PICKING THE PRESIDENT

understanding the electoral college

EDITIED BY ERIC BURIN

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Eric Burin

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Preface

The 2016 presidential election has sparked an unprecedented interest in the Electoral College. In response to Donald Trump winning the presidency despite losing the popular vote, numerous commentators have weighed in with letters-to-the-editor, op-eds, blog posts, and the like, and thanks to the revolution in digital communications, these items have reached an exceptionally wide audience. In short, never before have so many people had so much to say about the Electoral College.

This remains a high-stakes debate, and historians, political scientists, philosophers, and other scholars have an important role to play in it. They can enrich discussions about the Electoral College by situating the system within the history of America and other societies; untangling the intricacies of republicanism, federalism, and democracy; articulating different concepts of political morality; and discerning, through statistical analysis, whom the Electoral College benefits most. In spotlighting the Electoral College from various vantage points, this volume aims to empower citizens to make clear-eyed decisions about it.

If one of this volume's goals is to illuminate the Electoral College, another is to do so while many people are still focused on the topic. This project came together quickly. The entire enterprise went from conception to completion in a mere five weeks. That swiftness was made possible by working with The Digital Press at the University of North Dakota, which embraces a cooperative, transparent model of publication with the goal of producing open-access, electronic works that can attract local and global audiences. Likewise, this volume came to fruition speedily because the contributors agreed to pen brief essays in short order. As a result, while their works have the hallmarks of scholarly articles, they do not constitute an exhaustive examination of the Electoral College. Indeed, many germane subjects are not addressed. Even so,

these learned ruminations can enhance the ongoing debate about the Electoral College.

Essays of this sort are much-needed, for the post-election dialogue about the Electoral College has been warped by partisanship. Republicans who reckon that Electoral College benefits their party usually have defended the system. Conversely, Democrats, smarting from the fact that in a span of sixteen years they have twice lost the presidency despite popular vote triumphs, typically have denounced it. This mode of assessment is unfortunate, for it impairs our ability to analyze the Electoral College on its own merits, as opposed to how it affects one party or another. Put another way, the Electoral College is an inherently political institution, but appraisals of it need not be invariably partisan.

To facilitate and expand the conversation about the Electoral College, this volume offers short essays that examine it from different disciplinary perspectives, including philosophy, mathematics, political science, communications, history, and pedagogy. Along the way, the essays address a variety of questions about the Electoral College: Why was it created? What were its antecedents? How has it changed over time? Who benefits from it? Is it just? Should we alter or abolish the Electoral College, and if so, what should replace it? In exploring these matters, *Picking the President* provides timely insights on one of America's most high-profile, momentous issues.

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Did Disenfranchisement Give the South an Electoral Advantage?*

Patrick Rael

There has been much recent discussion of the three-fifths clause of the Constitution,[1] which boosted slaveholding states' representation in the Electoral College by including for apportionment a population that received no benefits from government. Scholars have debated how this influenced national politics under slavery, but this conversation applies to the post-emancipation world as well.[2]

Let us start in 1860. With the three-fifths clause operating, the slaveholding states controlled 120 of 303 electoral votes (EV), or 40%. The free states desired a "0/5" scenario, in which slaveholding states received no representation benefit for the enslaved population. In this case, the South would have controlled only 35% of all EV. In 1860, the three-fifths clause thus gave the South a substantial 5% bump.[3]

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* A version of this essay appeared as Patrick Rael, "Did Disenfranchisement Give the South an Electoral Advantage?" *Journal of the Civil War Era* (blog), December 13, 2016, http://journalofthecivilwarera.org/2016/12/disenfranchisement-give-south-electoral-advantage/.

[1] For a brief summary see: Wikipedia contributors, "Three-Fifths Compromise," *Wikipedia, The Free Encyclopedia*. Accessed December 31, 2016. https://en.wikipedia.org/w/index.php?title=Three-Fifths_Compromise&oldid=754867751.

[2] See, for example, "Slavery, Democracy, and the Racialized Roots of the Electoral College," AAIHS (November 14, 2016); "Is slavery the reason for the Electoral College?" CNN.com (November 22, 2016); "Yes, The Electoral College Really Is A Vestige Of Slavery. It's Time To Get Rid Of It." WGBH News (December 6, 2016).

[3] All figures based on my analysis of data from *Historical Statistics of the*

Under the South's desired "5/5" scenario — the one in which all slaves counted for representation — the South would have controlled 42% of all EV. That is a more modest bump of 2% (about 7 EV) over what it actually enjoyed under the 3/5 ratio.

Emancipation enhanced the South's share of national power by propelling 3.9 million former slaves into the ranks of the population used as a basis for apportionment. With slavery gone, each former bondsperson would now be counted as a whole person rather than three-fifths of one. In principle, this was a "5/5" scenario, in which all people (former slaves among them) were considered for purposes of representation.

In the 1872 election cycle, which was the first to rely on post-emancipation census figures, the South controlled 138 of 366 (38%) EV. Had former slaves not been included (a "0/5" scenario), the South would have controlled only 90 of 319 (29%) EV. The emancipated freedpeople thus gave the South a 9% bump in representation in the Electoral College.

It was good that emancipation boosted southern political power so long as those added to the apportionment population had access to the political process through the 14th and 15th Amendments, which granted citizenship to African Americans, and the franchise to black men. But under conditions of complete disfranchisement, which southern states came close to making around the turn of the 20th century, no African Americans received direct representation in Congress.[4] At that point, emancipation's boost in

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United States, *Earliest Times to the Present: Millennial Edition*, Susan B. Carter, Scott Sigmund Gartner, Michael R. Haines, Alan L. Olmstead, Richard Sutch, and Gavin Wright, eds. (New York: Cambridge University Press, 2006); "Inter-university Consortium for Political and Social Research. Historical, Demographic, Economic, and Social Data: the United States, 1790-1970 (ICPSR 3)," [Computer file] (Ann Arbor, MI: Inter-University Consortium for Political and Social Research, 197?). A note of caution: there are many ways of building counterfactual scenarios with these numbers. I have made some plausible but not airtight assumptions, such as that the apportionment basis for each cycle would not change despite having fewer people in the apportionment population. Bottom line: republish these numbers at your own risk.

[4] Absolute disfranchisement was the goal, but it was rarely complete.

Southern power worked (some might say ironically) against African Americans, who struggled against racist state regimes whose disproportionate strength in national government blacks' presence was artificially inflating. Imagine trying to get federal anti-lynching legislation passed against Southern states that had worked to remove blacks from the voting population, and were stronger than they should've been because of it.

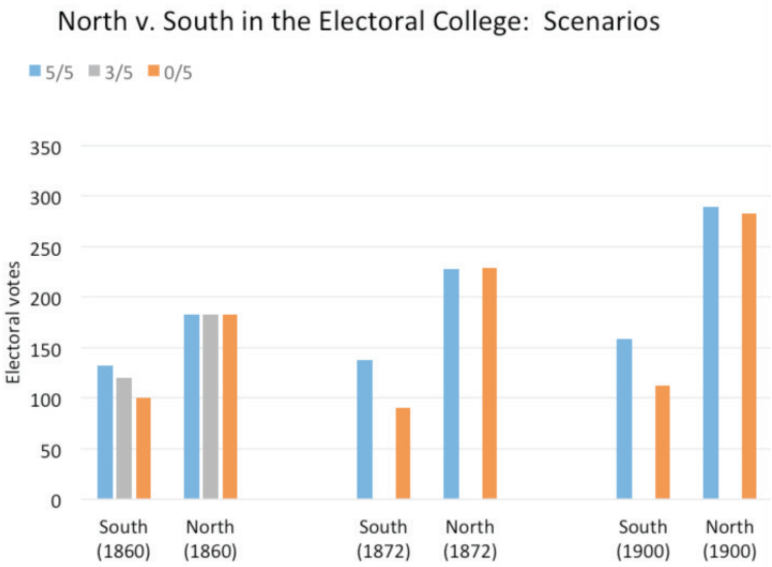
By 1900, African Americans were being largely expelled from the political process. Their concerns went unrepresented, and yet their numbers still boosted Southern representation in the Electoral College. Effectively, the country ran on the "5/5" principle even though the reality was that close to "0/5" of blacks could vote for their own representatives.

In slavery, this desire had resulted in the diminishment of Southern power. At the constitutional convention in 1787, representatives from northern states had bargained the South down to counting only three-fifths of each slave for representation. After the war, Republicans had sought to carry this principle into freedom by Section 2 of the 14th Amendment, which provided for the diminishment of a state's enumerated population in proportion to the proportion of voters it disenfranchised. That failed, though, as did the 15th Amendment's voting protections, when the Supreme Court began (from the 1870s on) permitting ostensibly race-neutral but intentionally race-specific disfranchisement measures. This gave white supremacists the best of both worlds — they received the enhanced political power that went with a larger population, without the obligation to serve that population.

The numbers for 1900 bear this out. In the "5/5" reality, the states that had held slaves in 1860 ("the South") had 159 EV, or 35% of the total. Under a "0/5" scenario, in which the South would lose representation for the blacks it refused to enfranchise, the South would have had only 112 EV, or 28% of a smaller House.

The South thus gained a lot from disenfranchisement. At the turn of the century, its largely disenfranchised African Americans gave it a 7% bump in the Electoral College, which was one even

I make no claims here about how many were *actually* disenfranchised. This is about hypothetical extremes.



Information from Susan B. Carter et al., eds., *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition* (New York: Cambridge University Press, 2006).

larger than the 4-5% bump the three-fifths clause usually gave under slavery. And, as before the war, this was a population included *only* to boost representation, for it could make virtually no claim on the political process at all.

The Electoral College has always provided the ruleset for selecting the President of the United States. The framers of the Constitution hoped that this membrane between the voters and the office of President would insulate the electoral process from the "heats and ferments" of public opinion, as Alexander Hamilton put it in *Federalist* No. 68.[5] But the cost has been high, for anti-democratic politicians have always been willing to game the system. One might have thought that ending slavery would have ended the compromise embodied in the three-fifths clause — a system that John Quincy Adams came to call "morally and politically vicious."[6] It was not to be. Of the many paradoxes to the

[5] James Madison, *Federalist* No.68, see the Documents section.

[6] Josiah Quincy, *Memoir of the Life of John Quincy Adams* (Boston: Crosby, Nichols, Lee and Co., 1860), 108-9.

"freedom" that followed slavery, one of the most neglected may be this: in the era of Jim Crow, ending slavery only made the white South stronger.