National political order in nineteenth-century America was dominated by two institutions, courts and parties. Corresponding to these two institutions were two dominant frameworks of thought, constitutional law and democratic individualism. Both forms of thought received their distinct marks early in the nineteenth century, with constitutional law predating theories of democratic partisanship. Symbolized by the figure of John Marshall as founder-statesman and codified in the legal writings of Joseph Story, constitutional law possessed a "national" and even an "organic-historical" self-understanding.

Democratic individualism, although deriving its theoretical origins in the Jeffersonian opposition to the Federalists (and from earlier Anti-Federalist writings generally), was institutionalized in the Jacksonian invention of the mass-based and electorally oriented political party. Tocqueville's *Democracy in America* held that democratic individualism was the natural product of a people born equally free and collectively sovereign, but only if freed from the prior constraints of the "great parties" and elite leadership that marked the founding period.

As dominant institutions and as dominant modes of political think-
ing, this regime of courts and parties would appear inherently—even massively—at odds with itself. The institutional framework for constitutional law is formal in the extreme: a hierarchic system of state and federal appellate courts and court personnel, canonical casebooks and legal treatises, and, in various forms over time, systems of legal education, bar organizations, and standards of professional success. In contrast, the political party framework of democratic individualism is both informal and protean in organizational expression. Prior to Progressive regulatory reforms early in the twentieth century, party leaders were informally chosen, were accountable to no body of officials, and exercised a constantly changing and bewildering number of powers. Attaching themselves to every level of government and all of its branches, forging ties to newspapers and magazines, ethnic and religious groups, and every conceivable form of economic interest, and adopting the vocabulary and styles of every expression of region and culture, party leaders made of the political party whatever significant numbers of voters and interests wanted it to become. During one election in 1854 in Hartford, Connecticut, twenty-three distinct party groupings ran candidates for office at the various levels of government (Billington, 1964, 390). Even in that most ritualized period of two-party competition following the Civil War, state and local party leaders were constantly innovating in organization and technique, if only to ward off the possibility of defection or third-party movements. Party leaders, came (and went) in every conceivable guise, reflecting the inner variety of the electorate, the economic, social, and demographic changes over time, shifting patterns of coalitions and alliances, and the changing political values of the American voter. With the exception of narrowly based "movement" parties, partisan political thought achieved coherence only at the national level and then less as programmatic guides than as encoded cultural appeals and as concessions to various interests in the coalition.

3. For example, in the five-year period 1903–8, thirty-one states passed legislation mandating direct primaries for political party nominations. McCormick, 1986, 343; and see Kelly, Harbison, and Belz, 1983, 438–43, for a range of antiparty measures at this time.


5. McGerr, 1986, 69–105, shows how party leaders began changing the tone and style of party appeals beginning as early as the late 1870s in response to the growing sophistication and antipartyism of the northern urban middle class. This kind of nonpartisan party appeal became increasingly common in the core regions of the country, with the Republican party emerging as the chief beneficiary and finally hegemonic victor in 1896.
These marked institutional and intellectual differences between parties and courts were most obviously played out in conflicts between state legislatures and state courts. And, insofar as the federal court system was heavily shielded from immediate partisan pressure and was staffed by those whose autonomous professional values were most strongly held, disputes between states and the national government were actually contests between state legislatures and national courts and therefore between the populist ideals of democratic individualism and the legal-institutional logic of constitutional tradition. Finally, there were major ethnocultural differences. The federal appellate judiciary and most state appellate judges were not only WASP to the core, they vastly overrepresented mainstream religious denominations, especially Episcopalians, Unitarians and, later, Methodists. In contrast, party leadership and elected officials at all levels were much more ethnically, religiously, and economically diverse.

Given these marked differences, one would think that Progressive intellectuals would naturally gravitate toward and attempt to integrate their historical theories and reform ideas into the long-standing and rich tradition of constitutional law. The nationalism of the courts, the organic-historical features of the common law, the tradition of professional autonomy and public service of the bar and of legal education would all seem to have beckoned to reformers at this time. But this was decidedly not the case. Constitutional law and the leading lights of American legal scholarship were treated by Progressive intellectuals with studied neglect as a kind of fossilized and symbiotic complement to the party system, which, in turn, they treated with studied contempt. While there are many historical-cultural reasons for the Progressive’s neglect of the constitutional legal tradition—foremost is the antilegal sentiment deeply embedded in Calvinist theology—there is a

6. Friedmann, 1985, 412–87 and 511–71; and Hurst, 1956. As Oliver Wendell Holmes cryptically expressed it: “We suppose this phrase [state police power] was invented to cover certain acts of the legislature which are seen to be unconstitutional, but which are believed to be necessary” (quoted in Keller, 1977, 410).

7. Earlier groups of reformers and intellectuals in the Gilded Age often included large number of lawyers, for example, the “Mugwumps” and the members of the American Social Science Association. John Commons, writing in the early 1890s, recognized this fact when he expressed the hope that he would “see the day when the leadership in the social movements of our time will be taken from the lawyer and the newspaper and given to the Christian minister. We cannot expect to have a society based on righteousness so long as our social philosophy is given to us by [party] editors and lawyers. They are put forward to favor special interests. But where is the advocate of the masses, of the great brotherhood of man? Where is the truly judicial mind, whose purpose is to bring to pass the kingdom of God on earth?” An earlier proviso is that the minister be trained in sociology (Commons, 1894, 23, and see 19–22).
deeper rationale to this result that only a few of the Progressives clearly recognized and then only quite late in the period.\(^8\)

Despite the obvious differences between the forms of political thought institutionalized in courts and in parties, their separate fates were inexorably linked together in the nineteenth century. It is no accident that two of the most creative and original periods of American legal scholarship occurred at precisely those periods when parties and a lusty political democracy were most active and dominant. By the end of the Jeffersonian era the awesome energies of democratic individualism described so well by Tocqueville created an explosive demand for legal ideas and doctrines to channel and contain those energies. Both then and now, this period is viewed as a golden age of American legal scholarship, and one in which the lawyer attained a luster unmatched in the history of free governments.\(^9\) Another extended period of legal creativity occurred during the Gilded Age, again when party was king and the energies of democratic individualism were unleashed. Here, too, a union of capitalism and the creative legal mind in America was forged, but this time the midwife was the corporate lawyer and the issue new forms of corporations, trusts, and financial instruments. The results for constitutional law were new legal doctrines making clear their way in a land still consisting of isolated localities of small-producer capitalists and realty interests. These older economic interests and economic regions both lusted for the benefits and sought to avoid

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8. Croly, in *Promise of American Life* of 1909 has long sections excoriating government by law and lawyers, but only in *Progressive Democracy* of 1914, chaps. 6–8, does he portray the relationship between constitutional legal thinking and democratic individualism as mutually sustaining. "The particular expression of the conservative spirit to which progressivism finds itself opposed is essentially, and, as it seems, necessarily doctrinaire and dogmatic. It is based on an unqualified affirmation of the necessity of the traditional constitutional system to the political salvation of American democracy. . . . It has been and is being acclaimed . . . as a consummate system of law and government, framed under a final political philosophy, to satisfy the essential conditions of individual liberty and wholesome political association" (20–21).

9. For the self-congratulatory rhetoric from the upper bar during this period, Miller, 1962, especially lectures and orations by Joseph Story (1821 and 1829), Charles Jared Ingersoll (1823), James Kent (1824), Rufus Choate (1845), and David Dudley Field (1855). Given the Federalist-Whig values of the elite bar and given Tocqueville's characterization of the American lawyer as naturally "aristocratic," this mutual flourishing might appear paradoxical, but both jurists and Tocqueville knew that the more active the American democrat, the more dependent he became upon creative lawyers. Hurst, 1956, shows just how this mutually beneficial alliance between the lawyer and the American democratic capitalist was struck in the Middle Period. Louis Hartz (1954) anoints this alliance into a permanent bond, blessing the result as "the liberal tradition in America."
the competitive costs of the emerging national transport, industrial, marketing, and financial institutions.  

This association of the release of capitalist energy and legal creativity occurred precisely in those periods when, in the concurrence of contemporary observers and intellectual historians alike, the higher intellect in America was at an ebb and when intellectuals were least honored. The two golden ages of law in the nineteenth century, then, stood as a kind of paradoxical proof of American anti-intellectualism and provincialism. Although this story is complicated by other factors, most notably the democratization of professional entry and the lowering of educational standards in the Jacksonian period (Friedman, 1985, 303-22), American constitutional and legal thought could not escape this guilt by association with party and with the irresponsibility and excesses of democratic capitalism.

**CONSTITUTIONAL LAW, POLITICAL SCIENCE, AND POLITICAL HISTORY**

Despite the animosity between Progressive political and social theory and American legal thought, there were points of contact and attempts at intellectual mediation. Along with the political economists and sociologists so prominent in this study, there were distinguished American political scientists and political historians who also received German training and who studied and taught in the new American graduate schools. Political scientists and historians like John William Burgess (1844–1931) of Columbia, Herbert Baxter Adams (1850–1901) of Johns Hopkins, and J. Franklin Jameson (1859–1937) of Brown and Chicago, all linked history to politics through the study of the evolu-

10. This "battle of capitalisms" is the central thesis of Charles Beard's writings on both the founding and later periods in America. This same battle had its juristic counterpart in doctrinal and status battles within the legal community. On one side was the typical jack-of-all-trades lawyer—part-time land speculator, banker, politician, and judge—representing the older realty and small producer interests and, on the other, increasingly flanked by federal appellate judges, an emerging core of full-time law school professors, and some of the judiciary in the industrial states, the urban, college-trained, and highly specialized "corporate" lawyer (Friedman, 1985, 606–29 and 633–41). On this same battle as it was reflected in legal education and admission to the bar, see Stevens, 1983, 71–111; and Hall, 1989, 211–21. In 1876, Harvard Law School under Langdell introduced the case method and thus strictly national appellate court law in legal training. This started the Harvard model on its path to domination of legal training for the upper bar. Hegemonic victory for all of legal education was not achieved until the Great Depression and the demise of the nonuniversity law school (Stevens, 1983, 33–72 and 172–90).
tion of political and legal institutions. And this list must include the most famous political scientist-historian-constitutional scholar of them all, Woodrow Wilson (1856–1924), a student of Herbert Baxter Adams and Richard T. Ely and a prolific writer and lecturer on these topics. In addition to these new academic connections to the study of American constitutional law, "realistic" constitutional histories informed by an evolutionary historical perspective were written in the 1880s and 1890s. In addition to Jameson and Wilson, George Curtis, Henry Jones Ford, William C. Morey, James Harvey Robinson, Simon Sterne, and Christopher Tiedman all wrote either constitutional histories or constitutional analysis from an organic-evolutionary perspective.

Despite these seeming affinities, there are compelling reasons why Progressive scholarship was neither driven by nor even attracted to this body of work. The most obvious is that almost all the "realistic" histories of the Constitution stressed its "unwritten" aspects, to be sure, but often in order to attach party to Constitution, which at once legitimated the prevailing parties and party system and made of them a necessary instrument in the preservation of constitutional government. Insofar as the prevailing system of party government was seen as an obstacle to reform, the conservative thrust of this strategy is implicit.

This conservative tendency was augmented by the ways in which the historical antecedents to the U.S. Constitution were traced in this same literature. Whether tracked through British or American colonial institutional history or through dark Teutonic forests, the destination reached was a constitutional product both antimajoritarian and of closely limited powers, again far away from the larger intent of the Progressives. Indeed, the necessary stress on legal and institutional "mechanics"—no matter what the protestations of the scholars themselves

11. Herbst, 1965, discusses each of these men and others. Burgess founded Political Science Quarterly and was first dean of the faculty of political science and public law at Columbia, having first taught at its law school. Jameson, a student of Herbert Baxter Adams and the recipient of the first Ph.D. in history awarded by Johns Hopkins, was one of the founders of the American Historical Association (AHA) and cofounder and managing editor of American Historical Review, 1895–1928. Adams, another founder of the AHA, began the Johns Hopkins Studies in Historical and Political Science, a major publishing vehicle of the German historical school in America.

12. Belz, 1969; Curtis, 1889; Ford, 1898; Jameson, 1889; Morey, 1891; Robinson, 1890; Sterne, 1882; Tiedman, 1890; and Wilson, 1908.

13. Of the writings considered here, Wilson's was the most studiously Anglophile, holding that the framers intended the Constitution "to be a copy of the government of England" [1908, 42]. Most of the other historians laid more stress on the charters of the English trading companies in the American colonies, on colonial charters, and on early state constitutions. See Morey, 1891.
against "Newtonian" understandings—compromised any thoroughgoing historical and critical analysis. Thus, despite a Germanic gloss, these writers found it hard to ignore the obvious facts that most of our constitutions were "willed," usually written whole and changed whole, and that most of our political boundaries after 1789 were products of the draftsman's art, marching in grids across forests and prairies.14

Finally, constitutional history, no matter its grounding in new historical and evolutionary methods, necessarily focused on legally constituted political institutions, thereby raising artificial barriers between politics, culture, economy, and society just when Progressive scholars were attempting to lower them.15 Indicative of this inner tension and the consequent isolation of constitutional scholarship from Progressive intellectual life is the fact that as early as 1885, the *Johns Hopkins Studies in Historical and Political Science* dropped its emphasis on political-institutional history. Its editor and leading political-constitutional historian, Herbert Baxter Adams, announced that he was switching to American economic history.16

Insofar as political science as a professional discipline was so strongly tied to the Constitution, it, too, could never quite free itself of these same disabilities. Except as political scientists became sociologists or political economists, their service to the shaping of Progressive public doctrine was either secondary and derivative or a conservative counterweight. In terms of the broader relationship between the universities and legal scholarship, the political scientists and constitutional historians might be credited with building some bridges over

14. Simon Patten's one foray into American constitutional issues from an evolutionary-historical perspective ended in hopeless frustration. In a short piece on state and local governments in America, 1890, he surveyed all the willed and arbitrary mismatches between "natural" economic, demographic, and cultural units and operative political boundaries (rivers should *connect*, not delimit, he almost shouts) and concludes that we must totally reconfigure our state and local boundaries (he even suggests "free cities" on the German model) or continue to suffer the decay and demoralization of local and state governments. He concludes that the greater the mismatch, the more the opportunity for party bosses to dictate policy because publics cannot find themselves, understand each other, and thereby become coherent, active, and powerful. *Annals* 1(1890): 26-42.

15. Kloppenberg, 1986, chaps. 2 and 3, discusses the philosophical foundations of this position in America, Britain, France, and Germany and, in chaps. 8-10, traces the political and programmatic consequences.

16. Herbst, 1965, 114. In a 1917 article in *The New Republic*, Charles Beard gave popular expression to this long-standing academic fact: "Political Science in the United States has always been under bondage to the lawyers. This is mainly due . . . to the nature of our system of government which places constitutionality above all other earthly consideration in the discussion of public measures" (quoted in McCorkle, 1984, 341).
which some law faculty and other jurists might cross, but the path on the other side seemed only to circle back to prevailing institutions and practices. In short, starting in the mid-1880s, Progressive horizons were decidedly not constitutional and legal. The stress on inner character, shared values, public opinion, social knowledge, and spiritual progress impelled the Progressives toward ever deeper critiques of American constitutional and party government and to ever more extensive reconstructions of democratic theory to accommodate new institutions and alternative practices in American political life.  

PARTY, PARTY GOVERNMENT, AND DEMOCRATIC THEORY

Much of the Progressive case against formal governing institutions in America was indirect. Given the tradition of antipartyism, attacking party was a way both to undermine prevailing formal-legal institutions—including the Constitution—and to reform them to serve Progressive ends. At first sight, this may appear paradoxical, for no institution in the nineteenth century was more powerful than the mass-based political party in overcoming the antimajoritarian features of state and federal constitutions and none more effective in mobilizing popular political participation. This "movement" or mobilizing feature of party was not forgotten by the Progressives, often making their critique of party a very selective one. As coalitions of state and local machines and their allied interests, however, most parties in America are not institutions of conscious national purpose. It was this coalitional and local-interest idea of party that was most excoriated.

Without always realizing it the Progressives were attempting to reverse Tocqueville's scenario of party in America as democracy gains more and more power. Tocqueville had predicted that democratic individualism spelled an end to "great political parties" that in the founding period had lifted adherents beyond their own narrow interests and ways of life under the "moral power" of great leaders. Democratic individualism both destroyed deference and created distrust of powerful government, leaving only small parties and therefore no party "which seems to contest the present form of government or the present course of society." Interests rather than principles and a multitude of minute and petty differences "upon questions of detail" animate parties premised on individualism and equality. The only difference between the

17. Kloppenberg, 1986, chap. 10, gives an excellent summary of this vision of a democratic society found in both American and in transatlantic progressive and social democratic thought in this period.
two parties, he concluded, is that one will seek to extend the authority of the people and the other will attempt to hold it in check. Neither will be animated by a larger conception of national greatness or the public good (Tocqueville, 1981, 89-91). As both parties become agencies of democratic individualism they reinforce the rights-based features of American constitutionalism and weaken coherent structures of national political authority. As described by the new constitutional histories, parties enhance federalism, encourage the devolution of power, strengthen checks and balances, and require a politics of bargaining and compromise. What this system will not permit is critical inquiry and serious discussion of the common good. What neither "small" party can provide is a platform from which to measure and judge the quality of the standing regime. Together, the party system and the Constitution reinforce the status quo.

The great exception to Tocqueville’s logic and its implied prediction, was the formation and victory of the Republican party and the constitutional and political revolution of the Civil War. It was the memory of those events that served to keep alive the hope of another great national party. But it was this same memory that served to embitter those who witnessed the transformation of the Republicans into more and more of a "small" party after the war. This transformation was particularly evident in the Midwest, both because of the scale of economic and demographic change and because the parties were so evenly matched. It was this last factor that made the stakes so high. Whoever captured the Midwest and held it captured the national government. And because the axis from New York to Chicago was the increasingly dynamic core, arrogating to itself the wealth, talent, and population of the country, the core became more than a strategic prize on the way to victory; it was victory itself.

This combination of memory and hope gave Progressive antipartyism the aspect of a crusade and made of its rhetoric a jeremiad. This was not new. In 1835, the New England churchman Lyman Beecher had declared that "the West is destined to be the great central power of the nation, and under heaven, must affect powerfully the cause of free in-
stitutions and the liberty of the world." With language indistinguishable from that of the 1890s, he described the West—now the Midwest—as "a young empire of mind, and power, and wealth, and free institutions, rushing up to a giant manhood, with a rapidity and a power never before witnessed below the sun" (Beecher, 1835, 11–12). For Beecher, Catholicism, not slavery or party, was the barrier to the conquest of the West for the American errand. After the Civil War, this same image of the Midwest became the image of America. In 1891, Josiah Strong repeated Beecher's call: "Within the bosom of these few years is folded not only the future of the mighty West, but the nation's destiny: for . . . the West is to dominate the East." As this region is called to become the nation, so the call is to "America for the world's sake . . . [because] ours is the elect nation for the age to come." The social gospel movement, Strong included, joined religious millennialism and political antipartyism to redeem the nation.

Given this background, critique of party was suffused with moral and ethical passion. Samuel Batten, a prominent social gospel minister and college professor in Iowa, condemned the competitive party system because each party, in its single-minded desire for electoral victory, was constrained to take men as they are and appeal to their present selves and their immediate individual interests. The party system "stands between the people and the government and makes a fully democratic government impossible." This "subtle and silent . . . tyranny" of party mirrors the despotism of the selfish appetites of the unredeemed American individualist. At its best, party government "means stagnation . . . commonplace ideas and past issues"; at its worst, it "spells compromise and not principles . . . it means mediocrity and inferiority where it does not mean cowardice and corruption. A good partisan cannot be a good citizen" (Batten, 1909, 239–40).

Even Dewey's college textbook on ethics takes a poke at party government. Dewey first reminds the reader of the deep meaning of voting and other formal exercises of political rights: "Political freedom and responsibility express an individual's power and obligation to make effective all his other capacities by fixing the social conditions of their exercise." He then turns to party organizations, recounting their past historical service for democracy and their present opposition to extending democracy. His disgust is not disguised.

20. Strong, 1893, 199 and 253–54. The barriers to victory for Strong were many and various, including Mormonism, the moral dangers of urban life, materialism, economic inequality, and Catholic alternatives to Protestant-dominated public schools. Even Tocqueville indirectly recognized the power of this hope: "The civilization of the North appears to be the common standard to which the whole nation will one day be assimilated" (1981, 265).
These agencies are the 'machines' of political parties, with their hierarchical gradation of bosses from national to ward rulers, bosses who are in close touch with great business interests at one extreme, and with those who pander to the vices of the community (gambling, drink and prostitution) at the other; parties with their committees, conventions, primaries, caucuses, party-funds, societies, meetings, and all other sorts of devices for holding together and exciting masses of men to more or less blind acquiescence.  

Among the Progressives, Croly's critique was certainly the most uncompromising and complete. Although almost all Progressives wanted to purge state and local government from the curse of party organization and corruption, most also thought that national parties for national elections were both necessary and good—in a sense, encouraging "great" parties by depriving them of temptations to pander to local and sectional interests while shielding states and localities from national party divisions. Croly, while admitting the force of this argument, sought strong executive government at all levels to replace party across the board and to overcome jurisdictional limitations with a now unmediated democratic consensus.

American parties had been organized to work with the Constitution, and to supply the deficiencies of that document as an instrument of democratic policy. The organization of a strong official government would not only render the Constitution of less importance, it would also tend to dethrone the party machines. It would imply that the government itself was by way of being democratized, and that the democracy no longer need to depend upon partisan organizations to represent popular purposes. . . . The government itself, rather than the parties, is to be responsible for the realization of the popular will.

Croly's argument held that political parties in America live in symbiotic relationship to a constitutionally fettered democracy in the same way that judicial review as "government by lawyers" does. Political

21. Dewey and Tufts, 1908, 474 and 478. Strictures of this type could be multiplied almost endlessly, both in the writings of Progressive academics and in the periodical press, starting early in the 1880s and reaching a crescendo in the first decade of the 1900s, when rhetoric turned to action and parties became increasingly regulated (Abbott, 1901, 238-42; Commons, 1894, 79-83).

22. See Croly, 1914, 330 and 334, for longer-range alternatives to national parties.

23. Croly, 1914, 124. "Just so far as a progressive political program is carried out, progressive social democracy will cease to need a national political party as an instrument" (336).
parties and constitutional courts exist because of defects in the institutions and practices of American democracy. Both have a stake in a discourse of rights, and not purpose, in a political universe where issues are discussed through the language of jurisdictions and formal powers, not merits. The result is stalemate, cynicism, and corruption. Paradoxically, then, parties both democratize the Constitution and keep alive its most democratically constricting features. But just as courts are giving way to legislative majorities, and legislative majorities, in turn, to direct democracy, so parties must now yield to democratic will, expressed as a coherent national program of social justice. Once "really democratic political institutions are created, the foundations of the two-party system are undermined." Although Croly's hope that political parties would be replaced by strong government did not come to pass, the Progressives were surprisingly effective in subordinating party to government through regulation. Writing in 1920, the political scientist Charles Merriam described the cumulative effect of these reforms as "the gradual absorption of the party by government." Another way in which party was attacked was to encourage and legitimate other forms of mobilizing and educating the electorate. In a sense this replacement of party as the vehicle for effective citizenship was implicit in the very purpose of reform organizations, especially in alliance with standing institutions such as churches and universities. As these organizations and their journalistic allies became more directly active in politics, they not only forced a modification of party electoral strategy (McGerr, 1986, 69–106), they also weakened party government per se by creating governing bodies removed from direct party and electoral influence. And when one adds the decline of party loyalty, the transformation of the press, lower election turnouts, and the host of reform measures addressed against legislatures—the seat of party government—Croly's hopes to destroy party were not as overblown as might first appear. The public, he said, must form "more permanently organized social and political groups" based upon shared notions of public good (civic societies, voters' leagues, woman's

24. Croly, 1914, 311–12. As examples, Croly points to the enhanced power of state governors and strong mayor/home rule city governments to conclude that "executive leadership provides . . . an alternative official method of organizing a majority for purposes of government."


26. Silbey, 1991, 224–41, locates the early 1890s as the end of the "partisan political nation" in American politics. See also McCormick, 1986, 197–227. The entire body of literature addressing the institutional changes caused by the realigning election of 1896 makes this assumption the foundation of its analysis.
suffrage unions) and upon shared national economic interests (farmers, wage earners) to supplant parties."

A powerful ally in the attack on parties was the woman's movement in all of its many manifestations. Whether the object of attack was the liquor interests, employers of child labor, owners of substandard tenements, or adulterators of the food supply, at some point early in the battle, one or both political parties would emerge as a stumbling block for change. Frances Kellar, one of Albion Small's first female graduate students at the University of Chicago and later a prominent Progressive party leader, summarized this position in no uncertain terms: "Politics in America had become a question of nominations and elections. Patronage was the key to success and power and hand maiden of the boss. Party lines were drawn, not by issues and policies laid down in platforms to be carried out, but by men who controlled conventions and competed for office" (Fitzpatrick, 1990, 151).

The dominant "feminist" wing of the suffrage movement was anti-party in its assumption that the women's vote would necessarily transform the ways in which parties could conduct their affairs and therefore the practices of government. Gilman went further. Party government is politics considered as a game of combat with the winner enforcing rules by threat of punishment. Political parties are institutional expressions of "inextricable masculinity" in politics and are inherently opposed to women's political participation. Human government, or democracy, must replace "andocracy." This transformation will require women's full participation and will result in a political life

27. Croly, 1914, 313-17. This call for nonparty and even functional mobilization of the electorate combined with a powerful administrative bureaucracy is the reason Croly has often been called the architect of "corporate liberalism," that is, a national politics administered in and through its leading industrial, financial, and labor institutions.

28. As Susan B. Anthony put it in The History of Woman Suffrage: "Each of the two dominant parties is largely controlled by what are known as the liquor interests. Their influence begins with the National Government, which receives from them billions of revenue; it extends to the States, to which they pay millions; to the cities, whose income they increase by hundreds of thousands, to the farmers, who find in breweries and distilleries the best market for their grain. There is no hamlet so small as not to be touched by their ramifications. No 'trust' ever formed can compare with them in the power which they exercise. They and the various institutions connected with them control millions of votes. They are among the largest contributors to political campaigns. There are few legislators who do not owe their election in a greater or less degree to the influence wielded by these liquor interests, which are positively, unanimously, and unalterably opposed to woman suffrage" (4:xix) quoted in Kraditor, 1981, 84, and see 60-61).

29. This aspect of the woman's movement is discussed in chapter 7 below.
wherein "a flourishing democratic government [could] be carried on without any parties at all" (Gilman, 1911, 187 and 221-22).

GREAT PARTY RESTORATION AND THE EDUCATED MAN

In an early book on the role of the church in achieving social justice, John Commons stated that "almost every reform you can name is today blocked at the doors of municipal, State, and Federal legislatures." This blockage is laid at the feet of the 'party machine . . . the organized clique of spoilsmen who feed upon the public storehouse' (Commons, 1894, 79 and 82). Whereas most of Commons's reform proposals are familiar ones—municipal ownership of utilities, unemployment and workers' compensation, temperance, 'child-saving,' and civil service reform—one proposal was directed at the political party itself, namely, proportional representation. This reform would not only break the grip of the two-party system by rewarding minority reform parties, it would transform legislatures by making them representative of the spectrum of opinions in the community. No longer would the structure of party competition effectively screen out good citizens. And just as the women's movement claimed that their presence in electoral political life would in itself help to reform it, so did Commons and a host of others claim the same for 'the educated man in politics' (Commons, 1894, chapter title, 51).

Commons creates a dynamic psychological profile of the contemporary college-educated young man in America and shows how he would logically progress from a college education to political and party reform. His starting postulate is that 'the educated man is the Christian man,' if not in formal creed, then certainly in ethics. As a result of his appearance in large numbers and his ethical values, America has witnessed the erection of massive structures of private benevolence, 'the home and foreign missionary societies, the temperance unions, the churches and Sunday-schools, the associated charities and prison-reform associations.' These efforts of individuals through voluntary associations soon teach the educated young man that 'there are powerful underlying evil forces, which individual effort cannot reach and overcome.' In this way the educated man discovers politics as 'the cooperation of citizens for employing the sovereign power of government to crush the evil and promote the good

30. Commons, 1894, chap. 7. This and similar proposals were widely discussed in both scholarly journals and the periodical press in the 1890s and early 1900s. Initiative, referenda, recall, short ballots, and mandated party primaries proved to be more popular antiparty and legislative reform measures.
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forces of society." In Commons's populist and social gospel version, this means that democratic political participation should be a kind of Christian witness: "[The educated man] should take the standpoint of the working classes, that is, of the class whose only means of livelihood is the daily labor of their hands." With this standpoint he will combine inner conviction and the achievement of social justice.

Whereas Commons's particular version of the educated man in politics was more radical, his party-reform ideas more far reaching, and his merging of participation and atonement more evangelical than many other Progressive intellectuals, they, too, structured arguments about citizenship and participation around these themes. By the early twentieth century, this was the case even among established Republican party leaders. A published series of Yale Citizenship Lectures in the early 1900s provides a good sample of the influence of this kind of thinking on the political notables invited to instruct the Yale undergraduate. Like Commons, they all rejected an ideal of high-minded citizenship that stands aloof from the battle, and they urged democratic humility—a sort of threshold atonement—as the appropriate cost of entry. William Howard Taft, an early lecturer in the series, warned the rich among his audience that they had a handicap because they were under the temptation not to test their mettle in the larger world. He suggested to the poor graduate that he postpone marriage for eight or ten years in order to gain experience in the world through politics and to establish himself in a career. To both he said that experience in political life would prevent intellectual and moral self-indulgence—he used "parlor socialism" and laissez faire as polar examples—and suggested that the first step was getting to know one's fellow citizens:

[The college graduate] must stand on an exact equality with men of less education and less advantages and must familiarize himself

31. Commons, 1894, 53 and 55. Although Commons may have exaggerated the college students' commitment to the working class, he was probably on the mark regarding their moral impulses, at least among college students in the Midwest. For example, in a straw vote among undergraduates at the University of Chicago for the presidential election in 1892 the winner by a large margin was the "fourth" party candidate, John Bidwell, with 164 votes, running on the Prohibition ticket, and not the Republican (151), Democrat (52), or Populist (31) (Jensen, 1971, 185). The Prohibition platform was economically populist (railroads and telegraph should be government controlled; restrictions should be placed on land ownership; commodity speculation should be prohibited), culturally nativistic (tougher immigration laws strictly enforced, compulsory English in public schools to "remain a homogeneous and harmonious people"), and politically antiparty ("Their protest against the admission of 'moral issues' into politics is a confession of their own moral degeneracy . . . their assiduous courting of the liquor power and subserviency to the money power") (Johnson and Porter, 1975, 92–93).
with the exact conditions that prevail in local municipal and broader politics. In many respects the college graduate has as much to learn from the workingman and the business man who have not enjoyed a college education as they have to learn from him (Taft, 1906, 29).

National parties held together by principle were the only effective means of reform. Any other kind of national party, that is, coalitions of separate local interests, no matter its rhetoric, will end up opposing effective national government and therefore will be negative, conservative, and nostalgic (Taft, 1906, 25).

The following year Elihu Root expressed these same ideas in a more muscular mode. Although democratic government rests on the stern virtues of self-control and national patriotism, these virtues must struggle for primacy in electoral combat where "manhood and self respect" do battle with "lust for power and savage instinct for oppression" and where "honesty and virtue" are pitted against "greed and cunning." Participation "is a matter of preemptory obligation which cannot be avoided by any intelligent man who has any understanding of the conditions under which he lives" (Root, 1907, 29-30). For this participation to be effective, however, "one must have a considerable degree of sympathy with [the] feelings and interests [of others]." To a degree "unequalled in any other association" political bodies include men of widely varying conditions in life, with different opportunities for knowledge and capacity for reflection, with different prejudices and ways of thinking, differing widely in information, in previous reflection, in breadth and scope of thought, in motives, in characters, in tempers, in ambitions. . . . A rightly constituted man brought into association with a great number of others cannot fail to acquire some degree of proper humility (Root, 1907, 64, 66).

Root also ends with a call for "great" parties. His framework is the evolution of democracy from lower to higher stages: first factional struggle led by notable individuals, then coalitions of interests and principles with an incapacity to subordinate minor considerations, leading to endless bargaining, and finally, "two great political parties [that] oppose each other upon fundamental differences." Unfortunately, America is caught between the middle and highest stage because "an organization of active party workers for the distribution of offices" has been grafted on to "the great parties . . . organized for the advocacy of certain declared principles." Reform of party at state and local levels is al-
ready proceeding to address this barrier and reach a higher stage of democracy.

The last Republican party notable to speak in this series was Charles Evans Hughes. He begins like the others by warning the college graduate that he can easily forfeit effective citizenship: "A cynical disposition or an intellectual aloofness . . . while not marked enough to interfere with success in many vocations, or to disturb his conventional relations, largely disqualifies him from aiding his community." Effective political life requires that he "endeavor to understand the different racial [i.e., cultural] viewpoints of the various elements which enter into our population [and] be free from the prejudice of occupation or of residence. . . . He will look neither up nor down, but with even eye will seek to read the hearts of men" (Hughes, 1910, 11-12). Like the other speakers, Hughes defends great national parties, but with more sophistication and point, drawing on Maine's Popular Government, Lowell's Government of England, and The Federalist Papers. He concludes that great parties necessarily arose in America because of the constitutional fact of national presidential elections and the continuing presence of national issues and national purposes. But when great issues are resolved, what keeps national parties national? What keeps them from devolving into coalitions of "small" and locally oriented parties, thriving on "the stupidity, despotism, and corruption of party managers," and from driving good men into independence (Hughes, 1910, 75)?

Hughes does not so much answer this question (obviously reflecting the problems of the Republicans after the Civil War) as suggest that great parties can be restored only when educated and virtuous men lead them. Admitting that the present party system and practices have "created an irresponsible personal government not only unknown to the Constitution, but alike unknown to any admissible theory of government by party," he warns that reforms must be "consistent with . . . the maintenance of national party organizations." The restoration of great national parties can be achieved by "seeking to limit their activity to what properly belongs to [political parties], and thus to narrow the range of appeals to party loyalty where party concerns are not involved, and of opportunities to convert party loyalty inspired by national ideals to the personal advantage of [local] party leaders." 32

32. Hughes, 1910, 102 and 107-8. Hughes's specific proposals to achieve this severance read like a standard Progressive agenda: short ballots, nonpartisan city government and judicial elections, more appointed and fewer elective local offices, especially those touching law enforcement. His hope is that "in time, party nominations as such would be denied a place upon official ballots [for local office]" (114).
short, the reconstitution of great parties requires the nationalization of party and the prevention of local party scoundrels taking refuge in national party patriotism—and voters should not be placed in the position of purchasing their high-minded national party principles at the cost of subsidizing low-minded private and local interests.

The twin themes calling for the educated man in politics and restoring great parties of national principle linked Progressive academics and intellectuals uniquely with the Republican party and its immediate antecedents. The call for participation at all levels of partisan activity but in the name of national and higher ethical purposes—even if it meant helping to destroy one's own local machine—reflected the distinctive antiparty traditions of the Republicans who, in turn, inherited it from the Whigs and, earlier, northern Federalism. Not even after more than six decades of regularized two party competition could the Whigs and then the Republicans fully accept the democratic individualist theory that lay behind it. They had never fully believed in public good as an aggregate majority produced by registering individual preferences in a game with fair rules, whether in a political or an economic market. If there is a common good it must be a consciously shared one and subjected to national discussion. Reliance on a "rights" discourse within the framework of neutral procedures defined by constitutions can as easily be a temptation to individualism and greed as a means of participating in the discussion and shaping of a common good. That almost all of these Progressive intellectuals acquired their early political educations through Republican families in the period between the early 1870s and the mid-1890s and in states with intensely close party divisions strongly reinforces this logic. An example of this Republican antiparty heritage and regional experience is a fixation on the earlier mugwump idea that a small group of virtuous and educated voters might serve as a strategic voting minority that can determine the fate of the nation—an assumption only credible in closely competitive two-party states that, in the national arena, could decide presidential victors and congressional majorities.

Following the election of 1896, the Republican party gained a firm grip on power in the Midwest and the industrial East. In this context

33. In this lecture series and in other writings, Arthur Hadley, by then president of Yale, made many negative references to politics considered as a "game" played by getting the most votes without getting caught violating the rules. This game aspect makes it "difficult for the good man to pursue high standards without sacrificing his chances for political efficiency." The same applied to business competition (Hadley, 1903, 163; see also Hadley, 1901, 11–14 and 30–31). Gilman, 1911, 107–25, explains the relationship between the "male" principle and combative games, 178–92, and explains how this distorts politics and business, 208–27.
the Progressives now saw themselves as a strategic group within the dominant party. As such, they could effectively make demands directly on local, state, and national governments through nonparty institutions and reform organizations. Moreover, under these changed conditions, playing electoral politics and manipulating party machinery became less important as the autonomous power possibilities of Progressive counterinstitutions grew more expansive. No longer seeing themselves only as a strategic minority dependent upon electoral results, they could now claim to stand at the head of a national reform movement consisting of an ever-growing complex of national institutions: universities, the periodic press, professional associations, and the host of local and national philanthropic and issue oriented groups.

Party and voter regulation and declining electoral turnouts further weakened the state and local parties, thereby increasing the strength of new and nonparty forms of political power. The Jacksonian universe of courts and parties appeared to be nearing its end and, with it, sectionalism and small-producer and agrarian capitalism. But what about the Constitution? Given the demise of party organization and the importance of elections, was it, too, destined for a kind of desuetude because it could not stand alone? Before this possibility can be addressed it is useful to examine the writings of Woodrow Wilson in this period. Although later placed in the pantheon of Progressives, Wilson, both as scholar and political leader, was usually seen by the Progressive intellectuals in this period as a conservative threat to their ideals. The best warrant for their view was Wilson's strong defense of the American Constitution allied with the prevailing party system as the guarantor of democracy, defined as the protection of individual rights. Wilson saw the mutual dependence of party and Constitution and sought to preserve both.

CONSTITUTIONAL LAW, INDIVIDUAL RIGHTS, AND WILSONIAN CONSERVATISM

In 1906, William Howard Taft, two years away from the presidency, reminded his Yale audience that despite his criticisms of party machines and patronage, great national political parties "are essential to the carrying on of any popular government" and that the more "efficient party [is one] in which the members are more nearly united on the great principles of governmental policy." Clearly making an appeal for the Republicans, he then concluded:
It is difficult to classify parties in this country as conservative and radical, because the facts do not always justify such a classification; but generally it will be found that the more efficient party in administration is the more progressive and more affirmative—more radical, therefore, in its policies. The opposing party is usually negative, declining to initiate new reforms (Taft, 1906, 24–25).

Under Taft's appeal to a consensual politics of "social harmony" that sublimated older ethnic, regional, and cultural appeals to the ends of shared national power and prosperity, it was clear that national public good was dominantly the values and interests of the urban industrial core. Against this Republican core-as-nation victory, the Democratic party seemed to have no choice but to defend the independence of the economic and cultural periphery and to man the existing constitutional ramparts preventing further "colonization." Failure to do so would be to concede a permanent subordination of regions to nation as embodied in this core. And insofar as this core was defined and defended by those who increasingly dominated American intellectual life and its most sophisticated organs of public opinion, nothing less would suffice than a defense of the periphery in equally sophisticated and cosmopolitan terms.

In 1908, Woodrow Wilson, four years away from the presidency that he won against both Taft and Roosevelt, gave a series of lectures published as Constitutional Government in the United States. Anchoring the federal Constitution firmly in British tradition, beginning with Magna Carta, he locates the meaning of constitutional government in individual rights: "There is no such thing as corporate liberty. Liberty belongs to the individual, or it does not exist . . . [and] liberty is the object of constitutional government." Constitutional government protects liberty because "representatives of government have no authority except such as they derive from the law" (Wilson, 1908, 16, 18, and 20). After discussing the cultural and racial factors that make it possible for a "people" to sustain constitutional rule, he then asks whether and to what extent the United States is one people: "Constitutional government can exist only where there is actual community of interest and of purpose, and cannot, if it be also self-government, express the life of any body of people that does not constitute a veritable community. Are the United States a community? In some things, yes; in most things, no" (Wilson, 1908, 51).

American constitutional government is limited government; with

federalism it is the sharing of limited government between states and the nation. So chary is Wilson of the idea of a single national community that when he does grant the growing power of national patriotism and purpose, he locates its origins only in the 1840s, symbolized in the famous speech by Whig Senator and Constitutional Unionist Daniel Webster. And even granting the increasing power of national feeling, Wilson's commitment to constitutional government as protective of liberty constrains him to limit its political reach:

There are natural limits beyond which such a [nationalizing process] cannot go, and our state governments are likely to become, not less, but more vital units in our system as the natural scope and limits of their powers are more clearly and permanently established. In a great political system like our own, spread abroad over the vast spaces of a various continent, the states are essential (Wilson, 1908, 49).

Concluding that increased perceptions of common interests will have more of a psychological effect than a political one, he predicts that while "the sphere of our national government will be . . . notably enlarged," this will not entail "any reconstruction of the system" (Wilson, 1908, 50).

Wilson's complacent prediction comes with an important caveat: constitutional government in America will effectively cease to exist if the national government is given exclusive and broad powers to regulate commerce. As the lectures proceed, this warning becomes more pronounced and its implications more ominous. In discussing recent commerce decisions by the federal courts, he says: "If the federal power does not end with the regulation of the actual movement of trade, it ends nowhere . . . . May [the national government] regulate the condi-

35. Wilson, 1908, 48–49. No clearer contrast to Wilson is provided here than Herbert Croly, who speaks of the "moral and intellectual cowardice" of leaders of all parties in the middle period, terming the leadership offered by the Constitutional Unionists "the least substantial" of them all. He then pointedly contrasts Webster's constitutional law nationalism to Lincoln's democratic nationalism. The starting points of Lincoln's analysis were that "a democratic nation could not make local and individual rights an excuse for national irresponsibility" and that "the Constitution was inadequate to cure the ills it generated" (Croly, 1909, 73, 75–77, and 86–87). Later he criticizes Wilson directly in these terms and with great force. Most pointedly he asks, "Does a real antagonism exist between the old order and the new order which some progressives are trying to substitute for it?" To answer no but to introduce a series of progressive reforms, as Wilson does, is intellectual cowardice and an act of bad faith toward his supporters who do not realize that the reforms subvert the democratic individualist ends proclaimed (Croly, 1914, 20). Thus the seeds of New Deal liberalism are planted.
tion of labor in field and factory? Clearly not, I should say;... that would destroy all lines of division between the field of state legislation and the field of federal legislation." This same theme is then repeated when discussing the states, warning that if national regulation or prohibition of child labor is constitutional, federal regulation "can be made to embrace every particular of the industrial organization and action of the country... Should the Supreme Court assent to such obviously absurd extravagancies of interpretation," there would be no limits on the power of Congress except those "of opinion and of circumstance."

Why did Wilson take such a reactionary stance? Why do his conclusions seem to fly in the face of more than two decades of economic teaching in America exposing the moral bankruptcy and intellectual absurdity of laissez faire as a national economic policy? How could Wilson be so at odds with his academic colleagues on such a fundamental issue? Although it may be a plausible answer to say that he was inoculated against the new social sciences by first receiving legal training at the University of Virginia, the better answer is supplied by Wilson's own arguments. If the commerce power is used by Congress to regulate labor and industrial conditions, regional autonomy and sectional self-direction will be lost. All of America would be subservient to its dynamic and industrial core. Extending the commerce power of the national government is to be resisted because a national politics of "social harmony" or common good is necessarily a politics of national economic planning. Whether planning is done by government, corporations, trade associations, finance, or trade unions is of course an important issue, but any conceivable combination would effectively destroy state police powers.

It would be fatal to our political vitality really to strip the States of their [police] powers and transfer them to the federal government. It cannot be too often repeated that it has been the privilege of separate development secured to the several regions of the country by the Constitution, and not the privilege of separate development only, but also that other more fundamental privilege that lies back of it, the privilege of independent local opinion and individual conviction, which has given speed, facility, vigor, and certainty to

36. Wilson, 1908, 171. On this logic, the New Deal court effectively destroyed American constitutional government by expanding the reach of the commerce clause.
the processes of our economic and political growth.\textsuperscript{37} (emphasis added)

It is no wonder that Progressive intellectuals seldom viewed Wilson as an authentic reformer and that Herbert Croly in effect accused him of bad faith.\textsuperscript{38} No serious reform could be urged within the prevailing system of party and constitution, both of which Wilson so vigorously defended.\textsuperscript{39}

In his defense of constitutional law as the guardian of constitutional government, Wilson was at one with the upper bar from the Gilded Age to World War I. Like Wilson, they put both their American national identity and their trust in the Constitution and the courts. Although they tended to distrust partisan politics, they shared with Wilson the same institutional grounds of American nationality. By holding the Constitution above politics and beyond debate, they could legitimate the prevailing system of power and purposes as the fair result of neutral procedures. The Constitution is the game and we are all obligated to play by those rules. The president of the newly formed American Bar Association (ABA) declared in 1879 that the national Constitution was outside of politics and therefore belonged to the federal courts, in which repose \textquoteleft\textquoteleft{}the sole determination and construction of the fundamental law of the land\textquoteright\textquoteright. He called on lawyers to \textquoteleft\textquoteleft{}meet as on a common ground, in respect to all questions arising upon the national Constitution\textquoteright\textquoteright{} and to oppose with all their strength \textquoteleft\textquoteleft{}all efforts to transgress the true limits of the Constitution, or to make it at all the subject of political discussion\textquoteright\textquoteright. This refrain set the tone of the elite bar

\textsuperscript{37} Wilson, 1908, 191–92. He adds that the value of states' rights is not the protection of states, but of economic regions.

\textsuperscript{38} Croly does not mention Wilson at all in his book of 1909, which devotes a large space to discussions of contemporary reforms and reformers. But in that book he knows even better than Wilson what the stakes are: \textquoteleft\textquoteleft{}The distinction between domestic and inter-state commerce which is implied by the Constitutional distribution of powers is a distinction of insignificant economic or industrial importance; and its necessary legal enforcement makes the carrying out of an efficient industrial policy almost impossible\textquoteright\textquoteright{} (Croly, 1909, 351). In 1914, he takes Wilson's \textquoteleft\textquoteleft{}New Freedom\textquoteright\textquoteright{} vigorously to task as a \textquoteleft\textquoteleft{}revival of Jeffersonian individualism,\textquoteright\textquoteright{} and therefore \textquoteleft\textquoteleft{}a negative policy . . . opposing the extension of national responsibility . . . intrusting the future of democracy to the results of cooperation between an individualistic legal system and a fundamentally competitive economic system\textquoteright\textquoteright{} (16–17). Bliss's \textit{New Encyclopedia of Social Reform} of 1908 also fails to mention Wilson, let alone give him a biographical sketch. For a comparison of Wilson's economic views to the \textquoteleft\textquoteleft{}new economics,\textquoteright\textquoteright{} Dorfman, 1949, 3: 336–42; and Fine, 1956, 276–79 and 239, on Ely's explanation of why his student failed to be influenced by him.

\textsuperscript{39} The implications of the rejection of a constitutionalist understanding of public good in Progressivism are discussed in chapter 6 below.
for the next three decades. Like Wilson, they could not envisage the political system functioning unless the traditional limits of the Constitution were placed outside of political discourse. Constitutional law, as one of their number said in 1912, "stands as an adamantine piece of reasoning and constitutes an invincible buttress of our nationality" (Foster, 1986, 55–56, 61).

No clearer indication of Wilson's distance from the moral and intellectual world of Progressivism was his strong defense of party. Given Democratic party fears of core domination through nationalization, Wilson's defense of constitutionalism as institution and constitutional law as political theory entailed a parallel defense of "small" party government and democratic individualism. He begins by stipulating an initial condition in our constitution making that we cannot alter: America chose not to create a strong executive responsible to a legislature upon whose advice and consent it acted. Constitutional separation of powers, therefore, mandates the political party as the only available source of governmental coherence and efficacy. Moreover, given the even greater dispersal of executive and legislative authority in the states "through the infinite multiplication of elective offices," party is also needed to weave these separated strands of power together. When these two factors are combined the necessary result is national political parties operating as coalitions of local and state party organizations. Two maxims flow from this result. The first is "whatever assigns to the people a power which they are naturally incapable of wielding takes it away from them," necessitating local party machines working across electoral levels and jurisdictions. The second maxim completes Wilson's defense of party:

When the several chief organs of government are separated by organic law and offset against each other in jealous seclusion, no common legal authority set over them, no necessary community of interest subsisting amongst them, no common origin or purpose dominating them, they must of necessity, if united at all, be united by pressure from without; and they must be united if government is to proceed. They cannot remain checked and balanced against one another; they must act, and act together. They must, therefore of their own will or of mere necessity obey an outside master.40

[emphasis added]

40. Wilson, 1908, 211 and 204, where he argues that American constitutionalism places government "in solution," which can be "solidified and drawn to a system only by the external authority of party, an organization outside the government and independent of it."
Whether by choice or necessity, constitutional government depends upon a system of party organizations outside the formal system of law and government. From this point on, Wilson's defense of party follows the inexorable logic of the nineteenth-century American regime. A hierarchy of party office "must supply the place of a hierarchy of legally constituted officials." National public opinion can only be produced through the separate national parties, and this, in turn, "depends upon their hold on the many localities of which it is made up . . . upon the petty choices which affect the daily life of counties and cities and States." Efforts to change this condition will "always in the long run fail" because patronage and exchanges of favors, that is, party machines, "are absolutely necessary . . . for keeping the several segments of parties together." So bound together are local party machines, party government, and constitutional government that to attack the first is to subvert the last: "The disrepute in which professional politicians are held, is in spirit highly unconstitutional" (Wilson, 1908, 208-9 and 214).

With this defense, it remained only for Wilson to define the American body politic as held together by power and rules and propelled by "the restless strain of contest and jealousy." America is a disordered and jarring clash of interests that only the "network of parties" can compose. "The very compulsion of selfishness has made them serviceable; the very play of self-interest has made them effective." If we want to have constitutional government and individual rights then we must concede "that our national parties have been our veritable body politic."142

It is clear that Wilson's constitutional theory and his resistance to the nationalization of American political life were directly at odds with ideas that lay at the very center of Progressive self-identity forged earlier. Even if it is granted that many Progressives resisted handing over

41. Wilson, 1908, 207. A textbook with the revealing title History of Political Theory and Party Organization in the United States, published a year before Wilson's study of the Constitution, begins with these words: "Party organization in the government of a country exists in proportion to the recognition of freedom of thought and action among the people of that country. Where this freedom is denied, political activity has nothing upon which to rest" [Fess, 1907, 7].

42. Wilson, 1908, 220. Given this image of America, it is more than ironic that academic scholarship on the left now attributes to Wilson and the Democratic party the more "radical" and "state-building" side of reform in the Progressive era [Buenker, 1978; Dawley, 1991; Sanders, 1990; and Sarasohn, 1989]. Given these types of arguments from Wilson, surely the most cosmopolitan and progressive spokesmen of the Democratic party of his day, any defense of the Democrats as progressive in this period necessarily requires that "Progressivism" have no intellectual or programmatic coherence at the national level. This is precisely the starting point of these studies. See discussion in chapter 1 above.
powers to the national government, their fears were exactly the opposite of Wilson's. They feared that an unreconstructed national government would regulate the nation as if it were not a nation, but a collection of localities, states, and regions held together by an intricate system of corrupt bargains, threats, and bribes. The very values of "separate development" that Wilson sought to protect were, to the Progressives, barriers to national integration and so many excuses to evade the responsibilities of American citizenship. So, too, did they treat a political discourse premised on the constitutionalist language of checks and balances, of federalism, of jurisdictional rights, state's rights, property rights, and even individual rights, a rhetoric of evasion and bad faith. If the competitive and unreconstructed political party system is not our veritable body politic, still less are governmental institutions under its control. But if the "small" party-state can never represent the nation as a democracy, what sort of state structure can?

WHERE IS THE STATE?

It has been said that a maxim of the party reformers from the Gilded Age onward was "strike at parties / strengthen government" [McCormick, 1986, 258]. Herbert Croly seems to confirm and strengthen this maxim in the Progressive Age: "The overthrow of the two-party system [is] indispensable to the success of progressive democracy, because, under American conditions, the vitality of the two-party system has been purchased . . . at the expense of administrative independence and efficiency" [Croly, 1914, 349]. The maxim as revised by Croly might now read: "strike at parties / weaken party-government and legislatures / strengthen bureaucrats and executives and independent regulatory agencies." This equation has fueled a huge body of literature on the

43. Their critique of this language, especially in the Democratic party, parallels that of the women's movement. The editors of History of Woman Suffrage contrast a list of Republican platform planks on rights of women (but not the right to vote) in the 1880s and 1890s to platforms of the Democratic party, concluding: "No Democratic national platform has recognized so much as the existence of women, in all its grandiloquent declarations of the 'rights of the masses,' the 'equality of the people,' the 'sovereignty of the individual,' and the 'powers inherent in a democracy'" [quoted from Grimes, 1980, 81; from History, 4: 437]. Wilson's argument here, but without party, replicates Jefferson's constitutional theory almost exactly. Local liberty or the virtue required of small republics is the guarantor of individual rights. Given slavery and southern gentry politics, Federalist charges of hypocrisy naturally followed.
""statist"" proclivities of Progressive thought" that, in light of its heady sense of nationalism and German influences, would seem particularly apt for the Progressive intellectuals highlighted in this study. And given the way in which they sought to transform the idea of public opinion and popular consent into organic social judgments with constitutive powers, it would seem that a Rousseauist or Hegelian State as embodied Nation would necessarily follow. When to all of this is added the sacralization of the "bonds of nationality"—a Religion of America—the sacralization of the National State could not be far behind. This conclusion receives added support from the language used by Progressive sociologists and political economists with close ties to the social gospel movement. George Herron saw the birth of the authentic democratic state as a collective religious conversion from corrupt law to pure faith: "Except the state be born again, except it be delivered from pagan doctrines of law and government . . . [and] from merely individual theories of freedom, it cannot see the divine social kingdom" (White and Hopkins, 1976, 194). His fellow Iowan, Samuel Batten, in The Christian State, declared that "in the last analysis the State is the organized faith of a people, and where there is no faith, . . . the State crumbles into dust; . . . the State is the sphere in which the religion of a people finds its full and final expression." Perhaps the most widely cited example of Progressive state theory is Mary Follett's The New State, published in 1918. Starting with now familiar ideas from the new disciplines of sociology and social psychology, Follett minces no words:

The old idea of natural rights postulated the particularist individual; we know now that no such person exists. . . . As an understanding of the group process abolishes 'individual rights,' so it gives us a true definition of liberty. . . . We see that to obey the

44. Dawley, 1991; Lustig, 1982; Sklar, 1988; Skowronek, 1982; and Weinstein, 1968. The argument is not that a corporate state was achieved (there was not a powerful enough state to accomplish this), but that both the pattern and the logic of some reforms pointed to the permanent institutionalization of the national government and national economic organizations.

45. See Herbst, 1965, 149, on Patten and Clark; Ross, 1918, 175–79, on the state's replacing the church as educator of citizens; Commons, 1894, 53–54, on the coercive power of government as a moral force; Ely, 1889, 72–80 and 92–93, on the Christian doctrine of the state and on government as "coercive philanthropy"; and Patten, 1916a, 8–9, on the need of the state to protect American culture and values.

46. Batten, 1909, 326. Batten's book is interesting in that it draws so eclectically on German, American Progressive, and British writings. Among the British used most prominently in the book are John Morley, John Stuart Mill, and Bryce; among American Progressives, Small, Abbott, and Ross; and among the Germans, Bluntschli.
group which we have helped to make and of which we are an integral part is to be free because we are then obeying ourself. Ideally the state is such a group, actually it is not, but it depends upon us to make it more and more so. The state must be no external authority which restrains and regulates me, but it must be myself acting as the state in every smallest detail of life (1918, 137–38, emphasis added).

This same logic was at the heart of one of John Dewey's earliest essays, "The Ethics of Democracy" of 1888:

If, then, society and the individual are really organic to each other, then the individual is society concentrated. . . . If society be organic, the notion of two classes [governors and governed], one of which is inferior to the other, falls to the ground. The basal conception, here, is of unity, and all distinctions must occur within and on account of this unity. The organism must have its spiritual organs; having a common will, it must express it. . . . In democracy . . . the governors and the governed are not two classes, but two aspects of the same fact—the fact of the possession by society of a unified and articulate will. It means that government is the organ of society, and is as comprehensive as society. 47

THE NATION, THE STATE, AND PARASTATES

What is most problematic about these and other Progressive paeans to the "state" is the uncertainty of its location. 48 Given their distrust

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47. Dewey, 1969, 237–39; see also Kloppenberg, 1986, 349–73, for a discussion of these same themes in the context of American and European thought.

48. Giddings's sociology textbook defines the state as consisting of "public corporations," but these include all bodies at all levels of government, with the lower subordinate to the higher. Even this broad definition gets broader: "The functions of the state are coextensive with human interests," no matter attempts "to prove that the functions of the state ought to be limited to a comparatively narrow sphere, leaving all other things to individual initiative and voluntary organization." He concludes that "the primary purpose of the state is to perfect social integration," thereby giving it power in economic and cultural life, the latter including religion and education (Giddings, 1898, 202–3). Small's sociology textbook is thoroughly Hegelian in its stress on antagonisms in the process of state formation and in the struggle of states to realize themselves as states. "Any given stage of na-
of formal laws and constitutions, why would distant and impersonal rational-bureaucratic structures suddenly appear to Progressives as attractive solutions? Given their vision of substituting the higher ethical means of informal persuasion for the lower means of external coercion, why should they suddenly turn to rules written by faceless agents of a Rechtsstaat? Where is the "state" to be found? For Follet, Dewey, and most of the Progressives, the state is first "located" in the good citizen who, in whatever role and location, spontaneously acts according to consciously held—and shared—ideas of the public good. This is precisely Herron's notion of a "reborn" state and Batten's notion of the organized faith of a people. A good citizen is "state-oriented" in the sense of seeking to achieve a larger public good in his actions in every sphere of life.

Some citizens are more state-oriented than others: they are the better citizens. Some regions of the country and some institutions are led by good citizens and some are not. Where is the state? Wherever good citizens gather, organize, and act. Rather than raise again the question of the "failure" of Progressive academics—especially political economists—to become state-centered social democrats (or at least English Fabians) and then look for sources of corporate-capitalist corruption in universities, it may be more fruitful to explore what Progressives mean by "state" and speculate more fully on its probable locations.

From their writings on American nationality and on the meaning of public opinion, the first location, prior to any external expression, must be an internalized idea of membership and shared values. There can be no "state" without a "people" and no people without good citizens sharing common ends and integrating those ends into their individual purposes, including their rights claims. This is the individual-
ized meaning of the term "social ethic" and its collective result in "social justice" as described in the sociology and psychology textbooks. In contemporary terms, they argued that the individual capable of bearing and exercising rights is "socially constituted"—and this is true whether those rights are exercised in socially benign or socially destructive ways.

John Dewey puts this same internalized idea in philosophical and ethical terms. Individualist claims of right against the prevailing practices and norms of the society are admissible to the extent that they are a means by which more inclusive ideas of common good come to be "socially embodied . . . [and therefore become] a means of social reconstruction." He contrasts good and bad citizens in these terms. Bad citizens "regard their actions as sanctions [i.e., normative] if they have not broken the laws . . . . The intelligence that should go to employing the spirit of laws to enlighten behavior is spent in ingenious inventions for observing their letter. The 'respectable' citizen of this type is one of the unsocialized forces that social reformers find among their most serious obstacles" [Dewey and Tufts, 1908, 432 and 467]. Good democratic citizens and true democratic states are mutually dependent creations, consisting of "the development of a comprehensive and common good." After reviewing American constitutional and party barriers to the creation of a democratic citizenry and state, Dewey then reverses the causal flow. The state is "the emancipation of personal capacities, . . . securing to each individual an effective right to count in the order and movement of society as a whole." From the standpoint of ethics, the moral test of a practice or a law is whether it "sets free individual capacities in such a way as to make them available for the development of the general happiness or the common good" [Dewey and Tufts, 1908, 474, emphasis added].

Both Follett and Dewey made of the democratic state an achievement to be won in the future. Neither the American national government nor many state and local governments had seriously begun to achieve the
status of "democratic states." But if that is the case, where is the good citizen to find a place to exercise citizenship? The standing answer is first to exercise citizenship in order to be able to exercise citizenship by reforming constitutions, governments, and parties. But if much of this exercise fails or becomes self-defeating, what then? There are two Progressive responses. The first has already been touched upon: the good citizen "officially" participates in those governmental institutions that contain or are mostly likely to come to contain substantive public goods. In short, some public institutions are or might become authentic state structures by virtue of their purposes and policies, whereas others cannot or will not. This accounts for some of the fascination with autonomous political executives (e.g., strong-mayor or city-manager forms of urban government) and expert commissions and bureaucracies. National citizenship exercised in and through these executive institutions may well consist only of supplying expert knowledge and policy advice, whether to a mayor, a state commission, or a federal bureau. National citizenship, in short, can be exercised at any level of government because reform as "social reconstruction" is the result. Thus, for example, municipal ownership of a trolley company is a "national reform"; using federal tax money and national legislation to pay off an electoral debt to a particular interest is not even a national act, let alone a national reform.51

But if national citizenship can be exercised in and through these variously located governmental bodies, why not through nongovernmental bodies? Why is teaching English to immigrants in a Cleveland, Ohio, YMCA not an act of citizenship, whereas voting in Cheyenne, Wyoming, for the party that promises a tariff on wool is? In a profound sense, it was women's participation in politics well before they had the vote that gave credence to this "influence" theory of political action and to this higher ideal of citizenship as public service. And this was the case whether or not women engaged directly in a politics of influence. The mother in the family, the teacher in the public school or the Sunday school, and the charity worker were all participating in the task of acting out ideals of public good and therefore "acting as the state in every smallest detail of life." The earlier roots of this ideal of citizenship were the early-nineteenth-century idea of "free institutions." These included town, church, and school, as well as the earlier Puritan notion of the family as "a little commonwealth." Translated into a state ideal with multiple locations, the new formulation would make

51. Ely's draft of a constitution for the forerunner of the American Economic Association read, in part: "Sovereignty resides in the people and is one in its nature, whether exercised by a local or general government." [Ely, 1938, 296].
of these institutions something like "parastates," in the sense of being supportive of the government both by producing good citizens and by themselves carrying out the substantive ends that would be desired by an ideal state. In the words of the title of an article by Jane Addams in the early 1890s: "Hull House, Chicago: An Effort toward Social Democracy."52

In Progressive thought, these older free institutions are forced to share place with new parastates in the form of labor unions, moral and political reform movements, settlement houses, and universities. In that sense, the older "parachurches" of the ecumenical religious establishment are a sort of way station, mixing with and merging into the newer parastates. Together, these parastates, like all historical states, have a tendency to seek conquest, but in this case, not always through laws and coercion. To borrow a phrase from Theodore Roosevelt, "ethnic" conquests are always more durable than mere "political" ones. One might electorally "conquer" various official governments and turn them into instruments of the common good by conquering the hearts and minds of the majorities of their voting citizens. If this tactic fails, one might conquer these same governments by dominating the agenda and information of powerful bureaucracies or executives who, through political reforms, have become somewhat independent of electoral and legislative majorities. One might prepare for these conquests by dominating enlightened opinion through journalism and teacher training and social research. In short, these institutions as "parastates" will do exactly what political parties as "outside master" (Wilson) had routinely done in nineteenth-century regimes.

Progressive parastates, despite their greater reliance on indirect influence, are even more various, more protean, and more resourceful than political parties. The most basic of these units, the family, illustrates the method and reach of this new conception of politics. Insofar as the family is the first training school for citizenship, to monopolize respectable ideas of motherhood, health, child rearing, and preschool education also represents a parastate conquest if those ideas carry with them a "social ethic." This is exactly how Florence Kelley, Jane Addams, Charlotte Gilman, and the "new charity" intellectuals saw their political task. Gilman, one of America's most influential feminist intellectuals, saw no conflict between espousing the emancipation of wives from housekeeping roles and writing A Clarion Call to Re-

52. Addams, 1892. Patten, 1912, 322–31, used the term "voluntary socialism" in contrast to "state socialism," saying that a reliance on the former would avoid the need for the latter.
deem the Race; the Burden of Mothers.\textsuperscript{53} Just as Dewey had argued, freedom for women—in Gilman's case the release of their energies from housekeeping routine—is justified only if those energies are placed in the service of the larger society. Jane Addams's advice to mothers is hardly different.\textsuperscript{54} What holds for the family as parastate holds even more for larger and more extensive organizations: schools, churches, trade associations, women's clubs, and even nationally organized economic interest groups.

Progressivism in both thought and deed represented the partial victory of the "parastate" over "party-government" but at the cost of locating citizenship and the exercise of power increasingly outside of constitutionally mandated boundaries. Put differently, party reinforced constitutional formalism whereas parastates circumvented and subverted it. But to the charge of extraconstitutionality, the Progressive might reply: Isn't party government also outside the Constitution, and isn't it the exercise not of informal influence, but of invisible power? The power exercised by parastates, whether within or outside constitutional boundaries, is "public" in the most important senses of that word: visible, based on widely known and shared moral, educational, and scientific standards, and exercised by people who willingly communicate and defend their ideas in the larger society through means accessible to all. Party power is not only deliberately disguised and exercised in rooms filled with smoke and shadow, its leadership augments its power by making secret and corrupt bargains with other hidden sources of power in the society. The alliance of powerful and corrupt parties with equally powerful and corrupt economic interests has entangled constitutionally authorized officials in ever-tighter networks of corruption, holding the voter hostage to his lowest self. "Behind the ostensible government sits enthroned an invisible government owing no allegiance and acknowledging no responsibility to the people. To de-

\textsuperscript{53} Gilman, 1898 and 1903, on emancipation of the housewife; Gilman, 1890, Shaker Press. Florence Kelley states the civic connection more directly: "It is clearly the duty of the parent to support his children; that is his obligation to the Republic" [1905, 69].

\textsuperscript{54} Gilman, 1898, 160–68, 268–69, and 319–40; and see Kelley's charge to "prosperous women" with "unsought leisure" [1905, 112–16], and Addams's discussion of the duty of the mother to her college-educated daughter. Addams begins by showing the connection between personal ethics ["righteousness"] and social justice, telling the reader that her book is a study "of various types and groups who are being impelled by the newer conception of Democracy to an acceptance of social obligations involving in each instance a new line of conduct." One of her six chapters is directed to mother-daughter relationships and another to household management and the ethics of employing maids [1902, 1–3 and 11; see also 70–90 and 105–36].
stroy this invisible government, to dissolve the unholy alliance between corrupt business and corrupt politics is the first task of the statesmanship of the day" [Progressive party platform, 1912].

Party government's symbiotic relationship extended beyond constitutional government. The democratic individualism of party, restrained only by the fragmented and externalized constraints of Constitution and courts, was repeated in the economic sphere. There, too, democratic individualism, under the blessings of constitutional legitimacy and property rights, had produced huge "machines" as well, equally unaccountable to the people, equally invisible in their inner workings, equally corrupting, and equally powerful. They, like party organizations, needed regulation. They, too, needed to be both socialized and democratized.

55. Johnson and Porter, 1975, 175. Croly, 1914, 92–95, gives a trenchant analysis of the cause of this alliance, born of the failure of Republican national industrial policy to change regime values and political institutions while encouraging economic institutions and practices that in fact can benefit all.