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*Enlightened Democracy:
The Case for the Electoral College*
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CHAPTER TWO

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DEAN CLARENCE MANION of the Notre Dame University College of Law once observed:

The honest and serious students of American history will recall that our Founding Fathers managed to write both the Declaration of Independence and the Constitution of the United States without using the term “democracy” even once. No part of any one of the existing forty-eight State constitutions contains any reference to the word.¹

Half a century later, his statement remains true, with the exception of two recent additions to the California and Oregon Constitutions.²

This fact may come as a surprise to many Americans, who mistakenly believe that the United States was established as a democracy. The founding generation, however, intentionally omitted the word “democracy” from their governing documents. The Founders, by and large, were opposed to pure democracies, which allow bare majorities to tyrannize over minority groups. Instead, the founding generation intended to create a republic—or, arguably, a republican democracy—which would incorporate a spirit of compromise and deliberation into decision-making.

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Such a form of government, the Founders believed, would allow them to achieve two potentially conflicting objectives: Avoiding the “tyranny of the majority” inherent in pure democratic systems, while allowing the “sense of the people” to be reflected in the new American government.

Before traveling any further into the tangled thicket of the “intent of the Founders,” it is important to recognize that an element of difficulty always exists in attempting to summarize the collective thoughts and deliberations of a group of individuals. Certainly, opinions among the delegates to the Constitutional Convention, the state ratifying conventions, and the general public differed widely on many issues. Indeed, some early Americans were opposed to adoption of the Constitution altogether. These early Patriots had differences of opinion, but their differences were, in many respects, transcended by shared concerns. One concern that was shared by many in the founding generation was how to resolve the tension between allowing self-government and providing protection for the political liberties of minority groups.

Members of the founding generation thought of themselves as having more reason than any other to know what it was like to have no voice in their own government. They themselves had been abused by a tyrannical monarch who took no account of their needs and opinions. As a result, self-governance was an important principle to these Founders. Yet their experiences in England had taught them another important lesson: They knew what it was like to be an ill-treated minority. After all, even if England had been a pure democracy rather than a monarchy, the American colonies, relegated to minority status, would have been quickly trampled by the majority of citizens at home in England.³

What form of government allows the people to govern themselves, but also prevents democratic majorities from endangering the freedom of minorities? How can the evils of democracy be avoided, while the benefits are allowed to flourish? The conflict

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was very real to many of the Founders. At one point during the Constitutional Convention in Philadelphia (one can almost imagine his exasperation), Colonel George Mason, delegate from Virginia, was led to observe: "It is curious to remark the different language held at different times. At one moment we are told that the [democratically elected] Legislature is entitled to thorough confidence, and to indifinite power. At another, that it will be governed by intrigue & corruption, and cannot be trusted at all."⁴

The Founders were students of history. They knew that democracy, in its purest form, could allow even "inflamed" majorities and "unreflective mob[s]" to rule.⁵ Any majority, even a bare majority, always wins—even when they do so at the expense of rather large minority groups. The authors of the Constitution realized that freedom and self-government can only co-exist if devices are created to temper the momentary passions of the public. Only "reasonable" majorities should be allowed to rule. The Founders had another important incentive for establishing such a system: It would enable the country's most permanent minority constituency, the small states, to exist peacefully alongside their larger neighbors.

The importance of protecting both the majority and the minority, of allowing self-government but protecting political liberties, was summarized by Thomas Jefferson in his first inaugural address: "All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate which would be oppression."⁶

The Founders would find encapsulating these conflicting values in the presidential election process to be especially difficult. When they finished crafting the Electoral College, however, it was nearly universally agreed that they had successfully created an election process that reflected the competing values of democratic self-government and the preservation of political liberty for minorities. The Electoral College made it nearly

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impossible for a presidential candidate to rely upon unreasonable or regional majorities at the expense of minorities or the small states. Instead, a candidate would need to generate national support before he could be successfully elected.

The Evils of Democracy

The Constitution does not guarantee “every State in this Union” a democratic form of government, but rather “a Republican Form of Government.”⁷ The difference is more than merely semantic. Republicanism expects that a country will thrive when the people are governed by representatives who are elected based on their wisdom, integrity and civic virtue. These representatives are intended to deliberate and reach wise compromises with other representatives.

A democratic, or populist, theory of government, by contrast, would assume that the “main repository of wisdom and virtue” is in the people themselves.⁸ Representatives in a democracy merely carry out the majority will and are not expected to independently deliberate. Thus, 51 percent of the people can rule the other 49 percent without any need for compromise, even when the majority will tramples the rights of the minority.

The authors of the Constitution were opposed to the concept of a pure democracy. They had studied the history of many failed democratic systems, and they strove to create a form of government that would be quite different. Indeed, James Madison, delegate from Virginia, argued that unfettered majorities such as those found in pure democracies tend toward tyranny. Madison stated it this way:

[In a pure democracy], [a] common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security

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or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.⁹

The rhetoric against democracies became quite strong during the Constitutional Convention. Early in the debates, Elbridge Gerry, delegate from Massachusetts, forcefully asserted that “[t]he evils we experience flow from the excess of democracy.”¹⁰ Edmund Randolph of Virginia concurred that “the general object was to provide a cure for the evils under which the [United States] laboured; that in tracing these evils to their origin every man had found it in the turbulence and follies of democracy.”¹¹ Later in the Convention, Randolph reaffirmed his words, noting that the “democratic licentiousness of the State Legislatures proved the necessity of a firm Senate. . . . to controul the democratic branch of the [National] Legislature.”¹²

Other delegates also sought to encourage creation of a system that would control the impulsiveness and emotion that they believed would sometimes characterize public opinion. Gouverneur Morris of Pennsylvania remarked that “Every man of observation had seen in the democratic branches of the State Legislatures, precipitation—in Congress changeableness, in every department excesses [against] personal liberty private property & personal safety.”¹³

The arguments against pure democracy continued after the Constitutional Convention had concluded. Madison spoke to Jefferson of the dangers that could be created when the Government becomes “the mere instrument of the major number of the constituents.”¹⁴ Alexander Hamilton continued these arguments against democracies in a June 21, 1788 speech before the New York ratifying convention:

It has been observed, by an honorable gentleman, that a pure democracy, if it were practicable, would be the most perfect government. Experience has proved that no position in politics is more false than this. The ancient democracies, in which the people themselves deliberated, never possessed one feature of good