

own interests in decades to come. That is federalism, and it has worked well.

The real scandal of 2000 was not that the “people’s will” was stymied, but rather that so many Americans demonstrated such a stunning ignorance of how the system worked, and more important, why it was set up that way. Unless that situation

changes, unless people can understand that the states are not just an antiquarian survival but the pivotal element of the constitutional system, we can say goodbye to federalism and accept an untrammelled unitary megastate. And by that point, Arizona and Pennsylvania will have precisely as much political substance as, well, Wessex or Aquitaine. c



## Roll Over, James Madison

by Clyde Wilson

To anyone who has spent some time with the Framers and ratifiers of the U.S. Constitution, most current talk about that document seems not about the Constitution at all but about some fanciful construct of wishful thinking, accumulated misunderstandings, and successful usurpations. This is certainly so in regard to the recent discussions of the Electoral College.

True, the Electoral College was, as is now complained of, in part designed to take the selection of president a remove or two from the people. The reason for this was not to thwart the people’s will but to induce deliberation and mature consideration of the public good and the virtues of candidates by persons who were in a position to have some solid knowledge of the matter. This design, of course, has been rendered null by the machinations of political parties. Electors are now anonymous party hacks whose names often do not even appear on the ballot and who would not know what you are talking about if you men-

tioned deliberation and judgment.

But an even more important consideration in the design of the Electoral College was the representation of the states. There was no possibility of a mass vote, since each state set its own qualifications for the franchise and chose the electors in its own manner—by the legislature or by districts in the beginning. States no longer set their franchise: The federal government now requires us to allow 18-year-olds to vote and to register aliens when they show up at the drivers’ license bureau.

Nevertheless, the Electoral College, at least potentially, represents the states. The smaller states were given more weight, by a design (and necessity at the time) that permeates the real Constitution. If the Electoral College yielded no majority, the House of Representatives was to make the choice, *with each state having one vote*. In fact, the Framers expected this to happen quite often.

The functioning of the Electoral College was perverted in the 19th century by political party organizations. The people could (and can today) vote only for candidates selected by party conventions, which are neither democratic nor recognized by the Constitution. (A lot of Americans probably think the two parties are part of the Constitution.) This is, in fact, a much more serious denial of majority rule than the weight given to small states in the college. So is the winner-take-all system, another invention of the party hacks.

There is nothing in the Constitution that requires all the votes of a state to go to one candidate. According to present practice, a candidate may win California with a 35-percent vote in a three-way race and receive all of California’s electoral votes, thereby disenfranchising two thirds of the voters. The only reason for this is that it is convenient for political parties.

If we really wanted to live up to true majority rule and preserve the virtues of the Electoral College, we would take the high constitutional function away from parties and choose electors by districts and as independents—men and women known for character and reason and an understanding of the people they represent. (Of course, they would have to be real districts, not ones designed by federal judges to maximize the success of favored groups.)

They would assemble in their state capitals and vote after deliberation and without reference to party organization or to polls and predictions and media declarations of winners on the basis of one percent of the votes. This would be closer to real majority rule and the real Constitution, and the results might be quite interesting. c

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### Dirge Without Music

by B.R. Strahan

Map of memory shadowed face  
of a million names and none  
fane of lost crossroads  
leading everyplace and none

Secret whispered on the marriage bed  
story told on the last day  
language of Babel and Byzantium  
what was sung “by the waters of Babylon”

Chipped icon on the crumbling wall  
rotten stairway to the shattered tower  
finger in the sun’s angry eye  
final cry before the great unfolking . . .



# True Reform

## Disenfranchising the Political Parties

by Scott P. Richert

The Electoral College is an archaic institution designed by men who felt that they could not trust the people at large to choose the president—or so we are told every four years by the most ignorant members of the Fourth Estate. While it may have been true (the argument continues) that the people were relatively uninformed when the Constitution was adopted, we cannot say the same thing today. After all, we now have CNN and C-SPAN and NPR and the *New York Times* and the *Washington Post*. Any objection the Founding Fathers could have had to popular election must surely vanish in the face of these organs of enlightenment.

Any objection, that is, except the real one. The Framers of the Constitution, although undoubtedly skeptical of the ability of the people at large to decide on national affairs, were not opposed to popular election *per se*. They allowed for direct election of the House of Representatives, and they included in the Constitution certain requirements for being able to vote—not simply because they thought suffrage should be restricted (which, of course, they did), but because they wanted to ensure that states could not impose more strict suffrage requirements in national elections.

Why, then, did the Framers establish the Electoral College? A quick glance at James Madison's notes on the Constitutional Convention reveals the answer. In their consideration of the election of the president, as in so many other areas, the Framers were concerned with two problems: mitigating the influence of faction and preserving the sovereignty of the states. If the president were elected by popular vote, the opportunities for factious demagoguery were great, and the states could, essentially, be disenfranchised by their own citizens. State sovereignty could be preserved by allowing the state legislatures to determine the method of appointing electors; the popular will would still be taken into account, since the people elected their state legislators.

Today, as far as state sovereignty is concerned, the Constitution is essentially a dead letter. The Electoral College is the only significant vestige of the Old Republic that reminds us that the states are not simply administrative subdistricts of the federal government—that the states, in fact, created the federal government. But while proposed constitutional amendments to abolish the Electoral College have never gone anywhere, the system has been successfully undermined in the states over the years by the forces of faction, which go today by the name of political parties. Any attempt to restore the Electoral College to its full function as conceived by the Framers must confront the

problem of political parties—and, therefore, it is probably doomed to failure. Still, it does not hurt to dream.

The 12th Amendment, ratified in 1804, was the earliest change to the Electoral College; it was also one of the most damaging, because it is one of the few instances in which the Constitution was changed to reflect the party system. (The 25th Amendment, allowing the president to appoint a vice president if the office is vacant, and the 14th Amendment, which disenfranchised a large number of Southern Democratic Party leaders and therefore ensured the primacy of the Republican Party, are the other instances.) While the amendment does not mention political parties, it sets up separate elections for president and vice president, making it almost inevitable that the two will come from one party; until that point, the man who received the second-highest number of electoral votes became vice president, regardless of his party affiliation. Repealing the 12th Amendment would strike a blow at the heart of the party system.

Any other reform should take place at the state level, because that is where the damage has been done. While the Constitution allows state legislatures to determine the method of appointing electors, every state now uses the popular vote. State legislatures might consider appointing electors based on the popular vote within each congressional district, allocating one of the two extra votes to the winner of the statewide popular vote and the other to the candidate who wins the largest number of congressional districts. While this system would force candidates to campaign within each congressional district, it would (unfortunately) probably strengthen the party system, since the districts are created by (and for) the parties (with a touch of judicial intervention).

A more radical proposal would be to return to the Framers' vision of appointing electors on the basis of their qualifications, rather than party affiliation. By adopting this idea, a few brave state legislatures could potentially deprive both of the major parties of the ability to construct an Electoral College majority. At the very least, they could force the presidential candidates to address issues that concern each state at large. Under the current winner-take-all system (which every state except Maine and Nebraska has adopted), candidates can simply pander to large urban populations and ignore the bulk of the state. Although Rockford is the second-largest city in Illinois, no presidential candidate has stopped here since 1988, because Chicago can manufacture more than enough votes to allow a candidate to win Illinois' 22 electoral votes. Returning to the Framers' original plan would not only restore a measure of state sovereignty; it would re-enfranchise millions of voters in small cities, towns, and countrysides across the United States. c

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