

A Bad Idea Whose Time Has Come: Direct election of the President If ...

By IRVING KRISTOL and PAUL WEAVER

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**Direct election of the President,
argue two social scientists, is**

A Bad Idea Whose Time Has Come

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IT now seems very likely that, before too many years have passed, this nation will be electing its President in a new way. The House of Representatives has recently approved, by the overwhelming margin of 339 to 70 votes, a constitutional amendment that would abolish the Electoral College and replace it with a system of direct election by the people as a whole. Endorsed by President Nixon and former President Johnson, by the American Bar Association, by most of the mass media, and supported (according to the polls) by roughly four-fifths of the American people, the amendment seems to have an excellent chance of getting Senate approval—if not immediately, then eventually—and a better than even chance of ratification by the necessary three-quarters of the State Legislatures. Direct election of the President looks very much like one of those ideas whose time has come.

It is also one of those ideas which, if realized, is bound to have far-reaching implications for the nature of the American democracy. One cannot casually tinker with the political origins of the nation's most important governmental institution without also affecting its powers, its ideological complexion, and the quality of its leadership. Under these circumstances, one would expect the American people to be engaged in a lively discussion of the pros and cons—the potential costs and benefits—of the direct-election amendment. But such discussion is close to nonexistent. Despite the fact that constitutional reform is the chanciest kind of political surgery, this nation, on this occasion, seems willing to operate upon its Constitution without much fear

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or trembling. In a way, this dogmatic self-confidence is itself the most interesting, the most revealing, and the most frightening aspect of the entire episode.

To be sure, one reason for this lack of anxiety is the fact that many Americans are under the impression that the people as a whole already elect the President and that the purpose of the amendment is merely to sanction traditional—if nonconstitutional—practice. This impression is understandable, since under present arrangements things usually work out as if the people did elect their President. Yet the process by which this is worked out is itself of no little significance, even though popular opinion pays it so little heed.

For the fact is that, interposed between the people and the Presidency, there does exist—has always existed—a peculiar institution called the Electoral College, which is made up of representatives from each of the states, one elector for each Senator and Congressman. It is for state electors, not the Presidential candidates themselves, that the people vote on Election Day.* About six weeks after the election, the electors convene at their respective State Capitols and cast their votes for President. Whoever receives a majority of the electors' votes is President. If there is no majority, the task of selecting the President devolves upon the House of Representatives with each state delegation casting

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*There is no such thing as an official "total popular vote" for the various Presidential candidates; there are only state-by-state totals for different slates of electors. Thus, when the Library of Congress supplied the House Judiciary Committee this year with the total popular vote in recent Presidential elections, the source of these statistics was not any official agency of government, but—The New York Times.

THE BIG UPLIFT—So we drop the Electoral College, what do we have?



Drawing by John Huehnergarth.

Direct election of the President

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one vote and with an absolute majority (26 today) required for election.

Now, this Electoral-College system has never had a particularly firm hold on the loyalty and respect of the American people. Since 1824, when Senator Thomas Hart Benton led the first concerted movement for its abolition, more than 500 constitutional amendments have been introduced in Congress to alter or eliminate it. Today it is widely denounced as a standing invitation to trouble and crisis; it is ridiculed as a creaky anachronism, a dusty relic of the "powdered wig and snuff-box era." Critics point out that even the Founding Fathers, who thought it up in the first place and wrote it into the Constitution, were ambivalent about it. The Constitutional Convention had a very difficult time making up its mind as to how the President would be chosen, and the device of the Electoral-College system was a compromise which few delegates found fully satisfying.

THERE are two major objections that have been raised against the Electoral College. The first is practical in its basis and technical in its focus. It accepts the fact that, since ratification, the Electoral College has evolved from an assembly of independent electors, free to vote as they pleased, into a more or less automatic mechanism for reg-

istering the popular vote for the Presidential candidates of the two major parties. It holds simply that the Electoral College is an imperfect and unreliable way of tallying the popular vote.

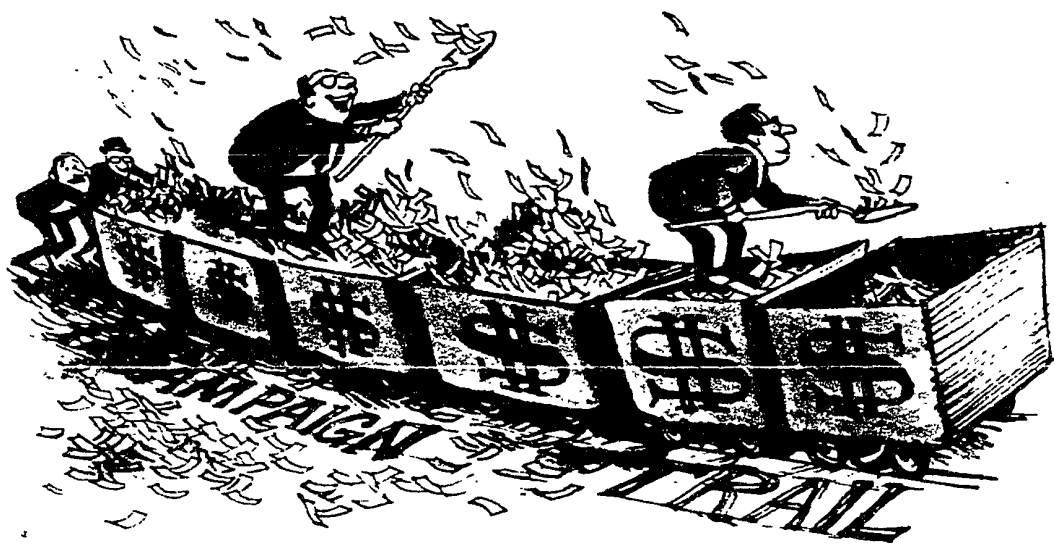
To begin with, it can happen that the candidate with the largest popular vote will fail to be elected President by the Electoral College. This has actually happened at least twice in our history—once in 1876, when Rutherford B. Hayes was elected although his opponent, Samuel J. Tilden, had a considerably larger popular vote, and again in 1888 when Benjamin Harrison was elected, although his opponent, Grover Cleveland, outpolled him by about 100,000 votes.*

In addition, it can happen that electors will not vote the way they are supposed to vote. Virtually all the men who run for the office of elector today are pledged to vote for the candidate of one party or another. In some states, such as Oklahoma, electors are even required by

*By one interpretation, the 1960 election was a third such occasion. In that year, Alabama elected 5 electors pledged to John F. Kennedy and 6 electors who were unpledged and who eventually voted for Senator Harry F. Byrd. If one allocates five-elevenths of the total Democratic vote in Alabama to Kennedy, instead of giving him all of the Democratic vote (as the media did), then the winner of the total popular vote in 1960 was Richard Nixon, by about 60,000 votes.



"Direct elections would end the current practice . . . among Presidential hopefuls of concentrating their campaign efforts in the big states."



"One result [of an election change] will be that the cost of a Presidential campaign . . . will rise astronomically."

state law to vote for the candidate to whom they are pledged. But all such pledges and state laws have no standing in the Constitution. If an elector votes for some candidate other than the one to whom he is pledged, there is no constitutional way to invalidate that vote, and Congress must count it as cast.

Such a situation actually developed in 1968, when Dr. Lloyd Bailey of North Carolina broke his pledge to vote for Richard Nixon and cast his electoral vote for George Wallace instead. This kind of perfidy is extremely rare. Out of more than 15,000 electoral votes cast from 1824 to 1964, no more than 12 (by one interpretation of the record, only four) have gone to a candidate other than the one to whom the elector was pledged. No "faithless elector" has ever affected the outcome of a Presidential election.

A further practical objection is directed at the procedure to be followed in the case that no one receives an absolute majority in the Electoral College. If this happens, the House of Representatives then chooses a President from among the three leading candidates. The last time this happened—in 1824—there ensued an unseemly spectacle of influence-peddling and back-door-dealing which resulted in the election of John Quincy Adams, who had run a weak second to Andrew Jackson in the popular vote. Adams took office under a cloud of suspicion, and his Administration never fully recovered from the harm done to its claim to legitimacy. Having a President with a questionable claim to office was bad enough in the early 19th century; today it would be an unmitigated disaster.

There can be no doubt that these shortcomings in our current constitutional mode of electing the President are matters for authentic worry. They certainly constitute grounds for reforming the present system; but it is not so clear that they are sufficient reason for abolishing it altogether. One must take care to distinguish the defects of the present system from those which are inherent in any electoral system. In a very close election, after all, any method for deciding the winner is open to criticism and doubt. Indeed, it is at least arguable that, with respect to close elections, the most important virtue of a system for deciding the winner is the clarity and decisiveness with which the verdict is rendered. And, in this respect, the Electoral College is not without its value. Not only does it tend to magnify the margin of victory. It also sharply limits the number of popular votes which are likely to be challenged by the losing candidate.

A system of direct election, by contrast, invites every single vote cast in the entire nation to be challenged, a process that could take months or even years, and which would be likely to divide the nation far more deeply than would having a President who ran a close second in the popular vote.

As for the faithless elector, it is impossible to see any objection to a constitutional amendment which would nullify his potential for mischief. But there is a world of difference between enacting such a relatively minor reform of the current system and instituting direct popular election of the President. They are not at all

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the same thing—though, in current discussion, an awful lot of intelligent people seem to have got it into their heads that they must be the same thing.

THE Electoral-College system has always been subjected to a second, more radical kind of criticism—a criticism which calls into question the justification for having any kind of Electoral College, reformed or unreformed. If the Presidency is a popular national office, the reasoning goes, the only just and logical way to elect the President is by direct popular vote. To the extent that the Electoral College introduces certain inequalities into the electoral process, it systematically distorts the popular will which is expressed on Election Day. So, instead of improving the Electoral College, the argument continues, we ought simply to abolish it altogether. This, it should be noted, is not a new opinion; its first famous exponent was none other than James Madison, who argued it before the Constitutional Convention. But in recent years its popularity has grown enormously, and today it clearly is the conventional and unthinking view of an overwhelming majority. This is something of a pity; that view really ought to be more controversial than it is.

Now, it is quite true that the current system establishes substantial inequalities among the Presidential votes of individual American citizens. First of all, there is the inequality flowing from the fact that the Constitution allocates to each state the same number of electoral votes as there are Senators and Congressmen. This gives (as the Founding Fathers intended it should) the smaller states—who have two Senators, just like the big states—a bit more “Presidential electoral power” than their population alone entitles them to. A second source of inequality is the practice, which has long prevailed in every state, of awarding the state’s entire electoral vote to the winner of the popular vote in that state. This “winner-take-all” principle confers a decided advantage on the big, populous states with a large number of electoral votes.

Theoretically, it would be possible for a President to get barely more than half the popular vote in each of our 11

most populous states (which have 58 per cent of the nation’s population), an additional bare majority in one small state, no votes at all in the other 38 states—and find himself declared the victor by the Electoral College while having received only something like 30 per cent of the total popular vote! Such a possibility, needless to say, is exceedingly remote in practice.

Weighing these two inequalities, one discovers that the winner-take-all principle more than compensates the larger states for the disproportionate numbers of electors allocated to the small states. This calculation, moreover, takes no account of the fact that our largest states tend to be the most evenly divided between the two parties, while our smaller states tend to give a large majority to one party or the other most of the time. The effect of this even division in the large states is to give any small, organized “swing” group—ethnic or racial minorities, the trade-union votes, etc.—an extraordinary influence over the outcome of Presidential elections.

The winner-take-all principle introduces another kind of inequality. Citizens whose opinions place them at the extremes of the ideological spectrum are almost automatically denied any hope of making their electoral weight felt in the Electoral College, even when their numbers in the nation as a whole are fairly substantial. In 1912, the Socialist candidate Eugene V. Debs received 900,000 votes, or 6 per cent of the total popular vote; in 1948, Henry Wallace won 1.2 million votes, which amounted to 2.4 per cent of the total vote. Neither received a single electoral vote. Sectional minorities, by contrast, find it much easier to register their numbers in the Electoral College. The same year Henry Wallace failed to win a single electoral vote, for example, Strom Thurmond, running for President on the States’ Rights ticket, received 39 electoral votes although his popular vote was only a few thousand larger than Wallace’s.

Direct election would wipe out all such disproportions and inequalities of electoral influence. Everyone would have one vote, and each vote would count equally in determining the winner of the Presidential campaign. Small

states would lose their constitutional edge; big states would have no more influence than their numbers warrant, and neither would organized "swing" groups; ideological minorities would have as much electoral vigor as sectional ones. There would also be other apparent advantages. The current practice, nearly universal among Presidential hopefuls, of concentrating their personal campaign efforts in the big states would come to an end; candidates would be forced to make genuinely national campaigns. Everything then, would be fairer. Why should anyone object?

Well, there are quite a few good reasons. To see what they are, let us assume that America were to adopt the direct-election system. And now let us imagine how this change could affect the Presidency and in what way it might reshape our national politics.

CONSIDER first the Presidential campaign itself. Under the current electoral system, candidates concentrate their time, money and personal effort in the big states. But with direct election, all this will change. A vote in California or New York will be no more valuable than a vote in Alaska or Nevada. One result will be that the cost of a Presidential campaign—it is already extremely high, around \$20- or \$30-million—will rise to astronomical proportions. Big money—whether the President's own or someone else's—will become even more influential in Presidential elections than it now is.

Certainly another result will be to accelerate the trend toward campaigning through television, with all that implies about the substitution of the artfulness of Madison Avenue for the more traditional arts of political persuasion. Personal appearances by candidates will undoubtedly be reduced; so, too, will candidates' knowledge of or care for special local conditions and problems. One can

almost imagine that we will witness a revival of the old front-porch Presidential campaign, except that instead of staying at home, candidates will ensconce themselves in a television studio in New York from which they will rarely emerge. Everyone will have more equal "access" to the candidate and the campaign—which is to say that everyone will have equally little access to a campaign of minimal political substance. Things will be "fairer," but will they really be better?

The other consequences of direct election are full of ironies. Probably none is more piquant than the situation in which the television networks will find themselves on election night. The networks, of course, have been instrumental in mobilizing public sentiment for reform of the electoral system this past year. But they will certainly not be as happy under the direct-election system as they now imagine. Under the existing method of electing the President, the networks report the outcome in each state. Thus, they have 50 separate events to report, and each outcome becomes final (or is predicted on the basis of a computer analysis) at a different time. This succession of outcomes creates drama, progressing throughout the evening and reaching its culmination at the moment when one candidate finally wins enough electoral votes for a majority.

With a system of direct election, however, there will be no such cumulative drama. The tallies of popular votes will, during the first several hours, not be very meaningful. Nothing will be decided until the votes in California, Oregon, Washington, even Hawaii and Alaska, have been counted. It would make for a long, dull night—and, ironically, it will almost certainly force the networks to report the outcome state by state, in order to infuse some semblance of drama into the evening. Thus, if our current electoral system doesn't exist,

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MUCH more serious would be the effect on our party conventions. It is virtually certain that the structure of political influence in these conventions will undergo a quiet but significant shift. Under the current electoral system, party leaders from the big states possess a disproportionate share of influence. Partly this is because their states have large numbers of votes in the convention. But another reason for their influence is that no candidate can hope to win the general election without complete cooperation from party organizations in the fiercely competitive big states, which is where the outcome of the election is decided.

One may deplore the methods or opinions of political bosses in the big states and cities. Yet those who are quickest to deplore may yet be soonest moved to nostalgia. After all, every single one of our most revered recent Presidents and Presidential candidates has owed his nomination to the sponsorship of one or another boss: F.D.R. was the candidate of boss Ed Flynn; Adlai Stevenson was catapulted into the national picture by Jake Arvey, and John Kennedy would never have been nominated without Richard Daley and John Bailey.

Under a system of direct election, the big-state party leaders would still have the influence in the nominating convention that the numbers of their delegates warranted. But the cooperation of the big-state party organizations would be vastly less important than it is now. For, with direct election, a small margin of victory in a big state would have no particular significance. Accordingly, it is the party organizations in the one-party states that would become particularly important to a successful campaign effort. Instead of needing the cooperation of the party leaders in New York or Chicago, the Democratic candidates will especially need the help of leaders in Louisiana, in Ala-

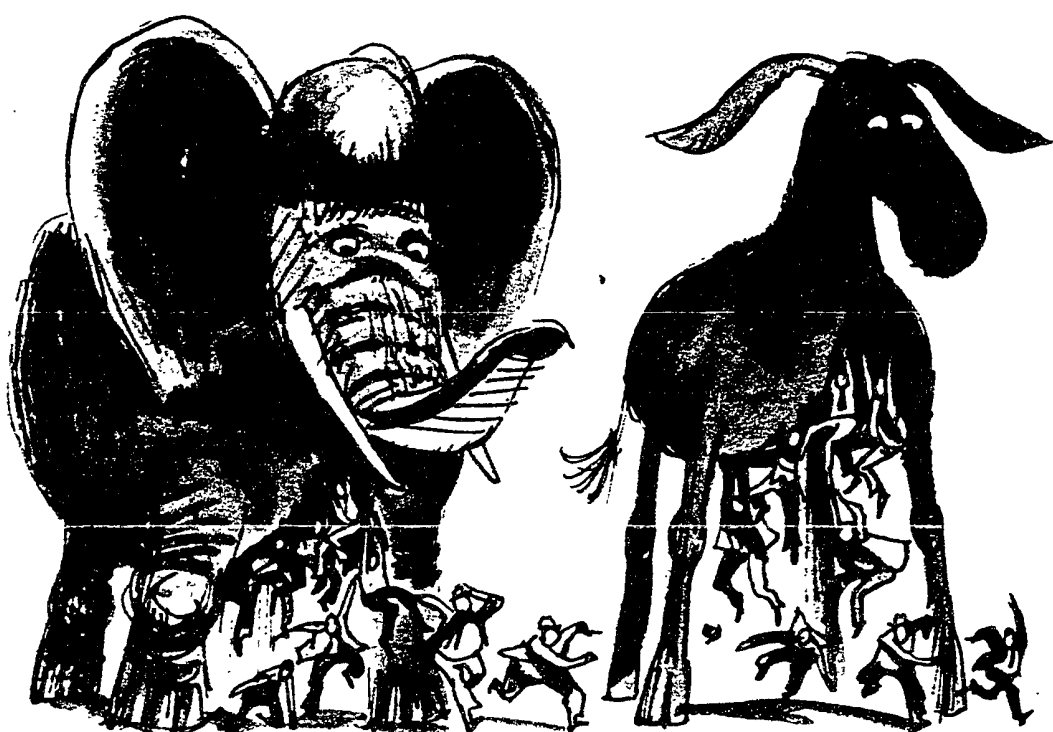
bama, in Mississippi, while the Republican candidates will be especially beholden to party influentials in Utah, Nebraska and other rock-ribbed Republican states where a strong get-out-the-vote effort will pay off handsomely. If this be progress, a great many progressives are going to find themselves mightily bewildered.

And here we touch on one of the most important likely consequences of direct election. The Presidency in the 20th century has been the source of almost every important piece of reform legislation enacted by our national Government. It is hard to imagine that an activist, liberal Presidency would have emerged—let alone persisted over the decades—had it not been for the preponderance of the big states under our current electoral system, and the special influence of minority groups in these big states. Public opinion polls have persistently revealed that the special brand of activism which has typified the Presidential wing of the Democratic (and, to a lesser extent, the Republican) party has never enjoyed the sustained support of a clear numerical majority of our citizens. It seems altogether probable that, under a system of direct election, the President could assume more of the character of an umpire among contending interests, less of the character of a leader who mobilizes the national will for public purposes. This is, after all, usually the case with our popularly elected mayors and governors.

One could understand, then, if liberals were opposing the direct election of the President, while conservatives were agitating for it. But, paradoxically, the situation is just the reverse. And this should give us a clue that a high order of ideological passion is abroad in the land, and that the movement to abolish the Electoral College has a thrust that goes far beyond its ostensible purpose of modernizing an old institution.

At least as important in the long run—and important to every one of us, whether

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liberal or conservative—is the likely influence of direct popular election on our two-party system. We all tend to take it for granted that the two-party system is somehow sewn into the very fabric of our character as a politically "moderate" people, committed to the politics of "consensus." This is almost surely a delusion. The most important factor making for a two-party system has been the winner-take-all feature of our electoral system.

TO be elected to Congress, to a state legislature, or to the Presidency, a candidate must win a plurality (or, in the case of the Presidency, a majority) on the first ballot—with the first ballot being the only ballot. A candidate who is serious about winning, therefore, has a very strong incentive to establish as broad an appeal as he can, both to his own diverse constituency and to potential defectors from the "other side." Inevitably—and this is something political scientists are nearly unanimous about—any single-member, single-ballot district system of election tends to encourage a two-party vote. After its fashion, the Electoral College has done much to insure that, despite the political fragmentation caused by division of powers and federalism, despite our racial and ethnic and regional heterogeneity, this nation as a whole has had but two major, permanent parties—disorganized and even inchoate, perhaps, but nevertheless two parties and not a mass of parties that intransigently reflect every fine color in the political spectrum.

As Prof. Alexander Bickel of the Yale Law School has eloquently argued, direct election of the President and the establishment of a runoff system (to replace the current procedure of sending an inconclusive election to the House of Representatives) will destroy many of the incentives supporting a two-party system, in which, precisely because the gulf between the parties is not too vast, the transfer of power can be accomplished without social convulsion or civil strife. The runoff provision, for example, gives every extremist leader the hope which the Electoral College's winner-take-all system denied him: that of being able, by bargaining prior to the runoff, to exert some leverage in the final choice of the President. Presidential elections are quite close, more often than not; and there would have been many occasions in the past century when, under direct election, a runoff would have been probable and bargaining with minority candidates inevitable. In contrast, under the present system, no election has been thrown into the House during all that time.

And the direct-election system will have its own direct effects on the parties. It could happen that protest candidates who are animated by the demands of conscience, and who fail to win their party's nomination, might in the name of conscience nevertheless present themselves to the electorate in the November election.

The current system makes such a strategy extremely difficult technically and, usually, suicidal politically. The direct-

election method would remove the technical necessity of meeting the different requirements of each state for getting on the ballot, and it would also render the option of running in the general election, despite failing of nomination, far more appealing.

Who, for example, can doubt that, under a direct-election system, Eugene McCarthy would have run as an independent in the last general election? If he had, Humphrey's vote would certainly have been diminished sharply, and, quite possibly, Nixon's too, if to a lesser extent. George Wallace's vote, by contrast, would have been little affected. It is entirely likely that a runoff would have been necessary, and, though Wallace would not have been in the runoff, he would unquestionably have been in a position to influence—perhaps decisively—its outcome. Yet it is the supporters of Senator McCarthy who now most strongly press for direct election because of the role Wallace might have played had there been no initial majority in the Electoral College in 1968, with the election being then thrown into the House!

AMONG the many scholars who have studied the various methods for electing the President, the preponderant opinion is that direct election would, in the long run, fragment our party system and diminish the legitimacy of the Presidential succession. The curious thing is how people react to such predictions—or, more precisely, how they fail to react. During this past spring's hearings of the House Judiciary Committee, for example, all the arguments for and against the various modes of election were set forth, and the Congressmen appeared to understand them perfectly well.

Yet time and again, the committee members showed a profound reluctance to appreciate the importance and seriousness of the criticisms of direct Presidential election. They kept coming back to a single, abstract political dogma: one man, one vote, and each vote to be weighed in the same balance. The anticipated consequences of direct popular election seemed unable to affect their judgment; it was as if it had been divinely ordained that only one factor, only one criterion was properly involved in deciding how we, as citizens of a democracy, should elect our President.

This obsession — it can hardly be called anything else — testifies to the extent to which, in recent decades, the



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democratic idea has been vulgarized and trivialized. From being a complex idea, implying a complex mode of government, appropriate to a large and complex society, the idea of democracy has been debased into a simple-minded, arithmetical majoritarianism—government by adding machine. Just how far popular opinion has moved in this direction can be seen in the mythical history which our modern critics of American politics have spun about the Electoral College itself.

AT the heart of this mythical history lies the belief, repeated again and again by men who ought to know better, that the Electoral College was intended to be an explicitly elitist and antidemocratic institution, an assembly of wise establishmentarians who, with cool deliberation, would make a choice too important and too difficult to be left to the common man. Just how mythical this image is can be judged from two simple facts. First, under the Constitution, the Electoral College never assembles to deliberate as a body—the electors go to their respective State Capitols, and no farther. Secondly, the Constitution leaves it to the states to decide how the electors are to be chosen—they can be appointed by the Governor, elected by the state legislature, or elected by the people as a whole, either as a slate, or individually, or by proportional representation, or in any other way.

Indeed, the one thing that practically all the delegates to the Constitutional Convention were clear on was that they were establishing a

"popular government," or a system of representative democracy. It is true that they believed mankind to be weak and easily corrupted. But their solution to this problem was not peremptorily to exclude any part of the population from participation in political life. In fact, the Founding Fathers' distinctive contribution to the theory of constitutional democracy was the idea that the best way to correct for the weaknesses of human judgment was to open up the political process to every group, large and small, and that the more groups there are with access to governmental institutions, and the more various the modes of access, the wiser and more just a popular government would be.

But the Founders were further intent on assuring that this system of popular government would also be a system of *liberal* government—one in which the individual would enjoy massive protection against unjust infringement by government of his rights and liberties. The "popular" character of the new government ensured that no minority could easily use public power to such an end. But what of tyrannical actions taken by a temporary majority? The Convention's answer to this possibility was to divide sovereign power among various institutions so that not one but several majorities, each differently constituted, would have to concur before a law could be enacted. That is why the House, the Senate, and the Presidency are all elected in different ways. And that is the general idea—not any dark, antidemocratic

intention—behind the original constitutional procedures for electing the Presidents, and it is still the effective import of those procedures, as adapted through almost two centuries' evolution, today.*

THE persistence of a mythical history of the Electoral College shows how much we tend to reduce complex issues of government and politics into a mere catechism of simple questions and of stock, moralizing answers. Such an approach to political life is disheartening enough in even the best of circumstances. But applied to our most important governmental institution, in a most difficult time, it is little short of scandalous. As *The New Republic*—which, on this issue, has been superbly intelligent (and, since its constituency is liberal to the core, courageous too) —recently remarked in an editorial:

“...Throughout our history we have perceived other values in government than its reflection of simple majorities of the moment, which are in any event not easy to find or may be whipped up on demand. We have lived in this democracy as a rather complex sum of these values, not just as uncompromising majoritarianism. We have, since Madison, understood that people tend to act politically not so much as individuals as in groups; that they have opinions, preferences and interests which vary in intensity, thus calling for varying degrees of respect and forbearance on the part of others, even if these others constitute a majority; that majorities sometimes act rashly and even mindlessly, and may need to be given pause; that, in short, influence and even power should be distributed more widely than they would be in rigid adherence to the majoritarian principle, so that government may rest on widespread consent rather than teetering on the knife-edge of a transient 51 per cent.... Practical men interested in perfecting the American democracy are well-advised to disenthral themselves from the romance of pure majoritarianism.”

These are sensible words. But it is clear the *Zeitgeist* seems determined that they should fall on deaf ears. ■

*The fact that the present Electoral-College system is as much a product of American history as it is of the Constitution is frequently overlooked. As has been noted, neither the popular election of electors nor the winner-take-all principle is in the Constitution. The Electoral College, whatever its deficiencies, is no mere archaism.