**Our Broken Constitution**

**By Jeffry Toobin**

**Main Claim:** The pervasive dysfunction that currently characterizes Washington is BECAUSE of the Constitution.

**Set up:** the bicameral legislature is designed to represent the people (House), and the states (Senate). The initial plan that senators were chosen by the House additionally reinforced the states as entities, as well as the elitism of the era.

**Points of Argument (Congress):**

* The Senate is distorted by each state having 2 senators. This gives small states a disproportionate level of power over legislation. Example: CA has 70 times the population of WY, yet WY has an equal say in legislation.
* The Senate’s role has historically been to stop legislation supported by a popularly elected president and House from sailing into law. A senate in which less populated states wield disproportionate influence is fundamentally *conservative* in nature.
	+ **In simple terms: in a world where progressives want change and conservatives favor the status quo, a legislative body that makes legislating difficult will be a conservative force.**
	+ **Theoretically the senatorial block is available to both parties. And there have always been two parties in the country where one wants change and the other is more supportive of the status quo. The Senate stops change and that hurts the party that wants it, which *at the moment* is the Democrats.**
* Madison feared majority rule. Minority rights are protected from tyranny of the majority by the Senate. But it stymies the flow of legislation. Another argument is *for* majority rule as it numerically represents the people and “gets the job done.”
* Perhaps the dysfunction in the Senate is not endemic, but rather the result of political partisanship in which cross-party alliances no longer exist (example of Orrin Hatch).
* Filibusters (Art. I Sec. 5) have traditionally been the means by which the minority party blocked legislation in the Senate. Both parties have abused it.
	+ In 2013, the Dems utilized the “nuclear option” and changed Senate rules to allow for a simple majority on presidential nominees (of which USSC justices are the most important)
	+ Unless the rules are changed back, this means that, going forward, the USSC will be controlled by the majority party in the Senate.

**(The USSC)**

* NLRB v. Cannng (2010): court struck down the board’s actions because of recess appointees—effectively shutting down that executive privilege used to circumvent majority tyranny in the Senate
* Simple majority for USSC appointees means that law and policy is now controlled effectively by the majority party in congress, *as well as an unrepresentative sample of Americans from sparsely populated, conservative states*.

**(Executive)**

* Recess appointments, which have traditionally been the way that a president could avoid Senatorial death of appointments, was curtailed in the Canning case.

**(Voting and Representation)**

* Economic and social circumstances have polarized the two parties, but especially the Republicans in the House.
* Partisan redistricting (Gerrymandering) in the House has all but numerically ensured Republican control.
	+ Example: PA redistricting after 2000 census resulted in a 12-7 Republican advantage.
* Vieth v. Jubelirer (2004): ruling that political parties had the right to gerrymander for political gain. Constitution does not guarantee equal protection (of political representation) to states, *only to individuals*.
* Shelby County v. Holder (2013): struck down section 4 of the Voting Rights Act requiring states with a history of voter suppression to obtain pre-clearance with the Justice Department for new voting laws. The result is state voting laws that statistically move the median voter to the right by restricting access for traditionally Democratic voters.
* Citizens United (2010): corporate donorship can’t be restricted so long as it doesn’t go directly to the campaign committee. The GOP share in state legislatures grew by 5 points.