

# The Constitution's Bodyguard

*William Howard Taft and His Defense of the Constitution  
During the Election of 1912*

by  
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*The most abiding compliment that can be paid to the American people is to point to the fact that in the Constitution which they framed and have maintained they have recognized the danger of hasty action by themselves, and have, in its checks and balances, voluntarily maintained a protection against it. The trust is that in this last century we have vindicated popular government in a way that it has never been vindicated before.<sup>1</sup>*

This homage to constitutional government might be a fitting compliment to a Constitution Week celebration any given September. When William Howard Taft spoke it in March of 1912, he wasn't just praising the nation's form of government, he was desperately defending it.

The nation was in uproar. Unrest seemed to prevail, be it serious or zany. It was said the farm was abandoned for Mammon. The nation would starve. The fearful decried "automaniacs" who mortgaged the house to buy motor cars. America's youth, they said, were seduced by the vile machines that would drag them into debt and worse. That fear turned dread following a highly publicized series of elopements of wives and daughters with the family chauffeur. Waiters in New York staged dinner hour walkouts. "Good heavens," said a distressed hotel guest, "are we going to have this sort of thing on this side of the pond also? I thought I had fled all that when I left England." The Detroit Tigers threatened a strike over Ty Cobb's suspension for beating a fan. Socialists burned American flags at New York's Union Square. Conservationists accused the President of ceding Alaska to Guggenheim and Morgan. The offices of the Los Angeles *Times* were dynamited, taking twenty-one innocents. Attorney Louis Brandeis blamed that and other bombings on the "great controlling trusts." A New York skyscraper blaze killed one hundred forty-six, mostly women workers trapped inside a top floor. The nation's most urgent reply to the horror, after forming safety committees, including one that prominently included a forester, came in new municipal codes across the nation limiting the height of buildings. Another real emergency struck in 1912 the night of April 15 with the *Titanic*. The event proved the modern age yet God's subject. Panic over it was assuaged with pride in Anglo-Saxon manhood that was supposed to have taken to death that night in uniform and black tie, cigar and brandy at hand. Slogans abounded, from Theodore Roosevelt's "The New Nationalism" and Woodrow Wilson's reply to it, "The New Freedom," to the alliterative progressive mantra, "initiative, referendum, and recall." Dissent was the rule of the day. The Republican Party, long in power, was in pieces, its self-destruction the doormat to the House of Representatives for the Democrats who seized it in a landslide in 1910. Along with the new Speaker of the House who threatened to ride to the Capitol on a mule came the body's first Socialist. That man, Victor Berger of Milwaukee, called for the abolishment of the Senate and the Supreme Court. Passing through Nebraska in 1911, Woodrow Wilson met a Socialist mayor and asked the man if it were true there were so many Socialists.

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<sup>1</sup> William Howard Taft, quoted in "Taft for Popular Rule with Reason," New York Times (NYT), March 10, 1912

“Oh, no,” replied the mayor. “My vote was twenty percent socialist and eighty percent protest.”<sup>2</sup>

Whereas one historian claimed that in 1910 “mass hysteria” followed on earth below a comet’s path, and that “agitation” over the verity of conflicting North Pole discovery claims dominated the American psyche that year, and where popular and academic history has spoken loudly for immigration, labor, and social issues, especially the abuse of privilege and an uneven distribution of wealth, as the dominant themes of the period, seen, generally, as technology’s devastation of mankind’s old order, real revolution in America in 1912 came in what did not happen -- in avoiding it.<sup>3</sup> Strikes were no longer nation-halting events. Their issues and the strife were large but were now mostly local. While often and admittedly horrible, even to the average observer of 1912, conditions for labor and immigrants were improving. As socialists, reformers, demagogues, and the Chautauqua crowd cast about hysteria and revolt, Americans, generally, were more busy making, if not all good, better than ever before on the Declaration’s promises of equality, liberty, and happiness. Betterment was the greater cause of discontent, hysteria, and hype in 1912 than actual condition.<sup>4</sup>

What of the national hysteria climaxed at the Progressive Party convention -- a political event -- of August of 1912, at which the star performer declared his cause the “battle for the Lord,” and his followers sang rowdy revival choruses of “Onward Christian Soldiers,” “Battle Hymn Republic,” and, with bowed heads and an equal but inversely exaggerated solemnity, “Old Hundred” and its “Praise God from whom all blessings flow.”<sup>5</sup> That man, former President Theodore Roosevelt, had, by the end of his seven year term of office, spurred the nation to moral excitement and expectations that his legislation failed to grasp. He was back now, four years later, asking for a third term and a whole lot more.

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<sup>2</sup> 1910-1912 wackiness per “William Howard Taft and the First Motoring Presidency,” by Michael L. Bromley, McFarland, Jefferson, NC and London, 2003; pp. 295-299 (see Chapter 24, “Progressively Unhappy and a Happy Discontent”).

<sup>3</sup> Haley’s Comet and the North Pole scandal from “Theodore Roosevelt and the Progressive Movement,” by George E. Mowry (University of Wisconsin, 1946; my copy is 3rd printing, 1963 by Hill and Wang; p. 116). Mowry, we shall see, held a particular antipathy for Taft. Like Taft’s biographer, Henry F. Pringle (with whom Mowry argued as too sympathetic to Taft), Mowry measured Taft republicanism by the scandals of Harding and the New Dealers’ perceptions of the 1920s as a failure (see Bromley, p. 1). Mowry’s purpose in “Theodore Roosevelt” seems to have been to establish Bull Moose progressivism as the benefactor to the New Deal rather than Wilsonian democracy (p. 381). Mowry’s history was detailed, but his use of it was prejudicial, uncritical, and often poor. He abused the modifier and jumped too often into supposition. He so loathed Taft that the editors of his book, “The Era of Theodore Roosevelt,” (Harper & Row, New York, 1958), defended his views against Taft in the introduction (p. xi).

<sup>4</sup> “A considerable proportion of the American people is beginning to exhibit economic and political, as well as personal discontent,” wrote Herbert Croly in “The Promise of American Life” in 1909 (The Macmillan Company, p. 20). Croly wrote that, unlike Europeans, Americans would not accept unequal condition (p. 10). Necessarily, by this view, discontent was of comparative and not absolute condition. When the basketball team is down 78-34 in the third quarter, it gives up; when down by 12, or something reasonably close, it tries all the harder to get ahead. Years later, a lead agitator of 1912, William Allen White, looked back upon it all and concluded just that: “Yet we Bull Moosers -- middle-class folks who had received all our share in the ‘distribution of the national income’ and were fat and saucy in our attack upon aggrandized capital, were almost alone in our charge upon the citadel of privilege. Labor was at work in those years. The farmers’ prices were reasonably good. While we sat at our feasts across the land, the whole cause and justification of our attack upon the established order was paling. And the injustices of the distributive system were being corrected, not by laws but by speeding up the wheels of industry in the United States and to an extent around the world.” (“The Autobiography of William Allen White,” The MacMillan Company, New York, 1946; p. 499). From there he concluded that the automobile had changed things, “the democratization of transportation.” For this, see Bromley, Chapter 31, and generally.

<sup>5</sup> “The Progressive Convention,” by Ernest Hamlin Abbott, *Outlook*, August 17, 1912, p. 864. The scene and, especially, its evangelic reportage in *The Outlook*, Roosevelt’s press outlet, wonderfully reminds of Tom, Joe, and Huck viewing their own funeral: “Tom Sawyer the Pirate” wrote Twain, “looked around upon the envying juveniles about him and confessed in his heart that this was the proudest moment of his life. As the ‘sold’ congregation trooped out they said they would almost be willing to be made ridiculous again to hear Old Hundred sung like that once more” (“The Adventures of Tom Sawyer,” by Mark Twain, p. 141).

It was a long way from December 3, 1901, when Roosevelt, only months into his inheritance of the McKinley second term, and up against all the urgency of the anarchist's demands, gave warning of his claim on the present tense. Here, too, began his war on the past. History was intervened, and Roosevelt had the answers. He told the Congress:

When the Constitution was adopted, at the end of the eighteenth century, no human wisdom could foretell the sweeping changes, alike in industrial and political conditions, which were to take place by the beginning of the twentieth century .... The conditions are now wholly different and wholly different action is called for.<sup>6</sup>

In his Eighth Annual Message he was still busy setting right and wrong and claiming all that in between:

It is well to keep in mind that exactly as the anarchist is the worst enemy of liberty and the reactionary the worst enemy of order, so the men who defend the rights of property have most to fear from the wrongdoers of great wealth, and the men who are championing popular rights have most to fear from the demagogues who in the name of popular rights would do wrong to and oppress honest business men, honest men of wealth; for the success of either type of wrongdoer necessarily invites a violent reaction against the cause the wrongdoer nominally upholds.<sup>7</sup>

Much was done during his two terms. And much was not. Some, much even, of his program made law. Its essence did not. His "sweeping changes" went unmet. Seven years, many laws, and the present was as removed as ever. His congresses, four times renewed under him, had not kept step, and the Supreme Court, well, the Supreme Court was for him stuck far behind. His last two years in office he divorced lawmaking for moralizing. He hailed commissions that publicized issues and gave but words for solutions. The people's representatives at Washington replied, and refused to fund the commissions. Roosevelt spent his final year feuding with that Congress, ending his term not in rhetorical or legislative triumph but in an exchange of petty accusations of misconduct and insults with Capitol Hill. The Senate debated rules to prohibit "referring offensively" to the Executive. The House censured him by tabling a presidential Message. It got so bad that the House ridiculed a request from Roosevelt to keep his wife's favorite White House sofa. Rather than submit to the embarrassment of a hearing over it led by the Chairman of the Appropriations Committee, Jim Tawney, with whom he had only recently conferred in urging the incoming President, William Howard Taft, to meet and work with Tawney, and whom he had now turned upon as a public enemy in the Message, Roosevelt rescinded the request. Roosevelt had lost control. He resented the House leadership thereafter, a primary cause of his mutiny from Taft. The Bully Pulpit ended all bugle and no charge.<sup>8</sup>

Taft followed him in March of 1909 with the explicit plan to put into law the Roosevelt moral awakening -- the unmistakable logic being that Roosevelt had failed to convert his moralizing into law. Taft knew Roosevelt's history with Congress, and he well knew the recent history of one of Roosevelt's social reform gems, the Employers Liability Law of 1906, that two years later the Supreme Court ruled unconstitutional. In that election year of 1908, the "standpat" Congress passed a new bill that met the Court's objections. The latter was the kind of law Taft wanted -- progressive *and* constitutional. It is

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<sup>6</sup> First Annual Message, December 3, 1901. This and other excerpts from Roosevelt Annual Messages from "The American Presidency," by Rick Matlick and "The American Presidency Project," by John Woolley and Gerhard Peters, University of California at Santa Barbara, per internet hyperlinks in the bibliography.

<sup>7</sup> Eighth Annual Message, December 8, 1908

<sup>8</sup> See Bromley, pp. 61-63, 70-73

critical to understand this about Taft's conception of his presidency going into office. His job was to corral the excess rhetoric of his predecessor, rope it, tame it, stamp it, and get it through both the Congress and the courts. It was for Taft to make up for that vast difference between what Roosevelt said and what he did. Before we go any further, know this: Taft pushed his two congresses harder than any since the Civil War, calling two special sessions and throwing legislation at them with a vigor and a pace unlike anything Roosevelt attempted; and of it all, but one section of one law, a minor law, signed by President Taft, was overturned by the Supreme Court.<sup>9</sup> For this, and for the temperament required of that kind of work and purpose, most of Roosevelt's existing Cabinet would not do. One, Jim Garfield, one of the flightier of the progressives, Taft discarded, "because I knew him."<sup>10</sup> Of another suggested by one of Garfield's fellow Roosevelt-stricken "incense swingers," Taft wrote,

Gifford Pinchot doesn't know the good lawyers of the country, and is quite likely to get some transcendentalist who hasn't any knowledge of the practice of the law but who has commended himself in some way, because of some particular view that he has on a matter of sociology or political economy, either to Pinchot or to the President.<sup>11</sup>

Taft needed sure legal talent in the Cabinet to recommend and, as he used it through his term, to write laws for Congress to consider. He didn't get every one he wanted, but he got the kind of Cabinet he wanted. To the Governor of Missouri, Herbert Hadley, whom he wanted there and didn't get, the President-elect went over the game plan:

My idea is to get five as good lawyers as I could get in the country, who have had large experience in corporate matters, who subscribe to my views on the subjects as indicated in my Inaugural Address which you will read, and who know enough about law to draft the needed amendments to the statutes; whose standing before the business community is such as to commend the result of their judgement, and to enable me, therefore, to get the suggested amendments through both Houses of Congress. It is the business of my Administration to do something, and to embody what we do in statutory form. There is no need to advise you, for you are a lawyer, that the difference between proclamation and result in the form either of a statute or a judgement is very wide. The President has preached a crusade and has nerved the people up to demand reform. Now it falls on me to clinch the matter by securing the necessary statutes, and that is a very different thing from

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<sup>9</sup> Taft's two congresses met 935 days as compared to 1,135 days for the McKinley/Roosevelt four congresses (Bromley, p. 262). For constitutionality, see "Acts of Congress Held Unconstitutional In Whole Or In Part By The Supreme Court of the United States," United States Senate document, per internet hyperlink in the bibliography. Of Roosevelt-era laws, one significant law and sections of four others were overturned. The distinction from Taft is that where Taft's laws were crafted to meet the Constitution, Roosevelt's were concessions to it. The constitutionality of Roosevelt-era laws came of the greater demands of Congress. See "Theodore Rex," by Edmund Morris (Random House, New York, 2001; p. 435) for Roosevelt's fear that Senator Nelson Aldrich kill an issue by passing a bill on it that was deliberately unconstitutional. Roosevelt's capitulation to accepted constitutionality was of political, not fundamental motives. It was a key weakness of his presidency that Congress held the Constitution as an axe over his head. Making constitutionality a primary goal of his laws, Taft removed from Congress what was under Roosevelt a defacto veto power of the legislature over the executive. I know that sounds odd, but that's how Congress operated under Roosevelt -- and how Taft manhandled his own congresses.

<sup>10</sup> William Howard Taft (Taft) to Horace Taft February 1, 1910, Taft Papers, Library of Congress. Unless otherwise indicated, all letters cited here are from the Taft Papers.

<sup>11</sup> Taft to Clarence Edwards, December 28, 1908. Gen. Edwards came up with the name "incense swingers" -- "largely of the New England element, possibly more the Harvard type, who are supposed to stand around the President as acolytes do about a priest and swing incense at him and about him, while the center figure stands with this skirts outspread to receive the adulation... and who never think the President makes a mistake" (from "The Letters of Archie Butt: Personal Aide to President Roosevelt," Doubleday, Page & Company, New York, 1925; letter of November 25, 1908, pp. 194-195. Butt's Roosevelt-era letters will be cited as "Butt, 'Roosevelt.'")

carrying on a popular propaganda.<sup>12</sup>

For the “nerved up,” there would be no pleasing. Roosevelt-inspired reformers had no patience for law and even less for its making. Soon enough, in June of 1909, Roosevelt’s Forestry Service creation, Pinchot, a man whom Roosevelt described as “a socialist but... very useful as long as he was held down and not allowed to get away,” howled at Taft and his lawyers:

The people, not the law, should have the benefit of every doubt .... Legal technicalities seldom help the people .... The law is not absolute. It needs to be construed .... Strict construction necessarily favors the great interests as against the people .... Wise execution of the law must consider what the law ought to accomplish for the general good .... The great oppressive trusts exist because of the subservient law makers and adroit legal constructions.<sup>13</sup>

Roosevelt himself went at the lawyers in 1910, saying “the big corporation attorney” would corrupt state constitutions. Two years later such talk became downright rants that attorneys were “counsel against the people.” His fellow Bull Mooser and financial backer, George Perkins, wrote, “Have you noticed that the worst howl against progressiveness comes from lawyers?” When Elihu Root found Roosevelt’s 1912 election-eve portrayal of certain decisions so deceptive that he was aroused to a public reply, Roosevelt scoffed at the “eminent corporation lawyers” that, he said, were perverting, not defending, the law. He called it a “substitution of legalism for justice.”<sup>14</sup>

As President, Roosevelt bragged that his was “an administration of ideals.” The extent to which the Republican party endorsed those ideals was expressed and clarified in Taft’s 1908 platform, his nomination acceptance speech, and his inaugural address, all of which Roosevelt approved. Going any further, as Robert La Follette demanded, was beyond Taft’s mandate, and beyond his promises. This was not a matter of philosophy, or some product of that supposed Taft reluctant or “Whiggish” presidency. President-elect Taft was exercising, and as President would very forcefully exercise, his mandate upon the political process for a desired outcome.<sup>15</sup> He was committed to making good on that Roosevelt legacy as expressed in the platform and in his speeches -- which brings us back to the lawyer Cabinet. Taft’s 1930s biographer, Henry Pringle, wrote that Taft “should have realized that Roosevelt... would soon grow suspicious of corporation lawyers serving as apostles of reform.” This view ignores Taft’s purpose and his obligation to his predecessor and to the promises of his campaign.<sup>16</sup>

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<sup>12</sup> Taft to Herbert S. Hadley, February 23, 1909

<sup>13</sup> “The Civil War in Taft’s Official Family,” NYT, August 22, 1909. Roosevelt’s view of Pinchot as “socialist” from Archie Butt paraphrase of a Roosevelt comment, “Archibald W. Butt Papers,” Georgia Department of Archives and History, Atlanta, Georgia, letter of January 7, 1910 (not included in the published versions of the Butt letters).

<sup>14</sup> “Roosevelt Against Rigid Constitutions,” NYT, August 31, 1910, “Colonel’s Last Word an Attack on Root,” NYT, November 5, 1912, “George W. Perkins Tells ‘Why I Am A Bull Mooser,’” NYT, August 25, 1912, and “Root and Others Assail Roosevelt,” NYT, November 5, 1912

<sup>15</sup> Butt, “Roosevelt,” letter of January 30, 1909, p. 314, Robert La Follette to Taft, July 17, 1908, and “Our Chief Magistrate and His Powers: A Reconsideration of William Howard Taft’s ‘Whig’ Theory of Presidential Leadership,” by Michael J. Korzi, *Presidential Studies Quarterly*, June 2003 Vol. 33 Issue 2. Korzi argued that Taft exercised a “far more subtle and substantial” leadership than that for which he has been credited.

<sup>16</sup> “The Life and Times of William Howard Taft” by Henry F. Pringle, New York, Farrar & Rinehart, 1939; pp. 382-383. More recently, H.W. Brands noted his historian’s dissatisfaction with Taft for the lawyer cabinet (“T.R.: The Last Romantic,” Basic Books, New York, 1997; p. 666). Morris ignored Taft’s purposes altogether. While making a lame joke about Taft’s weight by inserting an editorial “[!]” into a Roosevelt comment that “Taft is big enough [!] to carve out his own administration,” Morris discarded Taft’s Cabinet choices with, “So much for Taft’s promise of continuity” (p. 548). Morris erred in fact in stating Taft’s “unwillingness even to consider Cabinet appointments until February” (p. 542). The Cabinet was not

In addition to the lawyer Cabinet, much noise has been made over the “insurgent” fight against Speaker Cannon and the Rules Committee he controlled and Taft’s supposedly not doing anything about it, and how this constituted a betrayal of the Roosevelt legacy. Further, there has been much disdain over Taft’s association with Senator Nelson Aldrich, Chairman of the Finance Committee, Czar, representative of privilege, and declared traitor of the people. There’s much to sort out through it all, but it comes down to this, even if you actually do believe all that Aldrich was said to be: Taft inherited Cannon and Aldrich and their like-minded majorities from Roosevelt. Roosevelt insisted that Taft meet up with and coordinate with Cannon before Taft took office. Taft did, and into his term he likewise spoke with Aldrich. Taft demanded and got from both pledges to carry out the party’s promises. The tariff gave, certainly, mixed results. That was to be expected by all realistic observers, including Roosevelt. That there was any revision at all was a huge capitulation by the standpatters who had bullied Roosevelt on the issue. The high tariff was more important to them than railroad rebating and rate control, which they gave to Roosevelt at the going price of laying off the tariff. Taft got them to go with the full program, including more railroad reform and tariff reduction. The problem became, Taft recognized early, that, “The strenuous supporters of Mr. Roosevelt, that is, the extreme supporters, those who like to call themselves ‘progressives,’” refused to join hands with the party leadership and the party in general. In “carrying out particular policies in which I, of course, need the majority in both Houses,” Taft wrote, “what a fool I would be if I joined, or permitted myself to countenance, the yelping and snarling at Cannon and Aldrich...”<sup>17</sup> The deeper problem Taft saw clearly. Opposition to the leadership had become for the “so-called ‘progressives’... a mark of loyalty to the Roosevelt policies,” regardless of those policies. Their spite was unproductive of their --and Taft’s -- purposes. “In other words,” Taft explained, “they do not look beyond their noses.” The insurgents did not force Taft to choose sides. They did the choosing. It was their power play, and it led them right to 1912.

The whole thing was opened up by Roosevelt’s decidedly irregular legacy on tax reform. As President he went every which way with taxes, variously calling for tariff revision, no tariff revision, free lists, reciprocity deals, and inheritance and income taxes and so on -- and he did nothing to get any of it. Typically, he bragged of this failure as an accomplishment. In his last Annual Message, and with the hardest of what the Latins call a “hard face,” he spoke against everything else he had said or not said and had not done with the flat statement that over his seven years, “There have been no new taxes and no increase of taxes; on the contrary, some taxes have been taken off; there has been a reduction of taxation.”<sup>18</sup> Strong words, but it was bluff and surrender. To get to the Roosevelt legacy, which, except for general associations with the word “reform,” had nothing to do with the tariff, Taft had to get around

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complete until late February, but that was not unusual. Part of the delay came of Taft’s affirmation of the Roosevelt legacy: in late January he went to Panama to demonstrate his commitment to the Canal project, which was at the time subject to much complaint. For Taft’s Cabinet making, see Roosevelt to Taft, December 31, 1908, Taft to Philander Knox, December 23, 1908, Taft to W.R. Nelson, February 23, 1909, and Taft to Mabel Boardman, April 14, 1912, that last regarding a conversation with Roosevelt on the Cabinet of December 10. This historical nitpicking is silly, but, sadly, necessary. The carping over Taft’s Cabinet and his golfing and sleeping after the election (Morris, p. 540) is typical but incorrect. It is excuse for complaint, and not legitimate cause. For Taft’s golfing, see Bromley, pp. 35-36. For Taft’s sleeping, see “Taft and Pickwick: Sleep Apnea in the White House,” by John G. Sotos, MD (Chest, 2003, 124:1133-1142). In this admirable study, Dr. Sotos concluded that Taft suffered from sleep apnea. Where it gets off base is when that condition is used to explain Taft’s presidency. For my reply, see “Taft and Sleep Apnea,” per internet hyperlink in the bibliography.

<sup>17</sup> Taft to Horace Taft, June 27, 1909. This was the accepted wisdom on Taft’s proper attitude toward the House rules fight. See “Cannon Fearful of Defeat,” NYT, March 8, 1909: “Mr. Taft’s support is confidently expected by the Cannon supporters, for the tariff programme and other Administration legislation would be in a sorry tangle if committed to a House with a majority divided against itself.”

<sup>18</sup> Eighth Annual Message. Those reductions, he failed to explain, were mostly expiration or annulment of McKinley-era war taxes. The Latin American term *cara dura* means, literally, “hard face.” The closest translation to American English is the Yiddish “chutzpah” for contradicting oneself with a straight, i.e., “hard” face.

Roosevelt's failure to reform that primary government function of taxation. And so it was that the issue of 1909 was tariff reform.

The reason Roosevelt dodged the tariff went beyond politics. While he understood there were no winners in tariff making, and while he understood the fetish for protection held by the standpatters, more important to his views on the tariff was that -- unlike those standpatters for whom protection was almost self-conception, a high principle -- he was unable to view it as a moral issue.<sup>19</sup> Democrats believed with heart and soul that the tariff hurt the common man. It was a moral tale for them -- just as it was for the standpatters. Insurgent Republicans, such as La Follette, genuinely believed in tariff revision, but they, like Roosevelt, yet argued for protection and otherwise couldn't see past the politics. For the "Roosevelt Republicans" of 1909, virtue came less in tariff reductions, especially as regarded home districts, than in opposing Aldrich. The tariff meant little more to Roosevelt than to the reformers he inspired, including Pinchot, who foolishly told Congress that higher tariffs on lumber would protect forests, testimony which standpatters used to kill crucial reductions in lumber schedules.<sup>20</sup> Without irony, the Roosevelt progressives blamed Taft for abandoning the Roosevelt legacy in the Payne bill, called by them, "Payne-Aldrich." This, along with the anti-legalism rhetoric of the Pinchot types, was the first of their confusion of ends and means that led to their building and collapse as a structured movement in 1912. Of the insurgent attitude towards Taft's kick-down-the-wall income and corporation tax Message of June 16, which, in removing the standpat argument for revenue, blew wide open the fight for reductions -- and led to that fundamental change in America in the 16th amendment -- he wrote,

Had they the breadth of view, and the keenness of insight, immediately upon the receipt of my message they would have arisen in their seats and said: "This gives us all we have been claiming and seeking only by another method, and now we claim to lead the procession because the President and the reactionaries have come to our side."

They didn't. With or without them, what to do next was an easy calculation:

Of course, I could make a lot of cheap popularity for the time being by vetoing the [Payne] bill, but it would leave the party in bad shape -- it would leave us in a mess out of which I do not see how we could get, and the only person who would gain popularity would be your humble servant, and that at the expense of the party and men who have

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<sup>19</sup> In 1910 he said, "The tariff ought to be a material issue, not a moral issue" ("The Commission Principle" speech at Sioux Falls, September 3, 1910). His presidential zigs and zags and inactive moralizing on tax issues has led to confusion of the final sum of his views on it. For example, in "1912: Wilson, Roosevelt, Taft and Debs -- The Election that Changed the Country," by James Chace (Simon & Schuster, New York, 2004), the author wrote, "The Republican arch-conservatives had always been wary of TR's commitment to political and economic reform; they detested Roosevelt's... [among things] disposition to reduce tariffs..." Chace suggested that where Taft "refused to interfere with the legislative process," Roosevelt would have (p. 17). For Taft's interference in the legislature, for which he was severely criticized, and which made for his legislative successes, see Bromley, pp. 165-167, 170-172, 247-250, 264-266. We cannot know what Roosevelt would have done in Taft's place, but we do know that as President he never touched the tariff, and as presidential candidate in 1912 he dodged it. Secretary of War Taft, not Roosevelt, pushed tariff revision, starting in 1905. The inheritance tax was the only tax Roosevelt could view with the indignation of reform. Nevertheless, his presidential suggestions for it were no stronger and had no more effect than any other of his stands on tax reform. Taft empowered this portion of his legacy, inasmuch as it was part of it, on his own. In his inaugural address, Taft warned that if the tariff not produce adequate revenue, "new kinds of taxation must be adopted, and among these I recommend a graduated inheritance tax as correct in principle and as certain and easy of collection." This went beyond the platform but took on the power of a pledge, as it was in the inaugural address. In removing the standpat argument that high tariffs were needed for revenue, Taft threw wide open the fight for reductions. If revenue were needed, the standpatters wouldn't have to rely on protection. Deprived of the requirements of revenue, opponents of protection were given cause.

<sup>20</sup> Gifford Pinchot to Sereno Payne, letter of March 10, 1909, Congressional Record, April 6, 1909, p. 1135. Using the same logic in 1912, he called for a ban on export of raw materials, a plan Mowry uncritically called "curious" (p. 272).

thus far stood with me loyally .... The vetoing of the bill, of course, would throw me out with the leaders in the Senate and the House, and would make me almost helpless in respect to effecting my reforms of next year, so you see how much more hangs on the question than the mere subject of the rates in the tariff bill.<sup>21</sup>

That word “loyally” would come to mean much to Taft. It and the fulfillment of his program were the basis for his “Winona” speech later that year. The deciding factors in signing the Payne tariff were those “reforms of next year” and the “administrative features” of the bill, each of which marked significant fulfillment of the Roosevelt legacy, or of accepted republicanism inherited through Roosevelt from McKinley. These provisions included Philippines free trade, the minimum/maximum rates, the corporation tax, the tariff board, and that historically huge, all-important Payne bill sideshow, the income tax amendment to the Constitution.<sup>22</sup> Those last three alone constituted break-through reform. Still, the overriding concern was the fuller program, the “reforms of next year.” The party and its majorities that had produced the votes for Payne, Taft would need for other purposes. As it had been for Roosevelt, the existing leadership was the agency. The 1910 session proved Taft exact. Over the long Spring and into the Summer, the regular session of the 61st Congress made almost entirely good on the Republican platform.<sup>23</sup> Two key events contributed directly to this success. The first was a speech Taft gave at Winona, Minnesota in September of 1909. The other was the rules insurgency fight in the House.

At Winona, Taft spoke of the tariff. He called the Payne bill the best tariff passed by the Republican party, and thereby, in his opinion, “the best tariff bill that has been passed at all.”<sup>24</sup> His critics, especially the insurgent and Democratic press, as well as the prominent low-tariff independent, The New York *Times*, used the statement to great effect to discredit him and the Payne tariff. Winona became the operative criticism of his presidency. Two years later Taft said that the statement was written hastily and was a mistake, an admission that I believe was disingenuous. The speech was not about the tariff. Its subject was the tariff. The message, the overall point of the speech, was party loyalty and the party system itself. At the district of the only Minnesota Republican to have voted for the Payne bill, Jim Tawney, one of the leadership, Taft measured that man’s performance against the rest of the State’s Republican delegation. House Republicans had voted in almost complete union for its original version of the Payne bill. The sole dissenter, and this included rules insurgents, was a southerner. While many of the insurgents

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<sup>21</sup> Taft to Horace Taft, June 27, 1909. See Bromley, pp. 165-167 and “The Collected Works of William Howard Taft,” Vol III (David Burton, General Editor, Ohio University Press, Athens, Ohio, 2003; p. 133; this collection will be cited as “Works”).

<sup>22</sup> For Taft on these reforms see, Taft to Helen Taft, July 11, 1909. The Payne bill made critical lateral adjustments in the schedules that were just as and often more important than reductions, a benefit that does not show in comparisons of rates. Chace wrote that “most of the changes went upward” (p. 17). Without arguing particulars, as that statement could mean quite any number of things, the comparative values of increases and decreases in each general category (the “schedules”), luxuries excepted, and overall *ad valorem* totals were significantly lowered from existing rates.

<sup>23</sup> See Bromley, pp. 249-250. It should be noted that throughout the 61st Congress, the Lawyer Cabinet was indispensable to Taft’s success, drafting legislation and straightening out constitutional issues. The remaining promises from the platform were currency reform, which was being studied by a commission, further tariff revision, which was being studied by a board, and changes in injunction procedure, for which Taft was not enthusiastic but insisted upon, “because it has been promised” (Second Annual Message, Taft “Works,” Vol. IV, p. 42). Another ongoing issue was additional regulation of the trusts, for which Taft’s solutions came in the 1909 corporation tax, his hard application of the Sherman Anti-Trust Law, and his calls for a federal incorporation law. Taft would continue to address all of this throughout. The unfinished business of the 1910 session was nothing compared to its successes.

<sup>24</sup> In Bromley, p. 213, footnote 40 incorrectly states that Taft did not say it was “the best ever” tariff. While in slightly different words, this is wrong. He twice said that it was “the best tariff bill” the Republican party had ever passed, only, when he repeated it the second time, which stupidly escaped my notice, he added that it was “therefore the best tariff bill that has been passed at all.” See “Works,” Vol. III, pp. 177, 180.

voted against the final bill, there was an understanding, especially among the Minnesota delegation, that were their votes needed, enough would appear at the last minute to pass the bill. It wasn't needed, and dissent was given its voice. It became a problem for Taft and the leadership when the Minnesotans went home and turned on Tawney for his vote.<sup>25</sup> The harsh criticism betrayed both the deal that allowed their dissent and any constructive force it might carry with the party. Taft found such loyalty wanting. At Winona, Tawney's hometown, he said:

But, as I have already said, I am quite willing to admit that allowing the woolen schedule to remain where it is probably not a compliance with the terms of the platform as I interpret it, and as it is generally understood. On the whole, however, I am bound to say that I think the Payne tariff bill is the best tariff bill that the Republican Party has ever passed; that in it the party has conceded the necessity for following the changed conditions and reducing tariff rates accordingly. This is a substantial achievement in the direction of lower tariffs and downward revision, and it ought to be accepted as such.<sup>26</sup>

This, "the best tariff bill," Taft had no intention of defining of his presidency. He certainly hadn't imagined the outcry that arose. His 1911 *mea culpa* was heartfelt only in that, as he said, he oughtn't have used the superlative. He meant it at the time. He repeated it twice in the speech. He did it because it was important to his larger point, which, despite the hysterical reaction to the tariff comment, was well understood by the intended targets. A few paragraphs more describing the benefits of the bill, such as the "tremendous cuts" in iron schedules, denial of the rather unfair but highly potent Democratic accusations that the new tariff had caused the "high cost of living," and affirmation of core republicanism in protection, "If we are to have free trade, certainly it cannot be had through the maintenance of Republican majorities in the Senate and House and a Republican Administration," more than half-way into the speech came the real message at Winona, Minnesota:

And now the question arises. What was the duty of a member of Congress who believed in a downward revision greater than that which has been accomplished, who thought that the wool schedule ought to be reduced, and that perhaps there were other respects in which the bill could be improved? Was it his duty, because in his judgment it did not fully comply with the promises of the party platform as he interpreted it, and indeed as I had interpreted it, to vote against the bill? I am here to justify those who answer this question in the negative.

By this view the Payne tariff was the best ever tariff, but it was not the best possible tariff. With Tawney the example of one who did not entirely agree with it, and voted for it anyway, and explaining that should he or the party have defeated the bill, "we would have left the party in a condition of demoralization that would have prevented the accomplishment of its purpose and a fulfillment of other promises which we had made just as solemnly as we had entered into that with respect to the tariff," and that, "it would have suspended the settlement of all other business," Taft returned to the heart of his message, which went

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<sup>25</sup> Taft early on decided to let the House veto or approve the bill for him. It was this pressure that he brought upon Conference Committee that led to Senate concessions to meet House approval. For the fall-back votes, if needed, see Bromley pp. 210-211. Jim Tawney's is an interesting story that needs more telling. More than any single character, he was the target of Roosevelt's ire for his opposition to the 1908 commissions. Roosevelt's ugly Secret Service affair was the excuse to go after him. The attacks on Tawney during his reelection campaign in 1910 by Roosevelt's comrades such as Pinchot and Francis Heney, and by Roosevelt himself, were malicious and downright unseemly. Pinchot called Tawney "the most dangerous opponent of the public welfare in the United States" (Bromley, pp. 214-215).

<sup>26</sup> "Taft Lauds Tariff as Nation's Best," NYT, September 18, 1909. Also in "Works," Vol. III, p. 177. This statement, top to bottom, was unarguably correct. The politics of it was another matter.

straight to 1912:<sup>27</sup>

I am glad to see that a number of those who thought it their duty to vote against the bill insist that they are still Republicans and intend to carry on their battle in favor of lower duties and lower revision within the lines of the party. That is their right, and, in view of things, their duty. It is vastly better that they should seek action of the party than that they should break off from it and seek to organize another party, which would probably not result in accomplishing anything more than merely in defeating our party and inviting in the opposition party, which does not believe, or says that it does not believe, in protection. I think that we ought to give the present bill a chance.

Taft wrote his wife, "I see that Cummins and La Follette and the rest of them propose to fight, but I anticipated this, and I am ready to stand with the party and see who comes out best." Still, if they were willing, he would have them along. Several months later he wrote, "I am laboring earnestly to bring insurgents and regulars together in support of progressive measures promised by the Republican platform of 1908."<sup>28</sup> It was up to them, for the insurgents were the lesser half of the equation. Taft's targets at Winona were not Cummins and La Follette and the insurgents alone. They assumed it. They were not. Taft railed at dissenters all, any Republican, insurgent or standpat, who was unwilling to act upon the platform. The morning of the Winona speech, at Milwaukee, he spoke in the same terms as at Winona. This time it was postal savings banks. You are with the platform or you are not with the party, Taft warned:

If they do not like a plank in a platform, or if they do not like the platform itself, they cease to be Republicans or they are Republicans with an exception, and that indicates a free and enlightened and discriminating people. But I am here to uphold the doctrine of the postal savings banks because I believe that they will fill in this country a long-felt want.<sup>29</sup>

There was little outcry over this threat, and none from insurgents. Postal savings banks was one shibboleth they could pronounce -- until, that is, it came to putting it into law; then they screeched more treason from Aldrich and Taft. The day of the reportage of the Winona speech, the lead editorial of *The New York Times* suggested that since Taft had not fulfilled the platform's promises of tariff reduction he ought neither be bound by the postal savings plank, which *The Times* deplored. Taft's reply to such criticism lay in the Winona address, in that objections to the form of legislation did not relieve party members of supporting the party's final production of its promises. They were welcome to carry on their struggle within the process, as had Tawney, who vigorously fought many schedules and voted for the end product.<sup>30</sup> Postal savings, as well as most of the rest of the platform, Taft insisted upon and got. Cannon and Aldrich objected to much of it, and went dutifully along according to the rules Taft set at Winona. That speech ensured his success in the 1910 session, and his rather extraordinary near fulfillment of the platform and of his promises.

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<sup>27</sup> In "The Political Battle of 1912" (Thomas H. Russell, Editor-in-Chief, Association of Political and Social Science, copyright by L. H. Walter, 1912), a "Non-Partisan Presentation" that leaned heavily towards Roosevelt, the editors traced the Republican party split to the Winona address (pp. 168-169). Taft's warnings at Winona still resonated three years later.

<sup>28</sup> Taft to Helen Taft, October 3, 1909 and Taft to E.F. Baldwin, January 13, 1910

<sup>29</sup> "Taft Lauds Tariff as Nation's Best," NYT, September 18, 1909

<sup>30</sup> "Postal Savings and the Tariff," NYT editorial, September 18, 1909. A dissident to whom Taft did not object was the senior Senator from Minnesota, Knute Nelson, who voted against Payne. While Taft would rather that Nelson argue against a bill and, finally, vote for it, Nelson afterwards remained regular, in and out of his particular dissent over Payne. Taft held in contempt those who, after lodging a dissenting vote, continued to work against the party, such as La Follette and Cummins.

The other event of great benefit to Taft's program was the end of the rules insurgency feud. Teaming up with Democrats, the rules insurgents removed the Speaker's appointment power of the Rules Committee. The more extreme of the insurgents, that is, those for whom insurgency went beyond the rules issue, wanted Cannon dethroned entirely. With the rules problem settled, Cannon received an affirmation of his speakership greater than that which elected him the year before. Insurgency in the House quelled, and with the exception of a few of the "ultra-insurgents," regularity prevailed.<sup>31</sup> Taft's wisdom in staying out of the fight paid off. Cannon's House acted with dispatch. While insurgency in the Senate continued and the La Follette team tried to drag the session far into the Summer by overloading bills with their own versions of the party's promises, usually way beyond it, and refused compromise, Aldrich took here, gave there, and kept to the platform. Taft walked off with his bills. Along the way Taft asserted himself vigorously, especially with railroad reform, which was nearly stampeded by the roads. He shut them down and got his way. At the close of the session, *The Times*, which had carped at Taft all Spring over the tariff, over meddling in the affairs of Congress, over keeping his campaign promises on such things as postal banks and railroad reform, and, if you can imagine it, for being a modern James Buchanan, made the stunning admission:

It is a personal record for the President not equaled by a Chief Executive in a great many years, and it has been accomplished by methods utterly unlike those used by the White House in the preceding seven years.<sup>32</sup>

So where was the rest of the country's acclaim? Rather than triumph, Taft's party lost the House of Representatives to Democracy in the Fall. Rather than praise, the former president, back from Europe, kept his mouth shut and refused to uphold his successor or his successor's fulfillment of his own agenda.<sup>33</sup> Taft's rather supreme defeat of Aldrichism in the name of the Roosevelt legacy could only be ignored by changing the meaning, in the minds of the anti-Taft elements, of that legacy. By the summer of 1910, tariff agitation turned to general discontent that empowered the Democratic party more than

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<sup>31</sup> See Bromley, pp. 245-247

<sup>32</sup> "Reluctant Congress Bent to Taft's Will," NYT, June 21, 1910. In his autobiography, White wrote that Taft "never had his way with Congress" (he also wrote that the insurgents were unfair to Taft; pp. 444-445). White was merely upset that Taft wasn't all that White wanted him to be. For Taft to have been for White what *The Times* here spoke of would have negated everything White was doing at the time, and would have required far more contrition than that offered in his autobiography, some of which was remarkable enough.

<sup>33</sup> Except in New York, Roosevelt spoke of the usefulness of certain Taft measures without giving Taft credit for them, or by dismissing them as insufficient. In Kansas he spoke for a tariff "commission" -- an insult at Taft's tariff board -- and praised Taft's railroad reform before dismissing it with, "and we must go yet further." At St. Paul, he credited Taft's articulation of conservation as "so admirably said," then forthwith limited the praise to Taft's policies on "coal, iron, and phosphate lands." At Syracuse he spoke more clearly for Taft's accomplishments, but, as universally noted, without enthusiasm and without admiration (*The Times'* headline said it all: "Roosevelt Praises Some Acts of Taft," September 18, 1910; see also Roosevelt's "The Republican Record and Popular Rule" speech at Saratoga, September 27, 1910). In private letters Roosevelt whined about this or that Taft, especially over the railroad bill, saying nothing the overanxious of his day in office didn't say of him, and displaying their same bitterness at not getting everything they wanted. He was not disposed to think kindly of anything Taft had done. There is no logic to it save what can be derived from an emotional or a self-serving political predisposition. Whatever he did or thought during this period, it was not heroic. He did the weak, easy thing, and tried to play off both sides. This was pandering, not philosophic wandering, or some brave attempt to unite the party, as Mowry portrayed it (see Chapter Five). For a view of his attitude, see Roosevelt's letter to Nicholas Longworth, an Administration supporter and Roosevelt's son-in-law, letter of July 11, 1910, from "The Letters of Theodore Roosevelt" Harvard University Press, Cambridge, Massachusetts, 1954; Vol. 7, pp. 98-102. (This source will be cited as "Roosevelt Letters." Sources for Roosevelt speeches from 1910-1912 are: "Social Justice and Popular Rule," from "The Works of Theodore Roosevelt," Volume XVII, Scribner's Sons, 1926; "The New Nationalism," edited by William E. Leuchtenburg, Peter Smith, Gloucester, Mass., 1971; "The Political Battle of 1912"; and various web publications of the same.) The glaring truth to Roosevelt's sentiments and goals in 1910 was revealed in his spiteful attack upon Tawney in the St. Paul speech, which was a direct, open attack upon a fellow Republican. In it, there was no reconciliation, no harmony, only the bitterness and contempt of his disastrous presidential year of 1908.

anyone else. For the insurgents, now called progressives, the previous year's standard that progressivism was measured by one's distance from Aldrich held. It was no longer a matter of fulfilling the details of the Roosevelt legacy as handed over to Taft. It was now Ballinger.<sup>34</sup> It was lawyers. It was the tariff. It was the high cost of living. It was anything but Taft's promises. More than anything it was the mood of the Roosevelt legacy, not its specific programs. Discontent had moved along to higher forms, and national politics became an exercise in opposition -- not to anything in particular, just opposition. Discontent was over agency, not product. Amidst it all, Taft looked about and shook his head. "The present political situation is a curious one," he wrote in September of 1910. "Indeed, the condition of public opinion is curious. It seems to be feeling the effect of the flood of misrepresentation which manifests itself in a protest against everything and everybody who is not in the forefront crying 'Stop thief!'" A year later he chuckled that now, not just the insurgents were upset at him, this time over his removing tariffs with Canada, but Wall Street freaked over his anti-trust enforcement, the standpat element howled at his tariff board and its impending fix for that most difficult of schedules, Schedule K, for woolens, and Roosevelt damned his peace treaties and trust-busting: "...I find that most of the world wake up with surprise and indignation to find me attempting to keep my promises..."<sup>35</sup>

Through it all, Taft's challenge worked. Winona held. He ended the year of 1911 in his strongest position since taking office. After taking loss after loss in the 1910 session, the insurgents officially gave up all pretense of regularity and launched their own organization, the National Progressive Republican League. They did it because they thought they could win. It got them no where through 1911. Instead, as Cannon taunted Pinchot the previous July, it was a sign of weakness with an inevitable destination. "I have the greatest personal regard for you," Cannon said with the required apology before criticizing Pinchot in public, "but I understand you are now engaged in conservation work for the organization of a new party."<sup>36</sup>

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While Taft's enemies smeared him as a reactionary, the Founding Fathers joined him as straw men, too. A labor attorney said they burned witches. Prohibitionists called them drunks.<sup>37</sup> Academics tossed muck their way. Herbert Croly's "The Promise of American Life" concluded that the Founders were wonderful gentlemen whose importance was in their own time, not 1909. Charles Beard went further and in his "Economic Interpretation of the Constitution of the United States" all but accused the Founders of running an illegal trust.<sup>38</sup> The most severe assaults of the period fell not upon Taft, and not upon the

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<sup>34</sup> See Bromley, 192-199 and Pringle, Chapters 26 and 27.

<sup>35</sup> Taft to W.D. Evans, September 12, 1910 and Taft to Otto Bannard, September 10, 1911

<sup>36</sup> "Pinchot Meets Cannon in Debate," NYT, July 16, 1910. Of the requisite apologies before any public criticism of Pinchot, see Bromley, p. 192, footnote 8. Pinchot's public image serves as example of the effect of the Roosevelt preachments for reform upon his excitable disciples. To the public, Pinchot stood for forestry and conservation. Pinchot rather saw himself as the embodiment of reform itself, and he applied his legacy in conservation to all affairs, for most of which he had no authority. The bridge Pinchot used to get from trees to politics was the Roosevelt rhetoric on "privilege."

<sup>37</sup> See Bromley, pp. 298-299

<sup>38</sup> For a good view of Croly, see "Herbert Croly's Transformation of the American Regime," by David Alvis, Claremont Institute, 2002, per internet hyperlink in the bibliography. Alvis investigated Croly's unsuccessful and misguided attempt to synthesize Hamilton and Jefferson. Mowry drew his comprehension of Roosevelt straight from Croly: "One of the great accomplishments of the progressive movement was to fasten Jeffersonian idealism on a Hamiltonian structure in a partial realization of social democracy" (pp. 10-11). As regards Beard, in the introduction to a later edition of his book, he protested that he had not impugned the Founders, it was just the facts of their economic interests, and that, "in no sense was the volume a work of the occasion, written with reference to immediate controversies" (Macmillan, New York, 1935). This serves more apology than explanation. Rather, Beard was using the old, "I led the horse to water but it wasn't my fault that he drank it," excuse. For example, using Beard's research on the origins of judicial review in "The Supreme Court and the Constitution" (Macmillan,

Founders, but upon their Constitution. Serious calls were made for drastic changes in it and its use, from looser interpretation, to popular referenda on its meaning, to easing its amendment, to outright revocation. It all led to an equally ugly destination: nullification. Taft, the Judge-President, the Constitution's bodyguard, was moved to alarm.

Roosevelt's nature rebelled against legal authority. He had no patience for lawyers. He wasn't one himself. As President he expressed frustration with legal interpretations that limited his action. Still, his two most important advisors were Taft, the former judge, and Elihu Root, a corporate attorney. Of his time in the Cabinet, Taft recalled that when Roosevelt "would get into hot water, he would send for the conservative members of the Cabinet and depend on us to get him out of it." Roosevelt, Taft said, "had a good deal of contempt for the judiciary. He did not like the delay of the law when he felt the public weal was to be served..."<sup>39</sup> Nevertheless, Roosevelt's few, if any, constitutional end-runs sallow when compared to his submissions to it. And it bugged him.

His 1908 Annual Message demanded that the courts greet the new and drop the old:

The decisions of the courts on economic and social questions depend upon their economic and social philosophy; and for the peaceful progress of our people during the twentieth century we shall owe most to those judges who hold to a twentieth century economic and social philosophy and not to a long outgrown philosophy, which was itself the product of primitive economic conditions.<sup>40</sup>

This idea, buried beneath some almost 20,000 other words, has been extracted as a forerunner of "legal realism," the liquid constitution. The *New York Times* of 1908 sure saw it that way. "When Judges once get away from the law and the principles of justice," the editors replied to the Message, "and begin to dabble in twentieth century economic and social philosophy, they will find themselves upon an uncharted sea, where it may be each will be inclined to sail his own craft according to his own brand of the twentieth century article."<sup>41</sup> Roosevelt's latest biographer quoted from the sentence that preceded the admonition that judges adhere to the "twentieth century" that so offended the *Times* and that read:

Every time they interpret contract, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy, and as such interpretation is fundamental, they give direction to all law-making.

"This suggestion that the judicial branch of government was actually a branchlet of the legislative," the biographer concluded, "was almost as revolutionary as Roosevelt's claim that concentration of power was democratic."<sup>42</sup> However anyone has interpreted the sentence, Roosevelt wasn't talking about judges. The

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1912), The *Times* criticized Roosevelt while excusing the Professor of it, with, "[Beard] does not assert this -- he gives [the Founders'] words." Same difference.

<sup>39</sup> "Taft and Roosevelt: The Intimate Letters of Archie Butt, Military Aide," Doubleday, Doran & Company, Inc., Garden City, New York, 1930; letter of May 5, 1910, pp. 345-346. (Butt's Taft-era letters will be cited as "Butt, 'Taft.'")

<sup>40</sup> Eighth Annual Message to Congress, December 8, 1908

<sup>41</sup> "The Last Annual Message," NYT editorial, December 9, 1908

<sup>42</sup> Morris, p. 542. He earned this praise for democratic "concentration of power" with, in the Message, after upholding the benefits of the concentration of capital, a correlation of the same to government: "Concentrated power is palpable, visible, responsible, easily reached, quickly held to account. Power scattered through many administrators, many legislators, many men who work behind and through legislators and administrators, is impalpable, is unseen, is irresponsible, can not be reached, can not be held to account. Democracy is in peril wherever the administration of political power is scattered among a variety of men who work in secret, whose very names are unknown to the common people." Therein is something that slipped out of this

“they” in the sentence were the legislators. He was making the rather obvious claim that, “The chief lawmakers in our country may be, and often are, the judges, because they are the final seat of authority.” It might have been “revolutionary” had he taken the statement to his 1912 conclusions, that judicial review be the lesser of legislative power or popular review. He didn’t. Instead, he ventured off into the “twentieth century” and how its judges ought to be of high character, before getting to, “But it is also true that judges, like executives and legislators, should hold sound views on the questions of public policy which are of vital interest to the people.”<sup>43</sup>

Taft, whom in the Message Roosevelt upheld as “the stamp” of the right type of judge, had no disagreement with any of these statements. Roosevelt’s demand that the courts evolve was an assertion of the English-American tradition of law, the progression of judicial opinion based upon application of precedent to new conditions. He might as well have quoted from Black, or from Holmes. There was nothing radical in the view that constitutional law also yield to the people’s “vital interest”<sup>44</sup> -- the question was who was to say what that interest was and how it was to be expressed in the Constitution. That’s called politics. The more important feature of this talk on the law was the degree to which he qualified its “revolutionary” statements. Roosevelt’s melodies ever captivated more than the words. The Message fell back upon the straight, old thinking that -- and forgive the length, but it’s worth the read to capture the tune:

The legislators and executives are chosen to represent the people in enacting and administering the laws. The judges are not chosen to represent the people in this sense. Their function is to interpret the laws. The legislators are responsible for the laws; the judges for the spirit in which they interpret and enforce the laws. We stand aloof from the reckless agitators who would make the judges mere pliant tools of popular prejudice and passion; and we stand aloof from those equally unwise partisans of reaction and privilege who deny the proposition that, inasmuch as judges are chosen to serve the interests of the whole people, they should strive to find out what those interests are, and, so far as they conscientiously can, should strive to give effect to popular conviction when deliberately and duly expressed by the lawmaking body. The courts are to be highly commended and staunchly upheld when they set their faces against wrongdoing or tyranny by a majority; but they are to be blamed when they fail to recognize under a government like ours the deliberate judgment of the majority as to a matter of legitimate policy, when duly expressed by the legislature. Such lawfully expressed and deliberate judgment should be given effect by the courts, save in the extreme and exceptional cases where there has been

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Message and into 1912, the progressive slogan, “invisible government.”

<sup>43</sup> For context, here it is in full: “The chief lawmakers in our country may be, and often are, the judges, because they are the final seat of authority. Every time they interpret contract, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy, and as such interpretation is fundamental, they give direction to all law-making. The decisions of the courts on economic and social questions depend upon their economic and social philosophy; and for the peaceful progress of our people during the twentieth century we shall owe most to those judges who hold to a twentieth century economic and social philosophy and not to a long outgrown philosophy, which was itself the product of primitive economic conditions. Of course a judge’s views on progressive social philosophy are entirely second in importance to his possession of a high and fine character; which means the possession of such elementary virtues as honesty, courage, and fair-mindedness. The judge who owes his election to pandering to demagogic sentiments or class hatreds and prejudices, and the judge who owes either his election or his appointment to the money or the favor of a great corporation, are alike unworthy to sit on the bench, are alike traitors to the people; and no profundity of legal learning, or correctness of abstract conviction on questions of public policy, can serve as an offset to such shortcomings. But it is also true that judges, like executives and legislators, should hold sound views on the questions of public policy which are of vital interest to the people.”

<sup>44</sup> Long before, in one of the “Granger” cases, *Munn v Illinois* (94 U.S. 113, 1877), the Supreme Court affirmed that the “public interest” was the larger than private interest if the former was affected.

a clear violation of a constitutional provision.

He spoke this point more clearly four years later that the Constitution and its interpretation must reflect the popular will or it ceased to be a legitimate instrument. In 1908, his take on it was dizzying, but, finally, bland and rather meaningless for the duality of it all which amounted to self-negation. The entire discussion started over court injunctions and the extreme demands over it and against the courts by labor. Eventually he got around to advice to the courts to be careful in annulling laws, and to the legislature to be wary of passing laws that might be annulled, and that all of them ought keep to the twentieth century plan. There were good judges and there were bad judges, and good judges were the ones with modern views and who applied them to the Constitution, and the same for legislators. Seeds of 1912, but not there yet. Whatever the intended revolution in the Message was trumped by real rebellion in Congress at the Message's intentionally provocative claim that funding and jurisdictional limits that Congress had imposed on the Secret Service were "of benefit only, and could be of benefit only, to the criminal classes." This war with Congress didn't just overshadow any theories of some new judicialism; those theories, or that of them that escaped the qualifications, were entirely lost to it. The "Big Noise," as Roosevelt was known by March 4, 1909, was louder than his words.<sup>45</sup>

Out of office, Roosevelt was more free to sing his arias without the answering chorus. In the Summer of 1910, he conducted a western tour. While yet indulging in qualification, best described in General Otis's name for him, "Mr. Facing Both Ways," he more freely presented his moralism than he had as President.<sup>46</sup> His most famous speech of the tour was called "The New Nationalism," and in it he proposed solutions to the day's problems along the lines of the title. It contained little new, and ran mostly like a campaign speech. There was that uniquely Roosevelt oddity about the speech that evoked simultaneous reactions of, from the one side, ho-hum there-goes-Roosevelt-again along with how-dare-he indignation, and of the other, high-fives at the glorious new next to affirmation of what they always thought. This effect has been passed down in history. A scholar recently observed that "there is scarcely a theme or a recommendation of the New Nationalism which Roosevelt had not already enunciated before..." -- yet the speech was "radical." To Roosevelt's mind he said nothing new: "I may have here and there strengthened [his statements as President], or made them a little clearer, but substantially what I said at Ossawatimie [sic] consisted of assembling those points made in my messages to Congress, which I regarded as of most importance for the moment."<sup>47</sup>

When in the speech Roosevelt quoted Lincoln's, "Labor is prior to, and independent of, capital," which, he said, were they his own words, "I should be even more strongly denounced as a Communist agitator than I shall be anyhow," it was nothing new. Not even his downright determinist comment that, "Combinations in industry are the result of an imperative economic law which cannot be repealed by political legislation," was new to his rhetoric. It was said with greater emphasis and less qualification than before, but there was as little surprise in it as there was in his call for federal regulation of the workplace. Furthermore, he excused all his remedies by way of the old theme that, "If the reactionary man, who thinks of nothing but the rights of property, could have his way, he would bring about a revolution." No, the most fanatical or "radical" or "revolutionary" thing in the speech was its claim that the problems of

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<sup>45</sup> "Possum Wallow, U.S.A.," by "General Debility," *Auto News* of Washington, April, 1909; p. 2

<sup>46</sup> *Outlook*, June 17, 1911, p. 330. Otis owned *The Los Angeles Times*.

<sup>47</sup> "Mr. Roosevelt is Guilty": Theodore Roosevelt and the Crusade for Constitutionalism, 1910-1912," by Gary Murphy, *Journal of American Studies*, Vol. 36, Part 3, December, 2002; p. 442 and Roosevelt to Henry Cabot Lodge, September 12, 1910 ("Selections From the Correspondence of Theodore Roosevelt and Henry Cabot Lodge," Charles Scribner's Sons, New York, 1925; pp. 391-392; cited hereafter as "Roosevelt-Lodge letters"). Of the speech, Elihu Root wrote, "the only real objection I see to it is calling it 'new'" (Root to Taft, October 14, 1912, per "Elihu Root," by Philip C. Jessup, Dodd, Meade & Co., New York, 1938; Vol. 2, p. 163).

the day were the equivalent to those attended fifty years before by his audience of veterans of the Civil War.

As President, Roosevelt's claim on history was that the issues of his day were unique. The newness was a matter of distinction, not value. Now, his day, his issues, his solutions took on the magnitude of the nation's greatest historical crisis: a nation split in two, with armies of hundreds of thousands against one another, ready to kill one another, brothers no more. This comparison, while less obviously hyperventilated than his "Armageddon" of 1912, is equally foul:

I do not speak of this struggle [the Civil War] of the past merely from the historic standpoint. Our interest is primarily in the application to-day of the lessons taught by the contest of half a century ago. It is of little use for us to pay lip-loyalty to the mighty men of the past unless we sincerely endeavor to apply to the problems of the present precisely the qualities which in other crises enabled the men of that day to meet those crises. It is half melancholy and half amusing to see the way in which well-meaning people gather to do honor to the men who, in company with John Brown, and under the lead of Abraham Lincoln, faced and solved the great problems of the nineteenth century, while, at the same time, these same good people nervously shrink from, or frantically denounce, those who are trying to meet the problems of the twentieth century in the spirit which was accountable for the successful solution of the problems of Lincoln's time .... One of the chief factors in progress is the destruction of special privilege .... That is what you fought for in the Civil War, and that is what we strive for now.

His equating the urgency of his times to that of the Civil War was not nearly as subtle as in a first reading it would seem. In it, and in the speech generally, he went beyond historical example, beyond the "spirit... of Lincoln's time," to what amounted to an attempt to re-write the Gettysburg address and its, "It is for us the living, rather, to be dedicated here to the unfinished work... It is rather for us to be here dedicated to the great task remaining before us..." He was trying to make that spirit and that crisis his own. It was not an homage to that history but a claim upon it.

As with 1912's "Armageddon," was the hyperbole necessary to his point, or, rather, dismissive of it in the exaggeration? Was it necessary? Without it, does the speech mean less? In saying it, he was making the necessity of hurt to sell his remedies. He had failed to close the sale two years before, and he was back now, to pitch it with a renewed and, into 1912, hysterical, urgency.<sup>48</sup>

For Taft, the "New Nationalism" was not in its detail a problem, but it was generally a problem. The speech was given during a western tour that cumulatively pronounced the attitude Roosevelt would take in his return to politics. To his brother, who had been in Europe, Taft wrote:

He has made some speeches that indicate that he is going quite beyond anything that he advocated when he was in the White House, and has proposed a program which it is absolutely impossible to carry out except by a revision of the Federal Constitution. He has attacked the Supreme Court, which came like a bolt out of a clear sky, and which has

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<sup>48</sup> Pinchot drafted the speech, for which one observer has excused its "radicalism far in excess of what Roosevelt would probably have done alone" ("Theodore Roosevelt's Osawatimie Speech," by Robert S. La Forte, *Kansas Historical Quarterly*, Summer, 1996, Vol. 32, No. 2). Indeed, Roosevelt adjusted it backwards -- slightly -- soon after in *The Outlook* ("The Progressives, Past and Present," *Outlook*, September 3, 1910). As Murphy recognized, the speech didn't represent anything new in Roosevelt's thought. It was but an unwrapping of what he had already said as President. That he felt it went too far is more telling. Too far in 1910 fell way behind in 1912.

aroused great indignation throughout the country on the part of conservatives. His tour through the West has been one of continual ovation, and his speeches have been of the same old kind -- attacking corporations, corruption in politics, and setting-forth his own views and his own actions as instances of proper conduct with reference to the wicked powers of evil in the Republic. I am bound to say that his speeches are fuller of the ego now than they ever were, and he allows himself to fall into a style that makes one think he considers himself still the President of the United States.<sup>49</sup>

Roosevelt didn't "go beyond" his White House rhetoric, and Taft didn't say that he did. What Taft sensed was that he was heading there, that the speeches "indicate[d]" the direction. Taft was dead-on right that the speech ran like a campaign document. It may as well have been. What most disturbed were the more drastic references to the courts, which marked Roosevelt's slide off that tricky balance upon which he had built his presidential rhetoric. In "New Nationalism" he complained, "There must remain no neutral ground" between federal and state jurisdiction. Aimed at the courts, it was, again, an old theme, if expressed without the old backtracking. In the "Nation and the States" speech at Denver, he went further on this -- again -- old theme: "Unfortunately, the courts, instead of leading in the recognition of the new conditions, have lagged behind." As example, he dug into the 1895 "Knight" and 1906 "Lochner" cases. As Taft wrote to Root,

I am the last one to withhold criticism from Supreme Court decisions, and in the two that Roosevelt selected for his criticism I fully agree with him. I can't get away from the feeling that the Knight case has been substantially overruled, or at least that it rests on certain assumed facts or lapses in the record which make it of no authority now. In regard to the bakers' case, I don't know why the Court was bound to assume what it did assume, that there was no reason of health which forbade the longer hours than the statute limited them to.

That wasn't the problem. Taft continued,

The whole difficulty about the business is that there is throughout the West, and especially in the Insurgent ranks to which Theodore was appealing, a bitterness of feeling against the Federal Courts that this attitude of his was calculated to stir up, and the regret which he certainly expressed that courts had the power to set aside statutes was an attack upon our system at the very point where I think it is the strongest. Indeed, my fear is that in this regard he simply spoke the truth as to his own views.<sup>50</sup>

Given subsequent events this was no unreasonable review of Roosevelt's state of mind and its effect upon elements of the public. It was rather astute. (Just as interesting from this letter is Taft's own conception of criticism of the courts and his own views of the "twentieth century article.") In retrospect, Roosevelt's 1910 speeches were tame compared to 1912. Taft sensed 1912's arrival in such hints from the Denver speech as, "It happens, probably inevitably, that the courts occupy a position of importance in our government as they occupy in no other government," and, of the cases he cited as examples of court backwardness, criticism to which Taft agreed in the specific but definitively not in the universality and extent of condemnation, that, "Such decisions, arbitrarily and irresponsibly limiting the power of the people, are of course fundamentally hostile to every species of real popular government." From there it was a short circuit to the judicial recall and constitutional nullification. Therein was the "regret" Taft

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<sup>49</sup> Taft to Charles Taft, September 10, 1910

<sup>50</sup> Taft to Root, October 15, 1910

sensed in Roosevelt over judicial review itself. Taft knew the man, he knew his politics, and if he hadn't the exact proof at hand in 1910, he saw it coming. Two years later the diagnosis was in. Of those who had taken to that "fashion to attack courts," Taft said in early February of 1912, repeating condemnation he threw the same direction a year before, "Such extremists are not progressives -- they are political emotionalists or neurotics, who have lost that sense of proportion."<sup>51</sup>

Roosevelt's talk about courts and judges was a product of his long held vision of government management of economic forces. From his first days in the White House he spoke of the need and the right of the Federal government to intervene in economic affairs in order to meet what he saw as new economic conditions. Into 1912 he adopted the progressive and reform movement's direct democracy as the way to what he considered a primary purpose of the movement, "industrial justice." To get there he stumbled over core American traditions to which he offered more abandonment than accommodation. His methodology hung entirely in its justification on the validity of its premise that new conditions required new solutions. To justify it, he spoke the language of crisis. To justify the methodology, he spoke the language of conservatism. That is, new problems required new ways and solutions in order to preserve old values and institutions. Into and through 1912, he failed to connect the dots, and those old values and institutions he left behind.

In the last of his presidency, Roosevelt looked beyond the Sherman anti-trust law to, as he said in the Eighth Message, "a law which shall expressly permit combinations which are in the interest of the public but shall at the same time give to some agency of the National Government full power of control and supervision over them." He said what he meant: "full power." Taft's version was that of Roosevelt's Seventh Message, which, though raked with attitude, was more germane to Taft's election and the Roosevelt legacy than the Eighth Message, of national incorporation of inter-state businesses wherein conditions of operation would be explicit to a corporation's charter. Otherwise, Taft was all about pulling the Sherman noose ever tighter in ridding the economy of illegal restraint of trade. Taft's view was consistent with his 1908 platform which asked for enforcement of anti-trust law and additional Federal controls -- this, of course, was short of that "full power" Roosevelt had demanded in his Message that followed Taft's election. Still, there was a common ground between them that Taft sought to achieve in law, and that was in compliance to his mandate. His corporate income tax made good on the platform's and President Roosevelt's own calls for "publicity" of corporate affairs in the prying open of account books to collect the tax. Ex-President Roosevelt wouldn't accept even half that loaf. He wanted made compulsory that voluntary partnership of his Bureau of Corporations that, by statute, and with willing corporations, reviewed business conditions, and to include, ultimately, price control and enforced market share and profits. Here, Taft and Roosevelt differed entirely that combinations and monopolies were requisite to "new conditions." Taft insisted they were not. The Standard Oil decision of 1911 and its "rule of reason" shook loose these differences. It did not cause them; it clarified them. Into late 1911, Roosevelt bagged out of the Sherman law entirely, giving it up to the other side of his 1908 balance between anti-trust enforcement and government control.<sup>52</sup>

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<sup>51</sup> "Taft Fires on His Opponents," NYT, February 13, 1912. From the year before see, "Our Judges Lack Power, Says Taft," NYT, May 14, 1911.

<sup>52</sup> It's always fun to recall the "missing plank" from the Progressive platform that called for the strengthening of the Sherman Act and that detailed specific crimes against it. Wilson made great advantage of it. When the plank was read to the Progressive Convention, Roosevelt and his man from the trusts, George Perkins, ordered the plank pulled from the version given to the press and that was used in the campaign. While it slipped out in some versions (see White, p. 489), the operative platform of the election did not include it. Modern versions erroneously do, and should, like Roger Maris' record, have that asterisk. It was not reinstated until December, after the election, and at the insistence of the body of the party over Perkins' and Roosevelt's objections (see Mowry, p. 295). The version of the platform that I use, and that does not contain the missing plank is from "The Political Battle of 1912," which was published sometime after the Progressive convention and before the October shooting of

The problem with it all for Taft came of those Roosevelt means that Taft saw had become his ends, that is, when his way to the new became its own destination. Taft agreed that the federal government had a right and an obligation to manage the trusts. It was a legitimate argument until it got into the bloody details of the twentieth century. Roosevelt's program required abandonment of competition, which meant abandonment of the fundamental law from which the laws of competition were derived. That would lead to what The New York *Times* recorded, the following year, as, "control of business by the Government would mean the control of Government by business."<sup>53</sup> Taft wouldn't give on that one. In 1911 he said,

For I am an individualist first, last and all the time, and I am bitterly opposed to the theory of Socialism -- that is -- to transfer the object of individual effort to State control and State supervision.<sup>54</sup>

And in early February of 1912,

It has been said, and it is a common platform expression, that it is well to prefer the man above the dollar, as if the preservation of property rights has some other purpose than the assistance to and the uplifting of human rights. Private property was not established in order to gratify love of some material wealth or capital. It was established as an instrumentality in the progress of civilization and the uplifting of man, and it is equality of opportunity that private property promotes by assuring to man the result of his own labor, thrift, and self-restraint. When, therefore, the demagogue mounts the platform and announces that he prefers the man above the dollar, he ought to be interrogated as to what he means thereby -- whether he is in favor of abolishing the right of the institution of private property and of taking away from the poor man the opportunity to become wealthy by the use of the abilities that God has given him, the cultivation of the virtues with which practice of self-restraint and the exercise of moral courage will fortify him.<sup>55</sup>

Taft was speaking to the opening of an election year, and he was staking his claim upon it. That is not to say that such talk was political. It was political only in the sense that Taft understood the direction of 1912. He would not tolerate its extremes, and so set defense of first principles as his theme. The week before Taft's talk on the rights of property, La Follette's candidacy had fallen apart, having been chased into its self-destruction by Roosevelt's shadow and by the impossibility of a La Follette nomination over Taft's political strength. Unmentioned by name, Roosevelt was the object of Taft's taunts of the demagogue. Taft said it just before Roosevelt declared. Roosevelt's destination was long clear. To clarify his own views and to secure his place, Taft over the previous months took advantage of Roosevelt's false calm and his contrived denials of the obvious candidacy. Taft would not give an inch to collectivism, not in economics, and not in politics, and he didn't back down against Roosevelt's railing on the U.S. Steel

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Roosevelt (note that this source tends to use the lower-case where modern versions use capitals).

<sup>53</sup> "Industrial Despotism," NYT editorial, August 31, 1912. Roosevelt was sensitive to this charge, and defended against it most defensively (see "Limitation of Governmental Power" speech, September 14, 1912). His protests fell short, especially in the avoidance and dismissal of the word, "competition" (he preferred the smear, *laissez-faire*) and its reasons in practice and law. In the "Charter of Democracy" speech, for example, he said, "Where regulation of competition (which is, of course, preferable) proves insufficient, we should not shrink from bringing governmental regulation to the point of control of monopoly prices..." For him, competition was not an operative principle. It is fascinating and amusing that what was plain to The *Times* of 1911 was, fifty years later, a revolutionary insight that business found safe harbor in government regulation. Leftist historian Gabriel Kolko re-discovered this in his book, "The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916," Free Press, New York, 1963. Kolko was bewildered by and generally wrong about Taft.

<sup>54</sup> "Taft Has New Plan to Save Treaties," NYT, September 17, 1911

<sup>55</sup> "Taft Fires on His Opponents," NYT, February 13, 1912

suit. It may be argued that in doing it, Taft forced Roosevelt into the race. Maybe. In the least, he forced Roosevelt into definition, to “publicity,” as it were, of the darker side of qualification. Following the government suit against U.S. Steel, to which the Administration meant to apply the “rule of reason” of the Standard Oil decision, Taft pushed his ideas of individualism -- ideas Roosevelt rejected. Roosevelt spent most of 1911 replying to Taft, replying to his arbitration treaties, his anti-trust and his Alaska policies. It was not until he announced his candidacy that Roosevelt regained the edge of the “New Nationalism.” It took him from economic radicalism to political radicalism and his fateful confusion of the two.

A month before the 1912 election, Roosevelt published an essay, “How I Became a Progressive”:

For years I accepted the theory, as most of the rest of us then accepted it, that we already had popular government; that this was a government by the people. I believed the power of the boss was due only to the indifference and short-sightedness of the average decent citizen. Gradually, it came over me that while this was half the truth, it was only half the truth... that for the average man it had already been made very difficult instead of very easy for him to do his duty .... I grew to feel a keen interest in the machinery for getting adequate and genuine popular rule, chiefly because I found that we could not get social and industrial justice without popular rule, and that it was immensely easier to get such popular rule by the means of machinery of the type of direct nominations at primaries, the short ballot, the initiative, referendum and the like.<sup>56</sup>

Singularity of question and sureness of reply was the Roosevelt way. For this, the past would not do -- especially when reversing course, qualifying his words, and for such other things as trying to re-make the structures of government. The short ballot, the initiative, the referendum... *and the like*. Roosevelt was always, always careful with his words. This was written in October of 1912. What got him to that October was not the short ballot, the initiative, or the referendum. What got him there was the “and the like,” which he had used to rile the nation and re-launch himself upon it. The missing word was “the recall,” the front man for the rest of “and the like,” which, had Roosevelt had his way, would have fundamentally changed America.

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Without losing yourself in modern vulgarities, know this: Taft was a beautiful husband, and a lover. “But I love you and I can not but plead for myself,” the young he wrote the young and pretty and way smart she in 1885.<sup>57</sup> Later, when she, Helen Herron, now his wife and the First Lady of the land, was stricken by a stroke, he, now the President of the United States, thought of nothing but her -- not of politics, not of the press, not of friends and enemies, all of whom were in a rage that summer of 1909 over his tariff and his tax reform, over his being or not being Theodore Roosevelt, over his doing too little, his doing too much. That precious moment had come all too fast when the new President of 1909 was “obliged by the necessities of high office to select a few enemies.” None of it mattered but for his wife’s condition. He stood by her door, waited for her smile. Politics, exercise, and business he kept, but it was second to his all in her. He refused to dismount his horse until she appeared at the window to greet his approach to the White House. He blew her a kiss when she appeared, held by a nurse, smiling half a smile. Two years later and about to win a huge bill in Congress, he wrote his wife who was at the Summer White House, the rented vacation home, of receiving “statesmen all day,” and assured her that victory was soon his, one

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<sup>56</sup> Outlook, October 12, 1912, p. 295

<sup>57</sup> This section from: Taft to Helen Taft, May 1, 1885, Washington Star editorial, January 13, 1909, Butt, “Taft,” letters of May 17-18, 1909 pp. 86-93, May 27, 1909, p. 99, and June 22, 1909, p. 129, Taft to Helen Taft, May 17, 1911

that “would be a great thing accomplished for the country.” So much for gloating: “I am longing to see you. The White House is not the same without you. Flowers are wanting and that essence or atmosphere that you alone can supply.”

That for a woman. To a political opponent, one his philosophic reverse, of the opposing party, and a friend, he wrote of an unexpected, and embarrassing, contrarian encounter:

I am very anxious to have you know that it has not left the slightest feeling of anger or resentment toward you, and that I still cherish the existence of a friendship between us which I have always valued and hoped might continue without any change. I still maintain that hope.<sup>58</sup>

It wasn't that he wanted to get along with the man. He had slammed him in public. “When the President cuts anybody,” wrote his Military Aide, Major Butt, on another occasion, “that body is cut, and there is no explanation to make. That ends it.” The man, Congressman Littleton, had a speech to make, one, Taft explained later, “he was in love with.” Taft liked him. “He is a kindly man, and I am sure would have no malicious thought or purpose.”<sup>59</sup> And Taft slammed him anyway, said his ideas were bad, as bad as socialism, for that's where his ideas led. Littleton, by the way, was speaking of the Sherman Act the same way as was Roosevelt. Taft was moved to fight:

I would cut my hand off before I would injure business. But what has my dear friend Littleton to offer? Only one course is open. Either we will have individualism or we will have combinations in restraint of trade going to that point where the people will demand that the power of men engaged in such corporations be transferred to the Government. And then we will have State Socialism.<sup>60</sup>

Taft said what he had to say for the attack in his presence and upon his office. Dignity and decorum required the reply. In the day, the event was headline news. Taft would avoid confrontation wherever it was reasonably avoided, or as was appropriate for his office. He never avoided a fight because it meant a fight. With his wife, he was just the same. He agreed with her when he wanted to agree with her, or when her ideas were more important to her than to him. If to him his idea was the greater he stood her down. Otherwise, he let her decide. He let her and others choose when it didn't matter to him, was less important to him, or if he already agreed. When it came to his deeper wishes, when he really cared, he stepped in. His famed obstinance kicked in not when he was obstinate but when obstinance suited his purposes. He was never some thing or some way for its own sake. That he left to politicians. Taft would be Taft, and obstinately. Whatever else he would be, he would always be Taft.<sup>61</sup> Confrontation was not and was Taft's way. It was not the pain of it that bothered but its uselessness. Same for politics. Note here the word, “confrontation.” Taft was not violent, and he was not “confrontational.” That is, he did not invite conflict, or, by definition of “violent,” purposefully inflict harm. “Confrontation” was more his way, as opposed to “confrontational,” inviting of conflict. He met it when it came. If it was constructive, or necessary, fine. Kindliness, or tact, or reason or whatever else but violence was the better first course. If that didn't work,

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<sup>58</sup> Taft to Martin W. Littleton, November 4, 1911

<sup>59</sup> Butt, “Taft,” letter of August 20, 1911, p. 745 and Taft to Horace Taft, November 5, 1911

<sup>60</sup> “Taft Defends Act to Control Trusts,” NYT, November 1, 1911

<sup>61</sup> See Bromley, pp. 43-44

then hit back. And hard.<sup>62</sup>

In early May of 1912, Taft spoke to large and eager audiences of Marylanders. In Baltimore he launched blows against their fellow citizen, Charles Bonaparte, former Cabinet officer and Roosevelt personality whose name was in the news over Roosevelt administration policies towards International Harvester, the trust the Taft administration was just then suing, and against Roosevelt, who, Taft explained, had misrepresented him in so many ways. "I'm a man of peace," Taft shouted at Hyattsville, "and I don't want to fight. But when I do fight I want to hit hard. Even a rat in a corner will fight." As with much of what he said in 1912, the line was distorted by the Roosevelt press that said he said he was a rat. His biographer called this analogy, and another in which Taft referred to himself as a man of straw, "tragic."<sup>63</sup> Rather not. Taft's audience knew exactly what he meant. His campaign was a week old. He did not invite it. He did not want it. It broke precedent. It was unseemly, degrading, that the President clamber atop the stump and preach for himself. Taft had to have great cause to do it. The day he opened the campaign he said,

I am extremely sorry my mission to Massachusetts is unpleasant. I am here to reply to an old and dear friend of mine, Theodore Roosevelt, who has made many charges against me. I deny those charges. I deny all of them. I do not want to fight Theodore Roosevelt, but then sometimes a man in a corner fights. I am going to fight.<sup>64</sup>

But a sitting president campaigning? In a primary? Taft owed his nation an explanation. "This wrenches my soul," he said, but he was there of a necessity brought on by another:

One who so lightly regards constitutional principles and especially the independence of the judiciary, one who is so naturally impatient of legal restraints and of due legal procedure, and who has so misunderstood what liberty regulated by law is, could not

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<sup>62</sup> His views of international peace were just so. Admitting that certain wars such as the Civil War were necessary, he saw war as neither necessary nor inevitable (for this generally, see "William Howard Taft: Confident Peacemaker," by David H. Burton, St. Joseph's University Press, Philadelphia, 2004). Echoing White's personal and entirely emotional view that Taft "was the victim of his own desire for peace and comfort" (p. 445), Morris wrote that Taft "was not a fighter, either open or covert. Lacking aggression, all he wanted was to be loved .... He was everybody's fat uncle" (p. 536). Sadly, Morris' wildly popular book has by that many copies therein sold a mistaken history of William Howard Taft. Somehow, Morris crawled into Taft's mind and found that, going into the White House, "He was in reality depressed and wishing that he was headed for the Supreme Court (p. 543). Continuing in the endnote, "If reporters could have read some of Taft's private mail at this time, they might have been more concerned about his readiness for office" (p. 738). Morris cited the negative and somewhat perverse, 1970s-laden, fat-psychology book by Judith Icke Anderson, "William Howard Taft: An Intimate History" (W.W. Norton & Company, New York, 1981) and a Taft letter quoted in William H. Harbaugh's "Life and Times of Theodore Roosevelt" (Collier Books, New York, 1966) of Taft feeling nervous on taking office and saying that he would rely on his wife's political skills "to meet all these issues." See Bromley, pp. 43-44 for Taft's jokes about his wife being the politician of the family and his use of the humor to deflect an issue by saying he'd refer it to his wife. He was either joking or blowing off a request, and he used the line all the time. It's nonsense this view that Taft didn't want to be President, and, especially, that he thought his wife was the "real president" -- his words on introducing his First Lady at her first public appearance after her stroke ("The Real President, My Wife," Says Taft," NYT, May 20, 1910). The audience applauded and laughed wildly at the introduction. This entrenched notion that Taft was unhappy going into office or unhappy in office leads to the preconception that what he did as President was somehow wrong. This is just as wrong as the notion that since Roosevelt was happy in office what he did there was somehow right. It is nonsense to gauge a president's actions based upon a supposed psychological disposition -- and I have plenty of evidence that Taft enjoyed himself in office. It misleads history and belittles Taft. That is a disservice to both. I have yet to see anyone dismiss Roosevelt's 1910 western tour because he dreaded the experience. He wrote, "I look forward [to the trip] with unalloyed horror" (Roosevelt to Lodge, August 10, 1910, Roosevelt-Lodge letters; p. 387).

<sup>63</sup> "Taft in Maryland Trails Roosevelt, NYT, May 5, 1912 and Pringle, p. 783. Similarly disregarding context, Chase called it "an unfortunate phrase" (p. 111).

<sup>64</sup> "Taft Opens Fire on Roosevelt," NYT, April 26, 1912

safely be intrusted with successive Presidential terms. I say this sorrowfully, but I say it with the full conviction of its truth .... So unusual is the exigency that the ordinary rules of propriety that limit and restrict a President in his public addresses must be laid aside, and the cold, naked truth must be stated in such a way that it shall serve as a warning to the people of the United States.

In attacking the third term and with charges of Cæsarism, Taft built the case that Roosevelt could not be trusted, that, as he said in Boston, "If he is necessary now to the Government, why not later?" The third term was no easy matter for Roosevelt. His earlier promises not to seek it were of a third *consecutive* term. But of course. Besides, went his theory, the people had demanded him, the crisis was great. The code against the third term was an "unwritten but potent law," and its attempted break offended as much as any of the rest of his program.<sup>65</sup> Roosevelt evaded the third term problem with his general hype of crisis and necessity and, more successfully, by ignoring it. Taft wouldn't let him get away with it. While Taft was more concerned with what Roosevelt might bring with him than with the third term itself, it was inherently dangerous, for only an extreme could bring it about. There was no menace in 1912 but that which Roosevelt brought to it. It also gave wonderful occasion for ridicule to make the larger statement of the dangers in the Roosevelt candidacy and ideas:

Suppose Mr. Roosevelt were wafted to the skies in a chariot like the prophet of old, and were to disappear from sight, how do you suppose this country would get along anyhow? My friends, it is a dangerous thing to put in the White House a man for the third term with his views of the Constitution, and with his views of himself. In every announcement he makes you would think he was the whole show, and that there wasn't anybody else in the country. It's I, I, I, all the time with him and therefore I say that if you feed that vanity and that egotism by giving him something that Washington did not get, and Jefferson did not get, and Jackson did not get, and Grant could not get, you are going to put him in office with a sense of power and with a view of constitutional restriction that will be dangerous to this country.<sup>66</sup>

In the denials of having chosen the fight, and in not wanting it, Taft was using Roosevelt's bellicosity against him, and suggesting it was the real source of Roosevelt's third term quest. Taft considered it almost demented Roosevelt's dreams of dying in battle. He understood where it took him in politics. "That is the secret of his present attitude," he wrote Otto Bannard in late 1911, as Roosevelt attacked Taft's peace treaties. "He has the spirit of the old Bersekers [sic] and he would think it a real injury to mankind if we did not have war..." Taft was dismayed, especially at such simplistic, machista comparisons of arbitration to sitting by while another man slapped the wife. Taft laughed it off with the sublime retort that the stronger man "can restrain himself. He holds himself in and says 'I am a greater man because I resist the temptation to lick your pusillanimous little body.'" <sup>67</sup> There's much of this and much of Taft's arbitration treaties themselves in his declarations of being a "man of peace." Roosevelt's unseemly attacks had gotten beyond holding back, and it was time, however regretted, for a licking:

No man has the right to misrepresent another to get himself up in office no matter how humble that man is. Condemn me if you will but condemn me by other witnesses than

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<sup>65</sup> See "Roosevelt Answers Cry of Revolution," NYT, February 27, 1912 and "The Unwritten but Potent Law Against Third Terms," NYT, March 10, 1912

<sup>66</sup> "Roosevelt Unsafe Taft Tells Ohioans," NYT, May 14, 1912

<sup>67</sup> Taft to Bannard, September 10, 1911, "Roosevelt Assails the Taft Treaties," NYT, September 8, 1911 and Bryan Toasts Taft as Highest Official," NYT, October 3, 1911

Theodore Roosevelt. I was a man of straw, but I have been a man of straw long enough. Every man who has blood in his body, and who has been misrepresented as I have been is forced to fight. I appeal to my friends in Massachusetts, who, I think, believe in the square deal.<sup>68</sup>

“Go to it, Bill!” came back the shouts. And to that Maryland crowd that yelled its agreement to “the rat” comment, Taft explained again why he must fight, why he was forced to demean his office, and why he was out there at Hyattsville, Maryland, breaking convention and decorum:

If only my personal ambition was concerned, if only my personal reputation was at stake, I shouldn’t bother you, but I consider that I represent a cause. The innovator is abroad, in the land, and we are told that there are new things that should be introduced -- for instance, the recall of Judges. If this policy is adopted it will mean that in Democratic years the decisions upon laws will be Democratic, and in Republican years they will be Republican. So we’ll have varying interpretations of the Constitution depending on a single vote. I am courageous enough to come out and tell the people what they already know: they recognize the shortcomings of a sudden decision of the people.<sup>69</sup>

Back in 1910, as we have seen, Taft wrote of the “regret” he saw in Roosevelt’s western speeches at the judicial review, which, Taft wrote, amounted to “an attack upon our system at the very point where I think it is the strongest.”<sup>70</sup> This from a man who held the highest office in the land, and who would later hold what he conceived to be the next most powerful office. This was a man who wanted not to be a Supreme Court justice, but its Chief Justice. In 1908 Taft risked that dream for what -- the presidency. The ambition there ought to be shocking, not, as it has been said, defaming of his presidency since, supposedly, he didn’t want it. This isn’t just an extraordinary career, this is an extraordinary hold on power by one man. And he didn’t just land there with, as he joked, his “‘plate’ up at the right time” (note to historians: it was a joke!)<sup>71</sup>

Intensity is not a word normally spoken for William Howard Taft. He was fun, and he was funny. That’s all very well. Did you consider that he was intensely passionate about it and about other things, especially his beliefs? Imagine him “dancing about the room like a schoolboy.”<sup>72</sup> Imagine him flirting with the girls at a fair, or the lead singer at the opera. Imagine him down a mine shaft, picking up a bar of gold with the show-off ease of a giant while his host, a United States Senator, practically falls to his knees trying the same. Or imagine him elsewhere descending the earth, this time twelve-hundred feet into a copper mine, and taunting the reporters, who, quivering from claustrophobia, call back, “We’d kind o’ like to get out.” Imagine him swearing and throwing his golf sticks in frustration. We can all see him laughing. Now, imagine him telling West Point graduates with the wink and all the wryness, “I know that all of you young fellows are anxious to get to New York and meet the merry widows. Now I want to say that I yield to no man my admiration for the merry widow, but I do know that the merry widow is a very expensive

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<sup>68</sup> “500,000 Turn Out to Cheer Taft On,” NYT, April 30, 1912

<sup>69</sup> “Taft in Maryland Trails Roosevelt,” NYT, May 5, 1912

<sup>70</sup> Taft to Elihu Root, October 15, 1910

<sup>71</sup> “Taft Is Grateful for All He Has Had,” NYT, March 2, 1913. Of Taft’s ambition for Chief Justice, Morris wrote, “Behind Taft’s jolly-fat-man facade, there lurked a love for titles” (p. 458). How he came to that conclusion is beyond me, except, I guess, for a special insight into the dangers lurking behind Taft’s “facade.” The fat and happy routine, you see, was a ruse to get cool signs on his desk. How about lurking therein, rather, ambition and success?

<sup>72</sup> This section from “William Howard Taft: Humor & Anecdotes,” by Michael L. Bromley, 2002, web publication per internet hyperlink in the bibliography.

commodity, and I hope that your association with her, for the time being, will be only brief.” In a recent book on the 1912 election, Taft is shown in a photograph in cracking-up laughter. The caption calls him “jolly.”<sup>73</sup> Jolly? How about a less dated term, a less derisive one -- one having less to do with Santa Claus and more to do with a man who truly knew how to laugh, and who, on the day of the photograph, was contented and proud -- something other than that silly and historically and wholly irrelevant indictment hiding behind the word “jolly.” Imagine, instead, Taft cursing someone out. Imagine him before audiences in Massachusetts and Maryland, and around the country, forcefully, vigorously, defending the dignity of his office, defending the core values of his country, and damned passionate about it, not at all sad or reserved. Or, imagine his big heart held out for Helen Keller and the blind, or for Texas schoolchildren, or for the beaten down whom he greeted at least twice as President at the Bowery. Taft used his office to make good on what he believed, to which he held with a fierce passion.

So how did he feel about “an attack upon our system at the very point where I think it is the strongest”? When it came to threatening that which Taft saw was as much as anything else made America great, and upon which that greatness yet depended, Roosevelt sparked in Taft the contempt and the passion of the patriot called to arms.

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The split in the Republican party might have been foreseen in Taft’s statements in defense of the Constitution during and shortly after the 1908 election. Roosevelt’s heated calls for reform had infected, especially, mid-West Republicans, and their expectations outran his deeds with cries for now! Even before he took office, Taft was up against the anti-constitutionalism of reform. It had no place with the incoming President’s promises or his disposition. His response to the impatient was:

I know that sometimes the Constitution seems to be in the way of direct operation. The division under our system by which the central government is limited to certain things and the state governments to carry on other things sometimes seems to work against the rapid carrying out of some of the reforms...<sup>74</sup>

But, as he wrote elsewhere that January of 1909,

We must work along with our Constitution as it is. It is a most wonderful instrument, most elastic for accomplishing purposes that were only dimly in the minds of its framers, and I think after you contemplate the history of the country one of the wisest features of the instrument is the difficulty with which it can be amended.<sup>75</sup>

Three and a half years later Taft stood before a Bull Moose platform that declared, under the title, “The Courts”:

The Progressive Party demands such restriction of the power of the courts as shall leave to the people the ultimate authority to determine fundamental questions of social welfare

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<sup>73</sup> Chace, photographs, between pp. 150-151

<sup>74</sup> “Taft Stands by Constitution,” Washington Star, January 15, 1909

<sup>75</sup> Taft to WR Stubbs, January 4, 1909

and public policy.<sup>76</sup>

While more coy than the Socialist's explicit plan to abolish judicial review and to revoke the Constitution itself, along with a separate plank calling for "a more easy and expeditious method of amending the Federal Constitution," the Progressive party's intent was clear: fundamental law was to mean what a simple majority of the people wanted it to mean. On judges and on judicial review, again the Socialists spoke the progressive language more plainly. To fifteen thousand who rocked Madison Square Garden with the "Marseilles" and the "International," the recently dethroned Socialist mayor of Milwaukee said that when Socialist judges took their seats on the bench every law in favor of "big business" would be declared unconstitutional, and every law in favor of the laboring man would be deemed constitutional.<sup>77</sup> From there to Roosevelt and back again was not so far as it would seem. When in March of 1912, the Roosevelt supporter and governor of Michigan, Charles Osborn, declared, "whatever is right is constitutional," there was no longer any difference between the mood of the Roosevelt rhetoric and its pained details. Taft had seen where it could go. To the Governor, he replied,

This is a government of law, not of changing economic and political theories of judicial or executive officers, when those theories are in conflict with the express letter of the law. Suggestions of that sort are dangerous because they put the ship of state on a sea of troubles, without a rudder.<sup>78</sup>

Whether Roosevelt's 1912 was inevitable will ever be open to historical debate. What is clear is that he got there with, or his path to it was marked by, progressively dropping the conservative side of qualification and by hyping the urgency of his issues. From his presidential Messages that registered surgically-pronounced and otherwise apologetic calls for looser judicial interpretation, to his 1911 explanation of his purposes in criticizing the courts as "the only alternative to adopting some other method of bringing the federal judiciary wherever necessary in closer touch with the people," he went the next year to adopting not just "some other" but several other of those methods he claimed to have been trying to avoid.<sup>79</sup> Mere criticism of the courts was now a pejorative for inaction.

Roosevelt's February 21, 1912, "Charter of Democracy" speech to the Ohio constitutional convention at Columbus marked the final challenge to Taft. The speech followed the two-way indulgence of "New

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<sup>76</sup> Going from there: "To secure this end it pledges itself to provide, 1. That when an act passed under the police power of the state is held unconstitutional by the courts the people, after an ample interval for deliberation, shall have an opportunity to vote on the question whether they desire the act to become law, notwithstanding such decision. 2. That every decision of the highest appellate court of a state declaring an act of the legislature unconstitutional on the ground of its violation of the federal Constitution shall be subject to the same review by the Supreme Court of the United States as is now accorded to decisions sustaining such legislation." The *Times*' version of Section 1 included, "under the State constitution" after "held unconstitutional," which limited popular review of judicial decisions to state and not federal law ("Panaceas Offered by the New Party," NYT, August 8, 1912). The version quoted above is from "The Political Battle of 1912" (p. 141), and leaves it open to federal law. I do not know which was more understood or if it mattered at all during the campaign, but it is clear that there were several views within the party and that different versions were sent out (see White, p. 489). Section 2 was partially enacted into law in 1914 in the granting of high court certiorari to "decisions of state courts sustaining a federal right" (quoted from *Coleman V. Miller*, 307 U.S. 433 (1939)). The larger Progressive goal that every such decision be considered by the Supreme Court went unfulfilled.

<sup>77</sup> "Socialists Cheer Debs 29 Minutes," NYT, September 30, 1912

<sup>78</sup> "Taft for Primary with Safeguards," NYT, March 19, 1912. Osborn defended his statement by saying that Taft took it out of context. He first spoke it regarding his fast push to enact a primary law so that Roosevelt could run against Taft in his state. There arose, then, questions of the constitutionality of the law, which prompted Osborn's comment. The excuses didn't catch up to the original sentiment ("Osborn Explains Message," Washington Post, March 21, 1912).

<sup>79</sup> From April 4, 1911, per Murphy, pp. 446-447

Nationalism” for the white wig and the log cabin with, “We stand for the rights of property, but we stand even more for the rights of man.” This time Roosevelt let his populism fly: “But when a judge decides a constitutional question, when he decides what the people as a whole can or cannot do, the people should have the right to recall that decision if they think it wrong.” To the outcry that followed, Roosevelt replied, “If recall of Judicial decisions be revolution, make the most of it.”<sup>80</sup>

Of this Henry Taft wrote his brother the President,

Fundamentally this is the most dangerous proposition ever enunciated by a public man since the days of nullification. Mr. Roosevelt will not be able to evade the issue or to qualify what he said at Columbus by hedging it about or by limiting it to decisions of state courts in a special class of cases.<sup>81</sup> His dramatic instinct presented it to his mind, when he decided that he wanted the Presidency again, the importance, if not the necessity, of finding some proposition, however unsound it might be, which would attract attention.

To overcome the huge liability of the third term and his earlier promise not to seek it, as well as the reforms he spoke for, Roosevelt needed a crisis to legitimize his run. As a political stunt, the “Charter of Democracy” served as the call he needed -- and which had not arisen spontaneously from a people begging him for rescue from Taft. Roosevelt fell long short of the early 1909 comment by English Ambassador Bryce, following the Secret Service affair, that, “Nobody likes him now but the people.”<sup>82</sup> Three years later the people didn’t show. In December of 1910, Roosevelt wrote to William Allen White, who had hedged his ambitions for Roosevelt by saying he ought avoid another term, “If you can possibly avoid it,”

But I do not think that this would be right. I think the chances are a hundred to one that I never shall be President again -- perhaps a thousand to one. But however improbable, it is possible that circumstances might arise when it would be unpatriotic of me, when it would represent going back on my principles and my friends, to refuse to be President.<sup>83</sup>

Maybe he was fooling himself. Maybe it was heartfelt. By late 1911 it spoiled into cynicism. That December, he wrote to Pinchot, who was then publicly booming and soon after to dump La Follette, “The last thing I wish is to be nominated now” and, “Under these circumstances I am most anxious not to be nominated” -- the “now” and the “these circumstances,” of course, the qualifiers. Those “circumstances,”

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<sup>80</sup> “Roosevelt Answers Cry of Revolution,” NYT, February 27, 1912. In making “the most of” criticism of the court, Roosevelt was also making use of Taft’s career on the bench. The President was, after all, “Judge Taft.” As Root said, Roosevelt was “essentially a fighter and when he gets into a fight he is completely dominated by the desire to destroy his adversary. He instinctively lays hold of every weapon which can be used for that end” (Jessup Vol. 2, p. 180). The *Times* likewise recognized that Roosevelt would use any and all tools against Taft. The editors wrote, “The sentiment against [Taft] has been artificially engendered” and “Mr. Roosevelt has seized on the factional fights in the Republican Party with his usual skill and rather less than his usual scrupulousness” (from “To Mr. Taft’s Managers,” NYT editorial, April 15, 1912 and “Home to Roost,” NYT editorial, April 17, 1912). While Roosevelt’s anti-court campaign was dogma as much as politics, it was more than convenient to it that his opponent that Spring was a former judge. With thanks to Teresa Jennings for this insight.

<sup>81</sup> ...which is precisely what he did. As we shall see, and as Henry Taft wrote, Roosevelt couldn’t escape the larger meaning of his words at Columbus. This quotation from Henry Taft to Taft, May 8, 1912. Mowry saw the judicial recall as Roosevelt’s fatal mistake... if only he had stuck to the “New Nationalism” (p. 213). For Mowry, that 1910 speech was as revolutionary as can be, and in it “Roosevelt scaled the heights of radicalism” (p. 143) -- yet the 1912 speech was only radical for having gone beyond its 1910 cousin in the judicial recall. But with difficulty are these view reconciled.

<sup>82</sup> Butt, “Roosevelt,” letter of February 14, 1909, p. 337

<sup>83</sup> Roosevelt Letters, January 24, 1911, pp. 213-214

by January it became, as he wrote to Hiram Johnson -- this to a progressive even more vociferously progressive than either Pinchot or Garfield, the man who would be his running mate -- "it may be that I shall have to come out and announce, bitterly contrary to my own wishes, that if nominated I shall accept."<sup>84</sup> If he was fooling anyone, it was himself. The *Times* called it:

To "smoke out" Col. Roosevelt would be both difficult and useless. Difficult, because he is used to smoke, he delights in it, it is the breath of his nostril. Useless, because, well, how can you smoke out a man who is already the most conspicuous object in the landscape, who visibly bestrides the whole continent, and whose continuous and thundering utterance rings in the ears of his countrymen, fills heaven's concave, and makes the firmest earth quiver like jelly in a bowl? No, there is no occasion for the friends of President Taft to collect combustibles and start a smudge. A process of disclosure is, nevertheless, in progress, but it is not so much a "smoking out" as a tearing off of disguises. The observant have long been aware that Mr. Roosevelt intends by fair means or foul to secure the Republican nomination for the Presidency this year. They have had no doubt about it, and now the whole country sees the truth. Towering ambition cannot long be dissembled.<sup>85</sup>

The call to Cincinnatus, the Washingtonian putting down the plow and picking up the sword didn't fly. Since after leaving office he never put down the sword, and, since the public wasn't clamoring his name, Roosevelt and his crew had to organize a series of letters from various governors declaring the nation ready for salvation, conveniently released after the hype of the "Charter of Democracy."<sup>86</sup> Only then did he affirm what had already been reported in the press with exception, and what he earlier dismissed with a "no comment," that his hat was "in the ring."<sup>87</sup>

The question now was what would Taft do. Would he roll over? Would he fight? He was throughout 1910 and 1911 now and then optimistic and pessimistic as to his chances for re-election. Except for the day and the shock of the "Charter of Democracy" speech, he was consistently sure of his re-nomination. By the time Roosevelt announced, Taft had already secured most of the political machinery. The only circumstance by which he stated he would stand down for re-election came when talk arose at the Republican convention of a third, compromise candidate. Roosevelt refused the idea, and Taft was freed of its consideration. Taft was deeply hurt by Roosevelt's challenge, yet spite was not his cause in taking him down, both at the convention and in the general election. Following the convention, his was not, as an historian wrote, the role of spoiler.<sup>88</sup> Before Roosevelt joined, Taft was the understood nominee. It was his, and the November fight was to be his. Roosevelt intervened, and in presenting himself as he did with all that populist baggage as he did, it became Taft's duty to defeat him and with him direct democracy and the third term. If being the spoiler to the spoiler made Taft the spoiler of 1912, then so it was. But I don't

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<sup>84</sup> Roosevelt Letters, Roosevelt to Gifford Pinchot, December 12, 1911, p. 462 and Roosevelt to Hiram W. Johnson, January 20, 1912, p. 487

<sup>85</sup> "Smoking out the Colonel," NYT editorial, January 5, 1912

<sup>86</sup> Jessup, Vol. 2, p. 176

<sup>87</sup> "Roosevelt Back to Storm Boston," NYT, February 23, 1912 and "Roosevelt Says He Will Accept Nomination," NYT, February 26, 1912. See Bromley, p. 310 for the "hat" business. Mowry wrongly elevated it to an act of "ringing militancy" (p. 219). It was only meaningful later on (see "The Political Battle of 1912," p. 169, which from late in the campaign called it "the now historical statement"). When it was first spoken, it meant little but what was already obvious.

<sup>88</sup> For Taft's view on a third candidate see Taft to Delia Torrey, June 19, 1912. "Spoiler" from "The Warrior and the Priest," by John Milton Cooper, Jr. (Belknap Press of Harvard University Press, Cambridge Massachusetts, 1983; p. 140). Mowry, in his disgust with Roosevelt's later, rightward turn come WWI (and ignoring that Roosevelt had by then hardened his views on industrial democracy), concluded that the Progressive Party was "[c]reated by Roosevelt to defeat Taft..." (p. 366).

think so. Above all, the word dismisses what Taft did and stood for. Through the November election Taft had cause.

Roosevelt leveraged his fame by forcing a popularity contest that he was sure to win. Less certain was if he could budge the party from Taft. The only way possible was to kick down the convention door with as many delegates as he could scrounge up through direct primaries, or from the State machines however he might, usually from defections or rump conventions that defied the local organizations, with or without cause. His political game was clear. Less certain was, as Henry Taft noted, its meaning and Roosevelt's sincerity about it. Was Roosevelt serious about the judicial recall? Root didn't think so. As with Roosevelt's 1910 talks on the courts, which Root explained away as "purely fanciful and devised for campaign purposes only," following the "Charter of Democracy" speech, Root wrote, "I have no doubt he thinks he believes what he says, but he doesn't. He has merely picked up certain popular ideas which were at hand as one might pick up a poker or a chair with which to strike."<sup>89</sup> Whatever the motivation, Taft had to take him at his word. Taft entirely agreed that judicial recall "be revolution."

On the day of Roosevelt's speech, Taft and Major Butt walked about Washington. It was a dreary day, and Taft was mostly silent. Stopping by Dupont Circle, he asked the Major, "Well, Archie, what do you think of the Recall of Judges as announced by the Colonel to-day?" Butt, whose loyalties had been split by the split between Taft and Roosevelt, and whose letters have brought all the pain of it to history, replied with a final definition of his allegiance: "I have always been opposed to the Recall of the Judiciary, Mr. President." Taft went silent again, and they continued the walk. Finally, he turned to the Major and explained that he thought Roosevelt would beat him at the convention. "But don't think me capable of quitting," he said, and then,

I can fight just as well when losing as when certain of victory, and I have made up my mind to answer that speech of Theodore's and answer it in Ohio where he dared to deliver it. He has drawn the line now, and I hope we can keep the fight from becoming personal. He has leaped far ahead of the most radical leaders of the Progressive party, and his heart is not with them, but he deludes himself that he will be able to guide it and stem it when he gets in power. He can't do it. He has gone too far.<sup>90</sup>

Taft answered Roosevelt at Toledo with a speech entitled, "The Judiciary and Progress." Given prior to his entry to actual campaigning, he kept to issues and spoke nothing of the election or his opponent. Those issues were plain. First up was the recall. Taft put it as politely as possible:

I have examined this proposed method of reversing judicial decisions on Constitutional questions with care. I do not hesitate to say that it lays the axe at the foot of the tree of well-ordered freedom and subjects the guaranties of life, liberty, and property without remedy to the fitful impulse of a temporary majority of an electorate.<sup>91</sup>

Taft had an unusual ability, perhaps, even, a twisted enjoyment of speaking plainly to unfriendly

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<sup>89</sup> Jessup Vol. 2, pp. 169, 180. I am only guessing here, but it was easier for Root to rationalize that Roosevelt didn't really mean it, for Root wanted above all to stay out of the race. To Taft's pressure, Roosevelt forced Root into it, and Root did his business at the convention. Until then, as with Lodge and most of the others, he left Taft to his own.

<sup>90</sup> Butt, "Taft," letter of February 21, 1912, p. 846. The capitalized "Progressive party," which didn't yet exist, probably came from the transcription and not in Butt's original letter. Butt's letters were full of typos that were corrected in their publication. Butt is known mostly as "Captain Butt." Taft signed his commission to Major in March of 1911.

<sup>91</sup> "Taft Shows Peril in Roosevelt Policy," NYT, March 9, 1912

audiences and to sensitive issues. He told GAR veterans that Grant was a drunk, the point, lost to the outrage of the audience, being Grant's tenacity in overcoming the weakness. He told off Grange leaders who rudely protested his Canadian reciprocity, telling them to keep their threats and their votes. He told the automobilists, whom he brought to America and America to them, to keep their hands off the national till and build their roads without general taxation. In his 1912 discussions of the nature of American popular government he was just as frank and brutally plain in saying the things that needed to be said. It opened him up to abuse, of course, but it was essential to his message. Pointing out that the voting public was but a portion of the total population, he explained at Toledo:

Government by unanimous vote of the electorate is impossible, and therefore the majority of the electorate must rule. We find that government by the people is, therefore, under our present system, government by a majority of one-fourth of those whose rights and happiness are to be affected by the course and conduct of the Government. This is the nearest to a government by the whole people we have ever had. Women's suffrage will change this, and it is doubtless coming as soon as the electorate can be certain that most women desire it, and will assume its burden and responsibility.

It was not a deft campaign statement. It was neither uttered nor intended as one. Easily twisted, Roosevelt used it and other similar statements with glee -- and wrongly. Taft was pointing to the flawed idea that the progressive programs for direct democracy would make for more real or more effective instruments of popular government than those already existing. Worse, as *The New York Times* saw plainly over the course of the campaign, special elections for initiatives, referendums, primaries, and recalls, in their reliance upon a majority of a minority of the public, and, of that, a dwindling minority, due to lower voter turn-out than at general elections, were problematic in practice to the theories of direct or pure or partial democracy from which they were drawn.<sup>92</sup> At Toledo, Taft turned the question of the judicial recall into a rebuttal of Roosevelt's views of the meaning of popular government. Taking direct democracy to its logical conclusion, he declared it null and void:

It was long ago recognized that direct action of a temporary majority of the existing electorate must be limited by fundamental law; that is by a Constitution intended to protect the individual and the minority of the electorate and the non-voting majority of the people against the unjust or the arbitrary action of the majority of the electorate.

Sounds trite, and obvious. That it had to be said in 1912, and by the President of the United States is remarkable enough. That these statements were considered by a two-term ex-president and the day's single most powerful personality hostile to the people and to the purposes and functions of true popular government can only be explained as exemplary of progressivism's hysterical slide into the fuller consequences of its looser equations. Taft repeated and pounded throughout late 1911 and into 1912 that direct democracy dangerously empowered momentary majority enthusiasms. In a January speech to the New York State Bar Association, he said,

Popular government we all believe in. There are those of us, however, who believe that not all people are fitted for popular government. The fact is that they are not. Some of us don't dare say so. But I do. The question of whether a people is fitted for popular self-government is determined by the ability of that people to place on itself the restraints by which the minority shall receive justice despite the majority. It is the question of self-imposed restraint that determines whether a people is fit to govern itself ....

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<sup>92</sup> See "The Primary Myth," NYT editorial, June 9, 1912 and "Progress In Ohio," NYT editorial, September 30, 1912

Now, what's the Constitution but imposed self-restraint, the delegation by the people to courts of just men the power to decide between the majority and the minority? That's what the Constitution -- drawn by lawyers and just men who knew the restraints necessary to secure a people even against themselves -- an instrument that has through all times and epochs adapted itself to the needs of the American people. And now we are called upon -- we of the bar -- to say whether we are going to protect that institution against the majority of a moment or, if need be, against all the people and to say if the desire of the moment is according to law.<sup>93</sup>

While, with a blunt demagogy, Roosevelt seized hold of these speeches to ramp up his claims of Taft's outdated orthodoxy, his contempt for the people, and his supposed abdication to bossism and corruption - charges with which Roosevelt got good mileage, despite it, Taft's Toledo speech knocked Roosevelt back in the campaign, and forced qualification of the "Charter of Democracy" rhetoric. Again and again Taft beat upon the recall, as at Toledo:

This is a remarkable suggestion, and one which is so contrary to anything in government heretofore proposed that it is hard to give it the serious consideration which it deserves... What the court decides is that the enacted law violates the fundamental law and is beyond the power of the Legislature to enact... What this recall of decisions will then amount to, if applied to constitutional questions, is that there will be a suspension of the Constitution...

... and concluding with,

Finally, I ask what is the necessity for such a crude, revolutionary, fitful and unstable way of reversing judicial constructions of the Constitution? Why, if the construction is wrong, can it not be righted by Constitutional amendment? .... Such a proposal as this is utterly without merit or utility, and, instead of being progressive, is reactionary; instead of being in the interest of all the people and of the stability of popular government, is sowing the seeds of confusion and tyranny.

With that, judicial recall at the Federal level was removed from the campaign. It remained as an extension of the logic and the rhetoric of the Roosevelt movements, but it was not to appear thereafter in specific form.<sup>94</sup> The recall roused Taft to a contempt born of his deepest convictions. Not infrequently during his presidency he displayed what Roosevelt said of him in 1908, "there never existed a man who was a better fighter when the need arose," and the concurring view from 1912 by the former Roosevelt admirer and staunch Taft friend, John Hays Hammond, that, "No man, it is true, has less taste for a fight, but once in

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<sup>93</sup> "Taft Denounces Recall of Judges," NYT, January 21, 1912. Along with the 1911 veto Message of the Arizona constitution for its judicial recall provision, these speeches were the foundation for Taft's 1913 Yale lectures, published as "Popular Government: Its Essence, Its Permanence, and Its Perils" (reprinted in "Works," Vol. V), a study of the stated purposes of the Constitution, starting with, "We the people," and yet the most pointed critique of direct democracy and its associated disciplines, and what ought to be considered among the greatest statements of American first principles.

<sup>94</sup> While in the "Charter of Democracy" Roosevelt did not explicitly demand judicial recall at the national level, neither did he deny it. He said it would be "difficult." He preceded that caveat with praise for Lincoln's actions regarding Dred Scott, which, Roosevelt said, amounted to judicial recall. He attacked the New York State Supreme Court for its application of the general Constitution to state law, which he flatly stated must be subject to popular review. From there, he went back to criticism of the Supreme Court, although without giving any specific remedy other than that the Court ought not follow "mere legal formalism, but to think of the great immutable principles of justice, the great immutable principles of right and wrong..." The Supreme Court, then, must consider not the law but its own conscience. The implication was clear: if judicial conscience wasn't enough, something else must be done. The destination was judicial recall at all levels.

it, with mind and spirit roused and fixed upon a high purpose, there is in all this world no man more resolute or more dauntless.”<sup>95</sup> If these comments of Roosevelt of 1908 and Hammond of 1912 reflect the enthusiasms of an election year and its politics, Taft’s fight against judicial recall bore their truth. On receiving from Congress approval of the Arizona constitution and its recall of judges in 1911, he blasted,

By George, I am ready for them. I rejoice in the chance to give this Recall business a blow. What a lot of cowards they are in the Senate! There is not a handful of men there, either Democrats or Republicans, who believe in the Recall of the Judiciary, and yet they send me the Constitution of Arizona with this provision in it. I believe I can give this Recall business such a blow as to set the American people to thinking.<sup>96</sup>

Taft’s veto won the day in Congress, but Arizonans proceeded to enact the recall as soon as their constitution was in force. Taft’s veto was in vain, supposedly. Imagine had the President not objected to it, and, like the Congress, gave it his endorsement? Politics took Senator William Borah, who, following Taft’s lead, had solidly condemned the recall in 1911, and again in early 1912, then to silence on it after he joined the Roosevelt pre-convention campaign.<sup>97</sup> The issue was pushed upon 1912; it did not come of itself, and Taft’s push back was instrumental in its defeat as national policy and, generally, as state policy, especially the recall of judicial decisions. It didn’t have to be this way. Taft fought it with everything he had. As he scolded members of the New York bar:

Judicial recall! Judicial recall! The words themselves are so inconsistent that I hate to utter them! Are we going to make our Constitution a mere liquid thing, so that a majority can at any moment, in any heat of passion, overrule the check the fathers gave to us as the greatest gift in our National heritage! Maybe you’ll say that these fears I feel in my soul are unfounded fears. Well, if you mean by that that we’re not going to give up our Constitution and run our courts by a majority vote, then I’m with you on that proposition. But I would remind you to bear in mind that this question of recall is being advocated the country over and by men of influence and many men.<sup>98</sup>

“Great reforms are achieved by thoughtful consideration and not by momentary impulses,” Taft said in March.<sup>99</sup> He understood that the hysteria would pass, but to find that calm, “thoughtful consideration,” a good shove was needed. It might be said that his condemnations of Roosevelt and the third term were no less hyperbolic than Roosevelt’s own exaggerations. Because Roosevelt attacked him, Taft was forced to reply. Taft fought fire with fire. By the end of the Republican primary, he had boxed Roosevelt into that philosophic corner of an idea taken to its extreme, and forced him to justify and to explain. Seeing that his rhetoric had alienated many Republicans, Roosevelt went back to his diluted radicalism, with that old mix of exception and condition, and upped the rhetoric on bossism and corruption. While not dropping his direct democracy as part of his power-to-the-people routine, it became a backdrop to his way into the June convention of railing at the bosses to fuel challenges to the party leadership and its delegates. In an

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<sup>95</sup> Pringle, p. 334 and “Why I am for Taft,” by John Hays Hammond, *North American Review*, October, 1912, p. 459. Hammond continued, “President Taft carries no chip on his shoulder; his ways are those of conviction and persuasion when these methods may be made to serve, but under the velvet glove, when the welfare of the nation demands, there is unfailingly the iron hand. And in coming to his purpose no man is truer than he to the broad creed of universal fellowship and universal justice.”

<sup>96</sup> Butt, “Taft,” letter of August 9, 1911, p. 742

<sup>97</sup> See “Borah and Root See Peril in the Recall,” *NYT*, August 7, 1911, “Alarms His Own Followers,” *NYT*, February 22, 1912, and “Sentiment for Hughes,” *NYT*, May 6, 1912

<sup>98</sup> “Taft Denounces Recall of Judges,” *NYT*, January 21, 1912

<sup>99</sup> “Taft for Popular Rule with Reason,” *NYT*, March 10, 1912

April speech at Philadelphia dedicated to the recall, he dropped all references to national law, with, “nor am I speaking of the Federal courts, which, because of the peculiar features of our Constitution, must be treated by themselves.”<sup>100</sup> He further applied limits in its use in state law to “a certain class of decisions of constitutional questions,” and offered a temporal boundary of two years for “due deliberation” before a popular recall vote. Such was the fine print. The rest of the speech was bluster. From its tone one would have no idea that he had so caged the judicial recall. As with his subsequent clarifications of the “New Nationalism” speech, the Philadelphia address served as a qualifier to the “Charter of Democracy.” At Philadelphia, he dropped the recall as an issue, at least in name:

My proposal is for the exercise of the referendum by the people themselves in a certain class of decisions of constitutional questions in which the courts decide against the power of the people to do elementary justice.

Looking back, this abandonment of the recall is the drama of the speech. In the day, there was nothing said of it, as he stashed the recall behind demagoguery and damnation of the rest. Starting with a statement against the recall that appeared in *The New York World*, signed by, mostly, New York lawyers, and that quoted from Taft’s “lay the axe at the root of the tree of well-ordered freedom,” and quickly bringing up Standard Oil and the American Tobacco Company suits -- not his mistake, mind you -- then moving to corporate attorneys such as Messrs. Choate and Milburn, who had represented these or other trusts, and who had signed the statement in *The World*, and back to Dred Scott, which, he said, was defended by the Choates and Milburns of Lincoln’s time, then joining with the example of the British commonwealth, where “the decision of the legislature on constitutional questions is absolute and not subject to action by the judiciary,” and, next, in quoting from the British Ambassador James Bryce, refuting de Tocqueville’s warnings against the tyranny of the majority, he brought the speech, now only started, to the point that by example of “two or three concrete cases” he would “show just what the attitude of these great corporation lawyers is on questions of fundamental justice as against special privilege.” And yes, in its flurry of associations and meshed topics, the speech reads just about like that. Then the qualification. He was not suggesting, he said, the examples of the British commonwealth, whose examples he had just given:

I do not propose to do in these matters what England, Canada, Australia, and France have always done, that is, make the legislature supreme over the courts in these cases. I merely propose to make legislature and court alike responsible to the sober and deliberate judgment of the people, who are masters of both legislature and courts.

and,

Nor am I speaking of the recall of judges, a measure which I do not wish to see adopted in any community unless it proves impossible in any other way to get the judges to do justice -- and I will add that nothing will so tend to strengthen the movement for the recall as action like this of Messrs. Choate and Milburn, and their associates, in seeking to buttress special privilege in the courts and to make them the bulwark of injustice instead of justice.

Rather, he continued, “I am seeking to introduce a system which will obviate the need of such a drastic measure as the recall.” From there he condemned the usual suspects, especially the New York State Court

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<sup>100</sup> “The Recall of Judicial Decisions,” speech at Philadelphia, April 10, 1912. Roosevelt’s rhetoric practically defies parsing and interpretation, and by design. The caveat to staying away from recall of Supreme Court decisions is the “peculiar features” of the Constitution. As we will see, that one is opened up again by the easier amendment he demanded.

of Appeals, which he had used as straw man since 1910. The word “recall” was practically hidden, and when shown, it was wrapped carefully -- this despite the title of the speech, “The Recall of Judicial Decisions.” When the recall appeared, it wore the ball and chain, or was given a new name, such as with, “Are Messrs. Choate and Milburn aware that in Vermont the actual practice about judges is that they are appointed practically for life, but subject to recall, and therefore to a referendum on their actions, every two years?” or, his “Nor am I speaking of the recall of judges,” which did not preclude the recall of their decisions -- and which, instead, ran cover for just that proposition. Roosevelt always chose his words with care. With Taft’s pressure, the “recall” had become a dirty word, and despite the ranting tone of the speech, Roosevelt was conducting an end-run around it. This may not have been noticed in the campaign, and by the results of the Pennsylvania primary, a big Roosevelt win, one wouldn’t know. Those results, *The Times* noted, had little to do with discussions or non-discussions of the recall: “Mr. Roosevelt’s instant profiting by the labor troubles in the anthracite region points with unmistakable directness to the quarter where the peril lies.”<sup>101</sup> That was not far from the mark. The Philadelphia speech had nothing to do with the recall. It was all about the bosses and death-by-association: “Mr. Taft, Mr. Choate, Mr. Milburn, Mr. Penrose, Mr. Guggenheim, Mr. Lorimer, and the rest of their companions, who so dread and distrust the American people...” He used the recall to get into the campaign, and now he discarded it -- for a time. Demagogy, not the recall, fueled his primary campaign. But only because Taft took the recall away from him.

Roosevelt won the primaries. His popular vote tallies came of excitement, not ideology, of novelty and dissent, not popular judgment. Despite the historical assumption, machine politicians were hardly Taft’s sole supporters, and neither did all the machines support him. Roosevelt took some, and, just as bad for Taft, not a few key local bosses stood aside to watch who’d come out on top, including the all-important New York delegation which, while mostly and wildly anti-Roosevelt, went to the convention without instructions. Certainly, Taft held the machine for his power as President and, since he began far earlier than Roosevelt, for his control of the National Committee. That’s but half the story. In these first ever primaries that were problematic at best and susceptible to minority or momentary majority enthusiasms, that Roosevelt was expert at provoking, Taft made his case before the public. Doing it, he summoned enough popularly-voted delegates that, with those of the machine, he kept hold of the party. They didn’t stay with him just because he was their President, or for the patronage. They stayed with him because they agreed with him. Taft gave voice to defiance of drastic change and to the conviction of first principles.

For Roosevelt, the game was too little, too late. At the party convention, his only hope was to sway delegate emotions to create a stampede. To get there he needed, as Henry Taft noted before, to up the outrage. Around Roosevelt’s screams for “the politicians... dead or alive,” orchestrated delegate bolts, a rightward feint with the promise to drop the initiative, referendum and recall in a Roosevelt platform, which nobody bought, and all the usual political tricks, including greenbacks spread about like poker chips, which didn’t work, with Taft’s man Root coolly running the podium, Roosevelt’s army fell to despair.<sup>102</sup> There would be no Roosevelt platform, which, as the *Times* wrote, wouldn’t mean much, anyway: “He would be the platform, and it would fluctuate with his moods or calculations.” Having

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<sup>101</sup> “To Mr. Taft’s Managers,” NYT editorial, April 15, 1912

<sup>102</sup> Of Root’s place there, Chace wrote it was “Taft’s only really brilliant move of the campaign...” (p. 118). For Chace, as for Mowry, upon whom Chace relied, Taft did no right. For example, Chace credited Taft’s Massachusetts primary win to Senator Lodge (p. 112) -- without mention that Taft’s campaign there was strenuous and effective and that his speeches were given to record audiences. Lodge hid behind his friendship with Roosevelt to avoid stumping for Taft. As did most of the former Roosevelt associates who were philosophically against him in early 1912, Lodge sat out the pre-convention fight, leaving Taft to his own. See “The Massachusetts Primary,” *Outlook*, May 11, 1912, p. 64, quoting from another newspaper that Lodge was “pathetically silent and reluctantly neutral,” and Bromley, pp. 319-321.

secured the party, and -- like a good spoiler? -- ensuring Roosevelt's November defeat, Taft stepped back and ran a traditional front-porch campaign, one I called the nation's first and only "golf course campaign."<sup>103</sup> He threw bones to the conservatives of his party by vetoing every tariff revision that came his way and by dropping the tariff as an issue, generally. In staying out of the active campaign, he made good on his promise that he would not have broken precedent in stumping during the primary but for the threat Roosevelt presented. Above all, Taft turned his campaign into a stand for constitutionalism.<sup>104</sup> Politically, it forced Roosevelt leftward, and allowed Wilson to walk through the middle, principally on the tariff. Historically, Taft importantly and successfully defended the core American principles. After the convention, he released the statement:

Never before in the history of the country was such a pre-convention campaign fought. Precedents of propriety were broken in a President's taking the stump, much to the pain and discomfort of many patriotic, high-minded citizens, but the emergency was great and the course thus taken was necessary to avert a National calamity, and in view of the result, it was justified.<sup>105</sup>

When Roosevelt unveiled the Progressive Party platform, its dominant meaning was mood. In it and in the national campaign Roosevelt continued the ideological push, especially since he was freed of playing to conservative Republicans. Still, the platitudes spoke louder than the reforms. The platform spun wildly for change, such as its loose call for easier amendment of the Constitution, but it lacked the fine print to define or make it, and when it did get specific qualification resurfaced. Judicial recall was vacated to corners of state law.<sup>106</sup> In homage to Roosevelt's self-conception as preserver not destroyer of order, the platform declared itself for "fundamental law," and excused those changes called for in it as necessary to maintain it. It was the same-old without the legitimacy of any real chance of actually doing it, and, given Roosevelt's wandering rhetoric, it was, ultimately, just a political tool. Late in the campaign, as Roosevelt unloaded on Root in argument over legal interpretations and not the powers of the judiciary itself, and at the same time went over the other edge with the recall of the presidency, he had drowned in his own rhetoric, having long cashed out the two sides of the this-or-that.<sup>107</sup>

Nevertheless, and despite the surrender in the platform to a combination of, alternatively, the innocuous specific or the impotent general, the attendance of direct democracy persisted with Roosevelt's presence in the national campaign. In "New Nationalism," Roosevelt had decried the "overdivision of governmental powers." Again, it was more of the complaints from the presidential Messages. Applying them forward into 1912, he landed far beyond Montesquieu and the American principles of divided power. To the Ohio constitutional convention:

It is often said that ours is a government of checks and balances. But this should only mean that these checks and balances obtain as among the several different kinds of representatives of the people -- judicial, executive, and legislative to whom the people have delegated certain portions of their power. It does not mean that the people have

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<sup>103</sup> "The Platform," editorial, NYT, June 17, 1912 and Bromley, p. 345

<sup>104</sup> For Mowry, it represented Taft's shedding of those progressive disguises with which he had, as a member of the Roosevelt Cabinet, fooled Roosevelt into believing he was a liberal. For Mowry, Taft's presidency was but a twisted psychological battle between a progressive shell and the inner conservative (see Mowry, p. 274).

<sup>105</sup> "Taft Renominated by the Republican Convention," NYT, June 23, 1912

<sup>106</sup> As noted before, even this plank had an ambiguous out that was clarified after the election.

<sup>107</sup> "Colonel's Last Word an Attack on Root," NYT, November 5, 1912 and "Roosevelt Favors Recall of President," NYT, September 20, 1912

parted with their power or cannot resume it. The “division of powers” is merely the division among the representatives of the powers delegated to them; the term must not be held to mean that the people have divided their power with their delegates. The power is the people’s and only the people’s.

To the Progressive convention he said it more plainly: “The first essential in the Progressive programme is the right of the people to rule.”<sup>108</sup> Majority rule had become the very end of the Roosevelt program. He would get there through the various mechanisms of direct democracy such as the initiative, the referendum, the recall. For Taft, the recall, either of judges or their decisions, was the most insidious of the screed in that it challenged constitutionalism itself.

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There was one other very real threat to constitutional government in the Roosevelt program of direct democracy in the easier amendment of the Constitution. However you look upon the Progressive demand of, “One day’s rest in seven for all wage-workers” to be set in national law, or upon the general program to run all inter-state businesses, “doing for them what the Government now does for the National banks, and what is now done for the railroads by the inter-state commerce commission,” including, therefore and among other really bad ideas, setting prices, or any of the measures for social reform and general welfare, many of which are in place today and many of which are not, and one of which I call to your special attention, the platform’s demand that the United States economy be run like Germany’s and “their policy of co-operation between Government and business,” or any one of these ideas, good or bad, no reform and no law pledged by it would have been as open-ended an invitation for mischief than that in it which would have allowed for enactment of any reform, any movement, good or bad, more quickly and more easily, than by the platform’s demand for “easy and expeditious” amendment of the nation’s fundamental law. Short of judicial recall of federal courts and decisions, from which the platform shied, this one idea trumped all others, for it potentially juiced the rest into super-law. Easier amendment was the most radical element of the Progressive platform, and its presence there discredited the Roosevelt claim that his was the conservative, preserving program.<sup>109</sup>

This most aggressive of the Progressive platform’s reforms on the processes and nature of government came under “Amendment of Constitution,” with its own section and near the top of the document:

The Progressive Party, believing that a free people should have the power from time to time to amend their fundamental law so as to adapt it progressively to the changing needs of the people, pledges itself to provide a more easy and expeditious method of amending the federal Constitution.

After Theodore Roosevelt’s heart -- and as ambiguous as ever. The qualifications were marvelous: “time to time,” “adapt it progressively,” and “changing needs”; the most defining words were also the heaviest: “easy and expeditious.” It was at the same time radical joy ride and meek surrender. “More” easier amendment might be, oh, ratification by three-fourths of the States minus one. As ever, specificity would

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<sup>108</sup> “My Confession of Faith” speech. In “Popular Government,” Taft wrote, “Now popular government is not an end” (Works, Vol. V, p. 21).

<sup>109</sup> For the case that Roosevelt’s program was conserving of constitutional law, see Murphy (“Mr. Roosevelt is Guilty”: Theodore Roosevelt and the Crusade for Constitutionalism, 1910-1912,” as previously cited). Murphy took the Roosevelt view that to preserve constitutionalism the Constitution required amendment or looser interpretation (see Murphy, p. 452, quoting from “Charter of Democracy”). Murphy relied too much on Roosevelt of 1910 and 1911 and too little on Roosevelt of 1912, and he did not consider the program of easier amendment.

not speak the progressive impulse -- or Roosevelt's purposes. A late draft of the plank set amendment by popular initiative to be affirmed by majority votes in a majority of states.<sup>110</sup> That lovely thought gave, in the final form, to platitude, leaving this ambiguous, hide-the-specifics plank that was entirely political and, so, contrary to the idea of the platform as the people's "Covenant." Nevertheless, it was open-ended, and therefore dangerous. "Easy and expeditious" amendment implied all the tenets of direct democracy. The Ohio convention that was so moved by Roosevelt's instructions demanded but ten per cent of the voters for proposal of a constitutional amendment.<sup>111</sup> Imagine this the model for the United States Constitution. "Easy and expeditious" amendment of the Constitution could, and reasonably forecast into the vagaries of American politics, would, mean constitutional amendments here, there, and everywhere. The Constitution would mean whatever was required of the immediacy of the demands upon it. And here it was in the Progressive platform, however hidden in qualification and ambiguity -- qualities that were unto themselves concessions to Taft. Rather than halting revolution, easier constitutional amendment would empower it.

There are problems with amending the amending powers of the Constitution.<sup>112</sup> Firstly, it would seem near impossible to effect, as majority rule unto itself provokes minority opposition. For a larger majority of the American people to give up their powers of constitutional amendment to a lesser majority than that already required is nonsensical. But who knows. As Taft pointed out in "Popular Government," the existing forms of direct democracy were established under the old representative system.<sup>113</sup> The emotions of 1912 would have been validated and enhanced by a Roosevelt win, and, as Taft told Major Butt the day of Roosevelt's "Charter" speech, it might have gotten beyond Roosevelt himself, to the point, say, of calling a constitutional convention, and from there.... Well, he lost. Still, the idea was right there in 1912 and its candidate took eighty-eight electoral votes. Here's the problem for 1912: the Roosevelt progressives condemned those constitutional restrictions that, by their view, defeated or were used to defeat the will of the people, yet, their solution to empower the popular will necessarily meant destruction of all constitutional principles besides majority vote. There was no way around it. No restriction upon the mechanics of simple, majority rule, such as, "from time to time" or "after an ample interval for deliberation," would change that the majority would rule absolutely. Once the simple majority got in, it would take but a simple majority to decide all matters. That majority may not have chosen to do bad things with that power, but, it could have so chosen, especially if, and against Roosevelt's admonitions, it were not a "moralized" majority. The Roosevelt program was to reduce to that simple fifty-one out of a hundred the choices of the millennium. Everything Taft said against it came down to enforcement of that super-majority the Founders insisted upon in defense of the minority and of the nation's first principles. Two-thirds the Congress and three-fourths the states might choose wrong, and they have. Half of them alone, or half the people, or however Roosevelt wanted it and the details were ever unclear, could choose wrong far more easily.<sup>114</sup>

While diluting the judicial recall, limiting it, qualifying it by place and time, or, even, renaming it

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<sup>110</sup> "Kirchway Drafts Platform," NYT, August 5, 1912

<sup>111</sup> "The Initiative and Referendum In Ohio's New Constitution," NYT, August 18, 1912

<sup>112</sup> For a start, see "What in the Constitution Cannot Be Amended?" by Douglas Linder, Arizona Law Review, per internet hyperlink in the bibliography.

<sup>113</sup> Works, Vol. V, p. 38

<sup>114</sup> Roosevelt very nearly caused one constitutional amendment that he did not want and that was blocked by the existing difficulty of amendment. In response to his third-term quest, the Democratic party submitted a plank for the party's old idea of a single, six-year term for the presidency, and Taft himself endorsed it in late 1912 (see "Taft Comes Out for Single Term," NYT, November 17, 1912). The idea represented a quick but earnest passion that would have found its way into fundamental law were the Constitution's rules of amendment any "more easy."

referendum, Roosevelt could not escape his conclusions. With easier amendment of the Constitution the fall-back cover for the limits to be imposed on the other ploys of direct democracy, he could not get around the problem of limiting popular will to do its will freely. It is either limited, and thereby not fully the popular will, or it is freely the popular will, one way or the other. And, since his entire rationale for direct democracy was that the people must express themselves in their government or doom would result, necessarily he had to go with allowing full expression of the majority will, one way or the other. Roosevelt's self-conception, as president, as presidential candidate in 1912, and to his last, was that he and his ideas were the final ramparts against revolution. He would counter revolution by swallowing it whole, spit out the cartilage and bone, making it a wholesome meal. Or, if you will, he would inoculate the nation against revolution with small doses of revolt. He was here, moderate reformer, there conservative radical, or what have you and depending on the issue and the audience. In office, it served him well, and he used it for great popularity. There, however, he was limited by the constraints of the political process and, especially, by dominant constitutional interpretation. His capitulation to it had the effect upon his more fervent followers of taking candy from a child. There is much to be said for this strategy, and it has been said.<sup>115</sup> There is equal and more time due to the opposite view that his inoculations were not successful in halting the disease, and rather hyped the symptoms, or, that in the first the disease itself was not as diagnosed. However you may view that, Roosevelt's 1912 debate fell upon the absurd contention that fifty-one of a hundred of the voters could, or would, stop revolution, while at the same time protecting the rest from the dangers of majority rule.

When Taft derided "instantaneous" government, he was hitting progressivism at the core misfire of the movement. In the quest for "genuine democracy," the Progressives demanded that at any given moment the rule of the people must prevail.<sup>116</sup> This logic took Roosevelt to easier constitutional amendment. It also took him all the way so as to speak for the recall of the President. He had to. It was required of the theory. To say it was not was to admit of the need for restraint upon popular will, which would have been the deadly admission that existing restraints on it weren't so bad, and that the historical reasons for them were yet operative. In applying immediate, or, as Taft called it, rule by "special instances," the temporal restraints on the people would be annulled.<sup>117</sup> Here again the progressive means became its ends. The largest of enacted progressive era reform of the mechanisms of government was the 17th amendment's direct election of Senators. By Rooseveltian logic, the direct election of Senators was the means to end corruption and to invigorate popular government. A study of its success in this regard is beyond this paper, but I will propose as standing fact that direct election of Senators did not touch -- rather, it affirmed explicitly -- what was more truly the source of power of the standpat Senate that reformers so hated and that this reform failed to change. The 17th amendment left intact the other fundamental division of power represented by the Senate other than geography, that is, besides the states, its temporal sovereignty. The principles of direct democracy were not achieved in direct election of the Senate if Senate election remained divided in time, if Senate terms were left at six years. The general mandate of 1909's Senate was at least four years old, and, given the power of unlimited debated, its mandate was as old, potentially, as oldest term of any single Senator, that is, six years. The mandate of the House was newly set by the 1908 campaign. Both houses acted accordingly, and continued according to the elections of 1910 and 1912. The direct election of the Senate changed nothing of this constitutional arrangement, and, by the language of the amendment, it was affirmatively left intact. The 17th amendment represented another victory of history and time over progressivism, or, perhaps, another capitulation by the movement to the same.

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<sup>115</sup> See Morris, p. 440. For this strategy, generally, see "Murdering McKinley: The Making of Theodore Roosevelt's America," by Eric Rauchway, Hill and Wang, New York, 2003.

<sup>116</sup> Taft's "instantaneous" from "Taft and Root Assail Radicals," NYT, August 2, 1912, and Roosevelt's "genuine" from, among places, "The Conservation of Business," Outlook, March 16, 1912, p. 574.

<sup>117</sup> "All Taft Wants is a Square Deal," NYT, March 20, 1912

Means to nowhere are ends.

Easier amendment was another attempt to break free of time. The difficulty to amend the Constitution was a constant problem for Roosevelt going back to the earliest days of his presidency. After suggesting in his First Annual Message that the Constitution might need amendment for greater power to regulate business, from his second year on he insisted that the Constitution already allowed for the fullest regulation of inter-state commerce. Now and again he insisted that the Constitution be amended to accommodate reform, such as in his Fifth and Sixth Annual Messages, both, notably, at the height of his powers following his re-election and amidst his most active pursuit of bills in Congress.<sup>118</sup> In the Fifth Message, he expressed some impatience with, “If this proves impossible, it will certainly be necessary ultimately to confer in fullest form such power upon the National Government by a proper amendment of the Constitution.” And also in the Sixth, with, “The difficulty of amending the Constitution is so great that only real necessity can justify a resort thereto.” For that last, however, he was displaying political dexterity rather than principle, for he was using the difficulty of amendment to argue for an inheritance tax instead of an income tax, which, he pointed out, had already been declared unconstitutional. In 1910 he yet clung to the necessity for looser interpretation, to which in 1912 he added that first idea of amendment, this time made “more easy and expeditious.” There exists a certain incongruity in these positions. The stated purpose of the Progressive plank on constitutional amendment was “to adapt it progressively to the changing needs of the people.” This would seem a concession to the practice of strict interpretation. But no matter, for the platform was about getting what it could. So we have it that the Constitution should be more easily amended.

The argument was that existing standards for amendment of the Constitution were too restrictive, that the near unanimity required was impossibly difficult and thereby empowered special and minority interests to block necessary amendment. This was and remains exactly the case. Whether or not you think it a good thing, an unarguably important result of this requirement, with the super-majorities required and the power divisions between the Congress and the States, is that it takes time to put together such a super-majority. As Taft said over and over, delay is the best protection against dangerous passions. Roosevelt gave lip-service to it in argument, and dismissed it in conclusion. Any easing of the amendment process would have inherently eased the amount of time required to do it, and any easing of the super-majority required would have expedited the same, regardless of such a restriction as he proposed in his April, Philadelphia speech, for the recall, of a two-year hiatus before popular consideration. If this process of amendment were to be made so easy as to truly reflect the Progressive party’s purpose to “to adapt it progressively to the changing needs of the people,” the amendment process would have become but a lightly-watered equivalent to judicial recall, both in time and demographics. Direct democracy held that if the courts overturned a law, the people could decide it right or wrong by majority vote. Whether that process entailed exempting the law from judicial review, reversing the decision and removing it from precedent, or amending the Constitution to allow for the overturned law, is all of the same thing. Easier amendment presented the same qualities of constitutional nullification as the recall of judicial decisions of the Supreme Court. The Progressive platform called for “wise carefully-thought-out” changes. It was an unsure proposition that application of those changes would have been wise and carefully thought out. Making it easier to put all the changes the party suggested into law through easy amendment of the Constitution was not a method of ensuring wisdom and thought. The only way to ensure its conservative application would have been to make the process, be it judicial recall or constitutional amendment, so difficult as to require a similar super-majority as already existed in the Constitution, and it would not, therefore, have been “easy.” Expeditious amendment meant easy amendment. It was all the same. Patience was not the progressive virtue.

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<sup>118</sup> Fifth Annual Message, December 5, 1905, and Sixth Annual Message, December 3, 1906

Taft did not focus on the easier amendment plank, and neither did Roosevelt push it in the campaign except as requisite to other reforms. In the February “Charter of Democracy,” he lamented the difficulty of constitutional amendment, the “intolerable delay and injustice [that] would be caused by the effort...” It was a resort, then, should looser judicial interpretation fail reform, and not the best resort, either, for, “the very judges who are at fault would proceed to construe the amendment” improperly. “In such a case the fault is not with the Constitution; the fault is in the judges' construction of the Constitution; and what is required is power for the people to reverse this false and wrong construction.”<sup>119</sup> When he mentioned constitutional amendment in the August “Confession of Faith” speech, it again came as a technical requirement for achieving the greater powers he sought in judicial recall. After a less than illuminating retraction of the recall, which he explained as,

Whenever in our Constitutional system of government there exist general prohibitions that, as interpreted by the courts, nullify, or may be used to nullify, specific laws passed, and admittedly passed, in the interest of social justice, we are for such immediate law, or amendment to the Constitution, if that be necessary, as will thereafter permit a reference to the people of the public effect of such decision, under forms securing full deliberation, to the end that the specific act of the legislative branch of the Government thus judicially nullified, and such amendments thereof as come within its scope and purpose, may constitutionally be excepted by vote of the people from the general prohibitions, the same as if that particular act had been expressly excepted when the prohibition was adopted.

... and, assuming the average voter of 1912 had any idea what that meant, bringing the logic of the argument forward to what would later be “more easy and expeditious” amendment, he concluded as to the necessity of easier constitutional amendment:

This will necessitate the establishment of machinery for making much easier of amendment both the National and the several State Constitutions, especially with a view to prompt action on certain judicial decisions -- action as specific and limited as that taken by the passage of the Eleventh Amendment to the National Constitution.

The history to which Roosevelt was using in the 11th amendment was that its enactment was designed to cure what was considered a defective Supreme Court ruling. The comparison went no further. Even though he argued that kind of amendment, that is, correcting or overturning a court ruling, his amendment plank in no way limited amendment to such action. Into the specifics of the 11th amendment itself, Roosevelt’s argument got even more lost. That amendment, as Taft wrote in “Popular Government,” “exalted the sovereignty of the States” and thereby contributed to that “neutral ground” Roosevelt complained of, that “refuge for lawbreakers” that was a result of the “overdivision of governmental powers.”<sup>120</sup> Next, it was passed quickly. The existing amendment process sufficed and in no way hindered the people’s will in demanding it. Lastly, the Supreme Court set about interpreting it, variously restricting and expanding those state immunities that were the subject of the amendment, according to the Court’s perceptions of law and necessity. The examples of the 16th and 17th amendments, both of which were progressing through the States during the 1912 election, proved shallow Roosevelt’s complaint of the difficulty to change the Constitution. His grievance, then, was in the institutions through which the existing amendment process worked and not in its ability to reflect the popular will. What he was really upset about, ultimately, was that not enough Americans agreed with his visions of “industrial justice” to make it in law.

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<sup>119</sup> “Charter of Democracy”

<sup>120</sup> Works, Vol. V, p. 87 and “New Nationalism”

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History has looked upon 1912 as a brief eruption, a passing convulsion in which the “progressive” Roosevelt challenged the “conservative” Taft, and which resulted in the “progressive” Wilson presidency. Taft is said to have fumbled the Roosevelt mantle by aligning himself with “conservatives,” which upset Roosevelt and produced his rebellion. Taft’s presidency is a footnote in studies of the progressive movement. With such a small historical marker, did Taft’s stand for the Constitution make any difference? Did it really matter? Did it change anything? Was it a crisis that Taft attended, or was it, like the dominant emotion of the age, just hysteria?

Using the definitions of a constitutional crisis developed by scholar Keith E. Whittington in “Yet Another Constitutional Crisis?” we might measure the situation Taft faced in Roosevelt’s challenge -- and that crisis Roosevelt said the nation faced.<sup>121</sup> Whittington wrote, “Constitutional crises arise out of the failure, or strong risk of failure, of a constitution to perform its central functions.” One form was the crisis of “constitutional fidelity,” which comes “when important political actors threaten to become no longer willing to abide by existing constitutional arrangements or systematically contradict constitutional proscriptions.” Whittington clarified that, “Challenges and amendments are not constitutional crises.” Still, “The idea of popular sovereignty is profoundly disruptive of the constitutional order, however.” In the “constitutional culture” of America, Whittington wrote, “Disagreements emerge over the meaning and requirements of constitutionalism, not over the appropriateness of constitutionalism itself.”

In the “Charter of Democracy,” Roosevelt declared the Constitution, as then applied, incapable of meeting present needs. Starting out with the flat, “I am emphatically a believer in constitutionalism,” which, he said, “must be interpreted and administered so as to fit human rights,” he continued,

The object of every American constitution worth calling such must be what it is set forth to be in the preamble to the National Constitution, “to establish justice,” that is, to secure justice as between man and man by means of genuine popular self-government. If the constitution is successfully invoked to nullify the effort to remedy injustice, it is proof positive either that the constitution needs immediate amendment or else that it is being wrongfully and improperly construed.

Either the Constitution be interpreted differently or amended, or it would cease to be an instrument of “genuine popular self-government,” a charge that immediately falls into Whittington’s general description of a constitutional crisis, “the failure... of a constitution to perform its central functions.” According to Roosevelt, thereby, constitutional crisis attended in February of 1912. What was to happen next would decide the magnitude of the crisis. To the Progressive convention in August of 1912, he said,

In the United States, where the courts are supreme over the Legislature, it is vital that the people should keep in their own hands the right of interpreting their own Constitution when their public servants differ as to the interpretation. I am well aware that every upholder of privilege, every hired agent or beneficiary of the special interests, including many well-meaning parlor reformers, will denounce all this as “socialism” or “anarchy” - the same terms they used in the past in denouncing the movements to control the railways and to control public utilities. As a matter of fact, the propositions I make constitute neither anarchy nor Socialism, but, on the contrary, a corrective to socialism

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<sup>121</sup> William & Mary Law Review, Vol. 43, Issue 5, April, 2002. Quotations here from pp. 2100, 2109-2110, 2121, 2125 and 2145.

and an antidote to anarchy.

This would seem by Whittington's definition of the "crisis of constitutional fidelity" to be not a direct threat "to become no longer willing to abide by existing constitutional arrangements or systematically contradict constitutional proscriptions."<sup>122</sup> Roosevelt was in no way violating existing rules, or saying that he would. His was a prediction, merely, that his remedy be applied or revolution would follow. It was his old theme. It would seem, then, that Roosevelt was defending constitutionalism, that all he wanted was a constitution that would better represent its masters, the people, which, in Whittington's terms, was disagreement with the Constitution and not with "constitutionalism itself." If so, Roosevelt's rhetoric betrayed that cause. His ideas themselves led to constitutional infidelity. As Whittington wrote, "If a constitution cannot readily be modified within the bounds of its own procedures to reflect the new political consensus, it may instead suffer a crisis of fidelity as political actors challenge its legitimacy and authority."<sup>123</sup> This was certainly the case in 1912. By Roosevelt's view, the Constitution was incapable of meeting its stated goals, for its structures prevented it, particularly judicial review and the difficulty of amendment. He advised the Ohio convention to avoid what he saw not just as presently operative in the national Constitution but fundamental to its construction:

I hold it to be the duty of every public servant, and of every man who in public or private life holds a position of leadership in thought or action, to endeavor honestly and fearlessly to guide his fellow countrymen to right decisions; but I emphatically dissent from the view that it is either wise or necessary to try to devise methods which under the Constitution will automatically prevent the people from deciding for themselves what governmental action they deem just and proper.

Translated to Whittington, Roosevelt was denying the Constitution's "ability to establish a particular political order."<sup>124</sup> He decried "a false constitutionalism, a false statesmanship... [that] seem to give the people full power and at the same time to trick them out of it." The pretext was advice for the Ohio constitution; but, no matter how narrow the complaint to, say, the New York courts, as he did in the speech, or, as he did elsewhere, specific decisions, it was and is impossible to remove the statements from constitutionalism in general and the United States Constitution in particular. Note the capital "C." For Roosevelt, the Constitution, as it stood, was inoperative, and thereby in crisis. Had he stuck to complaint and to urging looser interpretation there would have been no crisis, real or perceived. Real crisis arose as Roosevelt applied his solutions to his perceived crisis. His remedy of weakening or removing judicial review and those other checks and balances inherent to constitutional procedure challenged "constitutionalism itself." As Taft noted, if the courts were subjected to popular review, constitutions would cease to function. Direct democracy was the antithesis of American constitutionalism. Roosevelt's idea that a constitution serve and only serve the public will was the same as having no constitution at all. In the "Charter of Democracy" he said,

It is impossible to invent constitutional devices which will prevent the popular will from being effective for wrong without also preventing it from being effective for right.

By this view, fundamental law is inherently contrary to popular sovereignty. His would be a constitution in name only. He concluded the argument with about the only way possible around the paradox he created between the demands of popular will and the limitations of fundamental law:

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<sup>122</sup> Whittington, pp. 2110-2111

<sup>123</sup> Whittington, p. 2114-2115

<sup>124</sup> Whittington, p. 2113

Our aim must be the moralization of the individual, of the government, of the people as a whole. We desire the moralization not only of political conditions but of industrial conditions, so that every force in the community, individual and collective, may be directed toward securing for the average man, and average woman, a higher and better and fuller life in the things of the body no less than those of the mind and the soul.

The pill was large. Popular will was to be good unto itself, ensured by no mechanism other than direct control of government and constitutions by a moral people. This logic and this rhetoric led directly to Governor Osborn's vapid claim that "whatever is right is constitutional." And out goes constitutionalism. One can almost hear Madison scream. Taft did it for him:

Distrust of popular government! The pride that I have that this is a popular Government, and that it has shown itself the strongest in history, is as deeply embed as any feeling that is in me. I would be the last man to exclude from the direction of the ship of state the will of the American people. That is the ultimate source of authority, and it does not in any way minimize my faith and my love of popular government that I insist that the expression of that popular will shall be with the deliberation to make it sound and safe.<sup>125</sup>

While Roosevelt on and off tempered his rhetoric on the recall and judicial review and assaulted judicial interpretation instead, his general solution, moral governance, challenged the essence of American jurisprudence and American constitutionalism. Arguing legalisms would not get him to the "moralization" of America. Direct democracy was the only way. Judicial recall was not an end, he said in Ohio, it was an element of the "proper machinery" needed for "good government." It was an "expediency merely... a last resort." What, then, had made things so drastic, so drastically unfair in Roosevelt's world that he would use democracy's ultimate tool, that "last resort," to achieve his higher good? Not to trip over ends and means again, but Roosevelt did it first. Did his means justify his ends?

In September he scolded Wilson for a "platonic devotion" to progressivism, that is, professing its goals but not, to Roosevelt's way, doing anything about it. Wilson had defended existing, representative government and -- horrors, liberty, the story of which, he said, was "a history of the limitation of governmental power."<sup>126</sup> Roosevelt's direct reply was that, if so, Wilson "must be against every single progressive measure, for every Progressive measure means an extension, instead of a limitation, of governmental control." This doctrine, of course, scared The New York *Times* into another of its marvelous rants. But, the extension of the federal government, according to Roosevelt's "present fancy," as The *Times* saw it, "to interfere in all industrial matters, to hamper commerce, to restrain personal liberty, to impede justice, to establish, indeed, a many-headed despotism, which, however humanely conceived..."<sup>127</sup> was not Roosevelt's critical point. He wanted all that, if more kindly put. His direct reply to Wilson was of the way to that "social and industrial justice" -- its means: "It is idle to profess devotion to Progressive principles and at the same time antagonize the only methods by which they can be realized in actual fact." Existing institutions through which Wilson would apply his form of progressivism were for Roosevelt incapable of it. They were, therefore, in crisis.

Returning again to Henry Taft, Roosevelt was deliberately practicing what Whittington called the "rhetoric of crisis." Whether the Constitution had failed to address the modern condition, Roosevelt's

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<sup>125</sup> "Taft for Popular Rule with Reason," NYT, March 10, 1912. With apologies, or thanks, to Morris for the license here to climb into Madison's brain.

<sup>126</sup> "Limitation of Governmental Power," speech delivered September 14, 1912 at San Francisco

<sup>127</sup> See "Two Doctrines," NYT editorial, September 16, 1912

rhetoric aimed to make it appear so. To get there, he appealed to the Civil War, equating the evils of judicial review to the crisis of secession, and otherwise blaming bad judges and their bad decisions for the day's evils. It wasn't enough. Where previously he found Lincoln at every corner, come Taft's imminent hold of the Republican convention, Roosevelt exchanged Lincoln for the Lord. Even if conceding the argument that in applying the remedies of direct democracy, or that in pushing the debate in order to advance a cause for more liberal court review, or that Roosevelt was arguing the terms not that "appropriateness of constitutionalism itself," nothing short of crisis could justify such fundamental changes as he proposed. Nullifying judicial review in order to achieve the eight hour day, for example, elevated that reform to an awfully high urgency. His standards of salvation seem dubious. Even if conceding that "social and industrial justice" went direly wanting, that corrupt bosses ran and ran off with everything, even if conceding all the rest of the evils Roosevelt intended to resolve, Whittington placed one more hurdle that Roosevelt could not possibly have cleared. Argument over constitutionalism, Whittington wrote, can turn into a crisis if gone too far:

A constitutional crisis justifies extra-constitutional, and perhaps even unconstitutional, actions, and a rhetoric of constitutional crisis can itself lead to a constitutional crisis. It is also notable that the rhetoric of crisis is often used to justify the accumulation of political power, frequently to the executive.<sup>128</sup>

At a minimum, that was just the challenge Taft faced, just the constitutional crisis, and just the outcome, he averted.

In mediating his perceived extremes, Roosevelt had to be on top of both. Into 1912, as he hyped the day's pains this labor became increasingly hopeless, as the two horses he stood upon ran further apart. It was not pretty. More and more he had to speak in terms of crisis to justify his solutions. More and more he had to speak in agreement with radicalism in order to maintain that he was staving it off. That he would be called a socialist or a radical for taking such and such a position was a favorite rhetorical device to discredit in advance that very criticism. While never venturing into the socialist program of the abolishment of private property -- he objected to government ownership of the railways for the difficulty in their management and not from any principles of private property or individualism<sup>129</sup> -- he allied himself with socialist notions of the people's rule and distanced himself and his progressivism from it by calling direct democracy a means and not an end, and by damning the radical equally as the reactionary. It was a messy proposition, and it took many, many words to spell out. It fell apart as too many Republicans saw in him too much socialism, too many Socialists saw too much conservatism, and too many Democrats saw too much republicanism. The people didn't necessarily make those conclusions on their own. Taft and Wilson brought them to it, and in their conjoined defense of core institutions, they led the people to their November rejection of Roosevelt's ideas on changing the mechanics of government.

Taft's supporters at the June convention and the November riders of his electoral Titanic pulled down with them the threat of Roosevelt's majority rule. Afterwards, Taft spoke of "3,500,000 voters, an irreducible minimum of the Republican Party, who were determined to remain a force in the community to prevent any constitutional amendment and legislation of a revolutionary programme announced by the so-called Progressive Party" -- Madison's thwarting minority, that is. Roosevelt's "battle for the Lord" ended with a thud on November 5, 1912. The Bull Moosers walked away, most to rejoin the Republicans

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<sup>128</sup> Whittington, p. 2148-2149

<sup>129</sup> Morris, p. 434. He also wanted government ownership of certain railroads in Alaska. See "Alaska Again," August 12, 1911, pp. 821-3. For Taft's reply to the Alaska "transportation problem," see his Special Message of February 6, 1913 ("Works," Vol. IV, pp. 359-365) regarding a Commission report on it.

at Taft's call. Had Roosevelt won, Taft would have accepted the results, however difficult. Asked his feelings had he to ride to the Capitol with Roosevelt at the next inauguration, Taft told a reporter, "It wouldn't have been so easy... but I would have taken the ride just the same."<sup>130</sup> Following the election, Taft's dear friend, Mabel Boardman, wrote,

An election means no triumph... Your own record is so firm, so unselfish, so thoroughly for the good of the country that we who know now -- as others will know in the future -- realize that yours is the true triumph. Unyielding to any misguided popular clamor, you have stood firm in the Constitution with all it means to us and the country. For this and many other things you have an heartfelt gratitude.<sup>131</sup>

Taft told a friend, "We accomplished [Roosevelt's] defeat, and you and I, with our ideas of constitutional government and of what is valuable in our country's constitution, must hold that to be worthy of any effort." The election didn't end Taft's fight. Soon after, he wrote, "I am thinking of organizing a constitutional club which shall by lectures and the like arouse the voters to a realization of the danger there is in any impairment of our form of government." The place and time came the following Spring at Yale. As he traded the Oval Office for the classroom, Taft told an audience, "In my small way, I want to contribute to the upbringing of undergraduates of one institution to the realization of the benefits of being Americans." The *Times* understood what this meant. "Professor Taft begins by planting his feet upon the Constitution," wrote the editors.<sup>132</sup>

Taft won. The argument remains what the Constitution means, not what the next election or some popular referendum will tell it to mean. He left office just where he came in. As he said in January of 1909:

And yet, gentlemen, that Constitution, simple, clear and comprehensive, has in the past been capable of such fair construction as to meet in a marvelous way the developments and emergencies of our country which could not have been anticipated by those who framed it in any detail at all, and I am very certain that the same Constitution will meet the emergencies which may come on in the future.<sup>133</sup>

It might have been different.

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*We stand at Armageddon, and we battle for the Lord.*<sup>134</sup>

Did he really mean it? Or was it, as The New York *Times* observed, "grotesque"?<sup>135</sup> And how did it get to this?

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<sup>130</sup> "Taft Invites All Bolters to Return," NYT, January 5, 1913 and "Taft Plans to Keep the Old Party Alive," NYT, November 7, 1912

<sup>131</sup> Mabel Boardman to Taft, November 6, 1912

<sup>132</sup> Taft to George R. Sheldon November 10, 1912, Taft to W. Edwards, November 19, 1912, "Keep Your Feet on the Ground," NYT editorial, February 1, 1913 and "Light Day for Prof. Taft," NYT, April 3, 1913

<sup>133</sup> "Taft Stands by Constitution," Washington Star, January 15, 1909

<sup>134</sup> From "The Case Against the Reactionaries," Roosevelt speech of June 17, 1912, the night before the Republican convention, and more commonly known in its day as the "Convention Hall" speech.

<sup>135</sup> "Mr. Roosevelt's Speech," editorial, NYT, June 18, 1912

Of political hyperbole, this has to be among the greatest. So what if he didn't mean it. It doesn't matter. He said it. More interesting is why. After a season of smearing Taft and the standing order, after the name-calling, the charges of bossism and usurpation of government of, by, and for the people, on the eve of the Republican convention Roosevelt conjured up the Lord. For his "rhetoric of crisis" Lincoln and bossism and delegate-theft weren't enough. He had to invoke the highest calling and the ultimate, the last battle. If a metaphor, it was in bad taste. If literal, it was deluded. As politics, it ensured -- or merely confirmed -- his June and November defeats.

He spoke it at the eve of the Chicago convention after failing to pry loose enough delegates in the internal contests at the National Committee, and after failing to spark defections outside the Committee doors, that his presence at Chicago -- a staged drama -- was intended to provoke.<sup>136</sup> His final chance was to hype emotions to sway the convention floor the next day. It didn't work. When the La Follette allies refused to join Roosevelt in the first votes, the convention was, if not fully Taft's, definitively not Roosevelt's. Roosevelt ran off with his own, and went on to hype them fully and lovingly. At the Progressive convention he again invoked Armageddon and the Lord, only this time without any urgency over the next day's convention vote. This talk of Armageddon was accepted uncritically by Roosevelt's supporters. They either believed it or accepted it as an appropriate metaphor for their day.<sup>137</sup> This required an elevated sense of discontent.

Niccolò Machiavelli observed:

So that one can call happy that state that by chance gets a man so wise that he gives [constitutional] laws so arranged that, without need of re-correcting, it can live with them securely. And contrariwise that city that, not having come across a wise lawgiver [and] having by itself alone to rearrange itself out of necessity, holds some degree of unhappiness. And of these, the still more unhappy is that one that is further distant from the constitution; and that one is furthest from it that, with its laws, is completely off the straight path that can lead it to the perfect and true end.<sup>138</sup>

If set wrong from the beginning, Machiavelli wrote, "it is scarcely possible that their institutions will be

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<sup>136</sup> While admitting that his presence was "[t]o heighten the intensity of passion," Mowry wrote that Roosevelt went to Chicago at the "pleas of most of his lieutenants" (p. 244). It was no less a fake show than the February call-to-arms he used to enter the campaign. He declared he wouldn't go to Chicago unless he was given a "square deal" by the Committee, to which *The Times* replied, "We may assume that Mr. Roosevelt will certainly go to Chicago" ("The Colonel at Chicago," NYT editorial, June 4, 1912; see also Bromley, pp. 331-333).

<sup>137</sup> In his biography of Roosevelt, Pringle kept "Armageddon" to the context of the Republican delegate fight and the next day's convention ("Theodore Roosevelt: A Biography," New York, Harcourt, Brace and Company, 1931; p. 564). Cooper accepted it as not just appropriate, but commendable, akin to Bryan's "Cross of Gold" -- another distasteful political use of religious metaphor (Cooper called the speech Roosevelt's "finest"; pp. 161-162). Chace wrote that "Armageddon" was "not simply a rhetorical flourish" and included a quotation from an observer that Roosevelt really meant it (p. 118). His believing it makes it no less repulsive. Brands was dubious of Roosevelt's sincerity, while observing that it was "thoroughly in character: Leave it to Roosevelt to place himself at the center of the biggest battle in the history, or future, of heaven and earth" (p. 716). Roosevelt gets away with it, then, for being Roosevelt. In "The Political Battle of 1912," the editors inserted at the end of the speech an explanation of Armageddon ("the hill or city of Megiddo..."; p. 165). With this dry, biblical history from Judges (iv and vii), the editors white-washed Roosevelt's source, Revelation (16:16). Elsewhere it has been suggested that Roosevelt was appealing to, or reflecting an apocalyptic sentiment that was current in 1912 (book review of Brands by John Reilly, "Culture Wars," March 1998, per internet hyperlink in the bibliography). If so, if Roosevelt deliberately played to such feelings, his cynicism was more vile than even I have imagined. I hope not.

<sup>138</sup> "The Discourses Upon the First Ten Books of Titus Livy," Book One, II, per translation in "Machiavelli in Hell," by Sebastian de Grazia, Vintage Books, New York, 1994, p. 174.

set right by some event or other.”<sup>139</sup> Those of less lucky, less happy origins could be fixed. But -- Machiavelli clarified, “But this is surely true: they will never be reorganized without running into danger, for the majority of men will not accept new laws designed to introduce new institutions in the state unless they are shown the necessity for them. Since such necessity cannot arise except in event of danger, it is likely that the state will perish before it is ever brought to a perfect order.” Crisis, hysteria, and fear were the necessities of Roosevelt’s 1912.

For his progressives, theirs was a world of ghosts, a world surrendered to larger forces, one that was stagnant and unfair -- as Machiavelli put it, unhappy. It was a world without hope, or, worse, one built solely upon hope, for hope lay in changing the present, not in living it.<sup>140</sup> The best that could be said of the present and, especially, the past from which it came, was that it contained “promise.”<sup>141</sup> As for the conservative, newness was not for the progressive its own virtue. Newness itself was the cause of progressive fears. What innovation was useful for the progressive was measured by its use as an instrument to remedy the wrongs of the present, for which the past was to blame. Newness that enhanced or upheld the present was a curse -- such as automobiles, which the political correctness of the Roosevelt era spurred, and to the great detriment of the industry.<sup>142</sup> Rather than celebrate material progress, the progressive lamented it. “We are creating new types of destitutes,” wrote Walter Weyl in 1914, the same year Henry Ford doubled factory wages, “-- the automobileless, the yachtless, the Newport-cottageless.”<sup>143</sup> The *Times* well before understood this progressive fear of progress, and the movement’s capitulation to a history from which it sought to unhinge itself: “It is a custom of all the advocates of fantastical social and governmental theories, thus to assume that the discovery and application of steam and electricity destroyed the eternal verities.”<sup>144</sup> Indeed, the most distressing thing about Roosevelt’s program for “industrial justice” was its surrender to those forces that created that injustice he everywhere saw. The competition he loathed was inherent to the values of the Founding. Rather than combat its excesses he would destroy competition itself -- and the values and laws behind it. He may have had fun in office and running for office, but his was not a happy republic.

The great progressive contribution to America of highlighting injustice was, but for Taft and his like-minded conservators of order, Wilson included, almost lost to the overboard cures the movement pushed upon it. Just as the progressive was frightened and outraged by the new immigration, industrialization, urbanization and all the other -tions and -isms of the day, and, especially the great, great gobs of money of that that -ism, the organization of capital, had produced, the old ways which had produced and allowed for those new -isms and -tions to prosper and grow had not yet worked them out in that slow, disorderly fashion of American politics. The old ways hadn’t been fully applied. Instead, for the progressive, fright led to outrage, which led to impatience, which led to disgust with what was perceived to have brought it all about and that had first caused the fright. The best defense of the Bull Moose extremes is the dialogue it created. No doubt, but if so, the same must be said for the extreme reactionary, and with equal value. In

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<sup>139</sup> Continuing from “Discourses,” with the translation by Daniel Donno (“The Prince: With Selections from ‘The Discourses,’” Bantam Books, New York, 1981, p. 91).

<sup>140</sup> My father, of good progressive tendency, suggests “enduring” the present. Marvelously makes my point!

<sup>141</sup> Croly’s word here: he accepted some good in American history, and damned it for not being good enough, then sought some other foundation for making good than the American past (pp. 16-20).

<sup>142</sup> For a more condensed history of the Roosevelt-era anti-automobilism than that given in my book, “William Howard Taft and the First Motoring Presidency,” see “Early Automobiles and Airplanes: The Cultural Lag,” *Automotive History Review*, Issue No. 42, 2004.

<sup>143</sup> From “The New Democracy,” pp. 244-248, quoted in Hofstadter, pp. 147-148. Admitting that professionals “make larger salaries than ever before,” Weyl complained that “the earning of one hundred thousand dollars a year by one lawyer impoverishes by comparison” the rest who “scrape along on a thousand a year.”

<sup>144</sup> “Two Doctrines,” NYT editorial, September 16, 1912

March of 1912, Cornell President, Jacob Gould Schurman, tried to set this all straight: “The reactionary worships the past, the radical flouts the past,” he said, “but the Progressive, while retaining all that is sound and valuable in the past, also vitalizes it with the living ideas of the present and creates new institutions for our day and generation.”<sup>145</sup> He was speaking of Taft. Schurman’s type of progressive was one who insisted that present needs could and must be met within the constraints of institutions which were proven effective in history and in present good outcome. For the man who led not reaction but preservation, who stood for reasoned progress balanced by standing example and rule, to ignore or deny his great conserving force is to lose the meaning of that which he defended. In standing down progressive radicalism and its direct democracy, Taft more importantly stood up the American Founding.

After the November election, in which Roosevelt polled more than most observers thought possible, the result of the surge of attention and sympathy that followed the October shooting, with which he pulled off the greatest stunt of his career in giving a speech with a bullet in his chest, and back at Oyster Bay recovering from his wounds and his electoral loss, he contemplated what went wrong. He lost, and his party hardly placed. Perhaps, he wrote, he and the party had “keyed our note very high, probably too high.” Or, from another letter, they had scared off millions of voters who were not convinced that the Progressives “were not engaged in an assault on property, or in wild and foolish radicalism.”<sup>146</sup> Hungover is the best way to describe it, and well earned. Even in this state of contrition Roosevelt couldn’t see that the same radicalism that he understood had brought him down was that which in the first place he used to justify getting into the race at all. Of all the virtues of his crusading, belligerent self-possession that sense of irony was the most wanting.

About the same time Roosevelt and the Pinchot brothers were trading agonized letters and arguing over methods and alliances, Taft sat in his White House office and happily gazed over the South lawn. His biggest problem this day was the gout of his ankle which, he fretted, kept him off the links. He dictated his letter to an old friend:

As I look out of my study window I see Lucy’s two boys and the fraulein running up and down the lawn, while the Washington monument looks down upon them with benignity and encouragement. It exercised the same office with me. This is the only country we have, my dear Nannie, and we have to make the best of it; and such popular manifestations as we had the other day are not to be taken as an evidence of governmental incapacity. They are an evidence of the ingratitude of republics, of which we hear so much. There was nothing done which can not be recalled and which will not be recalled promptly when the time comes, and in the end we shall see that popular government is the most enduring and the most just and the most effective.

No president ever went in to and out of office with as much public warmth and love and had so little of it in between as William Howard Taft. He spent his last months in office giving heartfelt and strong speeches about his and his party’s principles, of constitutionalism, of his Administration’s considerable accomplishments, and of his gratitude to the people for his long career of public service. What he prevented from happening was far greater a success than was his electoral count a defeat. His core ideas had won, and there was an emphatic, general feeling of assent for the man from all but his worst enemies -- and the incoming Administration which had its own issues to sort through. Despite Brandeis and Bryan, Wilson’s progressivism would deviate little from where Taft had set it in turning over the government to

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<sup>145</sup> “Schurman Predicts Roosevelt’s Defeat,” NYT, March 20, 1912

<sup>146</sup> Roosevelt Letters, Roosevelt to Gifford Pinchot, November 13, 1912, p. 642 and Roosevelt to A. Pinchot, December 5, 1912, p. 662

him in 1913. Wilson's tariff, anti-trust, currency, and other reforms and issues would differ from Taft by that Democratic degree and not by that philosophical breach by which in the campaign both had differed from Roosevelt. Taft handed progressivism to Wilson to do as he would while sure that Wilson would keep core institutions intact.<sup>147</sup> Taft made it easy for Wilson not to touch them. Among the important legacies Taft left him was freedom from having to make an enemy of the disgruntled, and the freedom of not having to defend against their extremes. Taft sucked up dissent, gave it a target, and killed it.

"The newspapers have treated me in a very kindly way since my defeat," Taft wrote a friend just after the election, "and I believe I can say the truth when I tell you that I harbor no ill will against anybody, even Beveridge -- could I put it more strongly?"<sup>148</sup> Taft's overriding emotion was contentment. "I am as free from disappointment and as full of happiness as you would have me and as I would have you," he told another friend who was yet bitter over the election. The immediate source of his confidence was that he held the Republican party, and he was sure it would endure. It was his party now, and would so remain. "I had a talk with Hadley yesterday," he wrote a week after the election, of the pre-convention Roosevelt supporter who stayed regular in the Autumn campaign, the Missouri Governor. In a magnanimous gesture, Taft invited Hadley to join his ticket in the Electoral College to replace Vice President Sherman, who died during the campaign. Hadley declined. "He wishes to preserve the Republican party," Taft continued, "but I am afraid he is not as strong as I am in the doctrine of maintaining our Constitution as it is, and continuing this to be a representative government, rather than a pure Democracy." Four years after asking Hadley to join the Cabinet, here came Hadley turning down another offer from Taft, and just as equally distancing himself from the party's future. The irony is stupendous. Except for this: "I find it very difficult to know on what common platform Cummins and La Follette and I could stand," Taft concluded.<sup>149</sup> Such accommodations were ever La Follette's problem, not Taft's. The insurgents ended right where they started, and Taft was on top at both ends.

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Beyond definitions of constitutional crises and the extent of direct democracy, there remains a disturbing element to the anti-constitutionalism of Roosevelt progressivism and of the Bull Moose campaign in its signal disregard for the word and concept of liberty.

Leading up to the party convention, New York Republicans gathered at Rochester and declared,

We believe that this is a self-controlled representative democracy as illustrated by the entire course of our National experience.

We believe that order is the prerequisite of progress, and that this National tradition must not be destroyed nor principle sacrificed to opportunism.

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<sup>147</sup> Taft was certain that Wilson wouldn't mess with existing institutions, and this was far more important to him than the tariff, which he thought would destroy Wilson, anyway. To Taft the worst things done by Wilson were the appointment of Brandeis, whom Taft feared would be far more radical than he was, and the labor exemption from anti-trust law (which Taft vetoed his last day in office; see "Works," Vol. IV, p. 366). Other areas of disagreement with Wilson were technical and not emotional, except for Taft's largest disappointment, that Wilson was not the failure he thought he would be. All told, Wilsonian progressivism was more Taft's than Roosevelt's.

<sup>148</sup> Taft to John Wesley Hill, November 10, 1912. Ex-Senator Albert Beveridge was with La Follette the most strident of the Senate insurgents of 1909 and 1910.

<sup>149</sup> Taft to Herbert Parsons, November 8, 1912. Had Roosevelt been willing to accept a third, compromise candidate at the Republican Convention, Hadley may well have been the one.

We believe that the guarantees of the Bill of Rights, as incorporated in the Constitution of the United States for the protection of each citizen, even if threatened by a temporary majority, shall be forever preserved.<sup>150</sup>

While later using similar language of “self-controlled democracy” in his own platform, at the time Roosevelt called these “doctrines not merely reactionary... so Bourbon and reactionary.”<sup>151</sup> These “guarantees” were revolutionary one hundred twenty-three years before; they were “Bourbon and reactionary” in 1912 because of who said them and not what was said. The Rochester convention was run by the Albany boss, William Barnes, long an expert at poking hot words at Roosevelt. Barnes pushed these “doctrines” of liberty and freedom and individual rights in the face of Roosevelt’s weakness on them. And he was right. Roosevelt replied with “doctrines” of his own: “First -- The right of the people to rule, and, Second -- Their duty so to rule as to bring about not merely political, but also social and industrial justice.”<sup>152</sup> The Roosevelt politics of popular rule as against the bosses led him to deny a plainly American statement by a political boss simply for who said it.

Taft, too, went after Roosevelt this way, only without the provocation of a Barnes, or of a Roosevelt, for that matter. Taft’s view, as expressed in his platform, is worth repeating, for its core statement reflects in principle the ultimate values and continuing history of America more than any other of the 1912 platforms. Those others are filled with policy that has or has not been adopted. None touched, as did the Republican platform, Taft’s simple faith in America. Read it in this spirit, and you, too, may be touched by Taft’s gentle hand and tremendous heart, just as was Dr. Nicholas Murray Butler, its principle author and the man who fielded Taft’s vice presidential bid in the Electoral College. It is hard to imagine that this document was written amidst the frenzy of that Chicago June. Following affirmation of the party’s concern for social issues and, without any supporting detail, a promise “to enact the necessary legislation” to address them, including workplace regulation and, in concession to the spirit of Roosevelt progressivism, “the study and solution of the complex and constantly changing problems of social welfare,” the platform read:

In dealing with these questions, it is important that the rights of every individual to the freest possible development of his own powers and resources and to the control of his own justly acquired property, so far as those are compatible with the rights of others, shall not be interfered with or destroyed. The social and political structure of the United States rests upon the civil liberty of the individual; and for the protection of that liberty the people have wisely, in the National and State Constitutions, put definite limitations upon themselves and upon their governmental officers and agencies. To enforce these limitations, to secure the orderly and coherent exercise of governmental powers, and to protect the rights of even the humblest and least favored individual are the function of independent Courts of Justice.

Whereas one observer managed to see in Taft’s platform “not the slightest hint of the impact of progressivism,” positive or negative, I have to assume, this kind of concern would be better directed towards there being “not the slightest hint” of individual liberty in the Progressive or the Democratic

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<sup>150</sup> “Taft and Roosevelt Men Go In Same Car,” NYT, June 5, 1912

<sup>151</sup> “Roosevelt Again Turns on Root,” NYT, June 4, 1912. The Republican party also used “self-controlled representative democracy” in its platform. The Progressives dropped the “representative.”

<sup>152</sup> “Roosevelt Again Turns on Root”

platforms.<sup>153</sup> The Democrats were avoiding connotations of full equality for blacks. The Progressives were doing the same thing insofar as they were aiming at southern votes, and were otherwise so lost in economic interpretations of their world that anything remotely associated with the rights of property, say, the Bill of Rights, went unmentionable. It might be said that the rights and restrictions of the Bill of Rights were to the progressive as they were to the Federalist, that is, understood, that their problem was in remaking the mechanics of a new government and that they would leave the principles of the Bill of Rights alone. The Progressives didn't just ignore individual rights, they *actively* ignored them. I use this word carefully, for it was not disregard or playing down, or neglect. It was a purposeful ignorance intended to dodge the discomfort of having to meet their urgencies with the principles of the Founding. In comparing the Progressive movement of 1912 with 1776, 1789, and 1856, The *Outlook* proclaimed, "Democracy has had a new birth" -- and without apology for the trashing therein of Lincoln.<sup>154</sup> Democracy had replaced freedom.

A worldly test of Roosevelt's progressivism came in the Ohio constitutional convention to which he preached the "Charter of Democracy." The convention was run by reformers, and they had a free run of it. All the possibilities and all the dangers of direct democracy were theirs to enjoy. The end result was hardly inspiring, if only because, as Taft found, putting Rooseveltian rhetoric into law was a muddy affair. The forty-two amendments offered to the people of Ohio came to a book-sized pamphlet of fine print, of which thirty-two were adopted, including the initiative and the referendum, easier amendment of the constitution, and a series of items "purely statutory in character," setting it well on the way to the enormous document of today that reads like legal code and not original law.<sup>155</sup> The recall, whether of officials or of judicial decisions, was not included by name. Whether Taft's vigorous attacks on it had anything to do with its specific absence, Roosevelt's talk was met in enactment of some of the effects of the recall through other means, including the requirement of a super-majority of the state Supreme Court to annul an act of the legislature, among other restrictions on judicial powers.<sup>156</sup> Here, too, came firm example of the progressive views on easier constitutional amendment. The Ohio constitution, which already called for periodic conventions to consider amendment, was now amendable by majority vote on an initiative launched by ten percent of the voters. Constitutional nullification was very much alive. As Columbia Professor Goodnow noted, regarding a prohibition in initiatives of Henry George's "single tax" idea, "It is, however, to be remembered that owing to the ease of constitutional amendment this limitation cannot be regarded as a serious obstacle to the adoption of the single tax once the people have made up their minds that they desire it." On the whole, Prof. Goodnow observed, with these steps Ohio's government "will certainly be a government of the people and by the people. Whether it will be a government for the people is still to be determined."<sup>157</sup>

Getting beyond these so-called "means" of the rule of the people, an example of one of the stated "ends" of Roosevelt progressivism, part of his program for "industrial justice," came in the amendment, "Welfare of employes," which empowered the legislature for such things as "fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of

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<sup>153</sup> Chace, p. 122, and straight out of Mowry's, "Scarcely one of [the Republican platform's] clauses betrayed any impact of progressivism upon traditional Republican doctrines (p. 253).

<sup>154</sup> "Going Forward or Looking Back," *Outlook*, August 3, 1912, p. 759

<sup>155</sup> "Ohio Constitution Has Many Changes," *NYT*, June 2, 1912 and "Killed Eight Amendments," *NYT*, September 13, 1912

<sup>156</sup> For a history of the Ohio super-majority law, see "Judicial Supermajorities and the Validity of Statutes," by Jonathan L. Entin, *Case Western Reserve Law Review*, Vol. 52, pp. 443-452. The provision was repealed in 1968.

<sup>157</sup> "The Initiative and Referendum in Ohio's New Constitution," by Frank J. Goodnow, *NYT*, August 18, 1912. See also, "The Influence of Socialism on the Ohio Constitution," by Daniel J. Ryan, *North American Review*, November, 1912.

all employees.” So far so good, except the urgency of the movement and its unashamed mix of ends and means intervened in the following clause, that “no other provision of the constitution shall impair or limit this power.” The idea that a provision regulating the workplace is above, potentially, any other constitutional provision or limitation, says much. Of course, the 14th amendment would intervene upon curtailment of a national constitutional right, and, of course, the convention never considered repealing the Ohio constitution’s own civil rights protections, still, to the people of Ohio of 1912, or that majority of the minority of voters that spoke for them, law regulating employment was preeminent over all other law, fundamental or otherwise.<sup>158</sup>

Through the overwhelmingly better part of that year’s great discussions of constitutions and courts, majorities and morality, social and industrial justice and human rights, absent the Progressive tongue were the words “Bill of Rights” and “liberty.”<sup>159</sup> To the progressive sage Herbert Croly the core problem in American history was its failure to reconcile the ideals of liberty and equality, due, principally, to the Founding’s outdated definitions of liberty and property: “The security of private property and personal liberty,” according to Croly, and along with federalism, “demanded at that time [of the Founding], and within limits still demand, adequate legal guarantees.” While this says it all, “within limits,” to call those securities “adequate legal guarantees” is to reduce those protections from ideals expressed in law to mechanisms for some other purpose, which, in the progressive mind was “the general welfare” or some other form of collective justice, which was precisely where Croly wanted to go.<sup>160</sup> Roosevelt was heading towards this view well before Croly set it out. Starting with his Second Annual Message, he declared,

A fundamental base of civilization is the inviolability of property; but this is in no wise inconsistent with the right of society to regulate the exercise of the artificial powers which it confers upon the owners of property, under the name of corporate franchises, in such a way as to prevent the misuse of these powers.<sup>161</sup>

This was an accepted wisdom. He followed it with a rather insecure assertion of the powers of the commerce clause, that he “believes” it, as,

I believe that monopolies, unjust discriminations, which prevent or cripple competition, fraudulent overcapitalization, and other evils in trust organizations and practices which

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<sup>158</sup> The Ohio Supreme court has upheld this provision’s final clause over other constitutional provisions, generally regarding conflicts between law generated by it and municipal code drawn from the constitution’s home rule provisions. Contrarily, several cases avoided the final clause issue by skirting the words in the first clause, such as what is a “law” and whether or not employment was at issue (see Page’s Ohio Revised Code Annotated, by William Herbert Page, Anderson Pub. Co, Cincinnati). This problem of conflicting constitutional provisions has arisen in the federal Constitution, such as in “LaRue v California” (1972) and “44 Liquormart, Inc. v Rhode Island” (1996), the one upholding the 21st amendment over the 1st amendment and the other rescinding that decision. Until 1996, that is, a core value of the Bill of Rights was subverted by one of the four progressive era reforms to make it into fundamental law.

<sup>159</sup> Aside from one of his last speeches, discussed below, the only homage to liberty that year by Roosevelt came in his article, “The Progressives and the Colored Man” (The *Outlook*, August 24, 1912; the article was to defend his having excluded southern black delegates at the Progressive convention). He made a fine defense of the black man’s “right to life and liberty, to protection from injustice,” but he did not make such talk central to any of that year’s themes.

<sup>160</sup> Croly, p 35 (see Alvis, pp. 7-8). Croly’s next sentences told all of Roosevelt’s 1912, and even more of the progressive disease: “It remains none the less true, however, that every popular government should in the end, and after a necessarily prolonged deliberation, possess the power of taking any action, which, in the opinion of a decisive majority of the people, is demanded by the public welfare.” From there Croly lamented the Constitution’s minority protections as a violation of “popular Sovereignty” and “an absolute violation of the theory and the spirit of American democratic institutions” (p. 36). If Croly didn’t write the “New Nationalism,” he definitely spoke the “Charter of Democracy” three years ahead of it.

<sup>161</sup> Roosevelt’s Second Annual Message, December 2, 1902

injuriously affect interstate trade can be prevented under the power of the Congress to “regulate commerce with foreign nations and among the several States” through regulations and requirements operating directly upon such commerce the instrumentalities thereof, and those engaged therein.

This too, was not inconsistent with standard thought, and he would the next year state it flatly, without the qualifying “I believe.” While it may have been offensive to *laissez-faire* purists and certain factory owners, and while the 1895 “Knight” precedent originally protected manufacturers from the Commerce Clause, the spirit of the 11th amendment did not rise up in rejection of “Knight.” As Taft noted, by the time Roosevelt got around to the complaint the Supreme Court had already abandoned it. No, this rather furtive assertion from Roosevelt early in his presidency on the commerce powers was not groundbreaking. What was new was that over the course of his presidency he came to the view that regulation of business was the very rationale for the Constitution, not just a power in it. Now he and Croly fully met. In the 1908 Message, he told Congress,

The chief reason... that led to the formation of the National Government was the absolute need that the Union, and not the several States, should deal with interstate and foreign commerce... The proposal to make the National Government supreme over, and therefore to give it complete control over, the railroads and other instruments of interstate commerce is merely a proposal to carry out to the letter one of the prime purposes, if not the prime purpose, for which the Constitution was founded.<sup>162</sup>

By 1912 it exited assertion to dogma. “The Constitution,” he wrote in *The Outlook* for all to see in July of 1912, “was framed more for the purpose of giving to the Government complete power over the inter-State commerce than for any other object.”<sup>163</sup> Historically, of course, it was correct that Washington envisioned economically inter-dependent states regulated by the central Union. To limit that vision to principles of economics is to belittle Washington’s accomplishment and reduce to mere self-interest his goals -- just the thing of a progressive. It ought to go without saying, and it did in 1912 from the likes of Theodore Roosevelt, that there was “more,” far more than that relegated to everything “other” than inter-state commerce, which constituted, to Roosevelt’s mind, or to his 1912 purposes, the leftover scraps beyond the “more for the purpose of” the Constitution. Even if we assume it as the “purpose” of the original document, even if we ignore the Preamble’s “to... secure the Blessings of Liberty,”<sup>164</sup> with adoption of the Bill of Rights and its prohibitions upon Federal powers and assertions of individual rights, the Constitution took on a greater meaning than the mechanics of the government it established. If the Bill of Rights spoke the ideals of the American Revolution, that the “purpose,” as Roosevelt said, of Union was solely economic is ludicrous. In any case, the 14th amendment reaffirmed the Bill of Rights far beyond the reach of Roosevelt’s narrow, self-serving history. Roosevelt, having claimed so much of Lincoln, ignored Lincoln’s simple, magnificent affirmation of the “purpose” of the Union. Lincoln’s math was clear. Going back, “Four score and seven years ago,” he landed not upon 1787’s economic and political instruments, but to 1776’s “new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.” The striking, scary thing about Roosevelt’s attitude toward the Constitution and the common good was the extent to which he ignored that statement.

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<sup>162</sup> Roosevelt’s Eight Annual Message, December 8, 1908. As Kolko pointed out, Croly’s progressivism ended in a pathetic defense of Mussolini’s version of industrial democracy (p. 216).

<sup>163</sup> “Platform Insincerity,” *Outlook*, July 27, 1912, p. 663

<sup>164</sup> The Progressives spoke of the Preamble’s “more perfect Union” and the “general Welfare” but not of the rest of it. See Beveridge’s keynote speech to the Progressive convention, which blatantly excluded the fuller text of the Preamble (“The Political Battle of 1912,” p. 91).

While “equality of opportunity” was one of the corners of the Square Deal, Roosevelt laid no cement for it. The “New Nationalism” was peppered with the phrase, but regarding economic, not legal, conditions, which Roosevelt failed to comprehend as the same.<sup>165</sup> Individual liberty had had its run, and he willingly traded it and, necessarily, its foundations in the Constitution, for “industrial justice”:

There once was a time in history when the limitation of governmental power meant increasing liberty for the people. In the present day the limitation of governmental power, of governmental action, means the enslavement of the people by the great corporations who can only be held in check through the extension of governmental power.<sup>166</sup>

Do I exaggerate? Were it up to the Progressives, the 5th amendment may not have survived, and not just its protection of property. For them the greater good was greater than the individual right of due process -- or any individual right, as we see from Croly, a few sentences after denouncing federalism, private property and liberty:

The time may come when the fulfillment of a justifiable democratic purpose may demand the limitation of certain rights, to which the Constitution affords such absolute guarantees; and in that case the American democracy might be forced to seek by revolutionary means the accomplishment of a result which should be attainable under the law.<sup>167</sup>

While Roosevelt doesn't seem to have gone so far as to “demand the limitation of certain rights,” and while his theories of majority rule opened the doors to it, he did, and in the spirit of Croly's greater good, condemn those “certain rights” when used on behalf of the criminally indicted.<sup>168</sup> In the “Charter of Democracy,” he related a friend's complaint that the Missouri Supreme Court set aside a conviction “upon purely technical grounds.” Quoting:

Nero, fiddling over burning Rome, was a patriot and a statesman in comparison with judges who thus trifle with and frustrate the aroused moral sentiment of a great people.

Nero? For the Roosevelt progressives, it was time for Brutus to make the guilty pay. Due process meant for them but court injunctions, legal technicalities and that busy-body 14th amendment which enforced the Constitution's, to them, lesser qualities upon reform. Rome burned more brightly for the absence of those individual protections the Progressives rather ignored.<sup>169</sup> This disgust with the protections of the law was not just politics or rhetorical games. It was not idle outrage at one or two cases. If Roosevelt spoke it specifically, such as at Columbus in 1912 and at Denver in 1910, he meant it generally, and the movement he led was generally infected by it.

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<sup>165</sup> For a defense of this view, see “To Make a Nation,” by Samuel H. Beer (Belknap Press of Harvard University Press, Cambridge, Massachusetts, 1993; p. 116-117). Beer, who admires Croly, discussed James Harrington's views that “a limit on economic inequality was a necessary condition for the survival of republican government,” and, of Harrington's view of Rome, “The institutionalization of political inequality had engendered a destructive economic inequality.” In 1912, Roosevelt held to that first view and Taft to the latter.

<sup>166</sup> “Limitation of Governmental Power”

<sup>167</sup> Croly, p. 36

<sup>168</sup> “Justice Too Slow, Says Roosevelt,” NYT, November 24, 1911

<sup>169</sup> The Progressive platform's section on “Administration of Justice” spoke only of reform of injunctions and contempt citations.

In May of 1911, Taft appeared at the Academy of Sciences banquet in New York. The topic of the night was criminal law, a good subject for the audience of prosecutors, and of acute personal interest to some, especially Samuel Gompers, who had yet to learn the truth of the McNamara brothers' bombing of The Los Angeles *Times*, and the detective who arrested the McNamaras for it, William J. Burns, and who was just then oppression itself to the labor movement. Present were many soon-to-be Progressives, including Francis Heney, the prosecutor of San Francisco grafters, and a progressive hero. Taft walked in during Heney's speech, which Heney interrupted to yield the floor to the President. Taft, who was an expert at the New York banquet rounds, sometimes fitting three or more in an evening, went straight into his speech on lawlessness, respect for the law, and the horrible idea that was the recall of judges, of which he said, while his wife smiled with pride, "Let us hope that the strong sense of humor of the American people, which has so often saved them from the dangers of demagoguery, will not be lacking in respect of this nostrum." When Taft finished, to calls of his name, Heney continued his speech. With apology to the President, he said that corruption in San Francisco was so great that the recall was needed for elected officials. (He did not mention judicial recall; reform hadn't fallen down that ramp yet.) Taft doesn't seem to have been upset by this, and he spent the rest of the evening pleasantly arguing politics with the First Lady.<sup>170</sup> Had he heard what Heney said before he entered the room, he may have felt differently:

One of Shakespeare's characters suggests that the first step in legal reform should be to hang all the lawyers, and there is some force in that suggestion. One of the crimes of lawyers is arguing that the legal presumption of innocence means that you must believe a man innocent until after you have got twelve men to say he is guilty. It makes no difference how much money is being spent to bribe jurors or how much to influence newspapers, you must continue to believe him innocent. I say there is no such duty on your part. It has been decided by every Appellate Court that for every purpose except the admission of evidence the fact of indictment is a strong presumption of guilt. Another illogical and absurd contention is that the defendant should not furnish evidence against himself.<sup>171</sup>

There, thankfully, he was cut off by the President's entrance. Heney suffered from prosecutorial zeal, of course. He suffered it to the bone. The whole movement did. The hysteria of reform was so great as to lead sane, smart people to trade away, as Franklin warned against, "essential liberty to obtain a little temporary safety..." in this case, a good part of the Fifth amendment and the spirit of the Sixth.<sup>172</sup>

Taft understood judicial reform to mean strengthening the courts, the very opposite of progressive intent. Coordinate to his defense of the Constitution came concrete steps to bring forth its protections more equally. He told his countrymen,

Government is framed for the greatest good of the greatest number and also for the greatest good of the individual, and the problem presented is the balancing of these two objects in such a way as that both may proceed side by side. While we would not part with the right of property, and while possibly in certain directions we might be willing to modify the character of its use where it has turned out to be an abuse, as in the case of the anti-trust law, what we are all struggling for, what we all recognize as the highest ideal in

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<sup>170</sup> "Our Judges Lack Power, Says Taft," NYT, May 14, 1911 and Butt, "Taft," letter of May 14, 1911, pp. 650-651. According to Butt, Mrs. Taft had been urging him to make a strong statement against the recall.

<sup>171</sup> "Our Judges Lack Power, Says Taft." The highest court of the state from where he spoke this two years before had declared, "An indictment is a mere accusation and raises no presumption of guilt" (*People v Morrison*, 195 NY 116, 117).

<sup>172</sup> From Franklin's "Historical Review of Pennsylvania," per "Bartlett's Familiar Quotations," Sixteenth edition, 1992

society, is equality of opportunity for every member born into it.<sup>173</sup>

Core to this view of equality was its application in the processes of law. Taft more than spoke it, he fought for it throughout his presidency. He lobbied in public, in Congress, and in his courts for reform of the judicial process. Roosevelt had called for some of this in his latter Messages but left it among the unfinished business of his presidency. It was taken up by Taft and the party in the 1908 platform, and Taft dedicated himself to it. His court appointments, including the new Chief Justice of 1910, Edward Douglass White, were made with this program in mind -- a program that he himself would more fully implement as Chief Justice a decade later. At the end of his presidency, and so far from his dream job on the Court, he said,

I have succeeded in securing the adoption of a new set of rules for equity proceedings in the United States courts. I hope to be able to secure new rules to govern proceedings at common law and if I succeed in my efforts in that direction I shall have accomplished more for so-called social justice than all the hollering and hysteria of the professional reformers could achieve in a thousand years.<sup>174</sup>

If there is a fundamental strain to progressivism, and its coherence, if any, has been argued over and over, it is that the movement saw itself as unique to history. For Roosevelt, especially, history was useful only as it served present purposes. It offered little precedent, just example or excuse. Where Taft looked to fulfill history, Roosevelt looked to use it. The “New Nationalism” was built around Roosevelt’s resemblance to Lincoln. In the “Charter of Democracy” he invoked the Lincoln-word at least twenty times. Perhaps naming Lincoln was a useful thing when running for the Republican nomination, but by April of 1912 he had carried it so far that Robert Lincoln publicly complained of Roosevelt’s distortion of his father’s words. A week later, *The New York Times* bitterly observed, “Col. Roosevelt’s discovery of his own likeness to Lincoln has aroused a cloud of witnesses to testify that he doesn’t resemble that President at all .... He can discover a new Lincoln with as much ease as Dr. Cook can discover a pole.”<sup>175</sup> At the eve of the Republican convention, when Roosevelt gave his End of the World speech, he spoke the name Lincoln but four times. His last serious appeal to Lincoln, until the end of the campaign, came in ordering the bolt from Lincoln’s party:

You, my friends, who are here before me, you are the heirs, in the spirit of Abraham Lincoln, when he refused longer to be bound by the shackles of the past and face the new issues in the new spirit that the times demanded.<sup>176</sup>

That September, on the fiftieth anniversary of the Emancipation Proclamation, Roosevelt took the day off. He offered no vital celebration of it. As was the duty of the President, only with the fullest conviction, Taft recognized and celebrated the anniversary. He said,

The issuance of the Emancipation Proclamation was the initial and the most important

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<sup>173</sup> Taft here offers a fascinating rebuttal to Croly’s vain search to remove the tensions between equality and freedom. Taft affirmed that tension. “Taft For Popular Rule With Reason,” *NYT*, March 10, 1912. See also, “Our Criminal Trials Disgrace, Says Taft,” *NYT*, September 17, 1909 and Taft’s Message on “Reform of Court Procedure,” “Works,” Vol. IV; p. 334.

<sup>174</sup> “What the President Sees in the Future,” *NYT*, November 19, 1912

<sup>175</sup> “Roosevelt Assailed by Robert Lincoln,” *NYT*, April 29, 1912 and “Another Second Lincoln,” *NYT* editorial, May 8, 1912

<sup>176</sup> “Orchestra Hall Speech.” The Progressive platform appealed to both Lincoln and Jefferson, but for their politics and not their ideals. The party was trying to attract Democrats and Republicans.

step in the freeing of five millions of slaves, who, with their descendants, have now grown into ten millions and constitute more than 10 per cent of our total population. It is, of course, an event in which every lover of his country takes an intense interest. Until the emancipation of the negroes the assertion that ours was the country of liberty was untrue. The Constitution and the Declaration were utterly at variance with each other in the recognition that the former gave to property in human kind. The excision of the cancer represented in the social institution of slavery enabled all Americans to look the world in the face, and say that our pretensions to absolute freedom were founded on actual fact, and did not need saving exceptions to make them truthful.

Mr. Lincoln suffered greatly by the criticism and abuse of those who thought he did not act quickly enough in issuing the Emancipation Proclamation, and later from the attacks of those who thought the act was a great mistake. Now, as we look back upon it, we realize that his selection of the time was most fortunate. He delayed action until he could take it as a war measure under the Constitution, and he could defend what he did as within his lawful power as Commander in Chief of the army and navy in the prosecution of the war.<sup>177</sup>

Celebrating triumph in history just wouldn't do when damning the present, and neither would an example in it of measured and "delayed action." Roosevelt only rediscovered Lincoln on October 30 at Madison Square Garden. He gave there a speech that was a sensation for the shooting earlier in the month. In it, he turned back to history. He called out to Lincoln, to Washington, to the Continental Congress, the Declaration of Independence, to Lee, and Grant, and, even, to liberty. That last, of course, was qualified: "We are for liberty. But..." And here's my But: all this history, especially coming at the end of the campaign, smells contrite:

To our fathers the chance came in the mighty days of Abraham Lincoln... To our forefathers the chance came in the troubled years that stretched from the time when the First Continental Congress gathered to the time when Washington was inaugurated as first President of the Republic. To us in our turn the chance has now come to stand for liberty and righteousness as in their day these dead men stood for liberty and righteousness. Our task is not as great as theirs.

Well, almost contrite...

Yet it is well-nigh as important.

In these calls to the past, he had turned completely around from where he left things at Milwaukee on October 14. Perhaps the shooting shook him of impatience. Or, perhaps, in staring down the final week of the campaign he decided to moderate his tone to attract conservative votes. I don't know, except that in this reach back in time this speech was unlike any of the others of the campaign.<sup>178</sup> As for the rest of it

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<sup>177</sup> "Taft On Road Again, Here To-morrow," NYT, September 23, 1912

<sup>178</sup> Chace's take on it, which he called Roosevelt's "apotheosis," is drawn from Mowry. It was, Chace wrote, "less aggressive than reflective" and unusual for its use of the first person plural (p. 237). Mowry noted that it was a "redefinition of his principles," and called it "his greatest speech of the campaign and one of the finest of his whole political career" (p. 277). The difference, then, was in attitude, not content. Mowry applauded that Roosevelt "used none of the old sarcasm or the belligerent personal attacks, and the pronoun *we* took the place of the overworked *I*" (p. 278). This does not speak well for the rest of his speeches. By Mowry's conclusion, Dr. Butler was right, after all, about the harsh tonal change in Roosevelt's rhetoric that arrived in the Seventh Annual Message. (For Butler's comments, see Pringle, "Roosevelt," pp. 479-481, and for Morris'

and his progressivism, it was the same old, only qualified by these sudden references to the Constitution, liberty, and the past. Lincoln was back.

And it was too late. The man who had never abandoned Lincoln held to him faster. In his own last major speech of the campaign, given shortly before taking a two-week automobile trip through a gorgeous New England Autumn -- yes, in the last month of the campaign, Taft left for a serious, cut-the-lines vacation -- Taft summarized the final meaning, for him and his party, of 1912:

There is one issue in this campaign of even greater fundamental and permanent importance to the Government and the people than the tariff and prosperity. That is the preservation of the institutions of civil liberty as they were handed down to us by our forefathers in the Constitution of the United States, and the State Constitutions which were modeled after it.

A third party has split off from the Republican Party, not for any one principle, or indeed on any principle at all, but merely to gratify personal ambition and vengeance, and in the gratification of that personal ambition and vengeance, every new fad and theory, some of them good, some of them utterly preposterous and impracticable, some of them as Socialistic as anything that has been proposed in the countries of Europe, many having no relation to National jurisdiction or policy, have been crowded into a platform in order to tempt the votes of enthusiastic supporters of each of these proposed reforms. This new party is not united on any cohesive principles, and is only kept together by the remarkable personality of its leader. Were he to die<sup>179</sup> the party would go to pieces, for "the cause" of which so many glibly speak is utterly incapable of definition in view of the crazy-quilt character of the platform.

But there is running through the entire declared policy of the third party an entire willingness to destroy every limitation of constitutional representative government in order that, by short cuts, these various reforms, inconsistent as they may be, and many of them are with each other, may be accomplished by the decree of a benevolent despotism to be supported by the acclaim of hero-worshiping, emotional, indiscriminating, superficially minded, and non-thinking people. The reason why the movement cannot succeed is that the great bulk of our people are not emotional, indiscriminating, superficially minded, non-thinking or hero worshiping. They have the virtue of the second sober thought. They have the underlying common sense that, after full discussion, enables the scales to fall from their eyes and to see the danger of a movement that must depend for its success on holding forth impossible promises of a millennium to be effected through legislation only, and by no change in human nature or the character of the individual member of society.<sup>180</sup>

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damnation of Butler's insight see his p. 509).

<sup>179</sup> This came a few weeks before Roosevelt was shot. It had nothing to do with the shooting. Taft had been making this point all Spring.

<sup>180</sup> Taft here nailed the core problem of Roosevelt's program in its attempt to inoculate against radicalism with half a dose of radicalism backed up by an impossible-to-attain moralization of individuals and society. As Kolko wrote, "Roosevelt never ceased to maintain an incurable confidence that institutional reform could best be obtained by personal transformation of evildoers." But, as Kolko then jumped on him, when it came to doing anything about it, "His response was pragmatic and contemptuous" of the movements or the reform (p. 111). Whereas Kolko's Roosevelt wasn't radical enough and never stepped fully into the socialist cures, especially public ownership of industry, Taft recognized the same weakness from the other shore. He saw both the leftward drift of Roosevelt's rhetoric and also that strained attempt to pull short of its own directions. Taft

Certainly the people will not turn permanently from the most valuable lessons of experience in the past; from those institutions of civil liberty, those guaranties of personal rights, and those limitations upon the majority contained in the Constitution, which have proven themselves to be of such inestimable service in the maintenance of the success of our Democratic, constitutional, representative form of government.<sup>181</sup>

Earlier in the year, at a New Jersey rally during the pre-convention madness, Taft asked some boys what they would do should someone speak against the country. A boy cried out, "Fight him!" Taft loved children, he loved speaking to them and telling them how proud he was that they were Americans and how proud they should feel in that. On another occasion, to a group of girls he said, "I have no doubt that when these young ladies grow to womanhood they will have the ballot, but whether you do or not you ought to make preparation to understand your country and to know the gratitude you ought to offer to God for being Americans." Theirs was, he said, the greatest country with the best government that ever was. He said it throughout his presidency, and with especial vigor in 1912. To the raucous boys of Matawan, New Jersey, Taft replied as to what to do with one of the panicked of the day who spoke against the country: "No, I wouldn't fight him," he laughed. "I would tell him that he didn't know a good thing when he saw it."<sup>182</sup>

"Ingratitude," wrote Burke, "is the first of revolutionary virtues."<sup>183</sup>

- End -

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damned it all as hopelessly unable to jump from word to reality, and dangerous if it did.

<sup>181</sup> "Taft Opens Attack on the Third Party" NYT, September 29, 1912

<sup>182</sup> "Taft Winds up Campaign," NYT, May 29, 1912 and "40,000 Cheer the President," NYT, May 28, 1912

<sup>183</sup> From Oxford English Dictionary, entry for "gratitude," citing Burke, Wks VIII, 51

## Bibliography

### Books

- Brands, H.W., "T.R.: The Last Romantic," Basic Books, New York, 1997
- Bromley, Michael L., "William Howard Taft and the First Motoring Presidency," McFarland & Co., Jefferson, NC and London, 2003
- Burton, David H.
  - "Theodore Roosevelt, American Politician: An Assessment," Fairleigh Dickinson University Press, Madison, NJ and Associated University Presses, London, 1997
  - "William Howard Taft: Confident Peacemaker," St. Joseph's University Press, Philadelphia, 2004
- Butt, Archibald W.
  - "Taft and Roosevelt: The Intimate Letters of Archie Butt," Military Aide, Doubleday, Doran & Company, Inc., Garden City, New York, 1930
  - "The Letters of Archie Butt: Personal Aide to President Roosevelt," Edited by Lawrence F. Abbott, Doubleday, Page & Company, New York, 1925
- Chace, James, "1912: Wilson, Roosevelt, Taft and Debs -- The Election that Changed the Country," Simon & Schuster, New York, 2004
- Cooper, John Milton, Jr., "The Warrior and the Priest," Belknap Press of Harvard University Press, Cambridge Massachusetts and London, England, 1983
- Corwin, Edward S., Editor, "The Constitution of the United States of America," United States Government Printing Office, 1953
- Flehinger, Brett, "The 1912 Election and the Power of Progressivism," Bedford/St. Martin's, Boston, 2003
- Hatch, Carl E., "The Big Stick and the Congressional Gavel: A Study of Theodore Roosevelt's Relations with his Last Congress, 1907-1909," Pageant Press, New York, 1967
- Hofstadter, Richard, "The Age of Reform," Vintage Books, New York, 1955
- Jessup, Philip C., "Elihu Root," Dodd, Meade & Co., New York, 1938
- Johnson, Donald Bruce and Porter, Kirk H., "National Party Platforms, 1840-1972," University of Illinois Press, Urbana, 1973
- Kolko, Gabriel, "The Triumph of Conservatism: A Reinterpretation of American History, 1900-1916," Free Press, New York, 1963
- Link, Arthur S., "Woodrow Wilson and the Progressive Era: 1910-1917," Harper & Row, New York and Evanston, 1954
- Manners, William, "TR and Will: A Friendship That Split the Republican Party," Harcourt Brace Javanovich, Inc., New York, 1969
- Morris, Edmund, "Theodore Rex," Random House, New York, 2001
- Mowry, George E., "Theodore Roosevelt and the Progressive Movement," University of Wisconsin, 1946
- Pringle, Henry F.
  - "Theodore Roosevelt: A Biography," Harcourt, Brace and Company, New York, 1931
  - "The Life and Times of William Howard Taft," Farrar & Rinehart, New York, 1939
- Rauchway, Eric, "Murdering McKinley: The Making of Theodore Roosevelt's America," Hill and Wang, New York, 2003
- Roosevelt, Theodore
  - "The Letters of Theodore Roosevelt," Elting E. Morison, Editor, Harvard University Press, Cambridge, Massachusetts, 1954; Vol. 6-7
  - "The New Nationalism," edited by William E. Leuchtenburg, Peter Smith, Gloucester, Mass.,

- 1971 (reprinted from Prentice-Hall, 1961, and The Outlook Company, 1910)
- "Social Justice and Popular Rule," Charles Scribner's Sons, 1926 (Vol. XVII of "The Works of Theodore Roosevelt")
- Russell, Thomas H., Editor-In-Chief, "The Political Battle of 1912: Party Platforms; National Issues; Great Leaders," Association of Political and Social Science, copyright L. H. Walter, 1912
- Taft, William Howard
  - "The Collected Works of William Howard Taft," David Burton, General Editor, Ohio University Press, Athens, Ohio, 2001-2003.
  - "Popular Government: Its Essence, Its Permanence, and Its Perils," Yale University Press, New Haven, 1913 (included in Vol. 5 of "Works")
  - "Our Chief Magistrate and His Powers, Columbia University Press, New York, 1916 (included in Vol. 6 of "Works")
- White, William Allen, "The Autobiography of William Allen White," MacMillan Company, New York, 1946

### Articles

- Anderson, Donald F., "The Legacy of William Howard Taft," Presidential Studies Quarterly, Vol. XII, No. 1, Winter, 1982
- Bromley, Michael L., "Early Automobiles and Airplanes: The Cultural Lag," Automotive History Review, Issue No. 42, 2004
- Entin, Jonathan, L., "Judicial Supermajorities and the Validity of Statutes: How *Mapp* Became a Fourth Amendment Landmark Instead of a First Amendment Footnote," Case Western Reserve Law Review, Winter 2001, Vol. 52
- Korzi, Michael J., "Our Chief Magistrate and His Powers: A Reconsideration of William Howard Taft's 'Whig' Theory of Presidential Leadership," Presidential Studies Quarterly, June 2003 Vol. 33, Issue 2
- La Forte, Robert S. "Theodore Roosevelt's Osawatimie Speech," Kansas Historical Quarterlies, Summer, 1996, Vol. 32, No. 2
- Milkis, Sidney M., "Why the Election of 1912 Changed America," Claremont Review of Books, Winter 2002
- Murphy, Gary, "'Mr. Roosevelt is Guilty': Theodore Roosevelt and the Crusade for Constitutionalism, 1910-1912," Journal of American Studies, Vol. 36, Part 3, December, 2002
- Schultz, L. Peter, "William Howard Taft: A Constitutionalist's View of the Presidency," Presidential Studies Quarterly, Vol. IX, No. 4, Fall 1979
- Solvick, Stanley D., "The Conservative as Progressive: William Howard Taft and the Politics of the Square Deal," Northwest Ohio Quarterly, Vol. XXXIX, No. 3, Summer, 1967
- Sotos, John G., MD, "Taft and Pickwick: Sleep Apnea in the White House," Chest, 2003, 124:1133-1142
- Whittington, Keith E., "Yet Another Constitutional Crisis?" William & Mary Law Review, Vol. 43, Issue 5, April, 2002

### Periodicals

- American Review of Reviews, The Review of Reviews Co., New York, 1909-1913
- Century Magazine, The Century Co., New York, 1910-1912
- New York Times, H.J. Raymond & Co., 1899-1914, 1901-1913
- North American Review, North American Review Publishing Co., New York, 1910-1912
- Outlook, Outlook Co. New York, 1909-1913
- Washington Star, Washington, W.D. Wallach & Hope, Washington, D.C., 1908-1913

## Collections

- The Papers of William Howard Taft, Manuscript Division, Library of Congress, Washington, D.C.

## Web publications and hyperlinks

- Alvis, David. "Herbert Croly's Transformation of the American Regime," presented at 2002 APSA annual meeting, at [http://www.claremont.org/writings/02apsa\\_alvis.html](http://www.claremont.org/writings/02apsa_alvis.html)

- Bromley, Michael L.,

- "Taft: Humor & Anecdotes," at [http://www.stretching-it.com/Taft/Taft\\_humor\\_pg1.htm](http://www.stretching-it.com/Taft/Taft_humor_pg1.htm)

- "Taft and Sleep Apnea," [http://www.stretching-it.com/Taft/taft\\_sleep\\_apnea.htm](http://www.stretching-it.com/Taft/taft_sleep_apnea.htm).

- "The Taft Pages," [http://www.stretching-it.com/Taft/taft\\_intro.htm](http://www.stretching-it.com/Taft/taft_intro.htm)

- Linder, Douglas, "What in the Constitution Cannot Be Amended?" 23 Arizona Law Review 717, at <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/unamendable.html>

- Matlick, Rick, "The American Presidency" (presidential Annual Messages) at <http://www.geocities.com/americanpresidencynet/theamericanpresidency.htm>

- Ohio State University, Election of 1912, at <http://1912.history.ohio-state.edu/>

- Reilly, John, book review of "T.R.: the Last Romantic" by H.W. Brands, Culture Wars, March 1998, at <http://pages.prodigy.net/aesir/prnot.htm>

- United States Senate document, "Acts of Congress Held Unconstitutional In Whole Or In Part By The Supreme Court of the United States" at <http://www.gpoaccess.gov/constitution/pdf/con039.pdf>

- University of California at Santa Barbara, "The American Presidency Project," by John Woolley and Gerhard Peters (presidential Annual Messages) at <http://www.presidency.ucsb.edu/>