Chapter 5

“Winner-take-all:” is it as bad as they paint it to be?

As mentioned earlier, 48 states and D.C. hold statewide and district-wide popular elections, respectively, to determine the winning slate of presidential electors to represent these states and D.C. in the Electoral College, and they award their electoral votes according to the “winner-take-all” method. Two other states—Maine and Nebraska—also hold statewide and district-wide popular elections and use this method though differently. (See Chapter 1 for details.)

Many Americans believe that the Electoral College system and the “winner-take-all” method of appointing state presidential electors are synonyms. However, the “winner-take-all” is no more than a particular manner of appointing state presidential electors that a state’s legislature may choose. In contrast, the Electoral College is an election mechanism, which works independently of how state presidential electors are appointed. Constitutionally, the Electoral College mechanism would work even if in a particular presidential election, all the state legislatures in 50 states and Congress in D.C. decided to appoint electors themselves, without holding popular elections.

Also, a plurality rule for determining the winner of a popular election is a particular form of the “winner-take-all” one. Indeed, in a popular election, one of the competing candidates is declared the winner if he or she receives at least a plurality of all the votes cast, provided a sizable part of all eligible voters participate in the election. The winning candidate and his or her supporters “take all,” i.e., the right to fill a particular public office, the right to represent the electorate in any other election, etc., whereas the losing candidates and their supporters end up with nothing. Interestingly, “ending up with nothing” by a majority of voting voters in a popular election under plurality rules is perceived as a fair outcome. In contrast, when the Electoral College winner...
is not the choice of a majority of the voting voters, the election outcome is perceived to be utterly unfair. Four famous presidential elections held in 1824, 1876, 1888, and in 2000 are examples of such an “unfair” outcome.

It seems that three major reasons account for this phenomenon in today’s America. First, no other country uses an election system like the U.S. does (though some countries use certain forms of an electoral college). Second, psychologically, if the election winner is not the choice of a majority of the voting voters, but a recipient of a plurality of votes cast, the election result is considered to be fair. Third, many Americans perceive popular separate elections in 50 states and in D.C.–which are to determine no more than winning slates of presidential electors to represent the states and D.C. in the Electoral College–as equal components of a united popular presidential election. This perception exists even though considering a presidential election as a popular election is a) incorrect in essence, b) unconstitutional, and c) contradicts the final decision of the 1787 Constitutional Convention participants to reject direct popular elections as a method of electing a President.

The last two reasons deserve to be considered in more detail.

Though direct popular election was discussed and rejected many times in the course of the 1787 Constitutional Convention, it was supported by some of the Founding Fathers. This situation resembles the one in which the Supreme Court makes a decision, and several Supreme Justices dissent. Though the opinion of the Supreme Court is what really matters, the opinions of dissenting Supreme Justices may eventually be revisited.

The intent to revisit the idea of introducing direct popular elections in the U.S. manifests every time the Electoral College winner is not the winner of the popular vote. This takes place despite the fact that the totality of votes cast for slates of presidential electors throughout the country, which many Americans perceive as the national popular vote, does not have any constitutional status. At the 1787 Constitutional Convention, the Founding Fathers designed a mechanism for amending the Constitution, which is described in Article 5. However, it is not easy even to initiate a constitutional amendment, in particular, with respect to introducing direct popular presidential elections. As a result of the 1787 Great Compromise, all the states are equal in making a decision on amending the Constitution. So even if an amendment to introduce a direct popular election were initiated, it would not be easy to have it ratified by three-fourths of the states.

It seems that many Americans do not understand that appointing state presidential electors according to the results of state popular elections has not changed the underlying idea and the structure of the Electoral College. The Electoral College was designed to elect a President according to the will of the states, rather than to reflect the will of voting voters in the country. As mentioned in Chapter 2, the will of a plurality of voting voters in a state has replaced the opinion to be expressed by state presidential electors when they were