

A Short History of Presidential Election Crises

(and how to prevent the next one)

Voting

Position

Alan
Hirsch

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A Short History of Presidential Election Crises

(and how to prevent the next one)

Alan Hirsch

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INTRODUCTION

While the Russian government engaged in covert operations in order to influence the 2016 United States presidential election, no evidence indicates any direct alteration of the vote tabulation—for example, converting votes for Hillary Clinton to votes for Donald Trump. But suppose someone does hack voting machines, and those efforts decide the outcome of the election. What mechanism in the Constitution enables us to reverse an illegitimate election?

You may be surprised to learn the answer: There is none. The U.S. Constitution provides no means for undoing an illegitimate presidential election. Article II sets forth procedures for electing the president, but does nothing to ensure the legitimacy of the outcome. In the more than two centuries since the Constitution was ratified, neither Congress nor the states have filled the void. Today, in the age of hacking, the continued failure to act would be stunningly shortsighted.

The problem transcends improper interference with an election. Outright cheating—the stuffing of ballot

boxes, dead people voting, hacking, and other species of fraud—is not the only way an election can go awry. Even in a relatively honest competition, circumstances may render it difficult to determine the actual winner. Just ask Al Gore. The monthlong chaos and convoluted litigation that ensued in Florida after the votes were tallied in 2000 reflected the absence of a reliable procedure for resolving a disputed election.

To some extent, the 2000 nightmare stemmed from a perverse alignment of the stars, a series of circumstances that will never be replicated. (Among other things, the election came down to the state that happened to be governed by the brother of one of the candidates.) But it would be a mistake to think that only a fluke can create a presidential election crisis. The year 2000 was the fourth time—along with 1800, 1824, and 1876—that a presidential election left the nation with no clear winner and no reliable process for determining one. Many other elections (1880, 1888, 1916, 1960, 1968, 1976, 2004, and 2016) were sufficiently close that a malfunction or misfeasance in a few states could have affected the outcome. All told, in *twelve* presidential elections, more than 20 percent of all such contests, the result was too close for comfort.

This is no accident. Rather, it stems from America's unusual method of picking a president. We often hear attacks on the Electoral College because of its undemocratic nature: Someone can become president despite receiving

millions fewer votes than his or her opponent. Equally troubling aspects of the Electoral College, however, have gone overlooked, including its capacity to produce cliff-hanger elections. In addition, the Electoral College may have been introduced to reinforce white supremacy.

Our flawed method of choosing a president calls to mind Charles Dudley Warner's quip about the weather: Everyone talks about it, but no one does anything about it. It is remarkable that, notwithstanding several crisis-ridden presidential elections, we have done little to remedy the underlying problems. In the aftermath of the first crisis election, in 1800, Congress did pass and the states then ratified the Twelfth Amendment to the Constitution, a partially successful effort to prevent a recurrence. The same cannot be said for the response to later disasters. No reforms followed the 1824 train wreck of an election. Fortunately, it took a half century before the nation experienced another dangerously uncertain presidential election. After the 1876 fiasco, in which the outcome was determined by a partisan commission and backroom dealing, we might have expected remedial action. Congress passed one relevant statute, but it was wholly inadequate. This time, though, the nation proved luckier. It took more than a century for another full-bore crisis. After the imbroglio in 2000, just as after the crisis-ridden elections of 1824 and 1876, little was done to prevent a recurrence.

That is not to say that our method of choosing

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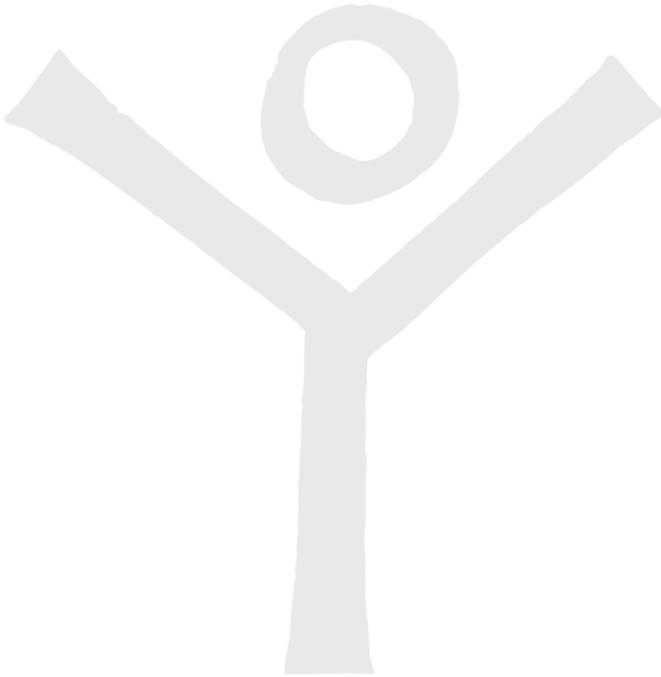
a president has remained the same. In the nation's early days, members of the Electoral College were selected by state legislatures. Today, virtually every state picks its electors through a statewide popular vote. The Twelfth Amendment enables the presidential and vice presidential candidates of each party to run as a unified ticket. The Fourteenth Amendment stipulates that any state that denies African Americans the vote will receive a reduced number of electoral votes, and the Twenty-Third Amendment gives the District of Columbia electoral votes. None of these changes, however, does anything to prevent the kinds of crises that have arisen on multiple occasions. We remain vulnerable to another crisis. Indeed, in the age of hacking, we are more vulnerable than ever.

This book is motivated by a combination of three circumstances. First, history teaches that we often experience razor-close presidential elections, which can and sometimes do produce crises. Second, our method of picking the president invites serious problems, and new circumstances have increased the risk. Third, we lack the means of resolving the next crisis, even though we have every reason to fear one.

The implicit premise of this book is the philosopher George Santayana's oft-cited maxim that the failure to learn from history assures repeating its mistakes. With that in mind, the first five chapters revisit the controversial elections of 1800, 1824, 1876, 2000, and 2016. This journey tees up Chapters Six and Seven, which propose

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constitutional amendments designed to prevent recurrences. Chapter Six advocates an amendment that would reduce the likelihood of elections producing a crisis, and Chapter Seven proposes an amendment that would establish a rational procedure for resolving the crises that do arise.



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ONE

EARLY ELECTIONS

Elections are the lifeblood of a republic, and the election of the president, the nation's most powerful public official, loomed largest for the Founding Fathers. The delegates who gathered in Philadelphia in 1787 for the Constitutional Convention discussed at length the process of electing the president—the issue came up on twenty-one different days and occasioned thirty separate votes.¹ *The Federalist*, the influential collection of essays promoting ratification of the Constitution, addresses presidential elections in eight different essays, one of which (*Federalist* 68, by Alexander Hamilton) deals with it exclusively. Yet, for all that attention, the Constitution produced a mode of election that amounted to an accident waiting to happen—and the wait wasn't long.

How could the framers get something so important so wrong? The answer, in a word, is parties. Or their absence. Political parties played little role in the framers' thinking, because they didn't yet exist. Before long, however, they sprang up and dominated the political

landscape. Absent parties, the Constitution's mechanism for electing the president made at least some sense. Each state, in proportion to its population, would get a certain number of "electors"—the only people to cast ballots for president (with each state to determine how its electors would be selected). Each elector would cast *two* votes for president. The person receiving a majority of the electoral votes would become president; the runner-up would become vice president. Why not? A next-in-command is needed in case the president dies or otherwise leaves office, and who better than the person the voters hold in second-highest esteem?

To be sure, such a system would make no sense today. In 2016, it could have resulted in President Trump and Vice President Clinton, a rather infelicitous partnership. But at the nation's creation, electors were not deciding between candidates from different parties after a competitive election. In fact, there were no candidates, no parties, and no competition. No one *ran* for president or even declared interest. The electors were simply expected to decide who would be the best man for the job. The second best person—the one receiving the second-highest number of votes—would become vice president. In the event no one received a majority of the electoral votes, the House of Representatives would choose the president.

This system worked reasonably well for the nation's first two elections. In 1788, the sixty-nine electors unanimously voted in George Washington; thirty-four of the

sixty-nine tapped John Adams with their other vote, easily surpassing the total (nine) of the third-place finisher, John Jay. It had always been assumed that the first president would be Washington, the Revolutionary War hero who presided over the Constitutional Convention. To no one's surprise, the second slot fell to Adams, the most important nonmilitary figure in the American Revolution. With the notable exception of the prickly Adams himself, who expressed bitterness that so many electors declined to support him, virtually everyone approved the result. The nation thus began with President Washington and Vice President Adams, a talented and public-spirited duo. They were re-elected in 1792, Washington again unanimously and Adams this time receiving the votes of seventy-seven of the 132 electors.

The broadly approved outcome of the first two elections masked two potential problems. First, what if all the electors had cast one ballot each for Washington and Adams? Under that plausible scenario, there would have been a tie for the presidency, throwing the election to the House. Foreseeing this possibility—or, worse, a few quirky electors omitting Washington, and Adams ending up president—Alexander Hamilton lobbied some electors not to vote for Adams, so as to ensure Washington's election to the top spot. But apart from Hamilton, who privately noted this “defect in the Constitution,”²² few worried about a tie, perhaps because such an occurrence would have been easily resolved: The House would have

elected Washington president and Adams vice president. Not even Adams would have expected otherwise or protested the result.

So too, no one raised the risk of a second troubling scenario: What if the men to finish first and second were adversaries, leaving the president saddled with an antagonistic “partner” in office? (Adams was actually the rare Founder not enamored of Washington, but for the most part he kept his misgivings to himself.) But this problem, too, seems magnified through the prism of political parties. Absent such parties, the antagonism between president and vice president would be personal only, a circumstance that could be transcended through maturity and good will.

Thus, if the original method of selecting the president and vice president created the seeds of crisis because of a potential tie or a schizophrenic “team,” neither problem seemed likely to arise. But both would before long.

By the time Washington stepped down after two terms, political parties were clearly established. Adams and Hamilton led the incumbent party, the Federalists; Thomas Jefferson and James Madison led the opposition, the Democratic-Republicans (or Republicans for short). The bitter divide between these parties produced the first contested presidential election, in 1796. While it remained the case that no one formally declared their candidacy or campaigned openly, everyone understood Adams and Jefferson to be the respective choices of the Federalists and Republicans. South Carolina's Thomas

Pinckney served as Adams's de facto running mate, while Aaron Burr was Jefferson's. Such designations were unofficial, and the voting mechanism remained the same: each elector would cast two votes for president (none for vice president) and the second-place finisher would become vice president.

Adams prevailed in a tight election, receiving seventy-one electoral votes to Jefferson's sixty-eight. Some scheming produced ticket-splitting, such that Pinckney received only fifty-nine votes and Burr just thirty. The result was that, while Adams won the presidency, Jefferson, rather than Adams's running mate Pinckney, was elected vice president. The Adams-Jefferson administration consisted of a president and vice president from different parties. And though they had been co-revolutionaries and close friends, Adams and Jefferson differed markedly in their political philosophies. Indeed, ten months prior to the election, in a letter to his wife, Abigail, Adams prophesied that he and Jefferson as president/vice president (in either order) would produce a "dangerous crisis in public affairs" because the two were in "opposite boxes."³

For the first time, the Constitution's mechanism for electing the president and vice president had proven problematic, producing an administration potentially at war with itself. "The Lion & the Lamb are to lie down together," observed Hamilton, who detested both lion and lamb (Adams and Jefferson). "Sceptics like me quietly look forward to the event—willing to hope but not prepared to believe."⁴

Some Federalists were more pessimistic and looked to prevent a recurrence of the lion/lamb problem that resulted from electors voting only for president. They proposed constitutional amendments that would require electors to vote separately for president and vice president, which would actually make it easier to elect a united administration. The proposals went nowhere, but the concern that triggered them proved justified: Over the next four years, Vice President Jefferson opposed (with various degrees of openness) many of the policies of President Adams.⁵

The resistance of his own vice president proved a headache for Adams, but not an existential threat to the nation. The Adams-Jefferson intra-administration discord paled in comparison to the crisis created by the next presidential election, in 1800. In that rematch between Adams and Jefferson, the Constitution's flawed process produced the other potentially catastrophic scenario that the framers had inadvertently made likely: a tie. Not a tie between the parties' respective presidential candidates, but rather a tie between one of them (Jefferson) and his running mate (Burr).

As in 1796, it was understood that Jefferson was the presidential candidate and Burr his junior partner, but there remained no mechanism for electors to distinguish between their two choices. Rather, as before, they cast two votes for president (and none for vice president). In 1796, many Republican electors had voted for Jefferson but not Burr. That changed in 1800, because Republicans

learned from the Federalists' mistake. Recall that in 1796 twelve Federalist electors did not use their second vote on Adams's running mate Pinckney, allowing Jefferson to sneak in to the vice presidency. In 1800, every Republican elector cast one vote for Jefferson and one for Burr, giving them seventy-three electoral votes each. Adams received sixty-five, and his unofficial running mate, Charles Pinckney (cousin of his previous running mate, Thomas), sixty-four. One Federalist elector was smart enough to vote for someone other than Pinckney and thus avert a tie in the event the Federalists won. There was talk of a few Republican electors doing the same. However, because of concern that too many electors would do so, thereby allowing Adams to secure the second spot, none did. Republicans *over-learned* the lesson of 1796. Professor Akhil Amar succinctly captures the result: "Even though almost all Republican electors had in their minds voted for Jefferson first and Burr second, on the formal paper ballots these two candidates emerged as equals."⁶

Recall our speculation that a tie between Washington and Adams would have been unproblematic: The House of Representatives would have elected Washington president without much fuss. Ideally, the Jefferson-Burr tie would have produced a similarly uncontroversial result. After all, no one doubted that Jefferson was the top of the ticket, the man the Republican electors wished to make president.

But the combination of two circumstances prevented the easy resolution: 1) Aaron Burr was a conniver who

wanted to be president; and 2) Federalists wanted anyone but Jefferson as president. They calculated that the notoriously nonideological Burr would work with them if he were indebted to them. Burr did nothing to discourage such calculations, declining to renounce interest in the top spot.

The Constitution dictates that, when a presidential election is thrown to the House, the voting goes state by state, with each state receiving one vote, and a majority of the states needed for victory. On the first ballot, eight states tapped Jefferson and six chose Burr, while Vermont and Maryland deadlocked. (Every Federalist representative voted for Burr.) That left Jefferson one short of the nine states needed for victory. One week and thirty-five ballots later, the stalemate remained—despite extensive backroom maneuvering, including efforts by the Federalists to extract promises from Jefferson in exchange for their votes. Alexander Hamilton, a leading Federalist and enemy of both Jefferson and Burr, let it be known that he regarded Jefferson as the lesser of the two evils. Even so, as the March 4 date for the president's inauguration rapidly approached, there was a real prospect of the nation without a leader.

Before the thirty-sixth ballot, however, James Bayard, Delaware's sole representative, announced that he would switch from Burr to Jefferson to end the crisis. Bayard ended up abstaining instead, leaving Delaware in neither candidate's column. However, a few Federalist

House members from Maryland and Vermont who previously supported Burr followed Bayard's lead and abstained. That gave Jefferson those states, and ten states total, breaking the deadlock and averting disaster.

The election of 1800 belied Alexander Hamilton's confident claim that the Constitution set forth a method of selecting the president that safeguarded against "tumult and disorder."⁷ But the Founders knew a constitutional crisis when they saw one, and looked to amend the Constitution to prevent a recurrence. The Twelfth Amendment was proposed in December 1803 and ratified in June 1804, in time to govern the 1804 election. The amendment is roughly 370 words (a page and a half, typed), much of it confusing or peripheral. But it did the heavy lifting in a few sentences: "[The electors] shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President. . . . The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed. . . . The person having the greatest number of votes as Vice-President, shall be the Vice-President."

By separating the votes for president and vice president, the amendment promised to avert repeats of the untoward scenarios from the two previous elections. It would now be possible for a party's presidential and vice presidential nominees effectively to run as a ticket, without fear of them ending up tied for president, à la 1800,

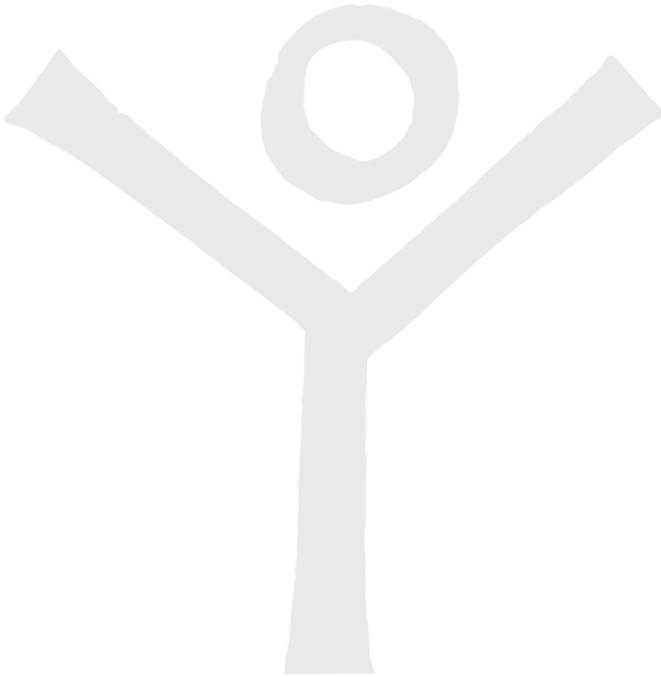
and without someone from the opposing party sneaking in to become vice president, à la 1796.

It worked as planned in 1804. The 162 electors who voted for Jefferson for president cast a separate ballot for his running mate, Governor George Clinton, for vice president. Unlike in 1800, when Burr received presidential votes along with Jefferson, Clinton received no presidential votes: no inadvertent tie, no crisis in the House. And unlike 1796, when Jefferson and Adams were forced together into a schizophrenic administration, now Jefferson and his vice president served harmoniously.

Unfortunately, while the Twelfth Amendment prevented repeats of the 1796 and 1800 fiascos, its drafters failed to anticipate other ways in which a presidential election might go off the rails. Just twenty years later, the election of 1824 produced another constitutional crisis. The problem stemmed from the provision that, if no candidate receives a majority of the electoral votes, the president shall be determined by the House of Representatives. To be sure, that provision also contributed to the crisis in 1800, but for a different reason: In 1824, the failure of any candidate to receive a majority resulted not from a tie but rather from a multicandidate field—four candidates with significant support.

When it comes to the scenario in which no candidate receives a majority of the electoral votes, the Twelfth Amendment simply imported the language of the original Constitution (apart from one tweak, noted next chapter). Accordingly, the possibility of a deadlocked House, and

all the mischief and chicanery that could bring, remained. In 1824, the nation paid the price for that provision: When none of the four candidates received a majority of electoral votes, the election went to the House, where it was eventually resolved in a fashion so dangerous that it risked fomenting rebellion.



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TWO ELECTION OF 1824

James Monroe served as president from 1816 to 1824, a period misleadingly termed the “Era of Good Feeling.” It was actually a time of considerable national contentiousness over, among other things, the treatment of Native Americans, slavery, a national bank, and tariffs. Despite the fractiousness, Monroe was easily elected and re-elected president. In 1816, he received 183 out of the 217 electoral votes. More impressive, in 1820 he received all but one of the 232 electoral votes. (For some reason, one elector opted for John Quincy Adams, Monroe’s secretary of state.)

Monroe’s electoral dominance stemmed from the absence of significant opposition. The Federalists, considerably weakened during the Jefferson administration, slowly withered away as a national force following the War of 1812. Any “good feeling” in the period thereafter resulted from the absence of competing parties. Monroe’s near-unanimous victory in 1820 echoed George Washington’s, but with a major difference. When Washington

was elected unanimously in 1788, there were no parties. Now there was *one*: the Republicans. Hence Monroe's coronation.

But politics abhors a vacuum. With Monroe poised to follow the precedent established by Washington and step down after his second term, every prominent politician could see himself in the White House. The year 1824 promised to be the opposite of 1820: the one-man "race" replaced by a multicandidate scrum. The names of at least seventeen potential candidates were bandied about.

No matter who prevailed, the election would witness a generational passing of the torch. Unlike his would-be successors, Monroe was a Founding Father—he fought in the Revolutionary War, served in the Continental Congress, was elected to the U.S. Senate in 1790, and was appointed secretary of state by President James Madison. As a matter of political and historical logic, it made sense for him to pass the baton to his secretary of state, John Quincy Adams. The position of secretary of state had become the standard stepping stone—Jefferson, Madison, and Monroe had all served in that position before becoming president. Moreover, Adams was literally a second-generation Founder—the oldest son of America's first vice president and second president, John Adams.

By virtue of upbringing, experience, and intellect, John Quincy Adams was probably the most qualified person ever to seek the presidency. As a toddler, he accompanied his father around Europe during the latter's diplomatic missions. A standout student at Harvard who built

a promising legal practice, Adams was just twenty-seven when George Washington appointed him minister to Prussia in 1794. In 1803, he was chosen U.S. senator from Massachusetts. Young Adams shared his father's disdain for political parties, including their own Federalist Party. His mutual antipathy with leading Federalists led to his resignation from the Senate in 1808. He then briefly became a Harvard professor, but left the post when named minister to Russia by President Madison in 1809. He stayed in that position for five years, before Madison appointed him to the commission that negotiated the Treaty of Ghent to end the War of 1812. Adams was subsequently appointed secretary of state by President Monroe in 1817, and formulated the Monroe Doctrine opposing European colonialism in the Americas.

If Adams's credentials were unimpeachable, the same could not be said for his personality and temperament. Even friends found him aloof; he made little effort to conceal his sense of superiority. Adams also inherited his father's thin skin. As the presidential pre-campaign heated up in the winter of 1822, he complained that "no man in America has made his way through showers of ribaldry and invective . . . more frequent and various than I have breasted."⁸

This personal prickliness dovetailed with a political problem: He was virtually a man without a party. The remnants of the Federalists considered him an apostate. He effectively switched to the Republicans (now the only national party), but they regarded him as a

Johnny-come-lately. Despite his impeccable qualifications, in the early stages of the 1824 election, Adams was not considered the front-runner.

That designation belonged to Monroe's secretary of the treasury, William Crawford, a native-born Virginian (though his parents moved to South Carolina and later Georgia when he was young). Crawford's election as president would have continued the Virginia dynasty—for thirty-one of the nation's first thirty-five years, a Virginian occupied the president's seat. He shared not only George Washington's home state, but also his imposing physique, standing six foot three and weighing more than two hundred pounds. A states-rights Republican, the hot-tempered Crawford participated in two duels, killing a man in 1802 and suffering a severe wound in 1806. But that hardly distinguished him in this field. Three of the five major candidates (Andrew Jackson and Henry Clay as well as Crawford) had fought in duels. Remarkably, at the time duels were widely considered an acceptable means of dispute resolution.

The less bloody part of Crawford's impressive résumé included a term in the U.S. Senate followed by service in several prominent positions in the Madison administration: minister to France during the War of 1812, secretary of war, and secretary of the treasury. Supporters urged Crawford to pursue the presidency in 1816, but he deferred to Monroe—and nevertheless came in a close second for the Republican Party's nomination. Monroe kept Crawford on at the Department of the Treasury,

where he “sat serenely . . . awaiting his turn at the Presidency with every assurance of success, only to be suddenly surprised by the appearance in the field of a swarm of candidates.”⁹

One of those candidates, another perceived powerhouse and member of Monroe’s cabinet, was John C. Calhoun. The South Carolinian prodigy went north for education at the finest schools—Yale and Judge Tapping Reeve’s famous Litchfield Law School in Connecticut—before returning to South Carolina and establishing a successful law practice. Calhoun was elected to the state legislature at the age of twenty-six in 1808 and to the U.S. House two years later. The anti-British war hawk achieved prominence by pushing for the War of 1812. He ran unopposed for Congress in 1812 and 1814 and was appointed secretary of war by Monroe in 1817. In December 1821, Calhoun formally accepted the invitation of several congressmen to announce his interest in the presidency, becoming the first in the field to declare.

Although he would later acquire notoriety for advocating for the South’s secession from the Union, in the early 1820s Calhoun preached no such heresies. On the contrary, Adams pronounced him “above all sectional and factious prejudices more than any other statesman of the Union with whom I have ever acted.”¹⁰ In Congress, Calhoun had been a stalwart supporter of the second national bank, and as secretary of war, he strengthened the U.S. Army. In 1824, Calhoun was a distinctly national, rather than regional, candidate.

Adams, Crawford, and Calhoun, all prominent members of Monroe's cabinet, were joined as presidential candidates by Henry Clay and Andrew Jackson. Like Crawford, Clay was born in Virginia but raised elsewhere in the South (in his case, Kentucky). Like Adams and Calhoun, he became an accomplished lawyer before turning to politics. Clay was elected to the Kentucky state legislature in 1803, appointed to the U.S. Senate in 1806 and 1809 to fill unexpired terms, then elected to the House in 1810 and immediately made Speaker. Like Calhoun, he pushed for U.S. entry into the War of 1812, and like Adams, he accepted President Madison's appointment to the commission that negotiated the Treaty of Ghent. But Clay rebuffed Madison's effort to join his cabinet, remaining until 1820 in the House, where he crafted the Missouri Compromise of 1820 and established himself as a leading critic of the Monroe administration.

Financial problems led Clay to resign his seat rather than seek re-election in 1820; he took a more lucrative position as attorney for the Bank of the U.S. in the West. But he again ran for the House in 1822, was elected, and was again chosen Speaker. As cheerful as Adams was dour, Clay was a charismatic orator and powerhouse Speaker of the House. He managed to be both a voice for the West and a militant nationalist, a lifelong advocate of an economic program termed the "American System," which combined protective tariffs, transportation development, and a national bank.

General Andrew Jackson, the sole veteran in the

field of candidates, was a veritable war hero. Eventually it would become commonplace for soldiers to use their experience as a stepping stone to politics (William Henry Harrison, Zachary Taylor, Ulysses S. Grant, Rutherford B. Hayes, Theodore Roosevelt, Dwight D. Eisenhower, and John F. Kennedy all rode their military exploits to the White House), but Jackson was the first presidential candidate since George Washington with a background on the battlefield rather than traditional political experience. Jackson's warrior days began young, when he skirmished against the British as a thirteen-year-old boy. He was captured and allegedly wounded when he refused to clean a British officer's boots. Such a beginning fits with Jackson's defiant personality. His father died before he was born, and his mother while he was a teen. The unrestrained orphan lived large and dangerously.

Trained as an attorney, as were all the major presidential candidates, Jackson became a successful prosecutor in his home state of Tennessee. He was elected to the U.S. House of Representatives in 1796, and shortly thereafter selected to fill a Senate vacancy (when his ally William Blount was expelled for conspiring with Great Britain). Jackson, who disliked the Senate, resigned and returned home in 1798. He was almost immediately elected judge on the state superior court and in 1802 was appointed a major-general in the Tennessee militia. Jackson retired as a judge in 1803, but remained a militia leader, leading to his appointment as a major-general in the U.S. Army. His victory over the British in the Battle of New Orleans

in January 1815, the last major battle of the War of 1812, furthered his reputation as a warrior. In 1823, a group of his supporters—the so-called “Nashville Junto”—helped get him elected to the U.S. Senate, which they saw as his path to the presidency. Jackson was a slaveholder and unabashed white supremacist, and his military exploits included tremendous violence against Native Americans, but to the white male electorate in 1824, these were not necessarily disadvantages.

The quintet of top-shelf candidates—Adams, Crawford, Calhoun, Clay, and Jackson—ensured the breaking of at least one presidential streak. By 1824, the White House had been occupied by Virginians for twenty-four consecutive years, and the last three presidents had previously served as secretary of state. Adams, the only present or former secretary of state in contention, hailed from Massachusetts.

Each of the five candidates had a plausible path to the presidency. Calhoun, Crawford, and Adams, major figures in the popular Monroe administration, could each be seen as a logical successor. (Monroe maintained an official neutrality, but was suspected of pulling strings behind the scenes to help Calhoun.) Clay, for his part, needed only to finish in the top three, provided that no one receive a majority of the electoral votes. The election would then be thrown to the House of Representatives, where he, the Speaker, would be the overwhelming favorite. In his diary, John Quincy Adams noted rumors that Clay had come out of retirement to reclaim his position

as Speaker precisely as “a step for his own promotion to the Presidency on the very probable contingency that the election would fall to the House of Representatives.”¹¹ Meanwhile, the war hero Jackson enjoyed the greatest popularity with ordinary Americans, and benefited from the kind of grass-roots campaign that was at the time uncommon in America.

In the latter part of the twentieth century, there would be much reference to the “endless campaign” or “perpetual campaign” for president. As it happens, the phenomenon of the next presidential election starting virtually as soon as the previous one concludes goes way back. In January 1822, with Monroe’s second term less than a year old, the political writer Hezekiah Niles lamented the excessive time spent by politicians and others “in electioneering for the next President of the United States.”¹² A few months later, another journalist noted that the “electioneering begins to wax hot.”¹³

The election of 1824 was, in a sense, the first modern presidential election, replete with campaign biographies, straw polls, and other campaign accoutrements that would eventually become commonplace. Many state legislatures held conventions that drafted resolutions endorsing a candidate. On February 14, 1824, the U.S. Congress held its quadrennial “caucus” to anoint its own candidate. This had become the traditional means for Republicans to select their nominee, but in 1824 the caucus came under heavy criticism for bypassing the people at large. As a result, all but Crawford’s supporters (and even some of

them) boycotted the caucus. Crawford received sixty-two of the sixty-six votes cast, but this Valentine's Day massacre may actually have harmed his candidacy, since Crawford was tarred as the beneficiary of an elitist cabal. A Jackson supporter from Pennsylvania expressed a widespread sentiment when he attacked the caucus as a game played by "the friends of a single individual, held in utter disregard or defiance of the known wishes of the Democratic Party in Congress and throughout the Union."¹⁴

Five months earlier, in September 1823, Crawford had suffered a greater blow—a stroke that left him paralyzed and blind. However, he gradually recovered mobility and vision in the months ahead without the public ever learning about the seriousness of his condition, and he remained in the race until the end. (He survived for a full decade after the election.) If the truth about Crawford's extreme condition failed to derail his candidacy, the inverse occurred with Clay: False rumors of ill health fueled speculation that he had dropped out of the race, and thus significantly impeded his candidacy. Clay would later blame his defeat on "fabrications of tales of my withdrawal."¹⁵

Despite their struggles, Crawford and Clay survived as major candidates—unlike Calhoun. When some of his strongest supporters defected to Jackson in early 1824, Calhoun could see the writing on the wall and made known his intention to seek the vice presidency instead of the top spot.

With Calhoun out and Clay and Crawford suffering

serious setbacks, Jackson and Adams pulled ahead in the final months. When the votes were counted on December 6, 1824, Jackson received 152,901, or 41 percent of all votes cast; Adams received 114,023 (31 percent); Clay 47,217 (13 percent); and Crawford 46,979 (13 percent). The Electoral College vote tracked the popular vote reasonably closely, though Clay and Crawford swapped positions. Jackson received the votes of ninety-nine electors Adams eighty-four, Crawford forty-one, and Clay thirty-seven.

Jackson fell thirty-two electoral votes short of a majority, and thus the election was thrown to the House of Representatives. Under the Twelfth Amendment to the Constitution, the House would choose among the top three candidates. Under the original Constitution, it had been the top five, and that tweak changed history. Although Clay received more popular votes than Crawford, he received four fewer electoral votes, knocking him out of consideration and thwarting his strategy of prevailing in the House. The House would choose among Jackson, Adams, and Crawford, with Clay relegated to the role of power broker.

The dangers of such a “contingent” election in the House, in which each state gets one vote, had been prophesied in 1823 by Thomas Jefferson. In a letter to a friend, written just 14 months before the 1824 election, the aged Jefferson said that he had long regarded the process of the House selecting the president if no one received a majority of electoral votes “the most dangerous blot on

our Constitution, and one which some unlucky chance will someday hit.”¹⁶ Jefferson meant hit *again*. No one knew better than he that the House selecting the President, with all the chicanery that would invite, had already occurred—in 1800, when, despite everyone knowing that the electors intended for Jefferson (and not Aaron Burr) to be President, it took thirty-six ballots and some backroom dealing to produce that result. Now, just twenty-four years later, the nation again faced the prospect of a covert post-election campaign.

While the presidential vote produced potential chaos, the vice presidential tally proved smooth and painless. With a de facto one-party system in effect, there were no president–vice president tickets in 1824. The electors, casting their ballots for vice president without any link to the presidency, overwhelmingly chose Calhoun. He received 182 electoral votes, and no one else more than thirty. Oddly, Calhoun would be re-elected vice president in 1828 even as a new man was elected president. Calhoun was one of just two men in American history to serve as vice president under two presidents. (George Clinton served under Jefferson and Madison.) Given his controversial views and outsize personality, Calhoun does not seem like the vice-presidential type, but history cast him in that role.

On February 9, 1825, the House met to select the president, just as it had done during the election of 1800. But now, with the country more populated, the structural oddity of the process by which the House made its choice

was more apparent. Once again, in keeping with the Constitution, each state received one vote. Accordingly, the single congressman from tiny Delaware wielded as much power as New York's thirty-four representatives. But a single congressman from Kentucky was widely presumed to have the power to determine the next president. Now that he was out of the running, Clay could sway the House to elect Jackson, Adams, or Crawford. Clay was believed to control the House members representing the four states that he had won in November, and perhaps to have influence over others as well. As one Adams supporter observed, either ruefully or hopefully, it was "very much in Clay's power to make the President."¹⁷

Surrogates of the three remaining candidates aggressively courted Clay. Hypocrisy flourished, as men who had attacked the Speaker for months suddenly discovered his virtues. Clay professed to find the notion that he controlled the House strings "very amusing" and quipped that "the friends of all the three gentlemen are so very courteous, and affectionate, that I sometimes almost wish that it was in my power to accommodate each of them."¹⁸ But Clay scoffed at the prospect of selling his services in exchange for a cabinet position: "I would not cross Pennsylvania Avenue to be in any office under any Administration which lies before us."¹⁹ So he said on December 22, 1824. Maybe he dissembled, maybe he later changed his mind.

Clay never seriously considered supporting Crawford, if only because of the latter's ill health. From the

beginning Clay confided to friends that, if he indeed were the power broker, Adams or Jackson would be the beneficiary. He regarded this choice as the lesser of two evils. "Most probably it will be either Genl. Jackson or Mr. Adams," Clay wrote a friend on December 13. "And what an alternative that is!"²⁰

Jackson and Clay never got along. By contrast, Adams and Clay had enjoyed a cordial relationship. They had served together on the commission that negotiated the Treaty of Ghent in 1815, and later, when Clay was Speaker of the House and Adams secretary of state, they worked together on various affairs of state and occasionally dined together. But early in 1822 their relationship soured over a pamphlet written by a Clay supporter who served with both men on the Ghent commission. The pamphlet alleged that Adams sought favorable terms for Great Britain in those negotiations in exchange for benefits to New England fisheries. Adams believed Clay responsible for the pamphlet; Clay angrily denied the charge.

Clay considered Jackson a crude warrior unschooled in legislation and negotiation—Clay's life work. The only case to be made for supporting Jackson was that he was the closest thing to the people's choice, having received the most popular and electoral votes. Such consideration could not overcome Clay's wholesale contempt for Jackson, whose election, Clay surmised, would "give to the Military Spirit a Stimulus and a confidence that might lead to the most pernicious results."²¹

Adams had Clay's respect but not affection, which is

pretty much how everyone felt about Adams. From the time of the November election until the House vote in February, Clay hinted to friends that he preferred Adams to Jackson. Sometimes he did more than hint. For example, in a letter to a friend dated December 28, Clay stated that “I have no hesitation in saying that I have long since decided in favor of Mr. Adams.”²² However, he did not make that preference public.

As the date for the House to decide grew nearer, Clay dropped the pretense that he lacked the power to determine the winner or to benefit personally from doing so. In a letter dated January 23, 1825, he stated that “my friends have probably the power of controlling the ultimate result” and, as for the prospect of him securing a cabinet position, “I believe that, if I choose to go into it, I can enter in *any* situation that I may please.”²³ Clay’s dealmaking was a source of constant speculation. Congressman James Buchanan of Pennsylvania, a Jackson supporter and future U.S. president, allegedly suggested to Jackson that he promise to appoint Clay secretary of state in return for his support. Jackson angrily nixed the idea.

Rumors also circulated about a Crawford-Jackson bargain. The idea seemed improbable, given the long-standing animosity between the two that had led Jackson to say, in December 1821, that “I would support the Devil first.”²⁴ But a sighting of their wives together ignited conjecture that Jackson and Crawford were in cahoots.

Speculation about Adams and Clay seemed better justified. On January 8, 1825, Clay wrote a friend that he

supported Adams, albeit “with great regret.”²⁵ However, he would not tell anyone how to vote and would certainly seek no personal benefit in exchange for his support; his friends in the House should “throw me out of their consideration” and “be guided solely by the public good.”²⁶ The next day, Clay met with Adams, who described their encounter as follows:

Mr. Clay came at six, and spent the evening with me in long conversation explanatory of the past and prospective of the future. He said that the time was drawing near when the choice must be made in the House of Representatives of a President . . . [and] that he had been much urged and solicited with regard to the part in the transaction that he should take. . . . The time has now come at which he might be explicit in his communication with me. . . . In the question to come before the House between General Jackson, Mr. Crawford, and myself, he had no hesitation in saying that his preference would be for me.²⁷

Adams suggested that Clay had in fact done some bargaining, but not of the improper sort: “He wished me, as far as I might think proper, to satisfy him with regard to some principles of great public importance, but without any personal considerations for himself.”²⁸

From the beginning, there was widespread suspicion

to the contrary. When a majority of the Ohio and Kentucky delegations (states Clay had carried in November) announced their support for Adams on January 24, an anonymous member of Congress charged that Adams bought Clay's support with the promise to make him secretary of state. Clay demanded that his unnamed colleague come forward. Pennsylvania congressman George Kremner did so, and promised to prove his claim. But when a committee was appointed to investigate the charges, Kremner refused to appear before it.

In a letter to his friend Francis T. Brooke on January 27, Clay reiterated both his bottom-line position and the basis for it: "I have interrogated my conscience as to what I ought to do, and that faithful guide tells me that I ought to vote for Mr. Adams." Far from acknowledging any benefit to himself, Clay cast himself as a martyr. He would catch hell for his choice, but "what is a public man worth if he will not expose himself, on fit occasions, for the good of his country?"²⁹ According to Adams's diary, Clay visited Adams on January 29 and "sat with me for a couple of hours, discussing all the prospects and probabilities of the Presidential election."³⁰ Adams offered no elaboration, but that same day, Clay reiterated his choice of Adams in a letter to Francis Preston Blair. His assessment of Adams might qualify as damning with faint praise if there were even a whiff of praise: "I should never have selected [him] if at liberty to draw from the whole mass of our citizens for a President. But there is no danger in his elevation."³¹

In Adams's diary entry for the next day, he observed that "the intriguing for votes is excessive, and the means adopted to obtain them desperate."³² The nation's capital, if not the nation itself, was understandably obsessed with what Adams circumspectly referred to as "the topic which absorbs all others."³³ He observed that "the flood of visitors is unceasing" and "the excitement of electioneering is kindling into fury."³⁴ Fury was the right word. Adams claimed to have received an anonymous letter "threatening organized opposition and civil war if Jackson is not chosen."³⁵

While Adams always denied that Clay asked for personal benefit in exchange for his support, he did acknowledge such efforts by others on Clay's behalf. In a diary entry on December 17, 1824, he noted the claim by Clay's friend and confidant, Kentucky congressman Robert Letcher, that "Clay would willingly support me if he could thereby serve himself, and the substance of his *meaning* was, that if Clay's friends could *know* that he would have a prominent share in the Administration, that might induce them to vote for me."³⁶ Adams claimed to give no such assurance, despite ongoing entreaties.

On the morning of January 21, 1825, for example, one congressman "spoke of himself as being entirely devoted to Mr. Clay, and of his hope that [Clay] would be a member of the next Administration," according to Adams's diary. Adams capily replied that "he would not expect me to enter upon details with regard to the formation of an Administration, but that if I should be elected

by the suffrages of the West I should naturally look to the West for much of the support that I should need.”³⁷

Clay likewise continually disavowed any hanky-panky between himself and Adams. In a typical letter, this one, dated February 4 and addressed to his friend Francis T. Brooke, Clay wrote that “if Mr. Adams is elected, I know not who will be in his cabinet; I know not whether I shall be offered a place in it or not.”³⁸ Their finesse in addressing the situation did nothing to quell concern that a deal between Adams and Clay would determine the election. In his diary entry for February 5, Adams acknowledged the view among some that “if I should be elected, it would only be by Clay’s corrupt coalition with me.”³⁹

On February 9, the House finally voted, and needed only one ballot. Thirteen states voted for Adams, seven for Jackson, and four for Crawford, making Adams the nation’s sixth president. All four of the states Clay had won in the Electoral College (Kentucky, Ohio, New York, and Missouri) went for Adams. In New York, Adams allegedly benefited from divine intervention as well as Clay’s. With the delegation split, the deciding ballot was cast by the wealthy philanthropist Stephen Van Rensselaer, generally considered a Crawford supporter. Van Rensselaer claimed that, as he was about to cast his ballot, he bent over in prayer. On the floor he spotted a ballot for Adams, and took that as a sign from above.

The next day, Adams expressed his intention to appoint Clay his secretary of state. The charge of a “corrupt bargain” between the two surfaced immediately, dogged

both men for the rest of their careers, and contributed to Adams's defeat at Jackson's hands in their rematch four years later. (In 1826, Clay fought a duel over such charges by John Randolph, a senator from Virginia. Though shots were fired, none struck.) Jackson himself unambiguously attributed his defeat in 1824 to an unsavory deal: "The Judas of the West has closed the contract and will receive the thirty pieces of silver. . . . Was there ever witnessed such a bare faced corruption in any country before?"⁴⁰

Was the charge fair? Perhaps not. Adams's diary showed Clay to be among the few men he esteemed. Long before the election reached the House, he observed that Clay's "talents were eminent; his claims from public service considerable."⁴¹ Curiously, as far back as November 30, 1822, two years before the election, Adams made reference to rumors of a deal with Clay whereby the latter would end up secretary of state. Adams dismissed the notion: "There was no understanding or concert between Mr. Clay and me on the subject, and never had been."⁴² That would be a claim Adams would repeat many times before and after the House vote in February 1825.

His exhaustive diary, however, says nothing about Clay's role in his victory and precious little about Clay's selection as secretary of state. In his entry for February 9, 1825, Adams recorded his victory in the House in uncharacteristically gushing fashion: "May the blessing of God rest upon the event of this day!"⁴³ Although he described the results as "completed, very unexpectedly, by a single

ballot,”⁴⁴ he made no reference to the fact that Clay’s allies in the House tipped the balance his way. In his entry for the next day, he mentions a visit by the secretary of the navy, Samuel Southard, and casually relates that “I told him I should offer the Department of State to Mr. Clay.”⁴⁵

There had been no prior discussion in the diary as to when or why he settled on Clay, their previous falling out, whether he had considered anyone else, or much of anything related to this choice for a crucial post. The absence of such rumination is especially noteworthy because Adams knew that the appointment of Clay would be contentious. His diary entry for February 11 does note concerns that “if Mr. Clay should be appointed Secretary of State, a determined opposition to the Administration would be organized from the outset.”⁴⁶ Adams writes, “I am at least forewarned,”⁴⁷ but expresses no pause about picking Clay nor explanation for the absence of such pause. Later, in that same entry, he reports telling President Monroe that he would pick Clay “due to his talents and services to the Western section of the Union.”⁴⁸ That is the full extent of Adams’s explanation for the most significant pick of his administration, one that arguably doomed it.

On February 12, he officially offered Clay the secretary of state position, and the latter (according to Adams) “said he would take it into consideration, and answer me as soon as he should have time to consult his friends.”⁴⁹ Clay’s alleged reticence could suggest the absence of a deal between the two, or else Adams choosing to cover their tracks. In his diary entry for February 27, Adams

noted “stores of opinion against the appointment of Clay as secretary of state.”⁵⁰ Before accepting Adams’s offer, Clay acknowledged to others the sensitivity of the situation. In a letter to Francis T. Brooke, Clay noted that friends warned him that his becoming secretary of state “would be treated as conclusive evidence of the imputations which have been made against me.”⁵¹ That no more stopped him from accepting the offer than it stopped Adams from making it.

It was nearly suicidal for Adams to appoint Clay, and absent an agreement between them, there was no compelling reason for him to do so. In large part for that reason, most historians have concluded that Clay indeed swayed the House to make Adams president in exchange for his appointment as secretary of state—the traditional stepping stone to the presidency, an office Clay would never stop coveting. Ironically, becoming secretary of state may have doomed Clay’s larger aspirations. Even during his final bid for the presidency in 1844, Clay’s so-called “corrupt bargain” with Adams continually surfaced.

Clay always explained his decision to back Adams as stemming from Jackson’s lack of even minimal qualifications for the office. For example, in his letter to Francis Preston Blair dated January 29, 1825, Clay asserted the folly of selecting as president “a Military chieftain, merely because he has won a great victory. . . . I cannot believe that killing 2,500 Englishmen at N. Orleans qualifies for the various, difficult and complicated duties of the Chief

Magistracy.”⁵² In fact, Clay considered Jackson’s military exploits *disqualifying*. Noting that the chief characteristic of the statesman is “a devotion to civil liberty,” Clay wrote another friend that “I, therefore, say to you unequivocally, that I can not, consistently with my own principles, support a military man.”⁵³

The election of 1824 could be seen as a constitutional success story. Notwithstanding the electoral stalemate produced on Election Day, and the passions of the day, the process played out quickly and bloodlessly, producing a president in keeping with established procedures. However, there are several reasons to regard that process as severely flawed.

First, we ended up with a president who lacked popular support. Less than one-third of the voters nationwide chose Adams. Of course, the Electoral College creates an inherent risk of a candidate winning despite receiving fewer votes than another candidate. Rather than pick our president through a single election, we aggregate the results of winner-take-all elections in each state (with the exception of Maine and Nebraska, which award one electoral vote to the winner of the state’s congressional districts, as well as two to the statewide winner). Under this system, one can win the presidency despite receiving fewer votes than one’s opponent simply by winning a few large states with many electoral votes while losing other states by greater margins. Or, as in 1824, a candidate who receives the greatest number of popular votes *and*

electoral votes may fail to win a majority of the latter, sending the election to the House.

On five occasions in U.S. history—1824, 1876, 1888, 2000, and 2016—the candidate who received the most votes was not elected. The most extreme case was 1824. Samuel Tilden lost the nationwide popular vote by 3 percent in 1876; Benjamin Harrison by 1 percent in 1888; George W. Bush by half a percentage point in 2000; and Donald Trump by 2 percent in 2016. By contrast, Adams received 38,000 votes fewer than Jackson out of 360,000 cast, a 10 percent gap. In modern parlance, he lost by a landslide. Moreover, unlike the winners in those other four elections, Adams received fewer electoral votes *and* popular votes than his opponent. His elevation to the presidency seems anti-democratic by almost any definition.⁵⁴

Second, although things did play out reasonably swiftly and free of violence, the chance for chaos and popular upheaval loomed. Jackson supporters did not make good on their threat to revolt, but the very fact that such threats were made is sobering.

Third, the election in 1824 was decided by what many regarded as a “corrupt bargain.” The widespread suspicion undercut confidence in U.S. democracy. In the run-up to the House vote, Adams himself expressed concern that, if it were perceived that he prevailed because of a deal with Clay, “the people would be so disgusted with this that there would be a systematic and determined opposition from the beginning, so that the

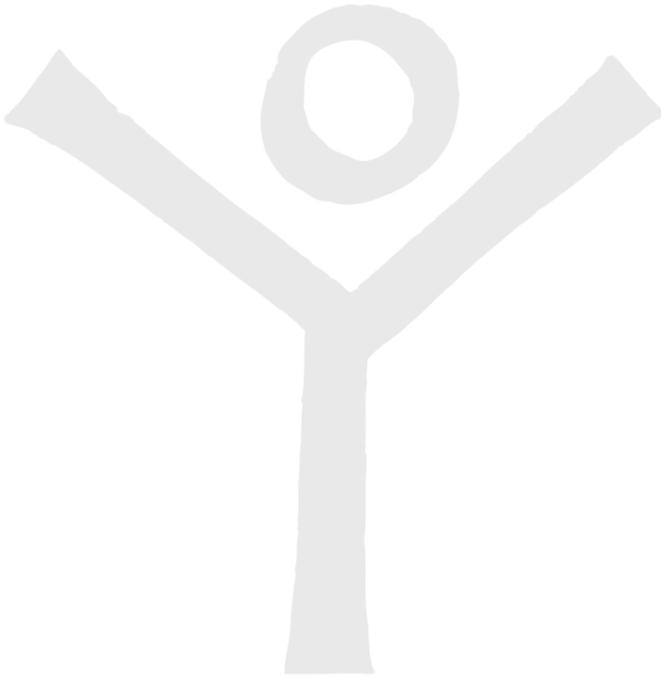
Administration could not get along.”⁵⁵ He proved prophetic. Adams received little cooperation from Jackson supporters in Congress and, in 1828, lost his rematch to Jackson decisively.

Assuming that Adams and Clay did strike a deal, was it in fact corrupt? On the one hand, for a politician to support a candidate for office in expectation (or even an explicit promise) of a position in his administration could be seen as time-honored horse trading. However, the notion that someone achieves the presidency because another candidate offers his support to the highest bidder seems obviously problematic. In the case of 1824, the easiest resolution of this dilemma is to emphasize the covert nature of the deal (if there was one) between Adams and Clay. Even if it was fine for the two to strike a bargain, the American people deserved to know about it. Ditto the Senate that had to determine whether to confirm Clay as secretary of state.

A full consideration of the propriety of the alleged actions of Clay and Adams is beyond the scope of this book. What matters for our purposes is the judgment rendered by the American people, and the fact that the arrangement the people judged harshly came about in large part because of the way we elect a president.

Conversely, Adams’s loss to Jackson in 1828 could be seen as a cleansing election, an antidote to the toxic backroom dealing that put Adams in office in the first place. So too, the corrupt bargain would have been partially thwarted had the Senate chosen not to confirm

Clay as secretary of state. Thus, one could look at the election of 1824 and give the Constitution one or two cheers. While it failed to prevent the crisis, it contained corrective mechanisms that could and to some extent did limit the damage. But should we settle for a system that predictably produces crises?



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