

The Accidental Electors

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STANFORD, Calif. - It would be comforting, the day after the Electoral College has given us a president who did not win the popular vote, to think that this system of electing presidents was an essential part of the grand design of the United States Constitution. But the Electoral College was cobbled together nearly at the last minute and adopted not because the framers believed it would work, but because it was less objectionable to them than two more obvious alternatives: election of the president by the people or by Congress.

Contrary to folk wisdom, the framers did not reject popular election because of a fear that the people might fall prey to a demagogue. They worried instead that in a provincial society, citizens would never be well enough informed to make an effective choice without multiple and expensive rounds of elections.

Election by Congress seemed much more feasible. Its members would certainly be well informed, and they could continue voting at no added expense until they reached a decision. But the framers were also seeking to make the president as politically independent of Congress as possible.

The Electoral College emerged as a way out of the dilemma. It had no positive advantages of its own. The framers did not really think the electors would act as a wise collection of notables. Rather than trust them to gather at one central campus and deliberate until they produced a result, they allowed the electors to meet only in their separate states, each to cast a single ballot, and then disperse. Most thought that the electors would, in effect, merely nominate candidates, which is why they spent three days trying to figure out which branch of Congress should make the final decision.

The chief virtue of the Electoral College was that it replicated other political compromises that the Constitutional Convention had already made. The large states got the chief share of electors, because one would be given for each member of Congress from each state. The Southern states got to count their slaves in the allocation -- by the three-fifths rule used for allocating House members -- even though they had no intention of giving them the rights of citizens. The small states got the dual advantage of getting disproportionate power through two bonus votes each (corresponding to their senators) and then having power over the final decision, which was given to the House with each state getting just one vote.

The framers did not even consider how electors should be appointed -- whether by the state legislatures themselves or the people, in districts or statewide. That was left to the states.

Contrary to the naive expectations of 1787, it proved remarkably easy to identify two leading candidates for president from whom a coherent national choice could be made.

As soon as George Washington announced his retirement in 1796, John Adams and Thomas Jefferson entered the lists as rivals and ran a remarkably competitive race. A swing of a single elector in each of two states, Virginia and North Carolina, then voting by districts, would have reversed the result, making Jefferson president and Adams vice president.

Jefferson's supporters in those two states were quick to take the hint. In the run-up to the rematch of 1800, they rewrote their laws to implement a winner-take-all rule: whoever got the majority of votes for president in Virginia would get all of the state's votes in the Electoral College. Adams's own base of Massachusetts immediately followed suit. By the early decades of the 19th century, nearly every state had adopted the practice we still follow today.

The winner-take-all rule might make sense if states really embodied coherent, unified interests and communities, but of course they do not. What does Chicago share with Galena, except that both are in Illinois; Palo Alto with Lodi in California; Northern Virginia with Madison's home in Orange County; or Hamilton, N.Y., with Alexander Hamilton's old haunts in lower Manhattan? States have no interest, as states, in the election of a president, only citizens do, and the vote of a citizen in Coeur d'Alene should count equally with one in Detroit.

Anyone can frame a plausible argument for scrapping the Electoral College as an 18th century anachronism, and with it the idea that the votes of some citizens are worth more than those of others because they are cast in less populous states. But it won't be approved.

Those states of small population, with the strongest political incentive to resist such a change, also have the constitutional capacity -- because a constitutional amendment takes approval by three-fourths of the states -- to prevent it from taking place. That's another legacy the framers have stuck us with.

We may not love the Electoral College, and the reasons for its adoption have no relevance today, but that doesn't mean we can ever get rid of it.