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## Constitutional Ideology and Progressive Fiction

Maxwell Bloomfield

A constitution which fixedly restrains a people from correcting their actual evils, becomes associated in the popular mind with the evils themselves.

—Judge Charles F. Amidon (1907)

In the early-20th century an information explosion in American law coincided with the rise of revolutionary new technologies for the shaping of public opinion. Mechanical improvements reduced the cost of publishing magazines and newspapers, and encouraged the creation of mass audiences undreamed of in earlier generations. Comic strips and movies brought enhanced social awareness to millions of semiliterates, especially those recently arrived immigrants who crowded into the nation's ghettos. A new generation of writers, often young and college educated, rebelled against the romanticism and prudery of 19th-century literary conventions, and called for an American literature more responsive to the problems of a modern industrial society. Through factual articles and problem-centered fiction, these writers—derisively termed “muckrakers” by their critics—sought to document the wasteful and inhumane practices of a mature capitalist order. At the height of their popularity from 1902 to 1914, they contributed significantly to a middle-class ethos that favored political and economic reform.<sup>1</sup>

One of the major obstacles to such reform lay in the conservative constitutional jurisprudence of the late-19th century. In an effort to make American law more “scientific” and predictable, jurists after the Civil War sought to create a system of authoritative legal rules that might be applied to recurring fact situations in a mechanical fashion. Fearful of class warfare and the possible redistribution of wealth through legislative action, courts developed new doctrines, such as “liberty of contract,” to protect the property rights of individuals and corporations. At the same time, advocates of mainstream jurisprudence professed to draw a sharp line between law and politics. Judges were learned technicians, not policy makers, they argued; and the law was a closed system

of logical principles that had to be obeyed, regardless of the consequences for society.<sup>2</sup>

By the turn of the century many courts, especially at the state level, had begun to turn away from this laissez-faire jurisprudence, and to consider social facts when assessing the constitutionality of proposed economic regulations. Roscoe Pound, a young law professor, provided an intellectual rationale for this trend in an influential article that appeared in *The Green Bag*, a popular legal journal, in 1907. Deploring the public's perceived gap between “legal justice” and “social justice,” Pound warned that the law must confront the urgent problems of modern industrialism by utilizing the hard data supplied by the social sciences. “The modern teacher of law should be a student of sociology, economics, and politics as well,” he urged.

He should know not only what the courts decide and the principles by which they decide, but quite as much the circumstances and conditions, social and economic, to which these principles are to be applied; he should know the state of popular thought and feeling which makes the environment in which the principles must operate in practice. Legal monks who pass their lives in an atmosphere of pure law, from which every worldly and human element is excluded, cannot shape practical principles to be applied to a restless world of flesh and blood. (611-12)

In practical terms, Pound's call for a “sociological jurisprudence” found an answer in the famous Brandeis brief of 1908. Louis D. Brandeis, a reform-minded Boston attorney, introduced the brief in *Muller v. Oregon* to persuade the United States Supreme Court that Oregon might constitutionally regulate the working hours of laundresses within the state. Devoting only two pages to legal precedents, Brandeis relied instead upon more than 100 pages of statistics and other factual data drawn from a mass of medical reports, psychological treatises, reports of factory inspectors, and published assessments of the effects of comparable legislation in the United States

and abroad. Such extralegal sources of information, he argued, demonstrated that the Oregon lawmakers had acted reasonably in legislating to protect the health of their women workers. Impressed by such reasoning, the Supreme Court unanimously upheld Oregon's maximum-hours law. While the *Muller* decision scarcely inaugurated a revolution in judicial thinking—it proved to be merely an exception to the still-prevailing doctrine of freedom of contract—other lawyers began to follow Brandeis's example and to interject an unprecedented quantity of factual information into the judicial process. Brandeis himself furthered this trend after his appointment to the Supreme Court in 1916, by citing such extralegal sources in his opinions.<sup>3</sup>

The heightened importance of factual inquiry in both law and literature resulted in a major revision of constitutional ideology by the time of World War I. To most Americans of the 19th century the Constitution had seemed the embodiment of fixity and fairness, a "sacred charter" whose enlightened principles promoted the well-being of every citizen. "We have as a people deeply revered our Constitution," observed Senator Henry Cabot Lodge in 1911, recalling the patriotic centennial celebrations of a quarter century earlier.

Those celebrations of the framing of the Constitution and of the inauguration of the government have been almost forgotten. More than twenty years have come and gone since the cheers of the crowds which then filled the streets of New York and Philadelphia—since the reverberations of the cannon and the eloquent voices of the orators died away into silence. And with those years, not very many after all, a change seems to have come in the spirit which at that time pervaded the American people from the President down to the humblest citizen in the land. Instead of the universal chorus of praise and gratitude to the framers of the Constitution the air is now rent with harsh voices of criticism and attack...[E]very one who is in distress, or in debt, or discontented, now assails the Constitution.... (qtd. in Kammen 154)

Indeed, since the 1890s increasing numbers of Americans—workers, farmers, consumers, racial, and ethnic minorities—had begun to question the wisdom and neutrality of the constitutional order created by the Founding Fathers. The cumbersome machinery of checks and balances, designed for a simpler society of small farmers and tradesmen, threatened to block effective government control of a dangerously unstable economy. Deep-seated popular suspicion of laissez-faire constitutionalism received impressive

scholarly reinforcement in 1913 with the publication of Charles A. Beard's influential study, *An Economic Interpretation of the Constitution of the United States*. Using previously neglected Treasury and census records, Beard presented the Founding Fathers as a conspiratorial elite who had devised an undemocratic Constitution to protect their property from the attacks of popular legislative majorities. Many other turn-of-the-century commentators agreed that an "invisible government" of wealth and privilege ruled America through the forms of constitutional democracy. Middle-class readers of magazines and books learned the details of such "machine rule" through a host of investigatory works that bore such titles as *Our Dishonest Constitution*, *Our Judicial Oligarchy*, and *The Treason of the Senate*.<sup>4</sup>

For working-class audiences, alternative presses and distribution networks carried the constitutional critique to the farms and small towns of the Midwest and Southwest. Oscar Ameringer's satirical history of the United States, *Life and Deeds of Uncle Sam* (1909), enjoyed immense popularity in labor and socialist circles. An Oklahoma humorist and newspaper editor known as "the Mark Twain of American Socialism," Ameringer emphasized the persistence of economic inequality and capitalist domination in American history. Noting that no genuine workingman or small farmer had attended the Philadelphia Convention, he proceeded to debunk the resulting undemocratic Constitution, over which "so many high-school graduates, Thanksgiving-day orators, and Fourth-of-July spielers have slobbered":

In monarchies, when the monarch becomes crazy and has to be removed to a padded cell, he retains his royal title, but a prince regent is appointed to sit on the throne and read the typewritten speeches handed to him by the Prime Minister. Well, the fathers of the Constitution persuaded the *sovereign people* that while they were sovereign, all right, they needed a prince regent to do the governing for them. And since we had no thoroughbred princes, they invented the checks of the Senate, the President, and the Supreme Court. (26)

Ameringer's caustic little book sold half a million copies by 1917, despite the absence of reviews in mainstream journals and newspapers. Apparently, his frequent travels and speeches at socialist meetings in several states introduced him to a large grass-roots audience, which promoted his work by word of mouth. Translated into 15 languages, *Life and Deeds* remained sufficiently popular to justify its republication in the 1930s. "No history book until

Charles and Mary Beard's *Rise of American Civilization* reached so many readers," noted historian Paul Buhle (Ameringer v).

In fiction, writers applied the new constitutional thinking most strikingly in a number of utopian novels that offered blueprints for the construction of truly democratic institutions. While the authors differed in their prescriptions for change, all of them championed some type of majoritarian democracy as a remedy for the abuses of the modern corporate state. More important, they generally insisted upon following established legal procedures in dismantling the old order, and looked toward a new constitution as the capstone of their "peaceful revolution." Firm believers in social engineering, they shared the pragmatic and moralistic values of Progressivism, a bipartisan reform movement that called for significant government intervention in the economy to promote the general welfare. Two of their narratives—Samuel Merwin's *The Citadel* and Edward M. House's *Philip Dru: Administrator*—exposed the philosophy and unresolved tensions of Progressivism with special clarity. Both works appeared at the height of the movement's popularity in 1912, when the Democratic and Republican party platforms each endorsed Progressive principles.<sup>5</sup>

Merwin's title refers to the Constitution, which his hero John Garwood, a Progressive young Congressman from Illinois, considers "the citadel of reaction and restraint." In a fiery speech before the House of Representatives, Garwood assails the Constitution in Beardian terms as an undemocratic document whose rigidity prevents the federal government from confronting the urgent problems of the modern age. "[L]et us...examine that paper very carefully to find out how nearly or how remotely it squares with present-day facts," he concludes. "It is quite conceivable that we may need a new one; or that we might get along better under modern conditions with no Constitution at all" (Merwin 10).

Denounced as a dangerous radical by Chicago's business leaders and the conservative wing of the Republican party, Garwood seeks re-election as an independent candidate and takes his case for constitutional reform directly to the people. The remedy he proposes is a constitutional amendment to permit future popular majorities to change the Constitution at will through a simplified amending process. "The real problem," he explains,

is to break down the rigidity, the fixed character of our government, and open it to influence from the same laws of continued change and growth that govern the development

of the individual and of industry. Of course we shan't bring about this great reform until we have succeeded in making both the Constitution and the courts secondary to Congress. For the people, or their representatives, must dominate ...absolutely. (193)

In this version of "pure" democracy, the people will determine the nature and timing of constitutional change through an easy amendment process. Garwood anticipates a gradual transition to a socially responsible and egalitarian society, as the electorate enacts more and more Progressive measures, from woman suffrage and old age and mothers' pensions to the nationalization of monopolistic enterprises. The alternative to such a peaceful revolution, he fears, will be violent class warfare. Although the voters of Illinois give his proposal strong support, he loses a close election through voting frauds sanctioned by the business elite who oppose him. Still, Garwood remains confident that his campaign has educated the public to the need for further critical scrutiny of an antiquated Constitution. "The change has begun—the change to modernity," he tells his sweetheart Margaret Lansing, a biologist in the Department of Agriculture and a representative "new woman." "And it really begins to look as if we had come close to making the whole United States think about the Constitution" (329).

Merwin, a veteran political reporter and muckraking editor, idealized "the people" in a dangerously naive way. Absent from his narrative is any concern for minority rights. Apparently, like other reform-minded writers of the time, he assumed that the masses would recognize and support a true "public interest" that could transcend the divisions of class, race, and ethnicity. But sentimental appeals to brotherhood and cooperation cannot conceal the potential for majoritarian tyranny that inheres in Garwood's scheme. Nor do frequent references to the building of a nobler race reassure the reader that blacks and ethnics will have an easy time of it in the new constitutional order.

Even more disturbing in its darker implications is the story of *Philip Dru: Administrator*. Where John Garwood was at least content to let popular majorities shape the constitutional system, Philip Dru imposes a model constitution on the American people by military force. The brainchild of "Colonel" Edward Mandell House, an experienced Texas politician, Dru represents the bureaucratic and efficiency-minded side of Progressivism. After an eye injury forces him to abandon a promising military career, Dru becomes a social worker on Manhattan's East Side and experi-

ences the suffering caused by a ruthless industrialism. In several widely read articles, he condemns the injustices perpetuated by existing social structures:

In a direct and forceful manner, he pointed out that our civilization was fundamentally wrong inasmuch as among other things, it restricted efficiency; that if society were properly organized, there would be none who were not sufficiently clothed and fed; that the laws, habits and ethical training in vogue were alike responsible for the inequalities in opportunity and the consequent wide difference between the few and the many; that the result of such conditions was to render inefficient a large part of the population, the percentage differing in each country in the ratio that education and enlightened and unselfish laws bore to ignorance, bigotry and selfish laws. (House 57-58)

When the newspapers obtain an incriminating dictaphone record that reveals how financiers, industrialists, and their political spokesmen control both major parties, a public outcry ensues. To maintain its power, the incumbent administration uses the Army to prevent free elections. Thereupon civil war breaks out, pitting the very rich and the very poor against the middle class—a scenario of mass violence that fed the deepest fears of middle-class audiences. Dru takes command of the Western Army of sturdy middle-class patriots, defeats the government forces in a single decisive battle, and marches on Washington. There he announces the end of the old constitutional system and proclaims himself dictator, or “Administrator of the Republic,” with the approval of the army and a majority of his civilian supporters. This drastic step is necessary, he argues, in order to effect fundamental changes in the “defective machinery” of government. Once his reforms are achieved, he promises to restore democratic rule under a new constitution.

To a modern reader, this flouting of constitutional norms seems protofascist at best; but turn-of-the-century audiences found it relatively easy to regard benevolent despots like Dru as democratic heroes. Like Napoleon Bonaparte, who had become the object of an admiring cult in America during the 1890s, Dru embodies character traits familiar to Americans as part of a cherished cultural heritage. A self-made man who rises from obscurity to power through his own talent and force of will, he represents an Americanized version of Nietzsche’s superman—a heroic leader who shares the democratic values of the masses.<sup>6</sup> In institutionalizing these values, however, Dru ignores grass-roots opinion and relies instead upon professional advice. He appoints boards of

experts to study specific social problems and recommend remedial legislation. On a more general level, he establishes legal commissions to revise and modernize the state and federal codes by eliminating obsolete and contradictory laws and by incorporating the policies newly formulated by other expert groups. He insists that these legal changes must precede the drafting of new constitutions, so that their adaptability to existing conditions may be tested in practice. The constitutions, when framed, will thus conform to a radically restructured legal environment, whose machinery will be run “absolutely in the interest of the people.”

Some of the reforms that Dru introduces in his role of supreme lawgiver merely make the system more efficient and economical: uniform divorce laws and simplified land registration procedures in all states, for example. Others look toward a major redistribution of wealth, accompanied by a vast increase in the power of the federal government. Dru approves a graduated income tax whose rates rise sharply at the upper levels, to a maximum of 70 percent on all incomes of \$10 million or more; a comparable inheritance tax; universal suffrage; old age pensions and workmen’s compensation; and a cooperative marketing and loan system for small farmers and businessmen. He also seeks to curb corporate abuses through federal incorporation and franchise laws, which require businesses to file semiannual reports of their activities and to seat a representative of the state or national government on their boards of directors. While he orders the nationalization of a few public service corporations, including the telephone and telegraph companies, his commitment to managerial efficiency leads him to endorse continued private direction in most instances: “The people were asked to curb their prejudice against corporations. It was promised that in the future corporations should be honestly run, and in the interest of the stockholders and the public” (House 183).

The conservative aspects of Dru’s “legal revolution” appear most strikingly in his labor policies. To alleviate workingclass discontent, his franchise laws reserve one seat on corporate directorates for a labor representative; establish an eight-hour day and a maximum work week of six days; and guarantee workers a share of surplus profits, in addition to their wages. As the price of these concessions, workers are forbidden to strike and must submit all grievances to a government arbitration board. Furthermore, their wages may be legally reduced in “dull” times. Through the elimination of class conflict Dru hopes to

enhance productivity and the distribution of goods through society. But his effort to create a partnership between capital and labor offers little promise of democratizing economic relationships, since business hierarchies will continue to dominate the workplace and to determine corporate policy.

In fact, real democratic empowerment of any kind seems secondary to Dru's overriding interest in scientific social planning. Although the national constitution, like those in other turn-of-the-century utopias, vests dominant political power in a popularly elected House of Representatives, the task of that body will be to manage the model institutions already established by Dru and his experts. To be sure, the formal machinery of the new government appears to authorize extensive popular lawmaking, since all traditional checks and balances have virtually disappeared. The federal judiciary, drastically reduced in size, can no longer review the constitutionality of legislative acts; the President has become a purely ceremonial figure, with no veto power; and, while the Senate may still reject a measure passed by the House, such action will cause the contested law to be submitted to the electorate for a final vote on its constitutionality. All legislation must originate in the House, which has been restructured along English lines, with an Executive chosen by the House now introducing and defending bills, much like a British Prime Minister. But these bills must conform to the enlightened constitutional principles laid down by Dru, who neglected to provide for amendments. Despite the machinery of democratic decision-making, then, the citizens of Dru's utopia will be limited to tinkering about the edges of a near-perfect system. In the last analysis, Colonel House believed as fervently as the Founding Fathers in the need for social order; and the best government, he agreed, should operate like a well-oiled machine.<sup>7</sup>

While Merwin, House, and other utopian novelists projected a new constitutional universe,<sup>8</sup> other writers used traditional imagery to justify the legal suppression of minority rights guaranteed by the existing Constitution. The most flagrant examples of this kind of "reform" fiction at the turn of the century dealt with the disfranchisement of African-Americans in the southern states. Confronted with the positive command of the Fifteenth Amendment—"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude"—conservative southern authors appealed to a higher law of racial inequality. Thomas Dixon, Jr.'s immensely popular novel, *The Leopard's*

*Spots* (1902), established the narrative conventions that guided later advocates of white supremacy.

The melodramatic plot, which spans the years from 1865 to 1900, paints a lurid picture of the excesses of black rule in North Carolina. Whenever blacks gain political power, Dixon argues, they threaten the lives and property of "civilized" white men and carry out brutal assaults against white women in the name of social equality. A true reign of terror had existed under the black-and-tan Reconstruction governments, until the Ku Klux Klan arose to reestablish Anglo-Saxon dominance. Now, in the 1890s, African-Americans are again filling public offices, thanks to their alliance with the small white farmers of the state. To restore responsible government once and for all, young Charles Gaston urges his fellow citizens in the town of Independence to reaffirm their Revolutionary heritage. At a mass meeting chaired by Gaston, the townsmen adopt a second Declaration of Independence, aimed this time at local tyranny:

Resolved, that we issue a second Declaration of Independence from the infamy of corrupt and degraded government. The day of Negro domination over the Anglo-Saxon race shall close, now, once and forever. The government of North Carolina was established by a race of pioneer white freemen for white men and it shall remain in the hands of freemen. (Dixon 411-12)

The document ends by calling for the immediate resignation of all black officeholders and their white allies. After a brief show of resistance by a black mob, Gaston and his supporters take over the town and legalize their coup through an election in which only white males are permitted to vote.

When the rest of the state learns of Gaston's initiative, his political popularity soars. At the state Democratic convention he electrifies the audience by demanding that the party endorse black disfranchisement as the major plank in its platform. "The Anglo-Saxon race is united and has entered upon its world mission," he declares.

We believe that God has raised up our race, as he ordained Israel of old...to establish and maintain for weaker races, as a trust for civilisation, the principles of civil and religious Liberty and the forms of Constitutional Government.... So long as the Negro is a factor in our political life, will violence and corruption stain our history.... We will take from an unprofitable servant the ballot he has abused.... It is the law of nature. It is the law of God. (Dixon 435, 438, 440)

An enthusiastic convention adopts Gaston's policy and nominates him for Governor. In the ensuing election a united white Democracy scores a stunning victory at the polls, and prepares to carry out its campaign pledge "to nullify the Fourteenth and Fifteenth Amendments to the Constitution of the Republic" (446). Dixon, unlike some of his imitators, does not describe the specific forms of legal discrimination, such as poll taxes and literacy tests, that were imposed by southern legislatures.<sup>9</sup> But he displays an unrivaled ability to popularize his racist agenda by appealing to the raw emotions of his readers. Again and again he insists that the African-American is little more than a jungle beast, given political power by a vindictive Congress to punish the defeated South. His white characters, proud descendants of colonial frontiersmen, are engaged in an epic struggle for racial survival that will determine the future of the nation: "One drop of Negro blood makes a negro. It kinks the hair, flattens the nose, thickens the lip, puts out the light of intellect, and lights the fires of brutal passions. The beginning of Negro equality as a vital fact is the beginning of the end of this nation's life" (242). Only a system of strict apartheid can preserve the heritage of Washington and Jefferson in the modern South.<sup>10</sup>

If constitutional reform for Dixon and his supporters thus meant the reassertion of state control over race relations, African-American authors called instead upon the federal government to protect the constitutional rights of the black minority. In response to Dixon's arguments, such representative novelists as Charles W. Chesnutt and Sutton E. Griggs created alternative fictions that told quite a different story of victimization and lawlessness. Their works describe a caste society in which whites wield dominant political and economic power, and ruthlessly suppress all efforts by blacks to claim the rights of American citizens.

Chesnutt's *The Marrow of Tradition* (1901), also set in a North Carolina town, presents the disfranchisement movement as a racist conspiracy led by demagogic newspaper editors and politicians. Instead of restoring order, as in Dixon's tale, disfranchisement encourages the white majority to further acts of terrorism and violence against a defenseless black community. Once stripped of the vote, African-Americans have no recourse against state-sanctioned violence, since prevailing doctrines of federalism prohibit national interference in local affairs. "The [federal] government can only intervene under certain conditions, of which it must be informed through designated channels," explains a black lawyer. "It

never sees anything that is not officially called to its attention. The whole negro population of the South might be slaughtered before the necessary red tape could be spun out to inform the president that a state of anarchy prevailed. There's no hope there" (Chesnutt 192). Unwilling to encourage armed resistance to white aggression, black professionals stand helplessly by as the town's leaders instigate a bloody race riot, which forms the climax of Chesnutt's powerful story. "Our time will come," reflects William Miller, the community's only black physician; "the time when we can command respect for our rights; but it is not yet in sight" (283).<sup>11</sup>

Black professionals—a group that Dixon either ignored or ridiculed—also play central roles in Sutton Griggs's *Imperium in Imperio* (1899), a remarkable fantasy of black power and alienation. The plot chronicles the parallel careers of two young African-Americans, Belton Piedmont and Bernard Belgrave. Schooled from boyhood in the libertarian principles of the American Revolution, each becomes a notable example of the college-educated and rights-conscious "New Negro." As southern legislatures pass repressive segregation laws in the 1890s, Bernard, a lawyer, receives an urgent summons to meet his friend at the Thomas Jefferson College in Waco, Texas, where Belton teaches. On his arrival, Bernard learns that the ostensible college is really the capital of the Imperium, a secret government established by blacks to protect their civil rights.

"[You] know," Belton observes, "that there is one serious flaw in the Constitution of the United States, which has already caused a world of trouble, and there is evidently a great deal more to come.... This flaw or defect in the Constitution of the United States is the relation of the General Government to the individual state" (Griggs 181). Although the General Government claims ultimate sovereignty over blacks and other citizens of the United States, it is powerless to protect them against lynchings and other outrages committed within a state. To remedy this situation, therefore, Belton and his associates have created a separate government to provide the kind of equal justice that blacks can not obtain under existing institutions.

The Imperium represents yet another version of the constitutional utopias so characteristic of the early 20th century. Its constitution, modeled on that of the United States, contains some recognizably Progressive features, such as a one-house Congress elected by popular vote. The members serve for an indefinite term, but may be recalled at any time by another majority vote. Other provisions highlight the racial foundations of the new order:

This Congress passes laws relating to the general welfare of our people, and whenever a bill is introduced in the Congress of the United States affecting our race it is also introduced and debated here.

Every race question submitted to the United States judiciary, is also submitted to our own. A record of our decisions is kept side by side with the decisions of the United States. (195)

Bernard soon learns that he has been elected the first President of the Imperium, and sets out to compile a record of every fresh assault upon African-American liberties committed throughout the nation. When the United States Congress meets to declare war on Spain in 1898, Bernard calls an emergency session of his Congress to determine the Imperium's future relations with Anglo-Saxon America. Noting that disfranchisement has foreclosed the possibility of any peaceful revolution through the ballot box, he urges his listeners to rise up against their oppressors, overthrow the government of Texas through a well planned coup, and convert the state into an independent black republic. The audience responds enthusiastically to this war policy, until Belton rises to plead for moderation.

Before resorting to force, Belton argues, an effort should be made to convince whites that they are dealing with a new generation of black freemen, who have absorbed Anglo-Saxon political values in their schools and are prepared to die, if need be, to defend their liberty. If this educational strategy fails, the Imperium should secretly order all African-Americans to emigrate to Texas, where their superior numbers will enable them to control the government peacefully, through the political process. (In fact, Texas did not impose a poll tax until 1902, three years after Griggs published his novel.) Swayed at first by Belton's eloquence, the Congress nevertheless decides to support Bernard's program of militant black nationalism. Unwilling to join the treasonous conspiracy, Belton resigns from the Imperium, an action that costs him his life. Before the threatened race war can begin, however, another member of the Imperium betrays the plot to the authorities. In a last testament the repentant conspirator pleads for interracial understanding, and warns that the continued denial of equal rights to African-Americans will only produce new forms of black resistance: "I urge this because love of liberty is such an inventive genius, that if you destroy one device it at once constructs another more powerful" (265).

Like many other Progressive writers, Griggs and Chesnutt appealed to the conscience of their largely

middle-class readers, and hoped that their social protest fiction would help to generate public support for remedial government action.<sup>12</sup> In one or two instances it is possible to trace a fairly direct connection between the literature of exposure and responsive legislation. Upton Sinclair's novel *The Jungle* (1906), a classic indictment of working conditions in Chicago's meatpacking plants, contributed importantly to the passage of the Meat Inspection Act of 1906. Similarly, Samuel Hopkins Adams's articles on patent medicine fraud in *Collier's* stirred Congressional interest in regulation and provided valuable support for the Pure Food and Drug Act of 1906.<sup>13</sup> But such specific linkages between literature and legislation are quite rare. The real importance of Progressive fiction, from a constitutional perspective, lies elsewhere. By describing, in however sentimentalized a fashion, the conditions of life in the early corporate state, writers created a compelling argument for government control of the economy. Although their individual recommendations varied widely—from limited regulation of Big Business to full-blown Socialism—all agreed that the modern state had a positive duty to protect the general welfare of its citizens. Their moralistic narratives complemented the speeches of political reformers, and sometimes made a lasting impact upon audiences. Thus, when Franklin K. Lane, Woodrow Wilson's Secretary of the Interior, contemplated the far-reaching constitutional changes that had taken place during Wilson's presidency, he was quick to give credit to Colonel House, the President's close friend and advisor. "[Wilson] likes the idea of personal party-leadership," Lane observed in his war-time diary of 1918; "Cabinet responsibility is still in his mind. Colonel House's book, *Philip Dru*, favors it, and all that book has said should be, comes about slowly, even woman suffrage. The President comes to *Philip Dru* in the end" (Lane 297).

## Notes

<sup>1</sup>The classic account of the muckraking movement is Louis Filler's *Crusaders for American Liberalism* (2d ed., Yellow Springs, OH: Antioch, 1950). See also: David Mark Chalmers, *The Social and Political Ideas of the Muckrakers* (New York: Citadel, 1964) and Peter Conn, *The Divided Mind: Ideology and Imagination in America, 1898-1917* (Cambridge: Cambridge UP, 1983).

<sup>2</sup>On the "scientific" nature of American law in the late-19th century, see Duncan Kennedy, "Toward An Historical Understanding of Legal Consciousness: The



Case of Classical Legal Thought in America, 1850-1940," *Research in Law and Sociology* 3 (1980): 3; Grant Gilmore, *The Ages of American Law* (New Haven: Yale UP, 1977), 41-67; and Morton J. Horwitz, *The Transformation of American Law, 1870-1960* (New York: Oxford UP, 1992), 3-31.

<sup>3</sup>For an excellent survey of changing legal culture in the early-20th century, see John W. Johnson, *American Legal Culture, 1908-40* (Westport, CT: Greenwood, 1981).

<sup>4</sup>Allan L. Benson, *Our Dishonest Constitution* (New York: Huebsch, 1914); Gilbert E. Roe, *Our Judicial Oligarchy* (New York: Huebsch, 1912); David Graham Phillips, *The Treason of the Senate* (1906; rept., New York: Monthly Review, 1953). See also, in general: Charles Edward Merriam, *American Political Ideas* (New York: Macmillan, 1920), 212-27 and Maxwell H. Bloomfield, *Alarms and Diversions: The American Mind Through American Magazines, 1900-1914* (The Hague: Mouton, 1967), 103-30.

<sup>5</sup>For a good appraisal of Progressivism, see John Whiteclay Chambers II, *The Tyranny of Change* (New York: St. Martin's, 1980).

<sup>6</sup>On the popularity of Napoleon in turn-of-the-century America, see Theodore P. Green, *America's Heroes: The Changing Models of Success in American Magazines* (New York: Oxford UP, 1979), 118-21.

<sup>7</sup>In reviewing *Dru* for the *New York Times*, Walter Lippmann commented, "If [the author] is really an example of the farseeing public man, then, in all sincerity, I say, God help this sunny land." Lippmann, "America's Future," *New York Times*, 8 Dec. 1912, 754.

<sup>8</sup>Other utopian fiction includes: Frederick Upham Adams, *President John Smith: The Story of a Peaceful Revolution* (Chicago: Kerr, 1897); Henry O. Morris, *Waiting for the Signal* (Chicago: Schulte, 1897); William Stanley Child (pseud.), *The Legal Revolution of 1902. By a Law-Abiding Revolutionist* (Chicago: Kerr, 1898); Zebina Forbush, *The Co-opolitan: A Story of the Co-operative Commonwealth of Idaho* (Chicago: Kerr, 1898); Sidney C. Tapp, *The Struggle* (New York: Wessels, 1906); Isaac N. Stevens, *The Liberators: A Story of Future American Politics* (New York: Dodge, 1908); and Alfred O. Crozier, *The Magnet: A Romance of the Battles of the Modern Giants* (New York: Funk, 1908). See also Upton Sinclair's nonfiction utopia, *The Industrial Republic* (New York: Doubleday, 1907).

<sup>9</sup>For a more detailed account of the disfranchisement effort in Alabama, see John H. Wallace, Jr.'s novel *The Senator from Alabama* (New York and Washington: Neale, 1904); and for conditions in Mississippi, see Emerson Hough, *The Law of the Land* (Indianapolis: Bobbs-Merrill, 1904).

<sup>10</sup>On the popularity of Dixon's novel, see Maxwell Bloomfield, "Dixon's *The Leopard's Spots*: A Study in Popular Racism," *American Quarterly* XVI (Fall 1964): 387-401, and Raymond Allen Cook, *Fire in the Flint: The Amazing Careers of Thomas Dixon* (Winston-Salem, NC: Blair, 1968).

<sup>11</sup>A Cleveland attorney as well as a literary artist of national prominence, Chesnutt largely abandoned the writing of fiction after 1905, out of frustration with the poor sales of his serious protest novels. He remained actively involved in the civil rights struggle, however, as a lecturer, publicist, and founding member of the NAACP. In 1917 he played a major part in the successful effort by African-Americans to ban the showing of *The Birth of a Nation* in Cleveland. That brilliant, but flagrantly racist, film was based upon another of Dixon's novels, *The Clansman* (1905). See Frances Richardson Keller, *An American Crusade: The Life of Charles Waddell Chesnutt* (Provo: Brigham Young UP, 1978).

<sup>12</sup>Griggs, a Baptist minister, lacked the literary craftsmanship of Chesnutt, but was equally committed to the civil rights struggle and enjoyed greater influence within the black community. As one perceptive critic has noted, "Griggs not only operated his own publishing company [the Orion Publishing Company of Nashville, TN] but also, during his travels as a prominent minister and orator, promoted an extensive sale of his works among the black masses of the country. Though virtually unknown to white American readers, his novels were probably more popular among the rank and file of Negroes than the fiction of Chesnutt and [Paul Lawrence] Dunbar." See Hugh M. Gloster, "The Negro in American Fiction," *Phylon* (4th quarter, 1943): 337. See also Bernard W. Bell, *The Afro-American Novel and Its Tradition* (Amherst: U of Massachusetts P, 1987), 60-63.

<sup>13</sup>On the influence of Sinclair and Adams, see Filler, *Crusaders for American Liberalism*, 157-70. Of course, as Filler pointed out and later historians have emphasized even more strongly, this legislation represented only a pyrrhic victory for "the people" or "public opinion," since lobbyists for major industries were able to secure a watered-down version of "regulation" that in fact served the interests of their clients. See Gabriel Kolko, *The Triumph of Conservatism* (New York: Free Press of Glencoe, 1963), 98-110.

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