

Selecting The President

By Marc Landy, Ph.D.

On March 2, 1797, President George Washington wrote to his old friend and fellow revolutionary soldier Henry Knox,

As early in next week as I can make arrangements for it, I shall commence my journey for Mount Vernon. - Tomorrow, at dinner, I shall, as a servant of the public, take my leave of the President Elect, - of the foreign characters, heads of Departments, & c. - And the day following, with pleasure, I shall witness the inauguration of my Successor to the Chair of government.

Washington was always as good as his word. Two days later, the world witnessed something truly new—an elected chief executive voluntarily retiring from power and peacefully handing over the reigns of government to his duly elected successor. And so it has been ever since.

The capacity of the United States to escape the violence and instability that have so often accompanied transitions of executive power in other countries has repeatedly been tested. The presidential elections of 1800, 1824, 1864, 1876, and 2000 provided the most severe and harrowing challenges to this unbroken record of success.

At the Constitutional Convention, there was heated debate on how to select the executive. Some wanted Congress to appoint the president. Others wanted the state legislatures to do it. Still others wanted the president to be directly elected through a popular vote. James Wilson of Pennsylvania was the first to propose the system we now call the Electoral College.

Each state would appoint a number of presidential electors equal to their representation in Congress. The winner would become President, provided he had a majority of electoral votes. The runner up would become Vice President.

If no candidate won a majority in the Electoral College, the House of Representatives would choose the President from among the top five contenders.

This design of the Electoral College worked smoothly through three presidential elections.



Washington's decision to leave office after two terms was no doubt eased by his confidence that his own Vice President, John Adams, would succeed him. But in 1800, Adams, a Federalist, was defeated by his partisan enemy, Thomas Jefferson, a Republican. The Federalists were honestly unsure about the wisdom of allowing Thomas Jefferson to become president, and a quirk in the wording of Article II of the Constitution gave them the opportunity to stop him. Article II provided that each presidential elector cast votes for two persons for president, one of whom could not be from the elector's own state. This provision was intended to force the electors to look beyond their own state to find someone they considered to have the breadth of vision and talent necessary to be President.

However, the Framers had failed to anticipate the influence of political party loyalty on the electors. In 1800, the Republicans slated Thomas Jefferson for president and Aaron

Burr for Vice President. But party leaders failed to instruct at least one elector to vote for Jefferson and not Burr. Thus both received exactly the same number of votes. Therefore the choice between them was left to the Federalist electors who detested them both. Burr refused to urge the Federalists to vote for Jefferson. Only the intervention of the most influential of the Federalists, Alexander Hamilton, enabled Jefferson to win. Hamilton told his political allies that they faced a choice between a scrupulous enemy, Jefferson and an unscrupulous one, Burr. To save the Constitution, they had to support the man who could best be counted on to act honorably, Jefferson. To ensure that such an impasse would never recur, in 1804 the states ratified the Twelfth Amendment to the Constitution that instructs the electors to cast separate votes for President and Vice President.

The Constitution provides that if no presidential candidate receives a majority of the electoral vote, the House of Representatives will choose the president from among the three candidates with the most electoral votes. In 1824, for the first and only time, none of the candidates obtained an electoral vote majority. Andrew Jackson had a substantial lead in electoral votes, but the House of Representatives elected John Quincy Adams. Jackson's supporters were infuriated. They believed that Adams won because he had promised appoint the Speaker of the House, Henry Clay, to the post of Secretary of State. But Jackson did not attempt to coerce the House into changing its mind. Instead, he made the alleged "corrupt bargain" between Adams and Clay a campaign issue in his successful 1828 presidential campaign.

1864 was the only time that serious consideration was given to postponing a presidential election. As late as the summer of that year, the Civil War was going badly for the Union. Abraham Lincoln greatly feared he would fail to be re-elected and his opponent, George McClellan, would sue for peace. Nonetheless, he decided that postponing the election would be such an egregious violation of the Constitution that he could not do so even if it meant his

defeat. Fortunately, General Sherman's capture of Atlanta revived public support for the war and Lincoln was re-elected.

In 1876, the Democrat Samuel Tilden won the popular vote and was leading in the Electoral College until results from South Carolina, Louisiana, and Florida appeared to give the victory to the Republican, Rutherford B. Hayes. Those three former Confederate states were the only ones still occupied by federal troops. Those troops remained to enforce Reconstruction voting laws enfranchising African Americans and protecting civil rights supporters from intimidation. Tilden accused the Republican governors of those states of stealing the election for Hayes. In the face of this unprecedented claim of fraud, the Electoral College postponed its decision. In January of 1877, President Grant signed into law Congress' extra-constitutional proposal to create an independent commission to determine the winner. It was composed of five members each from the House, the Senate, and the Supreme Court. The commission chose Hayes. The Democrat-controlled House of Representatives threatened to block the decision. It relented only after Republican congressional leaders promised

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to end Reconstruction thereby removing federal troops from South Carolina, Louisiana, and Florida.

In 2000, Florida was once again at the center of a disputed presidential election. The Democrat, Albert Gore, won the popular vote by almost half a million votes. He led the

Republican, George W. Bush, in the electoral college by a 266 to 246 margin, but Florida's twenty-five electoral votes were enough to give an electoral vote majority to Bush. Bush led there by fewer than 2,000 votes. Gore challenged the outcome, claiming that paper ballots and voting machines in four heavily Democratic counties were flawed. He demanded a hand recount. The US Supreme Court overruled the Florida Supreme Court order requiring manual recounts. By failing to establish a standard by which those conducting the recounts would judge voter intention, the Florida court violated the Fourteenth Amendment's requirement that states protect the right of individuals to equal protection and due process of the law.

The Court's decision was greeted by a furor of protest from Democrats. But Gore agreed to abide by its decision, and so George W. Bush was declared the victor more than a month after Election Day.

Thus, party discord, personal hatreds, war, ballot irregularities, and even allegations of vote fraud have failed to disrupt the orderly succession from one president to another. The courage of Hamilton and Lincoln, the forbearance shown by the supporters of Jackson, Tilden, and Gore, and the wisdom of the Twelfth and Twenty Second Amendments each played their part in preserving the American constitutional commitment to the peaceful transfer of executive power.

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