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Abstract

On the day the Electoral College met and elected Donald J. Trump the 45th president of the United States, the New York Times editorial board published a scathing attack on the Electoral College as an "antiquated mechanism" which "overwhelming majorities" of Americans would prefer to eliminate in favor of a direct national popular vote. [*excerpt*]

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ELIZABETH ROBERTSON / Staff Photographer
President-elect Donald J. Trump in Hershey on Dec. 15.

By Allen C. Guelzo and James H. Hulme

On the day the Electoral College met and elected Donald J. Trump the 45th president of the United States, the New York Times editorial board published a scathing attack on the Electoral College as an "antiquated mechanism" which "overwhelming majorities" of Americans would prefer to eliminate in favor of a direct national popular vote.

That did not keep the Electoral College from doing what it was required to do. But it was not the end of the debate, and as the official Jan. 6 date for opening the certifying the Electoral College ballots drew near, the Washington Post's E.J. Dionne joined the demand for "majorities" to prevail over the Electoral College.

We're not sure which majorities Dionne and the Times have in mind, but they don't seem to be the majorities registered by a Dec. 2 Gallup poll, which showed support for retaining the Electoral College rising from 35 percent to 47 percent since 2011. And this isn't the only dubious assertion we've heard from advocates of abolishing the Electoral College. Take, as an example, these three anti-Electoral College indictments:

The Electoral College violates the principle of one-man, one-vote. This accusation is rooted in the Constitution's requirement that presidents be elected by "Each State" appointing "a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress." This means, for instance, that 38 million Californians get to cast 55 electoral votes, while the half-million or so who live in Wyoming get three electoral votes - which means that each Wyoming voter gets six times more electoral clout than every Californian. Is this equality?

But the same objection could as easily be raised against the U.S. Senate, and even more so, since every state, no matter what its population, gets only two U.S. senators. In fact, we might as well level this accusation at the states themselves. California gave 61 percent of its popular vote to Hilary Clinton, and as a result, Clinton collected all 55 of California's electoral votes. But that majority was won in the 32 counties clustering around San Francisco and Los Angeles. The rest of the state - 22 counties - went for Trump, and got no say whatsoever in how California's electoral votes were cast, despite making up a solid block of the state north of San Francisco. Instead of breaking up the Electoral College, we might be better off breaking up California into two states, and allow northern Californians to be represented the way they want.

Or try Illinois. Of the 100 counties in Illinois, only 11 went Democratic in November. Clinton won the state's popular vote, 3 million to 2 million, and almost entirely because of the Chicago area, and so got all of Illinois' 20 electoral votes. But is that fair to the rest of the state? So, once again, consider an alternative solution: Break up Illinois.

The Electoral College was designed to protect slavery. After all, the Constitution allowed states where slavery was legal to count three-fifths of their slave populations as part of the state population, which in turn determined the number of representatives each state could send to Congress. Since a state's electoral votes were determined by adding together each state's senators and representatives, it would seem that the infamous "three-fifths clause" gave slave states an extra boost in electing a president as well.

What this leaves out of the equation, however, is the fact that in 1787, when the Constitution was written, slavery was legal in all of the states except Massachusetts. Pennsylvania still had slaves in 1840; New York didn't free its last slaves until 1827; New Jersey still kept 18 lifetime "apprentices" in bondage when the Civil War broke out. The "three-fifths clause" gave no extra boost to slave states in the Electoral College until the Northern states, one-by-one, eventually abolished slavery.

It could, perhaps, be argued that there was a vast difference between Northern states that legalized slavery but who had tiny slave populations, and Southern states with mammoth ones. But would this have really made a difference in the Electoral College in 1787? Take New York

and Virginia, the largest slave states in the north and south respectively at the time of the Constitutional Convention. Subtract the slave population of New York entirely (in other words, no three-fifths clause) and you get a population of 319,000. Do the same thing for Virginia and you still get a population of 455,000. Even without the three-fifths clause, Virginia gets more representatives in Congress and a larger electoral vote.

The Electoral College is so cumbersome. This is partially true. But the larger truth is that the Constitution never set out to create a streamlined national government. It created a federal Union, and almost every other aspect of that Union can be (and has been) charged with being "cumbersome." Why must we have a Senate, which represents the interests of the states, when we already have a House of Representatives, which is directly elected by the people? Why do we divide powers between the states and the federal government? Why do states have to approve amendments to the Constitution? The answer in each case is that we are a federal Union. Federalism is in our very bones as a nation, starting with our name - the United States of America.

And would direct presidential elections really be any less "cumbersome"? Counting and recounting votes on a nation-wide basis when the margin is a half-percent (as it was in 2000), would be even more problematic than the mechanics of the Electoral College.

The architects of the Constitution designed a remarkable three-legged stool for electing our national leaders. The House is elected by the people. The Senate is elected by the states. And the president is an amalgam - elected by the people, acting in each state. Fiddle with one leg, and the whole thing could collapse.

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