Chapter IV

"SOCIAL HARSHNESS" AND CONSTITUTIONAL GOVERNMENT
A degree of harmony among individuals and groups in society, Wilson recognized, is an essential condition for the establishment of a constitutional government. Once organized, however, the government has the opportunity to make an equitable adjustment of interests, creating greater social harmony. Wilson's writing on constitutional government is especially significant because he attempted to describe the role of the government in creating this harmony.

Throughout his writing Wilson's approach was pragmatic. He defined constitutional government in terms of purpose rather than form. A constitutional government to him was not merely one with a constitution, but one "whose powers have been adapted to the interests of its people and to the maintenance of individual liberty." (1) Perhaps the key word in this definition is adapted, for Wilson continually emphasized that the ideals of liberty and law, and the forms of government, must change as the society changes. "The ideals of Liberty cannot be fixed from generation to generation. . . . Liberty fixed in unalterable law would be no liberty at all," he wrote in his Constitutional Government. (2)


(2) Ibid., 4.
In Wilson's opinion, no system of law was absolute; its criterion was expediency and justice. Its value was to be judged according to whether or not "it was suited to its object, to the purpose of its originators." It was just if it corresponded "with actual fact and moral truth." (3) Standards of justice and expediency, he declared, change with the time:

Only that is expedient which tallies with prevalent standards of judgment as to conduct and its responsibilities. Justice and expediency, consequently, have shifting boundaries—shifting with ethical conceptions and social developments. The standard cannot be the same for the state as for the individual . . . the state is a complex of individual forces. It must depend upon average judgments and follow a utilitarian ethic. (4)

Because needs, interests, and ethical conceptions change, Wilson maintained that there must be freedom for continual adjustment of the constitution. "The freedom to alter the adjustment," he stated, "is as important as the adjustment itself for the case and progress of affairs and the contentment of the citizen." (5) This principle of continual adjustment was an integral part of Wilson's view of government as the instrument of an organic society. Since government

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(4) Ibid.

is a part of the life of society, it will change its objects and practices as the society changes. Every generation determined for itself the very substance of its liberty and happiness and has the right to change its government accordingly.

... men have always the right to determine for themselves by their own preferences and their own circumstances whether the government they live under is based upon such principles or administered according to such forces as are likely to affect their safety and happiness. (6)

In order to determine its goals, a society must have attained a high degree of self-consciousness. Its members must be aware of common ties, interests, and standards of life. They must be able to take concerted action in whatever affects them as a group. Only such a self-conscious, self-directing society would Wilson call a "community." This community becomes self-governing when it expresses itself in political institutions; in other words, in constitutional government. Only a community, therefore, can have a constitutional government. (7)

When a community has reached the stage where it is ready for a constitutional government, Wilson explained, its first task is to define the relationship between the individual and the government, and then set up the machinery

(6) Ibid., p. 4.
(7) Ibid., p. 25.
to maintain that relationship. The primary object of constitutional government is, according to him, "To bring the active and planning will of each part of the government into accord with the prevailing popular thought and need, in order that government may be the impartial instrument of a symmetrical national development. . . ." (8) Its second object, Wilson said, is "to give to the law thus formulated under the influence of opinion and adjusted to the general interest both stability and an incorruptible efficacy." (9) Finally the government must "put into the hands of every individual, without favor or discrimination, the means of enforcing the understandings of the law alike with regard to himself and with regard to the operation of government, the means of challenging every illegal act that touches him." (10)

The primary object—bringing the will of the government into accord with the prevailing popular thought—is effected through representative bodies which are essential to constitutional government. These representative bodies—parliaments—because they speak for the people could rightly claim an authority that could not be set at nought by a king or president. With their independence uncurtailed and with their

(8) Ibid., 23-4.
(9) Ibid., 24.
(10) Ibid.
right to criticize upheld, these parliaments are, as Wilson put it, "an indispensable part of the institutional make-up of a constitutional government." (11)

Although representative councils form an essential part of a constitutional government, they alone cannot safeguard the freedom of the individual. There is no such thing as "corporate liberty." The real test is whether the individual is "free in his own action, in his own dealings with the persons and powers about him." Wilson was emphatic on this point. "Liberty belongs to the individual, or it does not exist," (12) he asserted. Protecting the individual against domination by the government, and violation of his rights by other individuals, is the task of the judiciary. The courts must evaluate each case in terms of the laws, written or understood. Wilson summarized the essential institutions of a constitutional system:

1st. A more or less complete and particular formulation of the rights of individual liberty,—that is, the rights of the individual against the community or its government,—such as is contained in Magna Carta and in the Bills of Rights attached to our constitution;

2d. An assembly, representative of the community or of the people, and not of the government: a body set to criticize, restrain, and control the government;

(11) Ibid., 13-14.
(12) Ibid., 16.
3d. A government or executive subject to the laws, and

4th. A judiciary with substantial and independent powers, secure against all corrupting or perverting influences; secure, also, against the arbitrary authority of the government itself. (13)

Thus, the legislature passes laws, the executive administers them, and the judiciary interprets the laws defining the relationship between individual and individual, and between individual and government. "Constitutional government is not excellence a government of law." (14) The degree to which written constitutions are regarded as superior law depends upon whether the courts exercise the power of refusing to give effect to laws which they hold to be in violation of the constitution. The superiority of the constitution is thus vindicated in a practical way. Wilson regarded the American Constitution as the greatest example of conscious voluntary law-making. But he did not subscribe to the view that the constitution was indisputable, permanent or unchangeable. On the other hand he considered the constitution a means and not an end in itself; an instrument designed for a purpose. It was not a contract, a fixed and determined thing in the nature of finality. It was to him a living, growing document as an evidence of the nation's development, capable of growth with the growth of the nation.

(13) Ibid., 24.
(14) Ibid., 17.
Since Alcon saw society as the source of political power, he considered government an "organ of society" intended to serve it. Nevertheless, he stressed the importance of the government's having real and active power. Sovereignty, he said, is invested in the government by the people, who retain the right of control.

Sovereignty is the highest political power in the state, held in active organs, for the purposes of governing. Sovereign power is a positive thing, control a negative thing. Power belongs to government, in logic in organs of initiative; control belongs to the community, in logic with the voters. (15)

Alcon pointed to the British parliamentary system as an outstanding example of effective community control of the actions of the legislature:

"Whatever an Act of Parliament prescribes is law, even though it contradicts every principle... recognized both by the passage of the Act as invincible. Such is the theory. The well-known fact is, that Parliament dare do nothing that will even seem to contravene principles held to be sacred in the sphere either of constitutional privilege or private right... Parliament is master, can utter valid commands, only so far as it interprets, or at least does not err, the wishes of the people... Its actual power is not a unit broader for having a free field in law, so long as the field in which it really moves is fenced high about by other acts. (16)"

Wilson was of the view that sovereignty viewed in terms of the positive aspect of power instead of the negative one of control resides in the law-making body of the state. This statement does not mean that the sovereign power of the state resides in the law-making body. It of course resides with the people as expressed in the amending power provided in the constitution. This law-making body has two functions. On the one hand, it carries out measures clearly demanded by the people, and, on the other, it initiates action in the society's interest. In initiating legislation, the government gradually changes the concept of its role, sometimes extending its powers into areas formerly outside its realm. The question of how far

organic self-determination by the State of its law and policy; and the Sovereign power is the highest constituted and organized power in the State entrusted with the choice of law and policy." Notes on Politics," 29 April 1900, File III-C, Wilson Papers. His statements indicate that he rejected the legal theory of sovereignty and accepted the concept of popular sovereignty. Although he rejected the "Austrian" idea that sovereignty means unlimited power and requires "the habitual obedience of the community," he observed that there is a vestige of this concept in the present foundation of governments upon constitutions. Wilson, An Old Leader, and Other Political Essays, 84. On the other hand, he accepted the concept that the people are the source of political power but pointed out that sovereignty—positive power—is not actually exercised by the community; people pass judgment or give sanction to governmental measures but they usually do not direct. For practical reasons it is necessary for the community to invest sovereignty in its law-making body. Sovereignty, he declared, "... is not the general vitality of the organism, but the specific originative power of certain organs." Ibid., 80.
the government's power should be extended, Wilson pointed out, "has provoked great wars of doctrine." (17)

Wilson's views on economic individualism underwent some changes through the years. Before he entered public office he supported the view that the object of all law was individual liberty. He was deeply suspicious of governmental regulation in the economic sphere. He considered William Jennings Bryan's 'populistic' and 'socialistic' doctrines as 'foolish and dangerous.' (18) It was not until he actually entered public office that he felt the need to modify his views. It was political expediency, experience and his basic belief that political institutions must adjust to solve economic and social problems that led him to abandon extreme economic individualism.

He attempted, however, to use the machinery of government to promote individualism which meant equality of rights and opportunities for all individuals to develop their faculties and capacities free from exploitation and oppression. The aim of government, he said, "is to aid the individual to the fullest and best possible realization of his individuality, instead of merely to the full realization of his sociality." He added, "Its plan is to create the best and fairest opportunities for the individual; and it has discovered that the way to

(17) The State, 58.

do this is by no means itself to undertake the administration of the individual by old-time futile methods of guardianship." (19) On the other hand he acknowledged that both government and the individual had vital roles in the economy. Government must be positive and not merely negative. He held the view that there was no inherent conflict between government and the individual in a democracy. Government existed to serve the people. It must and should, therefore, be responsive to their needs and demands. Thus he later advocated economic regulation to correct and prevent evils and abuses of the capitalist system caused by industrialism. It was not a destructive attack upon the then existing economic system. On the other hand he tried to lay down socially acceptable rules to govern its operations in the interests of the people. It was an effort to prevent the destruction of individual freedom and democracy by preventing the abuse of economic power.

Wilson himself rejected both the extremes of laissez-faire and socialism. He could not accept the laissez-faire doctrine that government is a necessary evil and that it should not undertake anything that could be accomplished by individual enterprise. Neither could he accept the socialist view of the government as a "wise foster mother to every member of the family politic." (20) He steered between the

(19) The State, 49.
(20) Ibid., 59.
two extreme theories because he believed that "The State [is] a Beneficent and Indispensable Organ of Society." (21) Government, the organ of society, is no more an evil than society itself. Government should exercise its powers wherever it can help to attain the society's goals:

Every means, therefore, by which society may be perfected through the instrumentality of government, every means by which individual rights can be fitly adjusted and harmonized with public duties, by which individual self-development may be made at once to serve and to supplement social development, ought certainly to be diligently sought, and, when found, sedulously fostered by every friend of society. Such is the view to which every true lover of his kind ought to adhere with the full grip of every noble affection that is in him. (22)

Although Wilson did not accept the theory of socialism and its concept of government, he praised the objectives of the high-minded socialists:

... they seek to bring the individual with his special interests, personal to himself, into complete harmony with society with its general interests, common to all. Their method is always some sort of cooperation, meant to perfect mutual helpfulness. (23)

His objection to the extreme individualism of the theory of laissez-faire was that it creates unfair competition. Modern industrial organization, he felt, has distorted

(21) Ibid., 60. Here Wilson is using his terms loosely. By state he evidently means government.

(22) Ibid., 60-1.

(23) Ibid., 61.
competition and is "misguided individualism. . . ." (24) It has led to concentration of power in the hands of the few, enabling them to tyrannize over many. However, he did not think socialism which endeavours to remedy the evil by stamping out all competition, is any better. He did not believe that all competition is bad, but only "unfair competition. . . ." (25) He attempted, therefore, to formulate a doctrine which would strike a balance between the rights of the individual and the interests of society, a doctrine "which gives wide freedom to the individual for his self-development and yet guards that freedom against the competition that kills, and reduces the antagonism between self-development and social development to a minimum. (26)

Wilson saw freedom in the context of society. As a member of an organized society the individual was bound to conduct himself with some reference to the effect his actions had on his fellow beings. Wilson considered liberty as "sort of parole" given to the individual by the society on condition that, "You may do what you please until you do something that is in violation of the common understanding, of the public interest; then your parole is forfeited." (27)

(24) Ibid.
(25) Ibid.
(26) Ibid., 61-2.
To Wilson, therefore, the rights of the individual had to be limited in order to protect the interests of others. This did not mean destruction of individualism because freedom of the individual was relative, not absolute.

Wilson thought of liberty as something more than mere absence of restraint. It was a positive concept. He thought real freedom existed only when the individual was placed in a situation which he could harmoniously develop all the faculties with which he was endowed by nature. In one of his presidential campaign speeches he stated that it was "intolerable for the Government to interfere with . . . individual activities except where it is necessary to interfere with them in order to free them." (28) But he felt that the individual was "caught in a great confused nexus of all sorts of complicated circumstances" which made him powerless to deal with the problems. (29) Therefore, the law must step in to assist the individual "to see that he gets fair play. . . ." If there was no "watchful interference" by the government it would be impossible to have "fair play between individuals and such powerful institutions as the trusts." (30)

Wilson proposed that government should intervene to regulate society in order to bring about "equalization of

(29) Ibid., 271.
(30) Ibid.
"Equalization of conditions" in all cases. Efforts to bring about such "equalization of conditions," he emphasized, was "the very opposite of interference." (31) In his inaugural address he asserted that the "firm basis of government is justice, not pity." (32) There could be "no equality or opportunity, the first essential of justice in the body politic" unless government protected men, women, and children "from the consequences of great industrial and social processes which they cannot alter, control, or singly cope with." (33) He affirmed that law must be used to keep society sound; to prevent it from crushing or weakening its constituent parts. As such, laws dealing with sanitation, conditions of labour and pure food were "ultimate parts of the very business of justice. . . ." (34) "Equalization of conditions" therefore meant to him the provision of equal opportunities for all members of the society. The government must consider the needs of both the society and the individual. The individual must be assured the fullest opportunity for complete self-development. The society, in this way, gains variety and this very variety provides greater opportunity for individual self-development. Society cannot allow its members to use power for their own private gain. It must exercise control and vigilance.

(31) The State, 62.


(33) Ibid.

(34) Ibid.
According to Wilson, then, the role of government is to maintain the proper balance in society. He classified its functions in two categories, the constituent and the ministrant. Under constituent functions he placed "the protection of life, liberty, and property, together with all the other functions that are necessary to the civic organization of society." (35) These functions are minimal, he believed; they are the very bonds of society and must be accepted by even the most extreme advocates of laissez-faire. Under ministrant functions he placed education; posts and telegraphs; conservation; regulation of trade, industry and labour; maintenance of thoroughfares, waterworks and sanitation; and care of poor and incapable. (36) Both constituent and ministrant functions have been undertaken by all governments, for social convenience and advancement have always been the objects of government. However, the interpretation of these functions has varied with the times.

Changed conceptions of the nature and duty of the state have arisen, issuing from changed historical conditions and deeply altered historical circumstances; and part of the change which has thus affected the idea of the state has been a change in the method and extent of the exercise of governmental functions. . . . (37) Ministrant functions, especially, will change with the times. Wilson limited the scope of governmental activities to "that-

(35) The State, 42.
(36) Ibid., 43-4.
(37) Ibid., 44.
ever experience permits or the times demand. . . ." (33) But no maintained changes should never be violent; they should be the result of the slow growth of society. It is "rather by gaining practical wisdom, rather by long processes of historical experience, that states modify their practices. New theories are subsequent to new experiences," (33) Wilson wrote.

Wilson's approach to the idea of the sphere of state action is also pragmatic. He does not prescribe a golden rule for deciding, in general, that the proper limits of state action must be. To him the problem is a practical one and not theoretical. But he is aware of the fact that there must be compromises, and consequently some sort of rule is necessary in accordance with which compromises are to be reached and enforced. So he feels that the political organization must be effective in enforcing such limitations on private discretion as are accepted by the majority as reasonable in the circumstances of the case. The state is to confine its activity to regulating matters which all or most of its members at a particular time consider to be sufficiently important to justify the use of coercion to produce appropriate action about them. Wilson summarized his view of the objects and functions of government:

... the end of government is the facilitation of the objects of society. The rule of govern-

\[(\text{33) Ibid., 54.}\]
\[(\text{39) Ibid., 57.}\]
method of political development is conservative adaptation, shaping old habits into new ones, modifying old means to accomplish new ends. (40)

His concept of social harmony is clearly based on his idea that society is organic and that government is a slowly evolving organ of society. Social harmony is a necessity for the successful working of constitutional government.

In recognizing social harmony as a prime condition for the successful working of constitutional government, Wilson opened up a field of political research yet largely unexplored. It is the individual who acts and interacts with others. Without action there are neither social problems requiring solution nor the need for social sciences to investigate the uniformities involved. Traditionally political science has been concerned only with formal legal or constitutional, as contrasted with extra legal political phenomena. A thorough understanding of the context of governmental policy-making and execution would have to go beyond activity at the level of governmental institutions. The political process is thus an interaction among governmental institutions and social groups. This approach implies that an understanding of governmental policy which is in the constant process of formulation and application depends upon an understanding of the role of the groups, especially those of pressure or interest groups. The word social harmony implies not the static state of equilibrium of

(40) Ibid., 63.
forces but a dynamic equilibrium resulting in harmony among contending forces. Wilson believed that one of the tasks of government was to insure this harmony. To achieve such harmony requires mutual restraint on the part of the power groups in society. Wilson believed that this restraint would naturally evolve and become the basis of the rule of law and freedom.

Wilson did not explore, in his writings, the full implications of the concept of social harmony. He did, however, emphasize that government must recognize that co-operation and understanding among different interest groups is a necessary prerequisite if a constitutional government is to work successfully.