

Toppling Statues is Not Enough; the Time Has Come for a Second American Revolution.

The Hypocrisy of the Founders Has Overtaken Us

Whatever its outcome, the controversy over the nomination of Judge Brett Kavanaugh for a seat on the Supreme Court lays bare the profoundly anti-democratic nature of our fundamental American institutions.

The fifty-one senators who are threatening to saddle us for many decades with a judicial philosophy which most Americans find loathsome represent states containing approximately 44% of the electorate. This is due to the fact that low population states have equal representation in the Senate as high population states, and the founders allocated to this lopsided body such key functions as advising and consenting with respect to treaties and to judicial nominees.

The founders also invented the electoral college, which has allowed several presidents, including President Trump, to assume office with a only a minority of the popular vote. Even when the Electoral College endorses the wishes of the majority of voters, the preceding campaign, conducted with an eye on the Electoral College, is addressed primarily to voters in a few swing states, while the concerns of the majority are left on the back burner. It is time for us to acknowledge that the huge numbers of citizens who do not participate in elections are not lazy or apathetic, but rather well understand that the system is weighted against them, and that participation simply endorses their own marginalization.

Since the President and the Senate together determine the composition of the Supreme Court, all three branches of our government are warped in a way profoundly contrary to democratic values.

While the Constitution presumably allows for its own improvement and correction, the extremely arduous amendment process, too, as defined by the founders, is weighted against majority rule.

It is true that in a democracy it should be insured that the rights of the minority will not be easily trampled by a tyranny of the majority; we, however, are faced with the reality that the rights of the majority are frequently subverted by a minority.

In the pre-Revolutionary period the thirteen American colonies were deeply reflective of the late medieval societies of Europe from which they sprang. Aristocratic people owned great landed estates like Mount Vernon, Monticello, Montpelier, the Rensselaerwyck Estate and the Fairfax Estate, while most of the population was comprised of the urban and rural poor, indentured servants, tenant farmers, and, of course, enslaved African-Americans.

America's aristocratic founding elites, naturally very suspicious of democracy, nevertheless cynically employed the rhetoric of the Enlightenment about human rights, equality, and liberty to rally the masses around the rebellion from England, and then cleverly devised a system of government which would ensure their own continued privilege and dominance. They managed to ignore the rights of Native Americans, enslaved African-Americans, women, and propertyless white men – the great preponderance of the population of the new nation. As has often been pointed out, ensuring the perpetuation of the institution of slavery in spite of popular opposition to it was an animating motive for many of the arrangements which characterized the new government.

Ten of the first twelve United States Presidents felt comfortable buying, selling and owning other human beings. Although President Lincoln never did so personally, during his presidency the plantation-style executive mansion in which he lived, the White House, was itself staffed by enslaved human beings. That it required a dreadful civil war before there could be an end to slavery is itself a tribute to the ingenuity of the founders in ensuring that the trappings of democracy would not easily result in substantive democracy. Even the great Union general, Ulysses S. Grant, the seventeenth President, owned slaves himself before the end of the Civil War.

Today, we remain saddled with this contradiction between the public proclamation of human rights, equality and liberty, and the reality that the institutions which presumably give expression to these principles actually cleverly subvert them. It is no accident that we are afflicted with the ridiculous situation that corporations are deemed to have the same rights as human beings, that money is equated with speech, that office holders can be bought and paid for by special interests, that the environment is being plundered, and that no way can be found to ensure that everyone has an equal opportunity to vote in tamper-free elections – elections which follow a balanced and free discussion of the issues facing the nation.

In recent decades we have seen the remnants of democracy which have survived the founders' machinations wither away in ways that, more and more, seem irretrievable.

It is time for a Second American Revolution.

Daniel A. Seeger
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Daniel A. Seeger is a retired executive in the not-for-profit field. He served as Executive Director of Pendle Hill, a Quaker Center for Study and Contemplation in Wallingford, Pennsylvania and served as Regional Director of the American Friends Service Committee's New York Office. He was a successful litigant in the Supreme Court case of the United States of America versus Daniel A. Seeger (1965).