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Alexander S. Belenky

# Who Will Be the Next President? A Guide to the U.S. Presidential Election System



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# Who Will Be the Next President?

A Guide to the U.S. Presidential Election System

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# Preface

If the title of this book has caught your eye, spend a couple of minutes to look at the following list of statements relevant to American presidential elections:

1. The system for electing a President was not designed to reflect the popular will.
2. The current election system does not follow some major ideas of the Founding Fathers.
3. The application of some election rules can make the intervention of the Supreme Court in the election process almost inevitable.
4. Amendment 12 of the Constitution contains at least seven puzzles relating to presidential elections, and the answers to these puzzles have remained unknown for more than 200 years.
5. The text of Article 2 of the Constitution contains a statement that is equivalent to the assertion that “ $0=1$ ”.
6. Skillful use of the election system may elect a President with less than 20 % of popular support.
7. Applying some election rules may cause a constitutional crisis in the country.
8. Votes cast by voters in a presidential election in November of the election year are not votes for President or for Vice President.
9. The “winner-take-all” method for awarding state electoral votes can be used to encourage presidential candidates to fight for each and every vote in a state and in D.C.
10. Many statements about the Electoral College mechanism are no more than myths of their authors, no matter how plausible these myths may seem.
11. A tie in the Electoral College may not necessarily be resolved in favor of a person with support from at least 26 delegations in the House of Representatives.
12. There is no need to get rid of the Electoral College to make every vote cast valuable in deciding the election outcome.

If these statements bother or intrigue you, and you want the explanations, this book is written for you. This book is the author’s second book to discuss in a simple manner the logical fundamentals of the system for electing a President. (The first one [1] is a monograph discussing these fundamentals, along with the mathematics of U.S. presidential elections.)

Studying the election system is mandatory in American schools, and immigrants applying for U.S. citizenship must pass an exam that includes questions on the basics of this system. Yet many of those who teach the subject and who have studied it do not seem to be clear on how the election system was designed, and how it currently works. From the author's viewpoint, this partly explains why more than 40 % of all eligible voters usually do not vote in presidential elections.

Each election presents an opportunity to learn about the uniqueness of the presidential election system. Moreover, explaining the fundamentals of this system to eligible voters and to residents of the country will contribute to developing their analytical skills and logical thinking. If commercial media were interested in educating people, it could do a lot to help develop both by explaining these fundamentals. Indeed, many people obtain information in general, and on presidential elections in particular, from this media. While public radio and TV also spotlight presidential elections, the commercial media seem to have a solid lead in spotlighting elections. Whatever the role of both branches of the media in spotlighting elections, currently the above educational opportunities remain unavailable to millions of those who could benefit from their use.

Undoubtedly, the commercial media must compete to earn money, and this imposes limits on what the anchors and hosts of talk shows can afford to broadcast. Any risky topic may either bring new customers or lose the current audience to the competitors. The same is true regarding the style in which the topic is presented to the audience. Everyone who watches or listens to any media channel expects to see or to hear something new, catchy, puzzling, etc., but not in the form of a lecture. Thus, any serious matters should be discussed in an entertaining form to hold the audience's attention, not an easy task. One must "have the guts" and a certain level of authority in the media to discuss on the air, for instance, some statements from the above list.

Certainly, the anchors and show hosts themselves should understand the fundamentals of the election system to discuss such statements. Even if they (or their producers) decided to discuss the system as deeply as it deserves, they would have to find experts in the field and present the topic as a controversy. They usually choose experts from a close circle of those who they know and who are (presumably) knowledgeable on the subject. Authors of the books promoted by numerous publicists and PR agencies connected to the media are another source of the experts. The shows are unlikely to invite knowledgeable experts who do not fall into these two categories, since they consider it risky. Thus, if the shows do not find trustworthy experts from their inner circle, the election system fundamentals are doomed not to be discussed on the air in the course of the election campaign.

This is how an artificial taboo becomes imposed on the right of Americans to be educated regarding what the election system was designed for, how it really works, what outcomes, including weird ones, it may produce, and why. As a result, election rules that every voter should know may surprise the American electorate. In one of his columns, David Broder of *the Washington Post* warned of the possible public reaction to the "discovery" that in an election thrown into

Congress, each state has one vote regardless of its size [2]. It seems that society would be much better off if the presidential election rules, especially those applicable in close elections, were explained to the electorate before weird election outcomes are looming, rather than being “discovered” when such outcomes occur.

In any case, picking the subject of the election system fundamentals could be problematic even if a particular show invites knowledgeable people. It could be problematic even if there was a good chance that this show would become the first to report new information on the election system.

It is much safer to provide traditional election coverage, which includes the following:

1. Nationwide polls. These polls are conducted by numerous organizations, and their results vary. Even if the results of these polls are trustworthy, they may contribute to creating the wrong impression in the voters about possible election results. That is, they may make the voter believe that a recipient of the nationwide popular majority or plurality of the votes will necessarily win or is likely to win the election.
2. Nationwide polls among certain groups of the American electorate. Unless one knows the demography of the electorate in each state, especially in the “battleground” ones, results of these polls are not informative. Moreover, they may create the wrong impression that certain voting patterns exist within each such group throughout the country.
3. Polls in the “battleground” states. Although the commercial media sometimes present the results of these polls, usually no analysis of the factors that affect the dynamics of these polls is provided.
4. Promises of the candidates. Presidential candidates make many promises in the course of their election campaigns, and most of these promises relate to improving the everyday life of the American people. Promises are usually made by the candidates themselves and by members of their teams who appear on the air on their behalf, and these promises seem to be one of the most important parts of the campaigns. However, debating opinions about the promises made, rather than the analysis of the promises themselves, is what is really offered by the media. Under this approach, real issues of concern to the voters remain no more than headlines of the candidates speeches and two-minute statements made in the course of presidential debates.
5. Scrutiny of the candidates. This is the major part of the media coverage, and the more scandalous the discussions, the more attention is usually paid by the audience.
6. Meetings with groups of selected voters in “battleground” states. It is hard to understand how these groups are selected, and to what extent their views can represent those of the states. However, broadcasting such meetings conveys what some people think about the candidates.
7. Voting equipment to be used in the election. This coverage is certainly informative though it is not clear how this information contributes to the voter’s decision on Election Day.

8. Opinions of political observers, commentators, and journalists regarding the election. These opinions mostly deal with what the American people think about the candidates, states of affairs in the economy, international relations, military activities (especially if they are underway), etc. Undecided voters and non-voters give a great deal of attention to discussions of these topics, as well as to those of the mood of the American electorate. Indeed, since the behavior of these categories of voters is assumed to be unpredictable, these discussions help keep the audience intrigued.
9. Presidential and vice presidential debates. These debates are critical to many voters who make their decisions on Election Day based on the likeability of the candidates and the trust that the voters have in them. For many voters, it has always been a chance to learn about candidates promises and to decide whose promises sound more trustworthy and realistic.

Certainly, the traditional coverage does not require tackling the list of statements presented at the beginning of this Preface. Moreover, as long as likeability and trust in the candidates remain prevailing decisive factors in forming the voters opinion, any coverage of the system fundamentals would seem unnecessary.

But can the country do better than this?

It seems that the following four elements of media coverage would be more beneficial for the American electorate in the twenty-first century:

1. Strategic abilities of the candidates. Although past activities of the candidates certainly matter, they may not necessarily constitute a pattern of making decisions (at least by the challenger). Even if they do, it is not clear to what extent such a pattern can be extended to the Presidency for the next 4 years. At the same time, any comparison is reasonable and fair when both candidates make strategic decisions in the same environment. Election campaigns undoubtedly present such an environment.

If the analysis of strategic moves of the candidates in the course of their election campaigns was done by the media, the voter could evaluate whose decisions were more effective. Such an analysis would be especially important in the last one or two weeks before Election Day. Indeed, the resources of the candidates will have been almost exhausted by that time, and misleading moves of a major party candidate may force the opponent to make wrong decisions on where to focus the remaining part of the campaign. It is the analysis of the campaign strategies in the context of the electoral map that could constantly remind the voters that under the current election system, the states—rather than the nationwide popular vote—decide the election outcome. It would be illustrative of how each candidate can use the election system to win the election by the rules in force, especially in a close election.

Such coverage would require conducting and analyzing completely different polls. For instance, polls reflecting how particular moves affected opinions of likely voters in each social or ethnic group of the voters in each state (rather than nationwide) would be more informative. Finally, such coverage would emphasize that a Chief Executive to govern the Union of the states and



D.C.—rather than a President of the American people—is elected in the U.S. every 4 years. His strategic abilities are what should matter and what should make him a good manager and a good Commander-in-Chief. If evaluated and analyzed properly, decisions on campaign strategies could help the voters understand who can better govern the country in the next 4 years.

2. Leadership. How the candidates form their teams speaks volumes about their abilities to lead. Analyzing the appearances of representatives of the candidate's team on the air, as well as their preparedness for answering questions and for "delivering the message" on behalf of the candidate, may help in evaluating the leadership provided by the candidates in shaping their election campaigns. Discussing the names of possible members of the next Cabinet may also contribute to the image of the leader that each candidate should try to create in the voter's mind.
3. Programs of the candidates. Each and every element of the candidate's program should be scrutinized by the media. It is important to separate promises, which may sound very good, from the deals that can really be accomplished in the next 4 years. It is important to explain to the voters that an elected President cannot transform any promises into the laws without Congress. Chances of the promises to be fulfilled should be evaluated depending on the composition of the Congress that the newly elected President will work with. All elements of the programs should be made understandable to every voter in terms of the voter's everyday life, rather than in terms of percentages of the potential beneficiaries.  
Thus, all the details of the candidate's programs should be understandable to all the voters rather than only to those who wrote these programs. Moreover, the candidates must be able to explain to the voters all these elements and answer corresponding questions on the air.
4. Tactical abilities of the candidates. Debates among the candidates present an excellent opportunity to the voters to see whose tactical abilities seem to be stronger. The analysis of approaches employed by the candidates in answering questions or in making comments, which should be provided by political observers, is critical to this end. It should give the voters an impression of how the candidate could handle his opponents in numerous discussions as President in the next 4 years.

The readers who share the author's viewpoint that the second type of election coverage is preferable—or at least should be present in the election year—may ask: can the media provide such coverage? From the author's viewpoint, the answer is yes, once there is a demand for such coverage. However, this demand may not emerge unless the voter education and the election culture in the country start changing.

Currently, it does not seem that the commercial media can (or want to) initiate this process because of the above-mentioned financial reasons. Nevertheless, it can certainly contribute to the process once the American people decide that they really want to know how the election system works, and how it can shape the election campaign.

The long-deserved explanation of the fundamentals of this system is the key to initiating the change. However, conducting any substantive public discussion in

the media of either the election system or election rules, including controversial ones, requires three prerequisites.

First, a sizable part of society should be concerned with the topic.

Second, those who wish to participate in the debates either as contributors or spectators should be at least familiar with the structure and the principles of the election system.

Third, at least one national TV channel should be willing to start the dialogue in a form that would encourage the rest of the media to follow suit.

Where is American society today with these inseparable ingredients of any substantive public discussion of the election system?

1. Society has been concerned about the fairness of the current election rules that may elect President someone who lost the popular vote, as happened, for instance, in the 2000 election. This concern has initiated two activities: (a) a few new approaches to changing the election system have surfaced and (b) voting technologies to count votes cast have been studied. Several proposals for improving the current election system have been published. However, only one particular proposal, the National Popular Vote (NPV) plan, has been promoted by a part of the media and presented to society as the best and even as an “ingenious” one.
2. Several books analyzing how the current election system works have been published since the 2000 election. However, a majority of American society seem to have advanced in understanding of only two basic features of the system. That is, more people have understood that under the rules of the current system, (1) the electoral vote rather than the popular vote matters in determining the elections outcome, and (2) the “winner-take-all” method for awarding state and D.C. electoral votes is to blame for the division of the country into “safe” and “battleground” states in presidential elections. (Here, a “safe” state is a state in which the electors of one of the presidential candidates are practically guaranteed to win all the state electoral votes in an election, and a “battleground” state is a state in which the electors of no presidential candidate can be sure to win all the state electoral votes.)
3. Though some newspapers have tried to initiate a dialogue on how to elect a President, a few influential media outlets have supported the National Popular Vote plan and have managed to present it as the only alternative to the current election system. Moreover, all the controversies of this plan and its constitutionality have never been seriously discussed, and the newspapers that support the plan are reluctant to publish articles critically analyzing this plan. Only the NPV plan has been mentioned by national TV channels, and only its originators and supporters have been able to air their views on how the current election system could be improved.

This state of affairs with public awareness of the basics of the current presidential election system has moved the author to write a book in which the fundamentals of this system are addressed [1]. The book offers (a) a logical analysis of the constitutionality and controversies of the NPV plan, (b) a brief description of other plans to improve the election system, proposed by other authors, and (c) the author’s plan

to improve the system under which the will of the nation and the will of the states as equal members of the Union decide the election outcome, whereas the Electoral College remains only a back-up election mechanism [1]. The book [1] is, however, a monograph oriented mostly to professionals studying presidential elections, including political scientists, constitutional lawyers, managers who plan and analyze election campaigns, systems scientists, and mathematicians, interested in familiarizing themselves with the election system and with the mathematics of this system.

In contrast, though this book implements the author's attempt in the same direction, this book is oriented to a general readership, and its understanding does not require preliminary knowledge of the subject. Like all the author's previous publications on the U.S. presidential elections and unlike almost all publications of other authors on the subject, this book does not consider historical materials. In particular, it does not consider the Federalist papers in which some of the Founding Fathers expressed their viewpoints on what Constitutional Convention participants meant regarding issues relating to the election system. The author believes that the Constitution, Supreme Court decisions, and Federal statutes are the only publications that can be used in any analysis of the election system. Any other historical materials may only encourage one to focus on particular published historic documents.

The Constitution was written for the American people rather than only for experts in constitutional law. Therefore, one should not be surprised that different people have different perceptions and different understanding of election rules, embedded in provisions of the Constitution and Supreme Court decisions. Moreover, the logical analysis of these rules suggests that more than one understanding of particular rules is possible.

If this is the case for any of the rules, these rules should be analyzed by constitutional experts, and the results of the analysis should be made available to all interested individuals. Though the interpretation of controversial election rules can be provided only by the Supreme Court, public discussion of these rules is a mechanism for initiating either such interpretation or constitutional amendments addressing the controversies.

The author views this book as an introductory guide for those who are curious about the peculiarities of the election system that are not studied in civics lessons in schools and are not considered in publications of other authors on U.S. presidential elections. He hopes that this book, along with the book [1], will contribute to making knowledge about the election system available to everyone.

Besides the Preface, the present book contains seven chapters in which (a) two election systems, the originally designed system and the current one, are discussed, (b) proposals to improve the current system are described, and (c) the chances of two of these proposals to be introduced are analyzed.

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# Chapter 1

## The Initial Design of the Electoral College: Basic Ideas, Logical Mistakes, and Overlooked Problems

**Abstract** Almost every American has either studied something about the Electoral College in school or at least heard of it. Yet to many people used to electing municipal, state, and Federal officials by the democratic principle “the one who gets the most votes always wins,” the Electoral College looks quite mysterious and antiquated. The mystery concerns how such a system could have existed for so long, and why it has not been replaced by a system that is based on the above democratic principle. In contrast, people who are curious about the election system often try to grasp (a) how the Electoral College could have emerged in the first place, and (b) what could have been the Founding Fathers’ logic of designing the system for electing a President and a Vice President. This Chapter considers the Electoral College origins and analyzes a logical mistake made by the originators of the Constitution, which still remains in its text, as well as the election problems that were overlooked by the Founding Fathers in the original design of the Constitution.

**Keywords** 1787 Great Compromise • Article 2 of the Constitution • Committee of Eleven, Electoral College • Electors • Electoral votes • Executive power • Founding Fathers • Founding Fathers’ logical mistake • “One state, one vote” principle • Slavery

Almost every American has either studied something about the Electoral College in school or at least heard of it. Yet to many people used to electing municipal, state, and Federal officials by the democratic principle “the one who gets the most votes always wins,” the Electoral College looks quite mysterious and antiquated. The mystery concerns how such a system could have existed for so long, and why it has not been replaced by a system that is based on the above democratic principle.

In contrast, people who are curious about the election system often try to grasp (a) how the Electoral College could have emerged in the first place, and (b) what could have been the Founding Fathers’ logic of designing the system for electing a President and a Vice President.

This Chapter considers the Electoral College origins and analyzes a logical mistake made by the originators of the Constitution, which still remains in its text,

as well as the election problems that were overlooked by the Founding Fathers in the original design of the Constitution.

The titles and the context of the sections of this chapter contain questions and answers addressing the above concerns raised by people's curiosity and the alleged mystery and antiquity of the Electoral College. The questions are those the author has often heard Americans ask.

## **1.1 The Founding Fathers' Electoral College: A Monster or a Masterpiece?**

For many of those who do not understand how the Electoral College works, it may look like a monster [3]. Even those who believe it has served the country quite well for more than two centuries may not understand how it works. The opinions about the Electoral College differ, as do the people who hold them. This is business as usual.

Traditionally, Americans attribute two meanings to the phrase "the Electoral College".

1. Constitutionally, there is a group of people—called (presidential) electors—who elect a President and a Vice President every 4 years. This group is often called the Electoral College though there are no such words in the text of the Constitution. This meaning is equivalent to the phrase "all the presidential electors appointed by (currently) 50 states and by D.C. (since the 1964 election) as Article 2 and Article 23 of the Constitution directs".

Each state is entitled to appoint as many electors as it has members of Congress. The total number of members of the House of Representatives is determined by Congress, and it is apportioned among the states. The number of Representatives that the state is entitled to in the House of Representatives depends on the number of people living in the state. This number is determined based upon the results of the census that is conducted in the country every 10 years. According to Article 1 of the Constitution, each state is entitled to two U.S. Senators in Congress, despite the state's size.

In 1912, Congress set the size of the House of Representatives equal to 435, and this has been the number of Representatives ever since. The only exception was made in 1960 for the 1960 presidential election, when the number of Representatives was temporarily made equal to 437.

From 1948 to 1959, the Union consisted of 48 states, and Congress consisted of 435 Representatives in the House of Representatives and 96 Senators. Thus, 531 presidential electors could be appointed during those years. Alaska and Hawaii joined the Union in 1959, and for the 1960 election, the number of Representatives in the House of Representatives was made equal to 437 to let each of the two states appoint the minimum number of presidential electors that each state could have in the election. Thus, the number of all the electors that could be appointed in that election was equal to 537 (since the number of Representatives