



PICKING THE PRESIDENT

understanding the electoral college

EDITED BY ERIC BURIN

PICKING THE PRESIDENT

*Understanding the
Electoral College*

*Edited by
Eric Burin*



The Digital Press at the University of North Dakota
Grand Forks, ND

Creative Commons License
This work is licensed under a
Creative Commons
By Attribution
4.0 International License.



2017 The Digital Press @ The University of North Dakota
in collaboration with *North Dakota Quarterly*



Book Design: William Caraher
Cover Design: Kyle Cassidy

ISBN-13: 978-062833445
ISBN-10: 0692833447

Table of Contents

Prefacei

Introduction: A Brief History of the Electoral College
Eric Burin iii

Section One

The Electoral College in Comparative Perspective

Ancient States and Representative Government:
Greek and Roman Models for the Electoral College
William Caraher 1

The Electoral College as American Aristocracy
Donald F. Johnson 5

America’s Rotten Electoral College System
Manisha Sinha9

The South (or the North, or the West...)
Will Rise Again, and Again, and Again:
Viewing the Electoral College from
the Perspective of Chinese History
Andrew Meyer 11

Section Two

The Electoral College in Historical Perspective

What the Founders Were Thinking:
Why We have the Electoral College
Andrew Shankman..... 17

Did Disenfranchisement Give the South an Electoral Advantage?
Patrick Rael..... 21

Citizenship, Civil Rights, and Electoral Politics
Cynthia Culver Prescott.....27

Quantifying a Candidate’s Advantage in the Electoral College
Timothy Prescott.....31

Section Three
The Future of the Electoral College

If the Electoral College Can Contradict the
Popular Vote Sometimes, Why Would It Be
Wrong for Them To Do It Every Single Time?
Jack Russell Weinstein.....37

Electoral College is Fixable; Senate is Not.
Mark Trahan.....47

Long Habits and Legitimacy
Mark Stephen Jendrysik.....49

In Defense of the Electoral College
Allen Guelzo and James H. Hulme.....53

Electoral College Alternatives: Tradeoffs
Benjamin J. Kassow57

Section Four
Teaching the Electoral College

“Empathy for the Unicorn”:
Teaching About the Electoral College
Brad Austin63

Documents

The Constitutional Convention	75
U.S. Constitution: Article II.....	101
<i>Federalist Paper</i> No. 68.....	105
<i>Anti-Federalist Paper</i> No. 68	109
<i>Anti-Federalist Paper</i> No. 72	113
Amendment 12	117
Timothy Pickering Speech in Favor of the Twelfth Amendment.....	119
James Madison to George Hay	121
James Madison to John Hillhouse	125
Contributors	129

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.

Long Habits and Legitimacy

Mark Stephen Jendrysik

“A long habit of not thinking a thing wrong, gives it a superficial appearance of being right, and raises at first a formidable outcry in defense of custom.” When Thomas Paine said this in *Common Sense* (1776) he was speaking about monarchy, but he could have been saying it about the Electoral College (EC).¹ The EC might once have had a purpose, and it can be argued that the EC was necessary at the beginning of the republic to overcome the basic problems of time and space that made rapid communication of electoral results across a continent-spanning nation difficult if not impossible.² This constitutional feature was designed for a very different time.

Like other features of the United States Constitution such as state equality in the Senate, the EC is now an ossified remnant of a distant past that creates a crisis of political legitimacy every time the EC fails to ratify the popular vote. While this has only happened four times in the history of the country (1876, 1888, 2000 and 2016), current demographic and political division make it possible this outcome might become a regular event. If elections are repeatedly resolved in the EC to the detriment of popular majorities, possibly numbering in the millions, America will face a crisis of legitimacy. After all, why should the election of the president be

¹ T. Paine, *Common Sense*. Philadelphia: Printed. And sold by W . and T. Bradford [1776]). Accessed on December 31, 2016. <http://xroads.virginia.edu/~hyper/Paine/common.html>

² It generally took at least two weeks to travel from New York to Charleston, South Carolina in 1800.

the only election where the majority (or plurality) does not determine the winner?³

Every argument in favor of the EC is made mindlessly, or in bad faith, or to cover up less than savory ideas. To co-opt George Orwell, the EC “can indeed be defended, but only by arguments which are too brutal for most people to face.”⁴ Mindless defenses of the EC pop up every four years. Repeatedly saying “We are a republic not a democracy” is not an argument, it is an incantation. Claiming the EC is a feature of state sovereignty ignores that fact that the states are not actually sovereign. Saying “that’s how the Founders set it up, and they were greater men than we are” infantilizes those of us alive today. Such thinking makes us children, forced to forever obey the Framers, without volition or reason of our own. To paraphrase Paine, the Founders might as well have declared themselves immortal, since we now have no choice but to follow their will.⁵

Bad faith arguments in support of the EC are easy to find. Donald Trump’s complaints about the EC turned to praise once he discovered it was working in his favor. We can also note people who say we can just amend the Constitution to get rid of the EC, while knowing full well that will never happen. Or we can consider the arguments of people in small states whose votes count for more than the voters of more populous states. Defending a weighted vote system requires a set of rather dubious and ultimately disturbing assumptions.⁶ For example, saying that the EC protects the interests of rural areas against urban ones, suggests that some voters votes should have a greater weight. After all, “Real Americans™”

³ In a similar sense, state equality in the Senate poses serious questions of legitimacy as well. Currently somewhat less the 15% of the population controls over half the seats in the Senate, a trend which will only grow more extreme.

⁴ G. Orwell, “Politics and the English Language,” *Horizon* Vol. 13, No. 76. (April 1946), 261.

⁵ See T. Paine, *Rights of Man* (London: Joseph Johnson, 1791) for a discussion of the absurdity of the idea that the dead can constrain the living.

⁶ Or, maybe you believe that empty space should be allowed to vote.

are the honest sons of the soil, not untrustworthy city slickers. As Michael Barone notoriously claimed, the EC protects the country from the rule of the voters of California, who, as we all know, don't represent or support real American values.⁷ And so it is only just that their votes count for less in the EC.

The United States Constitution is an admirable document. But parts of it can be compared to a petrified forest, once alive and vibrant, now merely existing. Even worse, parts of it, in particular the EC, are like vestigial organs. Like the appendix, the EC is mostly harmless and unnoticed. But every once in a while, the EC reminds us of its existence and threatens the health and safety of the Republic. In a democracy elections decided by less than a majority are, on their face, illegitimate.⁸ Quite simply, choosing the single most important office in the world through anti-democratic methods leaves a ticking time bomb of disaster at the heart of our political system.

⁷ Michael Barone, "Ditching the Electoral College" *Washington Examiner*, December 4, 2016. Accessed December 31, 2016. <http://www.washingtonexaminer.com/ditching-electoral-college-would-allow-california-to-impose-imperial-rule-on-a-colonial-america/article/2608766> The key paragraph: "California's 21st century veer to the left makes it a live issue again. In a popular vote system, the voters of this geographically distant and culturally distinct state, whose contempt for heartland Christians resembles imperial London's disdain for the 'lesser breeds' it governed, could impose something like colonial rule over the rest of the nation. Sounds exactly like what the Framers strove to prevent."

⁸ There are over 500,000 elected officials in the United States. All of them, except the president are chosen by majority or plurality elections. David Nir, "Just how many elected officials are there in the United States? The answer is mind-blowing," *Daily Kos*. March 29, 2015. Accessed on December 31, 2016. <http://www.dailykos.com/story/2015/3/29/1372225/-Just-how-many-elected-officials-are-there-in-the-United-States-The-answer-is-mind-blowing>