

The Breakfast Club

Constitutional Minute for 15 February 2022

Is the Electoral College “Racist?”

If you put the phrase “the Electoral College is racist” in your browser’s search engine you will be presented with several pages of links to articles which appear to confirm that statement. The links will take you to websites such as The Brennan Center, MSN, The Atlantic magazine, Daily Kos (of course), PBS, Mother Jones, and a host of others. Some of these articles will try to deflect the question of this essay by pointing out that the Electoral College (EC) is “undemocratic” (it decidedly is, and on purpose) and they never seem to get around to what makes the EC “racist.” Some articles will proclaim that the EC must have been intended to empower the Southern states since the Southern states supported the measure in the Grand Convention. And since “the Southern States” were themselves racist the EC is therefore as well.

Dictionary.com defines “racist” (the adjective form) as “of or like racists or racism.” That’s not particularly helpful, so we turn to the noun form of “racist” and there we find it refers to “*a person who believes in racism, the doctrine that one’s own racial group is superior or that a particular racial group is inferior to the others.*” This definition might have been applicable in 1787 or 1861; and I’m sure there remain such people in 2022 America or other countries, but to say that the EC is racist because it provided advantage to certain states that happened to have a lot of slaves, it simply propaganda. In 1787, there were slaves in many of the 13 states, and there were also free blacks in all of the states as well. Not exactly a racist environment.

Constitutional scholar Akhil Reed Amar of Yale University was the catalyst for the Left’s recent charge that the Electoral College has to be replaced by a popular vote because of the “taint” of slavery. Amar published [a very brief article](#) in the online version of Time magazine in November 2016 claiming that the Electoral College method was pushed through in the 1787 convention by the Southern states because their slaves gave them an advantage in the number of Presidential Electors and thus an advantage in electing the President. Virginia, for example, while it had fewer free residents than Pennsylvania, because Virginia could count 3/5 of its slaves in determining representation in Congress, Virginia got more representatives than Pennsylvania (12 to Pennsylvania’s 10) and thus more Electors in the Electoral College.ⁱ Proof of the Electoral College’s link to slavery is that “*[f]or 32 of the Constitution’s first 36 years, a white slaveholding Virginian occupied the presidency.*”ⁱⁱ Ergo: the Electoral College is racist! Apparently, Amar has never encountered the principle that “correlation is not causation.”

After Amar’s article was published, others on the Left picked up and repeated his talking points, which concluded that Donald Trump’s election was illegitimate, because he had “only” won in the Electoral College which, because it was a relic of slavery, made Trump unworthy to sit as President.

The problem with Amar’s charge that racism was the driving force behind the Electoral College resulted from his cherry-picked examples of the debates of the Constitutional Convention, examples from which Amar even then drew false conclusions; he also ignored comments and votes in the convention which did not fit his preconceived notion that racism was the driving force.

Constitutional scholar Kevin Gutzman, author of [Virginia's American Revolution: From Dominion to Republic, 1776-1840](#), wrote a fine rebuttal to Amar's article in [Chronicle Magazine Online](#). You'll be able to understand Gutzman's rebuttal better if you have first read Amar's original article.

Amar attributes remarks by James Madison in the convention as being in response to Pennsylvania's James Wilson's suggestion of a direct popular vote for President when they were instead in response to remarks by Wilson's colleague Gouverneur Morris on a different point.

Gutzman points out that on the question of whether to replace a Presidential election by Congress with one by Electors, while Virginia voted "aye," North Carolina, South Carolina, and Georgia all voted "no." Not exactly proof that the slave-holding states were in favor of the Electoral College method.

Gutzman destroys Amar's arguments in multiple ways. In the end, the Electoral College method of election, while it had been debated and compared on multiple occasions to the other methods then available, was not as much a product of the debates as it was the solitary decision of the "Committee for Postponed Parts," which stuck the Electoral College method into the draft Constitution on its own volition. The delegates knew that should there be a tie in the Electoral College or lack of a majority the election would devolve to the House of Representatives -- which the delegates thought might happen often. In what is commonly called the "Contingent Election," the eight Northern states would hold a distinct advantage over the five Southern states. Knowing this, the Southern states still went along with the Electoral College method. Amar's arguments simply do not hold water. So why did he insist on making them. Gutzman provides the answer:

"Amar has long written and spoken in various fora of his wish for an end to the Electoral College. Because he is a professor at Yale Law School, he has ready access to major media outlets for disseminating his arguments, and his books draw attention. Far from teaching us about the creation of the U.S. Constitution, this episode in contemporary American intellectual history has something to tell us about cultural authority in our own day."

There you have it: charges that the Electoral College is "racist" are simply another in the Left's long history of "playing the race card" (even when they don't hold that card in their hand).

But this issue should encourage all of us to become better educated. The truth will not only "set you free" it will win arguments when engaged with the lazy, sloppy arguments of the progressive Left.

Observing the America of 1835, Alexis de Tocqueville found that "... every citizen is taught...the history of his country, and the leading features of its Constitution. ... it is extremely rare to find a man imperfectly acquainted with all these things, and a person wholly ignorant of them is sort of a phenomenon." (from *Democracy in America*)

We have some catching up to do.

Prepared by: Gary R. Porter, Executive Director, Constitution Leadership Initiative, Inc. for The Breakfast Club. Contact: gary@constitutionleadership.org; 757-817-1216.

ⁱ Interestingly, in the first Presidential election, two of Virginia's electors failed to cast a vote, which resulted in Virginia and Pennsylvania each sending ten electoral votes to Congress. All ten electors in each state cast their first vote for Washington and their second vote for a variety of other candidates.

ⁱⁱ Akhil Reed Amar in "The Troubling Reason the Electoral College Exists" November 8, 2016, published at: <https://time.com/4558510/electoral-college-history-slavery/>