

THE PRESIDENTIAL SPLIT DECISION OF Y2000

A COMPARATIVE ANALYSIS OF THE 1876 AND 2000 ELECTIONS AND THE POTENTIAL FOR REFORM

Presented by

V.Lance Tarrance, Jr.

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The 2000 presidential election remains today a "statistical tie" and a "split

decision" embedded in election disputes about its outcome. Additionally, the race was so close that it became immediately deadlocked on election night and has been immersed in over 40 lawsuits with the judicial branch of government involved in determining the overall winner. From a political science standpoint we also have a "split decision" for the first time in 112 years, which marks the 2000 contest historic beyond even its immediate significance. George W. Bush (most likely) has won the Electoral College while Al Gore carried the popular vote. Will this "split decision" create a nervous uncertainty to our nation about its true leadership and direction or will it become only a trivial problem that the media attempted to invent into a "crisis"?

PART ONE: A DIVIDED COUNTRY

The margin of the last actual occurrence, in 1888, of a discrepancy between the popular vote and the electoral vote was of minute proportions – Harrison (R) received

5.439 million votes while Cleveland (D) received slightly more, 5.540 million votes, a difference of less than 1%. Even though the parallel of the 2000 election and the 1888 election is extremely relative (see footnote below), this paper will focus on the earlier disputed election of 1876, which yielded both a split decision or discrepancy in the voting and also involved a monumental election dispute of nearly insurmountable legalities and political "mischief". Since the state of Florida was involved both in the 1876 disputes as well as in the 2000 election of today, this paper will lay claim to the notion that we need to rediscover the 1876 election controversy as a potential prologue to our most recent presidential election problems.

It is important to first note that the elections of the 1870's and the 1880's were "wild years" in that all those election outcomes were extremely close and that the recurrent chaos in Washington D.C. politics and the "barn-burner" elections were no big deal. (See Table I)

Footnote: "Imagine a presidential campaign matching two solid but somehow uninspiring men. One boasts a pale power of incumbency; the other, a governor from the nation's midsection – bears the surname of a former president. The sky rocketing cost of old-age pensions is an issue along what to do with a huge federal surplus. The race is close – so close that come Election Day, one man carries the popular vote while the other wins the Electoral College. Year 2000? Not yet. This was 1888" (Washington Post).

Table I

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- 1876

Hayes (R) (185) vs. Tilden (D) (184)

4.036 million 4.300 million

1880

Garfield (R) (214) vs. Hancock (D) (155)

4.454 million 4.444 million

1884

Cleveland (D) (219) vs. Blaine (R) (182)

4.874 million 4.851 million

1888

Harrison (R) (233) vs. Cleveland (D) (168)

5.439 million 5.540 million

1892

Cleveland (D) (277) vs. Harrison (R) (145)

5.557 million 5.176 million

1896

McKinley (R) (271) vs. Bryan (D) (176)

7.105 million 6.502 million

The vote determinants for all the political chaos at the end of the 19th century, especially the split decisions of 1876 and 1888, arose from deep regional differences, as is the case with the recent election. At the end of both centuries it has found America "at peace, moving into a new economy, issues of character and money at the forefront, and one candidate capturing the Northeast and the other sewing up the Southern states." As in both centuries as they closed, the political divisions seem to increase and the electoral outcomes became murkier.

The key reasons for such electoral deadlock and party parity which promotes voter mischief and election tally litigation, has to do among other factors, with the geopolitics of the U.S. today. Specifically we note two strong undercurrents today:

- 1. The Democratic Party is the Pro-government party whose power is located primarily in the centralized cities and the Northeast/industrial Great Lakes, and the "Left Coast" of California.
 2. The Republican Party has been transformed geo-politically into a party of "Mid-Americas" – that is, the South, the lower Midwest, and the Great Plains states. The square miles of the U.S. controlled by Gore was 580,000 while those for Bush numbered 2.4 million (4x).

The Achilles heel of the Democrats is most likely Iowa and Wisconsin while for the Republicans it is no doubt Florida. These two large geo-political groups of states (29 GOP and 21 Democratic) are almost perfectly in balance, both in population and in political influence. This is more or less a total flip flop from the 19th century when the two political parties controlled opposite geography.

American voters are also sharply divided over cultural issues that can only indirectly be addressed through politics and public policy. It could be said that both the Gore and Bush campaigns failed to fully grasp the deep cultural changes that have taken

place at the end of this century. Bush's "compassionate conservatism", however, was an attempt to adjust to the changes. According to Francis Fukuyama of George Mason University, it is the "feminization" of American politics that has caused this great divide (akin even to the large racial divide that is also still so pervasive). Not only is it that women vote in greater numbers but also they constitute the key vote that has swung to the Democrats in contemporary elections. The social role of women now represent the "single most important change to have taken place in the U.S. over the last 40 years". Now it is, according to Fukuyama, from this single source that virtually the entire "culture wars" stem. The Democrats have, as the pro-government and social reform party, marketed to these "soccer moms" in the suburbs of their target geopolitical areas with innovative public policies while the conservative Republicans, the anti-government and traditional values party, have been left to decry the social ills. They have been "less good at explaining how to put the genie back in the bottle".

Conservative Republicans have too often appeared "judgmental" in this moral decline era and as an example, played a losing hand in the impeachment politics of Clinton. In addition, Republicans have been slow to approach solutions to health and educational issues while touting only tax cuts, abortion, and defense issues (mostly male – driven politics). With over 60% of white males in the U.S. voting consistently Republicans, it is the "split decision" of women that keeps the post-Reagan/realignment from coming to completion. Among all women, they voted 54 – 43 for Gore; white women split evenly 48 to 49; but working women voted for Gore 58 to 39 while "housewives" not in the labor force voted for Bush 52 to 44. All of the above statistics from the 2000 exit polls show the "split decision" women vote results in an almost perfectly balanced outcome: male white voters and housewives vs. working white women and black women (see Table II A and B).

Walter Dean Burnham of the University of Texas believes that there is still another "split decision" that is making American elections more difficult to find a consensus candidate. It is the split in voters with household incomes between \$39,000 and \$50,000 (24% of the electorate which split 49 to 48) and those of family incomes of more than \$100,000 (15% of the electorate). Bush won the upper brackets (54 to 43 as expected). But their agenda of issues are sharply different than that lower – income voters. Less affluent voters are far more likely to favor making prescription drugs part of Medicare while over 40% of the \$100,000 bracket wanted tax cuts and to spend the

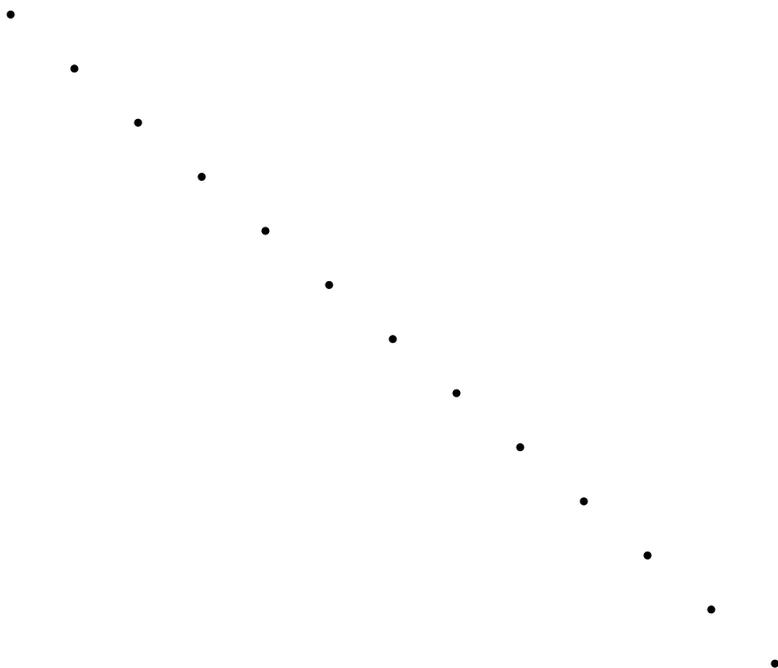
surplus to trim the national debt. This income – agenda skew in the electorate is one reason, according to Burnham, "that the Democrats are having a lot of trouble, even with this good economy – there's disenchantment, even among core Democrats". (Washington Post)

TABLE II A

SELECTED EXPLOITIVE

SOCIAL AND DEMOGRAPHIC DIVISIONS IN AMERICA:

Democrat Advantage



• Gore Bush

- 1. Blacks (10) 90 10
- 2. Jews (4) 80 17
- 3. Gays/Lesbians (4) 70 25
- 4. Hispanics (7) 62 35
- 5. No H.S. degree (5) 60 40
- 6. Under \$15,000 income (7) 57 37
- 7. Post graduate degree (18) 52 44
- 8. Upper class (4) 56 39
- 9. Liberal philosophy (20) 80 13
- 10. Medicare/Rx drugs Top Issue (7) 60 39
- 11. Social Security Top Issue (14) 58 40
- 12. Health Care Top Issue (8) 64 33
- 13. \$15-30,000 income (16) 54 41
- 14. Union member (16) 62 34
- 15. Working women (31) 58 39

- Source: Exit Polls November 7, 2000

TABLE II B

SELECTED EXPLOITIVE

SOCIAL AND DEMOCRAPHIC DIVISIONS IN AMERICA:

Republican Advantage

- Bush Gore

1. Conservative philosophy (30) 81 17
2. Taxes Top Issue (14) 80 17
3. Honesty Top Quality (24) 80 15
4. Married with children (39) 52 45
5. Upper middle class (27) 54 43
6. White men (48) 60 36
7. Whites (61) 54 42
8. Non-union household (74) 54 41
9. Gun owner household (48) 61 36
10. Protestant whites (56) 63 34
11. Attend church regularly (14) 63 36
12. Abortion mostly illegal (27) 69 29

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- Source: Exit Polls November 7, 2000

David Broder ventured another key to all these national split decisions – it's the "polarized baby boomers" (born between 1946 and 1964). He postulates that the generation that came of age during the 1960's and comprises 30% of the electorate was divided by so many forces (Vietnam, Civil Rights, the pill, etc) that it "never has gotten its act together". Al Gore and George Bush, both baby boomers themselves, reflect the opposing tendencies of that stormy decade and embody the split within their generation. As Michael Moore at University of Wisconsin observed "the election 2000 is really about competing time capsules – as the first – ever baby boomer vs. boomer oval office contest unfolds, the intergenerational schisms between the first wave of boomers are personified by Gore–Lieberman crowd and the Bush–Cheney bunch". Florida's spat is just a renewal of ancient boomer rivalry." (Houston Post). Broder also asks – "is it too far fetched to say that the stalemate in this first election of the new century reflects those divisions? I don't think so". The exit polls, incidentally, showed that Broder was right – the voters between 45 and 59 years who came of age during the 1960's split perfectly: 48 to 48, also perfectly reflecting the national vote. As Broder says, "until they make up their minds deadlock is likely in this country".

Indeed, during the entire 2000 year campaign, polls after polls indicated a close and competitive race – literally "too close to call" as neither candidate ever climbed to 50% or better. After this "statistical tie" presidential outcome (see Table III), there are now nearly perfect partisan splits in both chambers of Congress (see Table IV). The U.S. Senate is a perfect 50 to 50 split with the incoming Vice President the tiebreaker, perhaps on many dozens of major votes in the next four years. Add all this to the fact that Iso symbolize the current close of the 20th century political history.

TABLE III

%

Net

Ballot 2000 U.S. Vote (unofficial) Vote % difference

Bush 49.821 million 48%

0%

Gore 50.158 million 48%

Other 3.836 million

Total 103.815 million

FLORIDA VOTE (CERTIFIED).

Bush 2.9128 million

0%

Gore 2.9122 million

TABLE IV

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• % Net

U.S. HOUSE MEMBERS 1992 2000 difference

Republicans 167 221

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Democrats 267 211

U.S. SENATE Members

Republicans 44 50

0%

Democrats 56 50

PART TWO: THE 1876 PARALLEL

As has already been stated, the last seriously disputed presidential result occurred after the Hayes–Tilden election of 1876 and it owed the dispute to the irrepressible conflicts in the aftermath of the Civil War. Except for this 1876 election (and now the 2000 election), the Electoral College had "produced unambiguous outcomes in every single presidential election, accepted by the losing candidate and party and by the whole American people with unfaltering legitimacy". (Martin Diamond "The Electoral College and the American Idea of Democracy"). The Hayes – Tilden election was 185 to 184 – a win by just one electoral college vote and the 2000 election appears to be 271 to 267, a win by just 2 electoral college votes. If Gore had won his home state of Tennessee, he would be president today.

It is important to once again note the "wild elections" at the end of the 19th century with the 1876 disputed election being just one. There was a span of 24 years in which elections were all "too close to call" in the popular vote. The threat of a "wrong winner" (i.e., winning the Electoral College vote but losing the popular vote) "hung like a dark cloud over every election from 1876 to 1896 because of the extreme closeness of party competition in that era." Out of 4 consecutive and highly competitive presidential elections, two produced "wrong winners" (1876, 1888) and a third (1884) "came within a hairs breath of doing so – a shift of only 575 votes in New York would have given the Electoral College victory to the popular vote loser (Blaine)". (Reference: The Coming Debacle in the Electoral College by Abbott & Levine). We can only surmise that our current era will parallel that of the late 19th century – will election 2000 be our 1876 and will we see more close & disputed elections in 2004, 2008, 2012 and beyond? Remember that Hispanic votes will become the U.S. largest minority by 2005 and could easily be the swing vote during this era.

If we employ the "flip flop" factor, that is, Republicans of today most resembling the Democrats of the 19th century and that Gore today most reflects Hayes (Bush reflects Tilden), lets review the 1876 election and transpose the party labels and names but let the actual history maintain itself. Lets hope that Bush is destined for a better fate than Tilden and that New Age television/lawyers can prevent the "mischief" that the Hayes/Gore crowd was able to pull off in the days and weeks after the 1876 election. Keep in mind that the state of Florida played a key role in the 1876 election as in the current "hanging chad unpleasantness".

There were "appalling revelations of corruption" in the national government of Grant/Clinton in 1876 and being impervious to criticism, Grant/"Clinton" was willing to run again but clearly was not wanted. Hayes, Governor of Ohio, had an unblemished reputation, and was nominated by the Republicans/"Democrats on the 7th ballot. Their platform was vaguely reformist/"populist" and said little of Grant's/"Clinton's" incumbent administrations policies. (Reference: A History of Presidential Elections, Rosebourn and Eckes).

On the other hand, the Democrats/"Republicans" assembled their convention in St. Louis and renamed Samuel Tilden/"Bush" governor of New York/"Texas" as their reformer candidate on the second ballot. That Tilden could carry New York, essential to Democrat success, was a powerful argument for his nomination. It was said at the time

that Tilden and Hayes, "if not two peas from the same pod; at least gave indications of coming from the same present vine". However, the "out party" had the momentum.

As the campaign unfolded and remained too close to call, Tilden/"Bush" was forced to defend his character while the Republicans/"Democrats" concentrated on New York and Indiana ("California" and "Florida") to the neglect of other states. The Hayes/"Gore" forces believed in a publicized memo that a "bloody shirt" campaign, with money, and Indiana/"Florida would be safe" – so they played up the dread of a solid south and "rebel rule" to distract voters. Tilden, thinking he was safe in The South, let the three Republican-controlled Southern states and Florida, Louisiana and South Carolina fend for themselves (now considered Tildens fatal error) as he tried to stop Hayes in New York and Indiana.

As it turned out, Tilden held New York, and won Indiana away from Hayes and nearly all the Republicans/"Democrats" either went to bed, gave up hope, or debated whether to concede to Tilden's/"Bush's" election. However, Florida in particular, had not counted all its ballots and Hayes campaign sent telegrams to party leaders in Florida telling them that the outcome depended on "holding" Florida (and Louisiana and South Carolina which are somewhat similar to today's Iowa and Wisconsin). Agents of the Hayes campaign, well supplied with money, were soon heading southward while Hayes declared "victory" even though the official counts were not in. Both sides sent "visiting statesmen" South to watch the count.

In Florida, a small Tilden majority was wiped out by a Republican/"Democrat" controlled election canvassing board and Hayes/"Gore" team engineered and received the official certification from the Secretary of State. Over in Louisiana/"Wisconsin", the Republican/"Democrat" election board threw out large amounts of votes in some parishes reportedly because of alleged violence and intimidation by the Democrats/"Republicans" which bears resemblance to the challenges in Seminole and Martin counties in Florida. They quickly changed Tilden majority into a Hayes margin of 3,500 votes (three members of the Louisiana election board later received federal positions from Hayes). Because now there were double sets of electoral votes from these disputed states, the U.S. Congress now had to decide which slate of electors would be accepted and then who would be president.

Since the U.S. Senate was controlled by the Republicans, and the U.S. House was controlled by the Democrats and that the partisan sentiments were too strong to overcome, an "Electoral Commission" was invented consisting of 5 Senators, 5 Representatives and 5 Justices. The Democrats went along with the plan, feeling certain that such a commission could not be so partisan as to award all of the disputed votes (total of 20) to Hayes as Tilden needed only one to win. However, the commission awarded Florida's disputed electoral votes to Hayes on a straight party line vote of 8 to 7.

Seeing the handwriting on the wall, the Democrats planned to filibuster the next contest for South Carolina's disputed electoral votes. Fearing another "Civil War" danger, a massive deal with the Southerners in Congress was made: Hayes would be granted the presidency but would have to bring an end to all federal support (i.e., the federal army) of carpetbag rule in the Southern states. The leaders of the two parties met in a hotel in Washington D.C. to work out all the terms of "the deal". Hayes arrived at the capital the next day, took the oath, forever became "His Fraudulency", and the South

removed all threat of another rebellion. It was Hayes acceptance of immediately removing all "occupying forces" from the South that sealed the deal. Thus, one of the world's greatest political bargains became a sordid reality.

So what did the 1876 election teach us? First of all, close elections will breed contempt and "mischief" between the two major parties, and as cultural divisions increase electoral outcomes become murkier. Secondly, votes can be "canvassed" in such a way (with enough money and "visiting statesmen"/agents) as to change the outcome of a close election. Thirdly, if any election dispute gets to Washington D.C., deals and bargains will have a high probability of success. Fourthly, the press and media will taint any "deal" forever in the history books as mostly fraudulent. And, lastly, there will be outcry's to reform our election system, abolish the Electoral College, develop national standards and ballots and to defederalize our elections into a centralized direct popular outcome. Lets now turn to the reformist tendency that results from any disputed or controversial outcome and see what is being said about our current situation. Since the Democratic Party is the pro-national government party as well as the cultural pro-change party, it is not surprising that nearly all of the criticism of the Electoral College comes from "National Democrats" like Senator-elect Hillary Clinton who desire to change the status quo to their advantage.

PART THREE: REFORMISM

Since the 2000 presidential election is the first election since 1888 where the presidency may not have been won by a popular vote, the Electoral College abolishment will again be foremost in the minds of most reformers. However, the Electoral College has been with us for over 200 years and amending the U.S. Constitution is extremely difficult to accomplish (i.e., two third majority required in the U. S. Congress; three fourth majority (38 states) of the state Legislatures). A better chance at reform will be to study voting methods, modernize ballot systems, develop a uniform closing time, etc. in other words, small steps without imposing uniform federal standards or creating some new federal oversight commission.

Of course the attraction for national Democrats to abolish the Electoral College will be too tempting and thus a great deal of energy and time will be "postulated even though there is virtually no chance of such a massive change in the U.S. Constitution. After all, the only reform of the 1876 disputed election did not take place until a decade later when Congress finally settled on a procedure to be followed for disputed electoral votes, called "The Electoral Count Act (1887)". It placed final authority in the states themselves (i.e., the state legislatures) and a concurrent majority in both Houses of Congress would be required to reject any electoral votes. (Title 3, Chapter 1 of the U.S. Code). This law is still in effect and was cited by the U.S. Supreme Court in its first (12/3/2000) decision to vacate the Florida State Supreme Court's actions in the vote count extension that was granted the Gore forces.

But let's return to the Democrat Party's favorite target – to abolish the Electoral College and replace it with a Direct Popular Election system. They have some support from the general public (which only reflects the media and high profile criticisms). Immediately after the election deadlock of November 7, 2000, Gallup polls measured the American public and found that 61% favored abolishing the Electoral College system and replacing it with a Direct Popular vote. This opinion is somewhat tempered by another Gallup Poll (November 13-15, 2000) which found that only 30% felt they understood the U.S. Electoral College System "very well". Similar majorities for abolishing the Electoral College public opinion have been registered since 1966 – but there is a sharp division of opinion today between Republicans and Democrats.

% FAVOR

DIRECT POPULAR VOTE

(November 11-12, 2000)

Republicans ----- 44%

Democrats ----- 73%

Source: The Gallup Organization

There are usually three basic reform choices that have been pushed by most national Democrats since the 1960's:

(a). Direct vote with a 40% run-off provision: abolish the Electoral College.

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- (b). Proportional representation of the statewide vote in each state (to one – tenth of 1%) but within the existing Electoral College.
- (c). Congressional district voting would reward the district winner but within the existing Electoral College.

Both reform (b) and (c) have defects as well. For example, proportional representation ("P.R.") would not have produced a winner this year as both Gore and Bush would be without an electoral majority because of Nader. (259.5 votes for Bush, 258.3 for Gore, Nader 14.5 and because 270 is needed for victory). The Proportional Representation reform would also have sent four recent elections to the U.S. House (1960, 1968, 1992, and 1996). Additionally, Democrats are wary of the Congressional District reform ("C.D.") when they first discovered that system would have reversed JFK's win (big city, big state strategy) and would have put Richard Nixon in the 1960 White House. Also, in 1976, the Congressional District reform would have caused a tie vote in the Electoral College between Ford and Carter and the election outcome would have gone to the U.S. House. Nonetheless, Maine and Nebraska use this system today but nobody seems to notice.

The Associated Press interviewed after the deadlocked election on November 7, 342 electors or nearly two-thirds of the 538-member Electoral College and it revealed the standard debate over the Electoral College. One Gore elector in Michigan said: "we're 200 years or more past when we really need that safeguard (i.e., electors). I think the average voter is intelligent enough to cast a popular vote". An Ohio Bush elector who was interviewed said the counter argument: "If it was a pure popular vote, the election would be about the biggest cities and the biggest states and the rest of the country would be forgotten" (Houston Post). About 60% of the Democratic electors surveyed wanted

the Electoral College reformed while 73% of the Republican electors surveyed said the system "works fine". Senator Phil Gramm summed up the GOP position when he said

recently, "if you eliminated the Electoral College, the presidential candidates would never campaign outside the 20 largest metro areas". (Houston Post).

Critics of the Electoral College call it a fantasy of federalism and the American Bar Association in 1979 said it was altogether "archaic, undemocratic, complex, ambiguous, indirect, and dangerous". Neal Pierce called it a "political contrivance invented by exhausted delegates at the end of the Constitutional Convention". (Reference: The Peoples' President: The Electoral College in American History and The Direct Vote Alternative, 1968). E. J. Dionne Jr. of the Washington Post recently said: "This Electoral College must be scrapped. The truth is that electors are not a deliberative group like representatives or senators. They are a product of a system created ... to temper the popular will".

Despite these criticisms and two amendments that actually came to the floor of the U.S. House and received the two-thirds majority, each time the U.S. Senate resisted the change (1969: 338 to 70 U.S. House, 54-46 U.S. Senate; 1979 51-48 U.S. Senate) by falling well short of the 67 Senators needed. Thus, it has now been 20 years since critics have been able to marshall enough support to even get a vote. Of course, attaining a

38-state legislature result to pass a direct election amendment appears even more remote today even if a bill got out of the U.S. Senate. Moreover, the U.S. House has become more conservative (and Republican) over the last 2 decades and any Electoral College abolishment bill most likely would not even today make it out of committee.

The reasons for the political party resistance to eliminating the Electoral College can be summed-up as follows:

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- (1). Southern states see Direct Election as a left-wing plot to defederalize our republic.
- (2). Very small and very large states believe they would lose power (middle-sized states have voted consistently for abolishment).
- (3). Black and Jewish populations, residing in the largest metro areas, believe they will lose their winner-take-all advantages as bloc voters.

One could summarize the critic's complaints about the Electoral College from a political science perspective as follows:

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- - (1). Poses the threat of a presidential election being thrown into the U.S. House where states not members vote as a single unit (i.e., Alaska has the same vote as California).
 - (2). Creates "wasted votes" with the winner-take-all rule in each state. For example, the 2.4 million votes for Gore in Texas were "wasted". Official returns in Texas: Bush 3.800 million (59%); Nader 138,000; Gore 2.429 million.
 - (3). Allows for "false mandates" as the Electoral College most of the time amplifies a slight margin of victory in the popular vote to a near landslide in the Electoral College.
 - (4). Tends to stifle third parties since the winner-take-all rule favors the two major parties and prevents multi party fragmentation.

How does one defend the 200 years old institution of the Electoral College (especially when considered against the backdrop of low knowledge by the public)? About 30% of the U.S. voters say they do not understand it at all and about 40% say they think they understand it somewhat. (Gallup Poll, November 13-15). Martin Diamond of The American Enterprise Institute wrote the best defense in 1977 (After the People Vote, editor Walter Berns, 1992 AEI) when he countered the American Bar Association's 1969 diatribe of six charges against the Electoral College.

- - First, let us address the counter argument to the charge that the Electoral College is "archaic". This is a common condemnation by the pro-government/pro change
 - national Democrat Party which, as former U.S. Senator Malcomb Wallop recently stated, "the Democratic Party no longer supports representative government". Sheila Jackson Lee (D-Houston) is a good example of the antipathy for federalism: "the Electoral College is ill-suited for presidential elections"; or Representative Gene Green (D-ouston) who said: "The Electoral College had its strength when the nation was small and rural". Diamond, however, argues that because the Electoral College has lasted so long that it is a model of up-to-date constitutional flexibility and "perhaps no other feature of the Constitution has had a greater capacity for dynamic historical adaptiveness". He further stated that the federal element in the process came strengthened by the winner-take-all practice (which evolved about 1830). Modern mass political parties developed, campaigning moved from rather rigid sectionalism to the complexities of a modern technological society – all within the original framework. Incidentally, there have been more than 500 bills introduced in U.S. history to change the Electoral College but no one has come up with a better or more equitable plan that could pass.

The device of independent electors, Diamond reminds us, was seen as nationalizing substitute for the state legislatures which, many framers thought ought to choose the U.S. chief executive. It was the product of compromise between the large and small states that left the primacy of the states intact. If anything it kept the election from state politicians and gave it to "the people" (via appointed electors). The framers also thought a national election (having administered now by 3000 separate counties and 50

separate states) in a country as large as the U.S. was "impractical". Thus, the Electoral College was the "most practical means by which to secure a free, democratic choice of an independent and effective chief executive".

Another important point that Diamond makes is that we indeed do have one-man, one-vote ... but in the states. Elections are free and democratically contested as elections can be – but in the states. The label given to the proposed reform, "direct popular election", is a misnomer ... the elections have already become as directly popular as they can be – but in the states ... reformers only propose to make elections more directly "national" by entirely removing the states from the electoral process. The key question regarding the Electoral College is whether we want to keep federalism (i.e. Jefferson) or to change to "nationally democratic" (i.e. Hamilton). The debate then continues in

America between those forces that want to maintain a federal structure with true representative democracy or move to a more centralized national democracy and to continue to defederalize our republic.

The American electorate has a fundamental tendency, according to Diamond, "to divide closely, with photo finish elections being the rule rather than the exception". The Electoral College almost always (Florida situation is a one in a million probability, as Stu Rothenberg noted) announces their close election outcomes, state by state, with "useful amplification" and with quickness. In a purely numerical popular vote system, an election outcome might be uncertain for many weeks and extremely vulnerable to challenge in any one of 3,000 counties, with inherent problems of error and fraud. Mayor Richard J. Daley (if he were alive today) would find a national direct election delectable from a Chicago machine strongpoint (i.e., the ability to "handle" any outcome needed). Diamond maintains that only the Electoral College can produce an "unambiguously visible constitutional majority that sustains the legitimacy of the election results".

More to the point are other dangers of a Direct Election itself, which do not get much attention they can be summarized as follows:

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- (1). Would specifically weaken the two party system and therefore produce less moderation and stability.
- (2). Weaken party politics generally by strengthening individual efforts for power
- (3). Imperialize the presidency by defederalizing the election process, strengthening the centralized mass media influence, and inflating a "tyranny of one" system.

In summary. the reformist outcome of the 2000 presidential election may indeed be limited to "small steps". Nonetheless, one can expect much "Constitutional mischief" once the election counting and retabulating protests are decided. After all, in 1980, it was the same Larry Tribe who suggested in an Atlantic Monthly piece that congress should appoint a "National Commission" to resolve all electoral disputes, as it did in 1876. Congress might amend some statutory provisions governing the electoral process but fortunately our constitutional provisions are not so readily changed.

Keep in mind that the 2000 election is a true "statistical oddity". The U.S. has avoided crises when a new president is elected because the Electoral College normally exaggerates the margin of victory in the popular vote. It seems clear that the effects of proposed changes are likely to be defective. The Electoral College is a paradigm of the American idea of democracy. It should not be abolished for political party advantage.

