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# THE ELECTORAL COLLEGE BY DAWN'S EARLY LIGHT

**Book Review by Christopher DeMuth**

*Why Do We Still Have the Electoral College?*
Alexander Keyssar, Harvard University Press (2020), 544 pages, $35

*Let the People Pick the President: The Case for Abolishing the Electoral College*
Jesse Wegman, St. Martin's Press (2020), 304 pages, $27.99

Consider this stirring account of democratic progress:

*At the Constitutional Convention of 1787, a proposal to elect the president of the United States by national popular vote – though initially favored by James Madison, James Wilson, and Gouverneur Morris – fell flat with most of the delegates. Instead, they adopted a complex, hasty, last-minute compromise no one was enthusiastic about: presidential election by state electors. This system came to be called the Electoral College.*

*Ever since, the arc of history has been bending toward the national popular vote but never quite getting there. Time and again, far-sighted statesmen have advanced sensible reforms to fix the Electoral College and make our presidential elections more democratic. Time and again, their reforms have attracted wide support but have been thwarted by venal or partisan calculations, misunderstandings, or sheer inertia.*

*Yet, the expansion of American democracy has always proceeded in fits and starts: the abolition of slavery, the enfranchisement of African Americans and women, the popularly elected Senate, the "one man, one vote" rule for legislative apportionment. Today, replacing the Electoral College with a national popular vote (NPV) is our rendezvous with history, the momentous next step for bringing our political institutions into line with our democratic ideals.*

That is the narrative of two recent books on electing the president. *Why Do We Still Have the Electoral College?* by Alexander Keyssar, professor of history and social policy at the Harvard Kennedy School of Government, is the most thorough study of our Electoral College debates ever written. *Let the People Pick the President* by Jesse Wegman, a member of the *New York Times* editorial board, is more selective and journalistic. Both books are serious histories, replete with drama and instruction. They defy today's progressive conceit that we can "cancel" history and fashion the world all on our own. But they make the converse mistake of trying to settle a living debate with a romantic plotline.

Professor Keyssar is committed to the proposition that the past holds lessons for solving today's problems. The problem he wants to solve is the existence of the Electoral College despite its manifold deficiencies. He says that he is not "directly" entering the contemporary debates over the merits of the Electoral College. But the premise of his book is an argument, not a research heuristic: in framing the College as a problem to be solved, he necessarily makes a claim regarding its merits. His history is overwhelmingly about the system's flaws and failures, with only cursory, often grudging attention to its strengths and successes. The momentous election of 1860, when the Electoral College gave Abraham Lincoln a solid 59% majority in a four-candidate race where he won less than 40% of the popular vote, is mentioned in a single passing sentence and then brushed off: "Had New York not voted Republican, the election would have landed in the House." That is the sly counterfactual, a specialty of anti-Electoral College polemics, in which the results of actual elections are selectively retabulated to produce an anomalous or terrible result. It is a trick that can be played with all but electoral landslides—and in landslides, election systems are unimportant.

Keyssar seems to have collected every complaint that has ever been uttered against the Electoral College. The litany of defects is long and variegated. State legislatures play a central role in choosing our national political leader and head of state. Electors pledged to one candidate in state elections may vote for someone else when the College meets. Voters in small states get an unfair advantage because every state gets two electors (one per senator) in addition to one elector per congressional district. But voters in big states get an unfair advantage, too, because the "general ticket" (winner-take-all) employed by most states gives all their electoral votes to the winner of the

popular vote, even if he or she wins only by a slim plurality. The general ticket leads candidates to concentrate heavily on large battleground states where small popular margins can reap large electoral vote harvests. The general ticket sidelines voters who prefer a candidate unlikely to win their state's popular vote. If no candidate wins a majority of the Electoral College, the House of Representatives votes to choose the winner by state rather than individual member—a recipe for corrupt bargains. And then the cardinal sin: it is possible for the winner of the national popular vote to lose in the Electoral College.

Keyssar is careful to note that the individual components of the Electoral College system cannot be treated in isolation, because each one is integral to the whole and to the Constitution's general design. He categorizes reform proposals by type as well as chronology, recognizes that the "faithless elector" problem has been a sideshow, and highlights the reformers' debilitating disagreements over the system's defects and how to correct them. He steers clear of the contemporary calumny that the Electoral College was a "pro-slavery" initiative. His running commentary on the perennial confusions over whether the College favors small states or big states is highly illuminating.

Yet, for all of these nuances, the steady drumbeat of complaint and controversy creates the impression of an institution under continuous siege. "Numerous state legislatures" endorse eliminating electors, so state popular votes would translate automatically into electoral votes; a "highly regarded" senator proposes to change the contingent selection process to an Electoral College runoff or regular vote of both Houses; somebody stresses out over small-state bias. The impression of incessant dissatisfaction is sometimes contrived, as in this roundhouse whiff: "Between the Civil War and the early twenty-first century, hardly a decade went by without a member of Congress or an influential journal of opinion strongly advocating the abolition of the general ticket."

Keyssar's narrative is in place by the end of his opening sentence: the Electoral College "has been a source of discontent for more than 200 years." It must have been a source of content as well, in order to have lasted so long, but that is apparently beside the point: "Although there…have been defenders of the Electoral College, few have maintained that the institution was unproblematic; …the system has not survived because of the shattering

brilliance of the arguments made in its behalf." Have the proposed reforms been unproblematic? Is any election system unproblematic?

I think many brilliant arguments have been adduced for the Electoral College. Keyssar thinks not. But that is no justification, in writing the history of an institution which has survived repeated efforts to abolish it, for persistently downplaying or disparaging what were unquestionably serious arguments by men of learning and public spirit. One great 20th-century defender of the College, Martin Diamond, does rate several mentions and pull-quotes, but is cast as a conservative "celebrant" of the Electoral College trying to outflank the "ideological resonance of the democratic surge." When Alexander Bickel, Theodore H. White, and Richard Goodwin testified against the national popular vote before the Senate Judiciary Committee, it was an "exquisite example" of Senator Sam Ervin's wily tactic of "showcasing liberals in defense of conservative causes." A lucid 5,500-word feature essay in the *New York Times Magazine* by Irving Kristol and Paul Weaver is called an "op-ed"; we are not told what it said, only that it was written by "dejected…neoconservatives" who thought NPV was going to pass. John F. Kennedy and Daniel P. Moynihan are given fuller and fairer treatment as part of Senate floor debates. But their motives are questioned, and Moynihan is shamed for invoking John C. Calhoun's "concurrent majorities"—the insight that requiring two separately constituted majorities is a stabilizing principle running throughout the Constitution. For Calhoun was a proponent of slavery, don't you know?

I am on record for the brilliance of the Senate Judiciary Committee's 1970 "Minority Views on Direct Popular Election of the President" opposing Senator Birch Bayh's constitutional amendment for a national popular vote, which was headed for the Senate floor under a full head of steam (see "The Man Who Saved the Electoral College," *National Affairs*, Winter 2020). The report, written by a young committee staffer named Michael Uhlmann, was without a doubt the most complete defense of the Electoral College and critique of the NPV to have appeared in congressional annals. It played an important role in the defeat of the amendment. Keyssar dismisses the report as "an angry, full-throated attack" and "jeremiad." Moreover, "its focus was not on principles but on consequences." And mere "alleged consequences" at that: the report's arguments about the effects of a national popular vote on the two-party system, federalism, separation of powers, public opinion, and

voting fraud, challenges, and recounts were "highly speculative." In contrast, the majority report was "concise and matter-of-fact," insisting that presidential elections must rest on two simple principles—every vote should count equally in the national calculus, and the candidate with the most votes should become president.

Those principles, and their increasing political resonance, are a central theme of Keyssar's narrative from his first page to his last. At the Constitutional Convention, the framers were concerned (like the 1970 Senate Minority Views) not with political "rights" and "values" but rather with "institutional balance and efficacy." From 1800 through the 1950s, most of the serious reform initiatives aimed to replace the states' winner-take-all general ticket with district election of electors (roughly the method in Maine and Nebraska today) or allocation of electors in proportion to the statewide popular vote. The debates were dominated by jockeying for partisan and regional advantage—but advocates emphasized that their reforms would make the Electoral College somewhat more democratic, and some wanted to go all the way to a national popular vote. Over time, Americans and their leaders became increasingly attached to the principles of "democratic equality" and "rule by majority"—so that, as of the 1960s, incremental reforms had given way to the NPV, the only procedure with equally weighted votes across states and a guaranteed popular-vote presidency. In the final paragraphs, we learn that Keyssar himself has been an NPV man all along. It is not a surprise ending.

To understand the insufficiency of this account, it is important to recognize that the framers, and the would-be re-framers who followed them, were grappling with a genuinely hard problem. A priori principles were important, but so were practical consequences, which necessarily involved speculation. The principles of equally-weighted-votes and most-votes-wins were not the only ones to be considered—for instance, the framers and many of their successors were also attached to the principles of liberty and limited government ("liberties" in the political sense appears three times in Keyssar's 513 pages of text and notes; "liberty," "freedom," and "limited government" not once). With multiple principles, interests, and estimates of consequences in play, compromise was unavoidable—and compromise is itself a cardinal democratic virtue.

Presidential selection was hardly an afterthought at the 1787 Convention—the issue was ever-present. But antecedent questions of constitutional structure had to be settled first: a federal system with a division of national and state responsibilities, a national government with separated powers and a powerful bicameral legislature, and an individual rather than a council as national executive. At that point, the method of choosing a president for their radically new form of government took the delegates into uncharted territory.

A critical, unavoidable element of the constitutional negotiations had been to accede, to a degree, to the slaveholding interests of the Southern states. The North-South compromise on political representation ended up in the system of state presidential electors. But slavery played almost no role in the debates and choices among the options at hand for electing the president—voting at the national or state level; voting by citizens, governors, state legislators, or the national Congress; or some hybrid. The task was to construct a procedure that would incarnate in a single leader the republican, non-monarchial, dispersed-power principles of the larger scheme. The American president should be broadly representative of the nation and its diversity of values and interests. He should hold his own electoral mandate, so as to think and act independently of the Congress and the state governments—yet he should be sufficiently attuned to their political cultures that he could collaborate productively with them. He should be a man of democratic energy, but not a Caesar.

Unsurprisingly, the framers ended up with a hybrid, whose central element was voting by states in proportion to their combined representation in the national legislature. Designating an intermediate body of electors to cast the state votes (a body only later christened the Electoral College) was an inspired effort to deepen the "representativeness" of presidential selection. The framers either did not anticipate, or feared, the development of organized, permanent political parties. The electors were their best stab at what an intermediary institution would look like. But the electors would meet only in their states (rather than all together), for a single purpose, and then permanently adjourn—all to protect against cabals and pretensions to continuing authority.

A longstanding puzzle is that the framers, most of them firm realists about human nature, would assure themselves, and later the delegates to the ratifying conventions, that the electors would be men of high distinction and

accomplishment. My interpretation is that, here as in the case of state legislators electing senators, they were putting the best face on an uncertain, underdeveloped procedure. Leaving the method of selecting electors to the state legislatures was a smart punt—the political cultures of the states varied widely but were trending democratic, their institutional evolution was difficult to foresee, and vesting the choice in legislatures rather than states-as-states gave the feature a populist twist.

The most heavily criticized feature of the framers' apparatus was the procedure for contingent selection if no candidate won a majority of electors—the states, voting through their House delegations, would choose by majority vote among the top three vote-getters. But it was a considered decision: it gave the states a distinctive role in adjudicating an inconclusive population-based election, and it was a one-off exercise, mimicking the temporary Electoral College, that avoided a president selected by and beholden to Congress. The device has been employed just twice, to resolve the elections of 1800 and 1824.

The failure to anticipate political parties created only one major problem, the voting routine for president and vice president, which was corrected by the 12th Amendment in 1803. On that occasion, Congress also carefully considered other elements of the original plan with the hindsight of four initial elections, and left them in place—further evidence that the plan was not slap-dash. The two-party system, powerfully buttressed by winner-take-all state electors, has itself updated the framers' handiwork, marginalizing the contingent selection procedure and relegating the electors to agents of their parties. (The electors' honorific status was sealed in 2020 by the Supreme Court's decision in *Chiafalo v. Washington* that states may sanction or replace electors who violate their pledges.)

Keyssar dislikes this system, but his assumption that a national popular vote is self-evidently superior, and a no-brainer from the standpoint of democratic legitimacy, clouds his account of the system's longevity. Amending the Constitution is certainly a heavy lift, but it has been done many times in contentious areas. He notes that the framers' system is hard to reform incrementally, because it is complex and has many interdependent features and offsetting compromises—but this can easily be turned on its head to say that the system was sturdily built, politically well-balanced, and integrated with a constitutional structure that has been manifestly successful. So too with

his point that Electoral College reform has often been a low priority with politicians and citizens: maybe they had their priorities right.

Reform was on the front burner during three decades: 1816–1826 (when the emphasis was on mandating district elections), 1944–1956 (proportional state elections), and 1969–1979 (NPV). Keyssar explains in persuasive detail that party and regional interests—North versus South, urban versus rural, large versus small states—were highly influential in each period. But he also highlights several outstanding figures speaking and acting with disinterested concern for the national interest. There is, moreover, a common pattern to the debates. They begin auspiciously, with formidable political advocates, wide acknowledgment of problems needing repair, and confident proposals for reform. Then, when it comes down to legislative drafting and nose-counting, momentum stalls and the deliberations become "desultory," "listless," and "in limbo." At last things end in a whimper, as many putative allies join the opposition—including, in the modern era, liberal stalwarts such as Clifford Case, Eugene McCarthy, Edmund Muskie, Paul Sarbanes, Bill Bradley, and Joe Biden. This reader's impression was that many Electoral College critics ended up, on full consideration, realizing the reforms would create more problems than they would solve, and that the College system's familiarity was a significant asset. Keyssar offers some vivid quotations to this effect.

The problem of second thoughts is particularly serious for NPV. The proposal's strongest selling point is that it would deliver a president with a "popular majority." But that is an illusion. If, as seems highly likely (more on this anon), a national popular vote would lead to a rise in third parties or to an outright multi-party system, the winner of the national vote would typically win a plurality, plausibly a small plurality in the 30% range. This prospect has led NPV advocates to propose, in the event of a plurality of less than 40%, a contingent procedure for selecting between the top two vote-getters—a runoff election, a joint session of Congress, or an Electoral College count held in reserve.

That is more than a wrinkle! Time and again, it has divided proponents and shaken fence-sitters who had initially considered NPV simple and unproblematic. The "doubts and worries" have multiplied: If NPV really means a popular majority, doesn't that require a full-fledged second election whenever no candidate receives 50% of the initial vote, which will be almost always? Should the runoff election date be fixed in the Constitution, say in

late November or during the December holidays, or left to the discretion of Congress—and could Congress change the date following the initial election? Moreover, two-round elections would lay the groundwork for a coalition executive branch, with smaller parties backing one or the other first-round frontrunner in exchange for cabinet appointments and policy commitments. That would resemble the maneuvering following the 1824 election, which landed John Quincy Adams ahead of frontrunner Andrew Jackson, or the post-election struggles to "form a government" in today's multi-party parliamentary democracies such as Israel and Italy. Maybe an American president who assembled a "national popular majority" by tying his own hands would be a good thing—but it is a fundamental regime change going far beyond what most NPV supporters think they are buying into.

These complications also afflict public opinion polling. Keyssar tells us repeatedly that majorities, sometimes large majorities, have favored replacing the Electoral College with NPV since polls were first conducted on the question in the 1940s (he lists the results of all 56 such polls in an appendix). But all of the polling questions I have examined are simplistic, presenting a choice between "who receives the most votes nationwide" and "who wins the most votes in the Electoral College" (with minor variations). The wording is biased, because the Electoral College is also "nationwide" and it requires a majority, not merely "the most votes." A balanced comparison, noting the relative complexity of a popular vote majority, is evidently too much for a one-sentence question.

As far as I can determine, the Electoral College/NPV issue has never been a subject either of informed polling, where respondents are given fuller descriptions of the choice or discuss them in focus groups, or of priority polling, where respondents are asked to rank the importance of a range of political issues. Keyssar says that many Americans are confused about how the Electoral College works, but the same could be said about how a national popular vote would work. He thinks the polls show the public is ahead of the politicians on NPV, but his accounts of the congressional deliberations left me with the opposite impression.

It was, presumably, Keyssar's animus against the Electoral College that motivated him to devote years of research to its infuriating sustainability. Yet he has given us a magnum opus with many contributions to political understanding that are free, or nearly free, of that animus. For example, his

account of the evolution of the general ticket demonstrates that it was an unintended consequence of the framers a) leaving the manner of choosing electors to the state legislatures while b) failing to anticipate the rise of political parties. The framers seem to have had something like district elections in mind, but when the Jefferson Republicans in Virginia shifted to winner-take-all in anticipation of the 1800 election, a new dynamic was born: when a party dominates a state legislature and is well positioned to dominate the state's presidential vote, it will want to reap all of the electoral votes rather than only a proportionate share. Even if most voters would prefer district or proportional elections for the nation as a whole, their state legislatures will frequently choose winner-take-all, and as winner-take-all spreads it becomes increasingly costly for individual states to depart from it. There are substantial arguments for and against the intrinsic merits of winner-take-all, district election, and proportional election, but this is a case where the "burden of history" is an actual burden—a hard constraint on contemporary choice.

Keyssar is particularly attentive to racial politics. First slaveholders, then segregationists, then free-at-last African Americans all successively defended the Electoral College for the leverage it gives to political minorities. Under slavery, a national popular vote was effectively off the table, because it would have removed the substantial electoral advantage the Southern states enjoyed from the Constitution's "three-fifths clause," which counted that fraction of their enslaved populations (non-voting of course) for purposes of House representation. (Some Southerners were open to replacing winner-take-all with district or proportional election during this period.) The 14th Amendment abolished the three-fifths clause—but, in a cruel irony, that only hardened Southern opposition to NPV in the period following Reconstruction, because Southern blacks now counted 100% for representation but were thoroughly disenfranchised back home.

The dynamic shifted dramatically, however, with the Great Migration of the early and mid-20th century, when African Americans moved by the millions from the rural South to the urban North. In 1949–1951, a campaign to require proportional allocation of state electors was led by an odd couple—Massachusetts Republican Senator Henry Cabot Lodge, a high-minded Brahmin, and Texas Democratic Representative Ed Lee Gossett, a fervent segregationist. Gossett's brief was that winner-take-all "invites irresponsible

control and domination by small organized minority groups, within the large pivotal States." And this was generating support for national anti-discrimination and other liberal legislation "as a bid for the Negro vote" in New York City, Chicago, and Detroit. For good measure, he also singled out Jews and "the radical wing of organized labor," who could tip the entire electoral votes of large Northern states and thereby exercise outsized influence in Washington.

The logic of Gossett's argument helped dissuade many Northern liberals from the proportional election initiative—and then, during the NPV debates of 1969–1979, it persuaded many civil rights leaders and organizations to stand with the Electoral College and winner-take-all. The issue was contentious and deeply debated among African-American leaders—the Congressional Black Caucus was divided on NPV, and the NAACP vacillated between opposition and support. But by the late 1970s, three prominent movers and shakers—Vernon Jordan, Benjamin Hooks, and Eddie Williams—joined most members of the Black Leadership Forum (a coalition of civil rights organizations) in full-throated opposition to NPV. The Electoral College, argued Jordan, was essential to preserving the two-party system, to discouraging splinter (including racial) parties, to balancing the interests of large and small states, and to protecting African Americans' strategic position and ability to forge coalitions with white voters and groups in the large industrial states. These arguments were apparently influential in drawing "a sizable handful of liberals" away from NPV at its decisive Senate defeat in 1979. Only after the election of 2000, when positions hardened along partisan lines, did civil rights leaders coalesce with other Democratic Party constituencies in support of NPV.

Keyssar is not above playing the race card, as when he associates Daniel P. Moynihan with a slave master. Winner-take-all, which works against all minority-party adherents in all states that employ it, turns racist when the minority party includes many blacks, as does the Democratic Party in the South today. When that 1970 Senate minority report "jeremiad" warned that NPV would endanger minority rights (making the arguments many black leaders were making at the time and that Vernon Jordan would make in 1979), the warnings were "disingenuous, if not downright hypocritical"—because four of the six signatories were Southerners and "ardent segregationists." Nevertheless, Keyssar's account reveals sophisticated realpolitik on both sides

of racial politics. In particular, the growth of black electoral power appears not as a romantic march for rights, but rather as an object lesson in navigating the currents of "democratic equality" and "majority rule." Here and elsewhere, Keyssar the faithful historian shows that the Electoral College debates cannot be flattened into a simple morality tale. They were chapters in a narrative of pragmatic accommodations that preserved and repurposed the College system as the nation grew and changed.

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Jesse Wegman's *Let the People Pick the President* wears the simple morality tale on its sleeve. Had I not signed up to review Wegman's book, I would have put it aside after reading the opening pages, in which we are introduced to the Electoral College as the 2016 handmaiden of Donald Trump, a race-baiting demagogue whose presidential campaign was assisted by coordinated Russian intervention. I am glad I persevered, because the book is in the main informative and entertaining, with many human-interest highlights including a vivid profile of the great and underappreciated framer James Wilson.

Amusingly, Wegman assures his readers that he is not just an elite *New York Times* lefty in a coastal blue bubble "fantasizing about a progressive takeover of America." I think he is sincere about that, but his account of the Electoral College and its discontents is emphatically progressivist. His version of my narrative at the beginning of this essay is fully teleological, and his exaltation of the two NPV principles is even more absolute than Keyssar's.

To wit: "With some important exceptions, the arc of American history has bent in one direction: toward more inclusivity, more equality, more participation—in short, toward democracy." Indeed, "Americans from the founding fathers onward have always considered majority rule to be the lodestar of our political system." Today, "we are political equals, and our elections are decided by majority rule." But the Electoral College "violates the core democratic principles of political equality and majority rule." Ergo, "if the arc of American history bends toward more equality, more participation, and more democracy, then the national popular vote is the last major point on that arc." And we're on our way, through the National Popular Vote Interstate Compact (NPVIC), wherein a growing number of states are contracting to cast their electoral votes for the winner of the national popular vote, thereby

avoiding the demands of constitutional amendment that frustrated earlier reformers.

The book's history is as much about the arc of equality as about the Electoral College itself. We do begin at the Constitutional Convention, where the erudite Presbyterian immigrant Wilson personifies Americans' ancient commitment to popular sovereignty and an NPV presidency. But the delegates fall into bitter disputes between large and small states and over the prerogatives of Southern slaveholders, ending up with a "complicated, half-hearted arrangement cobbled together in the convention's final days by a few exhausted delegates"—etc., etc. The Electoral College "did not reflect any coherent political theory but flowed instead from deals the delegates had made in response to the specific conflicts they faced at a particular moment in history." The 12th Amendment fixed the procedure for electing president and vice president—but that amendment, by "refusing" to address the pro-slavery provisions of the original Constitution, "helped entrench slavery in America for another 60 years."

Following a brief review of the early general-ticket and district-election debates, Wegman's narrative turns to the long struggle for political equality—slavery, the Civil War, the Reconstruction amendments, the violent subjugation of Southern blacks before and after the riotous election of 1876, the Progressive Era's popularly elected Senate and enfranchisement of women, and the civil rights movement and Supreme Court "one man, one vote" decisions of the 1960s.

Then the arc leads to Birch Bayh, a moderate Democratic senator from Indiana who took charge of a judiciary subcommittee on constitutional amendments in 1963. Wegman presents an epic saga of political epiphany: beginning with the idea of a few small-bore adjustments to the Electoral College, Bayh drilled down with extensive hearings on the subject and absorbed the political and judicial developments that were "transforming how Americans thought about representative government." In 1966, Bayh announced on the Senate floor that he had discovered the wisdom of the Founding Fathers hidden deep in the deliberations of 1787—direct popular election of the president, with its "many virtues and no vices." He was the reincarnation of James Wilson, James Madison, and Gouverneur Morris; but while their words had been "spoken in secret and hidden from the American people," Bayh's were "spoken in public and meant to be heard."

Wegman's narrative is more selective, dramatic, and personality-driven than Keyssar's—it reads almost like a screenplay written from Keyssar's novel. The Electoral College and winner-take-all are all vice and no virtue. Wegman breezes past arguments for the College and against the national popular vote (but does cite correctly, and quote, the Irving Kristol-Paul Weaver essay). He does not conjugate shifting regional interests in detail—other than those related to slavery and its sequelae, which are emphasized throughout over all other important factors.

Most of all, Wegman leaves "democratic equality" and "majority rule" as unexamined slogans. In the end, we are told, Birch Bayh's NPV amendment was defeated by the forces of "white supremacy" and the "ghost" of slavery that (somehow) remained "embedded" in the Electoral College system of 1970. Disagreements among proponents over how to engineer a majority in a national popular election are ignored. The fact that African-American and Jewish political leaders opposed NPV strikes Wegman as an "odd twist" in his plot, one that segregationist Strom Thurmond exploited to unscrupulous advantage. It was merely an "ironic side effect" of the Great Migration that blacks "suddenly found themselves with unique leverage in big cities like New York and Chicago, which were often the decisive factor in swinging their entire states to the Democrats." That they fought to protect their leverage is one more regrettable example of "a basic truth about the Electoral College: its strongest defenders have never been those advocating some broader principle, but those who believe, rightly or wrongly, that the College advantages them personally."

That, like many of Wegman's broadsides, is way overbroad. Vernon Jordan (whom he does not mention) was a strong advocate for high principles as well as narrow interests, and intellectuals such as Kristol and Weaver were not after personal advantage. But their principles were different from Wegman's—less abstract, more down-to-earth. Our narrator-advocate, despite his enthusiasm for "more democracy," is impatient with democracy in actual practice. It is not the dispensing of "coherent political theory." Effective democratic action always combines immediate interests with appeals to principle, and the results always reflect compromises over "specific conflicts faced…at a particular moment."

Wegman is quite right that American political history is a story of ever-expanding liberty and equality, and quite wrong that that history points to a

national popular vote as the only legitimate way to select the president of the massive democracy we have become. America is a fervently inclusive and equality-minded polity, with extraordinarily high levels of political activism, engagement, and electoral participation, as well as the most thoroughly democratic—sometimes, egad, even populist—head of government the world has ever known. The Electoral College has not stood in our way.

Wegman's historical narrative is only about half of his book. The rest is a frontal argument for NPV and the gestating interstate compact NPVIC. The argument is presented in colloquies with an imaginary NPV skeptic, plus a profile of John Koza, the California computer scientist who is NPVIC's principal architect and tireless (at 76) promoter. In the colloquies, arguments for the Electoral College and against NPV are nothing but "myths," which Wegman dispels with hard facts and logic to the growing enlightenment of his conservative interlocutor. In the profile, Wegman is himself the disciple, accompanying Koza on his rounds and coming to understand the ingenuity of his state-compact brainstorm and its cross-partisan appeal.

Wegman's arguments are smart, informed, polemical, and tendentious. (Trigger warning for *CRB* readers: they are also on a few occasions grossly partisan in the manner of a *New York Times* editorial or news report.) The College system causes candidates to focus exclusively on big battleground states and ignore the rest of the country—and there is nothing good in their slugging it out before closely divided state electorates as the whole nation watches. But a national popular vote, he maintains, would not in the least cause candidates to focus on big population centers and demographic groups—they would dutifully barnstorm for everybody's vote everywhere, and Republicans would suddenly go after minority voters and suburban women while Democrats rolled out backcountry revival plans. Winner-take-all disenfranchises scores of millions of voters—but the solutions within the College system may be even worse, because district elections would encourage gerrymandering and produce "battleground districts," while proportional elections would favor smaller states and involve arithmetical rounding dilemmas. Every consideration leads to NPV.

Along the way, Wegman swats a few flies: The College system doesn't protect small states; a national popular vote wouldn't bring "mob rule" or permanently ensconce Democrats in the White House (two separate points). He thoroughly eviscerates the contingent procedure for choosing a president

in the absence of a College majority (which has not been used for two centuries), and he quotes loose rhetoric from a few politicians as easy foils for his arguments. But he has found some valuable nuggets, such as the failure of the House to keep pace with population growth—if it had grown with the decennial census since the founding, as James Madison proposed, its current size would be 11,000 instead of 435. Current proposals to expand the House modestly would also make the Electoral College somewhat more representative (especially with district elections), but Wegman is not interested in incremental reform and just uses this as another NPV talking point.

On two occasions, our author confronts problems that cannot be spun away and that seem to me to be show-stoppers. The first involves the "myth" that NPV would mean the end of the two-party system—a myth that most serious analysts regard as a certainty, and that, as we have noted, has preoccupied many NPV champions among practicing politicians (including Birch Bayh). Wegman's approach to this myth is convoluted and halfhearted. He concedes that, under NPV, "third-party candidates would have every incentive to run and try to draw support away from the major-party candidates," so that "the person with the most votes nationwide could end up with 35 percent, or 30, or possibly even less." Bait-and-switch! We have been told repeatedly that "majority rule" is a "core" democratic value and the "lodestar of our political system," and now we learn that NPV means *plurality* rule. At which point the arc of history vanishes: Wegman avers that we have had many presidents with less than a popular majority, and even some with fewer votes than their opponent, and Americans have been fine with all that. Nor have they clamored for run-off elections. After a nod to the election wonk's chimera of "ranked-choice voting," he gives up and ditches the two-party system for multiple parties, which would mean "more opportunities for voters to find a political home and be heard." His resounding conclusion: "there are plenty of problems with multi-party systems too, but are they really worse than what we're living with right now?"

The problem resurfaces at the end of the book, when Wegman confers with experienced political operatives on how the Electoral College affects presidential campaigning and how a national popular vote would improve matters. They mostly underscore his arguments, but the two senior-most

practitioners do not. Karl Rove, architect of George W. Bush's two winning campaigns and a political historian in his own right, says NPV would "blow up the two-party system and give us the same problems that are affecting western European democracies, where trust and confidence in government declines dramatically because nobody can be held responsible." Jennifer Palmieri, director of communications for Hillary Clinton's 2016 campaign, which of course lost the Electoral College while winning the national popular vote, positively likes the College: "America's staying power is related to having to work out agreements with a really large number of people who have different views…. [E]ven though it can be frustrating, that's preferable to some of the less stable democracies." She values the Electoral College "because of how it affects voters' perceptions of their place in the larger citizenry."

The second problem concerns the interstate compact, NPVIC. John Koza, whose academic field is the optimization of complex systems, is not particularly interested in popular sovereignty or the arc of American equality—he is just offended by "the Electoral College's violation of basic rules of math and logic." But although he has devoted years to mastering the politics of NPVIC and debunking all doubts, one problem has left him stumped: what happens when a state's citizens have voted heavily for candidate A, and then all of their electoral votes go to candidate B, who is unpopular locally but won the national popular vote? Outside of national landslides, this result—loser-take-all—would happen frequently.

My answer is: they will take to the streets. Wegman agrees that many who have signed on for NPVIC would be "horrified" by loser-take-all, and confesses that "there is no silver-bullet answer." Koza says the solution is to "change how people think"— "to persuade them that when they vote for president, they are voting not as a resident of their state but as a citizen of the United States." And that is also Wegman's best case for NPV itself. In the introduction to his book, he asks: wouldn't it be wonderful if, when we cast our vote for president, we conceived of ourselves as occupying a position of equality with every other citizen of "one nation, indivisible"? "When you vote for the president—the only person whose job it is to represent all Americans equally—you should be voting as a citizen of the United States."

That is lovely but fanciful. Citizenship, in Wegman's sense of civic affinity or kinship, is many-layered. The strongest, most reliable human affinities are

local and immediate—among family and friends and co-workers, within the communities that shape us and depend on us. Strong affinities may be more extended—as racial, ethnic, religious, and vocational groups often are—but these, too, are typically rooted in lived experience. Nationhood involves attachment to larger histories and ideals, but it is constructed of innumerable subsidiary associations and the loyalties within them: witness the soldier who fights for his platoon-mates and girlfriend back home, with the glory of the USA in the background at best. In a polity as vast and diverse as ours, national citizenship (in the civic-affinity sense) is a compound of many citizenships—state, county, town, school district, down to the building or neighborhood association. One votes for president not in idealized communion with hundreds of millions of abstract others, but as a person living in a particular community with distinctive institutions, traditions, and interests, voting in concert with other national citizens in their own distinctive circumstances. When we vote for president by state, when we watch candidates campaigning in states with varying interests and values, and when, on election night, we watch returns come in first from faraway precincts and towns and then from whole states, we are not just conforming to an arbitrary ritual. We are gaining a vivid sense of what this nation of ours is made of, and of our place within it. That is how Jennifer Palmieri understands the value of the Electoral College.

As long as the Electoral College apparatus remains in place, as it would under NPVIC, many citizens (certainly not all, but many) are going to consider it a travesty of their state's political integrity that its electoral votes should be handed *in toto* to the local loser, math and logic be damned. If we dispense with the College altogether, replacing it with a constitutional national popular vote, other, more serious citizenship problems will arise. These were on display in the aftermath of the 2020 presidential election.

In the days following that election, when the media and election analysts had called the race for Joe Biden, President Trump proclaimed he had won re-election in a landslide only to have victory stolen by massive election fraud. Many of his supporters—well aware that the Democrats, media, and permanent government were willing to play dirty where he was concerned—believed him and rallied boisterously to his side. The president's claims were then adjudicated over several weeks in scores of local forums by hundreds of state and local election officials and state and federal judges, in six

battleground states whose initial returns had gone narrowly for Biden—Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. At least three of them would have had to switch to Trump to reverse the result. Republicans controlled both houses of the legislatures in five of the six states; two of the governors were Republicans; and the election officials and judges hearing the fraud claims were from both parties.

The Trump team won a few intermediate, procedural cases, but ultimately lost every significant claim on the merits, drawing sharp rebukes for the flimsiness of its claims from several judges, including Trump appointees. As the court losses mounted, President Trump called on Republican state legislatures to step in and cast their electoral votes directly for him (on one occasion summoning the leaders of the Michigan Senate and House to the White House), and on state governors and election officials to recalibrate their election returns in his favor. In every case, he was firmly, publicly rebuffed. The states duly certified their final election results (in Georgia following its own recount), and the 538 electors, meeting in their state capitals on December 14, elected Mr. Biden president by a vote of 306–232. The certified votes were delivered to Congress and counted before a joint session by Vice President Mike Pence on January 6 and 7. Challenges by a few representatives and senators to the votes of Arizona and Georgia were overwhelmingly rejected on grounds of constitutional deference to the state certifications, even as a mob of Trump partisans stormed the Capitol and interrupted the session, incited by the president's claim that the session might reverse the election result.

All of this was the Electoral College system of layered citizenship and diversified local authority in action—steering sturdily through gales of hysteria, settling an election in an exceedingly dangerous storm. Many of Trump's supporters would continue to see the Biden victory as a continuation of the truly treacherous Russian-collusion and impeachment assaults that had dogged him throughout his presidency. There had been more than the usual election irregularities, arising from lax procedures for mail-in voting and late counting introduced shortly before the election, and these certainly justified a commission of inquiry and tighter procedures in future elections. But if enough fraud and vote-rigging had existed to steal the election, hard evidence would have turned up somewhere. The most conspicuous election irregularities were President Trump's own, egregious efforts to subvert the

Electoral College's structure and procedures, which ended his presidency in ruination and disgrace.

Things would have gone differently under unitary national presidential citizenship. A national popular vote would require national standards for voter qualification, candidate ballot eligibility, ballot counting and reporting, mail-in voting, and election recounts—all but one of them (candidate eligibility) central to President Trump's claims of theft. The NPV principle that every vote must be weighted equally across states demands such national uniformity. Even if the NPV amendment were vague on these matters, political controversies would inevitably arise under all of them, which would be resolved by national legislation, and court decisions enforcing the equal protection clause, to eliminate differing and conflicting state and local standards.

And Congress could not possibly specify all of the standards by statute, or manage real-time problems such as a pandemic or allegations of new forms of election chicanery. So substantial discretion would be vested in an agency of the executive branch, which is headed by the president. The agency would have some formal independence, such as a bipartisan commission or lengthy terms of office, but to be effective it would need a tie-breaking vote, cast by an official from one party or the other (or from one of multiple parties). It would be widely assumed that the president exercised significant control; and a president who, like Mr. Trump, would publicly berate state legislators and governors, and the Supreme Court and vice president and his own attorney general, would certainly try to exert such control over a national popular vote. One can only guess where such a spectacle might lead—but it would be another distant, inside-the-beltway drama, in a world where Washington had acquired significant authority over the succession of the nation's presidency.

Keyssar and Wegman pay some attention to federalism as a constitutional formality, but essentially none to the raw problems of centralized power, as against localized and diversified power, that I have sketched here. I would like to think that the denouement of the 2020 election would give them some pause. Time and again, the Electoral College has delivered solid, stabilizing results and averted clear and present calamities, only to be condemned afterward on grounds that if some people had voted differently than they had, the College would not have performed so well. But its performance in this angry election defies opportunistic counter-narratives. It should give some

satisfaction to partisans of both candidates, some guidance to the losers, and great heart to partisans of constitutional order. The Electoral College has proven itself to be not only a steward but also a guardian of our democracy.

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