

Should the Electoral College Be Abolished?

Debaters



Akhil Reed Amar

[Akhil Reed Amar](#), a professor of law and political science at Yale University, is the author of "[The Constitution Today: Timeless Lessons for the Issues of Our Era.](#)"

The Electoral College Is Important Because It Reflects the Will of the States

Charles Fried 3:20 AM



Charles Fried

[Charles Fried](#) is a law professor at Harvard Law School. He was solicitor general of the United States from 1985 to 1989.

We have a direct democracy: Senators, representatives and members of the Electoral College are all elected directly by the people. They do not, however, elect the president directly. This is a feature of the kind of government we have chosen from the beginning in which the states are important subsidiary (in some instances, primary) units of government.

Even after a civil war and two world wars, the states control a large measure of the laws, administration and finance that have an impact on the lives of ordinary citizens. The states have their own political cultures, personalities and traditions which persist in spite of our far more transient population, an

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president's party controls the House and Senate, caution is less likely.

In order to reflect this mode of governance, the interactions between the national government and the states in important matters often utilize the local units and personnel. The notion is that the states are not simply administrative units of the national government or its local offices. In that context it is quite appropriate that the head of state is elected state-by-state, albeit by popular vote in each state. That way at the most focused democratic moment, every four years the candidates and parties must take the states into account.

And sometimes it will happen that, as this year, there will be a significant divergence -- millions of votes -- between who is chosen by the Electoral College and the winner of the overall popular vote. Sometimes that disparity can act as a caution to the elected president, but where the House and Senate are in the hands of the elected president's party that caution is less likely to operate.

States Don't Use an Electoral College to Choose Their Leader, Neither Should the Nation

Akhil Reed Amar 3:20 AM



I prefer direct national election of our president. I take states seriously and value federalism, but in a different way than do most defenders of the status quo. Consider the fact that each state picks its own president-equivalent —

its governor — quite directly: one person, one vote. All votes are counted equally and in close races recounted carefully. America should copy this state-tested model when choosing the governor of us all: the president.

The fact that no state uses an Electoral College for its governor suggests that many standard arguments for the Electoral College — recount nightmares, fairness for rural areas, etc. — are makeweight. If these arguments were truly sound, then states are stupid. And states are not stupid.

Indeed, direct presidential election would harness state creativity in exciting ways. Currently, states have little incentive to encourage voting. A state gets a pre-set number of electoral votes regardless of voter turnout. But in a direct election system, states with higher turnout would have more clout in the final tally, giving state governments incentives to encourage voting. States may do this different ways — early voting in some states; same-day registration in others; making Election Day a holiday in still other jurisdictions. Federal oversight would be necessary to keep state competition within fair boundaries, but state creativity could drive a race to the top — democratic experimentalism and federalism at their best.

Future direct national elections could happen, even without a constitutional amendment if the two major presidential candidates in 2020 themselves agreeing, solemnly and publicly long before Election Day, to abide by the national popular vote. Keep your eye on 2020.

Some states are already experimenting with a creative plan for future presidential races. Under the National Popular Vote Interstate Compact that has gained momentum in recent years, states in the compact are promising that, if enough states ultimately join the bandwagon, these states will give their electoral votes to the national popular vote winner. It's an interesting idea — in 2001 [I floated a precursor of this plan](#) — but the current version does have technical wrinkles that need to be ironed out. (What if some

noncooperating states refuse to hold proper elections or careful recounts? What if some states lower the voting age in ridiculous ways — letting 12-year-olds vote — to maximize their clout?) To work well, strong federal oversight would be needed.

There is at least one other way that future direct national elections could happen, even without a constitutional amendment. This way — which I also [floated](#) in 2001 — would involve the two major presidential candidates themselves agreeing, solemnly and publicly long before Election Day, to abide by the national popular vote. Keep your eye on 2020.

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