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## **The 17<sup>th</sup> Amendment changed how the U.S. is governed**

*Steve Bakke*  *November 9, 2021*



*Old U.S. Senate Chamber*

Some Constitutional Amendments end up merely clarifying or adjusting elements of governance. Others were transformational. The 17<sup>th</sup> Amendment joined the latter group.

Article 1, Section 3 of the unamended U.S. Constitution established the method for selecting senators as follows: “The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof...” The 17<sup>th</sup> Amendment in 1913 revised the process: “...two Senators from each State, elected by the People thereof...” i.e. directly elected by the people.

Does the Amendment deserve continued support, or should we consider going back to the original process? Am I beating a dead horse by bringing this subject up? Perhaps, but more than any time in our history, today’s politics and governance seems nuanced, conflicted, and subject to examination.

These responsibilities are unique to the Senate: ratifying international treaties and agreements; approving Supreme Court justices and other presidential nominations; and conducting impeachment trials. Considering these unique responsibilities, along with their more familiar bicameral lawmaking duties, begs the question, “Who should be the Senate’s constituents?”

Senators are ultimately accountable to those who select them. The U.S. is a republic, with checks and balances. The Constitution sets up centers of power and influence both among the three Federal branches of government, as well as between the U.S. government and states. This is clarified in the 10<sup>th</sup> Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The Founders set up our government as a republic, which allows for representative governance, rather than a pure democracy. It also features an element of “federalism” in which dual sovereignty is established between the federal government and states. And both are accountable to “we the people.” Superimposed on the three government branches is separation of powers and its inherent “checks and balances.”

## Visions of the Senate



☞ *"The senators will be constantly be attended with a reflection, that their future existence is absolutely in the power of the states. Will not this form a powerful check?"*  
-Alexander Hamilton, New York ratification convention

The constitution clearly established dual sovereignty federalism. True to that form of governance, the Founders took the opportunity to build on the concept when setting up the selection process for representatives and senators. Members of the house were to be elected directly by the people of their state. Senators were to be selected by the state legislatures. Both represent an obvious bow to the Founders' concept of dual sovereignty federalism.

Arguments favoring the original process for selecting senators make theoretical sense:

- Promotes federalism, state authority, guarding against federal overreach, and controls size of the federal government.
- Enhances state sovereignty and influence relative to the federal government.
- Gives states a chair at the table of federal policy making. This is important because individual citizen's issues may be different than collective state issues.
- Amplifies the voice of the minority, thereby discouraging a tyranny of the majority.
- Encourages more deliberation (vetting) of potential senators.
- Promotes better legislative decisions because different power bases have to agree.
- Ensures more legislative deliberation than if senators were elected directly, thereby easily swayed by momentary whims of the electorate.
- Enhances bicameralism, by differentiating senate characteristics from those of the House of Representatives, hopefully becoming more deliberative than the House.

Many arguments in favor of the 17<sup>th</sup> Amendment are heavily influenced by practicality:

- Prior to the Amendment, there were high levels of hostilities and wrangling surrounding the selection of senators by state legislatures.
- Prior to the Amendment, subtle adjustments of procedures were made to avoid conflicts, and soon the senator selection process resembled a quasi-direct citizen election.
- Direct election reduces the influence of party machines and special interests that some perceive in state legislatures.
- Direct election is intended to reduce the potential for corruption that was perceived prior to the Amendment.
- A directly elected Senator is considered more responsive – i.e. less deliberative.

My respect for the Founders' objectives would cause my vote to be cast in favor of the unamended original Constitution. But the impracticalities and conflicts that led to the 17<sup>th</sup> Amendment are real, and the popularity of direct elections, along with the difficulty in getting approval of two-thirds of both houses and three-fourths of state legislatures, argue against the practical reality of any repeal. Attempts to change would be futile.

The 17<sup>th</sup> Amendment is under no threat of repeal.