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Gene Healy: Repeal the 17th Amendment?

By: [Gene Healy](#)
Examiner Columnist
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Quick, what's the 17th Amendment? Good on you if you didn't need a lifeline: It's the one that mandated direct election of senators, instead of having them appointed by state legislatures.

Thanks to the wonderfully impertinent Tea Partiers, that 1913 "reform" is no longer just the stuff of trivia -- it recently made headlines in House and Senate races.

Two Republican nominees for House seats -- Ohio's Steve Strivers and Idaho's Raul Labrador -- have expressed sympathy for repeal. And Tim Bridgewater, one of two Tea Party candidates who last month knocked off sitting Sen. Robert Bennett, R-Utah, argues that "if the states elected their senators, legislative monstrosities like ObamaCare or [No Child Left Behind], with their burdensome mandates, would never see the light of day."

Predictably, the liberal intelligentsia has responded with scorn. Of all the "goofy ideas from those lovable wacky Tea Partiers [sic]," John Aloysius Farrell writes at USNews.com, this is the "stupidest." Repeal talk is "truly regressive," even "Paleolithic," Timothy Egan seethes in Sunday's New York Times.

Apparently, the only thing worse than peasants with pitchforks is peasants with pocket Constitutions.

But there's nothing silly or retrograde in deploring the effects of an amendment that has done untold damage to federalism and limited government.

"Let the state legislatures appoint the Senate," Virginia's George Mason urged at the Philadelphia Convention of 1787, lest a newly empowered federal government "swallow up the state legislatures." The motion carried unanimously after Mason's remarks.

So it's probably fitting that it's a George Mason University law professor, Todd Zywicki, who has done the best work on the 17th Amendment's pernicious effects.

Zywicki shows that selection by state legislatures was a key pillar of the Constitution's architecture, ensuring that the Senate would be a bulwark for decentralized government. It's "inconceivable," Zywicki

writes, "that a Senator during the pre-17th Amendment era would vote for an 'unfunded federal mandate.' "

In the grade-school morality tale offered by Egan and others, noble Progressives pushed the amendment as an antidote to corruption. Yet Zywicki found "no indication that the shift to direct election did anything to eliminate or even reduce corruption in Senate elections."

Indeed, "the increased power of special interests was the purpose of the 17th Amendment," Zywicki writes. "It allowed them to lobby senators directly, cutting out the middleman of the state legislatures."

Maybe that's why corporations and urban political machines -- Progressives' supposed enemies -- supported the amendment.

Together with the 16th Amendment establishing an income tax, the 17th Amendment helped transform the states into little more than administrative units for the federal behemoth. The feds have the gold, and they increasingly make the rules -- in education, health care, and more.

Over the next decade, Obamacare will lead to \$34 billion in new state spending on Medicaid alone, according to the Congressional Budget Office. With the Senate co-opted, state attorneys general can only look to the federal courts to save them from that unfunded mandate.

Unfortunately, repealing the 17th Amendment would be almost impossible. Since Congress won't propose the repealing amendment, you would need two-thirds of the states to call for an amending convention -- something that has never happened.

And repeal might not change anything. By 1913, more than half of the states had already adopted mechanisms that effectively bound state legislators to the voters' choice, and it's hard to imagine their 21st century counterparts ignoring the people's will in senatorial selection. "Democracy is popular," Zywicki notes dryly.

Repealing the 17th is a noble but quixotic goal. However, by focusing on the damage that amendment did, the Tea Partiers have drawn much-needed attention toward the problems that plague us. And diagnosis, one hopes, is the first step toward an eventual cure.

Examiner columnist Gene Healy is a vice president at the Cato Institute and the author of "The Cult of the Presidency".

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