

The 17th Amendment – A Mistake That Keeps on Giving

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4/8/2016



Article V Blog – April 8th 2016. Our previously free republic continues to reel from a one hundred and three year old mistake: the 17th Amendment. Pardon me if I don't celebrate today's anniversary.

Republican theory demands the consent of the governed. From ancient Greece, republican Rome, Saxon Germany, and even in the English kingdom from which we declared our Independence, the component members of their societies had a place at the lawmaking table. Greek ecclesia, Roman tribunes and senators, Saxon Mickleghemots, English commons, lords and king, encompassed the totality of their societies. By this, the consent of the governed was present in every law.

Unlike simpler Greek or Saxon societies which met in single-house democratic assemblies to craft their laws, the vast American Republic required representation of an additional component member, the states. Like the people, the states preceded the Union. Also like the people, the states relinquished some powers in exchange for legislative representation. Out of necessity, our republic was a compound form; it featured both democratic and federal elements.

It could be no other way, for the states would have never subjected themselves to a government in which they were not represented. Until the 17th Amendment, no republic in history denied the lawmaking consent of a component member.

Since 1913, the states have been subjected to arbitrary, despotic rule – tyranny. While the Constitution and subsequent laws and court rulings still act on the states, the states have no say in the government of their creation. Left in the wake of the 17A is federalism without a federal government!

Post-17A, the senate is an institution whose foundation cannot support its purposes. Popularly derived bodies have never been known for their caution and circumspection. Instead of reflecting the distinct interests of the various states, senators are no more than at-large politicians with extended terms in which they are free to serve their electoral and party interests rather than those of their states and nation.

When confronted with strong-willed presidents, these roving politicians seek electoral safety in rubber stamping executive initiatives. It is why treaties and presidential nominees to high offices are rarely opposed. It is why presidents since FDR have gotten away with the appointment of federal judges hostile to the 9th and 10th Amendments.

This contradiction, this tyranny within an otherwise rational form of government will be our demise. Because of the

17A, the tyranny exerted on the states is fast overwhelming the other component of the American republic – the people.

Scotus outrages enabled by the 17A go back to at least 1937:

Helvering v. Davis (1937) In order to promote the general welfare, government may rob Peter to enrich Paul.

Wickard v. Filburn (1942) Washington, DC can regulate just about any commercial activity.

Engel v. Vitale (1962) The Constitution prohibits prayer in public schools.

Roe v. Wade (1973) Fifty-five million innocent dead and counting.

A series of decisions culminating in *Chevron USA Inc v. Natural Resources Defense Council* (1984), so much as rendered the states subservient to executive branch agencies.

Obergefell v. Hodges (2015) Homosexual marriage. Five lawyers know better than thousands of years of Western Civilization.

Of course there are dozens more. The effect of the mistaken 17th Amendment has been to gradually snuff out free government, that happy condition in which government respects the Laws of Nature and makes no law without the consent of the component members of the nation. Scotus amends statutory law and the Constitution at will.

In conclusion, we can get excited about the upcoming November elections, but realize that it is but a sideshow. No Trump or Cruz alone can salvage our dying republic. It is up to us to rescue freedom.

What took over a hundred years to screw up cannot be restored overnight, yet there must be a starting point. Begin with the restoration of the first principle of republican free government, the consent of the governed. Repeal the 17th Amendment.

Article V.