Epilogue: Some Sober Second Thoughts

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The fine theory of a republic insensibly vanished.

— Edward Gibbon

Although the resolution for the amendment passed the Senate, at last, on June 12, 1911, it was not the same version that had already been approved by the House. Thus, a deadlock ensued in which the two chambers wrangled for eleven months over whether the states or the Congress should have the regulatory power over the popular election of senators. Despite the narrow passage of the Bristow resolution, the Senate resisted the temptation to reverse itself for the sake of obtaining the amendment, and eventually wearied the House into submission on May 13, 1912. The resolution for the Seventeenth Amendment as it now reads in the Constitution was submitted to the states for ratification.

Had the premise of reformers been correct, the state “machines” would never have endorsed a constitutional change which proposed to strip them of power, but few amendments have been more quickly ratified. In less than a year, it had received the necessary consent of three-fourths of the state legislatures. Fifteen states passed the proposal by unanimous vote in both houses. Seventeen others endorsed it with margins of more than nine to one. The only states formally to reject the resolution were Delaware and Utah, a strange oasis of constitutional conservatism in the great West. Vermont, with a sixty-two percent vote in favor, and Connecticut, with sixty-six, were the only other states to show any signs of an opposition. When the Connecticut Senate ratified the resolution on April 8, 1913, the requisite number of states had been secured. A little over a month later, on May 31, William Jennings Bryan, as Secretary of State, officially signed the Seventeenth Amendment into the fundamental laws of the United States.

In the great enthusiasm for this advance of popular rule, no one seemed to notice that those same political bodies that had been charged with representing special interests had themselves engineered the change. Not surprisingly, there was no substantial overthrow of the “Bosses” when the first direct elections were held in 1914. Indeed, with the exception of two candidates defeated for renomination, all of the twenty-five senators running for reelection were returned to their seats. One of the few machine politicians who bore any resemblance to the muckraking caricature, Boies Penrose of Pennsylvania, had voted against the Seventeenth Amendment at every turn, but his landslide victory apparently engendered a change of heart about the virtues of popular elections. “Give me the people every time,” he is reported to have remarked. Elihu Root, on the other hand, did not seek renomination when his term expired. Weldon Heyburn died in the autumn of 1912, spared the sight of what he considered America’s constitutional suicide. And it is questionable whether either of them would have

1 Congressional Record (62nd Congress, 2nd Session):3366-3367.
3 Ibid., p. 451.
had a chance in a mass election. The field now opened to the ambitions of a Huey Long or a Joseph McCarthy left little room for men who refused to flatter their sovereign constituents.

As has been consistently maintained, the Seventeenth Amendment offered more democracy to cure the evils of democracy. Hence, the changes it brought about have generally exacerbated the problems they were intended to solve. The most obvious example is the importance of money. Compared to the ten or so millionaires of the early 1900s, over half the Senate members are millionaires today. An inflationary century might make this a relative comparison, but it does not change the fact that the Senate after direct elections is as much a rich man’s club as it has ever been.

There is nothing intrinsically wrong with senators belonging to the wealthier classes. More disconcerting is how influential, if not indispensable, money has become to win an election. In the century since the Seventeenth Amendment went into effect, the cost of winning a Senate seat has risen to an average of more than $10 million nationwide. An increasing proportion of campaign contributions comes from nationally organized interests outside the state a senator actually represents — the difficulties of uniting factions in a large republic having been apparently overcome by mass communications. Whereas such interests, in attempting to influence the Senate, had once presumably needed to buy a majority of the legislators in a majority of states, they now attempt their purchase more directly. It is the legislative “machine” all over again, but on a national level.

As was true when the state legislatures still elected senators, corporate donors prefer to give to incumbents, no matter what their ideological persuasion. Challengers often have to wait until after the primaries, or even until late in the campaigns, in short, until they look like a more certain bet for the money. It is not too unusual to see two opposing candidates obtaining funds from the same contributor. In saying that the Senate is hostage to “special interests,” however, it would be a mistake to think of it as the servant of the few exclusively. A great diversity of competing constituencies are represented in the lobby, and Congress must endeavor to please them all.

Not that the institution has gained the popular trust since it became more “responsive” to popular demands. Opinion polls consistently reveal that the vast majority of Americans think members of Congress are “dishonest” and “favor special interests over the needs of the average citizen.” As one late-twentieth century liberal senator observed, Congress’ popularity is at about “the level of a used car salesman.” Interestingly enough, the same majority thinks their own congressmen and senators are doing a fine job. The latter apparently represent “the people.” Lawmakers from other constituencies are catering to special interests.

But the sad truth is that the average citizen is apt to know far less about the character and conduct of his senator than he did before direct elections. This is probably the single greatest irony of the whole direct democracy movement. It was predicated in large part on the ability of the modern media to inform the public, and yet the amount of voter attention to what their politicians have said and done has been inversely proportional to the immediacy with which it was possible to report it. A hundred years ago, entire speeches from Senate proceedings were quoted verbatim in the daily newspapers. Today, senators vie with each other for as few as five second “sound bytes” on the evening news. Some of them go to extreme lengths,

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11 Congressional Record (101st Congress, 2nd Session): S11468.
However, to keep up appearances. Full-time staffs are retained for the sole purpose of keeping in touch with the Folks Back Home. A wide variety of form letters, generated by “constituent-minded computers,” are available to any senator wanting to assure all inquirers that he is in complete agreement with them — whatever the issue. For good measure, Senate staffers are equipped with the latest office technology, such as automatic pens that add the boss’s personal signature to the correspondence churned out in mass mailing campaigns.

During election season, when Senate candidates are turned loose to meet the public, voters are rarely brought any further out of the dark as to who is asking for their endorsement. The vast majority of campaign money is spent on advertising, increasingly on thirty or even fifteen-second appeals on television. Large commissions are paid out to successful public relations firms, armed with the latest marketing data, to yield the highest emotional response to any issue. Media consultants rehearse with candidates to enhance the personality that comes across the airwaves. It would seem that as much as ever, if not more so, Senate elections still hinge on decisions made in the smoke-filled room.

In sum, the Seventeenth Amendment has failed to drive the influence of money, special interests, and backstage manipulators from the election of United States senators. On the other hand, as intended, it succeeded in making the Senate more responsive, by definition less deliberative. It’s role in restraining federal expenditures, for example, has gone the way of indirect elections. While it is true that electing senators by state legislatures was intended to protect the states from federal encroachments, it is conversely true that it was also designed to insulate senators against popular pressures to sacrifice the national interest to regional ones. In the decade before the direct election of US senators, 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. A century afterwards, the federal government now supplies one out of three dollars in state and local revenues.

This proportional shift reflects how far the balance of the original “partly federal, partly national” republic has tilted in the direction of mass democracy. To recall, observers as widely divergent in their political views as Elihu Root, James Bryce and Herbert Croly understood the direct democracy movement of the Progressive Era to be a surrender of the representative authority and responsibility of state legislatures. The ability to represent the interests of a state had been difficult enough in the early republic, when elections were annual and legislators were expected not to deviate from constituent instructions. When they complied with popular wishes, the ensuing carnival of expenditures resulted in constitutional amendments restricting what legislatures were permitted to deliberate. Matters ably addressed by ordinary statute had to be written into state constitutions to keep them beyond the reach of the special interests that state legislatures were said to represent, while a history of tax revolts, particularly in states with some form of the plebiscite, reduced the means of raising revenues locally.

Even though it was justified in part to redress pork-barrel spending in Washington, the Seventeenth Amendment did not abate the appetite of constituencies for government services. On the contrary, coming as it did less than two months after the Sixteenth Amendment, also known as the Income Tax Amendment, it provided popular access to a far larger pool of

revenue than the states could ever have summoned individually. In other words, the democracy that undermined the representative capacity of state legislatures, that brought about direct legislation, the direct election of senators, and the all-but-direct election of presidents, also brought the direct taxation on personal income by the federal government, and thus over time, the distribution of federal resources directly to the people. Accordingly, federal expenditures on constituents now go well beyond state and local budgets, subsidizing massive programs of direct entitlements.

This system of wealth redistribution has been in place for so long, and is so ingrained in American political and economic life, that to object to its constitutionality at this point is to lock the barn door after the proverbial horse has escaped. As a phenomenon of mass democracy, however, it is noteworthy that such extraordinary outlays are categorized as “mandatory,” in contrast to the mere third of federal budgeting that Congress considers to be “discretionary.” Confiscating all taxable corporate income, as well as the adjusted gross income of every taxpayer earning more than 66 thousand dollars a year could not fund these programs without increasing the already astronomical public debt, 16 yet it is virtually impermissible for Congress to deliberate upon the costs. The concept of mandatory funding is, of course, a contrivance intended to portray these entitlements as the inviolable rights of the people, above the sordid reach of self-interested politicians. When economic reality ultimately trumps wishful thinking, it will prove as meaningless and revocable as debt ceilings and automatic sequestrations, the congressional contrivances for demonstrating fiscal accountability and resolve. In actuality, they are all examples of the longstanding American tradition of legislators exculpating themselves from having to deliberate the contingencies of legislation.

As Senator Root predicted, without strong representative institutions in the states, Congress would get weighed down by the minutia of legislative and administrative burdens that should rather be borne locally. As it turned out, without statesmen in the national legislature willing to withstand constituent pressures — whom state legislatures no longer had responsibility for promoting — Congress would buckle under the tonnage of special interest legislation that members in both houses have had to vote upon, largely without reading. All that seems to matter is that constituents and sponsors are taken care of, and that the party justifications sound grandiose enough for mass consumption.

The scale of politically-driven redistribution being attempted in the United States does not bode well for basic accountability. While the United States has never been more democratic in its political participation, it has never been more plutocratic in its political rewards. The government that is reluctant to require even basic proof of citizenship as a qualification to vote is the same government that loans hundreds of billions of dollars on exceedingly generous terms to politically-connected enterprises deemed too big to fail, regardless of their prior mismanagement or morally hazardous risk-taking with other people’s money. It is tempting to suggest that the minimal property qualifications of the past preserved a better distribution of wealth than has been accomplished through universal suffrage. At the very least it can be asserted that the mass democracy which doles out mobile phones and breast pumps to needy constituents is by no means consonant with the insider government that hands over monstrous bailouts and subsidies to crony capitalists.

By comparison, the Kingdom of Sweden, that imagined paragon of socialist democracy, only disburses government entitlements among a population smaller than that of North Carolina. With respect to that nation’s notoriously heavy taxes on wages and salaries, the greater portion of such revenues are collected and distributed by municipalities and county governments, with only the wealthiest citizens paying the national income tax. 17 By contrast,

the percentage of payroll taxes raised and disbursed by Washington is a marvel of imperial tribute. To put the Scandinavian kingdom under a comparable scheme would require Swedes to hand over at least a quarter of their paychecks directly to the European Union government in Brussels.

A three hundred million member nation state can not be well governed without a recognition of the limits of political egalitarianism. Strong representative institutions capable of deliberating the national interest are by definition inegalitarian, to the extent that it is only the representatives who may participate in the making of the laws. Strong state and local governments are likewise inegalitarian, inasmuch as they place a ceiling on all but the few issues that merit consideration at the national level. But the passion for equality overwhelms these intermediaries and favors centralized decision making. With the demise of representative hierarchy, and the virtual surrender of the smaller platoons of government signified by this demise, Congress has had to resort to an executive bureaucracy to sort out the details of all its unread enactments. It is no wonder that after two hundred years of democratic advance, the president is popularly expected to be the giver of laws, the declarer of wars, and the overall arbiter of resources.

Henry Jones Ford observed that when the House of Representative was the only branch elected directly by the people, it was the engine of the federal republic, the initiator of legislation, the keeper of the purse, and the branch of government that enjoyed the popular trust above all others. That was before the presidency became a popular institution. In choosing George Washington, presidential Electors had been unanimous, and appointing the Chief Executive was a dull but solemn affair. Alas, party faction over the presidency ensued ever after. By Andrew Jackson’s time, the idea of Electors having wills of their own had gone the way of indirect elections, and the House had lost its luster in the popular eye. The president, after all, was elected by a much larger constituency.

This was the nascency of America’s mass democracy. Effecting popular elections for the highest office in the land required permanent party machinery at the national level, machinery that would require funding, and sources of funding that would expect political consideration in return. At the scale of the continental nation state, demagoguery is an intrinsically expensive proposition. Even local elections become tainted with party money in a regime so engrossed in the mass election of its highest officers that prospective congressman and state legislators have to hire advertising strategists to get the attention of their community’s electorate.

Meanwhile, the president has become a global celebrity, traveling the world in opulent comfort, accompanied by a princely entourage and a Praetorian Guard. He is expected to make a speech of condolence or concern or apology after every misfortune, and to have a plan for the relief of every aggrieved constituency. It could be argued that the job of being hero of the people impinges on his ability to execute the laws, exercise discretion in treating with foreign powers, and command the respect of the armed forces, but as the one officeholder elected by all the people in the land, he carries the burden of delivering all that politics is expected to deliver, which is almost everything. Accordingly, he enforces only the laws he agrees with, makes his own proclamations where there is no law, and regularly commits impeachable offenses, with rarely an objection from those constitutionally empowered to stop him, at least not from those in his party.

The egalitarian finds gratification in everyone having an equal vote in the appointment of the “the most powerful person in the world.” It concerns him little that the individual voter has statistically zero influence over the outcome of mass decisions, and even less that this

2012, p. 46.
enormous power in which he imagines himself to be participating was born out of the corruption of the representative hierarchy, without which checks and balances are doomed and federalism is a dead letter. The story of this corruption begins at the very founding of the republic, in the heady days when the colonies declared their independence from an abusive monarchy, only to engage in the abuses of democracy when exercising their power as sovereign states. The Constitution created a stronger union while attempting also to restore the classical balance of the one and the few against the many, using separate, indirect systems of election to promote the President and Senate. But the rationale for indirect elections, and for the classical balance of power they were intended to sustain, was no match for the Enlightenment era notion of citizens obeying no one but themselves, a notion which was ultimately at odds with representative government.

If the collapse of the College of Electors in the 1820’s represented the first wave of mass democracy to strike against the edifice of original intent, then 1913 was the year in which the waters finally rose above the federal level, having steadily submerged the system of representative checks and balances for more than a century in the states. The states were supposed to be the fail-safe dikes against the national democracy, but given their own democratic proclivities, they could not indefinitely uphold the original mode of federal elections against the egalitarian tide. Structurally weakened, the state legislatures finally gave in with the direct election of United States senators. While the amendment did not dissolve every constraint on popular sovereignty, it certainly helped to set in motion a government over hundreds of million of souls that could be “managed merely by decrees.” What repercussions those decrees would have upon the national interest and the preservation of liberty, the few remaining constitutionalists of 1913 were hardly equipped to forecast, but to their reasoning the jubilation over the Seventeenth Amendment was proof enough that the American polity was already out of kilter.

And to this sobering reflection was cruelly added the next Progressive amendment, which constitutionally denied them the solace of drink.