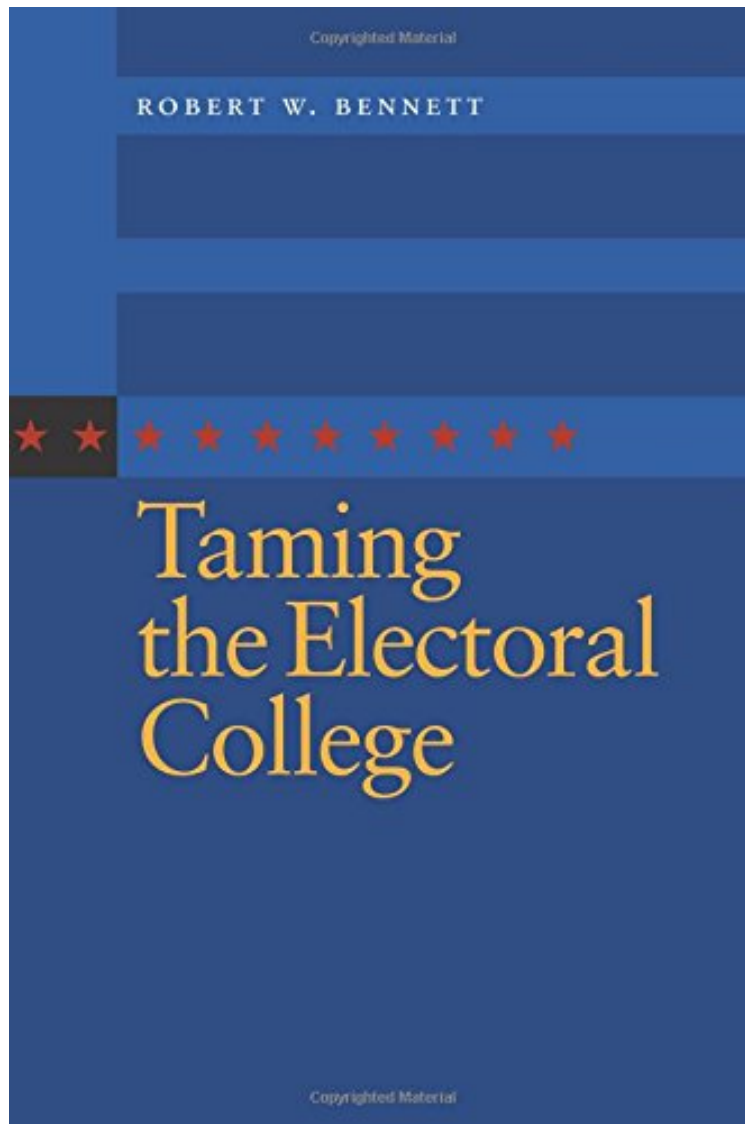


[Download free pdf] Taming the Electoral College

Taming the Electoral College

Robert W. Bennett

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Robert W. Bennett : Taming the Electoral College before purchasing it in order to gage whether or not it would be worth my time, and all praised Taming the Electoral College:

4 of 4 people found the following review helpful. Electing Taming the Electoral CollegeBy John PosterBook Review Taming the Electoral College by Robert Bennett Reviewed by John PosterProfessor Robert Bennett of the Northwestern University Law School is already thinking about the presidential election of 2008. Unlike the rest of us, Bennett tries to anticipate problems and solve them before they become severe. Reacting to the presidential election of 2000, Bennett believes that the Electoral College as presently defined represents a largely hidden danger in the

election of 2008 and beyond. For those of us who have forgotten our high school civics lessons, the Constitution of the United States refers to the manner of choosing the president in Article II and Amendment 12. Article II Each state shall appoint...a number of electors equal to the whole number of senators and representatives to which the state may be entitled...The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not lie an inhabitant of the same state with themselves...The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them to be president; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representatives from each state having one vote...Bennett reminds us that in the election of 1800 in which John Adams and Charles Cotesworth Pinckney ran for president and vice president respectively against Thomas Jefferson and Aaron Burr, the electors gave Jefferson, the assumed presidential candidate, and Burr, the assumed vice presidential candidate, a majority of the electoral votes, but an equal number of votes. The election was thrown into the House of Representatives with each state having one vote, Jefferson was chosen president and Burr selected as vice president. The nation realized that a further refinement of the electoral system (the word college is not mentioned in the Constitution) was in order. Amendment 12 The electors shall meet in their respective states, and vote by ballot for president and vice president...they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president...Bennett observes that the founding fathers did not foresee the advent of political parties. The two party system made a conclave of wise people in each state choosing the best qualified person not only unnecessary, but Constitutionally risky. Why risky? As Bennett remarks, only about half the states bind the electors to the candidate that they represent. When you vote for president you're really voting for the electors pledged to that candidate. But what is that pledge worth if not enforced by law? The so-called "faithless electors" have frequently voted for someone other than the person with whom they were associated. Bennett cites examples including the instances when electors have abstained. What happens if one or more faithless electors determines the outcome of a close presidential race? There appears to be no constitutional remedy. The election of 2004 wasn't close and one Minnesota elector, perhaps in frustration at the fate of Senator Kerry, cast his presidential vote for Senator John Edwards, the Democratic Party vice presidential candidate. Bennett warns that the same thing could happen in a very close election. Amendment 12 also specifies that if there is a tie in the Electoral College for vice president then the Senate decides the contest. A tie for vice president seems less important than a tie for president, but again, faithless electors could frustrate the popular will. When a candidate who lost in the popular vote receives a majority of electoral votes the situation is called the "wrong winner." Currently, there are 538 members of the Electoral College so a majority is 271 votes. In analyzing the demographics of achieving 271 votes Bennett notes that the 11 most populous states have the necessary majority. Bennett is not optimistic about the chances of a Constitutional amendment to abolish the Electoral College system. In the first place an amendment requires a two-thirds vote in Congress and then ratification by three quarters of the states. Would the smaller states, which have a disproportionate influence since every state has electors equal to its Congressional delegation, be willing to lose influence to the 11 largest states? Then there is the problem of third party candidates. Suppose there are three candidates for president and vice president and none of them achieve a majority of the popular vote? One may still win a majority of the electoral vote. Bennett cites the case of Ross Perot. In 1992 Perot received almost 20 million votes and no electoral votes. As it happens, another candidate did receive a majority of the popular vote, but had Perot siphoned enough votes away from the major party candidates to deprive each of them of a popular majority, the Electoral College system would have avoided throwing the election into the House of Representatives. On the other hand, in the 1948 presidential election Strom Thurmond received less than 2.3% of the popular vote, but won 46 electoral votes because his strength was concentrated in a few states. Bennett repeats suggestions that in the 1968 election Governor George Wallace may have intended to throw the election into the House of Representatives and use his electoral votes as a bargaining chip to win concessions from the major party candidates. In fact, Richard Nixon won a popular and Electoral College majority. If abolishing the Electoral College is not a possibility, are there other remedies? This is the strength of Taming the Electoral College. Bennett lists several reforms that states could adopt in time for 2008. Binding electors to their respective candidates is a reasonable requirement that half the states have not adopted. Bennett also suggests that a proportional system of allotting electoral votes might also avoid "wrong winners." Now all the states and the District of Columbia except Maine and Nebraska have winner take all systems for allocating electoral votes. In Maine and Nebraska candidates receive electoral votes in proportion to their popular vote. The proportional system makes the electoral vote totals more closely approximate the popular vote totals. Bennett also comments on possibilities for avoiding run off elections where third party (or fourth or fifth party) candidates deprive any candidate of a majority of votes cast. If rival slates of electors seek legal recognition as the winning electors (as in the election of 1876), Bennett speaks of recourse to other state results as the deciding factor. Bennett concludes that all these changes could be enacted at the state level and, indeed, constitutionally it is probable that only the states have the right to constrain the electors. In spite of the controversy following the disputed Florida vote in 2000 little scholarly attention has been paid to the Electoral College

system. Bennett's book is a welcome clear-headed and sensible analysis of the pitfalls of the electoral system with some safe detours around the worst of the dangers. Bennett's book is obviously timely and deserves attention among the public and state legislators. It is the outstanding volume on the Electoral College and is likely to maintain that status for a considerable time. My recommendation is that you "elect" this book as a must read before 2008.4 of 5 people found the following review helpful. Challenging the Conventional By Arnold B. Kanter Professor Bennett's new book challenges the conventional wisdom that reform of the electoral college is nearly impossible because it can be accomplished only through constitutional amendment. He takes his reader on a lucid and fascinating intellectual ride through the history and workings of this important provision. A most worthwhile book for anyone interested in the politics or legal standing of the electoral college.

Taming the Electoral College explores poorly understood aspects of the electoral college, including two possibilities in particular that could pose the most serious danger for American democracy. These are, first, determination of the president by "faithless electors" who ignore the popular vote in their states, and, second, choice of the president in the House of Representatives, which is required if no electoral college majority votes in favor of a single candidate. In any given election, neither of these outcomes is likely, but the 2000 election showed that we would do well to take both of them seriously and take action now to prevent them from occurring. Both possibilities could be dealt with by constitutional amendment, but amendment is difficult to achieve, particularly as it bears on the electoral college process. This engaging book instead offers nonconstitutional solutions to the two possibilities, as well as to a variety of other problems that lurk in the shadows of the electoral college process. It also offers a way to work toward popular election of the president without a constitutional amendment.

"The electoral college is a disaster waiting to happen. But the brief interest kindled by the 2000 election, in which the electors chose a president who lost in the popular vote, dissipated in the face of 9/11 and other matters of more immediate concern. Without downplaying the importance of wholesale reform, Robert Bennett, a distinguished constitutional scholar, argues lucidly and persuasively that incremental changes could avert major crises, such as subversion of the democratic process by 'faithless electors' who do not adhere to their mandates." (Paul Brest, Dean Emeritus, Stanford Law School; President)"Robert Bennett lucidly unveils the many complexities of a familiar but largely unknown institution in American life. The Electoral College is at once a process, a mystery and a dispenser of ultimate political power. It will henceforth be impossible to write knowledgeably about it without consulting this book." (Norman Dorsen, New York University School of Law; ACLU President 1976-1991)"Bennett's book on the electoral college is the best book on this subject in years, if not ever...Bennett is clearly more interested in scholarship than he is in persuading the reader to one point of view about the electoral college." (Ballot Access News)"This well-timed book will appeal to experts as well as to members of the general public who are looking for a nuanced picture of Electoral College reform." (Harvard Law)"Doing nothing about the Electoral College system is the real and significant problem identified in this thoughtful book. Pretending that the problems of a tie or a faithless elector or a minority candidate prevailing will not arise is rather foolhardy. Thus, the value of this book is that it should stimulate informed citizens and elected officials to act on solving the problems now." (New York Law Journal)"Bennett treats a timely, important, and complex topic with consummate skill, and his analysis of the electoral college's history and contemporary functioning is full of fresh insights. His writing is so lucid, even affable, that the book is sure to be engaging to both specialists and general readers. This is a remarkable accomplishment." (Stephen Siegel DePaul University)From the Inside FlapTaming the Electoral College explores poorly understood aspects of the electoral college, including two possibilities in particular that could pose the most serious danger for American democracy. These are, first, determination of the president by faithless electors who ignore the popular vote in their states, and, second, choice of the president in the House of Representatives, which is required if no electoral college majority votes in favor of a single candidate. In any given election, neither of these outcomes is likely, but the 2000 election showed that we would do well to take both of them seriously and take action now to prevent them from occurring. Both possibilities could be dealt with by constitutional amendment, but amendment is difficult to achieve, particularly as it bears on the electoral college process. This engaging book instead offers nonconstitutional solutions to the two possibilities, as well as to a variety of other problems that lurk in the shadows of the electoral college process. It also offers a way to work toward popular election of the president without a constitutional amendment.