

REVISED EDITION

# The People's President

THE ELECTORAL  
COLLEGE IN  
AMERICAN HISTORY  
AND THE  
DIRECT VOTE  
ALTERNATIVE

NEAL R. PEIRCE AND  
LAWRENCE D. LONGLEY

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*Revised edition*

Neal R. Peirce and Lawrence D. Longley

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## Preface

Some years ago, political columnist and sage Arthur Krock wrote, "the road to reform in the method of choosing the Presidents and Vice Presidents of the United States is littered with the wrecks of previous attempts."

The cause of electoral reform has always suffered from two handicaps—the unwillingness of reformers to agree on a single system and the insistence of some on reforming the system for their own partisan advantage.

Immutable laws seem to dictate that partisan motivation will always rear its head; it cannot be banished, though with luck it may be controlled. But the time may be ripe in American history to put aside the various halfway proposals for reform of the electoral college—all to be described later in this book—in favor of a simple direct vote of the people for their chief executive.

The history of past reform attempts, Tom Wicker suggested in a foreword to the first edition of this book in 1968, is a chronicle of one proposed reform after another gaining some popular favor but being defeated for lack of sufficient support. "One by one, the district system, proportional electoral votes, automatic electors, have come out of the pack like challenging horses only to fall back on the homestretch." Wicker suggested, however, that with the formidable support the direct vote had received in the late 1960s, it might have a better chance than earlier reform efforts:

The time of this particular idea has come. Can it any longer be pretended that this great people needs the electors to choose wisely for it? Of course not. Yet that was the original theory. The President is the only American official who represents the American people entire—the whole constituency, every one of us, from Maine to California, Dixiecrat and New Left, white and black, man and woman—and what real reason is there that we should not vote directly for him and have our votes counted directly for him? We may be 50 states in Congress but we are one people in the White House—or should be—and the President ought to be ours to choose.

These arguments were not without their effect in the strong push after the 1968 election to abolish the electoral college and institute the direct vote. The 1968 election featured a near-reversal in the electoral college of the popular vote and a blatant attempt, by independent presidential candidate George Wallace, to prevent any majority in the electoral vote, so that he might play the role of bargainer-kingmaker. Indeed, a constitutional amendment providing for

direct election of the president was adopted by the House of Representatives in 1969 by an overwhelming vote of 338–70. It enjoyed enormous support from diverse groups in the society, from the organized bar and conservative business circles to many liberal-leaning labor and good government groups. But it was narrowly defeated in the Senate in 1970, not by a substantive vote on its merits but by an undeclared yet effective filibuster.

A decade later, in 1979, yet another, and ultimately unsuccessful, attempt was made by congressional sponsors to win approval of the direct vote amendment. Senator Birch Bayh of Indiana again proved himself a worthy inheritor of the mantle of reform, passed down since the first decades of the republic from men who have labored tirelessly for true reform of our presidential election system without regard to personal or partisan advantage. In his efforts, Bayh built upon the work of such senators as Thomas Hart Benton of Missouri and Oliver P. Morton of Indiana in the past century and Henry Cabot Lodge of Massachusetts and Estes Kefauver of Tennessee in ours. The final vindication of these efforts will come one day in a simple, undiluted, unencumbered vote of the American people for their president. The only question is whether the nation must first undergo a cruel crisis, undermining popular faith in the Constitution and our system of government, before this eminently fair and logical reform is instituted.

For their advice and counsel in the preparation of the original edition of this book (written by Neal Peirce alone), a special debt of thanks is expressed to collaborator-advisers James C. Kirby, Jr., John D. Feerick, Robert G. Dixon, Jr., Charles W. Bischoff, and Roan Conrad.

The revised edition has benefited greatly from the analysis and reflections of Alan G. Braun and John H. Yunker, who were responsible for valuable research on which we drew heavily. We are also indebted for assistance and counsel to Professor William Crotty of Northwestern University, Professor Richard G. Smolka of American University, Warren Mitofsky of CBS News, and Nels Ackerson and his colleagues of the staff of the U.S. Senate Subcommittee on the Constitution. Special appreciation is due Marian Ash of the Yale University Press for her encouragement and intelligence regarding the revision. Above all, our wives, Barbara and Judith, provided greatly appreciated encouragement and support, both to the project and to their husbands, throughout our labors. We thank them.

Washington, D.C.  
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# The People's President

ELECTION NIGHT, NOVEMBER 4, 1980

It is the quintessence of what Americans call a "landslide" election, an echo of years like 1932 and 1936 (Franklin D. Roosevelt's greatest triumphs), 1952 and 1956 (Dwight D. Eisenhower's massive wins), and 1972 (the reelection of Richard M. Nixon over a Democratic opposition in total disarray).

Although most published national opinion surveys have suggested a 1980 election "too close to call" between Republican challenger Ronald Reagan and incumbent President Jimmy Carter, the suspense in the contest has drained away by late afternoon. "Exit polls" of voters leaving the polls across the nation, conducted by the CBS, NBC, and ABC television networks, are already showing a huge Reagan lead. As NBC signs on with its election night coverage at 7 P.M. (E.S.T.), commentator John Chancellor confidently predicts "Ronald Reagan will win a very substantial victory tonight, very substantial." And he is right. Over the course of the next hour, television election maps become awash in "Reagan blue" as state after state is called for the Republican.

Just an hour and a quarter into its election night programming, NBC at 8:15:21 (E.S.T.) flashes REAGAN WINS on the nation's screens, followed by ABC at 9:52 and CBS at 10:33. President Carter himself appears before his election workers (and the nation's television viewers) to concede the election before 10 P.M.—indeed hours before the polls have closed in the West. The shortest election night of the television era is over. The final returns will show Reagan winning 51 percent of the popular vote, Carter 41 percent, and independent candidate John B. Anderson 7 percent. In electoral votes, it will be an overwhelming 489 votes for Reagan, only 49 for Carter.

But the history of U.S. elections demonstrates clearly that it is not always so easy, that the electoral college which performs with so much apparent smoothness in a decisive election is a faltering and potentially dangerous mechanism when the contest is close.

Indeed, in the election immediately preceding the 1980 landslide, the United States had experienced a contest underscoring the system's vagaries and unreliability.

## ELECTION NIGHT, NOVEMBER 2, 1976

Its polling completed, a curious nation waits to see whether Jimmy Carter will become president or whether Gerald Ford, who succeeded Richard Nixon to the nation's highest post, will be able to retain the job he first won by luck of appointment to the vice presidency. In most Americans' minds, the real race is in the popular votes. Since early evening, Carter has led by a rather comfortable margin; when the final returns are reported a few weeks later, the election night trend will be confirmed, and Jimmy Carter will enjoy a popular vote margin of 1,683,040 votes. It is not a stupendous plurality; in fact it is a pale shadow of the margin for Carter suggested in polls just after the two parties' nominating conventions. But it is an unambiguous, clear, unchallengeable margin. The people have spoken. Jimmy Carter is to be their next president.

But will he? Even as November 2 fades at midnight into November 3 on the East Coast, a sliver of doubt lingers in the minds of the professional politicians, the political aficionados, the political journalists. Regardless of that substantial popular vote margin, they know there is still a doubt, perhaps mostly theoretical but still not to be entirely dismissed, that Jimmy Carter will become president. The reason, of course, is that hoary eighteenth-century institution still chugging into the last quarter of the twentieth: the electoral college. In any close election, there is a chance the electoral college may choose a candidate the people have rejected. In this election, Carter's heavy vote is in his native South; his popular vote is not well distributed throughout other regions. Indeed, political commentators have already reported on the possibility of a 1976 misfire. Among them was one of the coauthors of this book, who wrote in a syndicated column on October 10, 1976: "the nation may face the greatest threat in this century that the antiquated electoral college system will elect the President who lost the popular vote." According to Peirce, campaign strategists on both sides were aware "that Jimmy Carter, bolstered by strong majorities in his native South, could lead by as much as 1.0 to 2.5 million votes in the national popular vote, but still lose in the electoral college because of narrow margins for President Ford in big Northern states with heavy electoral vote blocs."

The scorekeepers everyone is watching as this election night rolls along are a group of totally self-appointed persons, occupying positions beyond the farthest stretch of the imagination when the electoral college was first conceived. They are the staffs of the three national television networks, each with millions of dollars invested in the election coverage, reporting from their studios in New York City. An army of thousands of poll watchers has been phoning in election returns from selected precincts across the nation, permitting the networks to declare on the basis of clear trends from representative voting areas, even when the computed vote is quite incomplete, just which candidate will carry each state. They use complex formulas involving several cross-checking computa-

tions to decide whether a state can be “called” for one candidate or the other. There have been known instances of “goofs”—when a network has called a state and then had to withdraw its projection. But these cases are rare. And it is virtually unthinkable that a network would risk calling the entire presidential election for a candidate without being convinced, beyond reasonable doubt, that it was right.

At midnight, Carter is comfortably ahead in every network's electoral vote calls. If one is watching CBS News, Carter's score over Ford is 208–62. NBC viewers see a 156–76 score, those viewing ABC 224–113. Carter has won his electoral vote lead by sweeping most of the South and New England and winning a good share of the Mid-Atlantic regions plus Minnesota and Wisconsin. Two of the three networks have already credited Pennsylvania, with a hefty 27-vote bloc of electoral votes, to Carter; as early as 9:31 P.M., taking a flyer on the basis of what must have been quite fragmentary reports, ABC has credited New York, with its 41 electoral votes, to Carter.

But at midnight it is still not impossible to construct a scenario for a Ford win. CBS and NBC still consider New York too close to call; Ford has won Connecticut, Vermont, and New Hampshire and seems on his way to winning the lion's share of the Midwest and virtually all of the Mountain West. If the Pacific Coast and a handful of doubtful southern states all went for him, Ford might still be elected, Carter's popular vote plurality notwithstanding.

Within 43 minutes after midnight, Carter has added New York to his total in both the CBS and NBC projections. CBS also credits Carter with Missouri (12 electoral votes) and Oregon (6 votes) in the hour after midnight, for a total of 267—only 3 votes short of the 270 required for election. But then, for almost two hours—until 2:58 A.M.—Carter remains frozen at 267 in the CBS count. And it is not a firm 267: at 2:58 CBS rescinds its Oregon call, bringing Carter back down to 261 electoral votes. At the same hour NBC decides that Hawaii will be a Carter state (the Hawaiian call has taken so long because none of the networks had thought it worthwhile to establish sample precincts in the island state, so they had only raw vote returns to go on). At 3:28 A.M. CBS also decides to call Hawaii for Carter; now both CBS and NBC counts stand at 265 Carter electoral votes—5 short of the magic number.

In earlier decades, there would have been no doubt about the vote of Mississippi: for a century it had been one of the states in which the Democratic nomination was tantamount to election. But now, hours after the closing of the last polls, Mississippi has moved to center stage. It is the only uncertain state at that moment that (1) clearly leans toward Carter, and (2) has enough electoral votes (7) to put him over the top. ABC had called Mississippi for Carter at 1:37 A.M., but both CBS and NBC are extremely leary—and with good reason. For one thing, the vote is reported as exceptionally close. Secondly, Mississippi election law incorporates a provision one could well consider a relic in modern America—separate votes for the individual candidates for elector. (The

only other states with similar provisions are Louisiana and South Carolina.) This feature means that in a close race it would be possible for the electoral slate to split, some electors of one party being elected, some of another. The News Election Service, which the networks and wire services depend on for raw vote returns, is counting in Mississippi only the vote for the frontrunning Carter and Ford elector candidates, county by county. There is no way to look behind these returns to determine whether there is a major differential in the vote for various electors.

Finally, at 3:31 A.M., NBC decides to call Mississippi's 7 electoral votes for Carter. With that, the Carter vote is 2 over the 270 required for election, and the network declares him president-elect. ABC moves simultaneously to make a late call of Hawaii, also putting Carter over the top with 272 electoral votes. And fifteen minutes later, finally convinced of the soundness of the Mississippi returns, CBS follows suit. Most of America has already gone to sleep. Yet it is only now, hours after Carter's popular vote lead had been unequivocally established, that the networks dare confirm that the electoral college will follow the lead of the people.

And in fact 1976 went down in the history books as another election in which the college barely did its work. After most TV sets had gone dark, enough returns came in to confirm that several more states—California, Alaska, Maine, Illinois, Oregon, and South Dakota—had gone for Ford. Days later, it was confirmed that Carter had won Ohio by a razor-thin margin of 11,116 votes out of 4,111,873 cast. The final electoral vote count was 297 for Carter, 241 for Ford (actually reduced to 240 because of one "faithless" Ford elector in Washington state). Had an exceedingly small number of votes shifted from Carter to Ford—5,559 in Ohio, 3,687 in Hawaii—Ford would have had 270 electoral votes to Carter's 268 and won the election. But if the same faithless elector had then withheld his support from Ford, the Ford total would have been only 269—one fewer than the constitutionally required majority of the 538-member electoral college.<sup>1</sup> The issue would finally have been decided either in informal bargaining among or breaking of pledges by electors or, in a cumbersome contingent election procedure, by the U.S. House of Representatives. But at what cost to the stability of the American government and the legitimacy of the presidency, no one can know.

#### OUR ODD ELECTION MACHINERY

What is this odd election machinery, this strange method of choosing a president we call the "electoral college?"<sup>2</sup> In the annals of American history, one can find few outright supporters. An early analyst of the system called it "an abortive organism."<sup>3</sup> A latter-day political scientist depicts it as "a hoary and outworn relic of the stagecoach era."<sup>4</sup> One of the founding fathers believed it "the most pleasing feature of the Constitution,"<sup>5</sup> but only a few years later, one

of the great reform advocates of the nineteenth century—Senator Thomas Hart Benton of Missouri—declared the system's operation “wholly incompatible with the safety of the people.”<sup>6</sup> In our own times, the Supreme Court has declared that “the conception of political equality” behind the electoral college “belongs to a bygone day,”<sup>7</sup> and a blue-ribbon study commission of the American Bar Association characterized the electoral college method of electing the president as “archaic, undemocratic, complex, ambiguous, indirect, and dangerous.”<sup>8</sup>

The electoral college is a double-election system for the American presidency. Instead of voting directly for their president, Americans vote for presidential “electors” equal in number to the representatives each state has in Congress plus each state's two senators. The winning slate of electors in each state—Republican or Democratic—meets in the state capitol the first Monday after the second Wednesday of December in a presidential election year to cast its votes. The results are forwarded to Washington, where they are opened in the joint session of Congress on January 6. If a candidate has a majority of the votes, he is declared elected. If there is no majority, the choice is thrown into the House of Representatives, where each state has a single vote. If there is no majority for vice president, the Senate makes that choice.

Once the people have selected the electors, they have nothing further to say about the election of the president. Three times in the last century—1824, 1876, and 1888—their will was frustrated, and the man who lost in the national popular vote was elevated to the presidency. Five times in this century—1916, 1948, 1960, 1968, and 1976—we came perilously close to another miscarriage of the popular will. Despite these experiences, we continue to rely, in the words of a foremost constitutional scholar, “on the intervention of that Providence which is said to have fools and the American people in its special care.”<sup>9</sup>

But as illogical as the electoral college may appear for the United States in the second half of the twentieth century, it *did* seem to make sense in 1787 when the founding fathers devised it at the Constitutional Convention in Philadelphia. Consider the differences between the country for which the Constitution was written and the America we know today.<sup>10</sup>

Then, the nation—if one could call it that—consisted of thirteen contentious semisovereign states spread thinly along 1,300 miles of the eastern seaboard, from Massachusetts and its province of Maine in the north to Georgia in the south. Now, the federal union comprises fifty states, spanning the breadth of an entire continent and reaching into the Pacific to encompass Hawaii and Alaska.

Then, our frontier extended scarcely beyond the Appalachian Mountains; Pittsburgh was little more than a military post; Kentucky, just receiving its first great wave of migration; Cincinnati, a tiny village. Beyond these outposts there was little more than wilderness and solitude; no white man had yet beheld the

source of the Mississippi River, and only a few men had seen the great western plains. Now, our continental frontiers long since tamed, outer space is the only physical frontier that remains before us.

*Then*, communications and travel were tortuously slow throughout the land; Philadelphia was two or three days by stagecoach from New York; from Boston to Philadelphia the traveler was obliged to disembark and ride crude ferries across no less than seven rivers and could well spend ten days on the road, dusty in summer, mired with ruts in spring, limited to twenty-five miles in a day by winter's snows. The postal service was slow and unsure; the nation's eighty newspapers, avidly read in every hamlet they reached, were the strongest link between the people and their nation. *Now*, jet air transportation has reduced travel time to a few hours between virtually any two points in the United States. We have an unparalleled system of rail, air, and road transport; we complain when the mail takes more than a couple of days, even between distant points; our newspapers, television, and telephones form constant, almost instantaneous communications links between our people.

*Then*, we were an almost exclusively rural nation: 95 percent of the people lived independently on isolated farms or in villages of less than 2,500 persons, and eight in ten Americans took their living from the land. "At this time," wrote a not untypical farmer in 1787, "my farm gave me and my whole family a good living on the produce of it, and left me, one year with another, 150 silver dollars, for I never spent more than ten dollars a year, which was for salt, nails and the like. Nothing to wear, eat or drink was purchased, as my farm provided all."<sup>11</sup> *Now*, roughly three-quarters of our people live in great cities or towns of 2,500 or more. Six American cities have more than a million inhabitants; thirty-seven metropolitan areas have passed the million mark. Our economy is totally interdependent.

*Then*, the land could boast but a handful of colleges, and public schooling was haphazard at best. In New York and Pennsylvania a schoolhouse was never seen outside a village or town; in New England the little red schoolhouses were open but two months in winter for boys and two months in summer for girls. Illiteracy was a critical problem, especially on the frontier. *Now*, free public education carries most American children through high school, we have a great network of universities, and illiteracy has been practically stamped out. The American electorate is immeasurably better informed than in the first years of the republic.

*Then*, a clear class structure was apparent in America—less rigid than Europe's but still evident. It ranged from the distinct aristocracy of education and wealth from which the Constitution's framers sprang—landowners, merchants, lawyers—down through the great group known as the "middling sort" (farmers, shopkeepers, independent artisans)—to a "meaner sort" of laborers, servants, and hardscrabble farmers. And below all these, there were indentured servants and more than 600,000 black slaves. *Now*, we still find extremes of

wealth and poverty, but the great mass of Americans form a dominant middle class in a land of pervasive affluence and extraordinary social mobility. Slavery is a century gone, though its scars remain.

Then, a myriad of property and tax qualifications imposed severe limitations on the right to vote. Now, we are approaching universal adult suffrage.

Then, the president of the United States was once removed from the people of the land; men's primary loyalty was still expected to remain with their states. The federal government was not expected to play a major role in taxation, education, or economic affairs of most immediate import to the people; a national communications system did not exist; the franchise was limited; we still lacked a party system to popularize American leaders. Now, the president is no longer removed but immediate—on our television screens, on the front page of every daily newspaper, in our consciousnesses because we relate to him directly, not as New Yorkers or Nevadans, Vermonters, or Oregonians but as Americans. As we do a member of the family, we may like him or dislike him, we may praise him or curse him, we may support him or oppose him. But when all is said and done, he *is* our president until the next quadrennial election.

If we would measure further the president's importance to us, we need only review the manifold functions he fulfills in modern American society. No one has summarized it better than the American historian Clinton Rossiter, who pointed to no less than ten major roles of the president:

He is *chief of state*, a "one man distillation of the American people just as surely as the Queen is of the British people."

He is *chief executive*, manager of the gigantic federal apparatus, with powers of appointment and removal and charged with the duty of seeing that the laws "be faithfully executed."

He is *commander in chief* of our military forces.

He is *chief diplomat*, with paramount responsibility for conducting the nation's foreign affairs.

He is *chief legislator*, proposing laws to Congress and devising the strategy to get them passed.

He is *chief of party*, the controlling figure behind national political party machinery, the inspirer of his partisans, his party's chief fund raiser.

He is *protector of the peace*, guarding the nation from internal revolt, moving swiftly to help when natural calamity strikes.

He is *leader of a coalition of free nations*, the newest responsibility, resulting from our emergence as the leading power of the Western world in the era since the Second World War.

He is *manager of the prosperity*, responsible under the Employment Act of 1946 and other statutes for maintaining a growing, stable economy.

He is the *voice of the people*, "the leading formulator and expounder of public opinion in the United States."<sup>12</sup>

Out of the Vietnam war era and the Watergate scandal of the early 1970s



came a realization that it was altogether possible to accord too much power to a president and that reasonable constitutional limits—on every front from war powers to control of intelligence agencies to ownership of the papers a chief executive assembles in his conduct of official business—were necessary. In Richard Nixon the country was faced with the untenable assertion that a president might act above the law, indeed in violation of it, for “the national interest.”

Despite the more circumscribed view of the presidency that emerged from those years, however, the office retained the essence of its national and global power, limited by the Constitution and by bureaucracy and incalculable foreign power blocs but still an immense force to be reckoned with. And there remained a belief in the president as a man of all the people, a vision the Englishman John Bright formulated more than a century ago:

We know what an election is in the United States for President of the Republic. . . . Every four years there springs from the vote created by the whole people a President over that great nation. I think the whole world offers no finer spectacle than this; it offers no higher dignity; and there is no greater object of ambition on the political stage on which men are permitted to move. You may point, if you will, to hereditary rulers, to crowns coming down through successive generations of the same family, to thrones based on prescription and conquest, to sceptres wielded over veteran legions and subject realms,—but to my mind there is nothing more worthy of reverence and obedience, and nothing more sacred, than the authority of the freely chosen magistrate of a great and free people; and if there be on earth and amongst men any divine right to govern, surely it rests with a ruler so chosen and so appointed.<sup>13</sup>

Few Americans could have put it better. But we must ask ourselves: to what world does our presidential election system really correspond? Is it adapted to a modern technological society in a politically mature nation, where every American considers the ballot his birthright? Or is it more a vestige of the world of two centuries past, when voting was haphazard, the secret ballot scarcely known, the society disjointed and spread over a vast frontier? Have we adequately assured the sanctity of the franchise of all Americans? In short, have we placed within the body of our Constitution a foolproof system that will give the person whom most of us have chosen to be our president a universally understood, unequivocal mandate to govern and to lead?

As long as the antiquated electoral college system remains imbedded in our basic law, the answer must be “no.” In any election the electoral college can misfire, with tragic consequences. It can frustrate the will of the people, sending someone to the White House whom a majority has specifically rejected by its votes on election day. It can cause prolonged chaos and uncertainty by throwing an election into the House of Representatives. A malfunction of this awkward and outdated mechanism could undermine our prestige abroad. Just as serious, it could undermine the confidence of our own citizens in their Constitution and raise serious questions about the sincerity of our democratic ideals. If the system went awry in a time of peace and domestic tran-



quillity, it would be a monstrous embarrassment to us as a nation. If it misfired in a time of tension, in a time when we were close to open conflict with hostile powers, or when social divisions rent our nation, the consequences could be tragic. It would be foolhardy to expect that the goodwill and understanding of the American people would be so great that such a travesty would be tolerated. The electoral count "winner" could be placed under heavy pressures from press and people alike, to step aside. If he actually took office, his authority could be undercut at any moment by an opposition that honestly believed it had been cheated of the presidency. The nation and the presidency might survive such an ordeal, but we would all be the losers for it.

Throughout history a variety of proposals for electoral college reform has been brought forward. Some would divide the nation into small electoral districts that would vote separately for president. Others would divide each state's electoral vote proportionately, in the hope of a least approximating the popular will. But only one solution has ever been advanced that would assure the election of the person most Americans wanted: a direct popular vote of the people, with no institutional obstacle between them and their choice.

It may seem paradoxical that we assert the desirability of national majoritarian rule in selecting our president at a time when there is greater emphasis on state and local and even neighborhood-based innovation to re-create mutually supportive bonds between people and government at the level at which citizens lead their daily lives, on the capacity of states to act as "laboratories of democracy" as Louis Brandeis admonished, on the rich fabric of variegated federalism and its barriers to "megasolutions" imposed from afar. We suggest that one may support both developments, as we do.

The search for grass-roots community and trust can be thwarted if there is doubt about the legitimacy of the highest levels of government. Thus it is imperative to amend our Constitution to implement the direct vote, so that in fact as well as in theory, in constitutional guarantee as well as by happenstance in the electoral college, the person we choose may truly be the people's president. This is not a new idea; it was advanced first in the Constitutional Convention and then in Congress as early as 1816. When we have finally amended our Constitution to assure direct choice of the president by the people, future generations will surely look back with amused tolerance and wonder whatever took us so long.