SURVIVING LEGISLATIVE DEADLOCK: INSTITUTIONAL REFORM IN THE UNITED STATES SENATE

By

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To Robert and Jacqueline Cicenia

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Abstract of Dissertation Presented to the Graduate School
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SURVIVING LEGISLATIVE DEADLOCK: INSTITUTIONAL REFORM IN THE UNITED STATES SENATE

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This dissertation addresses the following broad theoretical question. Why do seemingly stable democratic institutions undergo sudden, abrupt transformation? Only once in American political history has the structure of a national political institution changed through a constitutional amendment. This dissertation examines the forces contributing to the passage of the 17th Amendment, which allowed for direct election of U.S. Senators. The effects of this amendment‘s passage are obviously far-reaching, as it took the power of appointing Senators away from the state legislatures and gave it to the general public.

Contributing to the literature on institutional development in the U.S. Congress, this study examines the long-term patterns and short-term pressures which led to the direct election of Senators. One contribution of this dissertation is to provide empirical evidence regarding theoretical claims about institutional change in a democracy, as well as shifts in the motives and behavior of individual members of Congress. A second contribution is to provide theoretical insight into an understudied event in American

political development. Third, this dissertation uses original data, which provides new understanding into the nature of legislative deadlocks during the Progressive Era.

CHAPTER 1
INTRODUCTION

In May 2009, Minnesota Senator Amy Klobuchar's office was busy. According to Klobuchar's staff, the office was experiencing an increase of 400 constituent cases, 30% additional meetings, 5% more constituent phone calls, along with an additional committee assignment. All this was due to the protracted campaign between incumbent Norm Coleman, and challenger Al Franken for Minnesota's other Senate seat which caused one of Minnesota's U.S. Senate seats to remain vacant for several months in the beginning of 2009. [1] This underrepresentation in Minnesota had profound implications both for the state, as well as the Senate's Democratic Caucus which was one vote shy of a filibuster proof majority.

Minnesota was not the only state to endure a Senate vacancy entering the 111th Congress. Colorado, Delaware, Illinois, and New York had vacancies for different reasons. Illinois and Delaware's Senate seats became vacant due to the ascension of President Obama and Vice President Biden respectively. Colorado and New York were also vacant due to the appointment of Ken Salazar and Hillary Clinton to Obama's cabinet.

Individual states have varying requirements for filling senate vacancies should they occur. The most common method is a gubernatorial appointment for a new senator to serve the remainder of the term in office. Other states call for a special election within weeks of a vacancy. As one can imagine, vacant senate seats can lead to confusion and deadlock.

[1] "Klubuchar: Minnesota Needs a Second Senator" Huffington Post, May 20, 2009.

Deadlock such as this did occur in late 2008 with the appointment of President Barack Obama's successor in Illinois. In December, reports surfaced that Governor Rod Blagojevich intended to sell the Senate seat previously held by Obama.[2] The scandal created a firestorm that eventually lead to Blagojevich' impeachment. This was not the first time the state of Illinois endured a scandal of this type, as a similar controversy occurred nearly a century ago. As will be seen in this dissertation, this controversy was the tipping point that produced a political earthquake.

These more recent controversies have led Senator Russ Finegold (D-WI) to propose amending the constitution over vacant senate seats. Finegold proposes a special election be called immediately following a senate vacancy. This solution would assuage any confusion while allowing citizens to directly choose their senator for the remainder of the term. Finegold's amendment has a familiar ring to it. Scenarios where a state was lacking one or both of their Senators were once a common occurrence. Between 1891 through 1905, there were 14 Senate seats vacant for at least one session due to disputed appointments. In fact, the state of Delaware had no representation in the Senate between 1899 and 1901.[3]

These deadlocks over disputed Senate appointments were one major factor pushing Congress to pass the most sweeping institutional reform in American history. This reform, the 17th Amendment to the constitution, changed how Senators are

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[2] "Illinois Governor Charged in Scheme to Sell Obama's Seat" New York Times, December 9, 2008.

[3] Wirls, Daniel, 1999. "Regionalism, Rotten Boroughs, Race and Realignment: The Seventeenth Amendment and the Politics of Representation" *Studies in American Political Development* (13): 1-30

Schiller, Wendy and Charles Stewart III 2007 "Challenging the Myths of 19th Century Party Dominance: Evidence From Indirect Senate Elections 1871-1913" Presented at the 2007 Annual Meeting of the American Political Science Association

elected. The framers originally designed a Senate that was appointed by the individual state legislatures. The 17th Amendment changed the method of electing senators so it would now be done by the voters in each state. Once dismissed as an effort without any realistic chance of passage, the 17th Amendment emerged through a series of events over the course of decades. Both the exogenous and endogenous forces causing this amendment's passage will be the focus of this dissertation. I will provide a review on the limited literature on this amendment's passage, a theory as to how this reform ultimately passed, and empirical testing of this theory.

Existing Theories on the 17th Amendment's Passage

The existing literature has provided a limited glimpse as to the pressures facing the Senate in the decades preceding the 17th Amendment. The first, and most widely used explanation, is that the 17th amendment was merely a reflection of several progressive electoral reforms passed during that period.[4]

This is the focus of two major works focused on the 17th Amendment.[5] In 1938, Political Scientist George Haynes published a comprehensive volume on the United States Senate. The first section chronicles Senate history of the first 150 years of the chamber. The second section is a detailed portrait of Senate organization, procedure, and practices in the late 1930s. In his chapter on the lead-up to the 17th Amendment,

[4] Hoebeke, C. H. 1995. The Road to Mass Democracy: Original Intent and the Seventeenth Amendment. New Brunswick, NJ: Transaction Publishers.

Haynes, George H. 1938. The Senate of the United States: Its History and Practice, Volume II.Reprint. New York: Russell and Russell. 1960.

[5] Haynes, George H. 1938. The Senate of the United States: Its History and Practice, Volume II.Reprint. New York: Russell and Russell. 1960

Hoebeke, C. H. 1995. The Road to Mass Democracy: Original Intent and the Seventeenth Amendment. New Brunswick, NJ: Transaction Publishers.

Haynes provides a descriptive account on the controversies and arguments surrounding the amendment's passage.[6] A generation earlier, Haynes wrote a book taking a normative stand in support of the direct election of Senators. In arguing for the amendment's passage many members of Congress cited the arguments in Haynes' book. [7]

There have been four doctoral dissertations, three in Political Science and one in History whose focus is related to the 17th Amendment. The first was in 1936, by Wallace Worthy Hall. This work is an excellent example of scholarship from the old institutionalist paradigm which dominated Political Science in the first half of the 20th Century. Hall provides detailed description of the resolutions and debates surrounding the history of the direct elections amendment. Hall proceeds to voice his normative approval, stating that this reform was beneficial in that it took power away from elites.[8]

Byron Daynes', "The Impact of the Direct Election of Senators on the Political System" examines the how the 17th Amendment impacted the Senate internally after 1913. Daynes examines questions related to this reform's impact on party factionalization, its role as a policy making body, and how it altered how candidates are recruited.[9]

Sara Crook's "The Consequences of the Seventeenth Amendment: The Twentieth Century Senate," is an examination of how the newly elected Senate impacted the

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[6] Haynes, George H. 1938. The Senate of the United States: Its History and Practice, Volume II.Reprint. New York: Russell and Russell. 1960.

[7] Haynes, George H. 1906. The Election of Senators. New York: Henry Holt and Company.

8 Hall, Wallace Worthy 1936. "The History and Effect of the Seventeenth Amendment." Unpublished PhD Dissertation

9 Daynes, Byron W., 1971. "The Impact of the Direct Election of Senators on the Political System" Unpublished PhD Dissertation.

demographic and vocational makeup of individual Senators. Included in Crook's findings were that the Senate became more professionalized, with members more likely to be born in the state in which they were elected, and more likely to have previously served in the House.[10]

The most recent work by William D. Murphy attempts to directly tackle issues behind the 17th Amendment's emergence. Murphy's argument is twofold. First, the 17th Amendment emerged as a reform due to a new understanding of power relationships between the state legislatures and the Senate. This was in part, due to the Progressive Era disenchantment with existing institutions throughout government. Murphy's second argument is that the amendment's supporters, while supporting a measure that expanded democratic practice, it was actually spurred by a desire to limit the participation of minorities and immigrants.[11] My dissertation goes beyond the above works by describing how external threats to the Senate's standing as an institution caused its members to act in a defensive posture towards this reform, as well as an internal institutional argument behind the processes involved in the amendment's passage.

There also exists a limited number of journal length scholarship related to the 17th Amendment. One article written four decades ago addresses why urban political machines were more likely to support the 17th Amendment. The author argues how steps taken by state governments to weaken the electoral power of cities was a major

[10] Crook, Sara Brandes 1992. "The consequences of the Seventeenth Amendment: The twentieth century Senate" Unpublished PhD Dissertation.

[11] William D. Murphy 2006. "The Politics of Reform: Direct Election of Senators and Democracy in the Progressive Era" Unpublished PhD Dissertation

factor in engendering this support from urban machines.[12] Additional research has indicated that state interests played a strong role in predicting final passage of the 17th Amendment.[13] An article by Jenkins points to partisanship as the main correlate to the outcome of contested Senate election cases throughout the history of the chamber.[14] Current work by Wendy Schiller and Charles Stewart is examining a similar question within state legislatures.[15] Wirls provides evidence that strategic motives for partisan electoral bias were behind arguments used for and against the amendment's passage.[16] Another article finds that the 17th Amendment and the introduction of the electoral cycle led to ideological moderation among Senators.[17] However, no other scholarship exists that directly addresses the causes of the 17th Amendment's passage.

My argument in this dissertation is that three main forces drove an unlikely reform, the direct election of Senators to its eventual passage. The explanation which I propose is that the old method of Senate elections being approved by State Legislatures and approved by the Senate led to increasing levels of controversy and institutional gridlock.

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[12] Buenker, John D., 1969 "The Urban Political Machine and the Seventeenth Amendment," Journal of American History 56: 305-22.

[13] Holcombe, Randall G., and Donald J. Lacombe 1998 "Interests Versus Ideology in the Ratification of the 16th and 17th Amendments" *Economics and Politics* 10: 143-159.

Kenny, Lawrence and Mark Rush 1990 "Self-Interest and the Senate Vote on Direct Elections *Economics and Politics* 2: 291-301.

[14] Jenkins, Jeffery A., "Partisanship and Contested Election Cases in the Senate, 1789-2002" *Studies in American Political Development* 19: 53-74

[15] Schiller, Wendy and Charles Stewart III 2007 "Challenging the Myths of 19th Century Party Dominance: Evidence From Indirect Senate Elections 1871-1913" Presented at the 2007 Annual Meeting of the American Political Science Association

[16] Wirls, Daniel, 1999. "Regionalism, Rotten Boroughs, Race and Realignment: The Seventeenth Amendment and the Politics of Representation" *Studies in American Political Development* (13): 1-30.

[17] Bernhard, William, and Brian R. Sala. 2006. "The Remaking of an American Senate: The 17th Amendment and Ideological Responsiveness." Journal of Politics 68: 345-57.

First, the institution benefited from the infusion of institutional activists, who were pushing for popular reforms against an intransigent old guard. Second, deadlocks over Senate elections, led to higher levels of institutional instability within state legislatures and the U.S. Senate, which brought increased pressure by states and members of Congress for institutional reform. In 1910, a major scandal which played a role both in shaping public opinion, and distracting members from other legislative business, and proved to be the tipping point that pushed the Senate over the edge. Last, the Senate was facing institutional threats. An exogenous threat was the state petitions calling for a constitutional convention for the direct election of Senators. An endogenous threat was the distractions Senators faced from their regular legislative business. Both these forces moved Senators to act in a defensive posture, acting in the interest of defending the institution and its standing in the national government.

This dissertation takes a mixed-methods approach in testing my argument. Mixed-methods has become increasingly popular in the social sciences as an alternative to a single method research design.[18] Mixed-Methods research integrates quantitative and qualitative data at different stages of the research process. By including both quantitative and qualitative data, the researcher can generalize to a population as well as gain a deeper context into the research question.[19]

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[18] Creswell, J.W. 2003. Research Design: Quantitative, Qualitative, and Mixed Method Approaches 2nd Ed. Thousand Oaks, CA: Sage Publications.

Tashakkori, A., and Teddlie, C. Eds. 2003. Handbook of Mixed Methods in Social and Behavioral Research Thousand Oaks, CA: Sage Publications

[19]Brewer, J. and Hunter, A. 1989. Multimethod Research: A Synthesis of Styles Newbury Park, NJ: Sage Publications

Hanson, William E., Vicki L. Plano Clark, Kelly S. Petska, John W. Creswell, and J. David Creswell 2005. "Mixed Methods Research Designs in Counseling Psychology" Journal of Counseling Psychology 52 (2): 224-35.

This study contains a detailed historical narrative tracing from the founding, the institutionalization of the Senate as it relates to disputed elections. Narratives help guide us in examining the temporal changes and sequencing patterns that impact institutional shifts.[20] This narrative is derived from Congressional archival documents as well as articles from The Historical Washington Post. This study also contains a detailed quantitative analysis of the factors behind the drive to pass the 17th Amendment. I turn to Event History Analysis to systematically examine the patterns behind state legislative calls for a constitutional amendment for the direct election of Senators. This is the first study to systematically examine the petitioning process by the states in the run-up to the 17th Amendment. Also included is a roll call analysis of final passage of the 17th Amendment in the U.S. Senate. These analysis model the causal processes for how this amendment emerged and eventually passed.

I draw from diverse literatures such as Historical institutionalism and social learning to construct my theoretical argument. Historical institutionalism tends to be more wide ranging in the substantive topics it addresses. Scholars within this perspective are attracted to questions addressing why policies change or remain stable, as well as the unanticipated consequences of policy change. Particular attention is paid to the gradual and punctuated nature of policy change over time. This literature privileges the role early historical events play in shaping institutions, which in turn set a

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Tashakkori, A., and Teddlie, C. 1998. Mixed Methodology: Combining Qualitative and Quantitative Approaches Thousand Oaks, CA: Sage Publications

[20] Buthe, Timothy 2002. "Taking Temporality Seriously: Modeling History and the Use of Narratives as Evidence" The American Political Science Review 96 (3):481-93.

For applications in a legislative development context see also Kassel, Jason 2008. Constructing a Professional Legislature: The Physical Development of Congress, 1783-1851. Unpublished PhD Dissertation.

particular path in motion, eventually becoming resistant to change over time[21]. However, over the long term, the eventual outcome may not necessarily be the most optimal outcome given the original choice set. This is due to the "positive feedback" which occurs as the actor proceeds further up a given path, the cost of reducing course and pursuing a previously available policy becomes increasingly higher. Thus, for significant institutional change to occur, there must be a "long buildup of successful challenges to the status quo," [22] which slowly reach a threshold level, which ushers in a new major institutional change. [23]

The process by which Senators processed and arrived at this decision occurred as a form of organizational learning. Dodd's theories of congressional learning address issues related to members reaching unanticipated "crisis" points that arise due to changes in the organizational environment. These institutional crisis moments lead members to question their epistemological assumptions about how the institution operates internally and with its power relationships in the broader political system.[24] Such a crisis moment presented itself as Congress faced an explosive scandal and the

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[21] Mahoney, James. 2003. "Strategies of Causal Assessment in Comparative Historical Analysis." In *Comparative Historical Analysis in the Social Sciences,* ed. James Mahoney and Dietrich Rueschemeyer, 337-372. Cambridge, UL; New York: Cambridge Univ. Press.

Pierson, Paul 2000. "Increasing Returns, Path Dependence, and the Study of Politics" *American Political Science Review* 94: 251-267.

- 2004. *Politics in Time: History, Institutions, and Social Analysis* Princeton: Princeton University Press.

[22] Pierson, 164.

[23] Ibid, 83.

[24] Dodd, Lawrence C., "Political Learning and Political Change: Understanding Congressional Development over Time" in Lawrence C. Dodd and Calvin C. Jillison, eds., Dynamics of American Politics: Approaches and Interpretations (Boulder: Westview Press, 1994) Lawrence C. Dodd "Reenvisioning Congress: Theoretical Perspectives on Congressional Change" in Lawrence C. Dodd and Bruce I. Oppenheimer, eds. Congress Reconsidered, 8th Ed. (Washington DC: CQ Press, 2005).

threat of a constitutional convention. With a constitutional convention, the Senate faced a potentially devastating change in its standing.

I turn to Prospect Theory as a form of social learning that provides a model that can provide some insight into these motives as to why the Senate eventually passed the 17th Amendment.[25] Central to Prospect Theory is how the environment shifts an individual's evaluation of outcome alternatives.[26] Subscribers to the theory argue that this is an indication that losses loom larger than gains when making choices under risk.

When Senators voted on the 17th Amendment, they were reacting to various threats to the Senate's standing as an institution. The Senate had become overwhelmed with the Lorimer case, with its hearings distracting senators from other legislative business. Most importantly, the Senate's standing as an institution was at stake due to the threat of a constitutional convention. Therefore, the Senate passed this reform in a defensive posture, attempting to protect itself from these institutional threats.

Foundations of the Early Senate

In order to trace the Senate's institutional development, it is imperative to go back to the institution's design during the Constitutional Convention of 1787. Examining an institution's genesis is considered to be crucial towards understanding its developmental

[25] Prospect Theory is a form of 'Bounded Rationality' which is a decision making theory that incorporates these limitations in an attempt to model decisions that appear on the surface to be "irrational." Bounded Rationality's most important feature is the limited information processing capacity of human beings. Most decisions take place in a complex environment, and include a multitude of considerations. Individuals have the capacity to focus on only a limited number of considerations when making a specific choice. Therefore the focus of our attention at a particular point in time provides a major component for how we make choices. Jones, Bryan D. 2001. *Politics and the Architecture of Choice: Bounded Rationality and Governance* Chicago: University of Chicago Press.

[26] McDermott, Rose. 1998. *Risk-Taking in International Politics: Prospect Theory in American Foreign Policy*. Ann Arbor: Univ.of Michigan Press.

path over time. [27] Additionally, by examining the effect of environmental changes to an organization's internal structure over time, can provide important insight into why particular choices are made at a particular point in time. [28]

Chapter 2 begins with a discussion of the philosophical underpinnings behind the framer's design. I reach back to the ancient philosophers who argued for a mixed government, consisting of different classes of society which would be a check against one another. In particular, I briefly look at the Roman senate, providing the separation of powers from an ancient perspective. I also address how some prominent 18th Century philosophers either expanded or contradicted mixed government theory. Specifically, I look to Montesquieu's discussion of bicameralism, Locke and Paine's treatment of limited government, and how these theories impacted the framers' thoughts on a constitution. It is important to look at these theories as they lead us to address why the founders created a Senate, why it gave it the specific powers it has, and most importantly, why Senators were elected by the state legislatures.

Next, I turn to specific debates during the Constitutional Convention of 1787. Examining these foundations will illustrate why the framers chose the election of senators by state legislatures within the framework of the Senate's position in the political system. Debate over the selection of Senators during the Constitutional Convention included proposals such as election from the lower house, direct election from citizens, appointment by Governors, and appointment by State Legislatures.

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[27] Mahoney, 2000 "Path Dependence in Historical Sociology" *Theory and Society* 29: 507-48.
Pierson, Paul 2000. "Increasing Returns, Path Dependence, and the Study of Politics" *American Political Science Review* 94: 251-267.
- 2004. *Politics in Time: History, Institutions, and Social Analysis* Princeton: Princeton University Press.

[28] Cooper, Joseph and Cheryl D. Young 1989 "Bill Introduction in the Nineteenth Century: A Study of Institutional Change" *Legislative Studies Quarterly* 14: 67-105.

Overall, arguments supporting the election by the state legislatures centered on two themes. The first, was to preserve the interests of the wealthy and property holders against the masses. This point of view was supported by actions of the several state legislatures during the era of the continental congress. This sentiment also supported the view that the Senate should be an American House of Lords, with Senators of superior character and prestige. The second argument was to preserve the power and representation of the state governments.[29] These arguments ruled the day and the convention overwhelmingly approved Senate election by the state legislatures.

Development of the Early Senate

Chapter 3 examines how the Senate evolved in the manner it did during the early 19th Century, why disputes over Senate elections were rare prior to the Civil War, and early attempts to reform the Senate election process.

Scholars such as Daniel and Stephen Wirls explain Senate development and institutionalization as based on the expectations and conditions from the Convention of 1787. These authors point to the gradual rise of partisan voting patterns over time as a key indicator.[30] Therefore, one reason why disputed appointments did not reach a high level of salience during the first half of the 19th Century is due to the fact that strong party and committee structures had yet to emerge in the Senate.

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29 Murphy, 33-35.

[30] Wirls, Daniel and Stephen Wirls 2004. *The Invention of the United States Senate* Baltimore: Johns Hopkins University Press.
However, this conception of institutionalization of the Senate is distinct from Polsby's (1968) classic discussion of the House. They examine how the early Senate resolved uncertainty in norms and procedures, creating precedents for its relationship with the executive, the House, and the states. Wirls and Wirls' conclude their analysis by portraying the Senate's institutional development as converging with the House in its electoral relationship with the public, while diverging from the House with its internal rules.

Several attempts to reform the Senate Election process were proposed in Congress dating back to 1826.[31] This reform encountered substantial resistance in Congress. Andrew Johnson both as a Senator and as President made the most serious proposal. Of course, Johnson‘s impeachment precluded this effort. Congress did not seriously consider this amendment again until the early 1890s.[32]

The first dispute over a U.S. Senate election to reach national salience occurred in1865 over the appointment of James Stockton of New Jersey.[33] Stockton’s credentials were questioned due to his election by a joint session of the New Jersey state legislature by only a plurality, with Stockton’s vote breaking the tie. The Senate Judiciary Committee ruled in Stockton’s favor, stating that the procedures employed by the New Jersey state legislature were in compliance with the state constitution. However, controversy erupted as it was discovered that the state of New Jersey typically applied different rules at each session for electing U.S. Senators.[34]

The Stockton controversy reached the Senate floor, expanding into a debate over the national government’s role in establishing a standard over U.S. Senate elections. Congress responded by passing a law in 1866 regulating the election of Senators in each state. This legislation required each house to hold a joint session, with the instruction to choose a candidate with majority vote. If no candidate received a majority,

[31] Hoebeke, 1995.

[32] Ibid.

[33] A highly contentious Senate election kept a seat from Indiana vacant in 1857, however, no significant reform legislation reached the floor during this decade Byrd, Robert C., 1989 The Senate 1789-1989: Addresses on the History of The United States Senate Vol. 1 Washington DC: U.S. Government Printing Office.

[34] Byrd, 1989: 391.

a state legislature was to consider the election during each legislative day until a Senator was chosen.[35]

One of the major criticisms of this legislation was that it did not allow for election by a plurality.[36] The new standard for state legislative selection led to the unanticipated consequence of deadlocked legislatures. The Stockton controversy is the perfect example of the unintended consequences of institutional reform. Unintended outcomes occur when institutional reform does not produce outcomes consistent with existing beliefs or practices within a particular policy paradigm.[37]

Recent theoretical work by Paul Pierson on path dependency is an example of scholarship that privileges the role historical events, such as the Stockton case, play in shaping institutions, which in turn set a particular path in motion that eventually becomes resistant to change over time[38]. However, over the long term, the eventual outcome may not necessarily be the most optimal outcome given the original choice set. This is due to the "positive feedback" which occurs as the actor proceeds further up a given path, the cost of reducing course and pursuing a previously available policy becomes increasingly higher.

Thus, the Stockton case was such a "pivotal moment" where the Senate set a clear path for how Senate elections would be conducted within the states. The expectation was that this new, uniform standard would cause future disputed elections a

[35] Haynes, 1906; Hoebeke, 1995.

[36] Ibid.

[37] Cortell, Andrew P. and Susan Peterson. 2001. Limiting the Unintended Consequences of Institutional Change. *Comparative Political Studies* 34 (7): 768-799.

[38] Mahoney, 2000 "Path Dependence in Historical Sociology" Theory and Society 29: 507-48. Pierson, 2002; 2004.

rarity. The Senate, created a new Committee on Privileges and Elections, designed to handle any subsequent disputes should they occur. Of course, this legislation did little to curb disputed Senate elections and may have in fact, exacerbated the problem.

Building Consensus for Direct Elections: Cases Before the Privileges and Elections Committee

Chapter 4 provides a qualitative analysis of how the Elections Act of 1866 failed to reduce the frequency and duration of disputed U.S. Senate elections. Although this legislation appeared successful at preventing controversial Senate elections in the short term, deadlocks over Senate elections accelerated during the late 1880s and 1890s. In fact, this law had the effect of stalling legislative business within both state legislature and the U.S. Senate. The Committee on Privileges and Elections was appointed on March 10, 1871.[39] Chapter 4 focuses on the disputes were waged in earnest in state chambers in addition to the Senate's new Committee on Privileges and Elections. Disputes both at the state and national levels were now covered by the national press who chronicled these deadlocks in all its scandalous detail. Charges of bribery, often stemming from partisan motives, became rampant during this period.[40] It is interesting to point out that prior to 1872 there was only one case where it bribery of a Senator was proven.[41] One of the most famous bribery cases during this time was Senator William Clark of Montana who confessed to spending over $140,000 to the legislators of his state.[42]

[39] Compilation of Senate Elections cases XXVII.

[40] Wirls, Daniel, 1999.

[41] Hoebeke, 1995: 91.

[42] Haynes, 1938: 130.

Chapter 4 also discusses the rise of an increasingly vocal minority in Congress whose frustration over these deadlocks spurred them to propose a constitutional amendment to have Senators elected directly by the people. An amendment calling for the direct election of Senators first passed the House in 1893, and five additional times before it eventually passed the Senate in 1912.[43]

However, this chapter also reveals the institutional powerlessness reformers felt during the 1890s and early 1900s. Constitutional change would not come about through Congress, at least for the time being. By 1900, external forces were building that would place unprecedented pressure on the Senate to act. Chapters 5 and 6 will illustrate how these external pressures placed the Senate's institutional identity at risk, empowering reformers to build a coalition that would eventually bring constitutional change.

Later Disputes and Calls for Reform

Chapter 5 provides the progressive era context behind the calls for reform, in addition to an assessment of the frequency and duration of disputed Senate elections from 1789- 1913, developing a model over time. The Progressive movement evolved during the 1890s and emerged in full force during the 1900s and 1910s[44]. Unlike the more agrarian and western origin of the Populists, the Progressives tended to emerge from midwestern states and from urban centers. Progressives also tended to be from the middle and upper economic classes in society. The intellectual genesis behind

[43] Haynes, 1938: Hoebeke, 1995.

[44] Hofstadter, Richard 1960. The Age of Reform. New York: Vintage Books.
Link, Arthur S., and Richard L. McCormick 1983 Progressivism Wheeling IL: Harlan Davidson

many progressive policies can be traced to the academics, attorneys, and journalists of this era.[45]

However, there were some significant contradictions within progressivism. Several policies were passed during this period that restricted the participatory rights of specific groups. Some of the most egregious policies were voting rights restrictions such as poll taxes and racial segregation laws.[46] Other policies included restrictions on immigration and miscegenation laws. The prohibition movement in particular was viewed as targeting immigrant groups. Chapter 5 will also detail how the desire to disenfranchise minorities made its way into the debate over the 17th Amendment. Specifically, there was a desire by some states to remove Article I Section 4, which gives the national government control over congressional elections.

The states were clearly burdened by the deadlocks observed in the 1880s and 90s. These burdens were compounded by the regulation of senate elections from the Elections Act of 1866. These controversies led to many calls for reform however the Senate remained intransigent in its unwillingness to act. However, pressure on the Senate did not abate. This chapter will reveal how outside pressures from the states and the national press continued to build on the Senate during the 1890s and 1900s.

The press clearly played a critical role by chronicling both the Senate election deadlocks, and the corruption in the Senate as a whole. This coverage clearly sent a signal to the public that the Senate was awry and needed some kind of reform. A content analysis of articles in The Washington Post shows that close to half of the

[45] Ibid.

[46] McDonagh, Eileen 1999 “Race, Class and Gender in the Progressive Era,’ in Sidney Milkis, ed., Progressivism and the New Democracy. Amherst: University of Massachusetts.

articles whose major theme was on Senate elections focused on the deadlocks and scandals. This analysis also revealed spikes in coverage during some of the highly salient election cases covered in the previous chapter. Another interesting finding is that articles related to the proposed direct elections constitutional amendment tended to lag closely behind articles that focusing on deadlocks. This reveals that the press was somewhat responsive to the scandals and deadlocks in their calls for reform.

Pressure was also building on the Senate from another institution, the state legislatures. More than two dozen state legislatures invoked Article V of the constitution in calling for a constitutional convention where the direct election of Senators would be addressed.[47] An Event History Analysis revealed that states who generated more coverage of scandals and deadlocks related to their Senate elections were more likely to petition Congress for the constitutional convention. This clearly indicates that the deadlocks and scandals were taking their toll on the state legislatures. In desperation, the states wished to delegate control over Senate elections to the people.

As discussed earlier, the decades after the Civil War saw an increasing role for party leadership in Congress.[48] The Republican caucus came under control of a faction of led by Senators Nelson Aldrich and William Allison. Although not nearly as strong as the party leadership structure developed by Reed and Cannon in the House, Aldrich

[47] Haynes, 1930.
Hoebeke, 1994.

[48] Binder, Sarah A. 1997 Minority Rights Majority Rule: Partisanship and the Development of Congress Cambridge: Cambridge University Press
Rothman, David. 1969 Politics and Power New York: Athenium Press.
Wirls, 1999.

and Allison enjoyed considerable sway in setting the legislative agenda in the Senate.[49] Efforts at achieving institutional reform would not only need to undermine this power base, it would need to replace it. This will be addressed in full in Chapter 6.

Tipping Points and Calls for Final Passage

Chapter 6 examines the role played by a few critical events in the 17th Amendment's passage. Long term, durable change in Congressional history is often facilitated by the infusion of new members. This process is often triggered with the arrival of newer members who do not have immediate access to the power structure will try to fragment the existing structure in an effort to advance a new power base.[50] This process occurred in two steps. In 1904, Oregon was the first state to pass a direct election method for U.S. Senators. One feature of what became known as the Oregon Plan asks candidates for the state legislature to sign a pledge that they will support the candidate for U.S. Senate who received a plurality in the statewide general election. Not only did this law make state legislators more accountable to the direct will of citizens, it also weakened state party control over Senate elections.[51]

This was followed by several other states that passed their own form of direct election legislation known as the Oregon Plan. In 1904 the state of Oregon passed a

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[49] Hechler, Kenneth W., 1940. Insurgency: Personalities and Politics of the Taft Era PhD Dissertation: University of Columbia.
Merrill, Horace Samuel and Marion Galbraith Merrill 1971 The Republican Command 1897-1913 Lexington: University of Kentucky Press
Schickler, Eric 2001. Disjointed Pluralism: Institutional Innovation and the Development of The U.S. Congress Princeton: Princeton University Press.

[50] Dodd, Lawrence C., 1977. "Congress and the Quest for Power In Lawrence C. Dodd and Bruce Oppenheimer ed., Congress Reconsidered. New York: Praeger Books.
-1986 "The Cycles of Legislative Change: Building a Dynamic Theory" In Political Science: The Science of Politics. New York: Agathon Press.

[51] Eaton, Allen H. 1912 The Oregon System: The Story of Direct Legislation in Oregon Chicago: AC Mc Clurg and Co., 5.

popular initiative known as the Direct Primary law. This was passed after Oregon's citizens became increasingly upset with the legislature's continued inaction during Senatorial elections.[52] This alliance of insurgent Republicans and Democrats were able to gain control of the legislative agenda after the 1910 election.[53] Senators recently elected by the Oregon Plan provided a new "institutional vision" to the chamber, which included a reform agenda.[54] After taking control from Aldrich led power structure, reform oriented Senators were able to implement parts of their agenda which included the 17th Amendment. [55]

Institutional theorists also mention the consequential role of "tipping points" or more precisely, events occurring at decisive moments, creating a critical mass for a particular action to occur.[56] The scandal surrounding the appointment of Senator Lorimer from Illinois and state petitions calling for a constitutional convention can be described as potential tipping points that pushed Congress over the edge. The controversy over the election of William Lorimer achieved considerable coverage in the

[52] Eaton, 1912.

[53] Haynes, 1936.
Heckler, 1940.
Hoebeke, 1995.

[54] Swift, 1997.
Schickler, 2000.

Similarly in the House, an insurgent group of progressive Republicans from the Midwest led a revolt against the strong power structure controlled by speaker Cannon (Heckler, 1940; Harrison, 2004; Schickler, 2000).

[55] Heckler, 1940

Hoebeke, 1995

Schickler, 2000.

[56] Pierson, 2002 and 2004.

press.[57] Lorimer's eventual expulsion from the Senate is considered by some to be controversial. This is partially attributed to the fact that some of the individuals who accused Lorimer of bribery later recanted.[58] Another important point is the strong relationship between the Senate vote to expel Lorimer and support for the 17th Amendment. The Lorimer case was clearly viewed as presenting a political opportunity by amendment proponents.[59]

By the end of 1910s, over 20 states invoked Article V of the Constitution, calling for a Constitutional Convention to address the Direct Elections issue.[60] Some scholars have argued that state petitions for a constitutional convention can be an effective means at provoking an unresponsive Congress to enact institutional reforms.[61]

Janice May has argued that petitions for a convention to propose constitutional amendments can be effective at provoking Congress to act. [62] By 1911, a total of 31 states applied, which was one state short of the two-thirds required for a constitutional convention. [63] With only one additional state petition required for a constitutional convention, the power of individual Senators and the institution as a whole was now at risk. The Lorimer case notwithstanding, Senators who were previously disposed to

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[57] Hoebeke, 1995.
Tarr, Joel A., 1971 A Study in Boss Politics: William Lorimer of Chicago Urbana: University of Illinois Press

[58] Hoebeke, 1995: 92.
Tarr 1971: 307.

[59] Hoebeke, 1995.

[60] May, Janice C. 1987. "Constitutional Amendment and Revision Revisited," *Publius*, (17) No. 1, New Developments in State Constitutional Law.

[61] May, 1987

[62] Ibid.

[63] Diamond, 1980

opposing Direct Elections, were now in a strategic environment where shifting their position may have been necessary for holding on to power.

Congress not only faced the possibility of a direct elections amendment, but possibly a plethora of additional changes to the constitution. Calls for a constitutional convention and the Lorimer case were key external events that shifted member's reference point bias to a losses frame. Congressional leadership, especially in the Senate may have observed a shift in what Prospect Theory would call their value position once the petitions for a constitutional convention gained momentum. This may have been the final catalyst forcing leadership to come to terms with the obvious. The states had enough of the deadlocks and scandals. Congress had no choice but to act.

Chapter 7 concludes this dissertation with a summary of the previous six chapters, implications for future Constitutional reforms, and directions for future research. What does the literature have to say about the effects of the Seventeenth Amendment? What opportunities are there for future research into Congressional ethics reforms? Do the events surrounding the 17th Amendment's passage provide implications for other constitutional reforms such as the elimination of the Electoral College?

CHAPTER 2
FOUNDATIONS OF THE EARLY SENATE

Introduction

As indicated in the previous chapter, the existing literature has provided a limited glimpse into the pressures facing the Senate in the decades preceding the 17th Amendment. Examining an institution's genesis is considered to be crucial towards understanding its developmental path over time.

[1] Since this chapter traces the Senate's institutional development, it is imperative to go back to the underpinnings behind the institution's design during the Constitutional Convention of 1787.

This chapter begins with a discussion of these philosophical underpinnings behind the framers' design. I reach back to the ancient philosophers who argued for a mixed government, consisting of different classes of society which would be a check against one another. In particular, I briefly look at the Roman senate, providing the separation of powers from an ancient perspective. I also address how some prominent 18th century philosophers either expanded or contradicted mixed government theory. Specifically, I look to Montesquieu's discussion of bicameralism, Locke and Paine's treatment of limited government, and how these theories impacted the framers' thoughts on a constitution. It is important to look at these theories as they lead us to address why the founders created a Senate, why it gave it the specific powers it has, and most importantly, why Senators were elected by the state legislatures.

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[1] Mahoney, James 2000 "Path Dependence in Historical Sociology" *Theory and Society* 29: 507-48; Pierson, Paul 2000. "Increasing Returns, Path Dependence, and the Study of Politics" *American Political Science Review* 94: 251-267;
Pierson, Paul 2004. *Politics in Time: History, Institutions, and Social Analysis* Princeton: Princeton University Press.

Next, I turn to specific debates during the Constitutional Convention of 1787. Examining these foundations will illustrate why the framers chose the election of senators by state legislatures within the framework of the Senate's position in the political system.

Mixed Constitution Theory

Many of the framers arrived at their views towards democracy from the theories of the early philosophers. Investigating these theories help us to understand the following questions. Why was the Senate proposed as an institution? Why was it given its specific powers? How did the framers arrive at their decision to have Senators elected by the state legislatures? Thus, it is important that we examine these theoretical underpinnings behind the framers' design. Therefore, I will trace some of the theoretical history that influenced the framers.

It is possible to point all the way back to Plato, in our search for the founders' theoretical foundations. Plato demarcated government into three forms, monarchy (rule by one), aristocracy (rule by a few), and democracy (rule by many). The existence of each form of government over time would dissolve, with monarchy devolving into tyranny, aristocracy into oligarchy, and democracy deteriorating into mob rule. Plato proposed a "mixed government" that would take the best of the three forms of government.[2]

Mixed government theory was further developed by the historian Polybius in the second century B.C. Polybius viewed Plato's three forms of government as occurring in a cyclical manner over history. In short, this cycle begins with a primitive society looking

[2] Richard, Carl "The Classical Roots of the U.S. Congress" in Inventing Congress, Ed. Kenneth R. Bowling and Donald R. Kennon Athens, OH: Ohio University Press.

for a strong leader to protect themselves from chaos and external enemies. Thus, they turn to a monarch. Over time, the monarchy becomes despotic and degenerates into tyranny. The monarch is then overturned by a group of nobles, which in turned formed an aristocracy. This form of government would also become corrupt, with the nobles oppressing the common class, with the government devolving into an oligarchy. Next, the people would revolt and form a democracy. However, the wealthy class, according to this theory, would corrupt the people with bribes, leading to factions and social chaos. This social unrest would lead to calls for a dictatorship, thus repeating the cycle over again. In order to prevent this from occurring, according to Polybius, it would be wise that a constitution provide for power to be distributed among these three classes in society.[3]

It was the Romans, who were in part influenced by the earlier Greek writings who developed mixed constitution theory in practice. In fact, Polybius looked to the Roman republic as the best example of a mixed government. It was this government, which minimized internal battles, providing for an interdependent relationship between "the one," "the few," and "the many." This mixed constitution would consist of Counsels, a Senate, and Tribunes.

According to Polybius, and the Roman philosopher Cicero, it was the Senate that was the key institution in the Roman republic. According to Cicero, the Senate should be looked to as the "leader of public policy" due to its wise and prudent leadership.[4]

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[3] Ibid., 6.
Hoebeke, 33.
Polybius, The Rise of the Roman Republic, from The Histories, Ian Scott-Kilvert, trans. (New York: Penguin Books, `986), pp. 307-310.

[4] Cicero, 1928. De republica, De legibus. Trans. C.W. Keyes. New York: Putnam's.

Both the public and the consuls were dependent on the Roman Senate, due to its dominance over the judicial system, it is control over the army, and its control over contracts. The Senate, was in turn, dependent on the people due to the tribune's ability to veto any Senate legislation.[5]

Polybius argued that these checks on power were what kept the mixed government going. Under this system each of the three institutions were given substantial power, thus satisfying the need for each to be prominent under the constitution.[6] Ironically, the Senate's power, was rather indirect in that its influence derived mostly from its ability to counteract and secure cooperation from the other institutions. Thus, the Senate's influence is broad, yet limited. Wirls and Wirls make a cogent point that Polybius s' constitution was premised on a similar assumption as the American framers. That deep-seated selfishness must be accounted for in a political system. This was especially needed during times of peace and prosperity, where corruption and power seeking is more in play.[7]

Modern Liberal Philosophers and Constitutional Theory

The framers were, of course also inspired by several modern liberal philosophers of the 18th Century. The French philosopher, Baron de Montesquieu argued in support for a separation of powers, and his theories are considered by some to be compatible

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Wirls, Daniel and Stephen Wirls, 2004. The Invention of the United States Senate, Baltimore: Johns Hopkins University Press, 13.

[5]Richard, 7.
E.W. Walbank, A Historical Commentary on Polybius, 3 vols. (Oxford, 1957-79), 1:635-746.

[6] Polybius 193, 6.44.
Wirls and Wirls, 14,15.

[7] Ibid.

with mixed constitution theory.[8] In Montesquieu's most famous work, *The Spirit of the Laws*, he argues forcefully not only for a separation of powers, but for bicameralism as well. Montesquieu's version of a mixed constitution consisted of an independent executive and a bicameral legislature. In this model republic, the first house initiates all laws, the second house approves, and the executive enforces them. Montesquieu did not believe the common people had the ability to legislate directly, calling them "extremely unfit." It was the legislature, which consisted of "persons distinguished by their birth, riches or honours" who can be entrusted to set policy.[9] Hoebeke quotes Montesquieu's model republic as strikingly similar to what the framers would eventually design:

> The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative.[10]

There is a distinct point of departure between Montesquieu and the earlier mixed constitutionalists. Wirls and Wirls point out that how Montesquieu's upper house is drawn primarily from the upper class, while its main purpose is to control the legislative excesses of the lower house. Unlike some other philosophers of his time, this argument does not assume a well-informed public, devoted to the general good. Instead, it argues

[8] Hoebeke, 34.

[9] Ibid.
Charles de Secondat, Baron de Montesquieu, The Spirit of the Laws, Great Books of the Western World, Thomas Nugent, trans. (Chicago: Encyclopedia Britannica, 195) vol. 38 p. 70-72..

[10] Hoebeke, 35.
Charles de Secondat, 74.

that a privileged class, or “aristocratic republic” is necessary to compensate for this lack of diligence among the general public.[11]

However, some theorists during this period argued for a limited government that contrasted with mixed constitution theory. The most prominent of these theorists were John Locke and Thomas Paine. Locke excludes any discussion of a second legislative house in his discussion of the right constitution. Locke, of course, is famous for arguing that all persons are equal in that none has the right to rule over another. Thus, any arguments for an aristocratic class, or what upper houses were considered to be inhabited by, are not considered in Locke’s idea of a just government. According to Locke, each individual is free to pursue their own happiness without giving a particular class an authoritative position. The role of the government, in Locke’s view, is simply to regulate the law, and to protect the property and liberty of the individual. Locke does not prescribe a specific institutional framework. Instead, he leaves it up to individual societies to decide the proper institutional arrangements according to their own judgement.[12]

Paine takes on mixed constitution theory directly. According to his judgment, America would never need a mixed constitution, due to the fact that he did not view any conflict between personal and public liberty. In fact, he viewed interests in society to be relatively homogenous. Paine argued for a more simple form of government, one that Hoebeke describes as “to disburden the people of checks and balances and establish

[11] It should also be noted that Montesquieu argued for a broad aristocracy that included “many nobles.”
Wirls and Wirls, 21-22.
Montesquieu 1989, 2.2-3, 8.2.

[12] Locke, 1980, sec. 129, 132-133;
Wirls and Wirls, 18.

the simplest and least inhibitive means of enacting their will."[13] Thus, there was no need for an elaborate system, checking one class of society against another. Instead, "the people's interests" were protected by a simple government, which did not impose itself on their liberty.[14]

Senates in Early State Legislatures

How did these theories manifest themselves within the early senates of the late 18th century? Although there was no particular pattern in constitutional design, each state drew from the above theoretical underpinnings in its own way. Since many of the framers who attended the Convention of 1787 criticized the failings of these institutional designs, it is important to discuss some of them, and why they were implemented.

Eleven states had a bicameral legislature, however, each had their own way of separating the two chambers. Most states had additional property requirements to be eligible to vote in a senate election. Some states had larger senatorial districts, whereas others had specific property holding requirements in order to serve. South Carolina's senate was elected indirectly through the lower house.[15] Maryland's constitution provided for a senate that was most removed from the people. Maryland's legislature elected an electoral college, who voted for an eight member senate. Many states had a

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[13] Paine, Thomas *Common Sense* (New York: Penguin Books, 1968), p. 67-69.
Hoebeke, 36-37.

[14] Ibid.

[15] Hoebeke, 37-39.
Wirls and Wirls, 44-45.
Anderson, 1992;
Wood, Gordon S. 1972 *The Creation of the American Republic: 1776-1787*. Chapel Hill: University of North Carolina Press.

weak executive whose powers were limited, some did not even have a veto.[16] Overall, Maryland's Senate was the most successful at checking against popular whims. Hoebeke found the Maryland Senate to be more protective of property, more responsive to the Continental Congress, and less responsive to than lower house.[17] This is clearly an example of a constitutional design consistent with Montesquieu's version of a mixed government.

Wirls and Wirls argue that although these states had a mixed government, they were quite distinct from the type described by Montesquieu. The intent behind these governments was rooted more in restraining the executive and preventing tyranny. Any provisions for an upper chamber that would check the masses were simply an afterthought.[18] This is even more evident in the designs of the two unicameral states.

Georgia and Pennsylvania both had unicameral governments. The government in Pennsylvania in particular was one of the more innovative states in their design. Pennsylvania had a popularly elected "Council of Censors" who would meet once every seven years to vote on the constitutionality of various laws. This branch also had an oversight role, looking into any abuses of power, or violations of the separation of powers[19] Pennsylvania also had a provision stating that public office was reserved for those "most noted for wisdom and virtue".[20] Clearly, there was sentiment in

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[16] Hoebeke, 37-39.
Wirls and Wirls, 44-45.

[17] Hoebeke, 39.

[18] Wirls and Wirls, 42-43.

[19] Pennsylvania had an "executive council" instead of a governor. Other states had governors elected by the legislatures Wood, 1972;
Wirls and Wirls, 43.

[20] Ibid.

Pennsylvania that only a certain class of society can be trusted with government service. In this design, the people elected a delegate from the upper class to represent them. This constitution appears concerned more with checking against potential tyrannical power than any expression of the popular will.

So, how did the founders view the constitutions in the states, and how did they impact their designs for the Senate? This issue will be addressed in a later section. I turn now to the general debates over the Senate during the constitutional convention.

Debates in the Constitutional Convention

In the next few pages, I will review the arguments posed by the framers during the constitutional convention as it relates to the design of the Senate. I will also discuss how the founders drew from constitutional designs implemented in the states. In this discussion, I suggest how Paul Pierson's theory of path dependency applies to this period. I will briefly describe Pierson's theory, then provide examples of how decisions were made at critical times during the founding that had profound implications for Congressional development.

Briefly stated, Pierson's theory emphasizes the importance early critical decisions that usually have a random chance element in them. Early on, there are a range of outcomes where actors must make a particular choice. Pierson refers to this as multiple equilibria. During this process, there are critical moments in time, where a particular decision is made, that is difficult to reverse, and sets in motion a series of successive events over time. These series of events that reinforce the earlier decision is what Pierson calls positive feedback. A key component to Pierson's theory is the timing and

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Thorpe, Francis N., ed. 1909 The Federal and State Constitutions , Colonial Charters and Other Organic Laws of the United States 7 vols. Washington DC: Government Printing Office., 5: 3084.

sequence of events at the early stages of development. This theory also acknowledges that the conditions behind the design of a particular institution or policy are also critical to the availability of options available to decision makers. [21]

As previously mentioned, the convention of 1787 took place only a decade after our nation declared its independence. Gordon Wood's 1971 classic work presents a provocative argument that some of the framers felt rather insecure about some of the social changes resulting from the American Revolution. The revolution brought the promise of social mobility for many. According to Wood, this was not only felt in the economic realm, but was even more pronounced in the political realm. Individuals from all walks of life became empowered to participate in the political process in ways that were considered unthinkable under the British regime. [22]

America, of course, never had the type of natural aristocracy as was common in Europe. However, the revolution unleashed among many, a sense that mobility among the social classes is possible. Some of the founders felt quite concerned with the prospect of individuals for whom they perceived as coming from a lesser station in life, obtaining political positions of responsibility. A cause of anxiety was the increase in contentious politics in the states. Some during this period even held the view that a legislative branch could be "tyrannical" by providing common citizens with access to too much power in a democracy. [23] More than anything else, it was obvious that the new nation was having difficulty adjusting to self-rule.

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[21] Pierson, 2000.

[22] Wood, 1972.

23 Ibid.

During this period leading to the convention, groups were polarized into two major camps over reforming the government. Some wanted a strong central government, while others wanted the states to have more control. The Federalists seized control over the debate in two ways. First, some of those opposed to the new constitution (Anti-Federalists) did not even show up to the Convention. Thus, they abdicated their ability to voice their arguments. Second, the Federalists were strategic in how they refuted the Anti-Federalist fears in the public debate after the Convention. The Federalists assuaged the fears of their rivals by arguing that the source of political power in the new republic was derived from the people and not its rulers. This was a new dynamic where elected officials are agents of the general public. Thus, the principle of Federalism was born, argued by Madison in the Federalist papers where both the federal and state governments serve as agents of the people, however with each level of government serving different purposes. [24]

Since the people were now the source of political power, they also had the discretion for how to delegate it. This provided Federalists with their main rebuttal for concerns over the division of powers between the national and state governments. The concept of Federalism became easier to contemplate, with the people merely delegating certain powers to their state government and others to the national government. This case was made even stronger by reiterating that the people were also empowered to change the allocation of said powers between the said governments.

[24] Wood, 1972: 546.

The Great Compromise

I turn more specifically to the debate over the structure and powers of the upper legislative body. Daniel and Stephen Wirls describe the most critical moment during the convention was the compromise over the size of the upper house and the apportionment of is members among the states.[25].

Surprisingly, there was a general consensus among the delegates to have a bicameral national legislature. Even James Wilson, who was a delegate from unicameral Pennsylvania voiced support for two legislative chambers:

> If the legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a single house there is no check . . . . . .[26]

In fact, Madison notes that when the bicameral legislature came up for discussion, it provoked virtually no debate.[27] Wirls and Wirls argues that this agreement was based on the assumption that a Senate was critical for ensuring a balanced legislative process. Wirls and Wirls also find that a small chamber and an independent selection were essential features proposed during debate. The Senate's small size would ensure its members would provide "stability and wisdom" to legislation.[28] Longer terms would also bring institutional memory that was not anticipated for the House. According to

[25] Wirls and Wirls, 1999.

[26] Pennsylvania did vote against two branches, mostly out of deference to Benjamin Franklin.
Wirls, 76-77.
Records, 1:254

[27] Ibid.

[28] Wirls and Wirls, 79.

Wirls and Wirls, the Senate's role would be that of an institutional check or "refinement" that would balance against the periodic whims of the masses.[29]

The Senate's design also had implications for how the framers decided to choose the executive. Some of the framers felt that each house would annul the choice of the other. Another concern was that an executive elected by the Senate would be controlled by the states. This new hesitation for providing the legislature the power to elect the executive resulted in the creation of the Electoral College system.[30]

Although the need for a Senate was almost universally accepted among the delegates, one area of contention was whether each state would have equal representation or if the number of Senators would be proportional to each state's population. The main line of conflict was between the larger states (and states projected to become larger sates), who supported proportional representation in both houses, and the smaller states such as New Jersey who wanted one vote in the house per state. Other proposals included merging states into 'districts' that would send members to the upper house.

Madison, in particular, was vehemently opposed to a Senate with equal representation among the states. The proponents for equal representation won the debate as it became apparent that a Senate with proportional representation was

[29] Wirls and Wirls, 78-82.

[30] Ibid.,

Anderson 1993

incompatible with a small Senate. Interestingly, the district proposal was defeated due to the fact that the proposal was linked to the popular election of Senators.[31]

Debate Over Senate Elections

Although not debated nearly as much as other aspects of the constitution, the issue of how Senators would be selected generated a variety of proposals and some heated discussion. Some delegates such as Roger Sherman and Elbridge Gerry were even opposed to direct election of the House. However, proponents of direct elections such as Madison and Wilson won with the argument that the people need some kind of direct connection to their representatives.[32]

There was only minimal support for the direct election of Senators among the delegates. Madison was a fervent supporter for direct election by the people, arguing:

> The great fabric to be raised would be more stable and durable if it should rest on the solid foundation of the people themselves than if it should stand merely on the pillars of the legislatures.[33]

Wilson is considered to be the biggest supporter for proposing that all white male voters in a state be allowed to vote for a Senator. Wilson was also a proponent of the district plan. Wilson's main argument for the direct election of Senators was that it was important for both chambers to have the same constituency, since if they did not then they would have diverging interests which would cause disagreement and deadlock. Wilson's proposal was quickly rebuked by the convention as there was clear sentiment

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[31]Popular elections were viewed as the most logical mode since multiple states would be selecting a Senator in a district.

Wirls 87-89.

[32] Murphy, William D. "The Politics of Reform: Direct Election of Senators and Democracy in the Progressive Era" Unpublished PhD Dissertation (2006) p. 30-31.

[33] Report No. 125., 55th Congress, 2nd Session. U.S. House of Representatives. "Election of United States Senators."

for some kind of indirect election of Senators.[34] Consistent with the prevailing view regarding popular rule at the convention, delegate Elbridge Gerry claimed:

> The evils we experience flow from an excess of democracy. The people do not lack virtue, but are the dupes of pretended patriots. [35]

George Reed of Delaware proposed that the Senate be appointed by the executive from a list of nominees provided by the legislature. This proposal did not receive any support and was not even seconded.[36] Another proposal receiving little support was election by the lower house. One of the reasons this proposal failed was that it was tied to proportionality, along with the fact that it would eliminate the independent nature of the upper body, thus defeating its purpose.[37]

On June 7, John Dickinson moved that Senators be selected by the state legislatures. Dickinson's motion was seconded by Roger Sherman who noted that this would lead to cooperation between the state and national governments.[38] Wilson, on the other hand, was still hoping for Senators to be directly elected by the people. About the inherent corruption that can occur in state legislative elections, Wilson's statement was prophetic of events more than a century later:

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[34] Byrd, Robert C., 1989 *The Senate 1789-1989: Addresses on the History of The United States Senate* Vol. 1 Washington DC: U.S. Government Printing Office
Haynes, George H. 1906. *The Election of Senators.* New York: Henry Holt and Company.
-1938. *The Senate of the United States: Its History and Practice, Volume II. Reprint.* New York: Russell and Russell. 1960.
Murphy, 32-33.

[35] Byrd, 1989.

[36] Report No. 125., 55th Congress, 2nd Session. U.S. House of Representatives. "Election of United States Senators."

[37] Wirls, 74.

[38] Report No. 125., 55th Congress, 2nd Session. U.S. House of Representatives. "Election of United States Senators."

> The great evils complained of were that the State legislatures ran into schemes of paper money, etc., whenever solicited by the people, and sometimes without even the sanction of the people. Their influence, then, instead of checking a like propensity in the National Legislature, may be expected to promote it.[39]

Several points were made during debate convincing a large majority of the delegates that selection by the state legislatures was the proper mode for electing Senators.

Dickinson pointed out how crucial it was to preserve the agency of the states in the national government. Gerry argued this would provide a needed representation for the "commercial interests".[40] Overall, arguments supporting the election by the state legislatures centered on two themes. The first, was to preserve the interests of the wealthy and property holders against the masses. This point of view was supported by actions of the several state legislatures during the era of the continental congress. This sentiment also supported the view that the Senate should be an American House of Lords, with Senators of superior character and prestige. The second argument was to preserve the representation of the states.[41] These arguments ruled the day and the convention overwhelmingly approved Senate election by the state legislatures. The above arguments even persuaded Madison, who forcefully defended the mode of electing Senators during the ratification debate. In Federalist No. 62, Madison agreed with the convention's conclusion that state legislatures were the proper, stating:

> It is equally unnecessary to dilate on the appointment of Senators by the state legislatures. Among the various modes which might have been devised for constituting this branch of the Government, that which has been

[39] Ibid.

[40] Ibid.

[41] Murphy, 33-35.

> proposed by the convention is probably the most congenial with the public opinion. [42]

Yet, there were two issues in the ratification debate regarding the Senate that would linger until the Seventeenth Amendment passed. The first issue of contention focused on Article I Section 4 of the constitution. This section gives Congress the power to regulate congressional elections and specifically reads:

> The Times, Places and Manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The above passage was widely criticized by the Antifederalists as being a Trojan horse for the national government to usurp power. This clause would also lead to significant debate during the lead up to the Seventeenth Amendment's passage. [43] Many Southern states wanted to eliminate this clause as a bargaining chip in order to seize control over Senate elections.[44] Another point of contention dealt with the inability of state legislatures to give instructions to, or recall a Senator. As will be observed in the next chapter, this clearly reduced the state's ability to control their Senators, thus completely undermining one of the framers' major intentions for the Senate.

Conclusion

This chapter demonstrates how the founders drew from ancient philosophical foundations when designing the federal government. A mixed constitution, one that balanced and checked each class of society was a clear goal during the convention of 1787. Arguments during the constitutional convention were also drawn from

[42] Byrd, 390.

[43] Murphy, 46.

[44] Riker, William H. 1955 "The Senate and American Federalism," *American Political Science Review* 49: 452-69.

experiences within the state governments, and the desire to avoid what was perceived to be some of their failings.

Debate over the Senate in particular was based on preserving this mixed system in general, and protecting the privileged classes in particular. There was also a strong desire to give the states certain power in the national government. Thus, a Senate removed from the people, one that checks the lower house and provides representation to the states was created. However, this design set in motion a series of events that were unintended. The next chapters will demonstrate how the Senate's design actually undermined itself and the ability of the states to select its Senators.

CHAPTER 3
DEVELOPMENT OF THE EARLY SENATE

Introduction

The previous chapter examined the Senate's foundations based on the convention of 1787. Based on these origins, rooted in the debates of 1787, why did the Senate evolve in the manner it did over the first 130 years of its existence? Why were disputes over Senate elections rare prior to the Civil War? In order to fully address this question, one must examine the patterns of institutional development in the Senate. This chapter will briefly review the institutionalization of the early Senate. Daniel and Stephen Wirls explain Senate development and institutionalization as based on the expectations and conditions from the Convention of 1787. These expectations and conditions were discussed at length in the previous chapter.[1] One potential reason why disputed appointments did not reach a high level of salience during the first half of the 19th century is due to the fact that strong party and committee structures had yet to emerge in the Senate. This discussion will be followed by a review of some of the early Senate election cases and calls for a constitutional amendment. Finally, this chapter turns to the pivotal case of James Stockton which spurred the first major reform of Senate elections in 1866.

The First Senate

When the first Senate convened at New York's Federal Hall on March 4, 1789, no business was conducted. This was because only eight out of the 22 Senators from the

[1]This conception of institutionalization of the Senate is distinct from Polsby's (1968) classic discussion of the House. They examine how the early Senate resolved uncertainty in norms and procedures, creating precedents for its relationship with the executive, the House, and the states. Wirls and Wirls' conclude their analysis by portraying the Senate's institutional development as converging with the House in its electoral relationship with the public, while diverging from the House with its internal rules.

states that ratified the constitution were present, thus there was no quorum. This was especially important since the Senate was constitutionally responsible for counting the electoral votes for the first President. Substantial absenteeism continued for several days leading to several Senators and other leaders to voice their disproval publically.[2] Connecticut Senator Samuel Huntington wrote:

> I know not but that particular embarrassments in some states may be sufficient excuse for delay to this time; but did those states duly consider the consequences: that at this important crisis earnest expectation may grow into impatience and finally change to a loss of confidence, and distrust by long disappointment.[3]

The Senate finally secured its first quorum on April 6, 1798 with the arrival of Richard Henry Lee of Virginia.[4] The lack of a full Senate will be a major theme in the coming chapters.

Between 1789 and 1801, 94 men served in the Senate. These were individuals of the highest esteem of the time. Eighteen were members of the Constitutional Convention, 42 were legislators in the Continental Congress, and nine were former Governors. The first president pro tempore was John Langdon, a former speaker of the New Hampshire assembly.[5]

Up until the Third Congress, the Senate actually met in secret. This was actually quite common for legislatures during this period.[6] Secret proceedings were so taken for granted that it was not even written into Senate rules. Several state legislatures

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[2] It should be mentioned that the House did not secure its first quorum until April 1, 1789. Byrd, 4.

[3] Ibid.

[4] Ibid. 3-4.

[5] Ibid. 5-7.

[6] Wirls and Wirls, 166.

disapproved of the secret proceedings as it failed to satisfy their need for influence over their Senators.[7]

The push against secrecy began to take hold as the Jeffersonian Republicans were in the ascendency. This was directly related to the desire of southern state legislatures to assert more control over their Senators by seeing that they did not vote for Federalist policies. In December 1789, the first instructions to open Senate proceedings arrived from Virginia, North Carolina, South Carolina, and Maryland.[8] The tide began to turn as the press would ignore the Senate, calling just the House as "Congress." The Federalists, who were losing control in the Second and Third Congress began to look at an open Senate differently, as an opportunity for shaping public opinion through a large platform.[9]

The Senate finally opened its proceedings after experimenting with it during the debate over a disputed appointment from Pennsylvania. Albert Gallatatin's credentials were questioned due to the fact that he did not have nine years of U.S. citizenship as required by the constitution. Gallatatin was eventually ruled ineligible by a partisan vote of 14 –12. [10] The debate over, and eventual overturning of secrecy is the first example of the Senate shifting to pressure from a defensive posture. The Federalists, who originally were the main backers of the secrecy policy realized that they were losing power. The pressure from the new Republican Senators, along with the realization that the public was not behind them, may have caused enough Federalist votes to shift over

[7] Ibid. 167.

[8] Ibid. 168.

[9] Ibid. 169.

[10] Ibid 169-170.

the secrecy question. Theoretically speaking, there are two related explanations for how this occurred. First, as Smith and Fridkin demonstrate, members of the minority party in a legislature will often turn to measures that weaken an institution, with the end goal of gaining more institutional power. Therefore, minority party members are basically "selling out" the institution for their personal and partisan political gain.[11] Additionally, Therault argues that minority party members are more responsive to public opinion when it comes to rules changes in Congress. More electorally vulnerable members, in particular will be susceptible to constituent demands.[12] This is a pattern that will repeat itself, most importantly in the eventual passage of the Seventeenth Amendment.

The Senate's Relationship to the House

In order to understand the institutionalization of the Senate, it is important to briefly discuss how the Senate's developmental path diverged from that of the House. The early Senate quickly attempted to assert its superiority over the House. As discussed in the previous chapter, some viewed this new Senate as an American version of the British House of Lords.[13] Elaine Swift quotes one Senator referring to his colleagues as men of "dignity and character" whereas House members were "improper company" who "conversed improperly."[14] A committee was formed in the First Congress recommending Senators address their colleagues as "the Right Honorable" and the President as "His

[11] Smith, Daniel A., and Dustin Fridkin. 2008 "Delegating Direct Democracy: Interparty Legislative Competition and the Adoption of the Initiative in the American States" *American Political Science Review* `02/: 333- 350.

[12] Therault, Sean M., 2005. *The Power of the People: Congressional Competition, Public Attention, and Voter Retribution*. Columbus: Ohio State University Press.

[13] Swift, Elaine., 2002. *The Making of an American Senate* Ann Arbor: University of Michigan Press.

[14] Ibid. 61.

Highness."[15] This was also evident in how communication was conducted between the chambers. Senators required that two House members bring communication to the Senate, whereas the Senate secretary would communicate with the House. Controversy between the chambers erupted when the Senate attempted to enact a pay differential with the House.[16]

Each chamber was empowered to chart its own internal rules under Article I of the constitution. The Senate originated as a much smaller body, with only twenty-six members. These facts presented both the Senate and the House to embark on their own separate paths towards institutionalization and development.[17] This initial divergence in internal rules within the two chambers set in motion a separate set of norms and procedures for each chamber that were reinforced over time. [18] Sarah Binder points towards the treatment of the "previous question" rule as a major point of divergence between the two chambers. The Previous Question rule allows for a simple majority to call the question and cut off further debate without additional amendments. [19] Invoking this dilatory measure has provided House majorities leverage for controlling the legislative agenda and debate. In 1806 the Senate abolished the previous question

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[15] See Murphy, 53.

[16] Byrd, 9.

Swift, 62.

[17] Binder, Sarah A. 1997 *Minority Rights Majority Rule: Partisanship and the Development of Congress* Cambridge: Cambridge University Press

[18] Pierson, Paul 2000. "Increasing Returns, Path Dependence, and the Study of Politics" *American Political Science Review* 94: 251-267.
Pierson, Paul 2004. *Politics in Time: History, Institutions, and Social Analysis Princeton*: Princeton University Press.

[19] Binder, Sarah A. and Steven S. Smith 1997. *Politics or Principle? Filibustering in the United States Senate* Washington DC: Brookings Institution Press., 14.

rule, setting in motion a tradition for unlimited debate.[20] By contrast, the House instituted the previous question rule during the War of 1812 as a means for agenda control by the majority faction.[21] As the House developed as a partisan institution more quickly, unlimited debate in the Senate further facilitated norms of individualism within the smaller body.[22] Without a strong partisan incentive in the Senate, members in the early 19th Century were less likely to use precious legislative time to challenge the credentials of new members.

Relations between the Senate and State Legislatures

Tension between the Senate and individual state legislatures emerged over the rights of instruction and recall. [23] In a departure from the Articles of Confederation which gave state legislatures the powers of instruction and recall, no such previsions existed in the constitution of 1787.[24] Although largely ignored, the state legislatures proceeded to send instructions on a host of issues. Many states protested the fact that the Senate met in secret during the early Congress.[25] By 1794, the Senate finally acquiesced, and opened its proceedings to the public. This was likely the earliest instance where the state legislatures attempted to gain leverage over the Senate. In her work on the early Senate, Swift quotes the following instructions from the Maryland legislature to its Senators that precisely makes this point:

[20] Ibid. 39.

[21] Ibid, 72.

[22] Binder, 1997.

[23] Swift, 57-58.

[24] Ibid, 57.

[25] Another issue where Congress did act on instructions was the 12th Amendment which addressed the conduct of presidential elections. Ibid.

> We consider the responsibility of the representative to the constituent body not only to be necessary in the House of Representatives, but equally so in the Senate . . . . . We therefore instruct you, to exert your abilities to effectuate an object so generally desirable.[26]

Between the Eleventh and Twentieth Congress, state legislatures attempted to instruct their Senators at an increasing rate.[27] Controversy erupted over instructions during the debate over the Bank of the United States during 1810 and 1811. This occurred when the Virginia state legislature censored both of the state's Senators for failing to obey legislative instructions relating to the bank.[28] Wirls and Wirls attribute the use of instruction and recall to the rise and fall of partisan majorities in the state legislatures. Probably the most prominent instance when a legislature did not re-elect a Senator for failing to obey an instruction was John Quincy Adams in 1808, who suffered the wrath of the Massachusetts' Federalist legislature when he supported Jefferson's embargo.[29]

State legislatures viewed the threat of recall as an opportunity to leverage power over their Senators, and increased the use of instructions considerably. Instructions were eventually ineffective due to a legislature's inability to effectively sanction a Senator. Swift points out that state legislatures had high turnover in the early 19th century, thus Senators were less likely to view the failure to obey an instruction as a threat to their reelection. [30] Therefore, a Senator had a minimal incentive to obey

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[26] Ibid, 57-58. Votes of the Proceedings of the House of Delegates of the State of Maryland, November Session, 1793 (n.p., n.d.), 104.

[27] Ibid, 120.

[28] This became known as the Virginia Doctrine of Instructions, used primarily in the South. For more see Ibid, 121.

[29] Wirls, 198.

[30] Ibid, 121.

legislative instructions due to the fact that many members of the legislature would have left office by the expiration of the six year Senate term. This controversy over instructions represents a recurring theme that will be observed in the relationship between the Senate and the state legislatures. This theme begins with a state legislature eager to gain leverage over the Senate. This is followed by a response by the Senate where individual Senators act in a way that is protective of the institution, leading to an increase in institutional power.

By the 1830s, Jeffersonian Democracy was in full swing. Candidates for state legislature began to actively campaign for popular support. A new party system began to emerge, with candidates up and down the ballot running on a party ticket. Senators began to align themselves with a party and actively campaign for their party's state legislative candidates. These legislators, in turn, naturally felt obligated to support their party's candidacy for the Senate once the new legislature convened. Swift deftly points out how this new system no longer privileged Senators' relationships with individual state legislators, but rather privileged a Senator's partisan affiliation in relation to the state legislature as a whole.[31]

Early Disputes and Proposals for Reform

During the early 19th century, a small number of proposals relating to Senate elections were submitted to Congress. None were given any serious consideration. The first constitutional proposal reforming Senate elections to be determined by the voting population of each state occurred in 1826. This resolution by Representative Henry Storrs of New York was quickly withdrawn after it was submitted. Representative Wright

[31] Swift, 165.

of Ohio proposed an amendment in 1829 that not only have given states the power to decide on their own for choosing its senators, it would have reduced a Senate term to four years. [32] As a member of the House, Andrew Johnson not only offered an amendment for the direct election of Senators, but also that would have also provided for the direct election of the President and Vice President. Johnson would continue his push for reform by offering a direct elections amendment as a U.S. Senator in 1860. This measure did not make it out of committee.[33]

The paucity of proposals relating to the manner in which Senators were elected could have been due to the fact that legislative appointments went rather smoothly at that time. However, several cases developed during the first half of the nineteenth century, mostly over questions pertaining to gubernatorial appointments or a legislature's failure to elect a Senator in the case of a resignation or death of an incumbent. Another series of cases focused on residency requirements. Varying standards among the states for electing Senators had been established during this period.[34] Throughout this period, there was no effort to assert Article I, Section Four which gives Congress the power to regulate the time and manner of electing Senators.

The first precedent setting case occurred in 1794, involving Senator Kensey Johns of Delaware. Johns was appointed by the Governor after the resignation of the incumbent, George Reed in December 1793. The Delaware legislature disputed this

[32] Murphy, "The Politics of Reform: Direct Election of Senators and Democracy in the Progressive Era," unpublished Ph.D. dissertation, Syracuse University; 2006 133-134.

Hall, Wallace Worthy, "History and Effect of the Seventeenth Amendment," unpublished Ph.D dissertation, (University of California at Berkeley; 1936 10-13; Haynes, 1906.

[33] While President, Andrew Johnson also proposed the election of President and Vice President by popular vote, as well as a federal judicial term of 12 years. Ibid.

[34] Haynes, Senate of the United States, 81.

appointment since it was in session during the time, and chose not to appoint anyone to fill this vacancy. [35] Article I, Section three of the U.S. Constitution empowers governors with the ability to appoint senators provided that a legislature is not in session. It also states that the legislature must fill the vacancy upon returning to session. The Johns case proved to be of profound importance, as it was cited often in subsequent cases dealing with gubernatorial appointments. The Senate ruled not to seat Johns due to the fact that the legislature was in session while the gubernatorial appointment took place.[36]

Another important case occurred shortly after Arkansas' admission to the union in 1836. This case is relevant since it was one of the first whose outcome was determined by a party line vote. In October, the Arkansas legislature appointed Ambrose Sevier and William Fulton to fill the state's two Senate seats. Sevier was appointed to the Senate class whose term ended the following March. With the legislature in recess, the governor appointed Sevier to a new term. Therefore, this was the first case where a governor appointed a senator in anticipation of a vacancy. The Judiciary committee, which had jurisdiction over senate elections in the early 19th Century, ruled Sevier to be entitled to his seat under Article I Section Three, declaring,

> and if vacancies happen by resignation or otherwise during the recess of the legislature of any State the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.[37]

[35] Taft, George S., Compilation of Senate Election Cases from 1789 to 1913.Senate Documents Vol. 9 62nd Congress, 3rd Session.

[36] Ibid.

[37] Ibid., 7-9.

The full Senate agreed to the Judiciary Committee's resolution by a vote of 26 to 19. This vote was determined primarily along party lines with 23 out of 29 Democrats voting in the affirmative while 13 out of 16 Whigs voted against seating Sevier.[38]

During the 1850s, a series of disputed Senate election cases emerged that focused on a host of procedural issues within individual state legislatures. Partisanship would be a significant factor in the determination of these cases as well. As the decade ensued, such cases increased in both in their complexity and frequency. These series of disputed senate cases, along with the strain it placed on the Senate's Judiciary Committee, led Congress to invoke Article I, Section Four empowering it to regulate the times and manner of Senate elections.

One rather complicated case surrounding the resignation and death of Henry Clay occurred in 1852. In December of the previous year, Clay issued his resignation to the Kentucky legislature, effective September, 1852. Within weeks, Archibald Dixon was appointed by the Kentucky legislature to finish Clay's term. In June, 1852 Clay passed away. Shortly afterward, Kentucky's governor appointed David Meriwether as Senator.

Meriwether took his seat on July 15 and held it until Congress adjourned in late August. When the Senate was back in session in December, Meriwether did not return, and Archibald Dixon presented his credentials. A few Democratic Senators objected to the appointment of the Whig Dixon, stating that Meriwether was Kentucky's legitimate Senator. The seat remained vacant until a couple weeks later, when the Senate voted 27 to 16 to admit Meriwether. The final vote fell along partisan lines even though this was the period when the Second Party System was dissolving. All 19 Whigs and 3 Free

[38]Ibid.

Soilers who voted did so in the affirmative, whereas 16 out of 21 Democrats voted Nay with 15 Democratic abstentions.[39]

The above case presented the Senate with the following questions. First, can a Senator choose a date when his resignation becomes effective? Second, can said resignation be filled and by whom? Third, can such an appointment be superseded by a Senator's death prior to his designated resignation? Precedents were applied to the first two questions, with the Senate ruling in the affirmative. The last question never occurred before Congress. The Senate ruled that the Governor's appointment in this case applies only to the interim period between the previous Senator's death, and the end of the original Senate term. Therefore, Dixon was entitled to his seat.[40]

In the late 1850s, there were two disputes involving the state of Indiana which became important, precedent setting cases, as we will see in the next chapter. In February 1857, the Indiana state legislature elected Graham Fitch for the Senate term ending in 1861 and Jesse Bright for the Senate term ending in 1863. When Fitch's credentials were presented to the Senate, there was a protest that Fitch and Bright "were not elected by the legislature of Indiana, but by a convocation of a portion of the members thereof . . . ."[41]

The basis of this dispute was whether Fitch and Bright's election occurred during a legal session of the Indiana legislature. The state legislature required that a joint session of the legislature (referred to at the time as a convention) to meet for the business of publishing the votes for Governor and Lieutenant Governor. On January 12,

[39] Ibid, 13-15.

[40] Ibid.

[41] Compilation of Senate Election Cases, 244.

1857, this joint session adjourned until February 2. The state senate proceeded by passing a resolution protesting and disavowing any involvement with the convention. A minority of Senate members but a majority of both houses met for an adjourned meeting where Fitch and Bright were elected.[42] Was this a legal election? Oddly enough, there was no law in the State of Indiana prescribing for the time and place of Senate elections. This lack of any standard would obviously lead the state to a dispute such as the Fitch-Bright controversy.[43] The credentials for both Fitch and Bright were then referred to the Senate Judiciary Committee. After some deliberation, the committee and the full Senate ruled that Fitch and Bright were entitled to their seats.[44]

This was not the end of controversy for Fitch and Bright. In January 1859, the State of Indiana sent the credentials of Henry Lane and William McCarty as the state's legal Senators. The legislature was basically trying to undo the selection that was made two years earlier.[45] The case was referred to the Judiciary Committee. The committee ruled that the earlier Fitch-Bright ruling was final due to the fact mentioned earlier that Indiana had no law prescribing the manner a legislature elected U.S. Senators. Therefore, Indiana's Senate seats were not vacant, thus the Lane-McCarty appointment was invalid. The minority in the Judiciary committee wrote that the earlier decision was not final and recommended the Fitch-Bright case be reopened. On February 14, 1859

[42] The majority report of the U.S. Senate Judiciary committee did mention that the group of legislators that elected Fitch and Bright were Republicans. Ibid 244, 248.

[43] Of course, Congress has the power under Article I Section 5 to regulate the time, place, and manner of Senate elections.

[44] Ibid.

[45] This clearly indicates a change of partisan hands in the Indiana legislature in 1859. There is no mention in the committee report or floor arguments regarding a change of partisan hands in the Indiana legislature during the 1858 election. A subsequent search of newspaper archives of Indiana's statewide newspaper during the 19th Century, the Indiana Gazette does not include articles prior to 1862.

the full Senate by a vote of 30 to 15 and 41 abstentions concurred with the Judiciary Committee's decision reaffirming Fitch and Bright's right to their Senate seats.[46] As expected, this vote fell along party lines, with all the Yea votes coming from Democrats and the small American party, whereas all Republicans either voted against the minority report or abstained. The Indiana cases set important precedents that will be observed in the next chapter addressing questions relating to when a Senate election case is considered to be closed, as well as how to handle the presentation of multiple Senate delegations.

The Stockton Case and The Elections Act of 1866

The case that served as sort of a tipping point regarding Senate appointments in Congress occurred in 1866. It involved John Stockton of New Jersey. The New Jersey statute under which Stockton was elected required that

> a majority of the votes of the members elected to both houses of the legislature . . . and any candidate receiving a plurality of votes of the members present shall be declared elected.[47]

Stockton's credentials were questioned due to his election by a joint session of the New Jersey state legislature by only a plurality, with Stockton's own vote breaking the tie between him and the other leading candidate. The Senate Judiciary Committee ruled in Stockton's favor, stating that the procedures employed by the New Jersey state legislature were in compliance with the state constitution. However, controversy erupted as it was discovered that the state of New Jersey typically applied different rules at each

[46] Ibid.

[47] See Haynes, 1930: 82.

session for electing U.S. Senators.[48] Upon full consideration in the Senate, Stockton's election was ruled improper and he was unseated.[49]

Congress responded to the Stockton case by passing a law in 1866 regulating the election of Senators in each state. The statute invoked Article I, Section Four, which states that Congress may regulate the "times places and manner" of electing members of Congress. Instead of the series of precedents set by previous election cases, there would now be a uniform standard over the "manner" in which each state legislature was to elect its Senators.

The debate in the Senate was brief. Senator Willard Salisbury Jr. of Delaware was the only major opponent, declaring the bill a "deplorable interference by the Federal Government in state affairs."[50] However, several issues did emerge in the debate over the elections bill of 1866. The first was whether voting for Senator should be by voice vote or secret ballot. There was some resistance to this provision, as some senators argued that a *viva voce* vote would change the practice of many states that used a secret ballot. The counterargument was that electing a senator was part of legislative business, and that citizens of a state had the right to know who their representatives voted for. The latter argument prevailed in the final legislation.[51]

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[48] Congressional Globe, Thirty-ninth Congress, First Session, 1635-1639
Byrd, 1989.

[49] See Haynes, Senate of the United States, 82; Taft, Compilation of Senate Election Cases, 264-270; Murphy 68-69.

[50] See Haynes, Election of Senators, 83.

[51] See Haynes, The Senate of the United States, 84, Congressional Globe, Thirty-ninth Congress, First Session, 3727-3734, Taft, Compilation of Senate Election Cases, xv-xv1, Murphy The Politics of Reform: Direct Election of Senators and Democracy in the Progressive Era, 69-71.

The next major issue was whether an election should be by a simple or concurrent majority. After some debate, it was decided that the first vote for Senator should have a concurrent majority, and if no candidate was elected, each succeeding vote would require a simple majority. In his work on the history of the U.S. Senate, George Haynes attributes responsibility to this provision for many of the subsequent deadlocks, as it empowered a minority in a legislature to block a nomination. [52] Under this scenario, minority parties could potentially hold up legislative business as a form of ransom to force a majority party to acquiesce. Such concessions the minority party may achieve by staging a successful deadlock could be the appointment of a Senator who is ideologically more aligned with the chamber's median voter. Another concession could also be placing a portion of the minority party's policy agenda on the legislative calendar. As demonstrated by Smith and Fridkin, as well as Therault, minority parties will often employ such a strategy. In fact, as a majority party's hold on a chamber becomes more precarious, the more likely a minority party is to pursue such a strategy.[53] The third major issue pertained to how much time a senatorial election should be allowed to delay normal legislative business. The final bill required that a single vote be taken in joint session each day until a Senator was elected.[54]

The elections bill passed the Senate after only one day of debate by a vote of 25 to 11, with 13 Senators absent. Eighteen out of twenty nine Republicans voted in the affirmative while the Eight Democratic Senators who voted were evenly split. This vote

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[52] Ibid.

[53] Smith and Fridkin, 336.

Therault, 2005.

[54] Ibid.

took place during the early days of Reconstruction, and the Republican party held an overwhelming majority at the time. The House passed the legislation under the "previous question" rule and no debate. This legislation required that on the second Tuesday after the organization of a legislature, each house was to meet separately, and by a *viva voce* vote nominate a candidate for Senator. On the next day, there was to be a joint assembly to canvass the votes. If a candidate received the majority of both bodies, he has to be declared Senator. If no candidate received a majority, a state legislature was to consider the election during each legislative day until a Senator was chosen.[55]

Did the reform of 1866 solve the problem of disputed Senate elections? The next two chapters will illustrate the answer is a resounding no. One of the major criticisms of this legislation was that it did not allow for election by a plurality.[56] The new standard for state legislative selection led to the unanticipated consequence of deadlocked legislatures. This unanticipated consequence is a facet of what some political scientists call "path dependency." The Stockton controversy is the perfect example of the unintended consequences of institutional reform. Unintended outcomes occur when institutional reform does not produce outcomes consistent with existing beliefs or practices within a particular policy paradigm.[57]

Recent theoretical work by Paul Pierson on path dependency is an example of scholarship that privileges the role of historical events, such as the Stockton case, play in shaping institutions, which in turn set a particular path in motion that eventually

[55] See Haynes, 1906; Hoebeke, 1995 and Murphy, 2006.

[56] Ibid.

[57] Cortell, Andrew P. and Susan Peterson. 2001. Limiting the Unintended Consequences of Institutional Change. *Comparative Political Studies* 34 (7): 768-799.

becomes resistant to change over time[58]. However, over the long term, the eventual outcome may not necessarily be the most optimal outcome given the original choice set. This is due to the "positive feedback" which occurs as the actor proceeds further up a given path, the cost of reducing course and pursuing a previously available policy becomes increasingly higher.

Thus, the Stockton case was such a "pivotal moment" where the Senate set a clear path for how Senate elections would be conducted within the states. The expectation was that this new, uniform standard for the states would cause future disputed elections a rarity. The Senate created a new Committee on Privileges and Elections, designed to handle any subsequent disputes should they occur.

Of course, the Elections Bill of 1866 did not produce this desired outcome. The next two chapters will illustrate how this legislation created a suboptimal outcome, in accordance to Pierson's expectations. By the 1880s and 1890s state legislatures and the Senate itself became increasingly deadlocked over Senate appointments. Slowly, this resulted in increasingly louder calls for an amendment to the Constitution providing for the direct election of Senators. Thus, as Pierson's theory anticipates, for significant institutional change to occur there must be a "long buildup of successful challenges to the status quo,[59] which slowly reach a threshold level, which ushers in a new major institutional change.[60] The next few chapters illustrate how this process played out with regard to Senate elections.

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[58] Pierson, 2002; 2004.;

Mahoney, 2000 "Path Dependence in Historical Sociology" *Theory and Society* 29: 507-48.

[59] Pierson, 2004: 164.

[60] Pierson, 2004, 83.

CHAPTER 4
BUILDING CONSENSUS FOR DIRECT ELECTIONS: CASES BEFORE THE PRIVILEGES AND ELECTIONS COMMITTEE

After the Stockton case and passage of the 1866 law regulating the election of Senators, the widely held belief was that disputed Senate elections would again become a rarity. The first Committee on Privileges and Elections was appointed on March 10, 1871.[1] To this new committee, the jurisdiction for any disputed Senate election cases fell. Yet, shortly after the committee's appointment, a wave of disputed Senate cases cascaded on this committee. This chapter will examine some of these cases and their impact on the reported calls for the direct election of Senators.

The Louisiana Cases

Three cases emanating from the state of Louisiana took up the entire period of 1873- 1880. The first case involved William P. Kellogg, who resigned his seat less than two months before his term expired. After subsequently assuming the Louisiana governorship, Kellogg appointed a successor, John Ray. However, the previous governor had submitted the name of William McMillen. With each man submitting his credentials to the Senate, the Committee on Privileges and Elections was charged with deciding the outcome.[2]

Since this case took place during the period of reconstruction, the committee first needed to decide if and when a legal state government took effect in Louisiana. The committee ruled that although the legislature electing Ray was in fact the de jure

[1] U.S. Senate. 1914. *Compilation of Senate Election Cases: From 1789-1913*. 62th Cong., 3rd sess.,S. Doc. Vol. 9.

[2] Ibid, 481.

legislature, there was no quorum when the vote took place. Therefore, the committee decided that a new election should take place[3].

Both legislatures proceeded to elect a Senator, with again McMillen elected by his legislature, and Pinckney Pinchback elected by the Kellogg legislature. The committee on Privileges and Elections could not decide on the credentials presented and referred the case to the full Senate. Over the course of the next few months the credentials of McMillen and Pinchback bounced between committee and the Senate floor without resolution.[4] The following quote from a member of the Committee on Privileges and Elections is an example of some of the frustration that was encountered by the length of the Pinchback case:

> The great length of time that elapsed between the beginning of the term for which Mr. Pinchback was a contestant and the date of the final determination of that contest by the Senate, as also the remarkably close vote by which such contest was decided. [5]

The Congressional session ended with no resolution to the Pinchback case. On January 22, 1875 credentials from a second election of Pinchback were presented to the Senate. Although the committee gave a favorable report, ruling that Pinchback had a *prima facie* title to admission, the resolution was tabled after it reached the floor.[6] In December 1875 and January 1876 the credentials of two other Senators from Louisiana were presented, referred to committee, reported out of committee, then tabled once it

[3] Ibid.

[4] Ibid.

[5] Ibid., 564.

[6] Ibid. 481.

reached the floor. In December 1877, a compromise was finally reached admitting James Eustis to the seat Kellogg originally vacated back in 1873.[7]

In 1877 another case involving two opposing Louisiana state legislatures reached the Senate. In March, Kellogg was again appointed to the Senate, this time via a resolution signed by Governor Stephen Packard and what became known as the "Packard" legislature. In October, the credentials of Henry Spofford were presented and signed by Governor Francis Nicholls and what became known as the "Nichols" legislature.[8] Then after several hearings, the Privileges and Elections Committee ruled that the Nichols legislature was the legal legislature in the State of Louisiana. The committee further ruled that Kellogg was entitled to his seat due to the fact that the legislature performed its duty, and that no subsequent legislature can undo such an act.[9]

However, charges of bribery were later raised against Kellogg.[10] The case was reopened by the committee. This became the first investigation of a U.S. Senate appointment to be reported in Washington's newest newspaper, *The Washington Post*. The committee ruled that the Nichols legislature was in fact wrought with fraud and bribery, thus disqualifying Kellogg from the Senate. A rather convincing minority report retorted that the partisan makeup of the Senate had changed between the two investigations and was the driving force behind the effort to oust Kellogg. The minority

[7] Ibid. 481.

[8] Ibid. 481-482.

[9] Ibid. 482.

[10] "Mr. Kellogg's Cash" The Washington Post Jun. 9, 1879

report further argued that the original ruling on the Kellogg case was binding. The Senate did not take any action on the majority report.[11]

More Competing Senate Appointments

Several more disputed senate cases erupted due to competing appointments from governors and state legislatures. The disputes over these seats tended to be partisan in nature, with the Governor of one party attempting to appoint a senator prior to the opposite party taking control of the legislature after an election. Credentials for two senators, one from each party, often were presented to the Committee on Privileges and Elections. Therefore, the committee had the responsibility to hear the competing claims to a senate seat, and to decide its rightful holder.

In early 1887, the West Virginia state legislature adjourned without selecting a Senator. On March 4, the governor called a special session of the legislature and on that very same day took it upon himself to select Daniel Lucas as Senator. According to the West Virginia constitution, a Governor who calls a special session has the right to declare which business will be addressed during the session. In this instance, the Governor did not specify the election of a new Senator as part of the business to be conducted. The legislature, in turn, decided to select Charles Faulkner as Senator during special session, even though the Governor did not specify this election as part of the call. To add to the controversy, Faulkner held a judicial position when he was appointed by the legislature. According to the West Virginia constitution at the time, a judicial officer was ineligible to hold a political office. [12]

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[11] U.S. Senate. 1914. *Compilation of Senate Election Cases: From 1789-1913*. 62th Cong., 3rd sess.,S. Doc. Vol. 9.

[12] Ibid., 722.

It took the Committee on Privileges and Elections until December 1887 to finally decide on this case. The committee decided to seat Faulkner due to the following reasons. First, the committee ruled that the West Virginia state legislature was within its right and duty to select a Senator at the time it did. Therefore, the Governor's selection of Lucas on the same day the legislature elected Faulkner was declared invalid. The majority cited The Revised Statutes of the United States, Title II, Section 16 which states:

> The legislature of each state which is chosen next preceding the expiration of the time for which any Senator was elected to represent such state in Congress shall, on the second Tuesday after meeting and organization thereof, proceed to elect a Senator in Congress.[13]

Second, the provision in the West Virginia constitution prohibiting a judicial officer from holding political office was ruled invalid in the case of national office. The majority cited Article I, Section 5 which states, "Each house shall be the judge of the elections, returns, and qualifications of its own members." Therefore, this clause along with the supremacy clause invalidates said provision in the West Virginia constitution.[14]

Questions relating to the validity of a legislative appointment also occurred in Florida in 1891. In the spring of that year, the legislature was deadlocked over the appointment of a Senator. On May 29, the legislature appointed Wilkinson Call in joint session. Call's credentials were disputed when presented to the Senate due to a question as to whether a quorum of the state senate occurred when Call was elected. With no decision coming out of the Committee on Privileges and Elections by

[13] Ibid., 723.

[14] Ibid.

September, the Governor appointed Robert Davidson as interim Senator.[15] In February 1892, the committee decided Mr. Call's credentials to be valid. The committee declared that:

> The joint assembly is thus composed not of the two houses, but of the members thereof. The joint assembly is not a junction or union of the two houses as such . . but it is a body distinct and separate from either as such.[16]

Therefore, this ruling declared that the term "legislature" for the purpose of electing Senators is not necessarily the separate chambers, but the collective body of all its members.

A large number of deadlocks occurred after the 1892 elections, placing the partisan balance in the Senate in doubt. Deadlocks for this election cycle tended to be more frequent in western states due in part to the presence of the Populist Party. Wyoming, Montana, California, North Dakota, Kansas, and Washington all experienced a deadlock of some scale during this cycle.[17] Members of the Populist Party were particularly successful in obstructing California's Senatorial election due to their ability to tip the balance of power in that state.[18] The following quote from the Washington Post chronicles a deadlock in the Republican Caucus in North Dakota, and is an illustration of the nature of similar deadlocks of that time:

> Nothing was accomplished in the Republican Caucus this morning. The members were indifferent about attending. Three ballots were taken, about fifteen candidates being voted for in each. It was evident that no result

[15] Ibid., 806.

[16] Ibid.

[17] "Four Deadlocks Remain" The Washington Post Feb. 9, 1893.

[18] "May Not Elect A Senator" The Washington Post Dec. 13, 1892.

> could be reached, so Senator Sorley in disgust moved that it be the sense of the Republican Caucus that the joint assembly adjourn.[19]

The scandals and deadlocks described in the preceding pages reveal an increase in the frequency, duration, and saliency of disputed senate elections. These deadlocks lead to the following important questions. First, did this strain on state legislatures and the Senate contribute independently to calls for reform? Second, who were the main proponents for reform and what were their motives? Last, what level of success was achieved by these champions of reform?

Pressure Mounts for Reform

As already stated, the prolonged contests over senate elections had taken their toll on state legislatures around the country and on Congress. Legislative business became increasingly delayed, interrupted, and thwarted due to this rise in deadlocks. This frustration at the state level did not go unanswered. States began to petition Congress, asking them to act on a constitutional amendment which would take the power of selecting Senators out of the State Legislature's hands. [20]

Haynes writes about a paralyzing deadlock that occurred in Oregon in 1897. The Oregon constitution at the time required two-thirds of the members in each house to be present for the legislature to organize. No legislation was passed[21] Another resolution which passed the State of Washington's legislature, wrote in a frustrated tone about how the legislature was distracted from the "many other matters and things of vital

[19] "Four Deadlocks Remain" *The Washington Post* Feb. 9, 1893

[20] These petitions asking Congress to consider a constitutional amendment should not be confused with the petitions calling for a constitutional convention covered later in this dissertation.

[21] Haynes, 1938: 94.

interest to the people." This frustration was so acute that the legislature decided to dissolve the joint session.[22]

These frustrations were also reported by newspapers at the state level and national level. The Washington Post often reprinted articles from state papers that reported in vivid detail the frustrations encountered by legislatures from across the country. One deadlock in Ohio was described as a "disgraceful and humiliating spectacle" that was "odious and so miserable."[23] Another article argued that every time argued how each time there was close senatorial election in a particular state, money, often in the form of bribery was often the deciding factor in the contest.[24]

Press reports that were supportive of a direct elections amendment noted two arguments in the amendment's favor. The first was a "popular clamor" for more representative democracy. The second argument cited in the press was a growing discontent with the Senate, to the point of referencing radical proposals to abolish the Senate altogether.[25] Some opinion pieces spoke about "carrying out the chief theory of popular government", while avoiding the many scandals that took place in the 1890s."[26] Articles spoke to how a legislature's most important duty is lawmaking and that delegating senatorial elections to the people would relieve these bodies of the many distractions and lost time due to these deadlocks.[27]

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[22] Haynes, 1906: 66.

[23] "The Scandal in Ohio" *The Washington Post*. Jan. 10, 1898

[24] "The Election of Senators" *The Washington Post*. Dec. 30, 1898.

[25] "Electing Senators Direct" *The Washington Post* May 23, 1894.

[26] "Election of Senators" The Washington Post May 31, 1897.

[27] "Popular Vote for Senators" The Washington Post. Apr. 23, 1900.

A serious proposal to amend the Constitution for the direct election of Senators was introduced in the House in 1892. Representative Henry St. George Tucker of Virginia, a law professor at Washington and Lee University, championed this amendment.[28] The 1892 bill was reported favorably out of the Committee on the Election of President, Vice President and Members of Congress. Although the bill did not reach the floor, the amendment would successfully pass the House five times between 1893 and 1902.[29]

Table 4-1. House votes on the Amendment for Popular Election of Senators.[30]

Congress	Date	Aye	Nay
52nd	Jan 16, 1893	Two-thirds	
53rd	July 21, 1894	141	51
55th	May 11, 1898	185	11
56th	April 13, 1900	240	15
57th	Feb. 13, 1902	Two-thirds	

The Senate's most prominent proponent for a constitutional amendment during the 1890s was David Turpie of Indiana. Turpie was no stranger to disputed senate seats. He was actually first elected to the Senate in 1857 as a replacement for the expelled Jesse Bright.[31] Ironically enough, Turpie's credentials were disputed in 1887. Two members of the Indiana State Senate were ruled as not entitled to their seats after Turpie's election and certification by the governor. Since these two members provided

[28] Biographical Dictionary of the U.S. Congress.

[29] Haynes, 1938: 97.

[30] Ibid.

[31] Biographical Dictionary of the U.S. Congress., http://bioguide.congress.gov/biosearch/biosearch.asp

Turpie's margin of victory, his election was contented as invalid. The Committee on Privileges and Elections took on this case and ruled that Turpie was entitled to his seat. The basis of this ruling was that the Senate of the United States could not "inquire into the motive" of the Indiana state legislature, and therefore ruled Turpie entitled to his seat.[32]

Turpie's first proposal for the direct election of senators was submitted to the Judiciary Committee in 1891.[33] This proposal failed to gain any traction. Turpie, who served as a member on the Committee on Privileges and Elections, submitted a proposal to that committee in 1895. After heated debate, the amendment failed to get voted out of committee. This outcome should be expected, as a committee of such importance would be stacked with defenders of the status quo. As author of the minority report, Senator Turpie succinctly described the frustration reformers felt over the increase in deadlocks over Senate elections:

> When we consider the very great evils of the present system of electing United States Senators, it might well be deemed of the first importance that the present mode should be changed. . . . . The conflicting interests involved in such question absorb public attention and prevent the transaction of other legislative business. The same may truly be said, of the election of Senators, where, as is likely to happen and has occurred very often quite recently, parties are closely divided in the legislative bodies and the whole time of the general assembly of the State is taken up with balloting in the Senatorial election, and even then has failed in effecting a result.[34]

[32] Compilation of Senate Elections cases, 719.

[33] "Election of Senators by the People". Washington Post. Feb. 3, 1891

[34] United States Senate. Report No. 916 53rd Congress, 3rd Session.

A similar report in the House noted how the election of Senators by popular vote would have avoided the recent deadlocks observed in several states.[35]

Although this reform was unsuccessful in the Senate, it did make somewhat of an impact on one of its most strident opponents. One of the most powerful Senators of the time was George Hoar of Massachusetts. Hoar was chairman of the Judiciary Committee and a powerful member of the Committee on Privileges and Elections. During his career, Hoar went so far as to write a treatise opposing the direct election of Senators. Yet in 1899, Hoar proposed a modification in the administration of senatorial elections that would be designed to prevent deadlocks from occurring.

Hoar proposed that after seven days of balloting, a state legislature would only be required to have a plurality instead of a majority of a state legislature for the election of a senator. The Washington Post described Hoar's proposal as "his simple yet certainly effectual plan for breaking Senatorial deadlocks in State Legislatures."[36] Opponents to this plan pointed to the fact that weak Senators would be elected, and that cohesive minority factions would have considerable power in the selection of Senators.[37]

Although Hoar's proposal failed to gain any traction in committee, it is another example of a Senator acting from a defensive posture as he observes cracks in his power base. Hoar's proposal was not born out of any desire for reform, but to prevent an alternative from gaining momentum. Such a sentiment will be observed again in Chapter 6, when I discuss how reform efforts eventually prevailed.

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[35] U.S. House of Representatives. Report No. 125., 55th Congress, 2nd Session. "Election of United States Senators."

[36] "The Election of Senators", The Washington Post, Feb. 25, 1899.

[37] Ibid.

Delaware's Deadlocks

Although Congress failed to act on constitutional reform of senate elections during the mid-1890s, the deadlocks and controversies continued. In fact, these controversies became more acute, at times causing Senate seats to remain vacant for a congressional session or longer. Between 1890 and 1905 a total of 14 Senate seats remained vacant for an entire Congress.[38] A conspicuous example is the state of Delaware. Between 1895 and 1905 Delaware had full representation during only one Congress, and had no Senator at all during the 57th Congress.[39]

Delaware's troubles can be partially attributed to the antics of John Addicks who attempted to buy himself a Senate seat. Addicks first emerged as an unsuccessful candidate in the early 1890s, throwing money at Republican state legislative candidates in an attempt to build a majority coalition for his election to the Senate.[40] After the Republicans gained control of the Delaware state legislature in 1894, a deadlock emerged between Addicks' supporters and those allied with Henry DuPont. After several votes, DuPont had 15 votes, one short of a majority. During this period the governor died and the Speaker of the State Senate, William Watson, became interim governor. This left Watson's State Senate seat vacant, giving DuPont the majority he needed for election. However, Watson refused to vacate his seat, keeping the election in deadlock resulting what would normally be a vacant Senate seat once the legislature

[38] Haynes, 1938: 92.

[39] Ibid.

[40] Murphy 2006: 114.

adjourned. Although unproven, it was rumored at the time that Watson's activity was influenced by a monetary contribution from Addicks. [41]

However, the Speaker of the Delaware House declared DuPont the winner of the Senate election and sent his credentials to Washington. A majority of the Committee on Privileges and Elections ruled DuPont the rightful holder of Delaware's Senate seat. It was ruled that Watson was ineligible under the Delaware constitution to be present in the joint assembly, thus making Watson's vote invalid.[42] However, once the DuPont case reached the Senate floor, he was declared ineligible for his Senate seat by a vote of 31-30, leaving the seat vacant.[43]

After the election, Addicks continued to build his faction within Delaware's Republican Party. In 1897, Addicks produced credentials to the Senate signed by the Speaker of the state House, and speaker of the state Senate. A second set of credentials in support of Richard Kenney was sent to the Senate signed by the Governor.

An application by Henry DuPont asking the Committee on Privileges and Elections to reopen his case was also presented. Kenney, having been present while his credentials were presented was administered the oath of office and the case regarding his seat referred to the Committee on Privileges and Elections. [44] However, no report

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[41] Ibid, 114-115.

Compilation of Senate Election Cases, 818.

Clark, Walter. "The Election of Senators and The President by Popular Vote, and the Veto Power." *The Arena* 10 (September 1893), 453-460.

[42] Compilation of Senate Election Cases, 821.

[43] Ibid, 818.

[44] Ibid, 117.

was ever produced by the committee. [45] After the appointment of Kenney in January 1897, DuPont again asked for his case to be reopened. In early February, the Committee dismissed DuPont's case due to the lack of new evidence, and Kenney was seated.[46] It should also be noted that while the Kenney v Addicks case was being debated in the Senate a deadlock over the Du Pont seat from the previous Congress, was ongoing in the Delaware legislature.[47]

Addicks and his faction continued to produce deadlocks in the Delaware legislature for each succeeding election cycle from 1898 to 1904. Delaware's legislature had the dubious distinction of failing to elect two Senators during the January 1901 session. This was due to the fact that the legislature failed to elect a Senator for a seat that became vacant in March 1900, in addition to the seat that was set to expire in March 1901. This scenario repeated itself in March 1903.[48] Addicks' antics were once described by The New York Times as "the most prolonged, open and audacious attempt to debauch a commonwealth which has ever been seen in the history of this nation."[49]

Addicks was finally brought down after President Theodore Roosevelt intervened in resolving the Delaware deadlocks in 1903. A compromise was reached where one Senate seat went to a longtime ally of Addicks and another Senate seat went to one of

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[45] Compilation of Senate Election Cases, 875-876.

"Senator Kenney Seated" The Washington Post Feb. 6, 1897.

[46] "Mr. DuPont is Shelved" The Washington Post Feb. 3, 1897

[47] "Senator of Delaware" The Washington Post Jan. 4, 1897.

[48] Murphy, 117-119.

[49] Ibid. 118

Clark 488.

Addicks' long time adversaries.[50] Delaware's last deadlock occurred in 1905. In an ironic twist, several of Addicks' supporters abandoned him and his adversary, Henry DuPont, was finally elected to a Senate seat. [51]

William Clark of Montana

Addick's antics were rivaled by the actions of William Clark of Montana, whose transgressions were not discovered until after he assumed office. Clark was no stranger to controversy, as his initial run for the Senate in 1890 was disputed as well. In 1890 two sets of Senators were sent by two different bodies claiming to be the Montana state legislature. The first body sent the credentials of Thomas Power and Wilbur Sanders, whereas the second body sent the credentials of Martin Maginnis and William Clark. The question as to which legislative election was legitimate rested on the delegation of Silver Bow County which sent two different sets of five legislators to the state capitol.[52]

Determination of which delegation from Silver Bow County was legitimate rested on the Committee on Privileges and Elections. The case came down to whether or not the votes in a specific precinct in Silver Bow County were properly counted. It is quite striking that the Committee had to go into such minute detail of a Montana state election to decide this case. The majority of the committee ruled that the state canvassing board was within its right to receive the election returns and certify the election of the state legislators representing Silver Bow County. Therefore, the first set of legislators votes were considered to be valid and Sanders and Powers were admitted to the Senate. It should be noted that the minority of the committee held that the county commissioners

[50] Murphy, 118-120.

[51] Ibid, 120.

[52] Compilation on Senate Election Cases p. 727

were the proper canvassing board and that Clark and Maginnis were entitled to be seated.[53]

Montana politics in the 1890s was wrought with controversy and known for expensive electoral campaigns. In 1895, the state government passed a law limiting the amount that could be spent on any state election in Montana. This law also limited to $1,000 the amount a candidate for U.S. Senate can give to a county political committee and a $1,000 limit on personal expenses during a campaign.[54]

As discussed earlier, William Clark was a major player in Montana politics. Clark was a candidate for the U.S. House in 1888, and the U.S. Senate in 1890, 1893, and 1895. In 1898, Clark consulted with the Governor, his son, and other operatives in an effort to gain election to the Senate in 1899. [55] Clark was a very wealthy man, with an income estimated to be around 1 million dollars a month.[56] Even with some of the campaign limits described above, Clark still had the means to conduct a major campaign in such a small state. Clark resorted to bribery, and in the end spent approximately $140,000 to gain the vote of state legislators.[57] The dispute over Clark's election and the Committee's findings are discussed below.

On December 4, 1899, Clark's credentials were first disputed, and in early January 1900, the committee began to hear the Clark case.[58] The committee found several

[53] Ibid.

[54] Ibid, 908.

[55] Ibid.

[56] "Hard Man to Throw Down" The Washington Post. May 27, 1900.

[57] Hoebeke, 91.

[58] Compilation of Senate Election Cases, 906.

incidents where Clark's agents assisted various state legislators by funneling money to their private businesses. One legislator, John Geiger received a sum of $3,600 in cash during a particular session. When some of Geiger's cash was found, he retorted by stating that the money was obtained through gambling.[59] One lump sum payment of $10,000 to a legislator was found in an envelope with Clark's initials written on the back.[60] Although no specific transgression was found, the report mentioned the peculiar behavior of several Republican legislators who abandoned their party's candidate in favor of Clark, the Democrat.[61] Clark's defense rested on an alleged conspiracy by Marcus Daly, who led a political faction that opposed Clark. Clark's side argued that members of Daly's faction funneled cash to several members in an effort to make it look as if Clark's side was conducting the bribery. The committee found no evidence that a conspiracy of any kind took place.[62]

On April 23, 1900, the committee submitted a report stating that Clark was not legally elected U.S. Senator from Montana. The report stated that out of his majority of 15 votes, at least 8 were obtained through corrupt means.[63] The two dissenting votes on the committee, although agreeing with the majority that Clark was not legally elected Senator, chastised the committee for unethical practices during the investigation.[64] This included a member of the House of Representatives involving himself in the

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"The Clark Case Begun" The Washington Post. Jan. 6, 1900.

[59] Compilation of Senate Election Cases. 908-909.

[60] Ibid. 911.

[61] "Senator Clark's Seat" The Washington Post Apr. 24, 1900.

[62] Compilation of Senate Election Cases 911-912.

[63] Ibid. 906.

[64] Ibid. 920-926.

investigation, and the offer of unlimited money in contributions from Daly to conduct the investigation.[65]

On May 5, 1900 Clark resigned his seat only to be reappointed that same day by the Lieutenant Governor A.E. Spriggs. Since the sitting governor was in California at the time, the lieutenant governor retained all gubernatorial powers, including the appointment of Senators, according to the Montana state constitution. Although Clark's credentials were originally accepted on the Senate floor, they were quickly referred to the Committee on Privileges and Elections for further investigation. Upon his return to the Senate floor, Clark received a standing ovation from Democrats, Republicans, and Populists alike.[66] This appointment blindsided Senator Chandler, the chairman of the Committee on Privileges and Elections. Chandler declared Clark's appointment as a "trick that won't work."[67] Other Senators on the committee voiced the opinion that if Clark's original election was improper, that the Gubernatorial appointment will also be found void. Senator Allison who was second in command in the Republican caucus voiced an opinion that was almost dismissive of the original charges against Clark, citing a previous case.[68] After Clark's credentials were received, a motion was made to move his credentials to the Committee on Privileges and Elections for investigation.[69]

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[65] "Senator Clark's Seat" *The Washington Post* Apr. 24, 1900.

[66] The Montana state constitution states that should a Governor "dies, resigns, is convicted, or impeached, or absent from the state, all functions , powers, and emoluments shall devolve upon the Lieutenant Governor. Clark actually presided over the constitutional convention that gave the Lieutenant Governor this particular power. See *The Washington Post* "Clark is Reappointed" May 6, 1900.

[67] Ibid.

[68] Ibid.

[69] Citing an earlier case, it was ruled that a Governor had the power to make an appointment the absence of a legislative session.

Upon returning from Montana, Governor Smith was interviewed by the Washington Post for his opinion on Clark's reappointment. Smith described it as a "scheme" and cited his belief that only 25% of Montana citizens approve of Mr. Clark.[70] On May 11, 1900 Clark resigned a second time.[71] Clark was undeterred as he was appointed to the Senate in 1901, this time by a fair vote.[72]

Reed Smoot of Utah

One particular case that caused an uproar in Congress and the national press had nothing to do with scandal but a lot to do with religious bigotry. The credentials of Reed Smoot of Utah were presented to the Senate in February 1903. On the same day a protest signed by several of Utah's citizens asking for an investigation into Smoot's election was received by the Senate.[73]

The animus against Smoot stemmed from alleged polygamy from Smoot individually, and the Mormon Church as a whole. Among the charges leveled against Smoot and the church included charges of Smoot's involvement in polygamous relationships, and that the leaders of the Mormon Church "protect and honor" violations of laws against polygamy, and

> are solemnly banded together against the people of the United States . . . . to frustrate the attempts of the Government to eradicate polygamy and polygamous cohabitation.[74]

[70] "Senator Clark's Seat" *The Washington Post* May 17, 1900.

[71] Compilation of Senate Election Cases 906.

[72] "Clark Elected Senator" *The Washington Post* Jan. 17, 1901.

[73] Compilation of Senate Election Cases, 930.

[74] Ibid, 930-931.

Supporters of the investigation included several women's organizations, including the National Women's Christian Temperance Union, the Interdenominational Council of Women, and a number of local women's groups.[75] Smoot was seated on the first day of special session in March. Smoot served without controversy until the first day of the second session of Congress met in January 1904, when a resolution was referred to the Committee on Privileges and Elections disputing Smoot's seat in the Senate.[76] What follows was a two year investigation by the committee.

The main charge against Smoot in committee was that he was a polygamist.[77] This case undoubtedly generated considerable attention in the press. The committee even conducted part of their investigation in Utah.[78] Issues surrounding Mormon Church practices, the Mormon Bible, and Church history were discussed at length by the committee.[79] Over the course of the investigation some in Utah suggested that Smoot resign from the church, thus ending the controversy. Smoot however, was undeterred and remained loyal to his church.[80]

When Smoot took the stand, his testimony was forceful, as he specifically denied ever being involved in polygamous relationships and that his duties to the Church in no way interfered with his duties to the Senate.[81] He even went on to voice his disapproval

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"Mormons are Confident" *The Washington Post* February 16, 1903.

[75] "Women's Anti-Smoot Fight" *The Washington Post* Dec. 19, 1903

[76] Ibid, 928.

[77] "Accuse Utah Senator" *The Washington Post*, Dec. 13, 1903.

[78] "Testimony in Smoot Case" *The Washington Post*. Apr. 28, 1904.

[79] "Told of Plural Wives" *The Washington Post* Dec. 13, 1904.

[80] "Smoot Will Fight" *The Washington Post* Jan. 13, 1903.

[81] "Smoot Enters Denial" *The Washington Post* Jan. 10, 1904.

of polygamy.[82] Testimonials from former members of Congress and a former Governor were entered on Smoot's behalf.[83] More welcome support came from Senator William Borah of Idaho a powerful leader in the Republican caucus.[84]

When the Chairman of the Committee on Privileges and Elections, Senator Burrows took the floor, he did not even charge Smoot with polygamy which was the principle charge against him. Instead, Burrows went into a scathing critique of the Mormon Church, arguing that Smoot's leadership role with the Church made him ineligible for office. Burrows went on to accuse Smoot with aiding and promoting the practice of polygamy, and reiterated the charge that Smoot took a "solemn oath" that was inconsistent with his duties as Senator.[85]

On June 11, 1906 the committee by a vote of 7 to 5 reported a resolution that Smoot was not entitled to his seat.[86] The minority report argued there was no evidence of polygamy by Smoot and the only way he could be removed from his seat is by an expulsion by the full Senate. Debate over the Smoot case continued until February 1907. At that time, the resolution was amended to require a two-thirds vote for expulsion. After a series of procedural votes, the resolution to expel Smoot from the Senate failed by a vote of 28 to 42.[87]

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[82] "Smoot on the Stand" *The Washington Post* Jan. 21, 1905.

[83] "Mormonism in Idaho" *The Washington Post* Jan. 12, 1905.

[84] "Borah to Aid Smoot" *The Washington Post*, Dec. 26, 1903.

[85] "Would Oust Smoot" *The Washington Post*. Dec. 12, 1906.

[86] "Against Smoot Seven to Five" *The Washington Post* Jun. 12, 1906.

[87] Compilation of Senate Election Cases, 928.

Conclusion

This chapter looks historically at how the Elections Act of 1866 failed to reduce the frequency and duration of disputed U.S. Senate elections. In fact, this legislation actually led to an increase in Senate disputes at an alarming rate. Disputes both at the state and national levels were now covered by the national press who chronicled these deadlocks in all its scandalous detail. This chapter saw the rise of an increasingly vocal minority in Congress whose frustration over these deadlocks spurred them to propose a constitutional amendment to have Senators elected directly by the people.

However, this chapter also reveals the institutional powerlessness reformers felt during the 1890s and early 1900s. Constitutional change would not come about through Congress, at least for the time being. By 1900, external forces were building that would place unprecedented pressure on the Senate to act. The next two chapters will illustrate how these external pressures placed the Senate's institutional identity at risk, empowering reformers to build a coalition that would eventually bring constitutional change.

CHAPTER 5
LATER DISPUTES AND CALLS FOR REFORM

Introduction

The previous chapter provided a qualitative descriptive analysis of the disputes over Senate elections during the 1880s and 1890s. The cases described in the previous chapter illustrated how several disputed Senate elections deadlocked legislative business both at the state and national levels. The states were clearly burdened by the deadlocks observed in the 1880s and 90s. These burdens were compounded by the regulation of Senate elections from the Elections Act of 1866. These controversies led to many calls for reform; however the Senate remained intransigent in its unwillingness to act. Pressure on the Senate did not abate. This chapter will reveal how outside pressures from the states and the national press continued to build on the Senate during the 1890s and 1900s.

The following questions will address the institutional response by the press and the state legislatures to the magnitude of these deadlocked Senate elections. Did the press cover these disputes? If so, how was the debate framed? Did the state legislatures have any effective response to these cumbersome pressures? Which states were more likely to respond?

This chapter provides the Progressive Era context behind calls for a constitutional amendment during the 1890s and 1900s. Providing this context is important since it provides the backdrop behind some of the zeal for reform. Next, I turn specifically to the national press. This important institution helped shape public opinion while also pressuring public officials towards the view that the Senate had deteriorated and was in need of a significant reform. I also look to the state legislatures, who had to endure most

of the damaging effects of the Senate deadlocks. The states did respond, in a rather forceful manner, by calling for a constitutional convention to address the manner of Senate elections.

This chapter also contains a quantitative analysis of the points described above using two original datasets. My quantitative data include articles related to Senate elections for the period 1878-1912 from The Washington Post. The article dataset contains categories examining the different facets of Senate elections for that period. Articles related to the proposed amendment are further coded as to their relative positive or negative tone. There are additional sub-categories to indicate the type of tone. From this point, I track the frequency of articles related to disputed Senate elections over time. I also include an analysis of the tone and nature of these articles.

A second dataset examines state-level data of disputed Senate elections. This data includes basic demographics, the frequency and duration of disputed Senate elections in that state, and whether that state petitioned congress for a constitutional convention calling for the direct election of Senators. The two described datasets are merged to examine whether higher levels of disputes translated into petitions calling for a Constitutional Amendment for the direct election of Senators. This is the first study to ever systematically examine factors that led state legislatures to petition Congress for a constitutional convention. Data collection procedures are discussed in more detail in the methodology section of this chapter.

The results indicate that articles related to disputed Senate elections tended to vary with articles related to the constitutional amendment over time. Additionally, states that had more frequent coverage of their disputed Senate elections were more likely to

petition Congress for a constitutional convention which would have addressed the issue related to the election of senators. This result, in particular, reveals that pressures felt by the state legislatures due to these disputes, forced them to respond in a most austere manner.

The Progressive Context

The Progressive Era was a truly transformative period in American political history. Although many scholars attempt to trace the Progressive movement's origins to the earlier Populist Era, the Progressives were quite distinct. The Progressive movement evolved during the 1890s and emerged in full force during the 1900s and 1910s.[1] Unlike the more agrarian and western origin of the Populists, the Progressives tended to emerge from Midwestern states and from urban centers. Progressives also tended to be from the middle and upper economic classes in society. The intellectual genesis behind many progressive policies can be traced to the academics, attorneys, and journalists of this era.[2]

One of the central puzzles of the Progressive movement focuses on why the impetus behind reform efforts of this era was driven by the middle class and professionals. Hofstadter provides a compelling argument that Progressives were motivated by the threat the new large business interests posed to their status. Hofstadter as described middle class grievances,

> not because of economic deprivations but primarily because they were victims of an upheaval in status that took place in the United States . . . . Progressivism . . . was led by men who suffered from the events of their

[1] Hofstadter, Richard 1960. *The Age of Reform*. New York: Vintage Books.
Link, Arthur S., and Richard L. McCormick 1983 *Progressivism* Wheeling IL: Harlan Davidson

[2] Ibid.

> time not through shrinkage in their means but through the changed pattern in the distribution of deference and power. [3]

Hofstadter describes how middle class professionals such as physicians, attorneys, academics, and the clergy enjoyed a high degree of status and influence during the first century of America's history. Although they did not endure economic hardship during the end of the 19th Century, members of these professions felt so due to the rise of large industrial business. These new industries produced large concentrations of wealth in a short period of time within a small number of people who were often less educated than the established professionals.[4]

The middle class also had an adverse reaction to patron-based democracy. They viewed this system of party machines as giving too much power to immigrants and the uneducated.[5] These professionals began to mobilize, calling for social reforms. These were known as the "Mugwumps." This group provided the intellectual energy and social credibility behind reform proposals.[6]

Progressive reforms began at the state and local level before making its way up to the national government. Western states saw the regulation of utilities and mining interests, and the institution of the initiative and referendum.[7] Some businessmen, who had the public interest of social reform in mind, ran as mayors in cities such as Cleveland and Jersey City on an agenda of reforming the structure of municipal

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[3] Hofstadter, 135.

[4] Ibid.

[5] Skowronek, Stephen 1982 *Building A New American State: The Expansion of National Administrative Capacities 1877-1920.* Cambridge University Press

[6] Hofstadter, 1955

[7] Link and McCormack, 34.

government. Innovations such as the city commission system came into being.[8] As Governor of Wisconsin, Robert LaFollette mobilized a diverse group of interests in an effort to pass reforms such as the direct primary, industry regulations, and progressive taxation.[9]

However, there were some significant contradictions within progressivism. Several policies were passed during this period that restricted the participatory rights of specific groups. Some of the most egregious policies were voting rights restrictions such as poll taxes and racial segregation laws.[10] Other policies included restrictions on immigration and miscegenation laws. The prohibition movement in particular was viewed as targeting immigrant groups. The next chapter will detail how the desire to disenfranchise minorities made its way into the debate over the 17th Amendment. Specifically, there was a desire by some states to remove Article I Section 4, which gives the national government control over congressional elections.

Scholar James Morone addresses some of these inherent contradictions within the progressive movement. In essence, these reforms had some unintended consequences that reinforced participatory bias in the system. [11] For instance, although the Australian ballot ended some voter intimidation at the polling place, it also served to disenfranchise African Americans. Morone also points out how the direct primary led to the diminution of partisan competition, bringing about one party rule in many states. This point is made

[8] Ibid, 30.

[9] Ibid, 31.

[10] McDonagh, 1999; 157

[11] Morone, James A., The Democratic Wish 1998 New Haven: Yale University Press.

quite persuasively as Morone points towards declining participation numbers during the Progressive Era. [12]

These points lead to the obvious questions; did the direct election of senators lead to more responsiveness or less? Did this reform provide more opportunities for people of less means to reach the Senate? Were there any unanticipated consequences to the 17th Amendment making the Senate less representative? These are just some of the questions that will be addressed in Chapter7.

Impact of the National Press

How did progressive reforms manifest themselves on the public agenda in the first place? As an institution in its own right, the print media transformed itself as well. These new journalists were known as the "Muckrakers," mostly came from a literary background, informed the public in glaring detail, many of the outrages occurring both in industry and government. These were depicted in periodicals such as Outlook, The Arena, and The North American Review.[13] However, this institution endured internal and external pressures as well. Advertisers who saw their interests threatened pulled their support for these periodicals. Many publications had to deal with the pressures of maintaining a large circulation and while deciding on how to report on an industrial sector that was hostile towards any reforms. [14] One particular article hailed other reforms such as Direct Democracy and the Direct Primary. It was argued that the direct election of Senators was a similar reform, would also be accomplished through use of

[12] Ibid. 123-125.

[13] Hofstadter, 1955.

[14] Ibid, 196.

the Direct Primary.[15] One editorial in The Independent magazine took aim directly at the deadlocks at the state and national levels, stating:

> We should eliminate from our political system an absurd anachronism which is a continuing cause of corruption and of misrepresentation of the public in the Senate at Washington.[16]

The Muckrackers did hold a particular aversion towards how business was conducted in the Senate. In fact, several periodicals during this period devoted significant space questioning whether the Senate had "deteriorated." These articles played a major role in swaying public opinion against the Senate as an institution, and towards the view that a major reform such as direct elections was necessary. In one article, Political Scientist John Burgess described the Senate as "the worst rottenborough institution in the civilized world."[17] Another editorial in The Outlook not only cited deadlocks as a reason for reform, but also called out individual Senators Chauncey DePew and Thomas Platt of New York for having "bought" their positions. This article decried the effect Senate elections had on both the state legislatures and the Senate itself:

> The worst of the present method of choosing Senators, however, is not that it is inefficient; . . . . . It has done injury to the character of the Senate, and it has done much to degrade the State Legislatures. . . . .If a rich man wishes to buy a high office for himself, he looks first to the Senate.[18]

One of the major publishers during this time was William Randolph Hearst. Hearst was a major supporter of direct elections, and in 1906 one of his publications,

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[15] "The Trend Toward A Pure Democracy" The Outlook. September 13, 1906.

[16] "Nullifying the Popular Will" The Independent January 29, 1903

[17] "The Election of Senators by Popular Vote" The Independent January 8, 1903

[18] "A Proven Failure" The Outlook May 4, 1907.

Cosmopolitan magazine, issued a series of scathing articles titled, “The Treason of the Senate.” Each article profiled a couple senators, often portraying them as agents of “the interests.” The author of the series was David Graham Phillips, a supporter of the direct election of senators.[19] Towards the beginning of the article, Phillips takes the issue on directly by stating, “A man cannot serve two masters. The senators are not elected by the people; they are elected by the ‘interests.”[20]

As was the case with the article in Outlook described above, the first article in this series was aimed directly at Senators Chauncey DePew and Thomas Platt. Phillips characterized these Senators as “New York’s Misrepresentatives” beginning his article by describing Platt’s testimony in an insurance investigation where he admitted to receiving thousands of dollars from the insurance industry.[21] The balance of the article focused on DePew, who Phillips characterized as a puppet of railroad executive Cornelius Vanderbilt. The author wrote a rather scathing narrative, chronicling DePew’s career starting with his early days in Tammany Hall and mentorship from Boss Tweed.[22] The author proceeded to indict DePew through a means of guilt by association with the Vanderbilts, covering his early days as a railroad lawyer for New York Central, to his involvement with railroad related legislation in the Senate. DePew was also portrayed as a pawn for the insurance industry, through his dealings with a disgraced leader in the industry. [23]

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[19] “The Treason of the Senate” Cosmopolitan Magazine March, 1906.487-502.

[20] Ibid. 488.

[21] Ibid. 488.

[22] Ibid. 492-494.

[23] Ibid. 500.

The second article in this series focused on the Senate's majority leader, Nelson Aldrich of Rhode Island whom Phillips describes as "the organizer of this treason."[24] As discussed earlier, the decades after the Civil War saw an increasing role for party leadership in Congress.[25] The Republican caucus came under control of a faction of led by Senators Nelson Aldrich and William Allison. Although not nearly as strong as the party leadership structure developed by Reed and Cannon in the House, Aldrich and Allison enjoyed considerable sway in setting the legislative agenda in the Senate.[26] Aldrich's portrait in The Treason series was rather biographical as well, dating back to his early days as a grocer and a bookkeeper.[27] Aldrich's dominant role in the politics of Rhode Island and the Senate itself is discussed at length in the article. The Aldrich machine is described as "controlling the legislature, the election boards, and the courts" with "the combination of bribery and party prejudice potent everywhere."[28] With a firm grip over the Senate, Aldrich's faction easily stifled the direct elections amendment by burying it in the stacked Committee on Privileges and Elections.[29] As will be observed in

[24] "The Treason of the Senate" Cosmopolitan Magazine May, 1906.628-38.

[25] Rothman, David. 1969 *Politics and Power* New York: Athenium Press.
Cox Gary W. and Matthew D. McCubbins 1993. *Legislative Leviathan: Party Government in the House* Berkeley: University of California Press.
Binder, Sarah A. and Steven S. Smith 1997. *Politics or Principle? Filibustering in the United States Senate* Washington DC: Brookings Institution Press.
Wirls, Daniel, 1999. "Regionalism, Rotten Boroughs, Race and Realignment: The Seventeenth Amendment and the Politics of Representation" *Studies in American Political Development* (13): 1-30.

[26] Hechler, Kenneth W., 1940. *Insurgency: Personalities and Politics of the Taft Era* PhD Dissertation: University of Columbia.
Merrill, Horace Samuel and Marion Galbraith Merrill 1971 *The Republican Command 1897-1913* Lexington: University of Kentucky Press
Schickler, Eric 2001. *Disjointed Pluralism: Institutional Innovation and the Development of The U.S. Congress* Princeton: Princeton University Press.

[27] Ibid. 630.

[28] Ibid., 628.

[29] Haynes, 1930.

the next chapter, it would take an infusion of new members to loosen this grip Aldrich had over the Senate and pave the way for the amendment to pass.

The above periodicals were critical in shifting public opinion on the Senate and fueling the cause for direct elections. The press had clearly taken their stand. The Senate was portrayed as a corrupt and detached body that was controlled by "the interests." Perhaps this new pressure coming from the press helped bring a renewed effort from the states, one that would be much more forceful in pushing Congress to act.

Senate Election Disputes and Calls for a Constitutional Amendment

The previous chapter described various proposals for a constitutional amendment calling for the direct election of senators. Each proposal, including those that achieved overwhelming support in the House, fell on deaf ears in the Senate. However, there was one method by which the states hoped to achieve this change by bypassing the Senate altogether. This involved invoking Article V of the constitution which states that a constitutional convention can be called provided that two-thirds of the states petition Congress for one. After the turn of the 20th Century, states began invoking Article V. By the end of the decade, a total of 31 states petitioned Congress, one short of the two-thirds necessary for a convention. Table 5-1 shows each state and the year they petitioned Congress for a constitutional convention.

The states were pretty explicit in their petitions, citing the Senate's inability to pass an amendment calling for the direct election of Senators. The following is an example taken from the state of Wisconsin's petition:

> Whereas the United States Senate has each time refused to consider or vote upon said resolution, thereby denying to the people of the several

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Hoebeke, 1994.

> states a chance to secure this much-desired change in the method of electing Senators; therefore be it Resolved by the Senate and Assembly of the State of Wisconsin, That under the authority of Article V of the Constitution of the United States, an application is hereby made to Congress to forthwith call a constitutional convention for the purpose of submitting to the states for ratification an amendment to the Federal Constitution providing for the election of United States Senators by direct vote of the people.[30]

In 1906, Iowa Governor Albert Cummins called a meeting of representatives from states that supported a constitutional convention. This became known as the "Des Moines Conference."[31] Representatives from a total of thirty state legislatures attended this convention.[32] The delegates to the meeting decided to form a permanent organization, calling themselves the "United States Senatorial Amendment Convention."[33] Calling a constitutional convention was considered to be a drastic move by many. A potential convention would not only address the direct elections issue, but any other potential issue as well. As will be observed in the next chapter, Congress took this threat quite seriously, and it may have been the tipping point that pushed the 17th Amendment over the edge.

Was there a relationship between the disputed Senate election cases described in the previous chapter and the calls for a constitutional convention discussed in the previous paragraphs? The states were clearly burdened by the deadlocks observed in the 1880s and 90s. These burdens were compounded by the regulation of Senate elections from the Elections Act of 1866.

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[30] Ibid., 373.

[31] Hoebeke, 149.
"The Des Moines Conference," *The Outlook* December 15, 1906: 902.

[32] "Senators by Direct Vote" *The Washington Post* December 3, 1906.

[33] "Goes Beyond Senate" *The Washington Post* December 7, 1906.

Table 5-1. State Petitions for a Constitutional Convention[34]

1893	1895	1901	1902	1903	1904	1907	1908	1911
NE	WY	AR	KY	CA	IA	IN	OH	ME
		CO		IL		LA	OK	
		ID		UT		NJ		
		KS		WA		OR		
		MI		WI				
		MN						
		MO						
		MT						
		NV						
		NC						
		OR						
		PA						
		SD						
		TN						
		TX						

The following questions address how the institutional response to the magnitude of these deadlocked Senate elections. Did the press cover these disputes? If so, how was the debate framed? How did the state legislatures respond to these cumbersome pressures? Was there any manner that empowered the states to pressure Congress to act? The remainder of this chapter provides quantitative analysis addressing the above questions. The results show an involved press that did not support constitutional reform, yet covered disputed Senate elections in sensational detail. My data also reveal that the state legislatures did act in a rather forceful manner. States with more press coverage of

[34] U.S. House of Representatives. Committee on the Judiciary, Problems Relating to a Federal Constitutional Convention by Cyril F. Brickfield, 85th Cong., 1st sess.

disputed Senate elections were more likely to turn to the most serious forms of constitutional change: a formal petition to congress for a constitutional convention. I turn to a discussion of my data collection and methodology. This is followed by a detailed data analysis of the issues described above.

Data and Methodology

The first dataset consists of a total of 1277 articles collected from The Historical Washington Post using the ProQuest Historical Database. Many of these articles were examined in a descriptive/qualitative manner in the previous chapter. A quantitative examination allows for a more precise assessment of the forces that occurred in the decades leading to the passage of the 17th Amendment. Therefore, I am able to determine whether higher levels of disputes over U.S. Senate appointments led to increased petitions from the states to call for an amendment to change how Senators are selected.

As mentioned in the previous paragraph, all articles were searched under the ProQuest Historical Database. This database contains historical newspaper archives from several national and regional periodicals dating to the early 19th Century. My sample begins in 1878, which was the first year The Washington Post was in circulation. The choice of 1878 also corresponds nicely with the end of reconstruction. The newspaper sample was drawn inclusive to dates where Congress was in session during the years 1878 through 1912. Searches were conducted using the Keywords “Senate Elections” and “Senate Disputes” in the abstract for each article. All articles fitting the search criteria were then placed into the dataset for coding.

The coding sheet used to code all articles is included in the appendix to this dissertation. Several approaches exist for performing Content Analysis, each with a

variety of strengths and weaknesses.[35] One approach tabulates the number of times a particular word or phrase is mentioned in a particular body of text.[36] Although many researchers who use content analysis use word counts to determine, some argue there are limitations to this technique, due to the fact that words used most frequently in a piece of text can often be used in multiple contexts.[37]

Another approach commonly used for periodicals, called "Key Word In Context" tests for consistency in word usage.[38] By utilizing this method, the researcher comes close to recreating how most potential voters read the newspaper. Specifically, most readers take one or two relevant points from an article, therefore less likely to break down each small point that was made. This method enables the researcher to pull several sentences from the document, thus facilitating a more valid coding of content categories.[39] The content unit[40] for this study is each informational article from the main news section of the newspaper whose major theme was the contest for a U.S. Senate seat in that particular state.

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[35] Stemler, Steven. "An Overview of Content Analysis" *Practical Assessment, Research And Evaluation*, 7: (17).

Weber, Robert Phillip. *Basic Content Analysis.* Sage University Papers. Series, No. 07-049. Beverly Hills, CA: Sage Publications, 1985.

[36] Riffe, Daniel. Stephen Lacy and Frederick G. Fico. *Analyzing Media Messages* Mahwah, NJ: Lawrence Erlbaum Associates, 1998.

[37] Stemler (2001) uses the example how the word "state" can be used in the same document to describe a political entity or as the verb "to speak."

[38] Ibid.

[39] Ibid.

[40] Standard content analysis procedures will often refer to each article as the "Content Unit" which should not be confused in any way with the unit of analysis in this study. See Weber, 1985

Analysis

The following tables and histograms examine the major theme for each article both at the aggregate and over time. As indicated in the table below, disputed Senate outcomes at the state level accounted for the highest category of article themes at 48.2%. This finding reveals that disputed Senate elections both at the state and national levels, in the aggregate, were covered by the national press has significant theoretical implications. This high level of newspaper coverage, in turn, helped to shape public opinion about the existing conduct of Senate elections. Legislators, who were already frustrated by the ongoing deadlocks over Senate elections, became pressured to do something about this problem. I posit, and demonstrate later in this chapter that as the national press reported on a particular state's deadlocked Senate elections in more frequency, the more likely that particular state's legislature would petition Congress for a Constitutional Convention calling for the Direct Election of Senators. I demonstrate this by deriving a variable that classifies each article related to a disputed Senate election by state. This variable is included in an Event History analysis that models the timing of a particular state's petitioning of Congress.

Another interesting result is the subcategories of articles focusing on disputed Senate elections. The subcategories producing the most coverage were intra and inter party factional disputes. Some of the more sensational cases tended to engender significant coverage. For instance, 80 out of the 654 articles in this category focused on the sectarian dispute over Senator Smoot of Utah discussed at length in Chapter 4. The consequential dispute surrounding William Lorimer of Illinois produced 77 articles. The Lorimer case was so debilitating to the Senate that it was one of the key factors forcing

the chamber over the edge in considering the 17th Amendment. This will be discussed in considerable detail in the next chapter.

The second highest category was horserace coverage of individual Senate races at 20.9%. These articles tended to focus on a couple of themes. First, was the partisan makeup of a state's legislative chamber following the end of an electoral cycle. The other major horserace theme focused on the fortunes of various factions within a particular state's legislature. These articles would describe the various maneuverings within a chamber and how it affected the aspirations of specific Senatorial candidates.

Close to 200 articles focused on hearings of the Committee of Privileges and Elections dealing with disputed Senate elections. These articles typically focused on the previous day's proceedings, with detailed accounts of testimony and arguments for or against a particular Senator's credentials. Several of the prevalent cases in this category were discussed at length in the previous chapter.

Slightly more than 10% of all articles focused on a proposed amendment for the direct election of Senators. Articles in this category tended to focus on proposals within state legislatures calling for a constitutional amendment. Other articles in this category were editorials and opinion pieces. A full discussion of the articles in this category is included later in this chapter. A surprising result is that only seven articles reported on the loss of a Senate seat due to a disputed election, accounting for less than 1% of the entire dataset. In fact, 1893 and 1900 were the only years where more than one article in this category was recorded. One article of note focused on a proposal by Senator Debois of Idaho who proposed to postpone the consideration of a Silver repeal bill until

a full Senate was seated.[41] This is an example of a U.S. Senator attempting to hold up regular business due to vacancies within the chamber, a phenomenon which will be observed again in the next chapter.

Table 5-2. Article Themes for Senate Elections

Disputed Outcomes	48.2% (615)
Horserace	20.9% (268)
Senate Hearings on Disputed Senate Elections	15.5% (199)
Proposed Amendment	10.1% (129)
Endorsement	4.6% (60)
Seat Loss	1% (7)
Total:	(1277)

Source: Data compiled by the author. Number of articles is in parentheses.

Figure 5-1 overlays all the articles by topic related to several of the proposed constitutional amendment over time. The top line depicts the number of articles related to disputes over Senate appointments in a given year, whereas the lower and thicker line represents articles related to horserace coverage of a particular Senate election in a particular year. The dashed line with the observed spikes are articles related to a proposed constitutional amendment for the direct election of Senators, while the dashed line that is relatively flat represents articles related to a vacant Senate seat.

The period around the 1890 election provides the first example of a major increase in press coverage of disputed Senate appointments.

[41] "Raises a New Point" The Washington Post Sept. 16, 1893

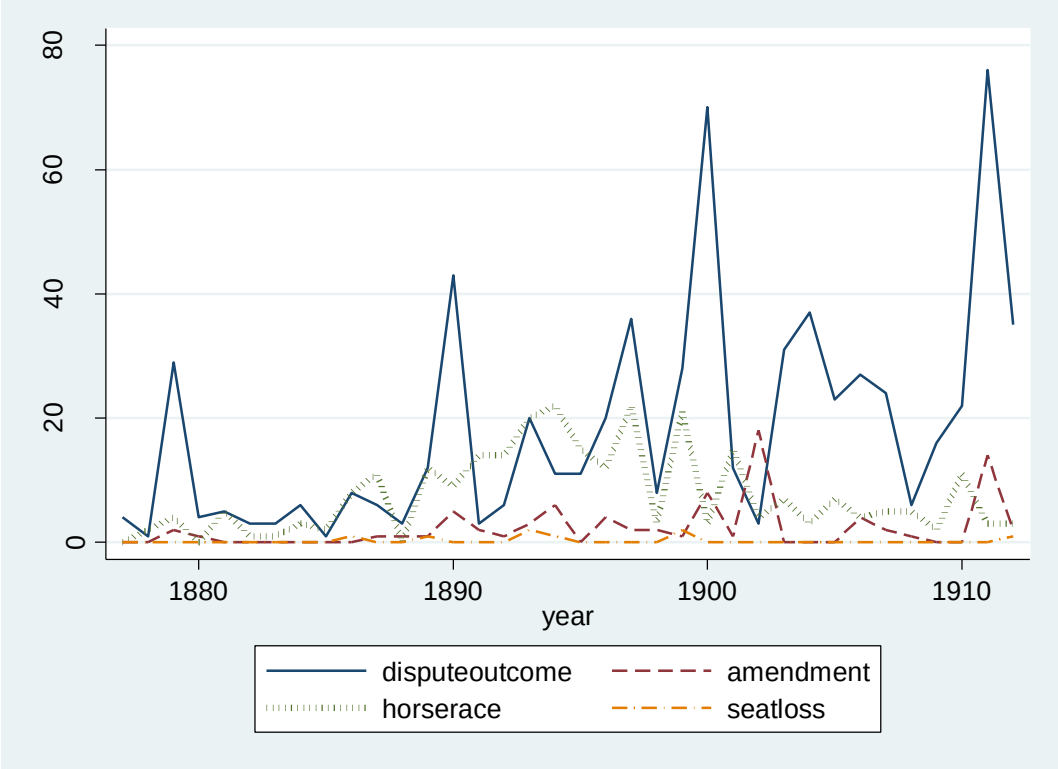

Figure 5-1. Articles by category

This was the period discussed in the previous chapter when Montana sent two sets of Senators to be considered by Congress.[42] Another highly partisan deadlock in Kansas which attempted to block the Republican's favored choice was also highly salient at the time.[43] The press responded by beginning to suggest changes to how Senators were chosen. Proposed remedies included both direct elections, and electing Senators at a state convention.[44]

The later part of the 1890s saw two spikes, with the second spike yielding over 60 articles in a year. This was also the period when Addicks was beginning to cause

[42] "Two Sets of Senators" The Washington Post Fed. 16, 1890

[43] "Republicans Loyal to Ingalls" The Washington Post Dec. 15, 1890

[44] "The Election of Senators" The Washington Post April 15, 1890
"Senators From the People" The Washington Post June 12, 1890

controversy in Delaware. The last major spike around 1900 coincides with the Clark case discussed in the previous chapter.

Article frequencies increased to a steady level during the first half of the 1900s with a substantial spike at the end of the decade. Much of this earlier increase can be attributed to the disputes over Senators Smoot and Quay of Utah and Pennsylvania respectively.

This last major increase, almost exclusively includes articles related to the disputed appointments of Issac Stevenson of Wisconsin and William Lorimer of Illinois. Both cases and their impact on Congress will be discussed at length in the next chapter. It should be noted that the corresponding increase in articles related to the proposed amendment were much more positive in tone than what was observed in previous years.

This graph shows a slight lag between articles relating to disputed elections and articles related to the amendment. Peaks observed around 1890, 1900, and the during the Lorimer scandal of the early 1910s demonstrate this pattern. Therefore, it may be inferred that articles related to disputed Senate outcomes are leading to more articles that are focused on a proposed amendment for the direct election of Senators. This is a critical point, since it signified that more frequent and salient disputed Senate elections were having an impact. Specifically, they were moving the press and opinion writers to consider a constitutional amendment to remedy the problem. Since this remedy was never seriously considered prior to 1890, this pattern demonstrates that the disputes were taking their toll.

Additionally, the number of articles related to horserace coverage appears to have no relationship with the level of articles related to disputed elections or with articles related to the proposed constitutional amendment. This is a surprising result since higher levels of partisan competition in a legislature tended to lead to more disputed Senate elections.[45] This graph shows peaks for election periods during the 1890s, followed by smaller peaks during the 1900s. This can be attributed to the more highly competitive nature of the party system in the 1890s.[46]

The following table examines the general tone for articles that are specifically focused on the proposed constitutional amendment. Out of the 129 articles related to the amendment, 54 were neutral in tone, whereas 75 were either positive or negative in nature. Overall, articles were more likely to be negative in nature; however the overall tone tended to improve over time. As illustrated in the histogram below, articles after 1902 tended to be substantially more positive towards the amendment than in previous decades.

Table 5-3 indicates the general theme for the articles that had either a positive or negative tone towards the amendment. The General Positive and General Negative categories contain articles that did not state a specific reason for supporting or opposing a constitutional amendment. Deadlocks and scandals were the most common reason given for positive articles, whereas tradition was most commonly mentioned in articles with a negative tone.

[45] Stewart, Charles III and Wendy Schiller "Party Control and Legislator Loyalty in Senate Elections Before the Adoption of the 17th Amendment" Paper presented at the 2004 Annual Meeting of the American Political Science Association. Chicago, IL

[46] See Rothman, 1969.

Table 5-3. Articles For/Against Amendment

General Negative (N)	22.7% (17)
Deadlocks/Scandals (P)	18.7% (14)
Tradition (N)	18.7% (14)
State's Rights (N)	13.3% (10)
Amendment Not a Remedy (N)	12% (8)
Trust People's Judgment (P)	9.3% (7)
General Positive (P)	5.3% (4)
Total: Article Positive or Negative	(75)

Source: Data compiled by the author. Frequencies are in parenthesis.

Positive arguments for the amendment were mixed. Popular Interests was the most frequent argument in support of the amendment. Deadlocks and Scandals were also highly mentioned positive arguments for a constitutional convention. This is critical, since these are precisely the arguments pushing public opinion and state legislators towards the need for reform. One article supporting the amendment presented three arguments in the following concise manner:

> First – it brings government nearer to the people . . . .
>
> Second – It avoids corruption, that, with increasing frequency, is attending to senators elected by the legislatures.
>
> Third – It enables the state legislature to attend to state matters undisturbed by national politics."[47]

[47] "Election of Senators" The Washington Post Apr. 6, 1902

Tradition and States Rights were the two highest negative categories. In an interview, former Senator Edmunds of Illinois described how the existing method was best for "not only securing the rights and safety of the states, but the deliberate expression of their will."[48] One Washington Post editorial dismissed arguments for the proposed amendment as "based on erroneous assumptions and arrive at ridiculous conclusions."[49] Another OpEd feared some "worthless demagogue would be elected" and that "the states would be eliminated."[50]

This chapter provides additional data analysis examining whether states whose Senate contests were in dispute were also likely to petition Congress under Article V, calling for a Constitutional convention for the direct election of Senators. The dependent variable for this model is when a state petitioned Congress for a constitutional convention calling for the direct election of Senators.

I examine disputed Senate election cases using Event History Analysis. Event History Analysis is well suited for this model since I am primarily interested in the "risk" of an event occurring, specifically petitions for a constitutional convention.[51] Methodologically, this is measured the same as a state adopting a policy at a given point in time. Work by Berry and Berry has led researchers to focus on state policy adoption by collecting longitudinal data on the timing of each state's adoption of a given

[48] "An Ex-Senator on the Senate" The Washington Post Nov. 13, 1894

[49] "Amending the Constitution" The Washington Post Jan. 23, 1897

[50] "The Senate and State fights" The Washington Post Dec. 18, 1894

[51] Box-Steffensmeier, Janet M., and Bradford S. Jones 2004. *Event History Modeling: A Guide for Social Scientists* Cambridge University Press.

Box-Steffensmeier, Janet M., and Christopher Zorn 2001 "Duration Models and Proportional Hazards in Political Science." *American Journal of Political Science* 45: 951-67.
Cleves, Mario "Analysis of Multiple Failure-Time Data with Stata" *Stata Technical Bulletin* 49: 30-39.

policy.[52] Typically, these data code a state from time t_0 at discrete time points, t=1, 2, 3, …k, until the state adopts the policy or the event occurs. The dependent variable is usually recorded where '0' indicates non-adoption at a given time point and '1' indicates adoption, or the event occurring. Event History models are motivated by questions of risk of an event occurring. Specifically, given an event has not occurred in a given state at a given time, Even History Analysis measures the chances of the event occurring.[53]

The dependent variable for this model is a state petitioning Congress for a constitutional convention calling for the direct election of Senators. The data for my dependent variable was collected from a report from the Congressional Record and a progressive era periodical.[54] Prior to a state petitioning Congress it is coded a '0' for the

[52] Berry, Frances Stokes, and William D. Berry. 1990. "State Lottery Adoptions as Policy Innovations: An Event History Analysis." *American Political Science Review* 84:395-416.
Berry, Frances Stokes, and William D. Berry. 1992. "Tax Innovation in the States: Capitalizing on Political Opportunity." *American Journal of Political Science* 36:715-42.

[53]The following equation represents the basic survival function for this model: $S(T) = \prod_{t=1}^{T}(1 - h(t))$

Source: Box-Steffensmeier, Janet M., and Bradford S. Jones 2004. *Event History Modeling: A Guide for Social Scientists* Cambridge University Press
Balla, Steven J. 2001. "Interstate Professional Associations and the Diffusion of Policy Innovations." *American Politics Research* 29: 221-45.
Hays, Scott P., and Henry R. Glick. 1997. "The Role of Agenda Setting in Policy Innovation - An Event History Analysis of Living-Will Laws." *American Politics Quarterly* 25 :497-516.
Mintrom, Michael. 1997a. "Policy Entrepreneurs and the Diffusion of Innovation." *American Journal of Political Science* 41:738-70.
Mintrom, Michael. 1997b. "The State-Local Nexus in Policy Innovation Diffusion: The Case of School Choice." *Publius: The Journal of Federalism* 27: 41-60.
Mintrom, Michael, and Sandra Vergari. 1998. "Policy Networks and Innovation Diffusion: The Case of State Education Reforms." *Journal of Politics* 60:126- 48.
Mooney, Christopher Z., and Mei-Hsien Lee. 1995. "Legislative Morality in the American States: The Case of Pre-Roe Abortion Regulation Reform." *American Journal of Political Science* 39:599-627.

[54] U.S. House of Representatives. Committee on the Judiciary, Problems Relating to a Federal Constitutional Convention by Cyril F. Brickfield, 85th Cong., 1st sess.

petition variable. When a state petitions Congress, the event of interest occurs, and it is coded as a '1'. [55]

My main independent variable is the number of articles related to a state's disputed Senate election. I expect that as a state's disputed Senatorial appointments are increasingly reported in the press, that its legislature will become more likely to pursue a petition asking Congress to pass a constitutional amendment for the direct election of Senators. My theory behind this is twofold. First, the press will provide an agenda setting function. The press will help to shape public opinion. State legislatures, will in turn respond by petitioning Congress. This is also consistent with Rosenson's work which demonstrates that electoral or other governmental reforms at the state level can be driven by a variety of factors such as, the professionalization of a legislature or the existence of ethics scandals. Specifically, state legislatures are responding to the agenda setting role of the press which shifts the self-interest calculation of the legislator to that of self-preservation. Legislators therefore are more concerned about their immediate self-interest than that of the institution.[56]

The following covariates are included in the model as controls. Opponents of the proposed amendment argued that passage would move power away from rural to urban populations. The argument was that state legislative districts were dominated by rural constituencies, and that direct elections would shift Senate selection to more urban

[55] See Box-Steffensmeier and Jones (2004: 8) for a full description for how an event of interest transitions a case from one condition to another.

[56] Rosenson, Beth. 2005. *The Shadowlands of Conduct: Ethics and State Politics*. Washington, DC: Georgetown Press.
See Smith and Fridkin as well as Therault for a discussion as to why this is more likely to apply to minority party members.

based constituencies.[57] It has also been shown that states with large urban machines were quick to ratify the Seventeenth Amendment. Buenker finds during ratification that representatives of urban machines almost unanimously supported the amendment in state legislatures.[58] Smaller states such as Rhode Island, whose rural constituencies yielded more power in the legislature were one of the few states to block ratification.[59] I attempt to measure this phenomenon with the following variables. First, population is measured as the natural log of state population over time. Therefore, I argue that states with larger populations will be more likely to petition Congress for a constitutional convention. The percentage of a state's population that is rural is added to model 2. I argue that states with more rural populations would be less likely to petition Congress.

A control is included for the percentage of a state's population is African American. States with higher African American populations were more likely to pursue measures to disenfranchise blacks during the Progressive Era and therefore were less likely to support democratic reforms such as the direct election of senators. Murphy writes at length about this inherent contradiction in Progressive Era politics where leaders seemed to be opening the political system for increased participation while decreasing opportunities for groups that were scorned at the time. [60] Therefore, I expect states whose population has a higher percentage of African Americans to be less likely to

[57] Daynes, 23.

[58] Buenker, John D., "The Urban Political Machine and the Seventeenth Amendment." *Journal of American History* 56: 305-22.

[59] Ibid.

[60] Link, Arthur S. and Richard L. McCormack, 1983 *Progressivism* Illinois: Harlan Davidson, Inc.

Riker, 1955.
Murphy, 2006.

support a constitutional amendment for the direct election of Senators. This will occur due to the desire of political elites in the state to keep control over Senate elections, and thus retain their ability to keep minority groups disenfranchised.

Alternatively, newer states, such as those in the west tended to be at the vanguard of progressive democratic reforms.[61] Political reforms, such as direct democracy has been hypothesized by Price as well as Smith and Fridkin to be a function of a state party's organizational strength.[62] Mayhew developed a measure of years a state has been in the union as a proxy for state party strength.[63] This is due to the fact that these state's party systems are less developed, and therefore there is less of an incentive among majority party members to vote in line with their party's leadership. Therefore, it is expected that among states that have been in the union for a shorter period of time are less likely to have their legislature petition Congress. Thus, an additional control is the number of years a state has been in the union as a proxy for party organizational strength.

Another control variable measures how large a legislative majority is in a particular state. It has been found by other scholars that states with smaller legislative majorities were more likely to have disputed Senate elections.[64] Specifically, this variable

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[61] Smith and Fridkin, 2009.

[62] Price, Charles. 1975. "The Initiative: A Comparative State Analysis and Reassessment of a Western Phenomenon." Western Political Quarterly 28: 243-62.
Smith and Fridkin, 340.

[63] Mayhew, David. 1986. Placing Parties in American Politics: Organization, Electoral Settings, and Government Activity in the Twentieth Century. Princeton: Princeton University Press.
See also Smith and Fridkin, 340.

[64] Schiller, Wendy and Charles Stewart III. 2007. "Challenging the Myths of 19th Century Party Dominance: Evidence From Indirect Senate Elections 1871-1913" Presented at the 2007 Annual Meeting of the American Political Science Association

measures at what level above 50% a particular party's majority enjoys in the state legislature.[65]

Cox Proportional Hazards models were run to determine whether said covariates led to state petitions calling for a constitutional convention. The Cox model is generally considered to be superior to alternative Event History models when dealing with social science data.[66] The models below were run using the Exact Partial Likelihood and the Efron method. These are superior for dealing with tied data in the dependent variable.[67] Specifically, there are three years where several 'events' or petitions for a constitutional amendment occur. The Exact Partial Likelihood method accounts for each of the possible orderings that these events could have occurred when they are tied for a given year. Tests for the Proportional Hazards assumption were also conducted. Results from both the graphical and Chi-Square tests indicate that the proportional hazards assumption is not violated.

The graph in Figure 5-2 displays the overall risk of a state petitioning Congress in a particular year. The hazard rate is known as the conditional rate of failure. This is the rate of an event, given that a person has survived up to that time.[68] The Y-Axis in Figure 5-2 is the overall Hazard Rate for a state petition given the independent variables in a given year. The risk of a state petitioning Congress doubled from 1897 to 1902 as state

[65]Several of these measures were collected from a dataset provided by Professor Daniel A. Smith. See Smith, Daniel A. and Dustin Fridkin 2009. "Delegating Direct Democracy: Interparty Legislative Competition and the Adoption of the Initiative in the American States" American Political Science Review (102):333-350. for more information.

[66] Box-Steffensmeier, Janet M., and Bradford S. Jones, 2004 *Event History Modeling: A Guide for Social Scientists* Cambridge University Press.

[67] Ibid.

[68] It is given by the following formula: $h_i(t)=h_0(t)\exp(x)$ Source: Ibid.

legislatures began to react to the pressure of press coverage related to their disputed Senate appointments. This risk decreased slightly in 1904 and 1905 as disputes over Senate appointments waned during this period. This is followed by a dramatic increase in risk for the remainder of the decade. By 1910, the remaining states in the union had an approximately 7% chance of passing a petition requiring Congress to call a constitutional convention. As stated earlier, only one more state was needed to call a convention. With states petitioning Congress at this high a rate, an additional petition seemed all the more likely.

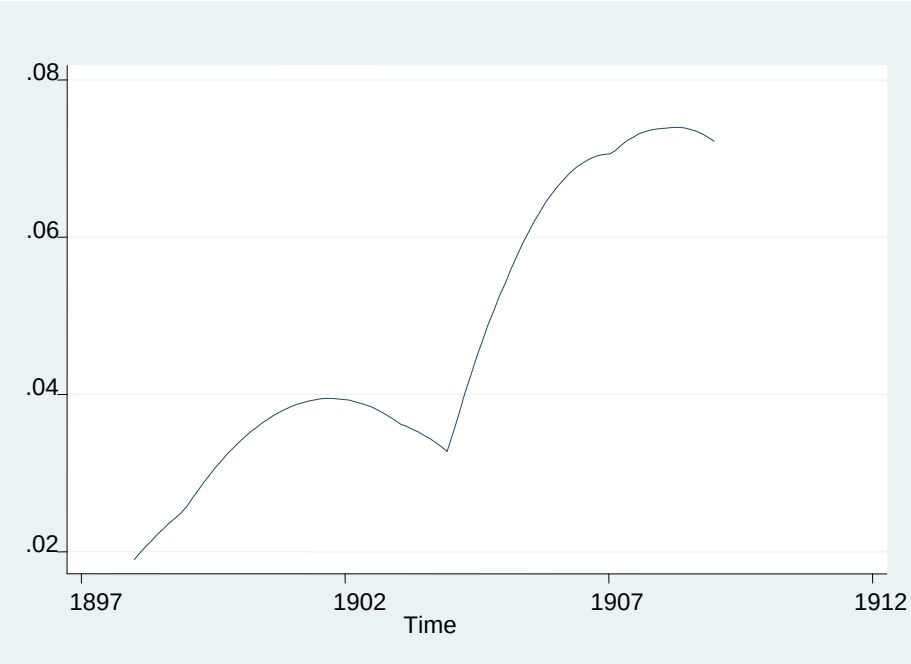

Figure 5-2. Risk of a State Petitioning Congress for a Constitutional Convention

Table 5-4 provides an Event History Model explaining when a state legislature decides to petition Congress for a constitutional convention under Article V. The hazard ratio is the ratio of change for an event occurring given a one-unit change in the independent variable. For event history models, a coefficient greater than ‘1’

corresponds to a positive relationship between the independent and dependent variables. A coefficient less than'1' corresponds to a negative relationship.

The results indicate that as a state's disputed Senate appointments are reported in the press, the more likely that state is to petition congress for a constitutional amendment calling for Senators to be elected by the people. The results of the multivariate models in Table 5-4 are pretty straightforward. States with more articles related to disputed Senate outcomes were 8% more likely in Model 1 to petition Congress. This result is significant at the ($p<.05$) level.

An analysis of specific cases within the dataset yields an interesting pattern. Specifically, a state will undergo a Senatorial deadlock, it be reported in the press, followed by its legislature petitioning Congress within a couple years time. California's first scandal in 1899 was quite explosive where the Speaker of the Assembly was accused of selling his vote to a Senate candidate. The speaker, who pronounced his innocence, sued the newspaper who reported the scandal for libel. This deadlock went over sixteen ballots without a conclusion.[69] California responded by petitioning Congress in 1903. West Virginia, well-known for having several partisan related deadlocks during the 1880s and 1890s, petitioned Congress in 1900. New Jersey petitioned Congress in 1907 which was the same year as its first protracted deadlock since the Stockton case. Of course Delaware, the state most notorious for its deadlocks and vacant Senate seats, petitioned Congress in 1907, after the state finally sent a full Senate delegation to Washington.

[69] "Grant in the Lead" Jan. 17, 1899 The Washington Post

Table 5-4. State Petitions for a Constitutional Amendment 1897 - 1912

Variable	Model 1	Model 2
# of Newspaper Articles on Disputed Senate Outcomes	1.08** (.041)	1.09** (.033)
State Population (Log)	1.97** (.603)	2.22** (.723)
State Rural Population Percentage		27.50 (52.21)
Number of Years in Union by State	0.96*** (.010)	0.97** (.012)
Percentage Black Population by State	0.99 (.018)	0.97 (.021)
State Majority Party >50%	0.98 (.020)	0.97 (.020)
Log Likelihood =	-35.92	-34.290
LR Chi2(df) =	28.68	31.95
No. of subjects =	41	41
No. of failures =	24	24
Number of obs =	378	378

As expected, states that were in the union longer were less likely to petition Congress by four percentage points in Model 1. As mentioned earlier, this variable was included as a proxy for party organizational strength. This result is at the ($p<.001$) level. When adding a variable for the percentage of a state's rural population in Model 2, this result loses some statistical significance. Oklahoma petitioned Congress its first year in the union. None of the New England states petitioned Congress. This is not surprising since these states sent Senators to Congress who represented the existing power structure within the majority Republican Party. None of the states in the Deep South petitioned Congress. This lack of petitions from the older states of the New England and the Deep South regions demonstrate an affirmation of my hypothesis that states with

stronger party organizations would be less likely to petition Congress, as both regions were known for having the most entrenched party systems in the country.

States with higher percentages of African Americans were no more likely to petition Congress. This result is completely flat in both models. This null finding may be explained by the unwillingness of southern state legislatures, who were almost uniformly Democrat to support the direct election of Senators. As mentioned earlier, and will be discussed at length in the next chapter, Senators from southern states were concerned about losing control over Senate elections and were less likely to support a proposed change unless it included a provision that changed Article I Section IV.

Another expected result is states with larger populations were more likely to petition Congress at the ($p<.05$) level in both models. This result is driven by California, Pennsylvania, and Illinois, all which petitioned Congress by 1903. Illinois and Pennsylvania in particular endured scandals that were particularly memorable. Illinois and Pennsylvania were also known for their active urban machines during this period. One counterfactual is New York, which did not petition Congress, and whose Tammany Hall machine has been widely written about. New York's lack of a petition can be attributed to the presence of Senator Chauncey DePew, an ardent opponent of direct elections, who was a central figure in 'The Treason of the Senate' series discussed earlier in this chapter. The percent rural variable in Model 2 is in the opposite direction as expected, as states with a higher percentage of their populations living in rural areas being more likely to petition Congress. This result should be viewed with caution since is not significant at any statistical level and produced a rather large standard error.

Finally, it appears that the margin of a state's legislative majority had a minimal effect on calling for a constitutional convention. Although not statistically significant, as a state majority party's margin increases by 1%, they were 2% less likely to petition Congress in Model 1. This unexpected result may be due to the fact that many deadlocks over Senate appointments were also due to intra-party factionalism.[70] States with majority parties that enjoyed comfortable margins (and therefore more intra-party factionalism) and states with more partisan competition were both likely to endure disputes over Senate appointments.

Conclusion

This chapter begins by providing the progressive era context behind the building movement to reform the Senate. The press was clearly a critical actor in their role of chronicling both the Senate election deadlocks, and the corruption in the Senate as a whole. This coverage clearly sent a signal to the public that the Senate was awry and needed some kind of reform.

A content analysis of articles in The Washington Post shows that close to half of the articles whose major theme was on Senate elections focused on the deadlocks and scandals. This analysis also revealed spikes in coverage during some of the highly salient election cases covered in the previous chapter. Another interesting finding observed in Figure 5-2 is that articles related to the proposed direct elections constitutional amendment tended to lag closely behind articles that focused on

[70] Reiter, Howard L., 1998. "The Basis of Progressivism in the Major Parties: Evidence from the National Conventions" Social Science History 22 (1): 83-116.
Schiller, Wendy. 2003. "Climbing and Clawing their way to the U.S. Senate: Political Ambition and Career Building 1880-1913" Paper presented at the History of Congress Conference, UCSD, LaJolla.

deadlocks. This reveals that the press was somewhat responsive to the scandals and deadlocks in their calls for reform.

Pressure was also building on the Senate from another institution, the state legislatures. More than two dozen state legislatures invoked Article V of the constitution in calling for a constitutional convention where the direct election of Senators would be addressed.[71] Petitioning by one more state would force Congress to call a constitutional convention to address the direct elections issue and potentially other reforms as well.

This chapter also provided the first ever systematic study of the timing and role of state legislature's petitioning of Congress for a constitutional convention. Other work has informed our understanding of the role of party during the period of indirect elections as well as some of the determinants of voting for final passage in Congress.[72] These works examine two important facets which led to the 17th Amendment; the nature of deadlocked Senate appointments, and some of the incentives pushing Senators to support or oppose the amendment. However, no other study to date has examined why state legislatures chose to petition Congress to shift the power of electing Senators away from the legislatures, moving it directly to the people. Therefore, my analysis fills an important gap in the process that unfolded in the run-up to the 17th Amendment's passage.

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[71] Haynes, 1930.
Hoebeke, 1994.

[72] Kenny, Lawrence and Mark Rush 1990 "Self-Interest and the Senate Vote on Direct Elections *Economics and Politics* 2: 291-301.
Holcombe, Randall G., and Donald J. Lacombe 1998. "Interests Versus Ideology in the Ratification of the 16th and 17th Amendments" *Economics and Politics* 10: 143-59.
Stewart III, Charles and Wendy Schiller 2004. "Party Control and Legislator Loyalty in Senate Elections Before the Adoption of the 17th Amendment" Paper Delivered at the 2004 Annual Meeting of the American Political Science Association, Chicago, IL.

In conducting this analysis, I raise a few important issues. First, why did state legislatures choose to devolve the power of electing Senators to the people? Second, what kind of role did the press play both in shifting public opinion and in pressuring state legislatures to act? Last, how important was the timing of the petitions?

An Event History Analysis revealed that states which generated more press coverage of scandals and deadlocks related to their Senate elections were more likely to petition Congress for the constitutional convention. This clearly indicates that the deadlocks and scandals were taking their toll on the state legislatures. In desperation, the states wished to delegate control over Senate elections to the people. Additionally, public pressure was mounting. Legislatures had no choice but to be responsive to their constituents. In answering the third question, I demonstrate how the rate of change in the number of petitions increased towards the end of the 1900s decade. This indicates that the chances of an additional state petitioning Congress became increasingly likely. Again, no other study has examined how these pressures on the state legislatures led towards increasing calls for a constitutional convention.

Why was the Senate so intransigent up to this point? One obvious point is that Senators had an incentive to keep Senate elections they way they were. A Senator simply would not want to place himself at the whim of the individual voter. Another factor was that the Senate was controlled by an old guard faction that was clearly opposed to any reform.

How did this reform eventually pass? The next chapter will reveal three factors that led to the unlikely passage of the direct elections amendment. The first factor was the infusion of new members who were elected not by the state legislatures, but by an

innovative reform. Second were two major scandals which rocked the Senate around 1910. Lastly, the Senate as an institution was threatened by the calls for a constitutional convention. A convention would potentially lead to multiple reforms, some which would place the Senate's standing at risk. With the Senate as unpopular as it was during this period, such multiple reforms were within the realm of potential outcomes.

CHAPTER 6
TIPPING POINTS AND CALLS FOR FINAL PASSAGE

Introduction

The previous chapter provided the Progressive Era context behind the building consensus for the direct elections amendment. National press coverage focusing on disputed senate elections in particular, and the degeneration of the senate as a whole in general was clearly building. Chapter 5 provided quantitative evidence that states with more press coverage related to disputed Senate elections were more likely to petition Congress under Article V, calling for a constitutional convention to address the direct elections issue.

As demonstrated in Chapter 5, a broad movement was building towards reform. This included the majority of state legislatures, the national press, and a majority of the House of Representatives. However, the Senate did not even address this issue through the first decade of the 20th Century. As mentioned in the previous chapter, the Senate was under the firm grip of leaders Nelson Aldrich and William Allison. Consideration of the direct elections amendment would require a significant shift in the chamber.

The tide towards reform in the Senate began to turn around 1910. A few factors were key towards this shift. The first were the petitions for a constitutional convention described in the previous chapter. Next, newer, reform minded members were elected to the Senate by an innovative reform which began in the states. Lastly, two prominent scandals emerged which engulfed the Senate. These events pushed the Senate into a defensive position, with members now realizing that the Senate's standing in our federal system was at stake. With the threat of a constitutional convention looming, and two

scandals which clearly rocked the institution, the Senate was forced to act on a reform it was previously adverse to. This chapter provides a detailed examination of these final events leading to passage of the Seventeenth Amendment, calling for the direct election of Senators.

This chapter will look at the role played by "institutional activists" in unmasking how the 17th Amendment eventually passed. This process occurred in two steps. In 1902, Oregon was the first state to pass a direct election method for U.S. Senators. This was followed by several other states that passed their own form of direct election legislation. Senators recently elected by what was known as the Oregon Plan provided a new "institutional vision" to the chamber, which included a reform agenda.[1]

To use Elaine Swift's terminology, the Senate will endure "reconstitutive change" as internal pressures cause actors to question existing procedures, norms, and structures. This is followed by an infusion of new institutional activists who facilitate a new vision for the organization. This shift produces a transformed institution with new procedures, norms and structures.[2] Although not the focus of her book, Swift posited that this type of transformation also occurred in the Senate of the Progressive Era.[3]

Institutional theorists mention the consequential role of "tipping points" or more precisely, events occurring at decisive moments, creating a critical mass for a particular

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[1] Swift, Elaine K., 1996 *The Making of an American Senate Reconstitutive Change in Congress, 1787-1841*. Ann Arbor: University of Michigan Press.
Schickler, Eric 2001. *Disjointed Pluralism: Institutional Innovation and the Development of The U.S. Congress* Princeton: Princeton University Press.
Similarly in the House, an insurgent group of progressive Republicans from the Midwest led a revolt against the strong power structure controlled by speaker Cannon. See Heckler, 1940; Harrison, 2004; Schickler, 2000.

[2] Swift, 1996.

[3] Swift (1996) argues that reconstitute change occurred only three times in Senate history, the founding decades, the progressive era, and the reform period of the late 60s and early 70s.

action to occur.[4] The scandal surrounding the appointment of Senator Lorimer from Illinois and state petitions calling for a constitutional convention can be described as potential tipping points that pushed Congress over the edge.

The controversy over the election of William Lorimer of Illinois engulfed the Senate and achieved considerable coverage in the press,[5] with his eventual expulsion from the Senate considered by some to be controversial. This is partially attributed to the fact that some of the individuals who accused Lorimer of bribery later recanted.[6] Another important point is the strong relationship between the Senate vote to expel Lorimer and support for the 17th Amendment. The Lorimer case was clearly viewed as presenting a political opportunity by amendment proponents. [7]

Social Learning, Prospect Theory and Congressional Decisionmaking

Theoretically speaking, what were the motives behind a Senator's support of final passage? Were they acting to their own personal benefit, or were there other factors at play? The events described over the past several pages reveal a Senate that was clearly on the defensive. When Senators voted on the 17th Amendment, they were reacting to various threats to the Senate's standing as an institution. The Senate had become overwhelmed with the Lorimer case, with its hearings distracting senators from other legislative business. Most importantly, the Senate's standing as an institution was

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[4] Pierson, Paul 2000. "Increasing Returns, Path Dependence, and the Study of Politics" *American Political Science Review* 94: 251-267.
- 2004. *Politics in Time: History, Institutions, and Social Analysis* Princeton: Princeton University Press.

[5] Tarr, Joel A., 1971 *A Study in Boss Politics: William Lorimer of Chicago* Urbana: University of Illinois Press
Hoebeke, C. H. 1995. *The Road to Mass Democracy: Original Intent and the Seventeenth Amendment*. New Brunswick, NJ: Transaction Publishers.

[6] Ibid.

[7] Hoebeke, C. H. 1995. *The Road to Mass Democracy: Original Intent and the Seventeenth Amendment*. New Brunswick, NJ: Transaction Publishers.

at stake due to the threat of a constitutional convention. Therefore, the Senate passed this reform in a defensive posture, attempting to protect itself from these institutional threats.

The process by which Senators processed and arrived at this decision occurred as a form of organizational learning. Learning occurs as individuals restructure their environmental perceptions through changes in decision-making assumptions and interpretations. The learning process does not necessarily occur in a linear fashion, but in a process of testing new ideas and routines. Thus, the individual experiments through a series of failures and successes to arrive at a "better" outcome.[8] The key to learning at the organizational level is each individual's reaction to new information, or changes in the organization's environment. Individuals learn, change procedures, which at the aggregate changes organizational behavior.[9] Another important component of organizational learning that contrasts this theory with rational choice is that individuals choose the "best available" outcome as opposed to one that is the "best."[10] This is particularly relevant for this study in that Senators were presented with a choice of facing a potentially unrestrained constitutional convention, or amending the constitution on their own. Neither choice is optimal as they are both less favorable than the status quo.

Drawing on Dodd's Theory of organizational learning within the congressional context, members reach unanticipated "crisis" points that arise due to changes in the

[8]Argysis, Chris and Donald A Schon. 1996. Organizational Learning II New York: Addison-Wesley.

[9] Hall, Peter A., "Social Learning and the State: The Case of Economic Policymaking in Britain" Comparative Politics, 25(3): 275-93.

[10] Lebovic, James H., "How Organizations Learn: U.S. Government Estimates of Foreign Military Spending" American Journal of Political Science 39: 835-63.

organizational environment. These institutional crisis moments lead members to question their epistemological assumptions about how the institution operates internally and with its power relationships in the broader political system.[11] Such a crisis moment presented itself as Congress faced an explosive scandal and the threat of a constitutional convention. With a constitutional convention, the Senate faced a potentially devastating change in its standing.

Prospect Theory is a form of social learning that provides a model that can provide some insight into these motives as to why the Senate eventually passed the 17th Amendment.[12] Previous work has depicted preferences among Senators on the Direct Elections amendment to be stable.[13] I propose a more dynamic process that incorporates how environmental perceptions shifted the preferences of members for this legislation. Therefore, Prospect Theory can inform our understanding of congressional decision making during situations perceived by actors as being uncertain, or even threatening to the institution.

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[11] Dodd, Lawrence C., "Political Learning and Political Change: Understanding Congressional Development over Time" in Lawrence C. Dodd and Calvin C. Jillison, eds., *Dynamics of American Politics: Approaches and Interpretations* (Boulder: Westview Press, 1994)
- "Reenvisioning Congress: Theoretical Perspectives on Congressional Change" in Lawrence C. Dodd and Bruce I. Oppenheimer, eds. *Congress Reconsidered*, 8th Ed. (Washington DC: CQ Press, 2005).

[12] Prospect Theory is a form of 'Bounded Rationality' which is a decision making theory that incorporates these limitations in an attempt to model decisions that appear on the surface to be "irrational." Bounded Rationality's most important feature is the limited information processing capacity of human beings. Most decisions take place in a complex environment, and include a multitude of considerations. Individuals have the capacity to focus on only a limited number of considerations when making a specific choice. Therefore the focus of our attention at a particular point in time provides a major component for how we make choices. Jones, Bryan D. 2001. *Politics and the Architecture of Choice: Bounded Rationality and Governance* Chicago: University of Chicago Press.

[13] Riker, William H. 1986 *The Art of Political Manipulation* New Haven: Yale University Press.

This theoretical approach is more prevalent in the study of international relations and has rarely been applied in the study of American politics.[14] Prospect theory places context in a prominent role when actors make a decision under conditions of risk. A main assumption in prospect theory is that choice decisions are dependent on their perception of the options facing the actor as a loss or a gain relative to a neutral reference point. The reference point represents the status quo.

Central to Prospect Theory, is an actors' perception of a changing strategic position under uncertain conditions. An actor's tactics will shift when they perceive their competitive position as moving towards what they perceive to be a declining competitive position.[15] Some scholars argue that Prospect Theory has potential to be applied to several questions in Political Science, especially questions dealing with group interactions.[16]

Decisions are then broken down into a two-step process: the editing phase and the evaluation phase. The editing phase, also known as "framing," deals with the manner a choice set is presented, and how said choices are distinguished. Choice outcomes are said to move the status quo from either a gains or losses frame on Figure 6-1 below. For instance, in the debate over direct elections members were presented with two choices. The first choice is to continue to do nothing about the deadlocks and scandals associated with the existing method of selecting Senators and risk a

[14] O'Neill, Barry 2002. "Risk Aversion in International Relations Theory" *International Studies Quarterly* 45: 617-640.
Mc Dermott, Rose 2004. "Prospect Theory in Political Science: Gaines and Losses from the First Decade" *Political Psychology* 25 2: 289-312.

[15] Jervis, Robert 2004. "The Implications of Prospect Theory for Human Nature and Values" *Political Psychology* 25: 163-176.

[16] McDermott, 2004.

constitutional convention where the Senate could face the potential of a host of changes. The second choice is to pass a constitutional amendment for direct elections.

The evaluation phase of the decision-making process is the phase in which the actual choice between options is made. The value function and the weighting function, which make up the evaluation phase, is illustrated in Figure 6-1.[17]

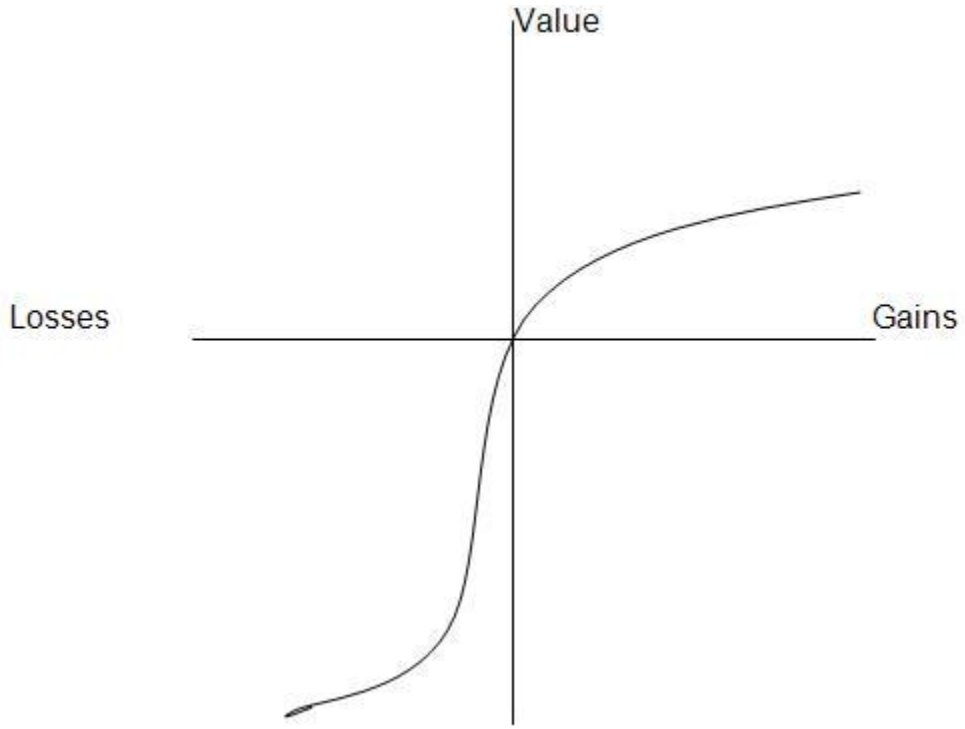

Figure 6-1. Value Function in Prospect Theory

Central to Prospect Theory is how the environment shifts an individual's evaluation of outcome alternatives.[18] Notice that the convex segment of the s-curve is steeper than the concave portion. Subscribers to the theory argue that this is an indication that losses loom larger than gains when making choices under risk. Prospect Theory scholars refer to this as the "loss aversion" characteristic of the value function. Therefore, when

[17] Kahnman, Daniel and Amos Tversky 1979 "Prospect Theory: An Analysis of Decision Under Risk" *Econometrica* 46 (2): 263-292.

[18] McDermott, 2004.

movement from the status quo is perceived as a choice between negative outcomes, the actor is more likely to pursue risk-seeking behavior. [19]

This is known as the "evaluation phase" where the actor updates their weighted probabilities of various outcomes, then updates their preferences according to the reduction of risk.[20] For example, Janice May has argued that petitions for a convention to propose constitutional amendments can be effective at provoking Congress to act.[21] By 1909, a total of 31 states applied, which was one state short of the two-thirds required for a constitutional convention.[22] An important facet is that the choice decision incorporates both a change in the value function and the probability function in Prospect Theory.[23] By 1909, with only one additional state petition required for a constitutional convention, the power of individual Senators and the institution as a whole was now at risk. It is most critical to point out that once the state petitioning process reached the point of being one state short of a constitutional convention (31 state petitions total), the direct elections amendment suddenly emerged as a serious issue on the Senate's agenda. The Lorimer case notwithstanding, Senators who were previously disposed to opposing Direct Elections, were now in a strategic environment where shifting their position may have been necessary for holding on to power.

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[19] Kahnman and Tversky, 1979.
Quattrone George A., and Amos Tversky. 1998. "Contrasting Rational and Psychological Analysis of Political Choice" *American Political Science Review* 82 (3): 719-36.

[20] Kahnman and Tversky, 1979.
Levy, Jack L., 1997 "Prospect Theory and the Cogntiive-Rational Debate" in *Decisionmaking on War and Peace: The Cognitive-Rational Debate* ed Nehemia Geva and Alex Mintz Boulder: Lynn Reiner Publishers

[21] May, Janice C. "Constitutional Amendment and Revision Revisited," *Publius*, (17) No. 1, New Developments in State Constitutional Law, 1987.

[22] Diamond, 1980.

[23] Levy, 1997: 38.

More specifically, Congress not only faced the possibility of a direct elections amendment, but possibly a plethora of additional changes to the constitution. Calls for a constitutional convention and the Lorimer case were key external events that shifted member‘s reference point bias to a losses frame. Congressional leadership, especially in the Senate may have observed a shift in what Prospect Theory would call their value position from a gains frame to a losses frame once the petitions for a constitutional convention gained momentum. This may have been the final catalyst forcing leadership to come to terms with the obvious. The states had enough of the deadlocks and scandals. Congress had no choice but to act.

Oregon Plan

As discussed extensively in the previous chapter, progressivism was on the ascendancy during the first decade of the 20th Century, and was spurred by the political entrepreneurship of Theodore Roosevelt’s Presidency, and the insurgent Congressional Republicans. Roosevelt used the Presidency as a vehicle of driving public opinion towards a reform agenda. Several of these new members arrived at the Senate through an innovative process called the Oregon Plan, designed to give the people more power over Senate elections. To use Swift’s terminology, I believe this infusion of institutional activists is critical to unmasking how the 17th Amendment eventually passed.

In 1902, the state of Oregon passed a constitutional amendment allowing for a system of direct democracy in the state. In 1904, the voters of Oregon, became the first state to pass a system where voters indirectly elect members to the U.S. Senate. Oregon previously had placed Senate candidates to a popular vote, however members of the state legislature were not bound to vote for the plurality winner. This resulted in a controversial outcome in 1903 where former Governor T.T. Geer’s selection by the

citizens of Oregon was not ratified by the legislature. The 1904 initiative was passed after Oregon's citizens became increasingly upset with the legislature's continued inaction during Senatorial elections.[24] Allen Eaton's historical account of the implementation of the Oregon System describes the frustration the legislature had with the existing mode of Senate elections:

> The record of the Oregon Legislature in Senatorial contests was the most discouraging feature of our political system for years. The deadlocks which were often marked by wholesale bribery and fraud, and which often resulted in no legislation at all . . . these deadlocks were the real cause of the adoption of the new method. The change was due to Oregon's determination to take the matter out of the hands of the Legislature rather than to an indication on the part of the people themselves to make their own selection.[25]

Central to what became known as the Oregon Plan asks candidates for the state legislature to sign a pledge that they will support the candidate for U.S. Senate who received a plurality in the statewide general election. All candidates were required to qualify by petition along with a 100 word statement on the policies they would promote while in office. Prospective candidates for the legislature were required to sign one of two statements pledging how they will vote in the U.S. Senate contest. Statement #1 in Oregon Direct Primary Law called for the candidate for state legislature to vote for the candidate for Senator who received the highest number of votes at the previous election. Statement # 2 stated that the candidate was not pledged to vote for the plurality vote winner for Senate.[26] Obviously, candidates would be rather foolish to sign statement #2. This method became so popular among general citizens that a pledge

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[24] Eaton
Haynes, 1930: 100.

[25] Eaton, 92

[26] Ibid.

circulated around the state where the signee stated that they would under no circumstance, vote for a candidate who did not sign statement #1.[27] Not only did this law make state legislators more accountable to the direct will of citizens, it also weakened state party control over Senate elections.[28] The Oregon System came under a test in 1908 when the popular Democratic Governor George Chamberlain emerged as the clear favorite of the public. When the legislature took office with a Republican majority, Chamberlain was elected to the Senate. This was due to Chamberlain receiving every vote from legislators who signed statement #1.[29]

The Oregon System quickly took hold in other states. In 1909 Nebraska adopted an almost identical system with the support of William Jennings Bryan. North Dakota passed a law requiring prospective state legislators to take a vote, however it was overturned by the state's Supreme Court in 1908. The court did uphold a requirement that candidates declare a candidate that they will support for the Senate.[30] This method became so popular that by the 62nd Congress, 21 states had passed legislation for some form of the Oregon system.[31]

Rise of the Insurgents

Senators recently elected by the Oregon System provided a new "institutional vision" to the chamber, which entailed a reform agenda that was in stark contrast to the

[27] Haynes, 108

[28] Ibid, 5.

[29] Ibid, 102-103.

[30] Ibid.

[31] Kenny and Rush, 301.

policy wishes of the old guard.[32] The presence of insurgent Republicans in Congress such as Robert LaFollette of Wisconsin and Joseph Bristow of Kansas provided the legislative leverage necessary for many of the administration's accomplishments.[33] Much has been written on the role played by Republican Insurgents joining with House Democrats in stripping the power of Speaker Cannon.[34] Administrative agencies also saw a similar type of transformation. Reformers also gained entry into these institutions, with tensions over organizational routines and administrative boundaries produced power struggles between various groups including industry, labor, consumers, and public servants.[35]

As mentioned previously, a coalition of new "institutional activists" was required to replace the powerful alliance Nelson Aldrich (R-RI) and William Allison (R-IA) held within the Republican Senate caucus. It was during this period where the caucus leadership developed procedures for committee assignments and scheduling legislation. Most importantly, norms were developed where individual Republican Senators could compromise differences over legislation, thus leading to increased unity when bills reached the floor.[36]

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[32] Elaine Swift, 1997.

[33] Examples include the creation of the Interstate Commerce Commission, the inspection of food, and greater enforcement of the Sherman Anti-Trust Act were all achieved during Theodore Roosevelt's administration See Link, Arthur and McCormick, 1983.

[34] Hechler, Kenneth W., 1940. *Insurgency: Personalities and Politics of the Taft Era* PhD Dissertation: University of Columbia
Harrison, Robert 2004*. Congress, Progressive Reform, and the New American State* Cambridge University Press.

[35] Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities.* New York: Cambridge Univ. Press.

[36] Rothman, 1969

The Aldrich-Allison grip on the Senate was clearly waning. Drawing from Prospect Theory, Senate leadership must have recognized that power was slipping away due to the infusion of these new reform oriented members. Aldrich, Allison and their cohorts entered the "evaluation phase" where a change in the environment shifted said actor's perception of the status quo down the value function away from a perception of gains and towards a perception of losses.

Efforts at achieving institutional reform would not only need to undermine this power base, it would need to replace it. The controversial Payne-Aldrich Tariff Act is not only an example of the sway held by the existing Senate leadership, but also a key to understanding how it unraveled during the elections of 1910. [37] The Republican insurgency gained its initial strength in the Senate as 11 Republicans joined with Democratic Senators to oppose Aldrich's tariff legislation. This coalition proved to be successful as they gained concessions protecting agriculture and commodities in the Midwest and South. [38]

I should briefly mention that institutional theory also depicts previously marginal groups as a catalyst for institutional change. [39] This alliance of insurgent Republicans and Democrats were able to gain control of the legislative agenda after the 1910

[37] Hoebeke, C. H. 1995. *The Road to Mass Democracy: Original Intent and the Seventeenth Amendment*. New Brunswick, NJ: Transaction Publishers.

[38] Heckler, 1940.
Rothman, 1969.
Merrill and Merrill, 1971.
Binder, 1997.

[39] Clemens, Elisabeth S. 1993 "Organizational Repertoires and Institutional Change: Women's Groups and the Transformation of U.S. Politics, 1890-1920. *The American Journal of Sociology* 98: 755-98
Pierson, Paul 2004. *Politics in Time: History, Institutions, and Social Analysis* Princeton: Princeton University Press.

election. [40] After taking control from Aldrich led power structure, reform oriented Senators were able to implement parts of their agenda which included the 17th Amendment.[41] These Senators were also critical actors in unmasking a major scandal which rocked the Senate. This scandal, along with the state petitions for a constitutional convention shifted not only Senate leadership, but a majority Senators down Prospect Theory's value function towards a perception that the chamber's position in the political system was at risk. This was due to the perception that the chamber's standing in the political system was at risk. This scandal and its considerable consequences will be discussed at length in the next several pages.

Lorimer and Stephenson Cases

Institutional theorists also mention the consequential role of tipping points or more precisely, events occurring at decisive moments, creating a critical mass for a particular action to occur. This is usually after a long period of pressures for institutional change building over time.[42] Two major Senate election cases emerged after the 1910 election, one in particular that fit the criteria of a tipping point. This tipping point was over the election of William Lorimer of Illinois. The controversy over the election of William

[40] Haynes, George H. 1906. *The Election of Senators.* New York: Henry Holt and Company
Heckler, 1940.
Hoebeke, 1995.

[41] Heckler, 1940
Hoebeke, 1995.
Schickler, 2000.

[42] Pierson, Paul 2004. *Politics in Time: History, Institutions, and Social Analysis* Princeton: Princeton University Press.
Pierson, Paul and Theda Skocpol 2002 "Historical Institutionalism in Contemporary Political Science," in Katznelson and Milner *Political Science: The State of the Discipline*, New York: Norton.

Lorimer achieved press coverage that was unprecedented.[43] Lorimer's eventual expulsion from the Senate is considered by some to be controversial. This is partially attributed to the fact that some of the individuals who accused Lorimer of bribery later recanted.[44] In the next couple paragraphs I discuss Isaac Stephenson's controversial election, next I turn to the Lorimer case.

In 1908, the state of Wisconsin held a primary to determine the nominees to be voted on by the legislature after the general election. The eventual winner, Isaac Stephenson spent over $107,000 to gain his party's nomination.[45] The committee on privileges and elections began an investigation as to whether Stephenson's primary election was obtained through bribery. In a majority report Stephenson's expenditures were considered to be "extravagant" and "in violation of the principles underlying our system of government." The report went on to declare that although there was corruption involved in Stephenson's election, that it did not reach the level of bribery.[46] In his defense, Senator Stephenson declared that he "never spent a dollar wrongfully in my life."[47]

In a minority report, Senator Kenyon of Iowa described Stephenson's election as an "organized riot of corruption." The Senator went on to not only declare the seat vacant, but charged that practices similar to the Stephenson case were rampant in the

[43]Tarr, Joel A., 1971 *A Study in Boss Politics: William Lorimer of Chicago* Urbana: University of Illinois Press
Hoebeke, 1995.

[44] Tarr, 307.
Hoebeke, 92.

[45]"Senator Paid $107,793" The Washington Post Feb. 12, 1909

[46] Haynes, 135-136.

[47] "Seat Bought, He Says" The Washington Post Mar. 5, 1912

Senate, and a "danger to the republic."[48] In late March, by a vote of 40-34, Stephenson's election was upheld by the full Senate.[49] Both parties were relatively split on the roll call vote.[50] One light moment occurred when the Senate erupted in laughter when the embattled Senator Lorimer voted in support of Stephenson.[51]

On April 30, 1910, The Chicago Daily Tribune published a first page article that set off a scandal that shook like an earthquake in the Senate. This article contained a sworn statement from Democratic legislator Charles White that he was bribed to vote for Republican Senator William Lorimer during the 1908 Illinois senatorial election.[52] During his confession, White stated that he was given $1,000 by the Minority Leader in the Assembly and that several other members of the Democratic caucus who supported Lorimer received similar sums. The $1,000 was broken into $100 upfront money and $900 in what was called a "jackpot" share which was offered by corporations for legislative favors.[53] White wrote his own narrative of the events surrounding the Lorimer election and sold it to the Tribune for $3,250.[54] At the time, the Tribune was allied with a faction associated with Governor Deneen, an opponent of Lorimer and his faction over the years.[55]

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[48] Ibid.

[49] Ibid.

[50] Ibid.

[51] Haynes, 137.

[52] "Democratic Legislator Confesses he was Bribed to Vote for Lorimer for United States Senator" Chicago Tribune April 30, 1910

[53] Tarr, 235.

[54] Ibid., 236.

[55] Ibid.

Lorimer and several legislators asserted that White tried to blackmail them during the writing of White's manuscript. He went on to assert that this was part of a larger conspiracy by the Tribune to ruin his political career.[56] However, in front of a grand jury one legislator admitted to receiving money for a vote for Lorimer.[57]

In a speech to the Senate, Lorimer asked that the Committee in Privileges and Elections investigate the charges against him. The committee responded in kind, appointing a subcommittee to look into the Lorimer election.[58] During the committee hearings a representative from the Tribune admitted that he could not provide a direct connection between Lorimer and the "jackpot" money, but asserted that Lorimer's election was achieved by corrupt means. Several of the legislators who were questioned stated that they would have voted for Lorimer regardless of the money offered. Others stated they supported Lorimer for patronage.[59]

The subcommittee reported that there was no evidence Lorimer had directly bribed legislators and that Lorimer's majority would have been achieved without the bribed votes. Although the full committee voted 10 to 2 to accept the report, the debate over Lorimer exposed a fissure that was deepening in the Republican Party between the insurgents and the old guard. The insurgents were spurred on by former President Roosevelt who stated that there was "universal corruption" in Lorimer's election and even refused to sit at the same table with Lorimer during a speech Roosevelt gave in

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[56] Ibid, 240.
"Lorimer Denies Bribery in Getting Senate Seat" The Washington Post May 29, 1910

[57] Tarr, 237-238.

[58] Ibid. 241

[59] Ibid, 249.

Chicago.[60] The old guard defended Lorimer and accused the insurgents of attacking the Senate establishment.[61] The press was clearly on the insurgents' side with many newspapers calling for Lorimer's expulsion from the Senate.[62] In a four hour speech on the Senate floor, Lorimer was tearful in his defense, recalling his rise from humble beginnings, and claimed that Democratic votes were obtained due to personal friendships.[63] On March 1, the Senate voted to retain Lorimer by a vote of 46 to 40. This was one day after the Senate defeated a resolution for the direct election of Senators. As indicated by the table below, both parties were split over their support for Lorimer with the majority of Democrats supporting his ouster. In general, the Republicans were split between insurgent and old guard members.[64] In a recent work, Robert Harrison classified all the Republican Senators in the 61st Congress on an "insurgency scale" as well as a Cluster Analysis category called "Insurgent" which were based on a series of twenty five roll calls.[65] For the analysis in this chapter, an 'Insurgent' is described as a Republican whose score was '7' or above on the 'Insurgency Scale' or achieved a Cluster Analysis score greater than 0.8. [66]

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[60] Ibid, 244, 254.

[61] Ibid. 256.

[62] Ibid. 257.

[63] "Tears for Lorimer" The Washington Post Feb. 23, 1911

[64] Tarr, 264.
"Lorimer is Upheld" The Washington Post Mar. 2, 1911

[65]Cluster Analysis is a form of multidimensional analysis that takes a large group of cases, in this case Republican Senators, and classifies a subset into a specific category, such as 'Insurgent Members' in this example. This procedure is performed by taking a large number of observations, and constructs a specific category based on similar responses to this set of observations. See Lattin, 2003 for more information.

[66] Harrison, Robert. 2004. *Congress, Progressive Reform, and the New American State* Cambridge UK: Cambridge University Press.

Table 6-1. Vote to Expel Lorimer From the Senate in the 61st Congress[67]

	Democrat	Republican			Total
	Total	Total	Insurgent	Old Guard	
Aye	18	22	12	10	40
Nay	11	35	0	35	46
Total	29	57	12	45	86

This attempt to expel William Lorimer from the U.S. Senate failed by a vote of 40-46. The clearest pattern observed in Table 6-1 is the intra-party split among Republicans. Insurgent members were unanimous in opposing Lorimer, with twelve voting for his ouster.[68] Although Old Guard members were more likely to support Lorimer by more than a 3:1 ratio, ten of these members voted against the party leadership. This high level of defections could be viewed as possible cracks in the leadership within the Republican caucus. Democrats were generally split on Lorimer. Out of the eighteen Democratic votes to expel Lorimer, thirteen were from the South. However, several Southern delegations were split on this matter, which included Southern Senators who either voted to retain Lorimer or abstained.

This was not the end of Lorimer's troubles. In January 1911, the Illinois State Senate started its own investigation into Lorimer's election. This special committee, known as the Helm Committee obtained testimony from a man named Charles Funk, claimed that a millionaire named Edward Hines asked him to raise $10,000 to go into a $100,000 fund for Lorimer. Other witnesses corroborated that Hines had approached

[67] Tarr, 264.

[68] One insurgent member, Senator Dolliver of Iowa abstained.

them as well.[69] Upon hearing this new evidence, Senator Robert LaFollette of Wisconsin offered a resolution calling for the reopening of the Lorimer case.[70]

On June 2, 1911 the Senate voted to reopen the Lorimer case, appointing a subcommittee of eight members of the Committee on Privileges and Elections to investigate. The committee consisted of four Senators who voted for Lorimer in the previous Congress, one who voted against, and three freshman Senators.[71] Hines also testified in front of the Senate committee, claiming that he was acting merely as an agent of Aldrich, who wanted an additional Republican vote in support of his tariff legislation. Hines even went as far as to state that President Taft supported his efforts to get Lorimer elected. In a private letter and to a statement to Senator Kenyon, Taft denied any role in Lorimer's election, accusing Hines as "guilty of the most willful perjury."[72] During his testimony, Aldrich denied any direct involvement in Lorimer's election, while several witnesses from the lumber industry gave conflicting testimony.[73]

Hearings also took place in Chicago, and reconvened in Washington on December 5. Lorimer took the stand, and he was questioned up until January 1912.[74] In his biography of Lorimer, Tarr argues that said testimony only reinforced those who were predisposed to vote for Lorimer and those who thought he was guilty.[75]

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[69] Ibid., 270.

[70] "Reopens Lorimer Case: Senator La Follette, in a Resolution, Names a New Committee." The Washington Post Apr 7, 1911

[71] "Reopen Lorimer Case" The Washington Post Jun. 2, 1911

[72] Tarr, 275-277.

[73] Ibid., 278-279;/

[74] Tarr, 282-283.

[75] Ibid., 284.

In late March, the subcommittee voted 5 to 3 to clear Lorimer of any charges. Although they ruled that Hines raised $100,000 to elect Lorimer, the subcommittee found no new evidence of a direct connection. The majority also ruled that the Senate's verdict in the previous Congress should be considered final, and that the Senate had no standing to retry Lorimer.[76] The minority retorted that the new testimony established that 15 votes which gave Lorimer the majority were obtained by corrupt means. The minority went on to declare Lorimer's election invalid and his seat vacant.[77]

Debate on the Senate floor lasted until the summer. In general, insurgent Senators made impassioned speeches calling for Lorimer's expulsion, whereas old line members spoke in favor of the majority report.[78] When Lorimer spoke he went into a diatribe against the Tribune and the "trust press," accusing them of perjury. The Senator went on, citing inconsistencies in other Senator's remarks during the proceedings. Roosevelt and Taft were not spared Lorimer's wrath as he scolded them for intervening in his case.[79]

On July 13, the Senate voted to expel Lorimer by a vote of 55 to 28.[80] Table 6-2 below display the inter and intra-party break down on the Lorimer vote in the 62nd Congress. Overall, the Republicans were split with sixteen voting in favor and against expelling Lorimer from the Senate. The insurgents were again united, with none voting

[76] "Vote Clears Lorimer" The Washington Post Mar. 29, 1912

[77] Haynes, 132.
Tarr, 294.

[78] Tarr, 295-297.

[79] Tarr, 300.

[80] Haynes, 133

Tarr, 301.

to retain Lorimer. Three insurgent Senators, Brown of Nebraska, Dixon of Montana, and Smith of Michigan abstained. The Old Guard vote remained in Lorimer's favor, however by a much smaller margin. It should be mentioned that there were a high number of abstentions among non-Insurgent Republicans. Perhaps many members who chose to abstain realized the evidence against Lorimer was convincing, yet were unwilling to vote against the party leadership on this question.

Table 6-2. Vote to Unseat Lorimer from the Senate in the 62nd Congress[81]

	Democrat	Republican[82]			Total
		Total	Insurgent	Old Guard	
Aye	29	16	6	8	45
Nay	8	16	0	13	24
Total	37	32	6	21	69

Democrats were mostly unified in their desire to oust Lorimer by roughly a 3:1 ratio. This can be interpreted as a partisan stand, since Democrats were presented with an opportunity to embarrass the Republicans by contributing to vote out of office one of their members. There is no systematic pattern among Democrats who voted to retain Lorimer in the Senate. Tarr points out that 21 out of the 23 new Senators in the 62nd Congress voted to expel Lorimer. Nine members who voted for Lorimer in the 61st Congress voted against him in the 62nd Congress.[83]

The scandal surrounding the appointment of Senator Lorimer from Illinois and state petitions calling for a constitutional convention can be described as potential tipping points that pushed Congress over the edge. One important point in favor of this

[81] Ibid.

[82] There were 7 new GOP Senators in the 62nd Congress. Five of these members voted on the Lorimer question. Since the Insurgent classification is based on votes in the 61st Congress, these members were not classified into either the Insurgent or Old Guard categories.

[83] Ibid., 304.

argument is the strong relationship between the Senate vote to expel Lorimer and support for the 17th Amendment. However several issues were at play during the debate over the 17th Amendment. This debate is the focus of the next several pages.

Debate over Final Passage

The Senate began to seriously consider the direct elections amendment during the 61st Congress. Joseph Bristow, a Republican from Kansas, submitted said amendment to the Judiciary committee in December 1909.[84] On January 11, 1911 the amendment received a positive report, written by William Borah of Idaho. The report argued how legislative elections diverted attention away from other legislative business, that economic and social changes since the founding called for reconsidering how Senators were elected, and that public opinion was clearly in favor of this reform.[85]

However, the committee reported an amendment with a particular change from Bristow's resolution. Bristow's resolution simply called for the election of Senators by the direct vote of the people in each state. The committee's resolution added the clause that: "The times, places and manner of holding elections for Senators shall be as prescribed in each state by the legislature thereof." Additionally, it stated that the power of Congress to regulate congressional elections under Article I Section Four did not apply to Senate elections.[86] Congress invoked Section Four in 1866 when it passed the Elections Bill regulating when state legislatures can consider Senate elections. This clause was clearly added to gain the support of southern senators who wanted to seize more control over elections in their respective states. This was a period when African

[84] Haynes, 1930: 108

[85] Ibid

[86] Ibid, 109.

Americans were largely disenfranchised throughout the South through the poll tax, literacy tests, grandfather clauses, and other methods.

Supporters of direct elections argued that this resolution was in fact two amendments, one to elect Senators by the direct vote of the people, and second to transfer power to the states over the regulation of Senate elections. Debate in the Senate turned into a discussion over federal control over Senate elections. Seizing what they perceived to be a new opportunity to defeat the amendment, members of the old line such as Chauncey DePew and Henry Cabot Lodge, denounced the amendment as being in direct contradiction of the 14th and 15th Amendments.[87]

Senator Sutherland, a Republican from Utah, and member of the Judiciary Committee, offered a constitutional amendment similar to Bristow's original proposal. Obviously, this generated some consternation from several Southern Senators. Augustus Bacon of Georgia was one opponent of direct elections who fiercely opposed the Sutherland amendment. Although Bacon opposed the direct election of Senators, he did support the Judiciary Committee's amendment as an alternative to the Sutherland amendment and a means of nullifying Section Four. Bacon believed that this amendment would lead Congress to pass another Force Bill to enforce its will on Senatorial elections.[88]

The supporters of direct elections felt the debate was diverted to issues of race, and was willing to go along with the Judiciary committee's amendment if that is what it took to get any reform through. Thus, the insurgents opposed the Sutherland

[87] Congressional Record, 61st Congress, Third Session, 1335.

Murphy 2006: 281-282.

[88] Murphy, 285-286

amendment when it came to the floor. However, on February 11, 1911, the Sutherland amendment passed the Senate by a vote of 50-37. Each time the resolution came up during the session, southern members voiced their concerns that this amendment would give the Congress new powers that it previously had not used. Senator Le Roy Percy of Mississippi even went as far to admit that his goal was the disenfranchisement of African Americans, and proceeded to make racist arguments in favor of the practice.[89] On February 28 the amended resolution was voted on. The resolution came up four votes short by a vote of 54-33 with four abstentions. One interesting point is that several of the old line Republicans who originally voted for the Sutherland amendment to be considered, voted against the resolution on final passage. Other scholars have indicated that this is a clear indication that the old line Republicans were more concerned with bringing a resolution to the floor that would generate a block of opposition from southern Senators.[90]

Although the race question took up much debate during consideration of the amendment, there were several arguments made for an amendment on its merits. One argument in favor of the amendment's passage was the looming threat of a constitutional convention called by the states. The previous chapter discussed how 31 states had petitioned Congress under Article V calling for a constitutional convention that would address direct elections, and potentially other issues. This was one state short of the required two-thirds necessary for a convention, and with Arizona and New

[89] Ibid., 287-288.

Congressional Record, Sixty-First Congress, Third Session, 3541.

[90] See Riker, 1955.
Hall-159-160.
Murphy, 2006, 289-290.

Mexico on track to join the union, it was widely believed that these new states would provide the margin that was required. Weldon Heyburn (R-ID) who opposed the direct election of Senators on the merits, voiced his fear over a constitutional convention:

> I should like to know what Senator would be willing to open the doors of a convention for the purpose and with the power of making an entirely new Constitution, for you can not limit the action of the American people if they should thus come together for the purpose of making the charter for their Government. The restriction that insures equal representation in this body would be wiped out, as would every other provision.[91]

The following excerpt from a debate on the Senate floor between Heyburn and Sutherland also clearly indicates the fear Senators had of a constitutional convention:

> Mr Heyburn: A constitutional convention is without limit as to its power. When the people of the United States meet again for the purpose of making an organic law, that prohibition is at an end.
>
> Mr. Sutherland: Then the Government is at an end.
>
> Mr. Heyburn: The Government is being reborn.
>
> Mr. Sutherland: That is revolution.
>
> Mr. Heyburn: That is a possibility, and within the power of a constitutional convention, because a constitutional convention represents all the people, and all the people can do as they please.[92]

The toll the Lorimer case was taking on the Senate was another factor that moved in the favor of the amendment's proponents. In January 1911, during the same period the Judiciary Committee favorably reported the amendment, the Lorimer case had the effect of delaying the consideration of an appropriations bill. There was also concern among some as to whether President Taft's legislative program would be considered at

[91] Congressional Record 61st Congress, Third Session, 2766

[92] Congressional Record 62nd Congress, First Session, 1544

all due to this deadlock.[93] By early March, an agreement was reached where a vote would be taken on Lorimer, followed by a quick consideration of Senate business.[94] However, debate over the Lorimer and Stephenson case continued to deadlock the Senate. These major distractions to Senate business caused one Senator to quit the committee on privileges and elections. The Senator felt the evidence in this case to be so overwhelming to the committee, that it would be next to impossible to arrive at a decision. To quote Senator Bailey on his resignation:

> I was appointed on the committee to investigate the Stephenson case, and it was simply impossible for me to do that work, and also to perform my duties as a member of the conference committee on the wool bill.[95]

With five days left in the session, one article in the Washington Post described the situation as "Chaos in the Senate." Bills over pensions, the post office, agriculture, military, diplomatic, Canadian reciprocity, and tariff reform were all being held up, in part to the proceedings over the Lorimer case. Night sessions and the possibility of a special session were all in discussion due to what was described as an "unprecedented and almost hopeless condition."[96] Pressures were clearly building both externally and internally to the Senate. Some prospect theorists point towards similar pressures as pushing individuals to a losses frame where the status quo is considered unacceptable.[97] Taking the next step, passing the direct elections amendment with all the electoral risks it carried for individual Senators, became an inevitability.

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[93] "Senators Fear Delay" The Washington Post Jan. 9, 1911

[94] "Senate Will Vote Today on Lorimer" The Washington Post March 1, 1911

[95] "Bailey Quits Office" The Washington Post Jul. 28, 1911

[96] "Chaos in the Senate" The Washington Post Feb. 27, 1911

[97] Mercer, Jonathan 2005. "Prospect Theory and Political Science" *Annual Review of Political Science* 8:1-21.

Although supporters of direct elections lost the legislative battle in the 61st Congress, they saw a golden opportunity that emerged from the 1910 elections. The new 62nd Congress would see the Republican Party now in the minority in both houses, and many of the old line Republicans such as Aldrich and DePew not returned to the Senate. By his own vote count, Bristow estimated that 10 opponents of direct elections did not return to the Senate and were replaced by as many as six supporters. Bristow felt these new members were not concerned with the race issue, and were more likely to support an amendment that did not affect Congress' power to regulate Congressional elections.[98]

Once the 62nd Congress convened, Bristow introduced a resolution to the Judiciary committee in the same form as it was voted on. During this same period, the House passed a resolution. When it arrived at the Senate, it also was referred to the Judiciary committee, with the committee choosing to favorably report the House version. Bristow offered his resolution as a substitute, with it being referred to now as the Bristow amendment.[99]

The Bristow amendment generated a debate as heated and very similar to that which was over the Sutherland amendment in the previous congress. Accusations were made that Bristow was attempting to confer new powers to the federal government which would allow the Senate to meddle in the internal affairs of the states. Bristow's pragmatism, by voting against the Sutherland amendment in the previous Congress, then turning around and offering a resolution that leaves Section Four untouched, was

[98] U.S. Senate. 1912. *Resolution for the Direct Election of Senators*. 62th Cong., 2nd sess.,S. Rept. 666: 8.
Congressional Record Sixty-second Congress, First Session,1482.

[99] Ibid.

considered to be an act of betrayal by some Southern Senators.[100] There was a tie vote on adoption of the substitute with the Vice President voting in the affirmative. On June 12, 1911, the Bristow resolution passed the Senate with 64 aye votes and 24 nay votes. There were five abstentions.[101] This was the first time in history that a vote on an amendment for the direct election of Senators passed the Senate.[102]

Since the version that passed the House repealed Section 4, the resolution had to go to conference. After several months the chairman of the committee in the House relented and recommended that the House adopt the Senate version. On May 13, the House voted favorably by an overwhelming vote of 237 to 39.[103]

Roll Call Data

Both the changes to the Senate's internal environment, in addition to the Lorimer and Stephenson cases described above, produced a setting where passage of the direct elections amendment became a reality. This chapter contains individual congressional roll call data on final passage of the 17th amendment in the U.S. Senate. Roll call data was obtained from a larger dataset downloaded at www.voteview.com. This data source provides the result of every roll call vote made by individual members of Congress through the just completed 109th Congress.

The dependent variable is an individual member of Congress' support for passage of the 17th (or direct elections) Amendment. Therefore, the level of analysis is the individual vote score for the Amendment. For this model "Aye" votes are coded '1',

[100] Congressional Record. Sixty-second Congress, First Session, 1908-1909.

[101] Bristow, "Direct Election of Senators." 8.

[102] A roll call analysis of this vote is later in this chapter.

[103] Ibid.

"Nay" votes are coded '0'. For this chapter, I analyze the roll call voting patterns for final passage in the Senate during the 62nd Congress. The direct elections amendment passed both houses during the 62nd Congress.

My main independent variable is Senators from states which have petitioned Congress for a constitutional convention. Members who are from states who petitioned Congress for a Constitutional Convention received a code of '1' with all others coded '0'. My theory behind this variable is twofold. First, Senators from petition states are acting as agents of their state legislatures, responding to their desire for constitutional change. These Senators are also most aware that the Senate's position as an institution is at stake. These members are the most affected by the petitioning process, and are especially aware that the nation was one state shy of calling a constitutional convention under Article V.

My main theory speaks to the motives behind these members' decision making. This group of Senators was individually pressured by the press, their own state legislatures, and by the institutional breakdowns within the chamber. Their individual reference points along the graph in Figure 5-1 moved to the losses domain, where the status quo was unacceptable. These members, especially those that were also not elected by the Oregon Plan were willing to put themselves and their colleagues at electoral risk, for the sake of saving the institution.

Another important variable is Senators who have been elected by the Oregon Plan. Previous work by Kenny and Rush has found that Senators who were elected directly by the Oregon Plan were overwhelmingly supportive of the 17th Amendment. It was concluded by the authors that extending direct election to all Senators would favor

members already elected by the Oregon Plan.[104] Senators who were elected by the Oregon plan are given a code of '1' with all other Senators are coded '0'. Data for this variable is available directly from Kenny and Rush's article.[105] I expect this variable to also have a strong positive relationship when it is included in Models 1 and 3. This will demonstrate that support among Senators elected under the Oregon plan is a robust finding since these models have a different set of covariates than that used by Kenny and Rush.

An additional variable is the cumulative number of articles related to disputed Senate elections for a particular state. I expect that Senators from states with more articles related to disputed elections will be more likely to support the 17th Amendment. My theory behind this variable is that Senators from states whose disputed elections were more highly reported in the press will endure increased pressure to support direct elections. These Senators will be responding to this pressure by both the public and the press by forgoing their immediate interest and support final passage of the 17th Amendment.[106] An additional facet to my theory is that these members will be more likely to recognize the stresses these disputes place on both the State Legislatures and the Senate itself. As is the case with members from petition states, these Senators will be acutely aware that the Senate's standing as an institution is at stake, and therefore passage of the amendment is a necessity.

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[104] The authors also found that Senators who faced a legislature from the opposite party were also likely to support the 17th Amendment for similar reasons.
Kenny, Lawrence and Mark Rush 1990 "Self-Interest and the Senate Vote on Direct Elections *Economics and Politics* 2: 291-301.

[105] Ibid.

[106] Theriault, 2004.

Feldstein, 2006.

An important independent variable is Party. In this dataset, Democrats are coded a value of '0' and Republicans a value of '1'. Aside of being a traditionally strong predictor of roll call voting during various eras in Congressional history, Democrats assumed power in both houses after the 1912 election, making passage a more likely outcome. Why are Democrats more likely to support the amendment? King and Ellis find that Democrats benefited from direct elections. Since popular voting for Senator is aggregated at the statewide level, as opposed to the district level, the Democrats stood to benefit in many states.[107] This is partially due to the fact that district boundaries were often drawn to benefit rural counties during this period.[108]

I also expect senators from southern states to be less likely to support the 17th Amendment. As discussed earlier in this chapter, southern Senators wished for their states to gain control over the manner that Senate elections would be conducted in their states. Southern members lost their argument for this change to Article I Section IV in the 62nd Congress. Therefore, these Senators would be less likely to support final passage on Bristow's amendment. Wirls also finds that Southern members were less likely to support final passage for said considerations.[109] Senators from the old confederacy are given a code of '1' whereas all others are coded '0'.

Population size is another covariate in this model. I expect Senators from more highly populated states to be more likely to vote for passage of the 17th Amendment. Machine Senators James Martine of New Jersey, James O'Gorman of New York, and

[107] King, Ronald F. and Susan Ellis. 1996. "Partisan Advantage and Constitutional Change: The Case of the Seventeenth Amendment." *Studies in American Political Development* 10:69-102.
[108] Ibid.
Beunker, 1971.

[109] Wirls, 1999.

Atlee Pomerone of Ohio all voted for final passage. Buenker finds during ratification that representatives of urban machines almost unanimously supported the amendment in state legislatures. This was mostly due to a sentiment at the time that state legislatures were being dominated by rural districts. Urban machines viewed reforms such as the direct election of Senators as way of shifting control of the Senate election process away from said rural constituencies.[110] Conversely, Senators from smaller states will be less likely to support the 17th Amendment due to the interest of satisfying their rural state legislatures.

Table 6-3. Final vote in Senate by Party and Petition State (62nd Congress)

	Democrat	Republican[111]			Petition State		Total
	Total	Total	Insurgent	Old Guard	Yes	No	
Y	31	33	10	18	49	15	64
N	8	16	0	13	7	17	24
Total	39	49	10	31	56	32	88

As was the case with the model in Chapter 5, Years Since Statehood is included as a proxy for party organizational strength. Senators from states that have been in the union longer are less likely to buck their party leadership than members whose states have been in the union a shorter period of time. These members rose through the ranks in party systems that were less developed. When confronted with a controversial issue, these members are less likely to take cues from the party leadership in the Senate and more likely to respond to the prevailing opinion back home. Therefore I expect Senators

[110] Buenker, John D. "The Urban Political Machine and the Seventeenth Amendment" The Journal of American History 56 (2): 305-22.

[111] There were 7 new GOP Senators in the 62nd Congress. Since the Insurgent classification is based on votes in the 61st Congress, these members were not classified into either the Insurgent or Old Guard categories.

who are from states that have been in the union a shorter period of time to be more likely to support final passage of the 17th Amendment.

Results

The results in the Senate show some interesting patterns. According to the crosstab in Table 6-3 above, there were a higher percentage of Republican Senators than Democrats who supported the 17th amendment. Similar to what was observed with the votes over William Lorimer, Insurgent Republicans were in unanimous support of the 17th Amendment. Although they were split, an interesting finding was that a majority of Old Guard Republican Senators voted for final passage. There was some regional variation in how Senators voted. Many of the Republicans who opposed the 17th Amendment were from the Northeast, whereas Democratic Senators who were in opposition resided in the South. There is a stark difference when comparing Senators from states that have petitioned Congress versus Senators from states who did not. This result demonstrates that the margin for the Senate's passage of the 17th Amendment came from Senators from states who already petitioned Congress. By contrast, a small majority of Senators from non-petition states voted against the amendment. The implications of this finding will be examined in further detail in a multivariate analysis included in the next few pages.

This multivariate analysis of the vote on final passage is located in Table 6-4. Due to the small number of abstentions in the Senate, Binary Logit was used to model the vote for final passage.[112] Senators elected by the Oregon Plan were overwhelmingly

[112] Binary Logit is depicted by the following equation: $P(y=1)=\frac{e^{x\beta}}{1+e^{x\beta}}$ Source: Long, J. Scott 1997 *Regression Models for Categorical and Limited Dependent Variables* Thousand Oaks, CA: Sage Publications.

more likely to support final passage. This result is particularly robust since it is positive and at the ($p<.01$) level in Model 2 which does not include the Petition variable, and in Model 1 which includes that variable. Although there is a positive relationship between both covariates, it does not reach the level of multicollinearity that would prohibit using both in the same model. These Senators elected by the Oregon Plan, viewed direct elections, for obvious reasons, in a positive light. Most importantly, Oregon Plan Senators represented an infusion of institutional activists that were responsible for reshaping the institution. Similar to what Swift observed in the early Senate, these members held an institutional vision, one in this case that was independent of their state's legislature and more accountable to the people.[113] Part of reconstitutive change is that it is enduring in the institution. As will be observed in the next chapter, Oregon Plan members were not only catalysts in changing how Senators arrived at the institution, they also brought on lasting changes into how the institution functions internally and with the rest of the political system.

Similar to what was in the crosstabs displayed earlier, Senators from petition states were most likely to support final passage of the 17th Amendment at the ($p <.01$) level. Marginal effects show that Senators from petition states were 29.3% more likely to vote for the 17th Amendment then members from non-petition states. These members were responding to pressures placed on them by their own state legislatures. By representing a state that has petitioned Congress, these Senators were well aware of their state legislature's intentions for a constitutional convention. While putting themselves and their colleagues at electoral risk appears puzzling at the surface,

[113] Swift, 1997.

Senators from petition states were responding to a threat to the very structure of the institution. This motivation will be discussed in more detail in the following paragraphs.

Table 6-4. Final Passage on the 17th Amendment in U.S. Senate

Variable	Model 1	Model 2	Model 3
Petition	2.14**	1.93***	
	(.884)	(.710)	
Oregon Plan	3.60***		3.46***
	(1.228)		(1.151)
Disputed Senate Elections	0.20	0.10	.14
	(.297)	(.253)	(.265)
Republican	-2.54**	-1.62*	-1.20
	(1.1112)	(.849)	(.782)
South	-0.42	-0.28	0.58
	(.970)	(.860)	(.797)
State Population by Year (Log)	-0.21	.13	.13
	(.422)	(.355)	(.361)
Number of Years in the Union	-0.003	-0.02**	-0.02*
	(.013)	(.011)	(.011)
Log-Likelihood	-29.317	-36.90	-32.813
N	88	88	88
Pseudo R-Square	0.431	0.284	0.364

Source: www.voteview.com Standard errors are in parentheses.

These Senators fell into two categories. Some Senators from petition states were elected under the Oregon Plan and others were not. Senators who fit both categories were reacting to public pressure in the following way. The majority of their state's electorate expected them to extend direct elections to the rest of the union. This result is consistent with Theriault's's theory of members Congress responding to public pressure for reform.[114] Likewise, members who were from Petition states, but not elected under the Oregon Plan were acting as agents for their state legislature. This is a clear example of members voting in a manner that put them in an electoral disadvantage

[114] Theriault, 2004.

(moving themselves from legislative election to direct election), by responding to pressures presented to them by their direct constituents.[115] As mentioned earlier in this chapter, this group of Senators was individually pressured by the press, their own state legislatures, and by the institutional breakdowns within the chamber. Their individual reference points along the graph in Figure 1 moved to the losses domain, where the status quo was unacceptable. These members were willing to put themselves and their colleagues at electoral risk, for the sake of saving the institution.

Although Senators who were from states with higher levels of articles related to disputed Senate elections that were reported in the national press were more likely to support the 17th Amendment, this result was not significant at any level in any of the models. Could the fact that some Senators from dispute states were less responsive be due to the fact that they benefited from the existing system? Specifically, I examined whether Illinois' Senators were outliers for this reason. Additional models were run omitting Illinois' Senators in an effort to see whether those two cases were driving this null result. Might Senators whose states have endured disputes more recently will be more likely to support the amendment? Models also were run truncating the dispute variable to include only articles since 1907. This result also yielded a null finding. Based on these findings, it can be concluded that Senators from states whose disputed Senate elections were more highly reported in the press were not necessarily more likely to vote for the 17th Amendment. Many of these Senators benefited directly from the existing system, and were no more likely to support a change.

[115] Ibid., 5.

Party was another strong predictor of final passage. Being a Republican decreased the probability of voting for the 17th Amendment by less than 27%, holding all other variables constant. This result is expected, as the old guard Republicans viewed direct elections as a threat to their institutional power. Democrats who were in the minority for many years, gained control after the 1910 election cycle, placing this reform squarely on the agenda. One interesting facet is how Party interacts with the Petition and Oregon Plan variables. When the Petition variable is not included in Model 3, party loses its statistical significance and years since statehood has an expected negative relationship at the ($p<.10$) level.[116] Party is strongest in Model 1 which includes both Petition and Oregon Plan variables. This indicates a Republican member who went against their party and supported direct elections, was most likely to be from a Petition and/or Oregon Plan state. Therefore, these members were more likely listening to cues from their state legislative or popular constituencies than to their party's leadership. Since these members tended to be from Western states, this finding extends Wirls' argument that regional intra-party differences were a driving force in the passage of the 17th Amendment.[117]

The South variable is statistically insignificant. This is a null finding as it was expected that there would be a strong negative relationship between voting for the amendment and being from a Southern state since the final legislation did not include the changes to Article IV discussed earlier. A deeper look into the data reveals that South Carolina's Senator E.D. Smith was the only Deep South member to vote for final

[116] A correlation matrix was run in an attempt to find any possible multicollinearity between the South, Years Since Statehood, and Oregon Plan variables. This test revealed that multicollinearity is not a problem between said variables.

[117] Wirls, 1999.

passage. All other Southern Senators who voted for the amendment were from the Peripheral South as defined by V.O. Key.[118] The Senators from Arkansas, Tennessee and Texas, who voted for final passage, were also from petition states. Perhaps these members, who were all Democrats, were motivated more by partisan considerations than sectional ones when deciding how to vote.

In Model 2 Senators from states that have been in the union longer were less likely to vote for final passage at the ($p<.05$) level. Since this variable is used as a proxy for party organization strength, it can be interpreted that Senators who are from states with more established party systems were less likely to support final passage. However this variable loses its statistical significance when you add the Petition variable to Models 1 and 3. This should be expected, given the strong negative relationship between years in the union and petitioning Congress observed in Chapter 5. Many Senators from petition states tended to also be from states that were admitted to the union recently. This may explain the reason why the Years Since Statehood variable is not significant in Model 1.

Conclusion

This chapter demonstrates the role played by multiple factors in pushing the direct elections amendment over the edge in the U.S. Senate. There were three major factors at play. First, the institution benefited from the infusion of institutional activists, who were pushing for popular reforms against an intransigent old guard. Second, the scandal over William Lorimer's election, and the role it played both in shaping public opinion, and distracting members from other legislative business, proved to be the tipping point that pushed the Senate over the edge. Last, the Senate was facing

[118] See Key, V.O. 1949. Southern Politics in State and Nation. University of Tennessee Press.

institutional threats. An exogenous threat was the state petitions calling for a constitutional convention for the direct election of Senators. An endogenous threat was the distractions Senators faced from their regular legislative business. Both these forces moved Senators to act in a defensive posture, acting in the interest of defending the institution and its standing in the national government.

As discussed at length earlier, this chapter confirms earlier work on roll call voting over final passage of the 17th Amendment. As earlier studies have shown, Senators were more likely to vote for their self-interest as opposed to ideology when voting on the 17th Amendment. Senators who stood to benefit, mainly those who benefited by the Oregon Plan and members of the minority party were more likely than others to support final passage.[119] This study found mixed results as to whether intra-party sectional differences also played a role.[120] Although Democratic Senators from the Deep South were almost uniformly against the amendment, Senators from the Peripheral South were no less likely to support the reform. However, Republicans from states with less established party systems were much more likely to vote in the affirmative.

However, this study also extends these works. Most importantly, this is the first roll call analysis of the final vote on the 17th Amendment to include a variable measuring how Senators from states who petitioned Congress. Senators from petition states were responding to pressures placed on them by their state legislatures to pass this reform. The strength of this petition variable is reinforced by the fact that its statistical and

[119] Kenny, Lawrence and Mark Rush 1990 "Self-Interest and the Senate Vote on Direct Elections *Economics and Politics* 2: 291-301.
Holcombe, Randall G., and Donald J. Lacombe 1998. "Interests Versus Ideology in the Ratification of the 16th and 17th Amendments" *Economics and Politics* 10: 143-59.

[120] Wirls, 1999

substantive significance remains strong in models that include and omit the Oregon Plan variable. Therefore, independent of members who were from states that used the Oregon Plan, Senators who were from petition states that did not use the Oregon Plan were just as likely to support the 17th Amendment. Additionally, this finding extends Wirls' argument that regional intra-party differences were a driving force in the passage of the 17th Amendment.[121]

One interesting result from the roll call analysis is why the disputes variable was not statistically significant even though there was such a strong relationship with the petition variable. As mentioned earlier, Senators who were from states with higher levels of articles related to disputed Senate elections that were reported in the national press were more likely to support the 17th Amendment, however this result was not significant at any level. Perhaps newspaper reports of disputed Senate appointments were not as effective at pushing U.S. Senators towards reform as they were with State Legislators. Senators were just not as rattled by the investigative journalism. Public pressure appeared to be much more of a driver at the U.S. Senate level. This question should be looked at more deeply in future analysis.

Eric Schickler argues that during any particular period in congressional history, a mix of interests motivate member behavior in Congressional reform efforts. [122] Any reform effort produces conditions that inspire a new coalition to pursue a counter reform. Such was the case with the Elections Act of 1866. This act set the conditions for the eventual passage of the 17th Amendment through unintended consequences of this

[121] Wirls, 1999

[122] Schickler, Eric 2001. *Disjointed Pluralism: Institutional Innovation and the Development of The U.S. Congress* Princeton: Princeton University Press.

legislation. By unintentionally producing conditions that forced more deadlocks, the Elections Act produced an environment where calls for further reform were inevitable. This argument is consistent with theories such as congressional cycles and reconstitutive change. [123]

Reform at the state level produced entrepreneurs in the Senate who formed coalitions that not only increased their personal power, but also reshaped the institution. These new members were, in part, motivated by a reform agenda which had widespread popularity with the public. These new actors on the scene viewed the direct election of Senators not only as a popular and long needed reform, but as a gateway to other potential measures such as direct democracy and women's suffrage.

Last, the emergence of an explosive scandal, along with calls for a constitutional convention placed the Senate's standing in the national government at risk. The Senate faced a major threat of a constitutional convention, as close to three dozen states petitioned Congress under Article V. Such a convention would not only address the direct elections issue, but potentially several others, thus the Senate risked losing institutional power from multiple reforms. Roll call analysis in this chapter reveals that Senators from states who petitioned congress were the most likely predictor of support for the 17th Amendment. This is consistent with theories that depict members as responding to popular pressures for reform.[124]

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[123] Dodd, Lawrence C., 1977. "Congress and the Quest for Power In Lawrence C. Dodd and Bruce Oppenheimer ed., *Congress Reconsidered*. New York: Praeger Books.
-1986 "The Cycles of Legislative Change: Building a Dynamic Theory"
In *Political Science: The Science of Politics*. New York: Agathon Press.
Swift, Elaine K., 1996 *The Making of an American Senate Reconstitutive Change in Congress, 1787-1841*. Ann Arbor: University of Michigan Press.

[124] Theriault, 2004.

Most importantly, the eruption of the Lorimer scandal was the final tipping point that pushed the Senate over the edge. The Lorimer scandal achieved considerable attention both from the press and by the Senate itself. The Senate was so engulfed in this scandal that it distracted members from other legislative business, even placing the President's legislative agenda at risk. I argue that Senators realizing these threats to institutional power, acted in a defensive posture, realizing the losses associated with inaction. To do nothing not only meant the potential of future scandals to distract Senators, but also the real risk of substantial constitutional change. This risk, which was unacceptable to many, coupled with substantial public pressure meant that the most unlikely of reforms came to pass.

CHAPTER 7
CONCLUSION

On April 8, 1913, Connecticut's state legislature approved the 17th Amendment to the constitution. Connecticut was the 36th state to pass the amendment, giving the amendment the necessary approval of two-thirds of the states in the union.[1] On May 31, 1913, Secretary of State William Jennings Bryan, a longtime proponent of the direct election of Senators, signed the proclamation that the 17th Amendment was now a part of the Constitution.[2] With passage of the 17th Amendment, all Senatorial elections from 1914 onward would be decided by the voters in each state. How did the new method of electing Senators change the Senate as an institution? Might other constitutional reforms take a similar road to passage?

Impact of Direct Elections on the U.S. Senate

The limited literature on the results of the 17th Amendment has provided some interesting insight into the impact of this reform. Bernhard and Sala find that Senators were more likely to seek reelection, and had slightly longer average tenures in office. These authors also found that Senators were more likely to moderate their voting behavior in the run-up to a reelection campaign in a post-1914 context.[3]

The Senate also began to mirror other elected institutions as its partisan distribution began to reflect the House, and shifts in seats began to mimic

[1] "People Will Elect: Popular Choice of Senators Approved by the States." *The Washington Post* Apr. 9, 1913.

[2] Haynes, 116.

[3] Bernhard, William, and Brian R. Sala 2006. "The Remaking of the American Senate: The 17th Amendment and Ideological Responsiveness" *Journal of Politics* 68(2): 345- 57.

corresponding Presidential elections.[4] Senators also tended to be more dedicated in their roll-call voting, with less abstentions during the period shortly after the 17th Amendment was passed.[5] In the same study, Scott Meinke found that Senators elected after passage of the 17th Amendment were more likely to support women's suffrage than Senators elected prior to 1913.[6]

Implications for Future Research

There exist many opportunities to extend this study into related topics focusing on legislative deadlocks in particular and constitutional reform in general. Future research should more closely examine the impact deadlocks over Senate appointments had on legislative productivity at the Senate level. Future research should also explore whether time to consider legislation was delayed due to prominent scandals. This study documented instances where the Lorimer and Stevenson cases held up legislative business. A more systematic analysis should provide a closer examination of this issue.

Another research opportunity is to link the 17th Amendment to other reforms during the Progressive era. Previous work has already done so in regards to the 16th Amendment which instituted the income tax and the 19th Amendment which provided for women's suffrage.[7] Systematic examination into the 1907 Tillman Act which made it illegal for corporations or banks to make direct contributions to candidates for federal

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[4] Crook, Sara Brandes. 1992. *The Consequences of the Seventeenth Amendment: The Twentieth-Century Senate*. Ph.D. Diss. University of Nebraska.
Crook, Sara Brandes and John R. Hibbing. 1997. "A Not-so-distant Mirror: The 17th Amendment and Institutional Change." *American Political Science Review* 91:845-854.

[5] Meinke, Scott R., 2005. "Institutional Change and Position Taking in the Senate: The Impact of the 17th Amendment" Paper Presented at the Annual Meeting of the Midwest Political Science Association

[6] Ibid.

[7] Holcombe and Lancombe, 1998.
Meinke, 2005.

office, or the campaign disclosure laws of 1910 and 1911 can provide insight into whether the theoretical patterns which led to the 17th Amendment are relevant to these reforms as well.[8]

This study also built upon other work that focuses on legislative ethics reform. Why did Congress begin to implement serious reforms as late as the Progressive Era? Impressionistic accounts tend to describe Congress' inaction on ethics during the early 19th Century as a result of a lack of a party system.[9] A more systematic analysis that traces Congressional ethics reform over time might provide such an explanation. Additionally, studies that link legislative ethics and institutional learning are sparse in the literature.[10] Congress is a complex institution that constantly presents new ethical issues and new opportunities for corruption.[11] Work in this area might shed more light on how members react to scandal or drastic changes in their environment that produce unforeseen ethical issues.

Implications for Future Constitutional Amendments

Many petitions for a convention to propose amendments seem to have been intended to provoke Congress into acting, rather than actually call for a convention. Calls for a convention show members of Congress which issues are important to the

[8] Drew, Elizabeth 1983. Politics and Money: The New Road to Corruption New York: Macmillan. Baker, Richard Allan 1985. "The History of Congressional Ethics" in Bruce Jennings and Daniel Callahan Ed Representation and Responsibility: Exploring Legislative Ethics New York: Plenum Press.

[9] Ibid.

[10] Davidson, Roger H., 1985. "Socialization and Ethics in Congress" in Bruce Jennings and Daniel Callahan Ed Representation and Responsibility: Exploring Legislative Ethics New York: Plenum Press.

[11] Thompson, Dennis F. 1995. Ethics in Congress Washington DC: Brookings.

states and their constituencies. For example, five states applied for a convention to repeal Prohibition before the 21st Amendment was proposed by Congress. [12]

The 1960s was another period when a constitutional convention was almost called. Illinois Senator Everett Dirksen, led a movement to repeal the Baker v. Carr decision of 1962, which mandated that state legislative districts be equal in population. As with the 17th Amendment, this proposal was one state short of the two-thirds required for calling a constitutional convention under Article V.[13]

Another close attempt to call a convention occurred when many state legislatures called for a balanced-budget amendment in the late 1970s and early 1980s. Missouri was the thirty-second state to petition Congress in 1982. The Senate responded by passing the balanced budget amendment by a vote of 69 to 31, whereas it did not come to a vote in the Democratic controlled House.[14] Were Senators acting on the defensive, concerned with a runaway constitutional convention? An interesting study might be to examine the Senate debate and vote behind the balanced budget amendment to see if similar patterns arose that were observed with the 17th Amendment. Rogers argues that the reason why the balanced budget amendment failed to pass the House was that the passage of the Gramm-Rudman-Hollings Act of 1991 was considered to be a satisfactory result for the states.[15]

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[12] May, Janice C., "Constitutional Amendment and Revision Revisited," *Publius*, Vol. 17, No. 1, New Developments in State Constitutional Law (1987): 153-179.

[13] Diamond, Ann Stuart. "A Convention for Proposing Amendments: The Constitution's Other Method." *Publius*, Vol. 11, No. 3/4, The State of American Federalism, 1980.

[14] Rogers, James Kenneth.*2007*."The Other Way to Amend the Constitution: The Article V Constitutional Amendment Process" *Harvard Journal of Law & Public Policy*, 30 (3): 1005-22

[15] Ibid.

A balanced budget amendment is not the only constitutional reform that is popular with the public. Table 1 below presents public opinion data from a Harris Poll showing overwhelming public support for a number of proposed constitutional amendments. Right behind the balanced budget amendment are legislative term limits which is supported by a little over seven out of ten respondents. Support for an amendment to ban same-sex marriage is slightly below the two-thirds threshold, however similar bans have passed at the state level in roughly three dozen states. Should a hypothetical Supreme Court ruling overturn these bans, there is the potential for latent public opinion to be activated in support of a federal amendment. A proposed ban on unfunded mandates to state governments is another reform that could be addressed by invoking Article V.

Elimination of the Electoral College is one reform that was not included in the Harris survey. However, this proposal has some striking similarities to the direct election of Senators. The deadlock over the 2000 Presidential election has become a permanent fixture in American political history. Although 2000 was the first election since 1888 where the Electoral College winner was different from the popular vote winner, a shift of a few thousand votes in one or two states would also have changed the outcome in 1960, 1968, 1976, and 2004.

One unreported fact from that election is that a shift of a few hundred votes to Gore in Florida and a few thousand votes to Bush in Pennsylvania would have resulted in an Electoral College tie. This would have sent the Presidential election to be decided in the House of Representatives. The last time this occurred was in 1824 with the election of John Quincy Adams.

Table 7-1. Popular Support for Proposed Constitutional Amendments[16]

Proposed Amendment	Percent Supporting	Percent Opposing
Balanced budget amendment	76%	18%
Term limits on Senators or Representatives	71%	23%
Prohibit Congress from passing laws affecting state governments unless Congress gives the funding needed to pay for those laws	69%	22%
Permit prayer at school meetings or ceremonies	67%	29%
Allow Congress to regulate the amount of personal funds a candidate may spend in a campaign	65%	29%
Define marriage in all states as the union of a man and a woman	64%	32%

Source: Harris Interactive, 2005

Since Presidential elections have been relatively close in recent cycles, it is not out of the realm of possibility for future elections to produce an Electoral College winner that is different from the popular vote winner or even an Electoral College tie. Should a similar event to the 2000 election occur again, or should a tie occur, popular support for an elimination of the Electoral College system will certainly increase.

The Senate is an institution that is most likely to block such a proposal. Gaining the two-thirds majority necessary for passage of a constitutional amendment would certainly need the support of Senators from smaller states who benefit from the current system. Although the Senate presents a particular roadblock to a constitutional elimination of the Electoral College, a process similar to the run-up to the direct election of Senators might produce such an outcome.

[16] Ibid, 1021.

Efforts are currently underway in the states to undermine the Electoral College system. Under one prominent proposal, states would enter into an "interstate compact" where they would be pledged to award their electoral votes to the plurality winner in a Presidential election.[17] Maryland's legislature in 2007 became the first to agree to this plan. During the same year, similar legislation passed one chamber in Arkansas, Colorado, and Hawaii.[18]

Conclusion

This dissertation provided a mixed-method approach in examining the many factors that led to the passage of the 17th Amendment. This study began at this nation's founding, tracing the philosophical underpinnings behind the framers design. Next, was an examination of the debates of how this institution would function within the broader political system. Once the constitution was approved and implemented, I examine how the early Senate developed its early norms, and dealt with early deadlocks over Senate appointments. Next, I looked at the first major effort to stem the tide of disputed Senate elections. This took the form of legislation designed to regulate how Senate appointments were conducted in the states. However, this new law presented some unintended consequences leading to even more deadlocks.

This was followed by a historical analysis of the major deadlocks which rocked the Senate in the 1880s and 1890s. Both the state legislatures and the Senate endured the loss of legislative productivity due to these deadlocks. The popular press responded by reporting on these deadlocks and scandals, helping to shape public opinion in favor of

[17] Koza, John R., et al. 2006. Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote Los Altos, CA: National Popular Vote Press

[18] "Maryland Senate Advances Bill to Dodge Electoral College" The Washington Post Mar. 27, 2007

reform. Responding to the press and public opinion, state legislatures took it upon themselves to petition Congress for a constitutional convention to address the direct elections issue. Several states also responded by passing their own version of direct elections. The Senators elected by this new method provided a catalyst for eventual reform. An explosive scandal emerged around 1910 which forced the proposed amendment back on the agenda. Finally, out of desperation the Senate acted by passing the 17th Amendment, providing for the direct election of Senators.

What caused this reform, which seemed unattainable in the 1880s and 1890s to emerge so strongly shortly after 1910? First, the institution benefited from the infusion of institutional activists, who were pushing for popular reforms against an intransigent old guard. These members were directly elected by the population in a system that began in several states. Second, the scandal over William Lorimer's election, and the role it played both in shaping public opinion, and distracting members from other legislative business, proved to be the tipping point that pushed the Senate over the edge. Last, the Senate was facing institutional threats. An exogenous threat was state petitions calling for a constitutional convention for the direct election of Senators. An endogenous threat was the distractions Senators faced from their regular legislative business. Both these forces moved Senators to act in a defensive posture, acting in the interest of defending the institution and its standing in the national government.

Passage of the 17th Amendment has not removed it from controversy. In fact, repeal of this reform has recently made its way into campaigns and policy debates at the state legislative level. In recent years, conservative personalities such as Alan Keyes, George Will, and Zell Miller have all called for the amendment's repeal. Their

main argument is that the 17th Amendment took away oversight rights the states had over the national government. [19] In fact, one commentator has called for a constitutional convention where the first item for consideration would be the 17th Amendment's repeal.[20]

Thus, the work of reformers is never complete. There will always be popular clamor to provide a more representative and responsive system. Likewise, there are sure to be scandals and inefficiencies that bring various reform proposals to light. Changes to the system, or even repeals of old reforms will surely be a constant as our system evolves in the future.

[19] "A Misguided Call for Repealing the 17th Amendment" The New York Times Jun. 2, 2010

[20] "Tony Blankley: Repeal the 17th Amendment" The Huffington Post Jan. 27, 2010

APPENDIX A
CODING SHEET FOR ARTICLES IN STUDY

Variable #	***Variable name***	***Variable Description***	***Codes***
V1	Article	article #	0001 - 9999
V2	Year	What year was the article?	1877 - 1912
V3	Congress	During which Congress was the article?	47 - 62
V4	Paragraphs	How many paragraphs in the article?	1 - 20
V5	OutcomeDispute	Was the major theme of the article related to a disputed Senate outcome?	0= No 1= Yes
V6	*State*	***IF YES IN V5:*** *What state did the dispute occur?*	*(STATE ABBREVIATION)*
V7	*LevelDispute*	***IF YES IN V5:*** *At what level of government was the dispute?*	*0= State level dispute* *1= National level dispute*
V8	*DeadlockPartisan*	***IF YES IN V5:*** *Was the dispute partisan?*	*0= No* *1= Yes*
V9	*DeadlockScandal*	***IF YES IN V5:*** *Was the dispute over a scandal?*	*0= No* *1= Yes*
V10	*Bribe*	***IF YES IN V9:*** *Was the scandal bribery related?*	*0= No* *1= Yes*
V11	*Governor*	***IF YES IN V5:*** *Was the dispute over a Gubernatorial appointment?*	*0= No* *1= Yes*
V12	*SenateHearing*	***IF YES IN V5:*** *Did the article focus on a Senate hearing?*	*0= No* *1= Yes*

Variable #	*Variable name*	*Variable Description*	*Codes*
V13	*DeadlockOther*	***IF YES IN V5:*** *What other reason was the deadlock over?*	*(LIST REASON)*
V14	Name	Name of disputed Senator	(LIST NAME)
V15	SeatLoss	Did the article discuss the loss of a Senate seat due to a vacancy?	0 = No 1 = Yes
V16	NewSenator	Did the article announce the election of a new Senator?	0 = No 1 = Yes
V17	*Horserace*	***IF YES IN V16:*** *Did the article focus on the horserace of the Senate contest?*	*0 = No* *1 = Yes*
V18	*Endorsement*	***IF YES IN V16:*** *Did the article focus on an endorsement?*	*0 = No* *1 = Yes*
V19	*NoOpposition*	***IF YES IN V16:*** *Was the election the result of no opposition?*	*0 = No* *1 = Yes*
V20	*LongDispute*	***IF YES IN V16:*** *Was the election at the end of a long dispute?*	*0 = No* *1 = Yes*
V21	Amendment	Was the article focused on a proposed constitutional amendment for Direct Election of Senators?	0 = No 1 = Yes
V22	*Tone*	***IF YES IN V21:*** *What was the tone of the article?*	*(-1) = negative* *0= neutral* *1=positive*

Variable #	*Variable name*	*Variable Description*	*Codes*
V23	*Paragraph Positive*	***IF YES IN V21:*** *How many positive paragraphs related to the Direct Election amendment in this article?*	*0 - 99*
V24	*Popular Interests*	***IF YES IN V21:*** *Was the article's theme focused on popular interests for the Direct Election amendment?*	*0 = No* *1 = Yes*
V25	*Deadlocks/ Scandals*	***IF YES IN V21:*** *Was the article's theme focused on deadlocks and scandals as the reason for the Direct Election amendment?*	*0 = No* *1 = Yes*
V26	*SaveSenate*	***IF YES IN V21:*** *Was the article's theme focused on saving the Senate as the reason for the Direct Election amendment?*	*0 = No* *1 = Yes*
V27	*OtherPositive*	***IF YES IN V21:*** *Other reasons for the Direct Election amendment*	*(LIST)*
V28	*Paragraph Negative*	***IF YES IN V21:*** *How many Negative paragraphs related to the Direct Election amendment in this article?*	*0 - 99*
V29	*Tradition*	***IF YES IN V21:*** *Was the theme focused on tradition for opposing the Direct Election amendment?*	*0 = No* *1 = Yes*

Variable #	***Variable name***	***Variable Description***	***Codes***
V30	*TrustPeople*	***IF YES IN V21:*** *Was the theme focused on trusting the people's will as a reason for opposing the Direct Elections amendment?*	*0 = No* *1 = Yes*
V31	*StatesRights*	***IF YES IN V21:*** *Was the theme focused on states rights as a reason for opposing the Direct Elections amendment?*	*0 = No* *1 = Yes*
V32	*NotRemedy*	***IF YES IN V21:*** *Was the Direct Elections amendment as not being a remedy for the problems in the Senate as a reason for opposing the amendment?*	*0 = No* *1 = Yes*
V33	*OtherNegative*	***IF YES IN V21:*** *Other reasons for opposing the Direct Elections amendment*	*(LIST)*
V34	Debate	If the debate over the proposed amendment occurred in Congress, was it in the House or Senate?	0 = House 1 = Senate

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