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In Defense of the Electoral College

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In Defense of the Electoral College

Abstract

There is hardly anything in the Constitution harder to explain, or easier to misunderstand, than the Electoral College. And when a presidential election hands the palm to a candidate who comes in second in the popular vote but first in the Electoral College tally, something deep in our democratic viscera balks and asks why the Electoral College shouldn't be dumped as a useless relic of 18th century white, gentry privilege. Actually, there have been only five occasions when a closely divided popular vote and the electoral vote have failed to point in the same direction. No matter. After last week's results, we're hearing a litany of complaints: the Electoral College is undemocratic, the Electoral College is unnecessary, the Electoral College was invented to protect slavery — and the demand to push it down the memory hole. (*excerpt*)

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Comments

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PICKING THE PRESIDENT

understanding the electoral college

EDITED BY ERIC BURIN

PICKING THE PRESIDENT

*Understanding the
Electoral College*

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Eric Burin*



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Preface

The 2016 presidential election has sparked an unprecedented interest in the Electoral College. In response to Donald Trump winning the presidency despite losing the popular vote, numerous commentators have weighed in with letters-to-the-editor, op-eds, blog posts, and the like, and thanks to the revolution in digital communications, these items have reached an exceptionally wide audience. In short, never before have so many people had so much to say about the Electoral College.

This remains a high-stakes debate, and historians, political scientists, philosophers, and other scholars have an important role to play in it. They can enrich discussions about the Electoral College by situating the system within the history of America and other societies; untangling the intricacies of republicanism, federalism, and democracy; articulating different concepts of political morality; and discerning, through statistical analysis, whom the Electoral College benefits most. In spotlighting the Electoral College from various vantage points, this volume aims to empower citizens to make clear-eyed decisions about it.

If one of this volume's goals is to illuminate the Electoral College, another is to do so while many people are still focused on the topic. This project came together quickly. The entire enterprise went from conception to completion in a mere five weeks. That swiftness was made possible by working with The Digital Press at the University of North Dakota, which embraces a cooperative, transparent model of publication with the goal of producing open-access, electronic works that can attract local and global audiences. Likewise, this volume came to fruition speedily because the contributors agreed to pen brief essays in short order. As a result, while their works have the hallmarks of scholarly articles, they do not constitute an exhaustive examination of the Electoral College. Indeed, many germane subjects are not addressed. Even so,

these learned ruminations can enhance the ongoing debate about the Electoral College.

Essays of this sort are much-needed, for the post-election dialogue about the Electoral College has been warped by partisanship. Republicans who reckon that Electoral College benefits their party usually have defended the system. Conversely, Democrats, smarting from the fact that in a span of sixteen years they have twice lost the presidency despite popular vote triumphs, typically have denounced it. This mode of assessment is unfortunate, for it impairs our ability to analyze the Electoral College on its own merits, as opposed to how it affects one party or another. Put another way, the Electoral College is an inherently political institution, but appraisals of it need not be invariably partisan.

To facilitate and expand the conversation about the Electoral College, this volume offers short essays that examine it from different disciplinary perspectives, including philosophy, mathematics, political science, communications, history, and pedagogy. Along the way, the essays address a variety of questions about the Electoral College: Why was it created? What were its antecedents? How has it changed over time? Who benefits from it? Is it just? Should we alter or abolish the Electoral College, and if so, what should replace it? In exploring these matters, *Picking the President* provides timely insights on one of America's most high-profile, momentous issues.

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In Defense of the Electoral College*

Allen Guelzo and James H. Hulme

There is hardly anything in the Constitution harder to explain, or easier to misunderstand, than the Electoral College. And when a presidential election hands the palm to a candidate who comes in second in the popular vote but first in the Electoral College tally, something deep in our democratic viscera balks and asks why the Electoral College shouldn't be dumped as a useless relic of 18th century white, gentry privilege.

Actually, there have been only five occasions when a closely divided popular vote and the electoral vote have failed to point in the same direction. No matter. After last week's results, we're hearing a litany of complaints: the Electoral College is undemocratic, the Electoral College is unnecessary, the Electoral College was invented to protect slavery — and the demand to push it down the memory hole.

All of which is strange because the Electoral College is at the core of our system of federalism. The Founders who sat in the 1787 Constitutional Convention lavished an extraordinary amount of argument on the Electoral College, and it was by no means one-sided. The great Pennsylvania jurist James Wilson believed that “if we are to establish a national Government,” the president should be chosen by a direct, national vote of the people. But wise old Roger Sherman of Connecticut replied that the president ought to be elected by Congress, since he feared that direct election of presidents by the people would lead to the creation of a

*A version of this essay appeared as Allen Guelzo and James Hulme, “In defense of the Electoral College,” *PostEverything* (blog), *The Washington Post*, November 15, 2016, <http://www.washingtonpost.com/posteverything/wp/2016/11/15/in-defense-of-the-electoral-college/>

monarchy. “An independence of the Executive [from] the supreme Legislature, was in his opinion the very essence of tyranny if there was any such thing.” Sherman was not trying to undermine the popular will, but to keep it from being distorted by a president who mistook popular election as a mandate for dictatorship.

Quarrels like this flared all through the convention, until, at almost the last minute, James Madison “took out a Pen and Paper, and sketched out a mode of Electing the President” by a “college” of “Electors ... chosen by those of the people in each State, who shall have the Qualifications requisite.”

The Founders also designed the operation of the Electoral College with unusual care. The portion of Article 2, Section 1, describing the Electoral College is longer and descends to more detail than any other single issue the Constitution addresses. More than the federal judiciary — more than the war powers — more than taxation and representation. It prescribes in precise detail how “Each State shall appoint ... a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress”; how these electors “shall vote by Ballot” for a president and vice president; how they “shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate” the results of their balloting; how a tie vote must be resolved; what schedule the balloting should follow; and on and on.

Above all, the Electoral College had nothing to do with slavery. Some historians have branded the Electoral College this way because each state’s electoral votes are based on that “whole Number of Senators and Representatives” from each State, and in 1787 the number of those representatives was calculated on the basis of the infamous three-fifths clause. But the Electoral College merely reflected the numbers, not any bias about slavery (and in any case, the three-fifths clause was not quite as proslavery a compromise as it seems, since Southern slaveholders wanted their slaves counted as five-fifths for determining representation in Congress, and had to settle for a whittled-down fraction). As much as the abolitionists before the Civil War liked to talk about the “proslavery Constitution,” this was more of a rhetorical posture than a serious

historical argument. And the simple fact remains, from the record of the Constitutional Convention's proceedings (James Madison's famous Notes), that the discussions of the Electoral College and the method of electing a president never occur in the context of any of the convention's two climactic debates over slavery.

If anything, it was the Electoral College that made it possible to end slavery, since Abraham Lincoln earned only 39 percent of the popular vote in the election of 1860, but won a crushing victory in the Electoral College. This, in large measure, was why Southern slaveholders stampeded to secession in 1860-61. They could do the numbers as well as anyone, and realized that the Electoral College would only produce more anti-slavery Northern presidents.

Yet, even on those terms, it is hard for Americans to escape the uncomfortable sense that, by inserting an extra layer of "electors" between the people and the president, the Electoral College is something less than democratic. But even if we are a democratic nation, that is not all we are. The Constitution also makes us a federal union, and the Electoral College is pre-eminently both the symbol and a practical implementation of that federalism.

The states of the union existed before the Constitution, and in a practical sense, existed long before the revolution. Nothing guaranteed that, in 1776, the states would all act together, and nothing that guaranteed that after the Revolution they might not go their separate and quarrelsome ways, much like the German states of the 18th century or the South American republics in the 19th century. The genius of the Constitutional Convention was its ability to entice the American states into a "more perfect union." But it was still a union of states, and we probably wouldn't have had a constitution or a country at all unless the route we took was federalism.

The Electoral College was an integral part of that federal plan. It made a place for the states as well as the people in electing the president by giving them a say at different points in a federal process and preventing big-city populations from dominating the election of a president.

Abolishing the Electoral College now might satisfy an irritated yearning for direct democracy, but it would also mean dis-

mantling federalism. After that, there would be no sense in having a Senate (which, after all, represents the interests of the states), and further along, no sense even in having states, except as administrative departments of the central government. Those who wish to abolish the Electoral College ought to go the distance, and do away with the entire federal system and perhaps even retire the Constitution, since the federalism it was designed to embody would have disappeared.

None of that, ironically, is liable to produce a more democratic election system. There are plenty of democracies, like Great Britain, where no one ever votes directly for a head of the government. But more important, the Electoral College actually keeps presidential elections from going undemocratically awry because it makes unlikely the possibility that third-party candidates will garner enough votes to make it onto the electoral scoreboard.

Without the Electoral College, there would be no effective brake on the number of “viable” presidential candidates. Abolish it, and it would not be difficult to imagine a scenario where, in a field of a dozen micro-candidates, the “winner” only needs 10 percent of the vote, and represents less than 5 percent of the electorate. And presidents elected with smaller and smaller pluralities will only aggravate the sense that an elected president is governing without a real electoral mandate.

The Electoral College has been a major, even if poorly comprehended, mechanism for stability in a democracy, something which democracies are sometimes too flighty to appreciate. It may appear inefficient. But the Founders were not interested in efficiency; they were interested in securing “the blessings of liberty.” The Electoral College is, in the end, not a bad device for securing that.