Suppose No One Won the Election?

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Imagine this scenario for the forthcoming presidential election: Clinton wins 43.3% of the vote to Bush's 42.7%, with Perot gaining only 13.5%. Not only does no one win an absolute majority of the popular vote, but the two frontrunners are virtually tied. The leaders are separated by only about 500,000 votes--about 10,000 per state. What would happen? Would the stock market crash? Would the "losing" candidate demand a recount? Would government become immobilized as the final result was being determined?

If history is a guide, none of these things will happen. These are the exact results produced by the 1968 election, when Richard Nixon squeaked past Hubert Humphrey in one of the closest presidential races in our history. Although George Wallace, the third candidate, carried five states and took 46 electoral votes, Nixon still won a solid majority (56%) of the electoral vote, emerging with a decisive margin of victory and a legitimate claim to govern.

Or consider an even closer election. In 1960, John Kennedy won only 49.7% of the vote to Nixon's 49.5%--a difference of fewer than 120,000 votes out of 68 million cast. Still, there were no demands for a recount; no agonizing uncertainty about who won the election; no protests in the street over a president not chosen by a majority of the voters. Instead the public accepted the outcome of this close election, and Kennedy, who also had 56% of the electoral vote, claimed a clear mandate to govern.

Although there has never been a nationwide recount of presidential votes, we can turn to the states for an example of what happens in a recount. In the 1982 election for governor of Illinois, incumbent James Thompson (Republican) defeated Adlai E. Stevenson III (Democrat) by what appeared to be 5,452 votes out of more than 3.6 million votes cast. After a series of partial recounts that narrowed the gap somewhat, Stevenson demanded a recount of all the votes. Nearly two months later, the State Supreme Court decided 4 to 3 to refuse his demand, and Stevenson finally conceded the election on January 7--three days before Thompson's inauguration.

Such delays in deciding the winner of a close election have occurred often in our history, usually for lesser state and local offices. Even for an office as important as governor, an unresolved election does not threaten the stability of the United States. But a delay of several months in naming the president could be disastrous. Fortunately, the electoral vote system established in the Constitution has largely protected us from confusion over who has been elected president after the people voted.

Our electoral vote system must be distinguished from the electoral college, in which faceless party electors are empowered to cast their state's votes following the popular election. I don't defend that anachronistic institution. A state's electoral votes could automatically be awarded to the winning candidate without an electoral college.

The electoral vote system has served us well. Since the U.S. has been conducting mass popular elections for president, we have experienced only one presidential election that failed to identify a winner quickly and decisively. In 1876, Democrat Samuel Tilden won 51% of the popular vote in November over Republican Rutherford Hayes. But when the electoral votes were counted in December, Tilden was one vote short of a majority due to 20 disputed votes in the electoral college, mainly from conflicting returns in three southern states where Democrats had challenged Republican rule after the Civil War.

The Constitution offered no clear guide to resolving the dispute, so Congress established an Electoral Commission to decide the matter. Eventually, the Commission reached a political decision and gave all 20 disputed votes to Republican Hayes. In return, the Southern Democrats in Congress gained the withdrawal of federal troops from the south and the end of reconstruction.

Hayes was not declared elected until March 2, almost four months after the election. Such a delay was unsettling enough in the 19th century; it would be disastrous in today's world.

Although our method of electing a president by electoral vote contributed to the disputed election of 1876, the problem was with voting in the electoral college, which played out the underlying issue of Republican rule of the south. Normally, Tilden would have won the electoral vote as well as the popular vote. Since the Civil War, the popular vote winner failed to obtain a majority of the electoral vote on only one other occasion--in 1888, over one hundred years ago. For most of our history, our method of selecting a president has displayed the salient virtue of decisively declaring a winner in close elections.

The U.S. is the largest country that selects its leader by nationwide vote and the only country that has done so for over a hundred and fifty years. Few citizens realize how difficult it is to conduct an election in a country with many millions of voters--to insure that the millions of votes are fairly counted at the local level, that they are reliably reported to higher levels, and that they are accurately tallied to declare a winner.

Due to mistakes--whether accidental or intentional--all national elections produce results that are really estimates of the winner rather than true counts of the exact vote distribution. If all votes in a hundred thousand precincts were recounted several times, there would be as many different outcomes as the number of counts. In a truly close vote, no one ever knows what the "true" count is, for that always hinges on disputed ballots--as in the 1876 election.

Why then didn't Nixon or Humphrey demand a recount to get a different result after their narrow defeats? It was due to the system of electoral votes, in which presidential votes are counted separately by states, and the candidate who carries the state gets all its electoral votes. Even if the election is very close in a state, there is no point in demanding a recount unless the state's votes are critical to the outcome of the electoral vote. In 1960, Nixon's best chance for winning the electoral vote through a recount required him to shift a total of only 13,000 votes, but in five different states. To win in 1968, Humphrey needed to shift 154,000 votes in four states.

Admittedly, election of the president by states according to electoral vote is not as simple as election by popular vote. Moreover, there is little democratic appeal in giving all a state's electoral votes to a candidate who barely won it. But the method has the unique advantage of having decisively elected our presidents while manufacturing a majority electoral vote to bolster their authority to govern.

Although the framers of our Constitution did not perfectly understand everything they designed, they devised an election system that admirably meets the essential objective of quickly and unambiguously declaring the president of a large nation. In compartmentalizing the popular vote by states, the framers' method of electing the president eliminates all need for any nationwide recount and insures against state recounts. By promoting a winner-take-all system for a state's electoral votes, the method discourages the spoiler roles of third-party candidacies.

Those who would replace our current presidential election system with a direct popular vote should contemplate the political skulduggery likely to ensue in a nationwide recount after a close election. Those who would replace the winner-take-all system for state electoral votes with an apportionment of electoral votes by congressional districts (as has occurred in Maine and recently Nebraska) should understand that this change will encourage political entrepreneurs. Running as minor party candidates, they would seek enough votes in targeted districts to throw a presidential election into the House of Representatives. Then they could trade their support for political favors.

Our Constitution has largely protected us against such potential problems in electing our president through the long life of our democracy. We do not have the best presidential election system in democratic theory, but we may have the best in governmental practice.

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