Democracy, Race, and the Electoral College

Abstract

In this paper, I examine the effects of the electoral college and resulting violations of democratic principles and conclude that the electoral college is an unjust means of apportioning political power. One representative example of such a flaunting of democratic norms is the way in which the electoral college affects racial minorities. I survey various philosophical and legal democratic principles and provide a way of classifying these views. From this classification scheme, I argue that there is no array of democratic principles which the electoral college can satisfy. Furthermore, by examining the ways in which the electoral college robs minority groups of their political power, I argue that the electoral college cannot be justified as a mechanism by which to apportion political power in a democracy.

The system for choosing the American president is unjust. I will begin with a brief overview of the most salient ways in which the electoral college affects the American political system, and then turn to an argument against the electoral college being a just way to apportion political power in a democracy. By surveying various legal and philosophical democratic principles and establishing a framework for organizing such principles conceptually, I will argue that the electoral college cannot satisfy the principles of a democracy. As an example of such failure, I will examine the ways in which the electoral college does especial harm to African American voters.

The electoral college weights votes arbitrarily so that voters in less populous states have their votes weighted heavier than the votes of voters in more populous states.¹ Because the electoral votes are awarded in statewide first-

¹We can give a more technical exposition of the measure of voting power following Miller
past-the-post elections, larger states are afforded more voting power. While there is no constitutional provision for how states award their electors, almost every state has always awarded their electoral votes to the party whose candidate receives the plurality of the popular vote. Much confusion in the electoral college literature could be avoided by paying special attention to the distinction between voting weight and voting power. Voting weight is determined by the way in which votes are apportioned (benefitting small states), while voting power is determined by the way in which votes are cast (benefitting large states). Because small states are guaranteed three votes, they are given more voting weight than they would under a strictly proportional distribution of electoral votes. California has 66 times the population of Wyoming, yet only has 18 times the number of electoral votes. The distribution of seats in the House of Representatives is the cause of arbitrary over and under weighting of votes due to the method used in apportioning House seats. Because votes are given to the party which wins the plurality of votes, large states have a much greater

---

2013 p. 415-16. Given n voters, there are 2^{n-1} bipartitions where a bipartition is some way in which votes could be distributed between two candidates. A voter is critical to a bipartition if their vote makes the difference between who wins and who loses. A voter’s Banzhaf score is the total number of bipartitions in which the voter is critical. Finally, the payoff, absolute Banzhaf voting power is the Banzhaf score divided by the total number of bipartitions.

2 This is with the exception of Maine and Nebraska which award two electoral votes to the party which wins the overall state popular vote and the remaining votes to the winner of each voting district. Each of those determinations is made in a first-past-the-post election either statewide (for two votes) or in each voting district (the remaining votes).

3 A first-past-the-post voting system is one in which the winner is the candidate or party with the most votes, not necessarily a majority. In this case, all of a state’s electoral votes are awarded to the party which receives the plurality of votes, not necessarily the majority. It does not matter how quickly the horse runs the race in absolute terms, only that it is the first past the post.

4 Two Supreme Court cases have confirmed the right of the states to have control over their electors. In McPherson v. Blacker, the court upheld the power of the states to set the date on which their electors cast their votes. In Ray v. Blair, the court upheld the power of the states to require their electors to pledge their vote to the winner of the popular vote.

5 Miller 2013 p. 412.

6 Wyoming for example has a population of 563,626 while Montana has a population of 989,415, yet they both receive three votes. Under a strictly proportional distribution, Wyoming would receive one vote while Montana would receive two.

7 All demographic data comes from the 2010 census available at census.gov.

8 Again, Wyoming has a population of 563,626 and Montana 989,415. Each gets one representative.
chance of impacting the election. All of California’s 55 votes are awarded to the party which wins the plurality of the popular vote in the state.

As regards voting weight, the situation is much worse in the case of a contingent elections.\textsuperscript{9} Because each state delegation casts one vote in a contingent election, the smallest state is now weighted equally to the largest.\textsuperscript{10} Rather than California being 66 times the population of Wyoming and receiving only 18 times the electoral votes, they are given identical say in choosing the president. Instead of one voter from Wyoming being worth four voters from California, they are now worth 66 voters from California. In their analysis of voting power, Neil Peirce and Lawrence Longley conclude that the most disadvantaged states are those in the middle as regards number of electoral votes.\textsuperscript{11} As the number of electoral votes increases, the increase in voting power for high population states almost washes out the inequality in voting weight produced by the structural inequality in favor of small states.\textsuperscript{12} Until this equilibrium point, states that are too large to enjoy the inequality in voting weight have no compensatory increase in voting power. Because the census happens on a decennial basis, high growth states are penalized as the apportionment of electors necessarily lags behind the population of the state. On the same grounds, low growth states are rewarded. Because electors are won in first-past-the-post elections, voters who turn out in low turnout states are given more voting power than voters who turn out in high turnout states.

Some have argued that the electoral college ensures that the candidates must pay attention to all states and build a geographically broad coalition in order to win the necessary electoral votes. Were the president chosen by popular vote, candidates could campaign in large urban centers and ignore sparsely

\textsuperscript{9}Should no candidate receive a majority of electoral votes, the House of Representatives chooses the president in a contingent election
\textsuperscript{10}Edwards 2011 p. 94.
\textsuperscript{11}Peirce and Longley 1981 p. 124.
\textsuperscript{12}Miller 2013 p. 418.
populated rural areas of the country. This is incorrect. The electoral college does not ensure a broad coalition, a cursory look at a map of election results will be enough to demonstrate this. Regional voting characteristics persist. The South and West vote Republican, the coasts vote Democratic. The salient feature is not geography, it is party. Both parties are national and so any president is constrained toward the ideological center not by geography, but by party. A broad coalition is a product not of the electoral college, but of the two party system. In 2008, 4.4% of Obama voters were Republican. There is no broad coalition in American politics, there is merely a partisan effort to affect turnout and sway swing voters. Moreover, electors are not bound by geography but by partisanship. The people chosen to be electors are hyper-partisans. 81% of electors try to convince others to change their votes. 76% often attend party meetings. 75% often spend time working for the party. Electors are not representatives of their neighbors, they are party hacks. As it stands, presidential candidates do not have to be worried about forming a governing coalition. In nearly half of states, the senate delegation is split. Even should a candidate lose a state, there is a roughly even chance that they will have a member of their own party representing that state in the Senate. Rather than ensuring a broad coalition, the electoral college ensures an obsessive interest in swing states. In 2008, Obama campaigned in 14 states while McCain campaigned in 19 states. Similar distributions are made in terms of campaign stops and campaign spending. It simply is not worth the resources to campaign in states where candidates are either assured of their victory or of their defeat.

---

14 Ibid. p. 244.
17 Alexander 2012 found another category of elector, political donors. Electors pay for their position with either loyalty or money.
18 Amar 2011 p. 245.
19 Edwards 2011 p. 5.
The only thing that matters is influencing where the electoral votes from swing states fall. Rather than forcing a broad coalition, the electoral college preempts one.

One of the most fundamental principles in Democratic theory is the principle of one person, one vote. For many theorists, equality simply means one person, one vote. This concern is what motivates a concern for majoritarianism. We care about the winner of the popular vote losing the election because we care about one person, one vote. Thomas Christiano gives an extended argument for the principle of political equality, i.e. one person, one vote. Principles of equality, e.g. equality of rights, are grounded in equality in the advancement of interests. Because there is widespread disagreement about the common good, the decision making process must explicitly take into account the equality of individuals in order to ensure the satisfaction of the above principles of equality. Democratic decision making, that is voting according to a principle like one person, one vote, is the best way to ensure the requisite equality. Finally, because we cannot divide up the world into privately held, equitable pieces, we must instead ensure an equitable share of the collective decision making process which will determine how to regulate and dispense with the common good. Specifically, we must ensure an equitable share of voting power and voting weight.

Robert Dahl elucidates a similar view in his seminal work in democratic the-

\[20\] Amar 2011 p. 240
\[21\] Christiano 2008 p. 12.
\[22\] Ibid. p. 76.
\[23\] Ibid. p. 78.
\[24\] Ibid. p. 85.
\[25\] It should be clear from the above discussion of the effects of the electoral college that it will fail to satisfy the principle of political equality. The fundamental interests of every voter are not treated the same by the electoral college. In terms of voting weight, the voters who live in small states have their interests given much more consideration than the interests of voters in other states. In terms of voting power, the largest states have their interests given more consideration. Were the Democrats ever at risk of losing California, they would do everything they could to avert such a disaster. The interests of voters in California simply matter more than the interests of voters in other states because of the structure of the electoral college.
ory, *On Democracy*. Dahl gives five criteria for a democratic process: effective participation (everyone has an equal chance to influence proceedings); voting equality (everyone can vote\(^{26}\) and all votes are counted equally), enlightened understanding (everyone has equal opportunities to learn about policies), control of the agenda, and inclusion of adults.\(^{27}\) As has been noted, various thinkers have considered political equality as being fundamental to democracy.\(^{28}\) For Dahl, a violation of any of these criteria for a democratic process amounts to a violation of political equality.\(^{29}\) The electoral college violates at least two of the above criteria. First, the electoral college violates effective participation. It is not the case that everyone has an equal chance to influence the election of the president. Voters in California have greater voting power than voters in Wyoming. No matter how a voter in Wyoming votes, they only have a chance at influencing three electoral votes. A voter in California has a chance at influencing 55 electoral votes. Second, the electoral college violates voting equality.

For very similar reasons, the electoral college does not count everyone’s vote equally. Votes in some states count for more than votes in other states.\(^{30}\)

Rather than merely supposing that political equality is fundamental to democracy, Dahl gives two reasons why one might buy in to the concept of political equality. First, Dahl cites a moral judgement as regards intrinsic equality. “We ought to treat all persons as if they possess equal claims to life, liberty, happiness, and other fundamental goods and interests.”\(^{31}\) Second, Dahl appeals to a pragmatic judgement as regards the best way to achieve good policy outcomes.

\(^{26}\)Dahl admits of reasonable restrictions on voting. This requirement should be read as consisting in ensuring the franchise for all, barring the presence of a relevant disqualifying factor.

\(^{27}\)Dahl and Shapiro 2015 p. 37.


\(^{29}\)Dahl and Shapiro 2015 p. 38.

\(^{30}\)It’s not clear here whether Dahl has voting weight or voting power in mind. In either case the electoral college fails, the difference would be in what examples to give to illustrate such a failure.

\(^{31}\)Dahl and Shapiro 2015 p. 65.
For Dahl, civic competence is a reason to endorse political equality. Because we are sufficiently similar, there is no reason to suppose some class of people should be vested with all of the political power. If we cannot be ruled by Plato’s Guardians, we ought to govern ourselves. Were the electoral college to satisfy these two motivations for political equality, that might undermine the objection that the electoral college violates political equality. If it does all of the same work, after all, we might as well exchange one for the other. Unfortunately for the advocate of the electoral college, it satisfies neither motivation for political equality. The electoral college does not satisfy intrinsic equality because it does not treat the fundamental interests of all voters equally. The electoral college does not satisfy civic competence because it does nothing to ensure that the more qualified candidate will win an election. The only contribution which the electoral college makes to the American political system is to arbitrarily weight votes from different states differently. Such an effect is entirely disconnected from choosing the most qualified presidential candidate.

A principle like one person, one vote or political equality does not exist merely as a facet of democratic theory. The Supreme Court has ruled in a number of cases that such a principle must be respected when apportioning political power. Baker v. Carr set the stage for litigation on this subject by establishing a test by which non-justiciable political questions could be distinguished. The drawing of legislative districts passes this test and so the court can weigh in on them. Wesberry v. Sanders and Reynolds v. Sims are both cases dealing with the proportional drawing of legislative districts. Both cases establish one person, one vote as the legal principle guiding redistricting. From Wesberry, “as nearly as practicable one man’s vote in a congressional election is to be worth as

---

32Ibid. p. 75.
33Wesberry dealt with the drawing of congressional districts while Reynolds dealt with the drawing of state legislative districts.
much as another’s.”\textsuperscript{34} From \textit{Reynolds}, a state must make “an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable, and that the ‘equal-population principle’ must not be diluted in any ‘significant way.’”\textsuperscript{35}

Of particular interest to the examination of the electoral college is \textit{Gray v. Sanders} as it is the closest the Supreme Court has come to ruling on whether or not the electoral college violates the principle of one person, one vote.\textsuperscript{36} The plaintiffs argued that the Georgia primary system counted their votes differently than those of other Georgians. The Georgia primary system was set up so that each county was assigned a number of unit votes. These votes were cast for the candidate who won the plurality of the popular vote in the county. The plaintiff’s argument rested on the fact that the ratio of unit votes to county population varied dramatically. In 1960, the difference between the most populous county (Fulton) and the least populous county (Echols) amounted to a vote in Echols county being worth 99 votes from Fulton county.\textsuperscript{37} In 1962 the system for apportioning unit votes was reformed in order to give more votes to the more populous counties. Under the 1962 apportionment, a vote in Ech county was worth merely 15 votes from Fulton county. The Supreme Court ruled that the two-tier primary system in Georgia violated one person, one vote because it treated the votes of someone in Fulton country different from the votes of someone in Echols county. The analogy to the electoral college should be clear.\textsuperscript{38}

Delivering the opinion of the court, Justice William O. Douglas wrote, “once

\begin{itemize}
\item \textsuperscript{34} \textit{Wesberry v. Sanders} p. 1.
\item \textsuperscript{35} \textit{Reynolds v. Sims} p. 533.
\item \textsuperscript{36} Clearly the Supreme Court will not be weighing in on the constitutionality of the electoral college as the system is laid out in Article II.
\item \textsuperscript{37} Felsenthal and Machover 1998 p. 84.
\item \textsuperscript{38} It is interesting to note that the district court ruled that the system was legal so long as the largest disparity between counties did not exceed the largest disparity found in the electoral college.
\end{itemize}
the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit.”

Presumably, based on this reasoning, if the counties had each elected a slate of electors to attend the state party conference and vote for who ought to win the primary, the system would have been acceptable. The geographical unit would then be the county instead of the state of Georgia and everyone in each county would have their vote counted equally. That Echols elects 15 electors for each of Fulton’s does not factor in. The important feature here, and the one which keeps the analogy to the electoral college from going through is whether or not it is a person who carries the vote from the county to the state convention and unthinkingly deposits it at the feet of the candidate or whether it is a carrier pigeon. Because the electoral college is made up of representatives from the various geographical units, the residents of those geographical units have no reason for complaint. Certainly the following from Justice Douglas would not apply to the electoral college, “the conception of political equality from the Declaration of Independence to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can only mean one thing—one person, one vote.” The court struck down Georgia’s unit vote system and was right to do so. Two-tier voting systems should be immediately suspect.

While most democratic theorists place special importance on the principle of one person, one vote, there are various proposals on the table in addition to such a principle of political equality. One such proposal comes from Jason Brennan.

40In their analysis of voting power, Felsenthal and Machover 1998 p. 87 recommend that two-tier systems should be avoided if majoritarian rule is desired. Remember from Amar 2011 p. 240 that political equality is the concern motivating majoritarianism.
41As it stands, a two-tier system might be made close to majoritarian by utilizing its mean majority deficit, which is clearly not the same as equalizing voter power. Felsenthal and Machover 1998 p. 88.
Brennan sees voting as a characteristically ethical act. This is due to the various ways in which voting has real effects on the world. Policies can be good or bad and they make people’s lives better or worse. Casting the wrong vote can do irreparable damage. Because of the dire consequences of incompetent or wrongheaded political leadership, voters should refrain from voting when they are not in the epistemic position to know whether or not their vote will result in good policies. Additionally, people should not vote merely in the search of their own self-interest, but instead should vote in pursuit of the common good. This is not to say that such voters should not be permitted to vote, but merely to say that they ought not to exercise their right to vote. The electoral college would not satisfy Brennan. Electors are exactly the sort of voters who are not in the epistemic position to know whether or not their votes will bring about good policies. Because electors are hyper-partisan, they can only be sure that their votes will bring about the party’s desired outcome. Moreover, electors are not voting out of a sense of the common good, but from a self-serving partisan motive.

In contrast to Brennan, Robert Goodin proposes expanding the franchise in rather dramatic ways. Where Brennan says fewer voters ought to vote, Goodin argues for more votes from more voters. The first principle Goodin argues for is the principle of enfranchising all affected interests. He considers two possible versions of such a principle, the principle of enfranchising all actually affected interests and the principle of enfranchising all possibly affected interests.

---

43 Ibid. p. 68
44 Ibid. p. 113.
45 This is a view which Brennan disavows in later work where he argues that such voters should be disenfranchised. Because I am only using this as an example of one sort of position and not as a representation of Brennan’s current views, I will restrict my comments to Brennan’s earlier work wherein he was explicitly working from within democratic theory.
46 Goodin 2007 p. 52-53.
47 Goodin rejects the all actually affected interests principle on the grounds that it is incoherent. In order to know whose interests are actually affected, we would have to reference the decision that ultimately gets made. But the decision cannot be made until we know who the
Endorsing the principle of enfranchising all possibly affected interests, i.e. all people who could possibly be affected by any of the possible outcomes of the decision, has obvious cosmopolitan implications. In order to account for those who object to such cosmopolitanism, Goodin proposes another principle, the principle of enfranchising all subjected.\textsuperscript{48} Anyone who will be subject to the laws should be entitled to vote on them.\textsuperscript{49} Obviously the electoral college fails by Goodin’s lights because there is no state in which electors are awarded based on a vote of either all possibly affected interests or all subjected.

There is a third sort of view lying in between Brennan and Goodin. Claudio López-Guerra argues for a Critical Suffrage Doctrine which is made up of five claims about just disenfranchisement: disenfranchising adults on the basis of ignorance can be justified; disenfranchising citizens on the basis of residing outside of the polity can be justified; disenfranchising children and mentally impaired adults cannot be justified; disenfranchising non-citizen residents of the polity cannot be justified; and disenfranchising on the basis of felony convictions cannot be justified.\textsuperscript{50} Because of the idiosyncratic nature of this view, the electoral college fails for very particular reasons. No state allows children to vote in presidential elections, for example, and so the electoral college fails by López-Guerra’s lights. This sort of appeal to various values when arguing for or against the justice of disenfranchisement in various cases is similar to the way in which Dahl argues for the principle of political equality, Dahl makes appeals to both intrinsic equality and civic competence.

\textsuperscript{48}Goodin 2016 p. 368.

\textsuperscript{49}It is interesting to note that this principle will not prevent all cosmopolitan implications. France in particular likes to hold foreign citizens accountable to French law for offenses against French citizens which occur on foreign soil. Such application of the law would enfranchise all residents of those countries in which the French would like to hold accountable aggressors against French citizens abroad.

\textsuperscript{50}López-Guerra 2014 p. 3.
I propose that we can see the differences between Goodin, Brennan, Dahl, and López-Guerra as varying along a continuum between inward facing values like dignity and autonomy which are concerned with the individual and outward facing values like the consequences of policies which are concerned with the well-being of society as a whole. While these thinkers are all answering different questions, in the course of answering these questions they endorse values of a particular sort. Dahl explicitly endorses both intrinsic equality (an inward facing value) and civic competence (an outward facing value). This would put him somewhere in the middle of the spectrum from inward facing values to outward facing values. Similarly, López-Guerra mixes inward and outward values when allowing for the disenfranchisement of incompetent voters (outward by appealing to the effects of their decisions) and when denying the disenfranchisement of the mentally infirm (inward by appeal to a principle like if it would not affect electoral outcomes, then we should not be unfair to them). At the extremes of the spectrum we find Brennan who places great importance on outward facing values like concern for the effects of poor policies on society and Goodin who places great importance on inward facing values like the autonomy of affected interests and subjected parties. Because we have seen the electoral college fail at the extremes of the spectrum (Brennan outward and Goodin inward) as well as in the middle of the spectrum (Dahl and López-Guerra mixing inward

\footnote{In order to make sure that the electoral college fails not only in terms of these particular views but in terms of democratic theory generally, there must be a conceptual schematization which allows for the various views to vary along a single axis. With such a schema in hand, appeals to both the extremes and the middle of the spectrum will provide assurance that there is not some democratic theory which will approve of the electoral college. If it fails by the criteria of those on the left of the spectrum, those on the right of the spectrum, and those in the center of the spectrum, then there is good reason to believe that it fails in terms of democratic theory as a whole. It is not enough to simply arrange the theories next to each other, these different theories are trying to answer different questions after all. Brennan is concerned with the ethics inherent in the act of voting. Dahl is concerned with establishing what makes for a democratic process. Goodin is concerned with who ought to be granted the franchise and López-Guerra is concerned with from whom it can be taken away.}
and outward facing values), we can be sure that there is no other schema of
democratic principles which will admit of the electoral college. Such a schema
will rely on appeals to either inward facing values or outward facing values or
a mixture of inward and outward facing values. The electoral college fails to be
justified on all three counts.

We can see these sorts of values at play in historical efforts at electoral college
reform. Historically, there have been two concepts of representation involved,
traditional representation and popular representation. Traditional representa-
tion is the sort of representation commonly associated with the founders of
the U.S. It involves the indirect selection of those best able to weigh diverse
interests and make the best choices. Examples of instantiating traditional
representation include the electoral college, the indirect election of senators,
and the nomination of justices to the Supreme Court. Popular representation
involves the direct election of representatives by a body of equal citizens.
Examples of instantiating popular representation include the direct election of
senators following the 17th Amendment, the Supreme Court rulings of the 1960s
requiring equal sized voting districts because of the principle of one person, one
vote, and the Voting Rights Act of 1965. The electoral college reform pro-
posal of Massachusetts senator Henry Cabot Lodge Jr. which passed the senate
in 1950 argued that the electoral college violated traditional representation by
giving too much power to a few pivotal states, undermining the diverse interests
cconcern. The electoral college reform proposal of New York representative
Emanuel Celler which passed the House in 1969 traded on the electoral college as

---

52 Bugh 2010 p. 6.
53 Ibid. p. 8.
54 Ibid. p. 10-11.
55 South Carolina senator Olin D. Johnston supported the reform proposal because he saw
the first-past-the-post awarding of electors as empowering minority voter blocs who were, “up
for sale to the highest bidder” and who sought to encourage racial “group consciousness and
group action.”
violating popular representation. Cellar cited this reform as the continuation of a path including the abolition of the poll tax, the Civil Rights Act of 1964, and the Voting Rights Act of 1965.\textsuperscript{58} Historically there have many efforts to restrict popular representation: property requirements were popular early on but faded as cities grew; literacy tests were first adopted in the 1840s to disenfranchise immigrants but were later used to disenfranchise African Americans until the Voting Rights Act of 1965.\textsuperscript{59} These attempts at limiting popular representation have yielded to various reform movements: the 15\textsuperscript{th} Amendment extended the franchise to African Americans in 1870; the 19\textsuperscript{th} Amendment extended the franchise to women in 1920; the 24\textsuperscript{th} Amendment eliminated the poll tax in 1964; the 26\textsuperscript{th} Amendment set the maximum age at which voting could be restricted on such a basis at 18.\textsuperscript{60} The trajectory of American voting rights has been from an endorsement of outward facing value (traditional representation) to an endorsement of inward facing value (popular representation).

Having demonstrated that the electoral college is undemocratic, I now turn to a specific example of one way in which the electoral college fails to satisfy democratic principles in order to motivate the conclusion that such a failure makes the electoral college an unjust way to apportion political power. It is an implication of the principle of political equality that African Americans should not be afforded less political power than white Americans. This is exactly the effect which the electoral college has. Consider first the make-up of the electoral college. Electors are, as a whole, older, male, wealthy, and white compared to the rest of the U.S. population.\textsuperscript{61} The electoral college acts like a filter shifting the demographics of the voters away from disadvantaged populations and towards existing power structures by eliminating minorities from the pool of voters.

\textsuperscript{58}Since the passage of the 23\textsuperscript{rd} Amendment which gave electors to Washington D.C., no reform proposal has passed both the House and the Senate.
\textsuperscript{59}Coleman, Neale, and Cantor 2001 p. 62.
\textsuperscript{60}Ibid. p. 63-64.
\textsuperscript{61}Alexander 2012 p. 134.
The electoral college gives all of the power to set up the electoral system to the states, but the states have a history of being very bad at giving everyone the vote. The Voting Rights Act of 1965 was passed in response to measures like poll taxes and literacy tests which southern states used to disenfranchise African Americans beginning after Reconstruction.\textsuperscript{62} To take a more contemporary example, when Texas passed its voter ID law in 2011, the legislature rejected numerous amendments which would have allowed for a free election identification certificate for the poor, reimbursement for travel costs incurred by the poor in order to obtain such a certificate, keeping the relevant government offices open on nights and weekends, and allowing poor Texans to cast provisional ballots without an ID.\textsuperscript{63} The legislation was designed to maximize the negative impact on racial minorities and the poor. Thankfully, the Justice Department and the courts refused to allow Texas’s law to take effect under the Voting Rights Act of 1965.\textsuperscript{64} \textit{Shelby County v. Holder} makes sure that the Justice Department and the courts will not be able to stop Texas from imposing racist, voter suppressing measures. Indeed, hundreds of bills have been introduced and 20 states have adopted laws restricting voting access since Shelby was decided in 2013.\textsuperscript{65} States have a very poor history of ensuring access to voting rights for African Americans and yet the electoral college is entirely under the control of state governments.\textsuperscript{66,67}

The electoral college provides a weak point for holders of fringe, racist views.

\textsuperscript{62}Daniels 2013 p. 1936.  
\textsuperscript{63}Ibid. p. 1949.  
\textsuperscript{64}Ibid. 1950.  
\textsuperscript{65}See the Brennan Center for Justice’s Voting Laws Roundup for yearly surveys of changes in voting laws.  
\textsuperscript{66}A principle affirmed by \textit{McPherson v. Blacker} and \textit{Ray v. Blair}.  
\textsuperscript{67}During the 2006 debate on extending the Voting Rights Act of 1965’s temporary provisions, the House committee found that failure to extend the Voting Rights Act of 1965’s protections would result in racial minorities in the South being denied the right to vote or having their votes diluted. The House sought to protect all aspects of the right to vote, “including the right to cast a meaningful ballot.” The electoral college ensures that African Americans in the South will not be able to cast a meaningful ballot.
to attack. They see it as easier to convince a small group of electors than to try and convince the country at large. The birther movement was the primary force behind the lobbying of electors between the 2008 election and the casting of electoral votes. Despite a convincing lead in the electoral college, 90% of Democratic electors were lobbied to change their vote. The birther movement saw the electoral college as “the last stand in the birthers’ 2008 battle.”

We can tell that racism was a powerful motivator for lobbying efforts because there was far more lobbying in 2008 than in 2004. Because the great majority of electors are unbound, their votes can change between the election in which they are selected and the moment at which they cast their votes. This provides an opportunity for racist lobbying efforts to reach almost all of the electors.

The electoral college dilutes African American voting power. Peirce and Longley’s analysis of voting power found that African Americans had between 3% and 5% less voting power than average largely as an effect of where they live (predominantly in the South). The electoral college discourages interest in African American voters because they live in the South which votes Republican but they themselves vote Democratic. Racially polarized voting is overwhelming in the South. For example, no African American candidate has won statewide office in Mississippi since reconstruction. 2011 gubernatorial candidate Johnny C. DuPree won a share of the total vote almost identical to the black population of Mississippi, winning 20% of the white vote but over 80% of the African American vote. When racial minority voters also make up the political minority, the electoral college erases the votes of the minority voters. There is no mechanism by which African American voters in the South

---

68 Alexander 2012 p. 142.
69 70% of Republican electors also reported being lobbied by birthers.
70 Ibid. p. 133.
71 Ibid. p. 143.
73 Edwards 2011 p. 142.
can express their political will at the national level.\footnote{That is, insofar as they are expressing their political will with respect to choosing the president.} Compare this situation to choosing the president by direct popular vote wherein an African American vote for the Democratic candidate counts exactly the same in Mississippi as it does in Washington D.C. Consider the number of African American votes which were cast in southern states for Hillary Clinton in the 2016 election. Compare this to the number of electoral votes cast for Hillary Clinton by southern states. Those popular votes might as well not have been cast at all. Wealth inequality is bad because of its effects on elections.\footnote{Dahl and Shapiro 2015 p. 202.} \footnote{Consider the changes in American politics since \textit{Citizens United v. Federal Election Commission}.} Inequality in voting power is bad for a similar reason. Iowa farmers have more political capital to spend merely as a result of the way the electoral system is set up. Now consider all of the ways in which the electoral college sways voting power in the U.S. On political equality grounds such a system is manifestly unjust.
References


