

In Search of The Supreme Flaw of the Land: The Seventeenth Amendment

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The Amendment

The U.S. Constitution originally specified that representatives would be chosen by the people of the several states, and that senators would be chosen by the legislatures of each state. That gave the people suffrage in the House of Representatives and a voice in the activities of the federal government. It preserved the powers of the states as distinct entities by providing that each state could vote in its own interest in the Senate. An essential ingredient of the arrangement, which was called the Great Compromise, was the recognition that the suffrage of the people isn't the same as the suffrage of the states.

Article V of the Constitution specified amendments to the Constitution to be valid when ratified by three-fourths of the several states, provided that no state, without its consent, was deprived of its equal suffrage in the Senate. Thus, Article V demanded that any amendment that deprived any state of its suffrage required ratification by that particular state as well as ratification by three-fourths of the states. All of the states were deprived of their suffrage in the Senate by the Seventeenth Amendment, which was therefore such an amendment. In effect, what that means is that the Seventeenth Amendment required ratification by all of the states.

When the Seventeenth Amendment was submitted for ratification, 48 states existed. The Amendment was ratified by 37 of them and rejected by two. Nine states didn't take any action on the Amendment. That means that eleven States¹ lost their equal suffrage in the Senate without their consent. The Seventeenth Amendment deprived them of it and gave that suffrage instead to the people. The Amendment was thus adopted in violation of Article V. Consequently, all Senates, beginning with the sixty-fourth Congress in March of 1915, have been elected in violation of Article V of the Constitution.

¹ Alabama, Delaware, Florida, Georgia, Kentucky, Maryland, Mississippi, Rhode Island, South Carolina, Utah, and Virginia

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Legal Considerations

An unconstitutional Senate cannot act with constitutional authority. As a consequence of that, most of the functioning of the government since 1915 has been without constitutional validity. For example, all treaties and all declarations of war approved by the Senate since 1915 are void. The judges of the Supreme Court, appointed with the advice and consent of the Senate, cause the Supreme Court to be defective and without authority. Any change in the court system itself, made by the Congress since 1915, causes the court system to be without authority. Regulatory agencies created or modified by the Congress since 1915 are incompetent, and all regulation by them is void from its inception. All constitutional amendments since the Seventeenth Amendment have been approved by a defective senate, and are invalid. Thus, all elections in which women or 18 year old voters have participated are void, as are the results of those elections. Executive appointments made with the advice and consent of the Senate since 1915 deprive the executive branch of any lawful authority. All tax bills approved by the Senate since 1915 are extortionate. States are admitted by the Senate. Therefore, Alaska and Hawaii are not states. Even state and local governments are invalid, because all state and local government today derives from the results of elections in which women and 18 year old voters have participated.

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A Remedy For The States

If the eleven States that didn't consent to the Seventeenth Amendment are assumed to remain valid political entities, a questionable assumption,² then they're entitled to a restoration of their equal representation in the Senate as guaranteed by Article V of the Constitution. They're also entitled to some compensation for the loss of that representation during the subsequent years. They're entitled to a universal rescindment of all federal laws, regulations, rulings, and so forth, that have been enforced against them since 1915 and to compensation for damages resulting from such enforcement. That includes two declarations of war, both of which were void from their inception. They're entitled to a refund of all payments that they've made to the federal government, pursuant to any act of the Senate, since 1915. Failing such remedy, they have ample cause of action. In view of the enormity of the complaint, any adequate remedy seems unlikely. If those eleven states are competent to do anything at all, then I believe that they should declare the contract void and secede from the union.

² See my essay *In Search of the Supreme Flaw of the Land: Perpetual Union*.

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A Remedy For The People

Such overwhelming unconstitutionality invokes the people's right to alter or to abolish the government.³ Yet today no constitutional mechanism remains whereby the government can be altered to constitutionality and no sufficient power of armed force is available to the people whereby it can be abolished. The people's only remaining remedy is to abandon it.⁴ Any other action will condone and authorize the present violations. If enough people abandon the present government, then it will wither because it relies utterly upon the people for its existence.

You're a part of this process of choice and once confronted with the choice, you cannot escape it. Your actions will either support or not support the government and from now on you're aware of the implications. Thus, to join without compulsion any authorized political party or association, to voluntarily vote in any election, to sit without protest on any jury, to acknowledge any court, to apply for any license, to benefit by choice from any privilege of government, to pay any tax without the clear and present threat of force, are among the many voluntary things that you might do in support of the present government. Having read this essay, you can no longer avoid responsibility for your choices.

3 See the Declaration of Independence.

4 See my essay *Abandonment*.

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Appendix 1

Roll Call of the States on the Seventeenth Amendment⁵

<u>State</u>	<u>Position</u>	<u>State</u>	<u>Position</u>
Alabama	No action	Nebraska	Ratified
Arizona	Ratified	Nevada	Ratified
Arkansas	Ratified	New Hampshire	Ratified
California	Ratified	New Jersey	Ratified
Colorado	Ratified	New Mexico	Ratified
Connecticut	Ratified	New York	Ratified
Delaware	Rejected	North Carolina	Ratified
Florida	No action	North Dakota	Ratified
Georgia	No action	Ohio	Ratified
Idaho	Ratified	Oklahoma	Ratified
Illinois	Ratified	Oregon	Ratified
Indiana	Ratified	Pennsylvania	Ratified
Iowa	Ratified	Rhode Island	No action
Kansas	Ratified	South Carolina	No action
Kentucky	No action	South Dakota	Ratified
Louisiana	Ratified	Tennessee	Ratified
Maine	Ratified	Texas	Ratified
Maryland	No action	Utah	Rejected
Massachusetts	Ratified	Vermont	Ratified
Michigan	Ratified	Virginia	No action
Minnesota	Ratified	Washington	Ratified
Mississippi	No action	West Virginia	Ratified
Missouri	Ratified	Wisconsin	Ratified
Montana	Ratified	Wyoming	Ratified

⁵ *Democracy and the Amendments to the Constitution*, Alan Pendleton Grimes, Lexington Books, Lexington, Massachusetts, 1978

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Appendix 2

Excerpts from *The Constitution for the United States of America*

The House of Representatives shall be composed of Members chosen...by the People of the several States. —Article I, Section 2

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof...and each Senator shall have one Vote. —Article I, Section 3

The Congress...shall propose Amendments to this Constitution, or, on the Applications of the Legislatures of two-thirds of the several states, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by...three-fourths of the several States...Provided that...no State, without its Consent, shall be deprived of its equal Suffrage in the Senate. —Article V

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof... —Amendment 17, Section I

Excerpts from *The Federalist*

In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. —Number 51

Another advantage accruing from this ingredient in the constitution of the Senate is the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States.

It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government. —Number 62

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Glossary

acknowledge.... 2: to recognize the rights, authority, or status of **3a:** to express gratitude or obligation for **b:** to take notice of.... **4:** to recognize as genuine or valid....

—*Webster's New Collegiate Dictionary*,
1973

Apply. To make a formal request or petition, usually in writing, to a court, officer, board, or company, for the granting of some favor, or of some rule or order, which is within his or their power or discretion.... —*Black's Law Dictionary*, 1979

AUTHORITY....

In Governmental Law. The right and power which an officer has, in the exercise of a public function, to compel obedience to his lawful commands....

—*Bouvier's Law Dictionary*, 1889

Authority. Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction....

—*Black's Law Dictionary*, 1979

Authorize. To empower; to give a right or authority to act. To endow with authority or effective legal power, warrant, or right....

—*Black's Law Dictionary*, 1979

COMPULSION. Forcible inducement to the commission of an act.

Acts done under compulsion are not, in general, binding upon a party; but when a man is compelled by lawful authority to do that which he ought to do, that compulsion does not affect the validity of the act: as, for example, when a court of competent jurisdiction compels a party to execute a deed, under the pain of attachment for contempt, the grantor cannot object to it on the ground of compulsion. But if the court compelled a party to do an act forbidden by law, or had not

jurisdiction over the parties or the subject-matter, the act done by such compulsion would be void. See COERCION; DURESS.

—*Bouvier's Law Dictionary*, 1889

Compulsion. Constraint; objective necessity; duress. Forcible inducement to the commission of an act. The act of compelling or the state of being compelled; the act of driving or urging by force or by physical or moral constraint; subjection to force....

—*Black's Law Dictionary*, 1979

DE FACTO. Actually; in fact; in deed. A term used to denote a thing actually done.

An officer *de facto* is one who performs the duties of an office with apparent right, and under claim and color of an appointment, but without being actually qualified in law so to act....

An officer acting under an unconstitutional law, acts by color of title, and is an officer *de facto*....

A government *de facto* signifies one completely, though only temporarily, established in the place of the lawful government.... —*Bouvier's Law Dictionary*, 1889

De facto.... In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate. Thus, an office, position or status existing under a claim or color of right such as a *de facto* corporation. In this sense it is the contrary of *de jure*, which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government *de facto* is one who is in actual possession of the office or supreme power, but by usurpation, or without lawful title; while an officer, king, or governor

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de jure is one who has just claim and rightful title to the office or power, but has never had plenary possession of it, or is not in actual possession....

—*Black's Law Dictionary*, 1979

DEFECT. The want of something required by law....

—*Bouvier's Law Dictionary*, 1889

Defective. Lacking in some particular which is essential to the completeness, legal sufficiency, or security of the object spoken of....

—*Black's Law Dictionary*, 1979

Effect, n. That which is produced by an agent or cause; result; outcome; consequence.... The result which an instrument between parties will produce in their relative rights, or which a statute will produce upon the existing law, as discovered from the language used, the forms employed, or other materials for construing it. The operation of a law, of an agreement, or an act....

—*Black's Law Dictionary*, 1979

EFFECT. The operation of a law, of an agreement, or an act, is called its effect....

—*Bouvier's Law Dictionary*, 1889

EXTORTION. The unlawful taking by any officer, by color of his office, of any money or thing of value that is not due to him, or more than is due, or before it is due....

In a large sense the term includes any oppression under color of right; but it is generally and constantly used in the more limited technical sense above given.... —*Bouvier's Law Dictionary*, 1889

Extortion. The obtaining of property from another induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right....

—*Black's Law Dictionary*, 1979

incompetent.... 2: not legally qualified....

—*Webster's New Collegiate Dictionary*, 1973

LAWFUL. Legal. That which is not contrary to law. That which is sanctioned or permitted by law. That which is in accordance with law. The terms “lawful,” “unlawful,” and “illegal” are used with reference to that which is in its *substance* sanctioned or prohibited by the law. The term “legal” is occasionally used with reference to matter of *form* alone: thus an oral agreement to convey land, though void by law, is not properly to be said to be unlawful, because there is no violation of law in making or in performing such an agreement; but it is said to be not legal, or not in lawful form, because the law will not enforce it, for want of that written evidence required in such cases. —*Bouvier's Law Dictionary*, 1889

Lawful.... the word “lawful” more clearly implies an ethical content than does “legal.” The latter goes no further than to denote compliance, with positive, technical, or formal rules; while the former usually imports a moral substance or ethical permissibility....

—*Black's Law Dictionary*, 1979

License. The permission by competent authority to do an act which, without such permission, would be illegal, a trespass, or a tort....

—*Black's Law Dictionary*, 1979

NULL. Properly, that which does not exist; that which is not in the nature of things. In a figurative sense it signifies that which has no more effect than if it did not exist....

—*Bouvier's Law Dictionary*, 1889

Null. Naught; of no validity or effect. Usually coupled with the word “void;” as “null and void.” The words “null and void,” when used in a contract or statute are often construed as meaning “voidable”.... “Null and void” means that which binds no one or is incapable of giving rise to any rights or obligations under any circum-

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stances, or that which is of no effect....

—*Black's Law Dictionary*, 1979

pedigree.... **2**....**b**: the origin and the history of something....

—*Webster's New Collegiate Dictionary*,
1973

Privilege. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens....

—*Black's Law Dictionary*, 1979

Protest. A formal declaration made by a person interested or concerned in some act about to be done, or already performed, whereby he expresses his dissent or disapproval, or affirms the act against his will.... —*Black's Law Dictionary*, 1979

Regulation.... Regulation is rule or order having force of law issued by executive authority of government....

—*Black's Law Dictionary*, 1979

suffrage.... **3**: the right of voting....

—*Webster's New Collegiate Dictionary*,
1973

Suffrage... the right or privilege of casting a vote at public elections.... Right

of "suffrage" is right of a man to vote for whom he pleases....

—*Black's Law Dictionary*, 1979

Usurpation.... The unlawful seizure or assumption of sovereign power. The assumption of government or supreme power by force or illegally, in derogation of the constitution and of the rights of the lawful ruler....

—*Black's Law Dictionary*, 1979

Valid. Having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside.... —*Black's Law Dictionary*, 1979

Violation. Injury; infringement; breach of right, duty or law....

—*Black's Law Dictionary*, 1979

VOID. That which has no force or effect.... —*Bouvier's Law Dictionary*, 1889

Void. Null; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended....

—*Black's Law Dictionary*, 1979

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