

Storm In A Teacup In The Presidential Election

by Michael Curtis

Politics is a game, in some ways akin to football. A win depends on how many points are on the official scoreboard, not on how many yards have been covered.

For a stable society to exist or a game to be successful certain rules must be followed. They may be simple or complex, few or many, handed down orally or through a complex code, but they underlie the existence of a structured order.

Adherence to that structure is essential even in politics which is an ongoing process with no eternal answers. It is natural in politics that conclusions and procedures once generally accepted are inevitably subject to change. As Thomas Jefferson wrote in his letter of September 6, 1789 to James Madison, "No society can make a perpetual constitution or even a perpetual law."

The presidential election just held raises the issue of the usefulness of the Electoral College (EC) in the U.S. today. Many Democrats including the largely Democratic media ardent Clinton supporters disappointed in her defeat have called for a change in the U.S. Constitution, specifically the EC, since Donald Trump's election to the Presidency of the U.S.

The 2016 election took on highly unusually emotional overtones in support of the different candidates. Questioning the authority of the EC seems to be a continuation of that emotion rather than a rational proposal. As such, it borders on breaking the official rules of the existing system.

The issue of the case for and the validity of political or social disobedience has always been present in life and in

literature. Questions arise about whether it is morally or politically right to disobey and refuse to accept the existing rules.

The classic argument about disobedience is presented in Sophocles' play *Antigone*, the story of the princess, the niece of the ruler Creon, who defies the ruler by insisting on burying her brother against the rule of the state that forbid celebratory burial of offenders. What ensues is a clash of opposites and principles: the individual confronts the ruler and the state; the woman confronts the male ruler; blood relationships confront impersonal law; and divine law confronts man made law.

Antigone argues it was not Zeus who made the laws, nor are the government's orders more basic than the unwritten and unyielding laws if the state is acting against humanity. The ruler Creon holds that obedience to his least command is essential.

Without accepting the extreme position of Creon, objective observers must be surprised by the continuing discussion on the part of the Democrats and the Democratic media as to whether Trump's election by the EC is valid or having been properly elected. Unlike the case of *Antigone*, there is no question of disobedience based on serious discussion of constitutional principle, or moral outlook, but simply questions of political expediency.

One can make the case that not all existing constitutional rules are appropriate today. They need to be changed as is the case in every generation. It is understood by all that the Declaration of Independence says prudence dictates that the government, and constitutional rules, not be changed for light and transient causes, but yet it is right and a duty to change what is improper and undemocratic.

In the present situation, the Democrats criticize the fact

that the EC formally casts the votes for president and vice-president. They argue the EC must be changed or abolished.

The EC was created as a compromise between election of the president by vote of Congress or by the popular vote of citizens. The EC was, as James Madison argued in *Federalist 39*, a mix of state-based and popular based government. It votes without tumult and disorder, avoiding both passion and interests.

Of course, the EC means violation of political equality but it does result in representation of a geographically broader and more diverse base than does a simple popular vote. However, three issues arise. The EC does not consist of educated and informed electors as was intended. The EC today is a formality and only ratifies the result. And it is arguable that the EC choice avoids someone with a talent for "low intrigue and the arts of popularity."

The essential practical issue is definition of the "will of the people" in a democratic system that is meant to prevent arbitrary power. The Democrats argument rests on the reality that Clinton received 2.8 million more votes in the country as a whole than Trump. Therefore, they maintain the EC should honor the popular national vote since it has a right to act independently of the decision of the voters in the individual states in exceptional circumstances.

There are two problems with this argument. One is that to have the election result based on the popular vote in the whole country would bring great practical and logistical difficulties if the vote was close and disputed in a number of the states. At the least the EC produces a definite winner, as in the present case with Trump getting 57% of EC votes.

The second problem is that it concentrates on and gives too much weight to two states. In 2016, Clinton had a majority in California of 4.2 million and in New York 1.6 million. A

country wide vote minimizes the smaller states and rural areas largely inhabited by whites. In California the score was Clinton 61.7% to Trump 31.62%. In New York City it was 78.59 % to 18.6%, and Clinton had Manhattan by 86.3% to 9.8%, the Bronx by almost the same margin, though not Staten Island too.

Without those two states Trump had a popular majority of three million votes. Clinton won a popular majority in only 13 states and D.C., while Trump had a majority in 23 states.

It is a fair argument that the role of the Electoral College which at its origin did not receive any severe censure and indeed received general approbation, should be reexamined. It is no longer true that a small number of persons, selected now by party leaders in their states, have the information and discernment necessary to make the best choice of the president. But an objective and desirable analysis of this constitutional problem is not to be confused with using the EC as a weapon to deny the validity of Trump's election.

It is worth looking at a number of issues connected with the case against the legitimacy of the EC. It is arguably valid for the Democrats to claim that President-elect Trump does not have suitable qualifications, capacity, or temperament to occupy the presidency. The accuracy of this argument remains to be seen. Again, Creon said in *Antigone*, "you cannot understand a man until he shows his practice of the government and law. (Your disapproval) alone does not justify causing disaster to creep on the town and destroy hope of safety." Indeed, it remains to be seen how Trump will "drain the swamp," and enhance the U.S.

A presently unresolved issue is the assertion that two outside individuals, FBI Director James B. Comey and Russian President Vladimir Putin, played a role or were responsible for Clinton losing the election, affecting the election by actions favoring the candidate of choice.

Putin was accused not only of being responsible for hacking and publishing Clinton campaign emails, but also of having a “personal beef” against Clinton. Everyone will agree that Russian meddling in a US election would be unacceptable, but the actual role of Russia needs to be ascertained dispassionately by an independent agency without either undue admiration or concern about the technological brilliance of Russia in its use of cyberspace.

The once highly regarded Comey, acting either deliberately or inadvertently, is denounced as having been partly responsible for Clinton’s loss by announcing the continuing probe into the use of her private email server only a week before the election. Though the FBI investigated the possibility of the mishandling of classified information, Democratic critics held this was legally unauthorized and factually unnecessary.

Another factor was the manipulation of fake news about the election. Unfortunately, this has reinforced the lack of confidence of many, perhaps a majority, of American voters in the ability of the media to report accurately on political matters. In spite of the assertions of the fake news, largely liberal in nature, there is no evidence that the election was “rigged” in favor of either candidate.

Evaluating the effectiveness of the Electoral College is legitimate but the current Democratic critique sounds more like political football than a serious intellectual effort. Political criticisms must be expressed but don’t alter the scoreboard or move the goalposts while the game is being played.