch: “A nation is led by a man ... in whose ears the voice of the nation ... sounds ... like the united voices of a chorus, whose many meanings, spoken by melodious tongues, unite in his understanding in a single meaning and reveal to him a single vision, so that he can speak what no man else knows, the common wisdom of the common voice.”

### **A Plebiscitary Presidency**

Was this the precursor for Perot’s seeming desire to run the country by an electronic town meeting? Columnist George Will makes this case:



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The core principle of our republicanism is representation: The people do not decide things, they decide who will decide. Representatives are supposed to deliberate about the national interest, not just broker demands registered from various factions. But Perot's idea of the plebiscitary presidency reflects Woodrow Wilson's revolution against the Founders' idea of deliberative democracy. [Sic — even Will, the ersatz Tory, misuses the terms.] The Perot phenomenon is a consequence of Wilson's mystification of the presidency. Wilson's theory of presidential government makes the president the indispensable catalyst of mass opinion. He defined the primary business of government as the massing of opinion by a strong leader.

Perot notwithstanding, we have already become a government of pollsters — who advise politicians on the wisdom of the masses, those very masses who flip over the wisdom of Geraldo. Alexander Hamilton would have made a lousy talk-show host with his belief: "The voice of the people has been said to be the voice of God; and, however general this maxim has been quoted and believed, it is not true to fact. The people are turbulent and changing; they seldom judge or determine right."

The major parties have become used to planning two-way races — where a vote taken from the opposition usually falls into your column — all of which changes in a three-way race. Sectional politics become more important. For instance, with Perot involved in the 1992 race the traditional Democratic black vote would have become even more important, since the white vote would most likely have been split three ways. One imagines this had a hand in the selection of Southerner Gore to go with Southerner Clinton. Things can change quickly in three-way races, with a late surge by one candidate and a rapid tailspin by another. Yet, there were certainly plausible scenarios whereby a strong showing by Perot (in, say, his home state of Texas or in California) could have denied either Clinton or Bush the needed 270-vote electoral majority, thus putting the election into the House. When Perot bowed out, he claimed that since his effort "would obviously put it in the House of Representatives and be disruptive to the country," he preferred to quit.

Here is the scenario candidate Perot would have faced: Democrats currently hold the majorities in 31 state delegations in the House of Representatives; Republicans are the majority in 10; eight are split; and an avowed socialist represents Vermont. Considering that 24 states have a margin of but one or two votes, those numbers will undoubtedly change in the new Congress. Most authorities as well as Speaker Foley agree that the new body would be the one to cast ballots, one per state, were the election to go to the House. Deadlocked states would get no vote. Would there be wheeling and dealing? Of course. Recall, the founders created the electoral college, which had one job only and then would disband, to avoid undue influences and local corruption. Thank the parties for a potential turnaround.

Balloting in previous House elections for president (1801 and 1825) was secret, but that is being called unthinkable by many today. For instance, on national television, Speaker Tom Foley claimed: "It would be impossible for the American people to be shut out from the actual undertaking and balloting of the House of Representatives. It'd be outrageous." The fact that members of Congress might escape party discipline in secret balloting might have something to do with it too, one would think. Ron Brown, chairman of the Democratic Party, said that he would have expected Democratic members of the House to support Clinton even had Perot won a plurality. According to Ed Rollins, late of the Perot camp, members of the latter's campaign had planned to go "district by district" to congressional candidates, both Democrats and Republicans, seeking their pledge to vote for Perot had that district cast more ballots for him than for Bush or Clinton.

Speaker Thomas Foley, in response to questioning at the National Press Club, said serious



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consideration should be given to abolishing the 12th Amendment and going to the direct election of the president. Political consultant Mark Siegel, a former executive director of the Democratic National Committee, contends: "If the popular vote winner of the presidential election was denied the presidency, the world's greatest democracy would be held up to mockery all over the world." Siegel opts for no voting by conscience in the House of Representatives, should it come to that, with votes cast only on the basis of party or constituents.

Similarly, Senator David Pryor (D-Ark.) wants a constitutional amendment to abolish the electoral college and institute direct voting for president. He said in an article in the June 28 *Washington Times* that voters in, for example, California, who voted for Michael Dukakis in 1988 were disenfranchised because their votes "didn't count." And he claims that in a direct election candidates would have to campaign everywhere because each popular vote would count equally. Does he mean that your vote is lost if your candidate loses? In that sense, all Dukakis voters were "disenfranchised" in 1988. The direct system of voting would merely transfer the "lost" vote of the supposedly disenfranchised voter from the state to the national level.

As for the "equal" votes in a national system, since there is a finite amount of time for campaigning, there can be little doubt that urban centers would become even more important for efficient vote-gathering and that sparsely populated states would likewise suffer — arguments dealt with in the compromises of the original Constitution tipping the balance in favor of the small.

### **Splintered System**

With direct popular voting leading to presidents with pluralities, splinter parties would be easier to form, some with merely sectional or one-issue appeal, resulting in a multiparty system such as in Israel or Italy. Without runoffs, in a multiparty race won by a plurality, would not there be claims that the winner did not represent the country at large? With runoffs, the process could be tedious, and transfer of power disorderly. Worst of all: Federalism as a principle would be lost.

None of which stops demagogues from demagoguery. On ABC's *Good Morning America* on June 19, political commentator Chris Matthews expressed anguish that we don't have a democracy in this country, but instead something called a republic with an electoral college. He saw devious plotters laughing at the voters and chuckling at them, "We have pulled the wool over your eyes." In a syndicated column the same week, Matthews tried scare tactics: "The Rodney King rioting would be a day at the beach compared to the uprising that would follow a verdict by 'the system' to veto the popular judgement of Nov. 3." Matthews also asks: "What candidate not wearing a ski mask could take the oath of office after being rejected by the people?" You mean such as Harry Truman? Or Woodrow Wilson? Or Abraham Lincoln?

"Now! While we've got it on our mind," fomented Matthews, "when we can see the dangers of the current system, let's amend the Constitution, dispel the Electoral College and give power to the people." Matthews offers potential mob action as the reason we need more mobocracy, otherwise called pure democracy.

### **Less, Not More, Democracy**

There can be no doubt the electoral college is not what it was supposed to be, with neither popular choosing of electors or a winner-take-all system in the Constitution in the first place. Moving from republican principles to democratic ones has put us in a bind, but more democracy would tie us in even more inextricable knots. Direct elections for president, which would hurt the relative power of small





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states, among other faults, is no answer. There can be a case made for district selection of electors, but that can be handled best at the state level, requiring no amendment to the Constitution — especially in these days when even having a form of republican government is not appreciated.

Our Constitution has been weakened, but it still provides a disciplined framework for us that has lasted through crisis after crisis during our history. When, in the midst of the latest spasm of frustration, haranguers grieve that the federal government doesn't work fast enough and needs streamlining, that is the time to beware, for it was never intended to make the trains run on time. One thing is sure: The further we get from republican notions, the worse it will be for the United States.



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