



# PICKING THE PRESIDENT

*understanding the electoral college*

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**EDITED BY ERIC BURIN**

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Electoral College*

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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.

# 1

## **Ancient States and Representative Government: Greek and Roman Models for the Electoral College**

William Caraher

The framers of the U.S. Constitution looked to antiquity as an inspiration for their own republic. The city-state of Athens during its Classical efflorescence represented a model for democracy, but it was not nearly as compelling as the Roman Republic alternately celebrated by Enlightenment authors and English reformers. Both ancient civilizations offered historical precedents for representative forms of government that allowed the architects of the various colonial and state constitutions, the Articles of Confederation, and the U.S. Constitution to appeal to traditions of government outside and older than the rule of the European aristocracy. Neither the Athenian democracy in its various forms nor the Roman Republic offered an exact precedent for the Electoral College, but both recognized the importance of recognizing regional interests in the context of their popular institutions.

Democratic Athens of the 5th century BC, featured a popular assembly made up of all citizens which generally meant male, property owners, of military age. This assembly met in Athens to vote on whatever legislation that the state required. Over the course of the 7th and 6th centuries BC various institutions served the roles of the executive, generally an office called the archon, and for a range of different judiciary functions. Most importantly for our purpose here, there existed a council responsible for preparing the legislation upon which the popular assembly would vote. In the late 6th century, the Athenian politician Cleisthenes negotiated a series of reforms in Athens including the creation of a “Coun-

cil of 500” which would serve this function. This council included 50 representatives from each of ten tribes. Each tribe represented communities from each of three non-contiguous regions in Attica, the territory ruled by the city of Athens: the city, the coast, and the interior. The goal of this arrangement was to ensure that each region had representation in the Council of 500 and played a role in the preparation of legislation for the popular assembly (whether this is how this arrangement functioned in practice remains difficult to know). The organization of the Council of 500 around territorially diverse tribes provided an important, representative, counterweight to the popular assembly which tended to be biased toward citizens resident in Athens or who could afford time away from their field, businesses, or jobs to attend voting sessions. In this effort to balance regional concerns with the direct democracy of the assembly, Athens provides an early example of a representative council in the Western tradition. While the tribal basis for the Council of 500 did not ensure each region distinct representation within the Athenian government, it appears to have acknowledged the diverse regional interests present in the Athenian state and it recognized, at least in theory, that compensating for regional interests served as a kind of counterweight to the popular assembly.

Whatever the innovation present in democratic Athens, the Roman Republic provided a far more compelling and influential model for the framers of the U.S. Constitution. Rome, like Athens, did not have a written constitution to guide its governmental structure, but we know enough about how it functioned from historians in antiquity. The Roman Republic possessed an array of assemblies and councils each with specific functions and advantages to particular groups. Unlike Athens, there was far less emphasis on the democratic, popular assembly and a fundamental commitment to the republican practice of voting blocks which represented groups of citizens within Roman society. The two most significant of these councils were the *comitia centuriata* and the *comitia tributa*. In the *comitia centuriata*, Roman citizens were grouped into first 193 and then 373 centuries according to wealth. Each century was a voting block and the majority of voters within the century decided the vote of that century. The wealthiest citizens were divid-

ed into more centuries than the poorest giving them more voting blocks. Moreover, the wealthiest centuries voted first resulting in most elections being decided long before the poorest blocks voted, although reformers consistently tried to shift the balance toward the poorest voters.

The poorest voters tended to congregate in the city of Rome, and this marginalized their political influence in other major assembly, the *comitia tributa*, which was organized according to region of residence. The city of Rome consisted of four urban tribes whereas the surrounding regions, eventually expanded to include all of Italy, comprised an additional 31. Each of the 35 tribes had a single vote with the 31 rural tribes tending to represent the interests of wealthier, rural landowners. Like in the *comitia centuriata*, the majority of tribes carried decisions in this assembly. In fact, the politically marginal character of the urban tribes was such that a punishment for certain kind of crimes included moving the guilty individual's tribal affiliation from a rural to an urban tribe to affect a kind of political disenfranchisement. Like in Athens, regional concerns play a role in managing the political balance of the Roman Republic.

While neither the representative council in Cleisthenic Athens or the *comitia tributa* in republican Rome represented a precise analog to the Electoral College, the Electoral College and the Roman assemblies shared the concept of voting blocks that is, in some appraisals, central to the idea of republican governance. For Rome, the *comitia tributa* also allowed for the state to expand voting and citizen rights into newly conquered territories while maintaining the privileges of the traditional aristocracy through their control of the majority of tribes. While this may appear to be a regressive tactic designed to conserve the political power of the traditional Roman elite, it also allowed the Roman state to expand political rights to new populations in ways that would have been more politically risky for a direct democracy like in Athens. By slotting new citizens into existing tribes or sequestering them into a small number of tribes, the Roman elite also ensured the stability of the state even during times of expansion.

Today, political commentators like to look to Rome and Athens to predict or make sense of the American political trajectory. This makes sense, of course, because the challenges faced by the Roman Republic and the democracy of Athens allow for sensation-ally tragic presentations of our country's political fate set amid the fundamental conservatism of the republican political tradition. Whether the U.S. will fail because of this adherence to these out-moded republican practices or find within them stability during times of dynamic change is beyond the limited gaze of the histo-rian's craft.