

Choosing a President

The Electoral College and Beyond

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how students and citizens analyze the issues under discussion here. Accordingly, we have developed a website at <http://raven.cc.ukans.edu/~college>. After you complete this book, we encourage you to go to this website and express your judgments about the Electoral College and the various alternatives to it. Your participation will enable us to develop a deeper understanding of citizen attitudes about how we choose our president.

CHAPTER 1

Bush, Gore, and the Issues of Electoral Reform

Paul Schumaker, *University of Kansas*

THE TUMULT FOLLOWING the 2000 presidential election has subsided. It began the morning of 8 November when we learned that Al Gore had received over 500,000 more votes than George W. Bush, but that the Electoral College would likely thwart his elevation to the highest office in the country. Since the American Constitution provides that the candidate with a majority of electoral votes in the College wins the presidency, the outcome hinged not on Gore's popular success but on who would get Florida's bloc of twenty-five electors and thus attain the necessary Electoral College majority. During the next several weeks — as the Florida votes were recounted (or not), as the lawyers and politicians maneuvered, and as the commentators pontificated — the legitimacy of a Bush presidency was often challenged and proposals to change our electoral system were plentiful. However, only mild, sporadic protests against the system were registered and, within six months, the issue of whether the Electoral College should be reformed or abolished vanished from the public agenda.¹

How can we explain the failure of this issue to take hold? Four broad possibilities come readily to mind, based on *realism*, *elitism*, *pluralism*, and *functionalism*. The realistic explanation is that the Electoral College is part of our constitutional heritage and that the Constitution has placed such formidable hurdles to changing our electoral system that there is little to be gained by trying. The elitist explanation is that the Electoral College serves the interests of the powerful; having no reason to support changes in the system, party leaders in our political system have ignored or even suppressed a broader consideration of the issue. A pluralist explanation is that American citizens have diverse views about our electoral system, which prevent a broad social movement rallying around some alternative to it. A functional explanation is simply that Americans generally regard the Electoral College as a serving an important, useful role in our political system

and thus see no reason to make an issue of changing our system for electing our president.² Let us take a closer look at each of these explanations.

The *realistic explanation* emphasizes the difficulty of changing our presidential electoral process because amending the Constitution is itself difficult — requiring supermajorities both in Congress and among the states. Realists understand that constitutional amendments to alter the Electoral College must win overwhelming support.

First, such amendments must be approved by two-thirds of the members of both branches of Congress.³ Realists would recall that Congress has considered more than seven hundred separate proposals for changing the Electoral College, and these proposals have met with almost no success. Recently, Judiciary Committees in both the Senate (1992) and the House of Representatives (1997) conducted hearings on the issue, but no action was taken. In 1979 both the House and the Senate entertained but abandoned proposals to abolish the Electoral College. In 1956 and 1969, constitutional amendments calling for the direct popular election of the president passed the House but died in the Senate. We would have to go back to 1803 to find Congress passing an amendment directly modifying the Electoral College.

Second, even if Congress passed a constitutional amendment, it would require approval by three-quarters of the states. Such rules regarding the process of amending the Constitution make it easy for state legislators from small states to thwart changes in the electoral process that undermine their interests. Because the Electoral College provides each state with two electoral votes irrespective of its population, the relative voting power of citizens in small states is enhanced,⁴ an advantage that both citizens and leaders of these states are loath to abandon. Realists would point out that George W. Bush won twenty of the twenty-nine smallest states, each overrepresented in the Electoral College and each decisive to Bush's narrow victory. If only thirteen of these states voted their interest in preserving an electoral system that advantages their voters, change would be thwarted.

The realist perspective derives from an institutional approach to explaining politics, which contends that political institutions and the rules governing them matter. As the most fundamental of all political institutions, constitutions create both the rules that govern political systems and the rules for changing these rules. The existing rules governing the process of amending the Constitution practically ensure the survival of the Electoral College as is.

The realist perspective has normative implications that are consistent with classical liberalism. At the time of America's founding, liberals viewed constitutions as articulating our social contract, or our most basic social agreements about our political community. A political process that sought widespread agreement about our governing institutions created the constitutional rules regarding the Electoral College. To found a nation at the constitutional convention, broad support was needed, and institutions such as the Electoral College achieved such

backing. If we now wish to change our method of electing the president, we are morally (as well as legally) required to obtain roughly the same sort of supermajority to amend the Constitution that was required to create it. From a liberal perspective, the institutional rules for changing the Electoral College are entirely appropriate for ensuring that the agreements embedded in our Constitution will only be amended by supermajoritarian processes similar to those that created our republic. Reform of the Electoral College should thus succeed only as a result of a widespread social movement or broad political support for change. From a liberal perspective, citizens have little reason to become active and mobilize into a social movement to protest our electoral system unless that system egregiously violates citizens' equal political rights. That standard may not have been met in the wake of the 2000 election.

An *elitist explanation* would see the demise of the Electoral College issue as the result of how power is distributed and how powerful interests are represented in America. From this perspective the Constitution was created to serve elite interests, and the Electoral College was intended to obstruct democratic impulses such as having a direct popular election of the president.⁵ Elite theorists would argue that throughout our history the Electoral College has helped shield presidents from popular and progressive impulses that threatened the most powerful economic, social, and political interests. They would claim that elites, particularly our political leaders, continue to use their power to thwart change in our electoral system. For the most part, our political leaders are Republicans and Democrats, and the Electoral College advantages our two major parties in the electoral process by shielding their office holders and candidates from third-party competition and pressure from other organizations outside the mainstream of American political life. Just as the Constitution presents substantial hurdles to electoral change, the interests of our elites — especially Democratic and Republican party leaders — dictate that political power will suppress the issue of electoral reform and defeat reform proposals that might reach our governmental agenda.⁶

The elitist explanation is also a structural one. While institutional explanations see political outcomes as greatly affected by the institutional rules, structural explanations see political outcomes as greatly affected by people's interests and their power resources. The structure of power in America makes it highly unlikely that any challenge to the system that undermines the interests of the powerful will be successful.

The elitist perspective has normative implications that are consistent with populism. Populists denounce the existing power structure and the institutions that support it. Populists face the dilemma of accepting an electoral college system they oppose or engaging in a difficult struggle to bring about change. Alienated populists would like to see the system change but opt for inaction because of their pessimism about the odds of successfully challenging the powerful. Activist populists would also like to see the system change, and they retain

enough hope that they do challenge the powerful. But because of the institutional as well as the structural barriers to change, they often conclude that the Electoral College is not the best target of their challenges to the system. They seek more promising reforms that would undermine the current distributions of power and privilege in America.

The *pluralist explanation* focuses on the possibility of political change bubbling up from the citizenry, from the bottom of the power structure. Pluralists see the American political system as open to reform efforts, with Democratic and Republican public officials both competing and collaborating in political affairs. The competition between them means that our representatives must respond to citizens who are mobilized on behalf of popular causes. Given widespread support for change, perhaps expressed by a broad social movement, Democrats and Republicans may well incorporate the movement's demands into their platforms, if only to achieve partisan advantage. Pluralists would see the absence of a widespread social movement on behalf of change as explaining the failure of the Electoral College issue to take root.

Pluralists adopt a behavioral approach, which emphasizes that citizens' actions make a great difference in shaping the actions and outcomes of political life. Pluralists recognize that on most issues, citizen involvement in broad social movements is not essential for political success. Smaller groups of citizens can become active on routine issues, and, absent overt opposition, they can achieve their political goals in an open political system that responds to their demands. But on larger issues — such as a fundamental reform of our electoral system — a much broader mobilization of citizens into a social movement is required to bring about change.

Progressive social movements seek fundamental changes in economic, social, and political life, but such movements are often thwarted because the Left embraces many divergent points of view.⁷ The splintering of the Left around different reform agendas leads to internal divisiveness, with different progressive factions criticizing one another's proposals. This dissension undermines the Left's capacity to generate popular support for its goals. From a pluralist perspective, the failure of the Electoral College issue to take hold does not mean that the Electoral College is beyond criticism. Rather, the progressive Left has failed to unify behind a single proposal for reforming or eliminating the Electoral College, thereby discouraging broad support for a more desirable alternative.

The pluralist perspective has normative implications consistent with progressivism. Progressives decry the early demise of any issue that can be addressed politically and that can promote democratic development and social progress. Progressives understand that diversity of opinion is a fundamental feature of political life and honor the rights of all to express their views, but they do not consider people's views as fixed or unchangeable. They judge political process as healthy when people present alternative views, deliberate on the merits of issues,

and seek a resolution that best suits their collective needs. For those dissatisfied with current electoral arrangements, progressives urge careful evaluation of competing proposals. If one such idea merits their support, progressives would then attempt to use it in rallying a progressive movement to change the presidential election system.

The *functional explanation* argues that there simply isn't a good case for changing our electoral system. Functionalists regard the Electoral College as an integral part of the Constitution and see both the Constitution as a whole and its method for electing our president as contributing to more than two centuries of effective representative democracy, social stability, and economic prosperity. They look at the long history of American presidential elections and claim that the Electoral College serves well — or at least adequately — the fundamental purpose of any democratic election; it allows citizens to hold their presidents accountable, which enables them to remove those executives widely regarded as corrupt, ineffective, or out of sync with the public. Functionalists interpret the aftermath of the 2000 election as evidence that the Electoral College can guide us safely through political crisis and bolster the legitimacy of our government. Moreover, functionalists are cautious about changing or eliminating the system because the Electoral College performs "latent functions" for the system that are only dimly appreciated. An alternative electoral method might well have unfavorable, often unforeseen, consequences for our political system.

The functional explanation incorporates a cultural approach to understanding politics, as it stresses that political events are greatly influenced by the dominant beliefs, norms, and expectations held by citizens and leaders. Thus, in the wake of the 2000 election, most Americans have judged — consciously or not — that our inherited Electoral College is an acceptable aspect of our political culture.

This functional explanation has conservative normative implications. Conservatives take the occasion of the 2000 election as an opportunity to reaffirm the role of the Electoral College, to recognize the legitimacy of those who win under its rules, and to encourage our presidents to use their authority to govern in the public interest. Having celebrated the virtues of the Electoral College, conservatives want to bury the issue of electoral reform.

Perhaps the Electoral College issue (or nonissue) provides an excellent opportunity to analyze the validity of institutionalism, structuralism, behavioralism, and functionalism as frameworks for explaining political outcomes. But this is not the task that we have set for ourselves here. We suspect that constitutional rules, the distribution of power, the lack of a united social movement, and a political culture that accepts the role of the Electoral College each contribute to keeping the issue of electoral reform off the public agenda.

The more interesting and challenging task is to address the normative questions that arise from the views of liberals, populists, progressives, and con-

servatives. Is the Right, composed of conservatives and (classical) liberals, correct to regard the Electoral College as a functional system for electing our president? Is the Right correct to claim that our existing electoral method has produced no egregious injustice requiring a revision of our initial social contract? Or is the Left, made up of populists and progressives, correct to regard the Electoral College as an unfair system that privileges those at the top of the power structure? Is the Left justified in seeing a need to discover some alternative electoral arrangement that promotes democratic development and can rally a progressive social movement on behalf of a new method of electing our president? In short, should the Electoral College be reformed or abolished?

FRAMING THE ISSUE

This book takes up the challenge of evaluating the Electoral College and the major alternatives to it. We recognize that no electoral method is perfect. All methods embody certain values and produce distinct consequences. We simply wish to assess the strengths and weakness of the Electoral College and its major alternatives as methods for translating the preferences of over 100 million American voters into a collective choice among candidates for the presidency. Once citizens have cast their ballots, what is the best method for adding up these votes?

This restricted issue ignores many other elements of the presidential electoral process that are worthy of analysis and possible reform. The issue of recounting ballots in Florida points to the importance of ensuring that each voter's preferences are accurately recorded. Complex ballots like the infamous "butterfly ballot" used in Palm Beach County can confuse voters by prompting them to mark their ballots in ways that betray their intentions. Voting machines that fail mechanically, leaving "hanging chads" and "dimpled ballots," can result in an "undercount" of votes. These are serious technical problems that can and should be remedied. In this book, we assume that all citizens who intend to vote have their preferences accurately recorded. Our concerns lie with how these accurately recorded preferences should be counted.

Other important issues include questionable, sometimes illegitimate practices that hinder (or facilitate) the access to vote for some people. Cumbersome registration procedures in some states could be eased. Holding elections on a Sunday or holiday may make it easier for many citizens to vote. Keeping certain citizens from voting through obstruction, intimidation, and unsubstantiated allegations of criminal records clearly violate democratic rights.⁸ Giving workers of one party access to public offices to ensure that their voters, but not voters registered to the competing party, properly return absentee ballots strains our conception of a fair electoral process. Such issues should be addressed if we want to ensure a fair democratic process, but these are not the issues discussed here. Our concern is how to aggregate the votes of all citizens who want to express their preferences.

Voter fraud also remains an important issue, especially in light of the 2000 election. *Miami Herald* investigative reporters noted that hundreds of illegal ballots—some for dead people—were cast in Dade County.⁹ Lax voter registration procedures sometimes enabled students to register and vote in more than one place, and the growing use of absentee ballots requires that authorities address issues of forgery or fraudulent use.¹⁰ It is even alleged that software used to compute vote totals may be manipulated without detection.¹¹ We believe that any such practices must be discovered and curtailed, but here our focus on fraud only addresses its likelihood using different electoral systems.

Perhaps the most important issues in presidential elections concern the bases of citizens' expressed preferences. Ideally, people's votes coincide with their political aspirations, principles, and interests, yet many other things influence their voting decisions. The enormous sums of money spent on elections to manipulate people's preferences, the deceptive ads employed to mislead voters, and the "horse race" (rather than issue-oriented) media coverage of campaigns are just a few practices that may undermine the capacity of voters to express their real values at the ballot box. Although these sorts of issues need to be addressed, they are not our *immediate* concern, which is how best to sum up citizens' individual preferences into a collective choice.

The issue that is our direct concern—how best to aggregate individual votes into a collective choice—may seem obvious and trivial. We have all participated in many elections that almost always produce a collective choice by giving all citizens one vote, letting them cast that vote for any of the nominees (or for no one at all), and pronouncing the nominee who gets the most votes as the winner. Because this method is so straightforward, many analysts advocate choosing the president by a direct popular vote with a plurality rule—awarding victory to the candidate with the most votes in a national election. A moment's reflection, however, gives most people pause that this is the best method. What if this scheme encouraged a proliferation of candidates, which led voters to split their votes among these candidates so that the highest vote-getter received only a small percentage of the votes? We might then adopt the familiar practice of majority rule: if no candidate gets 50 percent plus one of the popular vote, we would have a runoff election between the two top vote-getters in the initial round of balloting.

The difference between plurality rule and majority rule methods of determining a winner from our individual choices is not trivial. On seventeen occasions since 1824 (when popular vote totals were first reported) no candidate for the presidency achieved a majority of the popular vote. If rules required the winner to attain a popular-vote majority, five of the last seven elections would have had runoffs. It is not clear that the candidate with the most votes in the initial balloting would have won the majority. For example, in 1960 John Kennedy was attributed 49.7 percent of the popular vote and Richard Nixon was attributed 49.3 percent.¹² In a direct election with a runoff, if Southern Democrats who

were skeptical of Kennedy and who had previously cast their ballots for "states rights" slates strongly supported Nixon in the runoff, a Kennedy presidency would not have occurred. Likewise, in 1992 Bill Clinton won only 43 percent of the popular vote. Those who supported Ross Perot might not have moved sufficiently to Clinton in a second round to deliver him a majority, and the Clinton era might not have happened.

Further examples could show over and over again how different methods of aggregating votes could have led to different results, but such examples would *underestimate* the overall impact of having alternative voting systems. Different voting methods can profoundly change the entire electoral processes. For instance, different electoral rules might encourage candidates who lost primary battles for their party's nomination to form "splinter parties" to pursue success in November. If we employed a popular vote with the plurality rule, perhaps John McCain, Bill Bradley, and other aspirants would have continued their campaigns into November, radically changing the popular vote totals received by Bush and Gore. Under such scenarios it is impossible to know what the results would have been. In short, alternative electoral systems do not only provide different ways of counting votes but they also change the distribution of individual votes that are to be aggregated. More generally, we can safely assume that methods of aggregating votes matter greatly, not only to who wins particular elections but also to how our political process functions.¹³

NOTES

1. Critics of the Electoral College did not anticipate this quiescence. See, for example, David W. Abbott and James P. Levine, *Wrong Winner: the Coming Debacle in the Electoral College* (New York: Praeger, 1991).
2. Most public opinion polls show considerable support for abolishing the Electoral College and instituting the direct election of the president. For example, a Gallup poll taken on 10 November 2000, showed 61 percent of the public favoring the direct election of the president, while 35 percent favored retaining the Electoral College. A Hart/Teeter poll conducted shortly thereafter reported 57 percent of respondents supporting the direct election of the president. See Ben Wildavsky, "School of Hard Knocks: The Electoral College: An Anachronism or Protector of Small States," *U.S. News & World Report*, 20 November 2000, 52. Defenders of the Electoral College refute the significance of such polls, claiming that the questions are "loaded" and that most Americans accept the institution.
3. The Constitution does permit the bypassing of Congress in the amendment process, but only when the legislatures of two-thirds of the states call a convention for the purpose. As indicated below, the likelihood of using this route to challenge the Electoral College is very small.
4. Lawrence D. Longley and Neal R. Peirce, *The Electoral College Primer 2000* (New Haven: Yale University Press, 2000), 151.
5. Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Free Press, 1986). Originally published in 1913.
6. The theory that many issues are suppressed from the political agenda by the application of power by those interests that dominate political life has its roots in the work of Karl Marx and has been developed by Peter Bachrach and Morton Baratz, *Power and Poverty* (New York: Oxford University Press, 1970).
7. See, for example, Richard Rorty, *Achieving Our Country* (Cambridge, Mass.: Harvard University Press, 1998), esp. 41–71.

8. Kevin Phillips, "His Fraudulency the Second? The Illegitimacy of George W. Bush," *American Prospect* 12, no. 2 (29 January 2001): 24.
9. Manny Garcia and Tom Dubocq, "Unregistered Voters Cast Ballots in Dade," *Miami Herald*, 24 December 2000, 1.
10. Norman Ornstein, "It's Not in the Numbers," *Washington Post*, 26 November 2000, B01.
11. Jonathan Vankin, "Vote of No Confidence," www.conspire.com/vote-fraud.html.
12. Such attributions may be leading. Voters in Alabama actually cast several votes for electors, some pledged to Kennedy and others to unpledged Democratic electors. It is likely that many voters who favored Harry Byrd cast ballots for both unpledged and Kennedy electors, but the method used to achieve a Kennedy popular victory over Nixon attributes all votes cast for Democratic electors as Kennedy votes. Other methods using plausible assumptions of voter intentions attribute fewer votes to Kennedy and provide Nixon a narrow popular margin over Kennedy. See Longley and Peirce, *Electoral College Primer 2000*, 46–59.
13. An important body of research in comparative politics has analyzed this topic. See Douglas Rae, *The Political Consequences of Electoral Laws* (New Haven: Yale University Press, 1967); and *Electoral Laws and their Political Consequences*, ed. Bernard Grofman and Arend Lijphart (New York: Agathon Press, 1986). The uniqueness of the Electoral College has prevented its systematic analysis in this literature.

CHAPTER 3

The Electoral College in Historical and Philosophical Perspective

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IN THE WAKE of the presidential election of 2000, there have been numerous calls to reform or abolish the Electoral College. In our view, the merit of these proposals cannot be judged without understanding why the Electoral College was established in the first place and how it resolves important political questions that naturally arise in selecting a president within our federal system. How well these political questions are resolved is a matter for others to decide; here we are content to bring underlying questions to the forefront of debate by reconstructing the history of the Electoral College. We then suggest principles and important considerations that may be used to evaluate the adequacy of alternative methods of selection, including the Electoral College.

THE CREATION OF THE ELECTORAL COLLEGE

On Tuesday, 29 May 1787, the members of the Federal Convention meeting in Philadelphia adopted what has come to be known as the Virginia Plan. This plan, largely the work of James Madison, became the working document for the remaining debates that led to the adoption of the present Constitution of the United States. Article 5 of the Virginia Plan said, in its entirety,

7. Resolved that a National Executive be instituted; to be chosen by the National Legislature for the term of [unspecified] years, to receive punctually at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made so as to affect the Magistracy, existing at the time of increase or diminution, and to be eligible a second time; and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation.¹

On Wednesday, 13 June, the Convention readopted the Virginia Plan with a number of modifications. In this version the executive was limited to a single person, which indicates that the original plan assumed a multiple executive, and the term of office was set at seven years with the executive ineligible for a second term.² The executive was still to be elected by the national legislature. On 6 August the Convention adopted what is basically now the United States Constitution. In it Congress continued to elect the executive branch to a single seven-year term.³ Not until 4 September, less than two weeks before finally adjourning, did the Convention receive a committee proposal to alter the Constitution to elect a president and vice president using an electoral college.⁴

The Virginia Plan would have created a unitary national government that relegated the states to basically the status of administrative units. Less well appreciated is that the Virginia Plan would have created something very close to a parliamentary system with the executive and judicial branches becoming creatures of the legislature. Even the second branch of the legislature, later termed the Senate, was to be selected by the popularly elected first branch that came to be the House of Representatives. Implicit in the design of the executive was that it be roughly equivalent to a council of ministers in the original version, and then to a prime minister in the revised version. As the debates wore on during the summer of 1787, the unitary plan was rejected in favor of what we now know as a federal system. But the implications of this basic shift for the executive branch were only slowly recognized. If a general commitment to preserving state government led to considerable fear that the national government might become too strong overall, a general commitment to separation of powers in state governments led to the fear that Congress might be too strong even in a federal system. As a result, the executive and judicial branches were gradually pulled away from congressional control even as the Senate was moved to an independent status through election by state legislatures.

The first proposal for electors came from James Wilson on 2 June, but he proposed dividing each state into districts with each district electing one elector.⁵ Hence, his proposal bypassed state governments and retained a unitary system. On 18 June Alexander Hamilton proposed his own comprehensive plan, which used Wilson's format for electing what Hamilton termed a "governor."⁶ On 19 July Elbridge Gerry proposed having the national executive selected by the state governors.⁷ Gerry's proposal, like Hamilton's, was ignored, and on 20 July Wilson's idea was taken up again in terms of how many districts each state should have.⁸ The question, not settled on that day, was whether the number of districts, and thus the number of electors, should be equal to the number of representatives allotted to each state. Debate on the election of the executive was thus brought into the more general debate between large and small states. The large states preferred representation proportional to population, whereas small states preferred

equal state representation. The Convention would resolve the general question eventually in the so-called Connecticut Compromise, whereby the states were given equal representation in the Senate, but the House was apportioned by population. The issue of selecting the executive was more difficult to resolve. The Federalists proposed on 24 July that the presidential electors be selected by lot from members of the House of Representatives. This proved problematic both because some thought popular election was a better method for identifying electors who were worthy men and because it still involved the House too much in the selection process.⁹

Members of the Convention did not invest much time and energy in the debate over executive selection, primarily because other matters were seen as more important, but also because they were in uncharted waters greatly complicated by crosscurrents of other issues. Still, by 24 July they had unknowingly made an important distinction between the identification of presidential candidates and the selection of the president from among these candidates. On one hand there was considerable concern that candidates selected through direct election would not be "worthy" because the people at large had no simple way to identify such candidates. On the other hand there were fears that making the nomination of candidates too dependent on Congress undercut the role of the states. At this point no one had come up with the idea of connecting the selection of electors to the states. Yet, by distinguishing the process of identifying worthy candidates from the process of selecting among those candidates, the Convention delegates opened up the possibility of what came to be the ultimate solution: state electors would identify the top five candidates, and Congress would select from among these five candidates with each state's delegation having one vote.

There was little further debate on the matter, and it is fair to say that the Convention delegates "backed into" the final solution. No coherent theory supported this solution, although it is also fair to say that as originally designed the Electoral College was commensurate in its details with the broader constitutional principles of federalism, separation of powers, and checks and balances. A review of the Electoral College's basic features will allow us to identify its internal logic, permit some discussion of the reasoning that connects the College to broader constitutional principles, and set the stage for explaining later changes.

The process of selecting candidates for the presidency was separated from the process of selecting the president from among those candidates. In the first process, each state legislature decided how the state's electors would be picked. There could be popular state elections, the legislature could pick the electors, or some other means might be devised. This was commensurate with the ability of the state legislatures to pick their respective senators and was a direct expression of federalism. Each state was allotted a number of electors equal to the number of representatives it had in Congress, plus its two senators. While on the one hand this tended to favor states with larger populations, by also giving electors for the

senators it tended to help protect the interests of the small states — much like the Connecticut Compromise that mixed proportionality with equality in the overall Congress. In the election of 1792 the largest state had three times the number of electors that the smallest state had, which significantly overweighed the smaller states. In the election of 2000 the ratio between the largest and smallest state was more than seventeen to one, which means that the overweighing is now of greatly reduced significance.¹⁰

Senators, representatives, and others holding “an office of trust or profit” in the national government could not serve as electors, which reflected federalism and the separation of powers. The electors met in their respective states, safe from interference by Congress and national cabals, and each elector nominated two persons, one of whom was not to be from their state. The intent was for the electors to deliberate free from interference in their search for “worthy” candidates. That one of their votes must be for someone from another state required them to stretch beyond parochial considerations and seek people of national reputation. Deliberations were to be collective, but each elector cast his own vote in the end. Eventually the vice president was to be selected from among these same nominees, which meant that the president and vice president might well have been political opponents. This possibility led to results in the election of 1800 that required an alteration in the process and that produced the Twelfth Amendment. The certified votes of the electors were then to be delivered to the U.S. Senate where the second part of the overall process began.

In the framers’ original formulation, the U.S. Senate opens and counts the ballots, and the person with the greatest number of votes becomes president, as long as that person wins a majority of the electors. If there is a tie, or if no one has a majority, the House of Representatives’ makes the selection. In the case of an even split of electoral votes, House balloting is limited to the two candidates. If no one has a majority, the House selects from among the five with the highest vote totals. After choosing the president, the remaining person with the most electoral votes becomes vice president. If there is a tie, or if no candidate has a majority, the U.S. Senate selects between the two. When the House votes, each state has one vote to cast, which it casts in accord with the majority of its House delegation. The president must have the votes of a majority of the states.

There is no doubt that the process is complicated, but so is the process for passing legislation. It is more accurate to say that the overall process of the Electoral College, as the framers envisioned, embodies a high level of deliberation and consensus. The complications result from applying the principles of federalism, separation of powers, and checks and balances. In this sense the Electoral College as originally designed reflects the underlying structure of the Constitution. The U.S. government was designed in every respect to be complicated. Although the Convention delegates backed into the design for the Electoral College, it was not arbitrary or random in its design. Historically, simple and straightforward

proposals for replacing the Electoral College have confronted the very principles underlying the entire document.

The most frequent complaint lodged, aside from its complexity, is that the Electoral College is undemocratic. Three members of the Constitutional Convention did doubt the ability of the general electorate to identify appropriate, “worthy” presidential candidates on its own, in large part because of the size of the country and its considerable population.¹¹ James Madison, among others, worried about the possibility of majority tyranny, which some have chosen to interpret as less than a perfect commitment to majority rule.¹² But the U.S. Constitution was not designed to prevent majority rule, or else why worry about majority tyranny in the first place? Rather, it was designed to produce deliberative majorities that achieved consensus beyond one-half plus one. Anxiety about majority tyranny also rested on a concern for minority and individual rights. We should remember that Madison’s original proposal, the Virginia Plan, would have put the House, elected directly by popular vote, at the center of national government. If the Electoral College is complicated, then so are bicameralism, the veto and veto override, and federalism in general. If it is undemocratic, then so are rights that prohibit majorities from restricting, for example, the speech of unpopular minorities. The point here is not to defend the original Electoral College, but to suggest that its replacement or modification, in order to be successful, will need to address concerns broader than mere complication or perceived anti-majoritarianism. These are reasonable criticisms, but criticisms do not constitute arguments for replacement or modification. Each proposed replacement or modification must be addressed positively on its own terms. And, indeed, there have been major modifications in the original design.

ALTERING THE ELECTORAL COLLEGE: THE TWELFTH AMENDMENT

Once the founders’ choice of the Electoral College is explained, the history of the Electoral College can be presented as the history of efforts to reform the Electoral College. All told, more than one thousand amendments to alter the process of presidential selection have been submitted to Congress, but only one has succeeded. The lone success was the Twelfth Amendment, which is usually described as merely a technical correction to the Constitution. But this amendment had major implications for the selection and functioning of the presidency. Why this is so can be demonstrated by rehearsing the strategic considerations encouraged by the Electoral College before the Twelfth Amendment.

The Twelfth Amendment replaced the procedure by which electors voted for two candidates for the office with one that required electors to vote for a president and “in distinct ballots” cast another vote for vice president. In addition to ending the “dual vote” system, the amendment reduced from five to three the number of candidates to be considered for president by the House of Representatives in the absence of electoral majority. If there was no majority for vice president, the

Senate would choose from the two persons with the highest numbers on the list. The amendment also included provisions for the vice president to act as president if the House has selected no president by 4 March (a provision further clarified by section 3 of the Twentieth Amendment).

The original dual voting system of Article II provided an arena for complex voting strategies as a party system rapidly developed in Washington's second term. *Federalist XX* described presidential selection as a reflection of the elector's judgments about individual talents, character, and qualification. But if votes were also cast in support of party agendas, decisions had to be made as to how to promote each party ticket: If one party's candidate for president had little prospect of success, should electors supporting that party cast both of their votes for their preferred vice-presidential candidate in the hopes of at least selecting him? Or should electors cast one of their votes for the opposition party's weakest candidate in hopes of denying the presidency to the opposition party's preferred candidate?

In 1801 Thomas Jefferson, the newly elected president, explored the risks of these strategies from a (Democratic) Republican standpoint, with an eye toward the upcoming election in 1804.¹³ The party could again support Burr for vice president or scatter its second electoral votes among several candidates. But, he wondered, "If we do the first we run, on the one hand, the risk of the Federalist Party making Burr President." On the other hand, pursuit of the other strategy might not only give the vice presidency to the Federalists but also "pave the way for the Federalist's successful candidate to that office to become President." Adding to these uncertainties were the tactics of factional leaders within a political party. In 1796 the Republican electors discarded their second vote while Federalists used theirs to maximize their chances for capturing the presidency. Indeed, the Republican strategy worked to the extent that Jefferson came in second in the balloting and became vice president. But, after the election, Federalists wondered if the strategy of discarding their second vote, as developed by their leader Alexander Hamilton, had an ulterior purpose. Did Hamilton really want Pinckney, the Federalist candidate for vice president, to win the presidency?

The calculations engaged in by electors operating under the original Electoral College suggest two interesting considerations. First, such strategic voting is similar to the coalition building that precedes the formation of a government in a multiparty, parliamentary system. The installation of dual voting, and the appearance of strategic action, may indicate that "the founders" were still operating with some of the presumptions of the Virginia Plan in mind. That is, they might not yet have realized how much they had already departed from parliamentary government as a result of their various compromises. Second, the rule that electors cast at least one vote for a citizen of another state was meant to move beyond state parochialism and broaden their horizons so as to take national considerations into account. The emergence of parties injected a level of concern for party interests that does go beyond a state, but falls short of the nation as a whole. The

broadening intended by the institutional design of the Electoral College is thus truncated through interaction with the political parties it encouraged.

In the election of 1800, the complicated strategic calculations encouraged by the original design of the Electoral College reached new levels of sophistication. As the party system moved from one of largely elite competition toward mass participation, a tie in the Electoral College resulted between Jefferson, the Republican Party candidate for president, and his vice president, Aaron Burr. Some Federalists preferred Burr to Jefferson; others thought a deadlock might induce Jefferson to make policy concessions in exchange for the presidency; still others were willing to engage in the high-risk route of adjourning without electing anyone in hopes that in the interregnum a Federalist could be installed in the office. It is difficult to determine accurately the Republican response since most of the available comments were made after the crisis. There were threats of armed resistance on the part of some states as well as plans to hold a new constitutional convention. Finally, after thirty-six ballots in the House of Representatives, Jefferson was elected president. Ironically, the Federalist Alexander Hamilton was instrumental in swinging the election to Jefferson, his Republican opponent, no doubt aided in his decision by an overriding dislike of Aaron Burr. It is possible that these intricate strategies might have continued for some time, and even become embedded as a traditional norm in the political culture of presidential selection, if the Twelfth Amendment had not altered the equation.

Despite the close call in the 1800 election, a "discrimination" amendment, so called because it discriminated between votes for president and vice president, failed to pass the Senate by a single vote in 1801. Legislation was again introduced in the next session but action was delayed by the Republicans, who feared they did not have enough votes. In 1803, the pressure of an upcoming presidential election made the issue of an amendment an urgent one. Federalists strongly opposed the amendment on two grounds. First, they argued that the amendment diminished the power of small states and thus violated the spirit of the compromise on this question that had been set at the Constitutional Convention. They were especially upset by the change from five to three candidates to be considered by the House under the contingency route to presidential selection. Second, they argued that the amendment violated the general principle of minority rights. Federalists were quite frank about the fact that under the conditions of the new amendment, they would no longer have a chance to elect a Federalist vice president. Even some Republicans, imagining themselves to be in a minority at some future date, questioned the wisdom of the change. Nevertheless, the Twelfth Amendment passed Congress and was ratified in time to take effect before 1804.

The Twelfth Amendment shows the adaptability of the Electoral College to changing political circumstances. The amendment accommodated party competition by ensuring the election of a president and vice president from the same party, and it ended the complex plotting by electors on how to cast their two

votes. On the other hand, the amendment, true to Federalist protestations in Congress, accelerated the demise of the Federalist Party. The Federalists might have elected a vice president in one or both of the next two elections and thus kept the party alive as a force in national politics to provide alternatives to Republican policies. The amendment also diminished the office of the vice president. In the immediate succeeding elections, Republicans nominated men near the end of their political careers. The ambiguous status of a vice president today is due to many factors, but the Twelfth Amendment certainly altered the institution early and significantly. Would vice presidents from a party other than the president, as was Jefferson in the Adams administration, have proved a source of chaos and gridlock or would some variant of a parliamentary system with an opposition-in-waiting have evolved? Or, to consider another possibility, would the (abandoned) practice of dual voting have reduced party conflict over time? There are no clear answers to these hypothetical questions, but one can say that even the correction of minor "oversights" to the Electoral College can produce significant consequences.

THE TWELFTH AMENDMENT AND THE PARTY SYSTEM IT HELPED TO FORM

Aside from altering the status and functioning of the presidency and speeding the demise of the Federalist Party, the Twelfth Amendment also contributed directly to the development of a party system in the United States. It thus indirectly worked against subsequent reform proposals, which have generally been opposed by political parties that fear the electoral consequences of changing or abolishing the Electoral College. The party system that the Twelfth Amendment encouraged also led to popular election of the electors in every state — an institutional move permitted but not required by anything in the U.S. Constitution. This in turn made inevitable the unit rule whereby all the electoral votes of a state are awarded to the party that wins a plurality in that state. In following the interlocking institutional consequences of this seemingly inconsequential amendment, we can see how it helped make the Electoral College extremely difficult to modify or replace.

Prior to enactment of the Twelfth Amendment, the person with the majority of electoral votes became president, and the person with the next highest total became vice president, whether or not that person was from the same party. Thus, Jefferson became vice president in 1796 when John Adams was elected president, though the two ran against each other for the top office. After enactment of the Twelfth Amendment, presidential and vice presidential candidates ran as teams from the same party and were elected as such. This change eliminated any representation of the minority party within the executive office and gave the winning party full control of the executive branch. It also encouraged the formation of electoral coalitions, and hence the two-party system, in order to win the presidency/vice presidency.

Institutionally, the Twelfth Amendment relegated the vice presidency to secondary importance, and made the presidency both more unified and more partisan. Over time, there were few internal challenges to the growth of presidential powers, and the party that was shut out of the executive was forced to make its stand in the legislature, increasing the potential friction between branches, especially during periods of divided control. However, although the vice presidency was itself weakened by the Twelfth Amendment, its political status grew in one way: the new arrangement allowed for the grooming of "heirs." This was important because, since the vice president begins with a natural advantage in visibility and experience, he has a natural edge over any candidate from another party (or within his own) when he runs for election to the presidency. The possibility of lengthening a party's control of the executive through such an "heir" is thus enhanced, subsequent term limits for individual presidents notwithstanding.

The term Electoral College is a misnomer. For one thing, Congress was expected to select the president most or even all of the time. In this sense the electors were not really supposed to be electors originally, but nominators. In the absence of political parties, this may well have turned out to be the case. But the party system that the Twelfth Amendment helped to create greatly reduced the probable role of Congress. By identifying and campaigning for their strongest candidates, the parties became the nominators; it was increasingly probable that the electors in name would be the actual electors as parties grew better organized and more effective. Although not originally designed to do the electing, the Electoral College came to make the actual selection among nominees identified by the parties.

Also, the Electoral College is a misnomer insofar as the electors never meet as a single body but as members of fifty state "colleges." The intent of this aspect of its institutional design is reasonably clear — the president was to be, like the Senate, the creature of the states and not of Congress. The intent behind leaving the manner of selecting the electors up to the states is less clear. Some evidence suggests that some delegates at the Constitutional Convention expected the state legislators to do the selecting, as with U.S. senators. Others, including James Madison, may have expected popular elections to be used, although probably from districts within the state rather than statewide contests. Regardless, the fundamental principle of federalism running through the U.S. Constitution led to the emerging party system being based on the capture of state executives and legislatures, with the national party organized as an assemblage of state organizations. The strong popular basis of state politics virtually guaranteed that the people rather than the legislature would elect members of the Electoral College, and by 1832 all states but one (South Carolina) used such elections. Popular selection of the electors in the context of state-based parties placed enormous pressures on the parties to move to a "winner-take-all" system for a state's Electoral College votes. As early as 1800 Thomas Jefferson noted that once some states moved to what is now known as the unit rule, it would be "folly and worse than folly" for

the other states not to follow, since any state that divided its electoral votes would have less impact on the outcome than one that cast all of its electoral votes for one candidate. Several states are currently debating whether to move back toward proportional allocation of their respective electoral votes. Two hundred years after Jefferson's statement it is still the case that any state not using the winner-take-all system reduces its impact in the Electoral College. Since this reduction in impact grows more pronounced the more electoral votes a state has, beyond the possibility of a few of the smallest states dropping the winner-take-all system the move back toward proportional allocation does not have a good prognosis for success.

As the presidency became the focal point of electoral competition at the national level, the winner-take-all rule became politically irresistible. Until the 1830s several states awarded electoral votes on a proportional basis, but the practice died in all but two states as each state sought to maximize its influence in presidential elections, and parties sought to maintain their electoral advantage in an increasingly regionalized party system. Reform proposals foundered on these shoals in the twentieth century, when divisions among reformers made it impossible to navigate the process of amendment. Some reformers tried to revive proportional allocation of electoral votes as a way of limiting the president's powers by shrinking the winner's apparent mandate. Others wanted to expand the president's power by connecting it to a popular mandate based on direct election. The prominent alternatives that have been repeatedly proposed through the years, most of which are discussed in this book, were so numerous as to divide proponents of change into warring camps pressing different political principles. In the face of this division, state-based party systems have rather easily fended off proposals to change the process of presidential selection.

Note that none of the later changes in the Electoral College discussed here resulted explicitly from a constitutional amendment and therefore do not require a constitutional amendment to undo. However, the post-Twelfth Amendment party system generated few incentives to initiate bills in multiple state legislatures or in Congress to undo these changes.

THE HISTORY OF THE ELECTORAL COLLEGE: THINKING ABOUT PERFORMANCE

There have been fifty-four presidential elections in the history of the United States, and the mechanics of selection have been an issue in eight of them:

- 1800: the House of Representatives chose Jefferson, who was tied with Burr in the Electoral College;
- 1824: the House of Representatives chose John Quincy Adams, although Jackson had a plurality in the Electoral College;
- 1876: a few disputed popular votes determined the outcome in several states, and hence in the Electoral College; this resulted in Hayes defeating Tilden by one electoral vote, although Tilden had a 3 percent margin in the popular vote;

- 1888: Benjamin Harrison won a majority of the Electoral College, although Cleveland had more popular votes;
- 1912: Wilson won a majority of the Electoral College, but only a plurality of popular votes;
- 1948: Truman won a majority of the Electoral College, but only a plurality of popular votes;
- 1960: amid charges of voting irregularities, Kennedy barely carried the popular vote in Illinois, and won a majority in the Electoral College;
- 2000: amid charges of voting irregularities, George W. Bush barely carried the popular vote in Florida, and won a bare majority in the Electoral College, while losing the national popular vote.

After each of these elections, calls for reform temporarily increased, as did scholarly attention. Ours is but the latest in a series of "white papers" on reform of the Electoral College. Debates on changing the Electoral College tend to be highly partisan. Those arguing for change treat some of the elections cited above as examples of Electoral College "failure," whereas those preferring to keep the Electoral College do not regard these elections as "failures." We are less concerned here with labeling than with understanding the consequences of rules that define a political institution. One of the fundamental premises underlying this book is that while electoral rules have consequences, there is no optimal set of rules for resolving differences. It depends upon what type of outcome is preferred and which principles are seen as more important.

Perhaps the only American national election that clearly "failed" was that of 1860, which resulted in a Civil War. This electoral failure was not a direct result of the Electoral College. Although the Electoral College produced a clear winner and was in this sense a technical "success," it failed to deal with the deep controversies dividing the nation. Probably no electoral method would have been successful under the circumstances. Those who worry about the "failure" of the Electoral College do not cite the election of 1860. Instead, they invariably argue that in one election or another the Electoral College failed to produce an outcome that was preferred by most voters. Let us examine the eight elections cited above in the light of how the Electoral College fared with respect to the popular vote.

Prior to 1828 there were no national vote totals, since as late as 1824 a third of the states still used their state legislatures to select their respective members of the Electoral College. This means that as contentious as the elections of 1800 and 1824 were, we cannot make a comparison with the popular vote. The elections of 1912 and 1948 awarded a majority of electoral votes to the candidate who had only a plurality of the popular vote. Since any popular vote system would essentially rest on a plurality rule and since the Electoral College did not award victory to the candidate with the second highest total and thus did not violate the plurality rule, these are not problems using the popular vote criteria. This leaves for consideration the elections of 1876, 1888, 1960, and 2000.

In the election of 1876, the clear winner of the popular vote, Tilden, lost the election by one vote in the Electoral College. This is the one election out of fifty-four in which the Electoral College clearly "failed" to produce the winner by the popular vote criterion. In 1960, charges of vote fraud dogged the party that barely won the popular vote, although the Electoral College awarded the presidency to the apparent popular vote winner. By the popular vote criteria, then, the 1960 election was not a "failure," although as we shall argue later we probably do not know who actually won the popular vote and use of a popular vote system would have made this outcome even more problematic than use of the Electoral College. This leaves the elections of 1888 and 2000. In 1888 the Electoral College apparently reversed the popular vote outcome, although again the difference in popular vote totals was close enough to leave us wondering who actually won. Did this apparent outcome create a crisis of legitimacy? There were no riots, and the electorate calmly elected Grover Cleveland president in the 1892 election after his defeat four years earlier. His 1888 loss was by 65 electoral votes (a 16 percent difference) even though he had .8 percent more popular votes, and his victory of 1892 was by a 3 percent popular vote margin and a 29 percent margin in the Electoral College. The election of 2000 with a .5 percent difference in the popular vote is apparently the third time in American history that the Electoral College has provided a winner other than what the popular vote would have provided. The .5 percent margin, however, is within the range of *possible* counting error across the nation. If nothing else, the experience with recounting Florida votes in the 2000 election illustrates how difficult it is to get an accurate popular vote total.

This leaves the 1876 election as the only clear "failure" using the popular vote criterion. Still, despite the majoritarian impulse that runs deep in the psyche of Americans, if the constitutional electoral rules specify that electoral votes are what matter, why is the popular vote criterion useful for determining the winner when the existing rules have failed? As Brian J. Gaines recently put it; "To borrow an analogy, arguing that a candidate 'deserves' the presidency because he won a popular vote plurality is akin to arguing that a team 'really won' a football game in which it out-gained its opponents in total yards but somehow failed to score."¹⁴

Put most simply, the failure of a set of decision rules needs to be determined on the basis of those rules failing to produce what is supposed to be produced. The popular vote criterion is one way of suggesting a preferred alternative set of rules, but the suggestion is not self-justifying when one can think of others, such as a set of rules based on a majority of eligible voters where voting is mandatory. The real problem in 1876 was the possibility of fraud or miscount where a few hundred votes in one state reversed what the rules called for — a winner based on who actually won the electoral vote in an honest, accurate count. It is important to note as well that election fraud was the direct outcome of severe sectional animosities, mirrored in party alignment, from the Civil War and Reconstruc-

tion. The 1876 presidential election was the first post-Civil War contest in which Democratic and Republican parties were at parity, when both confronted the issues of Southern "home rule," "reconciliation," and "unredeemed" states. Hence the failure was due less to the Electoral College than to the aftershocks of the systemic breakdown of 1860.

If this sounds as if the "failures" of the Electoral College have been explained away, the intent is otherwise. Instead, the point is that close elections will be a problem for any electoral system, including the Electoral College. Since 1824 six elections have had less than a one-percent popular vote difference between the two major candidates: 1880, 1884, 1888, 1960, 1968, and 2000. If one accepts the possibility of counting error as well as vote fraud, all six elections must be considered possible "failures," using the standard of the popular vote. That is, we cannot be absolutely certain who actually won the popular vote in any of these elections. At the same time, none of the alternatives to the current Electoral College promises to be any less controversial or less of a threat to legitimacy when the national difference is less than one percent. Is the assistance given to legitimacy by the tendency of the Electoral College to add an average 20 percent to the election outcome differential worth the possible damage to legitimacy if the electorate is otherwise conditioned to view a popular vote total as the normal standard?

We know of no good systematic study that examines the prevalence of voting fraud, although we know it has occurred regularly in the history of American elections in all parts of the country. Perhaps we should assume that attempts at fraud cancel each other out. Nor do we know of any good study of counting error, although social scientists know it exists. One of the authors of this chapter took part in an exercise at the University of Michigan's Survey Research Center about a third of a century ago. Eighteen teams of three doctoral students each were handed a large stack of punch cards and told to carefully count them by hand. By machine count there were 1,807 punch cards, which is about the size of the national sample used by political scientists in survey research. Instead, the counts ranged from more than .5 percent above that number to more than .5 percent below. One team came up with the number 1,807, although this was consistent with a random occurrence since for 1,807 a $\pm .5$ percent spread is a total of eighteen, and there were eighteen teams. There was a second hand-count with a similar spread of results. This exercise showed that simple mechanical recounting, even without looking for such things as dimpled chads, will not necessarily produce a more accurate total, but it will almost always produce a new total. Additional recounts will just generate new totals. Nor is counting by machines the answer. Those who make voting machines admit that error rates, which vary by machine, tend to be at least one percent. When counting 100,000,000 votes from several thousand counties using a variety of voting methods, the assumption of a one-percent counting error is undoubtedly quite conservative. In national elections human error enters in another way. A certain small, but inevitable number of voters make mistakes

marking their ballots unless there is some mechanical means to prevent such a ballot from being cast until corrected. In the 2000 election more than 1,500,000 ballots were thrown out nationwide as a result of voter errors — three times the 500,000-vote difference reported between the two major candidates.

One irony of the 2000 election is that although the Electoral College may well have produced a winner contrary to the one with the highest popular vote total, it also allowed us to identify Florida as the place to focus our recount efforts. If we had been using a nationwide popular vote system, we would have had to recount the entire nation if there had been a challenge. While an apparent 500,000 popular vote difference in 2000 would probably have been viewed as substantial enough to preclude the need for any recount if we had been using a popular vote electoral system, the 1960 outcome was close enough that a national recount might well have been called — indeed, should have been called. A number of states have a provision for an automatic recount if the difference is less than a certain percentage, and the 1960 (.2 percent) difference was less than, for example, the .3 percent automatic recount trigger used by New Mexico.

These considerations raise a number of questions that must be settled for any electoral system. Should the various approximations of the popular vote system include an automatic recount trigger? For that matter, shouldn't the popular vote in the states for their respective electors under the current Electoral College include a proviso for recounting? If automatic recounts using the same rules and mechanisms are no more accurate than the original count even though a different number is produced, shouldn't we determine what kinds of rules and mechanisms will enhance the relative accuracy of a recount? Indeed, shouldn't we develop rules and counting mechanisms that reduce the probability of serious counting error to begin with? What is "serious" counting error? Should we develop a uniform process for counting votes? Should we not work harder to educate the public not only about how to cast a usable ballot, but also about the process and mechanisms for detecting and correcting errors, intentional or otherwise? These are questions that need to be addressed regardless of our preferred electoral system. There will be close elections in the future no matter which electoral system we use. There will be counting errors no matter the electoral system. If we keep the current Electoral College, we still need to think hard about the inevitable future close elections, counting error, voter error, and fraud. If we move to some other electoral system, we are not excused from that same hard thinking.

THE HISTORY OF THE ELECTORAL COLLEGE: BROAD LESSONS

Although any number of "lessons" might be gleaned from the history of the Electoral College, we would like to highlight the following half dozen as possibly illuminating the operation of any presidential electoral system in the future.

1. The Electoral College may have had a certain accidental quality at its birth, but it nonetheless reflects and embodies fundamental principles of the U.S.

Constitution. We have seen how the Electoral College emerged as a natural extension of the principles of federalism, separation of powers, and a deliberative process that informed the design of all the institutions of the U.S. Constitution. The Constitutional Convention's move from a parliamentary design to an independent executive selected by a national constituency conditioned the very existence of the Electoral College. The previously approved bicameral Congress retained a role, but one that had to involve both houses in some way if it involved either of them. With the separation of powers already in place, it made sense to separate the process of selecting presidential candidates (through the Electoral College) from the process of selecting among those candidates (in the House). The Electoral College then operated historically to reinforce the independent executive, bicameralism, and thus the separation of powers.

2. Incremental changes in an electoral system can lead to more substantial consequences in other political institutions. The supposedly "technical" correction of the Twelfth Amendment is a case in point, as is the nonconstitutional move in all but two states to a winner-take-all rule. Institutions do not function in isolation, but in a network with each other. A constitution identifies and describes a basic institutional network and provides the essential rules defining the interrelationships among these institutions. Moreover, institutions also have inevitable interlocking effects on each other that are either too complicated to lay out or are unforeseen and unintended. Analyzing a political institution in isolation from the rest of a constitutional system is ordinarily difficult, and the history of the Electoral College reaffirms this basic lesson in constitutional design.

3. An essential aspect of the history of the Electoral College is its interconnection with the extraconstitutional institution of political parties. We have seen how the inception of party politics complicated the operation of the Electoral College, leading to the Twelfth Amendment, which in turn hastened the development of a party system. Later alterations served to strengthen the two-party system, which subsequently helped preserve the Electoral College. This relationship has been bolstered by an amendment process that makes it easy for the two major parties to protect the Electoral College and thus makes replacing this institution very difficult — indeed, highly unlikely. If the Electoral College is altered or replaced, the change will need to make sense in terms of the rational interests of the major political parties at that time. Likewise, the party system will itself be altered by any change in the current electoral system. For instance, movement toward proportional allocation of electoral votes will encourage the development of a multiparty system, which might work well in a parliamentary regime, but under our constitution it increases the likelihood that presidents will be chosen by the House of Representatives under a state unit rule that is highly inequalitarian.

4. If the history of the Electoral College consists of many attempts to alter or replace it, that history underscores how difficult it is to amend the U.S. Consti-

tution. Except for Australia, the United States has the most difficult amendment process in the world. As a result, of the approximately eleven thousand amendments that have been proposed, only twenty-seven have been adopted. More than one thousand of these would-be amendments have proposed altering or eliminating the Electoral College. The amendment process is so difficult because of a historical "accident," when a temporary political situation became embodied in American constitutional law. It has always been understood that to change an agreement, one must return to the same process that produced it. The amendment process thus returns to the same level of consent as was used for its adoption. At the Constitutional Convention, it was understood that the unanimity rule could not be used because Rhode Island was going to reject whatever emerged from their deliberations. On the one hand, the Convention delegates wanted and needed a ratified Constitution. On the other hand, those who ratified it had to include the large states and produce a nation unbroken by geographical gaps. Experience in the Continental Congress had shown that there was a critical threshold at nine states. If a proposal had the approval of nine states, it almost always included Massachusetts, Pennsylvania, and Virginia. If Massachusetts was on board, so was the rest of New England (except Rhode Island). That is, Massachusetts led the New England coalition. The same was true of Pennsylvania for the middle states, and Virginia for the South. As a result, when at least nine states supported a proposal, there were almost automatically eleven or twelve, whereas if fewer than nine states supported a proposal it was usually not eight or seven states but fewer than seven. This prudential calculation led to the nine-state ratification rule, although New York threatened not to play its subordinate role to Pennsylvania, having rapidly become its near economic equal over the previous two decades. For this reason, the *Federalist Papers* were thus thrown together and aimed directly at New York. The calculation worked, as the nine-state requirement yielded ratification by twelve states (Rhode Island held out until after the first national election.)

Amending the constitution thus requires a two-thirds majority in Congress plus ratification in three-fourths of the states. Nine out of thirteen states is 70 percent, which is close to half way between a two-thirds (67 percent) and three-fourths (75 percent) majority. The two steps to the amendment process thus bracket, and together recapitulate, the ratification percentage. What makes legal sense, however, does not always make good political sense. The resulting amendment process has been so difficult that we have turned to the Supreme Court to effectively amend the Constitution through interpretation. If this has been one consequence of the amendment process, another has been the inability to alter or abolish the Electoral College. In the absence of compelling reasons for change or elimination, debate about the Electoral College has been surprisingly thin and desultory through the years. Whatever two parties were most entrenched had no trouble keeping these more than 1,000 proposed amendments bottled up in com-

mittees. Contemporary congressional Democrats and Republicans will almost certainly maintain this record.

5. A broader look at comparative constitutional history suggests that while other democracies reject the Electoral College for their own use, they also reject most of the rest of American constitutional design. The Electoral College used by the United States is *sui generis*. Historically, however, outside of some Latin American countries, few democracies have adopted direct popular election of their respective executives. Instead, the chief executive is usually elected by a legislature/parliament based on proportional representation within a multiparty system. Put another way, the political system of the United States is just as unusual for its relentless separation of powers, for its popularly elected executive, and for its two-party system as it is for its Electoral College. Other democracies have not so much rejected the Electoral College, as they have rejected an executive separate from the legislature. Thus, whether to use a direct popular vote or an electoral college never became an issue in most other democracies. There is no compelling lesson from constitutional history outside the United States that supports keeping, altering, or replacing the Electoral College, unless we feel compelled to move to a parliamentary, proportional representation, multiparty system. We are "free" to do as we wish for our own prudential reasons, but deciding what to do is not simply a "game." Competing principles and values are at stake and should be the focus of debate over keeping, altering, or replacing the Electoral College.

6. Finally, just as there are no compelling technical reasons why we should keep the present Electoral College, there are likewise no compelling technical reasons why we should change it. Most elections that produced controversy for the Electoral College would have produced substantial controversy for any of the proposed alternatives suggested in this volume. A direct popular vote scheme, in particular, may well have resulted in even more frequent controversies because any close election would have been open to the charge of possible miscounts, if not fraud. Indeed, a popular vote system not only invites a multiparty system, which tends to produce more close elections, but also invites systematic fraud to be buried in dispersed areas across the nation by those multiple parties. In sum, no electoral system can prevent controversy in a very close election. If there is no magic in the electoral system itself, then we are left to choose among the options for reasons other than the technical efficacy of the system. That is, if different electoral systems flow from or reflect one set of values or another, selection will inevitably be made on those grounds rather than on technical ones.

ELECTORAL COLLEGE: THE PRINCIPLES AT STAKE

Above all, debate over the Electoral College reduces to two basic positions—keep the Electoral College or move the method for selecting the president closer to an unfiltered popular will that is based on majority rule. With few exceptions

those who debate the matter do not address the important distinction in decision theory between what is "most preferred" versus "preferred by most," although the problem facing us raises what political theorists term the "intensity problem."

The notion of minority rights assumes that the important interests of an intense minority are seriously threatened and need protecting. A minority that has no strong feelings on a given issue does not need protecting. Problems arise with a system based on "preferred by most" in the following circumstances: when an intense minority faces either an apathetic or intense numerical majority; or when there are two opposed and intense minorities facing an apathetic majority that holds the key to the decision. The latter instance is more common in American politics. Think of abortion, where two-thirds of the electorate is against abortion on demand, and two-thirds are opposed to complete prohibition of abortion. The muddled middle ends up satisfying neither minority in the policies it is willing to support, while both minorities attempt to raise the intensity of the middle in their direction. Historically, racial discrimination in the United States since the end of slavery has been of this nature, although it has also been at one time or another considered an example of an intense minority facing an intense or apathetic majority. Often, but not always, those supporting the present Electoral College have tended to emphasize the importance of the intensity problem, while those preferring change have tended to minimize its significance. Rather, they have focused on the importance of legitimacy and fairness.

The theory is that the current Electoral College somehow allows a combination of states with less than a majority of the potential popular vote to protect their interests. This argument makes sense if the potential minority has a geographical basis, or one predicated on small state interests versus large state interests. In late eighteenth-century politics in the United States this argument had some force, but the greatly reduced impact of giving two senatorial votes to each state regardless of size mitigates this argument. Nor is it clear how small states or states with small populations scattered across a continent are likely to have similar interests. The recent gloss on this argument is that a popular vote system would lead to campaigns that largely ignore states with small populations, but this is already a tendency in elections using the Electoral College. Even large states are sometimes ignored in current elections, as were California and Texas in the 2000 campaign. The outcome in those states was a foregone conclusion because of partisan distributions, and neither party wasted much time, effort, or money to contest them. Still, the intensity problem remains a consideration, only now it is not state-based. What the intensity problem does is call into question a simple plurality popular vote system as morally superior to the Electoral College. Neither seems to address the intensities of minorities scattered across a number of states large and small. The moral basis of a popular vote system rests entirely on an appeal to equality.

Arguments from equality get us back to what is meant by majority rule. De-

cision theory has long considered the ideal form of majority rule for purposes of legitimacy to be unanimity. The theoretical grounding for a one-half-plus-one majority is that it is the minimal acceptable form of majority rule, which makes it both acceptable and the easiest to achieve. However, in consent theory anything larger than one-half-plus-one is always preferable to this minimal standard, just as unanimity is always preferable to any smaller majority. In other words, although we have come to accept one-half-plus-one for practical reasons, there is nothing admirable about this minimal majority rule per se in moral terms other than it always is preferable to minority rule. Ironically, the use of a simple majority in a system where voting is optional, and where about half of the electorate does not vote, is formally equivalent to minority rule. The use of a plurality rule with more than two candidates simply compounds the theoretical problem. The argument from majority rule would then seem to require, at a minimum, support for a runoff election and probably mandatory voting. Put another way, the current argument from majority rule is not seriously based on a majority rule principle but upon grounds of practicality under a norm of satisficing. Even though the Electoral College creates the appearance of a larger majority and sometimes produces majorities as high as 95 percent of the electoral votes, it is subject to a similar criticism. It is an appearance, not the reality, of majority rule. Strictly speaking, majority rule as envisioned by Locke, Algernon Sidney, and the other early liberals who first codified the concept requires at least one-half-plus-one of all citizens, or something approaching this.

The appeal to minority rights also cuts in more than one direction. At the founding there were real and important differences in the political cultures of states, and between clusters of states. An appeal to minority rights then was more an appeal to regional minorities — something that does not resonate as strongly today. If one looks at the outcome of recent elections on a map of the United States, however, persistent regional differences would remain. Whether this is a potential minority rights problem is open to question. One might argue that with the direct popular election of the president these regional differences would finally be put to rest, although it may actually come down to ignoring regional differences.

The concept of minority rights today refers most obviously to Americans of African, Hispanic, Asian, and Native American heritage. Certainly a direct popular vote system would minimize the perception that, as was charged by some in Florida after the 2000 election, minority votes were excluded unfairly. Of course, this might be so because any such tampering would be buried in a nationwide result that minimized the perception of such abuses and made them difficult to find.

A direct popular election of the president might also result in at least a minimal reduction in the effect minorities have on the outcome. Under the current system there are ten or twelve states in which African Americans have a good

chance to determine the direction in which the entire state's electoral votes are cast. Hispanics too are on the verge of becoming the swing vote in five of the six largest states, as well as several smaller states. A direct popular electoral system would flatten out minority votes toward perfect equality so that a white vote in North Dakota could cancel out an African American vote in New York. In contrast, today an African American vote can be part of a bloc vote that shifts New York's outcome in a way that may magnify that African American's vote. This is no reason not to move to a direct popular vote system, but we need to be analytic about the principles that actually animate a choice as well as be honest about probable consequences of keeping, altering, or replacing the Electoral College. Discussion in a later chapter will address the possible effects of Electoral College changes on minority voter impact, although the effects do not appear to be important.

Those opposing the present Electoral College invariably cite equality as a reason for opposition. The problem usually cited is that the Electoral College, by giving two electoral votes to each state for its senators, gives voters in the smaller states more weight relative to those in larger ones. This has led to calls for altering the electoral vote distribution so that the number of electoral votes is proportional to the population of a given state — that is, by eliminating the two senatorial-based electoral votes per state. Is there an argument from equality that points toward more than this adjustment and implies the need to replace the Electoral College entirely? Put another way, does an argument from equality automatically imply a national majority as opposed to a state majority? The continued use of state majorities would, in the absence of the two senatorial-based electoral votes, produce an outcome different from that of a national majority only if we retain the unit rule where the state majority determines the allocation of all state electoral votes. The winner-take-all rule, as the unit rule is commonly termed, does not require a constitutional amendment to change, whereas eliminating the two senatorial-based electoral votes does require a constitutional amendment.

Given the difficulty of amending the U.S. Constitution, a rational actor pursuing greater equality might well seek to alter the unit rule and move to a requirement for proportional allocation of state electoral votes based on the popular vote in a given state. Seeking a nationwide popular majority system, which is unlikely ever to be approved because it requires a formal amendment, would seem to promise no payoff in terms of equality because of likely failure. On the other hand, pursuing the nonamendment route to require assigning a state's congressional district electoral votes in proportion to the state's popular vote, a much easier prospect than pursuing a constitutional amendment, leaves only the slight inequality of the two senatorial-based electoral votes per state. This brief discussion illustrates the extent to which apparent pragmatic arguments are still conducted within the framework of deeper principles. The trade-off one is will-

ing to accept is largely tied to the principle one prefers. This example also shows how difficult it is to be a rational actor in this controversy, since anyone pursuing greater egalitarianism by moving to proportional allocation of state electoral votes also increases the likelihood that presidents will be chosen by the House of Representatives using a state unit rule that is not egalitarian. In short, pursuit of greater equality through change may result in equal or less equality because of interaction effects.

Equality as a principle may also cut more than one way. Even with the current system that gives proportionally more weight to the smaller states in the Electoral College, presidential election campaigns pay more attention to the concerns of citizens in larger states; such a strategy should reap many more votes per dollar invested. Any move away from the Electoral College might increase this inequality of attention to the concerns of citizens in small states. Put another way, the concerns of voters from smaller states already seem to be less than equally addressed, so equality-based arguments may be disingenuous — more a matter of appearance than political reality.

This gets us back to the deeper concern for legitimacy. Regardless of how any change actually works with respect to political equality, legitimacy may be best served by the formal equality of a nationwide popular majority. Still, as noted, no electoral system has an advantage with respect to legitimacy when the popular vote is evenly divided. There seems to be no advantage, for example, in giving the popular vote winner an additional hundred electoral votes, since in a very close election the legitimacy for assigning those hundred votes is as open to question as it is with any electoral system.

Where does this leave us? No one is happy with the outcome of close elections, but they will occur occasionally no matter which electoral system we use. We should spend at least as much time improving the administration of elections as we do on debates over the relative merits of electoral systems. The success or failure of any selection system depends on efficient, accurate, uniform, and fair procedures for casting and counting ballots. The current systems fall woefully short when evaluated on these criteria. Improved administration might obviate the need for constitutional reform, which is unlikely in any case. And even if reform is warranted, its success will hinge on effective administration — especially if the change is to a direct election format.

NOTES

1. This text is taken from James Madison, *Notes of Debates in the Federal Convention of 1787* (New York: Norton, 1987), 31.
2. *Ibid.*, 116.
3. *Ibid.*, 392.
4. *Ibid.*, 574.
5. *Ibid.*, 50.
6. *Ibid.*, 138.
7. *Ibid.*, 327.

8. Ibid., 331-36.
9. Ibid., 356-62.
10. In the aggregate, however, the overweighing of small states is still potentially important in very close elections if the electoral votes of the smaller states tend to go to one candidate, who is thereby advantaged when even a marginal advantage could be decisive. Given the geographic distribution and diverse interests of the smallest states, a small state "stampede" toward one candidate is very unlikely. The very close 2000 election was typical. Gore and Bush split the sixteen smallest states, which together are about one-third of all the states and comprise most of the small state statistical advantage. Bush carried the next six largest states in the Great Plains, but their combined advantage deriving from the two senatorial-based electoral votes was eliminated when Gore carried any one of the largest twenty-five states. One does not win the presidency by attempting to combine the small state advantage in the Electoral College.
11. Elbridge Gerry, Roger Sherman, and George Mason in comments on pp. 51, 306, and 308, respectively, in *Notes of Debates in the Federal Convention of 1787*.
12. Madison made this argument most famously in *Federalist*, No. 10. See *The Federalist*, ed. George Carey and James McClellan (Dubuque, Iowa: Kendall/Hunt, 1990), 43-48.
13. The party of Jefferson is sometimes called the Democratic Republican Party, to distinguish it from the modern Republican Party.
14. Brian J. Gaines, "Popular Myths About Popular Vote-Electoral College Splits," *PS: Political Science and Politics* 34, no. 1 (March 2001): 71-75. The quote is taken from p. 75.

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CHAPTER 12

Reaching a Collective Judgment

Paul Schumaker and Burdett A. Loomis

SO WHAT DO ALL the assessments in the previous chapters add up to? What is the best system for selecting our president? Unfortunately, this book cannot answer this question — and we suspect no book can. All we can provide are the collective judgments of the thirty-seven political scientists involved in this project. This chapter summarizes our judgments about the Electoral College and the main alternatives to it, but our conclusions are less important than the collective judgments of the American public and its political representatives. Our aspiration is to provoke informed deliberation by citizen groups and within our political institutions on the issue.

COUNTING OUR VOTES

To provide a quantitative summary of our collective judgment on the Electoral College and its alternatives, all participants read executive summaries of each group's analysis and then cast their ballots. In this section we aggregate these individual assessments in various ways to determine whether defining our collective judgment is dependent on the methods employed to count our ballots.

One method for reaching a collective decision that is prominent in the discipline of political science, though seldom used elsewhere, is the approval ballot.¹ Rather than forcing voters to choose among various alternatives, approval balloting allows participants to vote for each option that they approve of, while rejecting all others. Under approval balloting, a voter can choose none, some, or all of the possible candidates, policies, or — as in the issue before us — electoral systems. When our participants cast such approval ballots, the results were as follows:

Electoral College	24	District plan	12
Popular-plurality	16	Bonus plan	11
Proportional allocation	14	Popular-majority	8
Instant runoff	13		

Table 12.1 Ranking the Electoral College and Alternatives to It: The Votes of 37 Project Participants

Assigned rank	Electoral College	District plan	Proportional allocation	Bonus plan	Popular-plurality	Popular-majority	Instant runoff
First	15	5	2	2	8	3	2
Second	6	7	4	7	6	3	4
Third	6	3	13	5	3	2	5
Fourth	2	5	5	9	3	6	6
Fifth	3	2	7	2	7	8	6
Sixth	1	8	2	8	6	11	6
Last	4	7	4	4	4	4	8
Borda count	102	155	144	153	140	173	171

Note: This table shows how many participants ranked each system as best (first), second best, and so forth. A few participants ranked their three (or in one case, four) least preferred alternatives as tied for last. Such ties in rankings were assigned the score of "sixth" in this table and the score of "6" in calculating the Borda count.

Approval balloting shows that the Electoral College is our most widely supported electoral system. As the only system supported by the majority of us, it appears to be the best system available for electing our president, in our collective judgment. Nevertheless, thirteen of us disapprove of the Electoral College, and there is considerable support for the various alternatives as well.

While approval voting has many virtues, it is not a definitive method for achieving a collective decision. One difficulty with approval voting is that it does not take into consideration *the degree* to which participants approve or disapprove of particular options.² Thus, it is important to consider electoral methods that take into account each voter's rank-ordering of options. Perhaps a different picture of our collective judgments will emerge if we tabulate our votes using methods based on how participants rank-ordered their preferences.

Table 12.1 summarizes our rank-orderings among the seven systems considered here. The first row reports the number of first-choice votes for each system. The second row reports the number of second-choice votes for each system, and so forth. These data can be used to reach a collective decision using the Borda count method.

The Borda count is another method frequently employed by political scientists and touted by other academicians (particularly economists and mathematicians)³ as the best system for reaching a collective judgment. It takes fully into account the rank-ordered preferences of each participant, summing up these rank-ordered preferences to reach the collective judgment. If everyone in our project ranked the Electoral College as his or her first choice, its Borda count would be 37 (1×37). If everyone ranked the popular-majority system last (or seventh), its Borda count would be 259 (7×37). So the smaller an option's Borda count, the higher is its rank in a collective judgment. The last row of table 12.1 reveals the Borda counts for each of our alternatives. Again, the Electoral

College is indicated as our collective choice, with the popular-plurality and the proportional-allocation systems again emerging as the most highly regarded alternatives. Notice, however, that approval voting and the Borda count lead to different outcomes in choosing among the other alternatives.

While academics are fond of approval voting and the Borda count, these voting systems have not been much discussed as alternatives to the Electoral College — and thus we have not considered the implications of adopting them as ways of counting presidential votes. Our concern is to evaluate the Electoral College and the most prominent alternatives to it. But as a final prelude to that discussion, it is instructive to use our participants' rank-order ballots to see whether and how our collective choice would be altered if we used these systems to determine that choice.

An electoral college approach to collective choice would of course involve a federal rather than an individual process. Just as the Electoral College initially requires elections within states, prior to summing state results to get a choice for the country as a whole, an electoral college approach for this project would initially involve each group making a determination of its choice and then aggregating the group decisions into our collective choice. Only a couple of our groups have explicitly indicated their collective choice; for example, our institutionalists (who wrote chapter 5) declared that the popular-plurality method was their first choice, with the present electoral college system being their second choice. But the top choices of each group can be determined from the ballots of the individuals within each group.⁴ Here are the outcomes within each group:

- our theorists choose the Electoral College
- our federalists choose the Electoral College
- our institutionalists choose the popular-plurality system
- our party specialists choose the Electoral College
- our campaign experts choose the Electoral College
- our media specialists choose the Electoral College
- our experts on citizen participation choose the Electoral College
- our comparativists (specializing in stability) choose the popular-plurality system
- our specialists on social cleavages choose the popular-majority system

Since the Electoral College won in six of our nine groups, it looks to be our collective choice under this method. However, only if we used the rules of the House contingency procedure — granting one vote to each group — would we declare the Electoral College a 6-2-1 winner. Under electoral college rules, we would grant each group two electors (for being groups with equal standing to one another in our project) and an additional three to five electors depending on their populations. We would then give all the electors allocated to each group to the group's top choice. The Electoral College would still win, 43-11-7, as neither

the small differences in the size of our groups nor the granting of extra voting power to the smaller groups affected our outcome.

There is one noteworthy feature of this result. The popular-majority system, which finished last in both the approval vote and the Borda count, came in third under the electoral college system. Just as the Electoral College awards electors to third parties that are strong in a region but have little support in the country as a whole, so this system would provide a more prominent role for the popular-majority system due to its strong support among our group specializing in social cleavages.

There was considerable diversity of preferences within each group, but the electoral college approach with a unit rule overlooks such diversity. The smallness of our electorate precludes us from compiling our results using the district plan to represent such diversity within an electoral college system. To apply a district plan, we would have to partition our groups into districts, but there would be much arbitrariness in how we would create such districts and not much to be gained from the exercise.⁵ Using the proportional allocation method to deal with this diversity is also not very meaningful. In apportioning electors within groups, we would presumably end up having one elector casting a vote for each individual in the group, and the result for those ballots would be the same as for the popular-plurality system considered below. The only difference would be that each group would have two extra electors (for being equal groups in the project) and these electors would vote for the top-ranked (or two top-ranked) systems by the group. No matter what formula was used for allocating such electors to achieve proportionality, the Electoral College would win, and the popular-plurality system would come in second under this system.⁶

To determine the winner under a popular-plurality method, we would simply have to look at the top row of Table 12.1.⁷ The Electoral College, as it currently exists, is the first choice of fifteen of us. The popular-plurality alternative came in a fairly distant second with eight first place votes. The district plan came in third with five first-place votes. The other systems got two or three first-place votes each. The relatively strong showing of the district plan here shows the key limitation of the popular-plurality method. We have bimodal attitudes about the district plan. Some of us like it a lot, but others dislike it immensely. The popular-plurality method takes into account only the strong support for the system by some and ignores the strong reservations about the system by others. Just as an extremist candidate could do well if we had a popular-plurality rule for choosing the president, divisive plans — like the district plan — can do well if we apply this decision rule to our collective choice in this project.

We are now in position to see what our collective choice would be had we adopted a bonus plan as our decision rule. We would start with the results from our Electoral College-style procedure. As previously indicated, this resulted in 43 votes for the Electoral College, 11 votes for the popular-plurality system, and 7

votes for the popular-majority system. We now know that the Electoral College also won the popular plurality, so we simply give some number of bonus votes to the 43 votes already won by the Electoral College under the electoral college procedure. In this case, the number of electoral votes granted doesn't matter. In any decisive election, the number of bonus votes won't matter.

To determine our collective choice if we adopt the majority rule with a contingent runoff, we need results from two separate votes. Because we had an initial vote at the beginning of the project, we use its result to determine the possibility of an initial winner under the majority rule. The first choices of our thirty-seven participants in the initial balloting were as follows:

Electoral College	11
District plan	7
Popular-plurality	6
Proportional allocation	4
Instant runoff	4
Popular-majority	3
Bonus plan	2

With less than 30 percent of the vote, the Electoral College had far less than a required majority, but it would be a finalist in head-to-head competition in our second round of voting, pitted against the district plan. Although we did not ask our participants to choose between the Electoral College and the district plan in the second round, we can use their rank-order ballots to determine who would have won in a head-to-head competition. The result: the Electoral College wins with 26 votes, while the district plan gets only 11 votes.

The rank-ordering of our individual preferences in our final balloting also allows us to conduct an instant runoff. We do this by dropping those systems with the least first-place votes, in this case the proportional allocation plan, the national bonus plan, and — ironically — the instant-runoff plan. Distributing the second-place votes of those who supported these plans to the remaining choices, we get the following result:⁸

Electoral College	18
Popular-plurality	9
District plan	6
Popular-majority	4

Since there is still no majority, we next drop the popular-majority plan, and transfer the votes of its supporters, and finally receive a decisive result.

Electoral College	19
Popular-plurality	12
District plan	6

Table 12.2 Collective Ranking of the Electoral College and Alternatives Using Different Voting Methods

Voting system	Ranking						
	First	Second	Third	Fourth	Fifth	Sixth	Last
Approval voting	Electoral College	Popular-plurality	Proportional allocation	Instant runoff	District plan	Bonus plan	Popular-majority
Borda count	Electoral College	Popular-plurality	Proportional allocation	Bonus plan	District plan	Instant runoff	Popular-majority
By group: Unit rule	Electoral College	Popular-plurality	Popular-majority				
By group: Proportional	Electoral College	Popular-plurality	District plan (tie)	Popular-majority			
Bonus plan	Electoral College	Popular-plurality	Popular-majority				
Plurality rule	Electoral College	Popular-plurality	District plan	Popular majority	Instant runoff (tie)	Bonus plan (tie)	Proportional allocation
Majority rule	Electoral College	District plan					
Instant runoff	Electoral College	Popular-plurality	District plan				

One difference between the contingent-runoff system and the instant-runoff system is that the supporters of the less preferred options were not forced to choose between the Electoral College and the district plan under the instant-runoff system. Had they been forced to make that choice under the contingent-runoff system, most would have opted for the present Electoral College. But supporters of the current system might have feared the supporters of the least preferred systems were some sort of reformers who would vote against the Electoral College (by supporting the district plan) in the contingent runoff. To get the votes of these reformers, perhaps supporters of the Electoral College would have made some sort of concession to these participants.⁹

Our results are summed up in table 12.2, which reports the order of finish of each electoral system under the different methods that we have thus far employed to achieve a collective choice. Under every system we have examined, the Electoral College is our top collective choice. This result points to a basic truth: when one alternative has much more support than any other option, it really doesn't matter what electoral system is adopted. Only when communities are strongly divided does the method of counting votes make a difference.¹⁰

There is much more division about what is the best alternative to the Electoral College. This is, of course, precisely the result that is predicted by pluralists and that provides a challenge to progressives. As in the public at large, as revealed by various polls, most political scientists prefer another system to the Electoral

College.¹¹ But the multiplicity of alternatives creates divisions among those who would challenge the existing system and prevents focusing enough energy to mount a successful challenge to the Electoral College.¹²

Opponents of the Electoral College may look at the results thus far and say that the best alternative to rally around — least in the collective judgment of political scientists — is the popular-plurality system. But the slim differences in the Borda count for that system and proportional allocation, coupled with the different rankings of alternatives under different counting methods, prompts us to withhold that judgment. Is there some procedure that we can recommend to discover the best alternative — one that opponents of the Electoral College might rally around in order to mount a sustained challenge to the existing system?

Many philosophers instruct us that when making evaluations such as this, the most effective method is not to hold one option up against an ideal, but to compare one alternative against another using agreed-upon criteria.¹³ Public choice theory also instructs us that the best method of reaching a collective choice is to decide between alternatives in pairwise comparisons. Condorcet, a French philosopher and mathematician in the late eighteenth century, proposed that if one alternative is the majority choice over all other choices in a series of head-to-head comparisons, that alternative is the rational collective choice.¹⁴ In the terminology of public choice theorists, it is the Condorcet winner.

Pitting the Electoral College against each alternative to it in head-to-head competition (based on the rank-order preferences of our participants), reveals that the Electoral College is our Condorcet winner, defeating each alternative by a margin of at least 2 to 1. But beyond that, things get muddier, though we can break our alternatives into two groups. The popular-plurality, the proportional allocation, and the district plan comprise one set of alternatives and they always defeat the other set of alternatives — the popular-majority system, the bonus plan, and the instant runoff — in head-to-head competition. But within the top group, the infamous “voting cycle” appears. In head-to-head competition, the popular-plurality system defeats the district plan (20–17), but it loses to the proportional allocation plan (18–19). The proportional allocation plan is not the Condorcet winner among the alternatives, however, as it only ties the district plan (18–18, with one participant abstaining because he ranked the two systems equally). The important point is that the popular-plurality system, which seemed to be the leading alternative, is not thought the better choice by most of us when we make head-to-head comparisons between it and the proportional allocation plan.

In short, we cannot provide a collective choice among alternatives to the Electoral College. We suspect that our deadlock on this issue reflects the broader division and uncertainty that exists among political activists concerning the challenges to the Electoral College. As in the country as a whole, most of us do not regard the Electoral College as the best system of selecting a president, but we are

far from agreeing on a replacement. Failing such agreement, the Electoral College remains an acceptable status quo.

Voting provides the sort of quantitative assessment about our collective judgments that cannot be ignored. But in the chapters that comprise the bulk of this volume, we have provided our qualitative assessments, and these provide the ideas (rather than simply the numbers) that are the real basis for making both individual and collective judgments about political matters. In the next two sections, we summarize these assessments concerning first the Electoral College and then the alternatives to it.

THE ELECTORAL COLLEGE AS REIGNING CHAMPION

The case for the Electoral College begins with the recognition that it was part and parcel of the U.S. Constitution, our most basic social contract for governing.¹⁵ More than any other constitutional feature, it has survived numerous challenges and has provided the basic rules for selecting presidents for more than two centuries. Successful candidates under its rules have won the authority of the office and sufficient legitimacy, both from the public and from political elites, to govern.¹⁶ Only the 1860 presidential election arrived at an outcome that seriously threatened the stability of our social and political systems, but we doubt that any electoral system could have prevented the civil war that followed Lincoln's victory.¹⁷

The Electoral College meshes with the underlying principles of the Constitution: federalism and the separation of powers. Its most basic federal feature is its allocation of electors. By distributing 436 electors to the states (and the District) on the basis of their populations, it gives great weight to the idea that we are a nation of individual citizens, who should all count equally in holding our presidents accountable through their votes. By allocating 102 electors to the states (and the District) simply because they are states, it also recognizes that we are a nation of states, each of which should also count equally in the presidential election process. Arguments that the Electoral College is unfair in giving more value to the votes of citizens of small states are therefore problematic because they assume that we are simply a nation of individual citizens.¹⁸ As a nation of states, each state has a role to play in the process of electing the most powerful national authority. By giving states *qua* states this role, presidents and presidential candidates have incentives to be attentive to the interests and rights of states.¹⁹ Given the federal component to the Electoral College, it is entirely appropriate that the states determine how they select their electors. Thus, if some states want to adopt the district plan or the proportional allocation of electors, that is their right.

Developed as an alternative to the congressional selection of the executive, the Electoral College is also consistent with the principle of the separation of powers. Having the legislature select the executive is a key feature of an alternative form of government, the parliamentary system, which integrates the

workings of the executive and legislature. But the American preference has been for a government that divides power so that interests dominant in one institution can be checked if they pursue policies harmful to those interests better represented in other institutions.²⁰ The electoral college system provides a way of electing the president that has developed as independent of the legislature, and the dormancy of the House contingency procedure has enhanced the separation-of-power principle in our government.

But the separation of powers can make governance difficult. Effective governance occurs when there is considerable consensus on policy goals and when opposing interests lack the capacity to cause stalemate.²¹ The chief barrier to effective governance is a proliferation of parties, each representing distinct interests and having considerable influence within governmental institutions. Governance is most effective when one party controls both the presidency and Congress and can claim widespread support for its policies. Governance is more difficult when different parties control the presidency and Congress, but if both parties are relatively pragmatic and centrist, they can still govern effectively. Governance is most difficult when control over institutions is fragmented among multiple parties, each representing narrow interests and/or uncompromising ideologies. The Electoral College helps prevent this situation because it promotes a two-party system in which both Democrats and Republicans have strong incentives to be centrist and pragmatic.²² Although the Electoral College was created before the development of political parties, our two-party system has been nurtured by the Twelfth Amendment and the practice of allocating electoral votes on a winner-take-all basis to the candidate with the most popular votes within each state.²³ The Electoral College limits the role of third parties that would fragment government and diminish effective governance.

Two major criticisms have been leveled against the Electoral College, but both are problematic. The first is that the Electoral College thwarts representation of the country's extensive diversity.²⁴ By enhancing the role of the two centrist parties, it diminishes the opportunities for citizens who support the goals of third parties to express their preferences effectively at the ballot box. Because of the unit rule, supporters of the weaker party within noncompetitive states go completely unrepresented in the Electoral College. This may be problematic, but such representation is not very germane to presidential elections. Under the American system, the executive is not an institution for the representation of diversity. The president should govern by pursuing policies that reflect the concerns of "the median voter."²⁵ The president creates and oversees an administration occupied by those who generally share the president's policy goals.²⁶ Congress is better suited to represent diverse interests, and we might want an electoral system that produces a more representative Congress.²⁷ But having third parties (and minority parties in one-party dominant states) play a greater role in the selection of the president will not overcome the fact that the president is one person,

and our best hope is that he or she will represent most Americans by pursuing a mainstream policy agenda that addresses as many of their concerns as possible. The rules of the Electoral College help elect such mainstream candidates and make unlikely the election of extremist presidents having both intense minority support and widespread opposition.²⁸

The second, more frequent criticism of the Electoral College is that it is undemocratic and can distort the public will. The 2000 election reminds us that the winner of the popular vote may not triumph in the Electoral College. Still, this criticism is problematic because it misunderstands democracy and has an oversimplified conception of "the public will."

The "undemocratic" criticism fails in part because the founders did not intend the Electoral College as a device to thwart democratic majorities.²⁹ They made no provisions preventing states from using popular elections to determine electors, and for almost 150 years all states have employed this procedure. The Electoral College was designed to encourage widespread or supramajoritarian support for presidents. Today, however, the Electoral College permits popular pluralities to determine the winners of statewide contests and requires candidates to gain the votes of a majority of democratically elected electors to win the presidency.³⁰

Whatever the criteria for a democratic process, producing "outcomes consistent with the public will" is not among them.³¹ Democracy does require popular sovereignty, which means that, because citizens have control over government, they consent to be governed by it. Popular elections are the means by which citizens control government, but there are many kinds of elections, including our electoral college approach. Most electoral systems are probably capable of controlling officeholders, letting citizens oust those who are corrupt, incompetent, or out of sync with the predominant aspirations of citizens. Because no one set of election rules is clearly best, the critical issue for democracy is that agreement exists on electoral rules, which are then consistently followed.

Popular elections under both plurality and majoritarian rules are often viewed as the preferred electoral format because they are said to lead to outcomes consistent with the public will. However, public choice theorists have demonstrated that the concept of a public will is often vacuous, an abstraction intended to signify what most members of the public want, but a concept that is impossible to operationalize precisely.³² As demonstrated earlier in this chapter, if voter preferences are fairly closely split among several options, the method of aggregating individual choices will influence which alternative appears to be the top collective choice, or so-called public will. In short, we can reach different understandings of the public will depending on the method used to count votes. If the popular-plurality method yields a different outcome than the popular-majoritarian method, which outcome is consistent with the public will? The answer is that there is simply no true "public will," at least not in close elections.

Moreover, in close elections, three practical matters prevent knowing the public will by just counting the ballots. First, nonvoters may have different preferences than voters.³³ If the extent of voter turnout influences who will win — a basic notion accepted by most candidates — then election results can at best tell us the will of the voters, not of the public. Second, counting errors approaching one percent or more can and do occur through both mechanical and human processes.³⁴ Thus, our conception of the public will in close elections can be distorted by the sort of problems that occurred in Florida. Third, electoral fraud does exist, and such fraud can yield results that distort the public will.³⁵ In short, in any close election we cannot know the public will and should not fool ourselves that a popular vote will inform us what that will is.

Nevertheless, accurate vote totals are important. In a democracy, electoral rules must be followed, and all fair electoral systems have procedures that minimize counting errors and rules that outlaw fraud. Given its decentralized nature, the Electoral College effectively locates critical counting errors and minimizes incentives for fraud by focusing attention on states where irregularities are suspected. Under the electoral college system, most states produce sufficiently decisive outcomes to render irrelevant questions of fraudulent or miscounted ballots.³⁶ Efforts to correct counting errors or fraud can thus be concentrated on areas where it matters, such as Florida in 2000.

The electoral college system is scarcely perfect. Its most obvious shortcoming is that it focuses attention on large states where large blocks of electoral votes are “in play.” The rules of the electoral college game require obtaining 270 electoral votes, so the attention and resources of candidates, parties, interest groups, and the media are concentrated on those large states where the outcome is in doubt.³⁷ In noncompetitive and small states, citizens may feel far removed from the election and parties may be inactive, resulting in lower voter turnout.³⁸ Certain groups of citizens, considered pivotal to the outcome in the large competitive states, receive extraordinary attention from the candidates, thus increasing their participation and influence on the outcome. Presidents may even shower such groups with policy benefits to ensure their continued support in subsequent elections.

One contention in political science is that minorities and the urban poor may be such especially influential groups. Because these groups are otherwise relatively powerless in our political life, this could count as another merit of the electoral college system. But questions remain about the validity of this thesis.³⁹ For example, blacks may be such committed Democrats that they are either taken for granted or ignored by candidates, even when they comprise a crucial voting bloc in large competitive states. And the stereotype of blacks as residents of large urban centers within competitive states misses the reality that many blacks may be ignored because they live in middle-sized and noncompetitive southern states. While Hispanics are becoming increasingly dispersed throughout the states, they are least likely to reside in smaller states where the value of the vote is greatest.

The Electoral College was designed to generate widespread support for presidents from most states in our infant nation. But the current system may not reinforce the kind of supramajoritarianism that was initially envisioned. Now candidates may ignore those groups that they see as unnecessary blocks of voters under our electoral rules. The Electoral College's major weakness is perhaps its growing inability to structure presidential elections so that the major-party candidates build electoral and governing coalitions broad enough for minorities and other relatively disadvantaged citizens to feel included.⁴⁰ One question is whether this weakness is great enough to overcome the many virtues of the Electoral College. A second question is whether any alternative system could overcome this limitation.

EVALUATING THE CHALLENGERS

The Popular-Plurality System

Abolishing the Electoral College and having a national popular election determined by the plurality rule is the most obvious alternative to the Electoral College. We use popular-plurality elections to select our governors and representatives, and they are a familiar, acceptable, and perhaps laudatory part of American politics.

The case for a popular-plurality system does not depend on the faulty argument that it ensures outcomes consistent with “the public will.” It is a mistake to believe that the winner of a popular election has authority because his election embodies the public will. It is also a mistake to believe that such a winner necessarily has a public mandate to impose his policy agenda.⁴¹ But in a democracy, who has a more legitimate claim to the presidency than the candidate who receives the most citizen votes? Thus, the legitimacy of a president seems as assured under the popular-plurality system as it is under the Electoral College. And having a legitimate president encourages effective governance in our separation-of-powers system.⁴²

The popular-plurality system also ensures voter equality, which is perhaps its most important democratic justification. Voters are not equal under the Electoral College, as citizens of small states and large competitive states have more voting power than citizens in middle-sized states and noncompetitive large states.⁴³ Every vote has equal value in the popular-plurality system, and voters are not made irrelevant because their states are not “in play.” Thus, by pursuing all voters, presidential campaigns could spread their resources more widely throughout the country.⁴⁴ Parties and interest groups might be more active in getting out their supporters across the nation. And the media may pay more attention to how voters react to campaigns in all regions. In the popular-plurality system, citizens would not feel that their vote is worthless because they live in a state where the outcome is preordained, even as a heated battle rages in the nation as a whole. While individual decisions to vote surely depend on many factors, citizens should

be more likely to vote if they think that there is some chance (no matter how small) that their vote will make a difference.⁴⁵

The popular-plurality system has the practical justification of being reasonably compatible with the two-party system.⁴⁶ The popular-plurality presidential scheme resembles the first-past-the-post (or single winner) legislative electoral system, which clearly promotes a two-party system. Other proposed reforms, like proportional allocation or runoffs, would encourage the more active participation of third parties in presidential elections, if only to increase their bargaining power with a majority party in need of their support to win a close election.⁴⁷ These alternative reforms would also provide supporters of third parties with greater incentives and opportunities to cast sincere votes for the candidates of their own parties, rather than casting sophisticated votes for their favored major-party candidate. But under a popular-plurality system, the electoral outcome could hinge on small vote differences between the two leading candidates, who would most likely be from the Democratic and Republican parties. Both major parties would thus retain their incentives to create broad electoral coalitions to edge out their rival. And the supporters of third parties would still have incentives to become sophisticated voters and not “waste their vote.”⁴⁸ Thus, third parties may not fare much better under the popular-plurality system than under the electoral college system. In fact, regional parties that can win a few states would almost certainly do better under current electoral rules.

The popular-plurality scheme also retains the advantages of two-party politics for achieving effective governance within our separation-of-powers system. Because the entire nation, not just a few competitive states, would be “in play,” the relationships between a party’s candidate for the presidency and its congressional candidates would be strengthened. The president’s electoral “coattails” might well help elect more members of Congress from the same party.⁴⁹ As a result, we might end up with less divided government, and thus more effective governance, under the popular-plurality system.

Still, fewer barriers to third parties would seem to exist under the popular-plurality system than under the Electoral College. The existing system creates disincentives for third parties to compete nationally, as they have little to gain by coming in second or third in states where the unit rule assures that all electoral votes will go to either Democrats or Republicans. Under the popular-plurality system, all popular votes gained in such states contribute to the national total, so third parties would be encouraged to conduct nationwide campaigns. Such increased competition could encourage the two dominant parties to campaign more inclusively by appealing to voters who could be attracted to the third parties. It could even lead to a third party becoming strong enough to replace one of the major parties as a real contender for presidential power. In short, a popular plurality scheme may make the existing party system more adaptive to the changing aspirations of voters and the emerging needs of the country.⁵⁰

But there are dangers in this scenario. The popular-plurality system may create incentives for many new parties to form and compete for the presidency. If more parties compete nationally and peel off voters from the major parties, the realistic threshold of votes needed to win might become dangerously low. A highly fragmented party system could emerge, in which many parties run on fairly narrow platforms (e.g., an environmental party, a right-to-life party, and a flat-tax party.). If so, the two dominant parties could no longer provide the glue that makes governance possible under our separation-of-powers system.⁵¹ Worse, the chances increase that we might elect an extremist president—someone successful at rallying a small but sufficient plurality from one segment of the population, despite being disliked by most of the electorate. Such an outcome could bring about the sort of social instability that the electoral college system has avoided.⁵²

Another popular-plurality danger comes with the instability that could result if we replicated the Florida events of 2000 on a national scale. In other words, an extremely close popular vote would lead to challenges of the initial results throughout the nation, not just in a single pivotal state.⁵³ We could be searching for evidence of fraud or fouled ballots in every county in the country. In short, we might plunge into a futile attempt to get a “true measurement” of voter preferences, even though repeated counts would only yield different estimates of who “really won.” Because of our inability to detect every instance of fraud or to avoid each mistake in counting the ballots, the “true winner” of close elections would remain obscure. Indeed, candidates’ supporters would have incentives to engage in fraudulent and discriminatory activities throughout the country. Savvy operatives would know that these activities could decide the national outcome and that they would be difficult to detect, because—unlike in the Electoral College—investigations into fraud would not be focused on particular states. All this could lead to challenges to the legitimacy of whoever is declared the winner of a close popular-plurality election, resulting in social and political instability.

In addition, the popular-plurality procedure could produce other problematic outcomes. Presidential candidates might be less concerned with the particular needs of states and pursue a national agenda that undermined the autonomy of state governments and their capacity to serve as laboratories of policy experimentation.⁵⁴ The popular-plurality system would likely enhance the role of national advertising in campaigns, which would make electoral outcomes more dependent on the fund-raising capacities of parties and candidates. It could also destabilize voter choices, making them a function of last-minute demagogic attacks on opponents rather than on thoughtful considerations of which candidate best satisfies the aspirations, interests, and political principles of the voter.⁵⁵

The National Bonus Plan

This proposed reform is a synthesis between the Electoral College and the popular-plurality system. The Electoral College would be retained but the win-

ner of a popular-vote plurality would get an additional 102 electors, which should cure the Electoral College defect of occasionally producing a president who is not "the people's choice." Thus a couple of merits of the popularly-plurality system would be achieved. The legitimacy of the president would be enhanced, in that, as the winner of the popular vote, his or her margin of victory in the Electoral College would grow. With all votes counting the same in determining the national popular winner, citizens would have more equal voting power than they would under the existing system. At the same time, the Electoral College's merits would be retained, at least formally. There would continue to be a federal aspect to our presidential elections, as states qua states would still have two electors and could still determine the rules for their allocation of electors. With the winner of the national popular vote getting a huge block of electors, there would be almost no chance of having a House contingency election, so that this system would be even more compatible with our separation-of-powers principles than the Electoral College. The two-party system — and the advantages to effective governance provided by that system — would be less threatened than by most other reforms, perhaps including the pure popular-plurality system. After all, the rules of the Electoral College that discourage voters from "wasting their votes" on third parties would still be in force.

Still, our general assessment of the national bonus plan is that it would be a *de facto* popular-plurality system.⁵⁶ The electoral college aspects of the system would become mere formalities. Because the winner of the national popular vote would almost assuredly pick up enough electoral votes in the states to win, attention would be focused on the national popular vote result rather than the results in particular states. Thus, it is hard to see how some of the dangers of the popular-plurality system could be avoided. There would be nationalization of the election and perhaps of government, with some possible reduction in state autonomy. An extremist candidate might capture a plurality of the national popular vote (and enough electoral votes from the states) to win. Perhaps the most likely danger is the instability that could occur in an extremely close election. As in the pure popular-plurality system, we could be engaged in an attempt to recount ballots and ascertain fraud throughout the country in a futile attempt to obtain an accurate national vote total, upon which the results of the election hinged.

Since the national bonus plan is a *de facto* popular-plurality system, and since the risks would be similar under both systems, there seems little reason for keeping the façade of an electoral college in an amended Constitution. Why add to our Constitutional complexity when a simple national popular-plurality system would have the same result?

The Popular-Majority System

Although a bit more complex than the popular-plurality system, most citizens would grasp the popular-majority system more easily than they would the Elec-

toral College. And its main justification is powerful: the president should win the support of a voting majority. If the initial popular vote failed to produce a candidate who is the first choice of a majority of voters, a runoff election could be held a few weeks later between the top two candidates, thus ensuring a majority.

This system has clear benefits. First, most of the advantages that the popular-plurality system has over the Electoral College would be retained by popular-majority procedures. Once again, all votes would count equally, regardless of where they were cast, and the inequalities that arise through the Electoral College putting a limited number of states in play would vanish.⁵⁷ Second, this system would likely maximize the legitimacy of the winner, who would be not only the people's choice, but also the ultimate choice of most people. Third, this scheme would provide more protection than the popular-plurality system against the possibility of electing extremist presidents and the resulting potential for instability. Should an extremist lead a fragmented field of candidates after the first round of balloting, the majority of citizens opposed to the narrow concerns and/or rigid ideology of the extremist could rally around the second-place finisher in the runoff.⁵⁸ Fourth, there may be greater protection against voter fraud in a popular-majority system than in a popular-plurality one. Local results from second-round balloting that are markedly at odds with the results from the initial round would signal the possibility of something being amiss. Efforts to detect fraud could thus be focused under a popular-majority system, discouraging such activities.⁵⁹

Nevertheless, the popular-majority system has several defects. First, nationalizing elections and government would be a concern. Second, while this system has the potential to enhance the legitimacy of the president, it could also reduce it. If the first-round winner lost in the second round, his supporters might question the legitimacy of the elected president, as well as the runoff system itself.⁶⁰ A third and related problem is likely "voter fatigue" in the second round.⁶¹ A significant reduction in second-round turnout could produce different outcomes in the first and second rounds of balloting. If different rules and a smaller turnout elected a different winner, legitimacy would be compromised.

But the most important deficiency of the popular-majority system is its effect on the party system.⁶² While all but the two top vote-getters would be eliminated from the runoff election, many parties and candidates would have increased incentives to run major campaigns in the initial round of balloting. Citizens would see a second electoral round as providing them with the opportunity to cast a sophisticated vote for the more preferred of two candidates. Voters might well act "sincerely" in the initial round, by supporting those candidates who best represented their narrow interest or ideological orientation. Candidates would probably emerge to capture such votes, and so the first round could be cluttered with parties and candidates. Many candidates who now seek a major-party nomination but who lose in the primaries and party caucuses might bypass

the major parties and simply enter the first round of the general election. There would be two incentives to do so. First, in a crowded initial field, such a candidate could finish first or second and thus get into the runoff; he or she could even be matched against another candidate with similar intense but narrow appeal, providing a chance to ascend to the presidency. Second, such a candidate could attract enough votes to broker a deal with one of the top two finishers. As in coalition governments, the top two finishers would offer policy concessions or offices in the administration to those parties and candidates who were eliminated in the first round but could deliver their voters during the second round. Even though they lost in the first round, such parties and candidates might exert disproportionate influence over the overall electoral result. We might even see much more "minority representation" — including members of extremist parties — within the administration as a result of such deals.⁶³ In short, the popular-majority system would probably lead to party fragmentation both in the electoral process and in governing. The chances for effective governance could thus decline from what is experienced under the current system. In the end, many of the political scientists in this project took these concerns seriously and gave a low ranking to the popular-majority system.

The Instant Runoff

Sometimes a fresh new face enters a presidential campaign, has attributes that are attractive to some voters, but simply fails to catch fire with the larger electorate and finishes out of the running in the early primaries. Such seems to be the fate of the instant runoff, at least when the electorate is comprised mainly of political scientists specializing in American politics. In chapters 4 through 11, our various groups often provided positive evaluations of the instant runoff, but when our votes were cast, this alternative received little support.

The main theoretical justification for the instant runoff is that it absolves citizens of the need to make a decision between being sincere voters and being sophisticated voters. Because citizens can rank-order their preferences among candidates, they can indicate as their top choice their sincere preference for an independent or third-party candidate who best reflects their interests or principles but who has little chance of winning. They can then indicate as their second choice their sophisticated preference for the major candidate that they prefer over the other major candidate.⁶⁴ The "transferable vote" aspect of the instant runoff ensures that, if and when their sincere preference is eliminated in the counting procedure, their sophisticated preference will be taken into account. Thus, they will not have contributed to the election of their least preferred candidate by "wasting" their vote on their sincere choice.

The instant runoff is one form of a national popular vote, and it would capture the benefits of such systems. Voters would count equally. No voters would be inconsequential because they lived in states where the results were preordained.

All candidates, third parties, and minority parties in one-party dominant states would have incentives to appeal to all voters and to get out the vote of all their supporters, regardless of their geographical location.

The instant runoff would surely increase the role of third parties and independent candidates in the presidential election process, and it might maximize the positive elements of such parties and candidates while minimizing the negatives. Voters who are now alienated from the Republicans and Democrats, or who simply see little difference between their candidates, could become mobilized and active voters by the presence of other candidates on the ballot.⁶⁵ An environmentalist may come to the polls to cast a sincere vote for Nader, decide that Gore is a more committed environmentalist than Bush, and so indicate such a preference in the rank-order ballot of this system. A social conservative could cast a sincere vote for Buchanan, and still indicate a second preference for Bush over Gore because of Bush's more conservative social policies. Thus, the instant runoff may result both in a higher voter turnout and in a set of ballots that more accurately reflects voters' preferences than occurs under the Electoral College or, arguably, other alternative electoral systems. In short, the instant runoff may minimize the distortion of voters' intents, which adds to the legitimacy of the winning candidate and reduces the threat to social stability that might follow such distortions, real or perceived.⁶⁶

While increasing the role of third parties, the instant runoff may nevertheless maintain most aspects of the prevailing two-party system. The major parties would have incentives to be inclusive, by incorporating the goals and issues of third parties into their own platforms and speeches and by trying to avoid alienating third-party supporters. Such informal coalition building would flow from the desires of both major parties to be seen as closer to the issue positions of third-party supporters and thus receive their transferable votes.⁶⁷

The instant-runoff system may thus be the most supramajoritarian of our alternatives.⁶⁸ A candidate would need only a slim majority of first-ranked and transferred votes to get elected. But he or she would like to be ranked as highly as possible on as many ballots as possible, because the instant runoff would reward the major candidate who is most highly supported by those who are *not* part of the candidate's own party.

The instant runoff would promote a multiparty system in which the major parties understand they lack the core of supporters to win on their own. In the electoral college system, the two main parties can take for granted or ignore voters in states where the outcome is preordained. Under the popular-plurality system candidates may be satisfied with getting a mere plurality of supporters to put them over the top. With a desire to reach the second round, candidates would initially seek enough core supporters to be one of the top two vote-getters among a number of parties and candidates that would contest the first round. Between the first and second rounds of votes, the top-ranked candidates might seek only

the minimal winning coalition, making bargains with specific candidates who can deliver the needed votes.⁶⁹ In contrast, by requiring candidates to obtain a majority, the instant-runoff scheme mandates that the preferences of all voters could matter, with no last-minute bargaining for votes. Candidates would understand the need for supramajoritarian coalition building. Moreover, under the instant-runoff system, voters may feel part of the winning coalition, even if they did not list the winner as their first choice. Having ranked the winner as a second or third choice may convey a sense of having "approved" of the winner, enhancing his or her legitimacy.

The participants in this project also report other possible benefits of the instant-vote system. The comparativists, specializing in social stability, rate the system as moderately effective at limiting fraud, because having a rank-order ballot complicates its successful commission.⁷⁰ They also rank the system highly in terms of preventing extremists from ascending to the presidency, because it requires a winning candidate to command broad public support. And our experts on the media suggested that the instant runoff might do more than any other electoral system to encourage the media to engage in more citizen-oriented, substantive coverage of the campaign.⁷¹ Under the instant-runoff system, reporting poll results on who is winning the horse race would be even more inadequate than it is now. Reporters would have to look more carefully at the messages of the candidates and how they were received by various kinds of voters. Additionally, the media might well report the efforts of candidates to appeal to voters beyond their own party, rather than focusing on attacks made by major candidates on each other. Such reporting might encourage people to see politics as a positive and inclusive coalition-building activity aimed at solving national problems rather than a negative and competitive activity aimed at tearing down adversaries.

Despite such positive qualitative assessments, the instant-vote system did not garner much support from our participants. As a national voting scheme, it would be problematic for supporters of state and local autonomy. Even if the major parties could become more inclusive, the instant runoff would certainly encourage the growth of third parties. In the long run, several parties could grow in influence and become legitimate contenders in presidential and legislative races. If this happened, gridlock between our governmental institutions might increase and make governance more difficult. Some doubts were also raised about the capacity of voters to cast meaningful rank-order ballots.⁷² Many voters have difficulty determining which of two parties has orientations that best reflect their interests and principles. Could such voters cast informed ballots rank-ordering their preferences among three or more candidates?

Without doubt, the instant-runoff ballot would be a radical reform in American politics. Passing the required constitutional amendment would be difficult, as Democratic and Republican politicians tend to see few advantages in innovations that could significantly threaten their customary practices and their power.

As a foreign import that is unfamiliar to most Americans, the chances it will generate widespread support are close to nil. The instant runoff is a fresh face with attractive features that might appeal to some intellectuals in Ann Arbor, Cambridge, and other university towns. Still, political scientists are realists, and their assessment is that this reform is going nowhere.

The District Plan

Having states abolish their unit rule by dividing the states into congressional districts, allocating one elector to each district, and awarding that elector to the winner of a popular-plurality vote in the district has both positive and negative implications. As a result, some participants in the project rated this reform positively, but others were highly critical.

On the positive side, the district plan is compatible with the Constitution and its major features. The Constitution permits states to select electors in any manner they wish, so particular states could follow Maine's and Nebraska's lead and adopt the district plan without an amendment. Likewise, the district plan is compatible with federalism.⁷³ The electoral college system would remain in effect, with two electors going to the winner of the popular-plurality vote in each state as a whole. While national popular vote schemes would reduce federalism by enhancing the role of national organizations in the presidential election, the district plan would extend federalism to the substate level, as political organizations within districts would play increasingly important roles. The district plan might slightly reduce the impact of the separation of powers, as presidential electors and legislators would come from the same congressional districts. Presidential coattails might be longer if boundaries for presidential elections coincided with those of congressional races. Members of Congress might be more susceptible to presidential influence if a president captured electors from their districts. But such effects would probably be small and sometimes run in the reverse direction, especially for those legislators who represent districts that the president lost.

The district plan would probably have no effect on the basic structures of our two-party system. Elections for Congress in the districts are now mostly two-party affairs, because their first-past-the-post feature enhances citizen perceptions that votes for third-party and independent candidates are wasted. Elections for presidential electors in the districts would have the same features.

The district plan would certainly change the geographic calculations of conducting presidential campaigns. Many new areas would be hotly contested. Proponents of the district plan emphasize that while most states are not competitive, some districts within these states are and could no longer be ignored. Presidential campaigns would be more active in these districts, and their ads and other activities may spill over into adjoining districts.⁷⁴ Parties in competitive districts would be energized, as citizens would see that their votes could make a difference. Because of such changes, the district plan may be associated with

higher voter turnout.⁷⁵ But the reverse could also occur. Presidential elections in some states may be highly competitive, with some districts within these states being dominated by one party or the other. Adoption of the district plan would probably decrease political activity in these areas.⁷⁶

The district plan has several potential problems that concern the participants in this project. For some, the district plan is a minor reform that doesn't address the real problems of the Electoral College and may in fact exacerbate them. Take unequal voting power, for example. Small states will still get the same two extra electors that the large states get, enhancing the vote value of citizens in small states. Simultaneously, whatever advantage accrued to large states would be lost if they abolished the unit rule, which had made them so important to presidential campaigns.

The possible discrepancy between the winner of the Electoral College vote and the winner of the popular vote would also persist and might well worsen. Al Gore would have lost more decisively in an Electoral College allocating votes under the district plan than he did in the existing Electoral College, despite having won the national popular vote. The district plan would have produced similar discrepancies in 1960 and 1976. This phenomenon occurs because the boundaries of districts can be drawn so as to concede a small number of districts to one party, packing its party identifiers into these districts, while creating a larger number of other districts where the other party has a thinner but still relatively safe partisan majority. The first party may have more supporters overall in the state, but the second party would win more districts and get more electors. Currently, Democrats seem to be more highly concentrated in some congressional districts, while Republicans have thinner majorities in a larger number of districts. This enables Republicans to do better under the district plan than in the popular vote.

This feature of the district plan makes it especially inhospitable to racial minorities and the urban poor, who are often concentrated in specific districts; this dilutes their capacity to exercise voting power on behalf of their favored party and raises the problem of congressional districting.⁷⁷ For the most part, state legislatures determine the boundaries of House seats, and their highly partisan, contentious processes have historically produced districts that work to the disadvantage of racial minorities and the urban poor. As a result of these problems, the district plan is strongly opposed by political scientists whose principles support the idea that our political institutions should be particularly responsive to the interests of our least advantaged citizens.

Proportional Allocation

Absent any constitutional amendment, specific states could abolish their unit rule and allocate their electors in proportion to the number of popular votes that a candidate received within their state. Like the district plan, this reform would be consistent with federalism, though the focus of presidential elections would

remain at the state level. But in other respects, the differences between the district plan and proportional allocation could be quite profound.

Under the district plan, only competitive districts would be in play. With proportional allocation, every state (and district) would be a factor, as dominant parties could not assume the capacity to win all electors; some electors could and would be peeled off by minority and third parties in the state.⁷⁸ Such parties and independent candidates would gain fresh incentives to compete aggressively for each and every elector to be proportionately distributed. Thus, states adopting proportional allocation might expect an overall increase in activity by political parties and other political organizations and an increase in citizen participation, as voters in noncompetitive states (or districts) would no longer see their vote as irrelevant to the outcome. The whole country — rather than specific localities, states, or regions — would be up for grabs; this would encourage presidential campaigns to spread their resources more equally across the nation. In this respect, proportional allocation would resemble the popular-plurality system.

Widespread adoption of proportional allocation would threaten the existing two-party system.⁷⁹ Freed from winner-take-all rules, third parties and independent candidates would seek electors in proportion to their popular success in each state. Supporters of such parties and candidates would be encouraged to cast sincere ballots for them, adding to their success. Party fragmentation would likely occur, making effective governance more difficult. To reduce such fragmentation and to limit the role of narrow or special-interest candidates and fringe parties, proportional allocation plans might require candidates to attain some minimal percentage of popular votes — typically 5 or 10 percent — to qualify for any electors. Of course, such requirements would only be important in larger states, as candidates winning 10 (or so) percent of the popular vote would not qualify for any electors unless the state had ten or more electors to allocate, at least if there was no fractional allocation of electors.

This points to the importance of allocation rules. If states seek an allocation of electoral votes that more precisely mirrors the distribution of popular votes, fractional allocation of electors would be necessary. Such distributions would provide some representation in the College for candidates getting only a small number of votes.⁸⁰ If states seek an allocation formula that avoided a fragmentation of electoral votes, they could adopt the d'Hondt formula discussed in chapter 10, which keeps electors whole and allocates seats in the College in a manner that reduces representation of minor parties and favors the major parties. In short, the d'Hondt system appears to be the preferred method of proportional allocation if the goal is to obtain a better balance between governance and representation.

In our discussion of the Electoral College above, we argued that representation within the executive branch of government was a problematic goal. As noted, presidents are not required to include members of the opposing or third parties

in their administration; rather, they seek to govern effectively by developing cabinets and staff that emphasize cohesion more than representation. Proportional allocation focuses on representation in the Electoral College, rather than on the executive. Such reform seeks to select a delegation of state electors that represents the entire range of citizens within a state, as opposed to the unit rule, which excludes those citizens who voted for the losing candidate.

Four purposes or values may be served by such representation. First, it may enhance the incentives of campaigns to build supramajorities within states.⁸¹ Under the Electoral College, dominant parties in noncompetitive states can ignore those minority interests and groupings that are too small to threaten their continued dominance. Proportional allocation would encourage parties and campaigns to attract such interests so as to maximize their number of electors.

Second, in contrast to the perceived exclusion produced by current rules, proportional allocation may enhance the sense of inclusion that citizens have about the political process, increasing both their participation in politics and their compliance with governmental authority.⁸²

Third, such representation under proportional allocation may reduce the mismatch between electoral votes and popular votes. The unit rule stands as the major cause of discrepancies between popular vote totals and electoral vote totals, as the popular votes given to losing candidates within states count for nothing. Proportional allocation ensures that electoral vote totals will more closely reflect the popular vote, but this system is no guarantee against the ultimate mismatch of the 2000 election. Factors such as the overrepresentation of small states in the allocation of electors and the imperfect rounding rules of any proportional allocation scheme could result in the election of a president who has a majority of proportionally allocated electors but who has lost the popular vote.

Fourth, the kind of representation achieved by proportional allocation could lead to the greater inclusion of minority interests in the administration, though this is unlikely. Suppose that every state had adopted the d'Hondt system in 2000 and the results were as described in table 10.2 (p. 154): Gore would have had 268 electoral votes, Bush would have had 267, and Nader would have had 3. Despite his few electoral votes, Nader could have controlled the outcome, and both parties would have had huge incentives to bargain with him. Nader's electors would not be "automatic" and could be induced to switch to (say) Gore if Gore were to promise to include Nader and other Green Party members in his administration. Continuing conflict between the Greens and the Democrats might have complicated Gore's ability to govern, but the proportional allocation system and the subsequent bargaining would have resulted in wider representation of interests in the administration.

Proportional allocation rules would probably lead to far more electors being allocated to third parties and independents than has occurred historically, increasing the likelihood that neither the Republican nor the Democratic candidate

would achieve an Electoral College majority on their own. If no bargain could be struck between a leading party and the array of independents and third-party candidates holding key electoral votes to produce an Electoral College majority, the selection of the president would be thrown into the House of Representatives. Many of the reservations about proportional allocation expressed by participants in this project emphasized that this reform would enable third parties to become sufficiently strong that they could become spoilers on a regular basis. Few participants welcomed the possibility that the House would even occasionally select the president.

In summary, we find all alternatives to the Electoral College to have combinations of strengths and weaknesses. No alternative commends itself as a clear improvement over the existing system. Our qualitative evaluations are perhaps most favorable to the instant-runoff system, but it fares poorly in our balloting, largely because it is unfamiliar and unlikely to be adopted. The popular-plurality system may be the best alternative, as it might enhance presidential legitimacy and minimally disrupt our two-party system. Still, it is susceptible to fraud and the possible election of extremist candidates.

Our qualitative evaluations suggest that reforming the Electoral College with a proportional allocation of electors is preferable to having electors selected in congressional districts, as this could further various aspects of representation, perhaps including a better representation of minorities. State legislatures could implement proportional allocation plans, and so some experimentation with this system is possible and perhaps desirable. State legislatures in one-party dominant states would almost certainly reject such reforms, as they would have no incentives to have the minority party peel off some electors from their winner-take-all advantage. But legislatures in smaller and more competitive states might see advantages in proportional allocation, as they may prefer a system that would deliver some electoral votes to the candidate of their party rather than incur the risks of the winner-take-all system. As political scientists, we would welcome such reforms that would permit empirical assessments of their effects.⁸³ However, adoption of proportional allocation would increase the chances that no candidate would receive a majority in the Electoral College, and this raises a couple of important questions. Should proportionally allocated electors be "automatic" electors (or more firmly bound human electors) who could not be used as bargaining chips to achieve an Electoral College majority? Should the House contingency procedure be abandoned or reformed?

OF ROGUE ELECTORS AND THE HOUSE CONTINGENCY RELIC

Even defenders of the Electoral College generally concede that the discretion of electors and the House contingency election are problems, but see them to be of little contemporary consequence.⁸⁴ But, on election night in 2000, as the networks began to call various states for Bush or for Gore and to project possible

outcomes in other states, a tie in the Electoral College loomed as a distinct possibility. The close presidential race reminds us that the House contingency remains a constitutional necessity if no candidate receives an Electoral College majority. Moreover, when the electors' votes were counted, we learned that one elector from the District of Columbia abandoned his pledge to vote for Gore. This had no effect on the outcome, but if two electors pledged to Bush had been "faithless" and voted instead for Gore, the election would have been thrown into the House. And had three Bush electors switched, Gore would have won. In short, the chances are remote—but real—that rogue voters or the House contingency election will be decisive. We need to consider abolishing the freedom of electors and the House contingency election.

Automatic Electors

When the Electoral College was established, electors were expected to be independent, casting their ballots for the persons whom they regarded as most qualified for the presidency. But today, electors are expected to perform their ceremonial role of voting for the state's popular vote winner. Electors are selected by state party organizations, but in most states, they are neither listed nor mentioned on the ballot. State laws merely provide that the party of the candidate receiving the most popular votes gets to have its electors cast their presidential votes at a designated location in each state on a designated time in December. Electors in a few states must pledge and even take formal oaths to support their party's national nominee, and some states would fine electors who violate their pledges, but these provisions are of questionable constitutionality.⁸⁵ Given that electors are loyal partisans, these provisions have normally been unnecessary, but on a few occasions "rogue" or "faithless" electors have cast ballots that violated their pledge to support the winner of the state's popular election. Since 1824, more than 20,000 electoral votes have been cast, with only eight instances when electors clearly violated their pledge. On no occasion did this affect the outcome.⁸⁶

The argument for eliminating the freedom of electors is simple. If an election ever turned on the faithless act of a rogue voter, the legitimacy of the outcome would be severely challenged, as would the legitimacy of the system that permitted such an outcome. After a close election, a candidate who is within an electoral vote or two of victory might approach some of his opponent's electors with inducements to switch. Indeed, a state legislature controlled by the opposing party to the winner of the popular vote may be tempted to substitute its own electors, which might well have happened if a recount had favored Gore.⁸⁷ Given the possibility of corruption and the presumed role of electors as mere delegates of the electorate, many reformers have proposed a constitutional amendment to make casting of electoral votes automatic, based entirely on the popular vote.⁸⁸

But the case for eliminating the elector's discretion is scarcely airtight. Indeed, the political scientists in our project leaned toward "keeping the present

system intact, allowing the slight possibility of rogue voters." Why so? First, the issue was thought too inconsequential to deserve a constitutional amendment. Second, our political system has always had a place of honor for the maverick—the freethinking human who refuses to succumb to the party line or popular pressure. For example, the decision of Vermont Senator James Jeffords to change his party affiliation from Republican to Independent in May 2001, and thus change control of the Senate from Republican to Democratic, resembles the action of a rogue elector. For many of us, politics is a human endeavor and humans should exercise individual judgment. Third, an amendment creating automatic electors would eliminate the possibility that a third-party candidate could request that his electors cast their ballots for another candidate to further his party's interests. Had Nader received enough electors to determine the outcome, he might have concluded that it served the interests of the Green Party to reach an agreement with Gore in the Electoral College, rather than have the decision go to the House, which would probably have chosen the less environment-friendly Bush. Again, an amendment creating automatic electors would remove the possibility of a reasonable political decision that might lead to majority-based outcomes.

Fixing the House Contingency Procedure

Having the House of Representatives elect the president if no candidate receives a majority in the Electoral College was a crucial part of the presidential selection process at its inception. Since 1824, however, this procedure has gone unused. But if several states were to create proportional allocation systems that awarded some electors to third-party candidates, the House contingency procedure could become an occasional element of the presidential election process. The majority of the participants in this project (60 percent) support constitutional changes to avoid this possibility. There are at least five problems with the House contingency procedure.

First, there is a reasonable chance of stalemate in the House. The Constitution provides for a House vote by state delegations; each delegation receives one vote, and a majority (26 states) is needed to name a winner. Given current partisan divisions and loyalties, this could lead to stalemate (as almost happened in 1824). If a state delegation is equally divided by party and no one abandons his party, the state would abstain. A majority of all states is still required. The Republicans had majorities of only 25 of the House delegations in the 106th Congress (1999–2000), and thus could not have dictated the outcome.⁸⁹ Had the responsibility of resolving the election fallen to the outgoing rather than the incoming House, it is difficult to see how stalemate could have been avoided as long as loyalty to party dominated the decision process. Nevertheless, the House must choose the president.

This points to a second, related problem: the results of the popular vote

would get short shrift in any House contingency election. While partisan concerns would likely prevail if one party had a majority among the state delegations, an initial deadlock would likely result in bargaining over matters of power and policy, rather than simply deferring to popular wishes.

Third, the contingency procedure provides for Senate selection of the vice president, which raises the possibility of the president and vice president coming from different parties. This could have happened in 2000–2001. Bush would have won in the House, but the new Senate was evenly split along party lines, and thus the sitting vice president, who was still Al Gore in early January 2001 when this process would have occurred, could have cast the tie-breaking vote for Joe Lieberman, his Democratic running-mate. Although we cannot be sure how this arrangement would affect our political system (that would take another book), most participants and observers perceive it as seriously undermining executive branch cohesion.

A fourth problem is simply that invoking the House contingency would violate our contemporary conception of fairness, which includes the idea of voting equality. Despite the formal equality in providing each state with one vote, there is a real inequality in a procedure that underrepresents the citizens of populous states. The 494,782 citizens of Wyoming would have the same one vote as the nearly 34 million citizens of California.

A fifth problem is that the House contingency violates the principle of the separation of powers by making the Executive a creation of Congress.

There have been numerous proposals for correcting these problems with the House contingency process,⁹⁰ but the simplest would abolish its need by eliminating the requirement for a majority in the Electoral College.⁹¹ The main objection to this change is that “it is feared it could produce a President with an insufficient mandate.”⁹² However, if there is such a thing as an electoral mandate, it is a matter of perception, and presidents without popular majorities or even popular pluralities have governed as if they had one. It is difficult to see how George W. Bush has a greater mandate with his narrow majority in the Electoral College than he would have with a larger margin of victory in the College that still fell somewhat short of a majority because a spoiler captured a few dozen votes.

Another approach to this problem is to create an alternative contingency process. For example, if one candidate held a popular vote margin of more than one percent over his closest rival (yet failed to get an electoral majority), he could be declared the winner. Or the matter could be referred to the House, but the rule of voting by House delegations could be dropped in favor of the more common practice of giving each representative one vote. The participants in this project could not agree on the best alternative to the present House contingency procedure, but they expressed widespread support for giving this issue more attention than it has thus far received.

HALT THE REVOLUTION. LET THE EXPERIMENTS BEGIN

Most revisions of our presidential election process — ranging from developing an alternative national popular vote to modifying the House contingency procedure — would require constitutional amendments. But such amendments rarely succeed, and there is no indication that any electoral reforms could overcome the formidable obstacles of modifying the Constitution. Perhaps such obstacles would be overcome if the public strongly believed that an electoral reform would greatly improve American democracy, but the participants in this project doubt that such a belief would be warranted.

Of course, electoral rules do matter, as different procedures can produce different winners of presidential elections. Different electoral procedures can also lead to other changes in our political process. But one conclusion that emerges from the assessments of our participants is that the changes wrought by just changing our electoral college procedure may not be profound. Among other things, our participants conclude that:

- the unequal voting power that the Electoral College provides to citizens of small states is not very substantial;
- the orientations of a presidential candidate toward the balance between national power and state autonomy does not depend on being elected under the electoral college system;
- any electoral system will normally provide its winner with legitimacy, but most systems can produce outcomes that reduce the winning candidate's legitimacy;
- our two-party system is a product of forces beyond the electoral college system, and would be only slightly modified under several alternative systems;
- campaign organizations allocate resources unequally under the electoral college system but they would continue to do so under any electoral system;
- imperfect media coverage of elections is primarily due to considerations independent of the Electoral College;
- electoral reform is unlikely to increase voter turnout significantly, and higher levels of voter turnout would not significantly improve the quality of American democracy;
- American elections are seldom associated with social instability, and the alternative electoral systems have both strengths and weaknesses in reducing the risks of instability; and
- minorities may not benefit from the current electoral college system, but alternate systems would not greatly enhance their power.

Over and over again, the participants in this project provide assessments that electoral reform would not fundamentally transform the things they study. They do not see in electoral reform any quick fixes to problems that occur in our political process.

Because of the institutional and structural barriers to electoral change discussed in chapter 1, reforms need broad and fairly intense public support. Such change probably requires a social movement, but most movements arise to sup-

port causes that are thought to transform social, economic, or political life. The analyses in this book indicate that there is not much here to spark the kind of social movement essential for enacting a constitutional amendment.

This is not to say that the Electoral College is without problems or cannot be improved. Some of us would suggest that the states experiment with district plans and proportional allocation — reforms that could be implemented by individual states without a constitutional amendment. State experimentation with such reforms could address two sorts of analytical problems that hinder making effective collective judgments.

First, many suspected consequences of reforms could not be adequately investigated because we lack opportunities to collect and analyze the data. The authors of chapter 9 put this point nicely: “We know little about how the Electoral College impacts citizen participation. This paucity of knowledge owes in part to the Electoral College’s longevity. There has been little opportunity to experiment with other methods of electing the president.”

Throughout this volume, our participants have had to speculate about the impacts of various reforms. Although theories and related empirical research could generate expectations about the consequences of various reforms, direct study to confirm or disconfirm these expectations was usually impossible. Trying out some reforms, especially in the unique American context, could contribute to our understanding of the desirability of proposed changes.

Second, some consequences of reform are simply unforeseen and perhaps unforeseeable. The concept of unintended consequences was one of the major recurring themes throughout this book. This notion is deeply imbedded in the culture and discipline of political science, making scholars leery of reforms that promise more than they deliver and that deliver problems that were unforeseen.⁹³ Reforms always change things, but the changes wrought may be quite different from those sought or expected. Since the implications of the electoral reforms analyzed here cannot always be foreseen, they can become apparent only through state-level experiments that can enable us to discover their unanticipated consequences.

Perhaps adoption of the district plan by some state (other than Maine and Nebraska) with significant minority populations would reveal what many of us fear — that the district plan would undermine minority influence. Better to find that out by an experiment in a few states than after a constitutional amendment imposed the system on the nation.

Proportional allocation may be the more promising method of achieving various forms of improved representation. If some states adopted this reform, such effects could be confirmed or disconfirmed. One virtue of the electoral college system is that it allows states to engage in such experiments from which the nation as a whole can learn. Absent any compelling reason for changing the system now, we have time to draw lessons from the modest experiments that the states might conduct.

In short, we find the Electoral College a flawed but acceptable method of choosing our president. We do not regard any alternatives as offering such significant gains as to be worth the risks that would accompany wholesale changes in our electoral system. Still, the issue of electoral reform should not be forgotten. Progressive reformers should continue to address the relative merits of the popular-plurality and the instant-runoff systems in their search for a consensual alternative to the Electoral College. The problems associated with rogue voters and especially the House contingency procedure warrant continued national attention. Experimentation in some states with the district plan and especially with proportional allocation of electors could enable us to better understand if such reforms could lead to modest improvements in American democracy.

Of course, such conclusions merely reflect the judgments of the political scientists involved in this project. While the theories and research of political science has contributed much to these judgments, political science is not an exact science, and different judgments can be drawn from the analyses presented here. To help us develop a more complete portrait of the views of various kinds of people about the issues presented here, we invite and encourage you to visit our website at <http://raven.cc.ukans.edu/~college>. There you will be provided the opportunity to express your judgments about the Electoral College and the various alternatives to it discussed in this volume.

NOTES

1. The role of approval voting in arriving at accurate collective choices is most strongly developed in the work of Steven Brams and Peter C. Fishburn, *Approval Voting* (Boston: Birkhauser, 1983).
2. A related problem with approval voting is that some voters may adopt a generous conception of approval (i.e., “I guess I can live with this alternative”) while others may adopt a more narrow conception (i.e., “I disapprove of this alternative in the sense that — while I can accept it — I much prefer higher-ranked alternatives”). Thus, the results of approval voting can underestimate support for those alternatives that have received “disapproval ballots” for strategic reasons.
3. The role of the Borda count in such choices is most strongly presented by Donald Saari, *The Geometry of Voting* (Berlin: Springer, 1994).
4. We use the Borda count to determine each group’s choice. In all groups save one, the top choice in the Borda count was also a Condorcet winner. (In the one group without a Condorcet winner, there was a voting cycle.)
5. Would creating one southern and one northern district per group (depending on the geographical location of the university where each participant is employed) be much less arbitrary than the congressional districts created by some state legislatures?
6. Using the d’Hondt formula for allocating electors proportionally, the extra two electors provided to our social cleavage group would go to the popular-majority system, so that it would end up with five electoral votes under proportionality, tying the district plan for third under this voting system.
7. We assume that all seven systems are under consideration. Shortly, we will consider outcomes of head-to-head competition.
8. One of our participants ranked two of these options among his top choices, so his ballot was transferred to his third-ranked option.
9. Perhaps they would agree to have automatic electors or reform the House contingency procedure. Who knows what kinds of concessions our reformers would have demanded before agreeing to support the Electoral College!

10. Jonathan Levin and Barry Nalebuff, "An Introduction to Vote-Counting Schemes," *Journal of Economic Perspectives* 9 (Winter 1995): 4.
11. In chapter 5 (p. 131), our institutionalists note that public opinion polls report that "only one respondent in three backed the Electoral College."
12. National public opinion polls often produce a contrived consensus behind an alternative by simply asking respondents if they prefer a national popular election rather than the Electoral College, ignoring both the variations within popular voting schemes and the reforms of the Electoral College that are possible alternatives to it.
13. This evaluative tradition goes back to Aristotle, as employed in his *Politics*. A recent discussion of this method is found in Paul Schumaker, Dwight C. Kiel, and Thomas W. Heilke, *Great Ideas/Grand Schemes: Political Ideologies in the Nineteenth and Twentieth Centuries* (New York: McGraw-Hill, 1996): 18–20.
14. See William H. Riker, *Liberalism against Populism: A Confrontation between the Theory of Democracy and the Theory of Social Choice* (San Francisco: W. H. Freeman, 1982), 67–73.
15. See chapter 3 for a more extensive discussion of the role of the Electoral College in the Constitution and for a discussion of its effectiveness in American history.
16. In chapter 5 (p. 85), our institutionalists note that the only president failing to have sufficient legitimacy to govern effectively was Andrew Johnson, and he was not elected to the office.
17. See chapter 10 (p. 152) for a more extensive discussion of the election of 1860.
18. The authors of chapters 4 and 11 stress the unequal value of the vote for citizens in different-sized states. From the perspective of federalism, there is nothing inherently unfair about the inequalities in voting value for individuals that arise from the allocation of two electors equal to the states. From the perspective of those of us interested in equal voting power among people of different ethnic and racial backgrounds, such allocations result in troubling racial biases.
19. But such incentives may not be sufficient to ensure that presidents are very sensitive to states rights, as discussed in chapter 4 (pp. 61–63).
20. Our political theorists, in chapter 3 (especially on pp. 31–35) are most clear on the link between the Electoral College and the separation of powers.
21. This conception of effective governance derives from our comparativists. See chapter 10 (pp. 150–51).
22. Our specialists on national institutions, parties, and campaigns all discuss at some length the idea that effective governance can be harmed by a proliferation of parties. See chapters 5, 6, and 7.
23. The role of the Twelfth Amendment in the development of our two-party system is revealed by our political theorists in chapter 3 (pp. 35–40).
24. This point is made most forcefully by our comparativists in chapter 10 (pp. 152–55) and by our specialists in social cleavages in chapter 11.
25. The importance of the "median voter" in governing coalitions is emphasized in the extensive literature examining the linkages between public opinion and public policy. See, for example, Elaine Sharp, *The Sometimes Connection: Public Opinion and Social Policy* (Albany: State University of New York Press, 1999). The theory of the median voter dates from Anthony Downs, *An Economic Theory of Democracy* (New York: Harper and Row, 1956).
26. The failure of American presidents to include other parties in the executive branch is discussed in chapter 3 (pp. 38–40) and chapter 10 (p. 147).
27. If so, we should probably abolish the highly unrepresentative Senate and develop a system of proportional representation to select members of Congress.
28. This role of the Electoral College in taming extremism is discussed by our party specialists in chapter 5 and by our comparativists in chapter 10 (pp. 148–49).
29. The myth that founders were "undemocratic" is debunked by both our theorists in chapter 3 (p. 35) and by our federalists in chapter 4 (pp. 55–57).
30. In chapter 4, our federalists contrast the intents of the framers of the Electoral College (pp. 54–57), with the practices of current candidates to be satisfied with gaining thin majorities in the necessary states (pp. 63–64).
31. See, for example, Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), 106–18.

32. This tenet of public choice theory, discussed in chapter 2 (pp. 20–21) was never disputed by the participants in this project, even by those who supported national popular elections.
33. In chapter 9 (pp. 136–37) our experts on citizen participation stress the similarities between voters and nonvoters, but this does not mean that there are no important areas where voters and nonvoters have divergent preferences.
34. See chapter 3 (pp. 43–44) for an extended discussion of the importance of counting errors.
35. The role of fraud in distorting the public will is most extensively discussed by our comparativists in chapter 10 (pp. 145–46).
36. See chapter 10 (p. 146).
37. This is a recurring theme throughout the chapters provided by our participants. It is most directly discussed by our experts on campaigns in chapter 7 (pp. 102–16).
38. See chapter 9 (pp. 129–30).
39. These questions are raised most forcefully in chapter 11 of this volume.
40. This issue is raised by both our federalists in chapter 4 (pp. 63–64) and our experts on social cleavages in chapter 11 (pp. 163–64).
41. Even presidents who win popular elections by such large margins that their victories would be assured under any electoral system and whose victories cannot be diminished by questions of fraud, counting errors, or small and unrepresentative voter turnouts cannot safely claim a public mandate for particular policies that they wish to pursue. After all, many voters may have supported them for reasons other than because they supported the particular policy for which a president claims a mandate.
42. Our institutionalists most strongly make these points in chapter 5.
43. The importance of voter equality is most strongly asserted by our specialists on voter cleavages in chapter 11 (pp. 162–63). Data on the unequal value of the vote for citizens in various states is shown in table 4.1 and table 11.1.
44. While acknowledging the logic of this proposition, our campaign specialists are unsure that campaigns would really allocate resources much differently under a national popular vote system. See chapter 7 (pp. 103–4).
45. However, our specialists in citizen participation argue that the increase in voter turnout under a popular election system would be small and perhaps trivial. See chapter 9 (pp. 129–30).
46. See chapter 6 (pp. 93–94).
47. See chapter 7 (pp. 106–8) and chapter 6 (pp. 95–96).
48. See chapter 6 (pp. 93–94).
49. See chapter 5 (p. 81).
50. These contentions are, of course, debatable, as indicated by our party specialists in chapter 6 (pp. 93–95).
51. The centrality of the two-party system to effective governance is asserted by both our institutionalists in chapter 5 (pp. 81–82) and our party specialists in chapter 6 (pp. 92–93).
52. See chapter 10 (pp. 148–49).
53. See chapter 10 (pp. 144–45).
54. See chapter 4 (pp. 68–69).
55. This possibility is inferred from the discussion of peripheral voters who cast ballots on the basis of the most recent campaign ads. See chapter 9 (p. 139).
56. See chapter 6 (pp. 94–95).
57. This consideration weighed especially heavily with our specialists on social cleavages. Indeed, they saw the runoff as providing both parties strong incentives to appeal to minority voters who might contribute to their needed majority. See chapter 11 (pp. 172–73).
58. See chapter 10 (p. 148).
59. See chapter 10 (pp. 145–46).
60. Our institutionalists raise this concern in chapter 5 (p. 78).
61. See chapter 9 (p. 130).
62. The following discussion draws primarily from our party specialists in chapter 6 (pp. 93–95) and our experts on campaigns in chapter 7 (pp. 106–9).
63. See chapter 10 (pp. 148).

64. Of course, voters who sincerely prefer two or more minor candidates to the major candidates, would list their sophisticated choice between major candidates lower in their rankings.
65. Though generally skeptical that electoral reform would impact voter turnout, our experts on citizen participation suspect that the instant runoff would have the greatest effect on voter participation. See chapter 9 (p. 133–35).
66. For example, our comparatives believe that the instant runoff would be the best system for limiting vote distortion while providing protection against extremist candidates. See chapter 10 (p. 149).
67. However, our experts on campaigns foresee circumstances when candidates having similar ideologies and being very closely matched in the polls would turn to bitter personal attacks to finish ahead of their rivals. See chapter 7 (pp. 107–8).
68. This argument is made by our federalists in chapter 4 (pp. 69–70) and by our social cleavage specialists in chapter 11 (pp. 156–57).
69. William Riker, *The Theory of Political Coalitions* (New Haven: Yale University Press, 1962).
70. See chapter 10 (pp. 155–56).
71. While our media experts thought that the instant runoff might help stimulate more substantive media coverage, they also were skeptical of such possibilities. See chapter 8 (pp. 115–16).
72. See chapter 9 (pp. 129–30).
73. See chapter 4 (pp. 65–66).
74. See chapter 7 (p. 105).
75. For a mixed assessment of whether the district plan would enhance voter turnout, see chapter 9 (pp. 131–33).
76. But such reductions might be fairly minimal as the votes' cast in safe districts within competitive states could still be decisive for the determination of electors at the state level. These matters are discussed in chapter 6 (pp. 97–98).
77. See chapter 11 (pp. 171–72).
78. See chapter 6 (p. 96).
79. See chapter 6 (pp. 95–96).
80. See chapter 2 (p. 16).
81. See chapter 4 (pp. 67–68).
82. See chapter 10 (p. 152).
83. For example, analyses could be conducted paralleling that of the effects of the district plan on voter turnout reported in Figure 9.1.
84. See Polsby and Wildavsky, *Presidential Elections*, p. 252, and Judith A. Best, *The Choice of the People?* (Lanham, Md.: Rowman and Littlefield, 1996), 45–49.
85. See chapter 10, note 12 for a list of states having restrictions on the freedom of electors.
86. Longley and Peirce, *Electoral College Primer*, 2000, 112–13.
87. Demetrios James Caraley, "Editor's Opinion: Why Americans Deserve a Constitutional Right to Vote for Presidential Electors," *Political Science Quarterly* 116: 1 (2001) 1–3.
88. Polsby and Wildavsky, *Presidential Elections*, 252.
89. The Democrats had majorities in 20 state delegations. Four delegations were evenly split, and the only Representative from Vermont (Bernie Sanders) in an independent with inclinations toward socialism.
90. See Judith Best, *The Case Against the Direct Election of the President* (Ithaca, N.Y.: Cornell University Press, 1971), 83–123.
91. If the Electoral College were maintained but the majority rule requirement were dropped, a contingency for breaking a tie in the College would still be required. However, this could be done by simply devising some alternative for calculating electoral vote totals, rather than by developing some completely different system as we now have. For example, the contingent calculation procedure could involve a proportional and fractional allocation of electors. This procedure is described below.
92. Best, *Case Against the Direct Election*, 88.
93. Arthur Lupia, "Evaluating Political Science Research," *PS: Political Science and Politics* 33 (March 2000), 7–18.