Unrequited Law: Utah’s Century with the Seventeenth Amendment, 1913–2013

By Nicholas Bradford

This paper examines the role of the 17th Amendment, the provision that established the direct election of U.S. senators. It is important to first trace a history of the philosophical debate about the composition of the U.S. Senate in the context of republicanism, federalism, and later populist criticism. After examining the history of the Utah Legislature’s refusal to ratify the Amendment in 1913, this paper investigates the impact of the Amendment on the behavior of the new Senate. Such concentrated federal power has spurred the contemporary attempts of Utah lawmakers to reverse these perceived corruptions of the Constitution’s original intent. Ultimately, this paper argues that the century-long impact of the 17th Amendment has contributed to an ongoing crisis in modern American federalism and helps explain the synthesis of ideas which motivates current attempts to repeal and reform it.

The year 2013 marked a number of famous anniversaries in the American heritage, among them the sesquicentennial of the Battle of Gettysburg (July 1–3) and Mr. Lincoln’s famous address delivered at the train station outside the Pennsylvanian hamlet (November 19). In contrast, April 8, the 100th birthday of the 17th Amendment—the amendment providing for the direct, popular election of U.S. senators—came and went with little fanfare or celebration. Instead, adamant debate and vocal opposition have been the Amendment’s prevailing legacy, even before taking a prominent role in the Tea Party platform for the 2010 election cycle. About a decade ago U.S. Sen. Zen Miller (D-Ga.) as a conservative Democrat sponsored a resolution attempting the repeal of Amendment XVII (A Joint Resolution to Repeal, 2004). The Amendment continues to be germane even at state level, non-legislative elections (Rauf, 2013).

As recently as 2006, Utah lawmakers—as a part of the larger movement of discontent with status quo federal relations—have revisited the Amendment, moving to pass legislation to diminish or reverse some of XVII’s effects.

Utah lawmakers have played a unique role in opposition to the century of the 17th Amendment. In the first place, Utah was the only state to reject the Amendment’s 1913 ratification to the Constitution. The debates of the 10th Session of the State Legislature in 1913 were not Utah’s last brush with the Amendment, either. In the first place, Utah was the only state to reject the Amendment’s 1913 ratification to the Constitution. The debates of the 10th Session of the State Legislature in 1913 were not Utah’s last brush with the Amendment, either.

1 Rauf (2013) in his October 17 article references the rhetorical role the Amendment has taken in the race for Texas Lt. Governor between Lt. Gov. David Dewhurst and Sen. Dan Patrick.

2 Delaware was the other.
The chief ideal of republicanism was a government where "Court and Country" and the subsequent emergence of the radical English Dissent movement (Rahe, 2011, p. 273). Bailyn goes on to note that, despite the current hostilities with the motherland, a general admiration for the balanced system in the English constitution pervaded these deliberations; support even emerged for emulating the bicameral legislature with an upper house distinguished by class. Debate flared early on in regards to the desirable mode of representation—direct or indirect. For the classical liberal tradition of Locke, class was a poor basis for representation in government. In this camp Thomas Paine, later a vehement opponent of the indirect elections of a Senate, promoted simple un-intermediated representation. For Bailyn (1992), “[T]he intellectual core of [Common Sense] was its attack on the traditional conception of balance as a prerequisite for liberty” (p. 285). The Pennsylvanian state assembly with its fully direct elections embodied this vocal dissent from republican ideals (Appleby, 1992, p. 193).

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...equal interest among the people should have equal interest in it” (p. 289).

While the deputation of power seems to have depended on a class of the “most wise and good,” American republicans appear to have been here less concerned with representing social class than with creating artificial political orders as revealed by the probing questions Bailyn (1992) sees in Adams’ “conjectural proposal”:

What was there in the character of the middle branch—the second assembly—that distinguished its members from the population in general? What did it represent? How could it retain its independence if it were elected annually by a body extremely sensitive to public opinion? Its similarities to the middle bodies of other governments were superficial, for it could not be thought of as embodying a separate order or interest in a society that consisted of only one order [emphasis added]. (p. 289)

This highlights one of the frustrations republicans encountered in trying to mimic the mixed English system by disrupting direct representation. While other republics ancient and modern had relied almost exclusively on pre-existing social class orders, the colonial aristocracy had no legal basis for a privileged peerage or nobility as in the House of Lords and “was never as well established, never as wealthy, never as dominant as it would have liked” (Wood, 1991, p. 113). Senators at both the state and national level therefore would come to represent this “middle branch” or “second assembly” but would derive their “deputed power” from an artificial political order of constitutional qualifications.

The Constitution and Republicanism

The ongoing crises of the Confederation altered and magnified some of the republican concerns as the consensus for the Constitution came together. The blueprint for the Senate required compromise. Dissent among the ranks of the pro-federal republicans reveals a substantial amount of uncertainty as to how the Senate should operate in balancing with the federal government, states, and the populace. In regards to the Senate, Madison, who among other Federalists favored a more nationally-integrated republic, was against the indirect elections measure at the Convention because it reserved too much power to the states (Rahe, 1992, p. 669). (Latter-day federal reformers in favor of repealing the 17th Amendment were enamored with indirect election for just that reason: the forceful role it gave states via Amendments IX and X [Stephenson, 2010, April].) Hamilton and later Adams, convinced of the need for an American aristocracy, favored a more august body, with Hamilton suggesting the Senate serve for life on good behavior (Rahe, 1992, p. 700).

Paradoxically, Adams himself saw the insulation of the Senate as a check on the American gentry (as opposed to direct representation): “[I]t had concluded that this influence could be reduced only by banishing the members of this aristocracy to a senate constituted on the model of Britain’s House of Lords” (Rahe, 1992, p. 715). Appleby (1992) comments that Adams’ time in France and influences like De Lolme had shifted his republican focus from simple political reform to the concerns about maintaining a natural social order as reflected in his Defence of the Constitutions of Government of the United States of America (1787):

Adams had drastically changed his concept of balance in government. Now it was not intragovernmental institutions which checked one another but different elements in the society at large—the rich and the few—whose power was pitted against one another through a bicameral legislative body. What began as a check against the power ambitions of all men without respect for rank and state had ended up as an acceptance of permanent social inequalities integrated purposely into the fabric of the political structure itself. (p. 196)

The role of a political ruling class and a more exclusive second assembly had clearly distilled in the formative decade of the Revolution and Confederation, concentrating itself in the form of a more insulated Senate.

Between liberals and republicans the final Senate defined in Article I Section 3 of the Constitution was (like practically everything else) the product of compromise. In Federalist No. 63, Madison outlines how Senate qualifications would produce an artificial political order of decision-making elites: he argues that six-year terms, nine-year naturalization, candidate age (30 years), smaller membership, and selection by state legislatures would create a distinct character for the Senate, rendering it with a strong, unified national character capable of “permanency” in making longer term decisions (Madison, 1788/2003, pp. 300, 306). Madison (having conceded his former views since the Convention) boldly “dilutes on the appointment of senators by the state legislatures”:

It is recommended by the double advantage of favouring a select appointment, and of giving to the state governments such an agency in the formation of the federal government, as must secure the authority of the former; and may form a convenient link between the two systems. Indirect elections indeed were only one of the key elements defining the institution’s exclusiveness and in checking federal power over the states. It is therefore consistent that later democracy-minded reformers focused their attacks almost exclusively on mode of legislative appointment; why they failed to address the other qualifications if they hoped to radically change the class of candidates is a subject worthy of further discussion.

The Senate and Reform

The 1913 Amendment was the culmination of an “86-year campaign,” where direct elections in all bodies of government had been a goal of American radicals like Thomas Paine since before the war with England (Rossum, 2001, p. 2; Hoebeke, 1995, p. 37). The Federalists, who best represented classical republicanism in the form of a national government headed by benign, enlightened ruling statesmen, quickly were quickly eclipsed by Jefferson’s party. Jeffersonian Republicanism, the dominant ideology of the consolidated United States, while maintaining moderated republican traditions espoused a view of limited government disassociated from the classical strain of English Dissent (Appleby, 1992, p. 326; Wood, 1991, p. 262). Such a shift had much to do, again, with the role of personal, private interests as part of the public good: “Once men decided that the public good was best promoted by allowing each individual to pursue his own good in his own way, then the relationship between the public and private spheres had to shift . . . Such a view marked an end to classical republicanism and the beginnings of liberal democracy” (Wood, 1991, p. 296).

The Progressive Era

With the dissipation of classical republicanism, the old U.S. Senate became increasingly vilified: “Throughout the nineteenth century, popular reformers would reassert the ideas against which the founders had contended, insisting that the direct vote was the inalienable right of every citizen, and one which applied to the highest spheres of government” (Hoebeke, 1995,
Despite the passage of a federal law in 1866 to regulate the election methods (p. 967).]

the general attack proceeded in a like manner to the scenario predicted by Madison (1788/2003) in concluding Federalist No. 63: [The] federal Senate will never be able to transform itself, by gradual usurpations, into an independent and aristocratic body; we are warranted in believing that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives with the people on their side will at all times be able to bring back the constitution to its primitive form and principles. (pp. 311-312)

(‘What chance has a poor, though capable, man against a dozen millionaires?’ 1913, February 6).

Progressives (as Hoebeke renders them) were not so much enemies of the class. In many ways they felt it represented the rise of direct election (Byler, 1997, p. 467; Baritono, 1996, p. 1052).

Critics attacked U.S. senators’ undue capacity to use their clout in Washington and personal wealth to sway local elections in their home state. Rogers (2012) notes the relative importance of public canvassing of state legislative voters by U.S. senators and would-be Senate nominees performed on behalf of state legislators prior to 1913 direct elections, citing the famous case of Abraham Lincoln and Stephen Douglas in the 1858 Illinois race for U.S. Senate (p. 515).

**Corruption.** In defense of the old Senate, Rossum (2001) suggests that actual charges of corruption were quite minimal in contrast to the popularly held view: Instances of bribery and corruption were, in truth, few in number. As Todd Zwicki has pointed out, “Of the 1,180 senators elected from 1789 to 1909, only 15 were contested due to allegations of corruption, and only seven were actually denied their seats.” Corruption was proved to be present in only .013 percent of the elections during that period. (p. 191)

The lack of records and any real semblance of campaign finance laws puts Messrs Rossum and Zwicki on somewhat untenable ground here though. Even if legislative selections of the old Senate were as corrupt as widely believed during the period, this would have been typical for even local seats and offices in the Gilded Age, the golden era of Tammany Hall–style machines and post-Jacksonian patronage.

Progressives targeted the Senate as a high profile perpetrator of the sort of corruption and graft that was present at every other level of the democratic process. The Senate’s national visibility made it a more effective target for trickle-down reform, thereby facilitating the smear campaign. Certainly seats in the federal Senate would have been expected to go for a higher price (by bribery and honest campaigning alike) by virtue of the office’s sheer electoral scale. In addition the small number of federal senators made the criticism prone to an exposure and coverage bias. While the specific attack Progressives made on indirect selection appears consistent with their views on popular sovereignty, their apathy or deference to established six-year term lengths and age requirements seems inconsistent with their aims for social reform, as these were some of the measures most touted by the founders as insulating the Senate as a class institution.

**Deadlocks.** Legislative deadlocks and subsequent Senate vacancies armed Progressives with additional fodder against the indirect selection process, demonstrating the old Senate’s inefficient and punctuated representation of the people. Deadlocks between parties in the state legislatures would often result in a state’s inability to officially elect a new senator to their federal delegation. According to the Senate’s celebratory webpage: “Despite the passage of a federal law in 1866 to regulate the election methods of the state legislatures, deadlocks and vacancies continued. Forty-five deadlocks occurred in 20 states between 1891 and 1905, resulting in numerous delays in seating senators” (The U.S. Senate, 2014). Shedd (2011) adds, “At one point, Delaware went completely unrepresented in the United States Senate for seven years” (p. 967). Rossum (2001) actually attributes the worsening deadlocks of the latter half of the 19th Century to the 1866 law rather than the indirect process or increased partisanship in state legislatures (p. 183). Whatever the case, deadlock proliferation lent credence to the notion that somehow the U.S. Senate was a bulwark against popular sovereignty (Burgess, 1902, p. 655).

**Reform initiatives.** Measures for reform came early and often: starting with Representative Henry Randolph Storr’s 1826 proposal to overturn legislative appointment, a total of 300 such resolutions came before Congress through 1912. These were some of the measures most touted by the founders as insulating the Senate as a class institution.

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proposals for direct elections were to no avail as William Perrin explains in Crook & Hibbing (1997):

[1] In each session of Congress between 1893 and 1911, the House passed a popular election amendment only to see it fail in the other chamber, where sitting senators had a vested interest in preserving a method of selection that had been good to them. (Crook & Hibbing, p. 845, citing Perrin, 1910)

Progressives, like their later federal reform counterparts in the 21st century, resorted to more creative and indirect measures. The Oregon model of canvassing public opinion in a direct primary for their preference in U.S. senator paralleled the pledging system already present in the Electoral College. Like the Electors who voted for the President, state legislators began to be expected to vote for the “winner” of the primary (Aylsworth, 1909, p. 395). This increase in majority participation provided a more direct or alternate channel for the machines and party bosses to move their interests onto the state senate floor. This experimentation, in the opinion of Rossum and Hoebeke, introduced new, unexpected forms of corruption—which, rather than blocking the involvement of party bosses and political machines, simply diverted their channel of influence, therefore suggesting that direct elections was not the root of the problem (Rossum, 2001, p. 192; Hoebeke, 1995, p. 90). Ironically, cases against bribery increased dramatically after the adoption of the Oregon model and the 1866 “deadlock” law (Rossum, 2001, p. 190). 6

The relatively limited adoption of the Oregon model appears to have provided precedent and mollified concerns about the feasibility of direct elections, thereby shifting the electoral incentives for senators even before passage of the Amendment itself (Bernhard & Sala, 2006, p. 346). The year 1913 was itself flush with Democratic victory at the 1912 polls (admittedly Wilson only carried a 41% plurality), which ushered in other hallmarks of the Progressive Era including the ratification of the Income Tax Amendment (XVI). It is relevant to our later discussion to note here that Utah was one of four states to reject this amendment outright, including Connecticut, Rhode Island, and Virginia. Ironically the very Congress that the direct election was meant to reform was the one that originated the 1913 proposal for ratification.

As I will demonstrate in the debate that surrounded the rejection of the direct election amendment in Utah, the stakes of change were set on two competing views of the Constitution, one defined by limited federal government and strong state federalism, and the other couched in popular sovereignty with a more limited role for state institutions. While it may seem tangential to the national phenomenon in question, the minority report delivered by the Utah’s 10th Legislature against 36 sister states as a microcosm provides insights that contextualizes the larger event. This historical examination also renders a thematic and regional background that serves to explain the later emergence of 17th Amendment reform movement.

Utah: Rejection & Ratification

Hoebeke (1995), in grudging admiration of Utah’s unique rejection of the Amendment, poetically dismisses the state as “a strange oasis of constitutional conservatism in the great West” (p. 189). Reflecting on Utah’s troubled road to statehood in 1896 and her continued strained relations with the federal government through the Progressive Era renders a more convincing portrait of reasoned and self-interested opposition. Utah’s conservatives were not overly willing so easily to concede to the direct elections initiative—seen as a primary check against the federal government—especially after suffering humiliation at the hands of a punitive expedition and occupation, delayed statehood, and the recent Reed Smoot hearings. 7 The 1913 Amendment rejection not only reflects Utah’s aloof and independent character as a western state, but also demonstrates considerable distrust of the eastern concentration of power.

In many ways, the Utah Legislature of 1913 was not very different from the Utah Legislature of 2010. As if by astrologic chance, both Speakers of the House in each year had the surname Clark, both sessions saw the passage of “wildlife” (wolf) management acts, and both legislatures eschewed high taxes (Sjödhal, February 6; February 7; February 28, 1913). Not everything was the same, though: Sen. Eckersley was, for example, successful in raising teacher pay (Sjödhal, January 28, 1913). In a purely academic sense, though, during both the 10th and 58th Legislatures, Utah’s majority Republicans were forced to react to the election of U.S. presidents far removed from their own ideology. In 1913 Progressive momentum saw the proposal of several federally expansive measures, namely Amendments XVI and XVII. Utah Republicans were firmly against such a constitutional reinforcement, especially in the Senate. 8 In 2010 the momentum had clearly shifted to Utah’s core conservatives. Utah Republican lawmakers pursued an agenda filled with active challenges to federal authority, themselves responding to an impetuous and widespread reaction against federal overreach. Whatever critics make of the futility of both attempts to stall or reverse the expansions of federal power, the repetition of history makes an abiding statement of the stubbornly independent nature of Utah politics.

Progressivism—as pervasive and persuasive as it was in its day—seems to have held little sway in Utah, as evidenced by the 1912 election: Utah was one of only two states (including Vermont) that submitted electoral votes for the Taft Republican ticket. This put Utah to the right of Roosevelt and his Progressive “Bull Moose” Party and to the far right of Wilsonian Democrats. Taft Republicans, although they showed symptoms of the era, were the least progressive of the batch. 9 Despite these formative influences and regional characteristics, the debate in Utah appears to have centered more on the intrinsic nature and constitutional principles of the proposed amendment.

Senate Joint Resolution No. 2. The perfunctory machinery for the ratification of the direct election measure started smoothly enough, having been, according to the Salt Lake Tribune, “introduced early in the session and recommended for passage by unanimous vote of the committee on state affairs and federal relations” (Nelson, January 30; February 4, 1913).10 This account parallels the Senate Journal (1913) recording the first reading as of January 20 and committee hearing as of January 29 where a cosmetic amendment was passed to bring the language in accordance with the 1912 national version (Utah Legislature, pp. 89, 137-138). Unmentioned by newspapers, Sen. Rideout was himself the chairman of the Senate Com-

6 Money could lubricate the wheels of the selection process out of deadlock (Rossum, 2001, p. 190). Again the Rossum thesis is disputed because of a lack of financial records and disclosure.

7 Senators Sutherland and Smoot, according to the Deseret News on February 9 appear to have been in favor of the Amendment (Sjödhal, 1913) (see Appendix: Timeline).

8 With several notable Republican exceptions.

9 Socialist Party candidate Eugene V. Debs’ minority success at the polls attests to the liberal dominance of the contemporary ideological paradigm.

10 See Appendix: Timeline (p. 36).
committee on State Affairs and Federal Relations. I suspect that due to his leadership position and as chief advocate throughout the entire life of the bill, he played no small part in expediting its swift passage out of committee (Utah Legislature, 1913, p. vi). The motion passed on to its third reading and final passage on February 3, but was deferred with the consent of Sen. Rideout for two days—possibly a tactic allowing opposition-Republicans time to mount a defense.

Floor debate. Ironically party politics played a hand in badly splitting the Republicans on the subsequent February 5 debate and vote. This action represented the high point of Utah public interest and political struggle wrapped up in the direct election matter. The Tribune called it “pointed debate,” which at times seems an understatement (Nelson, February 6, 1913, p. 1). The pragmatic arguments throughout made by proponent Republicans like Rideout and his Democratic allies were (1) that the passage of the amendment was inevitable and (2) that it was already a part of the Utah Republican Party plank. Opponents like Sen. Ferry (R) and Sen. Iverson (R) were proud of Utah’s polling record in 1912 and her unique conservatism and welcomed the challenge of looking in the eye of “that beast called the majority and tell[ing] him the truth to his teeth” (Nelson, February 6, 1913, p. 13).

The party plank was a stickier issue for most opposition Republicans. Amidst conflicting and “hazy” accounts, it appears that some sort of partisan espionage occurred at the Utah GOP convention that year, where the direct election plank was proposed and voted on by only a small group at the tail end of the meeting. The tactic was successful, to the chagrin of most Republicans that spring. Amendment advocates pressed home the issue to Republicans by characterizing their opposition to the amendment as disloyal to the party platform upon which they had campaigned. Many of the Republicans bowed to this allegation that they were “getting in on” but not “standing on” their platform (Nelson, February 6, 1913, p. 13), explaining that they indeed opposed the resolution in principle, but would vote for it out of party ties to the plank. This waffling between “trustee” and “delegate” philosophies proved to be moment of grave indecision for the conservative Republicans in the upcoming decision, causing them to lose a number of votes.

At the heart of the debate, however, was the interpreted strength of the 9th and 10th Amendments. For Democrats this had already occurred via a corrupt Senate. For Republicans it was about to occur via direct elections. Employing deft vox populi, vox Dei rhetoric, the Progressives left no room for doubt as to their ideological allegiance. The leading voice in this faction, Sen. J.W. Funk (D), “mentioned to have been laughing during the confused apologies of his Republican colleagues” described the direct election as “right and just” without citing where justice had originated, acknowledging “the great popular demand that the powers that should be inherent rights of the people,” and altogether mimicking the a priori assumptions of popular sovereignty rhetoric critiqued by Hoebeke (Nelson, February 6, 1913, p. 3). Sen. Funk, in a display of demagogic appeal, claimed that “the centralization of the government” had removed “the powers from the people.”

Senator Ferry (R) provided the leading philosophical counterbalance to this Progressive stance. His defense of original intent demonstrated that

“What is retained of that striking debate in the historical record offered by a single Tribune article reveals the underpinnings of an overarching strategy to defeat the resolution in the Utah Senate.”

 Republicans abandoned the opposition that day, joining the nine votes in favor. With the seven-vote minority in dissent, the resolution failed to meet a two-thirds passage by just one vote. Before Sen. Rideout could make a motion for reconsideration, President Gardner killed the bill (Nelson, February 6, 1913, p. 3).

House Concurrent Resolutions No. 1–3. The Progressives were not so easily defeated. The day following the death of SJR 2, Representatives Durham and Smith of the House proposed resolutions, HCR 1 and 2, modeling the defeated bill. They passed smoothly out of committee and on into a favorably populist House, where they were substituted by a consolidated version, HCR 3, which was read three times and passed on to the Senate on February 18 (Utah Legislature, 1913, p. 387). The Tribune, however, anticipated the resistance these bills were about to receive in the Senate (Nelson, February 9, 1913). The amount of opposition in the Senate had actually increased since SJR 2, producing a 14-to-4 decision against the measure on February 28.

This sort of reversal suggests that Republicans bucked the party plank problem altogether, and that several party caucus meetings had hammered

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11 As a legislative intern in during 2010 58th Session, I observed the ability of adroit chairmen to create a powerful consensus even among opponents while in the preemptive stage of committee work.

12 For a fully recorded discourse of the February 5 debate see Appendix: Time-line (Feb. 5; 2, d, i).

13 Senator Funk in his later rebuttal obviated the misleading nature of the statement calling it “a harmless scarecrow [mean] to frighten us” (Nelson, February 6, 1913).

14 The modern spectator can only imagine the behind-closed-doors orchestration of such a rhetorical assist. The public layer of this debate is likely only a refined continuation of consultation and arguments made in caucus.
together a united front." The Tribune argues simplistically in the muckraking fashion of the day that Utah lawmakers were trying to protect Sen. Smoot’s seat from what would now be direct elections in 1915 (Nelson, February 9, 1913). I would argue that, based on the public statements of the opponents, the final majority rejection was not at all deluded about the impact they would have against the majority of states in favor of direct election. The futility of trying to protect Sen. Smoot’s seat does not seem logical coming from this rational council—they were clearly trying to send a message not only to political parties but democratic reformers as well.

THE NEW SENATE

While Utah’s 10th Legislature saw little wisdom in the departure from Republican principles, few other states followed suit, and, with the 36 ratifications required to amend the Constitution completed by April 8, a chapter closed in American history and on the old Senate. Surprisingly, very little active measure was taken of the direct effects of the amendment; previously staunch advocates in fact grew disappointed with the perceived lack of change, namely the concentration of wealth, the perpetuation of political dynasties, and the level of electoral responsiveness and accountability (Crook & Hibbing, 1997, p. 845). The federal Congress, uninhibited, proceeded to expand into many new uncharted frontiers. No such dramatic change in the formative nature of an institution could go long without impact: by displacing a critical check in the American hierarchical system of representation the 17th Amendment would open a power vacuum that would lead to a new federalism, the spark that would reignite the future states rights resurgence of American neo-conservatives at the national level and locally in Utah in 2010.

In taking stock of the effects of the 17th Amendment, the impact can be divided into two segments: (1) the intended or expected results of implementation and whether they succeeded or not, and (2) the indirect or unintended consequences. The first segment depends primarily on the Progressive perspective and criteria for reform. Crook and Hibbing (1997) observe, “The objectives of reform were unusually clear and afford us the opportunity to ascertain whether they were accomplished” (p. 846). Specifically they refer to Progressive aims for the composition of the Senate and its responsiveness to the electorate. Subsequent studies have expanded on this latter point: Meinke (2008) comments on the rationale for his research, making the case that “[because the reform reoriented the relationship between the public and the Senate, there is good reason to expect that the change yielded behavioral consequences in the Senate” (p. 445). The literature on indirect consequences consists mostly of qualitative arguments, noting the relationship between the passage of the direct elections amendment and a drift in federalism, a paradigm shift in the federal judiciary, and the resolution of the Senate vacancy controversy.

Expected Results

In a work seminal to 17th Amendment studies, Crook & Hibbing (1997) generated some of the first modern quantitative social science research on the effects of direct elections on the composition of the U.S. Senate. Their study released a veritable deluge of subsequent projects attempting to overcome the dearth of extant quantitative research (e.g. Rogers, 2012, p. 501; Meinke, 2008, p. 445). Taking the perspective of the Populist and Progressive criticism of the Senate’s class insolation, Crook and Hibbing (1997) set about to determine “the degree to which a senator [was] aristo-cratic and under the thumb of large monied interests . . . or [was] a reasonably typical citizen of the relevant state” using political dynasties, prior political experience, wealth, and electoral responsiveness as intermediate variables (p. 845). They pose two main inquiries: (1) whether significant changes did or did not occur in the 24 Congresses from the 54th to 77th (1895–1942) and (2) whether the definition of the tests and subjects provides adequate linkage and causation (p. 846).

Dynasties. An implied objective of direct elections was to provide a more level playing field against the “well-connected” and “well-heeded” millionaires club (Crook & Hibbing, 1997, p. 845). Crook and Hibbing state, “One partial test of this expectation is whether a senator had a relative who previously served in Congress. The hypothesis is that direct election will diminish the percentage of senators from politically influential families” (p. 846). Their subsequent regression compared the number of previous relatives that had held office as senators and representatives (the latter as the control under the de facto state of legislative appointment elections). The results show a large downward trend in this measure for “connectedness” of senators after 1913, but “[t]he only real disappointment is that the coefficient for the interactive term in the Senate fails to meet standard tests of statistical significance—but just barely” (Crook & Hibbing, 1997, p. 847).

Experience. Crook and Hibbing (1997) next turn to measuring for prior political experience, expecting to find an increase after the Amendment took effect. They reason that “a solid record of government service will attract voters (more than it attracted state legislators) and eventually become a more common trait of elected senators” (p. 849). The results show a relative increase of this test factor in the House, but a decrease in the early 20th century for the Senate (accounting for turnover), followed then by a dramatic increase beginning in the 1920s. Indeed, elsewhere in the literature, Lapinski (2004) provides evidence for the increased length of individual senators’ committee service (cited in Meinke, 2008, p. 446). Here Crook and Hibbing grapple with an ambiguous variable: a record of government experience could at once indicate the increased strength of machine politics that consolidated offices for favored candidates or the expansion of the civil service and the federal patronage of the day—an entirely different sort of “connectedness” (Hoebcke, 1995, p. 75). On the other hand, limited previous government experience could possibly demonstrate civic virtue or citizen activism. Alternately, already declining government experience would seem to support the Hoebcke thesis that an insulated decision-making body was already on the outs. Crook and Hibbing (1997) conclude that “the results are consistent with these interpretations, but there is no way conclusively to tie changes to the 17th Amendment” (p. 849).

Wealth. A discussion of wealth as a variable returns us to arguments from republicanism and populism about the role of private interests in government. Data regarding the personal wealth of U.S. senators was also a tricky variable to capture because of timing; the Income Tax Amendment (XVI) that passed alongside Amendment XVII would only just shortly go into effect, and hence none of the modern fiscal reporting methods were in place to provide any accurate record (Crook & Hibbing, 1997, p. 848). The authors qualify this variable, noting:

Indeed, wealthy senators are much in evidence today and are not in any way incompatible with popular elections. Yet, rough estimates suggest
that the immediate effect of the change was to drop the ratio of wealthy senators from about one in four to one in six, and perhaps a shift of this magnitude was as much as the reformers could expect (Crook & Hibbing, 1997, p. 848).

“Rough estimates” do not seem ample enough to explain for a significant class distinction. Seventeenth Amendment studies would benefit from a further investigation of this variable with particular attention given to the spread between senators’ net worth and the mean or median wealth of the general population.

Stepping outside the Crook and Hibbing study, I find Hoebeke (1995) less optimistic about the Amendment’s long term impact on reducing the Senate’s net worth: “Compared to the ten or so millionaires of the early 1900s, there are at least 28 at present, although this figure would almost certainly be higher if lawmakers held themselves to mandatory reporting standards” (p. 190). The number of millionaires in recent years has risen to over half the body of the Senate (Center for Responsive Politics, 2012). Again the literature would benefit from a more concise response to the relative wealth of the Senate to the populace.

For Hoebeke (1995), a more alarming wealth-related issue is the effect direct elections have on campaign finance. At the time of his writing the average Senate seat required a $5 million campaign on average (p. 191). According to FEC disclosures for the 2012 election cycle, winners of U.S. Senate seats on average spent $10.2 million (The Center for Responsive Politics, 2013), up from $8.3 million in 2010, and $7.5 million in 2008 (Choma, 2013). Hoebeke (1995) blames this ballooning “price of admission” on the shift in the Senate’s direct constituents:

An increasing proportion of campaign contributions come from nationally organized interests outside the state a senator actually represents…. Whereas such interests had once presumably needed to buy a majority of the legislators in the majority of the states, they now attempt their purchase more directly. It is the legislative “machine” all over again, but on a national level. (p. 191)

In his view, far from eliminating the “monied interests” from Washington and the state legislatures, the implementation of direct elections appears to have—at best—missed the mark, or—at worst—magnified the problem. While the contemporary literature has largely focused on responsiveness, Senate composition has become neglected. 16 The degree to which contemporary campaign finance and senator net worth are results of the Amendment and not other political developments is certainly worthy of a more conclusive investigation. 17

Responsiveness. A question central to the evaluation of the new Senate is whether U.S. senators became more responsive to the mass electorate. Crook and Hibbing (1997) note a higher rate of turnover in seats after the implementation of direct election, and argue that such partisan shifts are higher now that nominal insulation from changing ideological winds was removed. “Before 1913 the Senate usually fulfilled its intended role of lagging behind or standing pat, but after 1913 it almost always moved in lockstep with the House” (p. 851). They also record increased correlation between the party identity of Senate seats to the party of a newly elected president (a good estimate of public sentiment and ideological persuasion). They conclude that these measures reflect “more sensitivity and rapidity” (p. 852). Several subsequent studies tended to support the Crook and Hibbing findings (Meinke, 2008, p. 446): that is, the new Senate was generally more responsive to the mass electorate in ideologically positioning (Bernhard & Sala, 2006) and roll-call voting (Jenkins, 2006). Other recent work such as that of Schiller (2006) and Wawro and Schickler (2006), according to Meinke, present a strong case for weak post-Amendment impact in responsiveness.

More contemporary studies by Meinke (2008) and Rogers (2012) continue the debate with added nuance. Meinke’s research framework is much more temporally specific: he compares the voting record of both originally selected and elected senators especially during the interim period of adoption in the 1920s when the two groups served contemporaneously (p. 445). He posits, “The simultaneous service of these two classes of senators permits me to compare the behavior of elected senators with the behavior of those originally chosen by state legislatures, testing the expectation that the originally elected senators will exhibit a stronger pattern of behavior oriented toward the mass electorate” (Meinke, 2008, pp. 445-446). Instead of roll-call behavior he focuses on variables of bill sponsorship, roll-call participation,14 and individualism vs. party loyalty on mass electoral and reelection incentives (p. 447). Meinke’s hypotheses construe the following: when other factors are controlled, relative to their originally indirectly elected counterparts originally elected senators (1) sponsor more private, constituency-oriented, and policy-focused bills; (2) exhibit higher roll-call participation; and (3) exhibit lower levels of party loyalty (p. 448). Accordingly, he reports results suggested that new senators did indeed tend to be more active bill sponsors, more participative in roll-call voting, and more moderate leading up to reelection.

Rogers, in his 2012 research, revisiting the Crook and Hibbing and Kernell and Erngstrom studies, identifies three major difficulties in the capturing responsiveness in that: (1) the preferred method of vote-seat relationships is impractical because Senate election returns before 1914 generally do not exist; (2) the studies therefore rely on a historical swing ratio to measure the relationship between the changes in presidential vote and Senate seats, a method which does not adequately match the six-year mixed election cycle of the Senate;19 and (3) they rely on data from elections prior to the 1960s which ignores important regional ideological shifts (the Southern Democratic switch) (p. 511). Rogers’ proposed solution is a counterfactual approach:

Instead of using observed indirect elections before the 17th Amendment, I simulate counterfactual indirect elections since 1914 as if state legislatures still selected U.S. senators. By assuming the majority party in the state legislature would have indirectly elected a senator of its own

16 Meinke (2008) here provides the most extensive literature review on quantitative studies of Amendment impact. He cites no additional studies on composition after 2000 (p. 446). Those that do follow Crook and Hibbing tend to focus on partisanship only.

17 Meinke suggests as much in his own assessment of the literature surrounding electoral responsiveness noting the possible impact of the Senate’s rapid growth: “further research is needed to show how the rapid changes in this time period were interrelated” (p. 454).

18 “An electorally oriented and risk-averse senator should be concerned with maintaining high rates of roll-call participation. In a related way, because roll-call voting is itself an opportunity to take public positions on key issues, senators with direct accountability links to the electorate should see a strong incentive to participate on roll calls for their position-taking value, regardless of each vote’s importance for the policy outcome” (Meinke, 2008, p. 448).

19 Rogers (2012) elaborates further, stating, “Despite its availability, presidential vote is not an ideal measure for congressional analysis. Its usage assumes that voters are consistent in their partisan preferences for presidents and senators. Employing presidential vote is also restrictive in studies of congressional elections because it is only available once every four years, meaning it fails to capture inter-election swings in state partisan leanings” (p. 511).
The Rogers study tends to strengthen the growing dissent opinion in the South as it is in the non-South, where direct elections seemed to have little impact. If the South continues to mirror other regions, the efforts of direct democracy and 17th Amendment advocates seeking increased responsiveness may ultimately have been for naught—at least along the electoral dimensions of representation studied here. (Rogers, 2012, p. 523) The Rogers study tends to strengthen the growing dissent opinion in the literature, suggesting weaker post-Amendment effects. While the findings remained mixed (Meinke, 2008, p. 447), the consensus on new Senate behavior has cast more doubt on how effective the Amendment was at producing populist outcomes.

Unintended Results

Vacancies. One of the original criticisms of legislative selection of the old Senate was the prevalence of deadlock in state legislatures. The 17th Amendment specifically dealt with this by allowing state executives to appoint senators in the interim. The vacancy-filling clause reads as follows:

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

One would have hoped that this degree of separation would have helped eliminate corruption, but as seen in recent years gubernatorial appointments have become a scandal to behold (Shedd, 2011, p. 960). He cites the case of electioneering by the Massachusetts legislature under Governor Mitt Romney for the potential vacancy of Senator John Kerry (then running for president) in 2004 and then again for the vacancy of Senator Ted Kennedy's office in 2009 under Governor Davenport, as well as the infamous Blagojevich scandal in late 2008 for soliciting bribes to fill Senator Obama's Illinois seat. With 33 states still relying on unrestricted gubernatorial appointment for interim vacancies, Shedd (2011) makes the case for a new amendment to, at the very least, correct the clause on filling vacancies (p. 963).

Judiciary. Among the unintended consequences of direct elections, the impact the Amendment had on the courts presents a sobering display of how tampering with one set of checks and balances can have a ripple effect, producing cross-branch collateral damage. According to Hunter and Oakerson (1986) the effects were reasonably swift, as the Supreme Court took up a relatively nuanced behavior of activism in favor of states; they report, "Between the turn of the century and the New Deal, the Court made a series of rulings that found congressional action in violation of the 10th Amendment" (p. 33). Per previous suggestion, the 17th Amendment had created a power vacuum by displacing states as the traditional arbiter between the central government and the people. Rossum (2001) contends that the Senate had been (1) "the primary structural support for federalism," (2) "the principal means for protecting the interests of states as states," and (3) for "demarcating federal from state powers" (pp. 2–3).

He further demonstrates that the U.S. Supreme Court has been attempting to fill that void in the past century as in landmark cases such as Labor v. Laughlin (1937) and NLC v. Usery (1976):

> The United States Supreme Court's frequent reaction to this congressional expansion of national power at the expense of the states was and has been to attempt to fill the gap created by the ratification of the 17th Amendment and to protect the original federal design. (Rossum, 2001, p. 2)

Between 1937 and 1976, however, the Court became an accomplice to the expansion of federal power, until the Rehnquist-majority ruling of 1976, which saw a resumption of Court activism (Hunter & Oakerson, 1986, p. 34).22 The effective reversal of this position in the 1985 Garcia ruling saw a Court abdication from this constitutionally untenable role (in Rossum's view). 23 The United States has meanwhile inherited what Hunter and Oakerson (1986) term the “intellectual crisis in American federalism,” which lingers to this day. Under their premise the contradictory results left in the uncoordinated and Garcia produced two “valid” but entirely inconsistent interpretations of the 10th Amendment as it balances with the Interstate Commerce and National Supremacy Clauses (p. 39).

This sort of dual-federalism schizophrenia has cast, if I may, a jurisprudential Alzheimer's on the courts: "While it remembers that the framers valued federalism and wanted it to be protected it has forgotten that they believed that it could be protected only by constitutional structure, not by an activist Court" (Rossum, 2001, p. 185). Senator Henry Cabot Lodge may have explained the Court phenomenon best in the 1911 congressional debate over the direct election provision when he stated, citing an extemporized tenet of Darwinism, that "Self-preservation is the first law of governments as it is of nature” (cited in Rossum, 2001, p. 209). The Court's heightened and rejuvenated defense of original federal design is not surprising: the Court can be considered nearly the last of the increasingly vestigial "aristocracies" of the American republic. With the presidency's Electoral College democratized via the pledging system and the U.S. Senate's popularization in 1913, the Supreme Court finds itself the only remaining insulated, deliberative body in a once vibrantly hybrid system. As Rossum (2001) points out,

> There is irony in all of this: An amendment, intended to promote...

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20 This requires several assumptions that he admits limit the application of his data: (1) party loyalty, (2) strong partisan voter preference and (3) the vote independence of state legislative elections (pp. 514–515).

21 The blocking of many New Deal–era legislation and programs, for instance.

22 The central issue of the case rested on the degree to which federal regulation trumped the “reserved powers” of states set out in the 10th Amendment via the Interstate Commerce Clause.

23 Pittenger (1992) provides excellent moderation between the modern anti-Court Rossum and the somewhat dated views of anti-framers Hunter and Oakerson, who propose radical constitutional amendments to resolve direct election (p. 13).
democracy, even at the expense of federalism, has been undermined by an activist Court, intent on protecting federalism, even at the expense of the democratic principle. The irony is heightened when it is recalled that federalism was originally protected both structurally and democratically—the Senate, after all, was elected by popularly elected state legislatures. (pp. 2–3)

He starkly concludes that federalism is “protected neither structurally nor democratically,” leaving the states to the whims of “congressional sufferance” or the interjection of a court ruling. Republicanism and federalism are essentially defined by the balance of representation between populace and polity. Judicial appointees (creatures of federal appointment and legislative structuring), without any sort of formal accountability to state governments, can only artificially reproduce the Senate’s insulating function.

Utah Redux: Soft Repeal

Sen. Howard Stephenson. Nearly a century after Utah’s rejection of the Amendment, state Sen. Howard Stephenson attempted a soft repeal of XVII in 2006, 2007, and 2010. Just as it was important to grasp the political maneuvering behind debates of Utah’s 1913 legislature, it is equally important to understand the author of the 2010 Senate Bill 250. Senator Stephenson is a self-styled, classical Reaganist, and hence small-government advocate that represents Senate District XI (Riverton, Bluffdale, Lehi). He serves as the President of the Utah Taxpayers Association, a group that touts the principles of a “broad base and a low rate” in taxation. He is also a product of conservative Mormon political thought, quoting former LDS Church President Ezra T. Benson on his website:

Seldom are men willing to oppose a popular program if they, themselves, wish to be popular—especially if they seek public office. Unlike the political opportunist, the true statesman values principle above popularity, and works to create popularity for those political principles which are wise and just. (Stephenson, 2010)²⁴

This in part begins to explain his aversion to the 17th Amendment and the other Progressive and New Deal Reforms—in his view largely unprincipled measures that lead to expanded federal controls (Stephenson, 2010). Hoebeke’s condemnation of the expanding role of the federal government as a fiduciary backer and controller of the states also informs Stephenson’s view of the world:

In the decade before direct elections, monetary grants to states and localities amounted to less than one percent of all federal expenditures, and provided less than one percent of all state and local revenues. By the late 1970s, seventeen percent of the annual federal revenue was spent in grants to states and localities . . . Congress has simply foisted the expense of its boondoggles upon state and local governments in the form of the infamous “mandate.” (1995, p. 192)

This sentiment is echoed by Sen. Stephenson in his own reprimands of Utah’s U.S. senators (in this case Sen. Orrin Hatch): “We get a lot of mandates…. Some of them funded; some of them unfunded” (Warhol, February 21, 2007; Canham, February 17, 2007).

Senate Bills 156 & 202. For Stephenson, the key was reducing or reversing this expansion of federal powers brought on by direct elections. Senate Bills 156 and 202 (in 2006 and 2007 respectively) represented attempts to accomplish exactly that. He stated concerning these bills, “I felt strongly there ought to be something we can do, short of repealing the 17th Amendment, that would get U.S. senators across the nation to be more responsive to their state governments” (Burr, 2006). Senator Stephenson’s first attempts in these years (notably pre-dating the states’ rights reaction against Obama federalism) produced publicity but no success as they contained a controversial provision for creating a formal process for directing the federal senators. The bills, had they passed, would have affected what Stephenson called a “soft repeal” of the 17th Amendment, something he hoped other state legislatures would emulate (Warhol, February 1, 2006; State of Utah, February 7, 2006). While many pundits dismissed the bills as obsessively reactionary, many at least saw principle in them. Larry Sabato, Director of the University of Virginia’s Center for Politics, commented: “I admire their courage to come out against democracy when their continuance in office depends on it” (cited in Burr, 2006).

Senate Bill 250. While his first two attempts miscarried, Stephenson persevered and, learning from past opposition, softened the bill for reintroduction in 2010. In the 58th Session of the Utah legislature, a session that will likely be remembered as a states’ rights session, Senate Bill 250—titled “Political Party Bylaws and U.S. Senators”—came across much more mildly amidst a deluge of outwardly more controversial challenges to federal power. Unlike many other 2010 bills that attacked interstate regulatory policies, the “symptoms” of federal overreach—Senate Bill 250 was, like its predecessors, intended to confront the causes thereof, rooted in the Constitutional assumptions about states representing themselves as polities in the federal government. For instance, while Senate Bill 11, “Utah State-made Firearms Protection Act,” sought to slap the hand of federal overreach by challenging the Interstate Commerce Clause and one of its offspring agencies (the Bureau of Alcohol, Tobacco, Firearms and Explosives), SB 250 aimed to redefine the way Utah was to be represented at the federal level by its U.S. senators.

Specifically, the new version envisioned a more informal process by which state parties could consult with state legislators to review the performance of Utah’s U.S. senators (Warhol, 2006; State of Utah, 2010). While this approach may seem indirect and even banal in comparison to its antecedents, it also proved much more successful. That Sen. Stephenson was able to steer it through the Senate Education Committee on which he sat (admittedly an odd fit for a bill on federal relations) shows tactical finesse. It passed with nearly 70% in the Senate and close to 60% in the House and was signed by Governor Gary Herbert on March 25, 2010 (State of Utah, 2010). The new statute in §20A-8-401—the title governing the registration of political parties and their bylaws—takes the following effective language:

(2) Each state political party, each new political party seeking registration, and each unregistered political party seeking registration shall ensure that its constitution or bylaws contain:

(i) if desired by the political party, a process for consulting with, and obtaining the opinion of, the political party’s Utah Senate and Utah House members about:

(A) their performance in representing Utah’s interests;

(B) their performance in representing Utah’s interests;

(ii) the members’ opinion about, or rating of, and support or opposition to the policy positions of any candidates for United States Senate from Utah, including incumbents, including specifically:

(A) their views and actions regarding the defense of state’s rights and federalism; and

(B) their performance in representing Utah’s interests;

(iii) the members’ collective or individual endorsement or rating of a particular candidate for United States Senate from Utah.
The reader should note the license and invitation given to parties to consult with legislator about sitting senators’ performance in “defense of state’s rights and federalism.” While it comes as no surprise that the bill contains just such a provision for measuring the U.S. senators by local legislators’ standards, the use of party bylaws as the vector seems ironic in the context of the historical criticism of the indirect election process. Progressive reformers traditionally vilified the political machines within parties as the express instrument of corruption in the indirect elections. The irony seems to be borne out by a state legislator who—in his attempt to reverse their aims—reintroduces the potential for strong partisan influence that they saw as a threat.

Impact. Utah GOP Chairman Dave Hansen and Sen. Lyle Hillyard (R) both questioned the need for such an accession when parties could already voluntarily fulfill this expected role (Bernick Jr., February 9, 2010; Utah Legislature, 2010). Hansen, upon being asked to comment on the bill’s introduction, gave a favorable report of Utah’s then sitting (and very senior) U.S. Sens. Orrin Hatch and Bob Bennett (Bernick Jr., 2010). Senator Stephenson’s open opposition to these figures has already been established. In an April 2010 web address at the conclusion of the 58th General Session, Sen. Stephenson expressed his hopes regarding his work with the 17th Amendment, thus:

“This election year is sure to change the complexion of Congress as voters exercise their prerogative to support candidates who support the Ninth and Tenth Amendments. The need for the people to stand up has never been greater, and I encourage all Utahns to educate themselves on the limits the Constitution sets on federal power, and how the people and the states can most effectively check federal overreaching. (Stephenson, April 2010)

In truth, Sen. Bennett faced less of a threat from the codified suggestion of proposed party consultations with the legislature than from anti-incumbent fervor in 2010 (Meyers, 2010). A world removed from Stephenson’s more moderate statements, Utah’s 2010 GOP State Convention is now notorious for its show of raucous ad hominem and summary dismissal of Sen. Bennett.

It does in part seem ironic that many of the Tea Party activists in pursuit of the ouster of long-time incumbent GOP senators were able to do so with relative ease expressly because of the 17th Amendment. The grass roots populism of the movement in many ways reflects that of the Progressives a century ago, despite the obvious contrasts in ideology."

The Tea Party movement, still quite misunderstood and misrepresented (by the media and the Tea Party movement is one of the periodic recurrences to fundamental principles that typify and revivify the American experiment in self-government….In the end, then, one does not have to agree with the Tea Party movement in every particular to welcome its appearance. (p. 18)

We should remember that the Progressives, before they were forged into an election-winning force, were originally just a more disciplined and organized offshoot of the much ridiculed and unsuccessful Populists. A comparison of the 10th and 58th Utah Legislatures shows us how much the world has grown up, and how little human political instinct has changed.

While we should never exclusively rely on the past for answers needed in the political tomorrow, I would argue that if the American experiment has anything to offer, it is this: great value comes from challenging the forms of our past and improving upon them. Reform, then, is essential; but all reform is not equal in quality. We must reconsider our institutions often in order to reconcile any unintended results and, moreover, to determine if the intentions of reform remain consistent with our values. With this attitude, the myopic effects of the 17th Amendment can be repaired.

What we can garner from the lessons of the past—in reviewing our conduct, in revising our laws, in rethinking our creations—allows us to see ourselves again from the other side of the looking glass. 26 Reflection and self-correction, after all, are sentinel virtues of the American republic.

CONCLUSION

The course of the federal reform movement in the 21st century remains indecisive and unresolved. Should we expect to see a complete reversion to wholly original institutions of a republic? That reactionary vision is fantasy and would represent a great blow to the achievements of the past century. That lawmakers like Sen. Stephenson recognize this fact of political development, and are willing to assert a strengthened position for states’ rights within a progressively shaped federalism, does credit to their belief in principled government.

Those principles, grounded in Reaganism and giving life to Tea Party conservatism, are again finding voice to resist anew the disruption of the federal balance caused by the state legislatures in 1913. A new corps of state legislators are taking up the mantle to combat, in their view, a historic error. The Tea Party movement, still quite misunderstood and misrepresented (by itself and others), is relatively young. Paul Rahe (2011), seasoned scholar of republicanism, comments: [1] It should be humbling to elites that ordinary American citizens choose spontaneously to enter the political arena in droves, concert opposition, speak up in a forthright manner, and oust a host of entrenched office holders. What we are witnessing with the Tea Party movement is one of the periodic recurrences to fundamental principles that typify and revivify the American experiment in self-governance….In the end, then, one does not have to agree with the Tea Party movement in every particular to welcome its appearance. (p. 18)

What we can garner from the lessons of the past—in reviewing our conduct, in revising our laws, in rethinking our creations—allows us to see ourselves again from the other side of the looking glass. 26 Reflection and self-correction, after all, are sentinel virtues of the American republic.

EXPLANATORY NOTES

(1) The reader will note the absence of specific authors assigned to articles from the turn of the century newspaper sources (The Salt Lake Tribune and Deseret News). I attribute this to the cultural and political solidarity of the papers of the period identified by Malmquist (1971) in Tribune executive editor William Nelson’s “aversion to personal publicity in the organ under his control or influence.” These articles are therefore cited by their respective executive editors. (2) Since the author’s initial research coverage of the historical record found in the Salt Lake Tribune and Deseret News, the microfilm records held at the University of Utah have been made publicly available in digital PDF format through the Marriott Library’s Utah Digital Newspapers project at http://digitalnewspapers.org/.

25 I would have suspected more support in the GOP with increased Tea Party activism and party infiltration.

26 “See ourselves again,” is this not a literal sense of “review?”
articles on his website. The attitudes and opinions contained therein expressly represent the views expressed by Sen. Stephenson and were drafted on his behalf.

ACKNOWLEDGMENTS

This work would not have been impossible without the J. Willard Marriott Library and its staff who faithfully instructed me in the hardware and software for reading and digitizing the microfilm records from which the original 1913 Salt Lake Tribune and Deseret News articles are drawn. Also, I express thanks to the Utah State Archives Research Center for access to the Utah House and Senate Journals for the same year.

REFERENCES


Nicholas Bradford

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Table 1  Senate Joint Resolution No. 2 (Rideout) – An Act proposing an amendment to Article 3, Section 5, providing for the election of United States Senators by direct vote of the people of the several states (1913 General Legislative Session).

**APPENDIX**

<table>
<thead>
<tr>
<th>Date</th>
<th>Events (Identified Bill, Motions, and Debate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 20</td>
<td>SJR 2 by Senator D.O. Rideout first reading. Tabled for one day by rules. (p. 89)</td>
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<tr>
<td>Jan. 24</td>
<td>(1) SJR 2 had under the consideration of the Senate State Affairs &amp; Federal Relations Committee and recommended the same be passed. (p.14:115)</td>
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<tr>
<td></td>
<td>(2) Senate adopts the committee report and SJR 2 is read for the second time. (p. 115)</td>
</tr>
<tr>
<td>Jan. 29</td>
<td>SJR 2 is again referred to committee with a motion by Senator Rideout (see Feb. 3). It is amended by State Affairs &amp; Federal Relations Committee and passed out with a favorable report [recommendation] and unanimous vote (p. 137; Nelson, Feb. 3). The amendment brought the resolution in accord with the congressional version.</td>
</tr>
<tr>
<td>Jan. 30</td>
<td>The Salt Lake Tribune records that President Gardner expressed concerns that “were such an amendment ratified it would give impetus, validity, or strength to a proposition to change the makeup of the U.S. Senate and regulate its membership on a basis of population” (Nelson, Jan. 31). This comment can be inferred to have occurred in response to the second reading of the bill.</td>
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**Feb. 3**

(1) SJR 2 read for a third time and up for final passage (p. 159).

a. Senator W.J. Funk (D), L.M. Olson (D), and D.O. Rideout (R) spoke against the “necessity and the wisdom of the amendment” but stated that he would vote for it because the state Republican platform favored it.

b. Senator Smith asked the President where he stood. Senator Gardner replied that he was against it.

c. A motion by Senator Ferry deferred the bill to Feb. 5 as a Special Order for 3:00 PM (p. 159; Nelson, Feb. 4). “He said that he felt much the same about the resolution as did Senator Eckerson.” He was seconded by Senators Cottrell, Eckerson, and Ogden.

d. Senator W.J. Funk objected to the postponement “on the part of the Democratic minority.” However, Senators Rideout (the author) and Kelly asked that Ferry’s request be permitted (Nelson, Feb. 4).

(2) A Tribune article today makes clear that SJR 2 was referred to its author back to committee on Jan. 29 after it was reached on the Reading Calendar “in order to make the resolution conform to the provisions of the proposed amendment as initiated by congress” (Thompson, Feb. 3).

**Feb. 5**

(1) SJR 2 taken up for consideration by Special Order (Time Certain) (p. 159).

The most publicized debate of the Utah consideration of the amendment occurred today. The major portion concerned the adoption of the resolution as plunk in the Utah Republican Party platform as related in an expose-style article in the Tribune, proponents of the resolution both Republican and Democrat admonished their fellow senators for their failure to support the direct election amendment (Nelson, Feb. 6).

a. Senator Funk and Funk led the proponent arguments while Ivory and Ferry led the opposition.

b. Ferry opened the debate warning against what he “consider[ed] to be hasty, ill-considered and dangerous legislation.” The main points of his speech duly noted by an unnamed Tribune journalist are as follows (Nelson, Feb. 6):

   i. I am resolved to vote against this measure and I do not feel that I can refrain from casting my voice against what I consider to be hasty, ill-considered and dangerous legislation. It is true that our party platform declared for this resolution, but I feel that we were one of those planks that sometimes creeps into platforms. As I remember it at the time this plank was adopted, many members had in the hall and it was put through with only a few voting on it understanding it.

   ii. I do not feel bound by this plank to vote for what I believe to be stop backward. It is popular these days to advocate the things that are new, and unpopular to stand for something that has been tried and proven. I believe the constitution of the United States is as much a dead force today as it ever was. I believe that it is a wise policy that permitted the fathers to place the election of United States senators one degree removed from the popular vote.

   iii. Representatives in congress are chosen every two years. They are chosen by popular vote and are in close touch with the people. The senators are chosen every six years by the legislators and act as a brake or a balance on the house to prevent popular clamor from going too far.

   iv. If we ratify this amendment we shall live to regret it. I believe that the requisite number of states will ratify the amendment and it will become a part of the constitution. Then I think the next move will be to choose the senators on the face of population and we in the smaller states will lose a large share of our representation in the national congress.

   v. I hope that Utah will live up to her reputation as a conservative state and will not be swayed too much by popular clamor. If this be a good measure it will develop as later. Let us not rush into this; it will be hard to get out. Let us wait a while. Let us not be bound by the un-Republican plank that went into our platform. I believe that this measure is contrary to the principles of the Republican party, in spite of our platform declaration.

   vi. I am glad to stand by the constitution and therefore it is with great pleasure that I cast my vote against this resolution.

c. Senator Cottrell addressed the body in favor:

   i. I am personally opposed to this resolution. I regard it as dangerous. Nevertheless, I feel that a duty has been imposed on the Republican members of this body by the plank in our platform. Therefore I feel it incumbent on me to vote in the affirmative.

d. Senator Eckerson addressed the body in opposition:

   i. When this resolution came up last Monday I was prepared to vote for it. I desired the wisdom of it at that time, but was prepared to vote for the resolution against my own best judgment because my party had declared for it. Since that time, however, I have changed my mind. I have concluded to take the responsibility myself and suffer the consequences, if any there be, and follow my own good judgment and vote against the measure.

e. Senator Booth addressed the body in favor:

   i. Personally I don’t know that I would be obligated by the platform declaration made last fall, since I was elected two years prior to that time. Nevertheless, I believe that the people who sent me here expected me to abide by the platform declarations. I am not strongly in favor of the resolution, but I believe that a large majority of the people of the state are in favor of the resolution and I feel obligated to respect their wishes. Therefore I shall vote for the resolution.

f. Senator Funk (mentioned to have been laughing during the confused apologies of his Republican colleagues) addressed the body in favor:

   i. I feel somewhat sorry for those who feel forced to vote against their wishes in favor of this resolution. As for myself I am glad to vote for the resolution with the full conviction that it is absolutely right and just to return to the people the powers that of right and justice belong to them.

   ii. Some years after the adoption of the federal constitution there came a movement for the concentration of the government and the removal of the powers from the people. NOW, we are in the midst of a great popular demand that the powers that should be inherent rights of the people be returned to them. The pendulum is swinging toward the people and none can stop it.

   iii. I am not alarmed at the danger of amending the sacred constitution—and let me say that none holds it more sacred than I. The fathers provided the way it should be amended and the people have the right to amend it if they choose. The senator was right when he said this amendment would surely be adopted. The arguments against its adoption are too paltry to deserve consideration.

   iv. I am not alarmed at the prospect of appointing senators to the states according to population. That time can never come. The constitution provides that each state shall have two members of the United States Senate. Before the constitution can be amended otherwise the proposed change must have the approval of two-thirds of each house of Congress and the ratification of three-fourths of the states in the union. When it comes to the ratification of a constitutional amendment Utah, Idaho, Nevada, or even Vermont—I like to speak of Vermont in connection with Utah—it is just as powerful as New York or Pennsylvania and Illinois and I don’t anticipate that the smaller states will ever vote to give away their representation in the United States Senate to the larger states. There is absolutely no argument in this contention. It is raised as a baseless scarecrow to frighten
v. The direct election of United States senators is coming whether Utah gets in the band wagon or hangs behind as it did in the case of the income tax amendment. I have the greatest pleasure of my life in casting my vote in favor of the election of United States senators by the people. [Followed by applause from the gallery]

Senator Kelly objected to the demonstration by the audience. Senator Wight, acting chair, warned the gallery against another outburst (Nelson, Feb. 6).

h. Senator Rideout addressed the body in favor:

1. There is no demonstration is just an echo of the great popular demand for this measure that has swept the country. This measure is not new thing. It was introduced in Congress forty years ago and has been introduced and passed the lower house time and again, always to be killed in the Senate, which has become a club of millionaires.

2. What chance has a poor, though capable, man against a dozen millionaires? Why had coal to Newcastle or salt to the great Dead Sea of America? It is a straight flush against a pair of aces.

3. This Senate is absolutely bound by the platform of the Republican state convention to pass this measure. I believe that when a man becomes a candidate and stands upon a political platform for election, he pledges his honor to carry out the platform promise of elected. I believe that a candidate for office is bound just as much to carry out his platform pledge as a citizen is bound to pay an obligation in which he has pledged his word and his honor. What is a platform for? It is to get in on, but not to carry out. It is to deceive the people? Oh, my friends, we have deceived the people too long. We have made pledges and broken them. What has been the result? It is a hard thing to say, but true. It is unfulfilled platform pledges that brought about the overwhelming defeat of the Republicans in the nation last year.

4. We should stand for principle. We should hold a platform pledge as sacred as a covenant with the people. As long as we take any other stand we shall be swept out of office just as a dam of straw would be swept out by the great Niagara.

5. Give the people a choice. We don’t mistrust the people when it comes to the election of a member of congress, a secretary of state, a state treasurer and a governor. Why should we mistrust them in the election of United States senators?

6. I have tried to find arguments in favor of the present method of choosing senators and I can find only one—that it is an ancient custom. Every year this custom has become less and less popular with the people as is evidenced by the fact that twenty-two states have already elected United States senators by popular vote in some form or other. It is true, as Senator Funk says, that it is immoral what action Utah takes on the question. It is sure to prevail. Thirty-six states will certainly ratify this amendment.

7. I shall vote for the direct election of the United States senators by the people, not because it is a pledge of the Republican platform, but because it is right and just.

d. Senator Wight addressed the body in opposition:

1. The popular side of the question is to vote in favor of this resolution, but I shall choose the unpopular side. I do not feel bound by the Republican state platform. I did not support the plank in this platform when I voted for it and I do not believe that this particular plank mentioned in the campaign. Furthermore, I believe that this body is more representative of the people of the state than the convention at which this platform was adopted. It is the body that has the right to elect and to be elected by the people. The body that is elected by the people is not only the people.

2. The men in the upper house of our national congress, chosen by legislators, are other, better men than those in the lower house, chosen by the people. This is true only of Utah, but also of other states.

j. Senator Iversen addressed the body in opposition:

1. I feel somewhat reluctant to speak on this measure, because of the fact that I was a member of the platform committee of the Republican state convention. If my recollection serves me, this plank, with other peculiar planks was introduced from the floor of the hall after the committee had made its report by a gentleman who afterwards took to the tailor’s bench, a man devoid of political integrity.

2. Personally I feel that a person ought not to astound too much secrecy to a political platform. I do not believe I should pay more attention to a political platform than to my own convictions. This plank was one adopted by the Democratic party and practically every public policy enunciated by that party in the past has proved to be wrong. It is a source of pride and pleasure to me that Utah voted as she did in the last election. It is consistent with her reputation. And if Utah could stand out against forty-six states last fall can she stand out against thirty-nine or forty states now on this question. I tell you it takes get to face that beast called the majority and tell him the truth to his teeth.

k. Senator Smith and Booth addressed a series of questions to Senator Iversen:

1. Smith: Isn’t it rather dangerous doctrine to say that a patron will repudiate the platform upon which he is elected?

2. Iversen: Yes. I never said that it wasn’t.

3. Smith: Did you make a speech like this during the campaign?

4. Iversen: No, I don’t know that I did. I don’t know that I had occasion to discuss the platform.

5. Smith: You hold that these platforms just get in on and not carry do you?

6. Iversen: No, indeed, but I do not believe that they should come before one circumstance personal convictions. I have told you time and again, Senator Smith, how I feel, and I don’t care to go over it again.

vii. [Senator Rideout continued with pressing home the point of the Republican platform—asking Senator Iversen if the plank discussed bad or had not been passed unanimously by the platform committee on which he resided. Senator Iversen said that he did not recall that.]

viii. [Senator Ferry interjected with a question to Senator Rideout, asking him if he felt “honor bound” by the county [and state] platform. Senator Rideout replied in the affirmative. Senator Ferry then double-backed, asking if Senator Rideout “was going to vote for the bill providing jail sentences for automobile speeders” without the county platform. Senator Rideout replied in the affirmative. Senator Ferry then asked if Senator Rideout had not been a party to the appointment of a committee of legislative candidates in order to override that same plank. Senator Iversen denied the accusation.]
Table 2  House Concurrent Resolution No. 1 – 3 (Durham, Smith, and Durham, respectively)—
An resolution to ratify and confirm the proposed amendment to Article 1, Section 3, of
the Constitution of the United States, providing for the election of United states
Senators by direct vote (1913 General Legislative Session).

<table>
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<tr>
<th>Date</th>
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<td>Feb. 6</td>
<td>HCR 1 &amp; 2 read for the first and second times and both referred to the Committee on Resolutions (House, p. 233).</td>
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Feb. 9  A dispatch from Utah’s U.S. Senators Sutherland and Smith was reported by the Tribune as quoting their surprise at the failure of the amendment and the breach with the party platform (Nelson, Feb. 9). The same article notes that this setback will shift the debate back in favor of the resolutionists in both houses.

Feb. 13 HCR 1 had under consideration by the Committee on Resolutions and recommended the same be passed (House, p. 199).

Feb. 17 HCR 1 taken up for consideration on the House third reading calendar. A motion by Mr. Judd had the resolution recommitted to House Resolutions (House, p. 175). Roll call vote was called and the motion carried by the following vote: Ayres, 26; Nays, 15; Absent and Not Voting, 3.

Feb. 18 (1) HCR 3 committee report read and Mr. Judd moved that same be suspended so that HCR 3 could be read for the first, second and third times, and placed on final passage. Motion carried (House, p. 366).

Feb. 19 (1) HCR 3 committee report read and Mr. Judd moved that same be suspended so that HCR 3 could be read for the first, second and third times, and placed on final passage. Motion carried (House, p. 387).

Feb. 21 HCR 3 had under consideration committee report favorably, and recommended the same be passed (Senate, p. 329). Report adopted and HCR 3 read for the second time (Senate, p. 330).

Feb. 26 (1) Senator Rodriquez motions that HCR 2 be deferred until Feb. 27 because “on account of the absence of five members of the senate.”

Feb. 27 (1) Senator Rodriquez made a motion to reconsider the Feb. 26 vote on HCR 3. Motion failed on the following roll call vote: Ayres, 4; Nays, 14 (Nelson, Feb. 28).

1 The measure was largely identical, with the Smith resolution (No. 2) slightly shorter. The Tribune notes that the “Durham measure, it is thought, will be given the right of way” (Nelson, February 7, 1913). The same source also notes their intentional reaction against the failure in the senate.

2 The journal is silent on the inner workings of this committee, but the Tribune reports in anticipation that their “may be a minority report,” in contrast to the unanimous committee passage of SJR 2 (Nelson, February 7, 1913).

3 This seems to have reconciled the two original resolutions and also fulfilled a similar function to Rodriquez’s senatorial version—in making the legislation contemporary with the national versions.