

The 17th Amendment

How to get the land back. By Henry Lamb

People west of the Mississippi know what it means to live under the heavy hand of the federal government. Although each state was promised entry into the Union on an “equal footing,” there’s nothing equal about the federal government controlling up to 85 percent of the land in a state. East of the Mississippi, no state has to endure this overshadowing presence by the federal landlord.

Every generation for a century has looked for a way to get the federal government off state land. Just because nothing has worked yet is no reason to stop trying. A new initiative started in the East may provide the mechanism to boot the feds off western lands. The initiative is a revived coordinated effort to repeal the 17th Amendment.

The 17th Amendment transformed the republic created by our founders. Since it was adopted in 1913, the power of the federal government has expanded, while the power of state governments has diminished. The founders knew what they were doing when they wrote the original Constitution. Delegates to the Constitutional Convention in 1787 spent nearly half their time in Philadelphia arguing and debating the issue of representation. After all, the new government had to be a government empowered by the consent of the governed, but just how, exactly, is this outcome achieved and guaranteed?

Just a few days after the convention convened on May 15, 1787, Edmond Randolph presented the Virginia Plan. Under this plan, there would be two legislative chambers, both consisting of representatives based on the population of the state. The upper chamber, the Senate, would be nominated by state legislatures, and elected by the lower chamber, the House of Representatives.

The small states balked. They argued that their voice would be little more than a whisper in a chorus of big-state majorities. No progress was made for nearly a month. On June 15, New Jersey’s William Patterson offered a new idea: a legislature consisting of a single house, with each state casting an equal vote regardless of population. Small states liked the idea, but the large states constructed an objection that could not be overcome.

It appeared that the delegates could not reach agreement and the Constitutional Convention was on the brink of collapse.

Then a committee was formed to seek “a grand compromise.” Finally, Roger Sherman and Oliver Ellsworth, both from Connecticut, offered a new plan: the House of Representatives would be elected by the people and the number of representatives each state could have would be based on population. The Senate would consist of two representatives chosen by each state’s legislature. This compromise offered the small states equal representation in the upper chamber while providing equal representation of the people in the House of Representatives. The compromise was adopted by a single vote on July 16. This compromise consumed the first two months of the Convention; the rest of the entire Constitution took only two more months to complete and was signed on Sept. 17, 1787.

For more than 126 years, the U.S. Senate consisted of people chosen by state legislatures. The concerns of the states were heard and no legislation could be enacted without the approval of the majority of the states. The Civil War changed this reality. It proved that the states were not voluntary participants in the “united” states, but were, in fact, subdivisions of a national government. This unmistakable reality fit nicely into the new emerging philosophy articulated by Karl Marx and others, who preached that the government should manage all society for the benefit of all. People who subscribed to this philosophy adopted the term “progressive” as the name to describe their movement.

Woodrow Wilson rode the progressive wave to the White House in 1912. He—and his minions—instigated the 16th Amendment, which gave us the income tax; the Federal Reserve; and the 17th Amendment,

which diminished the influence the states had in the federal government. The 17th Amendment allowed senators to be elected by the public, rather than by state legislatures.

It was an easy sell. The progressives campaigned on the idea that it was far more democratic to allow the people to elect senators, rather than to let the politicians decide. They claimed that state legislators were subject to corruption and bribes, and that states often failed to send senators because the two statehouses could not agree on a nominee. The campaign was extremely successful, and since 1913, senators have had no accountability to state governments, and state governments have had no real voice in the federal government.

The midterm elections in 2010 provide powerful evidence that the people are not happy with the growth in size and power of the federal government. The influence of the Tea Parties strongly suggests that the people do want to take control of their federal government once again. A growing number of people believe that a major step toward controlling the federal government would be to repeal and replace the 17th Amendment.

It is not an unprecedented move. The 18th Amendment, prohibition, was adopted in 1919, and it took 14 years for people to realize the amendment was a

mistake. Prohibition was repealed in 1933. It has taken nearly 100 years for people to realize the 17th Amendment was a mistake, and it will take a while longer to convince enough people to correct the mistake—but the initiative is underway. If the states are, once again, given a voice in the federal government as the founders intended, it is quite possible that the land now owned by the federal government can be returned to the states in which the land lies.

There is no legitimate reason for the federal government to own more than 30 percent of the nation’s land. There is absolutely no reason why western states should be burdened more than other states by the presence of the federal landlord. There is no reason why a determined public cannot correct this injustice.

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Repeal or Replace

Is it enough to simply repeal the 17th Amendment, or would it be better to repeal the 17th Amendment and replace it with an amendment that corrects some of the problems the progressives identified in their sales pitch? They claimed that states often failed to send a senator to Washington because the two houses of the state legislature could not agree. This problem was grossly exaggerated, but it could be completely removed with an amendment that required the state legislature to meet in joint session and cast a single, joint vote to choose among the candidates. And to assure that no state would be without a senator, the amendment could also stipulate that upon failure by the legislature to choose a senator by a certain date, the governor would appoint a senator to serve until the legislature elected a permanent senator.

Convention or Resolution

Article V of the Constitution provides two ways to amend the Constitution. Two-thirds of both houses can propose a resolution of amendment, which then must be ratified by three-fourths of the states. Article V also provides that upon the request of two-thirds of the state legislatures, Congress "shall" call a "Convention for proposing Amendments."

Neither of these methods is inviting. Sitting senators are highly unlikely to support an amendment that will reduce their power and make them directly accountable to their state legislatures. The current system allows senators to be accountable to millions of people. Being accountable to millions means never having to explain their votes or their actions to anyone. Senators elected by state legislatures must account for their votes and their actions directly to a few hundred legislators who hold the senator's future in their hands.

The current system allows senators to raise millions of dollars for campaign expenses from in-state, and out-of-state interest groups and individuals. Sitting senators will not want to give up the opportunity to direct the disbursement of these millions of dollars. Nor will they want to be accountable to their state legislatures.

The other method, getting two-thirds of the states to request a Constitutional Convention, has far more dangers than possible benefits. It is no accident that none of the 27 amendments to the Constitution have been enacted through an Article V Convention. The primary reason is that once a

convention is called, it can do whatever it wishes. The convention in 1787 was called not to write a new Constitution, but to tweak the Articles of Confederation to strengthen them.

Some people argue that a resolution adopted by the states that limits the authority of the convention would solve this problem. Others argue that the Constitution says that such a convention is called to consider "amendments"—plural—which means that limitations set forth in a state resolution cannot override the clear language of the Constitution.

Freedom21, the organization that has launched the current initiative to repeal and replace the 17th Amendment, has vowed to avoid the convention process and instead call on state legislatures to adopt resolutions urging their state's congressional delegation to sponsor a resolution to repeal and replace the 17th Amendment.

The Resolution

Here is the resolution being presented to state legislatures for their consideration and adoption:

Whereas, the authors of the Constitution for the United States of America deliberately required senators to be elected by state legislatures in order to provide a check and balance between the federal government and state governments; and Whereas, adoption of the 17th Amendment erased that check and balance between the federal government and state governments; and Whereas, the federal government has persistently expanded its power over state governments since the adoption of the 17th Amendment; and Whereas, the 10th Amendment to the Constitution has been continually weakened due to lack of states having their powers protected, as originally intended by the framers of the Constitution,

NOW, THEREFORE, BE IT RESOLVED: That the congressional delegation of the state of _____ is urged and implored to introduce, co-sponsor, and work diligently to adopt this "Proposed amendment to the Constitution for the United States of America":

Section 1. The 17th Amendment is hereby repealed.

Section 2. The legislature of each state shall, in the year a senator's term expires, meet in joint session and elect by joint vote a senator to represent the state.

Section 3. In the event the legislature fails to elect a senator by the date of the general election at which representatives are elected, the governor shall make a temporary appointment of a senator who shall serve until such time as the legislature elects a permanent senator to complete the term.

This resolution is straightforward and simple. It will be opposed by sitting senators because it will diminish their power. But it will increase the power of states to hold in check a runaway federal government.

A Senate filled with representatives chosen by, and answerable to, state legislatures would send a chill across 1600 Pennsylvania Avenue and the entire executive branch. Were states to have that kind of power in Washington once again, they could demand that the federal government rethink its land-use policies, and reconsider the wisdom of maintaining its enormous land inventories. The states would have a real voice in the ratification of treaties, and in the confirmation of judges and cabinet officials.

To achieve this goal, people must be taught anew that the United States of America was never intended to be a democracy. It was constructed to be a representative republic. A federal legislature, elected in part by state legislatures, was a crucial part of the republic. When this important structural element was removed, the republic was greatly diminished. To rebuild the republic, determined people must convince their elected representatives to repeal and replace the 17th Amendment, and then begin the long arduous task of returning to the states that which rightfully belongs to the states—beginning with the land. ■

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