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# The Rapid Sequence of Events Forcing the Senate's Hand: A Reappraisal of the Seventeenth Amendment, 1890-1913

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# The Rapid Sequence of Events Forcing the Senate's Hand: A Reappraisal of the Seventeenth Amendment, 1890-1913

## **Abstract**

For over 125 years, from the ratification of the Constitution to the passage of the Seventeenth Amendment in 1913, the voting public did not elect U.S. senators. Instead, as a result of careful planning by the Founding Fathers, state legislatures alone possessed the authority to elect two senators to represent their respective interests in Washington. It did not take long for second and third generation Americans to question the legitimacy of this process. To many observers, the system was in dire need of reform, but the stimulus for a popular elections amendment was controversial and not inevitable. This essay examines why reform came in 1911 with the Senate's unexpected passage of the Seventeenth Amendment, which was ratified twenty-four months later in the first year of Woodrow Wilson's presidency.

## **Keywords**

Seventeenth Amendment, Congress, Senate, Progressivism, Lorimer, Congress, Early Government, Social Sciences, Political Science, John Lapinski, Lapinski, John

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*The Rapid Sequence of Events Forcing the Senate's Hand:  
A Reappraisal of the Seventeenth Amendment, 1890-1913*

Joseph S. Friedman  
March 30, 2009

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Thesis Adviser: Professor John Lapinski

**“The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action.”<sup>1</sup>**

Woodrow Wilson  
President of the United States (1913-1921)

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<sup>1</sup> Lindsey Rogers, *The American Senate*, (New York: Alfred A. Knopf, 1926), 116.

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## I. Introduction

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For over 125 years, from the ratification of the Constitution to the passage of the Seventeenth Amendment in 1913, the voting public did not elect U.S. senators. Instead, as a result of careful planning by the Founding Fathers, state legislatures alone possessed the authority to elect two senators to represent their respective interests in Washington. It did not take long for second and third generation Americans to question the legitimacy of this process. Elections for senators often resulted in legislative deadlocks, in which partisan sentiment prevented agreement on a single candidate within the state assemblies. Bribery and corruption also became common cries of complaint, as evidence mounted that state officials profited from the scheme by selling their senate votes to corporations and other vested interests. The problem of officials voting for themselves led to the troubling multiplication of candidates by the turn of the century. When North Carolina's Legislature convened to elect a U.S. senator in 1903, eighty-five legislators put their names up for selection.<sup>2</sup> In Delaware, due to an absence of a majority vote, the state slugged its way through twenty-four months with no senators at all.<sup>3</sup> To many observers, the system was in need of reform, but the stimulus for a popular elections amendment was controversial and not inevitable. This essay examines why reform came in 1911 with the Senate's unexpected passage of the Seventeenth Amendment, which was ratified twenty-four months later in the first year of Woodrow Wilson's presidency.

Beginning in 1826, various proposals were suggested in Congress to enhance the election procedure. Congressional debate on the subject remained desultory for decades, however, until the 1890s when petitions from political associations and citizens began flooding Congress with calls for

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<sup>2</sup> George Haynes, *The Senate of the United States: Its History and Practice*, Vol. I (New York: Russell & Russell, 1938), 83.

<sup>3</sup> 57<sup>th</sup> Congress. *ibid*, 66.

reform.<sup>4</sup> State legislatures perceived the problem of indirect elections to be so severe that over two-thirds formally pledged their support for an amendment giving the voting public the right to elect U.S. senators by 1900.<sup>5</sup> They lamented the rampant corruption that plagued the indirect procedure, and demanded reform to end the troubling legislative deadlocks.<sup>6</sup> The House responded to these pleas by passing five affirmative proposals to that end in 1893, 1894, 1898 (unanimously), 1900, and 1902, but the Senate doggedly blocked these measures.<sup>7</sup> Had the Senate been less obstinate, therefore, an amendment for popular elections could have been passed much earlier – in the late 1890s perhaps – since the measure had sufficient support in the House and states. Instead, it would take many years of bitter ideological disputes, political legerdemain, institutional obstacles, and even an explosive sectional rift over race, before the measure’s ratification.

The burden of delay rested on the shoulders of the ninety senators who owed their prized Senate seats to their state legislatures. As early as 1896, the *New York Times* wrote that ‘opposition is now confined to the Senate.’<sup>8</sup> In 1902, the *New York Times* decried the Senate as ‘the principal obstacle’ to direct elections, while celebrating the House for its work.<sup>9</sup> And in 1905, the Senate continued to be ‘immovable’ and as ‘fossilized as ever’ in regard to popular elections for senators.<sup>10</sup> Members of the Upper Chamber recognized, rightly, that the amendment jeopardized their chances of reelection. Many depended on a coterie of legislative supporters for their seats and stood little chance

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<sup>4</sup> William Riker, ‘The Senate and American Federalism’ in *The American Political Science Review*, Vol. 49, No. 2. (Jun., 1955), 467.

<sup>5</sup> The Senate was not moved either by the startling realization in 1900 that state legislatures would likely ratify a proposed direct elections amendment by the necessary three-quarters majority. According to the *Los Angeles Times*, there was ‘not much doubt that state legislatures would ratify the amendment by the necessary three-quarters majority.’ (‘A Significant Vote’, April 6, 1900 p. 8). Another article noted that it would ‘probably not be difficult to secure the ratification by the state legislatures.’ (‘Electing U.S. Senators’, *Los Angeles Times*, Sept. 15, 1906 p. II4).

<sup>6</sup> C.H. Hoebeke, *The Road to Mass Democracy: Original Intent and the Seventeenth Amendment*, (New Brunswick, NJ: Transaction Publishers, 1995), 83.

<sup>7</sup> The 1894 vote was ayes 137, nays 49; the 1900 vote was ayes 240, nays 15. See: ‘Senators by Popular Vote’, *New York Times*, July 22, 1894 p. 1 and ‘To Amend the Constitution’, *New York Times*, April 14, 1900 p. 5, as well as Riker, 467.

<sup>8</sup> ‘The Senate and the People’, *New York Times*, June 9, 1896 p. 2.

<sup>9</sup> ‘Election of Senators’, *Los Angeles Times*, June 24, 1902 p. 5.

<sup>10</sup> ‘The Changing Order of Things in the Senate’, *New York Times*, Nov. 8, 1908 p. SM4.

of winning a popular contest. ‘It is much easier for a pushing and plotting politician... who has a good deal of power over a party machine to secure nomination in a legislative caucus than the support of a majority of the people’, noted the *New York Times*.<sup>11</sup> ‘The President, House of Representatives and Supreme Court are in line with the people, while the only branch of government which is obstructing their will is the Senate’,<sup>12</sup> lamented the *Wall Street Journal* in 1906. Five years later, the Senate became the first institution to ratify the Seventeenth Amendment. What changed?

The Senate’s *volte-face* occurred rapidly and unexpectedly.<sup>13</sup> In the haphazard context underlying its passage, a number of developments surprised contemporaries and confounded scholars.<sup>14</sup> It is not intuitive, for instance, why the state legislatures vigorously sought to cede their most potent check on the federal government – their right to choose U.S. senators; more perplexing is why senators who were voted in by state officials voluntarily agreed to popular elections, a change that spelled the political suicide for many of these very senators.<sup>15</sup> Other questions have not been satisfactorily answered by scholarship to this day. Among published materials, it remains a mystery why the amendment was passed first by the Senate, instead of the House, and why the Upper Chamber did so precisely in 1911 – as opposed to an earlier or later date.

After analyzing the relevant scholarship, the *Congressional Record*, and contemporary newspaper accounts, I have found a depth of heretofore unpublished research powerfully illustrating that a convergence in rapid succession of four factors from 1908 to 1911 made the previously political issue of direct elections into an urgent question of national importance. This evidence

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<sup>11</sup> Some senators refused to support direct elections because they ‘could never have obtained their seats if they had depended upon popular support. (‘Election of Senators by the People’, *New York Times*, April 13, 1892 p. 4). As Representative Bushnell remarked in 1892, ‘Men have gained seats in the senate of the United State whom the people of their state would never have chosen’ (Bybee, 539).

<sup>12</sup> ‘Supreme Court and Senate’, *Wall Street Journal*, Feb. 6, 1906, p. 1.

<sup>13</sup> President Wilson’s remarks are telling in this regard. When learning of the amendment’s ratification, he said: ‘I am sincerely glad the amendment has been ratified so promptly and a reform so long fought for has at last been accomplished’ (‘Elect Senators by Direct Vote’, *Los Angeles Times*, April 9, 1913, p. 4).

<sup>14</sup> ‘Decline of the Senate’, *Wall Street Journal*, Aug. 24, 1905 p. 1.

<sup>15</sup> As the *New York Times* observed: ‘To ask the legislatures to ratify the amendment is to ask them to strip themselves of power conferred upon them from the beginning’ (‘Senators by Direct Vote’, June 14, 1911 p. 8).



demonstrates the Seventeenth Amendment became suddenly perceived as not only sufficient, but also *necessary*, and that its path to ratification similarly crossed a permissive threshold at this time. The four factors – a sensational Senate scandal of unprecedented magnitude involving Mr. Lorimer of Illinois,<sup>16</sup> a vigorous campaign to end ineffective state primary laws by state governors, a racially-tinged states’ rights controversy, and the death and retirement of four powerful and conservative senators – propelled the passage of the Seventeenth Amendment by the Senate on June 12, 1911. A fifth factor of a more amorphous nature was also significant, although less important: the country’s movement toward Progressivism and calls for reform at all levels of government.<sup>17</sup>

In the absence of these factors, my research illustrates, popular elections for senators would not have occurred in the Progressive Era, or perhaps at all. As late as August 1905, the *Wall Street Journal* noted, ‘We do not believe that it is possible for a long time to secure the adoption of the [Seventeenth] Amendment.’<sup>18</sup> ‘The Senate will never willingly allow such an amendment’, balked the *Los Angeles Times* the same year.<sup>19</sup> In 1906, the newspaper reported regarding the Senate, ‘On its initiative, it will never propose, nor will it allow to pass’ an enactment of electoral reform.<sup>20</sup> Thus, contingency mattered to the Seventeenth Amendment. This empirical finding is supported by a breadth of previously unpublished material; through the use of Proquest,<sup>21</sup> I have individually searched for, analyzed, and synthesized no fewer than 1,400 newspaper articles, of which exactly 232

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<sup>16</sup> Hoebeke, 92.

<sup>17</sup> As the *New York Times* noted in 1908: ‘the old order is changing, yielding place to new... A great change is coming over... (‘The Changing Order of Things in the Senate’). David Brady, Richard Brody, and David Epstein write: ‘The turning point in the development of the modern congress occurred in the period from 1896-1910. During that period, called the ‘big bang’ by Polsby, being a member of Congress became a career... seniority became the norm in making committee and chairman assignments, and the rules were changed so that committees rather than parties became the major policy actor... The system became decentralized after 1910, when party and committee leadership positions were separated’ (205). See: Brady, Brody, Epstein, ‘Heterogeneous Parties and Political Organization: The U.S. Senate, 1880-1920’ in *Legislative Studies Quarterly*, Vol. 14, No. 2 (May, 1989).

<sup>18</sup> ‘Decline of the Senate’, *Wall Street Journal*, Aug. 24, 1905 p. 1.

<sup>19</sup> ‘Election of Senators’, *Los Angeles Times*, July 5, 1905 p. II4.

<sup>20</sup> ‘Election of U.S. senators by Popular Vote’, *Los Angeles Times*, Feb. 5, 1906 p. 6.

<sup>21</sup> Proquest allows for simultaneous searching of the *New York Times*, *Los Angeles Times*, *Chicago Defender*, *Pittsburg Courier*, *Wall Street Journal*, and a number of prominent periodicals. Its content is estimated at 125 billion digital pages. [www.proquest.com/en-US/default.shtml](http://www.proquest.com/en-US/default.shtml).

are footnoted in this paper. (For a detailed explanation of the content analysis of this paper, please see the Appendix following the Conclusion.)

Timing in political science is a perpetually difficult phenomenon to understand, but it forms the motivations of this essay. Scholars have long underplayed the question of the amendment's timing, and, by focusing on long-standing factors instead, have exacerbated attempts to systematically understand its immediate origins.<sup>22</sup> William Riker, for example, inadequately attributes the amendment to state pressure: 'Three-quarters of the states had indicated they no longer wanted to elect senators... The Senate concurred because there was little point in holding out any longer.'<sup>23</sup> This assessment is untenable: since precisely the same number of states had made this intention clear for over a decade, why was it only in 1910 that the amendment became clearly foreseen?<sup>24</sup> Other accounts stress the deep-seated factor of public opinion. 'In the final analysis,' concluded an article in the *Northwestern Law Review* in 1995, 'the real justification for the amendment was its *populist* appeal... The people simply wished to elect senators themselves'.<sup>25</sup> The academic consensus continues to be, in the words of Jay Bybee, that 'the populist movement was hard to ignore.'<sup>26</sup> This theory also lacks explanatory power. 'The prevailing sentiment of the American people' had been by 1902 'undoubtedly in favor of direct elections', the *Los Angeles Times* reported.<sup>27</sup> Not dismissive of this argument, George Haynes, the doyen of the Senate, stresses three factors: state pressure (like Riker), public opinion (like Bybee), and legislative deadlocks.<sup>28</sup> I am somewhat persuaded by Haynes's multi-factorial explanation, as these three dynamics most

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<sup>22</sup> As Bybee has noted, by the early 1890s, there was a general perception that senatorial elections had been bought and sold (540). Also see: Hoebeke, 83.

<sup>23</sup> Riker, 468. Emphasis added.

<sup>24</sup> As mentioned above, thirty-one states had expressed their desire for a Constitutional amendment by 1904; in six years, this number only grew to thirty-three states. The two additional states memorials were an insignificant force driving the Senate's *volte-face*. See: Robert Byrd, *The Senate 1789-1989: Addresses on the History of the United States Senate, Vol. I* (Washington: US Government Printing Office, 1988), 398.

<sup>25</sup> Bybee, 538. Emphasis added.

<sup>26</sup> *ibid*, 544.

<sup>27</sup> 'Election of Senators', *Los Angeles Times*, June 24, 1902 p. 5.

<sup>28</sup> George Haynes, *The Election of Senators* (New York: Henry Holt and Company, 1906).

clearly combined to *motivate* reform. But I am not interested in merely understanding the justifications for the Seventeenth Amendment, as scholars have emphasized, but identifying stimuli that *drove* Congress to support the measure.

It is highly unlikely that the breaking-point occurred before 1908 given that one-third of the legislatures voted for a U.S. senator every two years; it was only in 1910 – not 1908, 1906, 1904, or 1902, etc. – that ten new progressive senators replaced incumbents.<sup>29</sup> It is my belief that sentiments aroused at this time largely lay dormant before that election, meaning that agitation for the amendment was not perceived as urgent until after 1908. Authors have argued that the critical years came long before this date. James Sopp writes that ‘the figurative feather that broke the back of the Senate’s reputation was a series of articles’ by the famous muckraking journalist, David Phillips, in 1906.<sup>30</sup> Other scholars go further back. Riker argues that the agitation for direct elections reached its high point during the 52<sup>nd</sup> Congress in 1891-92, which received seven state memorials, 54 petitions, and 24 resolutions on the subject.<sup>31</sup>

Newspaper coverage, however, reinforces the notion that the watershed moment occurred at a later date. Headlines covering issues relevant to direct elections, as measured by frequency, reached an incomparable climax in 1910-11 (according to my research); the year 1910, for instance, featured more than ten times the articles related to direct elections than did the year 1905.<sup>32</sup> Other issues, such as reduction of tariffs, the silver issue, and foreign treaties, captured the interest of officials and the

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<sup>29</sup> In the 61<sup>st</sup> Congress, the Senate featured 60 Republicans and 32 Democrats; the 62<sup>nd</sup> Congress revealed a ratio of 51 Republicans and 43 Democrats. See: Lawrence Chamberlain, *The President, Congress and Legislation*, (New York: AMS Press, Inc., 1967), 110.

<sup>30</sup> James Sopp, *Indirect Elections and the Democratization of the United States Senate: Constitutional Design, Historical Development, Roll Call Voting, and the Outcome of National Elections*, (Doctoral Thesis, University of Illinois, 1999), 89.

<sup>31</sup> Riker, 467.

<sup>32</sup> I have found 253 articles with direct relevance to the stimulus in 1910, and 254 articles for 1911. By contrast, coverage of the issue was perceptibly lower earlier in the decade. I found only 25 articles relevant to direct elections in 1904 and 32 in 1905. See Appendix for further elaboration.

public drastically more than direct elections for most of the period from 1890 to 1911.<sup>33</sup> The evidence suggests that the defining moment did not spring from a series of editorials from 1906. Nor did the high watermark of resentment come in the early 1890s, as Riker has written. The crucial developments occurred from 1908 to 1911. It was only at this time that a series of events coalesced to convince state legislatures to send fresh blood to the Senate. It was only at this time that the Senate itself had changed sufficiently as an institution to allow the amendment to be passed. And it was only in this period that one can understand why the Senate passed the amendment before the House.

To understand the Senate's orientation at the turn of the twentieth century, it is necessary to be familiar with the Founding Father's desire for indirect elections and how this electoral procedure served the antebellum Senate. I will provide this overview in the following section of my thesis, which will help establish why the call for popular elections was so controversial. I will also explain why the measure was transformative; to this day the Seventeenth Amendment receives mainstream media attention for its ramifications regarding vacancies and governor appointments.

In the third section, where I get to the heart of my argument, I emphasize the tendency of existing scholarship to focus on the justifications for the amendment, as opposed to imminent factors precipitating its passage. Pressure for an electoral overhaul was evidenced from an outpouring of public support, memorials from legislatures, and muckraking journalists. By showing that these factors crystallized in the 1890s in response to rampant bribery, legislative deadlocks, and senatorial incompetence as it related to the silver issue, I will to some extent reinforce the secondary literature. At the same time, I will substantially add to it by emphasizing the long-standing existence of these phenomena, in order to explain that these factors did not convince officials of the necessity for a Constitutional amendment.

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<sup>33</sup> 'There are two subjects now foremost before the people of this country', noted the *Wall Street Journal*, 'one of these is the question of revision of the tariff. The other is government regulation of corporations.' ('The Two Factions', Dec. 10, 1904 p. 1). The *New York Times* agreed; in the words of Senator Rayner, 'the tariff and executive usurpation are the leading campaign issues' ('Calls Roosevelt Usurper', Aug. 28, 1906, p. 4).

It is in the fourth section that I focus on the U.S. Senate, a comprehensive analysis that to my knowledge does not yet exist. This section focuses on the actions and commentaries of the ninety senators themselves, as opposed to the previous section which emphasizes out-of-doors pressure. The objective is to show that the timing of the Seventeenth Amendment was most powerfully affected by factors underplayed, if not obscured, by existing scholarship. By exploring senators' *political* arguments against direct elections, I show that a very strong case existed for not enacting electoral reform. Then, by explaining how procedure rules, such as the use of filibusters and committee wrangling, made the Senate uniquely amendable to control of the minority, I show how *institutional* rules impeded the progress of reform. The Seventeenth Amendment would be forced to hurdle over these political and institutional stumbling blocks – which would not begin to occur until 1908.

I examine the crucial years in the penultimate section of the essay. Beginning with Mr. Lorimer, I show how a three-year scandal captivated the nation, radicalized public opinion to an unprecedented extent, and convinced legislators that their political futures depended on not only passively supporting direct elections through formal petitions but actively supporting progressive U.S. Senate candidates. Second, I focus on how an informal collaboration of governors and national leaders further galvanized the stimulus. Woodrow Wilson, the governor-elect of New Jersey, and William Jennings Bryan, the Democrat candidate for President in 1908, stoked the embers for electoral reform, in particular, helping to turn it into an issue of pressing importance.<sup>34</sup> The sustained effort only began in 1908 because it was at this time that the experiment of state primaries (originating on Oregon, 1901) became perceived to be in need of national reform – in order to end controversial and ineffective state laws. Third, by shedding light on the dramatic turn the debate took with the so-called Sutherland/Bristow resolution, I show how the direct elections stimulus turned into an explosive issue of race. Divisive schisms infused the debate with new moral implications,

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<sup>34</sup> It was argued at the time that Bryan opportunistically galvanized the direct election cause to increase political capital for himself. He is 'engaging in political buncombe for the necessity of change', noted the *Los Angeles Times* ('Wake Up Bill!', Sept. 6, 1906 p. II4).

convincing senators that it was now necessary to pass the measure ‘to preserve the continuity of Congress itself.’<sup>35</sup> The Sutherland/Bristow clause, reserving the supervision of Senate elections to the federal government, passed the Upper Chamber in 1911 but required a year before arms in the House could be twisted to support it. The Senate agreed to the resolution long before the House largely because of the fourth and final factor prompting the Seventeenth Amendment: the untimely passing of Mr. Allison, the Republican leader in the Senate, in 1908, making the Upper Chamber less amenable to partisan control. Mr. Allison, a fierce direct elections opponent, had led a powerful group of senators, known as ‘The Four’, who dominated the Senate at the turn of the century.<sup>36</sup> His conservative ally, Mr. Nelson Aldrich, has been called one of the most powerful senators ever to serve.<sup>37</sup> After Allison’s death, all three of the remaining Four had stepped down or died by 1911, not coincidentally, the same year the Seventeenth Amendment passed.

In the subsequent section, I explain the fifth, elusive factor: why the atmosphere was ripe for reform at the turn of the century. Beginning with the emergence of the Populist Party in the early 1890s, newly politicized farmers and workers frustrated by the growing disparity of wealth in the country mobilized to demand political concessions.<sup>38</sup> The presidency of Theodore Roosevelt, who has been called America’s first modern chief executive, encapsulated the new spirit of reform.<sup>39</sup> The Republican Party suffered severe setbacks at this time due to the Depression of 1907, which had not lifted with the passage of the 1909 tariff. The 62<sup>nd</sup> Congress featured eleven new Democratic

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<sup>35</sup> ‘Direct Election of Senators Finds Rocky Road in Senate’, AP in *Los Angeles Times*, Feb. 18, 1911 p. 17.

<sup>36</sup> Vincent DeSantis, *The Shaping of Modern America: 1877-1920*, Second Ed., (Arlington Heights, Illinois, 1989), 175.

<sup>37</sup> Richard Cohen, *Congressional Leadership: Seeking a New Role*, Vol. VIII (Beverly Hill, CA: Sage Publications, Inc., 1980), 30.

<sup>38</sup> DeSantis, 153. Also see: Robert McMath, Jr., *American Populism: A Social History, 1877-1898*, (New York: Hill and Wang, 1993), 8.

<sup>39</sup> As Richard Baker writes, ‘Roosevelt’s move into the White House after McKinley’s assassination began the modern presidency and one of the greatest periods of reform in the nation’s history’ (68). See: Baker, *The Senate of the United States: A Bicentennial History*, (Malabar, Florida: Robert E. Krieger Publishing Company, 1988).

senators. This auspicious political framework did not prompt the Seventeenth Amendment (as did four previous factors) but its passage would have been impossible without it.

In my conclusion, I provide several insights as to the amendment's journey through the House and states that have never before been published. The goal, again, is to emphasize contingency, in particular during the moments preceding the amendment's ratification. Even though the House was widely expected to embrace a popular elections amendment, it blocked the historic Seventeenth Amendment passed by the Senate before it ultimately relented in May of 1912.<sup>40</sup> Idiosyncrasies during the state ratification process further delayed the amendment, which was not formally signed into effect until May of 1913.

Those factors that were the *sine qua non* of the Seventeenth Amendment's passage must be taken into account. Long-standing factors discussed by previous scholarship cannot explain the amendment's ratification. Literally, for decades, the public demand for electoral reform had been 'loud and emphatic' (1896);<sup>41</sup> There is probably not a state that would not endorse it in a popular election', announced the *New York Times*.<sup>42</sup> Yet, not a single proposal for direct election of senators managed to squeeze by the Senate until the second half of 1911. Even the House for ten years in the early 1900s did not take up the issue. After passing five resolutions for the amendment from 1892-1902, the House did not pass a single proposal to that end from 1903-11.<sup>43</sup> During the early twentieth century, public sentiment for other Constitutional amendments was equally boisterous as demands for popular election of senators, including abolishing the Electoral College or making the presidency one, six-year term.<sup>44</sup> These other agitations failed because they lacked what the Seventeenth Amendment suddenly gained: a cascade of critical factors prompting its ratification.

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<sup>40</sup> Byrd, 402.

<sup>41</sup> 'Senators by Popular Vote', *Los Angeles Times*, March 21, 1896 p. 2.

<sup>42</sup> 'Republican Retreat is Sounded by Bryan', *New York Times*, June 21, 1908 p. 2.

<sup>43</sup> Haynes, Vol. I, 106.

<sup>44</sup> See Sections VI for an elaboration on these other stimuli. 'Election of U.S. Senators by Popular Vote', *Los Angeles Times*, Feb. 5, 1906 p. 6.

By focusing on the Senate's voting on the stimulus, this essay indicates the extent to which legislation in general consists of complicated calculations that often have nothing to do with the enactment at hand. At least half of those in the majority on various votes turned out to be opponents of direct elections. Their strategy was to pass an amendment so obnoxious to Southern senators who otherwise favored direct elections, so that those members would vote against the resolution itself.<sup>45</sup> The thesis, therefore, illustrates a pivotal truth of the workings of Congress: officials often vote in antithesis to their individual preferences or misreveal preferences.<sup>46</sup> As John Aldrich writes, there are invariably in Congress 'incentives for at least one player... to act strategically or sophisticatedly rather than to express preferences sincerely.'<sup>47</sup> There exists a growing corpus of *theoretical* work on these so-called 'killer amendments', but few historical instances has been documented. As John Wilkerson notes, there was 'a virtual absence of systematic empirical work' before 1999.<sup>48</sup> I will show that voting on the Seventeenth Amendment represents an ideal case-study of disingenuous strategizing, as the measure's timing was significantly delayed by 'killer amendments'.

In the following sections, it is important to keep in mind the delineation of boundaries I have provided to explicate my argument. Existing scholarship invariably discusses elements which *encouraged* the Seventeenth Amendment, such as public pressure and decades of abuses. Readers of this essay, however, will learn in a systematic detail about dynamics which fostered the amendment versus those catalysts that *ensured* its ratification.

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<sup>45</sup> Byrd, 400.

<sup>46</sup> Walter Oleszek writes, 'Members introduce such bills for a variety of reasons: to go on record in support of a given proposal, to satisfy individual constituents or interest groups... to convey message to executive agencies, to publicize the issue, to attract media attention, and to fed off criticism during political campaigns' (80). See: Oleszek, *Congressional Procedures and the Policy Process* (Seventh Ed., Washington, DC: CQ Press, 2007).

<sup>47</sup> John Aldrich writes: 'Voting is sincere if legislators always vote for whichever alternative they prefer. Voting is sophisticated if legislators look ahead to see the consequences of their current votes for later choices. One might vote against a preferred alternative to avoid ending up with an even worse outcome' (301). See: Aldrich, *Why Parties? The Origin and Transformation of Political Parties in America*, (Chicago: The University of Chicago Press, 1995).

<sup>48</sup> For a review of killer amendments, see: Jeffrey Jenkins and Michael Munger, 'Investigating the Incidence of Killer Amendments in Congress' in *The Journal of Politics*, Vol. 65, No. 2 (May, 2003), as well as Wilkerson, 'Killer Amendments in Congress', in *The American Political Science Review* Vol. 93, No. 3 (Sep., 1999), 532.



## Section II: The Seventeenth Amendment in Context

- (A). Research Methodology
  - (B). The Seventeenth Amendment in the 21<sup>st</sup> Century
  - (C). The Antebellum Senate
- 
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This section grounds the argument of the thesis in existing scholarship, relevant historiography, and germane contemporary notions of the Senate today. It explains why the Seventeenth Amendment is fundamentally important to the symmetry of the federal government and why it has had an enduring impact on twentieth and twenty-first century political history. And, finally, it explains the reasons underpinning a scholarly reappraisal of the amendment.

### ***Section II (A): Research Methodology***

Why has the storyline of the timing of the Seventeenth Amendment not received the attention it deserves? A few answers are telling. The most direct one involves the fact that the Seventeenth Amendment has received comparatively little scholarly attention. John Lapinski in 2002 noted that ‘only a modicum of research has been devoted to what is arguably the most important institutional change of the twentieth century involving congressional representation.’<sup>49</sup> In *The Road to Mass Democracy*, C.H. Hoebeke wrote (1995): ‘The direct election of U.S. senators has engendered very little commentary in the historiography of either the Constitution or of the Progressive Era. It has been somewhat summarily adjudged a closed case.’<sup>50</sup> James Sopp supported this notion (1999): “There has been surprisingly little research done on the Seventeenth Amendment”<sup>51</sup>, while Ronald King and Susan Ellis published an article in the *Studies in American Political Development* (1996),

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<sup>49</sup> John Lapinski, ‘The Seventeenth Amendment and the Construction of the Modern Senate’, submission for *American Journal of Political Science*, (2002), 3.

<sup>50</sup> Hoebeke, 18.

<sup>51</sup> Sopp, 22. Emphasis added

noting: ‘There have been few academic studies of this amendment.’<sup>52</sup> Moreover, scholars have tended to focus on the amendment’s effects, as opposed to its origins. In the past two decades, nearly all articles on the amendment have focused on its institutional ramifications. John Lapinski concluded that ‘Senators did alter their behavior in how they approached committee assignments after the Seventeenth Amendment’<sup>53</sup>; James DeNardo (1994) concluded that direct elections sharply increased the responsiveness of the senatorial vote to political tides in the general electorate.<sup>54</sup> An article in the *American Political Science Review* (1998) noted: ‘the amendment significantly increased the likelihood that a state would send divided delegations to the Senate’<sup>55</sup>, while Charles Stewart (1992) went a long way to disproving that the amendment increased the average size of the majority party in the Upper Chamber.<sup>56</sup> The latest evaluation appeared in the *Journal of Politics* (2006), concluding that ‘the amendment significantly changed patterns of election-seeking and legislative voting behavior.’<sup>57</sup> Rather than studying the ramifications of the amendment, or focusing on its journey through state legislatures or the House, I examine the factors that fostered its passage through the U.S. Senate.

The need for a reappraisal also stems from the tendency of scholars to rely on antiquated secondary material. Nearly every book or article on the topic relies on the research of George Haynes, who published one of his most vaulted books – *The Election of Senators* – more than a

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<sup>52</sup> Ronald King and Susan Ellis, ‘Partisan Advantage and Constitutional Changes: The Case of the Seventeenth Amendment’ in *Studies in American Political Development*, Vol. 10 (Spring, 1996), 73.

<sup>53</sup> Lapinski, 5.

<sup>54</sup> James DeNardo, ‘The Direct Election of Senators and the Cohesion of the Two Party Vote’, presented at the Annual Meeting of the Midwest Political Science Association, Chicago (Apr. 14-16, 1994), 14.

<sup>55</sup> Thomas Brunell and Bernard Grofman ‘Divided U.S. Senate Delegation, 1788-1996: A Realignment Approach’, *American Political Science Review*, Vol. 92, (1998), 391.

<sup>56</sup> Charles Stewart, ‘Responsiveness in the Upper Chamber: The Constitution and the Institutional Development of the Senate’ in *The Constitution and American Political Development*, (Urbana: IL, University of Illinois Press, 1992), 75.

<sup>57</sup> According to William Bernhard and Brian Sala, the Seventeenth Amendment negated the influence of legislatures in senators’ decisions to stand for reelection, inducing more incumbents to run. Second, it introduced incentives for senators to moderate their public ideologies in pursuit of reelection. See: Bernhard and Sala, ‘The Remaking of an American Senate: The Seventeenth Amendment and Ideological Responsiveness’ in *The Journal of Politics*, Vol. 68, No. 2 (2006), 345.

century ago in 1906.<sup>58</sup> In the words of Congressional historian, Senator Robert Byrd (the 91-year-old President Pro Tempore), Haynes's work is 'magnificent' and although 'marred by minor errors', it remains 'an invaluable resource that is yet to be equaled.'<sup>59</sup> Unfortunately, the reliance on Haynes' research has led to a regurgitation of scholarly opinion on the Seventeenth Amendment. Since academics are primarily concerned with the amendment's effects, but feel indebted to their readers to establish a baseline of understanding with the measure's origins, they tend to recast the same arguments written by a researcher born during Andrew Jackson's Presidency. In his own award-winning study, Senator Byrd himself footnotes Haynes twenty-eight times in fewer than fifteen pages. Haynes's book was published in 1906, meaning that the most formative years of the Seventeenth Amendment's journey (1906-1913) are untouched. This thesis goes beyond that arbitrary cutoff to examine the amendment from 1890 to the point in time it was ratified.

New methodologies are available today that have limited the ability of researchers in the past. Thanks to the multi-database search interface known as Proquest, it has been possible to find a great deal of evidence that that has never before contributed to published works. I have been able to support my argument by a depth of primary sources: newspaper articles that I have individually found by searching for factors relevant to direct elections, such as 'corruption in the Senate' or 'popular election of senators' over a twenty-two year period beginning in 1890 (for further information, see the Appendix). The thrust of this material comes from the *New York Times*, *Los Angeles Times*, *Wall Street Journal*, and a few weekly periodicals, including *The Forum* and *The Congregationalist*. The advantages of journalistic accounts are manifold. They allow for broad understanding, with a sense of progress over time, by reporting political events of an official nature, as well as developments that are significant to this thesis but only tangentially related to the measure. As an example, consider the interest direct elections aroused in the Ivy League, whose college

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<sup>58</sup> In fact, the U.S. Senate's official homepage comments that George Haynes 'contributed greatly to the passage of the amendment.' [www.senate.gov](http://www.senate.gov).

<sup>59</sup> Byrd, 405.

debating teams contested the issue for years. The secondary literature is silent on the trend, which is surprising considering scholars' goal of showing direct elections to be a matter of 'utmost public concern'.<sup>60</sup> In fact, as early as 1897, the *New York Times* reports, Columbia defeated Harvard in a debate titled 'resolved, that the present method of electing U.S. senators is preferable to election by popular vote' – with Harvard holding the affirmative and Columbia the negative. Two years later, Harvard debated Yale on the same topic; and as late as 1910 Harvard and Princeton's debate teams disputed the issue of senatorial election and women's suffrage.<sup>61</sup> This information has only recently been uploaded. By researching newspapers of diverse ideologies, this thesis breathes fresh air on prose long yellowed by decades of neglect.

### ***Section II (B): The Seventeenth Amendment in the 21<sup>st</sup> Century***

On March 10, 2009, the *New York Times* published an article on the U.S. Senate that harkened back to the debates of one century ago. The controversy is fueled by 2008-09's flurry of tangled appointments to the Senate, which now counts four new members who have yet to face election. There was nearly a fifth until one senator changed his mind about departing.<sup>62</sup> A group led by Senator Russell Feingold, Democrat of Wisconsin, is pushing for a Constitutional change that would require that vacancies be filled by popular election. Mr. Feingold said he was motivated by the furor surrounding the disputed appointment of Ronald Burriss to the Senate by Governor Rod Blagojevich of Illinois, but also by the large number of appointees after the election of President Obama. 'I really became troubled when I realized that such a significant percentage of the U.S. Senate was about to be appointed rather than elected by the people,' said Mr. Feingold.

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<sup>60</sup> Haynes, *The Election of Senators*, 262.

<sup>61</sup> 'Columbia Beats Harvard', *New York Times*, May 20, 1897 p. 7; 'Harvard-Yale Debate', *New York Times*, March 24, 1899 p. 4; and 'Yale Picks Debate Topics', *New York Times*, Jan. 16, 1910 p. 7.

<sup>62</sup> Carl Hulse, 'New Idea on Capital Hill: To Join Senate, Get Votes', *New York Times*, March 10, 2009.

The push for change has sparked interest in the Seventeenth Amendment. The Seventeenth Amendment, the article explains, allows for temporary appointments, and in the years since it was passed, 185 senators have been appointed in this way.<sup>63</sup> Their success in office has been mixed. According to the Senate Historical Office, slightly more than one-third were subsequently elected on their own, slightly fewer than one-third were defeated, and the remainder chose not to run. Having four appointees in one Senate is unusual, but not a record. In 1945-1946, there were more than a dozen Senate appointees. The current cluster stems from the resignations of Mr. Obama, Vice-President Joe Biden, Interior Secretary Ken Salazar, and Secretary of State Hillary Clinton. Senator Judd Gregg, Republican of New Hampshire, said he would join the cabinet as Commerce Secretary, but backed out days later. These appointments have garnered criticisms not only in Illinois, but also in New York, where Governor David Peterson publicly vacillated over appointing Caroline Kennedy before settling on House member, Kirsten Gillibrand. Even Gregg's apparent resignation led to a strange process in which New Hampshire's Democratic governor pledged to name a Republican replacement to avoid tipping the balance of power in the Senate.

It is insightful to see how this modern-day article describes the Seventeenth Amendment. Typical of the secondary literature, it provides a stirring appraisal of the effects of the amendment, but largely ignores its origins. For instance, it does mention how the Constitution originally required senators to be picked by state legislators and that 'advocates of direct elections first sought to overturn the approach as early as 1826.' But the article does not go beyond that portrayal by explaining that the year 1826 was actually significant because a member of Congress, Mr. Henry Storrs of New York, was the first official to propose a direct elections amendment.<sup>64</sup> The article rightly notes that the Seventeenth Amendment was ratified in 1913, but does not mention the backdrop to the Amendment's ratification – how, against expectations, it passed the Senate suddenly,

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<sup>63</sup> *ibid*

<sup>64</sup> Haynes, Vol. I, 96.

and then the House, and ultimately, the states. The article accurately explains how the amendment was helped along by ‘a sensational series of *Cosmopolitan* magazine stories that explored ties between senators and railroad and industrial interests and stirred long-simmering public resentment.’<sup>65</sup> But this leaves the impression that popular resentment was the primary storyline, and fails to note the twists and turns from 1908-11 – as this thesis discusses. The objective of the *New York Times* author may have been limited in scope, but his explicit reference to muckraking and ‘long-simmering public discontent’, yet simultaneous disregard for any of the four critical factors, reflects how gradualism has become a red herring that diverts attention from the true story of the amendment’s passage.

Among the general populace, the Seventeenth Amendment may not be regarded as a particularly defining point in legal history. It is overshadowed by the Bill of Rights and Constitutional changes on Prohibition, women’s suffrage, and the Electoral College. Yet, it is important to note that the Seventeenth Amendment engendered such controversy that it was considered to have the potential to be the ‘wildest and widest revolution... since the Constitution of the United States was adopted’, in the words of Senator DePaw in 1902.<sup>66</sup> It ‘would amount to the destruction of the Senate and the balance of government’, prophesized John R. Passos, the prominent attorney, to a conference on the subject in 1908.<sup>67</sup> The amendment was not quite so far-reaching, but was still a massive change.

The Seventeenth Amendment’s impact was momentous even when compared to other amendments. The Seventeenth Amendment was the first and only time Congressional election procedures were altered. The amendment changed a fundamental compromise from the Constitutional Convention. In 1913, the states dealt away their most potent tool – selecting U.S.

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<sup>65</sup> Hulse, *New York Times*, March 10, 2009.

<sup>66</sup> Bybee, 567.

<sup>67</sup> ‘Electing Senators by Popular Vote’, *Wall Street Journal*, Oct. 17, 1908 p. 1.

senators – and did so most willingly and in near record time.<sup>68</sup> Indirect elections had been considered one of the most important mechanisms by which the states could defend against federal encroachment. As Alexander Hamilton noted in *The Federalist Papers* (#62):

‘The state legislature, who will always be not only vigilant by suspicious and jealous guardians of the rights of the citizens, against encroachments from the Federal Government, will constantly have their attention to awake to the conduct of the national rulers and will be ready enough, if anything improper appears, to sound the alarm to the people and not only to be the VOICE but if necessary the ARM of their discontent.’<sup>69</sup>

With memories of George III in mind, Art. 1, Sec. 3, Cl. 1 of the Constitution – providing ‘The Senate of the United States shall be composed of two senators from each state, chosen by the legislatures thereof’ – was perceived by federalists and anti-federalists alike to have undeniable advantages in protecting against a vigorous executive.

By taking elections out of the hands of legislators, the complexion of the U.S. Senate in terms of political ideology was transformed. According to the research of Jay Bybee, the control of the Senate would have returned to the Republicans in 1917, 43 to 53, had the Seventeenth Amendment not passed (in reality, Democrats retained control, 54 to 42). In addition, controlling for germane factors, without direct elections the Senate would probably have shifted from Democrats to Republicans in 1917-1920, 1933-1934, 1945-1946, 1958-1959, and 1981-1986. In other words, scholars have noted, major governmental projects in the twentieth century may not have come to fruition barring the Seventeenth Amendment; the votes would have been especially lacking to support President Roosevelt’s New Deal. Data suggests that for the famous 1994 elections, which saw the GOP overtake the Senate for the first time in decades, the Democrats would have retained control by a substantial majority of 70 to 30 (directs elections notwithstanding).<sup>70</sup>

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<sup>68</sup> Bybee, 535.

<sup>69</sup> David Wootton, Ed., *The Essential Federalist and Anti-Federalist Papers*, (Indianapolis: Hackett Publishing Co., 2003), 264.

<sup>70</sup> *ibid*, 553.

Before the Seventeenth Amendment, only four Constitutional amendments had been passed since 1804. Three of these four sailed through at a time of national emergency, on the heels of the Civil War, with the Union's victory largely dictating their passage.<sup>71</sup> The Thirteenth Amendment (1865) abolished slavery; the Fourteenth Amendment (1868) guaranteed citizenship to black males and applied due process to the states; the Fifteenth Amendment (1870) removed race as a condition of suffrage. The Sixteenth Amendment, allowing for a federal income tax, was only ratified four months before the Seventeenth Amendment. Given the infrequency of amendments, and sweeping nature of the reform, the Seventeenth Amendment's passage was unforeseen before the rapid convergence of events from 1908-11.

### ***Section II (C): The Antebellum Senate***

To fully understand the Seventeenth Amendment, it is necessary to explain why the Senate featured indirect elections to begin with. The narrative dates back to the generation that fought the Revolutionary War. At the Constitutional Convention in 1787, a proposal for popular elections of U.S. senators was, in fact, raised by James Wilson but quickly rejected.<sup>72</sup> That the Founding Fathers rejected popular elections should not be surprising. The Founders themselves were indirectly elected, and the Constitution itself was ratified by state conventions, not by popular vote.<sup>73</sup>

The language of the Constitution illustrates that the Senate was of fundamental importance to the delegates, who gave the Senate the notable distinction of an 'unamendable' clause. The Constitution features two such clauses, also known as 'Never-Never' clauses, which establish that their provisions are to be valid for all time; no future amendment can override them. One of these clauses decreed that the Atlantic slave trade shall be abolished in 1807; the second, contained in

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<sup>71</sup> According to the *Los Angeles Times*: 'The abolition of slavery made the amendment absolutely necessary, but in ordinary times and for ordinary reasons the process would be slow and tedious'. ('Electing U.S. Senators', March 14, 1891 p. 4).

<sup>72</sup> Byrd, 389.

<sup>73</sup> James McPherson, *Battle Cry of Freedom* (Oxford: Oxford University Press, 1988), 235.



Article V, prohibited any change in the equal representation of each state in the Senate.<sup>74</sup> In the future, opponents of the Seventeenth Amendment would argue the Senate as outlined in the Constitution was a sacred institution and should not be tampered with under any circumstance.

Indirect elections for senators represented a middle ground upon which the advocates of various plans stood together. Divergent opinion ranged all the way from the monarchical notion that senators should be chosen by the President of the United States to the democratic idea that they should be elected by the people.<sup>75</sup> In rejecting the latter proposal, the delegates in 1787 argued that the Senate ought to be insulated from the fleeting whims of the electorate. Roger Sherman declared: ‘The people immediately should have as little to do as may be about government. They lack information and are constantly liable to be misled.’<sup>76</sup> Elbridge Gerry echoed this theme: ‘The evils we experience flow from an excess of democracy. The people do not lack virtue, but are the dupes of pretended patriots.’<sup>77</sup> Gouverneur Morris believed the second branch out to be composed of an ‘aristocracy’ whose purpose would be ‘to keep down the turbulence of democracy.’<sup>78</sup>

The advantages of indirect elections seemed just as, if not stronger, than the disadvantages of popular elections. Roger Sherman believed indirect elections would be more likely to produce ‘fit men’. James Madison thought the Senate ‘ought to come from, and represent, the wealth of the nation’. Elbridge Gerry added that ‘commercial and monied interests’ would be ‘more secure in the hands of state legislatures, than of the people at large.’<sup>79</sup> The 62<sup>nd</sup> article of the *Federalist Papers* declared that indirect election of senators ensured that, ‘No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then of a majority of the states.’<sup>80</sup> The anti-federalist George Mason explained, ‘The national legislature [would] swallow up the legislatures

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<sup>74</sup> *ibid*, 254.

<sup>75</sup> ‘Aristocratic Senators’, *Los Angeles Times* July 21, 1890 p. 4.

<sup>76</sup> Byrd, 389.

<sup>77</sup> *ibid*

<sup>78</sup> Haynes, *The Election of United States Senators*, 96.

<sup>79</sup> Bybee, 510.

<sup>80</sup> Wootton, 267.

of the states. The protection from this occurrence [would] be the securing to the state legislatures the choice of the senators of the United States.’<sup>81</sup> Thus, when Richard Spaight of North Carolina proposed that the Upper Chamber be chosen indirectly, his proposal was seconded by John Dickinson, and endorsed.<sup>82</sup> The ratifying conventions of the states do not appear to have had serious objections to this method of election. According to James Madison, the method was ‘most congenial with the public opinion.’<sup>83</sup>

The Senate rose in repute to become more prestigious than the House in the antebellum period. Upon traveling to America in the late 1820s, Alexis de Tocqueville was struck by the differences between the two bodies, and attributed the superior performance of the Senate to indirect elections. ‘A couple of paces away [from the House] is the entrance to the Senate, whose narrow precincts contain a large proportion of the famous men of America,’ he noted in *Democracy in America* (1835). ‘There is scarcely a man to be seen there whose name does not recall some recent claim to fame. They are eloquent advocates, distinguished generals, wise magistrates, and noted statesmen. Every word uttered in this assembly would add luster to the greater parliamentary debaters in Europe.’<sup>84</sup> Tocqueville could think of no reason underlying the distinction of the Senate except ‘the election which produces the House of Representatives is direct, whereas the Senate is subject to election in two stages.’ Other foreign observers concurred. Harriet Martineau, the prolific English writer who visited America in 1834, wrote regarding the Senate: ‘The stamp of originality was impressed upon every one, and inspired a deep, involuntary respect.’<sup>85</sup> John Stuart Mill asserted that indirect elections have ‘proved eminently successful; and are conspicuously the best of all the

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<sup>81</sup> Todd Zywicki, ‘Senators and Special Interests: A Public Choice Analysis of the Seventeenth Amendment’ in *The Oregon Law Review*. Vol. 73, No. 4 (Winter, 1994), 1014.

<sup>82</sup> Bybee, 510.

<sup>83</sup> Byrd, 39.

<sup>84</sup> Alexis de Tocqueville, *Democracy in America*, (New York: Harper Collins, 1998), 200.

<sup>85</sup> Hoebeke, 54.

elections in the United States... consisting of the most distinguished men.’<sup>86</sup> William Gladstone added to the Senate’s accolades, calling it ‘that most remarkable body, the most remarkable of all the inventions of modern politics.’<sup>87</sup>

The antebellum Senate was arguably the most esteemed legislative body in the world.<sup>88</sup> The four-decade period preceding the Civil War is considered to have been the Senate’s ‘Golden Age’. In the words of Senate historian Richard A. Baker, it was in this period that the Senate ‘moved from a position of relative equality with the House of Representatives and the Presidency to a preeminent position.’<sup>89</sup> Nearly half of the antebellum presidents – seven of fifteen – served in the institution. As of 1816, the Senate was still widely regarded as a rather inconsequential body, however. In 1789 through 1809, the House led the Senate in national newspaper coverage by twenty-three to one; in 1809 through 1829, by four to one.<sup>90</sup> Coverage equalized in 1829 largely through the increasing part the Senate played in the admission of new territories and states, as well as the rising stardom of several senators, including Charles Sumner, John Calhoun, Daniel Webster, and Henry Clay. The Senate debates of the Compromise of 1850 have been called ‘the most famous in the history of Congress.’<sup>91</sup> Generations of schoolchildren recited the famous Senate speeches of the debate. ‘I wish to speak today, not as a Massachusetts man, nor as a Northern man, but as an American,’ declared Daniel Webster. ‘I speak today for the preservation of the Union. Hear me for my cause.’<sup>92</sup> The Golden Age of the Senate and the brink of disunion shielded issues associated with indirect representation. At the country’s centennial, few observers could have imagined the frenzied agitation on the horizon.

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<sup>86</sup> Sopp, 81.

<sup>87</sup> Haynes, Vol. I, ix.

<sup>88</sup> Sopp, 78.

<sup>89</sup> Baker, 33. See also: Fred Harris, *Deadlock or Decision: The U.S. Senate and the Rise of National Politics* (New York: Oxford University Press, 1993), 19.

<sup>90</sup> David Mayhew, *America’s Congress: Actions in the Public Sphere*, (New Haven: Yale University Press, 2000), 131.

<sup>91</sup> McPherson, *Battle Cry of Freedom*, 71.

<sup>92</sup> *ibid*

### Section III. Gradual Pressure

- (A). Corruption, Bribery, and Legislative Deadlocks
  - (B). Popular Support, State Pressure, and Muckraking Journalism
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The previous section contextualized the Seventeenth Amendment in historical and contemporary notions regarding the U.S. Senate. This section focuses on the agitation which sought to overturn the principle of indirect elections established by the Founding Fathers. Based on my research, this agitation grew vigorously starting in the 1890s, only growing irrepressible from 1908-11. The objective of the section is to support the notion that scholars' focus on long-standing factors is not helpful, and in fact harmful, to explaining the Senate's *volte-face*.

#### ***Section III (A). Corruption, Bribery, and Legislative Deadlocks***

At the turn of the twentieth century, the Senate was widely regarded to be at its nadir both in terms of its reputation and performance.<sup>93</sup> As the secondary literature discusses, the Senate's fall into disrepute was caused mainly by its association with bribery, corruption, and legislative deadlocks. My research also indicates that another dynamic, the Senate's incompetent response to the silver issue, stimulated the call for popular elections. These factors fanned the flames of discontent over indirect elections but did not ensure the passage of a Constitutional amendment.

Corruption and bribery have been traditionally emphasized as the smoking guns demolishing indirect elections. 'There was a general perception that senatorial elections had been bought and sold', notes Bybee.<sup>94</sup> Certainly, the Senate gave the impression that it was the stronghold of trusts and corporate interests.<sup>95</sup> New senatorial scandals seemed to crop up every year. In 1891, for

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<sup>93</sup> As Haynes observed, 'Never before in its history has the Senate been the target of such scathing criticism as during the past fifteen years' (*The Election of Senators*, 165).

<sup>94</sup> Bybee, 539.

<sup>95</sup> Lewis Gould, *The Most Exclusive Club: A History of the Modern United States Senate*, (New York: Basic Books, 2005), 4. Also see: Rogers, 112.

instance, the *New York Times* dubbed the California assembly ‘the Legislature of a Thousand Scandals’.<sup>96</sup> Three years later, the *New York Times* alleged that \$50,000, and perhaps as much as twenty times that, had been offered to two senators to kill a tariff reform bill.<sup>97</sup> The former Secretary of Treasury Charles Fairchild exclaimed that the rumors may not be true but still showed ‘the possibilities of corruption in the government.’<sup>98</sup> That same year, the president of a powerful sugar corporation openly admitted that he hoped ‘to control the legislation of Congress with a view of protecting the interests of the trust.’<sup>99</sup> In 1905, John Mitchell of Oregon earned the dubious distinction of becoming the first senator in history to be sentenced and convicted (and to this day remains one of only five sitting senators to have been convicted, along with Ted Stevens of Alaska in 2008).<sup>100</sup> He was found guilty of a shady business transaction, ordered to pay a fine, and sentenced to six months in prison; the scandal died, however, as the 70-year-old senator passed away before his expulsion.<sup>101</sup>

The Senate’s reputation as a ‘paradise of millionaires’ further damaged its stock in the public’s eyes.<sup>102</sup> The old joke went that it was harder for a poor man to enter the Upper Chamber than for a rich man to enter Heaven.<sup>103</sup> And a story circulating the streets painted President Grover Cleveland in his bed at night, with his wife, when she suddenly turned to him, waking him, “Honey, there are robbers in the house!” Letting out a sigh of relief, Cleveland replied: “Dear, there are no robbers in the house; all of the thieves are in the Senate.”<sup>104</sup> By the early 1890s, it was widely perceived that the Senate had degenerated from a body of honorable statesmen to a collection of

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<sup>96</sup> ‘It is a Shocking Story’, *New York Times*, April 6, 1891 p. 1.

<sup>97</sup> ‘Attempt to Bribe Senators’, *New York Times*, May 17, 1894 p. 1.

<sup>98</sup> ‘Pass the Bill At Once’, *New York Times*, May 17, 1894 p. 1.

<sup>99</sup> ‘Article 6, No Title’, *Los Angeles Times*, June 17, 1894 p. 6.

<sup>100</sup> ‘Expulsion and Censure’, [www.senate.gov](http://www.senate.gov).

<sup>101</sup> ‘The Sentence of Mitchell’, *New York Times*, July 26, 1905 p. 6.

<sup>102</sup> Haynes, *The Election of Senators*, 165.

<sup>103</sup> *ibid*, 173.

<sup>104</sup> Gould, 10.

‘boodlers and an aggregation of corporate representatives’.<sup>105</sup> A *New York Times* article in 1890 observed that a millionaire could purchase a vacant Senate seat, just as ‘he would buy an opera box, or a yacht, or any other luxury which he can afford to indulge himself.’<sup>106</sup> The ‘chief objection’ to indirect election of senators, noted an article in 1899, was the ease with which the seats could be purchased.<sup>107</sup> Transatlantic commentaries worsened the image of the Senate in this regard. London’s *Spectator* asserted in 1900 that the U.S. Senate ‘now swarms with millionaires who are believed to purchase their election by large gifts to campaign funds.’<sup>108</sup> And a West Virginia race for a U.S. Senate seat attracted negative attention in 1902 when it was acknowledged that all three candidates were millionaires.<sup>109</sup> It was not long after that the *Wall Street Journal* wrote: ‘There can be no doubt that the Senate has declined in public regard and confidence to a very large extent.’<sup>110</sup>

In addition to the ill-will engendered by corporate influences and bribery, the Senate by the 1890s had stooped from its lofty plateau due to legislative deadlocks in the state assemblies. Here, again, the scholarship discusses the long history of the issue, a fact that clearly led to calls for reform but does not explain the timing of a Constitutional amendment. A typical approach in this context is for the secondary material to begin with the year 1866, when Congress passed a law requiring state legislatures to choose senators by majority vote, rather than plurality vote.<sup>111</sup> It is stated, rightly, that this law backfired. It led to an even greater number of deadlocks. Mr. Fessenden’s experience became frequent. Maine’s Senate elected him eighteen times in the span of several months to become U.S. Senator, but the lower house refused to concur, and hence the seat remained vacant throughout that Congress.<sup>112</sup> In Delaware in 1895, the number of days of deadlocks was 114 with 217 ballots

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<sup>105</sup> ‘Money for the Masses’, *New York Times*, March 28, 1890 p. 4.

<sup>106</sup> ‘The New Millionaire Senate’, *New York Times*, Jan. 17, 1890 p. 4.

<sup>107</sup> ‘Plurality Election of Senators’, *Los Angeles Times*, April 30, 1899 p. B10.

<sup>108</sup> ‘Popular Vote for Senators’, *New York Times*, April 22, 1900 p. 4.

<sup>109</sup> ‘Candidates in West Virginia’, *New York Times*, April 7, 1902 p. 1.

<sup>110</sup> ‘Decline of the Senate’ *Wall Street Journal*, August 24, 1905 p. 1.

<sup>111</sup> Byrd, 393.

<sup>112</sup> Haynes, *The Election of Senators*, 20.

cast, and no senator ended up being elected. The chart below summarizes significant deadlocks encountered by nine states in a ten-year period from 1892 to 1901, whereby each state went months with only one or sometimes no senators.

<u>Year</u>	<u>State</u>
1892	Louisiana
1893	Montana, Utah, Wyoming
1894	-
1895	Delaware
1896	Kentucky
1897	Oregon
1898	-
1899	Delaware, California, Pennsylvania
1900	-
1901	Delaware (two) <sup>113</sup>

These serious deadlocks occurred decades before the passage of the Seventeenth Amendment, and therefore cannot be considered a proximate cause. Nonetheless, vacancies were problematic and perhaps unconstitutional. As Representative Corliss noted, ‘The framers of the our Constitution did not intend to permit vacancies to exist in the Senate.’<sup>114</sup>

Another long-simmering problem with indirect elections stemmed from the multiplication of candidates. When North Carolina’s Legislature convened to elect a U.S. senator in 1903, eighty-five legislators put their names up for selection.<sup>115</sup> In the elections of 1899, twenty-seven candidates were voted for in Delaware, twenty-one in Montana, twenty in Utah, seventeen in Pennsylvania, and sixteen in Nebraska.<sup>116</sup> Perhaps the most eyebrow-raising feature of these deadlocks, however, was their tendency to turn violent. Passions ran so high during a Kentucky election in 1896, for instance, that the governor declared martial law, calling in the state militia for three days, to minimize the risk of bloodshed.<sup>117</sup> The Missouri election in 1905 occurred in the midst of a riot. One senator grabbed a

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<sup>113</sup> *ibid*, 60.

<sup>114</sup> Bybee, 543.

<sup>115</sup> Haynes, Vol. I, 83.

<sup>116</sup> Haynes, *The Election of Senators*, 45.

<sup>117</sup> *ibid*, 50.

ladder, which had been resting by a large clock on the wall, and threw it out the window in disgust; a bloody fist fight ensued. Ink bottles were thrown and desks torn from the floor.<sup>118</sup> In a controversial 1903 Colorado race, Republican state leaders appealed to the governor for troops to support their candidate, since it was believed that the Democrats had the Denver police on their side.<sup>119</sup> The cost to the states in money due to these deadlocks or in the derangement of public affairs was an expensive luxury. A meeting of the Tennessee Legislature to fill a deceased U.S. Senator in 1898 lasted from January 17 to February 5, and is estimated to have cost the state \$20,000.<sup>120</sup> That is to say nothing of the recrimination which accrued over the contests.

These legislative deadlocks are instructive as to the timing of the Seventeenth Amendment. Notably, the worst excesses of the deadlocks occurred in the 1890s, not in the immediate years preceding its passage. Martial law was declared in Kentucky in 1896, for instance, not 1908 or 1910; Delaware went without any senators in 1901, not 1907 or 1909. A poignant remark to this point was implicitly offered by Senator Hanna, when he remarked that an amendment for direct elections ‘will be *encouraged* by obstinate deadlocks in the Senate.’<sup>121</sup> Legislative deadlocks, in other words, made electoral reform more likely, but not inevitable. As early as 1902, it was clear to many commentators that the compromised ability of legislatures to elect senators was demonstrated ‘conclusively’ by deadlocks.<sup>122</sup> It would take another nine years before the Senate concurred to alter the Constitution.

A subtheme of this paper is to note errors in the secondary material or to shed light on germane evidence not previously identified. Such an opportunity arises with the Senate’s tangled action on the silver issue in the 1890s. While the scholarship discusses at length entrenched corruption and deadlocks, it fails to detect agitation rooted in the attitude of the Senate on the repeal of the Silver Purchase Law of 1893, which ‘stimulated the demand for direct popular control of the

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<sup>118</sup> Haynes, *The Election of Senators*, 48.

<sup>119</sup> *ibid*, 50.

<sup>120</sup> *ibid*, 62.

<sup>121</sup> ‘Senator Hanna in Town’, *New York Times*, March 26, 1901 p. 3. Emphasis added.

<sup>122</sup> ‘Election of Senators’, *Los Angeles Times*, June 24, 1902 p. 5.



election of members of the Upper Branch’, according to the *Congregationalist* periodical.<sup>123</sup> With a decline in personnel, the Senate passed aggravating laws in the face of economic crises. In 1878, for instance, it overrid a presidential veto requiring the treasury to coin from two to four million worth of bullion into dollars, the market value of which at the time was only a little more than 90 cents. Again in the early 1890s, when silver in the standard dollar had depreciated in value far below the level of 1878, the Senate by a great majority declared in favor of unrestricted coinage – a policy out of touch with public sentiment.<sup>124</sup> The unpleasant truth regarding the silver issue was that the Senate is ‘making a parliamentary ass of itself’, declared the *New York Times* in 1893.<sup>125</sup> The economic performance of the Senate, lamented another article in 1895, has been ‘lame and impotent’ and ‘ignoble’.<sup>126</sup> When considering the justifications for the amendment, it is worth recalling that specific economic policies of the Senate in the 1890s prompted calls for reform – not only government malfeasance. State legislatures appeared increasingly ill-equipped to send talented men to Congress.

The character of the Senate had deteriorated from the time of Webster and Clay. The introduction of new states was seen to have lowered the caliber of the Senate.<sup>127</sup> An article from the *New York Times* in 1897 called the new senators from the West ‘bores’ and reminisced about ‘the great men of the earlier time’.<sup>128</sup> While these lamentations illustrated frustration with indirect elections, their existence two decades before the Seventeenth Amendment passed indicates that the critical years had yet to occur.

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<sup>123</sup> ‘Government by the People’, *Congregationalist*, Oct. 19, 1893 (Vol. 78, No. 42) p. 519.

<sup>124</sup> ‘The Senate in the Light of History’, *Forum*, Nov. 1893 p. 272.

<sup>125</sup> ‘Senators are Disgusted’, *New York Times*, Oct. 17, 1893 p. 5.

<sup>126</sup> ‘Ignoble and Impotent’, *New York Times*, March 4, 1895 p. 1.

<sup>127</sup> According to the *New York Times*, ‘Charges of corruption, jury bribery, and others were made against what is termed the gang that is in control of political affairs in New Mexico, caused all hope of the passage of New Mexico and Arizona Statehood bills to be abandoned for this session.’ (‘Scandal Halts Statehood Bill’, Feb. 28, 1909 p. 2). And another article: ‘A Senate committee will inquire into the actions of men accused of land grabbing... The committee declined to grant statehood to Arizona because it feared the trail will lead to the adjacent territory.’ (‘New Mexico Frauds To Be Investigated’, *New York Times*, March 1, 1909 p. 3).

<sup>128</sup> ‘The Decline of the Senate’, *New York Times*, Dec. 27, 1897 p. 6.

### ***Section III (B). Popular Support, State Pressure, and Muckraking Journalism***

Popular pressure began to crystallize in the 1890s to alter the Constitution. The resentment of the electorate towards indirect elections was supplemented by a surge in state resolutions declaring steadfast commitment for reform. Muckraking journalism fanned the flames of discontent as well, most notably David Graham Phillips's articles in *Cosmopolitan* magazine in 1906. This section is intended mainly to reinforce the secondary literature with the caveat that it will stress the historical nature of these phenomena. Popular discontent, state memorials, and muckraking journalism had by overwhelming fashion urged the necessity of what would become the Seventeenth Amendment by 1906 at the latest – years before the passage of the measure. These dynamics were thus insufficient to account for the Senate's support for a popular elections amendment.

As early as 1896, a formal report from a Senate committee noted that 'the tendency of public opinion is to disparage and depreciate its [the Senate's] usefulness, its integrity, and its power.'<sup>129</sup> In 1900, an article in the *Los Angeles Times* predicted that approximately ninety percent of the public would support direct elections of senators, if the question were submitted to a national referendum.<sup>130</sup> The sentiment had manifested itself in many ways. Farmer associations, 'granges', and other local organizations, especially in the West, sent petitions to Congress. It became a popular plank in the platforms of political parties, beginning with the People's Party in 1892. The Democrats first endorsed the initiative long before the Seventeenth Amendment as well, in 1900, and did so in 1904, 1908, and 1912. The Republican Party rejected a proposal for popular elections in 1908, but in his acceptance speech of the nomination, President Taft remarked: 'With respect to the election of senators by the people, personally I am inclined to favor it, but it is hardly a party question.'<sup>131</sup>

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<sup>129</sup> George Haynes, *The Senate of the United States: Its History and Practice*, Vol. II, (New York: Russell & Russell, 1938), 1070.

<sup>130</sup> Following the House's 135-30 affirmative resolution on direct elections, the *Los Angeles Times* wrote, 'There is not much doubt that if the question were submitted to a popular vote, the majority would be quite as large, proportionally as the House vote.' ('A Significant Vote', *Los Angeles Times*, April 14, 1900 p. 8).

<sup>131</sup> Haynes, Vol. I, 97.

Based on my own research, newspaper articles from the 1890s demonstrate that popular opinion overwhelmingly supported the popular election of senators for decades. The *Los Angeles Times* declared in 1891, for instance, ‘There is growing sentiment in favor of electing U.S. senators by the people at large.’<sup>132</sup> An article in the *New York Times* six months later used similar rhetoric: ‘A demand had been made... mostly in the West, for the election of U.S. senators by popular vote.’<sup>133</sup> Another article described the crystallizing demand: ‘The sentiment in favor of the change has been growing for a long time, and recent developments have strengthened it.’<sup>134</sup> There is ‘widespread dissatisfaction with the present system’, noted the periodical, *March*.<sup>135</sup> After the mid-1890s, with the movement gaining momentum, the language of newspapers changed. Now the demand was not only growing but nearly unanimous. Public opinion, declared the *Los Angeles Times* in 1896, is ‘loud and emphatic, pronounced as it is imperative’ and ‘almost unanimous among the great masses of people.’<sup>136</sup> An article in 1899 noted: ‘Without much doubt, public sentiment throughout the country is favorable to changing the method of electing members to the American House of Lords.’<sup>137</sup> Another article observed: ‘Popular sentiment is undoubtedly growing up in favor of some change in the method of electing senators.’<sup>138</sup> By 1902, ‘the prevailing sentiment of the American people was undoubtedly in favor of direct elections.’<sup>139</sup>

A similar dynamic occurred with the state legislatures, whereby increasing numbers came out in support of direct elections until a near-maximum threshold was attained *years* before 1911. In 1891, for instance, both houses of the Wisconsin and Illinois Legislatures put themselves on record

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<sup>132</sup> ‘Electing U.S. Senators’, *Los Angeles Times*, March 15, 1891 p. 4.

<sup>133</sup> ‘Nominating U.S. Senators’, *New York Times*, March 28, 1891 p. 4.

<sup>134</sup> ‘By Popular Vote’, *New York Times*, Dec. 14, 1891 p. 4.

<sup>135</sup> ‘How Can We Secure Better U.S. Senators’, *March*, 1893 (Vol. XLV, No. 5) p. 792.

<sup>136</sup> ‘Senators by Popular Vote’, *Los Angeles Times*, March 21, 1896 p. 2.

<sup>137</sup> ‘Election of U.S. Senators by Popular Vote’, *Los Angeles Times*, Jan. 27, 1899 p. 8.

<sup>138</sup> ‘A Plan for Electing Senators’, *Los Angeles Times*, May 24, 1899 p. 8.

<sup>139</sup> ‘Election of Senators’, *Los Angeles Times*, June 24, 1902 p. 5.

as favoring the election of U.S. senators by popular vote.<sup>140</sup> These formal petitions were followed by more than two dozen states. By 1900, Mr. Clark could tell his House colleagues that *thirty-three states* had declared for the election of senators by popular vote.<sup>141</sup> Although some contend this number was not reached for several years afterwards, due to confusion stemming from a technicality of the petition process, it is clear that more than the two-thirds supported the initiative more than a half-dozen years before the Seventeenth Amendment. The turn of the century therefore witnessed the curious phenomena of a majority of legislatures repetitively electing U.S. senators who did not respect their views on direct elections. Idaho exemplifies this trend. Its legislature instructed its two senators to support the measure. One of its senators, Mr. Borah, vigorously complied; its other senator, Mr. Heyburn, was one of the measure's fiercest opponents. He openly maneuvered to block the amendment. When asked why he would not comply with the instructions of the state legislature, he replied: 'A man who is afraid of his legislature or whose vote is affected by what his legislature may do is not fit to be here.'<sup>142</sup>

The third component motivating popular elections which the secondary literature emphasizes is muckraking journalism. Certainly, it is true that the campaign for direct elections 'took a large step forward' after February 1899 when the publisher William Randolph Hearst decided to make direct elections of senators an objective of his publishing empire. Early in 1905, Hearst purchased *Cosmopolitan*, a respectable family magazine, which quickly became one of the nation's most sensationalized muckraking journals.<sup>143</sup> Hearst hired the rising star, David Graham Phillips, to write a

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<sup>140</sup> 'They Favor Popular Elections', *New York Times* April 10, 1891 p. 1 and 'Want a Popular Vote for Senators', *New York Times*, June 10, 1891 p. 4.

<sup>141</sup> 'Popular Election of Senators', *New York Times*, April 13, 1900 p. 5. While not referring to this quote specifically, some scholars have implicitly challenged this notion by arguing that this plateau of states was not attained until several years later. Haynes, for instance, writes that 31 states had made formal applications for the submission of a direct elections amendment by 1906 (Election of Senators, 101).

<sup>142</sup> 'Fails to Force Vote on Direct Elections', *New York Times*, Feb. 18, 1911 p. 2.

<sup>143</sup> Byrd, 395.

series of articles appearing from March through November 1906. Phillips directed his fire at twenty-one senators, all of whom were very wealthy.<sup>144</sup>

‘Treason is a strong word, but not too strong, rather too weak, to characterize the situation in which the Senate is the eager, resourceful, indefatigable agent of interests as hostile to the American people as an invading army could be, and vastly more dangerous; interests that manipulate the prosperity produced by all, so that it heaps up riches for the few; interests whose growth and power can only mean the degradation of the people, of the educated into sycophants and the masses towards serfdom.’<sup>145</sup>

By May, *Cosmopolitan*’s circulation had doubled. In truth, many of his writings were exaggerated, if not patently false, such as his accusations that Senator John Aldrich’s daughter married Commodore Vanderbilt’s only son as proof that the two men were involved in a perfidious act to defraud the American people.<sup>146</sup> These flagrant portrayals stimulated existing popular sentiment for direct elections – at least initially.

Ultimately, Phillips went too far and earned the wrath of politicians; President Theodore Roosevelt himself coined the derisive expression ‘muckraker’ to describe Phillips’ overstated journalism.<sup>147</sup> The nation’s respectable press reacted unfavorably to Phillips as well. Editors feared that the series would discredit their own efforts to bring reform. In fact, to many observers, after initially garnering support for direct election, Phillips’ unsubstantiated accusations paralyzed the cause for an amendment.<sup>148</sup> The editor of *Collier’s* wrote in 1906: ‘These articles made reform odious.’ Another editor noted that muckrakers were ‘undermining the confidence and destroying the respect’ of investigative journalism which had been built up by truthful and conscientious work.<sup>149</sup> Supreme Court Justice George Shiras, Jr. criticized muckrakers when he declared: ‘I doubt whether

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<sup>144</sup> Eighteen of the twenty-one were Republicans, many of whom chaired important committees. Baker, 70.

<sup>145</sup> Sopp, 59.

<sup>146</sup> Bybee, 91.

<sup>147</sup> Baker, 70.

<sup>148</sup> Byrd, 398.

<sup>149</sup> *ibid*

the young men, who are writing for the magazines for the profit of those publications, rather than the prosperity of the country, can improve upon the work of the founders of the government.’<sup>150</sup>

As late as 1905, the *Los Angeles Times* observed: ‘It cannot be said, with truth, that any material progress toward a realization of the proposed amendment has been made.’<sup>151</sup> That assessment stemmed from the realities that public opinion was not progressive but fluctuated over time; the total number of states supporting direct elections – 33 – reached its high-water mark thirteen years before the Seventeenth Amendment was ratified; and muckraking journalism was less important than typically portrayed. These factors encouraged electoral reform, but did not guarantee a Constitutional amendment.

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<sup>150</sup> ‘Ex-Justice of Federal S.C. Denounces Direct Elections’, *Los Angeles Times*, June 15, 1911 p. 2.

<sup>151</sup> ‘Election of Senators’, *Los Angeles Times*, July 5, 1905 p. II4.

## Section IV. Inside the Senate

- (A). Political Arguments Against Direct Elections
  - (B). Institutional Factors Making Reform Unlikely
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The previous section emphasized out-of-doors pressure for electoral reform. This section takes an inside look at the Senate from 1890 to 1911, with special emphasis on the few years before the amendment passed. No other systematic portrayal of the Senate's reaction to the agitation exists among published material to my knowledge. This section is important because it shows that many governmental officials believed steadfastly in indirect elections as planned by the Founding Fathers, and that despite widespread public support for change, the stimulus was not powerful enough to pass the Senate until the four factors coalesced.

### *Section IV (A). Political Arguments Against Direct Elections*

Mr. George Hoar of Massachusetts vocalized many of the strongest arguments against direct elections. He and his colleagues fired back at advocates who asserted that indirect elections had corrupted the Senate. Mr. Hoar thought that popular elections of senators actually created even greater temptations for bribery.<sup>152</sup> Indirect elections saved the Senate from dealing with the demagoguery, falsified returns, and fraudulent residence disputes that characterized the campaigns in the House. Part of Mr. Hoar's antagonism was also based on Constitutional grounds; he went so far as to argue that without the senatorial principle of indirect representation, 'it was matter of historical fact... that the Constitution never would have been agreed to.'<sup>153</sup>

Opponents also counted among their members the venerable figures of Mr. Elihu Root of New York and Mr. George Edmunds of Vermont. During the debates, Mr. Root, a former Secretary of State and future Nobel Prize winner, recognized the potential folly of electoral reform. American

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<sup>152</sup> 'Direct Vote', *Los Angeles Time*, April 4, 1893 p. 2.

<sup>153</sup> 'Direct Vote for Senators Opposed', *New York Times*, Feb. 14, 1902 p. 3.

democracy has been so successful, he argued, because the country has made it practically impossible for the frenzy of the moment to carry out excesses which have wrecked other experiments in history. ‘No one can see foresee the far-reaching effects,’ Mr. Root said, ‘of changing the language of the Constitution in any manner which affects the relations of the states to the general government.’<sup>154</sup> Mr. Root believed so fervently in the principle of indirect elections he refused to stand for popular elections after the passage of the amendment.<sup>155</sup> ‘How little we know what any amendment would produce’, he exclaimed.<sup>156</sup>

Many U.S. senators questioned whether the problem was serious enough to warrant a Constitutional amendment. It is true that the Senate’s reputation had suffered from the antebellum period, but it was still widely respected. Of all the Upper Chambers in the world, the U.S. Senate was still regarded as the most successful.<sup>157</sup> ‘Who could declare,’ asked a senator in 1892, ‘looking at the distinguished men who had occupied seats in the Senate for the last one hundred years, if senators had been chosen by popular vote, there would have been better men, greater, or nobler men?’<sup>158</sup> In 1896, the *New York Times* noted: ‘The Senate of the United States should be, and in fact is, the most dignified as well as the most important legislative body in the world.’<sup>159</sup> An editorial in the *New York Times* noted that ‘in the company of senators a member of the President’s cabinet looks like a farmer.’<sup>160</sup> Three years later, Woodrow Wilson wrote, ‘Most of the leading figures among the active public men of the country are now to be found in the Senate, not in the House.’<sup>161</sup> A newly published book in 1910 observed, ‘without exception, the strongest and most effective’ legislative assembly in

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<sup>154</sup> 46 Cong. Rec. 2242 (1911).

<sup>155</sup> Bybee, 538.

<sup>156</sup> 46 Cong. Rec. 2242 (1911).

<sup>157</sup> Haynes, *The Election of Senators*, 217.

<sup>158</sup> ‘Senators by Popular Vote’, *New York Times*, April 13, 1892 p. 2.

<sup>159</sup> ‘For a Popular Senate’, *New York Times*, March 21, 1896 p. 2.

<sup>160</sup> ‘In Washington a Senator is a Very Exalted Personage’, *New York Times*, July 26, 1905 p. 6.

<sup>161</sup> Haynes, Vol. II, 1019.



the world' is the American Senate.<sup>162</sup> And even if the Senate had degenerated of late, Mr. Hoar contended, many senators were 'often worse than any senators now.'<sup>163</sup>

One of the trump cards of direct elections opponents was to point out that the real problem with indirect election did not stem from U.S. senators but with malfeasance in state legislatures. 'You cannot purify the fountain by changing the form of the stream that comes from it',<sup>164</sup> one senator famously remarked in reference to the pervasive corruption of government. Based on my research, nearly every state legislature from 1890 to 1913 faced alarming scandals themselves, from the typical money laundering to an atypical instance of state officials allegedly being 'persuaded' to vote a certain way by women agents hired by a corporate entity.<sup>165</sup> Mr. Root made this point explicitly: 'If people would look properly to the selection of legislative candidates', he was sure there would be 'comparatively little complaint regarding senators.'<sup>166</sup> James Gibbons, the second man in America to be made a Cardinal (in 1886), pointed out the obvious in a slight against the public: 'If you cannot trust the members of the legislature how can you trust their constituents from whom they spring?'<sup>167</sup>

Senators defended indirect elections in other ways as well. 'Have there been no millionaires elected as governors of states?' asked one senator rhetorically, anticipating the costs that would underlay campaigning in popular elections.<sup>168</sup> 'This will cease to be a deliberative body', another senator remonstrated, 'if every senator has to convince, to explain to the great body of the people of his state every act he performs and every concession he makes.'<sup>169</sup> Others asserted that the Senate's

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<sup>162</sup> 'Second Chambers', *New York Times*, May 28, 1910 p. BR1.

<sup>163</sup> 'Is Senator Hoar Degenerate?', *New York Times*, April 3, 1897 p. 6.

<sup>164</sup> Haynes, *The Election of Senators*, 240.

<sup>165</sup> According to the *New York Times*: 'Rumors of bribery in connection with the fight to name a successor to U.S. Senator John Dryden [New Jersey] have given rise to stories that agents of a certain candidate are at work among wives and sweethearts of members of the legislative to bribe them to lend their influence to induce the members to vote for the candidate the agents name. The agent picks out the man he thinks may be "available" and then sends a woman to make the acquaintance of the women of his household.' ('Women To Bribe Lawmakers', Jan. 26, 1907 p. 1).

<sup>166</sup> 'Opposition to Direct Voting', *Los Angeles Times*, Feb. 11, 1911 p. 14.

<sup>167</sup> 'Gibbons Deplores Change', *New York Times*, Oct. 2, 1911 p. 11.

<sup>168</sup> 'Senators by Popular Vote', *New York Times*, April 13, 1892 p. 2.

<sup>169</sup> Hoebcke, 175.

abuses had not been nearly as serious a menace to the public interest as the reckless haste and partisan manipulation which characterized much of the proceedings of the House. In that institution, there had been some 350 contested elections stemming from controversies of the popular vote.<sup>170</sup> It was widely asserted that popular elections would deprive the states of men of wisdom who would not undertake the labor and inconvenience of a popular campaign.<sup>171</sup>

More worrisome was the potential for an amendment to establish disconcerting precedents. When Mr. Palmer of Illinois took the initiative in support of direct elections in 1892, Mr. Chandler objected on the grounds that it would result in other ghostly changes. 'If adopted, it would be followed by provisions for the choice of President and Vice-President by the people,' altering the fundamental framework of the U.S. government, he told his colleagues.<sup>172</sup> Rather than go so far as an amendment, therefore, some senators sought reform measures to enhance, rather than abolish, indirect procedures.<sup>173</sup> 'Practically the same result of an amendment for direct elections can be achieved indirectly, as has been attained in several states', noted the *Los Angeles Times* in 1906.<sup>174</sup> A thoughtful response came from Mr. Root, who questioned why 'abandon... rather than reform the system.'<sup>175</sup> This had the advantages of precedent and feasibility: in 1866 Congress passed a law requiring state legislatures to choose U.S. senators by majority vote, rather than a vote based on plurality.<sup>176</sup> The law unfortunately created more frequent legislative deadlocks; why not revise the law, asked Mr. Root, to permit election by plurality in order to end deadlocks?<sup>177</sup> Of the 1,180 senators elected from 1789 to 1909, only fifteen were contested due to allegations of corruption.

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<sup>170</sup> Haynes, *The Election of Senators*, 222.

<sup>171</sup> 'Opposition to Direct Voting', *Los Angeles Times*, Feb. 11, 1911 p. 14.

<sup>172</sup> 'Senators by Popular Vote', *New York Times*, April 13, 1892 p. 2.

<sup>173</sup> 'The Bribery of Voters', *New York Times*, April 22, 1905 p. 8 and 'To Push Fight Against Corrupt Practices', *New York Times*, Nov. 26, 1905 p. 14.

<sup>174</sup> 'Electing U.S. Senators', *Los Angeles Times*, Sept. 15, 1906 p. II4.

<sup>175</sup> Bybee, 540.

<sup>176</sup> 'Senators by Popular Vote', *New York Times*, April 13, 1892 p. 2.

<sup>177</sup> Bybee, 543.

Only seven of these, or .006 percent, had been denied their seats. ‘That is a pretty good record’, observed Mr. Heyburn in a rare moment of brevity.<sup>178</sup>

#### ***Section IV (B). Institutional Factors Making Reform Unlikely***

In addition to strong political arguments against direct elections, other factors – namely institutional ones – created conditions that decelerated the Seventeenth Amendment’s progress. Factors such as the use of the filibusters and certain procedural rules made the Senate amenable to the minority control of senators (in opposition to the amendment). Senators’ use of ‘strategic voting’ created even greater imposing barriers to the amendment. These so-called killer amendments stultified the aims of senators genuinely interested in the amendment.

One of the major institutional factors impeding the measure involved sophisticated voting, wherein senators stapled minor ‘amendments’ to resolutions ostensibly calling for popular election of senators. The strategy was to intentionally defeat the popular cause in a backhanded manner. No fewer than seven senators by my count – Mr. Depew, Mr. Penrose, Mr. Borah, Mr. Root, Mr. Bacon, Mr. Sutherland, and Mr. Bristow – proposed additions to the actual amendment, slightly altering its wording or the mechanisms for its enforcement. Each time this backlogged the process. Each time new versions added conflicts of interest, making it unlikely the resolution would pass.

The first example occurred in 1902 with Mr. Penrose, whose addition to the affirmative House resolution scuttled any chances a Constitutional amendment may have had of passing the Senate at that time. In addition to giving the people the right to select U.S. senators, Mr. Penrose proposed that each state should be given one additional senator for every additional ratio of 500,000 people.<sup>179</sup> This was a perfect example of what political scientists today call ‘sophisticated voting’. As Duke Professor John Aldrich explains in *Why Parties?*, the Senate has invariably featured incentives

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<sup>178</sup> Hoebke, 179-180.

<sup>179</sup> ‘Senatorial Representation’, *New York Times*, March 15, 1902 p. 8.

for actors to misreveal preferences; that is, to act ‘strategically’ rather than to express preferences ‘sincerely.’<sup>180</sup> Mr. Penrose’s objective was not actually to have a Constitutional amendment passed but to gain notoriety to show what would be the frightening outcome of the adoption of the plan.<sup>181</sup> As Mr. Stewart of Nevada had argued a few days earlier, direct elections would eventually result ‘in another step being taken which would result in depriving smaller states of representation.’<sup>182</sup> Mr. Penrose thus killed the amendment.

A couple of weeks later, Mr. Depew further hurt the chances for electoral reform by cloaking his objectives in another ‘killer amendment’. His direct elections resolution required that qualifications to vote for senators and representatives shall be uniform in all states, a demand that had little chance of gaining the support of states’ rights advocates.<sup>183</sup> *The New York Times* remarked: ‘Advocates of direct elections heard this morning with *dismay*’ the proposal of Mr. Depew.<sup>184</sup> The qualification practically killed the Senate resolution, noted another article: ‘Those who favor the resolution in the committee do not favor the Depew amendment.’<sup>185</sup> Depew ‘scuttled the resolution’, explained another writer, ‘after the amendment, the committee was hamstrung.’<sup>186</sup>

In 1908, Mr. Depew offered another amendment providing for the direct election of senators according to population.<sup>187</sup> The new resolution frightened senators that their institution would be transformed into a quasi-Lower House; the proposal was too grandiose to garner support. Mr. Penrose then amplified Mr. Depew’s resolution by introducing yet another amendment. He proposed a popular elections resolution with the caveat that senators be apportioned by population. According

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<sup>180</sup> Aldrich, 301.

<sup>181</sup> ‘Senatorial Representation’, *New York Times*, March 15, 1902 p. 8.

<sup>182</sup> *ibid*

<sup>183</sup> ‘Popular Vote for Senators’, *New York Times*, April 11, 1902 p. 3.

<sup>184</sup> ‘The Election of Senators’, *New York Times*, April 16, 1902 p. 8. Emphasis added.

<sup>185</sup> ‘No Popular Vote for Senators Yet’, *New York Times*, May 10, 1902 p. 8.

<sup>186</sup> ‘Senate Election Tangle’, *New York Times*, May 28, 1902 p. 8.

<sup>187</sup> ‘Against Popular Ballot’, *New York Times*, May 24, 1908 p. 3.

to its terms, this time around, no state could command more than fifteen senators.<sup>188</sup> These qualifications ensured the defeat of direct elections proposal yet again.

A fifth example of strategic voting damaging the stimulus came in 1911 with Mr. Root's proposal. Assailing direct elections for an hour and a half in the Senate, Root introduced a bill in February amending the 1866 statute on the subject and providing if a legislature fails to cast a majority for a candidate before the first of March preceding the date of the beginning of the new term, a plurality vote shall suffice. The *New York Times* bemoaned that the proposal 'complicated' the pending Seventeenth Amendment.<sup>189</sup> The Root bill was severely criticized by many senators and was not passed. 'Its obvious purpose to offset agitation in favor of popular elections was manifest from the start,' noted the *New York Times*.<sup>190</sup> Moreover, an additional hurdle the Seventeenth Amendment had to pass was the compromise plan on the Borah amendment. Instead of making direct elections mandatory upon the states, the resolution decreed that the various state legislatures would simply be authorized to pass a popular election statute if they should see fit. In this way, opponents of popular elections believed they would effectively 'take much wind from the sails' of supporters for the Borah resolution.<sup>191</sup> Mr. Borah himself was not happy with the course his amendment had taken, and the proposal lived a short life.

Other institutional factors affected the prospects for electoral reform in the Senate. In 1899, for instance, Mr. Heyburn of Idaho tried to manipulate procedural rules to his advantage to the detriment of popular elections. After the Committee of Judiciary reported favorably to an amendment, Mr. Heyburn challenged the right of existence of the committee itself. He raised the point that the resolution adopted a week earlier reorganizing the Committee of the Judiciary went into effect only at noon a week later, and thus the meeting of the committee earlier that day (and by

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<sup>188</sup> *ibid*

<sup>189</sup> 'For Senators by Plurality', *New York Times*, Feb. 26, 1911 p. 1.

<sup>190</sup> 'New Direct Election Plan', *New York Times*, June 6, 1911 p. 3.

<sup>191</sup> (1911gg), 'Favor Root Election Plan', *New York Times*, May 28, 1911 p. C4.

implication its favorable report) were out of order.<sup>192</sup> The point was technically correct. But, proponents argued back, because the report was made after twelve, the rules of the Senate forbid inquiry into the action of standing committees. Ultimately, the report advanced unimpaired, but the measure was decisively defeated before the full chamber.<sup>193</sup> Apparently, Mr. Heyburn did not forget the tactic because eleven years later he would make the same attempt again, resulting in precisely the same fashion.<sup>194</sup>

Mr. Heyburn and his flare for attempting to outmaneuver opponents on issues of procedure appeared on the scene with another scheme in 1911. Bitterly opposed to direct election of senators, he was even more hostile to another measure the Senate was discussing, Canadian reciprocity. He openly pledged to filibuster for as long as his health permitted, since ‘filibustering against one of these measures is filibustering against the other.’<sup>195</sup> And the attempt paid off: days of Senate sessions appear to have been wasted because of Mr. Heyburn’s rants. Cloture, the motion to bring debate quickly to an end, did not exist in 1911. (It was instituted in the Senate six years later in 1917 in an attempt to prevent a few willful men from thwarting the Treaty of Versailles.)<sup>196</sup> Thus, even if a supermajority wanted to end Mr. Heyburn’s scheming, they had no device to do so. According to the *New York Times*, filibusters prevented or delayed action on a host of imminent votes in the Spring of 1911, including popular election of senators, tariff measures, Canadian reciprocity, and a vote as to the fate of Mr. Lorimer of Illinois.<sup>197</sup> The Senate had long been accustomed to such filibusters. In 1893, a minority against tariff reform notoriously claimed, it seemed, ‘unlimited time for debate and talk and talk, and talk and talk’; Mr. Allen spoke one night for twelve hours, not to enlighten his

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<sup>192</sup> ‘Report on Popular Vote’, *New York Times*, April 9, 1899 p. 6.

<sup>193</sup> *ibid*

<sup>194</sup> In a striking instance of journalistic déjà vu, the *New York Times* reported the story with nearly identical language as the article twelve years earlier. See: ‘Report on Popular Vote’, May 2, 1911 p. 6.

<sup>195</sup> ‘Fails to Force Vote on Direct Elections’, *New York Times*, Feb. 18, 1911 p. 2. Also see: ‘Threat in Senate of Extra Session’, *New York Times*, Feb. 2, 1911 p. 5.

<sup>196</sup> Roger Davidson and Walter Oleszek, *Congress and Its Members, Second Ed.* (Washington, D.C.: Congressional Quarterly, 1985), 283.

<sup>197</sup> ‘Senate in Tangle, Extra Session Sure’, *New York Times*, Feb. 24, 1911 p. 4.

colleagues but simply to prevent the taking of a vote.<sup>198</sup> So endless was the discourse in 1911, however, that an extra session for the Senate was ordered, while senators began earnestly calling to limit filibusters.<sup>199</sup> Ultimately, to the surprise of contemporaries, the Seventeenth Amendment passed in the next term, partly because Mr. Heyburn was not in good physical condition and realized that single-handedly he could not forever prevent a vote on popular elections.<sup>200</sup> He passed away less than a year later, of heart and kidney complications, at sixty years of age.

A final way institutional factors in the Senate delayed the Seventeenth Amendment involved an unprecedented question of procedure, the settlement of which has developed into established precedent.<sup>201</sup> The matter concerned the Constitutionality of the actions of the Vice-President, James Sherman (who tragically passed away eight months later). The Constitution, of course, gave the Vice President the authority to cast a deciding ballot in the case of a legislative tie in the Senate. When the Senate tied 44-44 on the so-called Bristow clause of Seventeenth Amendment in June of 1911, the VP cast an affirmative vote – breaking the tie.<sup>202</sup> What was the problem? President William Taft’s junior partner created an unprecedented Constitutional debate because never before had a VP broken a tie on an amendment. Mr. Reed of Missouri insisted the VP had overextended his hand; his power was limited to break ties on ordinary legislation, he insisted, not amendments.<sup>203</sup> An investigation was launched. And the Seventeenth Amendment was forced to jump over another institutional hurdle. The objection was ultimately overcome, claimed the *Los Angeles Times*, by a subsequent vote of 64 to 24 adopting the Seventeenth Amendment with the Bristow clause.<sup>204</sup> In hindsight, it seems that the Seventeenth Amendment in similar form would have soon passed anyway even had Mr.

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<sup>198</sup> ‘The Deadlock in the Senate’, *The Independent*, Oct. 19, 1893. Vol. 45, No. 2342 p. 11.

<sup>199</sup> ‘Root Seeks Senate Reform’, *New York Times*, April 7, 1911 p. 7.

<sup>200</sup> ‘To Ballot on Direct Vote’, *New York Times*, May 26, 1911 p. 5.

<sup>201</sup> Eric Schickler, *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress*, (Princeton: Princeton University Press, 2001), 26.

<sup>202</sup> Byrd, 401.

<sup>203</sup> ‘Would Amend the Constitution’, *Los Angeles Times*, June 13, 1911 p. 1. Also see: ‘Contest Direct Vote Motion’, *New York Times*, June 14, 1911 p. 3.

<sup>204</sup> ‘Election of U.S. senators’, *Los Angeles Times*, June 15, 1911 p. II4.

Sherman capitulated and not cast the deciding ballot.<sup>205</sup> Based on my research, the Seventeenth Amendment was *fait accompli* by this time. The following pages explain what brought on this suddenly sanguine trajectory.

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<sup>205</sup> ‘Senate Adopts Popular Vote’, *New York Times*, June 13, 1911 p. 1.



## Section V. Critical Factors

- (A). Mr. Lorimer's Scandal and Other Corruption, 1910-11
  - (B). Ineffective State Primary Laws, 1908-1911
  - (C). The Explosive Issue of Race, 1911
  - (D). Death of Mr. Allison and 'The Four', 1908-11
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The previous sections have established that the stimulus for direct elections had been simmering for decades but were not strong enough to convince the Senate to support the Seventeenth Amendment. It took four critical factors from 1908-11 to coalesce in rapid succession to change the issue of direct elections into a question necessitating national change. This explanatory framework is based overwhelmingly on primary sources never before published.

### *Section V (A). Mr. Lorimer's Scandal and Other Corruption, 1910-11*

In 1909, a local story catapulted to the nation's front-pages implicating Mr. William Lorimer of Illinois as the lead agent in a large swindle case. Over the next two years, a scandal ensued that became the most sensationalized investigation in the history of the Senate up to that time.<sup>206</sup> Some 749 pages of testimony were taken during the investigation.<sup>207</sup> The case stirred public opinion in favor of electoral reform to an unprecedented extent before the convicted senator was expelled in 1912, halfway through his term.

Mr. Lorimer was not a newcomer to making a splash in the headlines. Before being indicted in the swindle case, the senator's ascent to the U.S. Senate in 1909 had been greeted with excitement for ending a deadlock lasting four-and-a-half months in the Illinois Legislature. A bipartisan coalition had ended the stalemate by electing Lorimer, a dark horse candidate acceptable to both parties.<sup>208</sup> This deadlock by itself whipped up public opinion to a frenzy, but it was a breeze compared to the

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<sup>206</sup> Hoebeke, 92.

<sup>207</sup> *ibid*, 95.

<sup>208</sup> The vote was 108 to 94. Haynes, Vol I, 130.

whirlwind to follow. Two years later, in April, the *Chicago Tribune* broke the story that Lorimer's election had been accomplished by bribery, 'throwing Illinois politicians into tumult.'<sup>209</sup> The disclosure came from a statement by Representative Charles White that he had received \$1,000 from Lee O. Brown, the Democratic leader of the Lower House, to vote for Lorimer and another \$900 from Robert Wilson, another Democratic legislator – as his share of the 'jackpot', a general corruption fund being distributed among the entire legislature.<sup>210</sup> Adjusted to 2009 dollars, this appears to have equaled the sum of approximately \$45,000.<sup>211</sup> A day later, two other members of the legislature came forward with testimony supporting the charges. One of these state senators remarked: 'A Democratic senator, an honest man, in whose word I have every confidence, told me just before Mr. Lorimer was elected senator that he had been offered \$1,000 if he would vote for Lorimer and use his influence with another legislator to do the same. He refused.'<sup>212</sup>

The months ahead followed with a similar outpouring of evidence and new indictments. The leader of the Illinois House was indicted on the charge of bribery at the same time as Representatives Robert Wilson and Michael Link.<sup>213</sup> A fourth legislator at the end of May confessed to taking a bribe to vote for him.<sup>214</sup> The scandal reached the highest levels of government: the Governor of the state, Mr. Deneen, as well as fifty-five other witnesses were indicted to bring forth testimony.<sup>215</sup> The U.S. Senate itself began investigating Lorimer's election in the Spring of that year, with one U.S. senator insisting 'Mr. Lorimer must have known what was going on... he was a seasoned politician.'<sup>216</sup>

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<sup>209</sup> 'Tells of Bribes To Elect Lorimer', *New York Times*, May 1, 1911 p. 1.

<sup>210</sup> *ibid*

<sup>211</sup> \$1 in 1909 equals approximately \$86 in 2009 dollars. 'Inflation Calculator' [www.data.bls.gov/cgi-bin/cpicalc.pl](http://www.data.bls.gov/cgi-bin/cpicalc.pl) and [www.westegg.com/inflation/infl.cgi](http://www.westegg.com/inflation/infl.cgi).

<sup>212</sup> 'Another Bribery Story', *New York Times*, May 2, 1910 p. 2.

<sup>213</sup> 'Indict Lawmakers in Illinois Scandal', *New York Times*, May 7, 1910 p. 1.

<sup>214</sup> 'Lies, Cries Lorimer, Another Confessor', *New York Times*, May 29, 1910 p. 1.

<sup>215</sup> 'Governor To Testify in Bribery Inquiry', *New York Times*, June 2, 1910 p. 4. And see: 'Illinois Corruption Inquiry', *Wall Street Journal*, Sept. 26, 1910 p. 6.

<sup>216</sup> 'Owen and Beveridge Say Put Lorimer Out', *New York Times*, Jan. 2, 1911 p. 8.

Other senatorial scandals began to rage at the same time. In July of 1910, for instance, Mr. Fowler, while campaigning for the U.S. Senate seat of New Jersey, called the state a ‘rotten borough and a cesspool of corruption.’<sup>217</sup> A New York scandal dominated the headlines when it was revealed that the Upper House unanimously voted to investigate allegations of corruption against state senator Jonathan Allds.<sup>218</sup> The *Los Angeles Times* called the accusations against Allds, ‘a most startling story of legislative corruption’, in reference to the accused’s alleged demands for sums of money in return for legislative favors.<sup>219</sup> Also in the summer of 1910, notably before the crucial elections in November of that year, a U.S. senator from Oklahoma let it be known that he had been approached for disreputable purposes. Mr. Thomas Gore claimed on the floor of the Senate in late June that a bribe of some \$50,000 had been offered to him – more than one million dollars in 2009 terms.<sup>220</sup> He claimed to have rejected the bribe, which had been offered to block legislation adverse to plans disposing of land inhabited by Choctaw and Chickasaw Native Americans. Despite Mr. Gore’s appropriate actions, his story angered the public and hinted at the pervasiveness of corruption in the Senate. It was then reported that the ringleader of the bribery plan was being offered the vast sum of at least three million dollars should he succeed, \$68,000,000 in 2009 dollars.<sup>221</sup>

These new allegations exceeded the threshold of what was considered acceptable. The Lorimer scandal, in particular, roused the malcontent of the public because of its long duration. It is worth contrasting that experience with a modern-day scandal involving the Illinois Legislature and governor, that of Mr. Rod Blagojevich. Blagojevich’s domination of headlines lasted some three months, from December 2008 to February 2009, which covered the looming indictment by federal prosecutors in early December, his imminent impeachment in January, and his unusual appearances

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<sup>217</sup> ‘Fowler’s Fight on for Jersey Senator’, *New York Times*, July 16, 1910 p. 3.

<sup>218</sup> ‘Full Senate to Try Case Against Allds’, *New York Times*, Jan. 21, 1910 p. 5.

<sup>219</sup> ‘Conger Tells Senate How Allds Got Bribe’, Feb. 12, 1910 p. 1.

<sup>220</sup> ‘50,000 Briber Offer to Federal Senator’, *New York Times*, June 24, 1910 p. 1.

<sup>221</sup> *ibid*

on the Late Show with David Letterman and the View in early February.<sup>222</sup> It only took three months for Mr. Blagojevich to become ‘the most hated man in America’, in the words of *The New Republic*.<sup>223</sup> By contrast, the Lorimer scandal kept the public in a fit for two years. Mr. William J. Bryan declared that the Democratic legislators who elected Lorimer should be read out of the party.<sup>224</sup> And, in September of that year, former President Roosevelt denounced Lorimer in what was called by the *New York Times*, ‘one of the stiffest talks on corruption in public life ever delivered to an American audience by a public man.’<sup>225</sup> Speaking at the prestigious Hamilton Club in Chicago, Mr. Roosevelt reportedly ‘took their breath away by the directness and vigor’ of his denunciation.<sup>226</sup> He accused the Illinois Legislature of the ‘foulest corruption and most infamous treason to American institution.’ He defied any person ‘of average intelligence who would read the confessions and statements, taken by two State’s Attorneys, not to come to the same conclusion.’ The speech was met with thunderous applause. It was reported to be one of the most forceful speeches Colonel Roosevelt ever delivered.<sup>227</sup>

The Lorimer scandal aroused unmatched anger as well because of the senator’s emphatic claims of innocence despite mounting evidence to the contrary. Speaking before the U.S. Senate, Lorimer dispassionately ‘expressed to his associates... he had done no wrong to secure the election, and believed that no friend had done wrong for him.’<sup>228</sup> These denials came even as the Senate prepared and passed a resolution declaring the election fraudulent and therefore void. This scandal, as well as the other allegations coming at the same time, invigorated the demand for reform to an unprecedented extent, and was therefore a critical factor prompting the Seventeenth Amendment.

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<sup>222</sup> Maureen Ryan and Rick Pearson, ‘David Letterman Grills Rod Blagojevich’, *The Chicago Tribune*, Feb. 4, 2009.

<sup>223</sup> ‘The New Republic: In Defense of Blagojevich (Sort Of)’, *The Huffington Post*, Feb. 1, 2009.

<sup>224</sup> ‘Bryan Bars Lorimer Men’, *New York Times*, Aug. 6, 1910 p. 2.

<sup>225</sup> ‘Roosevelt Ban Put On Lorimer’, *New York Times*, Sept. 9, 1910 p. 1.

<sup>226</sup> *ibid*

<sup>227</sup> *ibid*

<sup>228</sup> ‘Owen and Beveridge Say Put Lorimer Out’, *New York Times*, Jan. 2, 1911 p. 2.

### ***Section V (B). Ineffective State Primaries, 1909-1911***

An informal collaboration of governors and other prominent officials, led by Woodrow Wilson of New Jersey, instilled the movement for direct elections with an aura of strength and professionalism it had heretofore lacked. They rallied to bring a national solution to the problem of indirect elections the states had made worse by devising abortive reforms. As the states had recognized for decades, the difficulty of securing a Constitutional amendment meant that the ills of indirect elections were theoretically easier to solve on a state-wide basis than at the highest levels of government. Unfortunately, by 1908, it became strikingly clear that *state* attempts at solutions – primary laws in essence giving the public the right to vote for U.S. senators – were inherently flawed. They could not by themselves end the party bossism that dominated state politics or effectively deal with charges that state laws were unconstitutional, as Washington’s Supreme Court declared in 1910. The Seventeenth Amendment was seen as a politically savvy and wise way to end these complaints.

Woodrow Wilson first caught the attention of the country at large by intervening in a senatorial election in 1909.<sup>229</sup> As governor-elect, he boldly declared that in the coming session of the legislature ‘self-respecting Democrats’ could vote only for Mr. James Martine, the Democrat who had won a primary for U.S. senator, but was not backed by the party machine. This was not a partisan issue, Mr. Wilson declared, but a moral issue: he supported Martine not because he believed he was the most deserving, but because he was indicated as the preference of a large plurality of Democrats who voted in the primary.<sup>230</sup> The mainstream media latched on to the story after Mr. Wilson made a backhanded threat against the New Jersey Legislature: ‘I have no fear the Legislature will go back on our platform pledges’, he declared. ‘If anything of the kind is attempted... I can make more trouble

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<sup>229</sup> Haynes, Vol. I, 104.

<sup>230</sup> ‘The Issue in New Jersey’, *New York Times*, Dec. 15, 1910 p. 8.

for them than they can make for me.’<sup>231</sup> Wilson thus went out of his way to convince Democratic legislators it was their duty to vote for Mr. Martine.<sup>232</sup>

The campaign for direct elections was actually rejuvenated before Woodrow Wilson was governor-elect, in 1906, when Mr. Chamberlain, the Governor of Oregon, received an official notice from the Ohio Legislature inviting him to join in a cross-country movement for electoral reform. Mr. Chamberlain replied that he was heartily in favor of the effort and would cooperate.<sup>233</sup> That same year, Mr. Cummins, the Governor of Iowa, called for a national convention to abolish indirect elections. Other governors notified Mr. Cummins that they were excited to join his effort.<sup>234</sup> Less than twelve months later, Mr. Edward Stokes, Governor of New Jersey, committed himself to a plan that was tantamount to the election of senators by direct vote.<sup>235</sup> In 1911, Governor Judson Harmon of Ohio was credited for persuading state officials that the shrewdest course for the state was direct elections, when a state primary resolution passed the Legislature in February.<sup>236</sup> Governor Glasscock of Virginia responded by recommending to the state legislature that they endorse popular election of senators.<sup>237</sup> When the Seventeenth Amendment ultimately passed, it was the Governor of Massachusetts, Mr. Foss, who first publicly urged the state legislature to ratify the amendment.<sup>238</sup>

The initiative also received a major boost from Mr. Bryan, who was widely regarded as the most powerful Democrat in the country.<sup>239</sup> ‘With the zeal of a new convert’, described the *Los Angeles Times*, Mr. Bryan advocated direct elections: ‘I think it is time to speak plainly in regard to the U.S. Senate’, he said, in preface to his endorsement for an amendment.<sup>240</sup> Later that year, 10,000

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<sup>231</sup> ‘Wilson Now Sure of Defeating Smith, *New York Times*, Dec. 22, 1910 p. 1.

<sup>232</sup> ‘Smith Broke Faith, Wilson Declares’, *New York Times*, Dec. 24, 1910 p. 2.

<sup>233</sup> ‘Chamberlain to Cooperate’, *Los Angeles Times*, Feb. 4, 1906 p. 1.

<sup>234</sup> ‘Election of U.S. Senators by Popular Vote’, *Los Angeles Times*, Feb. 5, 1906 p. 6.

<sup>235</sup> ‘Stokes for Direct Vote for U.S. senators’, *New York Times*, Jan. 9, 1907 p. 4.

<sup>236</sup> ‘Wins Direct Vote for Ohio’, *New York Times*, Feb. 9, 1911 p. 1.

<sup>237</sup> ‘West Virginia Session On’, *New York Times*, Jan. 31, 1911 p. 3.

<sup>238</sup> ‘First to Adopt Direct Vote’, *New York Times*, May 18, 1912 p. 2.

<sup>239</sup> Bybee, 538.

<sup>240</sup> ‘Wake Up Bill!’, *Los Angeles Times*, Sept. 6, 1906 p. II4.

people gathered in sweltering heat at Madison Square Garden in New York to hear a speech from Mr. Bryan, the Democratic nominee for President; a thunder of approval greeted Bryan when he spoke in favor of direct elections.<sup>241</sup> The event bubbled with excitement partly due to Bryan's well known declaration a few weeks earlier exhorting President Taft to come out in unwavering support of direct elections.<sup>242</sup> Mr. Bryan urged Mr. Taft to follow up with real action after his implicit endorsement of direct elections made at the 1907 Republican Convention. It was believed that if the President took a firm position, it would go a long way towards accomplishing a Constitutional amendment.<sup>243</sup>

Several assessments can be gleaned from the information above to help understand the timing of the Seventeenth Amendment. First, it is noteworthy to consider when these prominent political figures came out in support of the measure. Notice that they did not publicly support reform in the 1890s or the beginning half of the first decade of the twentieth century; they only clamored for direct elections *after* 1905. It was only after this time that Governor Chamberlain of Oregon, for instance, declared his intention to create a partnership with other governors to support an amendment, and it was only in 1910 that Woodrow Wilson famously declared that he 'could make more trouble for the Legislature' than vice versa. Not only should the dates of the statements be noticed, but so too should their substance. Importantly, Mr. Bryan always called for a *Constitutional amendment*; notably, New Jersey's Legislature reported affirmatively to Governor Wilson's request to urge their representative to support an *amendment*. Why did Bryan and Wilson want an amendment (instead of reform) and why did they call for it vigorously after 1906? First, it is instructive to recognize that the country as a whole was moving in a direction of greater domestic reform (discussed below), and therefore, it seems, there were political bounties to be reaped by capitalizing on public discontent. One article, for instance, sardonically portrayed Mr. Bryan as 'engaging in political buncombe for the necessity of

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<sup>241</sup> '10,000 Swelter as Bryan Speaks', *New York Times*, Aug. 31, 1906 p. 1.

<sup>242</sup> 'A Few More Left', *New York Times*, July 15, 1909 p. 6.

<sup>243</sup> 'Oregon Asks Taft's Advice', *New York Times*, Nov. 27, 1908 p. 4.

change.’<sup>244</sup> ‘Bryan seems to imagine that he has discovered a new issue in his advocacy of direct election of United States senators’, the article asserted, but this method ‘has been advocated for some years by men of all political parties, on the rostrum and in political platforms.’<sup>245</sup> There were thus selfish reasons to support an amendment.

A second and less cynical motivation involves what I believe to have been a noble-minded decision on the part of Mr. Bryan and Governor Wilson: they believed a Constitutional amendment was in the best interest of the country because it would standardize state primaries. While this notion has not been raised in the scholarship, it is persuasive to me and most directly explains why an amendment came to be seen as necessary, instead of leaving the question of direct election to the states to decide. Primary laws had for years sought to achieve in essence what the Seventeenth Amendment accomplished, but these diverse state laws came to be seen as categorically flawed. The existing scholarship has not only missed this crucial link in trying to understand the timing of the amendment, but has also largely misinterpreted state primaries as a whole, by stressing its virtues as opposed to its shortcomings.<sup>246</sup> My research shows that criticism against state primaries laws (not coincidentally) reached its high point in the immediate years before the Seventeenth Amendment.

In 1901, the Oregon Legislature enacted a law for the first time intended to secure the virtual election of senators to the U.S. Senate by popular vote.<sup>247</sup> The law provided that ‘it shall be the duty of each house to count the votes and announce the candidate having the highest number and

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<sup>244</sup> ‘Wake Up Bill!’

<sup>245</sup> *ibid*

<sup>246</sup> A typical account is offered by Byrd, who gives the impression that after the failed Oregon experiment of 1901, state primaries worked well and motivated electoral reform. He notes that the new system ‘was first put to test in the election of 1907; it worked *perfectly*... Other states followed’ (395, emphasis added). I will show that in reality state primaries was perceived to be flawed both before and after 1907, and that the woes stemming from these laws were a critical factor for the Seventeenth Amendment – not because it showed the wisdom of popular elections but because it was seen as a *necessity* to end the state primary controversies. Other authors have also missed the significance of the state primary laws. Lewis Gould explains that ‘Oregon’s experience showed clearly that popular sentiment was turning towards direct elections’ (31). This assessment lacks critical examination; the state primaries were much more important than merely *reflecting* a pre-existing desire. They *reoriented* official wisdom.

<sup>247</sup> As early as 1875 Nebraska provided for a popular preferential vote on candidate for the U.S. senator (Rogers, 14). Also see: ‘The Oregon Law’, *Los Angeles Times*, June 6, 1906 p. II4.



thereupon the house shall proceed to the election of a senator.’<sup>248</sup> This provision proved to be an abject failure the first time it was tried.<sup>249</sup> The man who received a plurality of thirty-seven percent in the popular vote secured only a small minority of legislators’ vote, the members distributing their votes among fourteen candidates. A deadlock ensued, which lasted for five weeks, and ended in the election of a member who had not received a single vote in the much-vaunted popular election.<sup>250</sup> Even when the law was revised, and improved, the Oregon experiment continued to arouse great unease because in 1908 it looked as if a Republican Legislature would be forced to choose a Democrat for the U.S. Senate – a radical peculiarity at the turn of the century.<sup>251</sup> Oregon had voted for Mr. Taft and was considered a Republican state, but in fact Mr. George Chamberlain, a Democrat, was sworn in as a member of the U.S. Senate. This was ‘an unprecedented violation of customs and principles of the party politic’, noted the *Los Angeles Times* in 1909.<sup>252</sup> Contemporaries called the Oregon experiment ‘a poor innovation’ and noted how Oregon’s senators stood ‘far below the average’ of the Senate ‘in ability and further in morals.’<sup>253</sup>

By 1906, party primaries for senators had been designed in many other states, including Virginia, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Kentucky.<sup>254</sup> By 1912, twenty-eight of the forty-eight states had adopted some kind of senatorial primary, indicating that the prevailing sentiment of the legislatures and voting public was for foregoing indirect elections.<sup>255</sup> Some scholars, notably William Riker, have misdiagnosed this fact to explain the Seventeenth Amendment as merely accomplishing formally what had been the case for

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<sup>248</sup> Byrd, 394.

<sup>249</sup> *ibid.* Also see: ‘Election of Senators’, *Los Angeles Times*, July 5, 1905 p. II4.

<sup>250</sup> Haynes, Vol. II, 101.

<sup>251</sup> ‘Oregon Election Today’, *New York Times*, June 1, 1908 p. 1 and see: ‘Choice May Be Democrat’, *Los Angeles Times*, April 19, 1908 p. 3.

<sup>252</sup> ‘Oregon’s New Senator’, *Los Angeles Times*, April 10, 1909 p. II13.

<sup>253</sup> ‘A Poor Innovation’, *Los Angeles Times*, April 21, 1909 p. II4.

<sup>254</sup> ‘Electing U.S. senators’, *Los Angeles Times*, Sept. 15, 1906 p. II4 and ‘Popular Vote for Senator’, *New York Times*, April 24, 1906 p. 1.

<sup>255</sup> Baker, 70 and Sopp, 8.

years. ‘There was little point in holding out’, Riker explains inadequately, in terms of why the Senate passed an amendment; it merely ‘formalized’ what the states had been doing for years<sup>256</sup> This is an unsatisfactory account: it does not explain why governors and other leaders continuously supported a Constitutional amendment after 1906 if the states could effectively accomplish on their own what national legislation merely formalized. If every state could accomplish through state laws what the Seventeenth Amendment unnecessarily formalized, why would so many Southern senators – historically opponents of centralization – support direct elections? It is my belief that Riker could not be more incorrect when he says ‘there was little point in holding off’; this implies it was a passive change of little importance. In reality, the demand for direct elections continued to be boisterous up to the eve of its ratification, and it was an active, not a passive, demand; the Seventeenth Amendment was perceived as necessary to solve local problems springing from primary laws in a single swoop through a national remedy and to end party bossism that continued to plague Senate elections.

Starting in 1908, and rising in intensity thereafter, state primary laws for senators began to be seen as flawed. The problem was that the state primaries only increased the pervasive bossism that had plagued the indirect procedure. ‘As to corruption, it is more easily carried on under the new system than the old. This is the best tool in the hands of the political boss,’ noted the *Los Angeles Times* in 1909.<sup>257</sup> ‘If the direct primary [in the hands of the parties] tended to establish popular control of public policy and promote good government, it ought not to be difficult to supply practical evidence. But we are constantly met not with evidence but apology’, noted the *New York Times* in 1908 regarding state primaries.<sup>258</sup> Perhaps the bitterest sentiments in this context were roused in Wisconsin in 1908, when Mr. Isaac Stephenson was elected under a state primary law amid allegations of corruption. Mr. Stephenson, the richest man in the state, was charged with bribing

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<sup>256</sup> Riker, 467.

<sup>257</sup> ‘The New Congress’, *Los Angeles Times*, Feb. 27, 1909 p. II4. Similar to modern-day primaries for presidential candidates, state primaries for U.S. senators were executed under the auspices of political parties.

<sup>258</sup> ‘Direct Primary in Operation’, *New York Times*, April 19, 1909 p. 8.

officials \$250,000 to vote for him.<sup>259</sup> The successful assault against Mr. Stephenson led the *New York Times* to bemoan that ‘any boss in any state may defeat the popular will.’<sup>260</sup> How long, Senator Husting asked rhetorically, ‘Can you use the cloak of the primary to debauch the electorate?’, referring to the ease with which party machines could control state primaries.<sup>261</sup>

Other states exhibited similar problems. The notorious Tom Taggart of Indiana, the long-time Democratic state boss, predictably came out in favor of primaries in 1910.<sup>262</sup> Missouri’s election for a U.S. senator in 1908 was widely called ‘a conspiracy.’<sup>263</sup> One of the clearest results of the Illinois primary for senator was reported to be ‘the success of politicians in manipulating’ the results.<sup>264</sup> ‘We have warned, sincere, well meaning but misguided citizens not to trust it’, the *Los Angeles Times* concluded.<sup>265</sup> Direct primary laws strengthened, not weakened, political manipulation and promoted the purchase of office.<sup>266</sup>

Charges that the state primary laws were, in fact, unconstitutional invigorated the perceived necessity for the Seventeenth Amendment. Most ominously, the Supreme Court of Washington declared in 1910 that the state’s provision providing for ‘popular elections’ violated the state constitution.<sup>267</sup> These charges led to the uncomfortable situation where certain candidates pledged to abide by the Supreme Court’s decision and others to disregard it.<sup>268</sup> Representative Gonna, for instance, made headlines when he announced his intention to ignore the ruling. Meanwhile, the North Dakota Supreme Court followed suit when it invalidated part of the state legislature’s primary law because it ‘adds another oath, declaration and test, as a qualification for office’ which was forbid

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<sup>259</sup> ‘How Will Legislature Choose Flint’s Successor’, *Los Angeles Times*, May 8, 1910 p. II12.

<sup>260</sup> ‘A Painful Incident’, *New York Times*, Jan. 21, 1909 p. 10.

<sup>261</sup> ‘Stephenson May Be Re-elected Senator’, *New York Times*, Jan. 27, 1909 p. 5.

<sup>262</sup> ‘How Will Legislature Choose Flint’s Successor?’, *Los Angeles Times*, May 8, 1910 p. II12.

<sup>263</sup> ‘The New Congress’, *Los Angeles Times*, Feb. 27, 1909 p. II4.

<sup>264</sup> ‘Primary Law in Illinois’, *New York Times*, Aug. 11, 1908 p. 4.

<sup>265</sup> ‘Absolute Usurpation’, *Los Angeles Times*, Jan. 23, 1909 p. II4.

<sup>266</sup> ‘Editorial Article 1’, *Los Angeles Times*, Jan. 12, 1908 p. II4.

<sup>267</sup> ‘How Will Legislature Choose Flint’s Successor’, *Los Angeles Times*, May 8, 1910 p. II12.

<sup>268</sup> *ibid*

under the state constitution.<sup>269</sup> Importantly, these controversies arose in notable pitch in the immediate years before the amendment passed. ‘The new system is unconstitutional and corrupt’, declared the *Los Angeles Times* in 1909 in reference to certain state primaries.<sup>270</sup> The controversies engendered by these laws were thus a critical factor pushing the Seventeenth Amendment.

### ***Section V (C). The Explosive Issue of Race, 1911***

The Senate’s agenda regarding direct elections irrevocably changed in 1911 due to the racially-tinged issue of states’ rights. The role of race in the amendment’s timing has been significantly underplayed by the existing scholarship, but the truth is that the issue went a long way towards delaying the measure’s ratification – by at least two years based on my research. The problem was that many senators who genuinely supported a Constitutional amendment found themselves in the unusual and difficult spot of being forced to vote against the measure because of manipulated outcomes induced by strategic amendments and voting. A few conservative senators (fiercely opposed to direct elections) raised ‘killer amendments’ – defined as measures expected to cause a bill to fail.<sup>271</sup> These intransigent senators introduced the issue of states’ rights and race to intentionally disrupt what was a popular cause and tantalize Southern senators historically sensitive to federal encroachment. To the South, the repetitively-introduced Sutherland/Bristow measure to the Seventeenth Amendment looked a lot like Reconstruction, if not another attempt at a Force Bill (1890). The race issue is so pivotal because it shows how the popular elections amendment depended on fleeting factors not only on the long-standing justifications stressed by scholars. Its successful reconciliation in the Senate in June 1911 goes a long way in explaining why it took the House twelve additional months to ratify the very stimulus it had sought for decades.

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<sup>269</sup> Haynes, Vol. II, 104.

<sup>270</sup> ‘The New Congress’, *Los Angeles Times*, Feb. 27, 1909 p. II4.

<sup>271</sup> Wilkerson, 535.

In hindsight, the strategy of conservative opponents appears ingenious. By turning the issue of direct elections into a bitter controversy striking at the nerves of Southern senators, they made opponents out of members genuinely interested in progressive reform and significantly decreased the likelihood of the amendment's passage. The key was to find a controversial issue tangentially related to popular elections, and then to insert that issue into the literal language of the amendment. Reactionary senators found their winning issue in the still festering wounds of the Civil War, an issue that the last decade had demonstrated still struck a sensitive chord in Southern states. The still strong passions engendered by disunion made the Democratic Party the 'only choice for white voters in most sections of Dixie.' In 1902, the *New York Times* noted about Delaware elections: 'The price for Negroes in the counties is generally accepted to be \$10 each.'<sup>272</sup> In 1908, Maryland's Senate nearly passed a Constitutional amendment to disenfranchise blacks.<sup>273</sup> At the same time, Mr. Daniel of Virginia famously walked around the Senate chamber with crutches, as a result of three wounds he received as a Confederate soldier at the first Battle of Manassas.<sup>274</sup> Two years later, during his emotional farewell address to the Senate, Mr. James Gordon of Mississippi acknowledged that he was 'born a multi-millionaire' but regretted spending 'much of it on my slaves.'<sup>275</sup><sup>276</sup> Importantly, Southern senators resisted racial integration but at the same time supported progressive measures, such as direct elections of senators. In fact, in 1899, the *New York Times* discussed General Robert E. Lee in the context of electoral reform, noting that his still-living friends were in favor of nominating U.S. senators by popular vote.<sup>277</sup>

In January of 1911, the real fight over popular election of senators began in the Senate when Southern members opened an attack on the Sutherland resolution, which had been proposed by Mr.

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<sup>272</sup> 'President's Interest in Delaware Politics', *New York Times*, Nov. 10, 1902 p. 1.

<sup>273</sup> 'To Disfranchise Negroes', *Los Angeles Times*, Feb. 15, 1908 p. 7.

<sup>274</sup> 'Snapshots at Members of Congress', *New York Times*, Feb. 20, 1910 p. SM11.

<sup>275</sup> 'Gordan Holds Senate in Thrall', *Los Angeles Times*, Feb. 25, 1910 p. 1.

<sup>276</sup> Gould, 21.

<sup>277</sup> 'The Virginia Senatorship', *New York Times*, May 10, 1899 p. 6.

Southerland of Utah in the preceding term.<sup>278</sup> By May of 1911, the *Los Angeles Times* would say that the injection of the race question had lifted the ‘hitherto comparatively commonplace discussion of direct elections... to a plane of almost sensational interest.’<sup>279</sup> Mr. Sutherland’s version of the Seventeenth Amendment explicitly reserved to Congress the authority to supervise Senate elections, if it should so desire.<sup>280</sup> Southern senators worried that the clause would be used as a pretext to send federal agents to polling station to compel the counting of ‘Negro votes’.<sup>281</sup> Even though most Southern senators supported direct elections, they felt compelled to vote against the entire measure because of the small part (the Bristow resolution) that tainted everything else.<sup>282</sup> This led to an unfortunate snowballing effect, whereby actions to squash this small clause overshadowed the true point of the stimulus – direct elections. On January 22, a group of Southern senators proposed its own clause, which explicitly gave the *states* full power over the popular elections.<sup>283</sup> The Southern position, in turn, disturbed Northern Democrats who favored direct elections but did not wish to alienate Southern colleagues.<sup>284</sup> They worried that this guarantee would give Southern states *carte blanche* to disenfranchise blacks. Some senators urged emphatically that the Southern senators’ proposal was, in fact, unconstitutional: it practically repealed Sec. IV, Part I of Art. I of the Constitution, which gave Congress the power to regulate the times, places, and manner of calling elections for representation.<sup>285</sup> It also appeared to contradict the Fifteenth Amendment.<sup>286</sup> The Southern proposal died not long thereafter but the controversy continued.

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<sup>278</sup> ‘Begin Senate Fight over Popular Vote’, *New York Times*, Jan. 21, 1911 p. 3.

<sup>279</sup> ‘Race Problem Jolts Senate’, *Los Angeles Times*, Feb. 11, 1911 p. 1.

<sup>280</sup> ‘To Force Vote on Freak Bill’, *Los Angeles Times*, Feb. 15, 1911 p. 5 and see: ‘Borah Attacks North’, *New York Times*, Feb. 17, 1911 p. 2.

<sup>281</sup> ‘Begin Senate Fight over Popular Vote’, *New York Times*, Jan. 21, 1911 p. 3.

<sup>282</sup> Byrd, 400.

<sup>283</sup> ‘Race Problem Jolts Senate’.

<sup>284</sup> John Bunker, ‘The Urban Political Machine and the Seventeenth Amendment’ in *The Journal of American History*, Vol. 56, No. 2 (Sep., 1969), 308.

<sup>285</sup> ‘Electing Senators’, *New York Times*, Jan. 23, 1911 p. 6.

<sup>286</sup> ‘Anti-Lorimer Fight Going on All Night’, *New York Times*, Feb. 28, 1911 p. 2.

Indeed, it was just heating up. The problem stemmed from staunch direct election opponents, who engineered additional ‘killer amendments’. These stand-pat Republicans, many of whom were Northerners, intentionally misrevealed preferences. They supported the Sutherland amendment in order to ensure Southern distaste for the basic measure and later joined Southerners in voting against direct elections.<sup>287</sup> Federal authority over senate elections was necessary, Northern Republicans began to insist, to prevent potential ambiguity on the subject. On February 10, 1911, Mr. Root roused the Senate when he said that ‘things happen’ in Southern states which ought to be corrected by the federal government. Without the Southerland clause, ‘Southern Negroes’ could not be assured of their franchise, pleaded Mr. Root in a veiled attempt at sincerity.<sup>288</sup> This is when the race problem really began to ‘jolt the Senate’, as a front-page story on the *Los Angeles Times* read.<sup>289</sup> A Southern senator, Mr. Bacon, asked for clarification: ‘What are the things to which the senator refers?’ Root responded by explicitly referring to the peonage system, the lynching of blacks, and disfranchisement provisions, such as the grandfather clauses of many Southern states, as things calculated to deprive black men of equal protection. References to lynchings ‘are red rags to the Southern delegations’ and Mr. Bacon was on his feet at once: ‘I might say the lynchings are not confined to Southern states. The great state of New York is not exempt to them.’<sup>290</sup> The session concluded with everyone knowing why lynchings and peonage had been brought into the controversy.<sup>291</sup>

In mid-February, Mr. Borah of Idaho, a direct elections supporter, pointed out the obvious: supporters of the Sutherland proposal lacked sincerity and wished to kill the direct elections proposal by drawing the race question into it.<sup>292</sup> ‘The Negro has been used as a political football about as long

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<sup>287</sup> Buenker, 308.

<sup>288</sup> ‘Solon Deplores Introduction of Race Question into Debate’, *Los Angeles Times*, Feb. 17, 1911 p. 5.

<sup>289</sup> ‘Race Problem Jolts Senate’.

<sup>290</sup> ‘Root Rouses Senate on Election Issue’, *New York Times*, Feb. 11, 1911 p. 3.

<sup>291</sup> ‘Race Problem Jolts Senate’.

<sup>292</sup> Byrd, 400.

as own sense of decency and his developing intelligence will permit!', he declared.<sup>293</sup> Mr. Borah agreed that Northern states had not dealt more leniently with blacks than any other section of the country: 'In the North, we burn the Negro at the stake, and there, as in other sections, we have our race wars. We push our Negroes to the outer edge of the industrial world; we exhibit the same prejudice, the same weakness, the same intolerance that is apparent in the South.' In this way, Mr. Borah upbraided his party for playing the 'hypocrite' and 'moral coward' on the Seventeenth Amendment.<sup>294</sup> By February 18, the Senate appeared to be enmeshed in an apparently hopeless tangle on the question.<sup>295</sup> Race had transformed the debate on direct elections for senators.

Thereafter the question of direct elections became associated with the very ideals of the country and harkened back to the debates on the Fourteenth and Fifteenth Amendments. The Sutherland amendment became perceived by many senators as *necessary* 'to preserve the continuity of Congress itself', in the words of Mr. Carter.<sup>296</sup> Mr. Nelson then came out and declared his steadfast support for the Sutherland clause to the extent that the army should be called in to enforce its provisions.<sup>297</sup> Mr. Bacon responded that this would establish a ghastly precedent. It might be used in other sections of the country, he reminded his western colleagues. For instance, the 'yellow peril' might assert itself in California.<sup>298</sup> Mr. Percy of Mississippi denounced the clause, arguing it would ultimately allow the federal government to invade the states and control all elections on the state, county, and municipal level. It is 'monstrous and preposterous', he declared.<sup>299</sup>

Had it not been for the Sutherland clause, it appears almost certain that the Seventeenth Amendment would have passed the Senate in February at the latest (and the House a year sooner). When a vote was held on February 28, the two-thirds majority needed fell short by a vote of 54 pros,

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<sup>293</sup> 'Solon Deplores Introduction of Race Question into Debate'.

<sup>294</sup> 'Borah Attacks North', *New York Times*, Feb. 17, 1911 p. 2.

<sup>295</sup> 'Direct Election of Senators Finds Rocky Road in Senate', AP in *Los Angeles Times*, Feb. 18, 1911 p. 7.

<sup>296</sup> *ibid*

<sup>297</sup> 'Insists on Federal Power', *Los Angeles Times*, Feb. 21, 1911 p. 5.

<sup>298</sup> 'Anti-Lorimer Fight Going on All Night', *New York Times*, Feb. 28, 1911 p. 2.

<sup>299</sup> *ibid*



33 cons. In the words of the *New York Times*, ‘Charges were repeatedly made that the Sutherland amendment... *was offered only for the purpose of killing the resolution.*’<sup>300</sup> This was strategic scheming at its foremost; opponents of direct elections knew Southern senators could not support the Seventeenth Amendment at that time with this strident clause. Mr. Rayner explained that the race issue ‘affected a large number of members on the Democratic side of the chamber.’<sup>301</sup> Mr. Percy of Mississippi flatly explained the problem: although the people of his state ‘favored popular elections, they did not think it is worth the price of lost state control over elections.’<sup>302</sup>

When the Senate reconvened in May, Joseph Bristow of Kansas proposed what would ultimately become the Seventeenth Amendment. It was nearly identical to the Sutherland version proposed months earlier.<sup>303</sup> The Bristow resolution was added to the Seventeenth Amendment by a vote of 45-44, with Vice President Sherman casting the controversial deciding vote. The adoption of the Bristow resolution was made possible by Mr. Clark of Arkansas, who cast the only Democratic vote for it.<sup>304</sup> Mr. Bacon then moved to add a resolution to the Bristow amendment, qualifying that the Seventeenth Amendment to prohibit federal supervision of senatore elections, unless the state legislature refused or failed to act; it was defeated 46 to 43.<sup>305</sup> Again, the Senate discussion focused on the issue of federal control of Senate elections, rather than on direct elections itself.<sup>306</sup>

With the Bristow resolution affirmed by a 45-44 vote, with ten new progressive senators sitting in the chamber, and the race controversy quelled by the flow of time, the Senate on June 12, 1911 adopted the Seventeenth Amendment by vote of 64 to 24. Six more than the necessary two-thirds majority voted for the amendment. Of the twenty-four negative votes, eight were cast by

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<sup>300</sup> ‘Kills Move to Elect Senators by People’, *New York Times*, March 1, 1911 p. 3. Emphasis added.

<sup>301</sup> ‘Fails to Force Vote on Direct Elections’, *New York Times*, Feb. 18, 1911 p. 2.

<sup>302</sup> ‘Kills Move to Elect Senators by People’.

<sup>303</sup> ‘Root Against Direct Election Vote’, *New York Times*, May 24, 1911 p. 7.

<sup>304</sup> ‘Would Amend the Constitution’, *Los Angeles Times*, June 13, 1911 p. 1.

<sup>305</sup> *ibid*

<sup>306</sup> Byrd, 401.

Democrats and sixteen by Republicans.<sup>307</sup> Specifically, those in opposition were eight Southern senators as well as every Republican senator from the New England states, New York, and Pennsylvania.<sup>308</sup> Strategic voting was apparent in this final vote. A number of senators complained that Mr. Bristow was inconsistent; in the previous session he had voted against the Sutherland amendment; he then proposed, campaigned, and voted for a nearly identical draft.<sup>309</sup>

These voting maneuverings indicate that the Seventeenth Amendment was passed for selfish reasons as well as high-minded ones. As Mr. Bacon noted, the question of race was in no way cognate to direct elections.<sup>310</sup> Officials shielded their genuine preferences and engaged in political legerdemain to increase their visibility on record and to get their way on an issue that a majority genuinely desired. It is also important in demonstrating why the amendment passed the Senate before the House. Even though the House had for decades vigorously supported the direct election of U.S. senators, it took over a year for the House to ratify the Seventeenth Amendment. The Bristow provision was even more controversial in the House than the Senate because of the Lower Chamber's 'unbroken alignment of Democrats' who were 'against federal interference in elections in states.'<sup>311</sup> The House refused to ratify the amendment to the point where observers expected that 'the Senate may have to reconsider' the amendment.<sup>312</sup> Ten days after it had passed the Senate, the House decisively defeated the Bristow resolution, 112-172. It would have taken seventy-eight more votes to carry. The tight partisan division in the House delaying the amendment did not exist in the Senate at the same time. The Senate was less amenable to partisan control because of several demoralizing events involving the Republican leadership in 1908. That storyline is explored below.

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<sup>307</sup> 'Senate Adopts Popular Vote', *New York Times*, June 13, 1911 p. 1.

<sup>308</sup> Byrd, 401.

<sup>309</sup> 'Senate Adopts Popular Vote'.

<sup>310</sup> 'Race Problem Jolts Senate'.

<sup>311</sup> 'Congress Divides on Direct Elections', *New York Times*, June 22, 1911 p. 3.

<sup>312</sup> *ibid*

***Section V (D). Death of Mr. Allison and ‘The Four’, 1908-11***

This debate on race prompting the Seventeenth Amendment may have been a moot point had it not been for a sanguine set of circumstances that were understandably greeted with grief. This fourth and critical factor did not convince officials of the necessity of the Seventeenth Amendment as the previous factors, but its occurrence from 1908-11 can easily be seen as having a decisive impact on timing. Before his untimely death, the Republican leader in the Senate, Mr. Allison, led a highly influential group of senators, known as ‘The Four’. By 1911, ‘The Four’ had disappeared – not due to losing any election but because of poor health, old age, and retirement. This factor is intuitively very significant, but to my knowledge has not been discussed as an element sparking the Seventeenth Amendment.

The unexpected death of William Allison of Iowa, who won a record seventh term two months before his death, went a long way towards allowing the Seventeenth Amendment to pass. Because the Senate by this time was highly institutionalized, bristling with norms and traditions, rules and procedures,<sup>313</sup> Mr. Allison as leader of the Republican Party in the Senate exerted disproportionate influence to the extreme – as did his strong distaste for direct elections. With Republicans firmly in control of the government by 1897, Allison became Chairman of his party’s caucus. More than any other leader of his time, scholars have noted, Allison strengthened partisan control of the Senate’s agenda.<sup>314</sup> He took on the chair of the powerful Republican steering committee, a post not previously held by a caucus leader. This panel determined committee assignments and decided which bills would reach the Senate floor and in what order. By ending the practice of the rotating membership of the steering committee at the end of each Congress, Mr.

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<sup>313</sup> Davidson and Oleszek, 33.

<sup>314</sup> Baker, 67.

Allison was able to appoint the same men each session. He pre-selected committee members so as to control those who by seniority would chair the key committees.<sup>315</sup>

In addition, Mr. Allison chaired the Appropriations Committee and ranked number two on the influential Finance Committee. His closest associates were the chairs of the other major committees, including Rules, Commerce, Judiciary, and Naval Affairs.<sup>316</sup> By appointing chairs and members of the committees, Allison had the privilege of orchestrating committees highly unlikely to support a direct elections amendment – a prerogative Allison exploited. Except for two years of Democratic control, Allison led Republicans in the Senate and chaired the Appropriations Committee from 1881 until his death in 1908.<sup>317</sup> He died a few months short of his eightieth birthday. He had served three decades in the U.S. Senate.

A second member of ‘The Four’, Mr. Nelson Aldrich, has been called by scholars ‘one of the most powerful senators to ever serve.’<sup>318</sup> First elected to the Senate in 1881, Aldrich also served in the Upper Chamber for a record-tying thirty years. With Allison, Aldrich firmly maintained reactionary conservatism in the Senate, by dispensing rewards, promoting friends, and isolating enemies.<sup>319</sup> These two men controlled the fate of many bills, and for years the prospects of the Seventeenth Amendment, through their ability to enforce voting discipline.<sup>320</sup>

Allison and Aldrich led ‘The Four’, who met regularly outside business hours for politics and poker; by 1901, ‘The Four’ were practically unchallenged in the Senate.<sup>321</sup> With Mr. John Spooner of Wisconsin and Mr. Orville Platt of Connecticut, they determined Senate scheduling, polices in party

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<sup>315</sup> *ibid*

<sup>316</sup> *ibid*

<sup>317</sup> Cohen, 30.

<sup>318</sup> *ibid*

<sup>319</sup> The *New York Times* wrote: ‘Aldrich is reactionary of the extreme school. He has no sympathy with the new ideas in politics and the new tendency in legislation.’ (‘Aldrich Weary of Senate’, Nov. 2, 1908 p. 1).

<sup>320</sup> Rothman, 74. ‘Caucus committees determined the schedule of business, arranging in detail the program for a working day. The party also controlled the fate of bill through the ability to enforce voting discipline.’

<sup>321</sup> Desantis, 175.

caucuses, and committee assignments.<sup>322</sup> At the turn of the century, therefore, the Senate featured highly centralized leadership with unprecedented partisan decision making.<sup>323</sup>

This all came crumbling down with Mr. Allison's death in 1908. His replacement, Mr. Cummins, was very progressive.<sup>324</sup> Thus, after electing an extremely conservative incumbent since 1878, the Iowa Legislature recapitulated with a man who was the antithesis to all that Allison represented. Shortly after Allison's death, Mr. Aldrich confirmed in November 1908 the long rumor that he would be stepping down at the end of his present term two years hence. 'He has been telling his friends that he is entitled to rest and means to have it', the *New York Times* reported on a front-page article.<sup>325</sup> Mr. Orville Platt passed away three years earlier, and Mr. John Spooner, 'seeing the handwriting on the wall', reported the *New York Times*, retired shortly before passing away in 1907.<sup>326</sup> Even though Mr. Aldrich stayed in the Senate until March of 1911, he was not in the Upper Chamber when the Seventeenth Amendment finally passed in mid-June. And during the injection of the race issue, Mr. Aldrich was frequently absent – 'in the South for his health'.<sup>327</sup>

It was once said about 'The Four', and in particular Mr. Aldrich and Mr. Allison, that 'no man dared dispute with them on the floor of the Senate, and there was never a word from [their] party followers in criticism or opposition.'<sup>328</sup> In three quick years, from 1908 to 1911, these words reflected the memory of one man and the bated breath of another. Not coincidentally, the three other critical factors – the Lorimer scandal, collaboration of governors, and race issue – propelled officials to reconsider the wisdom of passing a direct elections amendment for U.S. senators. This last critical factor ensured that the Senate itself, long characterized by hierarchical control, would have the

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<sup>322</sup> Cohen, 30.

<sup>323</sup> Oleszek, 35. Also see: Brady, et al, who quote David Rotherman, 'Never before in the history of the Senate were the outstanding committees so monopolized by party leaders' (209).

<sup>324</sup> 'The Changing Order of Things in the Senate', *New York Times*, Nov. 8, 1908 p. SM4.

<sup>325</sup> 'Aldrich Weary of Senate', *New York Times*, Nov. 2, 1908 p. 1.

<sup>326</sup> 'The Changing Order of Things in the Senate'.

<sup>327</sup> 'Tangle in Senate Partially Cleared', *New York Times*, Feb. 25, 1911 p. 2.

<sup>328</sup> 'Aldrich Weary of Senate'.

institutional capacity to pass the amendment. It was only in 1911, for instance, after the Old Lights had been darkened, that Mr. Borah of Idaho succeeded at last to have the Seventeenth Amendment referred to the Committee on Judiciary; before that time, all such resolution had been smothered by the Committee on Privileges and Election.<sup>329</sup> Once it had passed this hurdle, the amendment's passage was foreseen.

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<sup>329</sup> 'Popular Vote Act Rescued', *New York Times*, April 18, 1911 p. 4.

**Section VI:**    *The Progressive Era*  
(National Convention and Other Amendments)

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This section demonstrates that the four factors discussed above were of overriding importance only within a political environment ripe for reform. Political, economic, and social dynamics combined at the turn of the century to earn the period the epithet, the Progressive Era. Other demands, such as bills for the abolition of the Electoral College, were just as virulent as the call for direct election of senators at this time. Many observers called for an unprecedented national convention to accomplish these and other objectives. In the context of these demands, the Senate preempted calls for a convention by being the first institution to pass the Seventeenth Amendment. The section's purpose, again, is to emphasize contingency in the passing of the resolution.

Progressivism had its greatest momentum and gained its most important victories between 1897 and 1917. One significant influence was that of Populism, a short-lived political phenomenon in the mid-1890s, whereby farmers mobilized against corporate wealth and monopolies. Another element sparking Progressivism was the growing familiarity and apparent success of Europe's experiments with socialism. England's New Liberalism, in particular, with its health acts, laws for housing, social security, accident compensation, and old age pensions, was regarded as an exemplary model.<sup>330</sup> By the turn of the century, the Old Guard, symbolized by Mr. Allison and Mr. Aldrich, was already giving way to men who were more responsive to broader segments of a rapidly industrializing society.<sup>331</sup> The country was moving in a direction of national unity, largely thanks to economic growth. In the past few years, the *Wall Street Journal* noted, 'State authority to a degree had broken down, while the power of the central government at Washington has largely increased.'<sup>332</sup> These societal changes were encapsulated by President Roosevelt's inauguration, a time scholars say

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<sup>330</sup> *ibid*, 154.

<sup>331</sup> Baker, 70.

<sup>332</sup> 'The Growth of National Unity', *Wall Street Journal*, Dec. 20, 1906 p. 1.

that sparked one of the ‘greatest periods of reform in the nation’s history.’<sup>333</sup> Roosevelt conceived of himself as ‘the steward of the people’ and believed it was his duty to undertake any action in the best interest of the country.<sup>334</sup>

Even though the Progressive Era had begun for years, a notable change in the country occurred in 1909, when ‘domestic reform came to be the dominant issue in national politics.’<sup>335</sup> A large reason for this shift stemmed from Republican impotence on the economy and the positive consequences this had for progressives. The Depression of 1907 had not lifted with the passage of the 1909 tariff. Just as Republican had taken credit for the prosperity which blessed the decade following the Dingley Act of 1897, they now received the blame for the rising cost of living.<sup>336</sup> Conservatism was further impaired by internal divisiveness, as Republicans lacked national leaders to keep down an insurgent revolt beginning to assume serious proportions.<sup>337</sup> Known for protecting the people against the ‘rule of the few’ and ‘higher prices’, insurgents capitalized on Republican discord to reap major electoral success in the election of 1910.<sup>338</sup> The new Congress featured tremendous change. In the House, the Republican majority of 221 was reduced to a minority of 165. In the Senate, the Republican majority of 60 shrank to a ratio of 51 Republicans and 42 Democrats.<sup>339</sup> Those defeated in the Republican Party were mainly regular Republicans, and the leadership responded by giving progressives better assignments.<sup>340</sup> For the first time a Socialist took a seat in the House.<sup>341</sup>

But just because the composition of Congress changed did not mean that the Founding Fathers’ principle of indirect elections of U.S. senators was doomed. Other demands for

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<sup>333</sup> Baker, 68.

<sup>334</sup> Desantis, 179.

<sup>335</sup> Jerome Clubb and Howard Allen, ‘Party Loyalty in the Progressive Years: The Senate, 1909-1915’ in *The Journal of Politics*, Vol. 29, No. 3 (Aug., 1967), 580.

<sup>336</sup> Chamberlain, 110 and Gould, 51.

<sup>337</sup> ‘The Nationwide Split on Republicans’, *New York Times*, Jan. 30, 1910 p. SM3 and see: Clubb, 580.

<sup>338</sup> ‘Assails the Evils of Machine Politics’, *New York Times*, May 16, 1910 p. 8.

<sup>339</sup> Chamberlain, 110.

<sup>340</sup> Three progressive Republicans received assignments to the ‘big three’ committees. Clubb, 45.

<sup>341</sup> ‘Congress Opens; Clark Speaks’, *New York Times*, April 5, 1911 p. 1.



Constitutional reforms were just as vociferous as those for direct elections. To demonstrate by way of negative example the importance of the four critical factors discussed above, I will briefly show that a great breadth of public and official support existed for making other major changes to the Constitution, from the mundane (delaying Inauguration Day until April) to the expected (lengthening the presidency to a six-year term), and to the more radical (abolishing the U.S. Senate as an entity). Most of the proposed changes did not occur at all, and if they did, it was at a much later date.

Some prominent spokesmen advocated the utter abolition of the U.S. Senate. The demand for abolition was less frequently heard than the stimulus for direct elections but still occasionally voiced.<sup>342</sup> A *New York Times* article from 1893 explained that the Senate's demise has 'provoked agitation for its utter abolition.'<sup>343</sup> A *Wall Street Journal* article from 1908 indicated the equal potential for either abolition or a direct elections amendment. An example of the democratization of the country, the article noted, 'can be seen in the proposal to abolish the Senate or to establish direct elections.'<sup>344</sup> As late as 1911, the Socialist Victor Berger of Wisconsin proposed an amendment to abolish the U.S. Senate.<sup>345</sup> Lessons drawn from the British example and the potential for the dissolution of the House of Lords made abolition of the Upper Chamber less unlikely.<sup>346</sup> 'The House of Lords might be wiped out in the not-too-distant future', predicted the *Forum* periodical in 1893.<sup>347</sup> 'The abolition of the House of Lords has been in the air for decades', observed the *Wall Street Journal* in 1906.<sup>348</sup> Onlookers dubbed the Senate 'the American House of Lords' in this context.<sup>349</sup>

Not only was Congress at the turn of the century proposing a host of amendments, but the states themselves were contemplating an unprecedented national convention to assert their demands

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<sup>342</sup> 'The Object of Stealing Senators', *New York Times*, April 18, 1890 p. 4.

<sup>343</sup> 'The Senate', *New York Times*, Aug. 15, 1893 p. 4.

<sup>344</sup> 'Making Business More Democratic', *Wall Street Journal*, Sept. 9, 1908 p. 1.

<sup>345</sup> 'Wants Senate Abolished', *New York Times*, April 18, 1911 p. 8.

<sup>346</sup> 'The Object of Stealing Senators', *New York Times*, April 18, 1890 p. 4; 'The Senate', *New York Times*, Aug. 15, 1893 p. 4 and "Making Business More Democratic", Sept. 9, 1908 *Wall Street Journal* p. 1.

<sup>347</sup> H. Von Holst, 'Shall the Senate Rule the Republic', *Forum*, Nov. 1893 p. 263.

<sup>348</sup> 'The House of Lords', *Wall Street Journal*, Dec. 15, 1906 p. 1.

<sup>349</sup> 'Election of U.S. Senators by Popular Vote', *Los Angeles Times*, Jan. 27, 1899 p. 8.

independently of a Congressional joint resolution.<sup>350</sup> In 1899, Pennsylvania created somewhat of a sensation by providing for the appointment of a joint committee to confer with the legislatures of other states to test the popularity of the notion. The committee reported that the objective could ultimately be accomplished.<sup>351</sup> The idea of an unprecedented convention was ‘popular everywhere throughout the country, except the U.S. Senate’, reported the *Los Angeles Times* in 1906. Some in the Senate, including Mr. Heyburn, worried that this convocation of legislatures ‘would rewrite the entire Constitution of the United States.’<sup>352</sup> The *Los Angeles Times* in 1911 noted that if a national convention ‘shall be called, it may do away with the Constitution of the Founding Fathers all together.’<sup>353</sup> These observations reflect the sign of the times: great change was in the air at the turn of the century. The Seventeenth Amendment as passed by the Senate (with language reserving the supervision of elections to the federal government) was certainly not inevitable.

It was widely believed that a national convention in 1911 would not limit its action to one amendment. As critics noted, ‘it may take into consideration a nation-wide marriage and divorce laws, women’s suffrage, or a rescission of the Fifteenth Amendment.’<sup>354</sup> It was widely agreed that New York and the Midwestern states might combine with the Southern states to overturn the Fifteenth Amendment, in particular.<sup>355</sup> A national convention also held the prospects of changing the number of U.S. senators, and making allotments based on population. The potential for such changes was significant and must be taken into account. By 1911, 29 state legislatures had voted in favor of a

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<sup>350</sup> ‘Election of U.S. Senators by Popular Vote’, *Los Angeles Times*, Feb. 5, 1906 p. 6. And see: ‘Wake Up Bill!’ As late as 1905, it was believed that the Senate would never willingly allow a direct election amendment but ‘the states can compel the calling of a national convention, if two-thirds will unite’ to override the Senate (Haynes, *The Election of Senators*, 122).

<sup>351</sup> *ibid*

<sup>352</sup> ‘Heyburn as a Prophet’, *Los Angeles Times*, May 25, 1911, p. 16.

<sup>353</sup> According to the *Los Angeles Times*, ‘A national convention might discard the U.S. Constitution.’ (‘A New National Constitution’, March 2, 1911 p. 14).

<sup>354</sup> According to the *Los Angeles Times*, ‘It might authorize the enactment of a national marriage and divorce law that would make the streets of Reno look like those of a goldsmith’s deserted village.’ (‘A National Constitutional Convention’, Jan. 31, 1911 p. II4).

<sup>355</sup> *ibid*

national convention. If two more state legislatures joined in the effort, a national convention would have resulted.<sup>356</sup> ‘The day of radicalism is at full dawn’, the *Los Angeles Times* reported.<sup>357</sup>

In the early 1890s, Constitutional amendments for reforming or abolishing the Electoral College gained traction. In 1893 Representative Springer proposed that if two leading presidential candidates are tied after electors cast their votes, the one having the larger popular vote ought to be declared the winner.<sup>358</sup> That same year, Senator Stephen White of California came out in vigorous support of abolishing the Electoral College. ‘I believe that the dummy names on the electoral tickets should be eliminated and that the president should be elected by the direct vote by Congressional districts’, he declared.<sup>359</sup> The plan for abolition was formally proposed in Congress in 1896 by Mr. William Springer.<sup>360</sup> In the 63<sup>rd</sup> Congress, Representative Hobson proposed yet another amendment to elect the president by popular vote.<sup>361</sup> Former President Theodore Roosevelt declared himself in favor of abolishing the Electoral College.<sup>362</sup>

Other officials in Congress at the turn of the century sought to amend the Constitution in regard to the Executive as well as Congress. Senator Harris of Kansas proposed an amendment extending the term of the presidency to six years, with no chance of reelection, and altering the terms of Representatives from two to four years.<sup>363</sup> The 62<sup>nd</sup> Congress (1911-1912) considered a similar amendment: a resolution presented by Senator Cummins of Iowa providing for the fixed terms of the president and vice-president to six years. The *New York Times* predicted that if the Senate passed the measure, it would be passed by the House and probably the states.<sup>364</sup> Indeed, the Senate Judiciary

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<sup>356</sup> *ibid*

<sup>357</sup> ‘Senatorial Characters’, *Los Angeles Times*, Dec. 2, 1906 p. VII7.

<sup>358</sup> ‘To Change the Mode of Election’, *Los Angeles Times*, Jan. 26, 1893 p. 4.

<sup>359</sup> ‘Senator White’s Views’, *New York Times*, March 30, 1893 p. 4.

<sup>360</sup> ‘A Good Plan in Itself’, *New York Times*, May 10, 1896 p. 4.

<sup>361</sup> ‘Ask Four Amendments’, *Los Angeles Times*, April 11, 1913 p. 6.

<sup>362</sup> ‘Colonel Would Elect Senators by Direct Vote of the People’, *Los Angeles Times*, Feb. 12, 1911 p. 2.

<sup>363</sup> ‘To Lengthen Presidential Term’, *New York Times*, August 19, 1899 p. 2.

<sup>364</sup> Indeed, on February 1, 1913, The Senate, by the necessary two-thirds majority and one to spare, passed a Constitutional amendment limiting the presidency to a single term of six years. ‘Senate Votes, 47-23, For Six-

Committee reported itself overwhelmingly in favor of the amendment, in large part to prevent former President Roosevelt from serving further as chief executive.<sup>365</sup> In 1911, President Taft boldly declared himself in favor of the plan. The *Los Angeles Times* endorsed the change by positively portraying the experience of other governments with approximate terms: ‘The Argentine Republic elects the President for six years... France elects her president for a seven-year term... Mexico has a six year term... In Chile the President is elected to five years... Columbia has a six year term... In Haiti, a seven year term.’<sup>366</sup> The article concluded that the American government should impose similar term lengths.

Other proposals for amendments fundamentally affecting the mechanics of government gained momentum at this time. Senator Owen of Oklahoma proposed an amendment in 1911 to make Justices of the Supreme Court subject to election recalls. ‘I say that the time has come for the exercise of the recall on the Supreme bench of the United States’, he declared.<sup>367</sup> Another senator, Mr. Crowder of South Dakota, proposed an amendment to fix the terms of judges of the inferior federal courts at ten years; the states were widely believed to be in support of the proposal.<sup>368</sup> That same year, Mr. Sean Gailinger proposed an amendment (proposed several times before) aimed at moving back the inauguration date of the president to the last Thursday in April. The latest motivation stemmed from thousands of dollars lost from the President Taft’s inauguration, when ‘grandstands... were occupied only by snowdrifts.’<sup>369</sup>

These competing amendments in the Progressive Era are instructive to the timing of the Seventeenth Amendment. Notably, Senator White’s proposal for presidential elections based on popular vote in 1896 failed, as did Theodore Roosevelt’s calls for the abolition of the Electoral

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Year Term’, *New York Times*, Feb. 2, 1913 p. 1. Also see: ‘One-Term Measure First Senate Task’, *New York Times*, Nov. 24, 1912 p. 7.

<sup>365</sup> ‘Favors Six-Year Term for the Presidency’, *New York Times*, May 24, 1912 p. 2.

<sup>366</sup> ‘Tinkering the Constitution’, *Los Angeles Times*, May 26, 1912 p. VII4.

<sup>367</sup> ‘Recalling the Supreme Court’, *Los Angeles Times*, Aug. 8, 1911 p. II4.

<sup>368</sup> ‘For Shorter Judges’ Terms’, *New York Times*, May 24, 1912 p. 7.

<sup>369</sup> ‘Ask New Inauguration Day’, *New York Times* May 18, 1911 p. 10.

College years later. The Senate also opted to lay aside Mr. Gailinger's proposal to inaugurate the president in April, and Senator Owen's initiative to subject Supreme Court Justices to popular recall. A national marriage and divorce amendment was not written into the Constitution, nor was the Fifteenth Amendment rescinded. Up to the eve of the Senate's about-face, mainstream media continued to report that an unprecedented national convention may yet transpire. By January of 1911, 29 state legislatures had voted in favor of such a convention; if only two more states had joined, a convention would have occurred.<sup>370</sup> In retrospect, the country would have to wait another twenty-two years until a convention convened to pass the Twenty-First Amendment repealing Prohibition. The Senate preempted the demand for a national convention by unexpectedly passing the Seventeenth Amendment, thereby supporting a measure public opinion had long endorsed. The resolution still had to pass the House and state legislatures, however. Twenty-four months of cloakroom bargaining and unforeseen, eccentric developments lay ahead.

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<sup>370</sup> 'A National Constitutional Convention', *Los Angeles Times*, Jan. 31, 1911 p. II4.

**Section VII: Conclusion:**  
(Path to Final Ratification and Lessons)

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Following the Senate's historic vote on popular elections, there stood 'a few lions in the path to the Constitutional amendment' before it could be formally ratified.<sup>371</sup> It had to gain support of two-thirds of the House and three-quarters of the states. It proved much more difficult to get by the House than expected, and encountered peculiarities in the state legislature rarely, if ever, seen with other Constitutional amendments. As the rest of the thesis has demonstrated, events overlooked by existing scholarship had a major impact on the amendment's timing.

The House supported a direct elections amendment but not in the language the Senate had endorsed. The temper of the majority was so decidedly against the 'obnoxious' Bristow measure that the resolution was 'messed back' to the Senate – 'without a word of explanation' from House officials.<sup>372</sup> 'Democrats in the House are practically as a unit in opposition to the Bristow amendment', explained Speaker Clark.<sup>373</sup> By a vote of 172 to 112, the House on June 21, 1911, defeated the Seventeenth Amendment.<sup>374</sup> It would take the House two more votes and many months before a super-majority could be obtained; the second attempt, like the first, was refused on the theory that the Bristow resolution would interfere with the sovereignty of states.<sup>375</sup>

Exactly eleven months after it was reported in the morning papers that the Senate passed the resolution, the House of Representatives ratified the Seventeenth Amendment in an overwhelming vote of 237 to 39 on May 13, 1912. The intransigent majority opposed to the Bristow resolution was finally overcome due to internal bargaining. Based on my research, it seems that a conference between Senator Clark, Chairman Henry of the Rules Committee, Chairman Rucker of the committee

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<sup>371</sup> 'Senators by Direct Vote', *New York Times*, June 14, 1911 p. 8.

<sup>372</sup> 'To Confer On Direct Vote', *New York Times*, July 6, 1911 p. 4.

<sup>373</sup> 'Democrats Against Bristow Amendment', *Wall Street Journal*, June 15, 1911 p. 6.

<sup>374</sup> 'Direct Election Strikes a Snag', *Los Angeles Times*, June 22, 1911 p. 5.

<sup>375</sup> 'Senators By Direct Vote Passes House', *New York Times*, May 14, 1912 p. 11.

in charge of the bill, and Secretary of State William J. Bryan came to a compromise that ‘while the joint resolution as amended by the Senate is not all Democrats desired, it would be better to accept what they could get than sacrifice the whole movement.’<sup>376</sup> Just as Woodrow Wilson and other governors pressured state legislatures to more actively support direct elections, William J. Bryan was instrumental up until the very end forcing the question to the forefront. The *New York Times* celebrated the House’s vote with the front-page byline: ‘The long fight which began in 1826, for an amendment to the Constitution, providing for popular election of U.S. senators, is nearer success tonight than ever before in the country’s history.’<sup>377</sup>

An unusual twist of events further delayed the amendment when it was presented to the states. Thirty-six states, or three-quarters of the union, were needed to ratify the amendment. By November 1912, six months after the House’s vote, only two states, Massachusetts and Minnesota, had voted to adopt the measure. The failure of other states to act was due to fact that few other legislatures were in session since the late spring.<sup>378</sup> The New Year brought a rush of states to sign on, with Pennsylvania being the thirty-fifth state to ratify the amendment.

In April of 1913, an embarrassing mistake in the Wisconsin Legislature led to the mistaken impression across the nation that that the Seventeenth Amendment had been ratified when, in fact, it had not. ‘No direct elections yet’, warned the *New York Times*.<sup>379</sup> The state legislature had accidentally voted on ‘a wrong copy’ of the draft, invalidating ratification for the time being; it was not known how state senator Ackerley who introduced the amendment came into the possession of an incorrect copy.<sup>380</sup> Another state – Connecticut – would ultimately save the measure on April 8,

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<sup>376</sup> ‘Senators By Direct Vote Passes House’, *New York Times*, May 14, 1912 p. 1.

<sup>377</sup> *ibid*

<sup>378</sup> ‘Two for Senate Change’, *New York Times*, Nov. 7, 1912 p. 1.

<sup>379</sup> ‘No Direct Elections Yet’, *New York Times*, May 6, 1913 p. 1.

<sup>380</sup> *ibid*

1913.<sup>381</sup> Although this ratification process was not slow by the standards of other amendments, additional unusual features affected its incorporation into the Constitution. Delay, for instance, occurred because of ‘the apparent apathy’ of officials in the ratifying states.<sup>382</sup> Although press reports indicated thirty-five states had adopted the amendment by April 6, the State Department had received the returns from only twenty-two of them at that time. Thus, more than three weeks after the amendment had been formally ratified, the amendment still lacked legal authority because South Dakota had not yet ‘notified’ the state department.<sup>383</sup> Thus, idiosyncrasies in both the Wisconsin and South Dakota Legislatures affected the timing of the amendment, notions never before raised in published material. It would take six weeks after the thirty-sixth state, Connecticut, had ratified the amendment before it became authoritative on May 31, 1913.

While scholars have long implied that the amendment was a *fait accompli* by virtue of its date in the Progressive Era, I do not believe onlookers themselves felt the Seventeenth Amendment was foreseen six months before its passage. And its ratification did not spring merely because there were more progressives and insurgents in the U.S. Senate either, as some scholars have argued. Other important reforms, such as calls for extending the term of the presidency and abolishing the Electoral College, were repressed. These equally responsible measures were eschewed; the Seventeenth Amendment was not.

Two examples from Constitutional history tell us, I believe, why timing for an amendment is crucial to understand. The first involves the Thirteenth Amendment, which abolished slavery and did not occur until after the Civil War. Its timing, clearly, had enormous implications: to the millions of slaves still living under its yoke, the fact that it happened in 1866 instead of 1867, 1868, or 1890 was surely not unimportant. Even if one were to assume that slavery contained the germ of death as an

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<sup>381</sup> The Connecticut General Assembly, by a vote of 159 to 77, passed the resolution; it was unanimously passed by the Connecticut Senate. ‘Direct Election of Senators’, *Wall Street Journal*, April 9, 1913 p. 6.

<sup>382</sup> ‘Delay Direct Vote Notice’, *New York Times*, April 6, 1913 p. C6.

<sup>383</sup> ‘Waiting on South Dakota’, *Los Angeles Times*, April 28, 1913 p. 3.



institution, it took a rapid cascade of critical factors in a short time span to bring about national manumission, including Lincoln's inauguration, the Fort Sumter attack igniting war, and the Emancipation Proclamation.<sup>384</sup> Similarly, even if the Seventeenth Amendment was destined to occur (which it was not), its ratification required a burst of energy that its previous momentum lacked.

A second example involves the Twenty-third Amendment (1961) that slightly altered the Electoral College, extending representation to the District of Columbia. Lyndon B. Johnson in 1964 was therefore elected by a different electoral procedure than John F. Kennedy in 1960, but neither was elected by popular vote. However, it is not difficult to think of a scenario whereby the Electoral College itself would have been abolished, especially if a few critical factors had coalesced during the Progressive Era – at a time, for instance, when Senator Stephen White proposed his amendment. Maybe a large executive scandal, like that on the level of Mr. Lorimer, would have been sufficient to abolish the Electoral College. Perhaps a vigorous campaign from governors could have forced the Senate's hand, or maybe if the states had devised laws to give the electorate the popular vote, an amendment would have been seen as necessary to end controversial, local problems needing national solutions. Alas, these factors did not occur, and Al Gore in 2000, for instance, lost an election he may have won had it been for the absence of a few historical factors occurring along a divergent trajectory.

Why things happen when they do is difficult to resolve when one is dealing with years of data describing diverse individuals, laws, institutions, and concepts, such as public opinion. This thesis has tried to focus the spotlight on the short dawn preceding the direct elections amendment. It has done so by taking a top-down perspective, focusing on the Senate, especially institutional factors affecting the timing of its passage, namely 'killer amendments'. I have sought to explain in my best

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<sup>384</sup> As McPherson notes, 'By pronouncing slavery a moral evil that must come to an end, by winning the Presidency in 1860, by refusing to compromise on the issue of slavery's expansion, by knitting together a Unionist coalition, by prosecuting the Civil War to unconditional victory as Commander-in-Chief of an army of liberation, Abraham Lincoln freed the slaves' (10). See: James McPherson, 'Who Freed the Slaves?' in *Proceedings of the American Philosophical Society*, Vol. 139, No. 1 (Mar., 1995).

judgment why the amendment occurred when it did. Four critical factors – Mr. Lorimer’s scandal, a campaign to end ineffective state primary laws, a divisive race issue, and the death of Mr. Allison and retirement of Mr. Aldrich –transpired from 1908 to 1911. These factors are far and away the most compelling stimuli underlying the amendment’s passage. No published material has explored the timing of the Seventeenth Amendment comprehensively, let alone these specific factors.

Scholarship has identified justifications, but has mostly concentrated on the amendment’s effects, not its origins, and has not appreciated the four factors I describe, or done so by the methods or within the framework that I have. Significantly, these factors occurred in the Progressive Era, but this era by itself did not guarantee the Seventeenth Amendment.

The common denominator of the critical factors described in this thesis is that they all occurred in a short time span, were unexpected and unmatched in intensity, and turned the issue into a question of national urgency. Here, certainly, was a cascade of events that qualifies as a *sine qua non* – the essential condition, the absolute prerequisite of the Seventeenth Amendment, and the very things without which the measure would not have happened at all, or certainly not near the date when it did occur. It is ironic therefore that the secondary literature focuses on the long history of agitation motivating reform, when the Seventeenth Amendment came about literally from a very short and unexpected framing of events. In 1891, a forward-looking article on direct elections graced the *New York Times*: ‘Although the demand appears to be increasing, it is likely to be a long time before it acquires sufficient force.’<sup>385</sup> That force came not in the early 1890s, as Riker states when he says public discontent reached its high mark; not in 1906 as Bybee indicates by pointing to muckraking journalism, but over the next several years. It was only at this time that sufficient numbers of officials sought to implement, and had the first real chance to institute, the noble-minded change.

The Seventeenth Amendment was officially signed into effect on May 31, 1913, an occasion of considerable ceremony. Secretary of State William J. Bryan signed his signature to the document

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<sup>385</sup> ‘Nominating U.S. senators’, *New York Times*, March 28, 1891 p. 4.

promulgating the amendment with four silver pens. One was tied with a red ribbon, another with a white ribbon, the third with blue, and the fourth with two white ribbons. Bryan signed his first name with the red-ribboned pen. He took the white-ribboned pen and signed Jennings. With the blue-ribboned pen he signed Bryan and handed it to his wife. With the double-white-ribboned pen he wrote the thirty-first and handed it to Senator Borah. 'That marks the end of a long fight,' said Bryan. 'Yes', replied Senator Borah.<sup>386</sup> The signature and date took three minutes. Began in 1826, the long fight had finally come to an end, the last word being blotted at 11:16 am.

THE END

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<sup>386</sup> 'Popular Election of Senate in Force', *New York Times*, June 1, 1913 p. 11.

## Appendix

I would like to thank my thesis adviser, Professor John Lapinski, for his ongoing and kind support over the past year. His guidance was everything I could have possibly hoped for and more. In writing this thesis, it reminded me how far I have come from my days as a first-year undergraduate, and it seems appropriate to thank the University of Pennsylvania as a whole, and especially the Political Science Department, for contributing primarily for my academic growth.

For purposes of future research, I would like to explain the trajectory I followed in compiling the primary research for this project. I began by reading every book and scholarly article I could find on the Seventeenth Amendment, and then researched corollaries of the amendment, including the Progressive Era, Congressional History, and Populism. At this time, I decided that the thrust of my project would come from researching contemporary newspaper articles, which I compiled and analyzed through the use of Proquest, a database of prominent newspapers and periodicals.

I developed and put to practice a systematic approach to sift through millions of digital pages, a process which consumed the majority of my research over the past eight months. For every year between 1890 and 1913, I typed in various ‘key words’ relevant to the Seventeenth Amendment, downloaded the article, saved it as a pdf if relevant – all to ensure that I was not missing a possibly germane article by searching for a topic that did not strike an immediate response from the search interface. These key words consisted of seven different types: ‘Direct Elections’, ‘Seventeenth Amendment’, ‘Constitutional Amendment and Senate’, ‘Popular Vote for Senators’, ‘Corruption and Senate’, ‘Bribery and Senate’, and ‘Senate and Deadlock’. Sometimes these searches yielded bizarre returns, such as an upsetting story that appeared after researching amendments in 1903, about a six-year-old boy who ate canned salmon and was believed to have died of ptomaine poisoning.<sup>387</sup> For the

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<sup>387</sup> ‘Boy Ate Canned Salmon and Died’, *New York Times*, May 10, 1903 p. 16

most part, the process worked as expeditiously as I could have hoped, and I saved and read no fewer than 1,400 articles. Below is a table summarizing the data for two of the years researched in this thesis; notice the disparity between the numbers of article hits in 1890 and 1910.

<b>Searches</b>	<b>1890</b>	<b>1910</b>
'Direct Elections'	0	8
'Seventeenth Amendment'	0	0
'Constitutional Amendment and Senate'	2	12
'Popular Vote for Senators'	20	45
'Corruption and Senate'	16	125
'Bribery and Senate'	15	171
'Senate and Deadlock'	0	10

While reviewing the agglomeration of data, I noticed a major fallacy in the existing scholarship: the tendency to ignore factors that were the *sine qua non* of the Seventeenth Amendment's passage. I thereafter synthesized my notes into various sections, from 'race and Bristow resolution' to 'Founding Fathers', 'William J. Bryan', 'Senator Allison's death', and 'Governors'. By thinking about these articles in conjunction with the secondary literature, I developed in my best judgment the reasons that Seventeenth Amendment passed when it did, a story that I discovered was in no small part defined by the U.S. Senate's handling of the stimulus.

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