



# PICKING THE PRESIDENT

*understanding the electoral college*

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**EDITED BY ERIC BURIN**

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THE  
PRESIDENT

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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.

# 2

## The Electoral College as American Aristocracy

Donald F. Johnson

Although dedicated to creating a republic, for the framers of the United States Constitution a stable aristocracy was essential to the project of crafting a Federal state. Basing their ideas on enlightenment theory and the British constitutional tradition, Constitutional architects such as James Madison and Alexander Hamilton envisioned a strong, independent class of well-educated, wealthy, independent men, who could mimic the function of European nobility and act as a check on potentially tyrannical executives or overly populist legislative assemblies. The Senate, meant to be a republican version of the British House of Lords, was perhaps the most obvious attempt at enshrining the interests of these wealthy men in government at the national level. The Electoral College, however, was crucial in creating a functioning local aristocracy in America. And, unlike the Senate, it is one that has never been democratized, maintaining to this day its connections to the monarchical governments of early modern Europe upon which it was based.<sup>1</sup>

Indeed, if the Senate was meant to establish a national aristocracy, the framers intended for the Electoral College to maintain elite representation at the state and local levels. The Constitution prescribed no form of selection for state electors, and did not bind

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<sup>1</sup> On the importance of mixed government for the framers, see James Madison, *Federalist* No. 40 and Alexander Hamilton, *Federalist* Nos. 23-28. For their Enlightenment inspiration, see Locke, *Two Treatises on Government* (1689) and Montesquieu, *On the Spirit of the Laws* (1748). On the Senate as safely fulfilling the aristocratic function in a mixed republican government, see Madison, Alexander Hamilton, and John Jay, *Federalist* Nos. 62-66.

them to follow popular elections for president in any way. As the Alexander Hamilton's *Federalist* No. 68 demonstrates, the College was meant to be a check on the excesses of the people, comprised of wealthy men "free from any sinister bias" who would protect the presidency from falling into the hands of "any man who is not in an eminent degree endowed with the requisite qualifications." Hamilton, Madison, and other Federalists assumed that state-level elites would act as a further check on the powers of the people and of demagogues who might seduce them. Still, such a blatantly un-representative feature seems out-of-place in a representative form of government.<sup>2</sup>

This dissonance is because the Electoral College was based not on republican theory but on the structure of aristocratic elective monarchies in eighteenth-century Europe, most notably the Dutch Republic, the Commonwealth of Poland-Lithuania, and the Holy Roman Empire. In the Netherlands, representatives from seven feudal provinces, each administered independently by hereditary lords, gathered periodically to elect a stadholder, or steward, responsible for leading the Dutch army in wartime, administering foreign affairs, and resolving conflicts between the provinces. Typically, stadholders came from the House of Orange, which became the de-facto royal family of the Netherlands (and whose most prominent member, William III, ascended the throne of Great Britain in 1688). Nevertheless, through the electoral system nobles of each province maintained autonomy over their provinces.

In early modern Poland-Lithuania, nobles came together from tens of thousands of sovereign fiefs to elect new monarchs upon the death of a prior king. Meeting in the *sjem*, or noble Parliament, these aristocrats tended to elect members of prominent families from among their own ranks, though elections could be bitterly disputed and more than once led to schisms and civil wars. Still, as in the Dutch Republic, the *sjem* ensured that nobles maintained power within their domains, and exercised supervisory authority over their executive.

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<sup>2</sup> For the selection of electors, see the United States Constitution, Article II, Section 1. For Hamilton's analysis, see Hamilton, *Federalist* No. 68 in the Documents section.

Finally, the Holy Roman Empire comprised perhaps the oldest and most well-known electoral college. For almost a thousand years, seven to ten electors of various German and Italian states comprising the Empire met periodically to elect a new Emperor, who usually came from the Hapsburg dynasty of Austria. Despite its seeming stability, however, electoral politics in the Empire were fraught with religious and political intrigue, and prince-electors (of whom George III of Great Britain, in his dual capacity as ruler of Hanover, was one) exercised near total autonomy over their own domains.<sup>3</sup>

The American Electoral College thus resembles more closely those of noble-dominated Federal monarchies of late-eighteenth century Europe than the British-style mixed constitution from which the framers drew much of their inspiration. Electors, drawn from the elites of each state in the Union, would confirm not only the integrity of the Presidency but also maintain the power of the local aristocracies in each region of the country. Yet, while the electoral systems of the Netherlands, Poland, and the Holy Roman Empire were destroyed in Revolutionary fervor during the 1790s and 1800s, the American Electoral College persists in much the same form established in 1789.

Indeed, the Electoral College continues to perpetuate a regional American aristocracy. Unlike the Senate, which was reformed in 1913 to allow for direct elections, electors are still appointed by state legislatures and governors, and typically comprise local elites. 2016 electors for the state of New York, for example, included former President Bill Clinton, current governor Andrew Cuomo, and current New York City Mayor Bill de Blasio.<sup>4</sup> Given its noble origins in pre-Revolutionary Europe and recent dramatic splits between the electoral and popular votes, perhaps further consideration of its place in modern American society is in order.

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<sup>3</sup> For more on the composition of the Holy Roman Empire, Poland, and the Netherlands in the early modern period, see Thomas Ertman, *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe* (Cambridge, 1997).

<sup>4</sup> “Duly Appointed Presidential Electors.” *The Green Papers: 2016 General Election*, accessed December 27<sup>th</sup>, 2016; <http://www.thegreenpapers.com/G16/EC-Electors.phtml>.