

Our Fragile Democracy — Part 1: How did we get here?

Beverly Pestel, *Columnist*

“Our Fragile Democracy” is a series of thought-provoking columns by retired local professor Beverly Pestel exploring the history and struggles of our nation’s form of government from its founding to our current social, cultural and political tensions — looking at solutions and means of learning to work with one another, in hopes of preserving our democracy.

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In Part 2 of this series I’ll address the fact that we are a “federal constitutional representative democracy” and what that means. But the first story to tell is the process of how we got there, and it was anything but smooth. Our Revolutionary War began in 1775, but it wasn’t until 1776 that a committee of five was appointed to draft the Declaration of Independence and a committee of 13, with one representative from each of the colonies, was formed to begin writing a constitution for a union of the colonies. The result of that second committee was the Articles of Confederation and Perpetual Union. This document defined what was little more than a “league of friendship” and legalized what the Continental Congress had been doing to execute the war. Issues arose, however, indicating that this document was not sufficient to meet the needs of an evolving union, and in 1787 (four years after the end of the war) the meeting which became known as the Constitutional Convention was convened. Thus began the formation of our new government and the

Constitution we now have – and the debates reigned supreme.

The first messy part was the fact that many of the delegates to the Constitutional Convention thought they were there to fix the Articles of Confederation, not devise an entirely new system of government. As things progressed, a major sticking point was the composition of the Senate. The disagreement was over whether the representation should give each state two senators or apportion senators by the state’s population. (This decision has turned out to have some significant ramifications.) A fierce debate involved the number of representatives each state would be allotted in the House of Representatives. This was finally set based on population by counting all free inhabitants of the state, but each slave as only three-fifths of a person. The absence of a Bill of Rights was another highly debated issue with delegates arguing against it on the basis that the Constitution should not authorize the national government to potentially alter the rights decided by the states. After months of modifications and debate, a final version was produced and signed on Sept. 17, 1787 by 39 delegates, 3 refused to sign. Fourteen delegates were absent – they had gone home. After additional debate within the colonies, the Constitution became binding when it was ratified by the required 9 of the 13 colonies in 1788. It wasn’t until 1790 that all 13 colonies finally ratified the document and joined the United States of America. A compromise had been reached, some votes for ratification passed with narrow margins, but the

Constitution had been written and accepted by all 13 colonies by 1790.

A few weeks ago, I was floored to hear one of the witnesses at the Jan. 6 committee hearings declare with



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tear-filled eyes that he believed the Constitution was divinely inspired. Given the degree of often heated debate, the fact that a number of delegates went home unhappy, and that few votes were unanimous, that seems an unreasonable position. That position is also problematic in that it infers that it is a document set in stone and closed to revision and improvement. The fact that it accommodates Amendments negates that position.

The three Supreme Court Justices who recently wrote the dissent to the decision to overturn *Roe v. Wade* expressed their thoughts on the writers of the Constitution. They did not attribute it to God, but neither did they say it was written by “people” – they pointed out that it was written by “men.” This should not necessarily be interpreted as a criticism, but it does

put the whole thing into context. The Constitution is a product of the culture of the time, the mindset of the men who wrote it, and the compromises that were at times hard to justify.

It is important that we understand what this document was intended to accomplish and what it was designed to address for the future. The first 10 Amendments, commonly referred to as the Bill of Rights, were ratified four years after the Constitution was adopted. Seventeen additional Amendments were added between 1795 and 1971. So, our Constitution has a history of being a work in progress, not an immutable thing, and certainly not a perfect thing – just a more perfect thing – which was the aspiration of our Founders as stated clearly in the preamble to the Constitution.

So, in a nutshell, this is where our Constitution has brought us – but where is that? Is the state of our Constitution and Nation final and secure? We are experiencing cracks within the body politic that are exposing a fragility to our democratic form of government. It is worth looking into some of the debated decisions of our Founders to get an idea of the details of where we are now and why our democracy may be on shaky ground.

Beverly is a retired professor. She lives in a remodeled farmhouse and tends 40 acres of woodland in Richland County. When not in the woods she spends her time reading, writing and enjoying the beauty of the Driftless Area.

In 19th century Wisconsin, abortion was common, sometimes deadly

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would have been far beyond what her husband’s income, their small cabin, her body, or her stamina could support.

Some of Wisconsin’s country doctors performed abortions. Midwives did, too. But rural women often relied on herbs and traditional wisdom passed down through generations. Maybe Nancy crossed the marsh between her house and my place and found what she needed – juniper, bloodroot, or black cohosh, a plant Native American women relied on – in the woods behind the cemetery. In the mid-1800s,

women were educating themselves.

They were becoming literate in increasing numbers. They were savvy about anatomy and how to manage their fertility. If they couldn’t grow or collect the right herbs, they could order pills or tinctures (some effective, some quack remedies) advertised in magazines. By 1850, the abortion business was booming.

At the same time, the birthrate among white, Protestant women was dropping. Abortion was part of the reason. Politicians and doctors raised alarms. They feared losing constituents,

losing power and influence. In rhetoric that might seem familiar today, they warned about outsiders taking over the country. One prominent physician and leader in the American Medical Association, Dr. Horatio R. Storer, wrote a book called “Why Not?” to convince white, Protestant women to forego abortion. In it he asked if the regions west and south of New England should be “filled by our own children or by those of aliens?” He told women that “upon their loins depends the future destiny of the nation.”

The movement Storer and the AMA

started spread quickly to Wisconsin. Although the state already had a law on the books, it applied to abortion after quickening and didn’t affect the status quo. It was a subsequent law, passed in 1858, that would punish women and providers for abortions at any stage of pregnancy. Women faced up to three months in jail and a \$300 fine (about \$10,000 today). The sentence for an abortionist was second-degree manslaughter. Neither the public nor the legislature had asked for the law.

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