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Primus Inter Pares: Political Parties and Civil Society

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PRIMUS INTER PARES: POLITICAL PARTIES AND CIVIL SOCIETY

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The voluminous literature on civil society ignores political parties. Political theorists and social scientists talk about religious associations, social movements and advocacy groups, book clubs and athletic teams, and unions and membership groups like the Rotary Club and Jaycees. They embrace voluntary associations formed for every conceivable purpose, but not political parties.[1] Indeed, normative democratic theory generally ignores parties or takes them up in the limited context of egalitarian arguments for campaign finance reform.[2] We may reasonably expect that civil society theory, concerned as it is with associations that mediate between the individual or family and state, would focus on parties. The fact that they are rarely mentioned is a remarkable lacuna.

Political parties share some of their purposes with other associations. Voluntary associations from unions to fraternal and ethnic groups take up political issues and nudge them into public consciousness. Separation of church and state does not prohibit political advocacy by religious associations, electioneering, or office-

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1. *See* CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL (Robert K. Fullinwider ed., 1999); COUNCIL ON CIVIL SOC'Y, A CALL TO CIVIL SOCIETY: WHY DEMOCRACY NEEDS MORAL TRUTHS (1998); NATIONAL COMM'N ON CIVIC RENEWAL, A NATION OF SPECTATORS: HOW CIVIC DISENGAGEMENT WEAKENS AMERICA AND WHAT WE CAN DO ABOUT IT (1998). The National Index of Civic Health does have a political component: voter turnout, writing a letter to a public official, work for a party or candidates, and attend a rally or political meeting. *See* NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 1, at 24, 34-36.

2. A notable exception is C.B. Macpherson, who attacks parties for functioning to produce a stable equilibrium that mutes class conflict. Macpherson argues that party systems are "blurring systems." C.B. MACPHERSON, THE LIFE AND TIMES OF LIBERAL DEMOCRACY 65-66 (1977). For a discussion of ideal democratic parties, see *id.* at 113-14. Two contemporary exceptions in democratic theory are Joshua Cohen and Bernard Manin. *See* Joshua Cohen, *Deliberation and Democratic Legitimacy*, *in* THE GOOD POLITY 17, 21-26 (Alan Hamlin & Philip Pettit eds., 1991); BERNARD MANIN, THE PRINCIPLES OF REPRESENTATIVE GOVERNMENT (1997). In the political science literature, by contrast, political parties have been central whether the approach is rational choice, institutionalism, or political culture. For instance, Leon Epstein reviews political scientists' commitment to parties as an object of study and to their practical usefulness. LEON D. EPSTEIN, POLITICAL PARTIES IN THE AMERICAN MOLD (1986).

seeking by clerics. Many voluntary associations support the activities of advocacy groups. And nonpolitical groups of all kinds teach organizing skills that are transferable to political arenas. For all of these groups, political expression is an adjunct to their principal purposes; their democratic effects follow unintentionally or as an indirect consequence of their defining activities. Of course, the effects of many voluntary associations are positively antidemocratic. Their internal organization is hierarchic; their leadership is authoritarian; they disregard due process and fairness; their agendas are antithetical to civic norms. Secret societies and hate groups are only the most obvious examples. In contrast to all these groups, political parties are the voluntary association principally committed to making democracy work.

Plainly, many nonparty political organizations share in the business of organizing interests and values and wielding political influence: interest groups and advocacy groups, professional associations and business groups (or their political action committees), and the media. The expansion of government is reciprocally related to the growth of organizations that attempt to forge links to the political representatives and government agencies whose decisions affect them. These groups are committed to making *government* work, not necessarily democracy.

Strictly speaking we must add to the catalogue of nonparty political associations the campaign organizations of candidates for state and federal offices. These are not just the creation of "independents." All candidates build and operate organizations largely independent of the state and national party with which they are formally allied by label. Candidates raise their own money. They hire their own contractors—specialists in media, lawyers, and accountants. Self-nomination without party support much less legal endorsement has become familiar, particularly by self-financed candidates who take advantage of the fact that the law allows them to spend unlimited amounts of their personal wealth. As a legal matter, presidential candidates who accept public funding are required to receive and expend funds through their personal campaign organizations not their party's.

Despite overlap in some areas, then, there are important differences and a real division of labor between parties and other political groups, which I will come to shortly. Put simply, the right to

be on the election ballot is what separates a political party from other political associations.[3] No other group is engaged in recruiting, nominating, and educating citizens about candidates and issues for the astonishing number and kind of elective offices at the local, state, and federal levels in the United States; and no other group takes a similarly comprehensive view of the public interest and political agenda. In addition, only parties "routinely, pervasively, and legitimately exercise their influence from *within* the government."[4] It is not too much to say that both public political life and political education are in their hands.

This is clear enough to scholars of comparative politics. Political scientists do not simply infer the importance of parties from their universal existence in stable democracies.[5] No matter how varied and vital the array of secondary associations in civil society, representative democracy cannot function without freedom for political association generally and for parties specifically. Parties are necessary for transferring office from one faction to another, and peaceful succession is possible only where partisanship (or the notion of "a loyal opposition") is legitimate. Voting rights and elections do not suffice for insuring choice among competing governance groups, focusing and expressing divergent views of the public interest, and deliberating and setting agenda. New democracies often lack parties or have volatile parties organized around "clientelism" or personalities rather than political cleavages. Their survival rate is modest—accenting the importance not just of parties per se but of a reasonably stable party system.[6]

The lacuna in theories of civil society is more remarkable because the value civil society theorists place on intermediary associations should make the democratic alternative—direct democracy—anathema. As practiced in the United States, plebescitary candidacies and popular initiatives and referenda institutionalize atomistic individualism. Direct democracy epitomizes the simple aggregation of individual preferences. The "collective decision" is collective only in outcome, in name only. Political

3. *See* Timmons v. Twin Cities Area New Party, 117 U.S. 1364, 1377 (1997) (Stevens, J., dissenting).

4. Daniel Hays Lowenstein, *Associational Rights of Major Political Parties: A Skeptical Inquiry*, 71 TEX. L. REV. 1741, 1758 (1993).

5. *See* EPSTEIN, *supra* note 2, at 19.

6. *See, e.g.*, Barbara Geddes, *A Comparative Perspective on the Leninist Legacy in Eastern Europe*, 28 COMP. POL. STUD. 239, 239-71 (1995); Herbert Kitschelt, *Formation of Party Cleavages in Post-Communist Democracies*, 1 PARTY POL. 447, 447-72 (1995).

decisions are made anonymously, apart from regular, standing political associations. Further, these decisions are made without opportunities for compromise and in the absence of even the minimal assurances of the "trial of debate" and the need to provide reasons, which we find in legislative policymaking (and in classic direct democracy where the people are assembled). The questions posed are not democratically inspired. Rather, formulating initiatives and referenda are typically the work of independent political entrepreneurs and special interest groups unconnected to established, broad-based political groups. They are promoted through privately funded campaigns organized by political professionals employing targeted direct mailing, market testing, and paid signature gatherers.[7]

Nor can statutory initiatives and referenda be justified in classic terms as popular attempts to tie the hands of officials—as popular self-defense against entrenched political machines and legislators captured by special interests. Increasingly, initiatives and referenda are willingly acceded to by political representatives as a way of deciding controversial political issues; legislators give over policymaking to the uneasy mix of "special interests" and majoritarianism that comprises direct democracy today. We would expect civil society theorists to acknowledge parties as the principal mediating institutions that temper these trends.

My first objective in this essay, then, is to reflect on the absence of political parties in discussions of American civil society—on why they fall from the lists of voluntary associations and membership groups. I then argue that among associations of civil society, political parties are *primus inter partes*. I outline their qualitative distinctiveness and indicate why parties are unique and irreplaceable voluntary associations, meriting serious study by political theorists. More specifically, the defining characteristics of parties as *voluntary associations and membership groups* provide the armature of justification for valuing and strengthening them.

It is possible to stand back and think of electoral parties as cadres of candidates, professional organizers, and hired consultants, and of citizens as consumers of their products. E.J. Dionne, Jr., describes

7. *See, e.g.*, Peter Schrag, *Take the Initiative, Please: Referendum Madness in California*, AM. PROSPECT, Sept.–Oct. 1996, at 61, 61-63. Courts have facilitated this by striking down a number of constraints imposed by state law on proposing and supporting initiatives. *See* Buckley v. American Constitutional Law Found., 119 S. Ct. 636 (1999); *see also id.* at 651 n.3 (Thomas, J., concurring) (stating that there is evidence in the briefs that circulators of initiatives do not discuss the merits of the proposed change in any depth).

contemporary party politics as "an elaborate insider industry."[8] That may be an apt characterization of candidates' campaign organizations, but as an account of parties it is truncated. Similarly, the characterization of parties as electoral parties simpliciter, supplying voters with "brand names" and low cost information about candidates—mechanisms for "reducing the transaction costs" of democracy—is truncated as well.

Only broad-based parties that have the publicly affirmed affiliation and participation of a significant number of active members can field candidates and hire experts. Parties are groups that people identify with, actively join, contribute to, work within, become officers of, and participate in—setting agendas, goals, and strategies.[9] Both the large-scale, long-term effects of parties on the political system and political culture overall and their capacity to shape the democratic dispositions and practices of citizens personally and individually are a function of their vitality as membership groups.

In saying that civil society theorists should give parties a central place, and that they should be at least as solicitous of political parties as the many other associations that are objects of concern today, I do not mean to weigh into the debate about the trajectory of American parties. I also do not consider here whether and in what ways parties are weaker or stronger today than at some baseline time period in the past. Further, I do not take up the current accuracy of Schattschneider's claim that national parties are "only the transparent filaments of the ghost of a party."[10] Simply, the justification I propose for valuing political parties, and for their centrality to democratic civil society, is based on their distinctive characteristics as membership groups.

This justification differs from the two pro-party positions that dominate the legal and political science literatures. It diverges significantly from the case for strengthening parties in order to secure "responsible party government."[11] It also diverges from the case

8. E.J. DIONNE, JR., WHY AMERICANS HATE POLITICS 332 (1991).

9. *See* PAUL ALLEN BECK & FRANK J. SORAUF, PARTY POLITICS IN AMERICA 8-9 (7th ed. 1992).

10. E.E. SCHATTSCHNEIDER, PARTY GOVERNMENT 163 (Phillips Bradley ed., 1942). For an account of the increasing strength of state and national party organizations, see BECK & SORAUF, *supra* note 9, at 140. Among other things, parties have a federated structure and local and state associations are as significant as national parties. *See* John P. Frendreis et al., *The Electoral Relevance of Local Party Organizations*, 84 AM. POL. SCI. REV. 225, 225-35 (1990).

11. The literature is vast. *See, e.g.*, COMMITTEE ON POLITICAL PARTIES, AM. POLITICAL SCIENCE ASS'N, TOWARD A MORE RESPONSIBLE TWO-PARTY SYSTEM (1950).

democratic theorists make for reforming the electoral system as a whole in order to secure political equality. Theorists of political equality see public laws—specifically ballot access rules and campaign finance law—as the principal determinants of the health of party life.[12] In contrast, I argue that the internal *nomos* of parties as associations—their rules, leadership, organization, sense of purpose, and relation to members—is as important as external conditions, including the regulatory framework within which they operate.

That is why it is plausible to think that parties themselves bear responsibility for perpetuating what Robert Lane has called the "unhappy polity" and contributing to "why Americans hate politics."[13] Why then have they failed to capture the attention of theorists of civil society?

MISSING PARTIES

The documented American disdain for and avoidance of politics is the larger cultural context in which parties carry on their business. The range of negative postures toward parties—from "abolitionist" to ambivalent to grudgingly reconciled—has been vividly described. The underlying belief that parties tend to divisiveness, oligarchy, and corruption has been registered. (I leave aside the recurrent conspiracist tendency that leads people to cast parties as secretive societies in the service of sinister interests.)[14] The array of government regulations imposed on American parties—unique among democracies—reflects recurrent attempts to rein them in.

Nothing is more common than the assertion that good citizens should vote for the candidate and not the party, or its corollary—that the good representative votes his or her conscience and not the party line. Public confidence in political parties lies at the bottom of the scale, lower than any other secondary association: 42.6% of respondents express "very little" and only 3.8% "a great deal" of confidence in them.[15] Even active partisanship, Austin Ranney notes,

12. For an important analysis of ways of considering political equality, see CHARLES R. BEITZ, POLITICAL EQUALITY (1989); Cohen, *supra* note 2, at 30; MANIN, *supra* note 2.

13. Robert E. Lane, *The Joyless Polity: Contributions of Democratic Processes to Ill-Being*, *in* CITIZEN COMPETENCE AND DEMOCRATIC INSTITUTIONS 329, 362-64 (Stephen L. Elkin & Karol Soltan eds., 1999); *see also* DIONNE, *supra* note 8. The author does not focus on parties as associations but on ideology.

14. For a discussion of conspiracism and American voluntary associations, see NANCY L. ROSENBLUM, MEMBERSHIP AND MORALS 239-84 (1998).

15. *See* VIRGINIA A. HODGKINSON ET AL., GALLUP ORG., GIVING AND VOLUNTEERING IN THE UNITED STATES 72 (1996).

cannot be taken to indicate approval of parties in general as desirable institutions.[16] Insofar as American political life arouses enthusiasm, it attaches to social movements, ideological causes, or unusually inspiring candidates. Of course, antiparty and antipolitical sentiment (the two are not distinguished in the public mind) is episodic. But it is fair to say that there is little appreciation for broad-based state and national parties.

By itself diffuse, mistrust cannot explain why serious theorists of democratic civil society ignore parties, however. Five considerations converge to produce this result.

For one thing, "civil society" entered the contemporary political theory lexicon from Eastern Europe where it was an oppositional idea. Civil society referred to an underground "parallel polis" of cultural and intellectual groups. When active resistance against political authority emerged, it was precipitated by churches and unions. These groups were also seen as the materials for ideal social restructuring. It is not surprising that attention focused on the political uses of nonpolitical groups; in the absence of freedom of political association, parties were unthinkable. And even with a degree of freedom of association, political parties as channels from civil society to political representation have been slow to develop.

The resurgence of interest in civil society in the United States was initially inspired by this literature on resistance to communist regimes, which had little to say about political parties. Moreover, many American civil society theorists write from a tradition of socialism or democratic radicalism and tend to think in terms of oppositional social movements dedicated to radical social change.[17] They prize activism outside of institutions like parties that are presumably tainted by day to day politics. Jane Mansbridge points out that interest in political participation as a form of democratic education is "ghettoized in the feminist and ecological movements."[18]

A second reason for the eclipse of political parties is that not all civil society theorists are preoccupied with the effects of groups on either democratic political life or democratic habits and dispositions.

16. AUSTIN RANNEY, CURING THE MISCHIEFS OF FACTION: PARTY REFORM IN AMERICA 52 (1975).

17. *See, e.g.*, JEAN L. COHEN & ANDREW ARATO, CIVIL SOCIETY AND POLITICAL THEORY (1992); IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE (1990).

18. Jane Mansbridge, *On the Idea That Participation Makes Better Citizens*, *in* CITIZEN COMPETENCE AND DEMOCRATIC INSTITUTIONS 291, 315 (Stephen L. Elkin & Karol Edward Soltan eds., 1999).

They are concerned instead with extra-political groups.[19] They focus on families and the inculcation of basic values, or on voluntary associations as sources of trust and social capital. They look for associations to serve as schools of civic but not necessarily political virtues such as tolerance and mutual respect. From this perspective, the description of Americans as "passive" and "disengaged" refers to disconnection from secondary associations generally and a diffuse lack of responsibility for the community rather than disengagement from electoral politics specifically. In *Membership and Morals: The Personal Uses of Pluralism in America*, I considered the full range of moral uses of associational life, intended and unintended, and parties played only a small part in that study.[20] The impetus to this essay was the challenge colleagues posed to identify the associations that stand out as qualitatively most valuable for democratic public life and political virtue.[21]

More important perhaps is the normative reason behind civil society theorists' neglect of parties. The moral valence of civil society attaches to small groups that have a direct and immediate improving impact on social problems and on members themselves. The exemplary associations are faith-based groups and neighborhood community organizations, philanthropic and social service groups. Priority is assigned to membership in volunteer-type activities that involve face-to-face cooperation and are said to "make a difference."[22]

Given the connection between effectiveness and small groups, civil society theorists do not see parties as having an immediate impact on social problems or affording the specific gratification that attracts and motivates members: they believe parties are much less capable of recruiting disconnected individuals and eliciting cooperation among them.[23] Indeed, civil society theorists may not

19. *See, e.g.*, ROBERT WUTHNOW, CHRISTIANITY AND CIVIL SOCIETY: THE CONTEMPORARY DEBATE 14 (1996).

20. ROSENBLUM, *supra* note 14, at 155.

21. Principally, I am referring to the provocative comments of William Galston. *See* William Galston, Remarks at the Panel on Nancy L. Rosenblum's *Membership and Morals*, the Communitarian Summit (Feb. 27, 1999).

22. Elizabeth Crowley, *More Young People Turn Away from Politics and Concentrate Instead on Community Service*, WALL ST. J., June 16, 1999, at A28 (quoting Sarah Kolar, a recent college graduate and participant in the Jesuit Volunteer Corps program).

23. *See, e.g.*, David Wasserman, *Self-Help Groups, Community, and Civil Society*, *in* CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL, *supra* note 1, at 231, 231-54; Robert Wuthnow, *The Role of Trust in Civic Renewal*, *in* CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL, *supra* note 1, at 209, 209-30. Urban political party "machines" were, in part, service organizations. Developed in response to the needs of immigrants, they provided social services,

count parties as civic-oriented membership groups at all. Small wonder "participation" is identified with "efforts to start a hospital or help the homeless" and that the label "activist" attaches to community service not political partisanship.[24]

Ideological motivations for renewed interest in civil society also militate against attending to political parties. Whether the chief concern is the crisis of the welfare state or moral values (or their interconnection), both radical democrats and conservatives are critical of "big government." They look to civil society as the realm of self-organized groups, and they advocate "subsidiarity."[25] From this standpoint parties may be mediating institutions, but they mainly seek to *use government* for positive ends rather than promote social steering by associations outside of government. Parties are so regulated by law and so associated with the organization of government that they lose their character as voluntary and participatory associations.

Finally, disregard for parties stems from the view that they may be voluntary associations but that they are not democratic associations. Theorists concur with Schattschneider's observation that "[d]emocracy is not to be found *in* the parties but *between* the parties."[26] Bossism is a rarity today—irresponsible party leaders exploiting the association for patronage or private advantage. Instead, parties are said to be captured by wealthy interests ("[money] buys political mercenaries")[27] or staffed by professionals who employ communication technologies to capture a mass audience. Inapt as "toeing the party line" may be as a description of party affiliation in America, the phrase nonetheless captures the picture of uncritical citizens under the sway of political professionals communicating deformed political messages. In short, parties are inegalitarian and nondeliberative.

The corrective I propose to each of these mistaken reasons for neglecting or disparaging parties as elements of civil society begins with highlighting the membership face of parties.

patronage, and preferments. The machines were sources of political education and social mobility. Contemporary parties, however, do not have that character.

24. COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 14.

25. *See* Joshua Cohen & Charles Sabel, *Directly-Deliberative Polyarchy*, 3 EUR. L.J. 313, 313-42 (1997).

26. SCHATTSCHNEIDER, *supra* note 10, at 60. The current threat to internal democracy at the national level at least is professionalized staff.

27. Frank J. Sorauf, *Political Action Committees in American Politics*, *in* WHAT PRICE PACS? 27, 83 (1984).

POLITICAL PARTIES AS MEMBERSHIP GROUPS

V.O. Key formulated the well-known analysis of the structure of political parties: the party in the electorate, the party in government, and the party organization.[28] They are functionally inseparable, of course. Party organization is principally though not exclusively geared to running winning candidates in elections to "control . . . the levers of government" and put its policies and philosophies into operation.[29] This typology has the merit of drawing attention to the party as an association, but it does little to illuminate the life of parties as membership groups. It eclipses the fluid, adaptive, and participatory character of parties. It also obscures the parties' importance for moral and political education, effect on civic consciousness, and impact on the tenor and quality of political culture.

American parties are not monolithic. They are loose and decentralized voluntary associations. Federalism and the organization of parties around electoral districts have guaranteed that. The "iron-clad requirement" that "[a]mbitious men wanting to go to Congress must be elected from the constituency in which they reside" largely holds.[30] Fifty states and innumerable localities "have created thousands of partisan elected officials, party leaders, and organizations with their own constituencies and cadres of supporters."[31] Almost all of those supporters are partisans. As Nelson Polsby observes, the American two-party system masks a hundred-party system.[32]

Party organizations at the state level vary, but they are typically flexible and nonhierarchical. Some are really confederations of local organizations. Although both major national parties may be stronger today than in the recent past, this has neither centralized national committee control of state parties nor created formal, federated parties. All state parties enlist volunteer functionaries corresponding to the voting districts of the state—for example, local precinct-level

28. V.O. KEY, JR., POLITICS, PARTIES, AND PRESSURE GROUPS 163-65 (1964).

29. Ripon Soc'y, Inc. v. National Republican Party, 525 F.2d 567, 585 (D.C. Cir. 1975); *see also* Ray v. Blair, 343 U.S. 214, 222 n.9 (1952) (quoting Seay v. Latham, 182 S.W.2d 251, 253 (Tex. 1944)); Nader v. Schaffer, 417 F. Supp. 837, 844 (D. Conn. 1976).

30. SCHATTSCHNEIDER, *supra* note 10, at 105.

31. JOHN F. BIBBY, POLITICS, PARTIES, AND ELECTIONS IN AMERICA 60 (2d ed. 1992).

32. Nelson W. Polsby, *The American Party System*, *in* NEW FEDERALIST PAPERS 37, 40 (1997).

committee persons, ward representatives, state central committees.[33] Political parties offer expansive and unusually varied opportunities for involvement: political street work, contact activities, public education, working committees, and caucuses and conventions. The forms of participation overall are significantly egalitarian. Skills, energy, commitment, and time are as important as money for many party activities. More than in most political associations, questions of openness, representativeness, recruitment, and internal democracy are salient.

Moreover, the motivations of active party members mirror those valued by civil society theorists. Civil service reforms diminished the material rewards of party activism. The incentives today are personal, solidary rewards, and issue or ideological goals. In addition, members' incentives change. Studies indicate that activists who became engaged for issue-related reasons come to find that social gratification and identification with the party become their dominant motivations.[34] They are rewarded with "social contacts and friendships," the "fun and excitement of politics," and the "feeling of recognition in the community."[35] There is also a pronounced civic incentive to participate: "Scholars who have questioned party workers about their motives for service . . . know the familiar answers. They were asked to serve, and they assented because it was their civic duty."[36]

In considering parties as membership groups, should we count voters, at least primary election voters? Schattschneider was categorical: "Whatever else parties may be, they are not associations of the voters who support the party candidates."[37] The common view is that affiliation qua voter is slight, tenuous, and fleeting. Justice Scalia observed that the independent voter participating in the Connecticut Republican primary "forms no more meaningful an 'association' with the Party than does the independent or the registered Democrat who responds to questions by a Republican Party pollster."[38] For most commentators, this is only slightly less true of declared partisans, whose "membership" has been described as a

33. There are few paid staff at the local level. At the state level there is little relation between the existence of party headquarters and staff and party activism or participatory membership. *Cf.* EPSTEIN, *supra* note 2, at 151.

34. *See* BECK & SORAUF, *supra* note 9, at 123.

35. BIBBY, *supra* note 31, at 113 (quoting Samuel J. Eldersveld).

36. BECK & SORAUF, *supra* note 9, at 124.

37. SCHATTSCHNEIDER, *supra* note 10, at 53.

38. Tashjian v. Republican Party of Conn., 479 U.S. 208, 235 (1986) (Scalia, J., dissenting).

fiction created by primary registration laws. The district court in *Nader* insisted:

> [I]t is true that, in order to vote in a party's primary, plaintiffs must publicly affiliate with that party. But enrollment in Connecticut imposes absolutely no affirmative party obligations on the voter, in terms of time or money, and it does not even obligate him to vote for the party's positions or candidates or to vote at all.[39]

To say nothing of the fact that when it comes to registering partisans "[t]he party as such is not consulted. It does not accept the application; it does not vote the applicant into the association; it may not reject the application; and, finally, there is usually no recognized and authoritative procedure by which the party may expel a member."[40]

Even with regard to the purely electoral face of parties, this description is bloodless. The "information" imparted by the party label and primary voters' connection to the party are discussed as if they are disembodied, without acknowledging mailings, telephoning, and face-to-face encounters to recruit and shore up partisans. No one concerned with civic consciousness should minimize the symbolic and expressive significance of voting, as citizens themselves attest. Nor should they fail to recognize the personal and political significance of avowed party identification as a mark that citizens acknowledge their politically salient values and connections.

In fact, "[p]arty identifiers have seemed so great a social reality in the United States that they command more scholarly attention than party organizations."[41] One reason is political scientists' specific interest in predicting electoral outcomes. Apart from that, the "social reality" of party identification is relevant to the membership face of the association. Whether voting is formative or an expression of already developed civic dispositions, the cumulative effect of voting is pronounced. Despite data on party decline and the rise of independents, roughly two-thirds of the voting population avows party identification and one-third avows strong party identification.[42]

39. Nader v. Schaffer, 417 F. Supp. 837, 843 (D. Conn. 1976).

40. SCHATTSCHNEIDER, *supra* note 10, at 56.

41. EPSTEIN, *supra* note 2, at 240.

42. For recent data, see Center for Political Studies, University of Michigan, Political Party Identification of the Adult Population, by Degree of Attachment, 1972 to 1994, and by Selected Characteristics, 1994 (unpublished data, on file with author). Epstein points out that the rise of independents is offset by the fact that they were "leaners" toward one or the other major party. EPSTEIN, *supra* note 2, at 258. For standard discussion of these measures, see BECK & SORAUF, *supra* note 9, at 182, 193, 200-01; RANNEY, *supra* note 16, at 49-53. Bibby points out that by age 35 most people are at least occasional voters and only five percent are habitual nonvoters.

"[M]ost voters are not merely party identifiers, by any measure, but still cast their votes most of the time for candidates carrying their party label."[43] Party identification accounts for most votes most of the time.[44] Moreover, strength of commitment to a party increases the likelihood of voting, even if people do not vote consistently in accord with party preferences.[45] Party identification may have more of an effect on voting than it does on how votes are cast.[46] The flip side is that "[n]onvoting is not primarily a matter of legal impediments; it is rather caused by personal attitudes—a lack of interest, low sense of civic obligation, and weak feelings of partisan affiliation. Nonvoters are also more likely than voters to believe that elections do not make a difference."[47]

That said, does partisan voting have significance as an expression of association as well as civic consciousness? The standard view is that "the party in the electorate" is "largely a categorical group" with no interaction, no structured relationships, and no organizational life.[48] Blocs of voters define the parties but do not comprise an association; as an association, the party is "a group of working politicians."[49] Against this, voting entails an expression of association in the sense that the extent of electoral participation is influenced by campaign and party activities to mobilize voters who respond to candidates, programs, and organizational efforts.[50]

It is nonetheless reasonable to concede that party membership is not usefully defined in terms of registered party voters or primary voters. And people ramp up from partisanship to contributions, which are an express sign of association. Oddly, like voting, individual contributions to campaign organizations and parties are generally seen as bare affiliation lacking civic or expressive significance.[51] They are categorically denied to be the equivalent of membership dues. This is surely wrong with regard to the many

BIBBY, *supra* note 31, at 260.

43. EPSTEIN, *supra* note 2, at 262.

44. *See id.* at 254.

45. *See* BECK & SORAUF, *supra* note 9, at 191.

46. The independent-minded voter stands in sharp contrast to the citizen who expresses no preference and does not vote.

47. BIBBY, *supra* note 31, at 261.

48. BECK & SORAUF, *supra* note 9, at 141.

49. SCHATTSCHNEIDER, *supra* note 10, at 59.

50. *See* BIBBY, *supra* note 31, at 262; EPSTEIN, *supra* note 2, at 240.

51. For a balanced discussion, see SIDNEY VERBA ET AL., VOICE AND EQUALITY 288-303 (1995).

individual contributors who regularly make donations large and small in response to party appeals. Contributions were depreciated in the Supreme Court's argument in *Buckley* that they are a form of association "by proxy,"[52] the implication being that contributions are morally deficient, an anticivic substitute for personal association and participation.

It is one thing to erect a moral hierarchy of forms of participation and association and another to disparage anything less than ideal activism. Party voting and "association by contribution" are not the only forms of political participation cast as trivial. Lobbying used to be defined as contact with legislators by professionals—in contrast to grassroots mobilization. Today, grassroots lobbying techniques invented by Ralph Nader's consumer-based groups have been adopted by all sorts of associations, including parties, which mobilize their constituents to contact decision makers. This form of association and expression too is often diminished as "astroturf" participation.[53] Clearly, electronic mail is not dialogic. But it is churlish to deny that this is democratic and in some cases partisan participation on a large scale.[54]

Even if most partisans are simply voters and inactive in party affairs, making the designation "member" inapt, this assessment passes over the association of volunteer activists that guides the "party in the electorate" and the many party officials legally responsible for party activities. Where most political interest and advocacy groups are predominantly mailing-list associations, local, state, and national parties seek not only a publicly affiliated clientele of voters and contributors but also active members. The number of activists should not be passed over lightly. Beck and Sorauf estimate that a fully staffed, two-party system assumes the participation of at least 200,000 men and women.[55] Moreover, active membership is gripping. Voters can switch parties but active members cannot readily displace their disagreements about candidates or programs. In contrast to religious dissenters, they cannot exit easily; the market of parties is immeasurably thinner than the market of religious groups. Members must "exit" party life entirely or amplify their "voices" within.

52. Buckley v. Valeo, 424 U.S. 1, 241 (1976).

53. *See* DAN CLAWSON ET AL., MONEY TALKS: CORPORATE PACS AND POLITICAL INFLUENCE 187 (1992).

54. *See* ROSENBLUM, *supra* note 14, at 234.

55. BECK & SORAUF, *supra* note 9, at 75.

My point: there is no bright line between party organizations as membership groups and electoral parties whose members are partisan voters. Austin Ranney observed that American parties are unique among associations because they do not have effective control of their own legal membership (a reference to state-mandated open primaries) and "there is no formal distinction between member and supporter."[56] Justice Marshall framed the ambiguity in more constructive terms:

> A major state political party necessarily includes individuals playing a broad spectrum of roles in the organization's activities. Some of the Party's members devote substantial portions of their lives to furthering its political and organizational goals, others provide substantial financial support, while still others limit their participation to casting their votes for some or all of the Party's candidates. Considered from the standpoint of the Party itself, the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be in any sense the most important.[57]

There are good reasons to characterize parties as membership groups and recognize that to some extent associational life is affected by the legal framework in which they operate. Like almost every voluntary association except for the most intimate, parties must conform to certain public norms, which are legally enforced. Parties, however, are regulated more than most groups in civil society, and these regulations are contested. In addition, state laws go to the heart of parties' freedom of association: control of the group's membership. Accordingly, the best first step into parties as *primus inter pares*, before turning to their qualitative distinctiveness, is via their unusual legal status.

PUBLIC UTILITIES/EXPRESSIVE ASSOCIATIONS

Parties are not just mediating institutions. They are "transitional objects" par excellence and Janus-faced. From the standpoint of political representation, electoral parties stand between citizens and the organization of government. As membership groups, parties are oriented in the other direction. They are voluntary associations for deliberation and organization, giving effective political expression to the interests and values of individuals and groups as they bear on the

56. BIBBY, *supra* note 31, at 75 (quoting AUSTIN RANNEY, THE GOVERNING OF MEN 199 (4th ed. 1975)).

57. Tashjian v. Republican Party of Conn., 479 U.S. 208, 215 (1986).

public interest.

Legally, parties have two faces: for some purposes they are highly regulated, for other purposes they are deemed constitutionally protected voluntary associations. Parties' mixed status was officially pronounced by the courts in the White Primary Cases.[58] Where states make primary elections an integral part of the electoral process to provide access to the general election ballot, the right to vote is protected by the Fourteenth and Fifteenth Amendments and therefore parties cannot exclude black voters.[59] The mixed status of parties was restated in *Duke v. Massey* under notably different racial circumstances.[60] The Georgia Republican Party's refusal to place former Ku Klux Klan head David Duke's name on the presidential preference primary list was judged to be both the action of representatives of the party (exercising their right to limit association to those they accept as members) and state action (because Georgia assigned authority to exclude a candidate from the party's primary ballot to a panel consisting of the state party chair and party leader in each house of the legislature).[61]

Of course, many voluntary associations in civil society have a quasi-public character. Many groups are classified as "public accommodations" because they are seen as important sources of social and economic opportunity, justifying state and federal laws requiring these groups to conform to liberal principles of due process and nondiscrimination, fairness, and equal respect. What I have called "the logic of congruence" circumscribes freedom of association—for example, when the state of Minnesota requires the Jaycees to open their membership to women.[62] Additionally, parties are required to insure fairness and equal protection of the law, as the

58. *See* LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 13-23, at 787-90 (1978).

59. *See* Clifton McCleskey, *Parties at the Bar: Equal Protection, Freedom of Association, and the Rights of Political Organizations*, 46 J. POL. 346, 354-56 (1984). The same reasoning justifies state intervention in the straw ballot (preprimary primary) of the Texas Jaybird party, even though the group did not appear on the ballot, on grounds that the association was the only effective part of the elective process in the county. *See* Terry v. Adams, 345 U.S. 461, 469-70 (1953). This application of the Fourteenth Amendment has been restricted to cases involving racial exclusion in one-party contests. *See* Smith v. Allwright, 321 U.S. 649 (1944). The right to vote has not been successful in challenges to closed primaries brought by independents or those who do not want to register as a partisan. Nor does this reasoning apply to party activities generally. *See* McCleskey, *supra* at 355.

60. 87 F.3d 1226, 1231 (11th Cir. 1996).

61. *See id.*

62. *See* Roberts v. United States Jaycees, 468 U.S. 609, 622-29 (1984).

White Primary Cases indicate.[63]

But relative to other associations, political parties have more characteristics similar to public entities; they have been described as "public utilities" or as "parties-in-states' clothing."[64] Apart from campaign finance law there is relatively little federal regulation of national parties. State laws heavily regulate political parties, however; and, when they intervene to control ballot access or party organization, their interests go beyond liberal norms of fairness and equal protection. They extend to independent democratic norms: maximizing political participation, preserving the integrity of the election process, preventing fraud and corruption, protecting voters from confusion and undue influence, preventing ballot overcrowding and the appearance of "frivolous candidates," fostering an informed electorate, and preserving the stability of the two-party system.

With the institution of the "Australian ballot," states took the apparatus of voting out of the hands of parties.[65] By printing standardized ballots listing the name and party label of all legally nominated candidates, states control ballot access. Most states permit but curtail through regulation write-in voting.[66] They also limit the choices available to voters and the opportunities available to candidates and parties by controlling access to the electoral arena by minority parties and independents through devices such as filing fees and petition requirements (including detailed constraints on permissible signatures).[67] The required showing of "significant support" may operate as an effective bar to ballot access in primary elections, and states impose even higher thresholds for participation by minor parties and independent candidates in general elections.[68]

Because states give nominees of the major parties automatic

63. *See Terry*, 345 U.S. at 461; *Smith*, 321 U.S. at 649; Nixon v. Condon, 286 U.S. 73 (1932); Nixon v. Herndon, 273 U.S. 536 (1927).

64. *See* EPSTEIN, *supra* note 2, at 155; Mark E. Rush, *Voters' Rights and the Legal Status of American Political Parties*, 9 J.L. & POL. 487, 488 (1993). The public utilities analogy is instructive for its emphasis on "duopoly," but the market analogy is incomplete, and it is instructive to compare voluntary associations cast as "public accommodations."

65. Epstein qualifies the salience of the link between government provided ballots and regulation, pointing out that other nations have official ballots but do not regulate the way in which parties bestow their labels on candidates. EPSTEIN, *supra* note 2, at 156. The principal explanation is "progressive" suspicion of the parties. *See, e.g.*, JAMES L. SUNDQUIST, DYNAMICS OF THE PARTY SYSTEM (rev. ed. 1983).

66. *See* David Perney, Note, *The Dimensions of the Right to Vote: The Write-In Vote, Donald Duck, and Voting Booth Speech Written-Off*, 58 MO. L. REV. 945, 956 (1993).

67. *See* BECK & SORAUF, *supra* note 9, at 238-39.

68. *See* Bradley A. Smith, Note, *Judicial Protection of Ballot-Access Rights: Third Parties Need Not Apply*, 28 HARV. J. ON LEGIS. 167, 175-76 (1991).

placement on the ballot, party selection of candidates amounts to a governmental function.[69] Government-organized primary elections, the most significant government regulation, supplant or supplement party caucuses and conventions as the legally mandated process for nominating major party candidates for federal and statewide offices in most states. State laws determine whether primary elections are open, closed, or "blanket." Appealing to the public interest in preventing "voter raiding," states can exclude voters registered with one party from participating in the primary of another.[70] (The time frame obviously determines the stringency of the requirement of party registration; in practice, the difference between open and closed primaries may be nil.)[71] State laws may also require candidate loyalty to the party in which he or she is running in the primary by means of disaffiliation requirements to avert "divisive sore-loser candidates"; they keep a primary loser from launching an independent candidacy.[72] Overall, "[a]n election ballot is a State-devised form through which candidates and voters are required to express themselves at the climactic moment of choice."[73]

States also regulate the internal organization of major parties, their procedures, and composition. They designate official governing bodies like state central committees, or require that state party executive committees include congressmen. Thirty-six states regulate the procedures to select state committee members; thirty-two states stipulate the composition of state committees; twenty-two states specify when these committees must meet; twenty-seven states

69. *See* TRIBE, *supra* note 58, § 13-23, at 790.

70. *See* Tashjian v. Republican Party of Conn., 479 U.S. 208, 224 n.13 (1986). The Supreme Court has struck down longer registration periods before voting, but upheld a New York law requiring registration 30 days before the upcoming general election to vote in the subsequent primary, that is, about eight months before the general election. *See* Rosario v. Rockefeller, 410 U.S. 752, 753, 757 (1973).

71. In practice, self-designation prevails. Even in closed-primary states only a declaration of past or intended affiliation is required; how people actually vote is secret. In any case, there is a difference between requirements that allow voters to affiliate or disaffiliate if they wish, and statutes that set registration requirements that demand so much advance planning and knowledge that voters cannot reasonably conform to them. Thirty-eight states require closed primaries. *See* BECK & SORAUF, *supra* note 9, at 235. Louisiana operates a "nonpartisan" primary. *See id.* at 228 n.1.

72. *Tashjian*, 479 U.S. at 223-24 (quoting Storer v. Brown, 415 U.S. 724, 736 (1974)). For other examples of intervention, New York law permits any aspirant for a party's nomination who receives 25% of the party committee's delegates in the convention to appear on the primary ballot without the party's endorsement; Connecticut law provides for the enforcement of a primary contest against the candidate endorsed by the party convention. *See* Rush, *supra* note 64, at 498.

73. Rosen v. Brown, 970 F.2d 169, 175 (6th Cir. 1992).

regulate internal rules and procedures.[74]

The catalogue of state interests invoked to justify regulating ballot access and party organization is broad and vague. It is fair to say that rationales like ensuring that some order rather than chaos accompanies the democratic process[75] offer little guidance in judging whether specific regulations are constitutionally permissible in light of the competing First Amendment right of association. Consider state control of primary elections. A justification for state-mandated *open primaries* is that less inclusive processes alienate individuals and discourage them from participating in the primary. Another justification is that more citizens are drawn into the political process at this crucial stage in the process by allowing citizens to select candidates from any party.[76] "The state's interest in . . . not restricting voting in the presidential preference primary to those who publicly declare and record their party preference is to preserve the overall integrity of the electoral process . . . ."[77] (In practice, the results both in terms of the number of competitive primary elections and voter turnout are not encouraging.)[78] But "preservation of the integrity of the electoral process"[79] also justifies state-mandated *closed primaries*. In this case, it is said to guarantee that primary election results reflect the will of party members "undistorted by the votes of those unconcerned with, if not actually hostile to, the principles, philosophies, and goals of the party."[80] Put strongly, "a candidacy determined by the votes of non-party members is arguably a fraudulent candidacy."[81]

The counterpart of the state's regulatory focus on the electoral functions of parties is the other face of Janus-faced parties—as voluntary associations. Parties have an interest in freedom of association and claim a right to self-government and control over their internal organization, purposes, and procedures. Party rules

74. "Only five states . . . do not specify some aspect of the parties' organizational structure, procedures and composition." BIBBY, *supra* note 31, at 96.

75. *See* V.O. KEY, JR., AMERICAN STATE POLITICS 17 (1956).

76. Alternatively, political competition not participation is the determinative value. Key proposed this explanation for the direct primary as it evolved in the south as an escape from one-partyism, a means of popular government where interparty competition was absent. *See* BIBBY, *supra* note 31, at 128. In states with two-party competition, the primary was adopted more slowly. *See id.*

77. Wisconsin v. Democratic Party of the United States, 287 N.W.2d 519, 536 (Wis. 1980).

78. *See* BIBBY, *supra* note 31, at 147-49.

79. Nader v. Schaffer, 417 F. Supp. 837, 846 (D. Conn. 1976).

80. *Id.*

81. *Id.* at 847.

effect contests to "win the party's nominations, elect its candidates, distribute its patronage, formulate its programs, and allocate whatever other goods its members seek."[82] Parties have a particular interest in rules for electing state and national committee members and seating delegates to national conventions. Courts have supported party autonomy by upholding formulae that deviate from one-person, one-vote.[83]

Parties' claims to autonomy are obviously heightened by the fact that as political associations they should be principal beneficiaries of the First Amendment protections of speech and association. As courts and commentators have repeatedly stated, the express political rights of speech and assembly are of slight value absent a concomitant right of political *association*.[84]

In *Roberts v. United States Jaycees*, the Supreme Court refined the constitutional right of association, explicitly recognizing the right of intimate and expressive associations to choose their own members.[85] As Justice O'Connor wrote in her concurrence: "Protection of the association's right to define its membership derives from the recognition that the formation of an expressive association is the creation of a voice, and the selection of members is the definition of that voice."[86] Clearly, crossover voters in state-mandated open primary elections could change the party's message. But the integrity of an association's voice is a concern whether or not there is a clear and identifiable nexus between membership and the group's political expression. Even if the association's specific message does not change because of laws compelling the Jaycees to admit women or forcing a party to allow independents to vote in its primary, the laws are potentially transforming. The point of political association is not just the message but the messenger: who exactly is speaking. At a minimum, a party whose membership is regulated could be accurately perceived as affected by state policy—a contradiction of the democratic purpose of political association. Hence, the sound core of the thought that "[f]reedom of association means not only that an individual voter has the right to associate with the political party of her choice . . . but also that a political party has a right to 'identify the

82. RANNEY, *supra* note 16, at 10.

83. *See* Democratic Party of the United States v. Wisconsin, 450 U.S. 107, 126 (1981).

84. *See* Buckley v. Valeo, 424 U.S. 1, 83 (1976); NAACP v. Button, 371 U.S. 415, 430 (1963); NAACP v. Alabama, 357 U.S. 449 460 (1958).

85. 468 U.S. 609, 618, 623 (1984); *see* ROSENBLUM, *supra* note 14, at 161-72.

86. *Roberts*, 468 U.S. at 633.

people who constitute the association.'"[87]

Despite assertions that freedom to further common political beliefs necessarily presuppose "the freedom to identify the people who constitute the association,"[88] and claims that primary voting to select the party's candidates is a "basic function" of the party,[89] regulations determining which voters may participate in primary elections hold. (These regulations, however, vary from state to state and judges balance the competing interests differently.)[90] Every permutation of the regulations has been challenged in the courts: states and parties jointly favoring the exclusion of unaffiliated voters from participation;[91] states favoring open primaries against party objections, and vice versa;[92] and a state and national party on opposite sides of a case challenging mandated open primaries.[93]

In a recent opinion, the Supreme Court affirmed parties' associational right to *open* its membership.[94] The Connecticut Republican Party wanted to broaden its base by permitting independent voters to participate in its primary so it challenged a law requiring primary voters to be registered party members.[95] The Supreme Court struck down the law on First Amendment grounds.[96] The law "limit[ed] the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community."[97] Whether party members should include independents or only those who publicly demonstrate prior commitment to the party is a question best left to the parties themselves.

Tashjian upheld the Connecticut Republican Party's right to open its primary.[98] Challenges to closed primaries brought by unaffiliated voters have been rejected, however.[99] Nonparty members

87. Eu v. San Francisco County Democratic Cent. Comm., 489 U.S. 214, 224 (1989) (quoting Tashjian v. Republican Party of Conn., 479 U.S. 208, 214 (1986)).

88. Democratic Party of the United States v. Wisconsin, 450 U.S. 107, 122 (1981) (citing TRIBE, *supra* note 58, at 791).

89. Tashjian v. Republican Party of Conn., 479 U.S. 208, 216 (1986).

90. *See Democratic Party*, 450 U.S. at 122-23.

91. *See* Rosario v. Rockefeller, 410 U.S. 752, 753 (1973).

92. *See Tashjian*, 479 U.S. at 210-11.

93. *See Democratic Party*, 450 U.S. at 109.

94. *See Tashjian*, 479 U.S. at 211.

95. *See id.* at 210.

96. *See id.* at 229.

97. *Id.* at 216.

98. *Id.*

99. *See* Rosario v. Rockefeller, 410 U.S. 752, 762 (1973).

denied the right to participate in a closed primary do have an interest in the outcomes, the Court observed in another context, but "they are *not* 'interested' in primary elections in the crucial, distinguishing aspect that party members are interested."[100] To date, parties that may want to avoid open primaries or avoid holding primaries altogether have not tested the constitutionality of state-mandated primary elections.

The closest we have come is a Supreme Court ruling that while states may mandate open primaries, they cannot dictate that primary results determine who may sit as state delegates to national conventions.[101] In *Democratic Party of the United States v. Wisconsin*, the Court asserted the national party's freedom to restrict delegate selection to voters who "are willing to subscribe to the general principles of the Democratic Party" by publicly recording their party preference.[102] National party rules trump state laws and state party rules for the purposes of selecting delegates to the national convention.[103] Because the decision was based on the associational rights of the party (not just the national party's immunity from state regulation), *Democratic Party* opened the door to future challenges.[104]

All voluntary associations challenge regulations that infringe on their freedom of association. But testing the constitutionality of laws regulating parties involves a complicating factor that points to another respect in which parties differ from other voluntary associations, including other political groups. In practice, regulation of parties entails laws passed by state legislative majorities and raises the problem of political entrenchment and self-interest. As Justice Stevens' argument for deference to Congress' judgment on matters of campaign reform points out, this position "fails to acknowledge . . . the potential for legislators to set the rules of the electoral game so as to keep themselves in power and to keep potential challengers out of it."[105] Regulations are not always the work of the ascendant party aimed at the other parties or the work of the major parties

100. Nader v. Schaffer, 417 F. Supp. 837, 848 (D. Conn.), *aff'd*, 429 U.S. 989 (1976).

101. *See* Democratic Party of the United States v. Wisconsin, 450 U.S. 107, 126 (1981).

102. *Id.* at 112 n.5 (1981) (quoting Wisconsin v. Democratic Party of the United States, 287 N.W.2d 519, 524 (Wis. 1980)). For statistics on the divergent voting patterns of crossover voters and identified Democrats, see *id.* at 118 n.19.

103. Though in practice the moral authority of state delegates chosen in open primaries has forced the national party to accommodate the state, the Democratic Party seated the Wisconsin delegation in 1980. *See* Lowenstein, *supra* note 4, at 1775.

104. *See Democratic Party*, 450 U.S. at 124-26.

105. Colorado Republican Fed. Campaign Comm. v. FEC, 518 U.S. 604, 644 n.9 (1996).

collaborating to preserve their dominance against challenges brought by minor parties or independent candidates. To complicate matters, the regulations are sometimes best understood as the work of party leaders in government aimed at the party organization outside. As such, challenges brought by the party organization represent intraparty disputes.

Consider *Eu v. San Francisco County Democratic Committee*. In *Eu*, elements of the state Democratic Party challenged regulations making it a criminal offense for parties to fail to (1) create county level committees, (2) adhere to a maximum term of office for the chair of the state central committee, and (3) rotate the chair between residents of northern and southern California.[106] The party also challenged a state law prohibiting it from endorsing a primary candidate.[107] The *Eu* Court overturned these regulations, arguing that party members have a right to organize a party in the way that will make it the most effective political organization.[108] As Daniel Lowenstein points out, this was an intraparty dispute and in deciding it the Court effectively determined who speaks for the party.[109] The plaintiffs were "[v]arious county central committees of the Democratic and Republican Parties, the state central committee of the Libertarian Party, members of various state and county central committees, and other [partisan] groups," and the Court referred to these officials as "governing bodies" of the parties.[110] By accepting them as speaking for the major parties, the Court ignored the fact that neither major party state central committee was a plaintiff.[111] It also in effect denied that party leaders in the legislature rather than party officials spoke for party members.[112]

This overview indicates that political parties have a unique legal status among voluntary associations. But by itself, neither states' distinctive interests in regulating parties nor parties' distinctive interests in freedom of association indicate why they should be considered *primus inter pares*.

106. 489 U.S. 214, 216 (1989).

107. *See id.*

108. *Id.* at 229-30.

109. Lowenstein, *supra* note 4, at 1779.

110. *Eu*, 489 U.S. at 219, 222.

111. *See* Lowenstein, *supra* note 4, at 1781-83. Lowenstein's thesis is that legislators (party leaders in Congress) have a better claim to speak for the party than party officials. *See id.*

112. See ROSENBLUM, *supra* note 14, at 73-157, for discussions of the "integrity" of an association as well as who speaks for members of churches and a host of nonreligious groups.

PRIMUS INTER PARES

Political parties compete with voluntary associations of all kinds for members and resources of time, money, and loyalty. They compete directly with other political groups as providers of the organization that draws citizens into political activity. But there is a division of labor between political parties and advocacy groups, interest groups, and the rest of the gamut of organized political voices. Only parties are principally concerned with candidates and elections. The goal of parties is not to "maximize the number of people who express an attitudinal preference for it" but to contest elections effectively.[113] This dictates the qualities of association that make parties unique and uniquely valuable contributors to democracy.

To serve their purposes effectively, parties must have long-run organizational and political goals—unlike PACs and the campaign organizations of individual candidates. In contrast to most interest and advocacy groups, parties must continuously seek to establish contact with the electorate in a fashion that elicits participation on a large scale. Parties do more than help recruit and support candidates for an extensive array of offices at every level of government. Indeed, the objective of contesting elections successfully involves more than campaign activities, registration drives, voter guides, and turnout. It requires long-term development—establishing local presence, developing cadres of activists, coordinating the support of social leaders, and a drive for membership from every salient group.[114] Parties raise and define public issues, engage in political education, choose officers, enact rules for process and representation, and decide on their purposes and policies as well as strategies. They are distinctive sources of information and experience in forming political judgments. They are forums for reasonably deliberative collective decision-making about public life. Potentially, they are the most important agenda-setting institution for the public interests of society as a whole. In all these respects, parties' value is independent of particular electoral successes, but it is dependent on their vitality as membership groups.

Closely connected to this functional division of labor between parties and other political groups are three defining characteristics

113. Frendreis et al., *supra* note 10, at 227.
114. *See id.*

that give political parties in the United States their unique *normative* status. They make party membership qualitatively different from membership in other associations.

First, major American parties bridge local and national citizenship. Whereas nonparty political associations are typically local or national, parties cover the terrain. In a country with fragmented government and a shifting array of political associations, major parties are reasonably omnipresent federated structures.[115] Most candidates for public office at every level of government carry major party labels, and the official ballot institutionalizes these labels. It follows that parties alone deal with a comprehensive range of local and national issues and bring local organizations in touch with national political affairs, and vice versa. Active membership signals commitment to both local and national community. With this, parties bring some coalescence if not unity to our understanding of political life.

This is particularly so because the major American parties have continuity. Most political groups—for example, interest groups and community-based service groups—are comparatively short-lived. Democrats and Republicans have confronted one another since the 1860s. The major American parties have a place in history, and what is vulgarly referred to as "reputational brand capital."[116] They have traditions. As a result, they cannot avoid public accountability for their continuity; they must be perceived as transcending the short-term proliferation of issues and personalities. Accordingly, membership entails identification with an institution that has deep connections to community and public events.

The second defining characteristic of parties is that they are *integrative.* American parties draw support from every socioeconomic group. No other political association pulls together such large and diverse segments of the population as measured by socioeconomic status, religion, or sectionalism (the most enduring division between the major parties is race). Precisely to the extent that the major parties are broad and encompassing, they embody the democratic norm of inclusiveness. This means that American parties avoid divisive cleavages based on "particularist" definitions of ethnic or cultural status or the boundaries of citizenship. It means that

115. Regional one-party domination is a recurrent feature of American party politics. *See* V.O. KEY, JR., SOUTHERN POLITICS IN STATE AND NATION 298-316 (1984).

116. Steven G. Calabresi, *Political Parties as Mediating Institutions*, 61 U. CHI. L. REV. 1479, 1523 (1994).

parties have every incentive to reach out to other groups; "representativeness" is their explicit purpose.

At any historical point, of course, parties have "core constituencies." But alliances like the one that generally prevails between labor unions and the Democratic Party are the exception. One reason is that organized interests typically have their own political arms—PACs, lobbyists, and so on; they are not dependent on parties to serve as their intermediaries to government. In fact, concerned as they are with specific policy outcomes, many organized interest groups support candidates who they hope will advance their policies from both major parties. That is why one characterization of parties' key role is to give expression to "shadow interest groups"—those who because of resources do not have independent political organizations.[117] The decline of important forms of associations and memberships generally, documented by civil society theorists, has significance for political parties: it makes them more important.

Parties are not coalitions of well-organized interests with predetermined preferences, then. But neither are they simply the voice of heterogeneous unorganized voters; their inclusiveness is not a matter of giving expression to diffuse majority sentiment. Rather, parties are *dynamically integrative*. "The major parties must do what the pressure groups need not do at all; they must consider the balance of relations among the interests."[118] They are mini-associative democracies, usefully described as the "intermediate intermediaries."

These two defining characteristics of parties lead directly to the third: their *comprehensiveness*. Parties are preoccupied with wide-ranging agenda setting at regional levels and for the nation as a whole. Unlike interest and advocacy groups whose agendas are often restricted to a single (sometimes uncompromisable) principle or policy, party agendas are broad and open-ended. Unlike candidate-centered campaign organizations attuned to immediate "issues" that promise short-term political benefits,[119] parties can identify and attend to long-term problems. Some minor parties are more like interest

117. *See* Jonathan R. Macey, *The Role of the Democratic and Republican Parties as Organizers of Shadow Interest Groups*, 89 MICH. L. REV. 1, 1-5 (1990). This is not to endorse Macey's account of parties as "political brokerage firms," as "arbitrageurs who signal politicians of citizens' preferences and thereby inform politicians about how to obtain political support," a matching process that "lowers the transaction costs to certain citizens of entering the political process." *Id.* at 1-2.

118. SCHATTSCHNEIDER, *supra* note 10, at 98.

119. "[I]ssues are merely what politicians use to divide the citizenry and advance themselves." DIONNE, *supra* note 8, at 332.

groups—devoted to a particular cause such as prohibition or right to life. But the major parties have comprehensive and necessarily flexible aims. Interest groups cannot do what parties can do in a diverse society: bring together the claims of groups and formulate issues in a comprehensive and effective manner.

This helps explain why parties rarely "mirror" the stated interests and values of their members (or voters). Partisans do not have preexisting exogenous preferences with regard to most issues—the range is too broad and preferences are not "independent of the products offered."[120] In this respect, the description of voters as "consumers" is complex; the vulgar implications are inapt. Parties are less responsive to partisans' opinions than forums for political judgment. Again: "Parties are as much engaged in prioritizing choices, and therefore suppressing some of them, as they are in expressing alternatives that may exist in the minds of ordinary citizens."[121] Parties are the political institution committed to articulating and advocating one among competing notions of the public good. As Schattschneider states:

> The mobilization of majorities in recognition of the great public interests, the integration of special interests with public policy, and the over-all management and planning involved in discriminating among special interests cannot be done by organized special interests on their own initiative. These are the functions of an entirely different kind of organization, the political party.[122]

Alone among associations, then, parties offer a comprehensive map of the political world—cues and symbols that extend across issues and candidates over time. And active membership in parties exposes men and women to a distinctive form of political socialization.

These three defining characteristics of parties point to an overarching reason why they can be described as *primus inter pares*. Together, the inclusive, integrative, and comprehensive nature of membership makes parties potential deliberative institutions. More specifically, these characteristics mark parties as institutions that lend themselves to deliberation about the common good. This is not to say that parties always demonstrate a principled commitment to deliberation, only that some kind and degree of deliberation is structurally required today. Bernard Manin's description of

120. MANIN, *supra* note 2, at 225.
121. Polsby, *supra* note 32, at 41.
122. SCHATTSCHNEIDER, *supra* note 10, at 31.

representative assemblies holds for major parties: "It is the collective and diverse character of the representative organ, and not any prior or independently established belief in the virtues of debate, that explains the role conferred on discussion."[123] Parties are *the* voluntary association for deliberating comprehensive, long-term political agendas. They are the embodiment of the democratic theorists' "public sphere," where public judgements are formed not through offers or threats but through persuasion and justification. If interparty decision-making is typically characterized as bargaining, intraparty decisions entail deliberation with reference to evolving notions of the common good. The party's notion of the common good is justified by its insight into and effective contribution toward the public good of the state and nation.

Many associations of civil society have been touted by one or another democratic theorist as "free public spaces" in which citizens cultivate public skills, cooperation, self-respect and assertion, and civic orientation.[124] In the case of parties, we can add experience in forming judgments about political directions and candidates—the dispositions specifically required of citizens by representative government. In this context, the dynamic integrative aspect of parties as associations bears repeating. For advocates of democratic deliberation, the essence of "public spaces" is that they encompass not only preexisting interests and opinions but also half-formed or unformed views. They do this in a fashion that gives rise to new politically relevant concerns and projects. Parties fit this description. National conventions are not simply deliberative bodies, but in other venues parties at every level can be.

In addition, parties alone among the voluntary associations of civil society are "strong publics."[125] Their deliberations culminate in decisions, and if they are electorally successful these decisions may become legislative programs. (If they are not successful, parties' articulations of public interests may nonetheless alter the public agenda.) The important point is that ideally, and to a reasonable extent in practice, parties are deliberative associations. Their failure to effectively deliberate can be a prime source of electoral and governance weakness.

123. MANIN, *supra* note 2, at 187.

124. *See, e.g.*, SARA M. EVANS & HARRY C. BOYTE, FREE SPACES: THE SOURCES OF DEMOCRATIC CHANGE IN AMERICA (1992).

125. *See* Jean L. Cohen, *American Civil Society Talk*, *in* CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL, *supra* note 1, at 55, 58.

These defining characteristics comprise normative reasons for designating parties *primus inter pares*. They account for the parties' intrinsic value, contributing to democratic education and political culture. They provide justification for preserving and strengthening parties, and, because they are inseparable from parties as membership groups, they justify strengthening parties as participatory, voluntary associations.

This justification has obvious affinities to the concerns of civil society theorists, but it diverges from the two dominant arguments for strengthening parties. Familiar arguments for strengthening parties as agents of "responsible party government" give principal place to political fragmentation, governance, and the accountability of political representatives to party officials.[126] In democratic theories of political equality, on the other hand, the focus is on legal reform of the electoral system as a whole to insure equality of rights among voters, candidates, and parties.[127] I discuss these positions elsewhere.[128] For now, suffice to say that neither advocates of responsible party government nor advocates of political equality focus on the internal associational life of parties or on their vitality as membership groups. For the most part, in both the legal and political science writings on parties, the normative characteristics that make them *primus inter pares* among voluntary associations—their inclusiveness, integrative role, comprehensiveness, and capacity for deliberation—drop from view.

THE *NOMOS* OF PARTIES AS VOLUNTARY ASSOCIATIONS

Consider just a few significant purposes of parties that are left out of the leading accounts of party renewal, which are principally concerned with governance and unequal political influence:

- The distinctive political education of active members in an association whose concern with the public interest is long-term and comprehensive.
- Parties as potentially deliberative institutions. Their inclusiveness and integrative dynamic gives them a comparative advantage relative to other political groups to

126. See COMMITTEE ON POLITICAL PARTIES, *supra* note 11, at 1-2, for an important formulation.

127. *See, e.g.*, BEITZ, *supra* note 12.

128. *See* Nancy L. Rosenblum, *Political Parties as Membership Groups* (Nov. 12, 1999) (unpublished manuscript, on file with the *Columbia Law Review*).

conference, accommodate, and generate new positions.

- Parties' irreplaceable part in identifying, recruiting, and guiding political leaders, which is dependent on a party structured to continuously attract active members from every quarter and bridge the concerns of activists and voters.
- Ultimately, parties' claim to moral support. In contrast to advocacy and single-issue groups, parties draw in unorganized as well as organized members who may not be committed to a set of policy preferences. Parties' failure to attract these citizens leaves them without a political voice.

The forces strengthening and weakening parties' ability to fulfill these purposes are not all external, and the legal framework and general political culture are not the whole story. What one scholar observes about campaign finance is true more broadly: it is quite conceivable that "the parties' role in campaigns ultimately may depend more upon their own initiative than present financing laws."[129] The party's own *nomos*—its rules, leadership, and self-defined purposes—are as important as public laws, probably more so.

The party's *nomos* is reflected in part in the association's rules and procedures. It is true that "[o]f all the many factors that affect the fate of candidates, factions, policies, and programs, party rules are the most easily manipulated."[130] But what matters are the purposes for which rules are made and altered—whether changes are more than the tactics of factions jockeying for short-term advantage. "Politicians live their lives in the short-run."[131] Parties live in the long-run.

The political science literature on party rules always converges on the National Democratic Party reforms of the 1968-72 McGovern-Fraser Commission, enacted in large part to enhance openness and participation.[132] Among the most salient changes were increasing the importance of primaries in selecting presidential candidates by ruling that delegates would be seated at the national convention only if they were chosen through open primaries;[133] requiring proportional

129. BECK & SORAUF, *supra* note 9, at 363.

130. RANNEY, *supra* note 16, at 209.

131. Gary Orren, *The Changing Styles of American Political Parties*, *in* THE FUTURE OF AMERICAN POLITICAL PARTIES: THE CHALLENGE OF GOVERNANCE 4, 35 (Joel L. Fleischman ed., 1982).

132. *See* RANNEY, *supra* note 16, at 27.

133. *See* BIBBY, *supra* note 31, at 179-80.

representation of women and blacks;[134] calling on party elements to expand the role of members vis-a-vis party leaders by permitting participants in caucuses and national conventions to speak and vote their consciences rather than follow the lead of party bosses;[135] abolishing proxy voting and the unit rule (which required each state's delegation to cast its entire vote for the majority presidential preference);[136] and ending favorite son delegates and prohibiting ex officio delegates.[137] This change was reversed in 1988 when automatic slots for unelected, uncommitted "super-delegates"—members of the Democratic National Convention, state party chairs, Democratic governors, and a certain proportion of the party's congressional delegation—were restored.

The reforms were contested within the Democratic Party and have been fiercely criticized by political pundits and academic commentators since.[138] Austin Ranney characterized the rules debate as a contest between the goals of representativeness and success at the polls.[139] The goal of representativeness accents the expressive function of party organization. That is, the issue for apportioning national committee members and setting delegate credentials is how well party institutions give expression to members' interests and values.[140] Representativeness takes a back seat to "combat effectiveness" when party rules are based on the goal of nominating "electable" candidates.[141]

The counterpart of expressive/competitive organizations in accounts of the McGovern-Fraser Committee reforms is the distinction between purists and pragmatists, or "party regulars." That is, "passionate amateurs" who cannot abide by normal politics and are loyal to the party only insofar as it advances ideals versus regulars who see integral value to the party and are willing to compromise principles to accommodate party factions and appeal to voters as

134. *See* RANNEY, *supra* note 16, at 27-28.

135. *See id.*

136. *See id.*

137. *See id.*

138. I will not take up the question that dominates the literature: whether these reforms were responsible for the party's electoral decline. I am inclined to agree with those who argue that they were the culmination of longer-term trends, and not a principal cause, of the decline of Democratic dominance from the 1930s.

139. RANNEY, *supra* note 16, at 111.

140. More specifically, Ranney and others pose the question of intraparty representation as a conflict between the representation of political preferences versus the representation of demographic and identity groupings. *See, e.g., id.* at 112-15.

141. *See id.* at 135.

necessary to win elections.[142]

The expressive/instrumental typology of party organization is valuable insofar as it draws attention to the membership face of parties and to internal associational life. But it also has limitations, even as a description of this particular set of Democratic Party rules changes. Intraparty contests over process are always tied to electoral goals as well as party self-government. Reformers are rarely concerned with democratization or doctrinaire stances *in contrast to* electoral success. There is also evidence that differences between so-called purists and regulars do not carry over into key actions in support of candidates.[143] The distinction between ideological activists and regulars is misleading too because it implies that the latter are sheer instrumentalists for whom winning is unconnected to programmatic goals. Consider that the progressive tradition of the Democratic Party in terms of government activism and liberal social reform is firmly entrenched—at least as a relative matter. Party regulars considered themselves better trustees of this history and the association's future than reformers. And one reason why Democratic reforms from 1968 to 1972 passed successfully was precisely their congruence with Democratic commitments to openness and the reformers' recognition that internal party organization was properly a matter of national public concern.[144] The reformers had better insight into the party's *nomos*.

Correcting the underrepresentation of women and minorities was crucial to party legitimacy. But representativeness by itself does not insure that parties will exploit their unique characteristics as comprehensive, integrative, and substantively deliberative bodies. Notable in all of this is that the national Democratic response to party decline at the time was to debate rules. This focus on process marks much of the political science and legal literature on party renewal as well. Rule changes were not accompanied by comprehensive assessments of the party as a membership group. They did not lead to substantive deliberation, changes of program (for example, moderation of the Democratic Party's commitment to "governmentalism" at the expense of civil society and the values that

142. Beitz notes that national party rules are made by party officials who may not be representative of the membership. BEITZ, *supra* note 12, at 190.

143. *See* BECK & SORAUF, *supra* note 9, at 131.

144. See David Plotke, *Party Reform as Failed Democratic Renewal in the United States, 1968-1972*, 10 STUDIES AM. POL. DEV. 223, 260 (1996), for an explanation of the reasons for the success of the reforms given the opposition.

entails), or enhanced recruitment of members in an attempt to close gaps between activists and voters.

In fact, Democratic Party reform was based on a partial view of the imbalance in party membership. The reforms added women and blacks, but delegates continue to be of high status and income.[145] For some time, voting and party membership have exhibited a decrease in the number of participants from the lower class.[146] This is exacerbated by the fact that, as Beck and Sorauf point out, the decline of parties in candidate or issue-dominated elections gives less access to lower income voters and an advantage to the upper-socioeconomic elite of both the left and right.[147] Recent declines in voter turnout have come disproportionately from lower status and less educated voters, "disenfranchised so to speak by a growth of politics less and less linked to parties."[148]

It is commonly thought that major changes, including this demographic shift in party membership, are the result of external forces not under the parties' control. The switch from electoral dependence on manpower to dependence on money and media is said to diminish the significance of precinct level face-to-face involvement.[149] It has doubtless had consequences for parties' commitment to recruiting activists. So has the fact that candidates can communicate directly with voters via the media, though this would seem to be more salient for candidate-centered campaign organizations than for standing parties overall. Too much can be made of these forces, however. Some state and local parties continue to be exemplary volunteer organizations, not just small cadres of party officers. Research indicates that grassroots precinct work by party members *is* electorally significant in local elections.[150] It is not so clear that money per se "squeezes out" participation, then. Parties do. Strengthening parties as membership groups has the possibility of reversing this trend, but only if they make increasing membership from among targeted groups and areas a principal long-term

145. *See* BECK & SORAUF, *supra* note 9, at 129.

146. *See id.* at 223.

147. *Id.* at 470.

148. *Id.* at 470-71.

149. The declining importance of manpower to campaigns is also traced to the decline of patronage and preferments available to parties as a result of civil service reforms and court decisions. For a skeptical view based on comparative politics, see EPSTEIN, *supra* note 2, at 113, 269-71.

150. An example is the Republican Party of Nassau County, Long Island. *See* BECK & SORAUF, *supra* note 9, at 81.

objective.

Ultimately, party strength depends on recruiting active members. All voluntary associations gain membership through vigorous recruitment. Few groups, with the possible exception of focused, single-issue groups, get self-motivated joiners. I observed earlier that, at present, civic-minded citizens are more inclined to join social service type volunteer organizations that have "a real impact" on the community than parties.[151] They are also more likely to work for candidate campaigns,[152] though this is a more direct avenue to party participation than other associations. In any case, even with robust state parties, membership is not spontaneous or self-maintaining.

The significant barriers to voting have not turned out to be legal and bureaucratic (registration methods, for example) but attitudinal. Reducing the "cost" of activism is not the same as mobilizing voters, and the same can be said of participation in party activities.[153] Recruiting party members is on a continuum with cultivating voters, but it is not identical. Candidates must appeal to voters. Candidates typically build ad hoc, activist enclaves devoted to their particular interests. Parties, however, must appeal to and enlist partisans in a wider range of activities over time. (This is hardest for minority parties in noncompetitive localities and states. In such circumstances, offices are frequently won by default.) The impact of state and local parties is less on overall vote totals than on recruitment. Recruiting requires party organizations that cover the electoral territory—blanketing precincts or counties. It requires convincing leaders of other voluntary associations—professional associations, unions, community groups, and so on—to ally with parties and encourage their membership to participate in party activities. In short, it requires institution-building aimed at establishing regular participation and deliberation as the permanent backbone for the periodic cycles of caucuses, campaigns, and conventions.

Beck and Sorauf observe:

> In very few party systems has the separation between the party organization and the party's faithful voters been as great as it is in

151. *See, e.g.*, NATIONAL ASS'N OF SECRETARIES OF STATE, NEW MILLENIUM PROJECT PART I: AMERICAN YOUTH ATTITUDES ON POLITICS, CITIZENSHIP, GOVERNMENT AND VOTING (visited Jan. 17, 2000) <http://www.nass.org/nass99/youth.html>.

152. *See id.*

153. See LYNNE M. CASPER & LORETTA E. BASS, U.S. DEP'T OF COMMERCE, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1996, at 9-10 (1998), for a discussion of data on party registration and voting since the National Voter Registration Act of 1993 went into effect.

> the American party system. American parties largely have failed to integrate the party's most loyal supporters into the party organization.... Nor have the American parties mounted any substantial program to educate their loyal electorates into the principles and traditions of the party. They view even the most sympathetic voters as a separate clientele to be reinforced anew at each election.[154]

This failure lies with party officials comfortable with the status quo, interested in "winnability" above all and supportive of the least controversial candidates. It lies with party leaders who are arrogant towards members and citizens overall and treat their positions as personal fiefdoms. It also lies with those who are suspicious of mobilization and resistant to opening up the association to substantive claims and deliberation.

Building parties as membership groups is tied to a number of factors. For one thing, it depends on party patronage. It is not dependent on preferments and material rewards, but rather the capacity of parties at every level to identify and implement measures that advance the fortunes of groups and neighborhoods. That is, recruitment depends on demonstrating the "real impact" of politics, countering the belief that parties do not "count."

Building parties as membership groups also depends in part on the commitment of visible political leaders at every level to use the bully-pulpit to advocate political participation via parties—for instance, as they have done through community service. Political officials typically cultivate their own constituencies and personal loyalty, not party activism. Leadership is imperative if parties are to return idealism to partisanship.

Recruitment depends in part on countering the evidence of Robert Lane's "unhappy polity."[155] Polling places are grim; lawn signs and bumper stickers are few; contacting has declined. The positive face of partisanship deserves attention. Reintroducing the hoopla of elections is a matter of manpower not media. Making election day a national holiday would help, too.

Finally, and most important, recruitment depends in large part on agendas. That is, it depends on not allowing process and "electability" to crowd out ideas, statements of value, deliberation, and programs.

If one wants to improve deliberation, a riveting program is apt to

154. BECK & SORAUF, *supra* note 9, at 141.
155. Lane, *supra* note 13, at 362-64.

> spur better discussion. If one wants to expand participation, a plausible route to achieving desired results can be very engaging . . . . If the idea is to replace the decayed leadership of one or both parties, a powerful alternative proposal is a good start.[156]

Parties must actively form political alternatives and excite civic consciousness among voters—all of whom are potential members. Parties are (or can be) the initiators of the terms of political debate. Their job is to see that the terms they set correspond to cleavages and values—to social reality. When they do, "the electorate appears as the origin of the terms to which it responds in elections."[157]

Agenda setting is as important a party function as campaigns. Technical expertise by party leaders and hired professionals is essential for activities like fund raising or media presentations. But it does not apply to programmatic goals. These cannot be relegated to advocacy groups, think tanks, or the entrepreneurial efforts of individual candidates. The way parties spin off of unofficial subsidiary groups—coteries of sympathetic officials in government and contributors like the Democratic Leadership Conference (with its own think tank, "convention," and chapters in several states)—is a sign of internal party vitality. However, it has limitations insofar as it does not add substantively to party agendas.

Agenda setting is not the same as identifying parties with specific policy promises, as responsible party government advocates would like. Agendas are not necessarily platforms (though they may be). Agenda setting is also distinct from "selling" divisive issues to passive (well-polled) constituents; in this limited sense, every electoral endeavor seizes on issues of some kind. There must be some hook to distinguish "ins" from "outs." "Representatives are persons who take the initiative in proposing a line of division."[158] But intraparty negotiating and purely strategic calculations of the market for votes is not the whole of agenda setting. For that, parties must operate not just as filters for narrowing down the array of preexisting preferences but as forums for the exercise of political judgment and deliberation.

The normative question, then, is the extent to which party agendas are the substantive outcome of deliberation among a broad and active membership. Party renewal depends on exploiting the associations' unique characteristics of inclusiveness, comprehensiveness, and dynamic integration. But these characteristics, in turn,

156. Plotke, *supra* note 144, at 284.
157. MANIN, *supra* note 2, at 223.
158. *Id.* at 226.

come only from participation, not just from qua activists in periodic campaign mode but as members of this unique voluntary association.

This is not a brief for maximizing party membership per se; there is little value in having intraparty decisions that replicate in miniature the liabilities of brute majoritarianism and direct democracy. It is simply to say that the democratic value of parties is both the cause and effect of their distinctive *nomos* as vital membership groups.