

Disputed Elections

By Jamie Eves • November 1, 2020

Jamie H. Eves, Windham Town Historian, 1 Nov. 2020 (updated 15 Feb. 2021)

Most of the time, elections in the United States go pretty smoothly. One candidate wins, the others concede with at least a modicum of grace, and the public accepts the results. But sometimes an election is disputed, meaning either that one or more of the candidates questions the results of the election and the outcome becomes uncertain, or that the supporters of one or more of the candidates refuses to accept the results.

Disputed elections undermine both republicanism and democracy. Because the public cannot be sure who won, or cannot accept the policies of the winner or their own side's defeat, people begin to reject the legitimacy of the electoral system itself. If not resolved quickly and fairly, disputed elections can lead to protests, turmoil, tumult, and even civil war. Nevertheless, disputed elections can be resolved, either when the two sides work out a compromise that allows one of the candidates to assume office but also assures that issues

important to the other side are resolved in a way that it finds acceptable, or when one of the candidates simply decides to concede gracefully, either for the good of the republic or because they conclude that winning is impossible, and persuades their followers to accept the loss.

Six U. S. presidential elections (1800, 1824, 1860, 1876, 1960, and 2000) were disputed, along with scores of state and local elections. This article summarizes the results of the six disputed presidential elections, along with a disputed gubernatorial election in Connecticut. I wrote it in the Fall of 2020 for the students in my first-year U. S. History classes at Eastern Connecticut State University, the University of Connecticut (Hartford), and the University of Connecticut (Storrs), to help them understand what might happen if President Donald J. Trump decided to dispute the results of the 2020 United States presidential election.

A few quick points before getting started: Nothing in the Constitution or in law requires losing candidates to formally concede defeat in an election, although there are good public policy reasons for doing so. Losing candidates and their followers remain Constitutionally and legally free to organize against the policies and programs of the winners, and to contest future elections.

Nothing in the Constitution or law prohibits former Presidents or Governors from criticizing their successors, although tradition holds that they should attempt not to do so.

Asking for a recount of the ballots, to the extent that it is allowed by law, is normal and not the same thing as disputing the results of the election. Peacefully disputing an election is neither unconstitutional nor illegal, but it may have serious and unintended consequences for the republic.

And finally, attempting to overturn the results of an election by force or other means that violate both law and the Constitution threatens the very existence of democratic and republican government.

Connecticut's 1890 Crowbar Election

Connecticut first: In 1890 Connecticut's Republican Governor Morgan C. Bulkeley chose not to run for a second two-year term, so Republicans nominated Samuel E. Merwin as their candidate to replace Bulkeley, while Democrats chose Judge Luzon B. Morris. At that time, the Connecticut Constitution required that a winning candidate receive not just a plurality of the votes cast, but an absolute majority. (A plurality means receiving more votes than any other candidate, while a majority of the votes cast means receiving more than 50% of all of the ballots, including those cast for third parties or left blank.) If no candidate received a majority, the General Assembly (the state legislature) was to choose from among the top two finishers, with both the State House of Representatives and the State Senate required to be in agreement.

This sounds simple, but in the Gilded Age of the late 1800s partisanship in Connecticut was high, the two major parties – Republicans and Democrats – were about even in strength, and third party candidacies were commonplace, all of which increased the odds that no candidate would receive an outright majority and the final choice would be left to the General Assembly. Indeed, in 1888 Bulkeley himself, although winning more votes than his opponent, had failed to win an outright majority and had become governor only when voted in by both branches of the Assembly. But unlike 1888, in 1890 the Assembly was divided, with Democrats in control of the Senate and Republicans in charge of the House.



*Above: Connecticut Governor Morgan C. Bulkeley, the “Crowbar Governor.”
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Moreover, in those days the state did not print election ballots. Rather, ballots were printed by the political parties (although under guidelines set by the state), which handed them out to voters at the polls. One rule was that ballots could not contain any “stray marks.” On election night, Democrats in some of the state’s larger cities had challenged hundreds of Republican ballots on the grounds that they exhibited “stray marks,” with the result that local election officials invalidated many of them. Morris – the Democrat – then won by a mere 26 votes statewide.

Outraged Republicans accused the Democrats of excluding valid ballots and also noted that Morris had not won a majority of all the votes cast. Of course, neither had Merwin. When the General Assembly subsequently met to choose from among the top two finishers, predictably the Democratic-controlled Senate voted for Morris and the Republican-controlled House chose Merwin. Full of fury and thunder, neither side backed down.



Above: Judge Luzon B. Morris

Bulkeley decided that, since the Assembly seemed unable to choose a governor, he would remain Connecticut's *de facto* governor until the situation was resolved, an outcome that pleased the Republicans, as it meant that they would retain control.

Now it was the Democrats who were outraged. They convinced a janitor to change the locks to the Governor's office. The next morning Bulkeley took a crowbar to the door to get inside, earning himself the nickname "the Crowbar Governor." Talk began to swirl that angry mobs might march on Hartford to install Morris by force.

The situation was resolved when Morris calmed his partisans and agreed to submit the dispute to the Connecticut Supreme Court for resolution. The Supreme Court ruled that, in instances where the two branches of the legislature were unable to agree about who was to be governor, the previous governor would remain in office for the remainder of the term. Morris accepted the result. Bulkeley thus stayed in power for two more years, a situation that pleased Republicans but rankled Democrats.

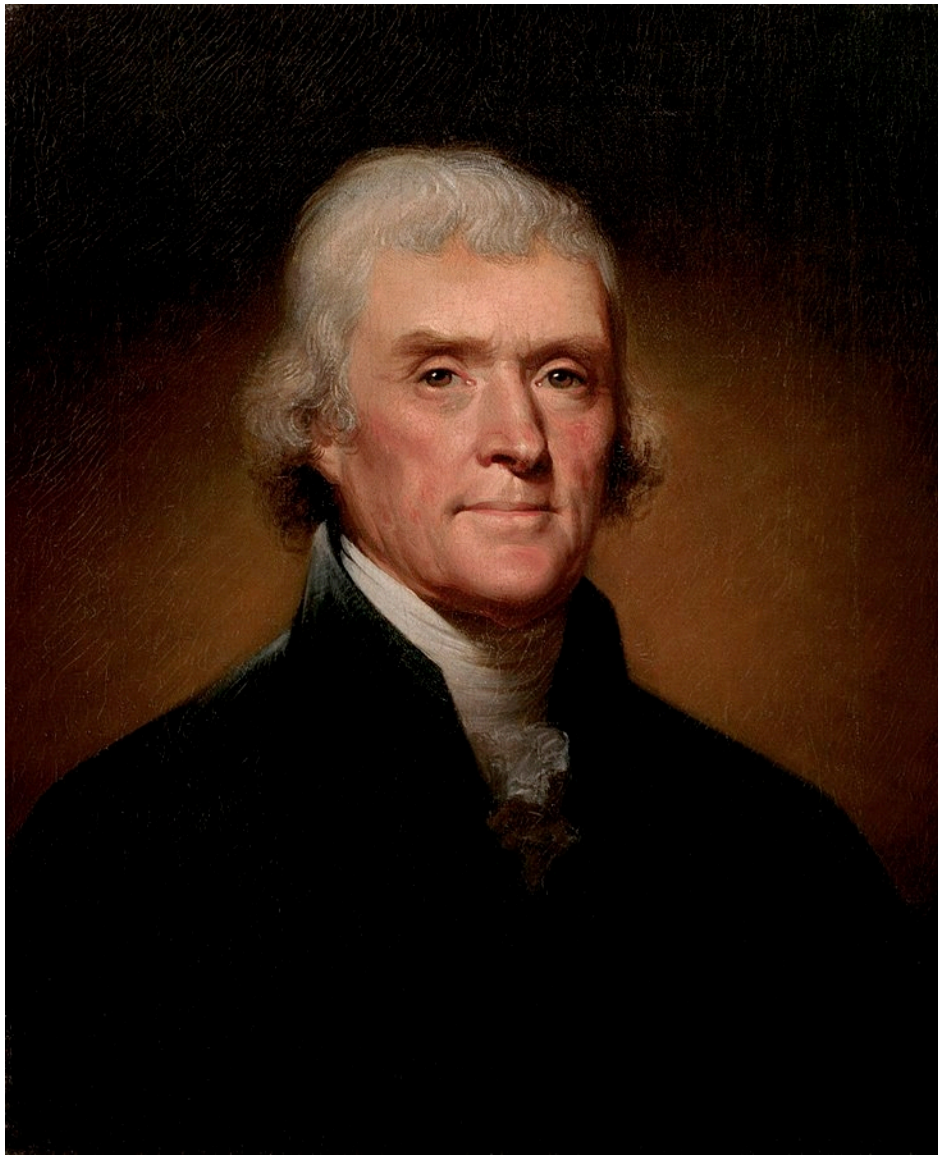
Morris ran for governor again in 1892. His partisans were fired up and turned out *en masse*. This time he won an outright majority. Democrats felt vindicated.

In 1901 Connecticut amended its Constitution to provide that henceforth governors would only need to win a plurality of the votes cast, not a majority.

The consequences of Connecticut's "Crowbar Election" were not as significant as if had been a presidential election, of course, but the episode does illustrate some themes that often occur in disputed elections. The election was hyper-partisan and close. There were accusations of chicanery (real or imagined) at the polls. There was a possibility of violence. The Constitution was flawed in the sense that its framers had anticipated neither the level of partisan strife, nor what would happen if the two branches of the legislature failed to reach an agreement.

Connecticut's Crowbar Election was also typical in its resolution. One of the candidates – Luzon Morris – decided, for the good of the state, to back down and concede rather than escalate the situation further. The two sides agreed to an extra-constitutional compromise by submitting the dispute to the State Supreme Court, which itself reached beyond the "plain language words" of the Constitution in settling the case. Of the United States' six disputed presidential elections, five would have similar resolutions. The sixth resulted in the Civil War.

1800



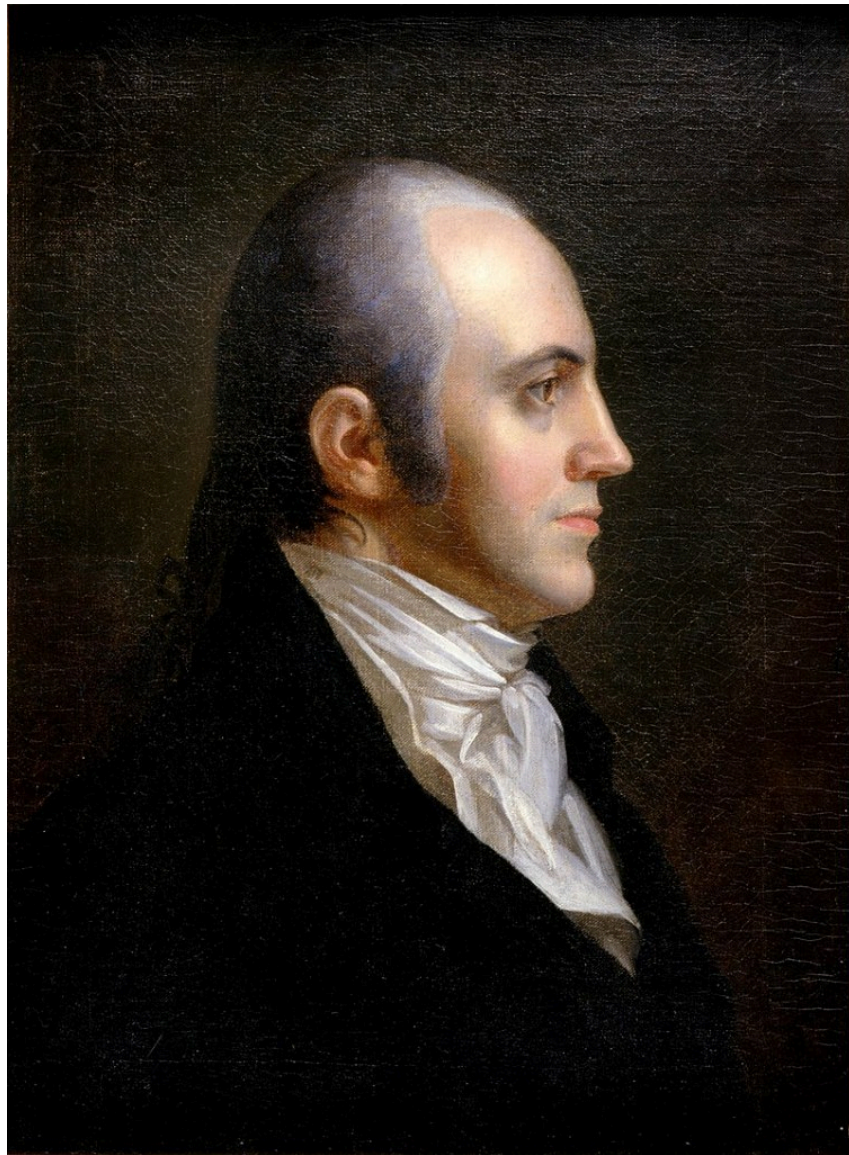
Above: Thomas Jefferson as President

It did not take the new United States long to experience a disputed presidential election. The first two presidential elections – in 1788 and 1792 – had gone off smoothly as the Electoral College unanimously chose George Washington. But Washington declined to seek a third term, so 1796 brought the country's first contested, partisan election, as Federalist John Adams squared off against Democratic-Republican Thomas Jefferson. The vote was close: Adams won with nine states and 71 electoral votes to Jefferson's seven states and 68 electoral votes. (It would not be until 1828 that every state chose its Electors by popular vote; until then, state legislatures usually chose them.)

Despite the closeness of the vote, there was no dispute: Jefferson conceded, and Adams became President. Four years later came a rematch. As with 1796, the 1800 election was characterized by hyper-partisanship and a close outcome, but this time Jefferson won nine states and 73 electoral votes to Adams's seven states and 65 electoral votes.

However, an unexpected problem arose. In those days, the Constitution required each Elector to cast two votes for two different candidates, but without differentiating which was to be President and which was to be Vice President. Instead, the candidate who received the most votes became President, while the candidate who received the second-highest total became Vice President. To increase his chances of defeating Adams and the Federalists, Jefferson had formed a “ticket” with New York Senator Aaron Burr, a fellow Democratic-Republican – the first time that this strategy was used. The plan was that Jefferson’s and Burr’s supporters in the Electoral College would name both men on their ballots, making Jefferson President and Burr Vice President. The idea of the “ticket” worked, and the Democratic-Republicans won a slim majority of the Electoral College.

Unfortunately, each Democratic-Republican Elector cast one vote for Jefferson and one vote for Burr, which meant that the two men ended up tied. (Why no one seems to have realized that this might happen remains a mystery.) The Constitution said that if a tie occurred, the House of Representatives would decide which of the two would be President and which would be Vice President. However, each Representative did not get a vote – rather each state got a vote, with the Representatives from each state caucusing to decide how their state’s vote would be awarded. At this point, Burr should have withdrawn as a candidate for President and accepted the Vice Presidency (since that had been the arrangement), but he thought it over and decided to make a bid for the Presidency himself. He went to the Federalists in Congress and urged them to vote for him, indicating that he would be amenable to working with them and would support at least some of their positions on the issues.



Above: Aaron Burr as Vice President

As a result of Burr's machinations, the whole thing quickly became a hot mess. Predictably, those states where the Democratic-Republicans held a majority of the Congressional delegation cast their states' votes for Jefferson, including Burr's home state of New York. Equally predictably, those states where the Federalists were in the majority cast their states' votes for Burr. Also predictably, the two states with delegations that were equally split between the two parties (Maryland and Vermont) tied and were forced to abstain.

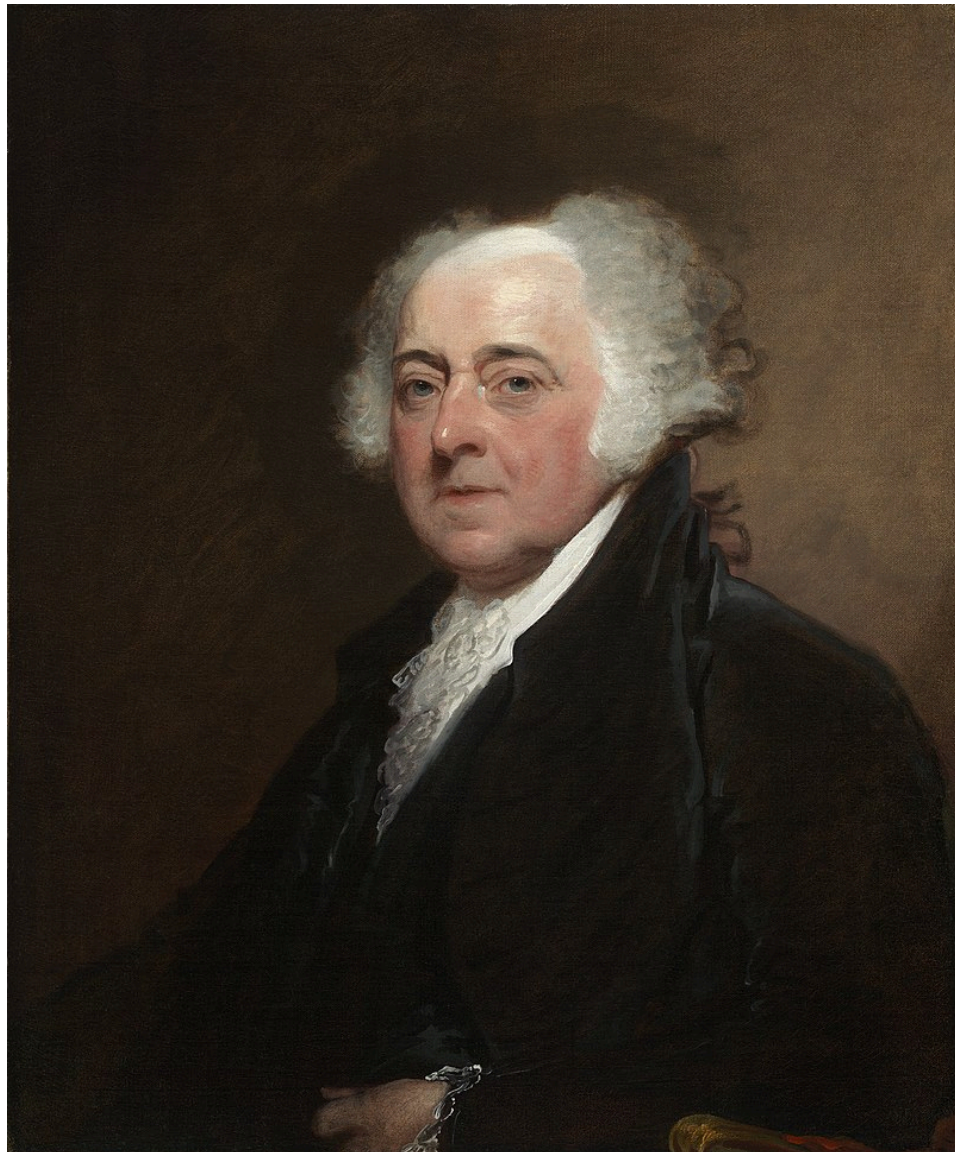
And there was one other hitch: the Constitution required that the House of Representatives choose a President not by a plurality but by a majority of the states. Since there were 16 states, the winner had to receive the votes of nine states, but with two states abstaining, neither Jefferson nor Burr could get to nine. The House took vote after vote but could not reach a decision.

As the House continued fruitlessly to hold vote after vote, plots were hatched. Some of the Federalists argued that, if the House could not resolve the election, then Adams could simply stay on as President, much as "Crowbar" Bulkeley would do in Connecticut decades later. Let's just continue to stall, many Federalists told themselves, and keep Adams as President. They defended this strategy by arguing that Jefferson was a notorious political radical who had threatened to abolish the Bank of the United States, slash military spending, reduce the protective tariff, and remove Federalist officeholders.

For their part, Democratic-Republicans began to talk darkly about organizing an armed mob in Virginia, marching on Washington, and installing Jefferson by force. Virginia's Governor James Monroe, a Democratic-Republican, considered calling out the state militia to install Jefferson by force. Either one of those actions — keeping Adams in office or installing Jefferson by force — would have destroyed the republic, replacing it with an authoritarian dictatorship.

Two things happened that saved the republic. First, Adams refused to go along with the plot to keep him in office as President indefinitely. He wasn't happy about having lost the election, and he agreed that most of Jefferson's political ideas were radical, but he knew that Jefferson had won – and even more, he believed that, for the republic to endure, its

leaders had to accept the results of elections. Adams deserves credit for putting the republic ahead of himself and his party. Not all leaders would have done that. Adams was far from perfect, and he made many mistakes in his life and as President. But he was also capable of moments of courage and integrity. This was one of them.



Above: John Adams as President

Second, the Federalists approached Jefferson with a deal: if he promised to keep the Bank of the United States, promote manufacturing and commerce, and retain many of the Federalist officeholders, they would vote for him to be President. Jefferson rejected the deal, but the Federalists offered it again. Although Jefferson always insisted that he did not accept the Federalists' deal, the evidence is that he did. With Jefferson's old enemy Alexander Hamilton (one of the Federalist leaders) vouching that (unlike the mercurial Burr) Jefferson could be trusted to keep his end of the bargain, one Federalist Representative switched to Jefferson (and some others abstained) and broke the tie, giving Delaware and Maryland to Jefferson. Jefferson became President. And indeed, the Bank was not abolished, the federal government continued to promote manufacturing, and many Federalist officeholders kept their jobs.

Taking the oath of office, Jefferson delivered a written address to Congress (Jefferson was a poor public speaker and did not like to give speeches) in which he urged both parties to work towards compromise and cool down the hyper-partisanship. "We are all federalists, we are all republicans," Jefferson wrote in what would become a famous phrase, a phrase that would prefigure Illinois State Senator (later President) Barack Obama in 2004 — "There is not a liberal America and a conservative America — there is the United States of America" — and President-Elect Joseph Biden in 2020 — "No red states, no blue states, just the United States." Partisanship did not disappear, of course, but the constitutional crisis was over and — for the time being — the republic was saved. Shortly afterwards, Congress and the states amended the Constitution — the 12th Amendment — changing the way the Electoral College functioned so that Electors henceforth designated one candidate for President and another for Vice President. For his part, Jefferson presided over two terms of moderate change and reform, eschewing the radical revolutionary actions that the Federalists had feared.

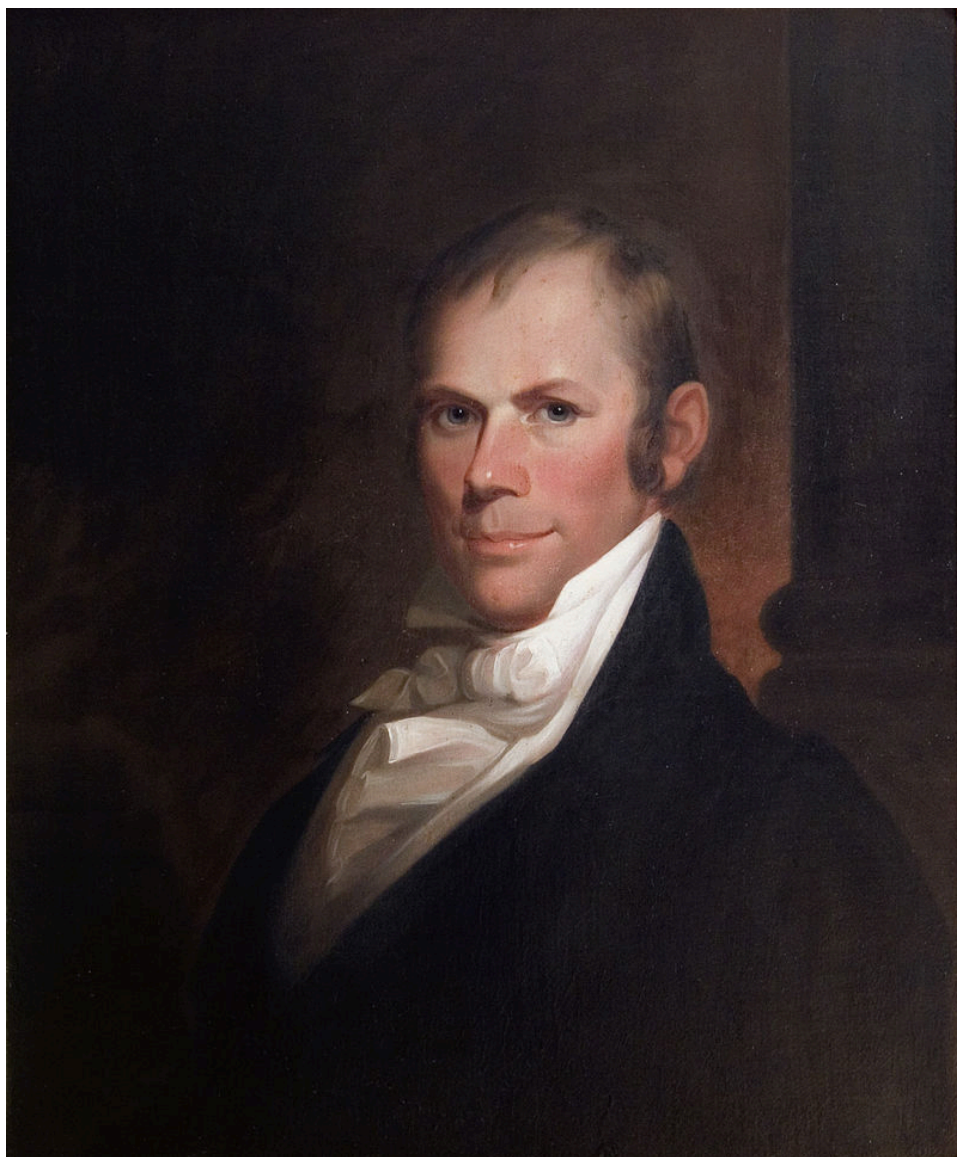
The presidential election of 1800 helps us understand disputed elections and why they happen. Like Connecticut's "Crowbar" election, the election of 1800 occurred in an environment of hyper-partisanship and close elections in which each side "demonized" the other. In 1800, hyper-partisanship was fueled by fear. Democratic-Republicans like Jefferson were terrified that Federalists like Adams and Hamilton were really closet monarchists. Adams was indeed thin-skinned, unable to accept criticism, and took disagreements personally. He tended to be arrogant and adverse to taking advice, even from members of his own party. He and Hamilton both were frankly elitist and deeply distrustful of democracy. They thought that most people were too ignorant, too easily inflamed, and too poorly educated to hold major office or even vote in major elections. They feared that, in a democracy, the less affluent majority would seize the property of the wealthy minority.

On the other hand, Adams and the Federalists had outraged Democratic-Republicans by passing the Alien and Sedition Acts, which had jailed newspaper editors that criticized them. Jefferson viewed the Federalists as dangerously anti-republican. But at the same time, the Federalists feared Jefferson and the Democratic-Republicans. They viewed Jefferson as a dangerous radical, a "leveler" and democrat who would extend political and economic power to the common man. They also considered him a hypocrite, a slave-owner who talked a good game about equality while at the same time subjugating masses of people in bondage. It is no wonder, given their intense partisan feelings, that each side would resort to drastic measures to keep "the enemy" out of power, to protect the republic as they understood it. The wonder is that the thin-skinned Adams found the strength to put his resentment of Jefferson aside, and that the self-righteous Hamilton and Jefferson each found the courage to compromise. As 1800 showed, in times of constitutional crisis, leadership matters.

The next disputed presidential election came under very different circumstances. In 1824, hyper-partisanship was no longer the dominant characteristic of American politics. Just the opposite: the old Federalist Party had disintegrated during the War of 1812 and the United States had become temporarily a one-party state. Politicians who hoped to have any chance of winning office now all belonged to the Democratic-Republican Party, which meant that the Party had lost its ideological identity. Indeed, in 1820 President James Monroe had won reelection as the only candidate running, an apparent national unity that was dubbed “the Era of Good Feelings.”

Under the surface, however, lurked churning ambition; young politicians like Kentucky Congressman Henry Clay were hungry for personal advancement, while “old Republicans” like New York Senator Martin Van Buren pined for the lost ideological purity of Jefferson’s day. The elderly Monroe did not seek a third term, and four younger Democratic-Republicans jockeyed for position, hoping to succeed him: Secretary of State John Quincy Adams of Massachusetts (a former Federalist who had converted to Democratic-Republicanism for expediency’s sake), Secretary of the Treasury William Crawford of Georgia, Secretary of War John C. Calhoun of South Carolina, and Speaker of the House Clay.

Adams and Crawford were the early front runners, with strong support in the Northeast and South, respectively. Calhoun eventually dropped out and ran for Vice President, but Clay hung in, hoping to win the support of the West. A resident of Kentucky, Clay looked to find votes in neighboring Tennessee, but discovered to his dismay that Crawford had gotten there first and sewn up the support of most of the local movers and shakers. Seeking to stop Crawford at any cost, Clay convinced several of his friends in Tennessee to put forward favorite son Andrew Jackson as a “stalking horse” candidate, with the result that Jackson, not Crawford, got Tennessee’s electoral votes. (In 1824, there was no single national election day, and different states chose their Electors at different times. Tennessee’s Electors were chosen by the state legislature, not by popular vote.)



Above: Henry Clay in 1818





Above: John Quincy Adams as President

Above: William Crawford

Clay's scheme worked too well. The result was that Jackson, who hitherto had not seen himself as a viable candidate, now decided that he, too, wanted to be President. A military hero from the War of 1812, Old Hickory had many admirers – and also not a few enemies. Jackson particularly disliked Clay and Crawford. The enmity stemmed from the 1818 Seminole War, in which Secretary of War Calhoun had ordered Jackson, then a military commander, to lead a raid across the border from Georgia into Spanish Florida in pursuit of Seminole warriors. Jackson had disobeyed orders and also seized several Spanish towns,

threatening war with Spain. Calhoun and Secretary of State Adams had backed Jackson, but Clay and Crawford had criticized his actions as illegal. War with Spain had been averted when Adams as Secretary of State negotiated a treaty with Spain that resulted in the American purchase of Florida — a purchase, admittedly, at the point of a gun. Part of the reason the hot-tempered Jackson now coveted the Presidency was to get even with Clay and Crawford for their earlier criticism of him, although a larger part doubtless was his desire for popular acclaim.



Above: Andrew Jackson as a general.

With four major candidates, it was practically a foregone conclusion that none of them would win a majority in the Electoral College. And indeed, none did. Jackson got the most Electoral votes, though, followed by Adams, Crawford, and Clay. As per the Constitution, the task fell to the House of Representatives to choose from among the top three: Jackson, Adams, and Crawford. Because Crawford had suffered a stroke during the campaign (he survived, but with diminished capacity), it was understood that the choice would be between Jackson and Adams. At this point, Clay — as Speaker of the House — approached Adams with a deal: if Adams promised to make Clay Secretary of State, Clay would use his influence in the House to deliver Adams the Presidency. Adams agreed. The House voted to make him President, and he duly appointed Clay Secretary of State.

Jackson was furious that his two opponents had made a deal, especially as one of them was his old foe Clay. He didn't march on Washington with an army of Tennessee sharpshooters, but he did spend the next four years raging against the "corrupt bargain" that had put Adams in the White House, thereby undermining the legitimacy of Adams's administration. Indeed, the shadow of illegitimacy hung over Adams for his entire term in office, undermining his ability to get his programs passed by Congress. Four years later, in 1828, in a two-way race, Jackson defeated Adams handily, 178 Electoral votes to 83, and became President.

If one result of the 1824 election was that Adams became, in the eyes of many Americans, an illegitimate President, which severely weakened his effectiveness, another consequence was the collapse of the old Democratic-Republican Party, which split into two, smaller parties: the more-or-less Hamiltonian National Republicans led by Adams and Clay (which a few years later metamorphosed into the Whig Party) and the generally Jeffersonian Democratic Party led by Jackson and Van Buren. Two-party politics was restored.

The 1824 election was a disputed election in the sense that Jackson never graciously accepted defeat and continued to rail against Adams and Clay, but it differed from the 1800 election in that it originated from personal ambition and grievance rather than hyper-partisanship, and there was never any real threat of violence. Like other disputed elections, it was resolved with a political deal, although not one that Jackson and his supporters accepted, and therefore not one that lasted beyond Adams's Presidency. And, like most disputed elections, it had unexpected consequences, ushering in a new political era of Democrats vs. Whigs.

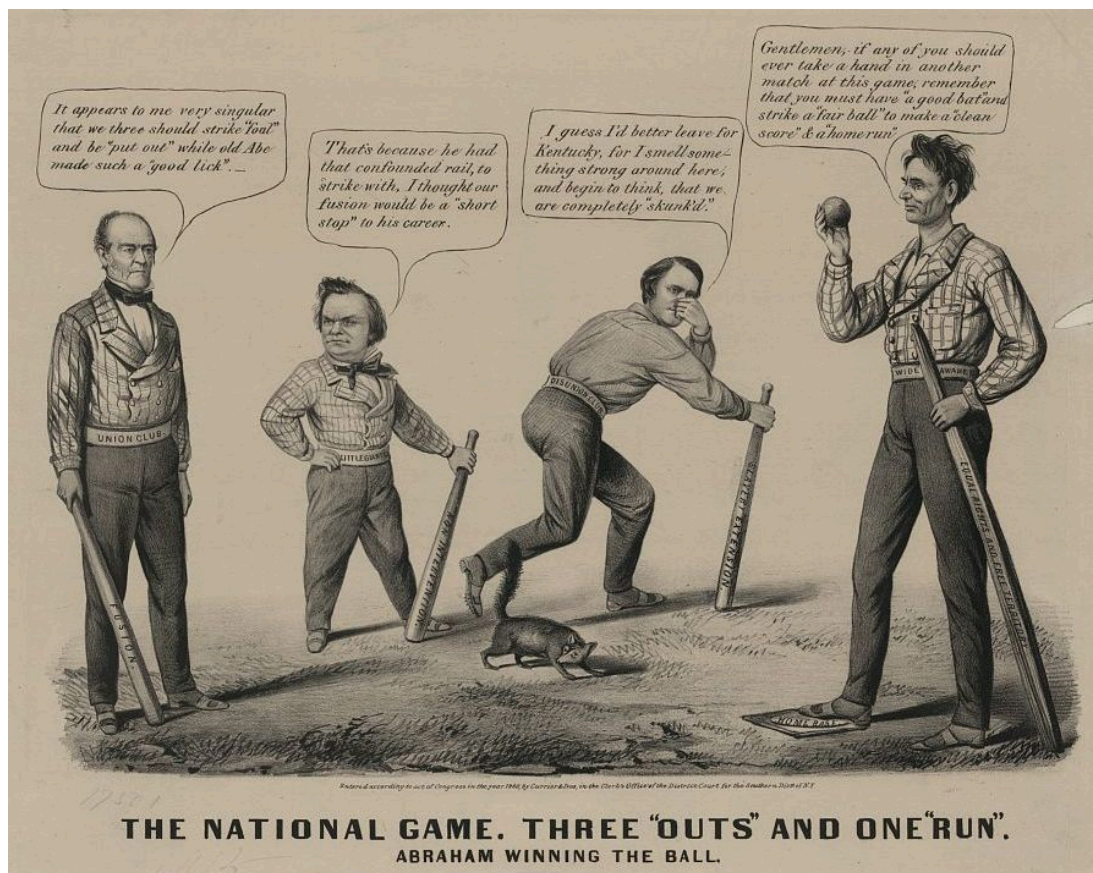
1860

The next disputed presidential election was in 1860, and it resulted in the Civil War (1861-65). The 1860 election combined the hyper-partisanship of 1800 with a political realignment reminiscent of 1824. The United States had never been more divided by politics. While over the years Whigs and Democrats had been able to craft compromises on issues like tariffs, they had been unable to resolve the thorny issue of slavery. That was partly because slave labor was integral to the Southern economy, while free labor was central to the Northern economy, and so each region viewed challenges to its system as tantamount to assaults on its “way of life,” making the political disputes of the 1850s a kind of “culture war.” It was also partly because an ever-increasing number of Americans (although still a minority) was coming to view slavery as a moral evil. And it was partly because slavery was intertwined with so many other divisive issues: war with Mexico in the 1840s; the addition of new states, especially after 1849 when the Missouri Compromise broke down; the fairness of the Electoral College (long a sticking point with many Northerners, who believed that the system favored the South); the allocation of seats in the House of Representatives (in which the Southern states’ strength was boosted by a Constitution that counted enslaved people as 3/5ths persons, even though they were afforded almost no human rights); the right to trial by jury (threatened by the Fugitive Slave Act); the citizenship of free Blacks; censorship

of the U. S. mails; and violence in the Kansas Territory and on the floor of the Senate – all of which bubbled noxiously out of the dispute over slavery and poisoned the rest of American politics. New conspiracy theories fed into a growing tendency for the two sides to demonize each other. Increasingly, White Southerners came to believe that Northerners were complicit in an “abolitionist conspiracy” to arm slaves and encourage a slave revolt that would cost them their lives, while Northerners came to believe that White Southerners were complicit in a “slave conspiracy” to force a system of slave labor on the North and West. The gulf between the two sides grew so great that it caused the old, national parties – the Whigs and the Democrats – to break down. In the 1850s, the Whig Party completely disintegrated, while in 1860 the Democratic Party divided into two wings, a radically pro-slavery Southern wing and a more moderate Northern wing that sought to find middle ground. As the Whig Party collapsed, three new parties rose in sequence to take its place: first the anti-slavery Free Soil Party, then the anti-immigrant and anti-Catholic American (or Know-Nothing) Party, and finally by the end of the 1850s the new Republican Party. The Republicans were a broad coalition of Northern Whigs, Know Nothings, Free Soilers, and anti-slavery Democrats – and by 1860 they were the majority party in the North, a strong minority in the border states, and practically nonexistent in the South.

Because of this political realignment, the 1860 presidential election featured four major candidates, not the usual two: Republican Abraham Lincoln (a former Illinois Whig Congressman), Northern Democrat Stephen A. Douglas (an Illinois Senator), Southern Democrat John C. Breckinridge (the current Vice President and a former Congressman from Kentucky), and John Bell (a former Tennessee Whig Congressman and Speaker of the House). In fact, the election was not one race, but three: Lincoln vs. Douglas in the North, Breckinridge v. Bell in the South, and all four candidates in the border states of Delaware, Maryland, Virginia, Kentucky, Tennessee, and Missouri (the “purple states” of the era).

Lincoln swept the North, winning every free state. Breckinridge swept the South. And Bell, Breckinridge, and Douglas split the border states. No one won a majority of the popular vote: Lincoln captured 39.8%, Douglas 29.5%, Breckinridge 18.1%, and Bell 12.6%. But because hyper-partisanship gave Lincoln victories in every free state, he captured 180 Electoral votes compared to 72 for Breckinridge, 39 for Bell, and only 12 for Douglas, winning a majority in the Electoral College.



Above: A political cartoon showing the four candidates in 1860: Bell, Douglas, Breckinridge, and Lincoln — playing “baseball”

The consequences of the election of 1860 were, as Lincoln would later say, “fundamental and astounding.” Although his victory in the Electoral College was clear, most Southern Whites refused to accept it; after all, he had won less than 40% of the popular vote and not carried even a single slave state. One by one, Southern states seceded from the Union, touching off the Civil War. Unlike 1800 and 1824, there would be no deal, no compromise, to save the republic. Indeed, it is difficult to imagine that compromise was even possible. There were attempts: Lincoln offered to preserve slavery in the South while forbidding it in the North and West, but Southerners rejected that. Breckinridge (now a Senator from Kentucky) advocated drawing a horizontal line across the Western territories to create a “slave south” and “free north,” but Northerners rejected that. The hyper-partisanship that had spawned such intense fear, mistrust, and fabulous conspiracy theories had made it impossible for the two sides to trust each other enough to compromise. (Since both compromises would have maintained slavery for decades to come, succeeding generations must ask if either would have been worth the cost.) It was not the losing candidates, but rather their allies and supporters that drove the United States into civil war.

When war did come, Douglas sided with the North and offered Lincoln his support (but died of illness in 1861 before the war ended), while Bell and Breckinridge each joined the Confederacy. (As most Kentuckians were Unionists, Breckinridge was forced to flee his own state. Arriving in Tennessee, he joined the Confederate army as an officer, rose to the rank of General, became part of the Confederate Cabinet as Secretary of War, fled the United States at the War’s end, and lived several years in exile until President Andrew Johnson issued a blanket pardon for Confederate officers and office holders.) Douglas accepted Lincoln’s victory in the election of 1860, but Breckinridge and Bell did not. Although not the organizers of the Confederacy, they were willing ultimately to join it in waging war rather than accept a Republican Presidency.

The contrast between 1800 and 1824 on the one hand and 1860 on the other is stark. Instead of a deal or compromise, there was a Civil War in which hundreds of thousands perished. The outcome fundamentally altered the American political system. It brought the new Republican Party to power as the majority party for decades to come. It led to three transformative Constitutional amendments that (legally, although not always in practice) ended slavery, granted citizenship to all persons born in the United States, and extended voting rights to all adult male citizens. It established that the Union was “perpetual,” meaning that no state could secede.

But 1860 did have one thing in common with 1800: the outcome of both disputes ended up reinforcing the key republican principle that the party that wins the election must be allowed to hold office – or, as Lincoln put it, “that government of the people, by the people, and for the people shall not perish from this earth.”

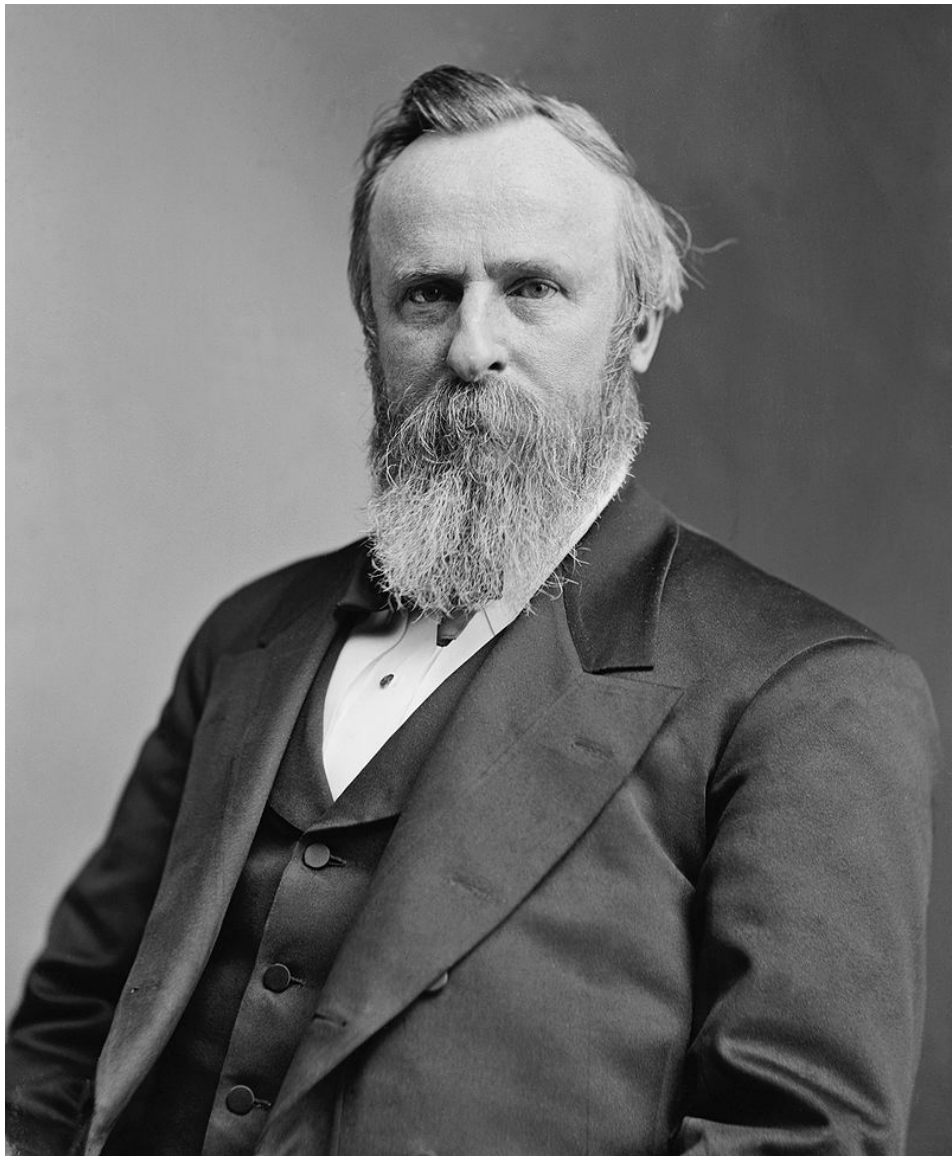
1876

With the misery and bloodshed of the Civil War still fresh in their minds, Americans experienced a cold shiver of terror when another disputed election occurred only sixteen years later, in 1876. Although the Republican Party was still the majority party in the North, Democrats had reunited and held power in most of the South as well as in Northern cities, where they were bolstered by the votes of immigrants. Know-Nothingism was still part of the Republican coalition, directed against urban immigrants.

Partisan feeling, stoked by the recent Civil War, still ran high. Hyper-partisanship caused Republicans and Democrats to cast each other as false caricatures of “the enemy.” Republicans viewed Democrats as Confederate traitors, slaughterers of Union soldiers, aided and abetted by uneducated, un-American immigrants. Democrats saw Republicans as sly Yankee carpetbaggers, uneducated former slaves, and rapacious robber barons. Both parties pushed racist tropes, Republicans decrying Democrats as hard-drinking, unlettered, unrepublican, Catholic Irish immigrants, and Democrats depicting Republicans as uneducated Blacks and avaricious Yankees.

The election was close: the Democratic candidate, New York Governor Samuel J. Tilden, won 50.9% of the popular vote, while the Republican, Ohio Governor Rutherford B. Hayes, won 47.9%. Even closer was the Electoral College: Tilden won 184 Electoral votes (one short of a majority), Hayes captured 165, and 20 Electoral votes from four states were in dispute. Each party claimed to have won Florida, Louisiana, and South Carolina, and one of the Electors from Oregon appeared to have been “illegal” because he was an “elected or appointed official.”

The crux of the issue in the three disputed Southern states was that Tilden had won the most votes, but Democrats had engaged in wholesale voter suppression by threatening and intimidating Republican voters, most of whom were African Americans. In Florida and Louisiana, Republican governors faced off against Democratic legislatures and election officials, each claiming victory for their candidate. Partisans on both sides threatened to resume the Civil War if they didn't get their way.





Above: Rutherford B. Hayes

Above: Samuel J. Tilden

This was a new type of dispute, one where the Constitution gave no guidance. Rival sets of Electors claimed to represent the “real” winners. While the Constitution did provide that the House of Representatives (voting by state) would choose the President from among the top three vote getters if no candidate received a majority of the Electoral votes, it

received a majority of the Electoral votes, it said nothing about what would happen if the Electoral votes themselves were in dispute, a circumstance that had never occurred to the founders when they wrote the Constitution in 1787, nor to Congress when they had passed the 12th Amendment a few years later.

The disputed election of 1876 was resolved by an extra-legal compromise. Although the Constitution did not authorize it, Republican and Democratic leaders formed a bipartisan committee to decide which candidate had won. Republicans had one more person on the committee than the Democrats, so it is no surprise that the committee found in favor of Hayes. But with the threat of civil war hanging in the air, a quiet compromise was reached: Hayes would become President, but in return Republicans agreed to end Reconstruction, cease the occupation of Southern states by the Union army, and accept the reestablishment of

white supremacist rule in the old Confederacy. As has often been the case in American history, White Americans resolved disputes among themselves by sacrificing the interests of people of color, who as a consequence would endure another century of Jim Crow, discrimination, lynching, and peonage. Tilden agreed to step aside – he deserves some credit for sacrificing his own political interests for the good of the republic, but truth to tell, he didn't really have a choice. Once his party had reached a compromise, he had no leverage anyway.

As was the case with previous disputed presidential elections, the election of 1876 had major consequences, transforming the political environment of the republic. Reconstruction ended. White supremacy remained in force for another century. And a “Conservative Coalition” of Northern Republicans and Southern Democrats now

controlled Congress for decades to come. Southern Republicans – who were mostly African Americans – and Northern Democrats – who were mostly immigrants and children of immigrants – were marginalized for a generation or more.

In addition, Americans seem to have learned that disputing presidential elections was not worth the cost. One dispute had resulted in a Civil War, and all of them had altered the political system in ways that had not been anticipated. For more than a century, the fear of civil wars and political realignments kept American leaders from disputing presidential elections. The Gilded Age – the period from 1876 to 1896 – was, like 1800, 1860, and 1876, characterized by hyper-partisanship, extremely close elections, elections where no candidate received 50% of the popular vote,

elections where the leader in the popular vote lost in the Electoral College, inflamed passions, and the propensity to caricature opponents and truck in conspiracy theories. Yet not once did losing candidates seriously raise the specter of civil war, riots, or other forms of violence – not at the presidential level, anyway. And the 20th century saw fewer close elections. Indeed, it would not be until 1960 that a losing candidate seriously entertained the possibility of disputing the outcome of a presidential election.

1960

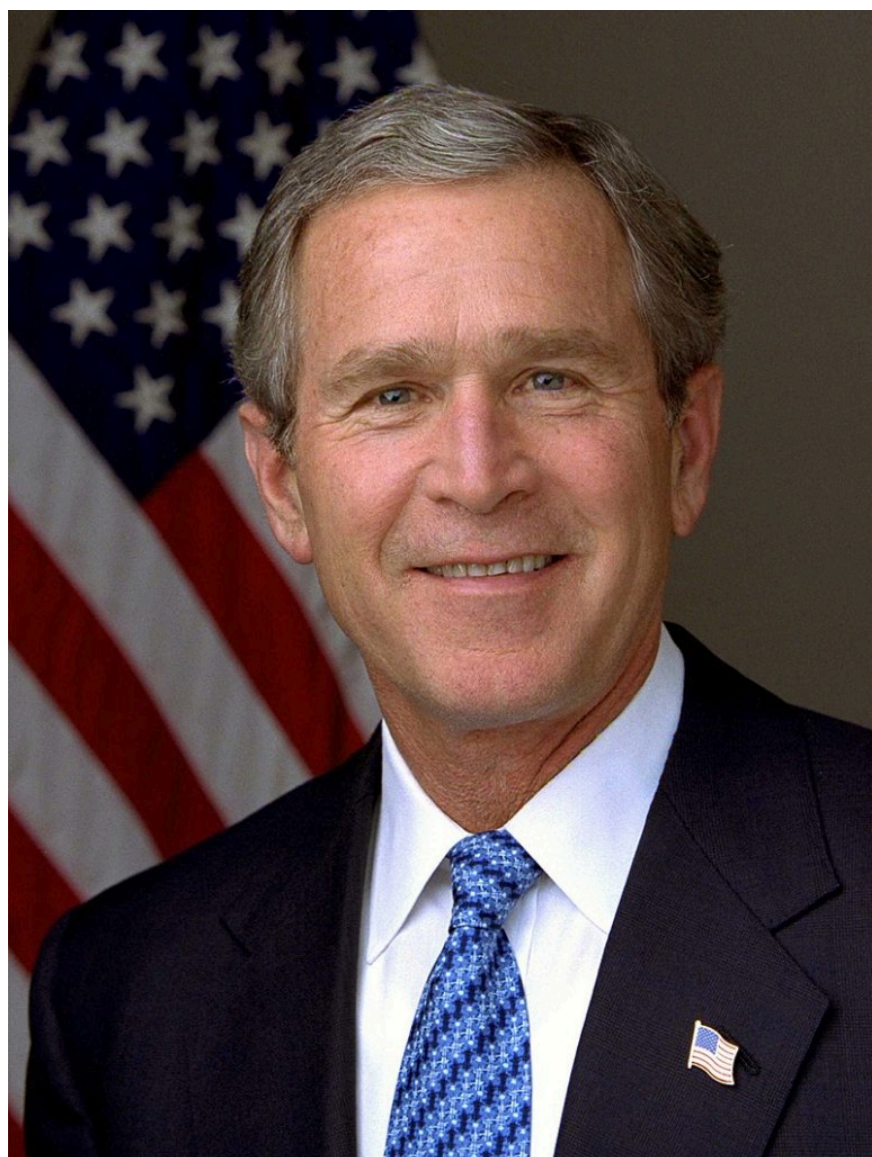
The 1960 presidential election was the disputed election that wasn't. It pitted the sitting Republican Vice President, Richard M. Nixon, against the Democratic Senator from Massachusetts, John F. Kennedy. It was close: Kennedy won 49.72% of the popular vote to Nixon's 49.55%. And although the Electoral College seemingly gave Kennedy a big victory with 303 Electoral votes to Nixon's 219 (and 15 for Dixiecrat Harry Byrd), had Nixon carried the states of Illinois and Texas, he – not Kennedy – would have eked out a narrow Electoral win. Nixon, as he admitted in his autobiography, *Six Crises*, believed that the Kennedy campaign had cheated in both states. Yet, ultimately, Nixon decided not to dispute the election. He always claimed that his decision was because he had put the republic before his own personal ambition, but the real reason was probably because he had no choice. He could not credibly have raised the specter of civil war. President Eisenhower would not

have subverted the Constitution to hand the election to him. While Illinois state law did provide him with an appeal process, Texas law did not, and he would have had to have captured both states to have won the election. Nixon could have attempted to challenge Texas law in federal courts on Constitutional grounds, but it was not likely that he would have prevailed. Such a challenge would have wound up before the Supreme Court, which had never before inserted itself into a presidential election, especially not in a way that would have changed the outcome. For most of American history, the Court strove to stay above politics, and such a move would have politicized the Court and diminished public confidence in its non-partisanship. Besides, most of the Justices were Democrats and not inclined to be on Nixon's side, anyway. So, Nixon chose to appear magnanimous and run for President again in 1968.

2000

But there would be a disputed election in 2000, and the consequences for the republic would be significant. The election pitted sitting Democratic Vice President Albert Gore against the Republican Governor of Texas George W. Bush. Gore won the popular vote by a razor-thin margin, 48.4% to 47.9%. He also won 266 Electoral votes to Bush's 246, but with the outcome in Florida in doubt Gore was four Electoral votes shy of victory. The lead in the Sunshine state seesawed back and forth between the two candidates, with the initial count showing that Bush won by fewer than 600 votes – which would have given him 271 Electoral votes and the presidency.

Gore, however, requested a recount, which uncovered problems with the ballots and the ways in which they were counted. Gore then requested a hand recount, a laborious process. The recount got underway but was challenged in court by the state of Florida (then under Republican control) and Bush. The challenge soon reached the United States Supreme Court in the case of Bush v. Gore. For the first time in American history, the Supreme Court was faced with deciding a disputed presidential election. By a 5-4 partisan vote (five Republican justices vs. four Democrats), the Court sided with Bush and ordered the recount stopped. At that point, Gore conceded.





Above: George W. Bush as President

Above: Al Gore in 1999

In many ways, the election of 2000 resembled earlier disputed elections. The United States had entered an era of renewed hyper-partisanship where partisans increasingly believed that the opposition was a dangerous “enemy” whose ideas threatened the nation. Partisanship had been brought to a fever pitch by Congressional Republicans’ attempt to impeach and remove the previous President, Democrat William J. Clinton. The election was razor close. There were accusations of ballot tampering and election-day shenanigans. And the ultimate loser, Gore, helped dissipate partisan rancor on his side by accepting defeat, as John Adams had done in 1800 and Samuel J. Tilden in 1876.

But 2000 also differed from previous disputed elections in three important ways. First, there were no threats of violence, riots, or civil war. And second, there was no compromise, no deal to resolve the dispute where each side could claim at least a partial victory. Because the Constitution did not and does not provide a mechanism for resolving disputed elections, the presidential elections of 1800 and 1876 had been resolved when the two sides had bargained compromises. In 1800, Jefferson got to be President, but certain Federalist programs and officeholders were left in place. In 1876, Hayes became President, but Republicans agreed to end Reconstruction.

We can argue about whether or not the deals of 1800 and 1876 were “good” or “bad,” but we have to acknowledge that they gave each side something that it really wanted. The compromises established the principle that if a party won the presidency in a close election where the vote count was in doubt, it needed to behave in a conciliatory way towards the other party, to look for compromise rather than escalate partisan conflicts. But the 2000 election dispute did not end in a compromise. Republicans did not have to give up anything to achieve their victory. There was no need for them to be conciliatory.

The third way in which the 2000 election differed from other disputed elections was that it was decided by the Supreme Court, and by a partisan vote. Before 2000, the Supreme Court had endeavored to stay out of presidential elections. Now, however, it was clear to leaders of both parties that close elections could, in the future, be decided by the Court, and that there was a good chance that the Court would rule on a party-line vote, as it had in *Bush v. Gore*.

Having a safe partisan majority on the Court – with justices that could be trusted to vote for their party's interest – could be a key to winning close elections. In a hyper-partisan era where presidential elections were expected often to be close, controlling the Court became of paramount importance. The Court became increasingly politicized. And parties that controlled the Court have more incentive to dispute close elections.

Conclusion

It is possible to reach some conclusions about the history of disputed Presidential elections in the United States, based on the 1800, 1824, 1860, 1876, 1960, and 2000 elections. Four of the six elections (1800, 1860, 1876, and 2000) occurred during eras of hyper-partisanship, when partisan feelings were unusually high. Such hyper-partisanship led members of the two major parties to demonize each other. Viewing opponents as dangerous radicals justified taking extreme measures to prevent them from coming to power, including disputing the outcomes of elections.

Four of the six elections (1800, 1876, 1960, and 2000) were extremely close, and a fifth (1824), while not as close, nevertheless had to be settled by the House of Representatives because there were more than two major candidates. And even 1860, although not especially close in the Electoral College, saw the winning candidate receive less than 40% of the popular vote. The combination of hyper-partisanship and close elections created political conditions that were ripe for disputed elections. In the worst-case scenario, hyper-partisanship degenerated into wild conspiracy theories. Different disputed elections were resolved in different ways, and the outcome was sometimes tragic. In the worst case, 1860, the disputed election led to civil war. In another case, 1824, the result was the the legitimacy of the winning candidate — John Quincy Adams — was severely undermined.

But disputed elections can delegitimize more than a Presidential administration — they can lead to a public loss of faith in republican and democratic government. Lincoln thought secession undermined not just the Union but republican government generally, a point he made in the Gettysburg Address, when he maintained that the South's failure to accept the results of the 1860 election could result in "government of the people, by the people, and for the people" perishing from the earth.

Disputed elections can also lead to unanticipated political realignments, as happened in 1824. Two of the six disputed presidential elections (1800 and 1876) were settled by extra-constitutional compromises, and while the compromise in 1800 that made Jefferson President was a good one, the compromise in 1876 that made Hayes President in return for a return to white supremacy in the South was a terrible deal for African Americans.

In only one case (2000) was the dispute resolved by the Supreme Court, but in a party-line 5-4 vote that threatened to politicize the Court.

In four cases (1800, 1876, 1960, and 2000), losing candidates deescalated the crisis by conceding the election and — just as important — not spending the next four years sniping at the winner. (It is, perhaps, unfair to include 1960 in this category: after all, Nixon did try to "get credit" for his concession by continuing to point out that he thought that he had been robbed.) Credit should go, though, to John Adams, who refused Federalist plans to keep him in the Presidency by stalling a resolution to the 1800 election, and to Al Gore, who stepped back from partisan politics and declined to openly criticize President George W. Bush. Indeed, the decisions of Adams, Tilden, Gore, and perhaps Nixon to deescalate and concede were keys to peaceful resolutions.

Does the history of disputed elections provide guidance for 2020, when one of the candidates – Republican incumbent Donald J. Trump – has threatened to dispute any result in which he does not win? Would such a dispute be likely to end in a compromise, or in a partisan Supreme Court verdict? How likely are riots, unrest, or civil war?

We can look at the conditions under which election disputes have been peacefully resolved – either the losing candidate accepts defeat, or some sort of compromise is reached between the two parties, or both. Reaching the compromise has not always involved the candidates – party leaders can step in and work out the deals and bargains that prevent violence and tumult. Could a compromise, deal, or bargain be reached in 2020, if necessary? If so, what would it be? Or does the ability to appeal to the Supreme Court make compromise unlikely?

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