Election Laws that Coax Centrism Promote Political Stability

I RESPECTFULLY TAKE ISSUE with the thesis advanced by Professor Gregory P. Magarian in the fall 2008 Washington University Law Magazine (“How Election Law Feeds Stagnant Centrism of American Politics”). He argues that “legal entrenchment of the two major parties, in turn, entrenches a centrist political order,” which he characterizes as “stagnant.” He concludes that “a better, fairer structure of political competition would give minor parties a legislative platform and a chance to supplant one of the major parties, as the Republicans supplanted the Whigs in the 19th century.”

I agree that election laws do tend to coax political debate to the center and to competition for power largely between our two major parties. I disagree that this is bad for the Republic. While Professor Magarian does not specifically indict the Electoral College as the most serious legal obstacle to the development of a multiparty system in the United States, I think most students of election laws would agree that it is. Indeed, the presidential party system organizationally pervades elections in most governmental jurisdictions nationwide.

The checks and balances in our system, including the Electoral College, help to inoculate us against the dangers of separateness in our culture—whether by national origin, religion, race, class, or other indicia of our immigrant culture. In other countries, the emphasis on differences rather than similarities (“them” and “us”) have torn apart societies over the centuries, including Bosnia, Rwanda, Israel/Palestine, Northern Ireland, and the Shia–Sunni split in the Muslim world. Not to mention the separation that many immigrant societies feel from their adopted countries in Europe.

The American experience in dealing with our differences has largely been a success story, but it might have been otherwise had our forefathers proceeded differently. The Electoral College has had a huge, positive impact upon our stability. Yet, intuitively, the college seems anti-democratic—where all electoral votes in most states are awarded to the winner, even if the winning margin is just a few votes, and sometimes, though infrequently, allows the winner of the electoral vote to be the loser of the popular vote. While the two big tent parties try to woo narrow constituencies like African-Americans, the Christian right, Catholics, Jews, Hispanics, labor, business, farmers, and many others, their dispersion makes some influential in one state and fairly inconsequential in another. America’s roots are immensely varied and growing more so each year.

Because, among lesser reasons, the parties dare not pit these groups against one another, the political dialogue is coaxed to the center, albeit sometimes slightly to the left or right of center. The system promotes stability through dialogue and incrementalism, in contrast to instant wholesale change. However, if we had no Electoral College and presidential candidates were free to go after these constituencies, after adding up the numbers as to what would be a winning coalition and then dividing up the marketplace into “winners” and “expendables,” would presidential campaign strategies change? You bet they would! There would be no need to care about the other guy’s power in another state. Whoever is disadvantaged by a policy choice would be expendable—at risk of feeling disempowered and without a voice. Resentments are then nursed. In a national free-for-all election, the past pitches to narrow constituencies would pale in comparison to the unbridled entreaties to their most narrow and fundamental interests, and might well become extreme, I fear. All a step away from a multiparty system of bitterly quarreling narrow interests held together by fragile coalitions.

Our Founding Fathers wanted checks on power and the protection of minority views. While the original rationale of the college may have lapsed, it has evolved into a moderating force that protects us from our worst instincts, and also gives us an opportunity through reason and civil discourse to share power and resolve our most challenging differences. The college’s moderating influence would be unnecessary if Americans shared an ethnic, religious, and cultural homogeneity, the inheritance of many other countries.

Majority parties have often adopted the agendas of minority parties under current law, but an attempt to speed up the process, I believe, would fragment the polity and institute a multiparty system that would greatly damage the stability that is our system’s “genius.” That the Electoral College permits the sometime election of a “minority-party” president is a flaw that I, for one, am willing to accept in exchange for the comity and national identity its political centristim promotes.

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