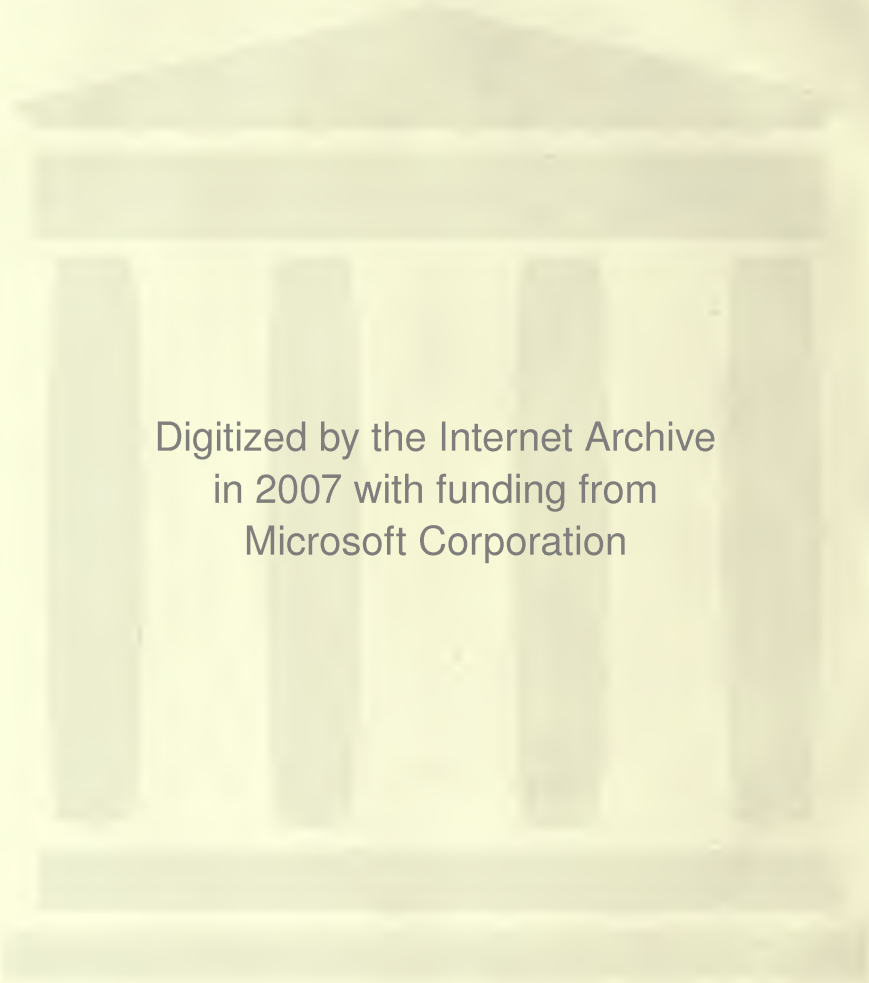

THE REFORM OF THE SENATE.

BY

WENDELL P. GARRISON.

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It might plausibly be maintained that the United States Senate is the most corrupting element in our national political system. This is not because it has become, as is sometimes alleged, a club of millionaires. Such a consummation would not have displeased certain of the framers of the Constitution. General Pinckney opposed the payment of salaries to Senators, on the ground that their branch "was meant to represent the wealth of the country," and that, in the absence of salaries, "the wealthy alone would undertake the service." Franklin seconded his motion. George Mason would have annexed a property qualification, since "one important object in constituting the Senate was to secure the rights of property." Their views did not prevail, but the millionaires have arrived, and make no scruple about drawing their salaries. They are a consequence of the mode of electing Senators established by the Constitution, and a part of the general demoralization ascribable to the same cause.

Notoriously, the Senate was the great stumbling-block — almost the *crux* — in the constitutional settlement. Edmund Randolph's plan provided for its election by the House "out of a proper number of persons nominated by the individual legislatures." George Read's substituted the President for the House. Dickinson, following Spaight, of North Carolina, moved that the legislatures elect. Wilson, of Pennsylvania, on the other hand, advocated direct popular election; arguing that a choice by the legislatures would "introduce and cherish local interests and local prejudices." Any of the rejected schemes, we can see, would have had its own dangers and abuses; but who can say whether the result would have been more disastrous than that of Dickinson's, under which we have worked for a century? Read thought he foresaw, from the general character of the Constitution, an end of the federal system by absorption, so that the state governments would "soon be reduced to the mere office of electing the national Senate;" and this fear found an echo in the ratifying conventions. Thus, in Pennsylvania, John Smilie, speaking for the minority in opposition, said the state legislature would "necessarily degenerate into a mere name, or at most settle in a formal board of electors, periodically assembled to exhibit the servile farce of filling up the federal representation." In New York, again, it was objected that the Senate would tend to perpetuate itself, and Chancellor Livingston retorted: "Can they make interest with their legislatures, who are themselves varying every year, sufficient for such a purpose? Can we suppose two Senators will be able to corrupt the whole legis-

lature of this State? The idea, I say, is chimerical. The thing is impossible."

No contemporary, so far as I can discover, anticipated the precise evil which has brought us to our present pass, and which is touched upon, all too lightly, by Mr. Bryce in the chapter on the Senate in his American Commonwealth. After quoting Hamilton, in The Federalist, as saying that the Senate would furnish "a convenient link" between the federal and state systems, Mr. Bryce remarks (the italics are mine): —

"In one respect this connection is no unmixed benefit, for it has helped to make the national parties powerful and their strife intense, in these last-named bodies. *Every vote in the Senate is so important to the great parties that they are forced to struggle for ascendency in each of the state legislatures by whom the Senators are elected.*"

In other words, the Constitution from the beginning insured the coincidence of state with federal party lines. This, it may be admitted, tended irresistibly to the consolidation of the country, but it had also the effect of mischievously prolonging the term of party existence; producing artificial divisions in local matters; making party fealty, and not competence or honesty or patriotism, the credential of office-holding at every degree of the scale, whether state or federal; and so leading to the steady deterioration of the personnel of state legislatures, the growth of machine rule, the purchasability of senatorships, and the decline of the federal Senate to what we now see it, — in large measure a medley of millionaires, "bosses," and the representatives of selfish interests.

If we must have parties, it is highly desirable that they should arise spontaneously, on clearly formulated principles and with definite objects; that they should cease to exist as soon as possible after these objects have been attained; that they should be easily attacked when the love of power becomes the real motive for existence, and when insincere professions take the place of genuine beliefs and aspirations; that honest members should be free to withdraw, and coöperate patriotically with others of like mind; that we should not go on stupidly transmitting from sire to son the antipathy begotten by obsolete party differences which have been outlasted by party names. To such flexibility the Constitution has erected a formidable barrier in the provision which forces state politics to turn upon the national complexion of the legislature, and makes the arbitrary control of that body by the managing spirits of the great parties the key to the political game.

That a governor, again, in ordinary times, or a mayor, a town collector, an overseer of the poor, a constable, should be selected for his national party badge, and not for fitness and probity, is of course destructive of the idea that public office is a public trust, derived from the people and answerable to the people. Have we not here the germ of the most of our civic corruption? The very existence of the machine and the boss is involved in keeping up this vicious confusion of things entirely distinct, and in hindering the subservient partisan from voting upon the real local (state or municipal) issue, or upon the character of the candidate, by making his concern for the success of the national party paramount. So long as this state of things continues, it seems hopeless to look for any such purification of our politics as will tempt men of refinement, honor, training, and public spirit to seek a statesman's career. The federal Senate, which should be the assured goal of the class competent to govern, and a model of legislative dignity, capacity, and behavior, cannot be expected to fulfill these functions while the state legislatures remain vulgar, petty, and sordid; and the state legislatures, in their turn, cannot avoid these vices so long as their excuse for being is prima-

rily to elect Senators, and only secondarily to attend to the affairs of their respective commonwealths.

One who examines the subject closely, in search of a remedy short of an amendment of the Constitution, will fix upon the abrogation of the existing statute regulating the election of Senators, and propose either the substitution of a new law, or the relegation to the several States of the control of the whole matter. The statute in question was approved on July 25, 1866, by President Johnson. It was introduced by Senator Clark, of New Hampshire, pursuant to instructions to the Judiciary Committee, on motion of Senator Williams, of Oregon, to inquire into the expediency of providing a uniform and effective mode of securing the election of Senators in Congress by the legislatures of the several States. It was reported — as Senate Bill 414, "to regulate the times and manner of holding elections for Senators of Congress" — and read and passed to a second reading on July 9, 1866. It excited no partisan opposition, and was passed two days later, after a short debate. On July 12 it was ordered printed by the House; on July 23 it was read three times without debate, and passed by a large majority. It was intended, in the language of Senator Clark, "to avoid the questions and differences that have sometimes existed." In this it has only partially succeeded, while it has tended steadily to impair the quality of the Senators returnable under it.

The law provides that the two houses of the legislature shall meet and vote separately for Senator on the first ballot, afterwards in joint convention; that voting shall be *viva voce*, and election by majority; and that at least one vote daily shall be taken till election is arrived at.

All these provisions encountered weighty objections. Senator Sherman, who voted in the negative, and who, from past experience, saw little need of Congress availing itself of its constitutional right to interfere, preferred a joint convention at once, advocated election by plurality, and was indisposed to interrupt the legislature's proper work till the senatorial election was got out of the way. He also pointed out the awkward effect of the law in the case of States holding biennial elections, — that a vote for Senator might have to be taken fifteen or eighteen months in advance. Senator Fessenden made a strong but ineffectual stand against the viva voce vote, as not being the usage in his State of Maine for one thing, and because "it is generally understood that the ballot is a more free and unembarrassed mode of voting." Moreover, he said, the viva voce vote was liable to put men "under restraints from party discipline which would lead them to act against their conscientious convictions of what was right and proper in the individual case, and which might bring a sort of compulsory pressure upon them which might be objectionable." Against this, Western usage was held up by Senators Trumbull and Williams: Trumbull saying that constituents had a right to know how members voted, and that there would be no chance to cheat by false or double ballots; and Williams, that members were frequently instructed by constituents how to vote, and the latter had a right to know if their mandate was obeyed as it should be. Senator Anthony, of the pocket borough of Rhode Island, even advocated open voting by the people at the polls as the only true way; alleging, "It prevents corruption, it prevents deception, and cultivates a manly spirit everywhere." Senator Sumner was of the contrary opinion as regarded popular elections, but held that in the legislature the votes belonged to the constituents. Mr. Edmunds and Mr. Sherman voted with Mr. Fessenden, and there were three others of like mind; but twenty-eight held to viva voce.

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It cannot be doubted that the overruling of these objections played admirably into the hands of the machine, insuring its control of the nominations and its marshaling of supporters by party pressure and by purchase. The open vote does not "prevent corruption;" it favors it by putting an obstacle in the way of treachery on the part of the bribed. It "prevents deception" of a certain kind, while fostering the grave deception that the legislator is voting according to his "conscientious convictions," and not from "compulsory pressure." It "cultivates a manly spirit," such as rings and machines most delight in, or manufacturers who wish to coerce the vote of their employees. Happily there is no need to insist on this point, as we are in the midst of an extraordinary movement, State after State, to substitute everywhere the secret for the open ballot as a means of restoring a manly spirit to the voter, protecting him from the consequences of his vote, and, above all, enabling him to baffle the cut-and-dried schemes of the caucus and the machine with independent nominations, having a chance of success without great outlay or preliminary organization. The Australian ballot, in fact, whose potency in purifying our politics cannot now be calculated, but which is certain to be very great, commends itself for adoption wherever the corruptionist or the boss finds a field for his devilish activity; and were the States once more free to elect Senators in their own fashion, this mode of voting might stand a chance of being prescribed for senatorial elections.

To make it of the greatest utility for this purpose, however, it ought to operate on a greater number of nominations than are commonly presented to a legislature by the respective party machines or caucuses. To secure these we must look to the people, making an appeal to them in advance of the mischief which they are now powerless to stave off or to repair. For this we have the warrant of the supporters of the statute of 1866 themselves. Senator Williams, as we have seen, held that, despite the constitutional injunction that the legislature should choose Senators, constituents had a right to instruct members how to vote, and to be obeyed; and Senator Sumner quite as frankly took the same ground. Both, in other words, acknowledged the rightful force of public opinion in shaping the legislature's action; and, as a matter of history, Senators have, in certain States, again and again owed their reëlection to respect for the popular sentiment and tradition in favor of retaining faithful servants in office.

Let us, then, suppose the States free to give to the people the power of nominating, at the proper general election, candidates for the approaching senatorial vacancy. Suppose that these nominations were reached as now under the ballot-reform laws; the State printing on the official ballot the names of such as had a certain group of petitioners behind them (say three to five thousand). Then let the five to ten highest be the popular instruction to the legislature to choose from among these, and let the legislative voting take place in joint convention, again by the Australian system, each member to vote on the first ballot for three on the list; on the second, for one (or two, as the case may be) out of the three highest as determined by the first ballot. In case of a tie, let the decision be by lot.

From this method certain obvious benefits would accrue. The legislator's choice would no longer be — as it too often is now, as the common voter's generally is — merely a choice of two evils. The people of the State would scan eagerly their own list of candidates, and could not avoid the comparison between the most worthy and the least, especially if the latter were the party nominees. A man fit to be Senator

would have a decided prestige when proposed in this manner as against the product of intrigue and jobbery. Such men would tend to multiply in the popular nominations, inasmuch as they could allow their names to be used without loss of self-respect, and with no obligation to work in their own behalf. Their appearance in the public view as ready to serve the State would recommend them for election to the legislature or to the lower house of Congress; in either of which positions they would demonstrate their fitness for promotion to the federal Senate, while meantime elevating the bodies to which they were elected. Moreover, if an abundance of good material were always in sight, the practice of nominating non-residents of the congressional districts, which is much to be desired, and which was signally exemplified last year in Massachusetts in the case of Dr. William Everett, would become common.

If a precedent be demanded for nominations in the manner just described, we can cite that recalled to mind by President Welling in a recent address on Connecticut Federalism before the New York Historical Society.

"I must add," he says, "that the old electoral system of Connecticut was ingeniously devised to promote the genesis of a natural aristocracy, — the aristocracy of talents and virtues. Each freeman in the colony was required, in September of each year, to name twenty men whom he wished to have placed in nomination for the office of 'Assistant,' the so-called 'Assistants' being the dignitaries who composed the Council, or colonial Senate. From the mass of nominations made at these primary assemblies of the townships, the General Assembly, six months before each election, selected and published the names of the twenty men who had received the highest number of nominating votes, and these men alone could be voted for on the day of the final election, when twelve out of the twenty were to be elected."

Nearer in point of time and to our present purpose is the Massachusetts practice during the first quarter of the century, by which each congressional district nominated three presidential electors, of whom the legislature chose one for each district, besides the two electors at large.

Still closer and more recent is the provision of the Constitution of Nebraska (1875) noticed by Mr. Bryce. The electors, in voting for state legislators, are allowed to "express by ballot their preference for some person for the office of United States Senator. The votes cast for such candidates shall be canvassed and returned in the same manner as for state officers." The futility of this, however, is apparent, as the legislature is in no way constrained to pay any heed to public sentiment. In fact, in actual practice, this privilege has only once been availed of by the people of Nebraska, namely, in 1886, when General Van Wyck made an active canvass in his own behalf as an anti-monopolist. The Republican and Democratic parties abstained from preliminary nominations, and General Van Wyck secured in November about a third as many votes as were cast for governor. In January, on the first two ballots, he received a plurality of the legislative vote, but was finally rejected.

To head off the machine, to give back to the people the right of *nomination* as well as of election, to restore to the state legislatures their stateward-looking character and duties, to divorce (so far as is possible) national from state politics, to fill the federal Senate with men whose prime qualifications are unpartisan and whose election is spontaneous, to pave the way for the reëntrance into politics of the cultivated classes to whom it has become abhorrent, — all this may be accomplished by making the choice of United States Senator un-

certain to such a degree that no political rewards can be promised or obtained in connection with it. Let the people nominate, let the legislature choose, within limits. Mr. Bryce remarks on the Nebraska provision that it is "an attempt to evade, and by a side wind defeat, the provision of the federal Constitution which vests the choice in the legislature;" and of course the same criticism would apply *a fortiori* to the scheme set forth in this paper. But is it certain that the courts would so pronounce? The legislature would still *choose*, if under conditions prescribed by the state laws, supposing the statute of 1866 to have been abrogated. Moreover, in practice, its range of choice would be, not diminished, but enlarged. Nobody has challenged, or would venture to challenge, Mr. Bryce's own account of the existing procedure. Senators, he observes, "are still nominally chosen, as under the letter of the Constitution they must be chosen, by the state legislatures. The state legislature means, of course, the party for the time dominant, which holds a party meeting (caucus) and decides on the candidate, who is thereupon elected, the party going solid for whomsoever the majority has approved. Now the determination of the caucus has almost always been arranged beforehand by the party managers. . . . Circumstances may change, compromises may be necessary; still, it is now generally true that in most States little freedom of choice remains with the legislature. The people, or rather those wire-pullers who manage the people and act in their name, have practically settled the matter at the election of the state legislature."

But what if the wire-pullers find that electing the legislature is not the same as electing the Senator? They will lose the chief reason for interfering with these elections, which will tend more and more to be governed by local issues and personal merit. The men thus sent up will be more independent of party, and more free to choose wisely and patriotically from the list for Senator returned by their constituents.

The stability of the federal Senate is, no doubt, a wholesome feature of our Constitution, but we must not forget that this branch became the bulwark of slavery, which measured its term of life by the preponderance of its supporters in the upper house. Two years ago, the promoters of our present tariff legislation were confident that their control of the Senate would prevent for years to come the undoing of the extremest measure they might carry in the short interval of their having a majority in the House of Representatives also. Certain accidents by which the engineer was hoist with his own petard have falsified this calculation; but the danger is a standing one, and the Senate ought never to be counted upon as the citadel of sectional or selfish combinations. The law under which it is now renewed favors such a perversion of it, and it has not prevented deadlocks. It is time that the States should ask to have their freedom restored to them,[1] and take the penalty of going unrepresented so long as they cannot agree upon a candidate. We might then introduce by degrees the combination of popular nomination and secret balloting described above, and trust to a steady if slow amelioration of the whole tone of our politics, a decline in the persistence of parties and a falling-off in party management, the emancipation of the state legislatures, the reformation of the federal Senate.

Wendell P. Garrison.

[1] While this article has been passing through the press, the Illinois legislature has taken the initiative in a movement to amend the Constitution so as to provide for the election of United States Senators by popular vote.