



Written by [Steve Byas](#) on January 23, 2017

Published in the January 23, 2017 issue of [the New American](#) magazine. Vol. 33, No. 02

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## The Electoral College: The Best Way to Pick a President

**Most Americans would be at a loss to explain why the Electoral College is important, even as liberals rage against it. Here's why.**

Imagine that it is the year 2028. America has abolished the Electoral College, with the 28th Amendment to the Constitution. With only a few weeks left before the inauguration of the next president, the United States faces a serious crisis. The election has failed to produce a clear winner.



After three days of counting, the Republican candidate appeared to have edged the Democratic Party choice by a mere 4,123 votes nationally, out of 135 million votes.

Of course, the Democrats refused to accept the results, and some additional “absentee votes” were found in Chicago, Philadelphia, and Los Angeles, which sent the Democrat surging ahead. But just as amazingly, Republicans in several small counties in Oklahoma, Texas, Utah, Idaho, Nebraska, Alabama, and Mississippi had likewise “found” additional votes, which put the Republican back on top by a little under 1,000 votes.

Lawsuits have filled the courts across the country. In several states, Democrats have even gone to court to stop the counting of votes from soldiers and sailors deployed around the world, arguing they were turned in “too late.” Riots are breaking out across the nation, and the National Guard has been called out in several states.

A national recount has begun, conducted by the United States Election Agency, created by Congress in the wake of the abolition of the Electoral College. But after three weeks, it has become obvious that the country will never settle — peacefully — who had actually won the election.

### A Tranquil Election

One can hope that such a frightening scenario will never happen. But if the system created by the Framers of the Constitution — choosing the president by electors, who are themselves elected through various methods by the several states — had been still in place in the above hypothetical election, the nation would have had a known winner weeks earlier, maybe even on election night.

Despite a concerted effort to overturn the November 8, 2016 presidential election, New York businessman Donald Trump was nevertheless chosen by the Electoral College on December 19 as the nation's 45th president. Activists who favored Democratic nominee Hillary Clinton argued that since she ran first in the “popular vote,” the electors in states carried by Trump should just go ahead and cast their votes for Clinton. There were the predictable protests, and electors were inundated with pleas to change their votes, with even some ugly attempts at intimidation, such as murder threats. But in the end, the Electoral College did its work — demonstrating the wisdom of the Founders in their creation of a presidential elections system, which still provides for a peaceful transfer of power.



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St. George Tucker, writing in his book *View of the Constitution of the United States*, said little about the Electoral College method of presidential election, other than it was the Constitution's way of providing for the "tranquility" of the election of the chief magistrate of the U.S. government. Tucker's 1803 book was the first systematic commentary on the Constitution following its adoption, ratification, and addition of the Bill of Rights. It was, for the next several decades, the most important handbook for American law students, lawyers, judges, and statesmen. Tucker adopted the view of the federal government as an agent of the sovereign people of the several states, and heavily influenced the general understanding of what the Framers of the Constitution were wishing to accomplish. According to Tucker, the delegates at the constitutional convention disagreed on many things, but choosing the president via electors was not one of them.

Alexander Hamilton said the way the president was to be elected under the Constitution was certainly not perfect, but it was "excellent." Writing in *The Federalist*, No. 83, Hamilton said, "The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents." Making a similar point to what would be noted by Tucker a few years later, Hamilton believed the method of election of the president would "afford as little opportunity as possible to tumult and disorder."

Despite the unanimity of the Founding Fathers in their support of what we now call the Electoral College, in our day it is castigated as at best antiquated and at worst, racist. Today, it is largely misunderstood, even by many of its defenders, some of whom assert that it is not working as it was intended to work by the Founders. It is safe to assume that such a statement could be made about a large portion of the Constitution, but the historical record clearly indicates that the Founders created the Electoral College as an important element in their overall goals of creating a republic, not a democracy; they wanted that republic to be of a federal nature; and, of course, they hoped it would produce the best possible person for the position of president of the United States.

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## **The Constitution Created a Republic, Not a Democracy**

Upon leaving the Constitutional Convention, Benjamin Franklin was asked what form of government the delegates had given the United States. Franklin's response was, "A republic if you can keep it." In *The Federalist*, No. 10 (the *Federalist Papers* were a series of newspaper articles written by James Madison, Alexander Hamilton, and John Jay in an effort to persuade the average person in New York State that the Constitution should be ratified), Madison took a dim view of a pure democracy, arguing, "Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths."

What Madison wanted instead, and what he believed the Constitution had established, was a republic: "A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect."

More recently, commentator George Will put it well: "The core principle of our republicanism is representation: The people do not decide things. They decide who will decide."



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Perhaps the most serious misunderstanding about this entire issue is the mistaken belief that the purpose of government is to create the conditions for the will of the majority to prevail. Fisher Ames, a member of the first three Congresses, did not agree with this proposition. He said, "Liberty has never lasted long in a democracy; nor has it ever ended in anything better than despotism."

The very reason that government should even exist is to advance liberty, and to protect the lives and property of its people. As Thomas Jefferson put it in the Declaration of Independence, government's legitimate purpose is to "secure" rights granted by the Creator. Certainly, for a government to be legitimate, it must obtain its "just" powers from the consent of the governed. But put simply, the only powers government can justly exercise, even those granted them by the governed, are those that carry out the legitimate purposes of government. So in choosing the president, like every other action taken in connection with government, protecting the life, liberty, and property of the people is its purpose, rather than making sure the will of the majority prevails.

This is why the president is afforded the veto pen by the Constitution. A simple majority of Congress is not enough to prevail when the president vetoes an act of Congress, but rather a two-thirds vote of each house of Congress is required to make a bill a law over his objections. This provision of the Constitution is not for reasons of democracy, but rather for reasons of carrying out the purposes of the Constitution and of the institution of government itself. It is the reason we have courts to decide whether an accused person is guilty, rather than leaving the judgment up to the mob. If the purpose of government were to simply carry out the will of the majority, the Bill of Rights, indeed the entire Constitution, would be superfluous.

If the United States were to replace the Electoral College with a national popular election, we could expect an intensification of the current drift toward an imperial presidency. The president would be the only public official chosen by a national popular vote. This would dangerously tilt the powers of the federal government even more so in favor of the executive. With a national popular election "mandate," presidents would make the argument that they represent "the will of the people," and that Congress should fall in line. We have already experienced presidents asserting their right to make law through executive orders, or that they can make war on their own, without any approval from Congress.

Furthermore, using a *national* popular election for the selection of a president was not seriously considered by the Founders, as there were simply too many problems with such an idea. Under the federal system of government established by the Constitution, such a process would have been unworkable. After all, no other officer of the new general government would be chosen by a national election. Elections of the president by a direct and national popular vote would raise many serious questions — such as what to do about recounts and voter fraud, and even the question of who would count the votes. No doubt a national election commission of some sort would be required, and the states would likely not accept that.

## **The Electoral College Preserves Federalism**

Perhaps the Electoral College can be better understood by examining the issues surrounding the most intense debate at the Constitutional Convention — how to choose members of Congress. Under the Articles of Confederation, each state exercised one vote, owing to their status as equal states. James Madison was among the leaders at the convention in bringing forth a plan for congressional representation that would give more votes in Congress to the more-populated states.



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Not surprisingly, this so-called Virginia Plan met with stiff opposition from the lesser-populated states. At the time, Virginia had approximately twice the population of the next closest state, Massachusetts. Madison reluctantly accepted what has been called the Great Compromise of the convention — one house (the House of Representatives) would be apportioned by a state's population, but a second house (the Senate) would have each state equally represented, with two senators. This was considered so important to the smaller states, but also to even some of the larger states, that it is the only part of the Constitution that can never be changed, even by constitutional amendment.

Because the government of the United States was to be a federal republic — or what is sometimes called a compound republic — the states were expected to elect both the Congress and the president. The selection of electors followed this pattern created in which the people in the states elect members of the House of Representatives, and the state legislatures of each state choose the members of the Senate.

The delegates rejected the idea of just letting Congress choose the president because this would reduce him to a mere creature of that body. They also understood that Congress, with its power to make laws, would be the most powerful branch of the new general government. They gave the president the veto power as a check on this awesome power.

This led the convention to create a system wherein the states would choose electors, who would then choose the president. How many electors would each state have? Following the pattern established with the Great Compromise on congressional representation, each state legislature could then choose, by whatever method they so determined, a number of electors, equal to their combined numbers of representatives and senators. Thus, the larger states would have more say in the election of the president, but it would also protect the people in the smaller states by forcing more respect for their interests, as well.

Significantly, the electors would not meet together, but rather in their state's capital city. The very term "electoral college" was a later invention, not even being referred to in federal law until 1845.

## **Electors Are Chosen for Their Independent Judgment**

Another assumption apparently made by the constitutional Framers was that each elector would use his own judgment in how to cast his vote. A comparison can be made to members of the House of Representatives. Although these individuals are chosen by the popular vote within their congressional districts (and not by some national popular vote), they are not "bound" to vote any particular way on the issues that come before them.

It was thought that the members of the House of Representatives would be chosen by their character, their views as expressed in the campaign, and their independent judgment. These qualities were important, since the Founders did not intend for the average citizen to vote on each national issue, leaving that up to their congressman's judgment. As George Will stated, "Representatives are supposed to deliberate about the national interest." And if citizens did not like the way their congressman voted, they could just vote him out at the next election.

Similar expectations were made of presidential electors. It was hoped that they would make a careful study of the various men who could potentially serve as the nation's president, and make a deliberative judgment. While each elector would cast his own individual vote, it was assumed each would benefit



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from a discussion with the other electors in their state before making a final decision.

## Evolution of the Electoral College

One reason that the Electoral College system does not operate exactly as expected by the Framers of the Constitution is that they left the elector selection method up to each state legislature. In the first presidential election, the legislatures of Connecticut, Delaware, Georgia, New Jersey, and South Carolina simply appointed the electors. Pennsylvania, Virginia, and Maryland picked their electors with a popular vote. Maryland set up its election for electors on a general ticket, but directed that five were to be residents from the “Western Shore,” and three were to be from the “Eastern Shore.” New York did not even choose any electors, as their legislature could never agree on how to proceed before the election of the first president.

It made little difference in the first presidential election, as George Washington was the unanimous choice.

Nine of the 15 state legislatures chose the electors in the second presidential election (which Washington also won by unanimous vote). By the 1830s, however, most states had gone to using a state popular vote method.

The Constitution provided that a person had to obtain a majority of the electoral vote in order to be elected, not just a *plurality*. Failure of any one candidate to gain the *majority* of the electoral vote would mean that the election would then be determined by the House of Representatives. This has happened twice — with Jefferson winning in 1801, and John Quincy Adams winning in 1825. The Constitution requires that each state’s delegation of House members cast only one unit vote, in that case.

## The Electoral College Today

Although the Electoral College has evolved over the years, it remains a testimony to the wisdom of the Founding Fathers. If the president were chosen through a national popular vote election, the campaign would look much different than it does now. Instead of candidates paying so much attention to small states such as Iowa, New Hampshire, Nevada, and Maine, they would instead camp out in large urban centers, where there are lots of voters. This would, of course, tilt national policy away from the interests of what many on the east and west coasts of the United States presently dismiss as “flyover country.” In fact, presidential candidates in the general election would tend to fly over “flyover country,” spending little or no time campaigning there. Columnist William O’Rourke of the *Chicago Sun-Times* was quite explicit in his disdain for the country outside of New York City, Boston, Philadelphia, Chicago, Los Angeles, and other great metropolitan areas, calling the less-populated areas of the country “Yahoo Nation.”

O’Rourke’s description of the middle of the country was extremely vitriolic, asserting that the part of America that voted against Al Gore in 2000 “is a large, lopsided horseshoe, a twisted W, made up of primarily the Deep South and the vast, lowly populated upper-far-west states that are filled with vestiges of gun-loving, Ku Klux Klan-sponsoring, formerly lynching-happy, survivalist-minded, hate crime-perpetrating, non-blue-blooded, rugged individualists.” He added that these areas do not contain “one center of thinking America, the teeming centers of creative and intellectual life.”

It should be noted that a popular vote in a presidential election may not necessarily reflect the winner



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of the popular vote under the present electoral methodology. After all, candidates could be expected to campaign much differently if they were trying to win the popular vote, rather than attempting to win electoral votes by winning states. Neither Trump nor Clinton even bothered to campaign in California, the nation's largest state. In a powerful demonstration of how a national popular vote could lead to that state dominating a national election, it should be noted that were the votes of California removed from the national popular vote, Trump would have actually finished ahead of Clinton in the popular vote, a swing of millions of votes. Conversely, millions of Republican voters living in "blue states" who might have stayed home on Election Day because they couldn't influence the election might vote in a national popular election scenario.

Strategy would be much different in a national popular vote election, rather than in an election determined by the electoral vote. After all, the game plan for a football game would be much different if field goals counted as four points instead of three, and touchdowns as five points instead of six, or if total yardage were the way a winner was determined, rather than by touchdowns, field goals, and safeties.

Determining a winner in a national popular vote election might even prove impossible. The 2000 election is particularly memorable, since it took 36 days *after* the election before a winner was finally declared — and that delay was solely because of disputes concerning the popular vote in one state: Florida. Texas Governor George W. Bush ran first in that state by a mere 537 votes out of six million cast, giving him a narrow 271-267 victory in the Electoral College. Americans who are old enough can remember the spectacle of the recounting of votes in a handful of Florida counties, in some cases even holding punch-card ballots up to the light in an effort to determine the intent of the voter.

Recounts are certainly an issue that would have to be resolved before the country could hold a meaningful national popular vote election for president. As it stands now, each state conducts its own recounts, according to its own laws. But if the nation were to begin holding presidential elections based on a *national* popular vote, it is likely that this recount would be conducted by a federal agency. After all, what motive would a state have to spend funds to recount its votes in the circumstance that its own state's election was not even close?

And once a federal agency begins to conduct a presidential election, with recounts, the detection of fraud, and ancillary issues, we would have *de facto* national control of all elections. It would be rather impractical to have a national agency overseeing just the presidential election, and this would mean even more power has shifted from the states to the federal government.

With a national popular vote election, in which fraud can no longer be "contained" within the borders of a single state, or a handful of states, the temptation to stuff the ballot box would be obvious. And with a national popular vote, states would likewise be tempted to increase their vote totals. This could lead to the spectacle of some states letting convicts inside state prisons cast ballots, the allowing of foreigners (both legal residents and illegal aliens) to vote, and maybe even letting children as young as 12 (or younger) cast ballots. After all, most young children could be expected to pad the results according to the views of their parents.

Such shenanigans in one state would be unfortunate, but if the votes in states that resorted to such unseemly tactics were allowed to affect the outcome of the national election, it would be tragic for our Republic.



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## Suggestions for Reform

While the Constitution left the actual selection method of states' electors in the hands of state legislatures, Madison and Hamilton were disappointed when Pennsylvania and Maryland opted to use a "winner-take-all" method. They had apparently assumed that each congressional district would choose one elector, with the other two then picked directly by the state legislature. Since the Civil War, however, states have generally awarded all of their electoral votes to the candidate who wins the popular vote in their state.

Today, only two states — Maine and Nebraska — use the congressional district method favored by Madison and Hamilton. This year, Hillary Clinton won the statewide popular vote in Maine, but because Republican Donald Trump carried one of the state's two congressional districts, he garnered one electoral vote in Maine.

If every state adopted this method, it would better maintain the federal character of the presidential election as envisioned by the Founders than the present winner-take-all system prevalent across the country. Had this system been in effect in 2012, Mitt Romney would have been elected president over Barack Obama. Within the 26 states won by Obama, Romney actually won a plurality of votes in 99 congressional districts, while Obama won only 32 districts in "Red States."

Opponents of this suggested reform argue that this would lead to state legislatures drawing congressional district lines so as to increase their state's clout in determining the winner of the presidential election, much as they now influence the makeup of Congress through gerrymandering. Actually, increasing the power of state legislatures in the selection of the president can be argued to be a good thing, because it would help restore some of the power of the states in their relationship with the federal government.

If one's goal is for government to protect our lives, liberty, and property, then the preservation of the Electoral College would seem imperative.

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## Reasons to Keep the Electoral College

- The Electoral College better maintains the federal character of presidential elections than does a national popular vote.
- With a national popular vote election, the trend toward an imperial presidency would only increase.
- The Electoral College limits the effects of vote fraud on the nationwide election results, since such fraud is more likely to occur in major metropolitan areas located in the larger states.
- A national popular vote election could lead to an election so close that a recount could not establish a winner.
- A national popular vote election would require more national control over the election process.
- A national popular vote election would increase the mistaken idea that the purpose of government is to ensure the will of the majority prevails, rather than the purpose of government being to protect life, liberty, and property.
- A national popular vote election would increase the cultural divisions of the country.



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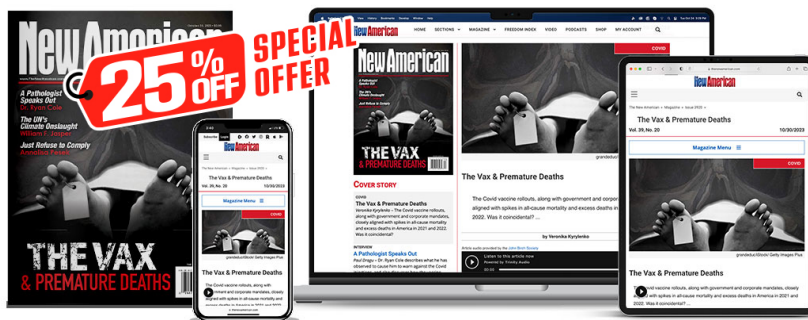
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