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THE EXCEPTIONAL ELECTION

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&

an election controversy timeline by

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This supplement has been designed to accompany the following Houghton Mifflin American Government textbooks:

Barbour/Wright, *Keeping the Republic*, Post-Inaugural Edition and Brief Edition
Gitelson/Dudley/Dubnick, *American Government*, Post-Inaugural 6th Edition
Janda/Berry/Goldman, *The Challenge of Democracy*, Post-Inaugural 4th Edition, Brief Edition
Lasser, *American Politics*, 2nd Edition
Miroff/Seidelman/Swanstrom, *The Democratic Debate*, 2nd Edition
Wilson/Dilulio, *American Government*, Post-Inaugural 8th Edition and Post-Inaugural 8th Edition, Essentials
Wilson, *American Government*, 5th Edition, Brief Version

IN DEFENSE OF THE ELECTORAL COLLEGE

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The drama that was the presidential election of 2000 seems just a bad memory to most Americans. As Wilson Carey McWilliams observed, the "season of hype" surrounding the disputed election has been "followed by the prospect of business as usual."¹ Many, if not most, concerned political observers are surprised at how quickly the issues raised by the election have all but disappeared from the political agenda. The looming "constitutional crises" that promised to challenge the legitimacy of the Supreme Court and generate radical reform of our electoral system are but fading items on the political agenda. News media sponsored recounts of contested Florida votes, barely made a wave in the national news, and the Bush Administration has operated as if it won by a landslide. The crises of Election 2000 are things of the past.

Or so it seems.

Given the recent pattern of American politics, a likely scenario is that we have not heard the end of the story of the 2000 presidential election. It is as if we are recuperating from a nasty but preventable accident, and at some point in the near future we will feel fit enough to take some actions that will prevent a recurrence.

A possible "trigger" for debate over electoral reform is the eventual retirement of some Supreme Court Justices (both Rehnquist and O'Connor are thought to be nearing retirement). Many feel that the ensuing nomination of new Justices is bound to re-open the controversies and debates surrounding the Court's role in settling the election's outcome. That struggle could, in turn, bring to the forefront in the minds of Americans the notion that it is time to do something about the institution at the heart of the debate – the Electoral College. The typical proposal floated about is a simple yet radical one – pass a

constitutional amendment eliminating the College and replace it with a system based on the direct popular election of the president.

Historical Precedent

If this scenario plays out, it would not be the first time a call for eliminating the Electoral College became a serious possibility. The most interesting historical case took place during the 1820s and 1830s. In the presidential election of 1824, John Quincy Adams gained the presidency despite losing the popular to Andrew Jackson *and* coming in second to Jackson in the Electoral College vote. Because Jackson did not have the required majority of Electoral College votes, the election was sent to the House of Representatives, where Adams drew sufficient support to win the office. Not surprisingly, Jackson immediately began to campaign for getting rid of the College.

Jackson eventually won the White House in the election of 1828, but he failed to do away with the Electoral College. He carried the torch for Electoral College reform throughout his presidency; in each of his eight State of the Union messages he put eliminating the College among his top priorities for Congress. Despite strong popular support for reform, however, Jackson was unable to persuade Congress to eliminate the Electoral College system.

The problem Jackson faced was not related to any reluctance to support constitutional change through amendments. As passage of the Twelfth Amendment in 1804 demonstrated, the Congress and states did not regard the original process for selecting the president untouchable; they did not regard the Framers' Constitution with the awe that developed a century later. Moreover, most states had no qualms about tampering with the process, as demonstrated by their constant changes in the methods used for selecting Electors through the first three decades of the nineteenth century.

What did hinder Jackson's efforts was that by the 1830s, the College "had become a party agency, automatically registering the party votes for the

candidates chosen by the party convention."² Members of Congress and state party machines – even those who helped elect Jackson – were not about to risk changing a system that was serving their parochial political interests so effectively.

The situation is obviously quite different today, for the success of national party candidates is no longer completely dependent on the Electoral College and its empowerment of state party machines. If there is any institution pivotal to the success of presidential campaigns over the past four decades, it is the mass media. Ironically, what seems to have kept the Electoral College system intact all these years is its perceived irrelevance.

The Strategic Importance of The Electoral College

The truth is, though, that the Electoral College has never really been irrelevant in presidential elections. The 2000 election highlighted the important role it plays in *both* shaping the presidential contest *and* ultimately determining the eventual winner. The College shapes campaign strategies by establishing the objective to be achieved: a majority of Electoral College votes.

There is nothing new or surprising about this. Perhaps the best example of how the Electoral College system influences campaign strategy was Harry Truman's 1948 campaign. It was an election he was not expected to win. A year before the campaign, however, some key advisors to Truman told him that he could beat the likely Republican challenger (Thomas Dewey) by focusing on those states that would make the difference between victory and defeat in the Electoral College. Truman realized he would be wasting his time campaigning in the "Dixiecrat" South or in the Midwest strongholds of the GOP. Instead, he tenaciously whistle-stopped in those regions where he was most likely to win Electoral College votes. There was always the possibility he might win the election while losing the popular vote to the heavily favored Dewey, but that did not change the strategic concentration on garnering Electoral College votes. As

it turned out, Truman was victorious in both regards due to the wide margins of victory he generated in those states where he beat Dewey.

The unique results of the 2000 presidential election should be understood in the same strategic context. The Bush campaign strategy – like that of Al Gore's and all other modern presidential campaigns – was to gain the Electoral College majority. What made this election different was that the traditional link between that majority and a plurality in the popular vote was undone. Bush won the Electoral College, but failed to win the popular vote.

Why We Should Keep the Electoral College

I raise this point not as an advocate of Electoral College reform, but as an opponent of any constitutional change of an institution that has played such a critical role in our political life as a nation. My position is based on the fact that there is no compelling reason to change the basic institution and there are good reasons for keeping it.

The Electoral College has been misunderstood for nearly two centuries. The problems raised by the current system are not found in the Electoral College itself, but in the way that institution has been reconstituted through state laws and political manipulation. To apply an overused cliché, getting rid of the Electoral College or radically altering its basic structures is truly a case of throwing out the baby with the dirty bath water.

How is the Electoral College “misunderstood”? Let's start by addressing one of the stronger arguments made by advocates of eliminating the College – that it was expressly designed as an anti-democratic institution, reflecting the elitist and conservative inclinations of the framers. Under this logic, eliminating the College and putting the presidency up for direct popular election would “modernize” the constitutional system, just as have amendments resulting in the direct election of U.S. Senators and the expansion of franchise.

There is little in the records of the constitutional convention to support this popular myth. Yes, there were comments by some delegates arguing against the popular election of the president, but that was not a major issue for those drafting this provision of the constitution. In fact, there was relatively little debate on the pros and cons of popular election. Furthermore, the delegates seemed to have little problem with letting the state legislatures determine how a state's Electors would be selected, and they did this knowing that some states would have the Electors chosen directly by the voters. Had the evils of democracy been a significant issue, they could have simply prohibited popular election of the Electors.

What was of greatest concern for the framers was how to shape the presidential selection process in a way that created a viable chief executive (that is, with some autonomy from the other branches) while enhancing the likelihood that the proposed constitution would achieve ratification. To accomplish that, the framers had to do with the presidential election process what they had done with a range of other issues from representation to slavery to the distribution of government power: they had to structure a *workable compromise*. As it turned out, the selection process compromise came very late in the drafting process and was pivotal in resolving a range of other issues, including granting the president some powers that were originally given to the Senate (e.g., appointment of ambassadors and the conduct of foreign policy; appointment of the Secretary of Treasury). The elaborate plan that eventually became the Electoral College was proposed by Pierce Butler, a delegate from South Carolina, on September 4, 1787 – and just a few days later all remaining issues were settled and the proposed Constitution was released to face the challenge of ratification.

What is the relevance of this history to reforms that would eliminate the Electoral College? Actually, a great deal, for when it comes to democracy, the Electoral College is not the problem. It is not inherently anti-democratic in its original form, nor is it anti-democratic in its Twelfth Amendment form. True, it

is not a democratic institution in the populist sense, but neither is it anti-democratic. It does not mandate direct popular election of Electors, but neither does it prohibit it. The constitutional provisions for selecting the Electoral College are intentionally indifferent when it comes to determining how those who do select the president are selected. That is left up to state laws, and since the 1830s essentially all states have opted for some form of popular election of the electors.³

Thus, those who try to understand the Electoral College through democratic lenses are bound to be frustrated. The institution is best understood and appreciated when viewed as a means to provide regional and local balance to the presidential selection process. It was the need for a federal balance in our national institutions, not anti-democratic sentiment, which determined the basic design of the Electoral College. It is the same logic that drove the bicameral design of Congress and the division of powers between the national and state governments. In that sense, the College has served the country well most of the time by shaping the campaign strategies of presidential candidates. To eliminate that design feature of presidential elections would undermine a fundamental premise of our constitutional system that demands consideration of regional and local needs and priorities. It would undermine federalism.

This is not to say that we ought not consider reforms to our electoral system, but in doing so we should focus on those features of the system that have always threatened to create the bizarre outcome we finally witnessed in 2000. The cause of the problem was not the constitutional Electoral College, but the "political" Electoral College that has emerged through the winner-take-all system found in all but two states.

In short, what we have in place today is only one of many different possibilities that could have emerged from the Electoral College mechanism found in Article II and Amendment XII. It is a system built on the foundations laid by the framers, but actually created through law and practice by nineteenth-

century political party machines. It is a process that has survived only because it has rarely (at least since 1884) created the kind of outcome that challenged the American democratic myth that the president is popularly elected.

In the 2000 election we saw one of our worst-case scenarios actually become reality (i.e., the winning candidate in the popular vote lost the election); as important, we came very close to what others regard as an even worse scenario – having the election settled in the House of Representatives.

But these scenarios emerged from the *political* Electoral College, not the constitutional Electoral College, and we should take care not to toss out this fundamental pillar of federalism too quickly. Our attention should be focused instead on those forty-eight state laws that establish a winner-take-all election for selecting state Electors. We should look more carefully at the experience of Maine and Nebraska (where congressional districts play a significant role), as well as proposals for allocating a state's Electors proportionally. And if constitutional changes are inevitable, we should consider alternatives short of eliminating the Electoral College, such as the idea of providing an Electoral College "bonus" to the winner of the nationwide popular vote.

NOTES

¹ Wilson Carey McWilliams, "The meaning of the election," in *The Election of 2000: Reports and Interpretations*, ed. Gerald M. Pomper (New York: Chatham House Publishers, 2001) p. 177.

² Herbert Agar, *The Price of Union*. (Boston, MA: Houghton Mifflin Co., 1966), p. 249.

³ The single historical exception until after the Civil War was South Carolina.