THE HISTORY OF THE SEVENTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

A Thesis Presented for the Degree of Master of Arts

by

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1917

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I. INTRODUCTION.

A question of grave concern and of much discussion in the Federal convention in 1787 was that relating to the legislative branch of the government. There was no existing federal scheme to be used as a pattern. Experience under the Articles of Confederation had proven that its legislative function was ill devised. Hence the chief source of theory and practice was sought in the various colonies or States. Even here were conflicting theories and practices.

After the bicameral system had been decided upon the question arose as to the method of selecting the members of the legislature. The method of selecting the upper branch brought out considerable discussion, and it was finally agreed that they should be elected by the State legislatures.

At this time developed a sentiment for the election of United State Senators by popular vote of the people. Receiving little consideration at the time, it continued to have various but scattered advocates in the history of the United States up to about 1870. After this period the agitation becomes very aggressive and takes its place among the leading questions before the people. With such events as the Lorimer case or 1910 the factors were brought to a focus and the result was the adoption of an amendment giving the people the direct vote for election of Senators of the United States.
The present discussion has been limited primarily to the causes of the agitation and action. I have not attempted to present the merits of the case other than by briefly stating some of the leading points that arose in Congress during the discussion.
II. ACTION IN THE FEDERAL CONVENTION.

The different methods advocated for election of United States Senators can fairly well be summed up in the remarks of Mr. Gerry made before the Federal Convention. "Four modes of appointing the Senate have been mentioned. 1. by the 1st branch of the National Legislature. This would create a dependence contrary to the end proposed. 2. by the National Executive. This is a stride towards Monarchy that few will think of. 3. by the people. The people have two great interests, the landed interest, and the commercial including the stock-holders. To draw both branches from the people will leave no security to the latter interest; the people being chiefly composed of the landed interest, and erroneously, supposing, that the other interests are adverse to it. 4. by the Individual Legislatures. The elections being carried thru this refinement, will be most likely to provide some check in favor of the commercial interest against the landed; without which oppression will take place, and no free government can last long when that is the case." (1)

The first two modes mentioned received but little attention in the discussions, while the third had but a single advocate, Mr. Wilson. Mr. Madison expressed himself as willing to support any method which would be most advantageous.
Mr. Wilson held that if we are to have a national government, that government should flow from the people at large. In order to avoid different sources of authority and dissensions between the two branches of the legislature (as the plan for popular election of Representatives had been agreed upon), the Senate as well as the House should be elected by the people. For this plan he urged a scheme of dividing the people into districts. At this point arose the greatest opposition, Mr. Madison being one of the chief leaders against this districting. As will be noted this popular election scheme, as laid down by Mr. Wilson, would give rise to another problem. It would blot out the idea of State representation in the Senate. By this scheme of districting some of the smaller states would not receive the privilege of electing a single Senator, but would be added to some territory of a larger State. State lines would be disregarded and at the same time the large states would have the advantage, due to size and population. Besides, in some cases it would be necessary to attach the smaller States to a part of a larger to be entitled to a Senator. This alone would then have brought the plan into disfavor, as the plan of State representation was one of the great compromises in the drawing up of the Constitution itself.

Mr. Wilson further argued that if the Legislatures were allowed to choose the Senators the people would occupy
a two-fold relation, first as citizen of the General Government and second, as citizens of the State in which they would reside. But the General Government was meant for them in the first capacity, while that of the State in the second, hence in forming the General Government abstraction from the State Governments should be made as far as possible. However, as both these Governments are derived from the people they ought to be regulated by the same source. The General Government is an assembly or individuals, not of States. "The individuals therefore not the States, ought to be represented." (2)

Mr. Gerry objected to the election of Senators by popular vote on three grounds, 1st, it is impracticable as the people cannot be brought to one place for this purpose, and even if this were possible it would lead to numberless frauds. 2nd, by this plan of districting, small States would not have equal opportunities of gaining an appointment for its citizens or merit. 3rd, this would lead to discord in different parts of the same district. (3)

Mr. Ellsworth, held that it would be impossible to maintain a Republican form of Government without the cooperation of the States. The country is so large that an army could scarcely give the Government practical control over it. The largest States are the worst governed. Virginia is forced to acknowledge that she cannot extend her Government over Kentucky. Massachusetts has found the same difficulty and how long Pennsylvania can maintain order is a question. Hence, if the people without the aid of States maintain a single government
throughout the United States. (4)

It was also held that the preservation of States was necessary so as to have checks by bringing the different authorities into collision. "If the State Governments were excluded from all agency in the National one, and all power drawn from the people at large, the consequence would be that the National government would move in the same direction as the State Governments now do, and would run into all the same mischiefs. The reform would only unite the 13 small streams into one great current pursuing the same course without any opposition whatever." (5)

It was further maintained that the "commercial and monied interests, would be more secure in the hands of the State Legislature than in the hands of the people at large." (6) The Legislatures are more capable than the people at large, hence will be more restrained from acts of injustice. An example of this attitude is shown by declarations at county conventions for a depreciating currency that would sink itself. On the other hand, having two branches in State Legislatures one being more aristocratic, there would be a "better chance or refinement in the choice."

"Wisdom was one of the characteristics which it was incontemplation to give to the second branch." (7) It was upheld that this would result more readily when the Senators were elected by the State Legislatures due to the character of these persons. "1. because the sense of the States would be better collected through their Governments; than immediately
from the people at large. 2. because he wished the Senate
to consist of the most distinguished characters, distin-
guished for their rank in life and their weight of prosperity,
and bearing as strong a likeness to the British House of Lords
as possible; and he thought such characters more likely to be
selected by the State Legislatures than in any other mode." (8)

The following general principles can then be given as
the reason for the plan of electing Senators provided by the
Constitution:

1st. The necessity to retain State identity.

2nd. The election of more capable men.

3rd. This plan would better secure the interests of all
classes.

4th. It would make the government more stable, as it would
not be directly responsible to the fluctuating opinion
of the people.

5th. The general democratic feeling or sympathy that had
earlier been manifest was now submerged.

6th. It would give representation to the wealthy class.
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III. BEGINNINGS AND GROWTH OF PUBLIC DISSATISFACTION 
(1825-1835).

BEGINNINGS OF DEMOCRACY, (1825-1835)

The government of the United States remained until 1829 in the hands of the persons who had taken an active part in the Revolution and in the formation of our union, or directly under the influence of the spirit manifest during this time. The persons at the head of affairs from the beginning of the government under the Constitution to 1829, with the exception of J. Q. Adams, who had received his early training under the direct influence of the old school, which formed the Constitution, were those whose influence had been the guiding spirit in the shaping of future events. Their desire for independence did not carry with it that element of radicalism often manifest in such a movement. Their radical move for independence lost its prominence when the serious task of forming a government was before them. The more conservative character expressed itself in the nature of the government established. Their early training had been generally along the line of old-world policies as the colonial period is really a continuation of politics in a parallel line with the mother country. Hence we should expect that the institutions should get their spirit and pattern from old world originals.

Hence despite the apparent "revolution" involved in thrusting aside the English rule, the policies have been almost unbroken in continuity. Immigration was very limited during
during the period of this generation of statesmen. The influence on the development of the West was not keenly felt until the time of J. Q. Adams' administration.\(^1\)

Hence with the termination of the administration of President Monroe, the last of the early generation of statesmen, the West brought forth a candidate believing that it was being made to suffer from the conservative policies. With such a situation in 1824 it can readily be seen why there should be such a cry for democracy with the defeat of what the people, or this new spirit, considered their justly elected candidate. To allow their candidate, who had received the largest popular vote, to be defeated, because of the mode of election, was certain to lead to opposition to the prevailing system of election of the President. This with the increasing popularity of their candidate led to the first proposed Constitutional amendment for popular election of the President and Vice-President, in 1826.\(^2\)

This democratic expression did not limit itself to the agitation for the popular election of the president. Mr. Storrs of New York in the same year offered a resolution, providing for an amendment to the Constitution for the direct election of Senators by the electors of the several States instead of by the State Legislatures.\(^3\)

He said that he offered this merely for consideration for the time being but if the House, when it took up the proposed amendment for the election of President and Vice-President,
should come to the conclusion that it should be adopted, he might then call the attention of the House to the proposal for election of Senators. He then simply desired the motion laid on the table until the House should express itself on the other proposal. (4)

Again in 1835 Mr. Hannegan laid on the table an amendment to a joint resolution (which was the second proposed constitutional amendment for the popular election of President and Vice-President). The amendment by Mr. Hannegan provided for the election of Senators by the direct vote of the people. (5)

The important thing to note is that the first two demands for a change in the plan of electing Senators, as adopted by the Federal Convention, are the direct resultants of the democratic demand for popular election of the President and Vice-President. The first in 1826 is a separate demand, while the latter in 1835 is simply an amendment to that proposed for the election of the President.

The explanation is, that this was one of the expressions of a democratic spirit of that period with no reason for dissatisfaction with the plan laid down in the Constitution other than the belief that it was undemocratic.
FURTHER DEVELOPMENT OF DEMOCRACY.

Although the early part of this period is overshadowed by events of the Civil War it nevertheless shows a spread of the democratic spirit. It reaches out to other phases of government, as will be noted. It begins a great inroad upon state government. The agitation ceases after the enactment of the Kansas Nebraska act until 1869 with the exception of the single advocate, Mr. Johnson.

With the opening of the great industrial enterprise (1870) there arose a period of vigorous agitation and unrest. It was a new condition in which the people were attempting to find themselves. The accumulating and amassing of wealth again brought to the front the problem that had been prominent in the framing of the Constitution, viz; the part that wealth should play in the make up of the Senate. However, the question was not viewed in the same light because of the changed conditions. The fear arose that the Senate would place wealth in a most predominating position and as a result, we get the beginnings of a movement that is to be the primary force in changing the mode of electing the Members of this body.

EARLY ADVOCATES OF POPULAR ELECTION.

The great advocate in the early part of this period is Andrew Johnson. Twice as a Representative from Tennessee (1850-1857) did he offer resolutions for the popular election of President, Vice-President, and Senators and a change in the
judiciary. Again, as a Senator in 1860 and as President in 1868 he upheld the above principles. However, he placed more stress on the election of the president and the change in the judiciary than on the popular election of Senators. His insistence upon these changes was largely the result of secession.

In his secession speech before the Senate, Johnson held, that, if these amendments had been passed he secession difficulties would likely not be before the people. It would have required that either the President or Vice-President be from one section and that by the term plan of the Supreme Court judges, the same division as to sections, could have been made, but he gives no reason for the popular election of Senators, simply including it in his scheme.

In his special message to Congress on these amendments he states that although the idea of changing the constitution may be justly looked upon with reluctance and distrust, yet time has shown us imperfections and omissions in the Constitution which need reform for the best interest of the country. In regard to the election of Senators he says - "It would be more consistent with the genius of our form of government if the Senators were chosen directly by the people of the several states. The objections to the election of Senators by the legislatures are so palpable that I deem it unnecessary to do more than submit the proposition for such an amendment with the recommendation that it be opened to the people for their judgment."

Five other resolutions were offered before the civil
War, three of which were presented by Mr. Mace, representative from Indiana. These unlike Johnson are for popular election of senators only. But here as before we get no clue to their reasons for such a stand. No speeches were made in Congress concerning these resolutions, yet there is a new feature noted. The resolutions for the popular election of Senators of this period were the first to be referred to a committee but were never reported upon, and hence led to no discussion in Congress. That this early expression was a result chiefly of democratic sentiment can scarcely be doubted. There was also an unrest within the several States, as during the period 1840 to 1850 great agitation concerning state constitutions was noted. From 1848 to 1850 eleven of the old states called State Constitutional Conventions.

"Some of these instruments were of venerable dates, and had not been influenced by the political experience accumulated in half a century of self-government. 'Through practical operation and greater knowledge of the theory of government,' the power has thus settled, as it were more firmly into the hands of the people who are more fully recognized as the depository of the great residuum of power."

CHARGES OF ILLEGAL ELECTIONS, BRIBERY IN SEATORIAL ELECTIONS AND SENATORIAL CORRUPTION

In 1828 Senator Bateman of New Jersey was charged with getting his seat by his own vote as a member of the
legislature but the Senate Committee held that he had a legal right to vote as a legislative member, hence that he had been legally elected.

In 1855 Mr. Harlan was elected to the United States Senate by the Iowa legislature under the following conditions. While the Senate was adjourned the House with a majority present and a minority of Senators also present elected Mr. Harlan. The question involved, was whether it was necessary for a majority of Senators to be present or whether the body that chose Mr. Harlan was the legislature of Iowa within the meaning of the Constitution. He was finally deprived of his seat by a vote of 28-18. (11)

One of the new but extremely influential questions of this period in its effects on public sentiment is that of bribery charged against eight Senators.

The first of these is a charge made against the election of Senators Caldwell and Pomeroy of Kansas in 1873. Caldwell had been charged with bribery in his election to the United States Senate. This was referred to the Committee of Privileges and Elections which reported that it could "not doubt that money was paid to some members of the legislature for their votes, and money promised to others which was not paid, and offered to others who did not accept it." However before a vote was taken he resigned his seat. (12)

In the same year Pomeroy was charged with bribing a State Senator for his vote, but the committee, with one member
disagreeing, reported the charge was not sustained and no further action was taken. (13)

In 1873 Powell Clayton, Senator from Arkansas, was charged with gaining his seat by money and by obtaining his five votes by having given these persons lucrative offices while Governor. The majority reported against the charges, while a minority report held them sustained. The vote favored the resolution of the majority report. (14)

In 1875–6 Senator Spencer of Alabama was charged with bribery. He presented a resolution to investigate the charges, while a memorial from a joint committee of the Alabama legislature declared that the seat be vacant, was sent to the Senate. The committee however found the evidence to be only hearsay, so it refused to sustain the charge and asked to be discharged from further consideration of the subject. No further action was taken. (15)

Some members of the Oregon legislature in 1877–charged Senator Grover as having used money to secure his election, but the committee to which this was referred held the charges unwarranted. (16)

In 1879 some members of the Kansas legislature charged that bribery had been used in the election of Mr. Ingalls. In the committee report the majority held that bribery and other corrupt means were used by his friends but not enough were bribed to have changed the election and he had nothing to do with the same. The minority agreed except that it held the
opposition had used the same means. But no further action was taken.

In 1881 Senators Lapham and Miller from New York were charged by members of that State legislature with illegal election and bribery. The Senate Committee on Privileges and Elections reported back the memorial and asked that it be laid on the table and that the committee be discharged from further consideration. (18)

Only two of these eight Senators were found to have been directly involved in bribery by the Senate yet it refused to deny the one his seat, while the other resigned his seat before a vote was taken and another the minority felt was guilty of the charges. Nevertheless there was a feeling of suspicion that the action of the Senate was not justifiable as will be noted in connection with later charges. They felt that the Senate attempted to conceal as much as possible to protect itself, hence this becomes one of the chief points of opposition and agitation.

The first two charges of corruption fall to this period. In 1867 some members of the Pennsylvania Legislature protested to the Senate, that S. Cameron had been elected by corruption, but a Senate Committee reported the charge too vague to justify an investigation. A minority report urged that such a charge was too serious to drop lightly, but nothing was done. (19)
In 1862 Senator J. F. Simmons of Rhode Island was charged with having used his official influence over certain departmental officers in procuring for a certain person the right to manufacture arms for the Government, and for this he was to receive $50,000 and had already received $10,000. The resolution was referred to the judiciary committee by a vote of 31 yeas and 7 nays. The committee reported their findings of the facts stated above and charged "it was highly improper for a Senator of the United States to have acted thus." Congress at once passed an act making this a penal offence thereafter. It was then discussed whether to make the act retro-active. The committee report was unanimous about the facts and left the action to the Senate. No action was taken but the Senate adjourned three days after and before the next session commenced Simmons had resigned.

Although these charges were not entirely the result of the mode of election, there arose the feeling that the election of Senators by state legislatures was largely responsible for these conditions. It was held that if the Senate was directly responsible to the people, the opportunity would not be so great and that the Senators would feel greater responsibility to the people and as a result would be more considerate in their actions.
DEADLOCKS IN SENATORIAL ELECTIONS AND THE LAW OF 1866.

A feature of undoubted effect was that of deadlocks. It was often the case where the parties in a State legislature were evenly divided and as neither would concede it would be impossible to elect a Senator. There was also a party manipulation in some cases to avoid a majority vote due to a split in the majority party concerning some of its candidates. This became quite common in the early fifties, thus three times within five years the legislature of California failed to elect a Senator, 1851, 1855 and 1856. In the 27th Congress Tennessee had but one Senator. (21) The case of Mr. Fessenden of Maine is typical. He states, "I was elected eighteen times on the part of the Senate, but the House refused to concur. No choice was made at that session of the legislature and the State was not represented in the Senate of the United States until the succeeding session." (22)

The spirit of the times can well be shown by the law of 1866. Concerning the election of Senators. This was intended to prevent deadlocks by resorting to a joint convention after the first ballot.

It was argued by Senators Sherman and Salisbury that we had witnessed no inconvenience under the plan followed since the adoption of the constitution. A few vacancies did occur but it has been no inconvenience and Mr. Salisbury further states, "If they had failed to elect a little oftener perhaps it would have been better for the public good but certainly the
legislation or the country has not suffered owing to this fact." (23)

On the other hand it was ably argued that the lack of uniformity and definition in the election of Senators was causing unnecessary difficulties. The matter of not being represented was a serious matter for the Union as well as the State concerned. Also that it was often a great expense to a State by prolonging the session and by using the time for the election of Senators that should be employed otherwise. Hence it was a financial as well as a political detriment as it stood. (24)

It is interesting to note that at no time was popular election even mentioned in the discussion in Congress. There was no sentiment against the plan as provided in the Constitution. The only democratic spirit displayed was that shown by demanding and embodying in the law the vive voce vote to insure faithfulness to their constituents. Very great opposition was also noted against this demand. The measure passed and became a law. It was not even discussed in the House, which is an interesting fact, as it shows a general lack of democratic sentiment, yet a general dissatisfaction because of the lack of uniformity and definition of the provision of the Constitution. However, this law does not prove a success and a greater agitation soon resulted as the number of resolutions offered in Congress was greatly increased and beginning in 1874 the State legislatures became active in sending memorials to Congress demanding the submission of an amendment for the popular
election of Senators.

**EARLY INFLUENCE OF THE SENATE.**

The intention of the framers was to have the Senate made up of the most able and distinguished men. "This idea was very fairly realized from the foundation of the government until a period that is almost within the memory of men now living. The Senate became incomparably the foremost legislative body of the modern world. Some of the most remarkable men of the century performed their most remarkable achievements there, and the body of eloquence and learning that went to the building-up of its influence and traditions includes, in fact, the best literature that we have produced. There is no doubt, either, that, for two or three generations of Senators, the ability and dignity of the body constantly grew. It was in the Senate that the principles which underlie our government were most eloquently expounded and emphasized; it was from the Senate that the genuine patriotism of the American people received its most valuable lesson; and it was in the Senate, during the days of its power and its glory, that the conflicting constitutional principles were expounded in that long series of debates which built up the national feeling for the last great struggle out of which grew the firmer establishment of the Union." (25)
But if we stop to consider the conditions of the period prior to the Civil War and that following we will note a great contrast. Beginning with 1870 to 1885 the United States enters upon a great industrial era of which capital and labor became the center as contrasted with the primarily agricultural character in the period before the War and Reconstruction after the war. Conditions, of which the framers of the Constitution had not dreamed when they urged that the Senate be the harbor of the monied and commercial interests as protection against the agricultural class, came into being.

Then too must be noted the continual growth of the Democratic principles not only in the field but there was also a demand for popular election of the President, labor legislation, and trust regulation.

Although at no time was the question of popular election of Senators discussed in Congress during the years 1870 to 1885, due to the fact that no committee would even report the resolutions, yet we can get some idea of the sentiment in Congress as there were 21 resolutions offered from 1870 to 1885 which in the main were presented by Congressmen from the North Central States, as Iowa, Illinois, Missouri, Minnesota, Indiana, etc. (26)

At the same time public sentiment was emphatically expressed by resolutions from State legislatures, California
being the first to send a memorial to Congress in 1874 to demand popular election of Senators. (27)

This region is the center of agitation against the then existing conditions. It was extremely active in the denunciation of the panic, which it placed the blame chiefly upon the monied men of the East, as the demonetizing of silver and causing the gold to go into hiding. Other events were lost sight of, but nevertheless this section became extremely radical in its demands not only local but national as well.

**INFLUENCE OF THE SPOILS SYSTEM**

Another feature of considerable influence on public sentiment concerning the Senate was that of the Spoils System. During this period there were four proposed amendments to reform the Civil Service. (1876–1879–two 1882.) (28) In 1885 a resolution presented for the popular election of Senators was urged because of the influence the Senate upon appointments. (29)

"The decline of the Senate began after the great struggle which brought on the war, when the further development of the spoils system in politics and the inroads of the commercial spirit were so great as finally to lead to that dramatic demonstration of the long distance we had traveled from the old conception of senatorial dignity, when the two Senators from New York resigned their seats because of a controversy
with the President over an appointment to office. This was the decisive keynote of the period of decline; for this was conspicuous proof that the Senate had come down to the common level of contemperaneous political methods." There is no doubt as to the feeling toward these acts as in the attempt to be vindicated by reelection both were defeated.

There were also beginnings of other events in this period, that began to cause opposition, as the silver and tariff issue, but as they become more important later in history, they will be left for later treatment.

The Chief Characteristic of this period is the arousing of public interest regarding the Senate. As we have earlier noted there had been no dissatisfaction of importance other than the development of a democratic feeling against the method of election but no dissatisfaction with the Senate itself. However with the industrial change came additional problems which the public feels are not being properly solved, and as a result leads to expression of distrust and a demand for change. This public sentiment was as yet not very emphatic in its demands as only one minor Party, the Anti-Monopoly Party, ventured to express itself upon this question. In 1884 it inserted in its platform a demand for the popular election of Senators.
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(1) W. Wilson, Division and Reunion, 9-11.


(5) Ibid., 1834-5, 1351.

(6) Ames, 61.

(7) F. Moore, Speeches of Andrew Johnson, 78.

(8) Richardson, Messages and Papers of the Presidents, VII, 640-43.

(9) Ames, 61.


(12) Ibid. 426.

(13) Ibid., 426

(14) Ibid., 444

(15) Ibid., 611

(16) Ibid., 661

(17) Ibid., 692

(18) Ibid., 697

(19) Ibid., 1217

(20) Ibid., 176
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(21) Haynes; The Election of Senators, 21.
(22) Cong. Globe., 39 Cong., 1 Sess., 3729
(23) Ibid., 3729-3731.
(24) Ibid., 3727-3731.
(26) Ames, 61.
(28) Ames, 139.
(29) Ibid., 61.
(30) McKee, 225.
IV - CRYSTALLIZATION OF PUBLIC SENTIMENT, (1885-1900).

The movement that developed so extensively in the seventies became very aggressive in the late eighties and early nineties. The papers and magazines take a most prominent part in this agitation. Many of these articles are written by some of the most critical students of the time. Popular sentiment becomes so pronounced that it leads to the first legislative action in Congress in which the House votes favorably upon an amendment, also in the States in the way of preferential primaries.

THE INFLUENCE OF WEALTH

Possibly the cause of greatest agitation against the Senate, as shown by contemporary writers, was that of wealth of the Senators themselves, and its relation to corporate or special interests. (1) The cry went out against the millionaire buying his seat, that the Senate was a club of rich men, that the boss and the senators were too intimately related, often the same individual. Further that the Senate had forced extravagance on the House on such questions as Land grants, railroad favors, pensions, free coinage, protective tariff and has recklessly opposed President Cleveland’s foreign policy for political reasons, that the Senate is a refuge of barter in patronage. Finally and most conspicuously that being judge or its own members, it refuses to dismiss any of its own body to maintain "Senatorial Courtesy." (2)
There were two conspicuous qualifications for Senators urged in the Federal convention relative to wealth, first that the Senator should receive no compensation for his service and second that a property qualification should be necessary. Hence making it possible for only men of wealth to hold a seat. However, their view did not prevail "but the millionaires have arrived, and make no scruples about drawing their salaries. They are a consequence of the mode of electing Senators established by the Constitution, and a part of the general demoralization ascribed to the same cause." (3)

"The Senate," says Von Holst, "has made it fearfully clear that for a long time we have been steadily drifting toward most dangerous shoals, and it is perhaps to be thanked for having given the helm a turn, which has suddenly brought the breakers into plain view. Thoughtful patriots, in and out of the press, have for years warningly called attention to the fact that, in consequence of the part money has been allowed to play in politics, and for other reasons, the Senate was swiftly gliding down from the high plane it had heretofore occupied." (4)

He further states that the constitution was ordained and established "to promote the general welfare, and secure the blessings of Liberty," not to fly in the face of the general welfare to serve particular and special interests and to secure the curses of abused liberty, forgetting that rights involve duty. (5) The Senate has gone so far as to sell its rights
and sworn duties even the birthright of the people for the
ghost of a shadow called the "Courtesy of the Senate." (4)

The mode of electing Senators lent itself too con-
spicuously to the influence of the money power. And because
so large a number owed their seats to the dictation of accumu-
lated wealth, which is such a great temptation for the Senator
to disregard the will of the people, was reason enough why the
mode of the election should be changed. (6) As the head of the
Sugar Trust testified before a Congressional committee that the
American Sugar Refining Company contributed to either party,
as it saw fit to secure its own ends. (7)

With the system of election by State legislatures,
police and the boss with the aid of wealth are the chief
factors. It is the political agent and not the people that
makes the selection. (8) By this system there was great need
in each State of unlimited wealth to support the party fund
and as a result the choice was greatly restricted to rich men. (9)

The cry of wealth was not only against the influence
on Congress but also against the effect upon the general as-
sembly of the State. "A corporation that can enter the halls
of a legislature and lay its unholy hands upon the members,
claiming them as its own in the election of Senators, has al-
ready destroyed the hope of a pure administration of the loc-
al affairs of the people of that State by polluting the source
from which such administration is derived." (10)

The tariff afforded the greatest advantage to the
wealthy class during this period of industrial development, labor agitation, etc. It developed into a problem of great concern. The cases of bribery already noted with the feeling of monied aggression by special interests was a basis of complaint. It was felt that the policy of the promoters of the McKinley tariff would attempt to tide over the House majority by keeping control of the Senate just as the South had won its points prior to the Civil War. (11)

With such an example as the tariff legislation in 1894, the so-called Wilson-Gorman Tariff, the people began to feel that wealth was in the saddle. "Interested interests" were seen at every turn. The Combiner, the trust, the local squeezer have been putting on the screw all along the line."

The point was brought home all the more forcibly by the fact that the Senate voted down a resolution 33 to 27 to investigate the charges against some Senators concerning their interest in the Sugar trust and its effects on this tariff. This was considered as another case of "Senatorial Courtesy" to conceal its own shortcomings. (12) Tariff reform as incorporated in this measure was felt to be so obnoxious to such a tariff reform advocate as President Cleveland, that he allowed the bill to become a law without his signature.

Other examples might be shown as the McKinley tariff which was dictated, as McKinley himself admitted, by the manufacturers, after a reduction had been recommended by a "protective" commission, that had been appointed to study the
tariff question. Also the protection of the monied class by the tariff of 1897.

THE SENATE AND SILVER

One of the most unpopular moves by the Senate was concerning the silver issue before the country in 1893. In this session of Congress thirteen joint resolutions were offered for popular election of Senators due largely to the Senate's attitude.

There had been really two appeals made before the country on the silver question. In 1890 the House refused to concur in a Senate free-silver measure. In 1892 the same situation occurred by a majority of 18 votes in the House. While again in 1893 the House voted to repeal the Sherman act by 130 majority, yet the Senate "is defying the people in its majesty" with a calm insolence which no House of Lords could possibly surpass."

The Senate as planned to be the deliberative body of Congress was portrayed to have "deliberated" two months on this question then resorted to a trial of physical strength, "that is to say, a most important problem in the national finances will be solved by ascertaining which of two small bodies of elderly men can go longest without sleep and without taking off their clothes. Another mode of reaching the same result, and one fully as likely to prove satisfactory would be ... the 'tug of war.'"

"... but no matter which process is resorted to, we venture to say the spectacle of a decision in a financial policy
reached in this way by the most famous second chamber in the world will be a heavy blow to constitution makers all over the earth." (16)

The most convincing evidence of the crystallization of sentiment during this period and especially in the year of the great silver issue (1893) can be gotten from the referendum vote in California on the question of popular election which carried by a vote of 187,958 for as 13,342 against. The papers in commenting on this vote regarded it as a typical example of the public sentiment. (17)

**DEADLOCKS IN SENATORIAL ELECTIONS**

A glimpse at the great number of deadlocks occurring from 1891 to 1895 can be gotten from the following table borrowed from Haynes.

<table>
<thead>
<tr>
<th>Date</th>
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<th>No. of Days</th>
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<td>44</td>
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<tr>
<td></td>
<td>Nebraska</td>
<td>21</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>North Dakota</td>
<td>33</td>
<td>61</td>
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<td>217</td>
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<tr>
<td></td>
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DEADLOCKS IN SENATORIAL ELECTIONS (CONT'D)

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<td>1901</td>
<td>Delaware</td>
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<td>46 No election</td>
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<tr>
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<td>Delaware</td>
<td>52</td>
<td>46</td>
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<tr>
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</tr>
<tr>
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<td>Maryland</td>
<td>16</td>
<td>12</td>
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<td>1905</td>
<td>Delaware</td>
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<td></td>
<td>Missouri</td>
<td>60</td>
<td>67&quot; (18)</td>
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A bare table showing forty-six deadlocks and fourteen failures to elect a Senator cannot show its effects. It is just a hint at the stubbornness of these contests. This does not show the work of the caucus which met behind closed doors, while on the other hand an election on the first ballot has been manipulated by the same means and it has often been the case where the election of members to the legislature was based on their support of certain candidates as the election of Senator Hanna from Ohio in 1896. While Senator Pugh of Alabama was elected in 1891 on the second ballot he was not determined upon the Caucus until the 30th ballot. Other times, due to a failure to agree in the caucus, it was agreed to prevent an election, as in North Carolina the Democrats scattered their votes among eighty-five candidates.
and after a week's voting they still scattered their votes among seventy-eight ballots. In the meantime the Caucus had come to an agreement and an election immediately followed.

Some of these deadlocks would lead to a semblance of a free for all and in some cases martial law was proclaimed.

The effect on local affairs under such conditions was most demoralizing. Instead of attending to local affairs the spirit ran so high as to cause an entire neglect of their primary duty, but made the election of a Senator the sole duty. It was also a great burden to the state financially to have a session so lengthened and in some cases to call a special session primarily for the election of a Senator. (19)

**Bribery Charges**

Both branches of the Ohio legislature in 1886 sent Memorials to the Senate charging that Senator Payne had been elected by bribery and fraud. Two other memorials were also sent by the Republican State Central Committee and the Republican editors. The Senate Committee made three reports two of which signed by four and three members respectively reached the conclusion that the evidence was not sufficient to warrant a proceeding in the investigation, while a minority report signed by two urged an investigation.

A significant fact noted is that none of the Committee questioned, that to deprive a member of his seat it was necessary to show by legal evidence that he was personally guilty of the corrupt practices charged or that it took place with his sanction,
or else that a sufficient number were bribed to change the result of the election. (20)

In 1900 Senator Hanna was charged with having won his election by bribery. A committee report of the Ohio Senate, adopted by the same, was sent to the Senate, but the majority desired to be discharged of further consideration as no protest had been made that Mr. Hanna ought to be expelled. A strong minority report held the charges sustained giving quite conclusive evidence, but the matter was finally dropped. (21)

Another case in 1900 was that of Senator Clark of Montana. He had been elected by a vote of 54 to 39 but of the 15 majority, the majority report held that he had secured more than 8 votes by illegal and corrupt practices. It offered a resolution stating that he had not been duly and legally elected. The minority disagreed in minor points only. During the debates on the resolutions Clark resigned his seat. (22)

**POPULAR SENTIMENT AND PARTY PLATFORMS**

The demand for election of Senators by popular vote advocated in 1864 by the Anti-Monopoly Party was not taken up again by any party until 1892. In that year the National People's Party favored an amendment to this effect. (23)

In 1896 the People's Party demanded the popular election of Senators, (24) while the National Party, a wing of the Prohibition Party, urged this amendment. (25)

However, in 1900 the attitude of parties became more pronounced with one of the two great parties expressing itself. The two People's Party Platforms demanded the election by popular vote, while the Silver Republican Party and the Democratic
Party also favored this method of election.\(^{(27)}\)

Although being taken up only by the minor parties during the period, it became sufficiently opportunistic for the Democratic party to take it up in 1900.

The different events as noted had a remarkable influence upon the people. The period of agitation had developed into a period of crystallization. The action of the House showed the determined demands of the populace, while the Senate was fast changing front. Hence it seemed as if time alone was the check to ultimate success. The Senate, which was blocking the adoption of this amendment, would finally be forced to yield as the state legislatures were yielding to the demands of the people and this in time would force a change in the complexion of the Senate upon the question.
REFERENCES:

(1) Public Opinion, 1892, XII, 500, 501, 524

(2) Ibid.

(3) Atlantic, 1891, V. 68: 227.

(4) Forum, 1893, V. 16: 263

(5) Ibid. 267

(6) Arebe, 1894, V. 10: 453

(7) Haynes, 177, 178


(9) Spectator, 1893, V. 71: 507.

(10) H. Pap. 368: 52 Cong. 1st Sess., V. 2


(12) Public Opinion, 1894, XVI, 592, 593.

(13) Public Opinion, 1894, XVI, 68-71, also 1894, XV, 517-520

(14) Nation, 1893, V. 57: 184

(15) Spectator, 1893, V. 71: 506, 507

(16) Nation, 1893, V. 57: 262

(17) Public Opinion, 1893, XIV, 322, 323

(18) Haynes, 38, 39.

(19) Ibid., 39-50


(21) Ibid., 878.

(22) Ibid., 906

(23) McKee, 285.

(24) Ibid., 309
REFERENCES: (CONTINUED)

(25) Ibid., 321
(26) Ibid., 352, 355
(27) Ibid., 337, 358
V. - BEGINNINGS OF LEGISLATIVE ACTION IN THE STATES -

PREFERENTIAL PRIMARIES.

The legislative action by many of the States was of a different character than that attempted in Congress. The action of the States was an indirect disregard for the strict provision of the Constitution concerning Senatorial elections. This was an attempt, and in many States it was accomplished, to force the legislature to elect the person selected by the people of a State by preferential primaries. As early as 1890 do we get a precedent for the selection of senatorial candidates in primaries by the direct voice of the people.\(^1\)

The South accepted this precedent beginning with the twentieth century. This movement also spread very extensively to the Western States and to the North Central States. The East was also giving way to this move.\(^2\) By 1912 thirty-six States had some form of the direct primary for the nomination of Senators.\(^3\) However these were not all equally effective as some were mandatory while others were not, but there was a gradual movement making it mandatory for the legislature to effect the choice of the people.

The following Southern States had a provision to this effect: North Carolina, Oklahoma, Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, and Florida.

Among the Western States were Oregon, California, Idaho, and Nevada.
Among the North Central States were Wisconsin, Nebraska, Iowa, North Dakota, South Dakota, Kansas, Ohio, Michigan, Illinois and Indiana.

The following North Eastern States also had such a provision, New Jersey, Pennsylvania, New York, Maine, Rhode Island, Delaware and Massachusetts. (4)

This is conclusive evidence of the attitude of the people and their determination to control the election of Senators. It was a scheme of accomplishing the end desired regardless of the Constitution and it was this primary election that gave the people the power to force the enactment of the seventeenth amendment. The majority of the Senators were already subservient to the people before the enactment of the amendment, hence were forced to carry out the will of the people. The Senators elected from the States having the mandatory primaries were the leaders in demanding popular election of Senators.

**IN CONGRESS**

More than seventy-five joint resolutions were offered during this period (1885 to 1900) for the popular election of United States Senators. It was also during this period that the first reports emerged from the committee and the first speech that was made in Congress favorable to the amendment by Senator Mitchell in 1890. (5)

The rapid change of sentiment in Congress can perhaps be best shown by the reports of committees and action following:
The first report emerging from a committee was in the House on Jan. 27, 1887, which made the following report: "Your committee believe that the potent reason which made the framers of our Constitution declare that there shall be "two Senators from each State, chosen by the legislature thereof' .. have lost none of their force, nor are affected by any counter-vailing considerations. We therefore recommend that the resolu-
tion be laid upon the table." (6)

The second report was also made in the House in 1888. The majority reported that the electors can certainly be as safely trusted with the lection of Senators as with Representatives. Such an amendment would have the further advantage of "awakening in the Senators thus chose a more acute sense of responsibility to the people. Furthermore, there is a suspi-
cion in the minds of many intelligent and well-meaning persons through-out the country that improper means are sometimes em-
ployed to unduly or corruptly influence legislatures in the election of Senators. Whether this suspicion be just or not, an election by the legal voters of a State would be free from any such taint, because no man can corrupt the popular voice."(7)

A minority report of five members held that in the first place the proposed amendment was inadequate as it did not provide to fill vacancies and does not provide for the Senators in office when the amendment would take effect. Furthermore it saw no necessity of this change and the popular will does not demand
it.

The third report in the House on this amendment, reported in 1892, supported the amendment for the following reasons:

1st. The state legislature being such a small body it is more easily corrupted than the voters as a whole.

2nd. "Power and responsibility". The Senate should be responsible to the body from whence it derives its powers.

3rd. "The States made the Constitution." The State is a political organization of people and is not represented by the legislature any more than by the judiciary or by the executive. Hence the ultimate sovereignty lies with the people and there should this power rest.

4th. The power of gerrymandering is undemocratic and too often overthrows the desire of the people.

5th. "State and federal affairs should, as far as possible, be kept distinct and separate for the purity of each and the betterment of both." The present method is destructive to such a principle due to corruption, etc.

The minority agreed to the popular demand but favored a substitute that would leave the matter to each state whether or not it desired popular election.

By tracing thereports we can see how in five years time the attitude of the House of representatives had changed on the subject. The first report was unanimously opposed to the resolution while the third was, we may say, unanimously in favor.
Although there had been a favorable report in 1888 and one in 1892 the House did not take a vote on the proposal until Jan. 16, 1893. The yeas- and nays were not called for and the record is simply that 2/3 had voted in favor of it thus having carried. As will be noted this was the year of the great silver issue. The public press commenting upon this decided vote declared that if this had been in force the Brices and Murphys would not hold their present seats. (10)

The second vote was taken in the House the following year (1894), which carried 141 yeas, 51 nays. (11)

No other votes were taken in the House until 1898 when the vote stood 185 yeas and 11 nays. (12)

Two years later another vote was taken in the House which stood yeas 240, nays 15. (13)

However, the Senate was not as active as the House on this proposal. This can be primarily attributed to the fact that the House was more directly responsible to the people and could be made more subservient. On the other hand, the Senate has as a rule been more conservative, acting more upon its own convictions, rather than upon the wishes of the people. Doubtless some Senators feared, if the change were made, that they would lose their seats. However, many earnestly believed that the change was unwarranted. Wealth also had considerable influence in the attitude of some of the Senators, as the wealth of the country generally was in favor of the old plan. The
discussions in the Senate were possibly more profound and enthusiastic, but it was not until 1895 that a resolution emerged from a committee. The first report by a Senate committee on this proposal was on the House resolution that had passed the House in 1893. On Feb. 12, 1895, the Senate majority reported adversely and ordered the resolution be placed on the table.

However a most interesting minority report was submitted by Senators Turpie, Mitchell, and Palmer. They upheld the resolution for the following reasons:

1st. Because of the growth of Democracy.

2nd. It would overcome very largely the corrupt influences now at work.

3rd. The evil effect on the state in detracting from local affairs.

4th. The effect of Deadlocks.

5th. That the people have proven themselves capable of self-government.

6th. The laws are made for the people hence those who enact the laws should be elected by the people.

A second committee report was made in the Senate the following year (1896.) The majority report declared:

1st. The resolution will not change the fundamental principles of representing the states.

2nd. This suggests no change in our system of government.
3rd. The present system is reflection upon the voting class.

4th. The electors cannot be influenced by corrupt means like a small body in the legislature.

A minority report urged "Complete, supreme, and uniform Federal election laws," if this amendment should carry. To secure honesty in elections,

1st. There should be an amendment to enforce the 15th amendment.

2nd. The vast amount of illiterate voters must be prepared for this. (17)

Here again as in the House it is interesting to note what a change had come about. However, the Senate could not be induced to vote upon this report.
REFERENCES:

(1) Haynes, 136
(2) Ibid., 136-152
(3) The American Year Book, 1912, p. 58.
(4) Ibid., 1910, p. 142.
(6) H. Rep. 239; 49th Cong., 2nd Sess.,
(7) Ibid., 1456: 50th Cong., 1st Sess., V. 5.
(8) Ibid., 368: 52d Cong., 1st Sess.
(9) H. J., 52d Cong., 2d Sess., 46
(11) H. J., 53d Cong., 2d Sess., 501
(12) Ibid., 55th Cong., 2d Sess., 547
(13) Cong. Rec., 56th Cong., 1st Sess., 4128
(15) S.J. 53d Cong., 3d Sess., 108
VI. - PERIOD OF ACCOMPLISHMENT (1900 - 1913)

So far as the attitude of the public was concerned this period is really a continuation of the former. We have noted the disregard in spirit at least for the provision of the Constitution by many of the States. It was only necessary for the Senate to make an unpopular move and it would be forced to concede. This even occurred when the public felt that the Senate tried to conceal in part at least the facts of the Lorimer Case.

MORE VIGOROUS POPULAR EXPRESSION

One of the best ways of determining the popular will is by a study of party platforms.

In 1904 the Democratic and Prohibition Parties declared in favor of the election of Senators by popular vote. (1) In 1908 the Democratic party again urged the amendment stating that it regarded "this reform as the gateway to other national reforms." (2) In the same year the Independent Party also favored the proposal, (3) the Prohibition Party pledged its support to the measure, (4) while the Socialist Party demanded that the Senate be abolished. (5)

In 1912 the Democratic Party insisted upon the adoption of the Proposal before the State legislatures, (6) while the Progressive and Prohibition Parties also declared themselves in favor of the pending (17th) amendment. (7) The Socialist Party
again demanded the abolition of the Senate.

The Republican Party at no time expressed itself in favor of this proposal, but in 1908 a minority report in the Convention strongly urged the party to favor the popular election of Senators. (9) Again in 1912 a minority report urged the party to support the pending (17th) amendment. (10)

Mr. Taft in his acceptance (1908) speech said concerning the election of Senators by popular vote, that he was personally inclined to favor it, but it is hardly a party question." (11)

Another example of public opinion like that noted concerning California is that of Illinois in 1902. In a referendum vote the people declared in no indifferent way their attitude concerning this question. The vote was 451,319 for and 76,975 against. (11)

The State legislatures had been exceedingly active in sending memorials to Congress favoring the amendment or the principle involved. Up to the year in which the proposal was finally passed by Congress thirty-two States had declared in favor of the direct election. (12) Of these States nearly all were of the North Central and Western States, though several of the Southern States expressed themselves in favor. The latter as we shall note later feared federal control of elections and greater enfranchisement of the negro.

The Climax of popular agitation was reached in 1910 concerning the Lorimer case. In a public statement by Chas. A. White, he declared that he had received $1000 to vote for Mr.
Lorimer, whereupon Mr. Lorimer demanded an investigation. A few weeks later C. W. Barnes of the Legislative Voters' League of Illinois filed further charges against Mr. Lorimer. These charges were referred to a committee of which the majority reported that the seat of Mr. Lorimer was not shown to be invalid by corrupt means.

While testimony showed four members of the General Assembly had received money, yet this would not have changed the vote as his majority was 14. It was further held that Mr. Lorimer himself was not a party to this corruption and evidence was not sufficient to prove that the legislators, who were accused of bribe giving, had been moved to such act by corrupt influence.

A minority report dissented to these beliefs and Mr. Beveridge, one of its members, submitted a resolution declaring that Mr. Lorimer was not duly and legally elected. On March 1, 1911 a vote was taken on this resolution and it failed by a vote of 46 to 40. (13)

Second Investigation.

On April 6, 1911 Mr. La Follette introduced a new resolution to reinvestigate the charges against Mr. Lorimer. The Illinois State Senate by further investigation held that Edward Hines had raised $100,000 to "put Lorimer over."

After a severe struggle this was referred to a select committee of the committee on Privileges and Elections. The majority
of five members reported that the Senate had after a full investigation already passed upon Mr. Lorimer in accordance with rules of law, judicial procedure, and justice, and unless new or convincing evidence was procured, that was final. It then held as no new or substantial evidence had been procured in the reinvestigation the former action should be held conclusive and final. The committee further held if the Senate should reconsider its former action, it could find no evidence as to Mr. Lorimer's personal guilt or that he was aware of any corruption, nor had Hines or anyone else raised a fund for said purpose.

The minority of three dissented. It held that the right of reinvestigation had been granted by an adopted resolution reopening the case. Their findings were that 10 votes had been bribed and Mr. Lea of the minority offered a resolution to the effect that Mr. Lorimer had obtained his seat illegally. This was carried on July 13, 1912 by a vote of 55 to 28.\(^{14}\)

The public held this to be a direct result of the election of Senators by State legislatures. As the people now had the direct control of a large majority of the Senators through direct preferential primaries, it was possible to force a favorable vote on this issue. It was either a case of obeying the will of the people or give way to another Senator who would do their bidding.

**LEGISLATIVE ACTION AND ADOPTION**

The first vote of the period was by the House in 1902 when a vote, not calling for the yeas and nays, was recorded as 2/3 favoring the amendment. Although there were no other votes taken
until 1911 there was only one congress, (54th) in which no resolution was offered but in that same Congress six State legislatures sent Congress memorials to that effect. However, from 1900 to 1911 there were no less than forty-three joint resolutions offered.

If the Record is examined, it will be found the debates grew no less forcible, but the Senate could not be brought to a vote. It seems the House had so often expressed its wishes that further voting would not accomplish any action, and it is not until the Senate was brought to a vote, that the House again express itself.

In Feb. 1911 the Senate finally by unanimous consent voted on a resolution reported by Senator Borah from the committee on Privileges and Elections but was amended by what was known as the Sutherland amendment before the final vote was taken which stood 54 yeas to 33 nays.

The following is the resolution reported by Mr. Borah,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein) That in lieu of the first paragraph of section three of article one of the Constitution of the United States, and in lieu of so much of paragraph two of the same section as relates to the filling of vacancies and in lieu of all of paragraph one of section four of said article one, in so far as the same relates to any authority in Congress to make or alter regulations as to the times or manner
of holding elections for Senators the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States.

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The Electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

"The times, places and manner of holding elections for Senators shall be as prescribed in each State by the legislature thereof.

"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies; provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election, as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."

An amendment to this resolution was offered by Mr. Sutherland, and was adopted by the South. This left the first paragraph of Section four, article one unaltered. The paragraph provided for Congressional control of Senatorial elections.

The paragraph in the resolution relating to State control
of the Senatorial elections was struck out by this amend-
ment. (17)

In April 1911 the House voted on a resolution in the
effect words of the resolution reported by Senator Borah ex-
cept the word "legislatures" at the end of the first para-
graph was spelled in the singular. This resolution carried
by a vote of 296 yea's to 16 nay's and 77 not voting . (18)

On May 1, this was reported favorably in the Senate
but a strong minority report again urged the Sutherland amend-
ment with a second minority report, which was entirely opposed
to an amendment for popular election. The amendment by Suther-
land finally carried. The vote taken on June 12, stood as
follows, yea's 64, nay's 24, not voting 3. (21)

In the House by a vote of 111 yea's, 171 nay's, the amend-
ment was refused on June 21. (22) However the Senate would not
concede to the demands of the House. This demand was that
election of Senators should be left entirely to the control
of the individual States as the original Borah resolution
provided. So on June 27th it asked for a conference (23)
with which the House agreed on July 5th. (24) But no agreement
could be reached. So on May 13, 1912 the House by a vote of
238 yea's 39 nay's and 110 not voting concurred in the Senate
proposal, and it was presented to the President on May 15, 1912. (25)

It is significant to note the negative vote in the Senate
on this resolution. The Senators from the following Southern
States voted against the resolution: Georgia, Alabama, and
Mississippi registered both votes in opposition, Florida, and Louisiana each had one negative vote and North and South Carolina each had one Senator not voting.

Of the Northeastern states, New Hampshire, Massachusetts, Vermont, Rhode Island, and Pennsylvania each had both votes in opposition. Delaware, Connecticut, and New York each had one negative vote and Maine had one Senator not voting.

The other negative votes were as follows: Illinois, Idaho and Utah each had one Senator who voted in opposition.

A further analysis shows that of these negative votes the following came from States which had the preferential primaries. Of the South; Alabama, and Mississippi, of the Northeast; Rhode Island, Massachusetts, Pennsylvania, Delaware and New York, and of other States, Idaho and Illinois.

The Southern vote is easily accounted for as it feared Federal control of Senatorial elections. The Northeastern states were the conservative centers. Some of their primary election laws were not effective and others were not mandatory.

In the House the 39 negative votes were nearly all from the South, Georgia eight, Alabama two, Mississippi seven, Louisiana two, Virginia five, Arkansas five, and Texas four. While those not voting were scattered over the North and South generally. This shows again the fear of the South concerning federal election control.

On May 31, 1913 this was declared part of the United States Constitution and was signed by the Secretary of State, Wm. J. Bryan. The following States having ratified the amendment.

The Amendment as adopted reads as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that in lieu of the first paragraph of section three of article I of the Constitution of the United States, and in lieu of so much of paragraph two of the same section as relates to the filling of vacancies, the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States.

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for election of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislatures of any State may empower the executive thereof to make
temporary appointments until the people fill the vacancies by election as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as Part of the Constitution." (21)

SOME OF THE LEADING ARGUMENTS IN CONGRESS

DEMOCRACY

Whatever may be said concerning the Nation's life two courses or directions are most plainly manifested, externally, in the acquisition of territory, internally by the extension of the elective franchise. However, this internal development has as yet not touched our Federal relations, as the franchise is only given for the election of representatives. (29)

But the Democratic growth is not limited to the United States. During the last century the power has moved toward the people. This movement has been quiet, gradual and continuous with no recession or thought of return. (30)

By such a scheme of Senatorial elections Congress would be brought more closely to the people and would have a wholesome effect," "it would leaven the whole lump of official autocracy." (31) This reform would be unnecessary if the agent would faithfully perform his duty. The demand has come because the public desire is ignored and private interests prevail. (32)

It has been the trend to make the path straight and open from the polls to office. This would weaken centralism and help
drive monopoly from its noxious lair.

FOR AN AMENDMENT -- PEOPLE ARE CAPABLE.

No doubt the Framers of the Constitution were wrong in maintaining that the people were not capable of direct self-government as experience has shown than American people have been equal to the responsibility. "They enter and occupy new territories in multitudes, and at once improvise governments and establish order" said Senator Borah. "The Americans of that day would, like their descendants, have been equal to their responsibilities and have added strength to the fabric of the Government, of the Constitution. They were brave, patriotic, and self-denying; they were not instructed in the learning of the schools, but they loved liberty and order, and were masters of the arts of self-help and self-care, which is the most useful if not the noblest education." (33)

Borah further states that it was the people that examined, accepted and ratified the Constitution. It was also preserved by the people. Others have gone to war for territory, gold or their faith, but we are "the only people who ever went to war over the construction of and to preserve the Constitution." Then can such people not be trusted to amend the instrument they have with their lives preserved. (34)

On the other hand it was held that the Framers did not estimate the intelligence and capacity of the people, as most
of the members were themselves still under the influence of inherited aristocratic ideas, and had not the "experience of the successful workings of popular institutions."(35)

The State of Illinois, after a majority vote of over 30,000 given a certain candidate, had a serious deadlock in the election of the people's candidate. "These are abominable examples. The proposed bill will prevent a repetition of them. If the people can be trusted the bill should pass. To say they can not be trusted condemns our whole plant of Government."(36)

Palmer in attacking the distrust of the people says, "Does the Senator prefer election by the Legislature because that Legislature speaks the will of the people? If so, can not the people speak their own will more directly? Does the Senator prefer an election by the Legislature because it does not speak the will of the people? Then I oppose his doctrine. I maintain that Senators are or ought to be representatives of the people. I have none of the fears of popular excess." The evil that can be traced directly to the popular influence upon the Government is nothing as compared with the evil that can be found where the popular will and interest is disregarded.(37)

Senator Clapp maintained that no man could hold in higher reverence the Framers of the Constitution than he, yet before being bound by precedent two great truths must be recognized, "First, the fallible nature of man, and second, the impossibility of any man, I care not how able, how great, how wise he may be, anticipating the needs of the future."
The greatness of the Constitution lies in the fact that it has recognized the changing conditions that time would bring.

It was held that this would not change the fundamental law as "time and deliberation and conservatism are still there "the States would still be equally represented and it would at the same time preserve the individuality and the representation of the whole State. The only change is in discharging the agent because the agent was incompetent." (39)

It was further argued that the fundamental law had been changed. The plan of the framers making the Supreme Court a co-ordinate branch, by a stroke of the pen under Marshall, it was placed as the highest of the three branches, hence is not as the framers intended. Furthermore their idea of the relation of the State and Nation was changed. "John Marshall by one stroke of the pen forever banished the word compact; when he said that the Constitution should be read and understood as words were commonly understood, not by the men who framed it for that would be the law of interpretation as to contracts and compacts, but as understood by the men for whom it was intended which would be the law of interpretation of law itself.

CHANGE IN THE CHARACTER OF THE SENATE

The change in the election of Senators would not change the character of the Senate very materially. The members of the House are thus elected and it has not suffered any ill consequences. There is no parliamentary assemblage that compares
favorably with the House in character or ability. (41)

It was because of the character of the men sent to the Senate that the public became dissatisfied. If they had been satisfactory no cry would now be heard. If all had been fair to the people there would not be this attempt to force such a proposal. Furthermore the feeling is universal and not limited to one section. (42)

CORRUPTION

The Framers did not foresee the dominating influences of the party-system. Their thought was that the legislature would get together, not hampered by pledges and party obligations, and deliberately select from the State some conspicuously capable man, but the party system has taken away all the virtue and left all the vices. The history of the last twenty years has shown one of the great evils by the continued and prolonged contests. The entire session of legislatures have this been occupied. In some instances special sessions were called. At least fourteen instances are recorded in which States were not represented. While in other cases bribery and corruption have been charged. (43)

Senator Palmer argued that it was the rich planter of the South that was feared at the time of framing the Constitution, by the commercial States of the East and North. But this has changed and the "commercial or moneyed interests" are now most potent and they have representatives in every department of the Government. (44)
In order to preserve the present form of government it is necessary to make it fit the changing conditions. The marvelous industrial progress and the great economic change must be accompanied by changes and modifications in our government as will prevent these influences from working modifications and changes in our institutions to have a free Democratic Government it must flow from the people and not from these special influences.\(^{(45)}\)

Such rights and shares in the Government have been granted to corporations like "eminent domain" is a right that should remain with the people. Some step of greater assertion must be taken to regain these and should be placed nearer the mass of the people to be guarded more closely. The influence of the people should be more active and assertive and not so advisory.\(^{(46)}\)

**EFFECT ON THE STATE.**

Senator Borah speaking of the Lorimer case said; "And now we are solemnly told by a committee of this body that so shameless and demoralized, criminal and degraded were many members of that legislature that they can not be believed on oath, and the legislature of that great State, by reason of that election, convened this year under the eye and surveillance of a grand jury. No wonder that one of the old and honored members of this body, a veteran in unselfish devotion to his country, a man who stood stainless in the
maelstrom of filth and corruption which stained the reputation of such men as Colfax and Blaine not a demagogue, not a sentimentalist, not a sensationalist, said as he listened to recital of the facts with reference to that election."

"I have begun to despair of the Republic." (47)

It was argued by some that the identity of the State would be affected by this change of election. The Senator here would indeed represent the State, but it includes all that makes up the State not only the legislature, rather all the braches of the government. "Not alone the corporate and intangible sovereignty, but all that and more — the bone and sinew, the flesh and the blood, the territory, the relation of the people to the territory, the hopes, aspirations, and ambitions of the people, the social, economic, and industrial life — this is the state in its entirety." (48) If he does not now so represent the state, it is due to the vicious system of election that some special interests has gained the upper hand. It is then the equal representation not the mode of election that recognizes the sovereignty of the State.

**EFFECT ON DEMOCRACY**

It was maintained that the Senate is the harbor of democracy, as freedom of debate is secure in the Senate alone. By not allowing the freedom of debate the majority can carry through its measures and deprive the minority of reasonable debate or reasonable amendments. (49)
On the other hand it was deplored that if such an amendment would be adopted it would lead to unlimited demands by the people. The next cry will necessarily be that the supreme court should be elected by the people. Then, unless we admit that the Framers made a grave mistake, there can be no legitimate answer why we should thus extend the franchise. (50)

**DANGER OF POPULAR VOTE.**

This was one of the foremost questions in the discussions, if not the leading issue. Senator Hoar possibly the greatest exponent in upholding the danger said 'I am not afraid to say to the American people that it is dangerous to trust any great power of government to their direct or inconsiderate control. I am not afraid to tell them, not only that their sober second thought is better than their hasty action, but that a government which is exposed to the hasty action of a people is the worst and not the best government on earth. No matter how excellent may be the individual the direct, immediate, hasty action of any mass of individuals on earth is the pathway to ruin and not to safety. It is as true today as it was when James Madison, the great advocate of the rights of the people in his time, one of the foremost among the Framers of our Constitution, first said it, 'that, although every Athenian Citizen might
be a Socrates, every Athenian Assembly would still be a mob.'"

Senator Chandler held that the Framers of the Constitution did not distrust the people but rather the sudden temper of the people. It was feared that the people would grow hot on some issue and carry it to the extremity ere they would consider the results, hence they insisted that the persons in charge should be guarded so as to avoid such action.(52)

REVERENCE FOR THE CONSTITUTION

Some of the greatest speeches made in Congress on the direct election of Senators were those touching upon the reverence of the Constitution and framers of the same. One of the leading advocates of this was Senator Hoar. He helped each generation since the dawning of civilization has had its peculiar capacity. That of Homer left nothing but a great epic poem, Italians their art and the age of Elizabeth that of dramatic poetry. The generation which accomplished the American Revolution had a genius for framing constitutions which no generation before or since has been able to equal or to approach. The features of the State Constitution framed in that day have been retained with little changes in substance, and have been copies since by every new State.

The men of that day had many advantages on this work. They had conducted a great revolution. To prepare for it, they had been engaged for a century in discussing the principles on which self-government is founded and by which constitutional liberty is secured. They were men of English stock, trained in the principles of English History. There was no admixture in
their body politic of men who had been born under despotic-government, and who associated the idea inseparably with the idea of tyranny. At their fathers' firesides the great debate of constitutional liberty had been conducted from the earliest recollection of the oldest men then living. They had the other advantage, that in framing their constitution they were free from all party bias and from the temptation to consult party advantage, or to appeal to the party prejudices of the people. (53)

Senator Chandler objected to such an amendment as it would be the first fundamental change in the Federal Constitution concerning our frame of Government. He considered the first 10 amendments as negative, merely a bill of rights and had nothing to do with the framework of the Government. The 11th was also a negative amendment. The 12th the first and only change in the fundamental law provides only for marking of the presidential ballot. While the 13th, 14th and 15th do not affect the organic law but only establishes liberty and citizenship. (54)

Senator Depew opposes any change because ours is the only government that has not failed and been changed during the last Century. It alone has stood the test of time, experiment and expansion and has proven the most perfect system of self-government yet devised. (55)
DETERIORATION OF THE PERSONNEL OF THE SENATE

It was argued that the change of election would result in a change in the character of Senators. If this be true, has the Senate suffered in comparison with the House or Governors. On the other hand the selection of Senators compares favorably with these. It is to the Senate as well as any body that we can point with pride in the enumerating of our leading characters.\(^{(56)}\)

That popular election would be a serious problem to the high standards of the Senate cannot be doubted. The value of a Senator increases with his time of service. Hence the good work of the Senate would be impaired by failure to return a capable Senator like the case of governors.\(^{(57)}\)

THE DANGER OF CORRUPTION

It is well known that more money was expended in primary contests for United States Senators, which are the equivalent of a popular election, than was ever dreamed of or ever charged against legislatures. Hence this would lead to a more serious problem in cases of contested elections. The Senate has a comparatively easy task to investigate such an affair but election by popular voice would make this much more difficult.\(^{(58)}\)

The convention was held by some to be necessary if popular election were granted. This would lead to worse corruption than that of the State legislatures. They would be called for this special purpose and special efforts would be used, as party
manipulations would be the guiding force. However, it was argued that it could be no worse than a caucus. On the other hand primary elections were rapidly gaining ground. (59)

Senator Hoar says, "The dangers of our country are the dangers to the elective franchise — violence, fraudulent voting, fraudulent counting, intimidation, corruption, gerrymandering, the unseating of legislators with unquestioned title to their seats for the accomplishment of political objects by unscrupulous men, the use of weapons intended to protect our institutions, to subvert them. These things— not mistakes in finance, or an erroneous fiscal policy, or unwise laws of succession, or even rash and violent projects of social extremists— are the things that menace the permanence of our institutions today. (60)

**FEDERAL CONTROL OF ELECTIONS**

One point that had great influence in checking the movement for popular elections was the fear of another "force bill," which was especially obnoxious to the South. Mr. Bryan (61) in 1912, besides many others urged that the State be left to decide the manner of election to avoid the question of Federal control. Borah (62) and others urged that the time, manner and places of Senatorial elections be left entirely to the State.

"It is upon this very point that the Sutherland amendment was based. Many of the opponents of the proposal took advantage
of this very point to defeat the adoption of such an amendment. An example of this is an amendment proposed by Senator Depew, as follows: The qualification of citizens entitled to vote for United State Senators and Representatives in Congress shall be uniform in all the States, and Congress shall have power to enforce this article by appropriate legislation and to provide for the registration of citizens entitled to vote, the conduct of such elections, and the certification of the result." (63)

Thus it would be seen that this struck at the heart of the negro suffrage question, as he says this would do away with "grandfather" and other clauses and devices to deny the privilege of voting.

**CHANGE REPRESENTATION**

There was also a demand to change the representation in the Senate, based upon the legal voters of each State, if the amendment should carry. By this means the South would be confronted with negro suffrage to have a larger ratio, while the West would be denied some of its seats or it would give the East greater representation. This was chiefly demanded by the opponents of the measure to strike the South and the radical states of the West. Borah however answered such an argument by stating that this could not be done unless by universal consent of the several States as this was one of the provisions as laid down by the Constitution itself. (64)
REFERENCES:

(1) McKee, 390, 406.
(2) Trimble, 144
(4) Ibid., 167
(5) Ibid., 166
(6) Trimble, 180
(8) Ibid., 699
(10) Gleason, 361, 362
(11) Haynes, 106
(14) Ibid., 1026
(17) S. Rep., 35: 62nd Cong., 1st Sess., V. 1; 6077
(19) Ibid., 787
(20) Ibid. 1428, 1429
(21) Ibid., 1923-1925
(22) Ibid., 2433.
(23) Ibid., 2548, 2549.
(24) Ibid., 2650.
REFERENCES: (CONT'D)

(25) Ibid., 2nd Sess., 6366, 6367.
(26) Ibid., 6503.
(27) Statutes at Large, V. 38, Part 2, 2049, 2050.
(28) Ibid.,
(29) Cong. Rec., 52nd Cong., 1st Sess., 80
(30) Ibid., 52nd Cong., 1st Sess., 79
(31) Ibid.,
(32) Ibid., 62nd Cong., 3rd Sess., 1106.
(33) Cong. Rec., 52nd Cong., 1st Sess., 1269
(34) Ibid., 61st Cong., 3rd Sess., 1106
(35) Ibid., 52nd Cong., 1st Sess., 1269
(36) Ibid., 6076.
(37) Ibid., 52nd Cong., 1st Sess., 3202.
(38) Ibid., 52nd Cong., 1st Sess., 6591.
(39) Ibid., 51st Cong., 3rd Sess., 1106.
(40) Ibid., 57th Cong., 1st Sess., 6591
(41) Ibid., 61st Cong., 3rd Sess., 1164
(42) Ibid., 57th Cong., 1st Sess., 3979
(43) Ibid., 61st Cong., 3rd Session, 1105-1106.
(44) Ibid., 52nd Cong., 1st Sess., 1269
(45) Ibid., 61st Cong., 3rd Sess., 1103
(46) Ibid., 52nd Cong., 1st Sess., 78
(47) Ibid., 61st Cong., 3rd Sess., V. 46, 1106
(48) Ibid., 61st Cong., 3rd Sess., 1104
REFERENCES: (CONT'D)

(49) Ibid., 53rd Cong., 1st Sess., 105
(50) Ibid., 61st Cong., 3rd Sess., 1339
(51) Ibid., 53rd Cong., 1st Sess., 103
(52) Ibid., 52nd Cong., 1st Session, 3195
(53) Ibid., 53rd Cong., 1st Sess., 102
(54) Ibid., 52nd Cong., 1st Sess., 3926
(55) Ibid., 57th Cong., 1st Sess., 3926
(56) Ibid., 53rd Cong., 1st Sess., 104
(57) Ibid., 61st Cong., 3rd Sess., 1336
(58) Ibid., 61st Cong., 3rd Sess., 1337
(59) Ibid., 1164
(60) Ibid., 53rd Cong., 1st Sess., 102.
(61) Ibid., 52nd Cong., 1st Sess., 6072
(63) Ibid., 57th Cong., 1st Sess., 3925
(64) Ibid., 61st Cong., 3rd Sess., 1103.
VII - CONCLUSION

Although there had been a great deal of "demagogy and lip-service" in advocating this change, there was a gradual change of sentiment among the conservative and thoughtful men of the country especially since 1890. In this later period many of the latter class expressed themselves in no indifferent may in advocating the reform.

It cannot be denied that the old plan was producing undesirable results. The will and even the general welfare of the people were disregarded by members of that great body. The principal functions, that the Framers had planned for had now become obsolete. The people had to a very great extent learned the value of the franchise, and the wealth, that the Senate was to protect, was now able to protect itself, even make inroads upon the rights of the people. It was at this point that the greatest attack on the old system was made.

The other important feature was the demoralizing effect of the older method upon the state legislatures. In many states the election of Senators was made the primary question, both in the election of the state legislature and in the legislature itself. The domestic affairs were not only neglected, but it demoralized the members of the legislature as was emphatically pointed out by Mr. Borah in the case of Illinois.

To overcome the influence of wealth and its demoralizing effect upon the State, was sufficient ground for demanding a
change. It is quite evident that the legislatures are now free of this influence in so far at least as the election of Senators is concerned. This alone is a great stride in the purifying of politics. Outside of the legislature, too, a great part of the influence of wealth is done away with. Bribery and corruption no doubt still exists but to a marked less degree. It is more difficult to bribe a general electorate than to corrupt a few members of a state legislature, while the bribing of a Senator after election can be no less difficult now than before the change was made.

Doubtless some of the Senators that have held seats could now be and would be kept from gaining a seat in that body. However, many of the wealthy Senators got their seats, not because of their wealth but because of their ability and statesmanship. Many of these deserved membership to that body.

Although it will not accomplish all that many desired, yet three can be little doubt that it was a great reform in the purifying of politics.

Another important accomplishment is the abating of the unrest upon this subject. Little is now heard concerning the Senate based upon the present method of its election. This settled influence will bid fair for a more just consideration, of the action of the Senate, by the people, unless it deliberately disregards public sentiment as was the case when the Senate
(in 1917) was virtually forced to limit debate so as to put an end to filibustering when action was vital.

This amendment is only one of the many ways in which the voice of the people was made manifest during this period. The people are now in a more commanding position, and legislation will doubtless be greatly influenced by this change. By the alliance of labor and agriculture, the influence of wealth, the chief basis of attack on the old system is likely to be lessened.