Options for Electoral College Reform

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Introduction
The US electoral college is the centerpiece of a convoluted process for election of the President and Vice President. Instead of voting directly for candidates, each state's voters choose a slate of electors who are pledged to vote for a certain ticket. These electors meet in their respective state capitals to elect the President, on the Monday after the second Wednesday in December. The number of electors in each state is equal to its number of Representatives and Senators — for Texas, 38. The total number of electors in all the states and the District of Columbia is 538. If any candidate wins a majority — that is, 270 or more — he wins the election. If no one wins a majority, the House of Representatives holds a special election, choosing from the top three candidates, with each state voting as a unit. (This is known as the "contingency election" and has not been needed since 1824.)
There have been many attempts to modify or abolish the electoral college via a constitutional amendment. For its complexity and perceived undemocratic nature, it has long been unpopular with the American people. In 1968, an election year in which three candidates won electoral votes, a poll showed 80% in favor of replacing it with a popular vote. In 1969 the House actually passed a constitutional amendment, which died later in the Senate. Another major effort was launched in the late 1970s, but failed once again. Despite these letdowns, a 1980 poll showed 67% still expressing support for abolishing the electoral college. In 2013, 63% of those polled were in favor, even though it had been decades since the last organized push for reform.¹

The worst feature of the college, in the eyes of many, is its potential for electing someone other than the winner of the national popular vote. This happened most recently in 2000, when Al Gore got about 540,000 more votes than George W. Bush. It has also happened on several other occasions in American history. This is difficult to reconcile with the democratic ideal of "one person, one vote".

This certainly seems like a major flaw, and a fairly obvious one at that. So it is puzzling how, in spite of its decisive, longstanding unpopularity, the system has been preserved in the face of repeated efforts to reform it. This paper is an attempt to understand the perspective of those who defend how the system works, and to assess whether there are alternative reforms that would be easier to achieve. Perhaps we can find a “common ground” position that most people can agree with.

**Problems with the system**

The chief complaint against the electoral college as it works today is that it does not provide for every vote to count equally. One reason is that every state gets two extra electors regardless of population. Wyoming, with 582,658 people and three electors, has one electoral vote for every 194,219. California, with 38,340,000 people and 55 electors, has one vote per 697,091. Thus the Wyomian has almost four times the “representation” in the electoral college as the Californian. In the chart below, the states (and District of Columbia) are ordered alphabetically, and the vertical axis ranges from 0 to 5 millionths of an elector per capita, as of 2014 census data²:
Turnout differences between states add another layer of potential inequality, since the number of electors given to each state is fixed. If 2 million people vote in Massachusetts and only a thousand vote in Texas, the former still only get 11 votes in the electoral college while the latter get 38. Another (usually minor) issue relates to the allocation of electors to the states, which happens every ten years following the census. Between censuses, it is possible for migration between the states to result in some states having more (and others fewer) electors than they would have if a census had been taken more recently.

Some of the difficulties have to do with the winner-take-all rule (also known as the “unit rule”) used by 48 states — all but Maine and Nebraska. Under this system, the candidate who wins a plurality in the state is awarded all of its electors. Thus in 2012 Barack Obama, favored by only 60% of Californians, got all 55 of the state’s electors. In 1992, with three major candidates running, Bill Clinton won all of California’s electors with only 46% of its popular vote. Voters on the losing side in such states are effectively disfranchised: their votes are not combined with those supporting the same candidate in other states.

Because certain states — including some of the largest, California, Texas, New York, and Illinois — tilt reliably towards one party or the other, the winner-take-all rule means that candidates need pay them little attention in campaigns. There is no bonus for winning 90% instead of a bare plurality when either outcome will yield the same number of electoral votes. This introduces the concept of “efficiency” in presidential campaigning — the idea of expending only the effort necessary to win a state’s electors. It means most candidates focus on the dozen or so “swing” states that are truly up for grabs, and ignore the rest.

As mentioned above, when no candidate wins a majority of electors, there is a contingency election in the House of Representatives, in which each state is given a single vote (with none
for the District of Columbia). A majority of states is needed for victory; balloting continues until somebody gets one. This procedure was triggered in 1800 and 1824; it has not been needed since. In 1800, it was used to resolve a tie between Thomas Jefferson and his running mate, Aaron Burr. (At that time, each elector voted for two candidates, without differentiating between the offices of president and vice-president: the VP was simply the second-place finisher. This flaw in the original election procedure was remedied soon afterward by the Twelfth Amendment.) It took the House 36 ballots before it finally elected Jefferson.

In 1824, with the Democratic-Republicans as the only national party, four of its leaders ran for president: Andrew Jackson, John Quincy Adams, Henry Clay, and William H. Crawford. Jackson won a plurality of both the popular vote and the electoral vote. Adams had the second greatest number of electoral votes, Crawford third. Clay, in fourth place, was out of the running, but happened to be Speaker of the House at the time. With Crawford not a serious contender (due partly to health issues), it came down to a contest between Jackson and Adams. Clay threw his support to Adams, who won with 13 out of 24 states. (Adams later selected Clay as his Secretary of State, leading to denunciations of a “corrupt bargain”.)

Even without the involvement of Congress, our method of electing a President allows for the possibility of a candidate who did not receive the most popular votes nationwide to win. This has happened three or four times in American history: 1876, 1888, debatably 1960, and 2000. (The fact that there is disagreement about the number reflects the complexity of the system.)

In 1876, there were many questionable dealings in some states, leading to uncertainty about the true number of votes cast for each candidate. Several states reported differing sets of results to Congress, which then appointed a commission to decide how to proceed. Voting along partisan lines, the commission decided in favor of the Republican candidate, Rutherford B. Hayes, who became President despite getting about 250,000 fewer votes (according to official tallies) than his opponent Samuel J. Tilden. The electoral vote was 185 to 184.

In 1888, Benjamin Harrison carried 20 of the 38 states, winning 233 electoral votes, compared to Grover Cleveland, who won only 168 despite getting about 90,000 more votes than Harrison nationwide. More of Cleveland’s state victories were landslides: an “inefficient” distribution of popular votes among the states. By contrast, Harrison “won 53 percent of the majority of electoral votes by narrow margins and wasted few of his votes on landslides.”³
The election of 1960 illustrates another quirk of the system: the unpledged elector. Usually, electors are pledged to cast their vote for a certain candidate, and in most states, it’s clearly indicated on the ballot which electors support which candidates; in fact, sometimes the electors’ names are left out entirely. Usually, if the electors are mentioned at all, the voter can only choose one slate of them; she can’t choose some from one group and some from another.

But in Alabama in 1960, voters could vote for their 11 electors individually. The Democrats had nominated a mixed slate of electors — five pledged to support Kennedy and Johnson, the other six unpledged — that is, reserving the right to vote for whomever they pleased in the electoral college. In the end, the Democrats won in Alabama, and these six joined with eight similarly unpledged electors from Mississippi in casting their votes for Harry F. Byrd, with Strom Thurmond as Vice President, in spite of the fact that they were not candidates. One “faithless” elector, a Republican from Oklahoma, also cast his presidential vote for Byrd, but gave his vice-presidential vote to Barry Goldwater.

Did the voters of Alabama understand that the six unpledged Democratic electors would not vote for the national party nominees, John F. Kennedy and Lyndon B. Johnson? Probably a lot of them did, given what must have been a contentious state party convention. When voters can mix their votes between different electors, it becomes difficult to determine exactly what the popular vote totals for the candidates should be. Traditionally, Kennedy has been credited with all of the Democratic votes in Alabama for his national popular vote tally. But if he is credited with only five-elevenths of Alabama’s Democratic voters, which seems more reasonable, then his popular lead over Nixon evaporates. He trails, in this view, by about 58,000 votes nationwide. Yet he won the electoral college by a decisive margin, 303 to 219.

Finally, there is the election of 2000, in which Al Gore won the popular vote by about 544,000 votes, but narrowly lost to George W. Bush in the electoral college. An extremely close result in Florida triggered a mandatory machine-based recount, and Gore requested additional hand recounts in certain counties. Eventually the Supreme Court stepped in to stop the recounts and insist that the state use its previously certified count. It’s debatable whether a full statewide recount would have reached a different result if allowed to proceed; some analyses have concluded that it would have, while others have found that the result would have been the same. In any case, as on previous occasions, the structure of the electoral college system created the possibility that a popular-vote runner-up would win a majority of electors. And due to various factors, including perhaps a vote distribution pattern that was not “efficient” enough on
Gore’s side, the possibility became real.

**What do we do about it?**

So, what, if anything, should be done to address these problems? For starters, there seems to be no point in allowing electors to make their own decisions. The first “faithless” elector, who cast his vote against the candidate for whom he had pledged, was Samuel Miles of Pennsylvania in 1796. As an angry voter wrote afterwards:

> Do I chuse [sic] Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No! I chuse him to act, not to think!

Faithless electors and unpledged electors could be eliminated from the process, and not many people would disagree. (Senator Mitch McConnell is among those who have expressed support for this reform.\(^5\)) But this would be a relatively minor reform; to make more fundamental changes would require more agreement on what should be done.

The best-known reform of the electoral college is simply to do away with it, substituting direct popular election of the President and the Vice President. This would require an amendment to the Constitution. But this is only one of the options that can be considered. Another is the congressional district method currently used in Maine and Nebraska, where two of the state’s electoral votes are given to the statewide winner, with the others going to the plurality winner in each congressional district.

These two states can use this method because the Constitution leaves it up to each state to decide how it selects electors. (A state could even decide to let its legislature appoint them, without a popular vote\(^6\) — a decision that would be almost unimaginable today, yet would be wholly constitutional. In fact, many states appointed electors in just this way before the 1830s.) A state could choose at any time to switch to the district method.

However, when a single party dominates a state, it is often inclined to maximize that state’s impact in the presidential election by using winner-take-all — especially when other states dominated by the opposing party do so. As Thomas Jefferson wrote in 1800 (using “general ticket” to mean winner-take-all):

> All agree that an election by districts would be best, if it could be general; but while ten states choose either by their legislatures or by a general ticket, it is folly and worse
Because of this “race to the bottom” dynamic, the most feasible way to switch to such a system would be for states to negotiate with each other to do it simultaneously. They could sign an interstate compact agreeing to institute the new system once enough states (or possibly all) had signed on — in its activation much like the National Popular Vote Interstate Compact, which we’ll consider at the end of this paper.

States could also choose to allocate their electors in proportion to the state popular vote. For example, if a candidate got 10% of a state’s vote, he would get approximately 10% of its electors. Except for issues related to rounding to the nearest whole number (presuming that fractional electors are not allowed), this would be the most accurate way to reflect the will of a state’s voters while preserving the electoral college. As with the district method, in our current political system most states would be unlikely to enact this change on their own — some coordination would probably be required.

Would such extra-constitutional reforms be enough to remedy the problems with our current system — or is a complete overhaul necessary? Or, would it be better left alone? What would we give up by abolishing the electoral college? To answer these questions, we must consider defenses of the current system, and how the main alternatives compare to it.

A note on origins
We don’t have enough space to tell the story of how the electoral college first came to be. We are more concerned here with how it works, and how it can be improved. Its design reflected compromises reached earlier in the Constitutional Convention of 1787, including the Three-Fifths Compromise, which gave slave-holding states more representation than their voting populations would warrant. In the words of historian Jack Rakove, “The Electoral College was cobbled together nearly at the last minute and adopted not because the framers believed it would work, but because it was less objectionable to them than two more obvious alternatives: election of the president by the people or by Congress.”

The founders thought the House would frequently be required to decide elections. Under the original terms of the Constitution, it would choose from among the top five contenders; this was changed to top three by the Twelfth Amendment. Thus, it is widely believed that the electoral college never really worked as intended. For a more detailed story of the debate on how to elect

**Points of comparison**
We’ve created the following table listing the main features that reformers and defenders have argued our presidential election system should have. For the district and proportional methods, we assume they are implemented without a constitutional amendment; for the popular vote, we assume the opposite. We’ll go through the list feature by feature and assign scores to each method as seems most reasonable. Given all the unknowns involved, of course these scores are only best guesses, and are open to debate.

<table>
<thead>
<tr>
<th>Feature</th>
<th>Current</th>
<th>District</th>
<th>Proportional</th>
<th>Popular vote</th>
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<tbody>
<tr>
<td>Represents voters equally</td>
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<td>NO</td>
<td>KINDA</td>
<td>YES</td>
</tr>
<tr>
<td>Supports federalism</td>
<td>YES</td>
<td>NO?</td>
<td>KINDA</td>
<td>NO</td>
</tr>
<tr>
<td>Supports two-party system</td>
<td>YES</td>
<td>KINDA?</td>
<td>NO*</td>
<td>NO*</td>
</tr>
<tr>
<td>Suppresses sectionalism</td>
<td>KINDA</td>
<td>NO?</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Isolates count/fraud issues</td>
<td>YES</td>
<td>YES?</td>
<td>YES?</td>
<td>NO</td>
</tr>
<tr>
<td>Enhances victor's mandate</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
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<tr>
<td>Fair contingency election</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>?</td>
</tr>
<tr>
<td>Promotes well-qualified, virtuous candidates</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
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<tr>
<td>Helps ethnic minorities</td>
<td>KINDA</td>
<td>KINDA?</td>
<td>KINDA</td>
<td>KINDA</td>
</tr>
<tr>
<td>Promotes presidential independence</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES?</td>
</tr>
</tbody>
</table>

* with caveat(s)

**Voter equality**
We’ve already discussed how the current system treats votes unequally, especially because of the winner-take-all rule. This violation of the principle of “one person, one vote” should be a
matter of grave concern. That some votes carry more weight than others is highly problematic for a country that likes to be thought of as a democracy.

The district method doesn’t do much better on this score, because it’s still a “winner-take-all” system on a smaller scale — congressional districts instead of states. So it, too, disfranchises voters who are on the losing side within a district, and has a high potential for distorting the popular vote, as anyone who is familiar with the problems of gerrymandering will no doubt recognize. For instance, in 2000, Bush won 52% of congressional districts while losing the popular vote. (Proposals to switch to this method come up from time to time, valued by partisans for this distorting effect.) Because of this problem, it’s not clear that the district method is any better than the current one.

The proportional method may distort the popular vote to some degree, chiefly because of (1) rules of rounding, including a possibility that some voters’ candidates may not meet a minimum threshold to have any electors; (2) the “federal” bonus of two electors to every state, which benefits small states; and (3) failing to account for differences in turnout between the states. But the distortion is not nearly as much as in the current system, and failure to elect a popular-vote winner would be less likely (assuming he won a majority, not just a plurality).

A national popular vote would unquestionably give equal weight to every vote. This is one of the main points in its favor.

<table>
<thead>
<tr>
<th>Represents voters equally?</th>
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<tbody>
<tr>
<td><strong>Current:</strong> NO</td>
</tr>
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</table>

**Federalism**

Defenders of the current system often claim that it supports federalism, and that the framers intended it to. Clearly, since each state has a minimum of three electors (one for each congressional district and one for each Senate seat), the smaller states benefit from increased representation in the electoral college, in the same way that they have disproportionate influence in the Senate.

But in electing two people to national office, other factors play much more prominent roles in determining how much influence a particular state has. Given winner-take-all and our
two-party system, many states are considered “safe” by one side or the other. Candidates tend not to spend too many resources on them, since they know they’re not likely to change the outcome. States where the race is tight have outsize influence, and get the most attention from candidates.

James R. Stoner Jr. explains why he values federalism and the electoral college’s support for it:

> By tallying votes for the highest office of the land by state, even giving each state a sort of bonus for being organized as a state, the Electoral College affirms the importance of these self-governing communities and helps secure their interest in self-government. We know this intuitively, as the whole process of presidential selection focuses national attention on the states and their distinctiveness. [...] Of course campaigns for national office ought to focus on national issues and to feature candidates of national stature, and on the whole they do. But to elect the president in a national plebiscite would either suppress what is local or, as has already been the trend, nationalize local concerns, removing their governance away from communities and into the inevitably bureaucratic machinery of a central administration.¹⁰

Actually, this does not seem “intuitively” obvious. It’s true that certain states (such as Iowa) are very significant in caucuses and primaries — but these are really intra-party affairs, which have nothing to do with the electoral college, or indeed with the Constitution. The distinctiveness of the states seems to play a less significant role in the general election than in primary season. Writing in *U.S. News & World Report* in 2012, Lara Brown compares presidential elections to the World Series¹¹, arguing that the team that wins the majority of games should be considered the better team. The electoral college “forces presidential candidates to win both people (runs in a single game) and states (the majority of games). This makes the president an able representative of the United States of America, who is tasked with balancing national and federal interests.” The analogy seems questionable, however: whereas every baseball game between the same teams is equivalent in difficulty and value, states are not equivalent to each other from the perspective of campaigns. Furthermore, is it truly the President’s job to balance national and federal interests? He should defend our constitutional system, to be sure; and it’s a federal system. But does that mean he should represent the interests of states as states? In other words, is he tasked with giving extra weight to the interests of citizens of small states? Or is his job to represent all the people of the nation fairly?
Federalism, in its essence, incorporates two basic ideas. One is that states regulate certain things, and the national government regulates others, without infringing on the prerogatives of states to manage their own affairs. The other idea is that states should be represented as states in the national legislature. The first of these clearly has nothing to do with the electoral college. The second finds expression in the Senate, where each state has two votes, regardless of its population. (Defenders of the electoral college sometimes accuse opponents of inconsistency because they promote the idea of “one person, one vote” but don’t call for the Senate to be abolished. But it is possible to believe that states should be represented equally in a legislative body, while the Presidency is meant to represent people, not states. Also, some people may favor abolishing the Senate, but recognize that it would be so difficult that it isn’t worth the effort.)

George C. Edwards III writes:

*Federalism is well protected by members of the House and Senate as well as by the legislatures and governors of the states. It is simply unthinkable that a constitutional amendment altering the federal structure could pass with the support of two-thirds of the both houses of Congress and three-fourths of the states. There is virtually no aspect of the constitutional system more secure against fundamental change than federalism.*

A key idea for those opposed to direct election of the president is that of “concurrent majorities” developed by John C. Calhoun in the 19th century. As characterized by Peter F. Drucker in 1948, this is the principle “that every major interest in the country, whether regional, economic or religious, is to possess a veto power on political decisions directly affecting it”. This provides an organizing principle for Congress that goes beyond geography, as James Burnham explains:

*The Congressman from New Mexico is also Congressman of the Mexican-Spanish stock; the member from Boston, of the urban Irish, as the New Yorker of the urban Jews. The gentleman from Montana, Nevada and Colorado can speak for the mining industry. Through the Cleveland or Pittsburgh or Gary member, Congress hears the voice of the steel mills. The auto workers can send their ambassadors from Detroit or Flint.*
How this principle applies to the presidency seems far from clear, however. As Neal Peirce writes:

*The vitality of federalism rests chiefly on the constitutionally mandated system of congressional representation and the will and capacity of state and local governments to address compelling problems, not on the hocus-pocus of an eighteenth-century voting system.*

In short, federalism doesn’t depend on the electoral college. The system gives it extra support, according to some, but this support is not vital. Direct election by popular vote would take away the extra support, but would not threaten to end federalism.

The “middle way”, proportional allocation of electors by states, would continue the federal “subsidy” for small states in the form of an extra two votes per state, but would largely shift the emphasis from winning states to winning individual votes. As for the district method, it’s debatable whether it would support federalism. Since an urban district often has more in common with those in other states than with rural districts in the same state, it seems probable that it would not.

| Supports federalism? | Current: **YES** | District: **NO?** | Proportional: **KINDA** | Popular: **NO** |

**The two-party system**

The founders of our republic did not anticipate a two-party system. Nevertheless, the operation of the electoral college under winner-take-all supports it. To understand why, we should consider Duverger’s Law: the idea that plurality voting combined with single-member districts tends to suppress third parties and lead to a two-party system. Of course, in the case of presidential elections, as opposed to legislative, there’s only one seat; so we can ignore the “single-member” part of the so-called law and focus on plurality voting.

When candidates don’t need a majority of votes to win, the possibility of vote-splitting emerges. If a third party enters the race and draws votes mainly from the more popular of the two dominant parties, it can result in the less popular main party winning. For example, if party A normally has 60% of the electorate while party B has 40%, but party C enters and takes half of A’s votes away, then B will win under plurality voting, 40% to 30% to 30%.
To avoid this effect, voters often decide to tactically switch their vote to one of the two dominant parties. And third-party candidacies are deterred by fear of this vote-splitting. Occasionally, as in 1912 and 1992, a third-party or independent candidate for president makes a strong run; but this rarely translates into a lasting movement.

In the current system, each state is a plurality contest. With rare exceptions, a third-party candidate has no chance of winning a plurality, and thus gets no electors. This acts as a “barrier to entry” for minor parties, who get no credit for winning anything less than a state plurality. Thus it adds up to strong support for two-partyism. Given national parties, the same logic would apply in the district method, where each elector (except for the state’s extra two, beyond its number of congressional districts) is decided by a plurality vote. However, the district method would not inhibit the formation of sectional parties, which might thrive under it. (We’ll look further into sectionalism in the next section.)

In the proportional system, the problem does not exist within the states — in the above example, A would get roughly 30% of the electors, B 40%, and C 30%. A strong second- or third-place finish in one state could be usefully combined with strong showings in others to improve the chances of winning. However, with more than two candidates vying for election, it would be less common for one candidate to win a majority of electors, making a contingency election in the House of Representatives more likely. Whether such a process would support the two-party system depends largely on the composition of the House, and the procedure used.

Direct election of the president might, or might not, support the two-party system, depending on the voting system employed. Would a plurality be enough to win, or would there be a runoff in case no one got a majority of votes? (See our paper “Better Choices for Voters: Exploring Alternatives to Plurality Voting” for other alternatives that could be adopted. After all, if you’re amending the Constitution, you can give it a full rethink — of course keeping in mind that too many changes may reduce the chances of passage.) In the 1970s a proposal promoted by Senator Birch Bayh would have required only 40% of the popular vote — a plurality system with an extra threshold, making the “spoiler” effect somewhat less potent. But the simplest popular-vote reform would leave the 50% threshold and the House runoff intact, abolishing only electors. In this case, it would again depend on the particulars in the House.

Having outlined how the current system and the alternatives affect the two-party system, it’s
time to ask: what’s so great about it anyway? According to supporters, it serves to moderate the often extreme passions of ideology, to insulate our politics from extremist influences. Michael Barone expresses this point of view:

When parties have an incentive to win 50-plus percent of the vote, they also have an incentive to moderate regional enthusiasms, to compromise ideological principles, and to unite voting blocs with very different cultural backgrounds and attitudes and very different economic interests and goals. Without this, it is very hard to govern acceptably a republic that is continental in expanse and variegated in culture and ethnicity. In other words, there are powerful reasons, reasons that perhaps might even have proved attractive to the Framers if they had contemplated them, to prefer a two-party system to one which allows the proliferation of parties based on regional, ethnic, economic, or ideological factors.  

Here is Senator Daniel Patrick Moynihan, explaining further:

When, in fact, one party momentarily belongs to an extreme faction and is almost instantly rebuffed, it has been the experience of two centuries that, just as instantly, they resort to a traditional practice of obtaining consensus, retaining a structure of concurrent majorities around the nation that makes it possible to win a majority of the votes in the Electoral College, and, thereafter, to govern with the legitimacy that has come of attaining to such diverse majorities.

It’s beyond the scope of this paper to get too deeply into the question of whether a two-party system or a multi-party one would be best. But it should be noted that the “big-tentism” which results from a two-party system comes with a high cost: a lack of clarity about what the parties actually stand for. For instance, the Republican party is a coalition including large groups from the business community and the evangelical Christian community — two groups that have little in common ideologically. Similarly, the Democratic party comprises a number of groups whose interests may not always align. To some, defining parties without reliance on ideological factors may seem a virtue. To others, however, it points to a major problem in the mechanism of representation: that “extremist” voters are denied options that reflect their beliefs, and that voters have a hard time knowing exactly what positions they are voting for. A pro-labor voter may, for example, be disappointed to see the party he voted for pushing free-trade agreements.

(The claim that our two main parties are essentially non-ideological may strike some as
nonsense in these highly polarized times. But it wasn’t so long ago that we knew conservative Democrats, such as Robert C. Byrd of West Virginia, and liberal Republicans, such as Lincoln Chafee of Rhode Island and, perhaps, President Dwight D. Eisenhower — an indication that party label is not necessarily predictive of ideology. American party politics seems to be moving towards a more ideological footing, but many scholars have considered it to be less so than party politics in other democratic countries.\(^9\)

Candidates gravitate towards the “center” when politics is defined in terms of a single dimension, left versus right. But having only two parties is not enough to accurately reflect the public’s differences of opinion across a wide range of issues. For example, if Republicans are fiscally and socially conservative, and Democrats fiscally and socially liberal, where is the party that is fiscally conservative but socially liberal? The “center” appears to be at least partly a mirage. But it does seem to be true that candidates who are too far out of the mainstream, such as Barry Goldwater in 1964, tend to be unsuccessful. (On the other hand, many would argue that Ronald Reagan was far from centrist, yet he was elected twice, the second time in a landslide.)

<table>
<thead>
<tr>
<th>Supports two-party system?</th>
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<tbody>
<tr>
<td>Current: <strong>YES</strong></td>
</tr>
</tbody>
</table>

**Sectionalism**

The founders were concerned that electors might favor candidates from their own state — thus they required the President and Vice President to reside in different ones. (This explains why Dick Cheney switched his official state of residence from Texas to Wyoming in 2000.) Different regions of the country had different interests — the North urbanizing, with a pre-industrial, manufacturing-based economy, the South with a plantation-based, slave-labor economy. Later, the West brought new interests revolving around mining, ranching, railroads, and the like. The founders did not want to see the nation break apart on such sectional lines. Given the lower speed of communication at the time, some worried that citizens would not be familiar enough with candidates outside their region to make an informed decision. While this problem has diminished with the advent of modern technology, there are still differences of culture and economic interest between different regions.

Supporters of the current system hold one of its benefits to be suppressing sectionalism in the
interests of national cohesion. Senator Moynihan once again expresses the idea concisely:

*The Electoral College requires the assembly of consent — again, concurrent majorities — in one part of the country and another part of the country, and yet another part, all defined in terms of several states. It has as its extraordinary ability the formation of consensus between widely differing regions, political purposes and styles, and political agendas.*

Presidential candidates usually do not aim to advance the interests of one region over the rest of the nation. When they do, as for example in 1968 when George Wallace ran a sectional campaign, winner-take-all tends to limit their progress. He won Mississippi by 40 percentage points, but got the same number of electors as if he had won by a sliver. Thanks partly to this effect, which penalizes the “inefficient” distribution of votes, his 13.5% of the popular vote translated to only 8.6% of the electoral college (46 votes).

On the other hand, candidates often have much stronger appeals in some regions than in others, along a mostly urban-rural divide — this is why we have “red” states and “blue” states, another kind of regional difference that is clearly not suppressed in our system. In “purple” states such as Colorado, with one fairly large city and plenty of rural communities, the winner-take-all rule will push all the electors to one side or the other, regardless of how evenly the vote is split. Is this what Moynihan had in mind as “formation of consensus”? If so, it’s quite a superficial one, for it is only formed by the disfranchisement of the large number of people who voted for the loser.

We can see the potential power of a sectional appeal in the recent British elections, where Scotland was dominated by the Scottish National Party (SNP), leading to a continuing question over whether Scotland will eventually leave the United Kingdom. The UK is, of course, a parliamentary system, not a presidential one. But let’s suppose it elected a president by a system similar to ours, and that Nicola Sturgeon, leader of the SNP, ran for the office. What would happen?

Most likely, she would split the vote on the left, leading to victory for the Conservatives, which would not be a popular result in left-leaning Scotland. The UK has a two-party system, sort of (less so than it used to), and uses plurality voting (known there as “first past the post”). So it is subject to the spoiler effect, just as the US is. The lesson drawn by disappointed Scottish voters
would be not to run a “spoiler” candidate again. Sectionalism would be suppressed. But should we credit the electoral college for this effect, or plurality voting and the two-party system?

The district method, although similar to winner-take-all, might be friendlier to sectional candidates in the sense that winning a district is a lesser barrier to an insurgent than winning a whole state. But sectional candidates still wouldn’t stand much chance unless the whole political landscape devolved into sectionalism, that is, unless there were no strong candidates with national appeal. As for direct election and the proportional method, there seems to be no mechanism by which they would suppress sectionalism.

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<th>Suppresses sectionalism?</th>
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<td><strong>Current:</strong> KINDA</td>
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<td><strong>District:</strong> NO?</td>
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<td><strong>Proportional:</strong> NO</td>
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<td><strong>Popular:</strong> NO</td>
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**Recounts and voter fraud**

Defenders of the current system argue that it limits conflict over the outcome of an election to a smaller number of jurisdictions than other systems would. For example, in 2000, despite the extremely close result, all recount efforts were focused exclusively on Florida. As Richard Posner writes:

> Were Presidents elected by popular vote, a nationwide recount might have been unavoidable in 2000 (and in a number of previous Presidential elections as well, such as those in 1876, 1880, 1884, 1888, 1960, 1968, and 1976, in all of which the popular vote was very close) because Gore’s popular vote margin was so slight. He received 51 million votes and Bush 50.5 million, a difference of 0.5 percent. If a plurality of the popular vote were what elected a President, a margin this small would have incited calls for a national recount on the same grounds that Gore argued for a Florida recount. Even though under a post-Electoral College, pure popular vote regime the Presidential election would presumably still be administered by the states, no state could refuse the demand for a recount on the ground that the election in that state had not been close. The state would no longer be a relevant entity for purposes of determining the winner of the election. Each candidate would be trolling for votes everywhere across the country.\(^{21}\)

Some argue that a national popular vote would be more vulnerable to fraud perpetrated by hackers. It depends on whether the states would continue to tally their own votes or not, and on
how vulnerable the counting system is. Under the district system (with hundreds of jurisdictions reporting counts) and the proportional system (with 51), it would probably be harder to manipulate the results.

Under the current winner-take-all system, fraudulent manipulation can be successful without needing to be large-scale. In Florida in 2000, changing only a few hundred votes would have resulted in a different outcome for the nation. So, while it may isolate issues of recounting and fraud, it should not be said that the current system is very resistant to fraud.

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<th>Isolates count/fraud issues?</th>
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<td>Proportional: YES?</td>
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<td>Popular: NO</td>
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The mandate of victory
It’s sometimes argued that the current system amplifies the decisiveness of the election, and thereby gives the winner a more powerful mandate to govern. The electoral college often magnifies the apparent margin of victory, thanks mostly to the winner-take-all rule. As an example, in 1984 Ronald Reagan got 59% of the popular vote, but 525 of the 538 electors. In 1992, Bill Clinton won 370 electors while getting only 43% of the popular vote.

The potential to amplify a victory depends on results being aggregated using winner-take-all at the state level. In the current system and the district system, there is a significant likelihood that the “final score” is more decisive than the popular vote. But with this possibility also comes the possibility of an inaccurate result — if “inaccurate” means that electoral votes go a different way than popular votes. Those who find virtue in this distorting effect need to explain how the appearance of decisiveness outweighs the need for accuracy.

Furthermore, it does not seem to be the case that when a perceived mandate exists, its primary source is the electoral college tally. George C. Edwards III cites three examples:

George Bush won a large electoral vote victory in 1988, but it did little to turn his 53 percent in the popular vote into a mandate. After election night, no one pays serious attention to the electoral college totals, and commentators quite sensibly focus on the popular vote. Similarly, Franklin D. Roosevelt and Lyndon Johnson, who benefited from perceptions of mandates, received large popular vote victories and required no help from the electoral college. The electoral college contributed nothing to these
The contingency election

Our method of electing a president was designed to be majoritarian — that is, embodying the will of a majority (of electors, not individual voters). As mentioned above, if no candidate gets a majority of electors, the House of Representatives decides among the top three — the so-called “contingency election”. The problem, as mentioned above, is that state delegations each have one vote (assuming they aren’t deadlocked, in which case they have zero votes). A majority of states, not representatives, is required for victory in this contest (with voting continuing round by round until this is achieved). So, this method flagrantly violates the principle of “one person, one vote”.

It’s not clear how this unfairness could be fixed without an amendment to the Constitution. So the proportional method and district method, assuming they are implemented without such an amendment, would suffer from the same defect. In fact, the proportional method would probably make contingency elections more likely, because it does not tend to suppress third parties. On the bright side, perhaps the experience of a contingency election would fuel the drive for an amendment.

The popular vote alternative might, or might not, avert such unfairness, depending on how it was formulated. Partly to avoid the need for the contingency election, the 1970s plan mentioned earlier modified the majority requirement to a “high plurality” of 40%. Only if no candidate attained that level would the election go to the House of Representatives.

Well-qualified, virtuous candidates

In Federalist no. 68, Alexander Hamilton writes:

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite
qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue.

John Jay concurs in Federalist no. 64, writing that electors’ votes “will be directed to those men only who have become the most distinguished by their abilities and virtue”. But this seems to have been a naive assumption on the part of the founders. How virtuous were Richard M. Nixon or Warren G. Harding? Was Sarah Palin qualified enough to be on a major-party ticket in 2008? (Of course, her ticket didn’t win. But is that really the point, to reduce the number of choices from two to one?) As one author put it, “Hamilton and Jay were great men, but history has not been kind to their prophecies.”

Perhaps this feature had more effect when state legislatures appointed electors without a state vote.

There seems to be little historical support for the view that the electoral college promotes the selection of well-qualified, virtuous candidates more than direct election would. And, of course, who is to judge virtue and qualification for office? In practice, candidates establish their fitness for office on the campaign trail, where voters judge for themselves. Voters are, of course, fallible. None of the systems we are considering can guarantee that poorly qualified candidates will be blocked from winning.

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<th>Promotes well-qualified, virtuous candidates?</th>
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**Support for ethnic minorities**

Another argument in defense of the current system is that it protects the interests of ethnic minorities. The idea is that blacks, for instance, are concentrated in large urban centers in states that carry a lot of weight in the electoral college, and that by voting as a bloc, they can be decisive, under winner-take-all, in delivering electors for one candidate or another. Therefore candidates will take the interests of such minorities to heart. Here is Vernon Jordan’s testimony in Congressional hearings from 1977:
For blacks, abolition of the electoral college would severely limit our political leverage in national elections. The larger states have the most electoral votes. No one can become President without taking at least some states from among California, New York, Illinois, Texas, Pennsylvania, Michigan and Ohio. Take another look at that list. All of those states have significant black and minority populations. Black support in some of those states is essential for victory in the Presidential race. Take away the electoral college, and the importance of that black vote melts away.\(^{25}\)

For such an argument to make sense depends on a minority being positioned at the crux of a swing state — one where the outcome is not taken for granted by the candidates. But most of the states mentioned by Jordan are now solidly Democratic or Republican. (Perhaps they were less so in the 1970s.) Under winner-take-all, there is no reason to expect candidates to pay much attention to states that are either “sure wins” or “sure losses”. In addition, most of the states where blacks are most populous, in proportion to the state population — Louisiana, Georgia, Virginia, the Carolinas, etc. — are solidly Republican. So black votes in these states, which tend to be largely Democratic votes, are “wasted” under the logic of winner-take-all. Under direct popular election or the proportional system, they could combine with black votes in other states to form a more powerful national bloc.

A similar argument has been made for Jewish voters, who have tended to be concentrated in large urban communities:

*The Electoral College "is an enormous benefit to minorities like Jews,” agreed Norman Ornstein, resident scholar at the American Enterprise Institute. He noted that states such as Pennsylvania, Florida and New Jersey were "close enough that a small but highly active group of people" — like Jews — could have a significant effect on the election."\(^{26}\)

Even if, in some circumstances, the interests of a minority are advanced by the structure of our electoral system, we should ask whether this is fair to the majority. For example, given winner-take-all and the fact that Florida is a very competitive state, Cuban-Americans have had an outsize influence in presidential politics. But should this be considered a plus for the nation, if a large majority of voters have differing policy objectives with respect to Cuba?

There may be an important distinction between ethnic groups that are concentrated in a small
number of states, such as Cuban-Americans and to some extent Jews, and those that are widely
dispersed, such as blacks and Hispanics. The former may well benefit from being strategically
positioned in swing states, under winner-take-all. This could seemingly hold true under the
district method as well as the current system. The latter ethnic groups, however, suffer under
winner-take-all systems from the inability to combine their votes across state (or district) lines.
In contrast, under the proportional method or the popular vote, minorities would not have
disproportionate influence, potentially, in swing states, but neither would they suffer from the
inability to combine votes nationwide.

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**Presidential independence**

The founders were very concerned that the President might be indebted for his election to
members of Congress, which would compromise his independence. They wanted to be sure that
each branch of government would be separate. This is why Congress would not be involved
except in a contingency election. It’s why the electoral college was conceived as a body of men
selected solely for the purpose of electing a President, and for no other duty. As James Madison
wrote:

> If it be a fundamental principle of free government that the Legislative, Executive and
> Judiciary powers should be separately exercised, it is equally so that they be
> independently exercised.\(^{27}\)

On this point, there is little doubt that the founders succeeded. Nothing in our recent history
suggests that the President is institutionally beholden to Congress; in fact, many would argue
that the presidency has become more powerful than was intended. A political party usually
connects the President with a large segment of Congress, but this is extraneous to the
Constitution, which doesn’t say anything about parties. (However, the two-party system may
reduce the independence of Congress from the President.)

All of the methods we’re considering avoid undue interference from the legislative branch of
government, in the first round of voting. But if a contingency election is needed because no
candidate wins a majority (of either electors or the popular vote), the House does get involved.
The proportional method makes this more likely, as we have noted. If direct election by popular
vote were adopted, it could be vulnerable to legislative interference, depending on how it dealt with the lack of a majority winner. Even so, the President would probably have a good deal of independence based on separation of powers, and the fact that he is elected independently.

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**Adding it all up**

Now that we’ve briefly examined the main features of our system of electing the President, and of the main alternative methods, choosing the best one is a matter of how much weight we give each feature, as well as how each method scores. Direct election by popular vote is the only method that guarantees that every vote is counted equally. Some people believe this fact outweighs all the other supposed benefits of the electoral college. Others, however, emphasize that our government is federal by design, and that the electoral college is an important pillar of federalism, as well as giving support to the two-party system, which is seen as a moderating influence on politics.

We should also consider the feasibility of the various reform proposals. Of course, amending the Constitution is not easily done, by design. The district and proportional methods have the advantage of being possible on a state-by-state basis, although it would probably require coordination between states. The proportional method also seems attractive because it approximates the results of the popular method fairly closely, but preserves the federal bonus for small states. This should make it much more palatable to those states, who otherwise would be likely to oppose reform.

To abolish the electoral college in favor of a national popular vote would require an amendment. However, there is a creative way around this requirement.

**An interstate compact**

As mentioned, states are free under the Constitution to appoint electors however their legislature deems appropriate. Although since 1880 every state’s vote in the electoral college has been based on a public vote, until the 1820s it was common for electors to be chosen by the state legislature. In theory, then, there is nothing stopping a state from appointing electors based on the national popular vote — assuming an authoritative source can be agreed upon.
This is the idea behind the National Popular Vote Interstate Compact (NPVIC), which envisions each state passing a law to follow the national result in choosing its electors.

The compact includes a provision specifying that it only takes effect when enough states have signed on to constitute a majority of the electoral college — that is, 270 electors. Therefore, once the compact goes into effect, the national popular vote would determine the outcome of our presidential elections. So far, 10 states and the District of Columbia have passed the NPVIC, representing 165 electoral votes — 61% of the 270 required.

This approach would effectively make the electoral college irrelevant, featuring the same benefits as direct popular election without the need for a constitutional amendment. Some have questioned whether the NPVIC is legal, but supporters have solid arguments that it is. The Supreme Court might ultimately be asked to decide, should it ever go into effect. While it has made a lot of progress, it’s not clear when, or if, it will reach the point of implementation.

Prospects for reform
Almost from the beginning of our country’s history, the electoral college has been the object of reform proposals. Between 1889 and 2000, over 500 constitutional amendments were proposed in Congress, though most of them didn’t get very far. In 1969, the House voted for a constitutional amendment 338-70, only to see it die by filibuster in the Senate the next year. After the election of 1976, another major effort was launched, with support from Jimmy Carter and other prominent national figures, but once again it failed.

After 2000, Hillary Clinton advocated change, saying “it’s time to do away with the Electoral College and move to the popular election of our president”. But there was surprisingly little momentum for it, considering recent events. Instead, the early years of this century saw the development of the NPVIC as a workaround. Perhaps the history of failures to amend the Constitution convinced reformers to try a different approach.

In the current decade, there have been several efforts by Republicans to change how electors are chosen in states where their party controls the legislature:

- After the 2012 elections, there were initiatives in Virginia, Ohio, Michigan, and Wisconsin for plans to allocate the state's electors by district. The proposed changes were abandoned amid concerns they would be widely seen as rigging the system.
- Pennsylvania Republican Dominic Pileggi, the State Senate Majority Leader, pushed for
his state to switch to the district method in 2011. In 2013, he introduced a bill to divide all but two of the electors proportionally by popular vote, with the remaining two going to the statewide winner. Both efforts were unsuccessful.

- In 2015, Nebraska Republicans pushed to switch back to a winner-take-all method. Since adopting the district method in 1996, all of Nebraska's electoral votes have gone to the Republican ticket except in 2008, when Barack Obama won the district encompassing Omaha and thus got one of the state's five electoral votes.

What does the future hold? Should we amend our Constitution, and if so, how? Or given the experience of the last 200 years, should we give up on that possibility and develop another plan? The answer is ultimately up to the voters of this country. We hope this paper will help illuminate the issues and the possibilities for reform.

NOTES


19. Paddock, Joel (2005) State & National Parties & American Politics. Peter Lang. URL: https://books.google.com/books?id=UK_dVntlk0YC&pg=PA82&lpg=PA82&dq=%22political+parties%22+american+%22non+ideological%22&source=bl&ots=dSGlJ9HcFI&sig=9BC1-R6L_idAwKRg0xIFVDLbksohl=en&sa=X&ei=Yu_VM2zNqpyQS5s4LQBQ&ved=0CC0Q6AEwAw#v=onepage&q=%22political%20parties%22+american+%22non%20ideological%22&f=false


25. Hearings Before the Subcommittee on the Constitution (Supplement), Exhibit no. 21, p. 256. See http://babel.hathitrust.org/cgi/pt?id=mdp.39015077924465;view=1up;seq=2


27. Burnham, p. 51.


