In Defense of the Electoral College

Five reasons to keep our despised method of choosing the president.

By Richard A. Posner

The Electoral College is widely regarded as an anachronism, a nondemocratic method of selecting a president that ought to be superseded by declaring the candidate who receives the most popular votes the winner. The advocates of this position are correct in arguing that the Electoral College method is not democratic in a modern sense. The Constitution provides that “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” And it is the electors who elect the president, not the people. When you vote for a presidential candidate you’re actually voting for a slate of electors.

But each party selects a slate of electors trusted to vote for the party’s nominee (and that trust is rarely betrayed). Because virtually all states award all their electoral votes to the winner of the popular vote in the state, and because the Electoral College weights the less populous states more heavily along the lines of the Senate (two Senators and two Electoral College votes for every state, and then more electoral votes added for each state based on population), it is entirely possible that the winner of the electoral vote will not win the national popular vote. Yet that has happened very rarely. It happened in 2000, when Gore had more popular votes than Bush yet fewer electoral votes, but that was the first time since 1888.

There are five reasons for retaining the Electoral College despite its lack of democratic pedigree; all are practical reasons, not liberal or conservative reasons.

1) Certainty of Outcome

A dispute over the outcome of an Electoral College vote is possible—it happened in 2000—but it’s less likely than a dispute over the popular vote. The reason is that the winning candidate’s share of the Electoral College invariably exceeds his share of the popular vote. In last week’s election, for example, Obama received 61.7 percent of the electoral vote compared to only 51.3 percent of the popular votes cast for him and Romney. (I ignore the scattering of votes not counted for either candidate.) Because almost all states award electoral votes on a winner-take-all basis, even a very slight plurality in a state creates a landslide electoral-vote victory in that state. A tie in the nationwide electoral vote is possible because the total number of votes—538—is an even number, but it is highly unlikely.*

Of course a tie in the number of popular votes in a national election in which tens of millions of votes are cast is even more unlikely. But if the difference in the popular vote is small, then if the winner of the popular vote were deemed the winner of the presidential election, candidates would have an incentive to seek a recount in any state (plus the District of Columbia) in which they thought the recount would give them more additional votes than their opponent. The lawyers would go to work in state after state to have the votes recounted, and the result would be debilitating uncertainty, delay, and conflict—look at the turmoil that a dispute limited to one state, Florida, engendered in 2000.*
Defending the Electoral College.

2) Everyone's President

The Electoral College requires a presidential candidate to have transregional appeal. No region (South, Northeast, etc.) has enough electoral votes to elect a president. So a solid regional favorite, such as Romney was in the South, has no incentive to campaign heavily in those states, for he gains no electoral votes by increasing his plurality in states that he knows he will win. This is a desirable result because a candidate with only regional appeal is unlikely to be a successful president. The residents of the other regions are likely to feel disfranchised—to feel that their votes do not count, that the new president will have no regard for their interests, that he really isn't their president.

3) Swing States

The winner-take-all method of awarding electoral votes induces the candidates—as we saw in last week's election—to focus their campaign efforts on the toss-up states; that follows directly from the candidates' lack of inducement to campaign in states they are sure to win. Voters in toss-up states are more likely to pay close attention to the campaign—to really listen to the competing candidates—knowing that they are going to decide the election. They are likely to be the most thoughtful voters, on average (and for the further reason that they will have received the most information and attention from the candidates), and the most thoughtful voters should be the ones to decide the election.

IN DEFENSE OF THE ELECTORAL COLLEGE

4) Big States

The Electoral College restores some of the weight in the political balance that large states (by population) lose by virtue of the mal-apportionment of the Senate decreed in the Constitution. This may seem paradoxical, given that electoral votes are weighted in favor of less populous states. Wyoming, the least populous state, contains only about one-sixth of 1 percent of the U.S. population, but its three electors (of whom two are awarded only because Wyoming has two senators like every other state) give it slightly more than one-half of 1 percent of total electoral votes. But winner-take-all makes a slight increase in the popular vote have a much bigger electoral-vote payoff in a large state than in a small one. The popular vote was very close in Florida; nevertheless Obama, who won that vote, got 29 electoral votes. A victory by the same margin in Wyoming would net the winner only 3 electoral votes. So, other things being equal, a large state gets more attention from presidential candidates in a campaign than a small states does. And since presidents and senators are often presidential candidates, large states are likely to get additional consideration in appropriations and appointments from presidents and senators before as well as during campaigns, offsetting to some extent the effects of the malapportioned Senate on the political influence of less populous states.

5) Avoid Run-Off Elections

The Electoral College avoids the problem of elections in which no candidate receives a majority of the votes cast. For example, Nixon in 1968 and Clinton in 1992 both had only a 43 percent plurality of the popular votes, while winning a majority in the Electoral College (301 and 370 electoral votes, respectively). There is pressure for run-off elections when no candidate wins a majority of the votes cast; that pressure, which would greatly complicate the presidential election process, is reduced by the Electoral College, which invariably produces a clear winner.

Against these reasons to retain the Electoral College the argument that it is undemocratic falls flat. No form of representative democracy, as distinct from direct democracy, is or aspires to be perfectly democratic. Certainly not our federal government. In the entire executive and judicial branches, only two officials are elected—the president and vice president. All the rest are appointed—federal Article III judges for life.

It can be argued that the Electoral College method of selecting the president may turn off potential voters for a candidate who has no hope of carrying their state—Democrats in Texas, for example, or Republicans in California. Knowing their vote will have no effect, they have less incentive to pay attention to the campaign than they would have if the president were picked by popular vote, for then the state of a voter’s residence would be irrelevant to the weight of his vote. But of course no voter's vote swings a national election, and in spite of that, about one-half the eligible American population did vote in last week's election. Voters in presidential elections are people who want to express a political preference rather than people who think that a single vote may decide an election. Even in one-sided states, there are plenty of votes in favor of the candidate who is sure not to carry the state. So I doubt that the Electoral College has much of a turn-off effect. And if it does, that is outweighed by the reasons for retaining this seemingly archaic institution.
Correction, Nov. 13, 2012. This piece incorrectly stated that a tie occurred in the Electoral College in 1824. (Return to the corrected sentence.) It also misstated the situation in which candidates would have an incentive to seek a recount if the winner were determined by the popular vote. (Return to the corrected sentence.) Thanks to Texas State Representative Scott Hochberg and Barnard professor Scott Minkoff for the corrections.