WHAT DEMOCRACY?

The case for abolishing the United States Senate

By Richard N. Rosenfeld

Americans believe in the idea of democracy. We fight wars in its name and daily pledge allegiance to its principles. Curiously, the fervor with which we profess our faith in democracy is matched only by the contempt with which we regard our politics and politicians. How interesting that we should so dislike the process that we claim to revere. Perhaps, however, our unhappiness with politics points to something significant; perhaps Americans dislike the daily reality of their political system precisely because it falls short of being a proper democracy. Indeed, in the last presidential election, we saw a man take office who did not win the popular vote. Money above all else shapes our political debate and determines its outcome, and in the realm of public policy, even when an overwhelming democratic majority expresses its preference (as for national health insurance), deadlocks, vetoes, filibusters, and "special interests" stand in the way. No wonder so few people vote in national elections; we have become a nation of spectators, not citizens.

The United States of America is not, strictly speaking, a democracy; indeed, the U.S. Constitution was deliberately designed to prevent the unfettered expression of the people's will. Yet the Founders were not, as some imagine, of one mind concerning the proper shape of the new American union, and their disputes are instructive. The political dysfunction that some imagine to be a product of recent cultural decadence has been with us from the beginning. In fact, the document that was meant to prevent democracy in America has bequeathed the American people a politics of minority rule in which our leaders must necessarily pursue their unpopular aims by means of increasingly desperate stratagems of deceit and persuasion.

Yet hope remains, for if Americans have little real experience of democracy, they remain a nation convinced that the best form of government is by and for the people. Growing numbers of Americans suspect that all is not right

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THE LESS POPULOUS STATES HAVE EXTRACTED BENEFITS FROM THE NATION OUT OF PROPORTION TO THEIR POPULATIONS

with the American Way. Citizens, faced with the prospect of sacrificing the well-being of their children and grandchildren on the altar of supply-side economics, the prospect of giving up new schools and hospitals so that the colony in Iraq might have zip codes and modern garbage trucks, have begun to ask hard questions. Politics, properly understood as the deliberate exercise of citizenship by a free people, appears to be enjoying a renaissance, but the hard point must be made nonetheless that tinkering with campaign-finance reform is unlikely to be sufficient to the task. True reform becomes possible only if Americans are willing to return to the root of our political experiment and try again. And if democracy is our aim, the first object of our constitutional revision must be the United States Senate.

In America today, U.S. senators from the twenty-six smallest states, representing a mere 18 percent of the nation's population, hold a majority in the United States Senate, and, therefore, under the Constitution, regardless of what the President, the House of Representatives, or even an overwhelming majority of the American people wants, nothing becomes law if those senators object. The result has been what one would expect: The less populous states have extracted benefits from the rest of the nation quite out of proportion to their populations. As Frances E. Lee and Bruce I. Oppenheimer have demonstrated in their *Sizing Up the Senate*, the citizens of less populous states receive more federal funds per capita than the citizens of the more populous states.* And what happens if the larger states, with a majority of the people, object? Not much. Today, the nine largest states, containing a majority of the American people, are represented by only 18 of the 100 senators in the United States Senate.

The fact that a Senate majority reflects a majority of states rather than a majority of the people originated in what is erroneously and euphemistically called the "Great Compromise," which small states extracted from larger states in 1787 at the federal Constitutional Convention. All states, large and small, wanted each state's vote in the House of Representatives to be proportioned to the size of its population. Small states wanted an equal vote for every state represented in the Senate, regardless of population. What followed was hardly a compromise, just the unhappy acquiescence of larger states to an undemocratic demand by smaller states, which were otherwise refusing to be part of a new national government.

When we look back on this so-called compromise, we should be wary of exaggerating the enthusiasm of the drafters or the public. When the proposal for an equal vote for each state in the U.S. Senate came before the federal Constitutional Convention on July 16, 1787, three states (New York, New Hampshire, and Rhode Island) failed to cast a vote; four states (Virginia, Pennsylvania, South Carolina, and Georgia) voted against the proposal; the Massachusetts delegation split evenly (thereby dividing their state's vote pro and con); and only a minority of five of the thirteen states (Delaware, North Carolina, Maryland, New Jersey, and Connecticut) carried the day. Furthermore, as the census of 1790 would later confirm, the plurality of five states that carried the day actually represented a smaller portion of the American people than the four states that voted against the proposal. The yeasaying states represented less than 33 percent of the nation's non-slave population (and no greater percentage if one counted slaves). Unfortunately, voting at the federal Constitutional Convention was as undemocratic as voting in the United States Senate is today. Each state had an equal vote, regardless of the state's population. As convention delegate James Wilson observed, "Our Constituents, had they voted as their representatives did, would have stood as ⅔ against the equality, and ⅓ only in favor of it."

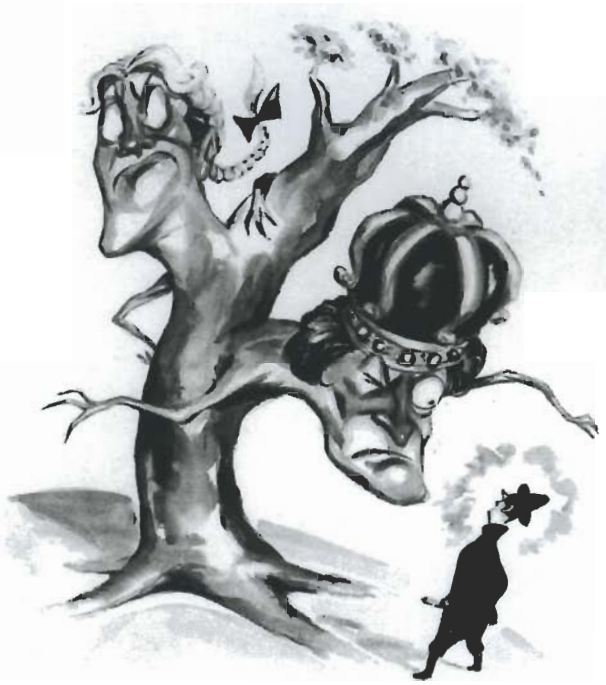
In the aftermath of the federal Constitutional Convention, many naysay-

** Many federal entitlement programs, once distributed to the American people in proportion to their needs and entitlements, have been converted to block grants for lump-sum distributions to the states, disguising the fact that citizens of smaller states get more of these benefits per capita than an equitable "entitlement" would allow.*

ers became yeasayers in persuading the thirteen states to ratify the final document. James Madison, who had argued vigorously against states having equal votes in the U.S. Senate, performed a lawyerlike pirouette in *The Federalist Papers*, as he propagandized for ratification of the final document. The states agreed in the end, and the Union was created. Today, however, we are not thirteen but fifty states, all of which (except the original thirteen) accepted the Senate's undemocratic voting system not as a concession to get smaller states to form a union but rather as a constitutional fact of life. Furthermore, except for Texas and California, the additional thirty-seven states were not independent before they became part of the Union; they were sections of territory that the United States already owned or claimed to own. Consequently, the inhabitants of the other states were already U.S. citizens before Congress allowed them to become citizens of the new states, which were created by Congress. There is thus no reason to apply the rationale of the Great Compromise to the vast majority of states that are part of this nation today. So what rationale shall we apply for our Senate?

THERE IS NO REASON TO APPLY THE GREAT COMPROMISE TO THE MAJORITY OF STATES MAKING UP THIS NATION TODAY

To understand the antidemocratic history and unsatisfactory logic that gave rise to American senates (both federal and state), one must start with the century preceding that of the American Revolution, when the people of England rose up in a fit of regicide, civil war, and tumult to end the absolutism of their Stuart kings ("accountable to none but God only") and to shift sovereignty from the king to "the king-in-parliament," meaning to a king whose actions depended on the approval of two branches of parliament. This new arrangement was basically a recognition of property classes in Britain, balancing the king (Britain's largest property owner), the hereditary House of Lords (Anglican bishops and titled aristocrats, "Lords Spiritual and Temporal," also representing vast land holdings), and a House of Commons (which represented a rising mercantile class of property owners whose demands for representation gave rise to this "Glorious Revolution"). Yet the British also came to see this balance as a protection of liberty, finding justification in the writings of the Greek and Roman philosophers, most notably in those of Polybius, who divided the forms of government into rule by one (monarchy), by the few (aristocracy), and by the many (democracy) but insisted that each of these forms, unless balanced by the other two, would degenerate into tyranny, oligarchy, or mob rule, respectively. Thus it was, in the minds of most Britons, a protection against tyranny that their constitution embraced the one (the king), the few (the aristocratic House of Lords), and the many (the more representative House of Commons). As Britain's most famous jurist, William Blackstone, argued in his *Commentaries on the Laws of England*, "If ever it should happen that the independence of any one of the three should be lost, or that it should become subservient to the views of either of the other two, there would soon be an end of our constitution." As Britain's leading political philosopher, John Locke, summarized at the end of the century, the purpose of government was to secure everyone's "lives, liberties, and estates."



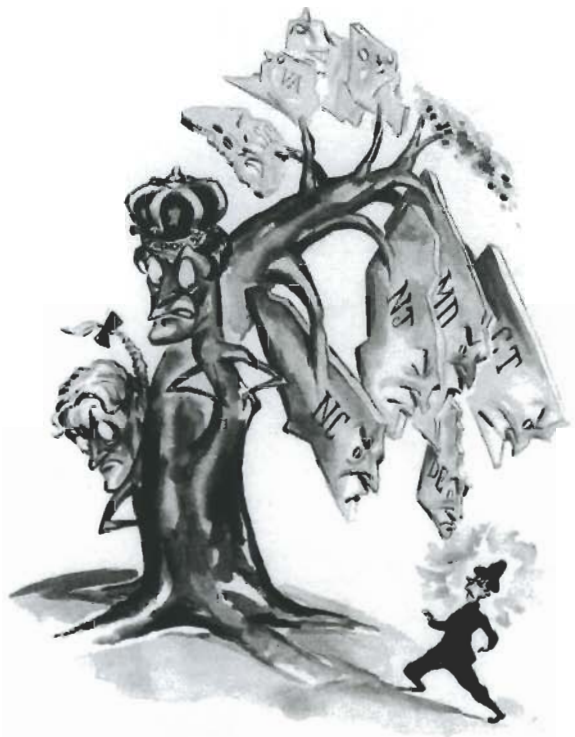
In the century that followed England's "Glorious Revolution," philosophers in France, politicians in America, and Whig critics within England itself had much to say about the British constitution and whether its balances secured or threatened liberty. Chief among them was the French philosopher Charles Montesquieu, who, in his *Spirit of the Laws*, accepted the balance among the one, the few, and the many but found a more important protection of liberty in the separation of executive, legislative, and judicial functions. As France and America approached the time of their own revolutions, most democrats accepted Montesquieu's theory of separation, but many totally rejected the British balance among monarchy, aristocracy, and democracy. These critics argued, as many Whigs in England did,

Illustrations by Tim Bower

THOMAS PAINE URGED AMERICANS TO DISTANCE THEMSELVES FROM BRITAIN'S ARISTOCRATIC CONSTITUTION

that the monarch's power of appointment and expenditure could (and did) corrupt the British Parliament and prevented Parliament from representing the people it was supposed to represent. Looking despondently at these developments, English Whig James Burgh wrote, in his *Political Disquisitions*, that William Blackstone had "placed the sovereignty wrong, viz. in the government; whereas it should have been in the people." Suffering "intolerable" and "coercive" acts of the British government, many in America agreed.

America fired its opening shot at the British constitution in January of 1776, when Thomas Paine came out with his revolutionary pamphlet *Common Sense*, urging Americans to declare their independence from Britain and to distance themselves from the British constitution (under which they had lived for generations). "I know it is difficult," he wrote, "to get over local or long standing prejudices, yet if we will suffer ourselves to examine the component parts of the English constitution, we shall find them to be the base remains of two ancient tyrannies, compounded with some new republican materials."* Paine condemned Britain's three-way balance as, "First. — The remains of monarchical tyranny in the person of the king. Secondly. — The remains of aristocratical tyranny in the persons of the peers [the House of Lords]. Thirdly. — The new republican materials, in the persons of the commons, on whose virtue depends the freedom of England." He urged that any American government consist of only one democratically elected legislative chamber, with no aristocratic or kingly branch to veto its decisions (the executive branch would be appointed by and answer to the legislature). Quoting Burgh, Paine urged "a large and equal representation," meaning a large number of representatives (so that each will answer to a small constituency) and a large number of voters (meaning that neither property nor any other special interest should limit the right to vote and thus limit equal representation). "A small number of electors, or a small number of representatives," Paine warned, "are equally dangerous. But if the number of the representatives be not only small, but unequal, the danger is increased."



The most virulent response to Paine's *Common Sense* came from New Englander John Adams, who introduced the phrase "checks and balances" into the American language and condemned Paine's plan of government as "so democratical, without any restraints or even an Attempt at any Equilibrium or Counterpoise." Adams countered *Common Sense* in April with his own pamphlet, *Thoughts on Government*, which argued that any American government should have its own three-way balance—specifically, two separate legislative chambers and a separate chief executive, each with the power to veto the other two. In such a government, he wrote, "equal interests among the people should have equal interests in it." Adams enumerated his arguments against a single-chamber legislature as follows:

> 1. A single assembly is . . . subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd judgments. . . . 2. A single assembly is apt to be avaricious, and in time will not scruple to exempt itself from burdens, which it will lay, without compunction, on its constituents. 3. A single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual. . . . 4. A representative assembly . . . is unfit to exercise the executive power, for want of two essential properties, secrecy and dispatch. 5. A representative assembly is still less qualified for the judicial power, because it is too numerous, too slow, and too little skilled in the laws. 6. . . . [A] single assembly, possessed of all the powers of

* *Paine made similar comments about America's new federal Constitution, observing, "As the Federal Constitution is a copy, though not quite so base as the original, of the form of the British Government, an imitation of its vices was naturally to be expected."*

government, would make arbitrary laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favor.

If these were the only arguments in favor of two chambers in the legislature, one could easily dismiss them, if only by questioning why having two chambers wouldn't simply double the problems of one chamber. If representatives of the people couldn't resolve their passions, discard their prejudices, control their greed, etc., in one deliberative body, why would a second group of representatives, arguing over the same matters, do any better? And if that second chamber were to reach a different conclusion from the first chamber, why would we believe that this second slice of humanity had reached a better conclusion than the first? Or, if we knew that the second chamber were better or would reach a better conclusion than the first, why would we not make the second chamber the only chamber and avoid the risks of the first chamber's mistakes?*

Paine's democratic message of January found its echo in July, when Thomas Jefferson drafted the Declaration of Independence, shifting American sovereignty from Britain's king-in-parliament to the American people. Proclaiming that "all men are created equal," Jefferson declared that government rested on "the consent of the governed" and that its purpose was to secure inalienable rights, among them "Life, Liberty and the pursuit of Happiness." Jefferson did not use John Locke's phrase "lives, liberties and estates," which would have tied America's political rights to property ownership, as in Britain's three-way balance. Jefferson opposed property qualifications for office-holding or voting. "I have not observed men's honesty to increase with their riches," he wrote.

After the Declaration of Independence, America's former British colonies began to draft new state constitutions, choosing between Paine's model of government and John Adams's. In September, Paine joined Franklin in propagating the nation's most democratic state constitution—that of Pennsylvania—which called for a single-chamber legislature without wealth or property qualifications for voters or representatives and with a weak plural executive that had no power to initiate or veto legislation. Franklin opposed the idea of a three-way balance, observing, "The Division of the Legislature into two or three Branches in England, was it the product of Wisdom, or the Effect of Necessity, arising from the preexisting Prevalence of an odious Feudal System?" He spoke openly at the Pennsylvania Constitutional Convention against a two-chamber legislature, which he likened to "putting one horse before a cart and the other behind it, and whipping them both. If the horses are of equal strength, the wheels of the cart, like the wheels of government, will stand still." For Paine and Franklin, two legislative chambers were a prescription for deadlock, and, with the advantage of hindsight, who among us would disagree?

If the arguments about the number of legislative chambers had simply been about the mechanics of decision-making, Paine and Franklin might well have had their way, but it wasn't, which is why they lost their argument. For eighteenth-century Americans as well as for the English, the purpose of a second chamber was really to protect wealth and aristocracy from the demands of a democratic majority. As historian Jackson Main has written, "The theory of balanced government suited colonial political figures because it justified their resistance to both monarchy and democracy, and at the same time it also justified upper-class rule."

In all this, Adams was an American exemplar, drafting a first constitution for his home state of Massachusetts that divided legislative power among a house of representatives (members were required to possess at least

THE PURPOSE OF A SECOND CHAMBER WAS TO PROTECT THE WEALTHY FROM THE DEMANDS OF A DEMOCRATIC MAJORITY

* *As Benjamin Franklin put it: "If one Part of the Legislature may control the Operations of the other, may not the Impulses of Passion, the Combinations of Interest, the Intrigues of Faction, the Haste of Folly, or the Spirit of Encroachment in the one of those Bodies obstruct the Good proposed by the other and frustrate its Advantages to the Public?"*

THE UNITED STATES SENATE IS A SMALL BODY DRAWN FROM LARGE AND UNEQUAL STATEWIDE CONSTITUENCIES

100 pounds in property), a senate (senators, at least 300 pounds in property), and a governor (at least 1,000 pounds in property), each with the power to veto the other two and each to be elected by constituencies meeting specified qualifications for wealth or property. In describing the Massachusetts senate to its citizenry, the state's constitutional convention wrote, "The House of Representatives is intended as the Representative of the Persons, and the Senate of the property of the Commonwealth." In his own defense of Massachusetts's two-chamber legislature, Adams extolled a "natural aristocracy," which he found "formed partly by genius, partly by birth, and partly by riches." He asked rhetorically, "How shall the legislator avail himself of their influence for the equal benefit of the public?" Then without hesitation, "I answer, by arranging them all, or at least the most conspicuous of them, together in one assembly, by the name of a senate."

When delegates gathered to draft a new federal constitution in 1787, most states had a senate or legislative council as a check on their more representative lower houses. With few exceptions, states imposed higher property qualifications on those who voted for or served in state senates than they did on those who voted for or served in state lower houses. Coupled with religious tests for holding public office (i.e., Christianity in Delaware, Maryland, Massachusetts, and Pennsylvania, specifically Protestantism in New Hampshire, New Jersey, North Carolina, South Carolina, Vermont, Connecticut, and Georgia), these property qualifications elevated many state senates to the functional equivalent of the British House of Lords, meaning a bastion of "spiritual and temporal" aristocracy. Therefore, when the federal Constitutional Convention decided in 1787 that U.S. senators would be appointed by state legislatures rather than elected by the people at large, the drafters were actually placing the choice of U.S. senators in the control of state leaders who had met their states' highest qualifications for property and religion.

Today, these property and religious qualifications are likely to strike us as quaint historical oddities. By the middle of the nineteenth century, all states had disestablished their Protestant churches and had eliminated religious tests for holding public office as well as wealth and property qualifications for voting and office-holding. In 1913 the nation amended the federal Constitution to remove the choice of U.S. senator from party bosses and greedy capitalists who were controlling state legislatures, and instead placed the election of U.S. senators directly in the hands of the American people. In these things, Americans spoke loudly in favor of democracy.

Yet the United States Senate stands today as a grotesque monument to that antidemocratic legacy; it remains largely a preserve of wealthy white male aristocrats drawn from an entirely different economic class than the people they purport to represent. Because the United States failed to heed Paine's warnings against a small and unequal representation, 40 to 50 percent of U.S. senators are millionaires (as opposed to less than 1 percent of the general population), with massive wealth requirements for those who wish to be senators. In election year 2000, wealthy candidates spent $107,700,000 of their own money in seeking election to the U.S. Senate, and the average cost of a successful campaign was more than $7 million. Notably, a successful run for the House of Representatives cost about one tenth as much.

Because the U.S. House of Representatives has a large and equal representation drawn from relatively small congressional voting districts, a congressional representative is more likely to be drawn from, to know, and to be known by the ordinary people he or she is supposed to "represent." For this reason, he or she will need less money to communicate with voters and will find money less productive (sometimes even counterproductive) in influencing what voters think. Not so for the U.S. Senate. Because the Senate is a small body drawn from large and unequal statewide constituencies, senatorial candidates often need vast sums of money (or family or friends with access to vast sums of money) to reach and influence as many as 10 million, or 20 million, or, in the case of California, more than 30 million people who may have little or no idea of who a candidate is. Needless to say, this disadvan-

tages women, blacks, the young, and other groups with a smaller percentage of millionaires. And the situation will only get worse. As state populations grow, the cost of reaching those populations will also grow, adding to the advantage of personal wealth for those who wish to run for the Senate.

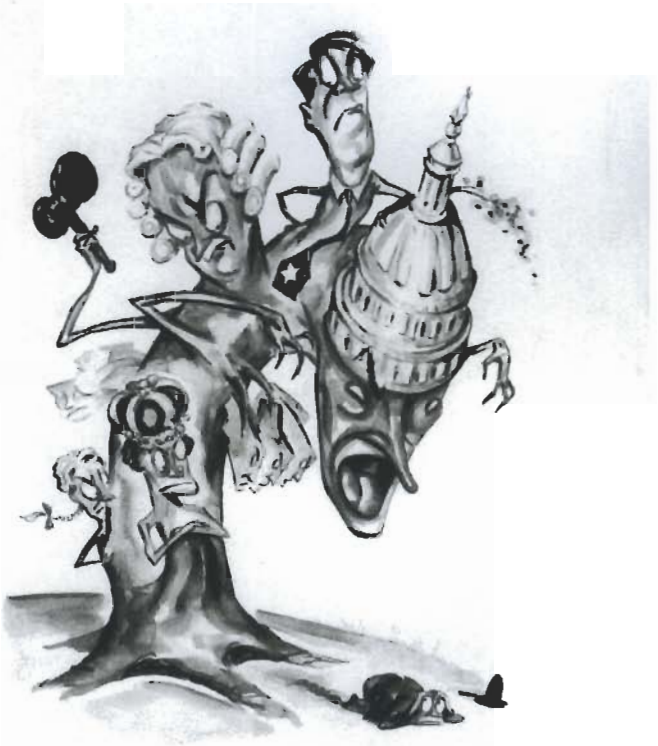
The Senate's "small and unequal" representation discriminates not only on the basis of wealth, sex, and age but also on the basis of race and religion. James Madison recognized in 1787 that an equal vote for each state in the Senate did not properly distinguish states with predominantly white populations from those with large African-American slave populations (whose numbers were counted, though at 60 percent, in apportioning seats for the House of Representatives). He could make a similar observation today. Today, African Americans and Hispanics make up only 11 percent of the population in the twenty-six smallest states constituting a majority in the U.S. Senate, though they are 30 percent of the population in the nine largest states, holding a majority of the people. Similarly, Catholics are only 16 percent and Jews less than 1 percent in the smallest states with a majority in the U.S. Senate, but they are 28 percent and more than 3 percent, respectively, of the largest states with a majority of the people. For Muslims, Asian Americans, the poor, and virtually every other group and category of voter, there may be important differences between the demographics of the smallest states and those of the largest states or of the average state or of the median state, so that an equal vote for every state in the Senate is not only increasingly undemocratic. It is increasingly unrepresentative as well.

The statewide election of senators (as opposed to the election of representatives by small congressional voting districts) works a further discrimination against minorities, denying them the ability to elect "one of their own" and thereby to have a voice in Senate debate. Even if blacks, for example, make up more than a third of a state's population (as they do in Mississippi), they could still find their voice in the Senate to be someone like Mississippi Republican Senator Trent Lott, who has supported racially segregated schools and opposed a national holiday to honor Martin Luther King Jr. To the shame of us all, the Senate's "small representation" and correlatively large (statewide) voting constituencies mean that it will remain a singularly white institution, even as the House of Representatives continues to reflect changes in the nation's racial complexion.

The "small and unequal representation" of the U.S. Senate infects the judicial and executive branches as well as the legislative branch. Because the Senate is the only institution whose "consent" is constitutionally required for presidential appointments to the U.S. Supreme Court, the undemocratic and unrepresentative nature of the Senate can skew the bias of the nation's highest court. In the case of the appointment of the highly controversial, conservative, and arguably sexist Supreme Court Justice Clarence Thomas, for example, the Senate confirmed Thomas's appointment (by a margin of four votes, 52–48), despite the fact that the senators who voted against him represented 7 million more people than the senators who voted for him. In that case, senators from the nine largest states with a majority of the people voted two-to-one against the Thomas confirmation (their vote was 12–6), while senators from the twenty-six smallest states with a majority in the Senate gave Thomas his four-vote margin of victory (they favored him 28–24).

Because the number of each state's presidential electors is the sum of its two U.S. senators plus the number of its representatives in the House, the unfairness of an equal number of senators for every state also corrupts the entire presidential election process, which in election year 2000 awarded 271 electors to George W. Bush and only 266 to Al Gore, despite the fact that Gore was the popular favorite by a margin of more than 500,000 votes. Had the number of each state's electoral votes simply been the number of its representatives in the House (and, therefore, been proportioned to the size of its

THE "SMALL AND UNEQUAL" REPRESENTATION OF THE U.S. SENATE INFECTS ALL THREE BRANCHES OF GOVERNMENT



THE MEN WHO WROTE OUR FEDERAL CONSTITUTION WERE CONCERNED THAT DEMOCRACY MIGHT TURN INTO MOB RULE

population), Gore would have enjoyed an electoral vote victory of 225 to 211 consistent with the preference of the American people. In 2000 the smallest states constituting a majority in the Senate cast their electoral votes nearly two-to-one for Bush, while the largest states boasting a majority of the people cast their electoral votes two-to-one for Gore.

The corruption of our political process does not stop with the legislative, judicial, and executive branches of government in their normal functioning, however; it undermines "the sovereignty of the people" as well. Although "we, the people of the United States" have retained the right to amend the Constitution with a two-thirds vote of the Congress and a three-quarters vote of the states, today this means that small-state senators representing only 8 percent of the people or the thirteen smallest states with fewer than 5 percent of the people can scuttle any amendment. Conversely (and perversely), if today's thirty-eight smallest states—with 40 percent of the people—want to change the Constitution (say, to prohibit gay marriage), they have the required three quarters to amend, regardless of what a democratic majority of the people might prefer. It is difficult to see how this is "government by the people," but it's not clear whether the drafters would have cared.

The men who wrote our federal Constitution were mostly concerned that democracy, without checks and balances, might turn into mob rule. Shortly before the federal convention, John Adams circulated the first volume of his monumental *Defence of the Constitutions of Government of the United States*, which defended constitutions built on his Massachusetts model against the unicameral ideas of Paine and Franklin. In his *Defence*, Adams returned to the arguments of Polybius (among others) and to the ancient theory of the one, the few, and the many, declaring, "If I should undertake to say there never was a good government in the world that did not consist of the three simple species of monarchy, aristocracy, and democracy, I think I may make it good." In the end, he did make it good, reviewing ancient and modern constitutions to conclude that "the English constitution is, in theory, both for the adjustment of the balance and the prevention of its vibrations, the most stupendous fabric of human invention." Many at the federal Constitutional Convention agreed.

Alexander Hamilton proclaimed, on the floor of the convention, that "the British Government was the best in the world; and that he doubted whether anything short of it would do in America." John Dickinson argued for "the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible." James Madison declared that "the Senate ought to come from, and represent, the Wealth of the nation." Edmund Randolph wanted the "number of Members for the Senate . . . to be less than the House of Commons . . . to restrain, if possible, the fury of democracy." Benjamin Rush predicted, at the start of the convention, "Mr. Adams's book has diffused such excellent principles among us, that there is little doubt of our adopting a vigorous and compounded federal legislature." And so they did.

But haven't times changed? The British themselves no longer subscribe to the Polybian balance or to the theory of the one, the few, and the many. The British now vest all legislative authority in the British House of Commons (their single chamber "of the many") and even allow the House of Commons to appoint their nation's executive branch in the person of the prime minister and his cabinet. By the Parliament Acts of 1911 and 1949, the House of Lords can no longer veto acts of the House of Commons and can no longer delay legislation for more than a year. Although the British monarchy retains a theoretical veto over

acts of the British Parliament, no monarch has dared to exercise that prerogative for nearly three hundred years. Today, the House of Commons reigns supreme on legislative and executive matters. The monarch and the House of Lords have merely advisory roles.

American views also have changed. Many drafters at the Constitutional Convention saw U.S. senators as agents of the state legislatures that would elect them, and thus as defenders of the residual powers of the states. Since then the Seventeenth Amendment took the power to appoint U.S. senators away from state legislatures. Americans gave their lives in the Civil War to confirm that the nation is not a confederation of independent sovereign states but rather a union "of, by, and for the people." Since the Civil War (and especially after the Fourteenth Amendment), it has been the federal judiciary, not the Senate or the House, that enforces our Bill of Rights freedoms (even against the states) and the U.S. Supreme Court that delimits the Tenth Amendment's mandate that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Finally, one must note that federalism carries no requirement that we have a senate or that less populous states have an equal vote in a senate. Federalism is concerned with what powers the federal government does or does not have vis-à-vis the states, not with how the federal government exercises those powers it legitimately has.

But what about protecting small states against large states, farmers against manufacturers, "old country values" against "the corruption of the city"? Pure mythology. Rhode Island and Delaware, among the smallest states, have less farmland and fewer farmers than either California or New York, two of the largest states. Nevada's small population is concentrated in Las Vegas and Reno, giving it a special interest in gambling, not farming. Besides, why should farmers have a greater say than manufacturers on questions of energy policy or airline deregulation? Why should country folk have a greater say than city folk on decisions about defense appropriations or funding AIDS research? If small states represent special interests and values, do such interests and values justify giving those states a veto over every national question?

But what about "the tyranny of the majority," that insidious and arguably oxymoronic phrase that French aristocrat Alexis de Tocqueville added to our vocabulary in 1835? The answer is that democracy is itself a protection against tyranny, whether by the one (autocracy) or by the few (oligarchy). In assuring that our representative democracy works properly, we must be vigilant that Paine's "two ancient tyrannies" don't insinuate themselves into our remedies. Furthermore, we must distinguish between tyrannical decisions and unwise decisions. We insulate ourselves from tyrannical decisions by declaring certain rights of individuals and minorities to be inalienable and by enshrining those rights, as we have, in the U.S. Bill of Rights. So long as the democratic majority respects those rights, a majority's decisions may prove unwise but should not be considered tyrannical.

What about occasions when the U.S. House of Representatives has been "wrong" and our undemocratic and unrepresentative Senate has been "right"? But what about the opposite, when the Senate was wrong? And doesn't such a judgment depend on one's political viewpoint? If, as a matter of experiment, we were to allow a roll of the dice, the chirp of a parakeet, or a phase of the moon to veto the decisions of the House of Representatives, there would also be times when the dice, the bird, or the moon would be right and the House of Representatives would be wrong. What would this prove? And what would we do about it? Would our response be to turn the dice, the bird, or the moon into a permanent part of the government? Or would we simply work to improve the decision-making procedures of the House of Representatives by requiring extensive public hearings, large supermajorities, or a "cooling off" period followed by a second vote on important questions such as amendments to the Constitution, so that future decisions would be better informed and better deliberated?

DEMOCRACY IS A PROTECTION AGAINST TYRANNY, WHETHER BY THE ONE (AUTOCRACY) OR BY THE FEW (OLIGARCHY)

TODAY, WE CITIZENS MUST RESUME THE HISTORIC STRUGGLE TO BRING FORTH DEMOCRACY IN AMERICA

Most Americans would not want monarchy or aristocracy to substitute for the will of the democratic majority. In this Age of Information, they simply expect today's democratic majority or its representatives to inform themselves on the issues and to act thoughtfully and carefully, with a readiness to change course if they find they have made a mistake. If the House, acting alone, were to make a mistake, the House would presumably correct itself, or, if it didn't, the people who elected wrongheaded representatives would elect new representatives to take their place. Here, too, the Senate is woefully deficient, because a wrongheaded senator has to answer to the voters only once in six years. As Thomas Jefferson observed, "A government is republican in proportion as every member composing it has his equal voice . . . by representatives chosen by himself and responsible to him at short periods." "In the General Government," he charged, "the House of Representatives is mainly republican; the Senate scarcely so at all."

How, then, does one abolish the Senate? The small states that forced the drafters to accept an undemocratic and unrepresentative U.S. Senate did their best to prevent any change. Article Five of the U.S. Constitution reads, "No State, without its Consent, shall be deprived of its equal Suffrage in the Senate," suggesting that we may not be able to reform the U.S. Senate, unless every state, including the smallest, agrees. Not a likely prospect!

An ironic alternative to outright abolition might be possible, however, which could prove to be a new "Great Compromise." Perhaps, in tribute to the drafters who so admired the British constitution, we could allow the Senate to continue in the footsteps of the British House of Lords, retaining its undemocratic, unrepresentative, and aristocratic membership (i.e., "equal suffrage" for each state, large and small) but with greatly reduced powers, so that it might, as in Britain, inform and delay, but not defeat, measures of "the people's house," which, in this country, means the House of Representatives. By conferring final lawmaking authority on the House of Representatives, we would thereby enhance the prestige and importance of our most democratic and representative branch, attracting more qualified ("wiser") candidates to its membership and encouraging greater citizen attention to its work.

Why would those citizens who live in small states support such an amendment? Because they, like all Americans, believe in "one person, one vote," fair representation, justice, equality, and democracy. As Thomas Paine wrote in January of 1776, "We have every opportunity and every encouragement before us, to form the noblest, purest constitution on the face of the earth." More than two centuries later, we still know that to be true.

In the centuries that have passed since "our fathers brought forth, upon this continent, a new nation, conceived in liberty, and dedicated to the proposition that 'all men are created equal,'" we, the children of these Founders, have slogged a long and difficult path toward a place of greater liberty. Along this path, we have disestablished the Founders' state churches, removed their wealth, property, and religious qualifications from voting or office-holding, abolished their enslavement of African Americans, ended their second-class treatment of women, paid compensation for their abuses of Native Americans, deprived their elites in state legislatures of the power to appoint presidential electors and U.S. senators, and made the Bill of Rights a guarantee not merely against actions of their new federal government but against actions of their old state governments as well. Along this path no principle of equality or democracy has been more important than that of "one person, one vote," and yet the U.S. Senate remains a glaring exception to this rule, a relic of Paine's two ancient tyrannies that continues to infect our political system. Today, we must resume the historic struggle to bring forth democracy in America: We must do away with our small and unequal Senate. This is America's next step. ■