

СИСТЕМА ВИБОРІВ ПРЕЗИДЕНТА У США: ОСОБЛИВОСТІ, ПРОБЛЕМИ ФУНКЦІОНУВАННЯ ТА ПЕРСПЕКТИВИ ТРАНСФОРМАЦІЇ

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У статті досліджується рівень демократичності президентської виборчої системи США та перспективи її трансформації. Задля здійснення цього дослідження значну увагу зосереджено на основних процедурних моментах проведення президентських виборів у США, зокрема, на особливостях організації первинних виборів, всенародному голосуванні та волевиявленні Колегії виборників. Використовуючи загальнонаукові, логічні та емпіричні методи дослідження, наголошено на слабких та сильних сторонах президентської виборчої системи США. Зокрема, розглянуто диспропорції представництва американських штатів у Колегії виборників і між кількістю голосів виборців та кількістю виборників як фактору дворівневості виборчих спотворень. Відзначено, що проблематика дослідження актуалізується завдяки виникненню політичної нестабільності у США, яка пов'язана з результатами президентських виборів 2020 р. та їх невизнанням частиною американського суспільства й переможеним кандидатом, що спровокувало внутрішньо-державну суспільно-політичну нестабільність та негативно вплинуло на міжнародний імідж США.

Автори стверджують, що президентська виборча система США попри певні позитивні моменти може частково трактуватися як недемократична, з наявною диспропорцією представництва. Відтак, вона потребує реформування і має для цього достатньо засобів. Визначено шляхи мінімізації недоліків та перспективи трансформації президентської виборчої системи США.

Ключові слова: вибори, виборча система, США, виборчий процес, Колегія виборників, недемократичність, диспропорція представництва, виборчі спотворення, перспективи трансформації.

THE SYSTEM OF US PRESIDENTIAL ELECTION: PARTICULARITIES, PROBLEMS OF FUNCTIONING AND PROSPECTS FOR TRANSFORMATION

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The article examines the level of democracy of the US presidential electoral system and the prospects for its transformation. In order to do this examination, considerable attention is paying on the main procedural aspects of the US presidential election, in particular, on the features of the organization of primary elections, popular voting and the

expression of will of the Electoral College. Using general scientific, logical and empirical research methods, the weaknesses and strengths of the US presidential electoral system are analyzed. For instance, the disproportion of the representation of American states in the Electoral College, as well as the disproportion between the number of votes and the number of electors as a factor of two-level electoral distortions are considered. The authors argue that the issue is relevant due to the emergence of political instability in the United States, which is related to the outcome of the 2020 presidential election and its non-recognition by part of American society and the defeated candidate, which provoked domestic social and political instability and negatively affected the international image of the USA. The study concluded that the electoral system used during the US presidential election, despite some positive aspects, can be partially interpreted as undemocratic, with the existing disproportion of representation, and therefore needs to be reformed and has enough prospects and ways for it. Ways to minimize shortcomings and prospects for the transformation of the US presidential electoral system are identified. The authors emphasize that the main problem is the choice of the most rational option for reforming the US presidential electoral system, which will not lead to an even greater socio-political crisis in the United States.

Key words: *elections, electoral system, USA, electoral process, the Electoral College, undemocratic, disproportion of representation, electoral distortions, prospects for transformation.*

The US is a state that enjoys the status of a “model of democracy” in the international arena. However, the process of electing the President of the US through indirect elections in the light of historical retrospect and current trends calls into question the democracy of the US presidential electoral system. This, in turn, actualizes the study of general aspects of its functioning.

The problem of adhering to the democratic principles of the electoral process, which exists in the USA primarily in connection with the participation of the Electoral College in voting and the disproportion of state representation in this institution, has always been actual to political science. Given the advantages and disadvantages of the the US presidential electoral system, it is important to develop a mechanism and determine the prospects for its transformation.

The US presidential electoral system has been the subject of research by a number of Ukrainian and foreign scholars, analysts and experts. In particular, among Ukrainian researchers it is worth mentioning the following: D. Holovchenko [2020], V. Matskaniuk [2018], R. Podoliak [2014], O. Schyller [2020]. Foreign researchers of the US presidential electoral system include E. Foley [2019], L. Whitaker [2004]. At the same time, despite the considerable attention of researchers to the chosen problem, there is still no common vision and assessment of the level of democracy of the US presidential electoral system, the feasibility, methods and prospects of transformation. Therefore, the issue of the US presidential electoral system needs further study. So we are going to conduct a political analysis of the problem of democracy and prospects for the transformation of the US presidential electoral system.

The US presidential electoral system is one of the most complex electoral systems in the world. The procedure for electing the president is unique due to the holding of two-stage indirect elections. The first step is the selection of a candidate, which takes the

form of primaries or caucuses (in some states both forms are used).

Therefore, the purpose of the primary elections, the so-called “qualifying rounds”, is to identify the most competitive, popular candidate who will be able to most effectively represent the party electorate in the elections. However, by voting for party candidates, voters are actually voting for delegates who will represent a specific state at national party conventions, at which candidates for the US presidency will already be formally elected. To gain official presidential candidate status, an absolute majority of delegates must be obtained [Вибори, 2012].

The voting of delegates for the candidates for the presidency of the US completes the selection of candidates and, in fact, begins the first stage of the election. It should be understood that the election of president by the Americans is, in fact, the choice of which party will send its electors to the Electoral College.

In general, the institute of the Electoral College was established in the US in 1787. This was primarily due to the lack of strong political parties in the US, a well-established communications system and national media. The complex of such problems could be the reason of defeats in national elections of popular candidates of the small territory. Given the importance of state sovereignty to the US, a system of direct nationwide voting was initially proposed, which was not supported by small states, which feared that larger states would have an advantage in the number of voters and therefore their candidates would always win [Шиллер, 2020].

In addition, the founding fathers of the US believed that at that time most citizens were not ready to elect a president yet and could make the mistake of choosing populists or extremists. Therefore, it made sense to elect special persons, who, in their opinion, would elect the best officials on behalf of citizens.

Under the US law, members of the Electoral College are experienced, authoritative US citizens who are able to represent the interests of the people of the state. Such individuals are selected at state party conventions or by state-level party leadership. Thus, there are two voter lists, one from each of the Democratic and Republican parties [Шиллер, 2020].

Each state in the College is represented by a number of voters that corresponds to the total number of state representations in both houses of Congress. The total number of voters who are members of the College is 538 people. A candidate must receive at least 270 votes to win. If no candidate receives at least 270 votes, the president will be elected by the House of Representatives by contingent voting from the three candidates who received the most votes. In 48 states, voters follow a counting system such as “the winner takes everything”, meaning the candidate who receives the most votes in the state receives the support of all electors from that state. Instead, Maine and Nebraska have a proportional system [Whitaker, 2004].

Assessing the level of democracy of the electoral system, used during the US presidential election, it should be noted that the primary elections in the United States are a democratic phenomenon that makes the selection process more open and allows a wide range of people to fight for the national candidate [Мацканюк, 2018]. However, the democracy of the primaries is partially offset by further processes, to a greater extent by aspects of the expression of will of the Electoral College.

We would like to note at once that we understand the complexity and revolutionary nature of the critique of the country’s presidential electoral system, which is considered to be one of the “cradles” of democracy and is perceived by the majority as a certain model to follow. At the same time, we believe that the democracy of any electoral system is determined primarily by its compliance with international electoral standards. Therefore, we see the need to appeal to such an authoritative international institution, which is a peculiar flagship in the implementation of democratic election standards, as the Venice Commission.

In the document developed by the Venice Commission – the Code of Good Practice in Electoral Matters, which is considered to be a model in the field of electoral relations, among the democratic standards of elections an important place belongs to the principle of direct elections. In fairness, it should be noted that the Commission pays more attention to the need for direct elections to parliament (especially to its Lower House) and does not absolutize direct elections of the head of state. The document emphasizes only that direct presidential elections are a more common practice, but

this issue may be regulated differently in the constitution of each country [Кодекс, 2002].

In this context, we would like to note that we believe that the lack of an absolute requirement for direct presidential elections in the Code is primarily due to the existence of different models of republican government, some of which (primarily parliamentary republics) provide for the election of the head of state by parliament. Thus, the absolutization in this case of direct presidential elections would violate the logic of the functioning of parliamentarism in many countries. At the same time, we would like to underline that the presidential republic presupposes the existence of a strong institution of the president, which is elected directly by citizens in direct elections. We also consider that the direct election of power by the people (if it does not contradict the logic of a particular model of government) is more democratic than the mediation of the will of citizens.

The expediency of the Electoral College is often explained by the fact that it promotes the separation of powers and strengthens the bipartisan system, protects the federal system, guarantees respect for the views of the majority, the mentality of American society, and the members of College are more competent than the general public [Podolnjak, 2014].

However, the participation of the Electoral College in the US presidential election as an integral part of the American indirect election can be a factor in many problems, including the rise of electoral absenteeism and the problem of ignoring large numbers of votes. These problems are exacerbated by the presence in the US of states with a constant predominance of democratic or republican electorate. Therefore, if the state has a practice of constant voting, for example for Democrats, the votes cast for Republicans simply disappear (especially on the principle of “the winner takes everything”). As a result, some Republican supporters often find it irrational to waste their time for voting. Some Democrats think similarly, but with an emphasis on the fact that even without their vote, the Democratic candidate will win [Мацканюк, 2018]. We can assume that if citizens directly elected their leader, turnout and a sense of responsibility for the choice would increase significantly.

In this context, there is also the aspect of reducing the importance of states that regularly vote for a particular party with a significant advantage, as the scale of separation from a competitor loses its meaning, only a simple majority is important [Головченко 2020]. In our opinion, the influence of “swing states”, where it is not possible to clearly determine whether a Republican or a Democrat will win, on the victory of one of the candidates, is also disproportionate. Exaggerating the

importance of “swing states” in the electoral process creates an imbalance. As a result, it may feel that voters living outside such states are not provided with sufficient information about candidates, their plans and intentions as potential presidents [Виборча, 2020].

As for the problem of ignoring the choice of those citizens who do not vote like the majority: it is that having received at least one vote more than the opponent, the candidate receives all the votes of electors. Voters who remain in the minority lose influence over the electoral process. As a result, the political preferences of almost half of the state may simply not be taken into account. Depending on the population of the state, tens of thousands of voters or millions can be ignored [Головченко, 2020].

In the history of the US, there have been five cases in which a candidate actually won according to results of popular vote but did not become president because of the results of an indirect election, which suggests that there is a disproportion between the number of votes and the number of electors. This happened during such election campaigns as:

1) the election of 1824, in which E. Jackson received 10.5 % more votes than J. Adams, but did not become president. None of the candidates was able to get the required number of votes, so the question of who will become president was decided by the House of Representatives, which preferred J. Adams;

2) the election of 1876, in which Democrat S. Tilden and Republican R. Hayes competed. S. Tilden received 50.9 % of the vote and 184 votes of electors, and his rival R. Hayes received 165 votes of electors. However, the votes of another 20 electors were called into question. The Grant Republican Administration, which controlled the election commissions, introduced federal troops into the three southern states that supported S. Tilden, and recounted the votes there, which had already helped R. Hayes win. Ensuring R. Hayes' victory with a one-vote majority is still considered the dirtiest campaign in the history of the US presidential election. Interestingly, at that time S. Tilden received 250 thousand more votes than his competitor;

3) the 1888 presidential election: Republican B. Harrison received 90.000 fewer votes than his opponent, H. Cleveland. But the results of the vote of the Electoral College brought him 65 votes more, so he became president;

4) the election of 2000. In a popular vote, A. Gore was ahead of George W. Bush by more than half a million votes. However, George W. Bush had an advantage of 537 votes in the state of Florida, which gave him all 6 million votes of Florida voters, about 3 million votes, of which were cast for A. Gore. The vote of all 25 Florida electors for George W. Bush resulted in

271 votes, while for A. Gore there were only 267 votes [Мацканюк 2018];

5) the 2016 election, which resulted in Trump winning, with almost 3 million fewer votes than his opponent, H. Clinton. But Trump received the support of 306 electors and became president of the United States [Клінтон 2016].

In addition, another factor in electoral distortions is the disproportion between the representation of the state population in the Electoral College. First, electors in different states represent different numbers of voters (from 2–5 % in large states to 33.33 % in small states). Second, in different states, the elector represents a different number of voters. In small states, there is a clear advantage and the ability to influence the outcome of the election to a greater extent. For example, dividing the total number of population of the states (313.913.548 people) by the number of electors in the College (538 people), we can assume that, on average, provided that equality of representation is observed, one elector of the College should represent the will of 583.482 inhabitants. However, for example, one elector from such large states as California, Texas, Florida and others represents much more voters, and from small states – much less than the average.

The result of this analysis, in our opinion, is the thesis that the US presidential electoral system provides for disproportionate representation of states in the Electoral College, as there is a difference in whether one vote of the elector expresses the will, for example, 852 thousand citizens or 92 thousand. This can often lead to the victory of the president of the “minority”, and the choice of the majority is leveled.

The US presidential election campaign in 2020 has also been a challenge for the US election system. Trump, who did not win the election with 7 million votes and 74 votes of electors less than J. Biden, considers the winner a fake president, and the US election less democratic than in Afghanistan, and even challenged the election results in The Supreme Court of the US. This position of the politician and storming by his supporters of the Capitol, during which people died, suggests that the US electoral system still provides room for distortion, if a candidate with such a colossal difference in votes with the opponent still considers the election result falsified [Трамп, 2020].

Of course, in analyzing the above-mentioned case, we can not ignore the phenomenon of the figure of D. Trump, who long before the end of the election questioned the reliability of possible voting results. Moreover, even after the vote count, D. Trump questioned the democratic nature of the US presidential election and refused to admit defeat, which later led to the tragic events near the Capitol. However, the figure of D. Trump

was only one of the factors (though extremely important) that led to the crisis of democracy and the institution of elections in the US. The electoral system also proved to be problematic. In our opinion, an effective electoral system must function without interruption, be self-sufficient and ensure the possibility of democratic election of power, regardless of the conditions in the country and the political situation.

The most criticism of the system of the US presidential election has focused on the functioning of the Electoral College. Proponents of electoral reform are either in favor of correcting the shortcomings of the current system, or for the complete elimination of the College as an institution and the replacement of indirect elections with direct national ones. According to the National Archives, more than 700 proposals have been submitted to Congress over the past two centuries to reform or eliminate the Electoral College. One of the supporters of the abolition of the Electoral College is the former Secretary of State and former presidential candidate H. Clinton, who is convinced that the US President should be elected by popular vote [Клінтон, 2016].

From the point of view of law Foley, one of the ways to reform the US presidential electoral system is to implement the principle of majority, which can be ensured through a certain transformation of the principle “the winner takes everything”. Foley believes that it is worth taking the position that a candidate cannot get all the votes of state electors if he does not get a majority of votes. According to the professor, there are many methods to follow this principle. For example, if no candidate received a majority of votes during the election, a second round can be held between the two leading candidates. States can also hold a preliminary vote so that only the two candidates who have received the most support can compete for victory in the November election [Foley, 2019].

In addition, the following option can be considered: if no candidate wins a majority, the state will divide the votes of electors proportionally among the candidates. Or the state may completely abandon the principle of “the winner takes everything” and distribute the votes proportionally, despite the presence of candidates with a majority [Foley, 2019]. States can also adopt the county system of Maine and Nebraska, in which “senatorial” votes automatically go to the candidate who receives the majority of votes. Instead, “district” electors vote based on the results of the vote in the district [Foley, 2019].

Another way to reform the current US presidential electoral system is to introduce a “approval voting” in which voters can vote for one or more candidates at once. The winner is the one who received the largest number of votes. The argument in favor of this method is that it will help reduce social tensions during the vote and give a

chance to candidates from other parties to be real competitors of Republicans and Democrats [Виборча, 2020].

Despite criticism of the Electoral College, analysts point out that since about a third of states will benefit from this turn of events, the adoption of an amendment to eliminate the College is unlikely. According to Financial Times columnist K. Caldwell, the principle of “one person – one vote” is important for democracy, but to ignore federalism is also wrong.

In general, supporters of direct elections argue that direct elections preclude the election of a “minority” president, as the candidate with the highest number of votes would always win. According to them, the introduction of nationwide voting as the abolition of the *de facto* conditional election process has the potential to eliminate distortions of the will of the people, to ensure that each vote is given equal weight, regardless of the state in which it was cast. Opponents of a direct election plan, on the other hand, argue that its adoption will weaken the current bipartisan system and increase the role of other parties. From their point of view, the increasing importance of other narrowly oriented parties may have an ambiguous impact on national policy. In addition, the transition to direct voting and, as a consequence, a single nationwide count eliminate the role of states as constituencies [Whitaker, 2004].

Besides, it should be understood that the abolition of elector voting will require amendments to the US Constitution, which is inherently strict, and changes to state election law. Direct voting will provide for the establishment of unified rules for the electoral process, so that the equality of votes throughout the country is not accompanied by varying the complexity of participation in elections. The problem may be the sharp perception of the unification of electoral rules by individual states [Головченко, 2020].

The US presidential electoral system is a unique phenomenon and has both positive and negative sides. The advantages of this system include primary elections (primaries), which allow the selection of the most popular and competitive candidates from each of the two key US parties. Competitiveness, publicity, taking into account the views of ordinary party members, the limited influence of the party leadership are the democratic components of the American electoral system. At the same time, the negative aspects of it include the disproportion of representation, which puts voters in different states in unequal conditions, creates different opportunities to influence the election process and its results, thus violating the principle of equal elections and distorting the will of citizens. Importantly, this disproportion is two-tier: at the level of voter representation in the Electoral College and at the level of the ratio between the number of votes cast and the number of electors received.

These shortcomings of the US presidential electoral system have repeatedly distorted the results of

the electorate's will, not only calling into question its democratic nature, but also leading to a socio-political crisis, delegitimizing power and destroying the US international image as a “model of democracy”. Therefore, the US presidential electoral system needs to be reformed, however, given the “legal conservatism” of the US, its federal system and the complexity of the constitutional change process, the transformation of the US presidential electoral system in the near future is unlikely.

We consider that it is quite possible to reform the US presidential electoral system in such a way that, on the one hand, at least partially reduce possible disparities and distortions and, on the other hand, not to destroy the principle of federalism. Given that this issue remains open and the likelihood of solving this problem is a matter of time, the issue of democracy of the US presidential electoral system does not lose its relevance and may become a promising area of our further research.

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