2000

Can Party Politics Be Virtuous?

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CAN PARTY POLITICS BE VIRTUOUS?

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American political thought has historically been dominated by two different conceptions of politics. One model conceives of politics as an arena for the virtuous and impartial pursuit of the common good, the other as an arena for the pursuit of private interest. Political parties perform significantly different functions in each model, leading them to divergent prescriptions concerning appropriate legal regulation of parties. This divergence suggests that choosing some regulatory regime for political parties necessarily requires casting one's lot with some conception of politics, and in so doing to favor its emergence. Madison, however, hoped that political institutions could be designed which would render such a choice unnecessary by performing well in the presence of either virtue or self-interest. Unfortunately, it does not appear that Madison's hope can be fulfilled at the level of political party regulation because regulatory regimes that facilitate the achievement of the classically understood common good tend to fare badly when political actors behave self-interestedly, and vice versa.

I. INTRODUCTION: POLITICAL PARTIES AND MADISON'S HOPE

The generation of Americans that founded the United States and wrote its Constitution feared and despised political parties. The "root idea" of Anglo-American political thought concerning parties, Richard Hofstadter writes of the founding period, was that "parties are evil."[1] Thomas Jefferson denounced party affiliation as "the last degradation of a free and moral agent."[2] Alexander Hamilton claimed that the goal of the Constitution was "to abolish factions, and to unite all parties for the general welfare."[3] George Washington warned in his Farewell Address against "the baneful effects of the spirit of party."[4] Even James Madison, one of the least dogmatic of the founders, thought that political parties

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    1. Richard Hofstadter, The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780–1840, at 9 (1969).

    2. Letter from Thomas Jefferson to Francis Hopkinson (Mar. 13, 1789) *in* The Life and Selected Writings of Thomas Jefferson 424, 424 (Adrienne Koch & William Peden eds., 1993).

    3. 2 The Debates in the Several States Conventions on the Adoption of the Federal Constitution 320 (Jonathan Elliot ed., William S. Hein & Co. reprint ed. 1996) (1891) [hereinafter Elliot's Debates].

    4. George Washington, Farewell Address, *in* Documents of American History 169, 172 (Henry Steele Commager ed., 8th ed. 1968).

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were, at best, unavoidable evils in a free society—forces to be condemned, yet patiently endured.[5]

The founders' antipathy toward political parties rested on their belief that parties were the vehicles by which self-interested groups and individuals—"factions," in their terminology[6]—coordinated and pressed their efforts to seize political power. Once in possession of power, factions could be expected to use it to pursue their own private self-interest at the expense of the common good, a course of behavior that political theorists since Aristotle have judged to be a defining characteristic of bad government.[7] These beliefs led the founders to hope, naively as it turns out, that political parties would not emerge on the American political scene, or if they did emerge, that their appearances would be infrequent and evanescent.

The Framers were thoughtful political theorists, but it does not always seem as though they applied their customary hard-headed pragmatism to the question of how to deal with the problems posed by parties. One of the Framers' paramount goals was to create the conditions in which political virtue could flourish. They sought "to construct a society and governments based on virtue and disinterested public leadership,"[8] and they hoped that the government they were creating would "foster rule by the informed and reasoned judgments of the citizenry"[9] rather than by passion and self-interest.[10] Yet the Framers never clearly explained why the presence of political parties should be capable of so thoroughly thwarting the achievement of these goals that nothing could be done except to condemn parties and hope fervently that they did not arise.

The Framers' fear of political parties is especially surprising given their otherwise robust faith in the power of institutional design to shape the nation's political life. The Framers sought to bring into existence a "virtuous politics"[11] by pursuing a two-track strategy of institution-building. First, they wanted to frame institutions that would effectively bring the most virtuous men into government and place power in their hands. As Madison put it, the preliminary problem of constitutional design required the Framers to craft institutions of governance capable of "obtain[ing] for rulers men who possess most wisdom to discern, and most

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5. See Hofstadter, supra note 1, at 24.

6. Hofstadter, supra note 1, at 10; see also The Federalist No. 10, at 78 (James Madison) (Clinton Rossiter ed., 1961) (defining "faction" as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community").

7. See Aristotle, Politics *1279a8.

8. Gordon S. Wood, The Radicalism of the American Revolution 229 (1992).

9. Joseph M. Bessette, The Mild Voice of Reason: Deliberative Democracy and American National Government 1 (1994).

10. See id. at 46, 48.

11. Wood, supra note 8, at 253.

virtue to pursue, the common good of the society."[12] At the same time, the Framers knew that they could not count on a politics of virtue to be sustained indefinitely or without interruption—"[e]nlightened statesmen will not always he at the helm," in Madison's words[13]—and they thus expected factional behavior to appear. Consequently, they simultaneously pursued a second strategy of institutional design, one that would prevent factions from doing significant harm. The Framers hoped to accomplish this by building into the constitutional structure devices that would contain factions and inhibit their ability to seize the reins of power.

Although at times the Framers sought to accomplish these two goals through a combination of distinct devices working in tandem,[14] in their more inspired moments they created discrete institutions that were capable, in their view, of advancing both goals at once. Surely the most elegant of these dual-purpose devices is the large republic itself. According to Madison, the use of elected representatives facilitates the emergence of political virtue in a large republic. The effect of the electoral process, he argues, is

> to refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.[15]

A politics of virtue, then, is obtained in the first instance by the use of an electoral mechanism which, when utilized hy the citizenry in the proper spirit, will install in office the wisest and most virtuous representatives, who will then diligently pursue the common good.

On the other hand, Madison immediately acknowledges, "the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigne, by corruption, or hy other means, first obtain the suffrages, and then betray the interests of the people."[16] To guard against the emergence of this kind of factional politics of self-interest, says Madison, the republic must be made as large as possible. This has two effects. First, because a large repuhlic will have larger election districts than a small one, each voter in a large republic will have more good candidates to choose from, thereby leading to "a greater probability of a fit choice."[17] Second, the large size of election districts in a large republic means that any successful candidate must attract the support of more voters than would be the case in a small republic with smaller elec-

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12. The Federalist No. 57 (James Madison), supra note 6, at 350.

13. The Federalist No. 10, supra note 6, at 80.

14. Among the devices the Framers intended to reduce the potency of majority factions are federalism, separation of powers, and judicial review.

15. The Federalist No. 10, supra note 6, at 82.

16. Id.

17. Id.

tion districts. This works to the benefit of the better quality candidates, Madison argues, because

> it will be more difficult for unworthy candidates to practise with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center on men who possess the most attractive merit and the most diffusive and established characters.[18]

Finally, large election districts also impede the ability of factions to coalesce and to elect venal candidates because each election district is likely to be large enough to contain "a greater variety of parties and interests" than would a small election district, thereby reducing the likelihood that a faction will form a majority within any district.[19]

Creating a large republic, then, performs an invaluable function. By simultaneously facilitating the election of virtuous candidates and impeding the election of factious ones, the large republic spares us the need to trust our fate entirely either to political virtue or vice. We need not wait passively for virtue to appear, yet neither need we give up on virtue altogether and steel ourselves to resist as best we can the inevitable outbreaks of self-interest. Instead of choosing one or the other, we choose both, equipping ourselves adequately for each occasion.

The possibility that certain institutions can produce good government regardless of whether the citizenry behaves well or badly presents an extremely attractive solution to what might otherwise be a thorny dilemma. Without such institutions, constitutional designers would have to choose whether to stress the pursuit and cultivation of political virtue or whether to concentrate on controlling political self-interest. Neither choice is particularly tempting: the first seems unrealistic and perhaps dangerously utopian; the second seems to capitulate at the outset to the worst of human impulses. A governmental structure that would simultaneously encourage virtue to flourish and take full advantage of it whenever it appeared, yet which would also be well-prepared to confront and confine self-interested political behavior to prevent it from causing serious damage to the nation, is undoubtedly just what the doctor ordered. The promise of avoiding difficult moral choices through clever institutional design I call "Madison's hope."

One of the anomalies of the Framers' political thought is that they never seemed to apply the methodology of Madison's hope to the institution of political parties. Evidently assuming that parties were suited exclusively to the coordination and expression of self-interest, they gave no serious consideration to the possibility that party institutions, like other institutions of democracy, could be shaped in such a way that they might also serve, under the right conditions, as vehicles for the emergence and transmission of political virtue. My goal in this Article is to consider, fol-

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18. Id. at 82–83.
19. Id. at 83.

lowing Madison in spirit if not always in his assumptions, whether parties can serve political virtue, and if they can, whether there is some regulatory regime that can be imposed upon parties that would enable them to serve simultaneously as conduits of virtue and bulwarks against unconstrained factionalism.

The balance of the Article is organized as follows. Part 1l describes the three main models of politics in American political thought—republicanism, populism, and interest pluralism—and examines briefly the role that political parties might play in each model. Part 1lI asks whether the existence of political parties and the achievement of political virtue are so fundamentally in tension at some theoretical level that inquiry into the structure and regulation of party politics would be pointless. I conclude that the existence of parties is in significant tension with the assumptions of republicanism, the model of politics generally embraced by the founding generation, but that there is no insurmountable tension between parties and the assumptions of populism, republicanism's principal successor.

In Part IV, I apply Madison's hope to the institutional desigu of political parties. This analysis proceeds in two steps. First, I set out the features that political parties must possess if they are to contribute effectively to achievement of the common good according to the assumptions of populism and interest pluralism, respectively. This yields two different ideal regulatory regimes. I then analyze how parties behave under each of these regulatory regimes when their primary assumptions about political virtue and self-interest are violated. From this analysis, I conclude that Madison's hope is not well founded when it comes to the design of party institutions: party institutions that function well when party members behave virtuously are unlikely to perform well in the presence of self-interested political behavior, and vice versa. While this does not mean that parties cannot be vehicles for the achievement of political virtue, it does mean that structuring parties in a way that makes them responsive to virtue also makes them extremely vulnerable, when party members behave self-interestedly, to a collapse into an unfair and inefficient kind of pluralism. Finally, Part V asks whether any kind of party system, however structured, inevitably teaches citizens the desirability and efficacy of self-interested political behavior, thereby undermining any possibility that might otherwise remain for parties to serve political virtue. I conclude that such an effect is possible, and at the very least cannot be ruled out.

1l. POLITICS AND PARTIES: THE PRINCIPAL MODELS

lan Shapiro, discussing the concept of majority rule, once complained that "[i]t is remarkable that so little of the literature in democratic theory attends to the question of what politics is about. Yet any evaluation of majority rule as a decision-making mechanism must surely be parasitic on a view of politics, or we are without criteria to judge its

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success or failure."[20] A decade later, his complaint is still valid. It can be applied not just to discussion of majority rule, but also to the discourse concerning most institutions of democratic government, including political parties.

When we take up Shapiro's challenge and ask what politics is *for*, what purposes it ought to serve, it is possible to discern in American political thought two distinct, venerable, and largely incompatible models of politics. The first and by far the older model holds that the purpose of politics is to identify and achieve the common good of society. Politics, on this view, is the forum in which truth emerges and is applied for the benefit of all. It is an arena in which actors are expected to behave virtuously, and where virtue is measured in part by the willingness to value the good of all ahead of private interests and to act accordingly. This model may be further subdivided into two principal schools. One school of thought, which I shall call *republican*, holds that democratic societies discover the common good by electing wise and virtuous representatives, who then use these characteristics to deliberate upon, identify, and implement society's good. A second and generally more recent school of thought, which I shall call *populist*, holds that the main repository of wisdom and virtue in any society is the people themselves rather than their representatives.[21] On this account, the people decide collectively upon the common good and then elect representatives whose principal responsibility is to implement the common good as the people have decreed it.

The second major model of politics found in American political thought is the model of *interest pluralism*. By interest pluralism, 1 mean the notion that politics consists of a competitive struggle among the groups and individuals comprising society for control over governmental power. On this model, the common good emerges through the political negotiations and adjustments that occur when all political actors treat politics as a forum for the pursuit of private self-interest.

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20. Ian Shapiro, Three Fallacies Concerning Majorities, Minorities, and Democratic Politics, *in* Nomos XXXII: Majorities and Minorities 79, 113 (John W. Chapman & Alan Wertheimer eds., 1990).

21. By using the term "populism" I do not mean to suggest any direct link to the late nineteenth-century agrarian populism of the Populist Party itself. It has been suggested to me that the activities of these Populists could easily be characterized as motivated by a self-interested desire for wealth transfers from the urban rich rather than by a virtuous belief in a particular conception of the common good. While I believe this argument proves too much—any conception of the common good can be subjected to the kind of reductionist utilitarian analysis that deems every belief motivated by some kind of self-interest, see, e.g., Donald P. Green & Ian Shapiro, Pathologies of Rational Choice Theory: A Critique of Applications in Political Science 34–37 (1994)—the dispute is not essential to my argument. I use the term here only for the limited purpose described in the text: to stand for the belief that the people are wise and virtuous and should thus exercise primary political responsibility for choosing policy goals and means. For a similar usage, see James A. Morone, The Democratic Wish: Popular Participation and the Limits of American Government 5 (rev. ed. 1998) (describing as the "populist ideal" the belief that "[t]he people are wiser than their governors").

The sections below describe these three models of politics in some-what more detail,[22] and explore briefly what role political parties might play in each model. As we shall see, each model of politics squares rather well with a familiar model of political parties. Republicanism fits well with the assumptions of nonpartisanship; populism pairs nicely with what is often called the responsible party model; and interest pluralism squares up well against a contemporary model that might be called the pressure group, or polyarchy, model of party behavior.

A. *Republicanism and the Nonpartisanship Model*

The generation that founded the United States and decided upon the initial structure of its political institutions inherited and embraced two basic ideas concerning the nature of politics: first, that the common good of society was objective and capable of discovery; and second, that politics was the means by which the objectively knowable common good was revealed to society's members. The idea that society has a single, objective common good falls within a long tradition in western thought that goes back at least as far as Plato, and grows logically out of the platonic understanding of the world as a harmonious whole in which the good of one part is necessarily linked organically to the good of the entirety.[23] By various routes,[24] these ideas exercised a significant influence on the American founding generation. For example, Jefferson's insistence in the Declaration of Independence that certain "truths" are "self-evident"[25] marks him, according to Morton White, as a "moral rationalist"[26]—one who holds that "we use our intuitive reason in perceiving self-evident truths of natural law."[27] The notion of an objective common good persisted long after the founding to become a staple of American political thought. For example, early twentieth-century Progressives held that "there was a public interest which could be defined objectively and which, if implemented, would benefit all citizens equally."[28]

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22. Space limitations prevent me from giving the kind of thorough account of these models of politics that they deserve. I set out a much fuller account of republicanism and populism in James A. Gardner, Madison's Hope: Virtue, Self-Interest, and the Design of Electoral Systems, 86 Iowa L. Rev. (forthcoming 2000).

23. See Virginia Held, The Public Interest and Individual Interests 136–40 (1970).

24. Contrary to the sometimes reductivist atomistic view of liberalism, an emphasis on political virtue is inscribed at the deepest levels of liberal thought. See, e.g., Wilmoore Kendall, John Locke and the Doctrine of Majority-Rule 134 (1965); John Dunn, Trust and Political Agency, *in* Interpreting Political Responsibility: Essays 1981–1989 at 26, 35 (1990); Peter Laslett, Introduction to John Locke, Two Treatises of Government 3 (Peter Laslett ed., Mentor 1960) (all arguing that a belief in the inherent virtue of the average person is implicit in Locke's political thought).

25. The Declaration of Independence para. 2 (U.S. 1776).

26. Morton White, The Philosophy of the American Revolution 77 (1978).

27. Id. at 61.

28. Dennis R. Judd, The Politics of American Cities: Private Power and Public Policy 101 (1979).

In political thought, to postulate the existence of an objective common good tells only half the story, for it says nothing about how the common good can be known and realized. In western political thought, the role of identifying and implementing the common good is typically assigned to politics.[29] This, too, is an idea that deeply influenced American political thought. An emphasis on virtue in politics was, of course, a staple of Anti-federalism,[30] but even Federalists expected "the majority of citizens and, even more so, most rulers to be 'virtuous' most of the time."[31] Americans of the Jacksonian period carried forward the republican ideology of politics as an arena of virtue, an attitude which produced "a disposition to see politics as a struggle between good and evil, expressed as the eternal warfare between liberty and power, virtue and corruption."[32] A century later, Progressive reformers revived the Jacksonian agenda by seeking to eliminate corruption from and restore purity to politics.[33] On the Progressive ideal, officials were "expected to make decisions on the basis of what they perceived to be good for the entire city, not just one geographic or social segment of it."[34] From this perspective, then, politics is understood to be an arena in which private, selfish interests are set aside and in which all political actors work together to discern the common good and to take collective action to achieve it.

This view of politics leads, finally, to an epistemological question: if society has some objective common good that it is the function of politics to identify, how precisely can a democratic political system lead society to discover it? Republicanism holds, quite straightforwardly, that democratic societies discover the common good by electing wise and virtuous representatives to do it for them. Through a process of legislative deliberation, the representatives find the common good and then use governmental power to achieve it.

Once again, this model of politics has ancient roots: "Immemorial practice and an enormous weight of political theory accepted that the character and quality of a people depended on the good influence of their government and also taught that this required attention to the vir-

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29. As Theresa Man Ling Lee has observed, this linkage occurred from the very beginning: Plato's *Republic* is nothing less than an "attempt to establish the claim of truth to sovereignty." Theresa Man Ling Lee, Politics and Truth: Political Theory and the Postmodernist Challenge 15 (1997).

30. See, e.g., Herbert J. Storing, 1 The Complete Anti-Federalist 20–21 (1981); Wilson Carey McWilliams, The Anti-Federalists, Representation, and Party, 84 Nw. L. Rev. 12 (1989).

31. Richard C. Sinopoli, The Foundations of American Citizenship: Liberalism, the Constitution, and Civic Virtue 7 (1992).

32. Harry L. Watson, Liberty and Power: The Politics of Jacksonian America 47 (1990).

33. See Richard Hofstadter, The Age of Reform 8–9 (1955).

34. Richard L. Engstrom & Michael D. McDonald, The Effect of At-Large Versus District Elections on Racial Representation in U.S. Municipalities, *in* Electoral Laws and Their Political Consequences 203, 203 (Bernard Grofman & Arend Lijphart eds., 1986).

tue of the rulers, assumed to be a prince or some sort of aristocracy."[35] By the Enlightenment, however, this concept was replaced by the idea of what Jefferson, echoing contemporaneous political terminology, called a "natural aristocracy"[36]—one based not on birth but on merit. So conceived, the republican model contemplates an extremely clear division of political labor.[37] The job of the people is to use their judgment regarding individual qualities and character to select the wisest and most virtuous representatives; this task exhausts the limits of their competency.[38] The job of those selected, in turn, is to use their gifts of intellect and character to identify and implement the common good.

None of republicanism's necessary assumptions expressly contemplates a role for political parties. If there is nevertheless room for parties in the republican model, what role might they play in political affairs? Answering this question requires attending to the purposes and methods of politics as republicanism conceives them. According to republicanism, the purpose of electoral politics is quite limited: to identify the wisest and most virtuous individuals, and to install them in office. If we think of parties as organizations the main function of which is to assist citizens in the performance of their political obligations, then the appropriate function of parties on republican assumptions would be to assist voters in the identification of the best qualified candidates. On republican assumptions, however, a party's search for candidates must be limited to assessing their personal characteristics—their wisdom and virtue. A candidate's positions on the issues can play no part in the decision making process. It is not for voters, on this model, to decide for themselves what policies are most conducive to the common good; that job is reserved for elected representatives to perform in the course of legislative deliberations. For the same reason, republicanism insists that parties bring to the process of candidate identification and recruitment no ideological predispositions based on policy preferences.

This model of party behavior accords well with a political system found widely throughout the United States: the system of nonpartisanship, currently used in a majority of local American jurisdictions.[39] In the

35. Ralph Ketcham, Presidents Above Party: The First American Presidency, 1789–1829, at 78 (1984).

36. Letter from Thomas Jefferson to John Adams (Oct. 28, 1813), *in* The Life and Selected Writings of Thomas Jefferson 579 (Adrienne Koch ed., 1972).

37. On the division of political labor see Ernest Barker, Reflections on Government 38–47 (1942); John Dunn, What is Living and What is Dead in John Locke, *in* Interpreting Political Responsibility: Essays 1981–1989, at 9, 24 (1990); Dunn, supra note 24, at 40–41. Such a division of labor, to succeed, must be based on considerable mutual trust among society's members. See Trust and Governance (Valerie Braithwaite & Margaret Levi, eds. 1998); Kendall, supra note 24; Willmoore Kendall, The Two Majorities, 4 Midwest J. of Political Science 317, 324 (1960).

38. See, e.g., Baron de Montesquieu, The Spirit of the Laws 9–10 (Thomas Nugent trans., Hafner 1949) (1751)

39. Carol A. Cassel, The Nonpartisan Ballot in the United States, *in* Electoral Laws and Their Consequences, supra note 34, at 226.

typical nonpartisan election, neither candidates nor voters take up party
labels and there is no overt party competition. Candidates are typically
identified and recruited by a single, central and all-inclusive citizens' or-
ganization—the "party," in this context[40]—which purports to choose can-
didates not on the basis of their policy views, but on the basis of their
general competence and qualifications for the office in question. In-
deed, nonpartisanship is premised on the Progressive belief that most is-
sues of local governance are inherently apolitical because they admit of
only one correct answer,[41] a belief that makes ideologically-oriented polit-
ical competition superfluous. The party, in this system, is more like a
committee of the electorate-at-large, acting on behalf of the group in ex-
ercising a limited, delegated responsibility.

B. *Populism and the Model of Responsible Parties*

Republican ideology was soon overtaken in American political
thought by a rather different conception of how democratic politics iden-
tifies and implements the common good. Under the influence of an em-
phatically leveling notion of equality, Americans, in Gordon Wood's
words, "came to believe that no one in a basic down-to-earth and day-in-
and-day-out manner was really better than anyone else. . . . Good republi-
cans had to believe in the common sense of the common people."[42] By
the Jacksonian period, "a strident egalitarianism had become the staple
of American political rhetoric."[43] Politicians of this era professed "an ap-
preciation of the common man, and a desire to serve his needs and aspi-
rations."[44] This faith in the common person rested on a belief in the
purity of the popular will and on the people's responsiveness to rational
argument—qualities that Jacksonians, following Jefferson, often attrib-
uted to the independence and self-sufficiency of what they took to be the
typical American yeoman.[45] Jacksonians thus claimed, loudly and repeat-
edly, that the people were "good, trustworthy, and capable of self-rule."[46]
They held, moreover, that any problems in the operation of democratic
self-rule were not caused by the people, who remained virtuous and rea-
sonable, but by politicians or government officials who had become cor-

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40. Nonpartisanship is something of a misnomer; it does not typically refer to an
absence of political organization so much as an absence of formal party labels. See Charles
R. Adrian, Some General Characteristics of Nonpartisan Elections, 46 Am. Pol. Sci. Rev.
766, 766–67 (1952)

41. See Samuel Haber, Efficiency and Uplift: Scientific Management in the
Progressive Era, 1890–1920, at 102–03 (1964); Hofstadter, supra note 33, at 101, 116; Leon
Weaver, Nonpartisan Elections in Local Government: Some Key Issues and Suggested
Guide Lines for Decision-Making 20 (1971).

42. Wood, supra note 8, at 234–35.

43. Watson, supra note 32, at 5.

44. Glyndon G. Van Deusen, The Jacksonian Era, 1828–1848, at xi (1959).

45. Marvin Meyers, The Jacksonian Persuasion: Politics and Belief 19–21 (2d ed.
1960).

46. Robert V. Remini, The Jacksonian Era 26 (1989).

rupted and who had in consequence betrayed the people's true interests.[47]

This formulation—a virtuous and competent citizenry whose will had been obstructed either by corrupt individuals or unsuitable governmental structures and institutions—continued to dominate American public political thought through the nineteenth century and on into the twentieth, and found its most sophisticated articulation in the thought of the Progressives. At the center of the Progressive democratic ideology lay the conviction that the average contemporary American citizen is fully competent to exercise extremely close oversight and control over the apparatus of government.[48] Progressives put these beliefs into practice by a carefully coordinated and extremely successful campaign for political reform. Among their widely adopted innovations are such now-familiar mechanisms of direct democracy as the initiative, referendum, direct primary, and recall election.[49] They also sought to tighten popular control over government through extension of the franchise to women, popular election of Senators, improved voter registration systems, corrupt practices acts, and the short ballot.[50] In introducing these innovations, Progressives took a view of the function of representation that could not have been more different from its republican predecessor: far from exercising independence based on their wisdom and virtue, government officials, on the Progressive view, "served as little more than highly intelligent coordinators who responded to all manner of rational public demands, integrated them, and arranged for their fulfillment."[51]

The notion that the people are competent and virtuous, and that the common good is best identified by them and implemented according to their instructions, raises the question of precisely how the people are to decide where the public good lies. The belief that some group of decision makers is wise and virtuous has long been linked with the idea that the majority of the group is more likely to be right than the minority. According to Willmoore Kendall, "[t]he proposition that there is resident in the majority a certain virtue which, outweighing all the claims of expertise or intellectual superiority, gives it the right to make final decisions affecting the welfare of the state, was more or less a commonplace in the utterances of the democratic statesmen of the ancient world."[52]

By the time of the Enlightenment, some natural law theorists seemed to try to avoid defending majority rule on these grounds, preferring to justify it on some kind of logic inherent in the natural world. Grotius, for example, wrote that it must be the wish of any association to have some way of "conducting business." "[I]t is manifestly unfair," he argued, "that

47. See Meyers, supra note 45, at 402–04.
48. See Benjamin Parke De Witt, The Progressive Movement 143 (1915).
49. See id. 189–243.
50. See id.
51. Robert H. Wiebe, The Search for Order 1877–1920, at 162 (1967).
52. Kendall, supra note 24, at 12–13.

the majority should be ruled by the minority. Therefore, naturally, the majority has the same right as the entire body."[53] In a famous passage, Locke also appealed to a kind of natural logic:

> when any number of men have . . . made a community . . . with a power to act as one body, [it] is only by the will and determination of the majority; for . . . it being necessary to that which is one body to move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority; or else it is impossible it should act or continue one body . . . ; and so every one is bound by [his or her] consent to be concluded by the majority.[54]

Because Americans inherited the principle of majority rule, and because its underlying assumptions so closely track other leading assumptions about politics, American political actors have rarely felt a need to articulate justifications of any sophistication for majority rule. Nevertheless, it is clear that support for majority rule has often been associated with the populist conception of politics. Andrew Jackson, for example, frequently referred to the importance of majority rule.[55] Populists held that "'[t]he way to discover the general will, which is the objectively correct common interest of the incorporated citizens, is to compute it by consulting the citizens."[56] Progressives similarly claimed that their institutional reforms would "give to a majority of the people . . . an easy, direct, and certain control over their government."[57]

As with republicanism, populism assumes no conditions that expressly require political parties for their fulfillment. Nevertheless, it seems clear that political parties could play a potentially important role in a populist democracy. On populist assumptions, the purpose of electoral politics is, first, to enable the people to come to some collective conclusion about what policies best achieve the common good; and second, to install in office some set of candidates committed to the implementation of the policies the people have selected. If the function of parties is to assist voters in the performance of these responsibilities, they could do so by, for example, collecting and organizing information on policy alternatives; sifting and analyzing this information, perhaps evaluating the merits of competing policies; recruiting candidates committed to pursue some

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53. Hugo Grotius, De Jure Belli Ac Pacis Libri Tres, Bk. II, ch. V, sec. XVII, at 249 (F. Kelsey trans., 1925) (1646).

54. John Locke, The Second Treatise of Government 55 (C.B. Macpherson, ed. 1980) (1690). See also Jean-Jacques Rousseau, The Social Contract 83, 153 (Maurice Cranston trans., Penguin 1968) (1762).

55. See Robert G. Dixon, Jr., Democratic Representation: Reapportionment in Law and Politics 42–44 (1968); Robert V. Remini, 3 Andrew Jackson and the Course of American Democracy, 1833–1845, at xiv (1984).

56. William H. Riker, Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice 11 (1982).

57. De Witt, supra note 48, at 196.

set of policies; and, if voters so desire, endorsing and recommending poli-
cies and candidates to the membership.

If this list of party activities sounds familiar, it should: it closely re-
sembles the list of party functions associated with the responsible party
model of government toward which the Progressives gestured,[58] and
which political scientists worked out more fully during the 1940s and
1950s.[59] According to the responsible party model, which is usually,
though perhaps not inevitably, associated with the two-party system,[60] the
purpose of political parties is to act as "agencies of the electorate"[61]—a
role that requires them to "develop and define policy alternatives on mat-
ters likely to be of interest to the whole country."[62] As the democratic
theorist Ernest Barker wrote in 1942, the electorate on this model "pri-
marily selects men; but by doing so it also selects a policy . . . . It instructs
the men, whom it has elected, to carry discussion to a further and finer
point in a legislative assembly; it instructs them to discuss the translation
of the programme, for which they stand and on which they have been
elected, into a body of general rules, or laws . . . ."[63] The program of a
responsible party is thus "a coherent and logically connected whole"[64]
that reflects the rational beliefs of party adherents.

C. Interest Pluralism and the Pressure-Group Model

The last major model of politics and historically the most recent is
interest pluralism, a model that rests on an assumption completely con-
trary to the assumptions of republicanism and populism. According to
the theory of interest pluralism, groups and individuals seek power not to
realize the common good but for the purpose of using power to pursue
their own self-interest.[65] What makes this such a dramatic departure
from republicanism and populism is that it places at the center of polit-

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58. See Progressive Party Platform of 1912, reprinted in The Progressive Movement
1900–1915, at 128 (Richard Hofstadter ed., 1963) ("Political parties exist to secure
responsible government and to execute the will of the people.").

59. See American Political Science Association, Committee on Political Parties,
Report: Toward a More Responsible Two-Party System, 44 Am. Pol. Sci. Rev. Supp. (1950).

60. Extremely useful discussions of the two-party responsible party model can be
found in Richard S. Katz, A Theory of Parties and Electoral Systems (1980) and Austin
Ranney, The Doctrine of Responsible Party Government: Its Origins and Present State
(1962). For an interesting discussion of the ideological context in which the two-party
model developed, see Lisa Disch, Party Discipline: American Political Science Constructs
the "Two-Party System"—1942–1964 (1998) (unpublished manuscript delivered at the
1998 American Political Science Association Annual Conference, on file with the Columbia
Law Review).

61. American Political Science Association, supra note 59, at 16.

62. Id. at 20.

63. Ernest Barker, Reflections on Government 41 (1942).

64. Peter Mair, Party System Change: Approaches and Interpretations 94 (1997).

65. See Cass R. Sunstein, Interest Groups in American Public Law, 38 Stan. L. Rev. 29,
32–33 (1985); Jane J. Mansbridge, The Rise and Fall of Self-Interest in the Explanation of
Political Life, in Beyond Self-Interest 3, 8–9 (Jane J. Mansbridge ed., 1990).

ical life, approvingly, a kind of behavior that is the very antithesis of the behavior that prior models deemed virtuous. Virtue, in interest pluralism, is replaced by vice.

The seeds of interest pluralism as a political theory were sown in the eighteenth century when Adam Smith's theory of economic markets provided a basis for legitimating the pursuit of self-interest.[66] According to Smith, self-interested economic behavior benefits not merely the individuals who pursue it, but society as a whole because it leads to the efficient allocation of resources.[67] In the mid-nineteenth century, the founders of utilitarianism refined and formalized this idea and generalized it into a full-blown theory of politics. According to utilitarianism, a good society is one that achieves the greatest good of the greatest number. Consequently, the only proper goal of society is to maximize overall utility. Overall utility, in turn, is understood simply as the sum of the individual utilities of each member of society.[68] Individuals, for their part, maximize their own utility simply by pursuing their personal self-interest however they are able.

Utilitarianism provides, then, that political actions are best understood as attempts by individuals to maximize their own personal utility. This means, of course, that all public and political acts are by definition taken in pursuit of private self-interest.[69] Although this leads to a political life of competitive struggle,[70] the overall effect is good: the political process of bargaining and compromise through which citizens maximize their own individual utility also leads to the maximization of overall social utility and, consequently, to the good of the society in a genuinely ethical sense. Today, the utilitarian assumption of rational utility-maximization through self-interested political behavior provides the standard premise of virtually every kind of political science analysis from the most empirical observational work to the most abstract and theoretical aspects of public choice theory.[71]

The purpose of electoral politics, then, on the assumptions of interest pluralism, is to produce a legislature that will enact policies which maximize overall social utility. In general, this is said to happen most effectively through a free process of legislative negotiation and logrolling

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66. See Ketcham, supra note 35, at 22–28.

67. See Adam Smith, An Inquiry into The Wealth of Nations Bk. I (Richard F. Teichgraeber ed., Random House 1985) (1776).

68. Jeremy Bentbam, An Introduction to the Principles of Morals and Legislation, at 3 (Prometheus Books 1988) (1781) ("The interest of the community then is, what? —the sum of the interests of the several members who compose it.").

69. See id. at 4–5.

70. Cf. Joseph A. Schumpeter, Capitalism, Socialism and Democracy 269 (1976) ("[T]he democratic method is that institutional arrangement . . . in which individuals acquire the power to decide by means of a competitive struggle for the people's vote.").

71. See James A. Gardner, Stop Me Before I Quantify Again: The Role of Political Science in the Study of Election Law, 32 Loy. L.A. L. Rev. 1141 (1999); Mansbridge, supra note 65, at 10–12.

in which each legislator attempts to advance the self-interest of his or her constituents. It follows that electoral politics on this model consists of a process in which voters attempt to organize themselves into groups with common interests for the effective promotion of those interests within the legislature. Among the things that voters might need to do to accomplish these goals are: identifying their own self-interest; finding and joining forces with other voters with similar interests; identifying candidates willing and able to press those interests in the legislature; and engaging in private negotiations to attract enough support for those candidates to get them elected.

Because interest pluralism contemplates that voters may act in groups, political parties have a special place in this model of politics. Moreover, given the intimate connection between interest pluralism and contemporary political science, it should hardly be surprising that the kind of party behavior contemplated by interest pluralism looks much like the pressure-group model of political parties that dominates contemporary political science.[72] Although the pressure-group model comes in many variations, it generally contemplates that political parties will do things like collect information, sift and analyze policy data, evaluate the impact of policy alternatives on the self-interest of party members, identify and recruit new party members and appropriate candidates, work toward the nomination and election of candidates who will serve party members' interests, and work to assure that party candidates who attain office pursue the interests of party members.

III. CAN THE EXISTENCE OF PARTIES BE RECONCILED WITH THE PURSUIT OF POLITICAL VIRTUE?

With this conceptual groundwork laid, we may now proceed to the main question addressed in this Article: can parties serve political virtue? Can they, that is, play some role in a selfless search for the common good, or must they inevitably degenerate into instruments for the self-interested seeking of private benefits? I begin with a threshold inquiry. The Framers apparently did not give serious consideration to the possibility that political parties can promote political virtue, assuming instead that parties are inevitably vehicles for the pursuit of self-interest. One possible reason for this reaction could be that the Framers saw some inherent contradiction between partisanship and the pursuit of political virtue, one to them so clear as to make extended discussion unnecessary. In this Part, I argue that there are good grounds for perceiving such a contradiction between the assumptions of republicanism and the nature of party competition. However, since the assumptions of republicanism have fallen out of favor, this contradiction need not concern us much today. A more serious potential problem concerns the tension between populist

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72. Two of the fountainheads of this approach are Robert A. Dahl, A Preface to Democratic Theory (1956) and Schumpeter, supra note 70.

majoritarianism and practices that create a party elite. This tension can be resolved, however, through the use of popular methods of internal party control. Consequently, there seems to be no irresolvable theoretical contradiction between parties and the assumptions underlying a populist politics of virtue.

A. *Party Competition and Republicanism*

Republicanism holds that political systems achieve the common good by electing the best and most virtuous individuals to public office. On this model, the only issues voters ever need address concern the personal qualities—the intelligence, judgment, or character—of candidates for office; policy judgments form no part of electoral politics. Republicanism thus by definition excludes the possibility of party differentiation on policy matters. Any such differentiation can relate only to the relative merits of the candidates' characters or wisdom.

While it is certainly possible for people to differ in their evaluation of candidates' fitness for elective office, it is hard to imagine this kind of dispute providing an adequate basis for anything that we might think of as party competition. The identity of candidates changes at every election, so no political party could easily endure beyond a single election cycle. There is, moreover, something strange and unseemly in the idea of an entire politics consisting of discussion of nothing but the wisdom and character of candidates for office. It is hard to imagine any group of self-respecting citizens organizing for the purpose of carrying on such a politics. Of course, one must never underestimate the ability of the electorate to behave basely: in keeping with the assumptions of republicanism, one of the earliest forms of electoral politics in the United States was (and remains) character assassination.[73] Nevertheless, a political party devoted solely to attacking or extolling the reputations of some set of individuals seems improbable in a system devoted to cultivating virtue.

A more direct impediment to a successful party politics of republicanism is the severe constraint that republicanism places on the ability of candidates to campaign personally for office. However one might judge political competition by proxies, it seems clear on republican assumptions that to campaign for votes on the basis of one's own intelligence and character would demonstrate immediately a disqualifying lack of virtue and judgment. Consistent with this view, the first six American presidents, however badly they may have wanted the job, did not run for office, but stood for it instead. To do otherwise would have undermined

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73. For example, Jefferson was accused of maintaining "a Congo harem" of slaves as his mistresses, see Alf J. Mapp, Jr., Thomas Jefferson: Passionate Pilgrim 33–35 (1991), of obtaining his estate by defrauding widows and orphans, and was referred to by New England preachers as "a spendthrift, a libertine, or an atheist." Alf J. Mapp, Jr., Thomas Jefferson: A Strange Case of Mistaken Identity 385–86 (1987).

the image of nonpartisan virtue each thought it necessary for an effective chief executive to maintain.[74]

These considerations suggest why, in practice, republicanism has evolved into a form of nonpartisanship in which there is no recognizable party competition. Instead of competitive partisan debate over the merits of the candidates' personal qualities, candidates tend to be recruited and nominated, quietly, by a single, jurisdiction-wide nominating group that is, certainly in theory, totally inclusive and partakes more of the character of a committee appointed by the entire electorate than of a party organization serving any subset of the whole. Such a model fits far more comfortably with the kind of electoral process republicanism contemplates, one in which little or nothing need be said about a candidate's character because the candidate's reputation speaks for itself.

While the tension between party competition and a politics of virtue might have seemed acute to a founding generation that embraced republicanism, it is largely irrelevant in the current political era, which tends to embrace populism as its principal paradigm of a politics of virtue. Of much greater potential concern, then, is any tension between the existence of political parties and populism's ability, on its own assumptions, to implement political virtue.

B. *Party Leadership and Populist Majoritarianism*

According to the populist model, the main purpose of politics is to provide a forum in which the people may collectively identify the content of the common good and decide which policies are best suited to bring it into effect. Secondarily, politics also must result in the election of officials committed to carrying out the policies selected by the people. As we have seen, nothing in populism's main assumptions contemplates any particular role for political parties. If the people are not to settle on their policy and candidate choices through the efforts and intermediation of parties, how exactly does populism contemplate that they will do so? This is a difficult question to answer because it seems quite likely that those who worked out the contours of populist thought, like their republican predecessors, did not so much deliberately exclude parties from their conception of politics as simply give no thought at all to the role that parties might play in political life.[75]

To a great extent, then, it seems that the baseline assumption of both populism and republicanism is that a politics of virtue will emerge spontaneously; that is, voters will spontaneously converge on the best policies, and appropriate candidates will be spontaneously identified and somehow brought forward and elected. Strong evidence for an assumption of spontaneity can be found in the robust, sometimes revered, American traditions of signature-gathering and write-in voting as avenues for the

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74. See Ketcham, supra note 35, at 89–140.
75. See Hofstadter, supra note 1, at 50–52.

nomination and election of candidates. It is often argued that these methods of election constitute a kind of backstop against corruption or factional tyranny insofar as they leave open the possibility that the people will reject the establishment candidates and spontaneously elevate to office a virtuous outsider who, unlike the parties' minions, will represent the people's true interests.[76]

The reality of mass democracy, however, makes it clear that voters generally either cannot or will not perform all the functions associated with a spontaneous, grassroots politics of virtue,[77] and that parties are necessary to perform many of the functions required to nominate and elect appropriate candidates. Someone, in other words, must collect information on policy alternatives, sift it, analyze and evaluate policies, identify and recruit candidates, and so forth. When we say that "parties" will perform these services, however, we really mean something different: we mean that *party officials* will do so. If the entire membership of a political party were involved directly in these tasks, a spontaneous populist politics might be possible. That a party is needed to assist voters means that voters do not care to do all the necessary legwork themselves, but wish instead to delegate those tasks to a small number of individuals who are the actual eyes, ears, arms and legs of the predominantly passive party membership.[78]

The delegation of these responsibilities to a small number of party insiders raises a question that, on populist assumptions, is somewhat troubling: what qualifies party officials to perform these critical functions? What guarantees that officials will do these jobs properly, to say nothing of virtuously? The stakes, it must be remembered, are high: if officials misconstrue the common good, or erroneously analyze policy alternatives or candidate qualifications, the chances are slim that the legislature will be in a position to effectuate the good of society.

One way to assure that party officials perform their critical functions effectively is to require that they have some kind of appropriate expertise. Yet to hypothesize some kind of expertise in such matters seems to assume the very kind of elitism that populism denies. Populists have responded to this difficulty in two ways. Andrew Jackson, for example, held that the kind of work associated with governance and politics was so simple and so basic that it did not require any expertise—anyone could do

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76. Issacharoff and Pildes have made much the same point, albeit using the language of public choice theory. See Samuel Issacharoff & Richard H. Pildes, Politics as Markets: Partisan Lockups of the Democratic Process, 50 Stan. L. Rev. 643, 668–87 (1998).

77. This is the main thrust of the last four decades of political science literature concerning voting behavior: voters are shown to fall short of the responsible party model ideal. See, e.g., Angus Campbell, et al., The American Voter (1960); Eric R.A.N. Smith, The Unchanging American Voter (1989).

78. See Daniel Ortiz & Samuel Issacharoff, Governing Through Intermediaries 85 Va. L. Rev. 1627 (1999) (describing in economic terms the cost advantages to voters of utilizing parties as political agents).

it.[79] On this view, a political "expert" is nothing more than an ordinary citizen with the time and resources to do a thorough job. Yet this hardly seems an adequate account: populist assumptions rule out the possibility that the judgment of a few people, even typical ones, is comparable to the judgment of the people collectively.

The Progressives moved in the other direction. Deeply impressed by technology and the newly emerging field of scientific management,[80] Progressives affirmed that political affairs required significant expertise. It was thus necessary, in their scheme, to invent the notion of the apolitical expert. Progressive officials would be, in Nancy Schwartz's evocative formulation, "Kantian; the representative was to act as if he were everyman, and could attend to the public interest by thinking in general categories about the issues at hand."[81] But it is clear that reliance on the impartiality of party officials makes the party apparatus itself vulnerable to corruption if officials behave self-interestedly. Indeed, the Progressives themselves well knew that party officials could become corrupt: one of their main motivations was to eliminate machine politics, which they viewed as rotten to the core.[82]

In any case, populist assumptions point the way out of this dilemma. If the people know best, then the people must be brought into the process.[83] If the people will not participate in every stage of the process, they can at least be brought in periodically in ways that allow them to apply their collective judgment to the work of their delegates. To make sure party operatives do their work well and virtuously, parties must use broadly inclusive internal procedures. Ideally, perhaps, the selection of party leaders should be left to the membership through a process of democratic selection. At the very least, the ultimate choice of candidates must be reserved for the membership: parties must employ the mechanism of democratic primary elections. Indeed, the democratic primary was a frequent item on the Progressive reform agenda. The bottom line, then, is that although the delegation of important political tasks to party operatives is in some tension with the assumptions of populism, on all but the strictest populist models these tensions can be adequately resolved through the use of democratic internal party processes.

IV. MADISON'S HOPE AND THE REGULATION OF POLITICAL PARTIES

If no insurmountable theoretical impediment prevents a political party from serving as an agent of political virtue, is there some way to structure and regulate parties so as to increase the likelihood that they

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79. See Remini, supra note 46, at 24.

80. See Haber, supra note 41, at 107–11.

81. Nancy L. Schwartz, The Blue Guitar: Political Representation and Community 124 (1988).

82. See De Witt, supra note 48, at 23; Judd, supra note 28, at 94–97; William Allen White, The Old Order Changeth: A View of American Democracy 13–22 (1910).

83. Cf. Morone, supra note 21, at 112–13.

actually do so? An even more important design question from the point of view of Madison's hope is more complex: is it possible to design regulatory structures that will both facilitate the emergence of party virtue and, at the same time, impede the effectiveness of party behavior intended to serve self-interest? The analysis set out in this Part suggests that the answer is probably no. Madison's hope is unlikely to be realized in the regulation of political parties because the regulatory structures best suited to facilitating party virtue differ from those best suited to containing party self-interest within the bounds of fairness, and because neither structure handles both kinds of party behavior with equal adeptness. This does not mean that party politics cannot be virtuous, but it does mean that any party regulatory structure designed to make the best use of political virtue will likely be extremely vulnerable to unfair manipulation if voters behave self-interestedly.

A. *The Use of Ballot Access Conditions to Control Politics*

In our political system, the most important means of regulating the behavior of political parties is through the imposition of ballot access conditions. The selection of public officials is a critically important public function, one that is logically and quite properly committed to collective social control by society's only agent of collective action, the government. Because no person can legitimately hold public office except by first gaining access to the official ballot, society can gain a potentially significant degree of control over the nature of its politics through the establishment of ballot access conditions. This control, of course, is not complete; in an open society, for the most part, voters and parties can do what they please, creating whatever kind of politics they wish. Nevertheless, by dictating the conditions of ballot access, the state retains the ability to select certain types of candidates, and hence officials, that it has reason to prefer, a power that inevitably creates incentives for voters and parties to engage in whatever kind of politics is necessary to place a candidate on the ballot.

Indeed, through its control over ballot access, the state wields significant power to define, at least for official purposes, what constitutes a political party in the first place. We tend to have a fairly narrow view of what political parties are and what they do, doubtless a result of the broad similarity of mass political parties in most western democracies today. Yet what constitutes a "party" is completely contingent on what needs to be done to assist voters in the performance of their political responsibilities, something that of course turns on what voters contingently in fact do for themselves. If voters need help collecting and analyzing pertinent information, for example, there is no reason in principle to withhold the label of "party" from any organization that helps voters collect and analyze information for political purposes.

Ballot access conditions, however, dramatically alter this picture by creating a set of "official" parties—those authorized, through complete

compliance with such conditions, to nominate candidates onto the official ballot.[84] This is what distinguishes the Democratic or Republican Party from, say, the Sierra Club, which performs almost all of the same kinds of voter assistance functions that the "official" parties do: collecting and disseminating information of mutual interest to members; analyzing policy initiatives of concern to members; reporting on the relevant performance of officials; and endorsing policies and candidates based upon principles held in common by its membersbip.

Because ballot access conditions create incentives for parties to alter their behavior to satisfy the conditions of access, they have the power to influence the way in which politics is conducted. This means of course that ballot access conditions can and should be designed so as to effectuate some social conception of what politics ought to be. If we apply this insight to the populist and pluralist models of politics discussed earlier, we find that the goals of elections, and consequently the ideal conditions of ballot access, differ under the two models. In populism, the purpose of an election is to choose a set of policies for the government to pursue. The policies chosen should be those thought by a majority of the people to be the ones best suited to achieve the common good. It follows that ballot access conditions in a populist system should be designed to select for placement on the ballot those candidates who, on populist assumptions, are most likely to be committed to the objectively best set of policies. At the same time, populist ballot access conditions should, if possible, simultaneously screen out those candidates most likely to be committed to the pursuit of the self-interest of some faction.

At first glance, the situation under pluralism seems similar: the goal of an election should be to choose a set of policies for government to pursue, though here the desired policies are those that best aggregate private preferences to maximize utility. This impression is misleading. The selection of utility-maximizing policies is indeed the purpose of *pluralism*, but it is not the purpose of a *pluralist election*. The purpose of a pluralist election is to choose a set of representatives, each of whom is committed to some set of policy positions, to engage in a *final round of negotiation* within the legislature concerning the ultimate content of government policy. Unlike populism, in which final policy decisions are for the electorate, final policy decisions under interest pluralism are for the legislature, not the voters. Consequently, interest pluralism provides that ballot access conditions should be designed to produce candidates who are committed to advancing the private self-interest of sizable groups of voters. This difference turns out to have significant implications.

B. *Ideal Ballot Access Conditions under Populism*

Party candidates for office do not dot the natural landscape like wildflowers; they are rather the end products of a long internal process of

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84. See Samuel Issacharoff et al., The Law of Democracy 201–02 (1998).

party politics. If we know what kind of candidates we want a party's internal processes to produce, we must then ask just what internal party processes are best suited to produce such candidates. In a populist system, the ideal candidates are those who are most likely to be committed to the objectively best set of policy positions. How ought party processes to be structured if they are to produce such candidates? As we have seen, populism assumes that the common good is objective and unitary. For a party to bring forward candidates committed to a platform that is most likely to embody the common good, the party's internal mechanisms must be ones that identify the common good with the greatest possible accuracy. How can such accuracy be best assured?

As shown earlier, populism is linked closely to ideas about the wisdom of numbers. Although populism imputes to the ordinary person a considerable degree of moral insight and intelligence, it reserves its strongest claims of competence for the people collectively. In the search for the common good individuals may err, but the more people participate in the search, the more likely it is to proceed successfully.[85] That is why majoritarianism is so central to populism: the agreement of a popular majority represents the agreement of the largest number of people that any society is practically capable of marshaling. This observation suggests two conditions that internal party processes should meet if they are to have the best possible chance of accurately identifying the common good: first, party processes should be as inclusive as possible so as to involve the greatest possible numbers; and second, final policy decisions should be made by a majority.

What party processes, then, are the most inclusive? This is a question, unfortunately, that cannot be answered in the abstract because it is impossible to know what party processes are appropriate or feasible without also knowing what voters actually are capable of doing, and choose to do, for themselves. It is clear, however, that the less work voters themselves do, the more work they must delegate to fewer and fewer individuals, thereby reducing by hypothesis its likelihood of accurately identifying the common good. This argues for requiring voters to do as much as possible, something that could be accomplished by crafting ballot access conditions which exclude candidates from the ballot unless the parties nominating them comply with some sort of requirement of popular participation.

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85. Aristotle put the case for this proposition as well as anyone:
There is this to be said for the many: each of them by himself may not be of a good quality; but when they all come together it is possible that they may surpass—collectively and as a body, although not individually—the quality of the few best . . . . [W]hen there are many [who contribute to the process of deliberation], each has his share of goodness and practical wisdom; and, when all meet together, the people may thus become like a single person, who, as he has many feet, many hands, and many senses, may also have many qualities of character and intelligence.
Aristotle, supra note 7, at *1281a39.

For example, the most critical task of a populist party is the formulation of a platform that embodies the common good. It is possible to imagine a regulatory requirement that would bar a party's nominee from the ballot unless that party has completed a rigorously inclusive process of platform development. A party might thus be required to hold a series of local platform caucuses around the jurisdiction. Each local caucus would be required to produce a platform report or recommendation with final selection by a majority of the larger group, and the party would be prohibited from adopting any recommended policy plank unless a sufficient number of voters participated in the caucuses. Parties that did not attract enough participation in the platform development process, or who adopted policy planks after an insufficiently inclusive process, would not be permitted to nominate candidates onto the ballot. This result would be fully consistent with populist assumptions since the platform would not be the work of a sufficiently large number of people to permit the inference that it has any reasonable chance of accurately identifying the policies most likely to lead to the achievement of the common good.[86]

On the other hand, such a requirement might be too demanding; any requirement of popular inclusion must after all comport with whatever limitations on popular participation lead voters to turn to political parties in the first place. If a process like the one described above were infeasible because of limitations on voters' abilities or inclinations, voter involvement could be obtained indirectly, through more commonplace mechanisms of mass democratic retrospective approval. Here, the policy development legwork would be performed by a small number of party employees, whose work would then be ratified by a majority of the group.

So far so good, but there is a problem lurking here. I have said that populist party processes should involve the largest numbers of people and that decisions should be made by a majority—but which people, and a majority of whom? Populism is premised on the belief that more know better than fewer, and consequently populist assumptions compel the in-

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86. Populist assumptions appear to be at work in the commonplace practice of permitting candidates a place on the ballot only if they have *already* demonstrated some level of support in the electorate. For example, in some states, a political party is allowed to place its nominee directly on the ballot only if the party has demonstrated substantial support for its nominees in previous elections. See, e.g., Va. Code Ann. § 24.2-101 (Michie 1996) (party's candidate must have received at least ten percent of total vote cast for any candidate for statewide office in any of the two preceding statewide general elections). Independent candidates must also demonstrate such support, usually by collecting signatures. See, e.g., Cal. Elections Code § 8400 (West 1996) (independent candidates for statewide office must obtain the signatures of one percent of all registered voters statewide to earn a place on the ballot for statewide offices, and three percent of registered voters in a locality for local offices). In populist terms, these requirements suggest that a major criterion for permitting ballot access is the candidate's ability to demonstrate, through popular support, some reasonable likelihood that the policies he or she supports may end up being identified by the entire electorate as best conducing to the common good.

ference that the accuracy of any decision is always enhanced when it is made by a greater number. On this logic, however, there is no good reason to observe the boundaries established by formal party membership. If a majority of the membership of one party is better able than a minority correctly to identify the common good, then a majority of the combined membership of two parties should be able to do an even better job, and the best possible job would be done by a majority of the entire electorate. In other words, the accuracy of the candidate nomination process is enhanced by opening those processes not just to party members, but to the general electorate. The logic of populism, then, requires not only that political primaries be democratic, but that they be conducted using an open or blanket format that allows participation by those who are not members of the party.[87] Ideally, internal pre-nomination party processes of deliberation and platform development would also be open to non-members. This approach, to be sure, is not likely to produce a high degree of differentiation among the platforms and candidates of the various parties.[88] Populism, however, does not require ideological differentiation among parties; it requires the correct identification of the common good, something best done by consulting the largest possible numbers of people.

It is possible to argue against this conclusion on the ground that the people cannot be expected to make a good decision unless they have a wide variety of positions from which to choose—call this the "buffet" model of decision making. But it no more follows that the best political positions can only be selected from a wide range of positions than it follows that the most nutritious meal can only be selected from a wide range of entrees. On populist assumptions, there is no reason to present the people with choices merely for the sake of offering them choices. Bad choices have no place on the table. To put this in its bluntest terms, nothing is gained by letting fringe groups that are by definition wrong on the merits present platforms and candidacies that pursue incorrect positions and thus waste everyone's time and resources. And if voters are justified, as they must be on any realistic party model, in placing significant reliance on party officials to bring to the voters only good, realistic options, then there is no real point to insisting on variety. We might well be better off, on these assumptions, insisting on a *narrowing* of the choices in preparation for the general election, thereby attempting to

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87. A primary is "open" if voters do not need to declare party affiliation before voting, or may do so on election day. A "blanket" primary is an open primary in which voters receive a comprehensive ballot listing all candidates from all parties and may vote in some or all of the parties' primaries. See Elisabeth R. Gerber & Rebecca B. Morton, Primary Election Systems and Representation, 14 J.L. Econ. & Org. 304, 306 (1998).

88. This is the usual complaint against open primaries—that they make the primary look too much like the general election. For an extreme example, see Foster v. Love, 522 U.S. 67 (1997), in which the Supreme Court struck down Louisiana's open primary system on the ground that it often operated so as to make a general election superfluous, in violation of the constitutional requirement of a uniform election day.

achieve the broadest possible consensus on as many points as possible until the actual, final possibilities differed only in a few salient details on which reasonable people could disagree.[89]

C. *Ideal Ballot Access Conditions under Interest Pluralism*

Attempting to derive from pluralist assumptions some guidance concerning the party structure and ballot access conditions that would best effectuate pluralist goals initially seems to present something of a puzzle. According to pluralism, the purpose of politics is to maximize overall utility, and the best way to do so is through free negotiation among all interested parties.[90] But this kind of political negotiation is potentially a completely open-ended process—where should it occur, when, and under what circumstances? What are the transaction costs associated with the possible venues and varieties of political negotiation? The number of potential variables is immense, and there is no reason to think that it is possible to predict in the abstract what process of political negotiation is best suited to maximizing utility. Indeed, because we ought on pluralist principles to be indifferent among political processes so long as utility ultimately is maximized, it might even make sense to leave democratic procedures themselves unspecified so that they, too, can become a subject of negotiation.

Worse still, if utility maximization is the only significant pluralist goal, there is no compelling reason to think that *election* is the political process best suited to maximizing overall utility. Perhaps an auction or some kind of open, free-for-all political bazaar is more likely to produce the best result than a highly constrained and regulated process of electoral choice. And even if there is some utility-maximizing advantage to a set of political procedures revolving around elections,[91] it is not clear in the abstract why we would not be indifferent between a system in which most or all preference aggregation occurs before the election, in the internal processes of political parties, and one in which it occurs after the elec-

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89. This is consistent with the standard political science defense of two-party systems: i.e., they reach about the same final result as would be reached in a multiparty system, but they do so by aggregating voter positions *before* the election rather than after it, as in PR. See Katz, supra note 60, at 1–16; Guy Lardeyret, The Problem with PR, 2 J. Democracy 30, 33 (1991); Quentin L. Quade, PR and Democratic Statecraft, 2 J. Democracy 36, 40–41 (1991).

90. See Gary S. Becker, The Economic Approach to Human Behavior 34 (1976) (an "ideal political democracy" is one in which "individuals endeavor to acquire political office through perfectly free competition for the votes of a broadly based electorate") (emphasis omitted); James M. Buchanan & Gordon Tullock, The Calculus of Consent: Logical Foundations of Constitutional Democracy 297–306 (1962).

91. Perhaps the transaction costs involved in conducting a nationwide negotiation would be so high that elections, because they are cheaper, are more likely to result in a decent approximation of overall utility. See Buchanan & Tullock, supra note 90, at 43–119.

tion, in the legislature. Each of these possibilities points toward a very different kind of, and role for, political parties.

If this analysis is correct, then we have no real way of choosing between two significantly different models of pluralistic party politics. One model would call for a small number of hroadly inclusive mass parties whose role is to aggregate a wide spectrum of preferences before any candidate is placed on the ballot, resulting in a final round of negotiation in the legislature that would be rather narrow in scope. This would be similar in many ways to the populist models and is reminiscent of the majoritarian, responsible two-party model familiar in political science. A second model would call for a larger number of more exclusive parties whose role is to aggregate a narrower range of preferences, resulting in a much more wide-ranging final round of legislative negotiation. Such a model has obvious affinities with the kind of political system proposed by advocates of proportional representation ("PR"), who seek a more diverse legislature in which many parties are represented.[92]

But are we, on pluralist assumptions, really indifferent between these two models? One way to break the tie is to look at some important democratic side-constraints that society seems to have imposed on its political processes. One obviously relevant decision is that society has chosen to use elections, thereby decreeing that at least *some* amount of political negotiation and preference aggregation must occur in the legislature; it cannot all take place in party councils and in the internal negotiations of party members. But which things must happen in the legislature, and why? To help answer this question, it is logical to turn to John Stuart Mill, someone with impeccable credentials as both a utilitarian and a normative political reformer.

Mill believed strongly that the British political system should be reformed so as to increase the range of interests represented in the legislature. In Mill's view, the winner-take-all aspect of the British electoral system resulted in "the complete disenfranchisement of minorities."[93] Mill's concern over the exclusion of minorities from the legislature flowed primarily from his rejection of Burkean notions of virtual representation.[94] Unlike Burke, Mill held that a person's interests are adequately represented in the legislature only if that person or, more realistically, that person's chosen representative, is present in the legislature and ahle to "stand up for" his or her interests.[95] This led Mill to endorse PR as a way of introducing into the legislature a far wider variety of interests than it then contained, thereby resulting, presumably, in a wider-ranging legisla-

92. A good overview is provided in Douglas J. Amy, Real Choices/New Voices: The Case for Proportional Representation Elections in the United States (1993).

93. John Stuart Mill, Considerations on Representative Government, *in* On Liberty and Other Essays 303 (John Gray ed., Oxford 1991).

94. For a classic account of Burke's conception of representation, see Hanna Fenichel Pitkin, The Concept of Representation 168–89 (1967).

95. See id. at 245.

tive debate. Mill thought it necessary for the full range of society's interests to achieve representation in the legislature because the legislature, he assumed, is where political persuasion occurs.[96]

Mill appears, however, to have given little consideration to the possibility that meaningful political persuasion could go on outside the legislature—that it might take place, for example, in pre-election, intraparty debates such as might occur within a mass political party developing its platform and debating whom to nominate. Mill's position would be justified, however, if intraparty debates tend not to be sufficiently wide-ranging, which might be the case either because certain interests are systematically excluded from participation in the internal affairs of existing mass parties, or because those interests, though present, are submerged through the use of majoritarian processes of platform formation and candidate selection. Nevertheless, it seems possible in principle that Mill's objections to the composition of Parliament could be satisfied by using some kind of proportionality in internal party affairs instead of using it in the general election. The wide-ranging debates that Mill thought necessary would then occur, but they would occur in internal party venues rather than in Parliament.

And yet it seems unlikely that Mill really would have been content to have the great policy arguments of the day occur in party conventions rather than in Parliament. Although he never says so explicitly, Mill seems to have presumed that there is something weightier about an argument made in the final governing body than one made in party convention.[97] Perhaps the public nature of the proceeding creates an opportunity for real persuasion that simply is not present in the convention of a political party that, no matter how broad its appeal, is in a certain sense closed, or not "for" certain members of the public. Similarly, Mill was greatly concerned with the educative effect of legislative debate;[98] perhaps the opportunities to educate the public and their representatives are greater in legislative debate than in intraparty debate. Or maybe it has to do with the symbolic aspects of representation—for example, the socially unique way in which a legislature represents a society as a collectivity. On this view, an argument made in the legislature, even if it is ultimately rejected, is an argument entertained by the collectivity in a way that cannot occur in party councils. But whatever the precise reason, it seems clear that on the assumptions of the kind of *democratic* pluralism toward

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96. See id. at 314.

97. Certainly one indication, as Richard Hofstadter points out, is that Mill nowhere so much as mentions political parties in *Considerations on Representative Government.* See Hofstadter, supra note 1, at 52. More fundamentally, though, Mill believed that one of the main benefits of representative government was that it offered citizens an opportunity to protect their rights and interests from invasion by the government, an opportunity which they exercised by electing representatives who stood up for their interests in the legislature. See Mill, supra note 93, at 245, 314. It is far from clear that standing up for one's interests in a party convention amounts to the same thing.

98. See Mill, supra note 93, at 245, 314.

which Mill gestures, we as a society want *final* policy decisions to be made in the public forum of the legislature rather than in deals cut privately in party conventions.

Democratic side constraints on interest pluralism seem then to require not only that a final round of utility-maximizing policy negotiations occur in the legislature, but that these negotiations be meaningful. These are conditions that can best be satisfied when, as Mill noted in arguing for PR, the legislature is populated by representatives with sharply differentiated positions on the issues. A sharp differentiation in legislative positions can be achieved only by first assuring that candidates who appear on the ballot hold sharply differentiated positions. This in turn means that in a system of interest pluralism, party processes should be those that most effectively produce such a range of candidates. What party processes would do so?

If a party system is to have any realistic chance of producing substantively distinct platforms and policy positions, then parties first and foremost must have the option of being both selective and exclusive concerning who can join and who can participate in their internal processes. At a minimum, certainly, there could be no open or blanket primaries, which tend to flatten party differences. Each party must be free to choose its platform and candidates, and to do so without input from those the party wishes to exclude. Second, party formation should be as free as possible to allow dissenters or those excluded from the parties of their choice to form their own parties in order to have some voice in the pluralist negotiation process, a condition essential to the accurate maximization of overall social utility. The option of exiting from a party must, moreover, be a realistic one and not merely nominal. In many electoral systems, however, the option of forming a new party with any meaningful chance of even minimal electoral success is severely limited, making it hard to talk about party differentiation without gravitating toward PR because of its greater amenability to a proliferation of narrow-interest parties.

There is also an important additional constraint: on pluralist assumptions, internal party negotiations over platforms and candidates must at a minimum be fair to the party's members. The purpose of a pluralist election is to aggregate social preferences so as to maximize utility. When parties are a part of the electoral system, at least some and possibly a great deal of preference aggregation will occur in the internal decision processes of political parties. It is crucial to the ethical claims of interest pluralism that social decisions accurately maximize utility; if they do not, interest pluralism can degenerate into an ideological fig leaf obscuring an unfair and inefficient power grab by a set of rulers bent on maximizing their own private interest at the expense of other segments of society.

Pluralism has only one tool at its disposal to assure the fairness and accuracy of preference-aggregating bargaining: to provide negotiators bargaining strength commensurate with the amount of utility at stake.

Utilitarianism usually accomplishes this by reducing all negotiations to financial ones. Because democratic side constraints of individual equality prohibit this approach in political bargaining, numbers of people, rather than dollars, must stand in as a rough proxy for intensity of feeling.[99] It follows that unless there is some reason to believe that bargaining among party members can be accomplished face-to-face, on an individual basis—an unlikely proposition—the only way to assure the fairness and accuracy of intra-party bargaining among members is through some kind of proportionality of interest representation within the party. This could be accomplished, for example, if a party used some form of PR to select delegates to party platform and nominating conventions.[100]

D. *Madison's Hope: Can the Same Party Structure Serve Both Populism and Pluralism?*

If the preceding analysis is correct, the party structure best suited to realizing an efficacious politics of virtue differs significantly from the party structure best suited to realizing a fair and efficient politics of self-interest. On populist assumptions, party politics is most conducive to the realization of political virtue if parties are large; have open and fluid memberships; utilize internal decision processes that are majoritarian; nominate candidates in open primaries; and, in consequence of these features, are not highly differentiated in their preferences for platforms or candidates. On the assumptions of interest pluralism, in contrast, party politics is most conducive to the realization of a fair and ethically meaningful politics of self-interest when parties are comparatively small; have closed and exclusive memberships; utilize internal processes of proportional interest representation; nominate candidates in closed primaries; and, in consequence, are well-differentiated in their platform and candidate preferences. This divergence in ideal structure suggests that the designer of a regulatory regime for political parties must confront a difficult moral choice: to choose a regnlatory regime is, it seems, to choose simultaneously to favor the emergence of a particular kind of politics, either a politics of virtue or one of self-interest.

There is, however, still one way to avoid making such a weighty moral decision. Madison's hope, it will be recalled, was that it might be possible

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99. See, e.g., Charles R. Beitz, Political Equality: An Essay in Democratic Theory 66–67 (1989); Elaine Spitz, Majority Rule 201–02 (1984); Jeremy Waldron, Rights and Majorities: Rousseau Revisited, *in* Nomos XXXII: Majorities and Minorities 44, 48 (John W. Chapman & Alan Wertheimer eds., 1990).

100. The Democratic Party appears to have made an attempt to institutionalize just such a system of proportional interest representation in its process of selecting delegates to the national convention. The party's Charter requires an equal number of male and female delegates and an affirmative action program to assure adequate representation of racial and ethnic groups. See The Charter and Bylaws of the Democratic Party of the United States, Art. 2, § 4; Art. 8, §§ 3, 4 (visited Sept. 25, 1999) <http://www. democrat.org/pat/hq/charter.pdf>. It also requires that delegations fairly reflect the preferences of participants in the selection process. See id. at Art. 4(b).

to devise a single set of institutional structures that could *both* reap the fruits of political virtue when it appeared *and* contain pluralistic self-interest within the bounds of fairness and efficiency. To test Madison's hope, we must inquire how the ideal party structures identified above behave not when their primary assumptions are fulfilled, but when those assumptions are violated. That is, we know that political virtue will be best utilized by a regime of large, open and majoritarian parties. But how would such a regime function if voters behave self-interestedly rather than virtuously? Would private self-interest be fairly and efficiently aggregated? Conversely, interest pluralism may be best channeled by means of a system of small, closed, proportionally-sensitive and highly differentiated parties. But what would happen in such a system if voters behave virtuously instead of self-interestedly? Would the opinions of a majority concerning the common good be readily implemented in that situation? If either of these party structures can perform well in the presence of both political virtue and vice, then we need not confront the moral dilemma of choosing which kind of behavior to design for.

1. *Populist Party Structures and the Pursuit of Self-Interest.* — Suppose that we are designing democratic institutions and have high hopes for a politics of virtue. We consequently establish a populist regime of party regulation designed to reap as fully as possible the benefits of political virtue. But what happens if our hopes for a politics of virtue are not realized? Suppose that the electorate begins to behave self-interestedly. Voters begin to formulate policy preferences not according to how well such policies bring about the common good, but according to how well the policies serve their private self-interest, at the expense of the common good if necessary. They formulate candidate preferences in the same way. Internal party politics no longer consists of fair-minded party members seeking collectively to determine the content of the common good but consists instead of a multitude of efforts to press for the adoption of platform planks designed to secure private advantage to those who seek them. What happens now in the internal processes of a party structured in accordance with populist assumptions? More specifically, what chance is there that these private preferences will be aggregated fairly and accurately, as interest pluralism demands?

Unfortunately, the relatively open, majoritarian party structure that populism requires is extremely vulnerable, in the presence of self-interested behavior, to a radical breakdown into a highly leveraged and unfair power grab by a majority or plurality of party members. Majoritarian party decision systems are designed to place control over the entire party apparatus into the hands of a majority or plurality; that is their point— that is how, on populist assumptions, they reap the benefits of political virtue. Such a system deliberately magnifies the power of the majority because it assumes that the majority knows, and intends to act upon, what is good. A majority or plurality bent on pursuing its own private interest rather than the common good—a "faction," in Madison's terminology—

can, however, under these same conditions, without difficulty seize control over party policy to serve its own selfish purposes.

When such a group gains control over the party's platform and nominating powers, the common good is the first casualty. On populist assumptions, the common good is something different from the private good of any group—even a majority—and the pursuit of self-interest by a controlling majority is thus by definition not the pursuit of the common good. But even under the assumptions of interest pluralism itself, the majoritarian decision apparatus thwarts the achievement of the common good as interest pluralism conceives it. Interest pluralism is a utilitarian system in which the common good is achieved through maximization of overall social utility. By allowing a majority full control over the institutions of party policy making, however, majoritarian processes do not institute the conditions necessary for the maximization of social utility. That would require negotiation and trading among all significant party groups and interests which, in a large populist party, would be expected to vary considerably. Majoritarian decision systems, by giving all power to a majority, exclude the minority from party councils and thus dispense altogether with the process of compromise and negotiation between and among majorities and minorities that the utilitarian calculus demands.

The danger of a power grab is exacerbated, moreover, by the populist need to keep party processes relatively open. Even if it were possible for the party to impose some kind of internal discipline on party members that might somehow lessen the likelihood that they would act self-interestedly, open internal processes and an open primary deprive the party of any good way to exclude self-interested outsiders or to prevent them from exercising an undue influence on the outcomes of the party's nominating processes. Thus, it seems that a populist party structure, faced with self-interested rather than virtuous behavior, is unlikely to do a good job of achieving the common good under the assumptions of either populism or pluralism.

2. *Pluralist Party Structures and the Pursuit of Virtue.* — What happens when the situation is reversed? Suppose, anticipating widespread self-interested political behavior, we set up a pluralist party system and are then surprised to find voters behaving virtuously rather than self-interestedly. Instead of pressing for the candidate they think will most effectively advance their own private interests, suppose some significant group of voters makes sincere and diligent efforts to make decisions on the basis of where they think the common good lies. Ordinarily, we might be inclined to think that the presence of virtue in politics—in any amount—is good. As Jeremy Waldron has observed, however, things are not that simple:

> This sounds as though it ought to make things better, since it mitigates the centrifugal force of egoism in politics, but in fact it makes things worse for the Benthamite theory of democracy. So long as each voter decides on the basis of his own interest, some

chance exists that a majority decision might correspond roughly
to the aggregate happiness of society. But if large numhers are
voting on the basis of what they think the aggregate happiness
demands [i.e., on the basis of a belief about the common good],
then the whole thing falls apart. If some are voting that way and
some are voting selfishly, adding those votes to one another is
like adding chalk and cheese. And if all are voting selflessly, on
the hasis of their personal perceptions of the general welfare,
then we have no aggregative reason for thinking that the major-
ity decision tells us anything new at all. Aggregation over indi-
vidual votes makes some sort of sense from the utilitarian point
of view if votes represent individual preferences. But it makes
no sense at all from that point of view if votes represent utilita-
rian opinions.[101]

In other words, for interest pluralism to work best, all must behave
selfishly. A politics of virtue subverts pluralism's ability accurately to ad-
just social benefits and burdens. A party platform or slate of candidates
assembled in this manner can be expected to achieve the common good,
on any set of assumptions, only inadvertently or randomly.

Another serious impediment to the ability of a pluralist party struc-
ture to promote the common good, even when *all* voters behave virtu-
ously, results from the pluralist requirement of a proportional internal
system of interest representation. If party decision making structures util-
ize PR to select delegates to hammer out the details of platform develop-
ment and candidate nomination, then relatively small minorities of party
members would have the opportunity to determine for themselves where
the common good lies and to elect party delegates committed to pressing
corresponding positions. Yet, on populist assumptions, these minorities
and the delegates representing them are likely to be wrong about the
content of the common good. Any electoral system that deliberately in-
troduces into the decision making process individuals committed to the
advancement of incorrect positions can only make it harder for the polit-
ical process to achieve the common good.

In some situations, the presence of these wrong-headed delegates
may make little difference to party process outcomes. For example, if a
virtuous party majority is sufficiently large, its delegates may so dominate
party deliberations as to have no need for the votes of delegates commit-
ted to positions dictated by the minority. The smaller the majority, how-
ever, the more often the votes of minority delegates might he needed,
and if the largest segment of the party membership amounts only to a
plurality then these votes become absolutely necessary. To attract these
votes, delegates of the majority or plurality might find themselves called
upon to engage in some form of compromising or vote trading with rep-

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101. Waldron, supra note 99, at 49. Expressions of this principle can be found at least
as far back as Wicksteed's principle of "non-tuism" in economic relations. See Philip H.
Wicksteed, 1 The Common Sense of Political Economy 180 (Augustus M. Kelly, 1967)
(1910).

resentatives of the various minorities. Yet it is axiomatic on populist assumptions that the majority possesses the truth, and the truth is not something to be compromised or traded away in exchange for other considerations. PR would thus force delegates to adopt an attitude toward the common good that is inconsistent with the premises of a politics of virtue.

3. *Summary.* — For these reasons, it seems unlikely that Madison's hope can be realized in the design of a regulatory regime for political parties. In the first place, the party structures required to make best use of political virtue differ from those required to channel the pursuit of self-interest most effectively into an accurate process of utility-maximization. In the second place, neither regulatory regime functions well when its primary design assumptions break down, which means that neither system is capable of producing good government without regard to the kind of behavior engaged in by voters. To choose a party regnlatory regime is, therefore, to make a moral choice. It is to decide whether to hold open the possibility of a successful politics of virtue, come what may; or to abandon any realistic hope of a virtuous politics and dedicate the political system to the task of surviving the vicissitudes of a politics of self-interest.

To identify this choice is not by any means to say that a party politics of virtue is impossible. The nature of the choice does mean, however, that such a politics can be fostered only by accepting a grave risk of pluralistic factional tyranny. The party structures necessary to make the most of political virtue also open party politics to the possibility of capture in the name of self-interest. Moreover, once a self-interested group has gained control over the party apparatus it will doubtless be extremely difficult to dislodge, meaning that a politics of virtue, once lost, will be difficult to regain.

V. WHAT LESSONS DO PARTY POLITICS TEACH CITIZENS?

If there are no outright theoretical or structural impediments to a virtuous party politics, only a practical question remains: how likely is it that a polity living in a party-dominated mass democracy is likely to practice virtue in its politics? Any answer to this question must of course take into account many imponderables concerning the collective character of a society's political actors. Nevertheless, political character is not something that individuals are issued at birth along with their height and bair color. True, a society's political institutions may be shaped by its character,[102] but the opposite is also true: a society's political character is shaped in part by its institutions. It thus makes sense to conclude by inquiring briefly whether the very existence of party competition in a political system provides political actors with any particular education, and if it

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102. Perhaps the most influential, and certainly the strongest, expression of this view is Hegel's. See G.F.W. Hegel, Philosophy of History (1834).

does, whether that education makes them more or less likely to behave virtuously.

It has long been observed that institutions educate. Aristotle argued that one of the most important jobs of the legislator is "to ensure that his citizens become good men. He must therefore know what institutions will produce this result."[103] While some of a citizen's education may be imparted directly, through teaching and other forms of direct instruction, much of it is not. In our time, few have put the case as well as John Dewey:

> The development within the young of the attitudes and dispositions necessary to the continuous and progressive life of a society cannot take place by direct conveyance of beliefs, emotions, and knowledge. It takes place through the intermediary of the environment. The environment consists of the sum total of conditions which are concerned in the execution of the activity characteristic of a living being. The social environment consists of all the activities of fellow beings that are bound up in the carrying on of the activities of any one of its members. It is truly educative in its effect in the degree in which an individual shares or participates in some conjoint activity. By doing his share in the associated activity, the individual appropriates the purpose which actuates it, becomes familiar with its methods and subject matters, acquires needed skill, and is saturated with its emotional spirit.[104]

By living a certain kind of life, then, members of society become educated to the society's values and beliefs. As Alasdair MacIntyre has put it, "the self has to find its moral identity in and through its membership in communities."[105]

What kind of education in citizenship, then, is provided by the experience of living in a society whose politics are characterized by party competition? To be educated to a life of political virtue, citizens must, through their observation of others and through their own participation in politics, derive the sense that the point of society's politics is to seek the achievement of the common good. Does party competition create this impression? I am not so sure that it does. In a politics of virtue conducted by means of parties, each party will take a position that it sincerely believes promotes the good of all. Candidates and partisans will debate the merits of these positions and the question will be put to the voters for resolution. In the end, candidates of one of the parties will win the election and others will lose. According to the assumptions of a politics of virtue, however, an electoral victory is not to be understood as a victory of one party over another or of one candidate over another, but as a victory of truth over error. This is an understanding that is easy to articulate but,

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103. Aristotle, supra note 7, at *1333a11.

104. John Dewey, Democracy and Education: An Introduction to the Philosophy of Education 26 (1916).

105. Alasdair MacIntyre, After Virtue: A Study in Moral Theory 221 (2d ed. 1984).

it seems to me, extremely difficult for any human being to internalize and practice, especially over long periods of time. It is always tempting to construe an electoral loss as resulting not from any reasonable substantive decision but from some adventitious confluence of events, perhaps cheating, even deception. No one professed a greater faith in the virtue and intelligence of the people than Jacksonian democrats, but when they lost the 1840 election to William Henry Harrison even Jacksonians were heard to grumble about how the people had been duped, or how they had not behaved with sufficient virtue.[106]

Another difficulty with the political education provided by party politics is that it is likely to provide an occasional vivid demonstration of just how efficacious political behavior can be when it is guided by self-interest. Even those who expect a society to exercise political virtue can hardly expect it from every political actor on every occasion; a few, and occasionally a good deal more than a few, can be expected to fall from the path of selflessness from time to time. Those who act out of self-interest are probably subject to fewer self-imposed constraints than those who seek to do what is objectively right, and this freedom may make them far more effective political agents—if effectiveness is measured in terms of getting what one wants—than their virtuous competitors. This effect, which cuts across political systems, is exacerbated in the case of party politics. As noted above, party structures designed to take advantage of political virtue are vulnerable to hijack by large or aggressive factions. In this context, party politics may inadvertently teach that it is easier for those who seek personal gain to get what they want than it is for those who seek general gain.

It may be, then, that the realities of party competition and the human nature that drives it may provide citizens with political lessons that gradually erode the possibility of a sustained, successful politics of virtue. Nothing in any part of my analysis here shows conclusively that party politics cannot be virtuous. Nevertheless, it seems clear that a politics of virtue carried on through political parties is likely to be an extremely fragile enterprise. Because parties have shown themselves to be indispensable to modern mass democracy, this conclusion inevitably casts doubt on the prospect that politics in modern democracies can proceed on the basis of anything other than the universal pursuit of self-interest. Let us hope it is not so.

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106. See Arthur M. Schlesinger, Jr., The Age of Jackson 401–04 (1953).