



THE WHITE HOUSE TRANSITION PROJECT  
1997-2021



Kinder Institute on  
Constitutional Democracy  
University of Missouri

*Smoothing the Peaceful Transfer of Democratic Power*

---

## REPORT 2021—11

# THE ELECTORAL COLLEGE WHAT WERE THE FOUNDERS THINKING?

George C. Edwards III, *Texas A&M University and University of Oxford*  
*The White House Transition Project*

## WHO WE ARE & WHAT WE DO

**THE WHITE HOUSE TRANSITION PROJECT.** Begun in 1998, the White House Transition Project provides information about individual offices for staff coming into the White House to help streamline the process of transition from one administration to the next. A nonpartisan, nonprofit group, the WHTP brings together political science scholars who study the presidency and White House operations to write analytical pieces on relevant topics about presidential transitions, presidential appointments, and crisis management. Since its creation, it has participated in the 2001, 2005, 2009, 2013, 2017, and now the 2021. WHTP coordinates with government agencies and other non-profit groups, e.g., the US National Archives or the Partnership for Public Service. It also consults with foreign governments and organizations interested in improving governmental transitions, worldwide. See the project at <http://whitehousetransitionproject.org>

The White House Transition Project produces a number of materials, including:

- **White House Office Essays:** Based on interviews with key personnel who have borne these unique responsibilities, including former White House Chiefs of Staff; Staff Secretaries; Counsels; Press Secretaries, etc. , WHTP produces briefing books for each of the critical White House offices. These briefs compile the best practices suggested by those who have carried out the duties of these office. With the permission of the interviewees, interviews are available on the National Archives website page dedicated to this project:
- **White House Organization Charts.** The charts cover administrations from Ronald Reagan to Barack Obama and help new White House staff understand what to expect when they arrive and how their offices changed over time or stayed the same.
- **Transition Essays.** These reports cover a number of topics suggested by White House staff, including analyses of the patterns of presidential appointments and the Senate confirmation process, White House and presidential working routine, and the patterns of presidential travel and crisis management. It also maintains ongoing reports on the patterns of interactions with reporters and the press in general as well as White House staffing.
- **International Component.** The WHTP consults with international governments and groups interested in transitions in their governments. In 2017 in conjunction with the Baker Institute, the WHTP hosted a conference with emerging Latin American leaders and in 2018 cosponsored a government transitions conference with the National Democratic Institute held in November 2018 in Montreal, Canada .

Earlier White House Transition Project funding has included grants from the Pew Charitable Trusts of Philadelphia, Pennsylvania and The Moody Foundation of Galveston, Texas.

**THE KINDER INSTITUTE ON CONSTITUTIONAL DEMOCRACY.** A central element of the University of Missouri's main campus in Columbia, Missouri, the Kinder Institute on Constitutional Democracy prepares students for lives of thoughtful and engaged citizenship by equipping them with knowledge of the ideas and events that have shaped our nation's history. See more information on the Institute at: <https://democracy.missouri.edu> .

© White House Transition Project 1997-2021

# TABLE OF CONTENTS

WHO WE ARE & WHAT WE DO	II
EXECUTIVE SUMMARY	5
INTRODUCTION	5
A PERPLEXING ISSUE	6
MOTIVATIONS FOR THE ELECTORAL COLLEGE	6
Table 1. Consideration of Presidential Selection in the Constitutional Convention	7
<i>Avoid Legislative Intrigue</i>	7
<i>Protect Presidential Independence</i>	8
<i>Overcome Voter Parochialism</i>	8
<i>Benefit from Intermediaries</i>	9
<i>Avert Presidential Power</i>	10
<i>Cope with Population Differences among States</i>	11
<i>Protect Slavery Interests</i>	13
SHORT-TERM POLITICS	13
<i>Fatigue and Impatience</i>	13
<i>The Washington Factor</i>	14
LACK OF A COHERENT DESIGN	14
CONTEMPORARY RELEVANCE OF THE FOUNDERS' INTENTIONS	15





## REPORT 2021—11

# THE ELECTORAL COLLEGE WHAT WERE THE FOUNDERS THINKING?

George C. Edwards III, *Texas A&M University and University of Oxford*  
*The White House Transition Project*

### EXECUTIVE SUMMARY

The Constitution's framers faced a perplexing problem in deciding how to select the American chief executive. They had a range of motivations in choosing the electoral college, including avoiding legislative intrigue, protecting presidential independence, overcoming voter parochialism, benefitting from intermediaries (electors), averting presidential power, coping with population differences among the states, and protecting slavery interests. Short-term politics such as the pressure to avoid further conflict in the Convention, fatigue and impatience, and the knowledge that George Washington would be the first president also played a role in their decision making. In the end, the electoral college was *not* the result of a coherent design based on clear political principles but, rather, a complex compromise that reflected the interests of different states and the search for consensus. More important, most of the founders' intentions are now irrelevant. Moreover, the electoral college does not operate as the framers expected. The public votes for electors, who are party agents and rarely exercise discretion. The House rarely chooses the president, and virtually no one would defend its doing so. Most significantly, the framers did not anticipate the unit rule, which is the greatest obstacle to the popular vote leader winning the election.

### INTRODUCTION

The Constitutional Convention, which met in Philadelphia from May 25 to September 17, 1787, was beset with massive tensions and rivalries as it sought to draft a new constitution.<sup>1</sup> With profound differences of opinion existing on such questions as the degree of centralized power for the new federal government, the type of special recognition to accord small states, the division of powers among the different branches of government, and the extent to which sectional interests would be protected, the

---

<sup>1</sup> This paper is based on George C. Edwards, *Why the Electoral College Is Bad for America* (New Haven, CT: Yale University Press, 2019).

delegates to the convention found themselves engaged in the most difficult of political negotiations in their attempts to achieve consensus—a task so demanding of their political astuteness as to cause John Dickinson of Delaware to cry out, “Experience must be our guide. Reason may mislead us.”<sup>2</sup>

During the summer of 1787, successive crises threatened to destroy the work of the convention as delegates fell to bitter quarreling over regional and large-state/small-state differences. The most profound and dangerous of these conflicts was between large-state and small-state plans for representation in the new congress: proponents of the Virginia Plan, which provided for congressional representation to be based on population, were locked in battle with supporters of the New Jersey Plan, which established equal congressional representation for each state. This deadlock was finally broken on July 16 through acceptance of the Connecticut Plan—the “Great Compromise”—which provided for one house of Congress to be based on population and the other on equality of states.

As the Constitutional Convention moved, in late August, to determine finally the means for selecting the president, there was little wish to see the conflicts and tensions that had plagued the preceding months of the convention renewed. When plans were advanced concerning the selection of the president that seemed likely to renew conflict, the delegates sought alternatives. On August 31, they commissioned a Committee of Eleven to study various possible methods for the election of the president and to work out a plan on which the delegates could agree.

## A PERPLEXING ISSUE

Arriving at the electoral college was no easy matter. As James Wilson declared near the end of the Constitutional Convention on September 4, “This subject ...is in truth the most difficult of all on which we have had to decide.”<sup>3</sup> Similarly, on December 11, he told the Pennsylvania state ratifying convention that the convention was “perplexed with no part of this plan so much as with the mode of choosing the President of the United States.”<sup>4</sup> How the delegates to the Constitutional Convention resolved the issue is a complex story. They deliberated on the method of selecting the president for twenty-two days throughout the convention and subjected the topic to thirty votes (Table 1).<sup>5</sup>

The delegates were obviously perplexed about how to select the president, and their confusion is reflected in their voting. On July 17, for example, the delegates voted for selection of the president by the national legislature. Two days later, they voted for selection by electors chosen by state legislatures. Five days after that, they again voted for selection by the national legislature, a position they rejected the next day and then adopted again the day after that. Then, just when it appeared that the delegates had reached a consensus, they turned the question over to a committee. This committee changed the convention’s course once more and recommended selection of the president by electors chosen by state legislatures, a position the delegates adopted.

## MOTIVATIONS FOR THE ELECTORAL COLLEGE

Because the electoral college is a peculiar method of selecting a public official, one never employed to select any other federal official, it is quite natural to seek to understand *why* the founders created this

<sup>2</sup> John Dickinson, quoted in John P. Roche, “The Founding Fathers: A Reform Caucus in Action,” *American Political Science Review* 55 (December 1961): 799. Roche describes the convention delegates as “first and foremost superb democratic politicians who *made* history and did it within the limits of consensus,” and the convention itself as “a *nationalist* reform caucus that had to operate with great delicacy and skill in a political cosmos full of enemies to achieve the one definitive goal—popular approbation.”

<sup>3</sup> Max Farrand, ed., *The Records of the Federal Convention of 1787*, rev. ed., 4 vols. (New Haven: Yale University Press, 1966), 2:501.

<sup>4</sup> Spoken in the Pennsylvania Convention, December 11, 1787, *ibid.*, 3:166.

<sup>5</sup> See Shlomo Slonim, “Designing the Electoral College,” in *Inventing the American Presidency*, ed. Thomas E. Cronin (Lawrence: University Press of Kansas, 1989), 33–60.

## *Smoothing the Peaceful Transfer of Democratic Power*

mechanism. The explanation is not as straightforward as one might expect, at least partly because the electoral college was the subject of little discussion during the ratification debates following the convention.<sup>6</sup> Indeed, the lack of attention to the electoral college led Alexander Hamilton to observe that “the mode of appointment of the chief magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure.”<sup>7</sup>

**Table 1. Consideration of Presidential Selection in the Constitutional Convention**

Date	Issue or Action
May 29	Virginia Plan includes selection by national legislature.
June 2	Delegates vote 2–7–1 (or 2–8) against electors. Delegates vote 8–2 for selection by national legislature.
June 8	Delegates vote 9–2 to reconsider selection by national legislature.
June 9	Delegates vote 0–10–1 (or 0–9–1) against selection by governors.
June 15	New Jersey Plan calls for selection by national legislature.
June 25	Delegates vote 9–2 for selection by state legislatures.
July 17	Delegates vote 1–9 against direct election of president. Delegates vote 10–0 for selection of president by national legislature.
July 19	Delegates vote 6–3–1 for selection of president by electors. Delegates vote 8–2 for selection of electors by state legislators.
July 23	Delegates vote 7–3 to reconsider selection by electors.
July 24	Delegates vote 7–4 for selection by national legislature.
July 25	Delegates vote 4–7 against selection by national legislature.
July 26	Delegates vote 7–3–0 for selection by national legislature.
August 6	Committee on Detail reports in favor of selection by national legislature.
August 24	Delegates reject 2–9 attempt to change from selection by national legislature to a popular vote. Delegates vote 4–4–2 on abstract question of selection by electors.
August 31	Delegates cannot decide on choosing the president; assign problem to new Committee of Eleven.
September 4	Committee of Eleven recommends selection by electors chosen by decision of state legislatures.
September 6	Delegates vote 9–2 for selection by electors. Delegates change venue of contingent election from Senate to House. Delegates vote 8–3 for one vote per state in House contingent elections.
September 7	Delegates approve electoral college plan for selecting president.

*Source:* Max Farrand, ed., *The Records of the Federal Convention of 1787*, rev. ed., vols. 1, 2 (New Haven: Yale University Press, 1966).

What considerations drove the framers to create the electoral college? Are these concerns still relevant? If they are, is the electoral college necessary to realize them?

### *AVOID LEGISLATIVE INTRIGUE*

Perhaps the most prominent criterion the delegates applied to evaluating schemes for selecting the president was a desire to limit the potential for cabal, intrigue, faction, and corruption in the selection of the chief executive. Although the Constitutional Convention tentatively approved legislative election of the president on four occasions during the summer, there was strong opposition to this plan on the

<sup>6</sup> See, e.g., Pauline Maier, *Ratification: The People Debate the Constitution, 1787–1788* (New York: Simon and Schuster, 2010).

<sup>7</sup> *Federalist Papers*, No. 68.

grounds that cabals were more easily organized in the national legislature.<sup>8</sup> Eventually, the framers insisted that the electors vote in their own states, further limiting the potential for cabals.<sup>9</sup> According to Alexander Hamilton in *Federalist* 68, no corruption could be possible because of the “transient existence” and “detached situation” of the electors.

### PROTECT PRESIDENTIAL INDEPENDENCE

The delegates originally favored Congress selecting the president, and some even wanted the president to be an agent of the legislature.<sup>10</sup> Nevertheless, many delegates worried that a president selected by the legislature would be too dependent on it to exercise independent judgment.<sup>11</sup> (Hamilton feared the reverse—that the president would corrupt the legislature to stay in office.)<sup>12</sup> In the end, the framers were committed to the separation of powers and could not reconcile this principle with legislative selection of the president.

### OVERCOME VOTER PAROCHIALISM

The most obvious alternative to selection of the president by the new Congress was election by the nation’s citizens. This option faced stern opposition, however.<sup>13</sup> Many delegates held important concerns about a direct election, especially that voters would not be able to make a reasoned and informed choice. They worried that the large distances and lack of communication within the new country made it likely that the typical citizen would not know the leading characters of the country well enough<sup>14</sup> and thus would support only candidates from their states<sup>15</sup> or be misled by a few designing men.<sup>16</sup> If the people voted only for candidates from their states, the big states would have a decided advantage.

Not everyone agreed with this view of voter incapacity and parochialism. Direct election by the people had strong support from some of the leaders at the convention, including James Madison of Virginia and Gouverneur Morris and James Wilson, both of Pennsylvania.<sup>17</sup> John Dickinson, Rufus King, Daniel Carroll, and Abraham Baldwin also supported popular election.<sup>18</sup> Still other delegates argued that the people would know the leading candidates well enough<sup>19</sup> and that the people could not be misled easily by a few men in a large country.<sup>20</sup>

Equally important, the framers did not avoid direct election of the president out of fear of the democratic mob. Historian Shlomo Slonim argues that “only a few delegates—most notably Mason, Gerry, and Butler—were opposed in principle to direct election of the executive.... Anti-majoritarianism was by no means the primary motivation behind the creation of the electoral college.”<sup>21</sup> Lucius Wilmerding Jr.,

<sup>8</sup> Farrand, *Records of the Federal Convention*, 1:80, 91, 2:29–30, 109–111, 500–01, 511.

<sup>9</sup> See, e.g., *ibid.*, 2:500.

<sup>10</sup> See Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (New York: Random House, 2010), 135, 136, 231.

<sup>11</sup> Farrand, *Records of the Federal Convention*, 2:30–32, 103–104, 403–404, 500, 522–5; Richard C. Welty, “Who Really Elects Our Presidents?,” *Midwest Quarterly* 2 (Autumn 1960): 23.

<sup>12</sup> Farrand, *Records of the Federal Convention*, 2:525.

<sup>13</sup> Beeman, *Plain, Honest Men*, 135–136, 232.

<sup>14</sup> Farrand, *Records of the Federal Convention*, 2:29, 31–2, 57, 114, 501, 511.

<sup>15</sup> *Ibid.*, 2:111, 511. This first assessment of the probable consequences of a direct vote for the president seems reasonably accurate for this historical period. What was not anticipated, of course, was the later development of political parties able to popularize national contenders, inform the nation’s electorate about them, and actively engage in aggregating support for candidates across state lines.

<sup>16</sup> Farrand, *Records of the Federal Convention*, 2:30, 57, 114.

<sup>17</sup> See, e.g., *ibid.*, 1:68–9, 2:29–31, 56–7, 109, 111, 114–5.

<sup>18</sup> Michael J. Glennon, *When No Majority Rules: The Electoral College and Presidential Succession* (Washington, DC: Congressional Quarterly, 1992), 7.

<sup>19</sup> Farrand, *Records of the Federal Convention*, 2:29, 31, 501.

<sup>20</sup> *Ibid.*, 2:30.

<sup>21</sup> Slonim, “Designing the Electoral College,” 55. Oliver Ellsworth, Luther Martin, and Roger Sherman also opposed popular election of the president.



## *Smoothing the Peaceful Transfer of Democratic Power*

---

citing a number of statements by the framers when they were explaining and defending the Constitution after the convention, also argued that their intent was for presidential selection to be based on the wishes of the citizenry. “It is clear,” he wrote, “that the framers wanted and expected the popular principle to operate in the election of the President.”<sup>22</sup>

There is some support for this argument. When Wilson could not convince the delegates to support direct election in June, he proposed that the voters choose electors in districts within the states, and that the electors would then select the president. This, he felt, was the next best thing to direct election.<sup>23</sup> In September, the delegates were still considering congressional election of the president. After John Dickinson criticized the idea, James Madison sat down and sketched out the idea of an electoral college.<sup>24</sup>

Madison was foremost in claiming the essentially democratic character of the election procedure. The president, he told the Virginia ratifying convention, “will be the choice of the people at large.” It was only because of the difficulties of direct vote in as large a land as America, he indicated, that the indirect system was proposed, but the people would choose the electors.<sup>25</sup> In *Federalist 39*, Madison declared: “The president is indirectly derived from the choice of the people.” Wilson told his fellow Pennsylvanians: “The choice of this officer is brought as nearly home to the people as practicable. With the approbation of the state legislatures, the people may elect with only one remove.”<sup>26</sup> And Hamilton wrote in *Federalist 68* that the president should be dependent on his continuation in office on none “but the people themselves.”

### *BENEFIT FROM INTERMEDIARIES*

---

Yet there was a contradiction in the way Madison, Hamilton, and others explained the electoral college system. Although they suggested that the president would be a man of the people and spring almost directly from them, they also suggested either that electors would make independent decisions regarding presidential selection or that the real power would lie in the hands of the state legislatures.

Unfortunately, there seems to have been no debate in the Constitutional Convention on what role electors should play or how state legislatures should select electors. Nevertheless, it appears that most delegates supported the electoral college because they believed that the electors would exercise discretion in selecting the president. Hamilton made the case for the electoral college in *Federalist 68*, where he argued that the mode of selecting the president was at the very least “excellent.” A primary reason was that although the people had a role in choosing the president, they would exercise influence only indirectly through a body of “men” chosen for this purpose. These men would “possess the information and discernment” for such an important decision and would be those “most capable of analyzing the qualities” required in a chief executive.

Meeting in the various states, there would be less potential for mischief and less exposure to “heats and ferments”—in other words, *pressure*—from the people, than if they convened together. The electors would provide protection against “tumult and disorder” by serving as a buffer between the many (the people) and the one (the president). Dispersion would also reduce the potential for “cabal, intrigue, and corruption,” including that by foreign powers. Because electors formed a temporary group, it would be more difficult to tamper with them beforehand. In addition, the Constitution excludes government officials, who might be too close to a sitting president, from service as electors. All of these provisions were designed to make the electors “free from any sinister bias.”

Hamilton ended his defense of the electoral college and electors’ discretion with a sweeping prediction of its primary consequence: “The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite

---

<sup>22</sup> Lucius Wilmerding Jr., *The Electoral College* (New Brunswick, NJ: Rutgers University Press, 1958), 21.

<sup>23</sup> Beeman, *Plain, Honest Men*, 135, 232.

<sup>24</sup> John Dickinson to George Logan, January 16, 1802, in James H. Hutson, *Supplement to Max Farrand’s The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1987), 300–301.

<sup>25</sup> Jonathan Elliott, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 2nd ed., 5 vols. (Salem, NH: Ayer, 1987), 3:487, 494.

<sup>26</sup> *Ibid.*, 2:512.

qualifications.... It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters preeminent for ability and virtue.”

John Jay, in *Federalist 64*, echoed Hamilton’s views: “As the select assemblies for choosing the President ...will in general be composed of the most enlightened and respectable citizens, there is reason to presume that their attention and their votes will be directed to those men only who have become the most distinguished by their abilities and virtue.” Hamilton and Jay were great men, but history has not been kind to their prophecies.

Although Wilmerding has asserted that the electoral college was equivalent to election by people and that electors were not meant to exercise discretion, there is a great deal of additional evidence that the founders intended the electors to make independent decisions in selecting the president.<sup>27</sup> For example, Constitutional Convention delegate Rufus King observed in 1816 that electors had become rubber stamps, contrary to what the framers had contemplated. A Senate committee report in 1826 concluded that electors had not met their obligations of acting independently as “they were intended to.”<sup>28</sup> In his famous *Commentaries on the Constitution* in 1833, Joseph Story reported that the framers intended that electors “would be most likely to possess the information, and discernment, and independence, essential for the proper discharge of the duty.”<sup>29</sup>

The Supreme Court has also weighed in on the question of the framers’ intentions regarding the role of electors. In *McPherson v. Blacker* (1892), the Court said that the framers expected that electors would exercise discretion in their selection of the president.<sup>30</sup> Justice Robert Jackson, in *Ray v. Blair* (1952), wrote that the original electoral college plan was for electors to be free agents and exercise independent judgment in the selection of the president.<sup>31</sup> In *Williams v. Rhodes* (1968), Justice John Harlan wrote that the motivation behind the electoral college was to permit the most knowledgeable people to choose the chief executive because the founders were concerned that citizens would not be informed enough to make the choice themselves.<sup>32</sup>

Some delegates felt that the state legislatures actually would select the president, because they could choose the electors. Madison wrote in *Federalist 45*, “Without the intervention of the state legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will perhaps in most cases of themselves determine it.” Another future president, James Monroe, opposed ratification of the Constitution, telling the Virginia ratifying convention: “I believe that he [the president] will owe his election, in fact, to the state governments, and not the people at large.”<sup>33</sup>

Thus the founders never provided a clear definition of the role of the popular will in the selection of the president, and the best evidence is that the Constitution’s framers expected intermediaries, principally electors, but also state legislatures, to play a critical role in selecting the president.

### AVERT PRESIDENTIAL POWER

Another undertone at the convention among some of the delegates was a fear of executive power. Although the framers sought to make the president independent from the legislature, they were also concerned with balanced government. The overall effort to create a system of separation of powers and checks and balances was motivated by a fear of concentrated power. Leaders of a revolution against a king were not going to create another in the guise of the president. Electing the chief executive of a nation was unknown at the time, so they had little experience to guide them. As a result, some, and perhaps many,

<sup>27</sup> Wilmerding, *Electoral College*, 171, 174.

<sup>28</sup> Glennon, *When No Majority Rules*, 8, 13.

<sup>29</sup> Joseph Story, *Commentaries on the Constitution of the United States* (Durham, NC: Carolina Academic Press, 1987), 531.

<sup>30</sup> 146 U.S. 1 (1892).

<sup>31</sup> 343 U.S. 214 (1952) at 232.

<sup>32</sup> 393 U.S. 23 (1968) at 43–44.

<sup>33</sup> Elliott, *Debates in the Several State Conventions*, 3:486, 488.

delegates feared that direct election of the president would consolidate too much power and influence in one person.<sup>34</sup>

#### *COPE WITH POPULATION DIFFERENCES AMONG STATES*

---

The states' different sizes posed an especially difficult problem for the framers. Some delegates feared that voters in states with larger populations would overwhelm voters in smaller states and by themselves determine the outcome of the election if the president was selected by direct election.<sup>35</sup> Some also feared the power of organized groups like the Society of the Cincinnati.<sup>36</sup>

On September 4, the Committee of Eleven reported to the convention the details of its intermediate elector plan, which carried over the Connecticut Compromise giving each state two U.S. senators regardless of population into the presidential election and gave the small states some relative advantage because of the two extra electoral votes each received. According to Madison, the ratio of population of the largest state, Virginia, to the smallest in population, Delaware, was about ten to one. With the electoral college vote distribution, the ratio would be only four to one.<sup>37</sup>

One of the most common statements about the creation of the electoral college is that the apportionment of electors was the result of a compromise between large and small states. The founders did not conceive the electoral college to be a bulwark of small states' rights, however. If anything, they saw it as favoring large states—or at least the principle of population.<sup>38</sup> For example, the small states helped defeat a proposal to elect the president by a joint ballot in Congress that would have given the small states the same relative power they achieved in the electoral college.<sup>39</sup>

The delegates did *not* consider the extra electoral votes for small states significant. The apportionment of votes in the electoral college did reflect the Connecticut Compromise about congressional representation. However, this feature of the electoral college was due more to expediency than philosophy. At no time after the Committee of Eleven reported was any mention made on the convention floor of the supposed advantage to small states of the senatorial “counterpart” votes. Nor was this apparent concession mentioned in the subsequent ratifying conventions.

What the delegates *did* consider a major concession to the small states was the provision of the presidential selection plan that stipulated that in the event there was no majority in the electoral college, the Senate, where each state would have equal voting power, would choose the president. Although the convention subsequently voted to shift the responsibility for contingent elections to the House of Representatives, it preserved the provision for equality of state voting power.<sup>40</sup>

The key to acceptance of this two-stage plan for presidential selection lay in the different character of electoral college and contingent House voting. The electoral college reflected, in a rough way, the population of states. When the contingent House procedure went into effect—as the delegates expected it most often would—the voting would be one vote per state delegation, thus representing equally weighed individual states regardless of population. This mechanism was a compromise between the principle of population and that of equal state interest.<sup>41</sup>

---

<sup>34</sup> Charles A. O'Neil, *The American Electoral System* (New York: Putnam, 1887), 3–4; J. Hampden Dougherty, *The Electoral System of the United States* (New York: Putnam, 1906), 1.

<sup>35</sup> See, e.g., Farrand, *Records of the Federal Convention*, 2:30, 111, 403, 527.

<sup>36</sup> *Ibid.*, 2:119. The Society of the Cincinnati was founded in 1783 to preserve the ideals and fellowship of Revolutionary War officers and to pressure the government to honor pledges made to them.

<sup>37</sup> See *ibid.*, 2:403.

<sup>38</sup> John P. Feerick, “Electoral College: Why It Was Created,” *American Bar Association Journal* 54 (March 1968): 254. See also William Josephson and Beverly J. Ross, “Repairing the Electoral College,” *Journal of Legislation* 22, no. 9 (1996): 145–193.

<sup>39</sup> Farrand, *Records of the Federal Convention*, 2:404.

<sup>40</sup> The change in the contingent procedure from the Senate to the House resulted from fears that the Senate, which had already been given treaty ratification powers and confirmation responsibilities, was accumulating too much authority in comparison with the House of Representatives. See, e.g., *ibid.*, 2:501–502, 511–513, 522–526.

<sup>41</sup> As Madison later put it, voting by states in the House was “an accommodation to the anxiety of the smaller States for their sovereign equality, and to the jealousy of the larger towards the cumulative functions of the Senate.” Madison to George Hay, August 23, 1823, *ibid.*, 3:458. See also similar comments by Rufus King and Roger Sherman, *ibid.*, 2:512–514.

The small states also expected to benefit from the provision that the Senate (or later the House), when called on to choose the president, would be required to choose from among the *five* persons who received the largest number of electoral votes. There was a good chance that one or more of the five candidates would be from small states. Similarly, the requirement that electors vote for two candidates, one of whom must be from a different state than the elector, increased the probability of a candidate from a small state being included in the pool of five.

The framers expected that the electors would, in effect, nominate a number of prominent individuals. The delegates believed that many of the presidential electors would vote for men from their own state and region and that diverse state and regional interests would usually prevent any one man from receiving a majority of electoral votes. At times, a George Washington might be the unanimous electoral choice, but, as George Mason of Virginia argued in Philadelphia, nineteen times out of twenty, the electoral college itself would not make the final choice of president. Instead, the House of Representatives, voting by states with one vote per state, would select the president from the top contenders.<sup>42</sup> In *Federalist 66*, Hamilton argues approvingly that it “cannot be doubted” that the House of Representatives “will sometimes, if not frequently” select the president, choosing from “among the most illustrious citizens of the Union.”

This conception of the electoral arrangements envisioned a mechanism for the selection of the president somewhat similar to today’s national nominating conventions and general election procedure, except in this view the electoral college would serve the nominating function and the House the electing function. This assumption about how the electoral college would work in practice—an assumption that was not to be borne out by events—was implicit in the agreement on the electoral college system.<sup>43</sup> As James Madison later described the electoral college, it was “the result of compromise between the larger and smaller states, giving to the latter the advantage of selecting a President from the candidates, in consideration of the former in selecting the candidates from the people.”<sup>44</sup>

At the same time, Madison recognized the challenge House election presented to democratic principles. On September 7, the last day the delegates considered selection of the president, he complained to the convention that House election “was liable to a further weighty objection that the representatives of a *Minority* of the people, might reverse the choice of a *majority* of the *States* and of the *people*” and asked for some cure for this problem.<sup>45</sup>

Later, opposition to the electoral college arose in the Virginia ratifying convention, where it was pointed out that if the election were thrown into the House, the majority could consist of fifteen representatives constituting a majority of the delegations of seven states—outvoting fifty other representatives from the other six states. George Mason contended that the elector system “was a mere deception—a mere *ignis fatuus* on the American people—and thrown out to make them believe they were to choose” the president. “They will, in reality, have no hand in the election,” Mason said.<sup>46</sup>

It is important to understand that the founders did not expect the states to remain with such unequal populations. Madison, for example, felt that the problem of different percentages of qualified voters in northern and southern states would decrease under the “Republican laws” in the southern states and the more rapid increase in their population.<sup>47</sup> They did not foresee the combination of a large number of new states and the low populations of many of those states. Research by the political scientist Bartholomew Sparrow shows that the Louisiana Purchase and its promotion of yet further continental expansion soon altered the framers’ expectations.<sup>48</sup>

<sup>42</sup> Roche, “Founding Fathers,” 811. See also Farrand, *Records of the Federal Convention*, 2:29–30, 500–501, 511–512, 525.

<sup>43</sup> Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Vintage, 1997), 266. See also Beeman, *Plain, Honest Men*, 301–304.

<sup>44</sup> Quoted in Elliott, *Debates in the Several State Conventions*, 2:495, 464. See also Feerick, “Electoral College,” 254; and Farrand, *Records of the Federal Convention*, 2:512–514.

<sup>45</sup> Farrand, *Records of the Federal Convention*, 2:536; see also 514 for another concern about minority election.

<sup>46</sup> Elliott, *Debates in the Several State Conventions*, 3:492–493.

<sup>47</sup> Farrand, *Records of the Federal Convention*, 2:111; Madison to Hay, August 23, 1823.

<sup>48</sup> Bartholomew H. Sparrow and Sanford Levinson, “Introduction,” in *The Louisiana Purchase and American Expansion, 1803–1898*, ed. Bartholomew H. Sparrow and Sanford Levinson (Lanham, MD: Rowman and Littlefield 2005), 13–14.

### PROTECT SLAVERY INTERESTS

Madison felt that the “great division of interests in the U.S.... did not lie between the large & small States: it lay between the Northern & Southern.” The critical interest dividing the North and South, of course, was slavery: “States were divided into different interests not by their difference in size, but by other circumstances; the most material of which resulted partly from climate, but principally from [the effects of] their having or not having slaves.”<sup>49</sup>

An earlier compromise allowed states to count three-fifths of the slaves living within them in calculating the basis for their representation in the House of Representatives. However, the slave population would not count with direct election of the president by the people because slaves could not vote. Thus some delegates were concerned that direct election of the president would cause a reduction in the relative influence of the South because of its large nonvoting slave population. Hugh Williamson of North Carolina bluntly noted that the South could not support popular election because the people would “vote for some man in their own State, and the largest State will be sure to succeed. This will not be Virg[ini]a. However. Her slaves will have no suffrage.”<sup>50</sup>

As Madison put it, “The people at large was in his opinion the fittest” for choosing the president, but “there was one difficulty, however, of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes. The Substitution of electors obviated this difficulty.”<sup>51</sup>

The electoral college, then, protected the interests of slaveholders in two ways. First, a state received electoral votes based in part on the number of slaves within it, although the slaves, of course, had no role in the selection of electors. The three-fifths compromise directly influenced the election of the president in 1800. In addition, the expected final selection of the president by the House, with each state receiving one vote, provided the ultimate protection for slaveholders.<sup>52</sup>

## **SHORT-TERM POLITICS**

The Constitutional Convention of 1787 thus created out of disagreement a system with broad, if somewhat artificial, support. “What really moved the delegates to accept the electoral system, with little enthusiasm and no unanimity of conviction, were certain practical considerations, dictated not by political ideals but by the social realities of the time—realities that no longer exist.”<sup>53</sup> Among these realities were (1) the pressure on the delegates at the Constitutional Convention to avoid additional conflict, (2) the delegates’ fatigue and impatience to leave Philadelphia, and (3) their lack of immediate concern about the operation of the electoral college.

### FATIGUE AND IMPATIENCE

By the time the delegates made their decision regarding the selection of the president, they had been cloistered together in secrecy for nine weeks during a steaming Pennsylvania summer. They were hot, tired, and eager to leave Philadelphia. Madison recalled that as the decision on the electoral college “took place in the latter stage of the Session, it was not exempt from a degree of the hurrying influence produced by

---

<sup>49</sup> Farrand, *Records of the Federal Convention*, 1:486. For an analysis of the context and consequences of this argument by Madison in the Great Compromise, see Rosemarie Zagari, *The Politics of Size: Representation in the United States, 1776–1850* (Ithaca, NY: Cornell University Press, 1987), 78–81.

<sup>50</sup> See, e.g., Farrand, *Records of the Federal Convention*, 2:32.

<sup>51</sup> *Ibid.*, 2:56–57; see also 111.

<sup>52</sup> For more on slavery and the electoral college, see Paul Finkelman, “The Proslavery Origins of the Electoral College,” *Cardozo Law Review* 23 (March 2002): 1145–1157.

<sup>53</sup> William T. Gossett, “Electing the President: New Hope for an Old Ideal,” *American Bar Association Journal* 53 (December 1967): 1103.

fatigue and impatience in all such bodies.”<sup>54</sup> As James McHenry put it in his notes on the debates of September 5, “The greatest part of the day spent in desultory conversation on that part of the report respecting the mode of chusing[sic] the President—adjourned without coming to a conclusion.”<sup>55</sup>

### THE WASHINGTON FACTOR

---

As practical men, the delegates sought to put off until a future time what could be postponed and reconsidered later. Thus another reason why the electoral college plan quickly gained support was the belief of most delegates that any problems that might arise in this method of electing the president would not be immediate: Everyone knew that George Washington was going to be chosen president no matter what the electoral system. As the eminent journalist Felix Morley suggested, “without this assured initial unanimity, it is probable that the electoral system would have been more closely scrutinized, with better anticipation of the troubles that lay ahead.”<sup>56</sup>

## LACK OF A COHERENT DESIGN

The electoral college was *not* the result of a coherent design based on clear political principles but, rather, a complex compromise that reflected the interests of different states and the search for consensus. There was certainly no theory articulated to justify political inequality. Although there was concern about protecting interests within states, especially slavery, the framers were not concerned with designing a system that protected states as states. As Madison forthrightly declared, “The President is to act for the *people* not for *States*.”<sup>57</sup> No one rose to disagree. Moreover, the framers wanted to design a strong national government and quickly and overwhelmingly rejected proposals for state governors to select the president.<sup>58</sup> As political theorist Martin Diamond put it, “The Electoral College ...in its genesis and inspiration was not an anti-democratic but an anti-states-rights device, a way of keeping the election from the state politicians and giving it to the people.”<sup>59</sup>

As early as June 2, James Wilson had suggested, as a possible compromise, an *intermediate election* plan involving an electoral college, and during the summer this alternative developed as “the second choice of many delegates though it was the first choice of few.”<sup>60</sup> When the Committee of Eleven met in the first few days of September, it turned to this compromise in order to avoid further deadlock and conflict.

Gouverneur Morris, who served on the committee, cited six grounds for the proposal. They were all essentially negative, centering on the dangers of legislative election. The only real advantage Morris could cite for the electoral college was that “the great evil of cabal” could be avoided since the electors would vote at the same time throughout the United States and at a great distance from each other.<sup>61</sup> The framers could not agree on—much less articulate—a view of the appropriate role of the people in selecting the president.

Ultimately, the electoral college was the end result of a process of elimination. As the distinguished historian Jack Rakove put it, “The Electoral College was cobbled together nearly at the last minute and adopted not because the framers believed it would work, but because it was less objectionable than two

---

<sup>54</sup> Madison to Hay, August 23, 1823.

<sup>55</sup> Farrand, *Records of the Federal Convention*, 2:516.

<sup>56</sup> Felix Morley, “Democracy and the Electoral College,” *Modern Age* 5 (Fall 1961): 377.

<sup>57</sup> Farrand, *Records of the Federal Convention*, 2:403.

<sup>58</sup> *Ibid.*, 1:149, 156, 174–175, 2:57, 109.

<sup>59</sup> Martin Diamond, *The Electoral College and the American Idea of Democracy* (Washington, DC: American Enterprise Institute, 1977), 4.

<sup>60</sup> Neal R. Peirce and Lawrence D. Longley, *The People’s President: The Electoral College in American History and the Direct-Vote Alternative*, rev. ed. (New Haven: Yale University Press, 1981), 22.

<sup>61</sup> Farrand, *Records of the Federal Convention*, 2:500.



## *Smoothing the Peaceful Transfer of Democratic Power*

more obvious alternatives: election of the president by the people or by Congress.... It had no positive advantages of its own.”<sup>62</sup>

The most basic reason that the founders invented the electoral college was that the convention was deadlocked on simpler schemes like direct election and choice by Congress, and thus invented a system that could be “sold” in the immediate context of 1787. The chief virtue of the electoral college was that it replicated other compromises the Constitutional Convention had already made: large states were allocated the most electors; the South was allowed to count three-fifths of the slaves toward its electors; and small states received a disproportionate number of electors (replicating the Senate). What did not replicate the rest of the Constitution was the decision on September 6 to accord the smaller states greatly disproportionate power when the House selected the president. In addition, states’ rights advocates won the right for the state legislatures to choose electors as they saw fit, and proponents of legislative supremacy were perhaps assuaged with the electors as intermediary between the people and the president.

One distinguished commentator on this period, John Roche, put it pointedly: the electoral college “was merely a jerry-rigged improvisation which has subsequently been endowed with a high theoretical content.” “The future,” Roche wrote, “was left to cope with the problem of what to do with this Rube Goldberg mechanism.”<sup>63</sup> Robert A. Dahl, America’s leading student of democracy, seemed to have it right when he concluded that the deliberations on selecting the president in the Constitutional Convention suggest a “group of baffled and confused men who finally settle on a solution more out of desperation than confidence.”<sup>64</sup>

## CONTEMPORARY RELEVANCE OF THE FOUNDERS’ INTENTIONS

Has the electoral college functioned as the framers anticipated? Can their intentions justify the violation of majority rule in the twenty-first century? Most of the motivations behind the creation of the electoral college are simply irrelevant today and can be easily dismissed. Legislative election is not an option, there is little danger that the president will be too powerful if directly elected, voters have extraordinary access to information on the candidates, defending the interests of slavery is unthinkable, and the short term pressures have long dissipated.

In addition, the electoral college does not work at all as the framers expected. Many thought that state legislatures would select electors. With the democratization of the franchise, however, state legislatures soon permitted the public to vote in presidential election—and no one would suggest changing this policy. Indeed, the broad thrust of constitutional revision over the past two centuries has been in the direction of democratization and majority rule. The Fifteenth Amendment (1870) prohibited discrimination on the basis of race in determining voter eligibility. The Nineteenth Amendment (1920) ensured women the right to vote. The Twenty-Third Amendment (1961) accorded the residents of Washington, DC, the right to vote in presidential elections. Three years later, the Twenty-Fourth Amendment prohibited poll taxes (which discriminated against the poor). Finally, the Twenty-Sixth Amendment (1971) lowered the voter eligibility age to eighteen.

The framers also expected that the House of Representatives would often select the president. That has not happened in nearly two centuries. Moreover, it is virtually impossible to find anyone who will defend the selection of the president by the House, with each state having one vote. It is the most egregious violation of democratic principles in American government.

Similarly, those delegates who wanted electors to exercise independent judgment would soon be disappointed. Political parties developed and electors became their agents. There is no support—and no justification—today for faithless electors, and many states have passed laws to prevent them from exercising discretion.

---

<sup>62</sup> Jack Rakove, “The Accidental Electors,” *New York Times*, December 19, 2000.

<sup>63</sup> Roche, “Founding Fathers,” 811.

<sup>64</sup> Robert A. Dahl, *How Democratic Is the Constitution?* (New Haven: Yale University Press, 2001), 66.

Once electors became agents of political parties, the dominate party in almost every state passed a law instituting unit voting in which the state awarded *all* of its electoral votes to the candidate who wins a plurality of the vote in the state. It is this rule that poses the greatest threat to accurately translating popular votes into electoral votes and thus allows the popular vote winner to lose the election.<sup>65</sup> Such a rule is not what the framers had in mind. The electoral college violates what Madison termed, “the vital principle of republican government ...the will of the majority”<sup>66</sup>

George C. Edwards III is University Distinguished Professor of Political Science and Jordan Chair in Presidential Studies Emeritus at Texas A&M University, Distinguished Fellow at the University of Oxford, and editor of *Presidential Studies Quarterly*

---

<sup>65</sup> See Edwards, *Why the Electoral College Is Bad for America*, chap. 3.

<sup>66</sup> Quoted in Marvin Meyers, ed., *The Mind of the Founder: Sources of the Political Thought of James Madison*, rev. ed. (Hanover, NH: Brandeis University Press, 1981), 416.