

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 7: The Republican Era – Foundations/Sources/Constitutions and Amendments/The  
Seventeenth Amendment

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**The Debate over the Seventeenth Amendment: Direct Election of Senators**

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*The U.S. Constitution originally specified that the members of the U.S. Senate will be chosen by the legislatures of the states. The Seventeenth Amendment, ratified in 1913, changed that mode of selection to direct election of senators by the people of each state. The argument for direct election rested in part on a preference for a more democratic political system. Proponents of direct election also sought to take the choice of U.S. senators out of state politics. An upcoming senatorial vote could overshadow local issues in state legislative elections. Partisan and personal turmoil of the senatorial voice had on occasion disrupted state legislative sessions and encouraged legislative corruption.*

*The movement for the direct election of senators built slowly over time before finally winning victory with the passage of the Seventeenth Amendment. Resistance to direct election was strongest in the Northeast. State legislatures and state referenda elsewhere strongly favored elected senators by popular vote. By 1900, reformers were calling for a federal constitutional convention to pass the needed amendment. Many states found effective means for bypassing the federal amendment route. In 1901, Oregon effectively established direct election by requiring state legislative candidates to pledge to vote for the U.S. Senate candidate (whose name also appeared on the state ballot) who received the most popular votes. Half the states quickly followed suit.*

*We have excerpted three influential arguments in the debate on the direct election of Senators. George Hoar, a Republican from Massachusetts, was a leading member of the Senate from the end of Reconstruction until his death in 1904. Hoar was the chair of the Senate Judiciary Committee before the Democrats gained a majority of the Senate in the elections of 1892. After a proposed constitutional amendment passed the House of Representatives in 1893, Hoar led the opposition in the Senate. His attack on direct elections emphasized the value of indirect elections for federalism and moderation. Former Republican senator George Edmunds of Vermont, another opponent of direct election, emphasized the value of having senators who represented the diverse interests of the state legislature, rather than the median voter of a popular election. Walter Clark was a prominent populist and progressive, who became chief justice of the North Carolina Supreme Court in 1902. Clark vigorously opposed policymaking by any official not directly accountable to the people. In addition to calling for popular elections of senators, he was a leading critic of judicial power.*

*When reading the excerpts below, consider who each contributor conceives of democratic or republican government. How does each conceive of the constitutional status of democracy? How do those understandings influence their attitude toward direct elections? In a constitutional democracy, what offices should be held by elected officials? Which offices should be held by unelected officials?*

George F. Hoar, *Direct Election of Senators* (1893)<sup>1</sup>

I do not, of course, claim that the people cannot now amend, or that they cannot now improve, our Constitution. That Constitution itself would be a failure if the experience of a hundred years under its operation found the people unfitted to improve it. The lives of our fathers would have been of little worth if, under the Constitution they framed, there had not grown up and flourished a people who were also fit to deal with the great and fundamental constitutional principles of the state. . . . But they must bring to

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<sup>1</sup> Excerpt taken from *Congressional Record*, 53rd Cong., special sess. (1893), 101.

them the same wisdom and courage and virtue. They must dare to tell the people plain truths. They must possess the wisdom of deliberate action, and arise to the austere virtue of self-restraint.

Mr. President, wherever there can be found an expression of admiration for the American Constitution in the works of any great writer or thinker at home or abroad it will be found that the admiration is based upon that part of its mechanism which secures the deliberate and indirect action of the popular will instead of its immediate, rapid, inconsiderate, and direct action. The parts of it which are everywhere the most praised and by which its framers sought especially to commend it to the confidence of the people were the constitution of the Senate and the constitution of the Supreme Court.

...

I am not afraid to say to the American people that it is dangerous to trust any great power of government to their direct or inconsiderate control. I am not afraid to tell them not only that their sober second thought is better than their hasty action, but that a government which is exposed to the hasty action of a people is the worst and not the best government on earth. No matter how excellent may be the individual, the direct, immediate, hasty action of any mass of individuals on earth is the pathway to ruin and not to safety. . . .

...

It is a poor, cheap flattery of the people, this notion that suffrage is to be deified and that the results of suffrage are to be degraded; that the people have all wisdom and all honesty, but that their trusted agents are to be bought or cajoled. Will it not be the same people who choose the senators and who choose the legislatures? Is there any evil influence which will operate upon the legislature which will not operate with like effect upon the convention?

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The state legislatures are the bodies of men most interested of all others to preserve state jurisdiction—more than the governors, who may be expected to aspire to national employments. It is well that the members of one branch of the legislature should look to them for their re-election, and it is a great security for the rights of the states. The state legislatures will be made of men whose duty will be the administration of the state authority of their several state interests and the framing of laws for the government of the state which they represent. The popular conventions, gathered for the political purpose of nominating senators, may be quite otherwise composed or guided. Here, in the state legislature, is to be found the great security against the encroachment upon the rights of the states.

...

The Senator from Oregon . . . goes on to announce, as to the foundations of his argument, the principle that no system can be properly termed free or popular which deprives the individual voter of his right to cast his vote directly for the man of his choice for any office. . . . And the logic of his position compels him to avow this doctrine. So that, if the people go with him, this amendment must be followed by others, under which the United States judiciary and the president and the vice-president are to be chosen by the action of direct popular majority. This may be sound policy; but when it is established, the Constitution of the United States is gone.

*George Edmunds, Should Senators be Elected by the People? (1894)*<sup>2</sup>

. . . [I]t was agreed [early in the Philadelphia Convention] that the House of Representatives should be chosen directly by the people and in proportion to the number of inhabitants in each State, excepting two-fifths of the slaves. And after similar tribulations of proposal and discussion, it was settled that the President should be chosen on the principle of having regard, chiefly, to the population of the various states. . . . It was obvious that if the other branch of the legislature were constituted in the same way, either as to the number from each State or the direct method of election, there would be a perpetual tendency toward the effacement of State rights and State sovereignty in respect to local affairs, and the

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<sup>2</sup> Excerpt taken from "Papers Relating to the Election of Senators by Direct Vote of the People," Sen. Soc. No. 512, 60th Cong., 1st Sess. (1908), 57–63.

establishment of a national democracy by government, practically, en masse, where the weight of the mass in one part of the country might, and probably would, dominate over the other parts, and might in the end destroy the peaceful liberties of all, as has been the ever-repeating experience of ill-balanced and unchecked forms of government—democracy succeeding conservatism and liberal order; the commune succeeding democracy; anarchism overturning the commune; and a single despot or brace of despots springing from the cabals and corruptions of communism and anarchy to be the masters of all.

To establish a secure barrier against such tendencies and dangers, the constitution of a second legislative branch composed of persons having a different constituency, and representing the independent equality of the States, was a supreme necessity.

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... The legislature of a State ... is the depositary of the whole mass of the sovereign power which the people as such, have set forth and defined in its Constitution. ... In constituting and exercising such a sovereignty, the people of a State never elect either branch of their legislature by the popular vote of all the citizens on a general ticket: that step remains to come in when the dream of the socialist shall be realized. The reason is obvious. Such a method would be purely the voice of an aggregation of mere numbers regardless of intelligence, property, and business interests, as well as of that innate sense of the value of the geographical distribution and separation of the various parts of a State into small communities substantially homogeneous. ... The government of a State is instituted for the benefit of the whole people, and not for that of party, nor for that of a majority of its people alone; and the act of a State in choosing its senators is one of the most important parts of its governmental duty. Both reason and experience prove that an election by a majority of all the people of a State is radically a different thing from the choice of the same officers by the people (through their representatives) of the separate political divisions of it. ...

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[A] new school of politicians has now appeared who profess to believe that the Fathers were mistaken in their theory of the surest foundation of our national republic, and that the system they adopted has not, in regard to senators, worked well—that the senators have not been the choice of, and have not represented, the great body of the people of the States that elected them, and therefore that elections of senators should be had by the suffrage of all the voters in the State acting together. ...

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[T]he new school of constitution-makers say that they think the Senate has become a body of rich men who gained their places by corrupting legislatures in a pecuniary way. ... But alas, this is not a peculiarity belonging to the office of senator alone. It has happened equally or more often in elections to the House of Representatives, as well in State and municipal elections. A legislative election of senators, therefore, is not the cause of this great evil. In the nature of things, it must be worse in popular elections, for the members of a legislature must, in the choice of a senator, vote openly, so that the constituents know whether or not their representatives have followed the general judgment of the particular communities they represent—a matter of vital importance in all representative government. But in popular elections, where each citizen is acting in his personal character only, it is equally important that he have the right to vote secretly, notwithstanding that he may be bribed in spite of every precaution that the law may adopt to prevent it. ...

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[T]here is neither reasonable nor plausible ground, then, for taking the grave step of disturbing the exact and solid balance of the powers and factions of our national Constitution, which has in these respects given us a century of security, of State representation and of State rights as well as a wonderful national progress as a people.

Walter Clark, *"The Election of Senators and the President by Popular Vote and the Veto Power"*<sup>3</sup>

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<sup>3</sup> Excerpt taken from Walter Clark, "The Election of Senators and the President by Popular Vote and the Veto Power," *Arena* 10 (1894):453.

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... The facility with which the present mode of election lends itself to the control of the choice of senators by the money power, the selection of a large proportion, probably a majority of the senators, at the dictator of the accumulated wealth of the country, and the consequent indifference with which the average senator is tempted to regard the people's interest, or the people's will, are reasons why the mode of election should be changed. ...

...  
The present mode of election virtually disfranchises all the counties in which the party, which is dominant in the legislature, does not control. Take a state in which either party has only a small majority in the legislature on joint ballot. In such a state half the counties, containing possibly one half the voters of the dominant party, are completely disfranchised. Nay, more, as the choice is usually by caucus, one half of the dominant majority, coming from one fourth of the counties, select the senator. The parties being usually nearly equal at the polls, the members of the legislature who cast the votes of those counties may thus represent less than one eighth of the voters of the state. Such a system is not democratic. That it readily lends itself to manipulation and to the influence of corporate and plutocratic influences would be apparent, even if the world was not advertised of the fact by that unanswerable teacher—experience.

But it is argued that the legislature represent the state. But so do the governor and the judiciary, and even more faithfully, since they must be chosen by a majority of the voters of the whole state,<sup>4</sup> while not unfrequently the majority of the legislature is chosen by a minority of the voters of the state. Yet who would be content to have the senators appointed by the governor or elected by the judges of the state? Why should they be chosen by the legislative department, when the people themselves are competent to express their own wishes at first hand, and not leave their choice to be determined, as often happens, by men who receive, as above stated, less than one eighth of the vote of the state? Each of those members of the caucus majority may have been the choice in the nominating convention of his party in his country of a small majority only, making it thus in fact possible and not very unusual for one sixteenth of the voters of the state to control the choice of the senator. ... What particular sixteenth of the whole vote shall decide the result is rarely left to chance. Skillful manipulation and the adroit use of money for political machinery (not necessarily for bribery) decide the matter and not the people's will. That is evil enough.

A senator who is tempted while in office to disregard the wishes and the interest of the people, is emboldened by the knowledge that if by certain influences he can control the sixteenth—more or less—who compose a majority in the nominating conventions of those counties which send a majority of the legislators of the dominant party, he is safe for re-election; and knows further that without being the choice of any perceptible element among the people it is sufficient if he can secure a majority of the caucus. But he will pause if he knows his renomination must command a majority of his party's convention and an endorsement of a majority of the voters of the whole state at the ballot-box. Is there any reason why the people should not have this potent assurance of the fidelity of their servant in his office?

One of the disgraces of our institutions is what is known as gerrymandering. It is a disgrace because its purpose and object is to defeat the will of the majority, which is the corner-stone upon which a republican form of government is based. One of the commonest instances of gerrymandering is the apportionment of legislative districts, and sometimes even the creation of new counties, with a view to securing a majority of the legislature to the party which is in the minority in the state on a popular vote. The greatest inducing cause to commit this crime against popular sovereignty is the selection of United States senators. It is well to remove the inducement.

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<sup>4</sup> Many state judiciaries were elected at the turn of the twentieth century.