

The Electoral College: A Bright Future in a Dynamic Political Landscape

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THE ELECTORAL COLLEGE: A BRIGHT FUTURE IN A DYNAMIC POLITICAL LANDSCAPE

PAUL LEONI & DOUGLAS PIERCE

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As a way of choosing the President of the United States, the Electoral College (colloquially and herein, “EC”), as created in the Constitution, Article II, Section 1, Clause 3, and refined in the 12th Amendment, should remain entrenched for another four generations. Generally, this is true for reasons detailed below and highlighted here. First, simply put, changing the constitution is difficult. Second, the election of 1824 and the 12th Amendment sealed the fate of ‘these States United’ (after the Civil War, ‘the United States’) as a two-party political system. Third, the EC will remain a fixture of this country’s political process because of the irreducible effects of the first two factors and the inherent physical mobility of the American electorate.

I. IT IS VERY DIFFICULT TO CHANGE THE UNITED STATES CONSTITUTION.

Regardless of what side of the ‘living document’ or ‘legal document’ debate a citizen falls on, it cannot be denied that changing, removing, or adding to the actual text of the Constitution is an arduous undertaking. In 232 years, it has only been accomplished 27 times.¹ In fairness, the first ten Amendments, the Bill of Rights, were more of a holistic supplement rather than ten individual amendment procedures.² Likewise, the 11th Amendment was an early fix to the Constitution, reducing the liability of states and thereby strengthening the precepts of federalism.³ Conversely, the 13th, 14th, and arguably the 15th Amendments

1. See U.S. CONST. amends. I–XXVII.

2. See *id.* amends. I–X.

3. *Id.* amend. XI.

required a bloody civil war.⁴ The 18th Amendment established prohibition only after a long simmering groundswell of popular agitation,⁵ and the 21st Amendment repealed it only after the country grappled with civil unrest and lawlessness directly related to the passage of the 18th.⁶ Similarly, women's suffrage, enshrined by the 19th Amendment, was the result of over a century of protest and turbulence.⁷ The 16th Amendment created income tax,⁸ and the 27th Amendment dealt with wages for the Congress;⁹ while neither were trifling matters, they were comparatively bloodless, almost ministerial affairs.¹⁰ The remaining eight amendments (roughly one-fourth of all the amendments) dealt with elections and how officials are chosen and serve their terms.¹¹ The record would suggest therefore that, when we truly want to change the Constitution, we war over it, it comes on the heels of a great cultural foment, or it deals with voting and the inner workings of our republic. While the present is not the most politically polarized moment in U.S. history, the manner in which the presidency is determined is hotly contested, and long howls that the EC needs to change come from some quarters.

In order to fully examine how to change the EC and whether it will happen in the next eighty years, there follows a brief, rudimentary explanation of how the Constitution can be amended. Article V of the Constitution prescribes the amendment process.¹² While there are two ways, only one has ever been successfully utilized.¹³ All twenty-seven Amendments have been ratified after two-thirds of the House and Senate approve of the proposal and send it to the states for a vote.¹⁴ Then, three-fourths of the states must affirm the proposed Amendment.¹⁵ The other method of passing an amendment requires a Constitutional Convention to be called by two-thirds of the legislatures of the States.¹⁶ Such a Constitutional Convention can propose as many amendments as it deems necessary.¹⁷ Those amendments must also be approved by three-fourths of the states.¹⁸ Although

4. *Id.* amends. XIII–XV; see *Landmark Legislation: Thirteenth, Fourteenth, & Fifteenth Amendments*, U.S. SENATE, <https://www.senate.gov/artandhistory/history/common/generic/CivilWarAmendments.htm> (last visited June 2, 2020).

5. U.S. CONST. amend. XVIII; *18th and 21st Amendments*, HISTORY.COM, <https://www.history.com/topics/united-states-constitution/18th-and-21st-amendments#:~:text=On%20January%2029%2C%201919%2C%20Congress,into%20effect%20the%20following%20January> (last updated Jan. 6, 2020).

6. *Id.* amend. XXI; *18th and 21st Amendments*, *supra* note 5.

7. *Id.* amend. XIX; *19th Amendment*, HISTORY.COM, <https://www.history.com/topics/womens-history/19th-amendment-1> (last updated Mar. 26, 2020).

8. *Id.* amend. XVI.

9. *Id.* amend. XXVII.

10. See *Notes on the Amendments*, USCONSTITUTION.NET, <https://www.usconstitution.net/constamnotes.html> (last visited June 2, 2020).

11. U.S. CONST. amends. XII, XVII, XX, XXII–XXVI.

12. U.S. CONST. art. V.

13. See *id.*

14. See *The Constitution*, LEXISNEXIS, https://www.lexisnexis.com/constitution/amendments_howitsdone.asp (last visited June 2, 2020).

15. U.S. CONST. art. V.

16. *Id.*

17. *Id.*

18. *Id.*; see also *The Constitution*, *supra* note 14.

neither method requires the approval of the entire electorate of the country, this latter method is much more of a 'grass roots' style with the impetus emanating from citizens through their local governments, rather than Congress, to call for a Convention.

In any event, changing the way we choose our President (e.g., from the EC to a popular vote) would require amending the Constitution. Arguably the only times the Constitution has been changed where the change flowed from non-violent alterations of signal sociological features of American life were prohibition and women's suffrage. Since the ability to predict the outbreak and/or outcome of a shooting war is beyond the ken of the authors and the scope of this writing, and given the more compact timeframe relating to its passage and subsequent repealing, an analysis of the history of the 18th Amendment and the 21st Amendment a short 13 years later, is made here. This effort is made in order to evaluate whether the elements which made passage of the 18th Amendment successful may be present today regarding changing the EC.

There are at least two critical factors that were present in 1919 that are not present today. First, by the year 1919, a long term, grass roots effort had been underway that sought to demonstrate that the consumption of alcohol was the root of not just social problems but economic problems as well.¹⁹ Second, disparate groups embraced the common factor of prohibition in their platforms to such a degree that they were able to set aside other differences in order to make prohibition a reality.²⁰

There were three major social and economic groups that pushed for prohibition in the 75 years leading up to the passage of the 18th Amendment: women's rights leaders, religious leaders, and business leaders. Women played a strong role in the temperance movement, as they viewed alcohol as a destructive force in families and marriages.²¹ "In 1906, a new wave of attacks began on the sale of liquor, led by the Anti-Saloon League (established in 1893) and driven by a reaction to urban growth, as well as the spread of Evangelical Protestantism (the Third Great Awakening) and its view of saloon culture as corrupt and ungodly."²² In addition, many industrial leaders supported prohibition in their desire to prevent

19. Mark Thornton, *Alcohol Prohibition Was a Failure*, CATO INST. (July 17, 1991), <https://www.cato.org/publications/policy-analysis/alcohol-prohibition-was-failure>.

20. William J. Phalen, *But They Did Not Build This House: The Attitude of Evangelical Protestantism Towards Immigration to the United States, 1800–1924*, at 157–76 (Jan. 2010) (unpublished PhD dissertation, Rutgers University) (available from ProQuest online dissertation database).

21. *Women Leaders of Temperance and Prohibition in the U.S.*, ALCOHOL PROBS. & SOLUTIONS, <https://www.alcoholproblemsandsolutions.org/women-leaders-of-temperance/> (last visited June 2, 2020).

22. *Prohibition*, HISTORY.COM, <https://www.history.com/topics/roaring-twenties/prohibition> (last updated Jan. 27, 2020).

accidents and increase the productivity of their workers in an era of increased industrial output and extended working hours.²³

Besides prohibition, it can be argued that these groups had few, if any, other issues in common. Religious leaders often opposed women's rights, especially the right to vote.²⁴ Business leaders also opined that there was no better place for women other than as domestic functionaries inside the family home, and not very many places for women in their factories.²⁵ Yet the movement's leaders were willing to set aside those differences in order to pass a national ban on "the manufacture, transportation and sale of intoxicating liquors."²⁶

In contrast, converting how we choose our President (EC v. popular vote) is not an issue bringing together business, religious, or political leadership or other leaders, or other high profile special interest groups that would be willing to set aside their vast differences and seek common cause. In fact, it is likely that changing the EC is not even a "top three" issue for the very large, high profile, and competing special interest groups dominating contemporary American culture.²⁷

As an aside, a brief examination of the Equal Rights Amendment, and its failure to pass since 1972, is another foundational example of both why changing the Constitution is difficult, and how the EC is safe. The ERA is about as simple and seemingly innocuous as an amendment could be,²⁸ yet it failed to pass and not only brought two "old chestnut" cases back to life,²⁹ but has spawned numerous United States Supreme Court and other federal cases regarding "reasonable time" to be ratified by the States.³⁰ If a simple statement that can be read only to mean 'equal means equal, regardless of sex' cannot be ratified, it bodes poorly that changing the EC, something as fundamental to American politics, inter-state relations, and 'one state = one state,' could happen.³¹

23. *Id.*

24. *See, e.g., Religious & Male Opposition*, NEBRASKASTUDIES.ORG, <http://www.nebraskastudies.org/1900-1924/votes-for-women/religious-male-opposition/> (last visited June 2, 2020).

25. *Anti-Suffrage Arguments*, THE OHIO STATE UNIV., https://ehistory.osu.edu/exhibitions/1912/womens_suffrage/interest

26. Olivia B. Waxman, *The Surprisingly Complex Link Between Prohibition and Women's Rights*, TIME, <https://time.com/5501680/prohibition-history-feminism-suffrage-metoo/> (Jan. 18, 2019, 4:24 PM); Further, it should be noted that possessing intoxicating liquors was not banned, and during the year between ratification of the 18th Amendment and the time of it taking effect, persons of means were able to stockpile. Mary Beth Albright, *Drinkers Rushed to Buy Booze After the 18th Amendment's Ratification a Century Ago*, WASH. POST (Jan. 16, 2019), <https://www.washingtonpost.com/history/2019/01/16/drinkers-rushed-buy-booze-after-the-amendments-ratification-century-ago/>.

27. The term "American culture" is itself controversial.

28. "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." Equal Rights Amendment, H.R.J. Res. 208, 92d Cong. (1972).

29. *Coleman v. Miller*, 307 U.S. 433 (1939); *Dillon v. Gloss*, 256 U.S. 368 (1921).

30. *Kimble v. Swackhamer*, 439 U.S. 1385 (1978); *Missouri v. Nat'l Org. for Women*, 620 F.2d 1301 (8th Cir. 1980); *Idaho v. Freeman*, 507 F. Supp. 706 (D. Idaho 1981); *Idaho v. Freeman*, 478 F. Supp. 33 (D. Idaho 1979); *Dyer v. Blair*, 390 F. Supp. 1287 (N.D. Ill. 1974).

31. *ERA History*, EQUAL. RTS. AMEND., <https://www.equalrightsamendment.org/history/> (last visited June 2, 2020).

II. SINCE THE ELECTION OF 1824, AND CERTAINLY POST-CIVIL WAR, THE TWO-PARTY SYSTEM IS AN INTEGRAL PART OF AMERICAN POLITICS, FUNDAMENTAL TO HOW FEDERAL LEADERS ARE CHOSEN.

Article II of the Constitution prescribes that a group of Electors—not direct, popular voters—chooses the president and vice-president.³² The framers’ envisioned the Chief Executive to be that person most suited to executing the laws passed by Congress, so, the thinking went, a president’s election (and re-election) should be linked to and dependent upon the will of the people, at least as expressed by a small body of Electors “deputed by the society for the single purpose of making the important choice.”³³ There was little appetite at the Constitutional Convention for leaving to popular vote who would be president *or*, for that matter, even for naming the Electors; a majority of state legislatures chose Electors.³⁴ Only persons possessing the “discernment requisite to such complicated investigations” should be Electors; while such discernment might be present in the average citizen, limiting the selection of a national leader to Electors had the added advantage of affording “as little opportunity as possible to tumult and disorder.”³⁵ To prevent foreign powers or entrenched interests from corrupting them, the Constitution would make Electors ephemeral, single-use intermediaries, selected in close temporal proximity to the election, and they would not originate from “preexisting bodies” (no sitting members of a state’s congressional delegation allowed), so as to enhance their detachment from considerations like the political affiliation of the candidates.³⁶ Each Elector cast two votes, which did not distinguish between president and vice-president; the candidate tallying the most votes and a majority of votes cast became president, and the candidate with the second highest tally became vice-president.³⁷ Political party “tickets” for president and vice-president were not present, which allowed for the possibility that political opponents could (and did in 1796) become the top-ranking members of the executive branch; this unworkable outcome became a signal impetus that led to the first and only change to the EC, the 12th Amendment, which was ratified in 1804.³⁸

The 12th Amendment to the Constitution changed the manner in which Electors cast their votes for the presidency.³⁹ The elections of 1796 and 1800 had placed the inherent flaws of the EC in stark relief against a backdrop of evolving

32. U.S. CONST. art. II, § 1, cls. 2–4. The term “electoral college” (“EC”) does not appear in the Constitution. *See id.*

33. THE FEDERALIST NO. 68 (Alexander Hamilton).

34. *See generally* THE RECORDS OF THE FEDERAL CONVENTION OF 1787 VOLUMES 1–3 (Max Farrand ed., 1911).

35. THE FEDERALIST NO. 68 (Alexander Hamilton).

36. *Id.*

37. *See generally* U.S. CONST. art. 2, § 1, cls. 2–4.

38. 38 ANNALS OF CONG. 1824 (1797); Tadahisa Kuroda, THE ORIGINS OF THE TWELFTH AMENDMENT: THE ELECTORAL COLLEGE IN THE EARLY REPUBLIC, 1787-1804 (1994).

39. William Kimberling, *The Electoral College*, in 1 ESSAYS IN ELECTIONS (1992) <https://cdm16007.contentdm.oclc.org/digital/collection/p267401ccp2/id/14435>.

political parties; the former election installed a vice-president of one party bent on subverting the policies of a president aligned with another party, and the latter election demonstrated that certainty in party-based presidential politics could not be relied upon under the EC given the risk of ties when Electors attempted to vote along party lines.⁴⁰ After the first two non-partisan presidential elections in the nation's history, it had become apparent that an unalloyed EC failed to reflect how political parties were becoming the vessel for the expression of the will of a rapidly expanding and diversifying populace.⁴¹

Political parties have had a continuous presence and influence in the development of the nation, despite the fact that they are not provided for in the Constitution; from the beginning, their very existence and potential for deepening factionalism was decried by many of the Founders as both inimical to good order and a recipe for partisanship.⁴² However, after the Revolutionary War, the national leadership had factionalized into Federalists led by Hamilton and Democratic-Republicans led by Monroe and Jefferson during what came to be known as the First Party System.⁴³ There were distinct differences in the view of each faction/party as to how, both philosophically and practically, the young nation would develop.⁴⁴ The Federalists wanted what the Democratic-Republicans most feared: a strong central government and a standing army and navy coupled with a flexible view of the Constitution that could countenance nation building, perhaps at the cost of the erosion of state governments' authority to manage their own internal affairs.⁴⁵ These competing parties, through the growing influence they wielded through their caucus power, publication of newspapers, and the personal influence and networking by the charismatic members of the national leadership, came to monopolize politics down to the local level.⁴⁶

40. *The Troubled Elections of 1796 and 1800*, BILL RTS. ACTION, Fall 2016, at 1, 2–4. Without a single candidate securing a majority of the votes cast, the election of 1800 was thrown into the House of Representatives as per the Constitution. *Id.* at 3. After nearly a week and 35 separate ballots, Jefferson became president on the basis of the contingent election in the House. *Id.* at 4.

41. GORDON S. WOOD, *EMPIRE OF LIBERTY: A HISTORY OF THE EARLY REPUBLIC, 1789-1815*, at 280–289 (2009).

42. *See, e.g.*, THE FEDERALIST NO. 9 (Alexander Hamilton), No. 10 (James Madison); George Washington, Farewell Address (Sept. 19, 1796). Apparently, Hamilton had managed to cure his allergy to political parties sufficiently so that by the early 1790s newspapers were referring to him and those in his orbit as “Federalists.” *See, e.g.*, *Federalist Party*, HISTORY.COM, <https://www.history.com/topics/early-us/federalist-party> (last updated Sept. 13, 2019). He is largely credited with founding the first political party in America, the Federalist Party, which boasted the first “partisan” president, John Adams. *Id.* Hamilton, however, at least initially, saw the Federalists not so much as a political party (deserving of disapprobation and repression) but rather as a philosophy of governance (strong central authority, a flexible view of the Constitution, etc.) to be contrasted with the more decentralized form of government, Republicanism, most widely identified with Jefferson and Madison. *See generally*, Colleen A. Sheehan, *Madison v. Hamilton: The Battle Over Republicanism and the Role of Public Opinion*, 98 AM. POL. SCI. REV. 405, 405–407 (2004).

43. HARRY AMMON, *JAMES MONROE: THE QUEST FOR NATIONAL IDENTITY* 83–88 (1971).

44. *Id.*

45. Samuel H. Beer, *The Idea of the Nation, in HOW FEDERAL IS THE CONSTITUTION?* 109–121 (Robert A. Goldwin & William Schambra eds., 1987).

46. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *THE TRANSFORMATION IN AMERICAN POLITICS: IMPLICATIONS FOR FEDERALISM* 12–14 (1986).

III. THE TWO-PARTY SYSTEM WILL MANDATE THE CONTINUATION OF THE ELECTORAL COLLEGE.

First, the two-party system has become such an ingrained feature of our society that it is difficult to imagine an aspect of politics and economics not influenced by one's party affiliation. Since the Civil War, which cemented the two-party system,⁴⁷ there has never been a third party that placed better than second in a Presidential election.⁴⁸ In 1912, Governor Woodrow Wilson of New Jersey defeated the incumbent, Republican William Howard Taft and former Republican President Teddy Roosevelt, with Roosevelt running on the third-party ticket.⁴⁹ Roosevelt came in second to Wilson while running as the Progressive Party candidate.⁵⁰

Next, even when our societal priorities change from one generation to the next (about fifteen to twenty years, or two to three presidential cycles/terms), the level of divisiveness has never been such that an *ad hoc* organization, special interest group(s), or political party has gained the power/authority necessary to alter or strike the EC. Arguably, this is because the EC does exactly what it is supposed to do: give less populated states a more equal footing in the choosing of the leader of the executive branch than their population would allow under a "one person-one vote" structure.

As stated above, President Roosevelt came close to busting not only trusts, but the two-party system.⁵¹ However, it certainly could be argued that the Progressive Party was not a true 'third party,' just a majority faction of the Republican party. In 1912, Roosevelt had won the first primaries in the history of the Republican party, however it was at the convention that the GOP regulars chose Taft as their nominee.⁵² Teddy stormed out, taking his supporters with him, telling reporters that he felt "as strong as a 'bull moose.'"⁵³ Thus, giving rise to the third-party nickname, the Bull Moose Party.⁵⁴

Later, during the 1920's the two parties were divided amongst themselves, but there was no Teddy Roosevelt—i.e., a single person/candidate who had the power to break away and form a third party. In the end, after nasty conventions in 1924 and 1928 in both parties, the chosen candidate went on to have support from

47. For the remainder of this essay, the time period shall be post-civil war unless otherwise stated.

48. See *infra* note 499.

49. Christopher Klein, *Here's How Third-Party Candidates Have Changed Elections*, HISTORY.COM, <https://www.history.com/news/third-party-candidates-election-influence-facts> (last updated Nov. 11, 2019).

50. *Id.*

51. *Id.*

52. *Id.*

53. Andrew Glass, *Theodore Roosevelt Leaves Republican Party, June 22, 1912*, POLITICO (June 22, 2016, 12:01 AM), <https://www.politico.com/story/2016/06/theodore-roosevelt-leaves-republican-party-june-22-1912-224589>.

54. Klein, *supra* note 49.

their parties in the general elections.⁵⁵ The issues at the Democratic Convention were prohibition, the rise of the Ku Klux Klan, and urban cosmopolitans versus small-town traditionalists.⁵⁶ The divisions were deep between region and religion, with a significant problem in 1924 being that the candidate was a Catholic.⁵⁷ Ultimately, instead of a third-party-breakaway, many non-Catholics simply chose to stay home, and the incumbent Republican candidate, President Coolidge, won handily in the general election.⁵⁸ Although the Democrats chose a Catholic again in 1928, they were much more unified in their platform.⁵⁹ It was to no avail, however, because Herbert Hoover, the Republican nominee, again won the White House.⁶⁰

When the Great Depression hit in the 1930's, the electorate looked to third parties. However, not seeing the results that comparatively radical parties were allegedly achieving in Europe (Fascism in Germany and Socialism in Russia and to some extent France), instead the dominant U.S. parties each inserted more conservative planks into their platforms, which tended to favor their overall positions.⁶¹ For example, the Democrats began courting organized labor, and the Republicans tried but failed to put up any candidate that could stall FDR's "New Deal" and its programs.⁶²

World War II and the 1950s showed strong support for the two-party system, with FDR clearly in control of both the Democrats and the country. Truman kept the support of the Democrats for two elections, and although eligible to run for a third in 1952, chose to withdraw after a loss in the New Hampshire primary.⁶³ The interesting issue when looking at the 1950s through the lens of the two-party system was that both parties courted General Eisenhower!⁶⁴ In fact, not only did President Truman himself attempt to recruit "Ike" as his successor in 1952, earlier in 1948 he had suggested to Eisenhower that Ike run for President with Truman as his Vice-Presidential running mate.⁶⁵ However, Ike chose to run as a Republican.⁶⁶

Despite the social turmoil of the 1960s and 70s, the United States was and remained firmly entrenched in the two-party system with special interest groups forming and then allying themselves with (some might argue being consumed by) one of the two parties. For example, the Student Protest Movement found a home

55. Steven Mintz & Sara McNeil, *The Democratic Convention of 1924*, DIGITAL HISTORY, http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=2&psid=3393 (last checked Apr. 15, 2020).

56. *Id.*

57. *Id.*

58. *Id.*

59. Steven Mintz & Sara McNeil, *The Election of 1928*, DIGITAL HIST., http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=2&psid=3394 (last visited June 2, 2020).

60. Steven Mintz & Sara McNeil, *Herbert Hoover*, DIGITAL HIST., http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=2&psid=3395 (last visited June 2, 2020).

61. Tom Rosentiel & Jodie T. Allen, *How a Different America Responded to the Great Depression*, PEW RES. CTR. (Dec. 14, 2010), <https://www.pewresearch.org/2010/12/14/how-a-different-america-responded-to-the-great-depression/>.

62. TAYLOR E. DARK, *THE UNIONS AND THE DEMOCRATS: AN ENDURING ALLIANCE* 2–8 (1999); SUSAN DUNN, *ROOSEVELT'S PURGE: HOW FDR FOUGHT TO CHANGE THE DEMOCRATIC PARTY* 2–5 (2012).

63. Mark A. Lause, *The Two-Party System, Part III*, AGAINST CURRENT, Mar./Apr. 2015, at 12–14.

64. Samuel W. Rushay, Jr., *The Ike & Harry THAW: A Presidential Aide Sought to Restore Cordiality Between Two Presidents*, PROLOGUE, Fall/Winter 2013, at 47, <https://www.archives.gov/files/publications/prologue/2013/fall-winter/ike-harry.pdf>.

65. *Id.*

66. *Id.*

in the Democratic party. In some instances, the major parties would court special interest groups. A prime example from the era was Nixon's use of the so-called "Southern Strategy," courting conservative states away from the Democrats.⁶⁷

This idea of interest groups finding a home with a party, or vice-versa, is what has become the standard feature of the two-party system in the United States. For example, there are few scenarios in which one could see a northern California-Democratic candidate touting their membership in the NRA, or a Texas Republican, regardless of her/his race touting their endorsement by the NAACP. Of course, all things are possible in American politics. Currently, the idea of support for agriculture coming from the Republican party is probably mainstream. Meanwhile, 'clean energy' is reserved for the Democrats.

IV. OTHER REPRESENTATIVE DEMOCRACIES UTILIZING MULTI-PARTY SYSTEMS.

While not unique, the U.S. two-party system is not the norm among representational democracies where, typically, allegiances between multiple parties underpin governing coalitions, which also tend to disintegrate when such allegiances break down. Even in those countries that have dominant two-party systems (e.g., Great Britain, the English-speaking nations of the Caribbean basin, Latin America), the parties are often transitory and are usually made up of smaller sub-parties of shifting influence.⁶⁸ In Germany and Israel, leadership of the executive is by members of the dominant two parties, but such power is only wielded secondary to multi-party coalitions securing a requisite number of seats in the national legislatures.⁶⁹ Recently, German Chancellor Angela Merkel and Israeli Prime Minister Benjamin Netanyahu, high profile and long-standing heads of state in their own right, have struggled mightily to knit together such coalitions as the public taste for change has intensified.⁷⁰ Merkel has had to publicly disavow working with a far-right nationalist party,⁷¹ while Netanyahu has used the specter

67. James Boyd, *Nixon's Southern Strategy: 'It's All in the Charts,'* N.Y. TIMES (May 17, 1970), <http://www.nytimes.com/packages/html/books/phillips-southern.pdf>.

68. Hannah Peaker, Opinion, *Smaller Parties Have a Surprisingly Big Impact on British Politics*, GUARDIAN (Apr. 22, 2019), <https://www.theguardian.com/commentisfree/2019/apr/22/smaller-parties-big-impact-uk-politics-womens-equality-party>; see generally Michael Coppedge, *The Dynamic Diversity of Latin American Party Systems*, 4 PARTY POL. 547 (1998).

69. ROBERT HAZELL ET AL., MAKING MINORITY GOVERNMENT WORK: HUNG PARLIAMENTS AND THE CHALLENGES FOR WESTMINSTER AND WHITEHALL 9–15 (Robert Hazell & Akash Paun eds., 2009); Ofer Kenig, *Coalition Building in Israel: A Guide for the Perplexed*, ISR. DEMOCRACY INST. (Feb. 18, 2013), <https://en.idi.org.il/articles/10248>.

70. Kate Connolly, *German Coalition Collapse Looms as CDU Rejects SPD's Demands*, GUARDIAN (Dec. 2, 2019), <https://www.theguardian.com/world/2019/dec/02/germany-coalition-collapse-looms-cdu-rejects-spd-demands>; James Phillips, *Netanyahu Faces Hurdles to Building Governing Coalition After Narrow Israeli Election Win*, HERITAGE FOUND. (Mar. 11, 2020), <https://www.heritage.org/middle-east/commentary/netanyahu-faces-hurdles-building-governing-coalition-after-narrow-israeli>.

71. *After Germany's Far-Right Scandal, Left Party Surges as Merkel's CDU Sinks*, DEUTSCHE WELLE (Feb. 11, 2020), <https://p.dw.com/p/3Xa3A>.

of an Arab party endorsing his opponent in his efforts to form a government.⁷² At the other end of the extreme, India, the world's largest representative democracy by population, has eight national and fifty-three state parties, addressing in detail the concerns of discrete constituencies.⁷³ The recent rise of nationalism in these places has been pronounced.⁷⁴ Nationalists might coalesce in a smaller legitimate party, or, nationalists may simply form a party of their own. In either case, due to the requirements of coalition building, they could and do rapidly gather an outsized influence over national politics that belies their demographic appeal. This could be deemed a wormhole to power inherent in multi-party systems.

In contrast, the U.S. Democratic party, founded in 1828, is one of the oldest political parties in world history and the oldest political party still active; the GOP, founded in 1854, is equally entrenched in the U.S. political system.⁷⁵ It has been posited that the federalist versus anti-federalist maneuvering from the beginning of the country's history set the stage for a dominant two-party system, while the strong executive power wielded by the president and the reality of the winner-take-all election system cemented the dominant two-party system in the U.S., all at the expense of viable third-parties.⁷⁶

V. DEMOGRAPHIC REALITIES AND THE LONGEVITY OF THE EC.

Two features of the American political landscape offer the most compelling evidence on which to base a projection that the EC will remain the Constitutional norm for electing presidents into the next century: 1) the adaptability of the two major political parties to changes in national politics; and 2) the mobility of the American electorate.

It is perhaps the longevity, comprehensive platforms, and dynamism of the political parties that present the greatest obstacles to any attempts at altering the EC. Accommodations for most political viewpoints, at least along the binary of conservatism versus liberalism, can be found within the platforms of each. Between those cardinal points of the political-philosophical compass, the two dominant parties offer nuanced political spaces. While it would seem impossible for a coastal progressive to have common ground with a member of the Teamsters, such persons occupy spots on the roster of the Democratic Party's constituency. Meanwhile, Evangelical Christians and Libertarians can share a political voice in the GOP. There is room in each party for all but those holding the most extreme political viewpoints. Just as the rise of nationalism and nativism can be accommodated in the GOP

72. *Netanyahu: Gantz Planning Government with Backing of 'Dangerous' Arab Parties*, TIMES ISR. (Oct. 18, 2019), <https://www.timesofisrael.com/netanyahu-gantz-planning-government-with-backing-of-dangerous-arab-parties/>.

73. See generally Ramesh Kumar, *Political Parties in India and the United States: A Comparative Analysis*, 72 INDIAN J. POL. SCI. 555 (2011).

74. Jack Snyder, *The Broken Bargain: How Nationalism Came Back*, FOREIGN AFF., Mar./Apr. 2019.

75. *Major American Political Parties of the 19th Century*, NORWICH UNIV. ONLINE, (Oct. 2, 2017), <https://online.norwich.edu/academic-programs/resources/major-american-political-parties-of-the-19th-century>.

76. STEFFEN W. SCHMIDT, MACK C. SHELLEY & BARBARA A. BARDES, AMERICAN GOVERNMENT AND POLITICS TODAY 284–91 (Carolyn Merrill ed., 14th ed. 2010).

alongside the Rotarians, transgender identity politics will be included in the same Democratic stump speech as tax relief for the middle class.

Two evolving trends in American demographics exemplify the physical mobility of the electorate that at least for the foreseeable future will negate the need to bother with a constitutional amendment aimed at the EC. First, it is estimated that approximately six million people emigrated from California since 2007.⁷⁷ Many moved to other western states, including Arizona, Texas, Nevada, and Colorado.⁷⁸ During that same period, Colorado and Nevada became reliably purple.⁷⁹ Meanwhile, the Democratic party has been spending resources to capitalize upon what are becoming more highly contested races in formerly bright-red Texas and Arizona. This sorting of the populace, bringing as it will more electoral votes into contention, will inevitably lead the political parties to modify their messaging in order to retain (or confiscate, as the case may be) those electoral votes.

Climate change is perceived by many voters to be the existential issue confronting humanity. Though it has not yet perhaps begun in earnest, there is evidence to suggest that massive domestic relocation in the U.S. due to the effects of climate change will occur within the next century.⁸⁰ This migration will be at least in part due to sea level rises inundating formerly habitable coastal lands. It is not difficult to imagine “coastal progressives” landing in Republican dominated states in the Southeast and Midwest. While some will adapt to the local political landscape, many will do what newcomers (immigrants and emigrants) do everywhere they go: they change the political dynamics.⁸¹ It remains to be seen what the GOP, a party heretofore unwilling to enact significant policies to address climate change, will do, if anything, to accommodate such voices and remain relevant and competitive in such areas.

VI. SUMMARY

In sum, the Electoral College is safe for the next eighty years. This is so because of the vitality of two-party system, the ability of the electorate to be

77. Luis Gomez, *Leaving California: Here's Who's Moving out, Who's Moving in*, SAN DIEGO UNION-TRIB. (Feb. 22, 2018, 5:49 PM), <https://www.sandiegouniontribune.com/opinion/the-conversation/sd-california-losing-low-income-people-gaining-wealthy-people-per-report-20180221-htmlstory.html>.

78. *Id.*

79. William Jordan, *Not All States are Red or Blue: In Search of the Purple States*, YouGov (July 3, 2015, 7:13 AM), <https://today.yougov.com/topics/politics/articles-reports/2015/07/03/nine-states-republicans-and-democrats-both-and-six>.

80. Oliver Milman, *'We're Moving to Higher Ground': America's Era of Climate Mass Migration is Here*, GUARDIAN (Sept. 24, 2018), <https://www.theguardian.com/environment/2018/sep/24/americas-era-of-climate-mass-migration-is-here>.

81. See generally FRANK D. BEAN & GILLIAN STEVENS, *AMERICA'S NEWCOMERS AND THE DYNAMICS OF DIVERSITY* (2003).

dynamic and mobile in altering the EC “landscape,” and finally, the sheer difficulty in changing the United States Constitution.