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ELECTORAL COLLEGE REFORM?

With the regularity of leap year, every four years we hear noises from intellectuals and academicians about abolishing the Electoral College. We are told that it is "obsolete," an "anachronism," and in need of "reform." The only way it could be changed would be by a constitional amendment.

That, indeed, was one of Senator Birch Bayh's goals during his tenure as chairman of the Constitutional Amendments Subcommittee of the Senate Judiciary Committee. It is the subject of at least 14 resolutions in the current Congress.

Bayh wanted the direct popular election of Senators, a populist-sounding proposal which sounds simple but which, in operation, would be at least as complicated as the present system. Here are the arguments generally made against the Electoral College.

First, the spectre is raised that some individual electors might vote for a presidential candidate other than the candidate supported by the people who selected the electors. Electors have the legal right to do that. However, this is hardly a problem that requires a constitutional amendment: it has happened only four times since 1789, and never has affected the outcome of a presidential election.

Second, it is argued that the unit rule disfranchises many voters. Each state's entire electoral vote is awarded to the one candidate who receives the most votes, regardless of his margin of victory. On the other hand, the unit rule promotes political stability through the two-party system; it is very difficult for a third party ever to win under the unit rule. In any event, the unit rule is solely a matter of state law and does not need a constitutional amendment to be changed.

Third, the argument is made that a candidate who receives the most popular votes might not receive the Electoral College majority. That did happen in the election of John Quincy Adams in 1824, Rutherford B. Hayes in 1976, and Benjamin Harrison in 1888.

However, that is not the sin it might at first blush appear to be. In two of those three cases, the man who received more votes than the Electoral College winner did not

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receive a majority of popular votes anyway. If we had direct popular election of Presidents, followed by a runoff election if no candidate won a majority, there would be no more assurance than under the present system that the original top vote-getter would win the runoff. Furthermore, most proposals for direct popular election of Presidents provide that a candidate can win with a plurality of only 40%.

Fourth, the devotees of "one man one vote" complain that, in the Electoral College, the votes of some citizens count more than the votes of others. For example, in a closely-divided state, a few voters may have the power to carry that state for their candidate, but in a state that votes largely for one party, a few voters one way or the other may have no impact. In sparsely-populated or low-voter-turnout states, individual votes have more influence than in densely-populated or high-voter-turnout states.

The answer to the third and fourth arguments is that the Electoral College is part of the Great Compromise of big states and small states by which conflicting interests were balanced and interlaced by the Founding Fathers into one Union. That's why our constitutional government has endured for more than two centuries.

We have a democracy harmonized into a federal republic, and knocking out one leg would distort the remaining checks and balances. Anyone who wants to disrupt this successful design has a heavy burden of proof to show that his alternate plan will be more successful and effective.

For this explanation of the reasons why the Electoral College should not be changed by a constitutional amendment, we can thank the winning article in the 1981 Ross Essay Contest conducted by the American Bar Association. The contest was won by Robert F. Weinhagen, Jr., an assistant counsel in the office of the House Legislative Counsel.

The Electoral College has produced a President in every election since 1789. No other government in the world can boast of such an enduring record. When we count our blessings flowing from the inspired wisdom of the Founding Fathers, near the top of the list should be our provision for an orderly succession of administrations from one President and party to another. The two-century success story of the Electoral College is unique in the annals of history.

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