

From the desk of

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How the Senate is Aiding and Abetting Voter Suppression: It's the Filibuster, Stupid

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Voter suppression has haunted our polity since the ratification of the 15th Amendment in 1870. It is obvious why this is a matter of public policy, a great deal of which is made within the halls of state legislatures and the United States Congress. It is probably not an exaggeration to say that it now represents a clear and present danger to our democracy. As of March 24, legislators have introduced 361 bills with restrictive provisions in 47 states; that is 108 more than the 253 restrictive bills tallied in February making a 43 percent increase in little more than a month. Voter suppression comes in many forms among which the most notable are: restricting who can register, gerrymandering (packing and cracking districts), strict voter ID laws, purging voter rolls and cutting voting times, particularly in early voting. The recent efforts in suppressing the vote in states across the nation have been attributed to huge voter turnout during the last presidential election; efforts directed in large part to disenfranchise minority voters. Alarmed by the 'positive' impact of early voting, absentee mail-in ballots and drop boxes, many of these states have engaged in voter suppression tactics using disingenuous fears resulting from fictional imaginations over 'voter fraud' and 'ballot security' as excuses to restrict voting abilities, especially of minorities across the nation. While this is not new, this time around, it is the scope, nature, and especially the timing of it that make it a matter of grave concern especially for keen observers of the public policy process.

That said, at the heart of this debate is the role of the Senate of the United States, particularly the filibuster. To begin with, rather than take on the herculean task of fighting voter suppression bills/laws piecemeal state-by-state, (especially since there are so many of them), the easier and most pragmatic way to do it would be to address the issue at the federal level, once and for all. However, good luck on that front, because while the House has already passed a bill that will do exactly just that, it is stuck in the Senate where its fate is unsure and critically in need of life support. In a worst-case scenario, many now believe that unless the filibuster mechanism is revisited, all legislative efforts to redress harms caused by voter suppression are dead on arrival. In order to understand why, I feel it is appropriate to remind us of a few things about the Senate: its creation, composition and in particular some of the powers that it possesses.

I have always wondered how the U.S. Senate really fits into the construct of a democratic institution. For me, it is like trying to fit a square peg in a round hole. For example, how can a Republic which claims to be the poster child for democracy, tolerate, and even revere one of the most undemocratic institutions among its ranks and still profess to live up to its democratic creed? Perhaps even more consequential is

the question of how we convince other nations of our commitment to democratic principles when we undermine the same system in such a fundamental way? We may need to go down memory lane for a minute for therein lie the answers to these burning questions.

Make no mistake about it, despite the rhetoric of the time and of today, the Senate was never intended by the Founding Fathers to be a democratic institution. Instead, they wanted, and got a Senate that was designed to be an elitist institution which would relatively be out of the reach of 'we the people' in as much as possible. For instance, at the founding, while the House of Representatives was elected by popular vote, 'we the people' had practically nothing to do with the election of our senators. Indeed, until 1913, except for electing members into the House, 'we the people' had practically nothing else to contribute to the election of the people that represented and/or governed us. Rather, we were literally mere bystanders in a political process that was meant to be a government of the 'people, by the people, for the people'. In my opinion, there is probably no better way of explaining why, today the 'Upper House' is so unresponsive to the will of the people. So much for all the hype about popular vote. As if that was not enough, the filibuster was specifically invented to neutralize the wishes or demands of the people especially when they are in contradistinction to what some of the Senators desire, a tool that was so efficiently used to disrupt many civil rights attempts designed to move us closer to a more perfect union. I am yet to encounter one really good reason why this mechanism was inserted into the Constitution. I would truly love to know the 'popular' benefit of having one single senator from a state the size of only one district, thwart the will of eighty million people (#2020presidentialelection), no matter what the pretext. While the political benefits may seem obvious, this check-and-balance mechanism could possibly not have been conceived in good conscience and, certainly not in the name of public good.

Imagine for instance what would happen today if the Senate were a more democratic institution. The People Act of 2021 (H.R.1) and the John R. Lewis Voting Rights Advancement Act of 2021 (H.R.4) would have probably passed by now. The voter suppression bills and laws now mushrooming around the nation would either never have materialized or promptly defeated at the federal level once they were passed. More importantly, the Supreme Court's decision to gut Section 5 of the Voting Rights Act may never even have happened if SCOTUS knew it could easily be overturned by Congress. Yet, none of these could have happened with the specter of the filibuster looming over the legislative process. Can you imagine how many good civil rights bills have been quashed by the filibuster, not counting the ones that were not even presented at all for fear of being filibustered? This is because it will take only one Senator (yes! you heard that right, only one Senator), again whose state may not even be more than the size of a district, to disrupt the process thereby disenfranchising thousands, or may be even millions of Black and Brown voters across the nation.

I would like to add one more observation underscoring how good public policy may become a hostage of the filibuster. Strict constitutionalists would argue that the checks-and-balances mechanism is not only necessary but very reasonable. But that is until you start reading between the lines. While from this standpoint, it is always a good thing to have the Senate check and balance the powers of the House of Representatives and vice versa, however, where the mechanism becomes problematic is the unequal powers both houses hold over each other. At any point in time, the House is required to have at least a



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simple majority before it can obstruct or stop the Senate from having its way. Again, thanks to the ingenuity of the framers, the Senate needs only one person to frustrate the legislative process even if the bill under consideration has been unanimously passed by all 435 members of the lower body. That, to me, is the antithesis of what our democracy professes and preaches around the world. Moreover, regarding the world, there is increasingly a resurgence of autocratic regimes at a rate that many consider alarming. For centuries, democracy has earned the noble reputation of being the strongest and in some cases the only credible bulwark against authoritarianism. Incidentally, among others, one of the principal hallmarks of this ideology is voter suppression. The 'Shining City on the Hill' cannot and must certainly not be seen as embracing such an odious and obviously antidemocratic practice. The Senate must somehow have to find the political will to resist the populist appeal that currently fuels some of these tendencies in order to safeguard our democracy. If that means changing the rules of the filibuster, so be it because when that happens, it will surely augur well for the public policy process in many ways.

Finally, I would like to finish by suggesting that we need to get past this notion that voter suppression is only a Black and Brown problem, because it is definitely not. Unless we want to have it both ways, (and we know how that usually ends), we cannot claim to be the shining light on the hill for democratic ideals while undermining the very principles that underscore those ideals. Incidents of voter suppression diminish our credibility in the eyes of the rest of the world and when that happens, it is not just a Black or Brown problem, it is an American problem.

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