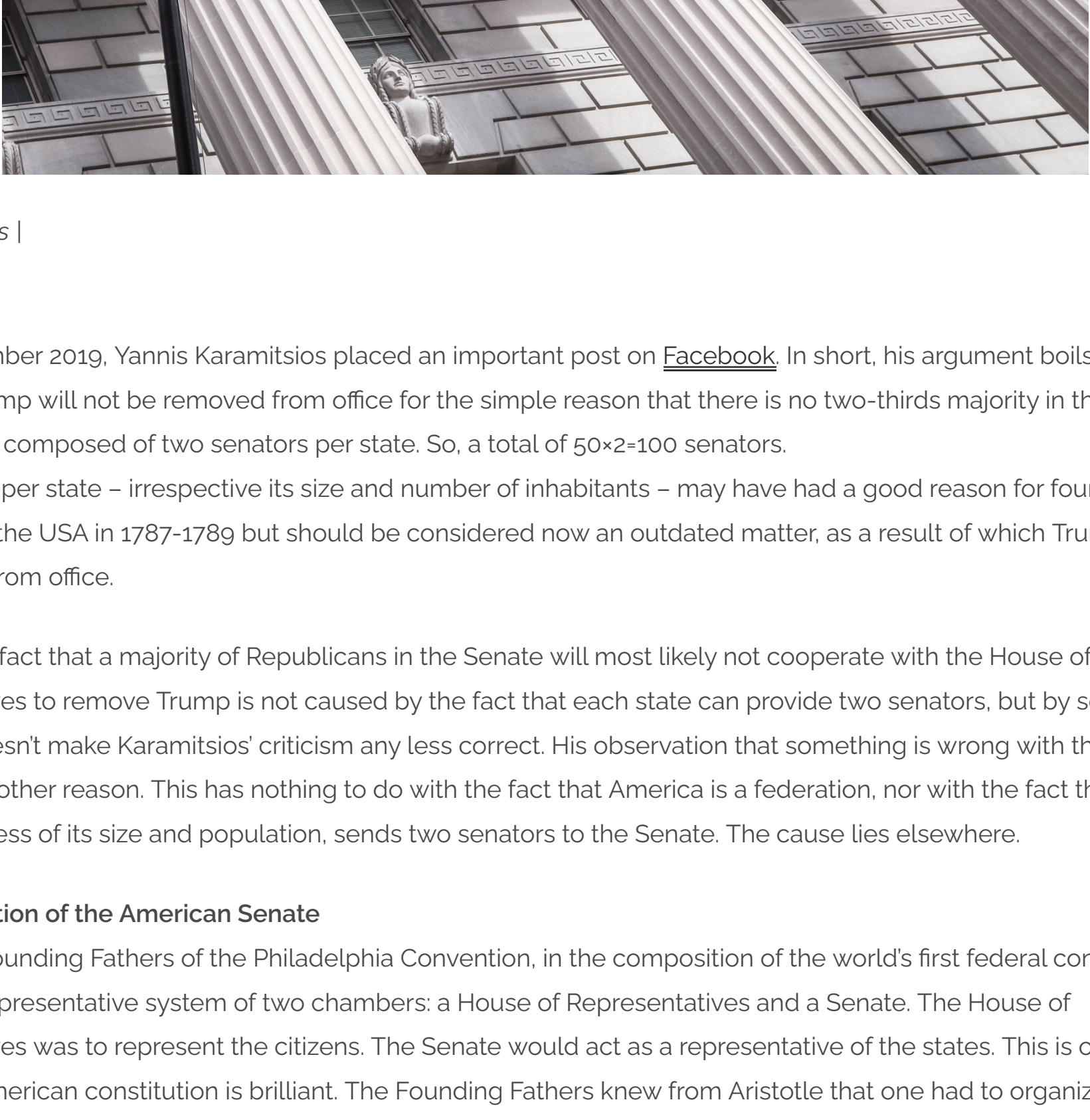




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Response to Yannis Karamitsios (Federalist Connection)

30 September 2019 - 0 Comments



by Leo Klinkers |

Introduction

On 27 September 2019, Yannis Karamitsios placed an important post on Facebook. In short, his argument boils down to this: President Trump will not be removed from office for the simple reason that there is no two-thirds majority in the Senate. The Senate is composed of two senators per state. So, a total of 50x2=100 senators. Two senators per state – irrespective its size and number of inhabitants – may have had a good reason for founding the federation of the USA in 1787-1789 but should be considered now an outdated matter, as a result of which Trump cannot be removed from office.

However, the fact that a majority of Republicans in the Senate will most likely not cooperate with the House of Representatives to remove Trump is not caused by the fact that each state can provide two senators, but by something else. That doesn't make Karamitsios' criticism any less correct. His observation that something is wrong with that Senate is correct for another reason. This has nothing to do with the fact that America is a federation, nor with the fact that every state, regardless of its size and population, sends two senators to the Senate. The cause lies elsewhere.

The composition of the American Senate

In 1787, the Founding Fathers of the Philadelphia Convention, in the composition of the world's first federal constitution, opted for a representative system of two chambers: a House of Representatives and a Senate. The House of Representatives was to represent the citizens. The Senate would act as a representative of the states. This is one example of why the American constitution is brilliant. The Founding Fathers knew from Aristotle that one had to organize decision-making by the people through a system of representation of the people. From Althusius they had learned how to create a federal state from the people. But because they were extremely afraid that representatives of the people would eventually behave like autocrats, just like the King of England, whom they had renounced in the Declaration of Independence in 1776, they devised a specific elaboration of Montesquieu's trias politica – the separation of powers – namely the checks and balances. I do not know of any (federal) constitution in which a system of checks and balances for the concrete application of the trias politica is so ingeniously and consistently conceived and laid down in binding rules as in the American one. I cannot list them all and limit myself to the way in which they have been applied in the composition of the Senate.

The representatives of sparsely populated states in the Convention objected to a composition of the Senate based on the size of the population. The large states would then have a predominance in both chambers, which could lead to a form of oppression. They won the debate. The Convention decided that the parliaments of each state would appoint two senators, regardless of the size of the state and regardless of the size of the population. Here is an example of checks and balances: the small states did not have to fear supremacy on the part of the large ones.

Amendment No 17 of 1913 modified this system. From that moment on, the senators were no longer chosen by the parliaments, but were elected by the people. In the European Federalist Papers Herbert Tombeur and I do not think this amendment was a sensible decision. The amendment undermined the original intention of the bicameral system. The House of Representatives was to operate on the basis of a mandate from the people, the voters. And the Senate would operate on the basis of a mandate from the parliaments of the states. An example of a true form of checks and balances. By also allowing the senators to be elected by the voters of a state, this form of checks and balances has been abolished. But the delegation of two senators per state has continued to exist, and that aspect of checks and balances has been preserved: in the Senate, the large states cannot overrule the small ones in terms of numbers.

In Paper 22 of our European Federalist Papers we discuss the way in which a Senate is composed on the basis of a federal constitution for the United States of Europe that we have drawn up. If you click on the link, you can follow our argument at Article II. Organisation of the Legislative Branch / Section 3. The House of the States, or the Senate. In the Explanation of Section 3 you can see why we have opted for having eight senators, chosen by the parliaments of each member state of the United States of Europe. In this way, Luxembourg has as many seats in the Senate as Germany. I refer to the link in order to have you understand the whole reasoning behind this choice.

The American electoral system

The problem Yannis Karamitsios rightly mentions is caused by the rotten American electoral system. It is based on a district system with the adage: 'the winner takes all'. The one who gets 51% of the votes gets the representatives of all voters of that district. Through a system called the Electoral College they will later vote for the candidate president of their party. Because the district system leads to a system of two parties – i.e. without the possibility of forming coalitions with a few parties – the other 49% are essentially not represented.

This has been given a name: 'spoil system'. As is the case in the United Kingdom, elections on the basis of a district system cause a political monopoly. Just as any monopoly corrupts, so it is with this system of elections. The party in power destroys what the previous government of the other party had built up and starts again from scratch. The 'spoil system' is opposed to the merit system.

Since 1800, dozens of attempts have been made in the USA to abolish this electoral system and to switch to a system of proportional representation via popular voting. Any amendment to the Constitution to that effect, however, has failed.

That is not to say that the opposition against it has stopped. When George Bush won the elections via the district system, it appeared that Al Gore would have won if the popular vote had been taken as the basis. The same thing happened with the election of Donald Trump. In terms of popular vote, Hillary Clinton would have won. As a result of this development, around ten states are currently coming up with an interim solution. At the next presidential election, based on the district system, they will also jointly discuss the results of the popular votes. In this way, they are trying to increase the necessary political pressure on the current system.

What is the core of this problem? Karamitsios sees an outdated way of assembling the Senate as the cause of the current Senate's unwillingness or inability to cooperate in the deposition of the President. The cause, however, lies in the absence of defensive mechanisms within constitutional and institutional building blocks of a democracy against idiots, adventurers, pirates and other villains who know how to master the procedures of democracy. Every country has to deal with this. Whether it is a unitary state, or a federal state is irrelevant. There is only one question: has sufficient constitutional and institutional defence mechanisms been put in place against those who, by manipulating the procedures of democracy, creep to the center of power in order to dismantle that democracy?

This creeping to the center of power by autocrats in order to dismantle that democracy is now happening in America, but also in the United Kingdom. Though not only in those two states. It is creeping in Europe as well, caused by the lack of adequate defence mechanisms that prevent political pirates from declaring democracy their property. Elections based on a district system – with the 'winner takes all' as the leading criterion – are the same for democracy as a computer without an antivirus programme and without a firewall. That is why it is called a 'spoil system'.

The spoilage of that system is reinforced by at least two other systems. In the first place the 'gerrymandering'. There is no room to describe this in detail, but in short: both parties – the Democrats and the Republicans – can periodically adjust the boundaries of constituencies in such a way that they can optimize their election profits. And thus, to be able to organise the loss of the other party. The protest against this is growing. Secondly, the Supreme Court has ruled that it is permitted to finance the party's election programme with large sums of money (superpacks) via a non-profit organisation that supports a political party. Both systems make a serious contribution to increasing the spoilage of the spoil system, because they open doors that should be closed to wrong politicians. I would like to refer to an article by Matteo Laruffa entitled 'The institutional defences of democracy'.

In our draft federal constitution for the United States of Europe, Herbert Tombeur and I have improved this, and some other, flaws in the American system. For the sake of brevity, I refer to my book 'Sovereignty, Security and Solidarity', in which that design is included.

So, what's to be done? It is clear that the post-war democracies in Europe, too, are experiencing an identity crisis. The autocrats are advancing. We are faced with the task of giving in-depth consideration to the need to look again at the type and strength of the built-in mechanisms that must defend our democracies against being taken over by wrong people. This is an important task for political parties. Just as we now need finely tuned filters to capture and remove even the smallest particles of plastic before they reach the ocean, so political parties must design new filters (like the equivalent of antivirus and firewall programs) to prevent the sovereignty of the people from being destroyed by autocrats.

As a non-political Federation of federalist movements, the Federal Alliance of European Federalists (FAEF) sees it as its responsibility to share its knowledge with political parties that are willing to face up to their own filtering system to keep out villains. In doing so, we – the FAEF – allow ourselves to be guided by a refutation of the ex-president Bill Clinton's statement 'It's the economy, stupid.' For the rest of this century, the adage must be for a united Europe:

"It is NOT the economy, stupid. It is the sovereignty of the people, organized within a true democracy, based on a federal constitution, ratified by the people of Europe, under the rule of law, protected by constitutionally and institutionally built-in defense mechanisms against autocracy."

Leo Klinkers – Editor

Leo Klinkers graduated in 1968 from the Faculty of Law at the University of Utrecht in the Netherlands. After a few years working in local government, he became responsible for research and education in public administration at the Law Faculty of Utrecht from 1971 until 1983. He wrote his Ph.D. thesis in 1974 on open access to Government documents. Between 1971 and 1983 Leo Klinkers developed a method for interactive bottom-up policymaking. This methodology has been published in a number of books and articles and applied in many projects in the Netherlands and abroad. Since 1983 he has worked as an independent consultant in public administration in several countries, as well as for the EU and the UN. In 2013 he was co-author of the 'European Federalist Papers' with Herbert Tombeur. He recently finished his last book 'Sovereignty, Security and Solidarity, arguing why and how the present intergovernmental administrating system of the EU should be replaced by a federal system and thus creating The United States of Europe, making America Europe's little brother. He is actually a co-founder and member of the Promoting Committee of FAEF (Federal Alliance of European Federalists)

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