

# Electoral College: Nearly Impossible to Repeal



The electoral college can fairly be said to be the most curious and hotly debated institution of government created by the Constitution of 1787. Yes, equal representation in the Senate, in which tiny Rhode Island or sparsely populated Wyoming each have the same number of senators as California and Texas, has its detractors. Many question the power of the Supreme Court to determine the constitutionality of laws. But no other element of American government elicits such bitter denunciations or fervent defenses as the electoral college. The 2000 election did not create *ex nihilo* a debate about a “college” that has neither campus, nor faculty, nor students. That debate has raged for over two hundred years.

Historians have a natural weakness for the argument that the past is always contained in the present. Yet in this conviction, contrary to Shakespeare’s wrong-headed aphorism that “the past is prologue,” they’re surely right. In the case of the electoral college, the past is the present itself. Why is that? Because entirely without meaning to, the Framers created a constitutional mechanism that it now turns out is inherently beyond repeal. That’s the reality overlooked by almost everyone who wishes either to preserve or scrap the electoral college. Any debate about its usefulness in the twenty-first century or about its conformity to modern American ideals must confront this harsh reality built into the Constitution itself.



Fig. 1. First printing of the second draft of the Constitution from the Committee of Style. September 12, 1787. The Gilder Lehrman Collection, courtesy of the Gilder Lehrman Institute of American History, New York.

Because history embodies the story and is not mere background to it, the history of the electoral college’s origins must be understood. The institution emerged from a series of extended exchanges in Philadelphia in the hot summer of 1787 over the foundations and power of the presidency. This critical debate had to do specifically with how and by whom a president would be chosen. But more was at stake. Since the young American nation had just emerged from a revolution fought in part against British monarchical misrule and then from six

years under the nation's first constitution, the Articles of Confederation, that had failed partly because it had no executive authority at all, getting the government's executive power right was of supreme importance. But how to do so? Provide election directly by the "freeholders"—that is, by those white male property holders who alone at the time possessed the vote? By members of Congress? Or by some intermediary body specially constituted to choose a wise and good figure from among the citizenry?

The last of these options carried the day. Why was that? It's hard to say, for the delegates in Philadelphia spent days searchingly debating the matter, voting, re-voting, and compromising to settle on what has existed almost unchanged since then. But if, as is sometimes said, a camel is a horse put together by a committee, then the electoral college, as established by Article II, Section 1, of the Constitution, is a camel—an institution that has all the characteristics of being a bit of this, a bit of that, each component designed to meet some objection and to satisfy some principle. The end result remains much like that ungainly desert beast.

Having such a mechanism in the first place can be credited to the Framers' fears about any chief executive. One elected only by the freeholders, they worried, might rule demagogically—that is, with deference to popular opinion rather than the views of more experienced men. Freeholders would easily fall, said Charles Pinckney of South Carolina, under the influence of "a few active & designing men." But, always concerned to check and balance each institution and each power of government, the Framers also feared that a president elected only by Congress would not be free of that body's own strong influence. James Madison, the "Father of the Constitution" who had more to do with creating the American frame of government than anyone, feared "the powerful tendency in the Legislature to absorb all powers into its vortex" and pushed hard to keep the two branches fully separate. Because of such conflicting anxieties, the Framers concluded that an electoral college would avoid the dangers of both too much popular and too much congressional influence over the presidency.

The Framers also tried to build into the process for selecting a president some deference to the continuing powers of the states. So they provided that each state legislature, its members themselves chosen by the state's freeholders, would determine how the electors would be selected (presumably by the legislature itself—as was the case until after 1815). Thus, the electoral college would reflect both voters' and legislators' views. In addition, because the legislatures could be presumed to choose as electors the "the wise and good" of each state, the president and vice president would themselves be the persons best fitted for their offices.

Leaving the mode of election of each state's electors up to the legislature of each also relieved the anxieties of those who feared turning over too many powers to the national congress that was about to come into being. Giving each state a number of electors equal to the number of its representatives in the House and its two senators satisfied the small states who feared being

overwhelmed by the large ones (from which they were somewhat protected by being ensured two electoral votes—for their senators—simply by being states). It also reassured the larger states themselves, who wanted their populations to count for something (as they did through the size of state delegations in the House). And permitting the electors to meet in their respective state capitals allayed the concerns of those who predicted that, were the electoral college to meet at the national seat of government, electors from distant states would not attend. If there was an institutional animal that might please the lovers (or haters) of both horses and giraffes, then this camel of an institution seemed to be it. Yet it is worth noting in this regard that Virginia's George Mason, who urged in debate over the election of the president that the government "ought at least to be practicable," refused in the end to sign the Constitution.

Impracticable the electoral college surely is. And it is precisely because of its improbable construction that today's electoral college remains one of the least altered institutions established by the Constitution of 1787: a separate body of people elected once every four years by the voters of each state to select the president and vice president of the United States. What has changed in the more than two centuries of its existence are the circumstances of its members' elections. When the Framers created it, political parties did not exist. But by 1800, contested presidential elections were a regular feature of American government. As a result, competing slates of electors came into being, too. Even today, most voters still believe that when they vote for the presidential and vice presidential candidates of their choice, they are voting for those two people. But they aren't. Instead, they're voting for people (unnamed on the ballots) selected by each political party to vote for that party's candidates in the electoral college. These electors are in effect proxies for the voters. The electors who represent the winning candidate in each state meet in December in their state capital to cast ballots for the candidates of their party. The candidates with the majority of electoral votes in all the states combined gain the nation's two highest offices. In all of this, Congress retains only two functions. The Senate must certify the electoral votes from each state—except for the election of 1876, a mere formality. And in the rare case of an electoral tie or the inability of a candidate to gain a majority of the electoral votes, the House of Representatives, with each state getting a single vote, elects the president and vice president from among the candidates.

Complicated? Surely. The object of criticism at home and bemusement abroad? Yes. Necessary in 1787 to secure ratification of the Constitution? No doubt. But of proven worth and still functional today? That's what the debate is all about.

In every respect, the electoral college has achieved what it was created to achieve: It has functioned as part of the constitutional mechanism by which presidential candidates are legitimately elevated to office. Only three times out of 104 quadrennial presidential elections—in 1800, 1824, and 1876—has the college failed in its task (not a bad record for any governmental device), and

in only the last of these three were the provisions established by the Constitution incapable of resolving the deadlock. Compared with the electoral records of other nations, whose histories have been frequently interrupted by coups, canceled elections, and revolutions, the electoral college has helped sustain the continuity of American constitutional government.

But this has not kept it free of sharp criticism. Among the strongest and most frequently advanced is the charge that, by allowing the election of minority presidents (that is, of those who fail to receive a majority of the total votes cast by all the people), it is undemocratic. And so it has done five times—most recently in 2000. These outcomes, argue its detractors with much justification, each time denied the majority its choice, as can happen again. In fact, given the relatively even balance between the two parties in the last fifty years, the chance of a candidate with a minority of popular votes going to the White House has grown increasingly strong. The elections of 1960, 1968, and 1976 were exceedingly close calls in that respect, and the election of 2000 confirmed critics' worst fears: George W. Bush became president with fewer popular votes than his losing opponent because he (ultimately) gained a majority of the electoral votes.

Another objection to the electoral college is that, because of the winner-take-all system in forty-eight out of fifty states, it allows a winning candidate in each state to gain a disproportionately large percentage of the state's electoral vote. If a candidate wins by a single vote in a state, he or she is awarded 100 percent of its electoral vote. Yet the Framers themselves intended that votes be accumulated within states but aggregated by states. In this way, they argued, individuals and states would balance each other off within the federal system. But opponents of the electoral college respond that these forty-eight states can easily follow the lead of the two states that distribute their electoral votes proportionately among candidates. This proposal has the appeal of avoiding a constitutional amendment to alter or do away with the electoral college while using the federal system in effect to thwart the potentially undemocratic consequences of the electoral college system. But the political parties in each state prefer a winner-take-all result, and so no change is made.

A third objection to the electoral college concerns the two-vote "bonus" in the electoral college that each state receives. Under the Constitution, each state's electoral votes equal the number of its representatives in Congress plus its two senators. As a result, the thirty-one least populous states get a roughly 25 percent boost in their electoral college strength from the two-vote senatorial bonus while California gets only a 4 percent increase in its electoral votes and New York, Texas, Illinois, Pennsylvania, Ohio, and Florida get no more than 9 percent. This is the element embedded in the existing constitutional structure of the electoral college that almost certainly dooms any chance of doing away with it. The small states see it as their lifeline to influence over the larger ones. They're not likely ever to relinquish their leverage.

While those who attack the electoral college can cite known and concrete problems with the mechanism, those who wish to preserve it can in response point to some known benefits of it. Yes, they concede; the electoral college may occasionally deny the majority the president it wants. But it also creates some important "requirements" for presidential candidates. As we saw in 2000, they argue, having to gain a majority in the electoral college forces presidential candidates to attend to the voters in small states. And it leads them to campaign everywhere, not just through television, but in person. Of course, the states with the largest number of electoral votes—California, New York, Texas, and Florida—sometimes get the lion's share of attention. But in a close election, like 2000's, battleground states, many of them small ones like Iowa and Oregon, receive more attention just for having an electorate that has not made up its mind. And that, say defenders, is democratic, too.

Furthermore, they argue, times like our own, when the popular and electoral votes roughly coincide in their closeness, very rarely occur. Usually the winner gains a decisive number of electoral votes even when the popular vote is close—as, for example, did Woodrow Wilson in 1912, even though, in that three-man contest, he received only a plurality of 40 percent of the popular vote. This pattern has solidified the president-elect's victory and bestowed a constitutionally mandated authority upon him.

Those who wish to preserve the electoral college also summon in its defense, not known defects, but "what might be's." Imagine what would probably happen, they argue, if the system were altered or done away with. Most likely, our two-party system would give way to a multiparty system like that of most other countries. This would probably happen because parties would no longer have to work hard, engage in compromises, and campaign in such a way as to achieve an electoral majority. They could hope simply for proportional representation in the state legislatures and Congress. Therefore, argues the electoral college's defenders, it's better to stick with known "bads" than run the risk of worse ones.

For a nation whose political practices (if not its social realities) have achieved a rough kind of democracy in keeping with its ideals, the opponents of the electoral college clearly have the better of the argument, even despite the dangers of doing away with it. But the weight of experience favors its defenders. Especially because of the advantage the system gives to the numerous small states, all efforts to abolish the electoral college have always failed, either in Congress or in those states. As one would have predicted, the last constitutional amendment that sought to abolish the college, that of the late 1960s, passed Congress but failed to be ratified by the requisite three-fourths of the states. The principal reason? As usual, most of the thirty-one states to which the Constitution delivers a 25 percent electoral vote bonus exercised their power to determine the fate of the amendment and failed to approve it. The least populous ones, like Wyoming, Montana, Rhode Island, South Dakota, and Alaska refused to give up their electoral heft. In addition, tradition, constitutional reverence, protection of state differences, and anti-big-city

sentiment in largely rural states continued to play their parts in keeping the electoral college in existence.

Without conscious thought and purposeful efforts to hold everything in balance, Americans have always somehow succeeded in doing just that. They mix old and new, jettison some old ways while holding onto others. And so they do with an institution that, after two hundred years, is something of an anachronism, invites the world's ridicule, and surely makes the oldest written national constitution in the world seem even more ancient than it is. But the burden of proving that a change wouldn't cause more harm than the current ones must perforce lie with those who seek the electoral college's repeal. And by the rough logic of existence, they cannot provide that proof. So the electoral college is likely to be with us for a long time to come.

**Further Reading:** No doubt because it has not changed in over two hundred years, the electoral college has been the subject of almost no historical literature. We debate it. Political scientists examine it. But historians steer away from it because without change they have little to write about. Nevertheless, one can circle the subject and learn much. The fundamental record of debates concerning the electoral college and everything else during the Constitutional Convention in Philadelphia in the summer of 1787, when the electoral college began its life, is Max Farrand's magnificent four-volume *Records of the Federal Convention* (New Haven, 1986), now available online at the Library of Congress's [American Memory site](#). The best work on the origins of the American constitutional system, which covers more than its subtitle indicates, is Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kans., 1985). A handy guide to the college itself is Lawrence D. Langley and Neal R. Peirce, *The Electoral College: A Primer* (New Haven, 1999). Some of the many issues concerning this unique institution are covered and debated in Walter Berns, ed., *After the People Vote: A Guide to the Electoral College* (Washington, D.C., 2001) and Judith A. Best, *The Choice of the People? Debating the Electoral College* (Lanham, M.D., 1996).

This article originally appeared in issue 2.4 (July, 2002).

---

James Banner, a Washington, D.C., independent historian of the early republic, is most recently the co-author, with Harold C. Cannon, of *The Elements of Teaching* (New Haven, 1997) and *The Elements of Learning* (New Haven, 1999) and co-director, with Joyce Appleby, of the History News Service.