

Hacked off by the Electoral College

by Greg Coleridge

It happened again. For the fifth time in our nation's history, we have a President of the United States who received fewer popular votes than his opponent.

As if we needed more political developments to question the legitimacy of our political system, we can now add to the growing list a President claiming a mandate to implement his agenda who lost the election by 2.86 million votes.

This issue for many is all about the individual persons who actually won and lost. It shouldn't be. The larger, more fundamental issue is about democracy. It's about the credibility and legitimacy of our political system.

The fundamental question is very simple: should citizens in the United States have the right to have their individual votes count equally when electing their President? Yes or No?

While Congressional Committees are now investigating the threat posed to our elections by the Russians, including possible hacking of private emails, every citizen should be hacked off by the proven threat to democracy on full public display every four years by the built-in system for (s)electing the President: the Electoral College.

Never mind a possible single wall built between Mexico and the U.S. in the next four years, multiple walls were erected in our own original Constitution to keep *We the People* outside our own government and governance.¹ Washington, Hamilton, Madison, Jay and other of our nation's

"founders," fearing the potential political power of "the rabble," had little interest in establishing anything approaching a real democracy.

History

The Electoral College is one of those walls. A relic of the immoral and heinous slavery era of our nation, the Electoral College was included in the Constitution to protect the political power of southern slave states when electing the President. Since slaves had zero rights, including the right to vote, an actual democratic national popular voting system would threaten the institution of slavery.

A nifty alternative was proposed by southern slave masters counting the "votes" of states over those of citizens, with each slave counted as 3/5ths of a real person when determining the number of proportional "electors" representing that state. This inflated the political power of slave states, protecting the barbaric institution. Democracy, like many slaves who resisted their inhumane treatment, was tarred and feathered. Little wonder that four of the nation's first five Presidents were from slave-dense Virginia.

Adding to the dismay was the requirement that each state, regardless of population, would receive an additional two electors — representing the number of Senators of each state. The democratic distortion was in full display (or decay) before the ink dried on the parchment of the original Constitution.

The sordid link between the Electoral College and slavery transcends its birth. Rutherford B. Hayes was the second loser of the popular vote to become President. Hayes lost the popular vote to Samuel Tilden in 1877. Twenty electoral votes were "unresolved." The (s)election of Hayes as President was determined by a special commission, controlled by the CEO of the Pennsylvania Railroad Company and made up of Supreme Court justices and members of Congress. A deal was struck, The Compromise of 1877: Hayes would receive the 20 electoral votes if he agreed to pull federal troops from the South. This put an end to Reconstruction and the launch of Jim Crow racist laws. Those same troops were shifted to put down the first national labor strike in 1877, resulting in the death of over 100 strikers. Other troops were sent to fight the "Indian Wars" in the West, which stole land and created a different form of enslavement — Indian Reservations². Thank you Electoral College!

Democratic disaster

A few years ago Donald Trump said: "The electoral college is a disaster for a democracy."

Views can and do obviously change when the shoe is on the other foot — or in his case Tweets are coming from another smartphone. It's not surprising that Electoral College outrage is so partisan. It's the same with gerrymandering. Those doing the line drawing to benefit their political party and marginalize the other party always think it's fair, even if the

drawing paints a democratically damning picture. The Electoral College is, however, a nonpartisan assault on real democracy.

The major pillar of the Electoral College defense is the argument that it provides balance in ensuring political voice and power to rural and unpopulated communities and states. The point was made, for example, that the entire 2.86 million popular vote advantage of Clinton came from just California and New York and, thus, a popular voting system would in effect be determined by wishes, wills and whims of these two coastal states.³

Numbers can be parsed, of course, in ways to make exactly the opposite point. Texas, with its 38 electoral votes, can be claimed to have determined the national election. Given that Trump received 74 more electoral votes than Clinton, it can be asserted that it was the wishes, wills and whims of the Lone Star State alone that determined the final outcome.

There's a reason that no other nation on the planet self-identifying as a "democracy" or "democratic republic" has anything like an Electoral College. Why? Because it violates the basic democratic principle of "one person, one vote." Every vote should count and be weighted identically. Under the Electoral College, voters in small states have greater power per person than in more populous states due to every state, regardless of population, automatically receiving two electoral votes. It's simple math.

Smaller states also have disproportionate power in the U.S. Senate. Gerrymandered congressional districts result in one political party (Republicans at the moment) having far better representation in the House of Representatives than their number of registered party members would warrant in state after state. If you add in the rights of minorities from majorities (be they individuals or institutions) inherently protected by

the U.S. Supreme Court, a solid argument can be made that the constitutional scale is tipped well away from the right or power of popular, majority rule.

The fundamental democratic "unit" in our country is the human person (or in the case of elections, voters), not "the state" or "substate" like such as individual states, counties, cities, wards, or precincts. It should be irrelevant, therefore, how many states, counties, cities, wards or precincts presidential candidates won, but only how many eligible human votes they received. That's how winning candidates are determined for Senate, House of Representatives, state elected office, county elected office, mayor, councilperson, even ward precinct committee person. Governors in all 50 states are elected by popular vote. Should not the same be true for the governor of all states – the President?

It's only the Electoral College that permits losers to be winners.

If this were as fair as its promoters suggest in choosing a President, it would be a relative breeze to develop an equivalent Electoral College-friendly system at the state level to elect, say, U.S. Senators. Compared to the months it takes for state officials every decade to create gerrymandered congressional and state senate and representative districts, designing such a system would be a relative cakewalk. Winning the greatest number of counties in their a state with rural counties weighted more heavily would elect U.S. Senators regardless of the state's overall popular vote. Why hasn't it happened? Because no politician or "Blue Ribbon Commission" could sell it to the public.

Winning when losing broadens and deepens the ever-growing legitimacy crisis of the Presidency in particular and U.S. political system in general. The hallmark of one person, one vote as the mechanism to determine

outcomes transcends politics to include virtually every civil society organization. Even "Dancing with the Stars" honors one person, one vote in their annual faux electronic elections. You can't get any more culturally legit!

Taking action

There are very few moments when fundamental flaws in governing institutions are so blatantly revealed.

This is one of them.

The challenge will be to address fundamental democratic constitutional flaws amidst responding to scores of anticipated horrific public policy proposals from the Trump Administration.⁴ It's what the Move to Amend (www.movetoamend.org) campaign to abolish corporate constitutional rights and money defined as constitutionally-protected free speech faces in the coming years.

It's the same old story for people of conscience: deciding where to strategically place their strategic time, energy and resources. Should we focus on electing or unelecting public officials? Should we advocate for better laws and regulations? Should we organize for long-term structural and institutional change?

The answer is, of course, some of each. They're all needed. They all, if understood as a package, reinforce one another.

Despite the in-our-faces contradiction between the myth of one person, one vote that we're raised to believe our nation upholds compared with the reality the Electoral College presents, little activist energy exists for a constitutional amendment campaign to abolish this antidemocratic arrangement, despite an Amendment being introduced in late 2016 by former Senator Barbara Boxer. Abolishing the Electoral College is more likely to occur as part of a larger package of constitutional "Democracy

Amendments” in the future. This will require that citizens continue organizing a larger “democracy movement” which undergirds many current social, economic, political and environmental efforts. As a reaction to the evaporating myth of democracy in our country, there is growing dedication to a democracy movement capable of successfully pushing a package of “Democracy Amendments.” It could be a reality much sooner than we think.

In the meantime, there is an alternative strategy that would neutralize the Electoral College and its democratic distortions. Ten states and the District of Columbia have already passed legislation awarding their respective Electoral College votes to the winner of the national popular vote. These states and DC account for 165 electors. If additional states with a cumulative total of 105 electors take the same action, the Electoral College would, in effect, be trumped with one person, one vote becoming the means for deciding the next President.

Being hacked off about the Electoral College is wholly legitimate. Our task is to convert that anger into positive vision, engagement and common action on behalf of an electoral system with democratic integrity.

Notes

¹ A list of undemocratic Constitutional provisions has been itemized in an earlier POCLAD article, A U.S. Constitution with DEMOCRACY IN MIND,

http://poclad.org/BWA/2007/BWA_2007_MAR.html#3

² Human Rights for Human Beings, Not Corporations,

http://poclad.org/BWA/2001/BWA_2001_MAR.html

³ The word “coast” is constantly used in this and other contexts not as a geographic descriptor but as a form of derision. “The coast” infers being on the edge or fringe, compared to being mainstream, or the center. The Midwest is authentic or real because it lies in the “heartland.” Interesting how those who use the word “coast” with such derision never use it when describing, say, Texas, with considerable coastline on the southern edge or fringe of the nation.

⁴ There would have been many horrific policies, though in some cases of a different set, deserving of immediate reaction and resistance if Clinton had been elected.

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By What Authority (ISSN: 524-1106) is published by the Program on Corporations, Law & Democracy. The title is English for *quo warranto*, a legal phrase that questions illegitimate exercise of privilege and power. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. Today, a minority directing giant corporations and backed by police, courts, and the military, define our culture, govern our nation and plunder the earth. **By What Authority** reflects an unabashed assertion of the right of the sovereign people to govern themselves.

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BWA is a tool for democracy proponents to rethink and reframe their work. To that end we encourage readers to engage us with comments, questions and suggestions.

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