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The Electoral College and the Federal Bias

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Although most of the public believes that the President is elected in the nation's ballot boxes every four years according to democratic principles, the more sophisticated know that he is elected by a complex federal mechanism that only approximates a popular election. Usually the apparent popular vote favorite also wins an electoral college majority, and is thus elected President. Actually, national popular vote tallies have no legal standing. They are unofficial tabulations calculated by the convention of combining the popular votes for each slate of electors pledged to a particular presidential ticket in the various states and (since 1964) the District of Columbia.¹ Nonpopular aspects of the system provide biases that may affect the selection of the President, particularly when leading candidates closely compete for the popular votes. Political analysts, however, are divided on the cumulative effects of these biases.

Many liberal political scientists believe that the present system favors liberal urban and minority groups. These groups allegedly hold the balance of power in the largest states casting large blocs of electoral votes under the winner-take-all system that the states have adopted for appointing electors.² The southern states with relatively low voter turn-outs are theoretically advantaged under the present system because states with equal populations control equal numbers of electors, whereas under direct election, electoral strength would be cast only by voters. On the other hand, the winner-take-all system penalized the South during its period of one-party domination. The presidential ticket carrying the South won its electoral votes by overwhelming popular pluralities while the opposing ticket often accumulated more electoral votes with

¹ Sometimes members of the same electoral slate pledged to the same national ticket may not receive precisely the same number of popular votes. In those instances, the convention has been to attribute to a presidential ticket those votes cast for the greatest vote-getter pledged to the ticket.

² After the 1968 election, when there was much concern with reforming the electoral system, Maine adopted a district system for electing its electors apportioned for its representation based on population. Maine only has two districts and the move was apparently to dramatize discontent with the winner-take-all system. The district system was once popular, but was generally abandoned in favor of the winner-take-all general ticket system by 1832. The general ticket system has been the exclusive system employed in the states in the twentieth century.

the same popular strength by carrying states by more modest margins elsewhere. Other biases have convinced many observers that the small states are advantaged by the present system and, therefore, should resist attempts to introduce a direct popular election of the President. Although there are flaws in all claims of special advantages for particular groups under the electoral college system, this article will focus on the alleged electoral advantages for the small states.

The most obvious bias favoring the small states is the two electoral votes apportioned each state for its equal representation in the Senate in addition to the votes apportioned for its proportional representation in the House. These two "extra" votes for each state do enhance the electoral power of the small states as compared to a system basing apportionment solely on population. A small state that is entitled to only one or two U. S. Representatives on the basis of its population has its electoral college representation at least doubled by the two votes based on representation in the Senate. If the 50 states and the District of Columbia are considered as three blocs of equal numbers of large, intermediate, and small states, then the 17 small states³ would have lost half their electoral strength in the last presidential election, if they had been apportioned votes precisely proportional to their populations. The 17 intermediate states would have lost modestly, about five percent of their strength, while the 17 large states would have gained about ten percent under an apportionment precisely proportional to population.⁴

Superficially, the relative enlargement of small state electoral strength by the two "extra" votes per state would seem to indicate that the present system does significantly magnify the electoral power of the small states in presidential elections.⁵ However, the present apportionment system makes the small states incapable of mobilizing an electoral majority except in combination with large states. When absolute vote strengths are compared under the present apportionment, the 17 small states have only 62 votes, the 17 intermediate states 134, and the 17 large states

³ The District of Columbia is treated as one of the smallest states for purposes of electoral college representation.

⁴ These calculations were based on the 1960 census and the apportionment according to that census. The 1970 census and subsequent reapportionment do not alter the figures presented here.

⁵ Electoral power has been defined as the ability of an electoral unit to affect electoral outcomes measured by the mathematical probability that its votes would be decisive to an electoral majority. Theoretically, this is different than a state's electoral vote strength. However, given the large number of possible winning coalitions of states under the present system, the electoral power of each state is almost precisely proportional to its electoral vote strength. See: Irwin Mann and L. S. Shapely, "The A Priori Voting Strength of the Electoral College," in *Game Theory and Related Approaches to Social Behavior*, ed. Martin Shubik (New York: John Wiley and Sons, 1964), pp. 151-164.

342.⁶ As 270 electoral votes are necessary to elect a President, clearly the small and intermediate states are powerless unless allied with large states. In fact, under the present apportionment, eleven large states could control a majority of the electoral votes.

A small state may contribute more electoral votes than its population alone would warrant to coalitions favored by a popular plurality of its voters. In 1960 and 1968, when the major-party voters were almost evenly split nationally, Richard Nixon was able to carry a majority of the states against Democratic coalitions with his greater popularity outside the most populous states. In 1968 Nixon carried 32 states with 302 electoral votes, while Hubert Humphrey carried only 14 states (including the District of Columbia) and 191 electoral votes, and George Wallace carried five states and 45 electoral votes.⁷ Indeed, had Nixon won precisely 50 percent of the two-party votes in 1968, he still would have carried 32 states against 14 for Humphrey. One can project the states that Nixon would have carried with precisely half the major-party votes nationally by assuming that a constant percentage of the major-party votes would have shifted in each state to produce an equal national division. This neutral assumption facilitates a demonstration of the effect of the distribution of popular support among the states independent of popular preference for a particular presidential ticket. Because Nixon carried all his states by relatively more than his national popular vote margin, no states and their electoral votes would shift to Humphrey. Thus, with the two major parties equally dividing the nation's popular votes, Nixon would still carry four of the nine states containing most of the nation's population and 28 of the rest of the states. Humphrey would still carry five of the nine largest states and only nine of the remaining states. Nixon's 18-state lead over Humphrey represented a 36-vote lead based on the states' two "extra" votes, and Nixon built up his lead in state victories outside the states with the most population. Nixon was the popular vote favorite in the smaller states, carrying about 52.7 percent of the major-party votes in these states, and would have carried a projected 52.3 percent with an equal division of the two-party votes. However, with an electoral lead of 111 votes over Humphrey, Nixon gained at least 75 additional electoral votes through biases in the system not attributable to the two "extra" votes for each state. This was principally the result of the Republicans carrying their states by more modest margins than the Democrats carried their states with equal popular

⁶ Under the previous apportionment the division was 63, 135, and 340 votes for the small, intermediate, and large states respectively.

⁷ One elector chosen on a slate pledged to Nixon in North Carolina voted for Wallace, leaving Nixon with 301 votes in the electoral college.

support nationally. The Republican votes were so well distributed relative to the Democratic votes in 1968 that Nixon could have won an electoral majority with a projected 49.1 percent of the major-party votes. Assuming a constant percentage shift of major-party support to the Democratic ticket in each state, Humphrey would have needed 51.2 percent of the major-party votes. Because this meant that Nixon could have beaten Humphrey while trailing him by more than one million popular votes, the projections cast doubt on the thesis that urban liberal and minority groups in the populous states are particularly advantaged by the present system in close elections. Humphrey's voter coalition was essentially liberal compared to Nixon's, with particular strength in the cities and among non-whites and non-Protestants.⁸

The case for a net advantage for small state voters is also dubious. Although trailing slightly in the national popular vote count in 1960, Nixon still carried a majority of the states, winning 26 states against 23 for Kennedy.⁹ Nixon trailed two states to seven in the nine states containing a majority of the nation's population, but led in the rest of the nation with 24 states against 16 for Kennedy. Although carrying only 48.9 percent of the two-party vote in the nine largest states, Nixon carried 51.2 percent of the votes elsewhere. Projecting for an equal division of the two-party votes, only Hawaii with three electoral votes would shift to Nixon. Nixon's projected 27 to 22 state lead gives him only 10 electoral votes based on his ability to carry more of the votes apportioned to states, regardless of population, because of his disproportionate strength in the smaller states. Moreover, as Kennedy actually enjoyed an 84 electoral vote lead over Nixon, and Kennedy would still lead by a projected 78 votes with a precisely equal share of the popular votes, the cumulative bias of the electoral system worked against the favorite of most small states in 1960. Nixon would have needed a projected 50.3 percent of the major-party votes to carry an electoral majority, assuming a constant percentage shift of major-party voters from Kennedy to Nixon in each state. Kennedy would have won a minimum electoral majority with a projected 49.8 percent of the two-party votes.

Comparing the results of the 1960 and 1968 elections under an equal division of the major-party votes, shows that Nixon's lead outside the largest states increased considerably from ten more state victories than

⁸ According to the Survey Research Center data, the three-party 1968 presidential contest gave Humphrey 94 percent of the black vote, 85 percent of the Jewish vote, and 54 percent of the Catholic vote. He carried 50 percent of the votes in the cities (population over 50,000) and was more popular in the larger cities.

⁹ Mississippi voters elected an unpledged slate that voted for Harry Byrd of Virginia. The rest of the states supported major-party tickets. The District of Columbia possessed no electoral votes at the time of the 1960 election.

the Democrats in 1960 to 19 more in 1968. This increase occurred at the same time that two of the nine largest states swung from the Democratic to the Republican column of state victories. These simultaneous Republican gains in state victories, with national popular support held constant, raises the suspicion that Nixon's 36 vote advantage gained through carrying more of the "extra votes" in 1968 may not only be attributable to greater popularity in small states, but also to a favorable distribution of his support among these states for carrying state-wide majorities.

The small increment in the electoral strength of the small states under the present system because of the non-popular aspects of apportionment does not measure the influence of the small state voters. The casting of a state's electoral strength under the general ticket system is controlled by a state-wide majority vote, and a very sizeable minority in the state may be denied any influence on the casting of its electoral votes. Moreover, even though they seem generally to have a net preference for Republicans,¹⁰ the small states do not vote as a unified bloc, and thus any advantage for the majority of such states is partially offset by the minority. Consequently, the advantage to the small state voters as a group in influencing the electoral college is small and appears easily outweighed by other biases of the present electoral system.

The preceding analysis attempted to illustrate the impact for small states and their voters of the present electoral apportionment and the winner-take-all system of controlling a state's electors. However, there is one aspect of the present constitutional system that may provide the representatives of the small states more influence in selecting the President than their small constituencies alone would warrant. The President is not necessarily chosen by the electoral college, in which most of the electors are from the large states. An absolute majority of all the presidential electors apportioned to the states must support a candidate to elect him President. One party has always controlled a majority of the electoral votes since 1824, and as long as the two major parties control almost all of the electors, the electoral college is likely to elect the President. In the absence of an electoral majority, however, the Constitution requires that the state delegations in the House of Representatives elect the President from among the three leading candidates in the electoral votes. As each state delegation, large or small, would cast one ballot, 26 states representing relatively few people could elect the President from among the three candidates nominated by the electoral col-

¹⁰ The Republicans usually carried most of the smaller third of the states in the 26 presidential elections after the Civil War. The Democrats with the support of the medium-sized states of the South usually carried most of the intermediate third of the states throughout this period.

lege. In theory, the smallest 26 states, containing only about 15 percent of the nation's population, could out-vote the states representing the overwhelming majority of Americans.

This small state bias was intended by the framers of the Constitution to allay fears that only candidates favored in the large states would muster large blocs of electoral votes. As national coalitions were not envisioned, it was presumed that the state-appointed electors would favor home-state figures. The Constitution originally provided that the electors would have to cast a second ballot for someone outside their home state. Yet, unless there was some obvious choice, it would be difficult for the electors voting in their separate state capitals to concentrate their second presidential ballots. In compensation, the contingent election would give the small state representatives an equal voice, with delegations from populous states, in selecting the President from among the leading choices of the electoral college. The original rationale for a contingent election, providing for state equality, evaporated almost immediately when national partisan coalitions united state majorities, irrespective of state size, and facilitated the election of the President without resort to the contingent election. Thus, there have been only two contingent elections. The first occurred in 1801 when the House delegations were obliged to choose between Thomas Jefferson and Aaron Burr because the original electoral system was unable to distinguish between the partisan votes for President and Vice President. To insure that a national party coalition could control both the offices of President and Vice President without further embarrassment, the Twelfth Amendment was passed in 1803 to provide separate electoral college balloting for these two offices.

The last contingent election occurred in 1825 after the dominant Democratic Party had failed to agree on a national nominee in 1824 and four candidates with largely sectional bases of support divided the electoral votes. Henry Clay, the Speaker of the House, helped organize a coalition of state delegations behind John Q. Adams, who was elected President over Andrew Jackson, the electoral vote leader. Jackson partisans, however, discredited the Adams administration with charges that it had been spawned by a corrupt deal between Adams and Clay that frustrated the will of the people. The legitimacy of any future administration undoubtedly would also suffer if it depended on a contingent election.

In 1968 there was much concern that the third-party coalition led by George Wallace might force a contingent election by winning a large bloc of electoral votes in the South. Wallace slates actually captured five

states, with 45 electoral votes, in the deep South. Unable to carry Texas or sweep the South: however, Wallace's support was too small to deny both candidates electoral majorities, especially with Nixon's favorable distribution of support for carrying electoral votes. Nevertheless, the danger was real, and an electoral college deadlock could have precipitated a severe political crisis. In 1968 the Democrats won control of a majority of the state delegations in the House of Representatives. Thus, Hubert Humphrey would have been elected President in a contingent election in 1969, if congressmen had voted strictly according to party affiliations. According to that premise, Humphrey would have won 26 states, Nixon 19, and five state delegations would have divided evenly and cast no ballot. However, a number of Representatives elected pledged to vote for their constituents' favorites in the event of a contingent election. If all the pledges had been honored and there were no other defections from party regularity, Humphrey would have had the support of 24 state delegations, Nixon 22, with four split.¹¹ According to this premise, no candidate would have had the absolute majority of state delegations needed for election. Such a deadlock in the contingent election undoubtedly would have produced an electoral crisis. Congressmen would have been placed under tremendous pressure, some of it not so savory, to break the deadlock. Even some of the best motivated congressmen might have been torn between voting for their party's nominee, their constituents' preference, their state's preference, or the leading candidate nationally. If any Southern Democrats had been willing to follow an attempt by Wallace to bargain away control of the presidency, the system would have been more thoroughly discredited.

The small states, thus, would have had a theoretical advantage in a contingent election through the disproportionate weight of their representatives, the single representative from Nevada being as decisive as a majority of the New York or California delegations. However, contingent elections are rare and the contingent votes would be cast by representatives whose choice would be largely determined by partisan and other considerations, distinct from the interests of small states as a group. Small state voters, of course, would be divided between the national partisan coalitions, and would hardly feel benefited as a group by the equality of their state delegations with those of the populous states. The lack of public confidence in such an election would extend even to those groups presumably enjoying disproportional representation.

Some eminent students of politics have held that abolishing the two electoral votes now apportioned each state regardless of population would

¹¹ Lawrence Longley and Alan G. Braun, *The Politics of Electoral College Reform* (New Haven: Yale University Press, 1972), p. 17.

violate an important compromise between the large and small states at the Constitutional Convention of 1787. In the Senate debates over electoral reform in 1956, Senator John F. Kennedy argued that the states joined the Union on the understanding that they would have the same number of electoral votes as the number of Senators and Representatives. Direct popular election, he suggested, would constitute a "breach of the agreement made with the states when they came into the Union."¹² Interestingly, this "breach of contract" argument has not been applied to the bias of contingent election. One reason for the failure to argue for this aspect of the electoral system is that the national partisan coalitions have been able to avoid resort to contingent election since 1824. Another reason is that a contingent election, as provided by the Constitution, would constitute so treacherous a proceeding that no one could make a plausible case for it.

Nevertheless, now that contingent election of the President has lain dormant since 1824, some defenders of the present system depict the present electoral apportionment as conforming to the principle of the federal system, which popular election would violate. However, although based on representation in both houses of Congress, the electoral college is not analogous to Congress in the way the states are represented. The Congress is a coordinate body, and the branch in which the small states share equality with the large states can block any act of the branch based on proportional representation. The electoral college would be analogous to Congress voting as a single body. Although the small states would have somewhat more representation than their population alone would warrant, the small state congressmen would be overwhelmed by the large state congressmen if representatives were to align according to the size of their states. They invariably do *not* align this way, but that only makes the small state bias inconsequential to small states as a group.

The philosophy that direct election would constitute a violation of a fundamental agreement of the Union of the states ignores the probability that many compromises necessary in 1787 would fail to win the acceptance of future generations. The drafters of the Constitution recognized this and provided for an amending process. The Constitution does provide that no state can be deprived of its equal representation in the Senate without its consent; all other aspects of the nation's representative system are now open to amendment. Actually, it was the equal representation in the Senate that was seen as the crucial concession to the small states, and the electoral apportionment was originally seen

¹² *Congressional Record*, CII, Senate, March 20, 1956, p. 5150.

as so favorable to the large states as to require equality of the states voting in the contingent election.

Although there is a slight bias favoring the small states in the electoral apportionment, it is easily overwhelmed by other biases in the system. Indeed, from the perspective of campaign strategists, the populous states will usually seem to require the most attention in a presidential campaign despite the small state bias in apportionment. Of course, campaign managers would prefer appeals that would win support across the board and media that could reach potential support throughout the nation. Few candidates lose because of poor distribution of support, but many lose simply from insufficient popular strength, even with favorable distribution. Nevertheless, campaign strategists must sometimes make choices about where to concentrate scarce resources. A party coalition would gain more electoral votes by carrying several small states than by carrying one large state with the same population as the combined small states. On the other hand, if a national ticket has competitive strength in all these states, then the chances of winning a popular plurality in the one large state might seem greater than winning popular pluralities simultaneously in the several small states. It might be rational, therefore, to give disproportionate attention to winning a plurality in one large state where a substantial bloc of votes is at stake, while expecting to win popular pluralities in at least some of the smaller states, for a net gain in electoral votes. If the large state voters were more closely divided in their preferences than the voters in the small states, then a presidential campaign would have even more incentive to seek the state's entire bloc of votes, which would seem within its grasp.

Of course, a presidential ticket's appeals are limited by the nature of its core voter support. It may seek to pick up strength beyond that core, but not at the expense of alienating its basic constituency. Still, to the extent that managers of a presidential campaign must choose states in which to concentrate limited resources, they will probably select states where they have a reasonable chance of winning large blocs of electoral votes. The tendency to concentrate on the large states is reinforced by the great competitiveness of the major parties in most of the very large states.

Under the present electoral system a presidential ticket must have considerable popular strength in the largest states because the eleven largest states alone contain an electoral majority. Therefore, a presidential ticket must win at least some of these populous states to mobilize an electoral majority. While, theoretically, a ticket need carry none of the small or intermediate states, practically, a ticket *must* carry some of

the small or intermediate states because any serious opposition will almost certainly carry a number of the larger states. Given the present distribution of the major-party voter coalitions, the Democrats probably have to win most of the 17 large states to produce an electoral majority, while the Republicans must carry at least some of them for an electoral majority. At any rate, in a close election, a few large states with huge blocs of electoral votes are likely to be carried by relatively small popular vote pluralities. Thus, the large states are crucial in any closely contested election, and they might receive attention even disproportional to their large populations despite the theoretical small state bias of the present system of apportionment. None of this demonstrates any advantage to the large state voters as a group. On the other hand, there is no concrete evidence that the slight small state bias in electoral apportionment provides any tangible advantage to small state voters.