

Essay 7

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America is the single best exemplification of a country founded upon ideas, principles, and self-evident truths while other countries in the world were founded upon borders, conquest, or inheritances. In our history, there is no document that exhibits that American exceptionalism better than The Constitution. It is safe to say that the Federal Constitutional Democratic Republic created by The Constitution was not perfect by any means, but it is easily argued that the American Experiment was being crafted long before the first Colonial charter was even written. Specifically, the idea underscoring the entire composition of The Constitution — Rule of Law — was derived from the Magna Carta and was arguably the most crucial of any idea represented in the blueprint to American society and government. One of the other foundational pieces of The Constitution is Democracy which was originally presented in Greek society. Specifically, we incorporated the idea of the Athenian *demokratia* (Cartwright, 2018). Athenian democracy is understood by most to be the prime example of Direct Democracy— all government power being placed in the people. Indubitably, the Founders modified this archetype to help establish more natural insulation between the Government and the People because mobs can be just as oppressive as monarchs. The Founders learned this lesson as they witnessed some of the cruelest actions committed by the violent protest of the American Patriot: the Boston Massacre and Tarring & Feathering. Specifically, Tarring & Feathering probably created such a sense of abhorrence that some type of systematic buffer between the People — who could commit such atrocities — and the systems tasked with upholding Rule of Law began to be necessary. Therefore, the Founders established a Representative Democracy as the base ideology of The Constitution which was originally articulated by Baron de Montesquieu. His works defined Democracy as innately representative and he claimed that Democracy was corrupted once the people failed to respect the power they placed within their representatives thus making that system of government synonymous with Direct Democracy (Bok, 2014). In John Locke's work — another important figure who influenced the Constitution — the Social Contract is the idea that the government secures the rights of the people in exchange for some power of the people. This is crucial in understanding how the people — under any government — must respect the contract and the government's work to secure the People's Liberty (Kimball, 2018). In my argument, I will clarify how the 17th Amendment (ratified 1913) is itself a corruption of the structural Federalism and the base Republic ideals of the Constitution, for it unnecessarily altered the governmental system to disregard the natural insulation that the founders had thoughtfully

put in place between Senators and the irresolute will of the people. Therefore, the 17th Amendment should be modified to uphold the integrity of the structure to the American government.

In the case of the 1913 abandonment from Federalism and Republicanism, many Americans reasoned correctly that the Senate was especially corrupt in an era of dirty politics. The famous cartoon “The Bosses of the Senate” (Senate, 2017) perfectly portrayed the perceptions that many common Americans had about the Senate in the late 19th and early 20th century: A Millionaire’s Club that was made up of greedy Robber Barons or puppets who were controlled by the interests of big business. In the eyes of most Americans, it was becoming increasingly clear that the Senate was not working in the interest of the people and that meant changing the system as to benefit the average Joe — who had an astounding 40 percent chance of living below the poverty line of \$500 a year (Trachtenburg, 90) while Senators earned roughly \$7,500 a year (Senate, 1789-2019). Naturally, the Senate would not have a good reputation because of such class differences and clear catering to the wants of the money-grubbing fat cats. That lack of faith in the institution and the integrity of the Senate would help create permissibility to the 17th Amendment because it was apparent change to such a corrupt system was most certainly needed. Though the amendment had support from many of the people, the foundations of the government were never meant to be changed without an overwhelmingly obvious need for that change. So, the government itself still had to find a reason to implement such a change as the 17th because there was little possibility of a constitutional amendment happening unless both the people demanded change and the government recognized the need for that change. As many Americans grew frustrated with the overtly corrupt Senate and attempted to better control who became a Senator, they began to degrade their State Legislatures to be a conduit for these elections. This, however, was not very efficient or practical for State governments that essentially turned into political war zones so that the people could possibly have a say in the States’ national representation. Because the State Legislatures were so focused on Senators, they failed to focus on their actual jobs for State affairs and could sometimes become deadlocked and still not have a chosen Senator. This disrespect of the State government’s sovereignty by the people — magistrates being disrespected is the first level of

corruption to Democracy — led to many states just giving up their right to elect Senators so that they could focus on other priorities like serving the very people who had violated the State's sovereignty. For example, 29 states (Senate, 1910) had caved into the demands for a direct election of Senators because they seemed to have no other option. A few years later, a couple of other states gave in to the demands of the people. Therefore the 17th Amendment was kicked into motion as the people had abraded enough States' dignity into submission to hopefully fix the corruption that was so apparent in the Senate.

Though there was good historical reasoning for requiring an amendment. The 17th Amendment can easily be criticized because it fails to uphold the innate Federalism of the original structure. The very nature of the amendment is to contradict that exact principle. The founders intentionally created a bicameral legislature for more than just the need for small State representation. They created it for State representation with the National government and the People. That established representation between the three (The People, The National Government, The State Governments) is key in the whole working of the Constitution because the lack of structured representation was a major defect in the Articles of Confederation as articulated by George Wythe (Madison, 1787) and fixing those problems was the main reason for even attempting at forming the Constitution. With a clear motive and understanding the original structure, we can begin to derive intention. The meaning in the action of the Founders specifically creating a bicameral legislature reveals an intended difference between the House and the Senate. From Wythe's proclaimed defects, we can understand that the bicameral legislature was not only for small and big State representation because the 4th and 5th resolutions of the Virginia plan clearly convey a difference in the 1st legislature and 2nd legislatures: precursors to The House and The Senate respectively. The 5th resolution clearly states, "*to hold their offices for a term sufficient to insure their independency,*" which clarifies how the Senate was to be more independent from the House who, "*ought to be elected by the people of the several States,*" Under this current system, there is no difference between the Senate and the House in term of their relativity to the passions of the people. Through Federalist papers 62 and especially 63 we can uncover the exact intentions that were violated by the 17th Amendment. Within the 63rd paper, Publius stated:

“Thus far I have considered the circumstances which point out the necessity of a well-constructed Senate only as they relate to the representatives of the people. To a people as little blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn.”

Now, this is important because it came directly from either Hamilton or Madison, whom both were intimately involved in the development of the constitution on a multitude of levels. Within this passage, Publius reconveys the sentiments Wythe presented at the beginning of the Convention but this is after the entire convention and signing of the convention which shows that the purpose of the Senate, throughout the whole process and debate on writing the constitution, was to be unaffected by to the passions of reaction but malleable to the wills of deliberate consideration. So, when the 17th Amendment came about, it disrupted the ingrained Federalism for State Representation and the very purpose of the Senate which has become no more than a smaller House that has different responsibilities.

Surprisingly enough, there has been little change concerning the Senate or the election of Senators since the misguided 17th Amendment in 1913. However, the attempts at removing insulation between the people and different institutions of Government have continued to take place. For example, there have been over 700 attempts at a Constitutional Amendment to the procedure or existence of the Electoral College (FairVote 2009). Some of the earliest attempts essentially came with the birth of the nation— like the 12th Amendment (ratified 1804). This is concerning considering that these insulated structures like the Electoral College and the original

election of Senators are so important, yet they seem to be under such scrutiny. More concerning, however, is the lack of Civic Literacy among the general populous because people can begin to form an opinion on civic subjects without knowing any basic facts on our government. Within a few minutes of research, it is easy to find commonly cited statistics such as:

“Only 36 percent of Americans can name the three branches of government. Fewer than half of 12th-grade students can describe the meaning of federalism. Only 35% of teenagers can identify “We the People” as the first three words of the Constitution. Fifty-eight percent of Americans can’t identify a single department in the United States Cabinet. Only 5% of high school seniors can identify checks on presidential power, only 43% could name the two major political parties, only 11% knew the length of a Senator’s term, and only 23% could name the first President of the United States (Kennedy, 2015).”

With that information, it becomes clear how a populace can grow so misguided as to disregard systems that can seem against the people on the surface but are working to protect us from our, *“temporary errors and delusions,”* (Publius, 1788). When there is a lack of Civic Education, it can make things like the 17th Amendment seem irrelevant if there will be problems in initiating an intelligent, informed national discourse on the subject. Luckily, 42 states and The District of Columbia require a bare minimum of one Civics type class as a graduation requirement (Serino, 2018) so there is some hope that future generations will restore the original intent of the Founders. One possible modification to the 17th Amendment could be a type of nomination system. Specifically, the State Legislatures would nominate so many candidates and then the people would elect from that pool of candidates. The benefits of this system are that it keeps the desired direct contact with the people while still reinstating State sovereignty because the States have the first selection in possible Senators. The nomination pool style also allows factions within parties and different parties to nominate their own candidates, thus avoiding the deadlocks of the original appointment system.

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