

The Problem of the Senate

by Richard Z. Duffee

1) The problem of the Senate is an example of the fact that one major reason the Constitution is in danger is because it unjustly defends inequities.

Those of us who advocate impeachment are convinced that the Constitution must be preserved because it is vastly preferable to what Bush and Cheney, and presumably their successors, want to substitute for it. We are convinced that corporations and the rich have vastly too much power for any shred of democracy to survive in this country. Nearly all of us are convinced that the Democrats are in cahoots with the Republicans and that they are not doing what they could do to impeach and stop war. Certainly I am convinced that those three assertions are true. But I think they create a blind spot for us.

How could the current constitutional crisis occur if the Constitution did not allow actions that defeated the apparent purpose of the Constitution? The Civil War could not have happened if the Constitution had not allowed slavery though slavery flatly contradicted the grand purposes announced in the Declaration of Independence—that all men are created equal, that we have inalienable rights, that we deserve to be free. The basic hypocrisy of the Constitution on slavery led to the Civil War. What are the hypocrisies and inconsistencies of the Constitution that have led to our problems now?

I'll deal with just one here: the Senate. The Senate was designed to be the same sort of counterpart to the House of Representatives that the House of Lords is to the House of Commons. Senators were supposed to be representatives of our upper class, our supposed aristocracy. They were supposed to be “the most illustrious” of us, a more “select” group whose superior wisdom was supposed to stabilize the popular whimsy the House was presumed to be capable of. But what was supposed to guarantee the senators' superiority? Only the fact that they were less numerous. The assumption was that if there aren't as many, there will be more competition for fewer slots and somehow the cream will rise to the top. But is this true?

The problem is that the Senate was used to solve two problems at once. It was supposed to create a virtuous elite but there was nothing to guarantee the virtue. At the same time, it was supposed to give the smaller states some security in their dealings with the larger states. This is did. With such a vengeance, in fact, that it is a wonder the more populous states agreed to it merely for their advantage in the House. The constitutional compromise on legislative representation made the Senate anti-democratic in its own peculiar way. Instead of guaranteeing virtue in the Senate, it guaranteed inordinate power for the least populous states in the amendment process, in trials of impeached officials, in ordinary votes in the Senate, and in the electoral college—for the Senate's elitism affects all four of those functions.

Our three basic convictions—about the virtue of the Constitution, the vices of plutocracy, and the covert reality of collusion between the parties—have blinded us to the meaning of the Democrat’s perpetual excuse that it is senseless to impeach because they don’t have the votes in the Senate.

To get at this meaning, I’ve been examining the 2000 census figures. I ask this about different hypothetical votes in the Senate: “Through the actions of their senators, how much power do the voters in the less populous states have compared to the power the voters of the most populous states have through their own senators?” The figures are conveniently laid out at www.enchantedlearning.com/usa/states/population/shtml, the populations of the 50 states (and DC) arranged from the most populous, California, to the least, Wyoming.

2) As Orwell would have put it, the citizens of the less populous states are far “more equal” than the citizens of the heavily populated states.

I’ll start with the extreme inequities, then go to more subtle ones. If you look at the figures in different combinations, the magnitude of the inequities begin to sink in. There are a lot of implications to these figures, so I’ll give a number of them.

Through the Senate, a citizen of Wyoming has 68.6 times as much power as a citizen of California.

21 states with 31,579,777 elect 42 senators while 1 state (California) with 33,871,648 elects only 2. Relative to the people of the 21 least populous states, **Californians are underrepresented by more than 21 times in the Senate.**

In the Senate 26 states with 49,911,176 people can outvote 24 states with 222,752,218 people. In this situation the voters of the less populous states each have 4.5 times as much power as the voters in the more populous states. **The Senate can deliver a majority vote from the representatives of less than one fifth (18.3%) of the people of the country.**

27 states with 54,212,437 elect a solid majority--54 senators, while 2 states (California and Texas) with MORE people--54,723,468--elect only 4.

31 states with 73,178,624 people elect 62 senators while 3 states (California, Texas, and New York) with 73,699,925 elect only 6.

34 states with 89,433,996 people elect **68** senators who have a 2/3rds majority while 4 states (California, Texas, New York, and Florida) with 89,682,303 have only **8** senators. This is where it gets crucial for us. **In voting for impeachment, the people of the least populated 34 states each have 8.5 times as much power as the citizens of the 4 most populous states.**

In the senate, half the people are represented by 16 senators while the other half is represented by 84 senators. Half the people have less than one sixth of the representation. 42 states with 136,989,160 people elect 84 senators while 8 states (California, Texas, New York, Florida, Illinois, Pennsylvania, Ohio, and Michigan) have 16 senators for 135,674,234 people. (272,663,394 + DC's 572,059 = 273,235,453 was counted as total population in 2000, 27 million less than the estimated population now.)

What if the most populous states want an amendment? To propose the amendment, they'd have to get 34 states to agree in the House and Senate. **How many people do those states have? 254,449,586 people: all but 18,213,808 in the 16 smallest states.** What if the least populous states want an amendment? They have to get 34 states to agree. **How many people do the 34 least populous states have? 89,433,996, one third as many. And how many can stand against them? 165,015,590, That's 9.06 times as many as the 18,213,808 that can block the most populous states. .**

Amendments have to be ratified by three fourths of the states—38 states. The 38 least populous states [up to and including Massachusetts but not DC] have 113,695,289 people. It would take the votes of the 13 most populous states, with 181,938,312 people to block their vote. The 38 most populous states have 261,786,496 people but their votes can be blocked by the votes of the 13 least populous states with 12,588,161 votes. **For blocking ratification, the people of the least populous states average 14.45 times the power of those of the most populous states.**

3) How can these inequities be corrected?

First, we'd have to either abolish the Senate or propose a different basis for getting elected to the Senate. I think bicameral legislatures are a good idea, so I'd propose the second. Instead of merely being elected by a state, senators could be elected at large after proving various qualifications, such as service to the country or world, various sorts of prizes or awards, levels of education or various intellectual skills, etc. But this is not the time to worry about the criteria, for a much larger problem looms before us. The structure of the Senate can only be changed by constitutional amendment, and the inequities that shape the Senate are even more serious in the amendment process. Read Article V:

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the [first](#) and [fourth](#) Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be [deprived](#) of its equal Suffrage in the Senate.”

So the inequities at the levels of two thirds and three fourths votes discussed in section 2 above are just the beginning of the problem. The worst problem is that ANY state can prevent a change in its status. For instance, if a majority of the 272,169,612 people in 49 states wanted to reduce or change the power of the Senate, the majority of the 493,782 people in Wyoming could prevent them from reducing Wyoming's power in the Senate. In that situation, the people of Wyoming would each have 551.2 times as much power as the people of the rest of the country.

Is there any way out of this bind? Four are suggested: two forms of "informal amendment," one form of "popular amendment," and an Article 5 Constitutional Convention.

"Informal amendment" means either by court ruling or by change of fact. Given the predominance of conservative and reactionary judges, it is presently inconceivable that courts would rule that the Senate should have less or different kinds of power. "Change of fact" would mean something like this: people in the more populous states decide to migrate to the less populous states so that eventually the inequities eliminate themselves, all states ending with 5.44 million people each. This would require, for example, that 28.43 million people leave California while 4.95 million move into Wyoming. Glad to see you're relieved the problem can be solved so simply.

"Popular amendment," has never been used, so no one knows whether it actually exists. James Wilson, who signed the Constitution, endorsed the idea. Akhil Reed Amar writes about it in "The Constitution: A Biography."

Joel S. Hischhorn has written "Delusional Democracy: Fixing the Republic without Overthrowing the Government" to advocate an Article 5 Convention. So far this looks like the best option to me.

4) So what are the relevant implications?

a) When the Democrats say it is pointless to impeach because they don't have the votes in the Senate, they are 1) overestimating their knowledge of the future; 2) underestimating the power of impeachment procedures; 3) being obstructionists because they've made prior deals with the Republicans and want imperial presidential powers themselves; and 4) being self-serving because they want everyone to believe the only solution is to elect a lot of Democrats to the Senate.

b) BUT the Democrats are also sloppily hinting at something important and ugly they think no one can do anything about and that they don't want to admit because it is profoundly anti-democratic. That is the extraordinary advantage the less populous states have in the Senate that section 2 discusses, and how hard it is to change it, as discussed briefly in section 3. If they talked openly about how the representatives of very few people are able to dominate the Senate, they'd generate a lot of outrage that would jeopardize their own positions.

c) Consider who gets elected in the less populous states of the West, Midwest, and South. They're not small farmers. Most are big landowners or are tied to large-scale farming interests like Cargill, tobacco interests, banks that manage farmers' mortgages and loans, defense contractors, etc. Corporate power takes full advantage of the opportunities disproportionate senatorial power provides. And they tend to do it through the religious Right whose power is concentrated in those states.

Consider: the 19 most populous states have 24 Democratic senators but only 14 Republican senators. The 20th to 41st most populous states have 30 Republican senators but 14 Democratic senators (one of whom is Joe Lieberman.) Those are the states with more than 1.25 million and less than 5 million people each: by population range, that is the Republican stronghold. The 9 least populous states have 12 Democratic senators, 5 Republican senators, and 1 Independent.

d) Consider the differences between the US and Europe on such indices as difference of wealth and income, health care, mortality, educational levels, the relative power of women, the impact of racism, religiosity, and authoritarianism. Though we have more money per capita than any country but Luxembourg, we have policies so backward that large percentages of our children are malnourished, badly educated, and uninsured, that healthcare in inner cities is on a par with that in Lagos, Nigeria, that 27 countries have greater life expectancy, and so on. All of these are related to the fact that in the Senate the representatives of the vast majority have less power than the representatives of less populous states.

e) Consider what hypocrites our representatives are in advertising our supposedly democratic nature around the world—though the Founders were absolutely clear that they established a Republic, not a Democracy, and that they did so because they believed republics to be vastly superior to democracies, likely to last far longer, and far easier to expand. Consider further whether, just as we now have universal suffrage for all citizens over 18 whereas we started with white male moneyed landowner suffrage, we may be at the point where our conception of democratic rights has outgrown the structured dominance of the Senate.

f) Consider finally whether we should not only be seeking to restore the constitutional provisions Bush and Cheney are destroying, but also to amend those clauses of the Constitution that have made it vulnerable to such extraordinary abuse.