

The Breakfast Club

Constitutional Minute for 8 February 2022

The So-Called “National Popular Vote”

There seems to be some disagreement as to whether “confusement” is a recognized word or not; my spell-checker seems to think it is not; but it just sounds like it should be, so I’m going to use it.

There is great – no – make that *enormous* confusement in this country over the Electoral College. I keep having to answer the same questions over and over again on Quora.com, so I thought I’d sit down and lay this out for everyone in Breakfast Club.

How was the presidential election system intended to work?

At the Constitutional Convention of 1787, three different methods to elect the President were examined (with variations). First “out of the chute” were plans presented by the Virginia, South Carolina, and New Jersey delegations on 29 May (am), 29 May (pm) and 15 June, respectively. Each of these called for the President to be elected or appointed by one or more houses of Congress. Once it was decided that the President could be elected for a second term, congressional election was discarded: a president seeking re-election would be too dependent on a “friendly” Congress for his second term and would tend to not act as independently as he should during his first term. “Checks and balances” would suffer.

The next idea introduced was on 18 June when Alexander Hamilton took the floor and delivered his famous 6-hour extemporaneous soliloquy on government, which became known as the “British Plan” because it bore a striking resemblance to the British parliamentary system. Hamilton’s “Governor” would be elected by “Electors chosen by the people in the Election Districts” (according to Madison’s notes of the speech).

Later on, a direct election of the President by the people was considered -- and rejected, for three reasons: 1) The people at large would lack awareness and knowledge of qualified candidates in other, distant states; 2) the citizens of the small states would certainly be disfavored in a national election; and, 3) perhaps most important, direct election would tend to consolidate too much power and influence in one person.

So if not the Congress, if not the people, who is left to elect the President? The states, of course!

“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” (emphasis added)

The states appoint the electors, the electors nominate (after the 12th Amendment) two men for the two jobs, and the Congress completes the election by tallying the nominations and determining who received the most. As long as he receives nominations from a majority of the electors and there is no tie, the person with the most nominations wins.

If there is a tie or a lack of a majority in the nominations the House immediately convenes to settle the matter of the President and the Senate does the same for the Vice-President, voting as state delegations in the House, and as individual Senators in the Senate. “The President was to be, like the

Senate, the creature of the states and not of Congress.”ⁱⁱ (and not of the people)

Even though the 1787 convention did not adopt Hamilton’s suggestion of electors chosen by the people directly, i.e., they left the method of appointing electors up to the states, in Federalist #68, Hamilton pretended the convention had adopted his plan exactly as he has presented it. He insisted that “the plan devised by the convention” required “that the people of each State shall choose a number of persons as electors.” Sorry Alexander, that’s neither what the Constitution says nor even implies. Nevertheless, he gushed: “if the manner of [electing the president] be not perfect, it is at least excellent.”ⁱⁱⁱ

Who were to be these “electors?” Nearly anyone except federal employees. There were no age, residency or wealth qualifications, only that “*No Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.*” This was the sole disqualifier. So, if Electors elect the President and Vice, where does this “National Popular Vote” fit in?

There is no such thing, constitutionally speaking, as a National Popular Vote. There is no mention of it in the Constitution; there is no requirement that one be tallied; it was not anticipated by those who designed what we’ve come to call the Electoral College. A national popular vote was not even officially tallied in this country until 1824 and even then, it was incomplete since not all states allowed their citizens to participate in the selection of the President. Yet somehow, we managed to elect five straight Presidents without adding up this fictitious vote.

The other fiction is that, in the United States, the people elect the President and Vice-President. At best, it can be said that you help your state elect these two officials; and you should feel fortunate that Virginia even allows you to help; there is no constitutional requirement that they do so.

While we’re at it, neither is there such a thing as a single “national” election for the President; instead, there are 51 separate state/District of Columbia elections for President which just so happen, by act of Congress, to take place on the same day.

In the very first presidential election, in 1788-89, four of the ten states that participated^{iv} appointed their electors directly; their citizens got to stay home that day. Following that election, states began, slowly but surely, to allow their citizens to take part in the election in some manner. It wasn’t until after the Civil War that every state in the union allowed its citizens to participate in the selection of electors. Yet all those many Presidents, elected without the participation of all the American people, still managed to do their job. Amazing!

I hope you are beginning to see that a “national popular vote” tally is meaningless information, only of interest to people fixated on yet another fiction: that America is a democracy. This is the same sort of useless information as the number of “counties and county equivalents” that Trump won compared to Clinton in 2016, which we see every so often come around the internet; interesting, but an otherwise useless bit of information.

Next time someone touts the “National Popular Vote” as proof someone “should have won the election,” you’ll be able to set them straight. Next week we’ll examine whether the Electoral College is “racist,” as the Left loves to claim. Stay tuned.

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ⁱ Article 2, Section 1 of the Constitution.

ⁱⁱ Donald Lutz, "The Electoral College in Historical and Philosophical Perspective: in "Choosing a President", Paul D. Schumaker, ed.

ⁱⁱⁱ Federalist 68

^{iv} North Carolina and Rhode Island were not yet in the union, New York failed to appoint its Electors in time.