

Welcome to What Happens Next – 1.10.2021

Islamic Fanaticism, Presidential Power, the Electoral College, and the Myth of the Entrepreneurial State – Jack Rakove & Robert Hardaway QA

Larry Bernstein:

Jack, one of the things that Robert was saying was what happens if there are three or four candidates and someone wins the popular vote with maybe, I don't know, 31%. In your mind, would you like to see something where if you don't get a majority 50.1% of the total vote, it ends up in the House where each state gets one vote? Or would you just say whoever's the top of the hill? Or do you want runoffs like France or Israel?

Jack Rakove:

Okay. No, we don't want it going to the House. There are ways to solve this. You could, for example, go to a system of rank choice voting, which would solve the problem. You could have a runoff election the way the French, and I believe that Brazilians do. I mean, they are feasible. I think if we went to a national popular vote, I think there'd still be strong incentives, strong advantages working on behalf of the two major political parties, assuming the Republican party as such survives, which I think is becoming an open question. Survives as something other than a Trump cult. I think those problems are solvable.

Larry Bernstein:

Well they're solvable in any sense, but what makes you think that the current French system that Robert was just attacking where the two runoffs were a small minority of the total population and something on the order of 4 million people decided to put a blank vote. Why is-

Jack Rakove:

There are lots of reasons.

Larry Bernstein:

Why is splintering power with multiple parties a good idea? We see it in France, we see in Italy, we see it in Israel. Why does it make it a stronger political system?

Jack Rakove:

Well, but Israel is a parliamentary system.

Larry Bernstein:

Fair enough.

Jack Rakove:

Which is completely different from ours. France is a combined model. Macron wound up with a pretty strong mandate, coming out of the last presidential election.

Larry Bernstein:

Because he did so well in the House as well. He did very well in parliament.

Robert Hardaway:

I might just point out here that our electoral college is very much the same as the British electoral college. Of course, they don't call it electoral college, they call it a parliament where they elect members of parliament who then in turn go to their electoral college, they call it a parliament, and elect the leader. So, it works almost exactly the same way as the parliamentary democracies. And in 1974, for example, the Labor party managed to elect more MPs and formed the government. But if you looked at the total number of votes for MPs, that did not match. But I don't remember anyone saying this is undemocratic, we should abolish parliamentary democracies and so forth. The only difference was in our electoral college-

Larry Bernstein:

Actually, we got a question from one of our listeners on a very similar topic. Victor Mikheev wrote in and Victor lives in London. He asked the question, "Why don't we just have each of the 435 congressional districts vote separately in order to achieve something like what England does?"

Robert Hardaway:

Well, the answer is the States have the option of doing that, and two states have already done that. That that's actually the system in Maine and Nebraska. And so each state is free to do that. But-

Jack Rakove:

But the problem with doing that is you have the whole problem with gerrymandering.

Robert Hardaway:

Yes, exactly.

Jack Rakove:

You can use I call crack and pack principles to distort how districts would be constituted. So, if in fact you wanted to move more towards... retain some kind of electoral college system but move to a vote, the best way to the best way to do that would be to do a kind of proportional allocation, which that would be closer to the Israeli model, right? There are no districts in Israel.

If you actually went to the district system, which was in fact the preferred form when for electoral college for reform discussed in the 19th century, the problem today is the parties have invested so much work in learning how to gerrymander that you could wind up with vastly distorted results.

Robert Hardaway:

And states have the option of doing that. If you think that's a good reform, go to the states and have them agree on something like that, which would make a lot more sense than this NPVIC which is based on the illusion that there's a popular vote for candidates. You vote for electors who may or may not vote for the actual candidate that they've pledged to vote for. And also, how do you count popular votes-

Jack Rakove:

That's ridiculous. No one votes for electors. We have the whole elector case. We don't want electors exercising their independent judgment. They've never had any value or function. As soon as we have contested elections, electors became the simple tools of party. Electors, they sure have no function whatsoever, except that their presence distorts the one person, one vote principle, which to my way of thinking is fundamental to any modern democracy. There's no reason why a vote in Wyoming-

Larry Bernstein:

Does that mean, to understand your point Jack-

Jack Rakove:

... should count for more than a vote in California.

Larry Bernstein:

Jack, should we have a Senate or not?

Jack Rakove:

I mean, Robert is right to say that that's locked into the constitution. It's not subject to Article V amendments for exactly the reasons he gave. But I have to say, Robert, I thought your historical account of what happened in 1787 was badly distorted. It seems to me, you don't really know the history very well. And until you come up with a coherent explanation of how the whole electoral system was designed, you can't really maintain the argument you're making. It's fine JFK said what he did back in 1956, but it seems to me that's largely irrelevant to the problems we have to deal with today.

Robert Hardaway:

Well, I've written several books, which I go into lot of detail. It's hard to go into that detail in the six minutes. I was just hitting some of the high points that JFK-

Jack Rakove:

The details you made struck me as being wrong. New York was not one of the largest states. By the way, they were states, not colonies. The role you ascribed to Franklin, that's wrong in terms of this. The idea the electoral college system is essential to preserving the equal state vote is erroneous. I mean, so-

Robert Hardaway:

JFK might have been off the mark, but I think that when we came to understanding the origins of electoral college, I think he was right on the numbers. And that's why I've looked into every one of his assertions historically and said that he was absolutely right. And he's also absolutely right in predicting the disasters that occur in elections, like in France. He had it right on the numbers.

Jack Rakove:

Our elections and elections in France, we have a different political culture. I think you have to reason from American history.

Robert Hardaway:

Yes, you do, because we have two parties. And that's because, as I explained in my book, that that flows from the electoral college. It's not a coincidence that we're the only country in the world with a two-party system. It's because we are the only one that has a real electoral college. And all the problems with multi parties and so forth are all based in countries which don't have an electoral college. But I think JFK was right on the numbers. And I think history was-

Larry Bernstein:

Jack, if you believe that today, that the constitution is flawed both for the electoral college and for the Senate, does it also mean that... are you also opposed to small states or federalism in general?

Let's just say, pick a state, Vermont. Here is a very small state with 3 electoral votes. Like your Wyoming's example, it has too much power. Should the federal government get rid of some of these smaller states and merge it with some of the bigger states? Or, Rhode Island?

Jack Rakove:

I'd be willing to discuss in the abstract, but there's a bigger issue here, which is hard to explain in this short period of time. But ask yourself the question, when you go to the polls, do you ever vote on the basis of the interest of the state in which you live? When we vote presidentially, and

I've lived in five or so different, I've cast my votes in I think five different states over the course of my lifetime. I mean, I'm 73 years old now. And I carry my preferences with me wherever I live. When I move from one state to another, I don't ask, what is in the interest of the state that should affect or influence the way I vote presidentially? I ask, what are my political values?

So, I think in that sense, as opposed to what I think Robert believes, it seems to me the values of federalism are adequately protected in Congress. That's to say we have a geographically based system of appointing both members of the House of Representatives and members of the Senate. But I think it's kind of crazy for the one truly national office, the presidency to have a state-based system when in fact the preferences on which we act when we vote presidentially do not really depend upon those kinds of local issues.

Robert Hardaway:

I've heard many proposals along Jack's proposal, his thinking that it's just not fair that Wyoming has more power in the Senate, for example, than California. And I've heard proposals along the green party and left wing people to say we should try to abolish the Senate and get every state to agree to abolish the Senate. I ever also heard proposals, well, let's just make it one person one vote so that Wyoming, that California would get 58 senators and Wyoming would be lucky to get one Senator. I've heard all these proposals. But it's as Madison said originally, is that we don't elect a president based on the masses. We have 13 separate sovereignties, he said, and those 13 sovereignties elect the president. And that's the fundamental cornerstone of federalism that creates a united republic.

So that's why I say when people, as JFK said, if people want to mess with one part of it, that they want to mess with the electoral college, abolish it or whatever, then they really have to consider abolishing the US Senate because they're inextricably intertwined. The weight of each state in the electoral college is based on the Article V guarantee of equal suffrage in the Senate. And if we're going to destroy that-

Larry Bernstein:

Jack, just to follow up with you for a second. You mentioned that you don't think of you being a resident or a person of California. You've lived all over the US, and many of listeners on our call have lived in multiple states over their life. It's ironic that at this point of US history, it used to be people even used to be citizens of more states over their lifetime. There was a lot more moving between states across the country. But are you suggesting that maybe this concept of having 50 individual states itself is undemocratic and kind of anachronistic?

Should we abandon the states as well?

Jack Rakove:

Not really. I mean, I think it does have a distorting impact on the presidential vote. I do think the principle of one person, one vote-

Larry Bernstein:

But just beyond the president, are you suggesting that we're all Americans and we should move towards a national government and reject federalism?

Jack Rakove:

We carry our preferences with us. For example, if you believe in the second amendment, if you believe in abortion or the right to life, if you believe in this that or the other thing, those are the commitments that really determine how we vote individually. The idea that when we vote, we're doing it in some sense to preserve the federal system, that the federal system somehow depends upon our system of presidential elections, to be honest, that just strikes me as being nuts.

Robert Hardaway:

I might point out that actually Jack's proposal is similar to one that Alexander Hamilton made. He proposed let's get rid of the states, let's just have state lines, sort of like you have in Russia and divided up into regions and so forth. But federalism would never have worked. We would never have a united country because these small states and the big states would never have agreed to form one country. And if we hadn't been for our federalist structure that the founding fathers created, we wouldn't have had one nation. We'd have at least three-

Larry Bernstein:

Robert, what I think Jack is saying is let the past be the past. We're in 2021, if we were going to create our new country right now, how would we do it and why? Would we have states, would we have a Senate, or would we adopt some sort of parliamentary or maybe a combination of a single house and an executive? And I ask you Jack, do you like the states? Should we have these individual states?

Jack Rakove:

I'm much more of a Madisonian than a Hamiltonian. I mean, I spent almost half a century working on Madison, and I just do Hamilton on the side. But I have to think, if we were starting from scratch, abolishing or relegating the states to a lesser position would be an acceptable option, it would be an acceptable option to me. But the issue today is the same as it was in 1787, you'd have a lot of transaction costs. Hamilton wasn't the only one to talk about eliminating or redrawing state lines. The problem is you already have all these separate legal systems, going back to the formation of the colonies and the different legal histories they have. So, the transaction cost of getting rid of the states would run awfully high.

But that's one reason why I think Robert is wrong to think that federalism somehow depends upon the existence of the presidency. Federalism, the very existence of the states and the fact that we have these separate bodies of law that are state and local, as well as national. We've made such a deep investment in this that the federal system is destined to persist for a long time anyhow. And the presidency doesn't really have anything to do with it.

Robert Hardaway:

Well Jack, I appreciate that you're a Madisonian. And as I now have the exact quote that when he was asked, what constitution have you created? And he says, "This government's not completely consolidated, nor is it entirely federal. Who are the parties to it? The people not as the people comprising one great mass, but the people comprising 13 sovereignties." And that was the basis. I mean, federalism is extremely complex. I teach federal jurisdiction and the checks and balances are so sensitive, so complicated, really. But I think federalism works because you have a separation between local interests and also national interests. And making those two combine in one nation is extremely difficult, particularly in a country with such geographic extension as the United States.

But the drafters realized that you can't have a country controlled by just particular regions or areas of the United States, as JFK said. They asked the bank robber, Willie Sutton I think it was, "Why do you rob banks?" And he said, "Because that's where the that's where the money is." And if we have this Russian system, national popular vote, where would they people campaign? They go where the votes are.

Jack Rakove:

I think that's false. I think if you have a national popular vote, and the parties are competitive so they have to actually campaign, it seems to me the strongest incentive is they want to mobilize their votes wherever they are. The idea that everybody will spend all their time campaigning in what, New York, LA, the Bay area, Chicago, Houston, arithmetically, that's bunk. If you do the arithmetic, it's a vast electorate. They don't all live in the big city. We know big cities are highly Democratic, we know the rural countryside is highly Republican, and we know the real battlegrounds are suburban and ex-urban areas throughout the country. And that kind of sociology, which by the way, this is also a very Madisonian approach, has nothing to do actually with the existence of state lines. It's really a way of asking how are the real interests and preferences of the citizens, not the states, of the citizens distributed across the landscape?

Larry Bernstein:

That's a kind of a recent phenomena, this concept of battleground states in this sense. If you go back to a very close election like a 1960, which was almost a popular vote tie, in that election, there were only 14 States in which any of the two candidates got more than 55% of the vote. But here in 2020, 34 states had more than 55%. So, the concept of battleground states is not something that is always been an American phenomenon, but has just more recently played itself out where this rural versus urban thing is also modern.

Robert Hardaway:

And of course, it changes over time.

Jack Rakove:

I want to mention if we still have a little time here, think about what's happened to Georgia. Which is for a long time, South Carolina, Georgia was really the heart of segregation, Mississippi, Alabama, the cotton belts, slave belt, really the racist parameters of Southern politics. Why has Georgia now become a battleground state? There are really two reasons. One is Stacey Abrams, because she realized there was a big black electorate out there, you could do a better job of mobilizing. The second factor is the Georgia economy has changed. The Georgia society has changed. People, for a whole variety of reasons, economic and social changes, have changed the very nature of the state of Georgia. So, its history as a state, its culture as a state, the whole process of population movement, which is really based on the preferences of individuals-

Social choices of individuals is what changes the composition of the states. Again, that's the reason for saying that there's some kind of important correlation between having a state-based system of presidential elections and maintaining federalism. That just strikes me as a false equation.

Larry Bernstein:

That's so funny, because I think of that as the exact opposite, Jack. Why is the fact that Georgia, which has I'll call it a new population because of wild swings in immigration, given a chance to reconstitute itself into a purple state?

In 1960, JFK won Georgia by like 30%. Nixon got like 25. And then it became a Republican state probably beginning of 1980, after Carter had won the state. He probably won it in '80 as well. So it moves around. It has a massive African-American immigration from my home state of Illinois, has moved to Atlanta which is a new modern black metropolis, not Chicago anymore. Why is that problematic at all or run counter to states reconstituting them-

Jack Rakove:

No no, I'm not saying it's all bad, it's just a way of illustrating what are the real dynamics of how the president... of how our electoral system works. Again, I'm trying to get at this idea... I mean, it seems, I think if I understand Robert's arguments correctly, that he really is trying to emphasize the federalism values that the presidential election system has. And I think he's exaggerating and even really distorting what those values actually are.

But the other thing I'm trying to say is that... and this, again, I think this is a Madisonian position as well, is that there's no way to say what the interest of the state is until you actually aggregate the preferences of its citizens. And the problem with battleground states is what makes them battleground states is precisely because they're closely divided, meaning the citizens of the states themselves don't really agree as to what their core interests are. That's what makes them battleground states, it's their disagreement, not their sense of cohesion is a state.

Robert Hardaway:

If I can add two points about the battleground States, just two quick points. One is that it changes over time. What becomes a battleground state changes based on demographics. And that's one reason that like in 1979, Vernon Jordan on behalf of the African-Americans in his constituency was opposed to abolishing the electoral college. He agreed with JFK. And he made the point which basically swayed the whole Congress against this whole idea of adopting the Russian system. Quote, "Take away the electoral college and the importance of being black melts away, instead of being crucial for victory in major states, such as battleground states, instead become 10% of the electorate with reduced impact." So they realized that this push to abolish the electoral college, which comes every 10 years or so, when a particular party thinks that somehow they've gotten a raw end of the stick, even though there's really only been a divergence between a hypothetical popular vote and an electoral vote, an average of once a century, like it does in all the parliamentary democracies in the world, for example, in 1974 in England.

Because I think Jack and I agree on my main problem with the NPVIC, of course the compact clause is a huge... according to the multi-state tax commission Supreme Court decision, those kinds of compacts are okay when they're very benign, sort of sharing water rights and so on. But when you affect the national structure, it's not permissible. You would have to get the permission of Congress. And it's also based on the illusion that when you go into the voting booth, you vote for candidates. How do you account, like in the 1960 election, several states had unpledged electors? How do you translate popular votes for unpledged electors to votes for a particular candidate? Or how do you do it like in 2016 when three Colorado electors who were pledged to Hillary Clinton decided to vote for a Republican instead? How do you account the popular votes for those electors who violated their pledges? And then a third of the states, electors are not even required to vote for the person they're pledged to. There's just simply no way to do that.

And also, how can you have a recount when every state has a different trigger for having to recount? How can you have a national recount when only half the states participate in it? It just doesn't make any sense. And since any kind of scheme or cabal that's formed by the states can be... that any participant in it can withdraw at any time, that means that states could, once the legislature pass the control from Republicans or Democrats, the other party could withdraw from the cabal. And that means you'd have changing the goalposts on reelection. You have a different standard in every election. So I think Jack, do we agree that the NPVIC is not the way to go?

Jack Rakove:

Yeah, I definitely agree. The only way to accomplish the national popular vote is by article five amendment. And the problem is, as I think about it, what is the best way to strategize that very difficult goal?

Robert Hardaway:

Glad that we agree on that one.