

CHAPTER 1

Bush, Gore, and the Issues of Electoral Reform

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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 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.