The Reasons for Change

Ottorino Cappelli (December 15, 2016)

There is nothing wrong, of course, in following the Fathers' prescriptions in favor of a republican (as opposed to democratic) form of government. But in this case the electors should not be constrained by their pledge when they meet. They should behave as free agents, independent thinkers, and deliberative representatives, not as mere delegates of their parties or even of their voters.Interestingly, in these very days a petition that has collected 5 million signatures is being circulated to this effect on the Internet.

The petition appeals to Republican electors to assert their constitutional right to change their mind and refuse to elect their party's nominee—to behave, in other words, as "faithless electors." This appeal would be in line with the constitution, as well as with our modi ed quote from Il Gattopardo [2]: "If we want things to change, things will have to stay as they are" (or better, they will have to revert to what they were or were supposed to be according to the Founding Fathers). However, I am afraid this would run against common wisdom. Americans today perceive their country not as a "republic" but as a "democracy." Realistic change must accommodate this historically modified self-

perception, or it won't work. But in a democracy, the majority of the people must rule.

The "Iter" devised by the Framers to insulate the selection of the president from the masses, is inconsistent with this principle. So we're back to the question: Should the Electoral College be abolished altogether and replaced with a straightforward popular vote? Not necessarily. And this is where the Italian experience may again come in handy.

An Italian Contribution

If nothing else, Italians understand the perils of democracy. Mussolini [3] himself came to power through elections and established a dictatorship with the consent of the masses. Italians, on the other hand, understand little about the American system of government —judging at least from the bewildered expressions of my students when we tackle the subject in our comparative government class in Naples. When we study the US Electoral College, however, they are very attracted by the underlying "as if" doctrine. And when I pose the question, "How could the system be reformed without necessarily abandoning it?" discussions flow. They seem to have Il Gattopardo in their blood. No wonder.

The Italian political system is almost the polar opposite from its American counterpart. Italy is a unitary state, not a federation; it has a parliamentary (as opposed to a presidential) form of government and a multi-party (as opposed to a two-party) system. And its election system, after much experimentation, has come back to the tradition of proportional representation. None of this applies to the US.

Italians, however, are specialists in devising "as if" situations and in making things change behind the scenes while looking "as if" nothing had really changed. Indeed, they have been trying hard for 20 years to grad- ually slide towards a presidential form of government, a two-party system, and even a federal system by applying apparently mi- nor formal changes to their constitution, or even none at all.

The latest—and, admittedly, very controversial—concoction is called the "premio di maggioranza" [4](literally: majority premium). Here's how it should work in Italy: To form a government and elect a Prime Minister, Italy needs a majority of votes in the Parliament. But it is near to impossible for one single party to get the majority of the popular vote needed to gain enough seats and thereby enough parliamentary votes. Thus major parties must beg smaller parties into forming a parliamentary coalition capable of electing and supporting a government. This allows an array of little factions to practice their "blackmail power." Not surprisingly, under such an arrangement, governments are highly unstable.

To get out of this stalling situation, the proposal under discussion in Italy is not to change the system altogether, but to create an "as if" situation. Provided that a single party is capable of getting at least a plurality of 40% of the popular vote, it will be automatically awarded "a premium"—an extra quota of "reserve seats" required to elect a govern- ment. It is "as if" it got 51% of the vote. The "premio di maggioranza" thus arti cially transforms a plurality into a majority: it makes the (relative) winner of the popular vote look "as if" it were the (absolute) winner—which it was not. The system of representation stays proportional, the multi-party system is preserved, and the Prime Minister is still elected by the Parlia- ment ("things must stay as they are"), but a more stable, one party government would be the outcome ("things will change"). How would this Italian version of the "as if" logic translate in the American context?

Exactly by turning our reasoning on its head: provided that a candidate is able to get the majority of the popular vote but not of the electoral vote he or she would be automatically awarded "a premium," an extra quota of "reserve votes" needed to be elected president. That is: the "premio di maggioranza" would make the system work "as if" the vote of the Electoral College coincided with the popular vote—even when it doesn't.

In other words, such an arrangement would allow the un-democatic system of the Electoral College to be preserved, including its anachronistic non-deliberative meetings ("things would stay as they are"), but it would modify the outcome to make the system look "as if" it were a true democracy

("things would change," really). Or, to put this in yet another way: a democratic principle would be introduced to correct an un-democratic outcome if and when it arises. Which seems necessary, if nothing else because a great country—and great democracy—cannot afford to have over half of its citizens convinced that they did not choose their president (a conviction supported by hard numbers).

Post Scriptum

Perhaps ironically, this mechanism that seems to me so Italian bears resemblance to one devised by two influential American legal scholars of Indian origin, Vikram David Amar [5] and Akhil Reed Amar [6]. Called the National Popular Vote Interstate Compact [7], or NPVIC, it is an agreement underwritten by 10 American states and the District of Columbia to assign their electors to whichever candidate wins the national popular vote. It will come into force only once enough states have joined the NPVIC to guarantee the winning candidate 270 electoral votes (participating states now total 165 votes, or 61% of what is needed). The difference with the Italian model lies in one crucial detail: the NPVIC risks being perceived as a definitive departure from the Electoral College system and therefore could be rejected as too radical, while an automatic Italian-style "premio di maggioranza" would only click should the discrepancy between the popular and the electoral vote arise. It thus would seem more respectful of tradition and might have a better chance of being widely accepted. A little more hypocritical and much more Italian. I believe Il Gattopardo would approve.

Links
[1] http://test.casaitalianayu.org/files/thereasondforchangesottorinocappellijpg
[2] https://en.wikipedia.org/wiki/NATO
[3] https://it.wikipedia.org/wiki/Benito_Mussolini
[4] https://en.wikipedia.org/wiki/Majority_bonus_system
[5] https://en.wikipedia.org/wiki/Vikram_Amar
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