

Why the Electoral College Should be Preserved

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By ripon_admin

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by JAMES WALLNER

A “time bomb lodged near the heart of the nation.” That is how the Pulitzer-Prize winning author, James A. Michener, described the Electoral College in his 1969 book, *Presidential Lottery*.

Michener is not the only person in history who has been concerned about the Electoral College. Indeed, the elaborate process stipulated in Article II, section 1, clauses 2 and 3 of the Constitution, has been a perennial source of controversy since it was ratified in 1788.

Nevertheless, opposition to the Electoral College has become more pronounced in recent years due to the controversial outcomes of the 2000 and 2016 elections. In 2000, Al Gore lost to George W. Bush despite winning approximately half a million more votes nationwide. Hilary Clinton similarly lost the 2016 election to Donald Trump despite having won almost 3 million more votes nationwide. In both elections, Bush and Trump became president because they won more votes in the Electoral College.



Earlier this year, Elizabeth Warren, D-Mass., sparked renewed interest in the Electoral College when she proposed abolishing the institution during a presidential town hall. Warren’s announcement encouraged many of her rivals for the Democratic nomination to also call for the Electoral College’s elimination. Many congressional Democrats also oppose the institution. In the Senate, Brian Schatz, D-Hawaii, introduced a constitutional amendment recently to abolish it. Steve Cohen, D-Tenn., submitted a similar proposal in the House.

The Democrats’ opposition to the Electoral College appears to be motivated at least in part by the fact that it disadvantages them vis-a-vis their Republican competitors in presidential elections. Of course, Democrats do not acknowledge that they base their opposition on narrow partisan calculations. They contend instead that the Electoral College is undemocratic and, consequently, that it undermines the federal government’s legitimacy. They claim that the institution values voters who live in rural, sparsely populated states, more than those who

live in populated states such as California or densely populated urban areas like Los Angeles. As Warren observed: “We need to make sure that every vote counts...And the way we can make that happen is that we can have national voting and that means get rid of the Electoral College.”

This disparity, opponents of the Electoral College argue, can delegitimize the new administration before it has even started. For example, consider a 1969 statement, by Birch Bayh, a former Democratic senator from Indiana and longtime opponent of the Electoral College: “When we have an Electoral College system which threatens to elect a man who has fewer votes than his opponent, we tend to erode the confidence in the people of this country and their president and in their form of government.”

Opposition to the Electoral College is not universal. Its proponents, who are predominantly Republican at present, counter that the institution, while complicated, nevertheless incentivizes presidential candidates to assemble super-majority coalitions to win elections. The institution’s proponents contend that such coalitions are beneficial because they resemble more closely the country at large, thereby helping the successful candidate govern effectively once in office.

Thinking about politics as a means to an end distorts our understanding of why the Electoral College matters.

Notwithstanding the merits of their various claims, the Electoral College’s opponents and proponents have more in common than they realize. That is, they both ignore the underlying role played by the institution in American politics. The Electoral College, along with the Constitution’s other institutional arrangements, exists to safeguard the space where Americans participate in politics to make collective decisions based on equality. Abolishing it would jeopardize that space and, in the process, exacerbate the federal government’s current dysfunction.

That both sides in the debate have overlooked this crucial point suggests that Americans of all political stripes – Democrat, Republican, liberal, and conservative – increasingly think about politics in the same way. Americans, especially those active in partisan politics, often do not think about political institutions in ways that transcend their immediate partisan interests. They no longer see politics as an activity in which they participate. Instead, they see it as a means to an end. Put differently, they think about government in terms of progress, not in terms of specific forms (i.e., monarchy, aristocracy, democracy, etc.). This shift in thinking is evident in the emphasis both sides place on outcomes rather than process. For opponents and proponents, results are more important than the activity that takes place within specific forms of government. Their outcome-oriented understanding of politics causes them to rationalize their view of the Electoral College based on whether it serves as a means to their particular end. That is why today’s Democrats predominantly oppose the Electoral College and Republicans generally support it.

The problem is that thinking about politics as a means to an end distorts our understanding of why the Electoral College matters. In contrast, thinking about politics as an activity forces us to acknowledge the space where that activity occurs. In the process, we gain a deeper

appreciation of why the Electoral College matters.

Take, for example, Warren's claim that the Electoral College violates the one person, one vote standard. While Warren is no doubt sincere in her belief, she is nevertheless predisposed to oppose the institution because she thinks about it in terms of progress; as a means to an end. In short, the Electoral College makes it harder for her, or any other Democrat, to win a presidential election given present conditions. For Warren, abolishing the Electoral College is a means to achieving her end precisely because she believes that there are, at present, more Democratic voters nationwide than Republican voters.

In making her argument, Warren overlooks the fact that her proposal, if successful, would change the very nature of the American regime. That is, abolishing the Electoral College and replacing it with a nationwide popular vote would create, for the first time in the nation's history, a single common electorate. Admittedly, a national electorate may exist symbolically or culturally, presidents may claim nationwide mandates, and elections can be nationalized. But no government official is currently elected by citizens casting votes in one single national electorate. Likewise, no institution in the federal government represents a single, nationwide electorate directly.

In America, the majority decides in both houses of Congress, the Supreme Court, and, during elections, in each state.

Many electorates organized by state instead comprise the American electorate. It is important to note that this is not an argument for states' rights. Instead, it is evident in how John Marshall, the nationalist chief justice of the Supreme Court, described the Constitution's ratification process in *McCulloch v. Maryland*: "It is true, they [the people] assembled in their several States," he wrote, asking, "and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States."

According to Marshall's logic, the existence of the Electoral College does not violate the one person, one vote standard because all votes count equally in the electorates, or states, where they are cast.

Both the opponents and proponents of the Electoral College should acknowledge this fact in the debate over whether it should be abolished. That would require them to think about politics as an activity instead of as a means to an end. Doing so illuminates the fact that the Electoral College is part of a complex arrangement of constitutional institutions that, working together, ensure that no one group of people rules, whether that group comprises a majority or a minority of the population. To do this, the Constitution established a space that could not be conquered by the majority or the minority and where Americans could participate in politics. That space would not coexist very long with one sovereign people in a single national electorate who could step into the shoes of the king and destroy it, or rule, whenever a majority so chose.

Fortunately for both sides in the debate over the Electoral College, the people as organized in different state electorates are sovereign in America. As Marshall observed: “From these [ratifying] conventions the Constitution derives its whole authority. The government proceeds directly from the people; is ‘ordained and established’ in the name of the people, and is declared to be ordained, ‘in order to form a more perfect union, establish justice, insure domestic tranquility, and secure the blessings of liberty to themselves and to their posterity.’”

This simple fact is what differentiates the outcome of the American Revolution from that of the French Revolution. In the latter, royal rule was replaced with majority rule and freedom was destroyed. In the former, royal rule was replaced with majority decision and freedom of all citizens to participate in politics was ensured. In America, the majority decides in both houses of Congress, the Supreme Court, and, during elections, in each state.

Acknowledging the underlying significance of the Electoral College does not mean that it cannot be reformed. Thinking about politics as an activity should not blind us to the fact that we can always do better. But it does force us to consider where we can do better.

The longevity of the American Republic suggests that its citizens make things better in the space where politics occurs. In reforming that space, we should endeavor not to create a single national sovereign that will have the power to destroy it.

Securing minority rights against tyranny in all its forms requires that we prevent any one group of people from ruling.

James Wallner is a Senior Fellow for Governance at the R Street Institute. He also serves as a professorial lecturer in the Department of Government at American University and is a fellow at American University’s Center of Congressional and Presidential Studies.

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