

How Electoral College Cheats Democracy

Exclusive: A shadow over Donald Trump's "election" is the fact that Hillary Clinton appears headed toward a significant plurality of the national popular vote, a quirk from the archaic Electoral College, notes Daniel Lazare.

By Daniel Lazare

The election commentary now filling the Internet seems distinctly out of touch. Many analysts are castigating Hillary Clinton for all the things she did wrong, her failure to connect with white workers in the Rust Belt, her inability to sufficiently rally blacks, and so on. Or they're criticizing the American people for falling for a racist, sexist know-nothing like Donald Trump.

But these critics are ignoring the elephant in the parlor. The simple fact is that Americans didn't elect Trump. An ancient relic known as the Electoral College did. For better or worse, a plurality of the people voted for Hillary Clinton.

Indeed, her margin of victory is turning out to be bigger than many imagined. The latest count by the Associated Press has her ahead by about a half million popular votes, or Clinton's 48 percent to Trump's 47 percent. That's about the same as George W. Bush's *losing* margin in 2000 before a judicial coup d'état propelled him into office.

But Nate Cohen of *The New York Times's* "Upshot" team is predicting that by the time all mail-in, absentee, and provisional ballots are counted, it will end up even bigger, i.e., as high as 2.2 million, or 1.7 percent. That's ten times John F. Kennedy's margin of victory in 1960 and four times Richard Nixon's in 1968.

If true, then Clinton will not only have won in terms of the popular vote, she will have won *big* (or as Trump might say "bigly" or "big league" depending on how you decipher one of his favorite expressions). Yet thanks to an obscure constitutional quirk, she's not the one going to the White House. Instead, an orange-haired reality TV star is so that he possibly can do to the United States what he did to his own real-estate empire, i.e. drive it into bankruptcy.

A Failure of Democracy

Three things seem clear as a consequence. One is that America has a major problem on its hands. After all, this is the second time in 16 years that the people (or at least a plurality of the people) have been robbed of their choice for president. And both times political democracy has suffered a major body blow as a consequence. How much more abuse the democratic process can take without

succumbing entirely is now open to question.

A second thing is that no one has foggiest idea how to fix it. A third is that the ruling elite and its minions in the chattering classes don't give a damn because, in contrast to the population at large, they benefit from the breakdown (it's much easier to control a demoralized population that has lost faith in the value of democracy) and are therefore eager to sweep the entire issue under the rug. So let's take these issues on one at a time and see where they lead.

First, the problem. The Electoral College is a very Eighteenth-Century affair, an example of what happens when New World pragmatism combines with the Age of Reason's love affair with ancient Rome. Faced with a tentative new republic in which "democracy" tended to be limited, local and individualist, the Framers concluded that a special body of elite electors was needed to hold the country together and ensure that a solid leader like George Washington took the reins.

The decision may not have been unreasonable given the exigencies of the day. (The proposed Constitution was a radical departure from the Articles of Confederation, which made the states supreme. The Constitution shifted sovereignty to "We the People," but the states, especially the small ones, still wanted a significant role in the new hybrid system.)

Unexpected Problems

But 230 years later, the device has turned out to have unexpected consequences. By awarding one vote for every senator and representative that a state sends to Washington, it triples the clout of demographic Lilliputians like Wyoming (population 586,107, according to the most recent estimate) at the expense of multi-racial giants like California (population 39.1 million). By forcing presidential candidates to concentrate on a handful of swing states, it sidelines Democratic strongholds like California or New York along with Republican bastions such as Indiana or the Deep South.

It also effectively cancels out millions of votes. Since Clinton carried New York State by 59 percent, it means that out of the 4.1 million people who voted her, some 632,000 might just as well have stayed home. Since she carried California by 61 percent, more than a million Golden State residents could have done the same.

Since it makes it possible to rack up a majority of electoral votes by winning a plurality in a surprisingly small number of state contests, one reform group has calculated that a candidate could conceivably win with as little as 30 percent of the popular vote overall. Indeed, if a third party makes a strong showing, it could even be less since all the winning candidate would have to do is win a 34-

percent plurality in as few as 16 states.

As farfetched as such arithmetic may be, it shows how readily the two kinds of votes, electoral and popular, can diverge. The tighter the contest, moreover, the greater the chance that they will, which is why they did so in 2000 when Al Gore and George W. Bush were running neck-and-neck and again in 2016 when the race proved unexpectedly close. Rather than resolving differences fair and square, it's a process all but designed to leave the majority (or a plurality) feeling cheated and scorned when races are hardest fought.

Undercounting Urban Voters

The Electoral College also tips the balance in favor of the Right by penalizing urban giants like California or New York, where ten times as many people ride the subways each day as live in all of Wyoming. Where Hispanics and racial minorities account for 44 percent of the ten most populous states, they account for less than 30 percent of the ten least. Yet it's the latter who benefit.

This is unfair, undemocratic, and downright racist. But it's also counterproductive because it prevents government from addressing human needs where they are most likely to occur, i.e. in crowded cities or traffic-snarled suburbs rather than in the Big Sky country of Montana where hardly anyone lives and cows outnumber people by better than two to one.

Not that the Electoral College is the only institution that shamelessly flouts the principle of one person-one vote. The Senate is even worse since it gives equal weight to California and Wyoming even though the former's population is some 67 times greater. But not only do two wrongs not make a right, but it turns out that Democratic senatorial candidates collectively outpolled Republicans on Tuesday as well by 45.2 million to 39.3. But so inequitable is the system that the GOP still wound up with a 51-seat majority.

Something must be done, which brings us to problem number two: the solution. The answer is that nothing can be done because, under the current system, the tools to fix it do not exist. In 2006, a Stanford computer science professor named John Koza came up with a clever scheme to sidestep the Electoral College by calling on each state to pledge its electoral votes to whoever won the popular tally. Once states accounting for a majority of electoral votes – as few as 16 as we have seen – signed on, it would be a done deal.

But after ten states plus the District of Columbia lined up behind Koza's reform, the movement stalled. One reason is that Republican states have no incentive to support a reform that clearly reduces their clout. Another is that swing states are even less inclined since they reap real-life rewards from their

role as presidential battlegrounds. So the idea of democratizing the Electoral College appears to be a dead end.

No Way Out

That leaves reform via a constitutional amendment. But this is the unlikeliest of all thanks to an arcane amending process that requires two-thirds of each house plus three-fourths of the states to approve any change, no matter how minor. The first is a non-starter since Republicans control both the House and Senate, while the second is even worse since it allows just 13 states to block any reform sought by the remainder.

Thirteen micro-population states representing as little as 4.4 percent of Americans are not likely to do away with an arrangement that augments their own power. By the year 2030, they'll be even less likely since their share of the population by that point will have shrunk to just 3.5 percent, according to Census Bureau projections.

Unfairness thus appears to be locked in – not for years or decades but for as long as the current constitutional arrangement persists.

Which brings us to item number three: the role of the political elite. As *The New York Times* pointed out on Friday, Clinton criticized the Electoral College during the “battle of Florida” in November 2000.

“I believe strongly that in a democracy, we should respect the will of the people,” she said, “and to me that means it’s time to do away with the Electoral College and move to the popular election of our president.”

Twelve years later, Trump lashed out at it as well, tweeting that it is “a disaster for a democracy.”

This time around, the silence is deafening. Trump didn’t mention it since he is obviously loath to quarrel with an arrangement that put him over the top. But Clinton said nothing in her concession speech about outpolling her opponent either. Why not?

One reason is that she had taken an oath to uphold the Constitution as senator and had then invoked it too many times on the campaign trail to talk about changing the rules now that they had gone against her. But another is that any mention would lead to questions about how such an outmoded and inequitable system had been allowed to persist 16 years after the political disaster of Bush v. Gore.

Why did the politicians fail to fix a system that is so obviously broken or –

for that matter – even take any initial steps? How could they be so lax? These are questions that Clinton now finds inconvenient because she knows there is no easy answer, so she held her tongue. Her devotion to the constitutional status quo outweighs her loyalty to the plurality of Americans who voted for her. (One can only imagine how Trump and his angry supporters would have reacted if Trump triumphed in the popular vote but was denied the presidency. One might assume that he would cite that fact as proof that the system was “rigged.”)

Losing Credibility

But the problem is not going away. The system is, in fact, collapsing before our eyes. Elections are a mess because they’re in the hands of thousands of state and county officials with their own special rules and procedures – not because a system like this makes sense (it obviously doesn’t), but because that’s what the Framers decreed (or didn’t anticipate) and no one knows how to change it.

Congress is frozen and corrupt while democratic accountability is nonexistent in an age of filibusters and anonymous Senate “holds” allowing a single legislator to prevent certain actions, such as confirmation votes for senior officials, from reaching the floor. Poland disappeared from the map in 1795 because a bizarre “liberum veto” allowed gave each senator power to block any bill and thus throw the entire government into paralysis. Yet today’s Senate “holds” allow individual legislators to do much the same.

Meanwhile, the only thing worse than a rightwing thug like Trump is a rightwing thug whose legitimacy is in question and who therefore can be counted on to turn even more thuggish by way of compensation.

Something should be done but nothing will be because the Founders had no idea that the system would last as long as it has and therefore neglected to include a workable toolkit with which to perform the necessary repairs. It’s not a pretty picture. But it will not get any better until the people face the problem of how to fix it on their own.

Daniel Lazare is the author of several books including *The Frozen Republic: How the Constitution Is Paralyzing Democracy* (Harcourt Brace).
