

Representational Issues and Electoral College Reform:
A Working Paper on the Implications of the
2000 Presidential Election

by

Glenn W. Rainey, Jr. and Jane Gurganus Rainey
Eastern Kentucky University

A Working Paper
Prepared for presentation at the Annual Meeting
of the Kentucky Political Science Association

Northern Kentucky University

March 2-3, 2001

(Includes correction of data on election of 1888 in Table 1)

INTRODUCTION

Alexander Hamilton wrote in "Federalist 68" that the method concocted by the framers of the Constitution for electing the President was "almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents." (Cooke, p. 457) If these words were accurate in 1788, they did not apply retroactively to the convention itself nor remain accurate for very long thereafter.

For over 200 years the electoral college has been debated, defended, ridiculed, and revered by politicians, press, academicians, and the public. Debates ranging from the philosophical to the mathematical have centered on the reason behind its creation, the biases contained within it, and the effects of altering or abolishing it. Every election which contained an electoral oddity, and many which did not, led to a new round of attackers and defenders of this institution. More Constitutional amendments have been introduced concerning the electoral college than any other part of the Constitution. (Slonim, p. 33; Best, 1971, p. 15) And yet, other than the not-inconsequential twelfth Amendment and the rise of various extra-constitutional practices, the United States still goes through the motions every four years very much as prescribed by the Framers.

The election of 2000 has once more rekindled the debate. One might wonder whether dwelling yet again on the electoral college is a red herring, first because campaign finance reform, national standards for voting technology, or discouraging minority voters might appear more urgent and directly related to the disputed outcome of the 2000 presidential race, and second, because the battle has been fought many times but the electoral college remains. However, we shall try to demonstrate in our paper that last year's election was a potentially critical watershed demanding attention from political scientists, and that the electoral college contributed directly to the creation of a potential crisis in relations between political coalitions in the United States. We shall do this by addressing the following questions:

a. How much principle and how much pragmatism was present in the creation of the electoral college, and how have interpretations of the Constitutional Convention influenced the two-hundred year debate as to whether to keep, alter, or abolish it? For example, some defenders of the electoral college have raised "original intent" of the Founders and "the federal principle" to near-sacred status. Opponents point to an original intent that no longer exists, and invoke other principles such as the people's will, representation, fairness, and equality. We argue that while the Constitutional Convention was a mix of principle and pragmatism, the invention of the electoral college itself was very much a pragmatic exercise born of necessity. That it could be made after the fact to fit neatly into the principles of federalism or checks and balances underlying the new document does not change the fact that it was born out of a clash of self-interests.

b. What has changed and what has stayed the same in the functioning of the electoral college in the year 2000? Several political scientists have made virtually a lifelong career in writing on the electoral college. Some have consistently argued that it contains a large-state bias, and others a small-state bias. Some consistently support keeping the electoral college and others consistently call for scrapping it. We shall address these alleged biases particularly as they apply to Election 2000 and the effects of emerging social cleavages and coalitions on the outcome of that election and potentially on future elections.

c. Finally, why has nothing changed after 200 years of criticism? Is this merely an every-four-years arcane academic exercise? We shall look at the most popular reform proposals, assess their strengths and weaknesses, and propose an option which is technically simple and therefore, possibly, more politically achievable.

PART I - THE GOLDEN CALF

Three reasons are commonly cited for the Founders' creation of an electoral college as part of the presidential selection process. First is the idea that the general public of 1787, because of limited education and media exposure, provincial outlooks, and a lack of nationally-focused political knowledge, were not well-suited to select the chief executive.

There is ample evidence that many of the Founders envisioned a strong executive, and thus did harbor concerns about choosing someone for this post who was not up to the job. James Madison's notes reveal this concern scattered throughout the Constitutional Convention, but perhaps its strongest proponent was Alexander Hamilton (not a major player at the Convention judging by Madison's notes). This, in fact, was his major justification of the electoral college in "Federalist 68" in which he argued that the electoral college would insure a "high probability of seeing the station filled by characters pre-eminent for ability and virtue." (*Federalist*, p. 461) (John Jay in "Federalist 64" echoed Hamilton's position but with particular attention to the anticipated important role the President would play in foreign affairs. (*Federalist*, pp. 432-3)) The enlightened elector idea is routinely cited both by American government textbooks and by opponents of the electoral college who argue that the people are no longer isolated, uninformed, or uneducated, and/or that the system in fact never worked "as it was intended".

The second reason given is that of checks and balances. The electoral college is plugged into the familiar model of three branches of government with each (including originally each house of Congress) chosen in a different manner and for different terms of office. While this works nicely in retrospect, we have not found a lot of evidence that this was high on the list of rationales given at the time for creating the electoral college. At the same time, one very persistent theme in the struggle for a method to elect the President does address the limited power idea behind checks and balances.

The two obvious methods were popular vote and selection by the legislature. However, each time the pendulum of opinion swung away from popular vote and toward selection by Congress, there could be heard a growing chorus of warnings that, in the words of Gouverneur Morris, the work of the legislature would be that "of intrigue, of cabal, and of faction." (Madison, p. 267) This led to the decision to elect the President in such a manner that he would not be hostage to the same and was also the rationale for electors not holding any public office, meeting in state capitals, and having no task other than their electoral role.

The third and most problematical reason often given is that of the "federal principle"--the implication that the electoral college was part of a master plan to establish the perfect balance between the powers of the national government, the states, and the people. The difficulty with this line of thought is not that federalism is injected into the discussion, but that the issue of how to elect the President, so hotly debated and constantly rehashed at the Convention, is elevated to the status of an overarching principle, making the electoral college the "third rail" of election reform--"touch it and federalism dies..."

The electoral college was indeed born out of the same small state-large state struggle that produced the "Great Compromise"--the core of the federal idea. However, while that hybrid was achieved in the early weeks of the Convention, the electoral college did not emerge in its final form until September, and the result was to heap another concession onto those already piled up by the small states and slave states in the form of the Senate, the three-fifths compromise, and the unamendable portions of the Constitution. Slave state spokesmen justified their demands not just on the basis of population but also of wealth. The southern states, some of their delegates noted, were wealthy, and the use of slaves as a basis of representation was argued in part as a compensation for the greater financial contribution they would presumably make. (e.g., Madison, pp. 225-226)

The small states were no less demanding. Their expressions of their own disadvantages and the need to be amply compensated appear repeatedly, either directly or indirectly. They threatened to invite foreign intervention. Their most relentless advocate was perhaps Roger Sherman of Connecticut, who voiced fears that the larger states would not only control the national legislature but also dominate the nomination and election of Presidential candidates. (E.g., Madison, pp. 220, 267, 461, 515, 519) He conveniently overlooked the majoritarian thought that this might happen because many Americans lived in those states, and his purpose seems clearly to reduce the advantage of their numbers. On at least one occasion, Sherman was unabashedly elitist:

The small States have more vigor in their Govts than the large ones, the more influence therefore the large ones have, the weaker will be the Govt. In the large States it will be most difficult to collect the real & fair sense of the people. Fallacy & undue influence will be practiced with most success: and improper men will most easily get into office. (Madison, p. 220)

Eventually, the electoral college would become one of the small states' great pay-offs, but the resolution took time. The delegates haggled at great length over the method of selecting the chief executive. At various points they considered election directly by the people, by the executives of the states, by the national legislature, by a committee of electors from the House and the Senate, and--on several occasions--by independently selected electors. At one point or another, all of these methods were rejected. The matter was finally resolved when, on September 4, 1787, a committee composed of representatives from each state present resurrected the concept of an electoral college and the delegates, after debate and some revisions, adopted it.

Through an electoral college based on the combined numbers of Representatives and Senators from each state, the small states had won not only representation in the Senate beyond proportion to their populations, but overrepresentation in the electoral college as well. Crowning their achievements was the additional provision that if the electoral college could not choose a President, the House of Representatives would make the selection, with all state delegations equally getting to cast one vote each. (It should be noted that delegates from other states were not uniformly opposed to providing advantages to the smaller ones. For example, Charles Cotesworth Pinckney of South Carolina and Edmund Randolph of Virginia admitted that the large states would have various advantages, and thought something should be done -- although both had opposed equal representation in the Senate as the means to do it.) (Madison, pp. 201 and 204)

In the context of the times, the concessions to the small states joined a large array of expedient arrangements necessary to gain acceptance of the new Constitution in

a time when representative democracy as we know it did not exist. The delegates were, of course, struggling in some large degree with the unknown. They had to find means to nominate and elect candidates for national office when it had never been done before in America. The political parties did not yet exist. Neither did a national census.

The anti-democratic bias of the small-states advantage must also have seemed unremarkable. The first election in which a popular vote for President might reasonably be construed was 1824 when eighteen of the twenty-four states allowed voters to make the choice; others continued to select the electors in the state legislatures, South Carolina continuing this practice until the Civil War. (Peirce, 1968, p. 82 - 86; MacBride, 1963, p. 32) Slavery and the three-fifths concession to the Southern states would continue until the 1860s. Women would not achieve the universal right to vote until the 20th century. In addition, the delegates were confined by circumstances. They had been sent to the convention by states to revise the Articles of Confederation; they were voting in the convention by states; states would have to approve and implement their work.

Federalism, then, was not a grand design for the Constitution; it was an inescapable political fact of life, and the electoral college was a practical instrument which helped to facilitate agreement at the convention and avoid other approaches which came to be considered undesirable. The "federal principle" was a golden calf begat by a grand cow of political expediency. Adoption of the electoral college was a decision that some felt comfortable making only because they were so sure that George Washington would become the first President, no matter what, and thus the new form of government could put down roots before the electoral college would even be put to a serious test.

PART II - LARGE STATES, SMALL STATES, AND REPRESENTATIONAL BIASES

Although Convention delegates were reportedly proud of themselves for having finally concocted an electoral scheme that all could live with at least for the moment, (Slonim, p. 34), their creation soon became controversial. As early as 1796, with "slates" of electors already starting to appear, criticism erupted in New York against a Federalist elector who saw his representational role as that of "trustee" than "delegate" and made an independent decision to vote for Jefferson rather than Adams, causing one outraged Federalist voter to complain, "I chuse him to *act*, not to *think*!" (quoted in Longley and Peirce, p. 24).

Through the early part of the 19th century, controversy concerning the electoral college centered on the disruption that occurred when it failed to give a majority of the electoral vote to a candidate, resulting in political conflict, bargaining, and connivance to settle elections, as was the case in the elections of 1800 and 1824. As the nation grew, added more states, expanded in population, and urbanized, the representational dilemmas presented by the electoral college would change as well.

In the first half of the 19th century, as political parties developed, states adopted the "unit vote" or "general ticket" system (Longley & Peirce; MacBride; passim.) , in which the state's entire slate of electors was to be committed to the one candidate who won the election in that state. The intent was to maximize the state's impact on the selection process, and therefore its influence on the election.

Combined with the unit vote system, the eventual universal selection of electors by popular vote would raise new representational issues. The expansion of popular suffrage, and the heightened value attached to it in the American political culture,

created a new discontinuity: the election in which a President would win in the electoral college, but lose the popular vote (called a "misfired election" by Longley and Peirce, 1999, p. 143).

"Misfired elections could happen in at least two ways. One involved the unit vote. Since the voters in a state would choose electors for the entire state, the unit vote conferred 100% of the electors on a candidate who did not have 100% of the vote -- the so-called "magnifier effect." (Longley & Peirce, 1999, p. 140) A candidate could win an election by winning a series of states having low turnouts while an opponent won states with fewer electors but higher turnout. The unit vote appears to have increased this possibility because a candidate can get a low turnout in a few large states and still win a large block of electoral votes. In cases of plurality election, the "magnifier effect" creates a particularly dramatic discrepancy. The winning candidate among three or more might have less than a majority of a low turnout, and still win all of a state's electors.

The small state advantages can also contribute to a "misfired election." One candidate might win the election by winning large numbers of small states with their disproportionate advantage in electoral votes while the loser won the popular vote but carried only a few large states.

Between the Civil War and 2000, there had been two such misfired elections, in 1876 and in 1888. They will be addressed in more detail below.

The unit vote combined with popular election has also created the issue of proportion in victory: a candidate may win the popular vote by a modest plurality but do so in numerous states, thereby carrying all of the electoral votes in those states, and therefore win by a large margin in the electoral college without winning a popular majority. This is a much more common occurrence than the misfired election. During the post-Civil War period, it has included the elections of 1892, 1912, 1916, 1948, 1968, 1992, and 1996, and almost certainly 1960. (NARA Electoral College Web Site) (In 1960, the counting of the popular vote in Alabama was made ambiguous by the partial use of uncommitted electors on the Democratic ballot. Robert Byrd, however, received 638,822 votes and other candidates won 188,559. Kennedy has been officially credited with defeating Nixon in the popular vote by a margin of less than 120,000. (Peirce, 1968, pp. 100 - 109))

In all of these elections, the "unit vote" system and pattern of victories among the states produced large margins of victory for the winner in the electoral college. Perhaps most dramatic was the result in 1912 when Theodore Roosevelt and Taft together won more popular votes than Wilson, but Wilson won the electoral vote 435 to 96. In the election of 1960, Kennedy ultimately won 303 Electoral votes. He could have given the electoral votes for hotly contested Illinois and divided Alabama to Nixon and still have won the election!

The historical development of the United States has increased some of the disparities in electoral college representation. As the number of states grew, expanding into the West, and the nation urbanized, the population became more and more concentrated in fewer states. By the 1990 census, nine states contained a majority of the population. The ratio of representation between the largest and smallest states in the electoral college grew correspondingly. In the first Presidential election to follow a census, in 1792, the largest state, Virginia, chose 21 electors while the smallest states, Vermont and Delaware, chose three each, a ratio of seven to one in favor of the largest states. By the election of 2000, California would choose fifty-four electors compared to

three each for seven other states and the District of Columbia, a ratio of eighteen to one in favor of California if it is compared to each the smaller states *separately*.

In recent decades, political scientists have taken these differences and the anomalies in electoral college outcomes as the point of departure to focus analytical attention on the relative advantages of large and small states. In analyzing large and small state advantages, political scientists have tended to equate small state advantage with the two votes which every state receives based on its Senate representation, known in the electoral college literature as the "constant two" provision. The argument for large state advantage focuses attention primarily on the "magnifier effect" resulting from the unit votes systems, and anecdotal references to the time and energy candidates spend on the larger states.

"Large" and "small" have been relative and changing concepts in this context. (California was at one time a "small" state with three electoral votes.) By "large," we will generally be referring to the smallest group of states which, taken together, contain a majority of the population; by "small" we will mean the remainder, which would benefit to some degree from the "constant two" rule.

One result has been a substantial body of argument that the largest states and their voters enjoy a sizable advantage over the smaller states. This view is supported in large part by "voting power" analysis (e.g., Yunker and Longley, 1976; Longley and Peirce, 1999). Voting power analysis in turn relies on game theory and computer simulations using models of pivotal contributions to election tallies to attribute influence over electoral outcomes. Very simply summarized, the technique creates an index out of two factors: (1) the chance that each state has of casting the deciding bloc of electoral votes in a fifty-one person "game" (the fifty states plus the District of Columbia) and (2) the proportion of voting combinations within each state in which a citizen can alter the outcome in a state.

The result is an index which purportedly to shows the ability of a citizen within a state to play a pivotal role in the outcome of a Presidential election. The index is typically normalized to compare between states. The results typically indicate that citizens of large states have substantially greater power over outcomes than citizens of smaller states, except for the very smallest states -- in which the overrepresentation in the electoral college is presumably so great that, few as they are, their voters can throw their three electors back and forth with impact. One conclusion suggested by such analysis is that states of intermediate size, having about four to fourteen electoral votes, are really the most disadvantaged of all. (Yunker and Longley, 1976; Longley and Peirce, 1999)

Voting power analysis, however, has some severe shortcomings of its own. The authors of the technique warned from the beginning that it incorporates *ceteris paribus* (all else being equal) assumptions which are not likely to be met in real situations (Mann & Shapely, 1964). These include assumptions that "the players (i.e., the states) all be independent agents, free from prior commitments and uninfluenced by considerations outside the stated objectives of the game." (Mann & Shapely, p. 154)

One consequence is that coalitional behavior is not recognized. Rather, the influence of each state is measured independently of all other states. Given the history of the solid Democratic South in the century following the Civil War and sustained Republican dominance in blocs of Western and New England states, this is a very unrealistic assumption.

Moreover, the approach suffers from superficial conceptual and operational specification. For example, population is incorporated as a key variable in two different locations in the implicit model: once in determining the relative influence of a voter within a state, and again when the states are compared in terms of their electoral vote blocs (which are based largely on population). But the approach then appears to assume that population has no independent effect on election outcomes -- i.e., the advantage of a state is entirely reflected in its ability to move a bloc of electors from one candidate to another.

This is also unrealistic. Population will have powerful, direct effects on campaigns and election outcomes. As one illustration, if the electoral college were replaced by direct popular election in a two-person contest, a candidate who could win against an opponent by 51% of the vote to 49% in a state with ten million voters would have a winning margin of 100,000 votes. The same candidate could lose nine states with one million voters each by the same percentage margin and still be ahead! To a great degree, big states have the political advantages that they do because that is where the majority of the American people live!

These weaknesses in voter power analysis have resulted in unstable findings and interpretations. In their seminal application of the technique, Mann and Shapely concluded that the "bias in favor of bigness" was "definitely visible" in their findings, but was "not large enough to be very significant as a practical matter." (p. 157) They further concluded that it was not "a significant counteragent" to the small state advantage. (p. 158) But Longley and Peirce would later argue that "voters in the nine largest states have a disproportionately large relative voting power" (p. 153) and "the advantage that citizens in the most populous state enjoy solely because of their place of residence is as great as 72 percent" (i.e., presumably a 72 percent greater voter power index) (p. 150).

Attributions of large state advantages based on candidate behavior also reflect simplistic modeling of cause and effect. For example, large states have been said to be advantaged because candidates spend disproportionate amounts of time campaigning in them, focus a lot of attention on appealing to local parochial interests particularly in the large states, and ignore states that are already "decided" (Longley & Peirce, 1999, pp. 164-165). But large states attract candidates anyway, because they have lots of people. Politicians have always couched political appeals heavily in local interests. And basic political strategy in the media age emphasizes the investment of resources in undecided areas and the capture of swing votes -- in any type of election. It is not at all clear how, why, or to what extent the electoral college might have amplified these behaviors, and it certainly did not create them.

The "constant two" advantage of the small states clearly has its limitations, but demographic change has hardly erased it, and may have amplified it. Based on 1990 census data, the largest nine states contained 130,641,000 people or 52% of the total population of 252,131,000. But these same nine states elect only 243 or 45% of the 538 Presidential electors. The 458,000 people of Wyoming, with three electors, have one for every 152,667 people while the 30,393,000 people of California choose fifty-four electors, one for every 562,833 people.

Currently, there are one hundred Senate-based electors. In any election in which a candidate wins by more than 100 electoral votes, the "constant two" would make no difference. Basic mathematics suggests and a review of elections confirms that in practice the "constant two" advantage will give small states a decisive influence when an election is close and the small states vote in large numbers for the same candidate.

Assessing the effects of this advantage requires a means of comparing election outcomes when the small states have do these bonus votes to outcomes when they do not. The simplest and most straightforward way of accomplishing this is to compare the current electoral college apportionment to one in which the "constant two" votes were not added -- that is, to assume a number of electors might have been equal to the representation of a state in the House of Representatives only.

Such a House-based electoral college would, like the House of Representatives itself, be largely but not entirely based on population. Since the Constitution guarantees each state no matter how small at least one Representative, states with total populations smaller than an average House district will be somewhat overrepresented (there are three based on the 1990 census). Rounding for population differences between the states will also cause some states to be very moderately over- or underrepresented. Finally, we are assuming that the unit vote system would be retained.

To illustrate these effects, Table 1 compares the differences in outcomes in three elections with close electoral college votes during the post-Civil War era are compared using the two approaches to representation. In the election of 1876, one of the most controversial in American history, Hayes "won" twenty-one states and 185 electoral votes (four states having been contested and subsequently awarded to him by a highly partisan commission). Tilden won 184 electoral votes from seventeen states. Tilden won the popular vote, 4,300,590 to 4,036,298. If the two Senate-based electoral votes had been removed from each state, Tilden would have had 150 Electoral votes to 143 for Hayes. The table indicates that the outcome of the election would have been changed. By this we mean that Tilden would have had the winning majority in the electoral college under the adjusted figures. We realize that this would not forestall other events, e.g., the Republican party might have contrived to steal another state for Hayes.

In the election of 1888, Cleveland beat Harrison in the popular vote, 5,540,309 to 5,439,853, but lost the electoral vote 233 to 168. The states were almost evenly divided, however, with Harrison winning twenty to Cleveland's eighteen. Removal of the Senate-based electors would therefore leave Harrison with 193 and Cleveland with 132, producing no change in the outcome.

In a third close race, in 1916, Wilson won the popular vote over Hughes, 9,129,606 to 8,538,221 and won 277 electoral votes to 254 for Hughes. But Wilson also won thirty-one states compared to eighteen for Hughes. Removal of the Senate-based electors in this case would have left Wilson with 215 electoral votes to 218 for Hughes, making Hughes a minority President by a very slim margin. This would have created a "misfired" election in which Wilson won the popular vote and carried thirty-one states, but lost the election. The influence of the small-state advantage was evident, nonetheless -- Hughes won the three largest states in the Union at that time, New York, Illinois, and Pennsylvania, and still lost the election.

While the "constant two" advantage has been the primary focus of interest in analyzing small state advantages, the last and potentially most controversial advantage given to the small states waits in the wings. Longley and Peirce have already noted that if an election should be thrown into the current House of Representatives based on the 1990 census, with the votes taken *by states*, the votes of the seven smallest states would each be cast by one Representative, and these seven people, representing just over four million people, would be able to outvote the six largest states in the Union, containing more than 100 million people (Longley & Peirce, 1999, p. 172).

TABLE 1

Impact of "Constant Two" Rule on Three Close Elections

YEAR	CANDIDATE	POPULAR VOTE	NUMBER OF STATES WON	ELECTORAL COLLEGE VOTE	E.C. VOTE MINUS TOTAL PER STATE
1876	Hayes	4,036,298	21	185	143
	Tilden	4,300,590	17	184	150
1888	Harrison	5,439,853	20	233	193
	Cleveland	5,540,309	18	168	132
1916	Wilson	9,129,606	31	277	215
	Hughes	8,538,221	18	254	218

Source: National Archives and Records Administration, *Electoral College Home Page*, <http://www.nara.gov/fedreg/elctcoll/index.html#top>

With these three exceptions the overall history of the electoral college has been one of great consistency. In all other Presidential elections since the Civil War, prior to the election of 2000, the winning candidate won at least a plurality of the popular vote and a substantial majority in the electoral college. The large state advantage, such as it may be, has been reflected in the "magnifier effect" of giving candidates a larger share of electoral votes than their share of the popular vote; it appears to have affected the results of the 1888 election. The "constant two" advantage for the small states directly affected the outcomes of elections in 1876 and 1916, primarily because they were quite close. For the most part, small states and large states have divided along complex and multiple lines of political loyalties. States have often voted in regional blocs, but a bifurcation of the nation into two blocs, one of predominantly large states and the other of predominantly smaller ones, which also appear to reflect basic social and economic cleavages in the nation, is a newly prominent feature of national politics as a result of the election of 2000.

PART III - THE ELECTION OF 2000

The Presidential election of 2000 was unusual and controversial for a multitude of reasons. Most widely publicized have been problems of voter access, methods of balloting, and vote counting, particularly in Florida. Continuing escalation of the role of money, media campaigning, and manipulative advertising in campaigns were hot topics before the election. And yet another would be the dramatic confluence of social, political, economic, and geographical divisions in the vote for President -- a confluence in which the small state advantage has played a decisive role. Had Florida not grabbed the headlines, the electoral college would have because for the first time since 1888, the winner of the popular vote lost the electoral vote.

The press has already begun to dramatize the election as a potential watershed in regional political and social cleavage in the U.S. (e.g., *Newsweek*, January 22, 2001, pp. 38 - 41). The geographic division of the vote has been graphically portrayed in a widely circulated map of county by county Presidential vote results showing Bush's victories in red and Gore's in blue (reproduced in the *Newsweek* article). The map pointedly demonstrates Bush's electoral dominance of most of the geography of the nation, with victories in thirty states sweeping down from Montana and North Dakota to Oklahoma and Texas, and then east through the entire South from Kentucky and Virginia down to (and now including) Florida. The blue areas won by Gore appear as minor splotches concentrated in the Northeast, the Midwest, and on the West Coast, and delivering to him only twenty states and the District of Columbia. In fact, these "minor splotches" include most of the metropolitan centers of the nation, in which most Americans live, which is why Gore won the popular vote by a margin of more than 500,000. Had Ralph Nader not been running as a third party candidate, the prevailing view in post-election commentary seems to be that Gore would have achieved an even larger popular margin, and probably a popular majority.

Gore lost the election because Bush won more states, although smaller states, *and because those states were proportionately overrepresented in the electoral college*. If the Senate-based electors had been removed from the count, reducing the electoral vote of every state and the District of Columbia by two, the results would have been as displayed in Table 2. Instead of receiving 267 electoral votes, Gore would have received 225; instead of receiving 271, Bush would have received 211. (Since all of Nebraska's votes went to Bush in the election and all of Maine's went to Gore, we are assuming that would continue to be the case.) It should also be noted that if *any one* of the smallest

states having three electoral votes which went to Bush had shifted to Gore, Gore would have won the election.

TABLE 2

Impact of "Constant Two" Rule on
Presidential Election of 2000

CANDI- DATE	POPULAR VOTE	STATES WON	ELECTORAL COLLEGE VOTE	E.C. VOTE LESS TWO PER STATE	AFFECT OUTCOME?
Bush	50,456,062	30	271	211	
Gore	50,996,582	21 *	267	225	YES

*Includes District of Columbia

Source: National Archives and Records Administration, *Electoral College Home Page*, <http://www.nara.gov/fedreg/elctcoll/index.html#top>

As the press has been quick to note, the geographical divisions reflected in the outcome closely follow lines of social and economic stratification in the society, suggesting "two separate Americas, each suspicious of the other, each protecting its way of life" (*Newsweek*, January 22, 2001, p. 40). Thus Gore's supporters are much more likely than Bush's to be urban and/or working class, to be black, to have less education, to support abortion rights, to support gun control, and to have lower incomes (*Newsweek*, January 22, 2001).

The divisions in the electorate appear to extend as well to the production of wealth in society and to the distribution of costs and benefits. Table 3 compares the twenty states and the District of Columbia won by Gore to the thirty states won by Bush on several basic measures of economic output, taxation, and basic public program expenditures. The measures were chosen to reflect production of wealth, tax burdens carried, relative benefit from Federal expenditures, and statistics which might provide approximate but reasonable indicators of a state's emphasis on selected social priorities -- e.g., education, environment, and the arts. The ready availability of data was undeniably a consideration in the choice of measures.

Of the total gross state product of 7.631 trillion dollars produced in 1996, the twenty states and D.C. won by Gore produced 4.122 trillion, while the 30 states won by Bush produced 3.509 trillion (Hovey & Hovey, p. 37). Of the 693.53 million dollars in federal personal income taxes paid in 1997, the 20 Gore states and D.C. paid 386.49 million, while the thirty Bush states paid 301.91 million (Hovey & Hovey, p. 130).

Yet the states won by Bush are disproportionately the beneficiaries of Federal spending. When Federal spending in the states is expressed as a ratio of dollars spent per dollar of Federal taxes paid, a ratio greater than one indicates that a state has been

TABLE 3

Economic and Policy Attributes of
Jurisdictions in the 2000 Election

CANDIDATE: ATTRIBUTES:	GORE: 20 States Plus D.C.	BUSH: 30 States	TOTALS
Total State Gross Product, 1996, \$Trillions	\$4.122	\$3.509	\$7.631
Federal Personal Income Taxes, 1997, \$Millions	\$386.49	\$301.91	\$693.53
No. With Net Gain, Federal Spending/Taxes Paid, 1997	7 (33%)	21 (70%)	28
St. & Loc. Rev. as % of Pers. Inc., FY 1995; No. > Mdn. of 11.5%	16 (76%)	9 (30%)	25
Fed. Share of Welfare & Medicaid > 60%, 1998; No.	5 (24%)	22 (73%)	27
St. & Local Educ. Spending as % of Personal Income, FY 1995; No. > Mdn. of 7.1%	9 (43%)	15 (50%)	24
Per Cap. Spending on Arts, FY 1998; No. > Mdn. of \$.78	13 (62%)	12 (40%)	25
Total Library Operating Expend. Per Capita, FY 1995; No. > Mdn. of \$17.60	14 (67%)	10 (33%)	24

(Continued . . .)

TABLE 3 -- CONTINUED

CANDIDATE:	GORE: 20 States Plus D.C.	BUSH: 30 States	TOTALS
ATTRIBUTES:			
Toxic Chemical Release, Pounds per Capita, 1996; No. > Mdn. of 9.1	5 (24%)	20 (67%)	25
Hazardous Waste Sites, 1998; No. > Mdn. of 16	12 (57%)	13 (43%)	25

Source: Hovey, Kendra A., and Harold A. Hovey. 1999. *CQ's State Fact Finder 1999*. Washington, Congressional Quarterly.

experiencing a net gain. In 1997, twenty-one of the thirty states that Bush would win had such ratios compared to seven of the twenty Gore states and D.C. (Hovey & Hovey, p. 127) On the whole, as Table 3 further demonstrates, the states won by Bush do not spend as much of their own wealth on public purposes: only 30% of them were above the median in the percentage of personal income taken for state and local revenue in 1995 compared to 76% of the jurisdictions won by Gore (Hovey & Hovey, p. 136). The states won by Bush included 22 (73%) in which Federal funds provided 60% or more of the funding for Welfare and Medicaid, compared to five (24%) of those won by Gore (Hovey & Hovey, p. 131).

The states won by Gore include fewer that were above the median in percent of personal income spent on education, but more that were above the median in spending on the Arts and on operating expenditures for Libraries. The states won by Bush included a much larger number with high levels of toxic chemical release, but the number of states with hazardous waste sites was more balanced -- twelve (57% of his total) won by Gore compared to thirteen (43% of his total) for Bush. (Hovey & Hovey, pp. 202, 83, 216, 85, 86, respectively)

We do not provide these figures as specific and reliable predictors of policy outcomes of the 2000 election, but as further and more specific evidence that the two groups of states appear to have systematic differences in economic output and social priorities. These differences appear to be strongly associated with size and geography, but the association is not absolute. The "large" states of Texas and Florida, for example, are probably politically and culturally more conservative than New York or California. On the other hand, some of the smaller New England states may be less individualistic and more public-regarding than small mountain states in the West.

Causality in policy analysis is complex and multivariate. The data presented on revenue and spending policies provide preliminary evidence of policy outcomes, but underlying policy interests are more elusive. For example, large states may spend large amounts on education because they have large numbers of immigrants or because they place a high priority on an educated work force; small states may have these same motivations but may also have to spend more just to establish a basic education infrastructure. Similarly, states may have large numbers of hazardous waste sites

either because they are indifferent to environmental damage, or because they inherited the damage from an earlier and regretted period. Large states in the East and Midwest may have more or less the same numbers of hazardous waste sites as those in the South and the West, but have quite different views concerning what governments should do about them.

It would be equally simplistic, however, to assume that these broad differences in interests would have no bearing on public policy. Candidates must win and maintain constituencies, and as the candidates themselves often said during the election, they reflect significantly different orientations to public policy and the role of government. On issues from global warming and environmental preservation, to family planning, to tax policy and economic equity, to education, to social programs, to social equity and affirmative action, Gore represented the political tradition of an active government role in solving societal problems, while the Bush campaign emphasized diminished government and devolution of its role in promoting a better society.

The differences appear to be influencing policy immediately. The Bush administration has already initiated its tax proposals, including elimination of the inheritance tax. It has already proposed a multi-billion dollar program of grants to churches to provide social programs, ensuring that those funds will not go to government-administered services. It has already reimposed restrictions on family planning aid to foreign nations based on its opposition to abortion. Bush's appointments to Secretary of the Interior and a Secretary of Labor are both individuals with pronounced histories of sympathy toward industry and antipathy toward government intervention to protect the environment and working class interests.

Longley & Peirce, noting that "spirited two-party competition" prevails in most regions of the country today, have already argued that the United States may be about to experience "a string of close elections like those of the 1870s and 1880s," and have warned that ". . . if history is any guide, the country will run a high chance of electoral disaster in every such election" (1999, p. 147). If such a string of close elections should be accompanied by continued bloc voting on the part of small states, it may portend something quite significant indeed. It is conceivable that the small states could impose upon the country not just one but a series of minority Presidents. It is conceivable that those Presidents might in turn seek to impose upon the urban and industrial states the values and priorities of a rural, anti-government minority of the society, while continuing to fund programs particularly beneficial to that minority out of wealth generated disproportionately by the urban majority. It is conceivable that these developments could severely elevate levels of social and regional antipathy in the United States.

We have no intention of being alarmist and are not specifically predicting such an outcome. We do note, we hope as responsible political scientists, the possibility that it can develop. The electoral college as it is presently designed would play a direct, facilitating role in such a development, and the specific mechanism by which the minority Presidents would be imposed would be the advantages given to the small states at the Constitutional Convention.

We note as well that history provides other warnings. When malapportioned state legislatures developed in the United States in the first half of the twentieth century, the rural interests that exploited them to benefit at the expense of urban areas proved unwilling to adopt equitable reforms. Only the intervention of the Supreme Court reversed a trend toward ever greater inequity and exploitation in many of the law-making institutions of the nation. Should the small states use their Constitutionally

prescribed advantages in the electoral college with a similar insensitivity to equity and basic concepts of fairness, the Supreme Court will be unlikely to intervene. In the first place, it will have difficulty finding grounds to reinterpret the specific mandate for the electoral college in the Constitution. It will also be dominated by appointees of Presidents who benefited from the existing situation.

Finally, we note that the situation is far from simple, and may take many directions. The complex dynamics of political opinion and interest in a large nation create many possible courses of development. The outcome of the 2000 election was not monolithic. Bush carried two of the big nine states; Gore carried thirteen of the rest, including two of the smallest, Delaware and Vermont. The Senate itself, perhaps ironically, remains the institution in which the Democratic party retains the strongest influence over policy because they control fifty seats.

Nonetheless, controversy has emerged about the 2000 election for good reasons, and the electoral college played an undeniable role in generating it. This time, the decisions about reforming (or not reforming) the institution may have serious consequences.

PART IV - HATCHING HORTON'S EGG

Proposals for reform in the method of electing the President have been made often in our history, and in such variety that they could not possibly be examined in detail in one paper. A review of some of the most salient ideas can, however, demonstrate the failure of reform arguments to converge on any particular solution and the intellectual and practical difficulties of accomplishing convergence. Several themes permeate the discourse:

The ideals to be served, sometimes explicitly and sometimes implicitly, tend to be multiple and inconsistent. For example, allocating electors on the basis of total population serves the ideal that all people should be represented. When combined with the "unit vote", the actual voters choose electors for the entire population of a state. Advocates of direct election, often galled by the "magnifier effect", despise the overstatement of actual votes and want to follow the principle that only actual votes count. Supporters of population based electors chosen according to "unit vote" might argue that the actual voters are speaking for many others -- the intimidated non-voter, the children, the infirm and incapacitated, the unregistered immigrants. The supporters of direct popular election argue that letting those who do vote speak for many others in one state may penalize high turnout in another state.

Ideals may reflect aspirations which complex realities refuse to support. As one illustration, direct election or its surrogates, precise and proportionately representative systems of district election, must provide for contingency elections if no candidate receives a majority (runoffs, election in the House, the "instant runoff"). None will work as hoped. Runoff elections, for example, ostensibly ensure that the candidate selected has a majority of the vote. In fact, turnout for runoff elections in the United States has been notoriously lower than turnout in general elections, and allows the possibility that the winning candidate will actually have fewer votes in the runoff than an opponent had in the general election.

Accompanied by the confused causal modeling previously discussed, the complex interplay of multiple ideals and practical considerations allows great relativism in the choice of ideals and purposes to serve. In the process, it opens opportunities for self-aggrandizing approaches. One example might be the unabashed hope of Republican Henry

Cabot Lodge that the Lodge-Gossett plan of the 1940s (a district plan in which electoral "votes" would be distributed directly on the basis of proportion of popular vote) would help to crack the solid South (MacBride, 1963).

Dilemmas in Electoral College Reform

Reflecting the effects of all of these considerations, the reform discourse tends to struggle with certain common problems: dealing with tradeoffs, relying on questionable assumptions, adjusting to practical realities, and addressing unintended consequences.

Trade-offs

Among the values often mentioned as desirable in constructing electoral systems are simplicity (does it make sense to the voters?), fair representation (does it meet "one person, one vote" criteria?), legitimacy (does the electoral process result in a winner who is recognized as the rightful leader?), the "federal principle" (does the process preserve a special role for the states?), stability (does the arrangement prevent the rise of "splinter parties" with their risk of legislative obstructionism?), majority rule (can the winner claim some sort of majoritarian mandate?), "original intent" (does this plan remain true to the wishes of the Framers?), minority rights (does the system give a fair voice to minority viewpoints and reflect the special needs of racial and ethnic minorities?), practicality (will it add cost or length to an already costly, lengthy process?) and voter-friendliness (will it encourage or discourage voter turnout?). It is hard to dismiss any of these as inappropriate considerations; it is impossible to construct a means of voting which will give equal weight to all of them.

Assumptions

Advocates of one plan or another often start with an assumption, presented frequently as a "matter of faith". One such example is the "federal principle". We have already demonstrated that the electoral college was not part of an overarching plan to preserve the sanctity of the states. Furthermore, even assuming federalism to be a valuable device for effective government, no other federal system has seen the need to copy the electoral college. In fact, selection of the chief executive, whether a president or a prime minister, does not typically involve the federal components in other countries at all. Likewise, even given that the "original intent" of the Founders is worth our attention, they had multiple intents and multiple assumptions as to how the electoral college should work; and some, apparently, saw it merely as a way to get the task finished, get Washington elected President, and then worry about choosing future presidents.

For some, the "given" is the sanctity of the two-party system. The literature is full of statements to the effect that the U.S. should avoid any reform which might promote splinter parties or a multi-party system because that would bring us closer to a western European type of system. The problem with this view is that while a two-party system can be very defensible, so can a multi-party system, especially if there are large elements in society who feel inadequately represented by either of the two parties. Finally, for some, fair representation becomes the center of the electoral universe. While it is hard to disagree with this as a laudable vision, a word of caution is in order. Mathematical equality does not guarantee fair representation and proposals to implement this ideal often run into practical roadblocks.

Addressing reality

A second factor to bear in mind when contemplating the future of the electoral college is that politics is indeed the "art of the possible." Thus, electoral college reform ideas may be divide into two categories--those which involve amending the Constitution and those which don't. The assumption is that the latter are more doable because the Constitution cannot be amended without action by states and there would be enough states seeing their self-interest in maintaining the present system that the 3/4 required to ratify would be virtually impossible to obtain for any major overhaul. Internal reforms can be made within states, such as the district method discussed below, but this would have to be done on a state-by-state basis, and it is hard to imagine states jumping on the bandwagon of change unless they saw themselves disadvantaged by not doing so.

Unintended Consequences

A fourth consideration is, of course, the law of unintended consequences. Proponents of various reform plans have tried to assess possible effects of party development, campaigning, and other parts of the political process, but of course no one can predict with certainty. That in itself is no reason to avoid change. Some scholars, particularly Longley and Peirce, have gone to great imaginative lengths to think of every possible worst-case scenario which could happen under the present system, including many which have not happened in the past (see especially chap. 1 in Longley & Peirce). Others, such as Judith Best (1971), have catalogued the potential ills of proposed changes. Still, as Bobbitt has noted, the Constitution is an organic whole, and change in one part may lead to pressure for change in other parts. (Why have an undemocratically elected Senate, for example?) (Bobbitt, pp. 18-21)

Major Reform Proposals

Proposals to correct the disadvantages variously attributed to the electoral college have included direct election of the President, several different types of reform in the electoral college itself, and measures to deal with the contingency election problem -- i.e., what to do when no candidate receives a majority in the initial election procedure. All have incorporated a restricted view of the problem which, among other things, consistently avoids the issue of small state electoral power.

Direct Election

The most widely discussed contemporary proposal for change is to scrap the electoral college entirely and go to direct popular vote. This has the virtue of mass appeal. It sounds democratic, appears easy to understand, and offers the attraction that every vote would count equally. Its proponents hold out the promise that candidates would plan their campaigns around people, not around states, and, of course, there would be no more worry of a President winning without the popular vote. At the same time, it is argued that direct election will help the small states by eliminating the unit vote which presumably so favors the large states. It is also argued that candidates pursuing popular votes will spend more time in smaller states trying to gain their winning margin.

Intended reassurances such as these raise some major red flags about direct popular vote. We have already noted that plurality elections have been much more common than misfired elections. (The election of 2000 has the wonderful distinction of being both!) Even a modest third party movement could cause a plurality election in a

direct election system. A President who won with a mere plurality might face the same legitimacy concerns as a President under the current system who wins the electoral vote but loses the popular vote. The answer to this is a runoff but runoffs, perhaps with good reason, make devotees of direct popular election uneasy. As we have already noted, runoffs tend toward lower voter turnout, and they also may lengthen an already long and costly campaign. This may be less of a problem in democracies which have a high voter turnout to start with, but in the United States it seems likely to produce Presidents who have the clear ballot-box support of only a minority of voters.

Many direct popular vote proposals seem committed to avoid a runoff at all costs by establishing a less-than-fifty per cent threshold which a candidate would have to win to avoid a runoff. The number most often mentioned--with no rationale provided-- is 40%. However, the President who wins with 40.1% of the vote is further from having half of the votes cast than having a mere third of the votes cast. This raises a host of questions about legitimacy, representational fairness, and that most stalwart of democratic mantras, majority rule. (Other democracies and even would-be democracies have moved in the opposite direction. Russia, for example, has required not just a majority win to avoid a runoff in the presidential elections of the 1990's, but also a 25% turnout requirement in legislative elections and 50% turnout requirement to approve the Constitution of 1993 (White, et al., p. 109). Parliamentary systems, even when "minority governments" are in power, require a majority of support from democratically elected legislatures in order to enact their programs.)

One way around a runoff is the so-called "instant runoff". This, however, requires voters to rank candidates; and its critics say, perhaps unfairly, that it is too complicated for the American voters to grasp. Other criticisms have been made as well, including the idea that states would find ways to continue to maximize their influence by maximizing their voter turnout through such devices as lowering the voting age. (Since getting out the vote among 18-21 year-olds has been difficult, it is hard to imagine that a 15-18 year old vote would make more than a marginal difference--but in a close election, this may be the winning difference.) And of course, a major criticism of direct popular vote is that it subverts the "federal principle", even though, as noted earlier, many other federal systems have survived quite nicely without involvement of the regional units in the choice of their chief executives.

Finally, the argument that small states will benefit from direct election includes a very dubious proviso: they must attract candidates with larger winning margins than large states will provide! Best, for example, has suggested that Louisiana might draw a candidate away from Illinois if it could somehow promise a winning margin of 170,000 votes while Illinois provided a margin of only 9,000 (p. 142). How Louisiana is supposed to be able to guarantee such a margin, and ensure that Illinois doesn't provide a better deal, and how they are to ensure that other small states do not offset it with an equally large margin for a different candidate are questions not addressed. The idea that candidates are going to abandon California, New York, Texas, and Florida and trek off to Wyoming, Alaska, and Vermont simply because of the change to popular election is difficult to swallow. And the election of 2000 has already given an eloquent enough answer: direct popular election would have helped the *large* states to elect Gore.

Reforming the Electoral College

Proposals for keeping but reforming the electoral college fall in three basic categories: the automatic plan, the proportional plan, and the district plan. All of these plans have had in common the apparent attempt to divide electors more proportionally according to popular votes. Insofar as we have been able to determine in our review to

date, none has ever proposed eliminating the "constant two" advantage of the small states. Implicitly, their concern seems to be to eliminate large state advantages by attacking the unit vote concept.

The automatic plan. The automatic plan would eliminate the electors as physical beings but retain the electoral vote, and assign each state's "votes" (including the "constant two") directly to the candidates on the basis of popular vote -- either *en bloc* or proportionally (see below). In addition to making elections appear more population-based in nature, this plan would also provide a presumed benefit by eliminating the fabled "faithless elector".

The emphasis on popular sovereignty is more apparent than real, however, since inequitable representation of the states is retained. As for the "faithless elector" Judith Best has called it a "miniscule" problem (1971, p. 209). After all, one of the criticisms of the existing system has been that the electors virtually always do exactly what the voters want them to do. Those creative enough to draw up worst case scenarios of faithless electors running amok can be matched with creative and equally remote fantasies of situations when having real thinking human beings rather than numbers could save the country from various disasters that might befall us in the month following the election. More seriously, *the automatic plan* by itself does not address the more real possibility of an election being decided in the House of Representative on a "one state, one vote" basis if this so-called "contingency voting" option were kept in the electoral college package. While it has been proposed as a free-standing reform, some of the other reform plans also incorporate the automatic plan.

The proportional plan. The proportional plan, which comes in several varieties, would mimic representation proportionally based on population by dividing each state's electoral vote (usually without live electors, thus allowing the use of fractions) among the candidates proportional to their share of the popular vote. It would thereby eliminate the alleged bloc voting effects of the general ticket system and create an appearance of greater precision. But as proposed, which means retaining the "constant two" votes, proportional systems would do nothing about the small state bias, and they retain their own distributional anomalies. If real electors are kept, the task of rounding off and distributing electors becomes wildly distorting if not virtually impossible. Even when live electors are disposed of, there is no agreed upon "best" way to round off the popular vote and divide the electoral vote.

The main attraction of the proportional plan is really its smoke-and-mirrors effect. It appears to remain "true" to the Founders while at the same time appearing to honor a state's popular vote. One benefit which has been claimed for it is that the candidate who wins the electoral vote would always be the winner of popular vote (e.g. the Lodge-Gossett plan; see MacBride, 1963, pp. 43-59). Because the plan retains the "constant two" advantage for the small states, this claim is simply not true. Moreover, while it might be desirable to avoid misfired elections, manipulating the electoral college to produce an assured victory for the winner of the popular vote while eliminating the electors as participants reduces the electoral college to a mere smoke screen, and thus offers no rational justification for using the proportional plan instead of a direct popular vote.

The district plan. The district plan, while less of a smoke-and-mirrors scheme, offers something for federalists and populists alike. Based on current practices in Maine and Nebraska, it consists of allowing voters in each House district to choose one elector on a winner-take-all basis, while the "constant two" votes based on the two Senate seats would go to the winner of the popular vote statewide. This keeps the

"federal principle" (including the small state advantage) alive while allowing the people in each district to feel a closer link with "their" elector. If majority-minority districts continued to be created, their populations, in particular, might perceive themselves to have more of a stake in the outcome as they point to "their" elector. All in all, however, the district plan would not eliminate the anti-democratic bias of the current system. In effect the plan creates two different sets of districts -- one set based on population (the districts within the states) and one blatantly biased in favor of small states (the at-large election of the two Senate-based electors in each state regardless of its size).

District plans have been proposed in which districts did not mimic the House Districts, and one could even be proposed with equally populated districts apportioned on a nation-wide basis, spilling where necessary over state lines, but the one described above is the one most often advocated by district vote proponents.

The contingency election problem

Besides the matter of keeping, reforming, or abolishing the electoral college itself, there is the issue of the "contingency" provision of the current arrangement whereby if there is no majority in the electoral college, the election for President is thrown into the House on a one-state, one-vote basis. If there were only one change allowed, this is probably the one provision which most academicians and politicians could agree deserves to be scrapped because it is so blatantly contrary to democratic principles and fraught with practical difficulties, and it exalts the "federal principle" to a level which makes even its supporters uneasy.

Addressing the "Constant Two"

In the debates over options for reform, one stands out by its omission. Perhaps the simplest approach of all is the one used earlier in this paper to test the effects of the "constant two" advantage on elections. That is, the extra two electoral votes given to each state on the basis of Senate representation could simply be eliminated, leaving an electoral college allocated on the basis of House seats alone.

The refusal to address the "constant two" bias in one reform proposal after another is interesting and important, both because it is so persistent, even as the problem is so obvious and, at least in a Constitutional sense, easy to reform. Insofar as we have been able to determine, no public proposal ever suggested eliminating this bias until it was included by Representative Frank Horton of New York in a proposal for a variation on the proportional plan in 1969 (Sayre and Parris, 1970, pp. 199-120).

Horton proposed allocating electoral votes on the basis of House seats alone and then awarding them in proportion to statewide popular vote. The result would presumably have been a surrogate for direct election, since the electoral votes would have been divided almost directly according to popular vote. The plan would therefore have carried most of the advantages and the disadvantages of direct election, including the likelihood of frequent contingency elections when no candidate received a majority. The U.S. Constitution would have had to be amended to eliminate the electors themselves, base electoral representation on the House, and specify a system of proportional allocation. Apparently, it received no particular support.

The House-based plan we have suggested has certain basic attributes which may be interpreted as advantages:

- (1) The change required in the Constitution is very simple. It could be accomplished with an amendment which read: "The Electors appointed by each state to elect the President shall be equal to the whole Number of Representatives to which the State may be entitled in the House of Representatives." The electoral vote of the District of Columbia, based on the Twenty-third Amendment is already equated to that of the smallest states and would adjust automatically.
- (2) The unit vote and its purported "magnifier effect" are retained. The implication is that when no candidate for President receives a majority of the popular vote, the nation will continue to rely upon plurality election to resolve the impasse -- the person with the most votes will almost always win. As the foregoing analysis should make clear, the unit vote system has had the potential *advantage*, that it has decisively resolved the frequent non-majoritarian elections that have occurred without requiring a contingency election. If history is any guide, none of the various methods of second stage resolution which will be required by popular election or surrogates for popular election will be without unintended consequences or be assured of creating the public impression that a majority election has been achieved. There is considerable reason to expect that they will raise additional controversy without providing a greater sense of the legitimacy for elections.
- (3) The House-based plan has the symbolic legitimacy of basing representation in the electoral college almost exclusively on population. Almost, but not entirely; the smallest states are still guaranteed at least one Representative. For those who believe that state identity in elections is an essential aspect of American Federalism, an emphasis on the electoral role of the states is continued.

It is simply incredible to suppose that consideration of eliminating the "constant two" had to wait for Representative Horton and us. During the long prior history of debate over the electoral college, someone must have thought about it. Because it was not mentioned, the reasons for avoiding it must remain speculative. Some reasons, however, are more plausible than others and one very plausible reason is that it was considered politically untenable -- it could never be adopted because the small states could and would easily stop the Constitutional amendment required to implement it.

We think this likely, and do not suggest this plan with the idea that we have now set the nation on course to the solution of the problems associated with the electoral college. The House-based plan is as legitimate as any other. Its exclusion from the reform debate might be justified for accommodational purposes in practical politics, but is an unwarranted neglect for political scientists.

CONCLUSIONS

A number of implications follow from this analysis, for political scientists and for political leaders. Political scientists need to consider the following measures:

1. The presumed large state advantage in general and voting power analysis in particular need careful review. Corrections need to be made in the incomplete causal modeling which confuses the separate effects of population with those of the electoral college as an institution. The hothouse assumptions which have been used in voter power analysis need to be

corrected. One prime target is the assumption of independent action, and the need to address coalitional behavior. If these corrections cannot be made, the technique and its implication should be abandoned.

2. Political scientists are particularly well suited to bring improved comparative perspective to the analysis of electoral institutions and reform, and improvement is badly needed. As other nations have demonstrated, democracy can operate quite successfully when the chief executive is elected by the lower house of a legislature elected from single member districts (as in England), or with multiple parties (as in proportional representation systems). And federal systems do survive without directly involving the regional units in the choice of their chief executives. Comparative analysis may help to make the assessment of risks and dangers in adopting institutional reforms much more rigorous than it has been.
3. Political scientists might also bring rigorous inquiry to bear on the journalistic thesis regarding a new geo-social schism in the nation. For both theoretical and practical purposes, it may be quite useful to investigate carefully the extent to which systematic regional differences in political culture and priorities are in fact developing, and the degree of conflict which may be developing. Comparison of the impact of emerging geo-social divisions on the legislative and executive branches would be a natural extension of this line of inquiry.

Political leaders in the United States must now decide whether the issues of potential social schism and electoral legitimacy raised by the 2000 election are to be ignored or resolved. If they are to be addressed, strategies must be chosen. Buying time, paying off antagonists to avoid conflict, and manipulating impressions to divert conflict are time honored strategies of political leadership, and have often been successful in negotiating past dangerous situations. But not always. The string of compromises concerning slavery did not avert Civil War; they only delayed it until more contestants could participate, just as the dawning of the industrial age was making warfare more deadly than ever. If a social and political estrangement is indeed emerging between major regions of this country, waiting to see if it will just go away may be the worst possible strategy.

In this context, the electoral college has played a direct role in raising doubts about the legitimacy of the 2000 election, and serious reform of the institution looms as a particularly thorny and intractable problem. Attempts to reform it in any way that threatens the small state electoral advantage are likely to fail and even to elevate conflict, not only because the small states would almost certainly loudly oppose it, but also because a reform effort would re-energize all the careless analysis and self-interested interpretation that has characterized the debate in the past. Yet failure to reform it leaves in place a relentless, repetitive reminder that the Constitution gave special advantages to some states, advantages which in the 2000 election appear to have brought them power and benefits at the expense of the others.

REFERENCES

Articles

- Bobbitt, Philip. 1998. "Parlor Games." In William N. Eskridge and Sanford Levinson, eds, *Constitutional Stupidities, Constitutional Tragedies*. New York, New York University Press.
- Carroll, William. 1991. "Should the Electoral College be Abolished?: Yes." In Gary L. Rose (Ed.), *Controversial Issues in Presidential Selection*. Albany: State University of New York Press, pp. 203-215.
- Mann, Irwin, and L. S. Shapley 1964. "The a Priori Voting Strength of the Electoral College." In Martin Shubik, ed., *Game Theory and Related Approaches to Social Behavior*. New York: John Wiley and Sons. pp. 151-164.
- Newsweek*. January 22, 2001. "Red Zone vs. Blue Zone," pp. 38-41.
- Pilant, Denny. 1991. "Should the Electoral College be Abolished?: No." In Gary L. Rose (Ed.), *Controversial Issues in Presidential Selection*. Albany: State University of New York Press, pp. 216-226.
- "Seymour and Frary" (sic). 1926. "Presidential Elections in the United States." (Excerpt) In Lamar T. Beman, ed., *Abolishment of the Electoral College*. New York: The H.W. Wilson Company. Vol. III, No. 7 in "The Reference Shelf" series. pp. 32-41.
- Slonim, Shlomo. 1989. "Designing the Electoral College," in Thomas E. Cronin, ed., *Inventing the American Presidency*. Lawrence, Kansas: University Press of Kansas.
- Wilmerding, Lucius, Jr. 1949. "Reform of the Electoral System." In Julia E. Johnson, ed., *Direct Election of the President*. New York: The H.W. Wilson Company. Vol. 21, No. 4 in "The Reference Shelf" series. pp. 45-63.

Books

- Best, Judith. 1971. *The Case Against Direct Election of the President: A Defense of the Electoral College*. Ithaca and London: Cornell University Press.
- Federalist, The*. 1961. Edited by Jacob E. Cooke. Middletown, Connecticut: Wesleyan University Press.
- Gray, Lee Learner. 1980. *How We Choose A President*, 5th Edition. New York: St. Martin's Press.
- Hovey, Kendra A., and Harold A. Hovey. 1999. *CQ's State Fact Finder 1999*. Washington, Congressional Quarterly.
- Janda, Kenneth, Jeffrey M. Berry, and Jerry Goldman. 1997. *The Challenge of Democracy*, 5th Edition. Boston: Houghton Mifflin Company.
- Longley, Lawrence D., and Neal R. Peirce 1999. *The Electoral College Primer 2000*. New Haven and London: Yale University Press.

- MacBride, Roger Lea. 1963. *The American Electoral College*. Caldwell, Idaho: The Caxton Printers, Ltd.
- Madison, James. 1987. *Debates in the Federal Convention of 1787*. Edited by Gaillard Hunt and James Brown Scott, Buffalo, New York: Prometheus Books.
- Pierce, Neal R. 1968. *The People's President: The Electoral College in American History and the Direct-Vote Alternative*. New York: Simon & Schuster.
- Polsby, Nelson W. and Aaron Wildavsky. 1984. *President Elections: Strategies of American Electoral Politics*, 6th Ed. New York: Charles Scribner's Sons.
- Sayre, Wallace S. and Judith H. Parris. 1970. *Voting for President: The Electoral College and the American Political System*. Washington, D.C.: The Brookings Institution.
- Wayne, Stephen J. 2001. *The Road to the White House 2000: The Politics of Presidential Elections*. Boston and New York: Bedford/St. Martin's.
- White, Stephen, Richard Rose, and Ian McAllister. 1997. *How Russia Votes*. Chatham, New Jersey: Chatham House Publishers.
- Yunker, John H., and Lawrence D. Longley. 1976. *The Electoral College: Its Biases Newly Measured for the 1960s and 1970s*. Beverly Hills: Sage Publications.

Web Pages

- National Archives and Records Administration, *Electoral College Home Page*,
<http://www.nara.gov/fedreg/elctcoll/index.html#top>