



# THE HOUSE OF TRUTH

A Washington  
Political  
Salon and the  
Foundations  
of American  
Liberalism

## BRAD SNYDER

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To Shelby, Lily, and Max



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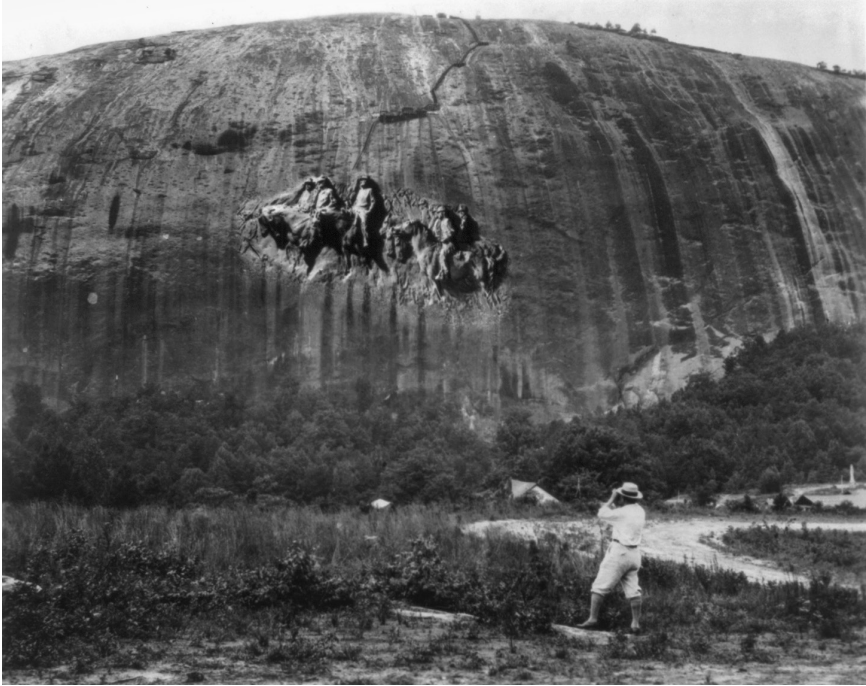
# Introduction

In 1918, a small group of friends gathered for dinner at a row house near Washington's Dupont Circle: a young lawyer named Felix Frankfurter; a seventy-seven-year-old Supreme Court justice, Oliver Wendell Holmes Jr., and his wife, Fanny; and perhaps the most unlikely guest, the sculptor Gutzon Borglum. As they sat around the dining room table, Borglum described his latest idea for a sculpture. He wanted, he explained to the other guests, to carve monumentally large images of Confederate war heroes into the side of Stone Mountain, Georgia. Justice Holmes, a Union army veteran who had always admired his Confederate foes, expressed interest in Borglum's idea. Yet he could not fully grasp the sculptor's vision.<sup>1</sup>

Borglum, a Westerner whose cowboy hat, bushy mustache, and stocky frame reflected his frontier beginnings, pushed the plates to the center of the table and began drawing on the white tablecloth.<sup>2</sup> He depicted three men in the foreground, all of them on horseback: Robert E. Lee on his legendary horse, *Traveller*; Stonewall Jackson, slightly in front of Lee; and Jefferson Davis closely behind them. There were clusters of cavalymen in the background. The desired effect, Borglum explained, was to march the Confederate army across the 800-by-1,500-foot face of the mountain. Holmes was delighted and astonished. Frankfurter never forgot the encounter.

As it turned out, Borglum never finished his Confederate memorial (mainly because of a dispute with the Ku Klux Klan, an organization he had embraced). Nonetheless, his first attempt at mountain carving led to what became the major work of his lifetime: memorializing four American presidents in the Black Hills of South Dakota at Mount Rushmore.

By the time Frankfurter, Holmes, and Borglum dined there that night, they had eaten many meals together at this narrow, three-story, red-brick row house that its residents self-mockingly but fondly referred to as the "House of Truth." The name was inspired by debates between Holmes and its residents about the search for truth. During these discussions, Frankfurter



Gutzon Borglum's vision of Robert E. Lee (center), Stonewall Jackson (left), and Jefferson Davis (right) marching across the face of Stone Mountain

and other Taft and Wilson administration officials who lived there from 1912 to 1919 turned the House into one of the city's foremost political salons. They threw dinner parties, discussed political events of the day, and wooed young women and high government officials with equal fervor. Ambassadors, generals, journalists, artists, lawyers, Supreme Court justices, cabinet members, and even a future US president dined there. "How or why I can't recapture," Frankfurter recalled, "but almost everybody who was interesting in Washington sooner or later passed through that house."<sup>3</sup>

For Frankfurter and his friends, the House was a place to gather information, to influence policy, and to try out new ideas. In 1912, many of them wanted Theodore Roosevelt once again in the White House and supported his third-party presidential run. Two years later, they founded the *New Republic* as an outlet for their political point of view. Above all, the House of Truth helped them create an influential network of American liberals

who would influence American law and politics from Theodore Roosevelt's defeat in 1912 to Franklin Roosevelt's victory in 1932.

This book tells the story of how the House built a professional network that shaped the foundations of American liberalism. The network revolved around and changed the personal and professional lives of four individuals in particular: Frankfurter, journalist Walter Lippmann, Borglum, and Holmes. Frankfurter met his wife there, gained a national reputation as a labor expert in the Taft and Wilson administrations, and landed a job as a Harvard Law School professor. Lippmann lived there with his new wife while on leave from the *New Republic* and became a foreign policy expert while working in the Wilson administration. Borglum was attracted to the House's support of Theodore Roosevelt in 1912 and often returned there in 1918 while investigating a subject he became as passionate about as mountain carving: wartime aircraft production. And largely because of his friendship with this younger crowd, Holmes saw his reputation evolve from a relatively obscure member of the Supreme Court into a judicial icon.

Though I refer to people associated with the House as "liberals," they were liberals not in the nineteenth-century sense of classical liberalism, with its emphasis on individual liberty, but in the twentieth-century sense of liberalism, with its emphasis on government. Like progressivism, "liberalism" has many definitions.<sup>4</sup> Progressives believed in government regulation; liberals also believed in government regulation, but they recognized government's limits. During the early twentieth century, the terms were sometimes used interchangeably. After World War I, however, the House of Truth crowd stopped referring to themselves as "progressives" and began calling themselves "liberals." This may have been clever rebranding, but it also reflected growing and genuine concern over the abuse of government power and the potential of courts, especially the Supreme Court, to protect civil liberties.

The network created by these men and women defined and then redefined American liberalism.<sup>5</sup> "The word, liberalism, was introduced into the jargon of American politics by that group who were Progressives in 1912 and Wilson Democrats from 1916 to 1918," Lippmann wrote in 1919. "They wished to distinguish their own general aspirations in politics from those of the chronic partisans and the social revolutionists. They had no other bond of unity. They were not a political movement. There was no established body of doctrine. American liberalism is a phase of the transition away from the old party system."<sup>6</sup>



This new liberalism began to take shape in 1912 during Theodore Roosevelt's third-party presidential bid—with the House of Truth serving as the Bull Moose campaign's de facto DC headquarters.<sup>7</sup> Frankfurter, Borglum, and their friends viewed Roosevelt as representing the best hope of achieving their political goals—a government run by experts rather than political party hacks, more aggressive prosecution of illegal monopolies, and new state and federal laws to protect workers and organized labor. They believed that government could make people's lives better through the passage and enforcement of antitrust laws, minimum wage laws, maximum hour laws, and workers' compensation laws. In their eyes, Roosevelt was the only politician willing to push for those laws; to stand up to big business; and to fight for working men, women, and children in an age of industrial accidents and violent labor disputes.

Before the First World War, one institution had stood in the way of their political goals—the Supreme Court. The Court struck down state minimum wage and maximum hour laws, limited the enforcement of antitrust laws and the rights of organized labor, and curbed congressional power. Part of the attraction of Theodore Roosevelt for the House of Truth crowd was his willingness to put “the fear of God into judges.”<sup>8</sup>

After the 1919 Red Scare prosecution and deportation of radical immigrants and the Red Summer of racial violence, Frankfurter and his allies began to change their view of the Court. They looked to the Court, and especially to Holmes and Louis D. Brandeis, to protect free speech and fair criminal trials.<sup>9</sup> During the Harding, Coolidge, and Hoover administrations of the 1920s and early 1930s, Frankfurter, Lippmann, and their liberal friends found themselves out of political power. They never lost faith in the democratic political process, but they turned to the judiciary when the political process failed them.

The story of the House begins with the friendship and professional aspirations of its three original residents: Frankfurter, Winfred T. Denison, and Robert G. Valentine. Together with Frankfurter, they stood out in the Taft administration as three of the most fervent supporters of Theodore Roosevelt. Though Denison and Valentine have been forgotten by history, all three men played central roles in the formation of the House of Truth.

The House broke up as a political salon in 1919 after its residents fell out of political power. Yet their faith in government and their old friendships never waned. In the years to come, they argued about which presidential candidates to support in the *New Republic*. They lobbied for and against

Supreme Court nominees. They took sides in 1927 on the efforts to save Italian anarchists Sacco and Vanzetti from the electric chair. They repeatedly celebrated the career milestones and opinions of Justice Holmes. And in 1932, they helped to elect a president and another Roosevelt.

In its own way, nothing captured the House of Truth's belief in government better than Borglum and his monument at Mount Rushmore, a mountain carving inspired by the Confederate memorial he had started to draw on the tablecloth that night in 1918. His desire to create a "shrine to democracy" began after Theodore Roosevelt's defeat in 1912. That election galvanized Borglum, just as it did the group of young men, beginning with an Austrian-Jewish immigrant who ascended through the ranks of the federal government of his adopted country.

# I

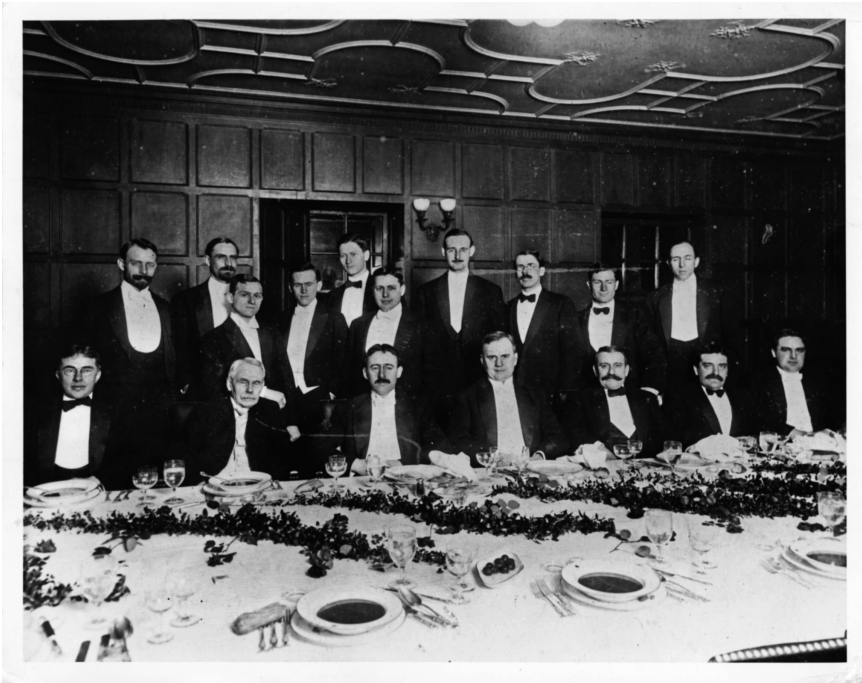
## Expanding Horizons

At 7:15 p.m. on October 31, 1910, five cars left the Lexington Avenue home of New York Republican gubernatorial candidate Henry Stimson. New York City police escorted them with shrill whistles blaring until they arrived at the Grand Music Hall, a Yiddish variety theater located at the corner of Grand and Orchard Streets on the Lower East Side. Men, women, and children clogged the streets and made it impossible for Stimson and his campaign aide Felix Frankfurter to get to the front door. Police finally cleared a path for them. More than 2,500 people were waiting inside.<sup>1</sup>

The audience cheered as Stimson entered the room. After the crowd quieted, the master of ceremonies told a story about how as Manhattan's US attorney Stimson had hired Frankfurter as an assistant US attorney though most Wall Street law firms had refused to hire Frankfurter because he was Jewish. "And if Tammany Hall tries this year to work off the oldtime tale of Republican race prejudice," the master of ceremonies continued, "you answer with the tale of the appointment of Felix Frankfurter, Jew." The audience, which knew the story of the Lower East Side boy who had made good, "shouted and cheered and cheered again."<sup>2</sup> Then Stimson spoke and appealed to the crowd of Jewish voters. "If there was one of my assistants in the District Attorney's office to whom I owe personal gratitude for the work done by my assistants," Stimson said, "Felix Frankfurter is that man. And I take great pleasure in expressing that obligation to him publicly."<sup>3</sup>

\*\*\*

When he arrived at Ellis Island on August 9, 1894, on the steamship *Marsala* from Hamburg, Germany, eleven-year-old passenger Felix Frankfurter could not speak a word of English and had never heard one spoken. The young Austrian quickly learned the language because his teacher at New York City's P.S. 25, Miss Hogan, had threatened his German American classmates with physical punishment if they spoke to him in German.<sup>4</sup> He filled



Henry L. Stimson (sitting third from left), Denison (sitting far left), and Frankfurter (standing third from left)

the gaps of his American education at Cooper Union, where he devoured the nation's daily newspapers in the top-floor reading room and attended Friday night political discussions. He became so interested in politics that he skipped school when he was thirteen to witness the arrival of 1896 Democratic presidential candidate William Jennings Bryan in Hoboken, New Jersey. At his grammar school graduation the following summer, Frankfurter recited a speech by John Adams.<sup>5</sup>

Frankfurter declined a partial scholarship to the private school Horace Mann because his family could not afford to pay the rest of the tuition. Instead, like many other Jewish immigrants, he enrolled in the five-year combined high school and college program at City College of New York. He joined the City College debate team and finished third in his class. He was nineteen. After working for a year in the city's new Tenement House Department, he decided to go to law school and enrolled at Harvard.<sup>6</sup>

Harvard Law School intimidated Frankfurter. His roommate Sam Rosensohn thought he was a "Mama's boy" because Frankfurter's mother

had packed his clothes. Frankfurter's classmates had attended elite colleges and universities, were taller and more self-assured, and spoke eloquently in class.<sup>7</sup> Dimple-chinned, five-foot-six, and with a slight foreign accent, the baby-faced Frankfurter did not think he would survive. The annual tuition was only \$150; more than 20 percent of his class flunked out after a single set of exams at the end of the year.<sup>8</sup> Frankfurter's grades on the exams were so good that they qualified him for membership on the *Harvard Law Review*. By graduation, he was first in his class.<sup>9</sup>

Yet the top student in Harvard Law School's class of 1906 struggled to find a job. Most Wall Street law firms in the early twentieth century did not hire Jews.<sup>10</sup> Not yet knowing he was first in his class, Frankfurter recalled feeling like a beggar as he took sealed letters of recommendation from the dean of the law school from firm to firm. Finally, Hornblower, Byrne, Miller & Potter, a respected firm with a number of Harvard law alumni, offered him a job. One of the partners asked him to change his last name to something less "odd, fun-making" (and presumably less Jewish-sounding).<sup>11</sup> Frankfurter accepted the job but kept his surname. He was the firm's first Jewish associate.

Soon after he began his professional life as a Wall Street lawyer, Frankfurter received a phone call from Stimson, who had just been named US attorney. Stimson had a long, thin face, an aquiline nose, short black hair parted down the middle, and a dark mustache. He also had degrees from Phillips Academy, Yale College (where he belonged to the secret society Skull and Bones), and Harvard Law School. At age thirty-eight, he had left his \$20,000 salary at his Wall Street law firm to go into government. He landed the US attorney post on the recommendation of his former law partner Elihu Root, Theodore Roosevelt's secretary of state, and because Stimson shared Roosevelt's love for the outdoors and his progressive spirit.<sup>12</sup>

Like Roosevelt, Stimson and other progressives believed in using the federal government to protect workers from the effects of industrialization and to prosecute illegal monopolies for destroying competition. Big government could be imperialistic—the United States was emerging as a world power after the Spanish-American War with territorial acquisitions in Puerto Rico, Cuba, and the Philippines. But big government could also be used to stand up for the little guy—prosecuting the robber barons for anticompetitive contracts and breaking up illegal monopolies. Roosevelt appointed Stimson to reorganize the office and to prosecute the sugar trust.

Stimson transformed the Southern District of New York into one of the nation's premier federal prosecutor's offices. He reorganized it into criminal, civil, and customs divisions and divided the criminal division into miscellaneous and antitrust sections. He ended the practices of farming out high-profile cases to private lawyers at great public expense and of keeping a percentage of the customs fees collected. He hired assistant US attorneys based on merit rather than political affiliation. With a budget of less than \$30,000, he replaced holdover patronage appointments by asking law school deans about their best recent graduates.<sup>13</sup> Frankfurter's name was at the top of Stimson's list. Harvard Law School dean James Barr Ames informed Stimson that Frankfurter was "the most able man of the graduates of that school within the past three or four years."<sup>14</sup> Stimson offered Frankfurter a job. Frankfurter, torn more about leaving his Wall Street firm so soon than about taking a \$250 pay cut, consulted Dean Ames, who replied: "I suggest you follow the dominant impulses of your nature."<sup>15</sup>

On August 7, 1906, Frankfurter joined Stimson in the US attorney's office as a junior assistant. Under Stimson's direction and with President Roosevelt's support, Frankfurter and his fellow assistants prosecuted railroads for illegal shipping rebates to the American Sugar Refining Company, bank executive Charles W. Morse for defrauding the National Bank of North America, and the American Sugar Refining Company again for manipulating scales and defrauding the federal government of customs fees.<sup>16</sup> The sugar trust prosecutions continued in 1909 and 1910 after Stimson had left office to return to private practice.<sup>17</sup> Frankfurter and others stayed on as special prosecutors, and they pursued criminal fraud charges and appeals against the secretary of the American Sugar Refining Company, Charles R. Heike.<sup>18</sup> Heike's conviction and eight-month prison sentence for conspiring to defraud the federal government of sugar import fees kept Stimson in the headlines. After the Heike case, Frankfurter joined Stimson's law firm for eight months in 1909 before returning to the Manhattan federal prosecutor's office. During the fall of 1910, he took a month off to work on Stimson's gubernatorial campaign.<sup>19</sup>

In Frankfurter's mind, Stimson's prosecution of the sugar trust had made him the natural candidate to replace Republican reformer Charles Evans Hughes as governor of New York. "He has never stood for peanut politics nor peanut politicians," Frankfurter told the *New York Times* in late September. "Mr. Stimson has no love for the grafter, never had and never will."<sup>20</sup>

Fifteen minutes after Stimson had finished his October 31 speech on the Lower East Side and had left for his next campaign stop, five more cars pulled up at the Grand Music Hall. This time, a swelling crowd of 3,000 people surrounded the lead car. The star attraction had arrived. The police tried but failed to create a path for him to the front door, so Theodore Roosevelt hopped onto a fire escape on the side of the building, bounded up a flight of stairs two at a time, and approached a window leading into the hall. Before he entered, he turned back and waved his hat at the cheering crowd below.<sup>21</sup>

Roosevelt was deeply invested—some thought too invested—in Stimson's campaign. As president, he had made Stimson one of the nation's foremost prosecutors. As an ambitious ex-president, he had orchestrated Stimson's Republican Party nomination for governor, turning the campaign into a full-scale war against the Tammany Hall political machine and a litmus test for another presidential bid. Introduced as "the greatest citizen in the world," Roosevelt received three cheers from the crowd and "three cheers more before he could be heard." New Nationalism with Stimson as governor, Roosevelt told the crowd of garment workers and merchants, offered them "the chance to work for a reasonable wage under healthy conditions, and not for an excessive number of hours." It also offered "the chance for the small business man to conduct his business without oppression, without having to be blackmailed" and the chance to "stand against the worst alliance of crooked politics and crooked business that this State has seen, or this city has seen, since the days of Tweed."<sup>22</sup>

That night, Stimson and Roosevelt spoke to nine different audiences throughout New York City and only crossed paths at the last stop. "Isn't it bully?" an energized Roosevelt repeated as he encountered Stimson in a narrow stairwell.<sup>23</sup> With the election nine days away, Stimson trailed Tammany Hall candidate John Alden Dix in the polls.

As successful as he had been as a prosecutor, Stimson was not much of a political candidate. "Darn it, Harry," Roosevelt told Stimson in Frankfurter's presence, "a campaign speech is a poster, not an etching!"<sup>24</sup> Roosevelt overshadowed Stimson on the stump and dominated the political conversation. Indeed, Frankfurter informed Roosevelt that the New York *World* was keeping a running tally of how often Roosevelt used "I" in his speeches on Stimson's behalf.<sup>25</sup> Tammany Hall fought to keep Roosevelt's handpicked candidate out of Albany and to tarnish Roosevelt's reputation as rumors swirled that he would run for president again in 1912.



Unable to escape Roosevelt's shadow or to overcome his own inadequacies as a candidate, Stimson never stood a chance. At the Stimson campaign headquarters on election night, Frankfurter and other current and former assistant US attorneys celebrated their defeated chief. Winfred T. Denison, who had joined the Justice Department as an assistant attorney general after trying and appealing the *Heike* case with Frankfurter, came up from Washington.<sup>26</sup> Denison brought one of his Harvard College classmates, President Taft's commissioner of Indian affairs, Robert G. Valentine. That night, Denison almost certainly introduced Frankfurter to Valentine.<sup>27</sup>



Clifford Berryman cartoon about 1910 New York governor's race



For the twenty-seven-year-old Frankfurter, the Stimson campaign had educated him about electoral politics, had whetted his appetite for a career in public service, and had brought him into the orbit of Theodore Roosevelt.<sup>28</sup> “I feel exactly as you do, that there never was a more genuine fight for the people than we made; and I am mighty glad to have had my hand in it,” Roosevelt wrote Frankfurter in December 1910. “Let me also say that it was a genuine pleasure to have gotten to know you. I value you and believe in you.”<sup>29</sup> Stimson believed in Frankfurter, too. In June 1911, President Taft needed a progressive in his cabinet and named Stimson secretary of war. At first, Stimson tried to arrange a job for Frankfurter with Attorney General George W. Wickersham. The position did not materialize.<sup>30</sup> Instead, Stimson offered, and Frankfurter accepted, a \$4,500-a-year job as a law officer in the Bureau of Insular Affairs overseeing US territories and as Stimson’s “junior partner.”<sup>31</sup>

Before leaving for Washington, Frankfurter accompanied his boss on a tour of territories acquired during the Spanish–American War.<sup>32</sup> Frankfurter boarded the USS *North Carolina* in Puerto Rico and saw Santo Domingo and Cuba. “His eyes are sticking out of his head with [the] novelty of the experience,” Stimson wrote of the “Faithful Frankfurter,” adding, “and we all feel a little expanded in horizon.”<sup>33</sup> Frankfurter’s horizons expanded even further upon his arrival in Washington.

## 2

### 1727 Nineteenth Street

In September 1911, Frankfurter arrived in Washington, DC, knowing only a handful of people.<sup>1</sup> Walking the streets of the nation's capital, the new War Department aide fell in love with the "charming, large, peaceful, equitable big town."<sup>2</sup> The sidewalks along tree-lined Connecticut Avenue were twice their current width because streetlights had not yet been installed and automobiles were scarce. Most people walked to and from their offices and worked at a leisurely pace. A month into his job, Frankfurter encountered Solicitor General Frederick W. Lehmann on the street and discussed the latest Supreme Court vacancy and Lehmann's disagreement with President Taft on the enforcement of the Sherman Antitrust Act.<sup>3</sup> Two mornings later, Attorney General Wickersham saw Frankfurter walking to work and offered the young man a carriage ride. During the ride, Wickersham opined on law, history, and politics, including Frankfurter's role in the sugar fraud prosecutions.<sup>4</sup> Frankfurter liked Washington because it was not driven by money like New York City but by political power and ideas.<sup>5</sup> He did not care about money and did not "collect books or pictures," one of his friends explained, "he collects people."<sup>6</sup>

Frankfurter's mission was to turn the most important person in his professional life so far, Secretary of War Stimson, into the Taft administration's leading progressive voice on trust busting. Like many Roosevelt supporters, Frankfurter doubted Taft's willingness to prosecute monopolies and deemed the president too deferential to the Supreme Court. Since its 1895 decision preventing the prosecution of the sugar trust, most progressives viewed the Court as the biggest obstacle to enforcement of the antitrust laws.<sup>7</sup> In 1910 and 1911, the Court had permitted the Roosevelt-initiated antitrust actions against John D. Rockefeller's Standard Oil Company and the American Tobacco Company.<sup>8</sup> Despite these apparent victories, the Court's decisions limited the broad language of the Sherman Antitrust Act's ban on any



Felix Frankfurter

contracts or combinations in restraint of trade to a “rule of reason”—meaning only *unreasonable* restraints of trade violated the law. Progressives worried that the rule of reason gave the Court too much power to decide what mergers were unreasonable. Instead, they wanted tougher enforcement of the Sherman Act, amendments to the law, and new legislation creating an administrative agency to regulate unfair competition. They saw antitrust enforcement as one way to strike the right balance between management and labor, producers and consumers, robber barons and small businesses.

During his first few months as Stimson’s aide in the War Department, Frankfurter drafted a trust-busting speech for his boss to deliver on November 14 before the Kansas City Commercial Club. He wanted Stimson to invigorate the Taft administration’s antitrust policy and to bring liberals into the Republican Party. “I assume that your larger purpose is to identify the Republican Party in the public mind as the liberal party and thereby more immediately further the interests of the administration [as the exponent of] liberalism,” he wrote Stimson on September 9. Frankfurter argued

that it started with the belief that government could improve the lives of working people by protecting the rights of organized labor; by passing minimum wage, maximum hour, child labor, and workmen's compensation laws; and by prosecuting monopolies. Frankfurter invoked themes from his boss's past speeches about "the changed industrial condition," "interdependence of people," and "a discarding of the old *laissez-faire* philosophy." Frankfurter proposed "a social program" that addressed the two most pressing areas of regulation: industrial relations and antitrust prosecutions.<sup>9</sup>

The dilemma for Stimson in his Kansas City speech was to reframe the debate about trust busting without undermining President Taft. Stimson had urged Taft to write out his speeches to convey a clear and constructive message on the trust issue during a month-long trip west.<sup>10</sup> Instead, Taft crisscrossed the country delivering a series of extemporaneous remarks that muddled the debate: he defended the Court's two recent antimonopoly decisions, opposed amendments to the Sherman Act, described literal enforcement of the Sherman Act as the road to socialism, and promised more prosecutions under the statute.<sup>11</sup> Stimson believed that Taft's speeches managed to alienate both conservatives and progressives.<sup>12</sup> Frankfurter encouraged Stimson to use the Kansas City speech to clarify the confusion over Taft's speeches and to chart a more progressive course. Attorney General Wickersham agreed that Stimson should address the trust issue. Frankfurter conferred with Stimson and other members of the administration.<sup>13</sup>

By the end of October, Frankfurter and Stimson had drafted a speech declaring the Sherman Act unclear and insufficient. They proposed to amend it and to pass new legislation, including specific criminal offenses and penalties and an administrative body like the Interstate Commerce Commission to provide guidance to businesses and to declare monopolistic practices anticompetitive. "I think we realize now better than ever before," the draft concluded, "how the interests of the manufacturer, the laborer and the consumer—the corporation, its employees, and the public—are alike bound up in common in its solution."<sup>14</sup> They showed the draft to several people. Former sugar trust prosecutor and Justice Department lawyer Winfred Denison read the speech and remarked that "this is exactly the sort of stuff that I think the administration ought to issue." But he cautioned Stimson that the proposal to amend the Sherman Act clashed with some of Taft's recent speeches and used Taft's prepresidential statements "against himself."<sup>15</sup> Instead, Denison argued, the best tactic was to propose new legislation preventing unfair competition.<sup>16</sup> Denison also wrote Stimson a

follow-up note: “F.F. had the notion that I did not like your speech because I didn’t say more in the letter the other day. He’s very much mistaken. I’m very much for it.”<sup>17</sup> Charles Nagel, Taft’s secretary of commerce and labor, endorsed the speech and believed that it did not show up the president: “I am satisfied you will find him fully committed to it.” Nagel echoed Denison’s concerns about the proposal to amend the Sherman Act and preferred new legislation. Overall, Nagel encouraged Stimson: “I am very glad that you are going to speak along these lines. It is just what Kansas City will want to hear.”<sup>18</sup>

When the Kansas City Commercial Club asked for a title for advertising purposes, Stimson met with Taft to ask permission to give the Sherman Act speech. The president immediately said yes. Stimson relayed the title, “The Sherman Law and Our Industrial Problem,”<sup>19</sup> but insisted that Taft read the speech. After he read it, Taft suggested a different topic—the soon-to-be-completed Panama Canal.<sup>20</sup> Taft planned to include remarks about the Sherman Act in his message to Congress, preferred different points of emphasis and tone, and wanted the entire cabinet’s input about antitrust policy. The president did not know that influential members of his cabinet had been encouraging Stimson, but that did not matter.<sup>21</sup> Stimson was a team player; his Sherman Act speech was off.<sup>22</sup>

On November 3, Stimson broke the news to Frankfurter.<sup>23</sup> The two men had less than two weeks to prepare a Panama Canal speech. As Frankfurter worked on it, he realized that Stimson “hasn’t got his heart in it as he had in [the] trust speech.”<sup>24</sup> The Kansas City Commercial Club wired Stimson begging him to return to the original topic; Stimson refused.<sup>25</sup> After receiving the telegram, he remarked to Frankfurter: “I’d give \$1,000 to make that trust speech.”<sup>26</sup> The *New York Times* buried Stimson’s Panama Canal speech on page eight.<sup>27</sup>

Instead of burying his ideas about antitrust policy, Stimson included them in a memorandum to the president for the message to Congress.<sup>28</sup> As predicted, Taft’s December 5 message opposed amending the Sherman Act but endorsed supplemental legislation including a Federal Corporation Commission. In reality, however, Taft’s support for new legislation was tepid. In Taft’s mind, the Sherman Act was sufficient. After all, his administration had initiated more Sherman Act prosecutions than Roosevelt’s.<sup>29</sup>

Taft’s critics believed that he was too content to allow the Supreme Court to define the contours of prosecuting illegal monopolies. In less than two years, he had remade the Court by nominating five justices: Horace



Stimson

H. Lurton in December 1909; Charles Evans Hughes in April 1910; and Willis Van Devanter, Joseph R. Lamar, and the elevation to Chief Justice of Associate Justice Edward Douglass White in December 1910. And with Justice John M. Harlan's death in October 1911, Taft had another vacancy to fill and nominated Mahlon Pitney. Indeed, Taft, a former federal appeals court judge, had made it no secret that he longed to be chief justice. "It does seem strange," Taft said of the chief justiceship, "that the one place in the government which I would have liked to fill myself I am forced to give to another."<sup>30</sup>

Ten days after the president's message to Congress, Stimson delivered a revised version of his Sherman Act speech to the New York City Republican Club.<sup>31</sup> With Taft's permission, Stimson proposed new legislation calling for criminal antitrust penalties and a federal administrative body.<sup>32</sup> But it was not the progressive rallying cry that Frankfurter had hoped it would be. For Frankfurter, the episode "left a painful impression and a striking demonstration of Taft's lack of leadership and constructive thinking. Here he

floats around the country talking on the industrial situation without having the thing at all thought out, without having formulated a definite policy after Cabinet consultation." Taft, according to Frankfurter, was "amiable and well-intentioned" but lacked "vision and decision. He is indeed the tragedy of opportunities of greatness unrealized."<sup>33</sup>

★★★

Disillusioned with Taft and unable to persuade Stimson to become the administration's progressive voice, Frankfurter formed a social circle of like-minded friends. His most important ally was Assistant Attorney General Winfred T. Denison.

Denison had made a national name for himself prosecuting the sugar fraud cases with Stimson and Frankfurter. Hired to be an assistant US attorney at about the same time as Frankfurter, Denison had left the Wall Street firm of Stetson, Jennings & Russell to be a senior assistant at \$4,000 a year (Frankfurter initially made \$750).<sup>34</sup> Denison took a lead role in prosecuting the sugar fraud cases as the head of the office's interstate commerce bureau and later as a special prosecutor.<sup>35</sup> After joining the Justice Department in early 1910, he continued to prosecute customs fraud in Philadelphia and other cities.<sup>36</sup> And in public speeches, he credited Stimson for ridding the federal prosecutor's office of political hacks and argued that the New York sugar fraud prosecutions never would have happened without Stimson's merit-based hiring practices.<sup>37</sup>

Denison hailed from a prominent Portland, Maine, family, graduated from Phillips Exeter and Harvard College, traveled in Europe for a year, then graduated in 1900 from Harvard Law School.<sup>38</sup> His six years of private practice made him one of the US attorney's office's more senior and accomplished trial lawyers. He also was a skilled appellate advocate. As assistant attorney general, he regularly argued before the Supreme Court, priding himself on never using the entire hour allotted to him.<sup>39</sup> In October 1911, he agonized with Frankfurter about whether to become a judge.<sup>40</sup>

Denison was closer in age to Stimson but closer in personality to Frankfurter. Both Frankfurter and Denison were social animals. A lifelong bachelor, Denison was 5-7½ and wore wireless oval pince-nez. He had prominent eyebrows, a wide nose, full lips, gray eyes, and thinning dark brown hair streaked with gray at the roots and temples.<sup>41</sup> Winnie, as his friends called him, entertained at the Metropolitan Club and Chevy Chase Country Club and earned a place in the *Social Register* and in the Washington society pages.<sup>42</sup>



Clifford Berryman cartoon of William Howard Taft

Frankfurter recalled that Denison “once said of himself about going out often, perhaps too often, with a childlike innocence, ‘It’s that damn charm of mine!’”<sup>43</sup> Denison’s charms came with high highs, low lows, and bouts of nervous exhaustion because of a history of depression.<sup>44</sup> In February 1911, he contracted typhoid fever.<sup>45</sup> He convalesced that summer in Britain with his sister and social companion, Katherine.<sup>46</sup> By October, he still had not recovered, and Katherine moved from New York City to Washington to live with him for the winter.<sup>47</sup> A twenty-four-year-old Wellesley graduate, Katherine hit it off with the Washington society crowd and was “fresh and lovely,” according to Frankfurter, “revelling in the richness of Washington life and absorbed in Winnie’s future and greatness.”<sup>48</sup>

On October 20, 1911, Frankfurter brought Denison to lunch with the People’s Lawyer, Louis D. Brandeis.<sup>49</sup> Frankfurter and Brandeis had been corresponding about antitrust matters for at least a year. As a law student, Frankfurter had heard Brandeis speak at the Harvard Ethical Society on “The Opportunity in the Law” about the roles that lawyers could play





Winfred T. Denison

in public service.<sup>50</sup> A Boston lawyer, Brandeis frequently found himself in Washington on business. He had become wealthy representing smaller manufacturers and corporations. Yet he became the People's Lawyer by representing the public's interests in political and legal controversies and by spearheading reform efforts against unscrupulous banks, railroads, and other monopolies. At lunch, Brandeis discussed the Sherman Act, the dangers of monopolies to capitalism, and the need for new antitrust legislation and more administrative oversight.<sup>51</sup> Representing smaller manufacturers, Brandeis opposed the American Tobacco Company's proposed reorganization plan and urged Frankfurter and Denison to lobby

Attorney General Wickersham.<sup>52</sup> Unfortunately for Brandeis, Wickersham approved the company's plan. Brandeis, in looks and bearing, was often compared to Lincoln. Journalist Ray Stannard Baker, whom Frankfurter met at Denison's home in November 1911, first saw Brandeis a year earlier and recalled his "tall, spare, rugged, slightly stooping figure" and "high, rather harsh voice, but with perfect command." Baker wrote that Brandeis's "face, indeed, at a certain angle, and especially in repose, recalls almost startlingly one of the portraits of Abraham Lincoln."<sup>53</sup>

Born and raised in Louisville by middle-class Jewish parents from Prague, Brandeis graduated from high school at fourteen, traveled with his family in Europe and studied in Germany for two years, and entered Harvard Law School at age eighteen. He graduated with the "highest known average" in the history of the law school.<sup>54</sup> As a lawyer, he possessed the mind of a skilled advocate and able politician. In 1908 in *Muller v. Oregon*, he had defended the constitutionality of the state's maximum hour law for women. Three years earlier in *Lochner v. New York*, the Supreme Court had struck down a similar law for bakers as violating the Due Process Clause's "liberty of contract."<sup>55</sup> In *Muller*, Brandeis found a way around *Lochner*. Submitting a 100-page brief based on sociological research by his sister-in-law Josephine Goldmark and other members of the National Consumers' League, he argued that the Court should uphold the Oregon law because of physical differences between men and women. The Court agreed.<sup>56</sup> Because the "Brandeis Brief" provided a new method of defending labor laws based on social scientific evidence, Frankfurter believed that the *Muller* decision was "epoch making."<sup>57</sup>

In addition to *Muller*, Brandeis challenged J. P. Morgan's monopolistic control of the New York, New Haven & Hartford Railroad's rail and trolley lines. Brandeis aroused public suspicion about the company's finances and succeeded in forcing the New Haven Railroad to relinquish control of the Boston & Maine Railroad.<sup>58</sup> In 1910, he represented *Collier's* magazine and advised US Forest Service chief Gifford Pinchot and field agent Louis Glavis in their allegations against Taft's Secretary of the Interior Richard Ballinger. Pinchot and Glavis charged that Ballinger had enabled Morgan- and Guggenheim-backed interests to exploit coal-rich public land in Alaska. Pinchot, an ally of Roosevelt, was fired from his Forest Service post after backing Glavis against Ballinger. The Ballinger-Pinchot Affair, as it came to be known, divided pro-business and conservationist wings of the Republican Party and pitted Taft's loyalists against Roosevelt's. Brandeis revealed that Taft had exonerated Ballinger based on an undisclosed

memorandum that had been backdated.<sup>59</sup> Brandeis's investigation and cross-examination of Ballinger made him a hero in the eyes of Frankfurter and his anti-Taft friends.

As great a lawyer as Brandeis was, his reserve did not endear him to Frankfurter and Denison. In time, Brandeis considered Frankfurter "half brother, half son,"<sup>60</sup> financed Frankfurter's pro bono activities, and supplied Frankfurter and his friends with ideas. Yet as much as they admired him, they did not love him—at least not at first. "Brandeis has depth and an intellectual sweep that are tonical," Frankfurter wrote after the October 20 lunch. "He has great force; he has Lincoln's fundamental sympathies. I wish he had his patience, his magnanimity, his humor."<sup>61</sup>

The person in Washington who made the greatest first impression on Frankfurter and Denison was Justice Oliver Wendell Holmes Jr. Frankfurter possessed the ultimate entrée to the justice—a letter of introduction from one of Holmes's oldest and dearest friends and Frankfurter's property law professor at Harvard, John Chipman Gray.<sup>62</sup> Like Holmes, Gray hailed from a prominent Boston family, attended Harvard College, and served in the Union army during the Civil War. After the war, Gray started one of Boston's leading law firms, Ropes & Gray. He also joined the Harvard law faculty and became the nation's preeminent property law scholar. One of his lasting contributions to history was introducing Frankfurter, his former research assistant, to Holmes.

On November 27, 1911, Justice and Mrs. Holmes invited Frankfurter to lunch for the first time. "I came away with the keen relief of having been on Olympus and finding that one's God did not have clay feet," Frankfurter wrote Gray. "There is a brilliance and range in the justice's conversation. . . . But over and above his keen penetration, his contempt for mere words and formula, and his freshness of outlook, give lasting zest and momentum to one's groping and toiling."<sup>63</sup>

Frankfurter, who initially lived in an apartment only a block away, became a regular visitor to Holmes's large three-story residence at 1720 Eye Street. The nerve center of 1720 Eye Street was the second floor. In those days, the Supreme Court did not have its own building and heard oral argument in the old Senate chamber in the Capitol. The justices worked out of their homes, and Holmes turned his second floor into an office and social gathering place. His beloved books filled floor-to-ceiling built-in bookshelves that covered the walls and even above the doorway to his study. His secretaries, as his law clerks were known then, sat in the front study at a small desk under



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WASHINGTON, D.C.

*Von Felix Frankfurter*  
*with great appreciation and high hopes.*  
*Most cordially*  
*Yours & sincerely*  
*May 21/1914*

Louis D. Brandeis circa 1914

a large lamp suspended from the ceiling. The double doors between the secretary's study and the justice's were always open.

Holmes worked and entertained in his rear study. He sat in a simple mahogany chair at a seven-drawer cherry wood desk that had belonged to his maternal grandfather, former Massachusetts Supreme Judicial Court Judge Charles Jackson. Several volumes of Supreme Court decisions and a small lamp sat on Holmes's desk. He wrote his judicial opinions at his grandfather's mahogany stand-up desk by the window and read for pleasure in a comfortable leather chair near the sitting desk. His great-grandfather's swords from the French and Indian War hung above the fireplace.<sup>64</sup> Even at age seventy, Holmes still possessed the erect posture and tall, lean frame from his Union army days. He wore three-piece suits and ties but was anything but formal in his manner. His full head of hair was gray on top and white on the sides; his flowing white handlebar mustache gave him a regal appearance. His aristocratic Boston accent made him sound oddly British. His piercing blue eyes twinkled with mischief.

What made Frankfurter's visits to Holmes special was the conversation. Of all the great talkers in Washington, none compared to Holmes. Frankfurter recalled sitting in front of the fire or in the study and listening as the justice "did practically all of the talking." Frankfurter did not dare interrupt him because "it was such a wonderful stream of exciting flow of ideas in words."<sup>65</sup> Holmes could discuss philosophy, law, history, literature, and culture, high and low. He cared little about politics and did not read newspapers, but he liked to gossip. He loved his wife, Fanny, yet flirted with other women well into old age. He told tall tales, especially about his Union army days. He delighted in young people and their idealism, even though he was skeptical about their ideas.

In 1911, Holmes's skepticism nonetheless endeared him to many young progressives. Thirty years earlier, in *The Common Law*, he had written one of the most famous sentences in the history of American jurisprudence: "The life of the law has not been logic; it has been experience."<sup>66</sup> As a member of the Massachusetts Supreme Judicial Court for twenty years and the Supreme Court of the United States since 1902, he had dissented from decisions that struck down pro-labor legislation—though not because he believed that the laws would accomplish anything. For example, he thought the Sherman Act's ban on all contracts and combinations in restraint of trade was "a foolish law."<sup>67</sup> But he was no more willing to declare the Sherman Act unconstitutional than he was labor laws. "I have little doubt that the country likes it and I always say,

as you know, that if my fellow citizens want to go to Hell I will help them," he wrote. "It's my job."<sup>68</sup> What drew Frankfurter and Denison to Holmes was his personality and open-mindedness. Holmes did not subscribe to their ideas, but he was willing to listen to them. They admired his intellectual curiosity, conversational skills, and sense of fun. Mephistopheles, as Holmes often referred to himself, admired their ambition, intelligence, and optimism about the future.<sup>69</sup>

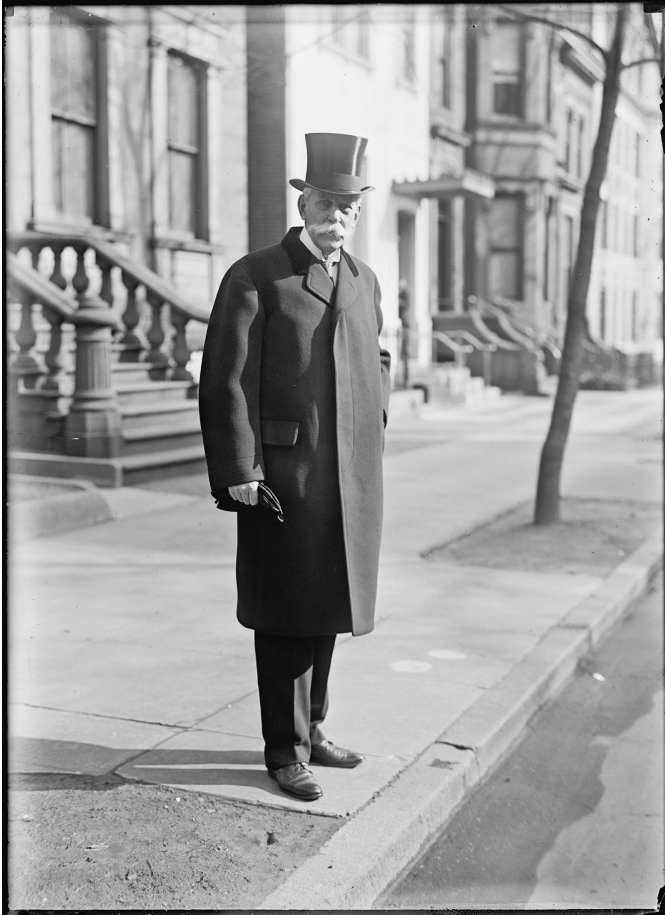
Frankfurter and Denison were beginning to form a new social circle. Brandeis inspired them with ideas and served as a role model for his fellow social and economic reformers. Holmes was their intellectual idol, who embraced them but not their ideas. Frankfurter was the *kochleffel*, the Yiddish word for cooking spoon or busybody, the avid collector of people who stirred the pot and introduced new ingredients into the mix.<sup>70</sup> Denison was Frankfurter's social companion and just as adept at flattery, charm, and friendship. All Frankfurter and Denison needed now was a house and a man named Valentine.



Soon after Frankfurter arrived in Washington, Denison reintroduced him to Taft's commissioner of Indian affairs, Robert G. Valentine. On the night of November 2, Denison brought Frankfurter to Valentine's home at 1727 Nineteenth Street for the first time. Valentine's fifteen-month-old daughter, Sophia, was in a long flannel nightgown and almost ready for bed. The guests, however, delayed the baby's bedtime. Denison, Sophia's godfather, and Frankfurter went up to the baby's room. "They each held her for a few moments," Valentine's wife, Sophie, wrote in her diary, "and the baby was rosy and sweet. She did not quite enjoy their call, or wish being held, but bore it without crying."<sup>71</sup> After a few months, Frankfurter and Valentine had become the best of friends. At Christmas, Frankfurter dined with Stimson and his wife out of professional obligation but spent half the day with Valentine out of personal pleasure. "We had a wonderful half day with Valentine," Frankfurter wrote his friend Emory Buckner. "He is the very *realest* of men I know here; next to you, Emory, he gets beneath my skin and touches my vitals more than any man I know."<sup>72</sup>

By early 1912, Valentine, Denison, and Frankfurter formed an inseparable trio, and the salon was beginning to take shape. "The days have been good to me down here," Frankfurter wrote to Buckner on April 20. "I should like to talk of Holmes and Bryce and Judge Mack (the real stuff) and Borglum and an Indian night at Val's etc. etc. with all that and so much more."<sup>73</sup> Julian W. Mack was a federal judge on the short-lived Commerce Court and later





Justice Oliver Wendell Holmes circa 1915

on the court of appeals, a prominent Harvard law graduate, and principal ally of Frankfurter and Brandeis in progressive and Zionist causes.<sup>74</sup> James Bryce was British ambassador to the United States. Holmes and Borglum, like Brandeis, were becoming regulars at Valentine's dinners.

Valentine, the Taft administration's leading outcast, turned his home into a political salon and into the center of a new liberal network. He clashed with Taft not simply as a holdover from the Roosevelt administration but as a direct result of Valentine's own policy decisions. As the commissioner of Indian affairs, Valentine put the economic self-sufficiency and assimilation of Native Americans first and governmental, business, and religious interests a distant

second, third, and fourth. He alienated conservatives with his liberal policies. Lumber industry interests, for example, pegged Valentine as an ally of Gifford Pinchot, the conservationist Forestry Service chief who had been fired by Taft. Indeed, Valentine succeeded Pinchot in challenging the administration.

On January 27, 1912, Valentine issued a one-page order banning teachers at government-sponsored Indian schools from wearing religious “insignia and garb.” The order appealed to the “essential principle of our national life—separation of church and state” and gave anyone with objections to the order until the next school year to comply.<sup>75</sup> Primarily aimed at sixty Catholic priests and nuns still teaching at Indian schools after the government had taken them over, Valentine’s order caused a firestorm. Protestant and anti-Catholic organizations cheered. The Catholic Church and some members of Congress complained. Representative Bird S. McGuire of Oklahoma phoned Taft to say that Valentine possessed “not one particle of loyalty” and “has declared himself as a rank, violent Pinchot follower; that he has absolutely no loyalty whatever.”<sup>76</sup>

Taft, with his re-election bid looming in November, was furious with Valentine for putting him in a no-win situation. Neither Taft nor Secretary of the Interior Walter L. Fisher had been consulted about Valentine’s order, and Valentine had issued it while the president was out of town. Taft wanted to revoke the order immediately and then to investigate the issue. Fisher and other members of the cabinet urged the president to investigate first and then revoke Valentine’s order before it took effect in the fall. One of the few progressives in the administration, Fisher presented the president with two proposed revocation orders: the first designed not to alienate Protestants, the second designed to humiliate Valentine. Taft chose the second option. “I fully believe in the principle of separation of the Church and State on which our government is based,” Taft wrote Fisher, “but the questions presented by this order are of great importance and delicacy.”<sup>77</sup> In revoking the order on February 3, Taft explained that the government had taken over the schools from the Catholic Church and that for these Catholic teachers Valentine’s order “almost necessarily amounts almost to a discharge from the Federal service of those who have thus entered it.”<sup>78</sup>

The Valentine who had united his friends against Taft was a divided soul. With his neatly combed, auburn-tinged hair, starched white spread-collar shirts, perfectly knotted ties, and dark suits, he looked as if he still belonged on Wall Street. Yet he possessed the spirit of an aspiring poet and had spent much of his early professional life chasing both banking and poetry





Robert G. Valentine

before he turned to government service. Born in 1872 in West Newton, Massachusetts, to an invalid mother and abandoned by his adventurer father, Valentine was raised by his aunts on a farm in nearby Holliston and attended a country school until he was fourteen. His beloved Aunt Beth made sure that he received an elite secondary education at Boston's Hopkinson School, which sent Valentine and many of its all-male graduates to Harvard College.

Valentine distinguished himself in Harvard's class of 1896.<sup>79</sup> In addition to Denison, his close friends included future New Hampshire governor Robert P. Bass; future lawyers and public servants Joseph P. Cotton and John Lord O'Brian; and future Boston lawyer John G. Palfrey. At Harvard, Valentine rowed freshmen crew, debated, played on the chess team, and was one of several graduation speakers.<sup>80</sup> His first love was poetry and literature. He published a student essay on Keats, made an aborted attempt at Harvard's graduate school in government, and then from 1896 to 1899 pursued his literary interests while teaching composition writing to MIT undergraduates.<sup>81</sup> He published articles about how to teach students to write in clear and effective ways in their chosen fields and prepared them for careers

in government, business, and engineering.<sup>82</sup> He wrote poetry but viewed “writing *as an avocation*, not taking it seriously except in trying to write *accurate* verses.” He burned many poems that he found unsatisfactory, bound the rest into a book, and looked for something else that inspired him.<sup>83</sup>

Wall Street lured Valentine to New York City. In June 1899, he subleased an apartment overlooking Washington Square and went to work as private secretary to James Stillman, the father of one of his Harvard classmates and the owner of the National City Bank (later Citibank).<sup>84</sup> Valentine learned how Wall Street worked from Stillman, who had allied his business interests with those of John D. Rockefeller and Edward H. Harriman.<sup>85</sup> After an apprenticeship lasting a year and a half, Valentine jumped at the chance to move to Omaha, Nebraska, to look after Stillman’s interests as a member of the accounting department at the Union Pacific Railway.<sup>86</sup>

Poetry and literature brought Valentine back to MIT. In September 1901, he resumed his job as an assistant writing instructor and corresponded with another aspiring poet, Amy Lowell.<sup>87</sup> He spent the summer of 1902 working for Stillman and left MIT again for New York in November 1903 to work full-time for the Stillman-owned Farmers’ Loan and Trust Company. Neither arts and letters nor making money satisfied him.<sup>88</sup> “In literature he felt the lack of actual human experience,” his college roommate John Palfrey explained. “He turned to industry, the actual; but there at first the poet missed, or rather was baffled in his eagerness to reach, the human touch.”<sup>89</sup>

Searching for the human touch in New York City, Valentine became active in political and social movements. In 1901, he campaigned for the successful anti-Tammany Hall mayoral candidate Seth Low, who introduced the merit-based civil service system in city government.<sup>90</sup> Valentine and four friends lived in a house in old Greenwich Village, then a crowded, poor, Italian immigrant neighborhood. In 1902, they co-founded Greenwich House, a settlement house for young immigrant women who lived and worked in the cooperative in exchange for food, shelter, and help in assimilating to American life. Valentine and his friends were known in their social circle as the “benefactors of Greenwich House.”<sup>91</sup> The strain of trying to do too much—poetry and business and New York politics and settlement house work—proved too great. In February 1904, Valentine suffered a nervous breakdown as well as heart trouble and was ordered to rest for six months.<sup>92</sup> His cousin Sophie French inspired him to get well. After a prolonged courtship, her own nervous breakdown, and multiple marriage proposals, the thirty-one-year-old Valentine and thirty-six-year-old French announced in March 1904 that they were engaged.<sup>93</sup>

Valentine looked for a fresh start and left for Washington in December 1904, ostensibly to attend the National Civil Service Reform League annual meeting but in reality to find a government job so that he could marry Sophie.<sup>94</sup> He was so confident of his job prospects that on December 10 he proposed that they get married in two weeks.<sup>95</sup> “My situation comes very near to life and death with me,” he wrote Sophie.<sup>96</sup> *Outlook* magazine’s editor-in-chief Lyman Abbott, the father of one of Valentine’s Harvard classmates, introduced him to one of the progressive magazine’s longtime Washington reporters, Elbert F. Baldwin. Baldwin took a personal interest in Valentine, accompanied him to Washington for the Civil Service Reform meeting, and introduced him to many leading politicians, including President Roosevelt.<sup>97</sup> “Wonderful Wonderful Wonderful!” Valentine wrote Sophie on New Willard Hotel stationery. “That’s been running in my mind ever since. It is not because he is President. You absolutely forget that when you are talking with him. He is a man; and your friend, in so far as there is good in you. Absolute quiet, a gentle voice, and strength, strength behind.” After three minutes with Roosevelt, Valentine was sure that he belonged not in banking with Stillman but in public service in the Roosevelt administration. “I shall never mind Mr. Stillman again,” Valentine wrote, referring to Roosevelt. “This is a great man.”<sup>98</sup>

The day after he saw the president, Valentine met Roosevelt’s newly appointed commissioner of Indian affairs, Francis E. Leupp.<sup>99</sup> The author of an early Roosevelt biography and a former newspaperman with a lifelong interest in Native Americans, Leupp wanted to pursue a progressive approach to Indian affairs. He respected Native American culture and believed that secular education, financial and land reforms, and skills training could make Native Americans more self-sufficient.

Leupp and Valentine hit it off. Having submitted an application to the Foreign Service, Valentine began a tryout of sorts with the new Indian affairs commissioner.<sup>100</sup> On December 21, he went to work for the first time in more than ten months.<sup>101</sup> The next day, after Valentine handed in his first report, Leupp asked if he was “open to negotiations.” With a permanent job in sight, Valentine knew he could get married. On December 31, 1904, at 1:30 p.m., he and Sophie were married at the French family homestead in South Braintree in a small ceremony witnessed by a few Harvard friends, including Denison.<sup>102</sup> Sophie joined her husband in Washington. On February 12, 1905, Leupp offered Valentine a full-time job as the commissioner’s private secretary.<sup>103</sup>

Valentine embarked on a new life in Washington and new adventures in Indian affairs. For four months of every year, he lived on reservations, rode with Native Americans on horseback, and learned about their problems.<sup>104</sup> The other eight months, he assisted Leupp, learned the ins and outs of the bureau, and rapidly ascended through its ranks. Leupp named him superintendent of Indian schools. In December 1908, outgoing President Roosevelt promoted Valentine to assistant commissioner of Indian affairs. Six months later, when Leupp resigned citing physical and mental exhaustion, Taft nominated the thirty-six-year-old Valentine as commissioner.

As commissioner of Indian affairs, Valentine sought to continue Leupp's policy goals of economic self-sufficiency and "treating the Indian as a man."<sup>105</sup> Valentine brought economic efficiency and scientific management skills to improving the lives of 300,000 Native Americans. He focused on Native American health, education, and industry. His oft-stated goal was simple—the elimination of the Indian Affairs Bureau.<sup>106</sup> He launched programs designed to make self-sufficiency and citizenship the only course.<sup>107</sup> He established local competency commissions to determine which Native Americans could control their finances and property. He endeavored to pay his field agents and superintendents more money and to hire them based on civil service standards rather than political patronage. He tried to stem the spread of tuberculosis and trachoma, to create Indian schools that emphasized English and vocational skills, to integrate Indians into white schools, and to encourage Native Americans to farm their land and to sell excess acreage. The results of these programs and others were mixed; failures were frequent.<sup>108</sup> Administrative problems, public corruption, private greed, and cultural barriers turned health, education, and industry into elusive goals and the elimination of the Indian affairs bureau into a pipe dream.

Valentine's home life was equally stressful. In May 1910, he accompanied forty-two-year-old Sophie back to Boston so that she could give birth to their first and only child.<sup>109</sup> On July 23, their daughter, Sophia, was born. His wife suffered life-threatening postpregnancy complications. His daughter had trouble gaining weight. While they recovered in South Braintree outside Boston, Valentine rented and furnished a three-story Dupont Circle row house at 1727 Nineteenth Street.<sup>110</sup> In preparation for his family's return, he had the walls scraped and painted cream white, hardwood floors and stairs waxed, and the baby's room decorated.<sup>111</sup> Every day he visited to check on the progress. He promised Sophie to make the House "healthy," "bright and happy," and "basically furnished" and hired two servants to cook

and clean.<sup>112</sup> A month later, Valentine's wife and daughter joined him there. "And such a fascinating house as this I am sure you have never seen!" Sophie wrote.<sup>113</sup> She liked the big room on the main floor and the roses on the upstairs wallpaper, and she described her sitting room—with two bureaux, three chairs, a cheval glass, a photograph of an Indian painting, and an etching of her family homestead in Braintree—as a "bower of loveliness."<sup>114</sup>

For Valentine, the house was the perfect place to entertain friends. The main floor opened up to a thirty-two-foot living and dining room with "burnt orange walls," a large fireplace "of reddish brownish black speckled bricks," and a "double mantel of black wood." "Sophie's French Coat of Arms" hung above the fireplace; Indian baskets decorated several shelves.<sup>115</sup> One side of the room included a small desk, a piano, and several comfortable chairs on an Indian rug near the fireplace, china displayed over the double mantel, a lawyer's bookshelf on the adjacent wall, and a skylight overhead. The other side included a china cabinet and a small round dining room table.<sup>116</sup>

The joys of his house and family could not prevent his job from getting to Valentine. He confessed that "no man can stand up to the remorseless



Sophie French Valentine with her infant daughter, Sophia



inconsequence of things below and of things above him and take all the attacks from right, left, behind and before and not have it reduce his efficiency.”<sup>117</sup> He prided himself on eighteen-hour days yet was so fatigued that he could manage only three hours in the morning and three in the afternoon on Indian affairs matters.<sup>118</sup> He looked gaunt and tired, and in May 1911 he suffered another nervous breakdown and headed to Atlantic City to recuperate with Denison.<sup>119</sup> After nearly two months, Valentine returned to work in Washington.

The poor health of Valentine’s family added to his stress. Baby Sophia still could not gain weight because of an undiagnosed milk allergy. Doctors insisted that she needed specialized medical care, and in March 1912 Sophie and Sophia returned to the French family’s home in South Braintree for good.<sup>120</sup> For the next three years in Massachusetts, a team of doctors and servants helped nurse baby Sophia back to health. Valentine was living all alone in the three-story, Nineteenth Street row house that he had decorated for his family. He opened his home to his friends Denison and Frankfurter.

In early May 1912, Frankfurter agreed to pay half the rent and expenses and moved into Valentine’s house.<sup>121</sup> A month later, Denison followed suit.<sup>122</sup> Frankfurter exulted over the “great time we are having.”<sup>123</sup> Valentine wrote



The living room of the House of Truth

his wife about their dinner parties and five-hour Sunday lunch: "Sunday at our regular general invitation we had besides FF & myself, [Louis G.] Bissell and [Thurlow M.] Gordon, Winnie's assistants at the Dept. of Justice, Lord Eustace Percy, & [Loring] Christy [*sic*]. We talked & talked after 1:30 feast and the first thing we knew it was 6:45!"<sup>124</sup>

A year later, two regular guests at the House, Loring Christie and Lord Eustace Percy, became its fourth and fifth original residents. Denison's assistant at the Justice Department, Christie had worked on the New York customs fraud prosecutions with Denison and Frankfurter and had come to Washington in October 1910 to assist Denison with briefs and arguments before the US Supreme Court and Commerce Court.<sup>125</sup> On one of his first nights in Washington, Christie had dined with Denison at Valentine's new home.<sup>126</sup> Three years behind Frankfurter in law school, Christie had been the *Harvard Law Review* president in 1908–9 and had finished in the top three in his class.<sup>127</sup> Christie and two other top classmates joined Stimson's law firm, Winthrop & Stimson. At Stimson's firm, Christie met and began a lifelong friendship with Frankfurter. Frankfurter probably urged Christie to leave the firm, where he was reputedly earning \$10 a week, to work for Denison at a \$2,500 annual salary.<sup>128</sup> Unlike other top Harvard law graduates, Christie and Frankfurter chose public service over a Wall Street law firm and knew that "our friends think us damn fools."<sup>129</sup> In Washington, Christie initially lived a few buildings down from Frankfurter at Eighteenth and I Streets and less than one block from Holmes.<sup>130</sup> Frankfurter and Christie often visited the justice at his home and admired Holmes's judicial philosophy.<sup>131</sup>

With his high cheekbones, cleft chin, prim expression, and commanding eyebrows, Christie looked like his Scottish ancestors. A product of a middle-class Baptist family from Amherst, Nova Scotia, and a graduate of a small Baptist college, Acadia University, he viewed Washington, just as he had Harvard Law School, as an escape from a provincial life in Nova Scotia.<sup>132</sup> He was practicing law at the highest levels of the federal government yet never forgot his Canadian roots or his interest in diplomatic and international affairs. "Christie is an attractive fellow with a fine mind; still rather restless," Frankfurter wrote in his diary. "He seems to have a deep emotional side which is not always administered."<sup>133</sup>

The fifth and final original resident at 1727 Nineteenth Street, Percy, arrived in Washington in early May 1910 to serve as an attaché to the British Embassy under Ambassador Bryce.<sup>134</sup> Soon after his arrival, Percy began

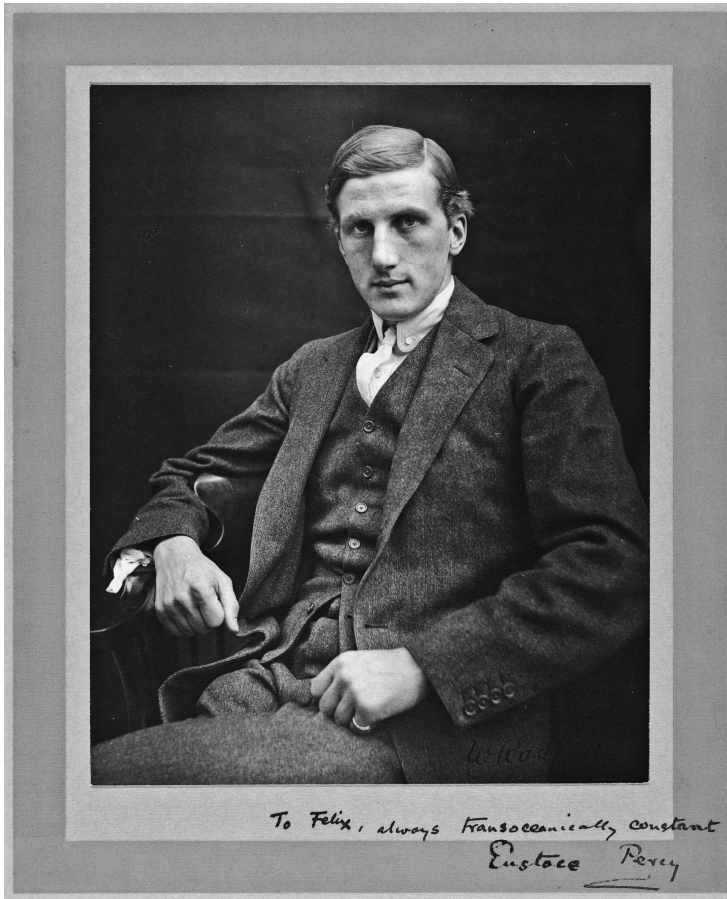


Loring Christie circa 1910

visiting Valentine's house.<sup>135</sup> Valentine described Percy as "a younger son of the head of the famous Percy family that owns a large part of England."<sup>136</sup> The seventh son of the seventh duke of Northumberland, Percy possessed the bloodlines of landed British nobility but none of the land or wealth. Educated at Eton College and Christ Church, Oxford, he believed in public service and belonged to the Catholic Apostolic Church that awaited the early Second Coming of Jesus Christ. According to Frankfurter, Percy was "much more of a dreamer and a mystic than the son of a great landowner."<sup>137</sup> He was not always sympathetic to his housemates' politics, but he shared their love of conversation, interest in social reform, and Christie's ties to Great Britain. Percy and his British friends brought a transatlantic perspective to the discussions.<sup>137</sup>

By the summer of 1912, the House was beginning to take shape. Frankfurter, Denison, and Valentine lived there, and Christie and Percy were soon to follow. They threw dinner parties that drew Justice Holmes, Brandeis, Borghlum, Judge Mack, Ambassador Bryce, and many others.





Eustace Percy

Valentine's dispute over his religious garb order in government-run Indian schools symbolized growing frustration with Taft. It also reflected differences between Taft and Roosevelt supporters, between big business and organized labor, between old ideas about laissez-faire capitalism and new ones about government regulation of both trusts and labor-management relations.

That summer the residents and guests at 1727 Nineteenth Street began referring to it as the House of Truth. The name has been misattributed to Holmes.<sup>138</sup> In fact, Holmes credited the name to Denison.<sup>139</sup> And Frankfurter could not remember who named it.<sup>140</sup> Regardless of its origin, the name

self-mockingly referred to the ideological debates between the justice and his young friends about the search for truth. They believed in an objective truth based on empirical data and analysis by social scientists and nonpartisan government experts. Holmes, on the other hand, believed that truth was “the system of my (intellectual) limitations”<sup>141</sup> or “the majority vote of that nation that could lick all others.”<sup>142</sup> Philosophical debates about truth soon morphed into political debates about whether Theodore Roosevelt should challenge his handpicked successor for the presidency. 1727 Nineteenth Street was not just a home for ambitious and disaffected Taft administration officials. It became the unofficial headquarters for Roosevelt supporters. More than anything else, the prospect of a Roosevelt presidential bid made the House of Truth the place to be in Washington.

# 3

## The Call of the Moose

At 1:00 p.m. on January 12, 1912, Frankfurter ate lunch with Theodore Roosevelt at the former president's office at *Outlook* magazine near Union Square in New York City.<sup>1</sup> A few days later, he sent Roosevelt a copy of Holmes's 1911 Harvard commencement speech on the fiftieth anniversary of the justice's graduation and employed the type of flattery Frankfurter usually reserved for his judicial idol.<sup>2</sup> "[W]hat I really want to send you is some indication of what *you* mean to me," Frankfurter wrote Roosevelt, "in dealing with the raw stuff of life, even if the common obscurity of the vast majority were my lot for the rest of my life."<sup>3</sup>

Long before his lunch with the former president, Frankfurter, like many others, had sensed Roosevelt's desire to run for a third term. Roosevelt had already served nearly two terms in the White House, from 1901 to 1905 after William McKinley's assassination and a second, elected term from 1905 to 1909. In 1908, Roosevelt had declined to run again, though he would have been only fifty years old on Election Day. Instead, he had groomed his friend William Howard Taft, a former state and federal judge, as his successor by naming Taft secretary of war. Roosevelt's anger and frustration with President Taft had been building for months. The Ballinger-Pinchot controversy about Alaska coal field claims in early 1910 turned into a proxy war between Taft and Roosevelt loyalists and had begun the formal split between the two men. By the time Roosevelt returned from Africa (where he was on safari) and Europe (where he accepted the Nobel Peace Prize for ending the Russo-Japanese War) in June 1910, his war with Taft was in the open. The final break between the two former friends came in October 1911 when Taft's Justice Department charged U.S. Steel with antitrust violations based on a merger that Roosevelt had approved as president after discussing it with his cabinet, including then Secretary of War Taft. In reality, Roosevelt was looking for excuses to run again.<sup>4</sup> A week before their

lunch, Frankfurter had predicted that Roosevelt would be drafted into the Republican presidential race: “The thing is in the air; people of intelligence and observation here ‘feel’ he will be nominated,” he wrote to Emory Buckner. “Right now, however, if I had to stake my life on it I should stake it on Taft’s re-nomination—but I’m damn glad I don’t have to stake it!”<sup>5</sup>

On February 10, a week after Taft revoked Valentine’s religious garb order, seven Republican governors petitioned Roosevelt to accept his party’s presidential nomination.<sup>6</sup> Roosevelt’s lone progressive rival for the presidency, Wisconsin Senator Robert La Follette, had lashed out at a group of newspaper publishers during a rambling two-hour speech on February 2 in Philadelphia. The press reported that La Follette was “ill” and had suffered a “mental collapse.”<sup>7</sup> The next day, La Follette took a break from campaigning, opening the door for Roosevelt to challenge Taft. The petition from the state governors, which Roosevelt had orchestrated, precipitated an intraparty showdown between the former president and his handpicked successor.

Roosevelt’s much-anticipated February 21 speech before the Ohio Constitutional Convention in Columbus raised expectations. “We Progressives,” Roosevelt began, “believe that the people have the right, the power, and the duty to protect themselves and their own welfare; that human rights are



Theodore Roosevelt speaking at Grant’s Tomb in 1911

supreme over all other rights; that wealth should be the servant, not the master, of the people. We believe that unless representative government does not absolutely represent the people it is not representative government at all.” Roosevelt described a war against privilege and on behalf of the common man; he vowed “to free our government from the control of money in politics” and to put government back “in the hands of the people” and to make their representatives “responsible to the people’s will.”<sup>8</sup>

Roosevelt’s “Charter of Democracy” addressed the issues most important to Frankfurter, Denison, Valentine, and other regulars at the House of Truth.

First, Roosevelt took on the issue of trusts. He did not attack big business simply because it was big but because the government should pursue illegal monopolies. He believed that, with the aid of new legislation, he could distinguish between good and bad trusts.<sup>9</sup>

Second, Roosevelt asserted that both the federal government and the states had the power to protect working people, particularly women and children, from long hours, low wages, and unsafe conditions.<sup>10</sup> Finally and most controversially—in the eyes of even his supporters—he attacked the courts by endorsing the popular recall of judges and their decisions.<sup>11</sup> State court judges, he argued, claimed to be interpreting the Constitution when they struck down legislation that protected small businesses and consumers from illegal monopolies and working men and women from unfair labor practices. He singled out a New York Court of Appeals decision that had invalidated the state’s worker’s compensation law and left a crippled railroad worker with no legal remedy.<sup>12</sup>

Although his recall proposal was aimed at state judges and not the Supreme Court of the United States, Roosevelt’s speech put the Court’s nine justices on notice.<sup>13</sup> Throughout his speech, he invoked Lincoln’s reaction to Chief Justice Roger B. Taney’s *Dred Scott* decision that invalidated the Missouri Compromise and exacerbated divisions over slavery.<sup>14</sup> In Roosevelt’s telling, the people trumped the Court by electing Lincoln, overruling *Dred Scott*, and passing the Fourteenth Amendment. Roosevelt implicitly cast himself as the Lincolnesque hero, the Court as a historically reactionary institution, and Taft as the reactionary institution’s enabler and biggest defender.

Attacking the Court was nothing new for Roosevelt. Two years earlier in a speech in Denver, he had criticized the Court’s decisions in *E. C. Knight*, which excluded manufacturing from the reach of the antitrust laws, and *Lochner*, which invalidated a New York maximum hour law for bakers.<sup>15</sup> The Court’s *E. C. Knight* and *Lochner* decisions, Roosevelt had

argued, created a no man's land where neither the federal government nor the states could regulate unfair competition and unfair labor practices. He also had attacked the courts and unpopular judicial decisions in a series of 1911 *Outlook* magazine articles, private correspondence, and stump speeches in the spring of 1912, as well as in an introduction to a book attacking the judiciary.<sup>16</sup> Roosevelt's latest broadside against state supreme court decisions was an extension of his earlier remarks and another effort to pit the judiciary against the will of the people. "I may not know much about law," Roosevelt told Frankfurter, "but I do know one can put the fear of God into judges."<sup>17</sup>

Roosevelt's Columbus speech did not officially announce his candidacy; newspapers, however, picked up his off-the-record response to a question about whether he would run: "My hat is in the ring."<sup>18</sup> Three days later, on February 24, he replied to the seven Republican governors that, if it were offered to him, he would accept the Republican nomination.<sup>19</sup>

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After Roosevelt's announcement, Frankfurter could not contain his inner turmoil about how a progressive Roosevelt loyalist could remain in the Taft administration. In an eight-page letter circulated to his friends, Frankfurter confessed his "prepossessions against Taft" upon arriving in Washington, prejudices that were reinforced by the Kansas City speech debacle with Stimson. Taft, Frankfurter believed, was a former judge miscast as president. He had no clear beliefs other than "textual worship of the Constitution," no passion for the presidency, and no ideas for the country. As a result, conservatives ended up controlling Taft's political agenda, even though he was neither liberal nor conservative. Taft, Frankfurter argued, had done nothing to further the progressive goal of social reform.<sup>20</sup>

Roosevelt, by contrast, understood that the president possessed the constitutional power to change the direction of the country—to enforce the antitrust laws and to lobby for the passage of supplemental legislation, to protect the rights of workers, and to exhort the courts not to obstruct these endeavors. Frankfurter recognized Colonel Roosevelt's limitations as a thinker, as someone far more "keen to scent a wrong, far less resourceful to suggest a remedy." Roosevelt's idea about popular recall of judges and their decisions was antithetical to Frankfurter's legal training, yet the Colonel's criticism of judges for thwarting legislation based on narrow interpretations of vague constitutional commands, in Frankfurter's view, was absolutely

correct. Though Frankfurter was well aware of Roosevelt's imperfections, his heart and mind were unreservedly with the Colonel. Their bond had been forged two years earlier during Stimson's New York gubernatorial campaign. And Frankfurter could not support Woodrow Wilson, despite the New Jersey Democrat's "moral endowment" and "more disciplined intellect," because of "his party's traditions on States' Rights," because "the Republican Party is the party of liberal construction of the Constitution," and because Roosevelt possessed the ability to transform the Republican Party into "the distinctly liberal party."<sup>21</sup>

Frankfurter's dilemma about staying in the Taft administration was heightened by his boss Henry Stimson's decision to support Taft. On March 5, Stimson publicly endorsed the president and asserted that he had "carried out this Progressive faith of the Republican party."<sup>22</sup> Though he owed his career in public life to Roosevelt, Stimson believed that Roosevelt's campaign was a "great mistake" that would divide the party and prevent a Republican victory in November.<sup>23</sup> Stimson also believed that Roosevelt had shown poor leadership and judgment by leaving the door open to running and allowing others to draft him into the race.<sup>24</sup> During a series of honest conversations with his boss, Frankfurter openly disagreed with Stimson's endorsement of Taft.<sup>25</sup> He also advised Stimson to refrain from making any further comments about the presidential race.<sup>26</sup> For most of the campaign, Stimson heeded Frankfurter's advice. Stimson valued Frankfurter's loyalty and counsel, and the two men agreed to disagree about Roosevelt.

As early as March 1912, Frankfurter seriously considered resigning from the Taft administration. But after discussions with Stimson, Valentine, and others, he decided to stay for the time being. An unsolicited message from Roosevelt instructed him to keep his day job; Brandeis offered the same advice.<sup>27</sup> Frankfurter could barely stand it as the Roosevelt campaign began without him. He knew in his heart that Roosevelt would not win the Republican nomination, that it was a mistake to challenge an incumbent president in the same party, and that Roosevelt should have waited until 1916 to try for a third term.<sup>28</sup> Nonetheless, Frankfurter hoped that Roosevelt would take the fight to the convention and, if that failed, run as a third-party candidate. After Frankfurter wrote his eight-page confession, he vowed to read it to his friends and housemates, Valentine and Denison, who were struggling with their own conflicts between their political beliefs and staying in the administration.<sup>29</sup>

A week before the Columbus speech, Valentine met with Roosevelt and "came back with at least a hundred spiritual years added to my life."<sup>30</sup>



Valentine believed Roosevelt was a changed man since leaving the White House; the former president had gained more physical strength, a gentler personality, and “a real grip on the social movement.”<sup>31</sup> Valentine knew after the “Charter of Democracy” speech that he, too, needed to leave the Taft administration and to join the man who had stirred his soul during his Washington job search in 1904 and who had appointed him assistant commissioner of Indian affairs. Roosevelt’s Columbus speech changed everything for Valentine.<sup>32</sup> It articulated the differences between Taft Republicans and Roosevelt Republicans and laid out the blueprint for the government’s role in creating a more just, progressive nation.

Valentine did not immediately resign because he did not want people to think that he was leaving because of the controversy about his religious garb order. A few days before a hearing on the issue, he had spoken at the graduation ceremonies for the Carlisle Indian Industrial School in Pennsylvania about the need for Native American self-governance. He was at peace physically and mentally on April 8 when he testified about his religious garb order before Secretary of the Interior Walter Fisher.<sup>33</sup> Fisher’s pretense of impartiality, the testimony of various religious organizations, and the accompanying briefs were something of a joke.<sup>34</sup> Everyone knew that Taft would not reinstate the order. Valentine, however, was pleased to get his side of the story on the record and felt “‘without care’” and as if “‘he had ‘won a spiritual victory.’”<sup>35</sup> Not even trumped-up charges in Congress that he had brought alcohol onto an Indian reservation and had committed other improprieties could dampen his spirits.<sup>36</sup> He was “amused” by letters from friends in Massachusetts suggesting that he was in “in danger!” “Not much!” Valentine replied. “The President’s statement about his not favoring Catholics was a great mistake. That’s the common statement here.”<sup>37</sup> After the April hearing, people began treating Valentine “with the tenderest consideration” and allowed him to “accomplish more things.”<sup>38</sup>

By mid-May, Valentine was handicapping the November presidential election. His career in the Bureau of Indian Affairs depended on it. It also affected his desire to buy the House at 1727 Nineteenth Street. He told Sophie that buying it would save them \$20 on their \$240 monthly rent and would be a good investment regardless of who won the election.<sup>39</sup> “The chances of Mr. Taft’s return are very small, I should say not more than one out of twenty,” he wrote Sophie. “If TR came in I should want to stay in some capacity. With TR, Hughes or Wilson I might well stay. If the



Democrats win with other than Wilson, we should probably leave & I think we should have no difficulty in renting.”<sup>40</sup>

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Roosevelt's campaign was also welcome news for Denison, who felt as weary as Valentine felt rejuvenated. Denison had left Washington in April 1912 for a vacation and much-needed rest.<sup>41</sup> He was always in danger of spreading himself too thin, overworking, and sliding into deep depression. Slowing down did not come naturally to him. Earlier that year, he had argued before the Supreme Court that the Commerce Court could not interfere with the Interstate Commerce Commission's factual findings on railroad rate-fixing.<sup>42</sup> He also had made a series of headline-grabbing speeches: he argued that sugar fraud resulted from political patronage and demonstrated the need for civil service reform, and he advocated for supplemental legislation to prevent unfair competition.<sup>43</sup>

Denison believed that Roosevelt was the only man willing to make these proposed new laws a reality. But he could not bring himself to quit his job as assistant attorney general in charge of customs affairs and to join the campaign—at least not yet. He owed too much to Attorney General Wickersham. Wickersham had kept his job open for nearly a year in 1911 while Denison battled typhoid fever.<sup>44</sup> In February 1912, Wickersham had defended Denison after Senator Boies Penrose of Pennsylvania questioned the propriety of Denison's customs fraud speeches and their effects on Pennsylvania business interests.<sup>45</sup> And Wickersham tolerated Denison's progressive political views and had accepted Denison's refusal to campaign for Taft in New Hampshire.<sup>46</sup>

Christie, Denison's assistant counsel at the Justice Department, felt less hamstrung by his position in the Taft administration. Christie was not a high-level official, nor did he have aspirations for higher office. The official search for his replacement had begun in November 1911.<sup>47</sup> Christie felt free to support Roosevelt's campaign and planned to attend the Republican National Convention in June.

Roosevelt's presidential campaign stumbled out of the gate. La Follette, a Wisconsin progressive popular with western farmers, captured the first primary on March 19 in North Dakota, as well his home state on April 2. After Taft was awarded most of the delegates at the state convention in New York on March 27, Roosevelt threatened to run as a third-party candidate and won a string of Republican primary victories: Illinois on April 9, Pennsylvania on April 13, and Nebraska and Oregon on April 19.

Things turned ugly in Massachusetts. Roosevelt looked as if he would sweep the remaining primaries against Taft, run away with the Republican nomination, and embarrass a sitting president. It was make or break for Taft, and Taft knew it. In an April 25 speech in Boston, the president broke his promise to Stimson not to attack Roosevelt personally, used Roosevelt's private letters as ammunition, and charged the former president with preaching "class hatred."<sup>48</sup> Roosevelt replied that pro-labor legislation to protect working women and children was not class hatred.<sup>49</sup> On the night of the Massachusetts primary, Frankfurter was "making the rounds at the newspaper offices" and told Valentine that "early returns look as if TR were carrying Massachusetts." By 10:30 p.m., the Associated Press and Hearst Papers indicated that Roosevelt had won. "I'm *so glad*," Valentine wrote.<sup>50</sup> The next morning, however, Valentine and Frankfurter learned that Taft had eked out his first and only primary victory in Massachusetts, 50 percent to 48, though Roosevelt was awarded more delegates.

After his narrow defeat in Massachusetts, Roosevelt captured the last five primaries in May, including Taft's home state of Ohio and nine of twelve primaries in all. In 1912, however, most states did not hold primaries.<sup>51</sup> Everyone knew that party leaders, not state conventions or primaries, would choose the Republican nominee at the convention in Chicago in June. But defeating a sitting president in his home state meant something. "Isn't Ohio grand!" Valentine wrote Sophie. "But I appreciate how you are filled and properly so with pity for the President's humiliation. It's a national humiliation that he could be the kind of man that should get such a rebuke. ... Whether Roosevelt is nominated at Chicago or not is a matter of minor importance *compared* with the importance of not having a man like Mr. Taft President another term."<sup>52</sup>

As Roosevelt's campaign surged, more people wanted to dine at the House. "Sunday we had a good truth teller," Valentine wrote of a May 19 lunch. From New York City, Frankfurter brought two friends from law school, Sam Rosensohn and Buckner. Other guests included Christie, Percy, Indian affairs official Arthur Ludington, New York lawyer Sanford Freund, and of course Justice Holmes. Valentine had known Holmes since their mutual friend John G. Palfrey, Valentine's college roommate and Holmes's lawyer, had introduced them soon after Valentine had arrived in Washington.<sup>53</sup> "It was good talk," Valentine wrote of Sunday dinner, "and the Justice I think enjoyed himself."<sup>54</sup>

All the talk, of course, was about Roosevelt. "T.R. is creating new, needed and healthy political organisms," Valentine wrote after a May 27

dinner party. “[W]hatever the immediate results may be politically, there is a real social democracy ahead, and with an increase instead of a lessening of individual achievement and a lifting of all standards including the highest.” The May 27 dinner included Roosevelt loyalists Herbert Knox Smith, Ludington, Frankfurter, Denison, and Percy; Captain Frank R. McCoy, an aide to General Leonard Wood; and the sculptor Borglum.<sup>55</sup> Borglum often traveled to Washington and in April 1912 had testified before the Senate Foreign Relations Committee about the need for a memorial to recognize the centennial of the 1814 Treaty of Ghent between the United States and Great Britain. Monuments, he argued, “are built to celebrate great events, great ideas, or great ideals, and artists are employed to celebrate those ideals.”<sup>56</sup> He proposed a monument to be erected on the US-Canadian border, consisting of a series of giant boulders and bronze tablets, but Congress never funded it.<sup>57</sup>

It is unclear how Borglum ended up at the House, but it was probably through Frankfurter. The previous year, Borglum had sent Frankfurter a signed photograph of the sculptor’s statue of a seated Lincoln in Newark, New Jersey, a memento that Frankfurter considered “a permanent treasure.”<sup>58</sup> Frankfurter’s and Borglum’s interests converged over the opening of the Panama Canal; Borglum had lobbied for an amendment to the bill to specify its artistic design.<sup>59</sup> Valentine and Borglum also hit it off. Having grown up in the West, Borglum engaged Valentine about Indian affairs. He had been raised with Indians as a boy in Nebraska and elsewhere in the West and had been interested in them his entire life. Valentine sent Borglum a report about the Indian Affairs bureau and requested Borglum’s comments and criticism.<sup>60</sup>

Borglum also shared his new friends’ enthusiasm for Roosevelt. In 1896, Borglum had received a letter of introduction to Roosevelt, who was then a New York City police commissioner and Borglum was new to the New York art world. Roosevelt championed the sculptor’s work.<sup>61</sup> In 1908, then-President Roosevelt unveiled Borglum’s Embassy Row statue of Civil War General Philip Sheridan.<sup>62</sup> A great admirer of Borglum’s marble bust of Lincoln, Roosevelt successfully lobbied for its permanent display in the rotunda of the US Capitol.<sup>63</sup> Finally, on May 30, 1911, Roosevelt unveiled Borglum’s statue of a seated and melancholy Lincoln, his hat resting on a bench, in Newark, New Jersey, after Roosevelt had admired the unfinished work in Borglum’s studio.<sup>64</sup>

Borglum, who claimed that he could judge a man by his facial structure and expressions, did not think much of Taft.<sup>65</sup> “Taft is a good man naturally but weak and so much flesh without purpose, will, nor moral courage or even constancy to his own convictions,” Borglum wrote. “His indecision serves crime, and he has not the will to see that the criminal only threatens and he yields to fears of one sort or another.”<sup>66</sup> Taft did not respond to Borglum’s letter about a proposed Lincoln statue in Taft’s hometown of Cincinnati. Borglum also attempted to engage Taft in a discussion of the sixteenth president at a Lincoln birthday celebration in Newark on the first anniversary of the dedication of Borglum’s Lincoln statue.<sup>67</sup> It could not have helped matters when, after laying a wreath at Borglum’s statue, Taft described progressives as “political emotionalists and neurotics.”<sup>68</sup> “I got interested in politics when Roosevelt broke loose in 1912,” Borglum wrote.<sup>69</sup> The sculptor admired the Roosevelt campaign’s regard for the rights of working people and western farmers, its contempt for the financiers who controlled the Republican Party, and its insurgent, antiestablishment themes.



Borglum (sitting second from back) at the 1912 Progressive Party convention in Chicago

“In God’s name I wish I could serve you these days,” he wrote Roosevelt in April. “I do at every chance.”<sup>70</sup> Borglum passed along wild rumors he heard in Washington, chaired the Progressive Party in Stamford, and organized political rallies in Connecticut.<sup>71</sup>

By going all in for Roosevelt, Borglum and his new friends Valentine, Frankfurter, and Denison found themselves drawn to each other. On June 19, Valentine finished a three-page poem, “A Nation’s Prayer,” which began by trying to inspire a new political generation:

A Nation, young, deliberate and keen  
 Bulks huge against the sunset,  
 Her eyes  
 Fixed on the outstanding stars.  
 Millions of men, arise!  
 This night in prayer are met  
 We who have seen  
 How fateful is the dawn tomorrow brings.  
 Millions on millions we, as one voice sings,  
 Now lift our hymn to light  
 Our plea for Truth, our Country’s might.  
 Lord God of all the worlds that be  
 Guide us to Thee,  
 Help us to serve thy earth aright.

He sent the poem to Borglum. “Here’s my latest use of the knife,” Valentine wrote Borglum next to the first paragraph, “in the eternal attempt to cut through to Truth. You are one of my Gratitudees.”<sup>72</sup> “Your prayer is so much mine it is hard for me to prove it,” Borglum wrote Valentine. “Still if it is too my prayer it’s wonderful. God bless you for it.” The sculptor promised to read Valentine’s poem to 200 people in Stamford, explained how he had challenged the Republican political establishment in Connecticut, and confessed to Valentine: “I’m still a Bull Moose whatever that may mean.” At the end of his letter, Borglum invited his friends from the House to his Stamford, Connecticut, estate known as Borgland. “What chance is there of having you and Frankfurter & Denison honor my inn by a visit here. I’ll write them.”<sup>73</sup>

The House of Truth attracted not only true believers like Borglum but also its share of converts like Francis Biddle. A recent Harvard law graduate tapped to work as Justice Holmes’s secretary from 1911 to 1912, Biddle was invited to a few Sunday lunches at the House and never forgot the big personalities of the men who lived there—Valentine (“the center of

a group of young men who were stirred by a sense of needed change in American life"); Frankfurter ("wonderfully stimulating and exciting"); Denison ("gifted and forthcoming, whose friendly ease covered desperate periods of depression"); Percy ("appealingly attractive and companionable, yet with something hidden and inviolate deep in his personality that suggested a diffident mysticism"); and Christie two years ahead of him in law school.<sup>74</sup> A blue-blooded Philadelphian and graduate of Groton, Harvard College, and Harvard Law School, Biddle was conservative to his core and had believed since college that Roosevelt was "demagogic, bumptious, untruthful."<sup>75</sup>

A few lunches and dinners at Valentine's home transformed Biddle's political outlook. "It was Bob Valentine who turned me into a Roosevelt man," Biddle recalled. "Yes, he said, to these hackneyed expressions of distrust on my part, he may be all these, but you must judge a man by his direction and by his positive virtues, not by his faults, not by what he lacks: and Roosevelt has done a good deal for the country, he has a forthright outlook, and a real, not a spurious, moral sense."<sup>76</sup> After leaving Holmes's employ, Biddle shocked his family by becoming the Philadelphia chairman of the Bull Moose Party's speakers' bureau.

Biddle's boss, Justice Holmes, could not understand the younger generation's fascination with Roosevelt. "My wife tells me that you have become a Rooseveltian and think that a great moral issue is involved," Holmes wrote Biddle. "I wish you had said what one, for I don't discover it. I fear, if a lot of you young men are on that side and take that view, that there is something that I don't see and that I am showing myself to be an old foggy, but it has seemed to me that the most striking difference between Taft and R. is that the latter thinks that everything is about right when it is under his hat."<sup>77</sup> Had he not stopped voting since taking the bench, Holmes insisted that he would have voted for Taft even though the justice disagreed with the president's Sherman Act prosecutions. Holmes admired the success of the robber barons. He once told Taft that "if they could make a case for putting Rockefeller in prison I should do my part; but if they left it to me I should put up a bronze statue of him."<sup>78</sup>

Holmes knew Roosevelt's faults better than any of his young friends and probably owed the Colonel the largest professional debt. In 1902, Roosevelt nominated Holmes to the Supreme Court at the urging of Senator Henry Cabot Lodge and after an interview at Roosevelt's Long Island home, Sagamore Hill.<sup>79</sup> Roosevelt admired Holmes's famous "Soldier's Faith"

speech, thought Holmes's speech about Chief Justice John Marshall was not respectful enough, but considered Holmes's Massachusetts Supreme Judicial Court "labor decisions criticized by some of the big railroad men and other members of large corporations ... a strong point in [his] favor."<sup>80</sup> Roosevelt had assumed that Holmes would enforce the Sherman Act and support the administration's antitrust prosecutions. Holmes quickly disappointed him. During his second term on the Court, he dissented from the *Northern Securities* decision that dissolved a massive railroad trust owned by J. P. Morgan and John D. Rockefeller.<sup>81</sup> In an apocryphal remark, Roosevelt is quoted as saying that "he could carve out of a banana a Justice with more backbone than that."<sup>82</sup>

The quotation may have been made up, but the tension between Holmes and Roosevelt was real. Although they privately aired their differences about *Northern Securities* and Holmes later dined with Roosevelt at the White House, the justice never forgave the president who had put him on the Court.<sup>83</sup> "We like each other by temperament though I cannot again take his friendship seriously," Holmes wrote.<sup>84</sup> The justice never failed to mention *Northern Securities*.<sup>85</sup> Nor did he consider Roosevelt one of the nation's great presidents. "He was very likeable, a big figure, a rather ordinary intellect, with extraordinary gifts, a shrewd and I think pretty unscrupulous politician," Holmes wrote after Roosevelt's death. "He played all his cards—if not more."<sup>86</sup>

In 1912, however, Roosevelt reigned as the hero of the House. Frankfurter conceded to Mrs. Holmes that the Roosevelt fixation was a passing fad, "the undisciplined exuberance of youth," an excitement about "the aspirations of the man rather than the man himself." Frankfurter reassured Mrs. Holmes that her husband's legacy would endure "long after the turmoil and noise of present-day politics."<sup>87</sup> For the time being, however, Holmes was perplexed by and a bit lost amid the Bull Moose fervor.

Another regular at the house, Brandeis, was not a Roosevelt supporter either. Personally and politically, he was extremely close to Wisconsin senator Robert La Follette and initially supported him for the Republican nomination.<sup>88</sup> Until Roosevelt entered the race, La Follette had been the leading progressive candidate. Like Roosevelt, he attacked the reactionary judiciary for invalidating socioeconomic legislation, thwarting the prosecution of illegal monopolies, and interfering with "the movement toward democracy."<sup>89</sup> But La Follette's rambling Philadelphia speech had cost him any realistic shot at winning the presidency in 1912. Even so, Brandeis believed that Roosevelt's



fight with Taft was counterproductive, for it had divided progressives among La Follette, Roosevelt, and Taft. During the close primary in Massachusetts, Brandeis remarked: "If we could only have had such an impasse between conservatism & progress—instead of the issue of T.R.!"<sup>90</sup>

The three-way battle between Roosevelt, Taft, and La Follette came to a head in June at the Republican National Convention in Chicago. A few days before the convention, party leaders had awarded 235 of 254 disputed delegates to Taft. "I don't see anything but a bolt unless we are willing to compromise pretty far," Christie reported to Frankfurter from Chicago.<sup>91</sup> Unsure how Roosevelt would react to defeat, Christie wrote: "He is strong enough to stand by & we ought to be able to count on keeping him up to the mark—and we could say, God help him if he doesn't."<sup>92</sup> With his defeat all but assured, Roosevelt delivered one of the best speeches of his career. On the eve of the convention, he charged "big bosses" and the "great crooked financiers" who back them with stealing his nomination and giving it to Taft.<sup>93</sup> Arguing that the "good of mankind" was at stake and vowing to continue his campaign, Roosevelt concluded with one of the most memorable perorations in American political history: "We fight in honorable fashion for the good of mankind; fearless of the future; unheeding of our individual fates; with unflinching hearts and undimmed eyes; we stand at Armageddon, and we battle for the Lord."<sup>94</sup>

Valentine was so inspired by Roosevelt's "Armageddon Speech" that he fired off a fifteen-page letter to a longtime family friend about the merits of Roosevelt's campaign.<sup>95</sup> Valentine had been receiving updates from a trio of Roosevelt insiders and friends of the House: lawyer Joseph P. Cotton, Valentine's Harvard classmate; George Rublee, Cotton's law partner and Roosevelt's speechwriter during the early stages of the campaign; and Judge Learned Hand, a federal district judge in Manhattan and one of the nation's most promising jurists.<sup>96</sup> Valentine believed them when they said that Roosevelt did not want to be president again, that he had been dragged into the campaign, and that it was up to him to challenge Taft as a matter of "principle" and to bring about a "true social democracy in this country."<sup>97</sup> Even if Roosevelt lost the nomination, Valentine believed, the campaign would unite progressive Democrats and Republicans into a third political party. Like Frankfurter, Valentine did not believe that Roosevelt was "doing any real thinking himself"; Roosevelt, however, had returned from Africa with an understanding of "the real spirit of social movement



in this country” and dedicated to the belief that “the real function of government in these days is social reform.”<sup>98</sup>

During the next several days at the Republican convention, party stalwart Elihu Root, Roosevelt’s former secretary of war and secretary of state, was elected chair and engineered Taft’s renomination. Prior to the final vote, Roosevelt instructed his delegates to walk out and announced his third-party campaign for the presidency. A month earlier, newspapermen had asked Roosevelt how he was feeling after several months of vigorous campaigning. “Fine! fine!” he replied at his *Outlook* magazine office, “just like a bull moose.”<sup>99</sup> With his defeat at the Chicago convention, Roosevelt’s Bull Moose campaign had begun.

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As Bull Moosers stuck in the Taft administration, Valentine, Frankfurter, and Denison continued to explore the possibility of leaving their jobs to join the campaign. Frankfurter met with Roosevelt in early July and was eager to discuss the meeting with Stimson.<sup>100</sup> Brandeis counseled Frankfurter to stay in the administration and discussed possible future public service jobs for Valentine.<sup>101</sup>

Brandeis’s influence was limited, particularly after July 10, when he informed his friends that he would support the Democratic nominee, Woodrow Wilson.<sup>102</sup> At the Democratic National Convention in Baltimore, Speaker of the House James Beauchamp “Champ” Clark of Missouri led after the first few ballots. But with Tammany Hall backing Clark, William Jennings Bryan threw his support to Wilson, and on the forty-sixth ballot Wilson captured the two-thirds votes needed for the nomination.<sup>103</sup> Brandeis believed that progressives should realign the nation’s political parties and unite behind Wilson and the Democrats.<sup>104</sup>

As much as Frankfurter and Valentine wanted to join the campaign, Roosevelt kept dissuading them. He only encouraged “men of the crusading temperament” and with “little or nothing to lose” to join him. In July, he instructed an intermediary to inform Frankfurter and Valentine that, as much as Roosevelt would like them on board, “you would not do enough good to the cause to counterbalance the damage you would do by leaving your present position.”<sup>105</sup> To friends and acquaintances, Valentine and Frankfurter insisted that they had no intention of resigning. Valentine dispelled swirling rumors about his imminent resignation, believed that he would serve until after Inauguration Day, and contended that Taft would



Clifford Berryman cartoon of 1912 presidential election

have to fire him.<sup>106</sup> Valentine refused to leave until he could find a successor who would put the interests of Native Americans above the interests of businessmen and party politicians.<sup>107</sup> Frankfurter wrote on July 17 that “here I am quite happy in good fun work, unhappy that I can’t be out where my political heart is (tho I’m exposing it to every passerby) and serenely lucky to have the pal-ship of Valentine and Denison. We’re having great times.”<sup>108</sup>

That summer, in addition to Christie, Percy, Borghum, Biddle, and Holmes, the rotating crew of guests at the House included new Children’s Bureau Commissioner Julia Lathrop, her private secretary Fanny Howe Fiske, Judge

Mack, and British attaché Alfred Mitchell-Innes.<sup>109</sup> One night, Valentine, Frankfurter, and Lathrop dined at the New Willard Hotel, then Denison, Biddle, and Justice Department lawyer Thurlow M. Gordon joined them to see *Carmen*.<sup>110</sup> “All the world were their friends,” Gordon’s wife, Pauline, wrote in a poem about the House of Truth, “and the merry parties they had become famous.”<sup>111</sup> Secretary of War Stimson and his wife dined there; another night the group went to the British embassy for dinner.<sup>112</sup> Valentine and Denison’s Harvard classmate Elliot Goodwin stayed at the House in August while working as the general secretary of the National Chamber of Commerce; like Stimson, Goodwin was a Taft supporter.<sup>113</sup> They not only convened over dinners but also took day trips to Great Falls and weekend trips to Carlisle, Pennsylvania, and Hampton, Virginia.<sup>114</sup> Valentine, Frankfurter, and Denison led the House’s activities. “You would have been joyous to see the Three Musketeers leaving the House this morning,” Valentine wrote his wife one Saturday, “kicking up their heels and each with a rose in his button-hole—a little rose.”<sup>115</sup>

Another of the House’s regulars, Taft’s Commissioner of Corporations Herbert Knox Smith, returned from a meeting at Sagamore Hill in mid-July and informed them that he was leaving the administration to join the Bull Moose campaign. “He’s going to help T.R. in the construction work,” Valentine wrote Sophie. “This is *confidential* till you see it in the papers. . . . We are greatly excited, waiting for Smith’s resignation to appear.” Even though it had been rumored in the papers for several days, the announcement of the first Taft administration official to jump ship for Roosevelt was front-page news.<sup>116</sup>

The calls for Frankfurter, Valentine, and Denison to get personally involved in Roosevelt’s campaign came in late July from New Hampshire governor Robert P. Bass. One of the seven Republican governors who had petitioned Roosevelt to accept the party’s nomination, Bass was a Harvard College classmate of Valentine and Denison and well known to Frankfurter. Bass’s decision to bolt the Republican Party would cost him a second term as governor and future elected offices.<sup>117</sup> But once he put his political career in jeopardy by joining the Progressive Party, Bass was looking for others to join him. “Now is the time,” he wrote Valentine on July 31, “for you to quit your job and join the 3rd party movement. In it lies the promise of the future, provided it remains in control of the right men. It need[s] such men now.”<sup>118</sup> Three days later, Valentine replied that he had been thinking about leaving the administration since Roosevelt’s “Charter of Democracy” speech but

also wanted to find a successor who would not undo in a few months what he had accomplished in seven years at the Indian Affairs bureau.<sup>119</sup>

Bass refused to take no for an answer—especially after the Progressive Party Convention on August 5 through 7 in Chicago. On August 6, Roosevelt delivered his “Confession of Faith” speech at a convention that Herbert Knox Smith described to Valentine as “more like a religious meeting than a political gathering.”<sup>120</sup> The next day, Progressive Party delegates including Borglum nominated Roosevelt as their presidential candidate and California governor Hiram Johnson as their vice-presidential candidate. A few days after the convention, Bass insisted that Valentine could make more of an impact on the future of Indian affairs by joining the campaign and electing Roosevelt.<sup>121</sup> Smith emphasized to Valentine the “moral effect created by men of prominence, like yourself, when they voluntarily give up office to join the party of their convictions. . . . There are vast numbers of people just waiting [for] a slight impetus from the outside to turn them our way.”<sup>122</sup> Valentine confided to his wife, Sophie, back in Massachusetts that he planned on staying until Taft left office on March 4.<sup>123</sup> Whatever happened with the election, Valentine still wanted to buy the House because they could always rent it after the inauguration and because “it is a headquarters for us.”<sup>124</sup>

At the end of August, Bass continued to pressure Valentine to join the campaign. Valentine once again pleaded that there was no one he trusted to run the Indian Affairs bureau.<sup>125</sup> After Bass’s letters, Valentine discussed the issue with his boss, Secretary of the Interior Fisher. Fisher asked if Valentine were “actively supporting the Third Party movement.”<sup>126</sup> Valentine replied that he was “heart and soul for the Third Party Movement” and was “losing the chance of my life” in not joining it, but the only active part he was taking in the campaign was in discussing it privately with his friends.<sup>127</sup> Valentine’s primary concern remained finding a nonpolitical successor who would put the interests of the Indians first; Fisher agreed yet also conceded that he had given up trying to find someone. Then he added: “‘As you doubtless feel, the President would be undoubtedly most delighted to lose you.’”<sup>128</sup>

Something changed after Valentine’s August conversation with Fisher. It may have had to do with the religious garb order. On August 22, Valentine wrote Fisher about the still-pending decision and laid out his differences with his boss.<sup>129</sup> Two days later, Fisher informed Valentine and Taft that the order would not be reinstated.<sup>130</sup> Taft affirmed Fisher’s decision a month later.<sup>131</sup> With his religious garb order permanently revoked, few allies left in

the administration, and a president who wanted him gone, Valentine knew he was a man with nothing left to lose. As he told Frankfurter, “The difference [between Taft as president and Roosevelt] was that when you left TR’s presence ‘you were ready to eat bricks for lunch,’ and when you left Taft, you thought, ‘What’s the use.’”<sup>132</sup>

In June, Valentine had declined to be considered for a job as the general manager of the Rockefeller Institute for Medical Research. He did not want to take money from the Rockefeller fortune, he sought to “re-enter public life,” and he considered himself a “social democrat.”<sup>133</sup> Valentine’s commitment to government service trumped his financial concerns—even with his wife and daughter still living with her family in South Braintree, Massachusetts, and his daughter, Sophia’s, costly medical bills. And yet he bought the House, both for what it represented and because it would save the family twenty dollars a month. The safe thing to do, especially because he had just bought the House, was to stay in the administration until Inauguration Day. The Roosevelt campaign forced him to stand up for his ideals and to see the bigger picture. “We must not forget that WE HAVE HAD A REAL LIFE—more than all people or any people deserve and more than most people get,” he wrote Sophie in mid-August. “We have two things left to do: See that Sophia gets her chance, and help a few others to get theirs by the kind of work we do in the world.”<sup>134</sup>

Valentine became the second member of the Taft administration to leave to join Roosevelt, news that on September 11 made the *New York Times* front page.<sup>135</sup> “Last winter I felt that the Progressive movement in the Republican Party was the beginning of a new day in the betterment of living conditions throughout the country,” Valentine wrote President Taft. “Now, however, the case is different. The program of the Progressives has been pushed aside by the national leaders of the Republican Party.”<sup>136</sup> A weight had been lifted off Valentine’s shoulders. “*Everything* that’s happened since my resignation,” he wrote Sophie, “only confirms the wisdom of the decision.”<sup>137</sup>

Valentine sent Bass a copy of the resignation statement, planned on joining him in New Hampshire to work on the campaign, and vowed to bring another Bull Mooser along with him—Felix Frankfurter.<sup>138</sup> In a late August letter to a skeptical Sophie Valentine, Frankfurter defended Roosevelt and the Bull Moose campaign against charges (in the *Boston Evening Transcript* from the La Follette camp) that Roosevelt was a fly-by-night progressive. Frankfurter knew that progressivism was an elusive trend, but he also knew Roosevelt’s record. As governor of New York, Roosevelt had played ball with

party bosses, yet he also had fought for a more progressive tax system.<sup>139</sup> As president, Roosevelt had come into office at “the high tide of national smugness,” not to mention his imperialistic control of territories gained during the Spanish–American War and acquisition of the Panama Canal Zone. Yet Roosevelt’s administration also had championed conservation efforts, civil service reform, and protective labor legislation. Frankfurter recognized Roosevelt’s “deep blemishes, the crudities, at times even the brutalities, of a fighter,” but he believed above all in Roosevelt’s “open-mindedness, his responsiveness to new insights, to new convictions—this is one of the great gifts of his usefulness—his capacity for growth.” Frankfurter concluded by apologizing, for he had been “very derelict in my duty as a reporter of the truth, but that is because Bob and I have been having such a riotously sober good time of it.”<sup>140</sup>

In his September 10 letter to Bass, Valentine predicted that Frankfurter would resign along with him.<sup>141</sup> Valentine believed that the best place for Frankfurter would be on the campaign trail with Roosevelt. During Stimson’s New York gubernatorial campaign, Frankfurter had always seemed to have the right speech or document at his fingertips for Stimson to use on the stump, and along the way Frankfurter had developed a good rapport with Roosevelt. Valentine urged Bass to write to Roosevelt but to keep the whole thing quiet until Frankfurter could inform Stimson.

The day that Valentine resigned, Frankfurter wrote a tortured resignation letter to his boss. The timing certainly was not convenient. Frankfurter was vacationing in Sharon, Massachusetts; Stimson was out west. But Frankfurter’s letter could not wait. “I find now the call for active work in the Progressive Party is too insistent, too dominant, not to be heeded if I have fairly considered all the controlling considerations,” he wrote.<sup>142</sup> Frankfurter felt great loyalty to Stimson, loyalty that had kept him from joining the Bull Moose campaign sooner. He planned to return to Washington in a few days but vowed not to leave his post until he heard from Stimson.

Frankfurter’s resignation letter was forwarded to Stimson at Yosemite, and Stimson answered it on September 19 in San Francisco. He wrote that he was extremely grateful for Frankfurter’s loyalty over the years and blessed his decision to join the Roosevelt campaign, though he also believed that Frankfurter was making a big mistake.<sup>143</sup> There was not enough time left in the campaign for Frankfurter to make much difference. He would be better off waiting until after the campaign when the “real work to be done” would be uniting the progressive factions.<sup>144</sup> Frankfurter promised to think

it over, returned to work in Washington, and awaited Stimson's return the first week of October before making any final plans.<sup>145</sup>

With Frankfurter's resignation in limbo, Valentine attempted to sway his friend's decision. "If you haven't heard from T.R. by the time you get this, please wire me, letting me know also when you feel you can cut loose," Valentine wrote on September 22.<sup>146</sup> Valentine attacked the two people advising Frankfurter to stay: Brandeis and Stimson. "I return Brandeis's note to you," Valentine wrote Frankfurter. "He is making such remarkable statements in this campaign that I do not like to keep such incriminating documents in my possession."<sup>147</sup> After a three-hour meeting with Wilson on August 28 at the New Jersey governor's summer home in Sea Girt, Brandeis came away "favorably impressed" and believed Wilson "has the qualities of an ideal President"—"strong, simple, serious, openminded, eager to learn and deliberate."<sup>148</sup> Brandeis helped Wilson articulate a "New Freedom" business platform so as not to attack big business per se but to attack monopoly. Brandeis also wrote pro-Wilson articles and editorials for *Collier's Weekly* and attacked the Progressive Party's approach to trust busting.<sup>149</sup> In September and October, he traveled the country speaking about trusts and advised the Wilson campaign.<sup>150</sup>

As for Stimson's suggestion that Valentine had regretted resigning, Valentine told Frankfurter that he had never been happier than he was in working with Bass in New Hampshire on Roosevelt's behalf.<sup>151</sup> Valentine insisted that Frankfurter's "real job at the present time is with the Colonel himself" and instructed Frankfurter to wait for a call from the candidate.<sup>152</sup> Roosevelt needed Frankfurter more than Stimson. The stakes, according to Valentine, were high: "With the Colonel you might well be a turning factor in the whole campaign."<sup>153</sup>

Just why Frankfurter decided not to resign in order to work for Roosevelt is unclear. Perhaps the call from Roosevelt never came. Perhaps the advice of his mentors Stimson and Brandeis gave him pause. Perhaps he knew that resigning in September was futile, and that Roosevelt's campaign was doomed. Perhaps he was worried about his future career prospects. In later years, Frankfurter recalled that Taft had offered him a federal judgeship in Manhattan, but that at age twenty-nine Frankfurter thought he was too young to lead the monastic life of a federal judge.<sup>154</sup> The only federal judicial opening in Manhattan had been filled in February 1912; Frankfurter may also have wanted to remain in good standing with the Taft administration.<sup>155</sup> "[A]fter much and dubious searching of heart I have decided it's my bigger



job to stay and I can only hope that it won't come up to plague me in the years to come," Frankfurter wrote fellow Bull Mooser Learned Hand. "I'm clearer than ever in the *raison d'être* of the movement and equally clear that it should be fought on the assumption of not being successful this year."<sup>156</sup>

The same mix of pragmatic and career concerns may have motivated Denison to stay in the Taft administration. One of Denison's college classmates, Governor Bass, also tried to pull him into the campaign. Like Valentine and Frankfurter, Denison had made no secret of the fact that he wanted to join the fight for Roosevelt. Earlier that summer, he had offered his resignation to Attorney General Wickersham, but Wickersham refused it because he believed that Denison had kept his progressive politics from affecting his first-rate work.<sup>157</sup> Denison was reluctant to leave Wickersham after the loyalty his boss had shown him during his typhoid fever recovery and after his controversial sugar fraud speeches. Denison also knew that the physical rigors of a political campaign might not be the best place for someone prone to overwork and depression. In July, he told Bass that he was too tired to hit the campaign trail and decided to wait and see how the election developed. A month later, after many discussions with Valentine and Frankfurter, Denison insisted to Bass that "I do intend to get into the fight just as soon as I honorably can."<sup>158</sup> In addition to lingering loyalty to Wickersham, Denison wanted to continue litigating a case that he had been working on for six months and that would not be resolved until September 1. Denison added in a postscript: "I hear the call of the Moose so loud and clear I can hardly sit still."<sup>159</sup>

September came and went without any word from Denison; career ambitions may have stood in his way. Denison harbored dreams of a judgeship or some other higher office. On August 21, Taft appointed him to a three-member commission to investigate allegations of neglect and customs fraud against the Board of the United States General Appraisers.<sup>160</sup> Nearly two months later, when one of the three members dropped out, Taft designated Denison the commission's chairman and added a new third member—Denison's housemate Frankfurter. Denison and Frankfurter accepted these posts less than a month before the election.<sup>161</sup> As the two men who principally prosecuted the sugar fraud cases, they were uniquely qualified to investigate additional customs fraud allegations. They were also young and ambitious lawyers who may have been reluctant to risk everything by joining the final months of a quixotic campaign.



With Denison and Frankfurter sitting on the sidelines and Valentine aiding Bass in New Hampshire, there was no shortage of drama on the campaign trail. Roosevelt was shot as he prepared to get into a car on his way to an October 14 speech in Milwaukee. The bullet was slowed by his eyeglasses case and a copy of the speech in his right breast pocket and lodged in his ribcage. Before he went to the hospital, he insisted on delivering the speech. After asking the crowd to be as quiet as possible and revealing that he had been shot, he remarked: "It takes more than that to kill a Bull Moose."<sup>162</sup> He spoke in a low voice for fifty minutes even though he was noticeably fatigued and his shirt was soiled with blood. Finally, after finishing his speech, he went to a nearby hospital, where doctors elected not to operate on what they described as a superficial wound.

The assassination attempt did not determine the outcome of the election. As Brandeis and Stimson had predicted, Republicans voted for Taft and Roosevelt, and Progressives voted for Taft, Roosevelt, Wilson, and Socialist Party candidate Eugene V. Debs (who received 900,000 votes).<sup>163</sup> The result was a victory for Wilson (435 electoral votes) over Roosevelt (88 votes), a pitiable third-place showing for Taft (8 votes), and a cloud of uncertainty at 1727 Nineteenth Street.

Roosevelt never again held such a firm grip on the ideals and aspirations of the House of Truth. Valentine moved out and returned to Boston. Frankfurter and Denison took charge of the House and waited for Wilson to take over in March. All three men needed to decide what to do next, and how best to achieve their political and legal goals with a new administration.

# 4

## The Center of the Universe

During his seven weeks on the Bull Moose campaign, Valentine felt more alive than he had ever been in his life. He no longer regretted not having lived during the Revolutionary War or Civil War eras, and believed that he was participating in one of the most important moments in American history.<sup>1</sup> After Roosevelt lost, Valentine and his housemates took different career paths.

Fortunately for Valentine, he had a plan. The previous July, he and Frankfurter had lain on the floor of the House of Truth and had “worked out our general scheme of the Universe.”<sup>2</sup> Four days later, they had finished it with some assistance from Denison and were “very proud of it.”<sup>3</sup> In an eight-page outline titled “A Tentative Social Program,” Valentine and Frankfurter took aim at one of the most important issues of their time—the effects of industrialization on workers.<sup>4</sup> Industrial accidents, strikes, and union busting plagued the nation’s economic life. Women and children worked long hours and in inhumane and unsafe conditions. On March 25, 1911, 146 female garment workers, most of them recent Jewish and Italian immigrants, had died in New York City’s Triangle Shirtwaist fire. Management had increased the loss of life because of its practice of locking the doors to stairwells and exits to keep the women at work on cutting and sewing blouses. With no way out of the top three floors of the burning ten-story building, more than sixty women had leaped to their deaths. Labor and management were at each other’s throats during this period; strikes over low wages, long hours, and inhumane conditions were common.

One of the largest strikes, which lasted from January to March 1912, was at the Lawrence, Massachusetts, textile mill. Organized by the radical Industrial Workers of the World (IWW), 23,000 workers, most of them immigrants, left their jobs and destroyed machinery after management cut their wages 3.5 percent in response to a state law that reduced the



The four original residents of the House of Truth (clockwise from left): Winfred T. Denison, Robert G. Valentine, Felix Frankfurter, and Loring C. Christie. The fifth resident, Eustace Percy, not pictured here, did not move into the House until late 1913.

maximum hours for women and children from fifty-six to fifty-four per week. Before the strike, men earned an average of \$8.76 per week, women and children \$6.<sup>5</sup> After a labor victory in Lawrence, the IWW led strikes among waiters in New York City in 1912 and 1913, and among silk mill workers in Paterson, New Jersey, from February to July 1913.

In their “Social Program,” Valentine and Frankfurter believed that they had discovered the solution to the nation’s labor problems—a stronger, more

powerful government. "Government," they wrote in the manifesto, "is the readiest and best fitted administrative means through which the conception of the people as to their welfare may find realization in action and, rightly understood, becomes the most potent affirmative social agency on behalf of all the people."<sup>6</sup> They believed that they could tap into the unused power of the federal government, the states, and the US Constitution to level the playing field between management and labor. Their examples included empowering administrative agencies, changing election laws, and making the tax laws more progressive. Above all, they envisioned experts in and out of government as facilitators of an "industrial democracy" in which workers were represented by organized labor; management recognized the rights of workers to unionize and agreed to negotiate with them collectively; unions embraced efficiencies associated with industrialization; and labor and management worked together to solve their problems. "Let us build up the personal manhood of our poets, scientists and politicians," they concluded, "as we seek to take the child out of the factory and men and women out of all kinds of poverty."<sup>7</sup>

Valentine and Frankfurter had thought that the key to implementing this social program was to oust Taft and to return Roosevelt to the White House. Roosevelt would maximize the use of federal laws and administrative agencies to protect working men, women, and children and to put the "fear of God into judges" who tried to stop them. The failure of the Bull Moose campaign left the "Social Program" in Valentine's and Frankfurter's hands.

To turn his ideas into a means to support his wife and daughter in Massachusetts, Valentine set up shop on Boston's State Street as the nation's "first industrial counselor."<sup>8</sup> He wanted to bring to industry the same principles that he had relied on as Indian affairs commissioner—disinterested expertise, efficiency, and the public good. He envisioned himself, depending on the project, as working for labor, management, municipalities, or consumers. He could report on working conditions, employment schedules, manufacturing difficulties, and consumer prices. He believed that management had nothing to fear from workers represented by organized labor. And he believed that labor had nothing to fear from efficiency studies championed by industrial engineer Frederick W. Taylor and other Taylorists who believed in scientific management.<sup>9</sup> Valentine described his efficiency studies as "industrial audits"—evaluating a company's books, employment, and wage schedules; working conditions; and the location and types of machinery on the factory floor. Valentine saw himself as the disinterested expert

who could bridge the gap between labor and management. He removed himself from politics, declining Governor Bass's invitation to a Progressive Party convention in December 1912. He knew that he needed to establish himself as neutral and nonpartisan, and after seven years of government service, he needed to earn enough money to support his family.<sup>10</sup>

What Valentine wanted most was for his fellow visionary Frankfurter to join him as a business partner. During the summer of 1912, they had formed a close bond. Frankfurter encouraged Valentine's poetry and his Bull Moose sympathies and joined him in a twelve-hour session from 3:00 p.m. to 3:00 a.m. one Sunday in June that resulted in Valentine's poem "A Nation's Prayer."<sup>11</sup> "I don't know how long you have known him," Valentine wrote his friend Julia Lathrop about Frankfurter, "but certainly long enough to have discovered that he is an inspired child."<sup>12</sup> For Frankfurter, the feeling was mutual. "I found a soul-mate down here in Valentine, the Indian Commissioner."<sup>13</sup>

With their "Social Program," Valentine believed that he and Frankfurter had seen the future. "We have discovered—you and I—the center of the universe," he wrote his "co-trustee" Frankfurter. "Don't make any plans for the future—either for yourself or the Universe—until we have stood at the center of it together and discussed things. This is a far cry from lying on the floor of the front room at 1727."<sup>14</sup>



Valentine in Atlantic City

Though he continued to work for Stimson in the final months of the Taft administration, Frankfurter seemed eager to explore the universe with Valentine. "Dear Pardner . . .," Frankfurter wrote, "I don't know what else you've done but you've sent coursing through my veins the rapturous champagne of your courage and imagination and humor and sanity that cannot be in vain, were it not sufficient unto itself."<sup>15</sup> In mid-January 1913, Frankfurter, Denison, Christie, and Frankfurter's friends Emory Buckner and Sam Rosensohn dined with Valentine in New York City and spent the entire evening critiquing and refining Valentine's prospectus.<sup>16</sup> The debate continued the next day during the car ride to and from a visit with Borglum at his Connecticut home.<sup>17</sup> They admired Valentine's fearlessness and determination in "going it alone."<sup>18</sup> Frankfurter passed along additional comments about the statement of services and praise for the venture from Holmes ("delighted, no almost awed"), Hand ("enthusiastic hopefulness"),<sup>19</sup> and Brandeis ("joyous surprise that you should do as well as you do")<sup>20</sup> and drummed up potential business in the private sector and federal government.<sup>21</sup> "The *practical* appeal of the idea," Valentine wrote his wife, "is cumulatively tremendous."<sup>22</sup> Frankfurter, however, remained noncommittal about joining his friend. "The silence is the silence of much thinking and more longing for a union of the universe," he wired Valentine in February. For the time being, Frankfurter was tied up with War Department work and awaited Valentine's draft prospectus for their new venture.<sup>23</sup>

With Valentine starting his industrial counseling business in Boston, Frankfurter and Denison took charge of running the House. "We enjoy living in this nice house very much and Felix keeps us alive most of the time," Denison wrote Frankfurter's mother. "The only trouble with him is that he wants to sit up all night and sleep all day. And he's terribly slow about getting dressed and washed and down to breakfast. Why in the world did you fail to teach him that black air means night and time to sleep and that white air means day and time to be awake? Otherwise than that you've brought him up tip top and I am very grateful to you."<sup>24</sup> Valentine instructed Denison and Frankfurter to send him the bills, to hang the curtains and drapes, to select wallpaper for the newly renovated bathroom and guest room, and to move the bed out of the upstairs parlor.<sup>25</sup> In late January 1913, Valentine asked that his reference books, including William James's *Principles of Psychology*, be sent to Boston.<sup>26</sup> Two months later, Sophie Valentine made sure that one of Washington's foremost political salons would survive her husband's return to Massachusetts. On March 12, 1913, she paid \$10,

borrowed \$2,000, and assumed \$4,500 remaining on the mortgage on the House.<sup>27</sup> Frankfurter and Denison ran it the way that their friend would have wanted. Valentine's picture above the mantel reminded them of their spiritual leader.<sup>28</sup> "I'd rather canvas the universe here," Frankfurter wrote Valentine, "in the living room of the House of Truth than even spend a day together Boston way."<sup>29</sup>

In late March, Valentine made a triumphant return to the House that he and his wife now owned. Frankfurter and Christie met him at Union Station; Denison joined them at the House for lunch.<sup>30</sup> Valentine ran into Justice Holmes, who reiterated his admiration for the industrial counseling idea.<sup>31</sup> Valentine discussed Indian affairs during a long dinner with Wilson's Secretary of the Interior Franklin K. Lane, who was "very much interested" in Valentine's business venture.<sup>32</sup> Valentine, Frankfurter, and "all the House of Truth" attended a dinner for British ambassador Bryce. Bryce was so impressed with Valentine's plans that the ambassador sent for him the following day and told Valentine to "use his name" as a reference.<sup>33</sup> "This is being a most helpful trip for the Adventure ...," Valentine wrote his wife. "Even [his conservative Harvard classmate] Elliot Goodwin thinks it is a *great* idea."<sup>34</sup>

Valentine and Frankfurter visited one afternoon with Justice Holmes. On Saturday night, Valentine, Frankfurter, Christie, Percy, Alfred Mitchell-Innes of the British embassy, Roosevelt speechwriter George Rublee, and Learned Hand dined at the home of writer Herbert Croly.<sup>35</sup> Croly's book *The Promise of American Life* served as the bible of progressives.<sup>36</sup> Finally, they held a Sunday night dinner in Valentine's honor at the House. The guests included Frankfurter; Denison; Christie, Percy; Croly; Denison's new boss, Attorney General James C. McReynolds; Learned Hand; Mitchell-Innes; former Indian affairs official Arthur Ludington; Sam Rosensohn; and Rublee.<sup>37</sup> Frankfurter boasted: "We dished up three cabinet members and one ambassador and one Justice for Val in three days."<sup>38</sup>

Upon his return to Boston, Valentine wrote a report on the working conditions at the Charlestown Naval Yard; his client, thanks to Frankfurter's War Department contacts, was Assistant Secretary of the Navy Franklin D. Roosevelt.<sup>39</sup> Although he lived only a few blocks across Connecticut Avenue from 1727 Nineteenth Street, Roosevelt was not part of the Bull Moose crowd; he was a Democrat and an ardent Wilson supporter. He probably never set foot in the House of Truth. Even so, Frankfurter knew Roosevelt well enough to prepare him for Valentine's recommendations.<sup>40</sup>





The House of Truth living room

“Cousin Roosevelt seems to have borne my report to him with equanimity,” Valentine reported.<sup>41</sup> The assistant navy secretary was one of Valentine’s first satisfied customers. But in 1913, he was far from the center of Frankfurter’s and the House’s universe.

Frankfurter and Denison stayed at the House until the final days of the Taft administration and beyond. They used their positions to pursue their political aims of bringing expertise to government, prosecuting fraud, busting trusts, and fighting for the rights of working men, women, and children. Since August 1912, Denison had chaired a three-person committee, including Frankfurter, to investigate the Board of General Appraisers in charge of hearing customs cases. The committee held a series of private hearings and interviews in Washington and New York and investigated how similar customs courts operated in other countries. On February 15, 1913, they issued an eighteen-page report with recommendations that included reducing the number of people on the board, dividing the functions of classifications for tariff purposes and reappraisals, and making appointments nonpartisan to prevent political agendas from dominating the process.<sup>42</sup> Taft took the report seriously. On the last day of his administration, the president fired two life-tenured members of the Board of Appraisers for cause.<sup>43</sup>



Frankfurter's War Department work at the end of Taft's administration was equally hectic. Stimson was constantly trying to prevent "blunders" caused, according to Frankfurter, by Taft's "impotence and incompetence."<sup>44</sup> Frankfurter accompanied Stimson to the opening of the Panama Canal and remained loyal to the secretary of war until the bitter end.<sup>45</sup> He coauthored a memorandum (abridged in the *Boston Evening Transcript* as "The 'War Record' of Henry Stimson") that read like a history of the War Department since the Spanish-American War and praised Stimson's management of the Panama Canal Zone, the insular territories, and peacetime reorganization of the military.<sup>46</sup>

Stimson urged Frankfurter to stay in the Wilson administration to see through two projects: hydroelectric power and governance of the Philippines. Frankfurter's knowledge of public utility regulation and the War Department made him one of the nation's experts on how federal agencies worked and how to effect social change. He agreed to stay on with the new administration. Stimson's successor, Lindley M. Garrison, was not the intellect or the administrator that Stimson was, but Frankfurter liked and admired his new boss.<sup>47</sup> He continued to learn about how federal agencies operated and made new contacts within those agencies. Something about the Wilson administration, however, rubbed him the wrong way. He observed a "regenerative righteousness" and "assumption, for instance, that the McKinley-Roosevelt-Taft policy in the Philippines was one of exploitation, and that we are the instrument of liberation."<sup>48</sup> Yet, as of May 1913, Frankfurter conceded that "Wilson has done mighty well thus far."<sup>49</sup>

Denison, who had submitted his resignation to President Wilson and had planned on returning to New York to practice law, was coaxed into staying by Attorney General McReynolds. From Denison's perspective, McReynolds had been a good choice because he was "not a politician," was a former assistant attorney general who "knows the department," and was "able and pleasant."<sup>50</sup> A prominent Tennessee lawyer who had prosecuted trusts in the Roosevelt Justice Department and as a special prosecutor, McReynolds had asked two men to resign—Solicitor General William Marshall Bullitt and William Henry Lewis. The Lewis resignation confirmed McReynolds's notorious racism. A Harvard law graduate, Lewis was the Justice Department's only black lawyer.<sup>51</sup> McReynolds met with Denison and asked him to stay and to argue some of Bullitt's cases pending before the Supreme Court. Denison agreed to stay "indefinitely, until fall anyway."<sup>52</sup> As early as February, rumors swirled that Wilson would nominate him for

higher office.<sup>53</sup> A few months later, Frankfurter reported to Valentine that “Winnie is really turkey-trotting with the Administration.”<sup>54</sup>

Though Frankfurter viewed his Wilson administration post as temporary and Denison saw his as a means for career advancement, they shared the same social instincts and sense of fun. “The House is flourishing,” Frankfurter reported to Valentine. “We have moved some of its furniture around, yet, I think, as Bryan would say, ‘we have kept the faith.’ I rather love to think we have done so uninfluenced by your stern countenance that frowns down on us from the heights of the mantel-piece. Winnie, I think has never been better, more steadily on the job, or more wholesomely buoyant. He says I am improving in general conversation, which, curiously enough, means that he talks more. We had a kids’ luncheon here yesterday, which would have warmed the hearts of both of you.”<sup>55</sup>

Some people with sterner dispositions, such as frequent visitor Brandeis, were not as enamored with the House’s social activities.<sup>56</sup> He attended a lunch with Christie, Stanley King and his wife, Gertrude, Justice Department lawyer Louis G. Bissell, and Borglum. The brash, outspoken Borglum and the cold, reserved Brandeis exchanging ideas over lunch must have been a sight to behold. The People’s Lawyer thought that Frankfurter and Denison needed to socialize less and to work more. “You are right about Frankfurter’s excessive sociability,” Brandeis wrote his wife. “[Attorney General] McReynolds criticised Denison also on that score.”<sup>57</sup> Brandeis’s humorlessness was one of the reasons why, despite his ideological affinity with Frankfurter, Denison, and Christie, the People Lawyer’s was not the hero of the House. That honor belonged to Holmes. With Theodore Roosevelt out of the political picture and Valentine in Boston in 1913, Holmes took center stage at the House of Truth.

And with good reason. The Court remained the biggest obstacle to laws regulating unfair competition, maximum hours, minimum wages, workers’ compensation, and child labor. With the Wilson administration poised to introduce a federal child labor law, Frankfurter stepped up his attacks on the Court’s defenders. In a January 1913 *Survey* magazine article, “The Zeitgeist and the Judiciary,” he criticized an American Bar Association report that condemned, without offering any alternatives, Roosevelt’s idea of popular recall of state judges. Frankfurter knew that judges were by their very natures conservative because they tended to be old men who relied on past decisions to resolve contemporary issues. He also knew that labor and unfair competition laws developed from detailed factual investigations rather than

old legal principles. New types of “social legislation,” which he defined as addressing “economic and social conditions” and “the stuff of life,” faced resistance from the Constitution’s judicial guardians.<sup>58</sup>

Instead of simply attacking the Court and its defenders in “The Zeitgeist and the Judiciary,” Frankfurter celebrated Holmes as the Court’s true intellectual leader. Holmes did not believe that unfair competition and labor laws would make people’s lives better. Yet, as he wrote in his 1905 *Lochner* dissent about the maximum hour law for bakers, he also believed that the justices had no business reading laissez-faire economic philosophy into the Constitution by making up concepts such as “liberty of contract.” In his article, Frankfurter quoted Holmes’s introduction to *The Common Law* and argued that Holmes had been “a powerful influence in the changed attitude of the Supreme Court.”<sup>59</sup>

By championing Holmes, Frankfurter revealed that he had not lost all faith in the Court as an institution. He believed that the best way to help working people was not through litigation but through state and federal regulation and through a government run by experts like the Board of Appraisers investigation that he and Denison led. Nonetheless, Frankfurter’s job still brought him before the Court. On April 24, he defended the decision by the governor of the Philippines to deport a Chinese immigrant. Holmes, speaking for a unanimous Court, affirmed the governor’s deportation power and refused to interfere with the decision.<sup>60</sup> Frankfurter’s argument won praise from other justices besides Holmes.<sup>61</sup> One evening, Frankfurter mixed cocktails in a shaker for his housemates and their guest, Justice Horace Lurton. A Taft appointee, Lurton was a Kentucky Democrat who during his four years on the Court often sided with Holmes. “I hope you mix drinks as well as you argue cases,” Lurton said to Frankfurter. After trying one of Frankfurter’s cocktails, Lurton added: “You mix drinks even better than you argue cases.”<sup>62</sup>

Frankfurter and his friends at the House of Truth embraced Holmes because they knew he would vote to uphold pro-labor legislation. They also liked him on a personal level and because they admired his dedication to his craft. Holmes was skeptical about all ideas except his “Jobbist” philosophy—his desire to do his job as well as he could (and better than anyone else) every single day.<sup>63</sup> And he could turn a phrase better than any other justice on the Court and perhaps any in the Court’s history. The House’s residents repeated Holmes’s zingers as if he were writing for them. And maybe he was. Holmes loved flattery, and Frankfurter and Denison were expert flatterers.

In March, Holmes sent a copy of his Harvard class speech to Denison. "The House of Truth is happier," Denison replied, "every time Mephistopheles crosses its threshold."<sup>64</sup> Two months later, Holmes sent Denison a new edition of the justice's collected essays and speeches.<sup>65</sup> "You know what I think of the philosophy which pervades this book and every contact one has with you," Denison wrote. "It has gusto and inspiration, and has given me a good pull over some hard places."<sup>66</sup>

An equally important part of the House was Holmes's wife, Fanny, whom even her husband portrayed as a recluse.<sup>67</sup> But her visits to 1727 Nineteenth Street and friendships with the men who live there offer a fuller picture. They loved her as much as they loved her husband. She liked to play practical jokes and to surprise the justice. And, though childless, she loved children. No one ever forgot her surprise at the House of Truth's children's party, and little wonder. "Mrs. Holmes sent a big pie for dessert, which had ribbons running out of it, one ribbon for each child, and when they pulled the ribbon, there came out of the pie a present instead of food," Denison recalled. "Then when they had just finished that a live monkey jumped right onto the table thru the dining room window, and a hand-organ began to play."<sup>68</sup> Mrs. Holmes also bought the men a housewarming gift, a small wren house, that they put on the sleeping porch out back. "I wait for wrens—," Frankfurter wrote his friend Marion Denman, "but only sparrows come."<sup>69</sup> Before the Holmeses left Washington for the summer, Frankfurter made sure to say good-bye to Mrs. Holmes and let her know that she was an integral part of the House. "Truth may still be at the bottom of the well," he wrote her, "but you have brought up for us—joy. A bountiful summer to you! In grateful humility. *Your House of Truth.*"<sup>70</sup>

On June 15, 1913, Holmes was leaving for an overseas voyage to Britain, a solo trip to visit Lady Clare Castletown, his flirtatious correspondent in Ireland, as well as other friends.<sup>71</sup> It was his last journey across the Atlantic. Mrs. Holmes accompanied her husband as far as New York City to see him off and must have known the reason for his trip. The House's residents let Holmes know that he would be missed. Christie greeted Justice and Mrs. Holmes in New York City.<sup>72</sup> Frankfurter sent the justice a note along with a copy of Mary Antin's autobiography, *The Promised Land*, about a Russian-Jewish woman's migration to Boston.<sup>73</sup> Holmes read the book on board the *Mauritania* and said it "stirred my vitals." "It seems as if the gift of passionate enthusiasm were racial," he wrote of her Jewishness. "It is a great one."<sup>74</sup> Denison sent Holmes a telegram on board the *Mauritania*:

“A happy and trifling summer to you and the eager friends across the sea; in the gay[e]ties and frivolities do not entirely forget Truth and its abode and the squatters therein laboring here in its vineyard but repine as of today tunc pro nunc with the same old inspiration.”<sup>75</sup>

The House’s young men faced impending career decisions and needed Holmes’s wise counsel more than ever.

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Christie was the first to leave. Alfred Mitchell-Innes, a regular visitor from the British embassy, wrote to the new Canadian prime minister Robert Borden and described Christie as “one of the two cleverest young men in Washington and is a particular friend of mine and Percy’s.”<sup>76</sup> Mitchell-Innes informed Borden that Christie “does not at all want to become a Yankee and would, so Percy tells me, much like to return to Canada.”<sup>77</sup> Borden asked for more information about Christie.<sup>78</sup> Innes replied, reporting Christie’s age (twenty-seven), experience, and status as a British subject and added: “Both the Attorney General and the Solicitor General have a high opinion of him.”<sup>79</sup> After a short interview in New York City, the Conservative prime minister offered Christie a job in the Department of External Affairs.<sup>80</sup>

In March 1913, Christie announced that he was leaving the House, but his last month in Washington was unforgettable.<sup>81</sup> On March 9, President Wilson accepted Solicitor General William Marshall Bullitt’s resignation effective two days later. Several newspapers reported that James Fowler, assistant to Attorney General McReynolds, was the acting solicitor general.<sup>82</sup> Others reported that the acting solicitor general was Christie.<sup>83</sup> Although Fowler may have held that title, it was well known among Christie’s friends that a twenty-eight-year-old Canadian citizen was running the solicitor general’s office representing the US government before the Supreme Court.<sup>84</sup> Before Christie left town, Frankfurter and Denison threw a dinner party on March 28 at 1727 Nineteenth Street. Christie was “the guest of honor.” Justice and Mrs. Holmes, Holmes’s secretary Stanley Clarke, Mr. and Mrs. Arthur Willert of *The Times* of London, Percy, Mitchell-Innes, and eight others attended one of the House’s rare gatherings that made the Washington *Evening Star* society page.<sup>85</sup>

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With Christie departing, Frankfurter faced his biggest career decision so far—whether to accept a Harvard law professorship. Without telling

Frankfurter, Denison had written to Professor Edward “Bull” Warren.<sup>86</sup> A year ahead of Denison in law school, Warren had started teaching at Harvard in 1904 during Frankfurter’s time as a student. He terrified first-year students in his property class by employing the Socratic method with unrelenting harshness and earned the nickname “Bull.”<sup>87</sup> Warren had taught Frankfurter Equity as a second-year student and Corporations as a third-year student and almost certainly knew that Frankfurter had graduated first in the class of 1906. “You know what I think of him and what everybody thinks of him down here, and you know him yourself,” Denison wrote Warren. “He has made a tremendous impression with the Supreme Court. The Chief Justice and two of the other Justices have spoken to me with great enthusiasm of his work and I understand their views are shared by the other members of the court.”<sup>88</sup>

Warren needed no convincing. “To a man, we want Frankfurter,” he reported after reading Denison’s letter at a faculty meeting.<sup>89</sup> The faculty member pushing hardest for Frankfurter’s appointment was Roscoe Pound, who wanted to collaborate on new approaches to criminology.<sup>90</sup> Frankfurter greatly admired Pound’s pioneering sociological approach to legal scholarship and his criticism of *Lochner v. New York*. Before they started raising money to endow a new professorship, Warren wanted to know if Frankfurter was interested and instructed Denison to show him both letters.<sup>91</sup> “If I had received a letter from an Indian princess asking me to marry her,” Frankfurter recalled, “I wouldn’t have been more surprised.”<sup>92</sup> He did not think he was worthy of a position on a faculty that had included Christopher Columbus Langdell, the founder of the casebook method; James Barr Ames, the dean who had brought the school to national prominence and had recommended Frankfurter to Stimson; John Chipman Gray, the property scholar who had introduced Frankfurter to Holmes; and James Bradley Thayer, whose view that judges should overturn federal statutes only in extreme circumstances profoundly influenced Frankfurter. Nor did Frankfurter regard himself as a traditional legal scholar who could spend his career churning out law review articles. Of Frankfurter’s unworthiness, Brandeis replied: “I would let those who have the responsibilities for selecting you decide your qualifications and not have you decide that.”<sup>93</sup>

The thirty-year-old Frankfurter knew that he was at a career crossroads and that the country was at a political crossroads. He was trying to find himself professionally just as America was trying to grow into its status as a world power and to take care of its citizens in the age of industrialization.

He yearned to be at the center of the universe and grapple with the socioeconomic issues of his time, and he believed that law would play a central role. Teaching at Harvard Law School, he wrote in a four-page memorandum, would allow him to mold the nation's future leaders who would shape "jurisprudence to meet the social and industrial needs of the time" and wrestle with "the great procedural problems of administration and legislation." Together with Roscoe Pound, Frankfurter believed that he could apply the social sciences to law in a way that would revolutionize Harvard Law School and transform its future graduates. Valentine identified Frankfurter's "gift of tapping people of all kinds," his "coordinating facilities," gifts that he could use to identify future leaders who could move public opinion and change the future of America. "'To enlighten public selfishness and harmonize the public will,'" Frankfurter wrote, "—that may be my job."<sup>94</sup>

Frankfurter wrote a memorandum outlining several competing options. First, there was what he called "the Valentine thing."<sup>95</sup> That path would force him to give up the law and waste his legal training and experience. As his financially strapped friend Emory Buckner remarked of Valentine's work, "You are about as unfit for that as I should be to become President of the National Provident Savings Bank."<sup>96</sup> Second, he could choose to stay in the Wilson administration. He never warmed to Wilson, whose "inscrutable secretiveness," "Southern-Democrat atmosphere," and "'party solidarity'" bothered him. Frankfurter's boss, Lindley Garrison, was nice enough but a "first-class mediocrity." Nor did Wilson use his cabinet as extensively as his predecessors Roosevelt and Taft.<sup>97</sup> Finally, he could practice law in New York City. Both Stimson and Roosevelt had been urging Frankfurter to take this route, to become the city's "citizen-lawyer," and to emulate Brandeis's "people's lawyer" status. Private practice, however, never appealed to Frankfurter. He did not like kowtowing to clients or advocating positions in which he did not believe. Harvard Law School, he concluded, was the "best five years' investment ahead." If he didn't like it, he would be young enough to change course.<sup>98</sup>

Before he confirmed his interest in the job, Frankfurter showed his mentors and friends his memorandum and asked for their blessings. The childless Stimson and his wife, who looked after Frankfurter like a surrogate son, were against the idea. Stimson worried that Frankfurter's "greatest faculty of acquaintance, for keeping in touch with the center of things,—for knowing sympathetically men who are doing and thinking," would be wasted at the law school. Frankfurter, Stimson argued, belonged "at the center of the