Pragmatism, Politics, and Perversity

Democracy and the American Party Battle

JOSEPH L. ESPOSITO

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LEXINGTON BOOKS
Lanham • Boulder • New York • Toronto • Plymouth, UK

Published by Lexington Books
A wholly owned subsidiary of The Rowman & Littlefield Publishing Group, Inc.
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706
www.rowman.com

10 Thornbury Road, Plymouth PL6 7PP, United Kingdom

British Library Cataloguing in Publication Information Available

Library of Congress Cataloging-in-Publication Data

Esposito, Joseph L., 1941–
Pragmatism, politics, and perversity : democracy and the American party battle / Joseph L. Esposito.
p. cm.
Includes bibliographical references and index.
ISBN 978-0-7391-7363-3 (cloth : alk. paper) — ISBN 978-0-7391-7364-0 (ebook)
1. Political parties—United States—History. 2. Democracy—United States. 3. United States—Politics and government. 4. Pragmatism—History. I. Title.
JK2265.E77 2012
324.273—dc23

2012005935

The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

Printed in the United States of America

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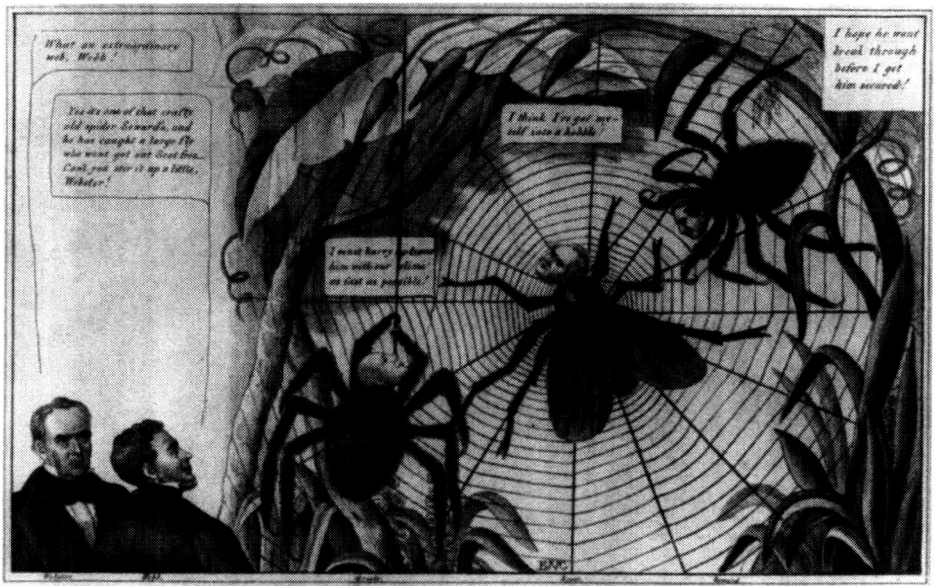

A BIG BLUE BOTTLE FLY IN THE WEB.

"Another swipe at Whig candidate Winfield Scott's manipulation by antislavery Whigs Seward and Greeley. Here, Scott is a fly caught in a large web, spun by spiders Greeley (left) and Seward (right). Scott exclaims, 'I think I've got myself into a hobble!' Greeley, hanging from a thread, decides, 'I must hurry up & cover him with our slime as fast as possible!' Seward adds, 'I hope he won't break through before I get him secured!' At lower left, Massachusetts Whig Daniel Webster and New York editor James Watson Webb look on. Webster remarks, 'What an extraordinary web, Webb!' Webb replies, 'Yes it's one of that crafty old spider Seward's and he has caught a large fly who wont [sic] get out Scot free—Can't you stir it up a little, Webster!'"

(Library of Congress, LC-USZ62-17321; http://loc.gov/pictures/item/2008661559

To Kate

Preface

The American party battle has been something of an unwanted stepchild to American historians. A subject characterized by endemic conflict and obfuscation is easier taken in small doses or not at all. Better to focus on dramatic events and interesting characters. There are exceptions, of course. Jefferson and Madison both took stabs at understanding the party battle deeply and comprehensively. So did Tocqueville and more recently Charles Beard, among a few others. In this book I take yet another stab at making sense of it, this time doing so from the perspective of a philosopher schooled in the American pragmatic tradition and as an attorney practiced in the adversarial process where the big issues of the party battle are closest to the surface—in the areas of employment, labor, and constitutional law. From a pragmatic perspective party studies provide a rich source of data for formulating hypothesis and making reasoned predictions about how our leaders will govern and how our justices most likely will rule from the bench. In a modern democracy, where increasingly the means of obfuscation overtake those required for deliberative consensus, what exercise can be more important?

This book has had a long gestation during my career as philosopher and attorney. I must give thanks first to those who brought me to appreciate a hard-nosed view of history, politics, and law, in particular Walter J. Petry Jr, Joseph Grassi, Paul Edwards, Kai Nielsen, and especially Sidney Hook. I am also indebted to Max H. Fisch, Kenneth Laine Ketner, and Christian J. W. Kloesel for discussions about Peirce and pragmatism during the summer we were holed up in the basement of Harvard's Houghton Library assembling the Charles S. Peirce papers for the new edition.

In later years my political education was deepened by discussions with my former law partner William C. Smitherman and his many Republican associates, especially Richard Kleindienst. In researching and writing the book I received able assistance from Hendrik Booraem, Francis Crowley, Michael Holt, James Huston, J. Christopher Maloney, Cheryl Misak, William Mishler, Harrold Stanley, Mark Stegmaier, Ivan Strenski, Robert Talisse, and Stephen Towne. I am grateful for the research services provided by the Milton S. Eisenhower Library at Johns Hopkins University, the H. Furlong Baldwin Library at the Maryland Historical Society, the University of Rochester Library, the Kansas Historical Society, the Whitney Library of the New Haven Colony Historical Society, the Massachusetts Historical Society Library, the Indiana Historical Society Library, the State Historical Society of Missouri Library, and the Beinecke Rare Book and Manuscript Library at Yale university. At the Missouri library I greatly appreciate the research done by Jason D. Stratman and Lauren Leeman in attempting to establish the authenticity of the pro-slavery remarks attributed to Benjamin Stringfellow by William Henry Seward and other new Republicans on the eve of the Kansas elections. And finally, I must thank Ellen Strenski for her expert editorial assistance and encouragement in helping me find the clearest way to say what I wanted to say.

To the Reader: This book may be read out of sequence. Part One summarizes the pragmatic analysis of the conditions of democracy and explains why understanding the party battle is necessary to maintain and strengthen those conditions. Part Two provides a history of some persistent themes and schemes in the American party battle. Part Three provides some remedies for problems described in the first part using the illustrations from the second part. After reading the introduction, those primarily interested in history may read Part Two next.

Introduction

Over the past century and a half, American philosophers within the pragmatic tradition have been quietly working to improve our democracy, first by explaining why democracy ought to be valued as a system of government and way of life, and then by describing the steps that should be taken to nurture and improve it. Unfortunately, they have found it difficult to get a broad hearing from the public or to apply their more sophisticated observations to the rough and tumble arena of politics. They have not been able to weigh in on the debates of our time in the way political scientists, economists, historians, and law professors do when the public turns to experts for advice about what to do in the latest crisis. In this book I argue that to engage Americans in their democracy project pragmatists must develop ideas about politics at its fiery core where the public is most immediately engaged and where the need is greatest for their careful analysis of context, consequences, and the uses and abuses of language. A thorough knowledge of American political history, and in particular of the 'party battle', is indispensable to a useful and durable theory of democracy. This is not to say that philosophers are oblivious to this need. Especially in recent years they have increasingly identified and analyzed some of the more perverse aspects of communication in everyday politics, such as ambiguous or duplicitous rhetoric, presenting false choices, hiding agendas, slanting and spin. In fact, philosophers of democracy in the tradition of Charles Peirce, John Dewey, and Sidney Hook are well qualified to handle complex social phenomena like party politics that require sensitivity to methods of inquiry, examination of assumptions, and discrimination

of facts, purposes, and values, all necessary ingredients for conducting meaningful and useful party studies.

This is not a book of political theory typically concerned with the delineation of first principles, natural conditions, or abstractly constructed and desired optimal outcomes or equilibria in our social and political life. In the spirit of pragmatism, it aspires to a descriptive empiricism—attending first to individual actors, along with their assertions, explanations, and goals—as a point of departure for achieving a better understanding of the purposes and flow of our politics. It does not pretend, for example, to shed light let alone resolve the Keynes-Hayek economic debate. We may theorize until we are blue in the face, but unless we burrow deeply into the political interests, motivations, and rationalizations of individuals in daily conflict we will have difficulty applying our potentially beneficial theoretical exercises in a salient and useful manner. Politics after all is not merely a human activity within the broader flow of history. Historical perspective is also invariably embedded within politics itself, and so historical studies are indispensable and complementary to any political theory no matter how abstract and foundational it claims to be. Nor does this book pretend to be a social and economic history of America. Although its subject matter is primarily historical, it is history at the service of philosophy. It is not panoramic history of, say, the "early Republic," the "Civil War," or "Gilded Age." It cuts a narrow swath through these eras by focusing primarily on the party battle, while at the same time revealing the importance of that battle as a crucial driver of many of the events normally associated with American history generally speaking.

The book's keystone argument may be summarized this way:

1. Democracy requires meaningful public deliberation if it is to maximize opportunity, happiness, justice, innovation, and social stability over individual life spans and social generations; and pragmatic reasoning with its emphasis on problem solving and prediction is the best way of encouraging and improving deliberation, and achieving a workable consensus on matters of public concern.
2. However, democracy does not exist in a vacuum; it is embedded within a party battle that arises of necessity from a conflict between market, state, and democracy: the market requires a state for protection, a market state, but only one it can thoroughly control, while democracy is the process of utilizing the state to curtail market influences on the state and create influences of its own upon the market. Thus, democracy is not neutral in the party battle; it is correctly regarded by the market as an extra business cost, and so requires continual though quiet suppression. This surreptitious process of sup-

pression, the heart and soul of the action and reaction of the party battle, is the origin of persistent perversity in American politics.

3. Understanding the party battle historically, then, becomes a necessary part of establishing and sustaining the viability of democracy since political perversity is the most effective means of undermining it. Party history reveals party objectives and strategies which become the basis for hypotheses about present political objectives, and these in turn become the seeding ground for intelligent questioning about those objectives. Questioning as the meaning of the word suggests has a dual purpose: it seeks *clarification* when directed to an accountable person such as a political leader and it creates *doubt* when expressed publicly, two critical components of pragmatic thought. When good questions are asked in a public context where answers are demanded and are expected to provide good reasons so will our democracy be good. That in a nutshell is the Peirce/Dewey democratic theory, as now expanded by the more recent generation of pragmatists. Of course, a corollary of this view is that if deliberative democracy is deeply perverse a serious doubt may be raised as to why democracy should be any better than effective rule from above.

Benefits of studying the party battle over many generations include a thorough refutation of the fatuous myth of originalism, a belief in an original foundation of the state prior to "politics" that makes the party battle look like a grubby and licentious fall from grace. The Declaration of Independence is the only uncontested inspirational text we have, but it is also the most inoperative in our actual political life. Another benefit is the recognition of the Supreme Court as functioning within the battle and not above it. But perhaps the greatest benefit is the realization of the sheer destructive power of perverse politics when comprised of willful acts carried out for strategic gain. When strategies to thwart democratic expansion prove unsuccessful, as during the years between 1800 and 1850, war and economic collapse become attractive alternatives because they weaken the infrastructure of the democratic state and give the market greater force in the lives of individuals.

The chapters of Part One summarize the philosophical and historical components of a pragmatic theory of democracy. Chapter One reviews the contributions of pragmatists to the democracy project. Peirce established the broad contours of the project by emphasizing that science and democracy are mutually sustained by the same practices of free inquiry, docility toward facts, and a faith in shared knowledge. Both require constant vigilance against the viral effects of incoherent ideas and beliefs. His student, John Dewey, argued that while science managed to develop

experimental methods to clarify concepts and test hypotheses, our political life too often devolves into cacophony and confusion in place of effective problem solving. Nonetheless, he argued, democracy remains the political system most suited to individual growth and social stability because it provides the best conditions for problem solving and consensus over the long run. It is not something handed down or granted; but like science has been achieved incrementally through shared action in an environment fostering trust. Its emergence was itself evidence of the ability of ordinary people to devise solutions collectively to their everyday problems. Dewey had faith in the ability of the public to exercise good judgment and find workable solutions in times of crisis but only as long as the sources of political conflict were also well understood and debated. In the tradition of Adam Smith and Alexis de Tocqueville, he understood that since the founding era politics has been largely driven by economic conflicts in daily life over property, wealth, wages, working conditions, and the distribution of the fruits of labor. Capitalism, in his view, did not set out to create democracy; it overthrew the old feudal order and freed up the public for political engagement demanding democratic reform.

Dewey's explorations on the necessary conditions for democracy led his most prominent student, Sidney Hook, to wonder whether deliberative democracy was strong enough to prevail in a war against aggressive totalitarian nations. After all, skillful enemies of democracy could use democratic liberties to subvert it from within. After World War I, Hook worked with Dewey to develop organizations and publications that would help Americans understand these deeper implications of the totalitarian challenge. The issue of the day for him was not between communism and fascism, on the one hand, and capitalism on the other, but between a society open from below and a society governed from the top down according to an orthodoxy beyond criticism. Whether that orthodoxy came from laissez-faire capitalists, state capitalists, religious fundamentalists, or the New Left mattered little. Each group committed the cardinal democratic sin: a failure to debate with outsiders and lay before the public the reasons its beliefs ought to affect the lives of non-believers. Demanding accountability in a public setting was the enduring strength of democracy, according to Hook, a strength that would outlast the impressive short-term mobilizing power of a government capable of mesmerizing its people with heroes, stories of national destiny, or torchlight parades. Hook's emphasis on the critical importance of practicing the deliberative virtues of free and open debate among inquiring and tolerant individuals, was carried forward by other American philosophers, among them Richard Rorty, Cheryl Misak, and Robert Talisse. They brought the ideas of Peirce, Dewey, and Hook to bear on the challenges of an expand-

ing electronic media, and in particular on the ways in which meaningful political dialogue becomes deliberately perverted in that media.

Chapter Two focuses upon a somewhat neglected aspect of the pragmatic account of democracy, the role it gives to historical knowledge. Dewey advised that we write and read history "close to the actual scene of events" to become better informed citizens, while Rorty discusses the importance of "detailed historical narratives" in understanding politics, *detailed* because they must include accounts of everyday life and the actors influencing it, *narrative* because they must provide us with information about how the ideas, interests, and decisions of individuals lead to the combination of events we call "history," "the past," or more significantly "our past." Since pragmatists believe that all contemporary politics must begin with an investigation of the motives and actions of individuals in their specific circumstances, a study of political history should begin the same way. Historian Charles A. Beard, who at one point worked with Sidney Hook to find better ways to write clear and accurate historical narratives, believed that a sound knowledge of the past is "indispensable to the life of a democracy," especially in a nation such as ours that frequently looks to its past for governing authority, and that the best starting point is to understand the motivations of individuals at the center of historical events. No matter what rationale these individuals provide for their actions, they invariably act concretely and pragmatically in order to bring about the future they desire, and in so doing provide information about their own interests and motives. Good historical writing, then, reveals pragmatists studying pragmatists. With influences from James Harvey Robinson, Edwin R. A. Seligman, and Arthur F. Bentley, among others, this is the approach Beard brought to the study of politics.

Interests and the motives derived from them were the focus of his early works, written around 1912–1915, on the origins of the Constitution and Supreme Court. The Convention delegates, he found, were consumed with the economic consequences of the proposals they were voting on. Some, belonging to the emerging investor economy, wanted a centralized government with sufficient powers to carry forward an aggressive mercantile agenda; others sought a more egalitarian nation centered on agriculture and work bench manufacturing. This original economic divergence, Beard argued, explained why there was no original consensus about the scope of federal judicial power, or about the relation between the states and the national government, and also why there was no agreement over the correct method of interpreting the Constitution. In *Federalist* No. 10, Beard frequently observed, Madison showed that he understood these deep tensions between those who had embraced the wealth concentrating power of capitalism and the urgent popular demands of

those who lived outside its charmed circle. Although economic liberty inevitably produces wealth inequality and often turns politics into "vicious arts," this effect is not pernicious in a large republic with separated powers, Madison had argued. Beard, by contrast, believed that unchecked economic liberty creates a disparity of influence that distorts the internal workings of representative government at every level and at any scale.

The "eternal contradictions" between economic liberty and representative government, Beard argued, gave an internal logic to the party battle. For example, as democracy increased after 1800, so did the need for capitalists to find new political strategies to resist it. Elites now cast themselves as populists and accused populists of being elites; they developed elaborate strategies for attracting white working class voters; their criticisms over the "size" of government were in reality "protective coloration" for their unpopular monopolistic uses of government; and they took every opportunity to shape events abroad into threats at home to create patriotic support for expansive capitalism. Unfortunately, although his output was staggering, Beard never wrote a single comprehensive historical study of the party battle. His later works provided only pieces and sketches presented as hypotheses in an ongoing historical research program, works such as *The American Party Battle* (1928), *The Economic Basis of Politics* (1934), *The Idea of National Interest* (1934), and *The Open Door at Home* (1935).

The chapters of Part Two update and expand upon Beard's American party battle research project. They too are presented as hypotheses subject to debate and revision. These historical chapters primarily cover the period from the American founding to the decades following the Civil War. Large-scale political conflict, the breeding ground of perverse opportunism, may be seen in the interlocking schemes and themes of three distinct eras over this period: the so-called founding era of deep disagreement over the nature of the republican project producing suspicion, treachery, and at times outright oppression; the antebellum era of democratic ascendancy and the muted political opposition hiding behind inauthentic surrogates, false messaging, and the obscurantism of the Supreme Court; and the decades after the Civil War, representing the full blossoming of political warfare as a contest between a more aggressive and politicized voice of the public and those with the industrialized resources who worked to make that voice less consequential. Obviously this same story continues on to the present day with fractal regularity. The point to be made in this book is that it is and has always been one story, with no golden age preceding it.

Writing history close to the actual scene of events requires a focus upon documentary evidence such as published and unpublished letters, speeches, and transcripts whenever possible, always on the lookout for

the mother's milk of pragmatic history—the telling admission against political interest. These chapters illustrate that the party battle produces not only vicious arts but persistent and systematic obstacles to democracy. From this point of view the perverse strategies that frequently disrupt democracy look more like deliberate, calculating, and mendacious efforts, and not accidental or isolated events beyond essentially healthy mainstream politics. "Perversity" and "perversion" generally refer to any intended corruption or distortion from the good or true to the bad or false, often involving concealed motives and strategies. Political perversity is a particularly wicked form of it because it affects many more people than does private intrigue or seduction. Political perversity employs tactics suited to the circumstances. In fact, it is the cunning use of circumstances that makes it so credible and effective. For example, a "false flag" tactic creates pretexts for "self-defense" actions. Hitler used it when he dressed German soldiers in Polish uniforms to "attack" Germany. So did abolitionists in the 1850s who goaded a "war" in Kansas and then used it as a pretext for heavily arming settlers. Alexander Hamilton was always on the lookout for opportunities to create incidents he could manipulate into crises and then exploit politically. All such tactics have in common the creation of problems by the very same people who claim to be best prepared to solve them. In its most extreme form political perversity creates tangible risk of significant destruction of the existing order in the short term for some hoped-for longer term gain. Nineteenth-century "barn burning" (destroying banks and corporations to end their abuses) and "starving the beast" (creating high government debt to impoverish the welfare state) illustrate such strategies. As we shall see the Civil War remains our most gruesome achievement of extreme political perversity.

Our political history also is replete with illustrations of rhetorical and deliberative perversity, where discussion is perverted by assertions made in bad faith. Political campaign "dirty tricks," such as manufacturing rumors, forging campaign documents, skewing polls, or stacking focus groups fall into this category. The most pervasive tactic and probably the most effective is the deliberate uses of rhetorical ploys to deceive the public such as equivocation, comparing apples and oranges, begging the question, presenting false choices, conflating issues, red herrings and straw men, exaggerations and big lies, false flattery, sarcasm, post hoc "causes," criticizing opponents for taking positions you would also hold if they did not, damning equally for doing or for not doing, attributing your biggest weakness to your opponent, and many others. The more we know about the history of the party battle, the better prepared we are to see through such ploys and maneuvers, understand why they continually reappear, and then move the deliberative discussion to a more constructive and pragmatic level.

Chapters Three through Six expand upon Beard's economic interpretation of the founding era, showing that most Americans were themselves Beardians when it came to debating daily politics, and explaining why politics become immediately so contentious, especially whenever the sensitive nerve of the nature of the revolutionary state was touched. Madison's failure to get Federalist support during the First Congress to incorporate key ideas from the Declaration of Independence into the Bill of Rights was one such sensitive spot. What these differences reveal is that no common social convictions and shared republican values had been identified and embraced by the founders or the people. Chapters Three and Four retrace and then supplement with new research Beard's account of the origin of the party battle as on one level a theoretical disagreement over the virtues of mercantile capitalism versus agrarian democracy, and on a deeper level, as a political struggle for power to create either a market state or a democratic nation state. Based on his historical research, Beard concluded that the party battle produced a conflicted Constitution and new government, permeated its administrative implementation, and then played a decisive role in shaping the events driving American political history. For example, Hamilton envisioned the new state as a partnership of business and government organized primarily to achieve rent-seeking objectives of well-positioned individuals, with the remainder in the public valued not as bearers of rights but primarily as components of a well-managed labor force, subject to the kind of top-down organization later exemplified by the company town. The primary function of the state in this view is to serve as a safe harbor for economic transactions. His opponents were devoted to the creation of a democratic nation state, a homeland or commonwealth, where free self-governing citizens reside and are free to engage in social, civic, and public relationships in addition to the variety of activities associated with "making a living." This nation state supports an entrepreneurial and investor class and eagerly rewards innovation for the benefits it brings but does not allow that class to consolidate full monopoly power and control government exclusively for its own interests. Instead, laws and policies are measured against the standard of whether they damage or nurture the civic virtues that extend beyond economic interest. This deep disparity of visions explains why the earliest debates forming the state constitutions and subsequent debate and ratification of the Constitution were so full of suspicion and rhetorical perversity. Hamilton, who wanted a fixed mercantile charter of governance, considered the whole Philadelphia Convention exercise a pure waste of time once it became clear to him that a market state would not be firmly established in the new Constitution. Madison, on the other hand, could see the debate from both sides and readily recognized that

the framer's irreconcilable differences inevitably left us with a Constitution perpetually subject to interpretation.

The creation of a new federal judiciary was at the heart of this political conflict, since the courts would define and enforce the reach and purposes of state power. What Hamilton had cynically sold to the state delegates as the "feeble" branch in the *Federalist* would be used by him and his Federalist allies to curtail or undo the damage done by the botched Constitution. Chapter Five discusses the debates over federal jurisdiction at the Convention and in the early Congresses, and examines their market-state/nation-state implications. Madison's clever nation-state maneuver, for example, in asking the First Congress to propose a Bill of Rights ran headlong into the Federalist market-state plan for an expansive federal court system enforcing the law merchant, for now those very same courts would become an enforcer of individual rights of citizenship.

Chapter Six describes the vigorous regime of rogue justice that the federal courts meted out under Federalist control during the 1790s. Hamilton turned every tax protest into a threat of insurrection. In Paris political operative John Marshall lied and obfuscated as a negotiator with the French Directory in order to prolong and aggravate diplomatic controversies and win political gains for his party at home. Sedition Act prosecutions were especially harsh against critics like David Brown and James Callender, who specifically condemned the emerging market state as a betrayal of the Revolution; while no better evidence of Federalist contempt for the Bill of Rights could be found than in the impeachment trial of Justice Samuel Chase in 1804–1805.

Chapter Seven traces the long history of efforts by market-state politicians, first as Federalists, then Whigs, and later Republicans, to weaken democratic practices. Liberal suffrage not its corruption was always the problem. In general, were accurate and efficient electoral systems of *broad* suffrage possible these politicians would still look for covert ways to undermine them; and since convincing the public to limit willingly democratic exercises would be futile, they instead sought ways to attract segments of the working class by developing elaborate political schemes to exploit social differences within it.

Although the Federalist Party disappeared after 1815, its market-state philosophy persevered in the Supreme Court until the death of John Marshall in 1836, at which time the court under Jacksonian Roger Taney immediately abandoned it. This transition, discussed in Chapter Eight, is one of the clearest illustrations of the invariable market-state/nation-state dynamic at work on the high court. The famous *Marbury* case had reflected the first step in the Federalist effort to establish a judicial veto over encroachments from the more democratic branches. That ruling allowed