

Let Hamilton Speak: Recapturing American Democracy

by Eric Chenoweth

Americans are being told that the Electoral College overrides the national vote in US presidential elections because the nation's founders established a federal system for states to determine the selection of the country's only national office. We are thus also told that the Electoral Colleges *must* affirm Donald Trump's election as president according to the state outcomes of the election even if he is unfit for the office and may be beholden to a foreign power for his election.

Both assertions are wrong.

Not only are these assertions wrong, they serve to weaken our understanding of American democracy, America's constitutional system, and fundamental democratic principles. The meeting of the Electors in the 50 states and the District of Columbia on December 19 to cast the actual ballot for the next president is an opportunity to redress these misconceptions and bring about a democratic outcome to the presidential ballot.

The 2016 election represents a profound anomaly in US history. The Electoral College or House of Representatives determined the presidential election contrary to the national vote on three unusual occasions out of the first twenty-seven presidential elections, the last in 1888. There followed, until the year 2000, twenty-seven clearly decided elections over 112 years in which the winner of the national and electoral college votes coincided. Even when closely decided, these outcomes constituted the popular will by a common understanding of the American citizenry.

Now, for the second time in sixteen years, the winner of the national or popular vote is being denied the office of president due to slight margins in states determining the Electoral College vote. And, unlike in 2000 when both margins were small, the Democratic candidate, Hillary Clinton, has won the national ballot by a large amount, 2.85 million votes and rising. Meanwhile, Donald Trump's total margin in the three states determining the Electoral College "win" is fewer than 70,000 votes out of 13.4 million cast.

This outcome falls outside any norm for American democracy or for democracy generally. The popular will is being rejected in a national election and a minority national government is being imposed on the country. The American Constitution does not in fact demand acceptance of such fundamentally abnormal and undemocratic outcomes. The Founders did not conceive of the Electoral College as a means to override the national vote nor to affirm an unfit candidate who might be beholden to a foreign power as president of the United States.

The Purpose of the Electoral College: Constitutional and Representative Democracy

State representation and sovereignty was part of the consideration of the Electoral College as it was in the US Constitution generally. It drove many of the Founders' compromises that, until 1865, allowed the existence of slavery in a free country. Yet, it is important to remember that the Founders were establishing a system for national self-governance. They blended national and federal visions in crafting the Constitution not just for purposes of compromise over slavery but

out of serious consideration how best to construct a United States of America. As James Madison wrote in Federalist 39, neither national nor federal vision dominates — nor should — in determining the powers of the national government in a constitutional republic.¹

The most significant compromise in determining election of the country's only national offices, president and vice president, is that this was *not* ceded to the states or to Congress. Instead, the Constitution establishes a single day for a national election in order for the people first to express the national will. The “federalists” — the term at the time meant those favoring a strong national government — won this debate.

The Electoral College was not a compromise to give states an arcane process to override the national vote — the common understanding. Rather the Constitutional Convention adopted Electoral Colleges, models for which already existed in the states, as part of America's emerging republican system. In Madison's conception, they were to serve as a mediating representative institution between the voters and the office of president so that they might protect the country from dangers inherent in establishing a national vote for the country's only national offices.

Those inherent dangers in a historically new self-governing republic were clear to the Founders. And the purposes of the Electoral College were described precisely, not vaguely, by Alexander Hamilton in Federalist 68. They are worth stating in full:

The process of election [by Electoral Colleges] affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union.

Further,

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils.

Certainly, Donald Trump fits all these definitions: he has never held any office of public trust or honor; he has displayed the lowest qualities of personal character; he based his campaign on demagogic promises; he insists there is no bar to his family's corrupt enrichment while he is president. And no one could better represent the Founders' *chief* fear that a foreign power gained improper influence over our national affairs. There is growing evidence that Trump's victory was significantly benefitted by foreign interference in the presidential elections directed personally by Russia's leader, Vladimir Putin — interference called upon and welcomed by Trump himself.

Why, then, should the Electoral College be misused for the *opposite* intent that Hamilton states was its primary function? As importantly, why should the Electoral College impose itself to override the national vote — the representation of the national popular will — in order to install a minority national government? No such intent should be inferred from the Constitution.

The First Principle is Democracy

However much a constitutional republic mediates the voters' will through representative institutions, the first principle of self-government is that every eligible vote cast in an election should be counted. There must then be a clear determination as to the accuracy and fairness of the vote count and assurance made that the election process was not compromised by improper means (foreign or domestic). This principle is fundamental because voting is the fullest expression of our political equality. The US Constitution, as amended, guarantees this expression to all citizens over the age of 18.

Yet, the contrary imperative is insisted upon. Americans are told by political leaders and the media to accept an immediate determination of a winner based on incomplete results on election night. In this year's election, the winner was declared when the margins of victory in states determining the election were small and national officials had confirmed that Russia had illegally hacked into several state election data systems, raising legitimate concerns of tampering with voter lists and electronic voting systems. How could we *not* insist on recounts in these states so that voters can be assured that the elections were fair, accurate, and free of foreign intervention?

Another anti-democratic norm is more significant. We are told before, on, and after Election Day that the national vote is irrelevant to the outcome of the presidential race. Somehow it became acceptable within a constitutional democracy that the political sovereignty of citizens in one state can be 3.5 greater than that of citizens in another, that less numerous rural voters have greatly more power than more numerous urban voters, and that a national margin of 66 million votes versus 63 million has *no* political meaning at all. It is incidental news.

The final result of a national election should have profound meaning within any constitutional democracy and especially in modern democracy's birthplace.

While an essential principle of governance in a democracy is that in an election the minority accepts the determination of the majority, how is the majority now to be determined when the Electoral College system, after 112 years of reflecting the popular will, no longer does so? Instead, in two of the last four presidential elections, it functions to certify the national vote loser and impose a minority national government. Acceptance of minority rule does not reflect an evolved understanding of our constitutional system or of democracy.

The Presumption of Power and Unfitness for "Eminent Office"

In an anomalous election that demonstrated the nation's clear political division, Donald Trump falsely claims a "landslide" victory and asserts a popular mandate to remake the nation's domestic and foreign policies contrary to the views and will of a majority of voters.

Aside from announcing the appointment of extremists to positions of power, Trump shows a clear intent to violate basic norms and limits on presidential powers under the constitution. A few examples suffice: he proposed to strip citizenship for exercising protected free speech rights; he attacks all media he considers critical of him as "dishonest"; and he called for a boycott of "Hamilton" when its actors petitioned his vice president-elect to take seriously the fundamental message of their play celebrating America's diversity. Further, Trump's assertion of the right to

transfer his business empire to his family's control would allow enrichment through his occupancy of the presidency and raises [serious questions](#) whether the Constitution allows him [to be inaugurated](#).

These considerations are reason enough for the Electors to assert their representative function to deny Trump the presidency. Hamilton, however, pointed to even more important dangers: protecting the republic from the assumption to national power of a populist demagogue subservient to a foreign power.

“The Little Arts of Publicity”

Donald Trump's statements and proposed policies should be taken seriously as threats to basic freedoms. Yet, all of his politics constitute demagoguery — “the little arts of publicity” as Hamilton put it. His brand of ethno-national populism stoked fears and resentment of white voters against minority ethnic and religious groups in a manner provoking national division. He then promised simplistic authoritarian solutions, often directed against minority populations, to core problems of immigration, terrorism, trade, and the economy.

Trump and his campaign justified saying everything and promising anything to gain power. Yet the most repeated promise to his supporters — to build a wall between the US and Mexico and make Mexico pay for it to stop illegal immigration — is now presented simply as a “great campaign device.” The most upsetting to his followers is the current reversal on the promise to start legal actions to “lock up” his opponent, a dictatorial power no president has but which Trump asserted constantly he would exercise anyway.

Those who demand that we accept Trump's election claim these statements prove Trump's pragmatism and that we should never have taken him literally. They show nothing of the kind. Such reversals show the true nature of demagoguery and why it is a fundamental threat to American democracy. Politics is no longer about convincing people to support candidates based on positions or policies that best represent their and the country's interests but about manipulating emotions of voters to propel a leader to power. Trump learned from his campaign that the more authoritarian and extreme he made his pledges, the stronger his support became. “Pragmatism” for Trump is demagoguery. He will now adopt the campaign principle that propelled him to power as a governing principle.

The interwoven danger of demagoguery is the rise of propaganda and falsehood as a means of politics in America. Russia took advantage of this rise to fuel a range of “false news” stories aimed against Hillary Clinton, but in truth the false news already existed through extreme right- and left-wing propaganda web sites. And Fox News and Breitbart.com have shown that a large portion of the American public is so susceptible to propaganda and the repetition of falsehood that facts no longer matter in covering election campaigns or politics. Trump spokesmen now state openly that truth is both fully relative and fully irrelevant. On MSNBC, Kellyann Conway, the campaign manager, articulated the propaganda principle used by the Trump campaign. When admitting to various untruths asserted by Trump and his campaign, she said, “Fine. It doesn't change what's in voters' minds.” Or, more precisely, what is placed in voters' minds.

“An Improper Ascendant to Our Councils”

Most significantly for American democracy’s future, a foreign power has successfully intervened and undermined America’s elections. There was ample reason to raise the alarm of this danger before the election, but unfortunately it is only now that the media and political leaders are paying full attention. Prominent Democratic Senators and House members have demanded that President Obama declassify the reports of US intelligence agencies on this subject to let the American people know the extent of this intervention and also to discover if there was collaboration between the Russian government and representatives of Donald Trump. Obama is reluctant to do so.

But these intelligence agencies and their leaders have said enough. They have affirmed that the Russian state directed the illegal hacking of private email accounts of the DNC and Clinton campaign chairman John Podesta and supplied them to Wikileaks for timed release with “specific purpose” to influence the US elections. Russian state propaganda constantly confirmed that the purpose was to favor Donald Trump.

There is clear reason to believe — and Putin no doubt does — that this “active measures” campaign against Clinton’s candidacy was a success. It is not a stretch to make the claim that Donald Trump’s victory is in part owed to the four weeks of continuing negative stories and scandals reported by the media before the election based on raw and generally uncorroborated information from Wikileaks “dumps.” Regardless, Trump’s statements and appointments make clear he intends to tilt American policy to serve Russian interests: ceding Syria to Russia by ending support to pro-Western rebels; possibly lifting economic sanctions and recognizing the annexation of Crimea; proposing an alliance with Russia in the war on terror while remaining uncommitted to the defense of NATO allies, in particular the Baltic countries vulnerable to Russian aggression.

Restoring American Democracy

When they meet on December 19, Republican Electors who reflect on their constitutional duty should not then affirm Trump’s election. As importantly, they should address the anomalous result of the 2016 election. The current accepted result is not an affirmation of the popular will; it is a negation of it. The solution to this is not to throw the election into the House of Representatives (which would likely vote to make Donald Trump president). The Electors should affirm the national vote winner with the idea that she will then establish a national unity government. There is no contradiction to democratic principle in a representative institution of voters acting as intended to prevent a fundamentally dangerous and anti-democratic outcome to a presidential election *and* affirming the national popular will.

All of this is unlikely. Although [Supreme Court precedents](#) have confirmed that under the Constitution Electors are free agents, most Electors have been convinced that their most solemn obligation is not to the Constitution or its ultimate principles but to their own state’s laws that require them to vote by the political party affiliation of their candidate on the ballot. They appear also convinced that the abundant flaws of Hillary Clinton are an equal or greater evil than the

grave dangers to American constitutional democracy and world security posed by Donald Trump.

Yet, the Electors should act. There has been an assault — both domestic and foreign — on America’s democratic system and it should alarm everyone who values democracy and our representative and constitutional system of government. These assaults should provoke a real debate over the functioning of American democracy. If enough Republican Electors take their oath to the Constitution seriously, they will help to provoke such a debate and encourage Americans to begin a movement to reform the country’s national and state laws and electoral practices to reflect the fundamental democratic meaning of a 240-year-old constitutional republic. If Donald Trump does assume the presidency, such a political movement will be necessary to affirm, defend and restore American democracy.

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¹ Constitutional scholar Gordon Epps argued in [The Atlantic](#) against consideration of *The Federalist Papers* as relevant to the original intent of the Constitution, saying it was merely a “sales document” to advocate for ratification. His arguments against an earlier article by Peter Beinart advocating that the Electors determine the outcome of the presidential election are serious ones, some of which I address in this article, but the argument to discount *The Federalist Papers* for an understanding of the meaning of the Constitution is wrong. *The Federalist Papers* have long been considered in assessing constitutional intent, including by “originalists.” Its essays generally reflect the dominant and majority’s justifications for the final crafted document, including most (though not all) of its compromises. Regardless, the basic conceptions of Madison, Hamilton and John Jay regarding representative institutions in a constitutional republic remain an undergirding of discourse on American democracy.