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WHY NO PARLIAMENTS IN THE UNITED STATES?

JONATHAN ZASLOFF*

TABLE OF CONTENTS

Introduction 270
1. Ground-Clearing: Timing and Evidence 272
1.1. Locating the Problem in Time 273
1.2. Silence in the Chamber 275
2. Exploring Hypotheses 275
2.1. Constitutional Disability 276
2.2. Tradition 277
2.3. Ignorance or Misunderstanding 278
2.4. Xenophobia 280
2.5. Conservatism 282
3. Why Have Parliaments in the First Place? 283
4. Villians in the Gilded Age: Legislatures and Parties 285
5. The Silence of the Backlash 291
6. Answering the Question 291
7. Conclusion 294

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Throughout American history, individual states have engaged in what scholars have aptly referred to as an 'orgy of constitution-making.' States' basic charters, however, have diverged profoundly from the federal Constitution in virtually every possible way but one: no state has ever created a parliamentary system. This Article asks why this is so, and finds that the answer reveals a basic American political pathology: a hatred of parties and legislative processes grounded in the electorate's mythic belief that the only thing preventing political consensus is either special interests or venal politicians. The current political paralysis in Washington, and in state capitals, also derives from this myth – thus demonstrating that inquiring into the absence of American parliaments reveals basic flaws in our current political culture.

Like all election years, 2008 saw its share of figures ripe for ridicule. Perhaps the strangest might have been Montana's Republican candidate for U.S. Senator, Bob Kelleher. Now in his late 80's, Kelleher won the nomination mainly due to the disarray of the state GOP and came with a history of positions usually not associated with Republicans, such as single-payer health care.[1] But when journalists wanted to communicate just how wacky and crazy the octogenarian is, they pointed to his belief that the United States should adopt a parliamentary system.[2] Of course, Kelleher himself seemed not to understand very well the political Everest he was climbing; acknowledging that shifting to a parliamentary system would require completely rewriting the U.S. Constitution, he retorted, "[a]nybody who can type as fast (as a reporter) can

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[1] *See Bob Kelleher*, ON THE ISSUES, http://www.ontheissues.org/senate/Bob_Kelleher.htm (last visited Oct. 20, 2013).

[2] *See, e.g.*, Jennifer McKee, *Kelleher: Still Pushing For Parliament*, BILLINGS GAZETTE (Sept. 28, 2008, 11:00 PM), http://billingsgazette.com/news/state-and-regional/montana/kelleher-still-pushing-for-parliament/article_6a5127c7-7876-5322-84bf-27b3441095d5.html (documenting Montana Senate candidate Bob Kelleher's advocacy of American conversion to a parliamentary political system based on England's example).

rewrite the Constitution in an hour."[3] Not surprisingly, powerful incumbent Senator Max Baucus won in a walkover.[4]

Kelleher's position, however, is worth far more than comic relief, especially in a contemporary U.S. political context that has descended into paralysis. The polarization of America's political parties has turned so extreme that any partisan division of the political branches threatens an immediate political and economic crisis. And this dysfunction, in turn, has led many observers to wonder whether the Presidential system does in fact undermine American governance. In the wake of the federal government's near-default in the summer of 2011, scholars pointed out that now, only nations with parliamentary systems still have AAA bond ratings from Standard & Poor's.[5] Time's Fareed Zakaria noted that something like the debt-ceiling debacle was impossible in a parliamentary system because it unifies the executive and legislature: "If we're in for another five years of this squabbling in the U.S., we are going to make presidential systems look pretty bad indeed."[6] He continued: "It's all very well to keep saying that we have the greatest system in the history of the world but against this background of dysfunction, it sounds a lot like thoughtless cheerleading."[7] But the United States hardly needed five years to make Presidentialism look bad: divisions between a Republican House and a Democratic Senate and President led to another government shutdown in October 2013, as well as nearly causing a federal government default. Presidential systems keep looking worse and worse.

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[3] Jennifer McKee, *Switchover to Parliament not Elementary*, BILLINGS GAZETTE (Aug. 31, 2008, 11:00 PM), http://billingsgazette.com/news/state-and-regional/montana/switchover-to-parliament-not-elementary/article_85aed7ed-a717-5af6-9aaf-2c5d0f46e230.html.

[4] *2008 Election Statistics*, OFF. OF THE CLERK OF THE U.S. HOUSE OF REPRESENTATIVES, http://clerk.house.gov/member_info/electionInfo/2008/2008Stat.htm#stateMT (last visited Oct. 20, 2013).

[5] Joshua Tucker, *AAA Ratings and Regime Types*, WASH. MONTHLY (Aug. 15, 2011, 6:28 AM), http://www.washingtonmonthly.com/ten-miles-square/2011/08/aaa_ratings_and_regime_types031529.php.

[6] Fareed Zakaria, *Does America Need a Prime Minister?*, CNN (Aug. 17, 2011, 12:27 PM), http://globalpublicsquare.blogs.cnn.com/2011/08/17/does-america-need-a-prime-minister.

[7] Fareed Zakaria, *Fareed's Take: Prime Minister . . . of America?*, CNN (Aug. 20, 2011, 1:34 PM), http://globalpublicsquare.blogs.cnn.com/2011/08/20/fareeds-take-does-america-need-a-prime-minister.

To be sure, replacing the federal Constitution with parliamentarism is close to impossible. Throughout American history, however, *states* have uprooted their constitutions several times; indeed, drastic change defines state constitutional history. As I will detail below, states have changed their basic charters in just about every conceivable way but one: instituting parliamentary democracy. Given the ease with which states can and have changed their basic charters, and the radical ideas they have pursued in doing so, it makes one wonder why the most powerful alternative to the basic form of U.S. governance has never been tried.

As I suggest in this Article, the answer to this question is more interesting and counterintuitive than one might suspect. It is not about worship of the U.S. Constitution, xenophobia, or ignorance. Rather, it turns on the traditional American hatred for the idea of political parties and distrust of legislatures. It thus points to political pathologies that endure through contemporary times.

1. GROUND-CLEARING: TIMING AND EVIDENCE

By 'parliamentary democracy,' I mean a governmental system in which the electorate chooses the Legislature, which then in turn chooses the Executive. The Executive remains formally responsible to the Legislature and can be dismissed by it at virtually any time, a process generally known as a 'vote of no-confidence.' The Executive is usually considered to be 'the Government,' and its head is the 'Prime Minister,' 'Premier,' or some other country-specific term such as 'Chancellor' (Germany), 'Taoiseach' (Ireland), 'Head of the Government' (Israel), or 'President of the Chamber of Deputies' (Spain).

I do not distinguish between various voting systems for electing the Legislature as long as the franchise is broad enough to consider the nation a 'democracy.' Great Britain uses individual districts in which the candidate with the highest number of votes is elected whether or not she has a majority, a system usually described as 'first-past-the-post.' Israel has no districts at all, and splits the 120 seats in the Knesset *pro rata* based upon vote totals as long as a party receives at least 2% of the national vote, a system often described as 'pure list proportional representation.'[8]

[8] For a fuller description of the Israeli electoral system, see *The Electoral System in Israel*, KNESSET, http://www.knesset.gov.il/description/eng/eng_mimshal_beh.htm (last visited Oct. 21, 2013).

Germany and Japan operate under complex systems in which some seats are distributed through national vote totals and some seats are allocated by regional support, with Japan maintaining multimember districts. Australian voters must list their ordinal preferences so that if their most-preferred candidate finishes last, their vote is allocated to their second choice, a process known as the Single Transferrable Vote.[9] All these systems carry vast implications for the country's politics, but all constitute 'parliamentary democracies.'

1.1. Locating the Problem In Time

A few weeks before adopting the Declaration of Independence, the Second Continental Congress advised the individual colonies to start writing their own constitutions,[10] and the states have been responding in orgiastic fashion ever since.

The nineteenth century marked the apex of state constitutional experimentation. The antebellum period was "an era of permanent constitutional revision" in the states,[11] and "[d]uring the last half of the nineteenth century, when a concern for continuity dominated national constitutional theory, state constitution-making was epidemic."[12] In all, "[o]f those states that joined the Union from 1800 to 1850, only two had not revised their constitutions by century's end; altogether, ninety-four state constitutions were

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[9] For more information on the Australian Single Transferrable Vote System, see *Proportional Representation Voting Systems of Australia's Parliaments*, ELECTRONIC COUNCIL OF AUSTL. & N.Z., http://www.eca.gov.au/systems/proportional/ (last visited Oct. 21, 2013).

[10] The precise date was May 10, 1776, upon a resolution moved by John Adams. *See The Resolutions and Recommendations of Congress*, U. HOUS. DIGITAL HIST. PROJECT, http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=3940 (last visited Oct. 27, 2013). The Congress then resumed the consideration of the report from the committee of the whole, which agreed resolved:

> [t]hat it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs have been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.

Id.

[11] DANIEL T. RODGERS, CONTESTED TRUTHS: KEYWORDS IN AMERICAN POLITICS SINCE INDEPENDENCE 93 (1987).

[12] G. ALAN TARR, UNDERSTANDING STATE CONSTITUTIONS 94 (1998).

adopted during the nineteenth century."[13] The process continued through the Progressive Era, which saw "widespread state constitution making"[14] and revealed "substantial interest in revising state constitutions and reforming amendment procedures."[15] The last third of the twentieth century also saw widespread state constitutional change, but the changes occurred in forums and were usually limited to deal with specific substantive issues.[16]

So as between the Revolution and the First World War, where should we focus? For the purposes of this project, the Gilded Age/Progressive Era nexus forms the most appropriate time, for two primary reasons. First, while many states revised their constitutions during Reconstruction, for the most part this came in the wake of the Civil War and the attempts to re-enter the Union; it would not represent a way of thinking about government structure, but rather about slavery and race. Second, before the Civil War era, quite literally there were no parliamentary democracies for Americans to emulate or learn from. Great Britain only became a mass democracy with the Reform Bill of 1867;[17] while its 1832 predecessor carries the august name of the 'Great Reform,' that Act was concerned more about eliminating corrupt parliamentary districts than about extending the franchise.[18] On the eve of the 1867 Act, less than twenty percent of British adult males could vote, and the system of the 1832 Act remained in control of the aristocracy.[19] Similarly, France did not become a democratic republic until 1870-71; Italy was still consolidating itself around the same time; Germany remained firmly under the

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[13] *Id.*

[14] JOHN J. DINAN, THE AMERICAN STATE CONSTITUTIONAL TRADITION 10 (2006).

[15] *Id.* at 47–48.

[16] *Id.* at 10.

[17] *See* H.J. HANHAM, ELECTIONS AND PARTY MANAGEMENT: POLITICS IN THE TIME OF DISRAELI AND GLADSTONE, at xxiii (The Shoe String Press, Inc., 2d ed. 1978) (1959).

[18] *See, e.g.*, LLEWELLYN WOODWARD, THE AGE OF REFORM, 1815–1870, at 78–81 (1962) (noting that the government was more interested in reforming Parliament than establishing democracy).

[19] *See* HANHAM, *supra* note 17, at xxvi–xxvii ("The Reform Act of 1832 had called the new forces in English life into the parliamentary forum, but it had not decided what role they were to play. Indeed, after satisfying the most pressing demands of their supporters, the reformers had deliberately preserved for the old aristocracy much more power and influence than its experience of government and prestige alone would have won it.")

control of a monarchy, albeit with a sort of limited Reichstag; and Canada did not establish its own parliament—with vague independent powers—until 1867. Although (as will be noted below) state constitution-makers were hardly shy in recommending radical changes, it would be asking too much to expect them to develop a new form of democracy on their own.

By the 1870's and 1880's, however, Americans could see robust parliamentary democracies all across Western Europe as well as through Canada and its provincial governments. Britain's Ballot Act of 1872 instituted the secret ballot (far in advance of the United States);[20] both major parties attracted more than a million votes for the first time with the general election of 1874.[21] It makes sense, then, to start at the time when parliamentarism could serve as a realistic option for American state constitution-makers.

1.2. Silence in the Chamber

A reasonable reader might now expect a review of what state constitution-makers said about the problem. This is indeed what the reasonable law professor expected to write when he began researching the topic. Therein lies the problem. Even the most punctilious reader will search in vain for discussions in conventions of whether parliamentary forms should be adopted. The most comprehensive study of state conventions has found just one during the period to be considered here: a brief colloquy in the Massachusetts Convention of 1919. Aside from that, there is nothing. Not until the 1970's did the issue raise its head again: 1) Illinois in 1976, when the proposal was dispatched with thirty seconds of debate; and 2) Montana in 1972, when the idea was advocated by—unsurprisingly—the indefatigable Kelleher, who gave an impassioned floor speech, was voted down, and left to nurse his wounds for another quarter century.

2. EXPLORING HYPOTHESES

In the absence of direct evidence, we might consider the indirect approach, namely, investigating the most plausible hypotheses and determining which one(s) seem to be the most

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[20] *See Pontefract's Secret Ballot Box, 1872*, BBC, http://www.bbc.co.uk/ahistoryoftheworld/objects/WryVwsknTr-aa4IQ-ID9iQ (last visited Oct. 27, 2013) (showing the first ballot box used in Great Britain, in 1872, and giving background on the Ballot Act).

[21] HANHAM, *supra* note 17, at xi.

plausible. I consider 1) *unconstitutionality,* i.e., that instituting state-level parliamentary systems would violate the United States Constitution; 2) *tradition,* i.e., that Americans were simply unable to recommend such a radical change from either the U.S. Constitution or their previous state charters; 3) *ignorance,* i.e., that Americans knew little or nothing about parliamentary government and thus could not be expected to imitate it; 4) *conservatism,* i.e., that Americans realized that parliamentary systems created a more activist government and rejected it for that reason; and 5) *xenophobia,* i.e., that Americans self-consciously rejected any European political system because of their distaste for European things in general and European politics in particular. I find that none of these hypotheses can adequately explain American rejection of parliamentary system.

2.1. Constitutional Disability

The most obvious potential reason—that state parliamentary systems would violate the U.S. Constitution—is also the most easily dispatched.

Quite literally, there is nothing in the U.S. Constitution that even suggests the illegitimacy of parliamentarism. The Supreme Court has repeatedly held that federal separation of powers doctrine does not apply to the states.[22] Even Michael Dorf, who claims that the "federal Constitution implicitly assumes that state governments will be structured along lines broadly similar to the federal government,"[23] can do little better than to argue that the federal Constitution requires an entity called a state "legislature" and another that can be called a state "executive."[24] If that is all the federal Constitution requires, then we need not detain ourselves. A state-level parliamentary system could co-exist quite easily within the United States: if the federal Constitution required action by the "Legislature," then Parliament as a whole would be the relevant actor, and if it called for action by the "Executive," then it

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[22] *See, e.g.,* Mayor of Philadelphia v. Educ. Equal League, 415 U.S. 605, 615 (1974); Sweezy v. New Hampshire, 354 U.S. 234, 255 (1957); Dreyer v. Illinois, 187 U.S. 71, 84 (1902).

[23] Michael C. Dorf, *The Relevance of Federal Norms for State Separation of Powers,* 4 ROGER WILLIAMS U. L. REV. 51, 54–55 (1999).

[24] *Id.* Dorf also insists that the federal Constitution requires 'distinct' legislative and executive bodies, but he does not claim that this 'distinction' would be violated by the Legislature choosing the Executive out of its own members.

would be the state-level Cabinet—although there might be litigation to determine whether it would be the state's Prime Minister or the Cabinet as a whole. Answering this Article's question requires us to look elsewhere.

2.2. Tradition

In different guises, what we might call the Anatevka Principle would seem to be the favorite explanation. Either Americans' devotion to the U.S. Constitution, or general reluctance to tamper with its forms, would suffice to explain the dearth of parliamentary democracy.

Such an account quickly flounders on the facts. The love for the U.S. Constitution hardly prevented state constitution-makers from departing from it, often in very fundamental ways. States tasked legislatures with appointing executive officers, or gave the job to Councils of Revision.[25] Rejecting the federal Constitution's provision that "the executive [p]ower shall be vested in a President of the United States . . . ,"[26] most states opted for explicitly plural executives–a condition that still spawns litigation today.[27] A few states even denied the veto power entirely to the Governor; others granted the Governor a line-item veto, which violates the federal separation-of-powers doctrine.[28] The American Revolutionaries detested what they saw as Parliament's "corruption" at the hands of the executive and forbade legislators from accepting executive appointments, but several states yawned at such a prospect and self-consciously allowed such co-mingling.[29] Several states vigorously debated unicameralism, a few conventions put unicameral proposals on the ballot, and one–Nebraska—adopted it.[30] Even those that did not often radically changed the

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[25] *See* Martin Flaherty, *The Most Dangerous Branch*, 105 YALE L.J. 1725, 1770 (1996) (noting that early state constitutions gave legislatures tasks currently thought to be executive and vice-versa).

[26] U.S. CONST. art. II, § 1, cl. 1.

[27] *See, e.g.*, People ex rel. Deukmejian v. Brown, 29 Cal. 3d 150 (1981) (enjoining state attorney general from litigation against state agencies when he has previously represented them).

[28] *See, e.g.*, Clinton v. City of New York, 524 U.S. 417, 448 (1998) ("[P]rocedures authorized by the Line Item Veto Act are not authorized by the Constitution").

[29] *See* Flaherty, *supra* note 25, at 1770.

[30] For debates surrounding bicameralism, see JOHN J. DINAN, THE AMERICAN STATE CONSTITUTIONAL TRADITION 137–83 (2006). Nebraska's provision may be

composition of their state senates to diverge from the U.S. Constitution's territorial principle. Most spectacularly (at least from a lawyer's perspective), a supermajority of American states instituted the popular election of the judiciary.[31] If this was fealty to the Constitution, it only failed to look like betrayal because the 1860's saw an actual one.

2.3. Ignorance or Misunderstanding

Perhaps the answer can be found in American parochialism: maybe Americans merely had little interest in events on the other side of the pond. But this assumption can certainly be overstated; indeed, in the late nineteenth and early twentieth centuries, "much of the discussion of American constitutionalism took place in the dual context of Anglo-American comparisons;"[32] indeed, "[f]or a full generation following 1885, fascination with Anglo-American constitutional comparisons ran high."[33]

Nor did these comparisons simply boil down to encomia concerning American superiority. In 1861, Walter Bagehot famously criticized the American Constitution in general and the separation of powers in particular, a critique "that caused real reverberations in America."[34] A quarter century later, a young political scientist named Woodrow Wilson "quickly became a nationally prominent voice for political reform"[35] by heretically denouncing the separation of powers as a "radical defect" in the

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found at NEB. CONST. art. III, § 1 (1875) ("The legislative authority of the state shall be vested in a Legislature consisting of one chamber.").

[31] See Caleb Nelson, *A Re-evaluation of Scholarly Explanations for the Rise of the Elective Judiciary in Antebellum America*, 37 AM. J. LEGAL HIST. 190 (1993) ("While every state that entered the Union before 1845 did so with an appointed judiciary, every state that entered between 1846 and 1912 provided for judicial elections. In the more established states, furthermore, all but two of the sixteen constitutional conventions held between 1846 and 1860 called for the popular election of both inferior and appellate judges. As the nation approached the Civil War, two of every three states elected their lower court judges, and three of every five states elected their Supreme Court.")

[32] MICHAEL KAMMEN, A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE 181 (1986).

[33] *Id.* at 166.

[34] *Id.* at 159.

[35] DANIEL D. STID, THE PRESIDENT AS STATESMAN: WOODROW WILSON AND THE CONSTITUTION 6 (1998).

U.S. Constitution.[36] Not everyone agreed with Wilson, of course, but that was the whole point: his work spurred an important debate within American educated opinion.

One who closely followed Wilson's analysis was the Scottish scholar and legislator James Bryce, whose *American Commonwealth* appeared in 1888: "For more than three decades his assessment of the U.S. Constitution would be cited as authoritative."[37] Bryce never called for Americans to adopt a parliamentary system, and went out of his way to honor the U.S. Constitution as a document appropriate for American conditions.[38] But in *The American Commonwealth* Bryce presented an extensive comparison of the differences between presidential and parliamentary democracy.[39] After reading Bryce's book, no one could fail to remain ignorant of the nature of parliamentarism.

Indeed, many people did read Bryce's book. When *The American Commonwealth* appeared, "[l]engthy reviews in journals of opinion appeared every month throughout" that year.[40] It was no surprise that so many Americans were interested in Bryce's book, for he had probably consulted them when he was preparing it: The Scotsman relied for information and answers on conversations and "an incredibly extensive correspondence with a wide range of elite Americans in a dozen cities."[41] The work was popular enough that Bryce produced a second edition only six years later-not a typical occurrence for a more than 1,000 page tome.

Bryce's network of contacts and his book's popularity gave him minor celebrity status, which His Majesty's Government made sure to exploit. When Britain's government in 1907 wanted to send an Ambassador to the United States in order to maintain the Anglo-American entente, it sent Bryce to fill the role.[42] In 1915, when it wanted to bolster U.S. friendship after the outbreak of World War

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[36] WOODROW WILSON, CONGRESSIONAL GOVERNMENT: A STUDY IN AMERICAN POLITICS 284 (1885).

[37] KAMMEN, *supra* note 32, at 165.

[38] *See, e.g.*, JAMES BRYCE, THE AMERICAN COMMONWEALTH 356-62 (Indianapolis: Liberty Fund ed. 1995) (1910).

[39] *Id.* at 193-203.

[40] KAMMEN, *supra* note 32, at 165.

[41] David C. Hammack, *Elite Perceptions of Power in the Cities of the United States, 1880-1900: The Evidence of James Bryce, Moisei Ostrogorski, and Their American Informants*, 4 J. URB. HIST. 363, 365 (1978).

[42] EDMUND IONS, JAMES BRYCE AND AMERICAN DEMOCRACY 1870-1922, at 203-41 (1968).

I, it appointed Bryce to head the commission to investigate "German atrocities" in Belgium.[43] Three years earlier, when several thousand members of the Pennsylvania Society attended a dinner at the Waldorf-Astoria to honor the 125th anniversary of the Constitution, the Society corralled Bryce, not an American, to give the principal address.[44] The point is not that Bryce was a popular figure, but rather that educated Americans knew his book, and could not have been ignorant about parliamentarism.

Did Americans think that Britain was still an actual functioning monarchy because of the Crown's formal role in the system? Probably not: Americans, at least educated ones, knew quite well that two mass political parties competed for favor among British voters, and that the electorate rendered the decision. In 1867, Walter Bagehot had famously described the monarchy as a "*theatrical show* of society," which is "commonly hidden like a mystery, and sometimes paraded as a pageant."[45] His insight quickly became commonplace. By the Gilded Age, even a cursory observer would have understood the basically democratic character of British political institutions. Wilson and Bryce made that very clear in their works, and contemporary newspaper reports did the same.[46]

2.4. Xenophobia

Maybe hatred rather than ignorance explains the problem. If Britain did something, then that was often good enough reason for America to avoid it. Certainly the tradition of hatred of England had purchase in American politics. Holding "the vision of Britain as an oppressive empire, bent on the conquest of the earth . . . [b]y the late 1880s, John Bull-baiting had become a common stock-in-

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[43] The results of this investigation are usually referred to as the "Bryce Report," and, unsurprisingly, concluded that German troops were guilty of repeated "outrages." JAMES BRYCE, THE BRYCE REPORT: REPORT OF THE COMMITTEE ON ALLEGED GERMAN OUTRAGES (1915), *available at* http://www.firstworldwar.com/source/brycereport.htm.

[44] KAMMEN, *supra* note 32, at 165.

[45] WALTER BAGEHOT, THE ENGLISH CONSTITUTION 51, 70 (1867).

[46] *See, e.g., Liberals Still Gaining: Mr. Gladstone's Party Almost Sure of Success*, N.Y. TIMES, Apr. 2, 1880, at A1. Of particular interest for current purposes is that the Times' report of the Liberal victory was reported on the same page and in the same columns as election contests in the American states. *See, e.g., The Burdens of Office: Heavy Responsibilities of the Gladstone Government*, N.Y. TIMES, May 13, 1880, at 2 (noting fierce interparty competition and pressure from constituents).

trade for Republican politicians" eager to maintain high tariffs.[47] But not for them alone. Democrats reliant on Irish-American votes were always anxious to "twist the lion's tail," especially because their program of lowering tariffs seemed to comport with English free-trade ideology.[48] Democrat Grover Cleveland's overheated 1896 response to British actions in Venezuela was designed to avoid accusations of Anglophilia.[49]

But political antipathy hardly implied hatred for British institutions and statesmen. British Prime Minister William E. Gladstone, notes Ernest May, was "idolized" by Americans.[50] This was particularly true of the reformers who strongly backed constitutional revision: for the reformer, observes Ari Hoogenboom, "John Stuart Mill was his philosopher and William E. Gladstone his ideal statesman."[51] While a schoolboy, Wilson had kept a portrait of the Grand Old Man above his desk and proclaimed him "the greatest statesman that ever lived."[52]

In any event, American suspicions of British policy never became anything close to general xenophobia. Importantly, Americans generally maintained positive feelings for France, especially after the emergence in 1871 of the Third Republic (which adopted a parliamentary system).[53] Americans wished that French politics might resemble American politics more closely and (in the wake of the Dreyfus affair) be less anti-Semitic.[54] But even Franco-American rivalry over the proposed Isthmian canal never yielded any sort of anti-French movement, in no small part because Americans appreciated the sturdiness of French Republicanism.[55] Only a few years after the Paris Commune, Americans had come to see France as a true republic. By 1902, Secretary of War Elihu Root

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47 MARK WAHLGREN SUMMERS, PARTY GAMES: GETTING, KEEPING, AND USING POWER IN GILDED AGE POLITICS 60-61 (2004).

48 *Id.*

49 *Id.* at 62.

50 ERNEST R. MAY, AMERICAN IMPERIALISM: A SPECULATIVE ESSAY 143 (1968).

51 ARI A. HOOGENBOOM, OUTLAWING THE SPOILS: A HISTORY OF THE CIVIL SERVICE REFORM MOVEMENT 1865-1883, at 21 (1961).

52 RAY STANNARD BAKER, 1 WOODROW WILSON: LIFE AND LETTERS 57 (1927).

53 The best general survey of U.S. attitudes towards France in this period, and indeed from the Revolution through the 1920's, is found in ELIZABETH BRETT WHITE, AMERICAN OPINION OF FRANCE: FROM LAFAYETTE TO POINCARE (1927). For summary of the pre-World War I Third Republic period, see *id.* at 208-34.

54 *Id.* at 251-256

55 *Id.* at 218-233.

noted that during the previous three decades France had "prov[ed] itself a most important, most significant stronghold of popular rights, of popular sovereignty and of hopes for the futures of the peoples of the earth."[56]

In short, then, there is little evidence of self-conscious, anti-European American exceptionalism in the specific design of political institutions. Regarding Europe, Americans had gripes, complaints, and conceits and biases—but they did not have hatreds. They were not inclined to reject ideas simply because they were European.

2.5. Conservatism

Perhaps the very reason why some prefer parliamentary government—its tendency toward activism—is why Americans rejected it. In this sense, it is not so much that the separation of powers caused weaker government, but rather the American desire for it, instantiated through the separation of powers.

This hypothesis also runs aground on the brute facts of American history. Although the Gilded Age is often thought of as the age of laissez-faire, it was anything but, and certainly by the Progressive Era such tendencies had been extinguished. Consider the wide and deep range of vigorous state action during the period: state and municipal-owned utilities ("gas and water socialism"), food and drug laws, railroad regulations, workers' compensation, state-level labor laws, forest conservation, antitrust laws, progressive taxation, and campaign finance laws. Moreover, recall the agencies just at the federal level that emerged during the period: the United States Geological Survey (1879),[57] the Interstate Commerce Commission (1887), the Agriculture Department (1889), the Commerce and Labor Department (1903), the FDA (1906), the Bureau of Reclamation (1902), the Forest Service (1905), Federal Reserve (1913), and the FTC (1913).

Reformers wanted stronger government. For the most part, however, they insisted that it be done through the executive branch and 'apolitical' administrative agencies. If anything, this explanation shows how much reformers went out of their way to avoid parliaments.

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[56] *Id.* at 230.

[57] *See also* WALLACE STEGNER, BEYOND THE HUNDREDTH MERIDIAN: JOHN WESLEY POWELL AND THE SECOND OPENING OF THE WEST (1952) (describing the 1870's and 1880's as the era of "big government science").

3. WHY HAVE PARLIAMENTS IN THE FIRST PLACE?

If the preceding discussion appears to have boxed us into a corner, we might escape by reframing the inquiry. On what grounds would potential constitution-makers choose a parliamentary over a presidential system? Many of the most prominent state constitutional revisions had obvious (if not always persuasive) justifications: the initiative to go around the corrupt legislature, or an elected judiciary for greater democratization. So why have a parliamentary system? One reason, alluded to above, would be government efficacy and efficiency: because presidential systems multiply veto points, they make governmental action ponderous and difficult. And one might argue that this was the reason why the Framers adopted it at the 1787 Convention.[58] But whatever the merits of that argument, it cannot explain political behavior during the Gilded Age and Progressive Era.

The key attribute of a parliamentary system, however, begins to clarify the matter. All parliamentary systems rely upon party cohesion to organize the government.[59] Parliamentary systems cannot exist without parties and thus empower them.[60] It stands to reason, then, that constitution-makers supportive of parties' role in government would have favored parliamentary systems.

To the extent that parliamentarism represents a party-based order, then the late nineteenth century would have been the ideal time for it to take its place in the constellation of American political

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[58] At least that is the standard argument, and it is credible and plausible, although hardly undeniable. *See, e.g.*, Immigr. & Naturalization Servs. v. Chadha, 462 U.S. 919, 959 (1983) ("The choices we discern as having been made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit Constitutional standards may be avoided, either by the Congress or by the President. With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.") (citations omitted).

[59] *See, e.g.*, Kevin Drum, *Can America Survive Parliamentary Norms in a Presidential System?*, MOTHER JONES (Oct. 14, 2013, 10:47 AM), http://www.motherjones.com/kevin-drum/2013/10/can-america-survive-parliamentary-norms-presidential-system (outlining in general terms how a parliamentary system works).

[60] *Id.*

ideas. Post-Reconstruction America, observes Stephen Skowronek, signaled the triumph of "[t]he state of courts and parties."[61] After the Democratic resurgence in 1874, the Gilded Age saw fierce inter-party competition, as Democrats and Republicans divided governmental control for all but six years from 1874 to 1896. Presidential majorities were also razor-thin, and in two Presidential elections, the electoral college and the popular vote split.[62] Thus, notes Skowronek,

> [t]he nature of electoral competition in these years further extended the hegemony of party concerns over governmental operations. More than ever before, the calculations of those in power were wedded to the imperatives of maintaining efficiency in state and local political machines and of forging a national coalition from these machines for presidential elections.[63]

The dominance of parties was not simply an established political fact: it was legitimized by prevailing political ideology. From the mid-1830's, to the turn of the century,

> partisan ideas, commitments, and organization not only spread throughout the Union but, more critically, penetrated the system deeply and completely enough to become the mainstay of the political nation. The ideological case for party became more dominant; it took on a different tone as well, less defensive, more assured and assertive, more celebratory. Spokesmen made a sustained, unambiguous case that rarely wavered . . . But there was much more going on than the expression of rhetoric. Building on the arguments made, powerful partisan

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[61] STEPHEN SKOWRONEK, BUILDING A NEW AMERICAN STATE: THE EXPANSION OF NATIONAL ADMINISTRATIVE CAPACITIES, 1877-1920, at 39 (1982).

[62] In 1876, Democrat Samuel J. Tilden captured the popular vote, but Republican Rutherford B. Hayes triumphed in the electoral college under circumstances still debated to this day. For a classic account of this election, see C. VANN WOODWARD, REUNION AND REACTION: THE COMPROMISE OF 1877 AND THE END OF RECONSTRUCTION (1951) (providing insight into the 1876 Tilden election). Twelve years later, Republican Benjamin Harrison unseated incumbent Democratic President Grover Cleveland, even though Cleveland won the popular vote. In 1892, Cleveland then defeated Harrison, becoming the only President in American history to serve non-consecutive terms.

[63] SKOWRONEK, *supra* note 61, at 39 (footnote omitted).

perspectives grew and, most critically, were adopted as the nation's norm with important behavioral consequences.[64]

Until the end of the 1850's, notes Ronald Formisano, party organizations "established an unassailable command of the routine political life."[65]

What could be better, then, than a state-level parliamentary system, where patronage and spending were run through party organizations? A parliamentary system would have allowed party organizations to keep a watchful eye on the Governor/Premier, enabling them to unseat him if he went off the reservation. The mystery, then, deepens: it would seem that the late nineteenth century would be just the time when party dominance would have led for a push for parliamentarism. Why didn't the dog bark?

4. VILLAINS OF THE GILDED AGE: LEGISLATURES AND PARTIES

To answer this question, we must consider those states that rewrote their constitutions during the Gilded Age and the Progressive Era. More specifically, we should look at those people and groups who pushed for constitutional revision. This examination is less easy that one might first think: although scholars have closely examined the nature of power in the late nineteenth century, they have rarely focused on the politics or intellectual theories behind state constitutional revisions. At this stage, however, we can provide one generalization. For the most part, reformers focused on two major and interrelated issues: the corruption of the legislature and the destructive influence of parties.

California's 1878-79 Convention serves as a typical example. The movement for constitutional reform was led by what would eventually become the right wing of the Progressive movement, comprising small businessmen and educated (mostly Protestant) middle classes. The reformers yearned principally "to recapture an older golden age of republican politics"[66]—one predating the partisan warfare that had begun in the mid-1830s: "[t]he nostalgic—or alternatively, optimistic—evocation of a purer

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[64] JOEL H. SILBEY, THE AMERICAN POLITICAL NATION, 1838-1893, at 33-34 (1991).

[65] RONALD P. FORMISANO, THE TRANSFORMATION OF POLITICAL CULTURE: MASSACHUSETTS PARTIES, 1790S-1840S, at 23 (1983).

[66] Harry N. Scheiber, *Race, Radicalism, and Reform: Historical Perspective on the 1879 California Constitution*, 17 HASTINGS CONST. L.Q. 35, 39 (1989-90).

political order was often expressed in a harsh critical stance against the regular parties."[67] The editors of the *Daily Alta California* expressed the reformers' tone, one with particular resonance for the question at hand:

> There is to be neither Republicanism nor Democracy, as party tenets, embodied in the instrument to be framed [by the convention], but Americanism, if we may so speak, in contradiction to French Communism, German Red Republicanism, or the still wilder agrarian notions which have recently been so loudly proclaimed even in this country among the less intelligent classes.[68]

Thus, state constitutional reform advocates specifically strove to *avoid* European political forms, not out of xenophobia but rather because they bred strong parties, which at least in some circumstances bred radicalism. In this ideological context, had anyone suggested moving to a parliamentary system, they would have been Red-baited into political irrelevance.

The party machines got the message, essentially running slates of stealth candidates under fusion and "nonpartisan" tickets; party regulars distanced themselves from the machine in order to get elected—which they did, forming a majority of convention delegates.[69]

New York's 1895 Convention appealed to similar constituencies, although its origins diverged from California's. The state's 1846 Constitution provided for an automatic referendum every twenty years to determine whether to hold a new constitutional convention.[70] Led by antiparty advocates, in 1886 the state's voters "overwhelmingly approved" a new convention.[71] But since Republicans and Democrats blocked each other for seven years over delegate selection procedures, the plan remained dormant until the Democrats emerged victorious in the 1891

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[67] *Id.* at 40.

[68] *Id.* (alteration in original) (quoting *What Is Needed Is a General Representation of All the Honest Classes*, DAILY ALTA CAL., Apr. 18, 1878, at 1).

[69] RICHARD L. MCCORMICK, FROM REALIGNMENT TO REFORM: POLITICAL CHANGE IN NEW YORK STATE, 1893-1910, at 52-56 (1981).

[70] *Id.* at 52.

[71] *Id.*

elections and established procedures that they thought would be favorable to them.[72]

To counter, the Republican machine nominated men "distinguished for their professional activities rather than for close association with the party organization,"[73] although the GOP's two most important delegates, lawyers Elihu Root and Joseph H. Choate, were in fact staunch Republicans dedicated to ensuring their party's hegemony.[74] Much to many people's surprise, the Republicans triumphed in the 1893 election, and their convention delegates went to work, crafting provisions that appealed to independents concerned about corruption but actually tended to enhance Republican prospects.[75]

And what would this new 'American' convention actually do to the state constitution? One institutional reform dominated: reduce the power of the Legislature. Although delegates to many state conventions were wary of making their states' charters too long, "such concerns underwent a change with . . . a growing suspicion, if not outright distrust, of legislatures."[76] Specifically, "from California's first convention in 1849 to the Western States' conventions of the late 1880s, delegates recognized that one of the principal purposes of the constitutions they were drafting was the expression of limitations—substantive as well as procedural—on the powers of state legislatures."[77] Similarly, "[t]he ultimate thrust of constitutional revision after the Civil War was . . . 'a grand design to reduce the field of state law and withhold from it every subject which it is not necessary to concede.' New and revised constitutions in the 1870s substantially reduced legislative

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[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] For example, many provisions ostensibly ensuring the integrity of the voter rolls made it very difficult to register urban immigrant voters, the backbone of the Democratic Party. The Convention separated municipal elections from state ones, which made it easier for urban Republicans to divorce themselves from the state party attracting Democratic votes. This supposed 'nonpartisan' reform garnered independent support for the GOP. But another independent priority—stronger municipal home rule provisions—died in committee: Republicans had little interest in giving predominantly Democratic cities more autonomy. *See id.* at 53–55.

[76] Christian G. Fritz, *The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-Making in the Nineteenth-Century West*, 25 RUTGERS L.J. 945, 967 (1994) (footnote omitted).

[77] *Id.* at 970.

authority."[78] The pattern continued through the Gilded Age, with some state conventions in the 1880s and 1890s enshrining regulatory commissions because they were thought to be more reflective of the popular will than legislatures.[79] State conventions insisted on single-subject rules, which were vague enough to give judges wide latitude to strike down statutes. By 1914, one academic commentator became so exasperated with repeated attempts to hamstring state lawmakers that he complained of a legislature so 'hampered' that it could not legislate.[80]

Azariah Flagg was a New York barnburner whose fierce anti-railroad campaign in Illinois was typical of the radicals who created mid-century Midwestern constitutional politics. An 1873 speech celebrating the radicals' victory in getting a new Illinois Constitution approved three years earlier encapsulates succinctly how political issues relate to constitutional change:

> But if discussion does not convince, power must compel. This nation was not formed to be run by moneyed corporations. *My liberties and yours are not to be bartered and sold away by venal legislators*; and the government of this state and nation must be in the interests of liberty and the people. Our election of judges signified this, and the work when kept up must go on until legislatures, judges, and executive officers understand that there has been too much time and expense devoted to chartered capital and too little to promote the welfare of the people . . . And let no man be horrified when we propose to elect judges that stand by popular rights.[81]

To be sure, there is a passing reference to "executive officers," but it is obvious that the focus here is on legislatures and judges. This hatred for legislatures should hardly come as a surprise: the

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[78] MORTON KELLER, AFFAIRS OF STATE: PUBLIC LIFE IN LATE NINETEENTH CENTURY AMERICA 112 (1977).

[79] *See, e.g.*, JAMES WILLARD HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 240-46 (1950).

[80] Orrin K. MacMurray, *Some Tendencies in Constitution Making*, 2 CAL. L. REV. 201, 213 (1914). *See also id.* (describing the current era as one of "[d]irect limitations upon legislative power").

[81] *See* Alan Jones, *Republicanism, Railroads, and Nineteenth Century Midwestern Constitutionalism*, *in* LIBERTY, PROPERTY, AND GOVERNMENT: CONSTITUTIONAL INTERPRETATION BEFORE THE NEW DEAL 239, 255-67 (Ellen Frankel Paul & Howard Dickman eds., 1989) (quoting a speech by Flagg addressing a convention of farmers in 1873) (emphasis added).

late nineteenth century served as the heyday of works such as Thomas M. Cooley's *Constitutional Limitations*, published in 1868 and reprinted several times over the next thirty years, which attempted to rein in the power of government.

But a closer look at the book's title is instructive. The title is, officially, *A Treatise Upon the Constitutional Limitations Which Rest Upon The Legislative Power of the States of the American Union*.[82] It might seem odd to lump together a jurist like Cooley and a radical like Flagg, but this conflation only underscores the point: constitutional reformers could disagree vehemently with each other on particulars, but they all agreed on their desire to reduce the power of the legislature and curtail the influence of parties.

As the Gilded Age gave way to the Progressive Era, reformers poured old wine in new bottles, which should come as little surprise since many of them were the same people or came from similar political pedigrees.[83] Reformers had political parties squarely in their crosshairs. For the Massachusetts Convention of 1917-1919, the delegate selection rules ensured that party influence would be diminished as much as possible: delegates were elected without identifying party labels, a major Progressive demand, and were placed on the ballot by petition instead of through a formal nomination process.[84] Ohio's new Constitution of 1912 banned party-nominating conventions, mandating that any future constitutional conventions or constitutional amendments be non-partisan.[85]

Once again, the Legislature came in for the brunt of the attacks. Now, however, reformers' main weapon was the 'initiative and referendum,' perhaps the quintessential attack on the legislative process, as this method undermines the essential idea of *representative* democracy. So omnipresent was this proposal that in

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[82] THOMAS M. COOLEY, A TREATISE UPON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION (1st ed. 1868).

[83] *See, e.g.*, Michael E. McGerr, The Decline of Popular Politics: The American North, 1865-1928, at 151-53 (1986) (noting that early anti-partisan reformers became dominant among middle-class reform during the first decade of the twentieth century).

[84] *See* John Allen Hague, *The Massachusetts Constitutional Convention: 1917-1919. A Study of Dogmatism in an Age of Transition*, 27 NEW ENG. Q. 147, 150 (1954) (describing the election procedures for the delegates to the Constitutional Convention of 1917).

[85] *Ohio's New Constitution*, 24 GREEN BAG 506, 508 (1912).

Massachusetts the delegates spent fully one-third of its time debating it.[86] And "in the sixteen years between 1902 and 1918, over two-fifths of the states then in the union adopted the initiative."[87]

We can see these political themes most clearly in the case of E.L. Godkin, founder of *The Nation*, editor of the *New York Evening Post*, and a man with "extraordinary influence on the opinions of the educated professional, and reforming classes."[88] William James is widely cited as stating, "To my generation . . . Godkin's was certainly the towering influence in all thought concerning public affairs, and indirectly his influence has certainly been more pervasive than that of any other writer of the generation."[89] Godkin was appalled at Flagg's address quoted above, calling it "worthy of a Paris Communard,"[90] but he shared with the radical a distrust for legislatures and an attempt at curing democracy with more democracy. In particular, Godkin was enthused about state constitutional revision as a cure for what he saw as the legislative mess:

> [I] do not look for the improvement of democratic legislatures in quality within any moderate period. What I believe democratic societies will do, in order to improve their government and make better provision for the protection of property and the preservation of order, is to restrict the power of these assemblies and shorten their sittings, and to use the referendum more freely for the production of really important laws. I have very little doubt that, before many years elapse, the American people will get their government more largely from constitutional conventions, and will confine the legislatures within very narrow limits and make them meet at rare intervals.[91]

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[86] *See* Hague, *supra* note 84, at 150.

[87] RICHARD J. ELLIS, DEMOCRATIC DELUSIONS: THE INITIATIVE PROCESS IN AMERICA 39 (2002).

[88] *See* ROBERT KELLEY, THE TRANSATLANTIC PERSUASION: THE LIBERAL-DEMOCRATIC MIND IN THE AGE OF GLADSTONE 299 (1969).

[89] *See id.*

[90] *See* Jones, *supra* note 81, at 257.

[91] EDWIN LAWRENCE GODKIN, PROBLEMS OF MODERN DEMOCRACY: POLITICAL AND ECONOMIC ESSAYS 297-98 (1896).

"[T]he duty of the government," he predicted, "will be confined to simply weighing and stamping."[92]

A prophet he was not. But he did not strike out, either. Indeed, one could argue that he accurately predicted much of the future course of California constitutionalism: the adoption of initiative and referendum, the use of these instruments to create the state's fiscal constitution, and the voters' reliance on them to protect their property.

5. THE SILENCE OF THE BACKLASH

If reformers hated parties and wanted to use the constitutional revision process to undercut them, one might well wonder why the leaders of party machines did not attempt an equal and opposite reaction, namely, using the constitutional revision process to strengthen parties and instituting parliamentary government. As with everything else, we have no direct evidence, but a relatively straightforward answer appears. Machine leaders had little to gain and much to fear from radically reforming a system that they already dominated. They knew how to nominate and elect candidates, how to pull the levers of patronage, how to stuff ballot boxes, how to drive their workers to the polls, and how to stop their opponents from voting. There is a reason, after all, why party organizations were called machines. Under these circumstances, any party leader confronted with radical reform would simply laugh at the prospect. In any event, machine leaders were not theoretically minded, to say the least.

6. ANSWERING THE QUESTION

In light of the forces pushing for constitutional revision, answering the question posed by the Article becomes relatively straightforward once we consider for a moment the fundamental nature of parliamentary systems. In such systems, formally the legislature dominates the executive (usually referred to as the cabinet, or the government). It can dismiss the executive if it wants, and if the executive's initiatives fail, the government usually resigns or calls a new election to establish 'confidence.' Informally, the legislature agrees on a government only through negotiations between parties. Parties are crucial to parliamentary systems; without them, negotiations to establish a government

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[92] *Id.* at 298.

would rapidly come to resemble Arrow's Impossibility Theorem. Even in those countries such as Great Britain and Canada, where coalitions are usually unnecessary, general elections are competitions between parties: the question turns on which party will gain enough seats in order to form a majority in the legislature and thus form the government. Thus, state constitution makers never seriously entertained the possibility of establishing parliamentary government at the state level because doing so would have empowered precisely those two political institutions that they most distrusted and detested: political parties and the legislative branch.

The hatred of legislatures carried with it a potentially important irony, for one could argue that the rejection of parliamentarism empowers the legislative branch. James Q. Wilson makes the argument most succinctly. Congress, he observes,

> is extraordinarily powerful when compared to the parliaments of many European democracies. Though a parliament can select the prime minister, often it can do little more: the British House of Commons, for example, cannot without the permission of the prime minister amend a bill, alter a budget, conduct a hearing, or render a service. More exactly, it can do some of these things over the objection of the prime minister, but in doing so brings down the government and forces a new election. Incumbent politicians look forward to new elections with about the same enthusiasm that children look forward to visiting the dentist.[93]

Little wonder, then, notes Wilson, that "Senator Daniel Patrick Moynihan was scarcely exaggerating when he said that the United States is the only democratic government with a legislative branch."[94] On this reading, state constitutional reformers only succeeded in cutting their own ideological throats.

But, although appealing and often true, we should not take this framework too far. Even assuming that Wilson's analysis is correct, it was by no means obvious in the late nineteenth and early twentieth centuries. We may now casually accept as fact the

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[93] JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT 237-38 (1989).

[94] *Id.* at 238.

notion of prime ministerial dominance over the United Kingdom's Parliament; at the time, the parliamentary system might have looked like constant intrigue, particularly if (as many reformers did) one followed Gladstone. The Grand Old Man had two governments upended by Parliamentary intrigue, as Joseph Chamberlain split the Liberal Party over Home Rule in 1885,[95] and nine years later, internal Cabinet politics forced Gladstone into retirement at age 85.[96]

Moreover, Wilson's framework might be questioned for selective evidence. Perhaps Great Britain has settled into a comfortable pattern of prime ministerial dominance,[97] but that is far from the case in other parliamentary countries. Israel has long suffered under unstable coalitions, usually driven by small parties, which have arguably hamstrung the ability of its prime ministers in peace negotiations. Constant parliamentary dissolutions became the hallmark of Weimar Germany (along with elections that returned parliaments unable to form stable governments).[98] Nor does the British system of individual districts elected through the 'first-past-the-post' rule solve the problem: Indian voters have not returned a majority government in a quarter of a century, and Indian governance has suffered for years from the intricate and

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[95] *See* R.C.K. ENSOR, ENGLAND: 1870–1914, at 97–99 (1936) (explaining that the First Irish Home Bill resulted in an "alliance" between Irish nationalists and some liberals, with "dissentient liberals" and conservatives sitting on the other side).

[96] *See id.* at 211, 214–15 (noting that Cabinet's failure to support Gladstone after the failure of the Second Irish Home Rule Bill helped to cause his resignation).

[97] Or perhaps not. As this Article was being prepared, the 2010 British elections returned a hung Parliament, resulting in an unconventional (and often ideologically incompatible) coalition between the Conservatives and their junior partner, the Liberal Democrats. *See Conservative-Liberal Democrat Coalition Deal: Full Text*, THE GUARDIAN (May 12, 2010, 10:11 AM), http://www.theguardian.com/politics/2010/may/12/lib-dem-tory-deal-coalition (including text from the agreement that was created to "underpin . . . [the] coalition government" between the Tories and the Liberal Democrats following the 2010 British elections); *Election 2010: First Hung Parliament in UK for Decades*, BBC NEWS (May 7, 2010, 11:29 AM), http://news.bbc.co.uk/2/hi/8667071.stm (reporting that no major political party succeeded in gaining a majority of the seats in Parliament).

[98] *See* GORDON A. CRAIG, GERMANY: 1866–1945, at 509–10 (1978) ("[B]etween February 1919 . . . and June 1928 . . . fifteen separate cabinets passed across the political stage, none performing for longer than eighteen months and several disappearing into the wings in less than three . . . . More and more, parliamentary politics came to resemble an endless cabinet crisis, with more time and energy expended on the task of filling the ministerial chairs than in governing the country.").

fragile coalition deals necessary to form a government. Apparently legislators in parliamentary system are not as powerless as some might think.

In any event, the constitutional reformers—who would eventually become prominent in the Progressive movement—had their own views on how to combat legislative corruption: a stronger executive, empowered by a professional civil service, which could rise above 'partisanship.'

7. CONCLUSION

So why should anyone care? Is this any more than antiquarian interest? To answer these questions, we might look at Senate Republican Leader Mitch McConnell.

McConnell may not go down in history as a Lion of the Senate. At the start of the 111th Congress, however, he shrewdly assessed the nature of American public opinion and developed an inside-Congress strategy: with only forty-one caucus members,[99] he needed to maintain absolute Republican unity and refuse to compromise with either Congressional Democrats or the Obama White House. Such a strategy, he argued to his fellow GOP Senators, would not only slow down the administration's program but also deny it political legitimacy.[100] Nowhere was this more critical than on the administration's centerpiece legislation, health care reform:

> 'It was absolutely critical that everybody be together because if the proponents of the bill were able to say it was bipartisan, it tended to convey to the public that this is O.K., they must have figured it out,' Mr. McConnell said about the health legislation in an interview, suggesting that even minimal Republican support could sway the public. 'It's either bipartisan or it isn't.'[101]

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[99] *See* Brian Beutler, *All 41 Senate Republicans Oppose Financial Reform Bill, Say Will Lead to 'Endless Taxpayer Bailouts,'* TALKING POINTS MEMO (Apr. 16, 2010, 6:07 PM), http://talkingpointsmemo.com/dc/all-41-senate-republicans-oppose-financial-reform-bill-say-will-lead-to-endless-taxpayer-bailouts (indicating that there were 41 Republicans in the Senate in 2010).

[100] Carl Hulse & Adam Nagourney, *Senate G.O.P. Leader Finds Weapon in Unity*, N.Y. TIMES, Mar. 16, 2010, http://www.nytimes.com/2010/03/17/us/politics/17mcconnell.html.

[101] *Id.* (emphasis added).

McConnell realized that for the American voter, calling something 'bipartisan' gives it a seal of approval. 'Bipartisan' legislation means good legislation, something that has been 'figured out,' as if it is a mathematical puzzle.[102] 'Partisan' legislation, on the other hand, is bad, reflective of something extreme or illegitimate. 'Responsible party government' in the American lexicon is something of an oxymoron. That different people or groups might have genuine and sincere differences over the proper direction of public policy is something close to heresy.

Such beliefs also account for the hatred of Americans for their legislatures. Political scientists John Hibbing and Elizabeth Theiss-Morse used focus groups and voluminous survey data to show that people do not know much and do not care much about policy. Instead, they believe in broad goals for the country, and they think that political actors working in good faith could accomplish those goals with minimum disagreement if they wanted to. Thus, they write:

> People believe that Americans all have the same basic goals, and they are consequently turned off by political debate and deal making that presuppose an absence of consensus. People believe these activities would be unnecessary if decision makers were in tune with the (consensual) public interest rather than cacophonous special interests.[103]

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[102] Although McConnell is the most prominent practitioner of blocking bipartisanship, he is not the only one. Indeed, avoiding bipartisanship is a bipartisan exercise. When, in 2005, President Bush wanted to privatize Social Security, House Minority Leader Nancy Pelosi drew a hard, uncompromising line against Republican proposals. Moving toward compromise, she argued:

> would have persuaded people that there must have been something wrong with Social Security that needed fixing. She suggested that Dems [sic] should keep that message in mind as they prepare to do battle over Ryan's Medicare proposals. 'We got criticized for it, but it was the most important thing,' Pelosi said. 'We couldn't have our own proposal on Social Security because it would confuse the public.'

Greg Sargent, *Pelosi: Dems Shouldn't Take GOP's Bait on Medicare*, WASH. POST (Apr. 6, 2011, 3:39 PM), http://www.washingtonpost.com/blogs/plum-line/post/pelosi-dems-shouldnt-take-gops-bait-on-medicare/2011/03/0/AFFRhVqC_blog.html.

[103] JOHN R. HIBBING & ELIZABETH THEISS-MORSE, STEALTH DEMOCRACY: AMERICANS' BELIEFS ABOUT HOW GOVERNMENT SHOULD WORK 7 (2002).

Such a political ideology makes it quite difficult to adequately or clearly frame policy choices for voters. Political actors in just about any democratic system seek to cast blame on their political opponents, but it reaches a high art in the United States, and it acquires a surreal tone when each side accuses the other of not being sufficiently 'bipartisan.'

The inability to adequately frame choices is not merely a matter of intellectual pique. As this Article is being written, the United States is going through a series of fiscal and financial crises all brought about through dysfunctional governance. As noted in the Introduction, the federal government shut down for sixteen days in October 2013 and nearly defaulted because of Republican refusals to lift the debt ceiling.[104] This was a reprise of similar incidents in 2011. Minnesota, faced with the same sort of divided government, actually did shut down for a few weeks.[105] California has also shut down several times over the past twenty years for the same reason.[106] While the immediate cause of these trends lies in a sharp ideological divergence between the parties, a gulf precipitated by the sharp right turn of the Republican Party over the past few years, its broader cause stems from the inability of the electorate to make fundamental choices.

Presidentialism at both the state and federal levels allows voters to do so and perhaps might even encourage them in the effort. Asking about the absence of parliaments in the states, then, reveals more fundamental problems in voter behavior. Even if true, of course, there is little point in cursing the darkness. But

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[104] *See* Jonathan Weisman & Jeremy W. Peters, *Government Shuts Down in Budget Impasse*, N.Y. TIMES, Sept. 30, 2013, http://www.nytimes.com/2013/10/01/us/politics/congress-shutdown-debate.html (discussing the causes of the shutdown); *Obama Signs Bill Ending Shutdown, Raising Debt Limit*, CHI. TRIB. (Oct. 17, 2013, 12:19 AM), http://www.chicagotribune.com/news/chi-government-shutdown-20131016,0,1118789.story (announcing that the federal government reopened after President Obama signed "an 11th-hour deal . . . to . . . pull the world's biggest economy back from the brink of a historic debt default").

[105] For a general background on the Minnesota government shutdown, see *A Sign of Things to Come?* ECONOMIST, Jul. 7, 2011, *available at* http://www.economist.com/node/18928883.

[106] Strictly speaking, of course, California's repeated fiscal crises over the last twenty years have not always been caused by divided government. But because the state's constitution until last year required a two-thirds vote to pass a budget, a provision only true in two other states, and still requires two-thirds to raise taxes, it effectively creates divided government even within the legislative branch itself. I am thus on firm ground in including it as an example of the perils of divided government.

perhaps forcing democratic choices might make sense: if required to choose one party or the other, voters would be less inclined to demonstrate the tendencies that Hibbing and Theiss-Morse discuss. If history is any indication, the process of state constitutional revision will proceed apace in the future: when the next opportunity arises, state constitution makers should bring a parliament to the United States.

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