


ARTICLES

"Some Necessary Iconoclasm": Contesting Liberty in the Progressive Era

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During the Progressive Era, academics and theorists in positions of substantial institutional power engaged in an intellectual shift against the prevailing American political culture by challenging the ontological nature of liberty and the state. Owing to the belief that individuals were social creatures who could not exist outside of an organized society, these theorists rejected the theoretical underpinnings of natural rights and personal liberty and reconceived of freedom as something that was socially constituted rather than individually focused. Liberty was repositioned as a way for individuals to be the best members of society, not to pursue their own ends absent a restraining force. These intellectuals imagined a dynamic, progressive democracy that would respond to changing social and economic circumstances rather than a fixed constitution that protected individual and minority rights. In practice, reformers used this intellectual and linguistic shift to legitimize the era's many moral crusades. They framed vices such as alcohol, cigarettes, and prostitution as deleterious to the socially constituted freedoms of the community and warranting the intervention of police power. Though progressive reformers were met with mixed success, the theoretical shift away from natural rights left a lasting legacy in the American political landscape.

In the late nineteenth and early twentieth centuries, academics and theorists in positions of substantial institutional power engaged in a sustained rhetorical and intellectual attack on the prevailing American political culture by challenging the existing public understanding of the ontological nature of rights, liberty, and the state. Their newly proposed governing philosophy presupposed overturning a feature of American political culture that had been dominant since the nation's founding: the notion that individual liberty preceded governments in the form of natural rights (also called negative rights, absolute rights, and individual rights) and that government's limited



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authority was largely for the protection of those rights. Liberty, as understood by the Whig philosophy that pervaded political culture in the Revolutionary era and early republic, was focused on individuals. Individuals assumed moral autonomy, self-direction, and the pursuit of their own happiness, but they acted within a framework of moral obligations which forbade violation of the natural rights of others while pursuing their own ends. A “natural rights republic” emerged based in large part on the philosophy of John Locke, who emphasized a “social contract” between governments and their people, whereby governments were established to protect these natural liberties as they pursued their own economic and social ends (S. K. Green 2015; West 2017; Zuckert 1994; for dissenting views that the Whig theory was not the prevailing sentiment of the founding era, see Brooke 1992; Wilentz 2004).

A core tenet of the conception of governance that grew to prominence during the Progressive Era redefined liberty as a collective or social right, not an individual one. Academics worked to reconstruct liberty in public discourse as the opportunity to develop oneself and maximize one’s potential for the good of the community. It developed out of a changing understanding of the nature of the state itself: the state was a historical development whose scope and authority expanded as a national society matured, not a limited agreement among individuals. A proper state served as an active agent in safeguarding community welfare by helping its citizens become morally and socially self-actualized. In this conception, liberty was something that was socially constituted and communitarian, not rooted in the individual. The end pursuit of liberty, rightly understood, was being a good member of society.

The positions of these theorists, most prominently in universities and Social Gospel churches, afforded these theorists the chance to make these new, complex ideas digestible for the broader population, though they tended to reverberate most prominently among moral reformers. Progressive Era reformers adopted the rhetoric of these academics (though there was considerable overlap between these groups) by arguing that moral vices were not a matter of individual liberty but threats to “true liberty,” socially considered. In their tracts, “personal liberty” became a derogatory term, carrying connotations of the atomistic and selfish nature of individualism that undermined the community at large. The pivot away from personal liberty and toward social liberty (and the “inalienable rights of society”) removed the principal grounds for resisting moral reform during the early nineteenth century—namely, the argument that personal liberty should enjoy its habits in private (Thompson 1914, 12). It brought the individual within the purview of the state, often with racial or gendered consequences (Leonard 2016; Paulsson 1994; Maddox 2005; Langum 2006; Odem 1995; Muhammad 2011; Oliver 2018; McRae 2018). This contestation over the nature of liberty and the individual’s social duties produced a deep fault line dividing American politics through the New Deal and the rest of the century.

To fully appreciate the Progressive Era’s assault on the natural rights tradition, it is essential to examine it outside of “rich man’s individualism” and demonstrate how the redefinition of liberty was a means to crack the political culture of the general American populace (McGerr 2005, 58). Historians who have examined Progressive Era attacks on the tradition of individualism and natural rights have almost exclusively examined them through the perspective of laissez-faire and economics (for inquiries of political scientists, see Eisenach 1994; Watson 2017; Marini and Masugi 2005). While they thoroughly demonstrated how theorists and reformers conceived of rhetoric about personal liberty as “defense of the market” or the “atomistic individualism of laissez-faire liberalism” as a basis of the domination of corporations, they miss the wider implications of the opposition to individualism (Rodgers 1998, 42, 100; Stromquist 2006, 23, 192; Kloppenberg 1986, 41; Leonard 2016, 8–10). Even in his sweeping work on the concept of freedom throughout American history, Eric Foner (1998, 139–56) limits his discussion of “progressive freedom” almost entirely to “economic freedom.” To be sure, reformers and intellectuals worried a great amount over the individualism of “the upper ten” and often framed the changing relationship between the individual and society through economic changes and accumulated capital. Yet this was not just a battle to pierce through “rich man’s individualism” but also a serious challenge to the normative assumptions of the general public as well (McGerr 2005, 58).

When scholars have examined the moral crusades of the Progressive Era, their works have tended to begin with the reformers and their legislative push while giving short shrift to the intellectual underpinnings of these movements (Langum 2006, 3–10). This article seeks to bridge the gap between histories on coercive moral legislation and progressive intellectual history by showing how reformers utilized a progressive conceptualization of liberty and freedom in order to legitimize legislative measures aimed at moral reform. It begins first by examining the two streams of progressive thought that were central to this theoretical change: German-educated American academics and Social Gospelers (many of whom were themselves academics or German-educated) who occupied prominent positions of institutional authority. These theorists, often relying on their “expert, university-based authority” to try and influence political and social change, challenged the legitimacy of the US Constitution, which they believed was too outmoded and too slow to address the challenges brought about by massive demographic and economic transformations in the United States after the Civil War (Rodgers 1998, 109). Instead, they conceived of a dynamic, energetic government that would be more responsive to the needs of its constituents and whose responsibilities would grow and evolve as society did.

But ushering in a new governing philosophy required penetrating through one of the prevailing principles of American political culture: an individually focused conception of liberty. This article subsequently examines how

progressive thinkers relied on the works of British Idealists such as Thomas Hill Green to reconceptualize the notion of liberty as something that was socially focused (or “positive”) rather than individualistic (or “negative”). It then demonstrates how this philosophical repackaging of liberty found a home among reformers taking aim at moral vices. With liberty properly understood as encompassing social rights and the duty of citizens to maximize their benefit to the community, these reformers cast immoralities such as alcohol, tobacco, and prostitution as threats to national vitality, social progress, and the positive liberties of society. These activists hoped to sanction new legislative measures, though they were met with mixed results at every level of government.

This article concludes by connecting the Progressive Era challenge to the notion of individually conceived liberty to the modern day by examining the “Democracy Constitution,” a proposed replacement to the current US Constitution that was conceived of by progressive thinkers in 2020 and 2021. The Democracy Constitution demonstrates an inherited intellectual tradition by echoing frustrations with Americans’ veneration of the Constitution and proposing a new philosophy of governance-based, socially constituted rights and a dynamic state that could more effectively respond to any challenges to democratic society. What this most recent chapter reveals is that the Progressive Era philosophical dispute between socially constituted and individually focused rights has left a lasting legacy in America’s political landscape and remains one of the primary fault lines today.

Institutional Power and Progressive Academia

The sheer variety of the Progressive Era makes efforts to define “progressivism” difficult, and such efforts are further complicated when noting that the progressive movement was but one piece of a larger transatlantic movement grappling with rapid industrialization and urbanization. The progressive impulse was decentralized and often inconsistent, with both overlapping and diverging goals. Finding the so-called progressive reformer as an individual is equally as difficult, with a robust number of reformers and organizations aimed at anything from social and economic reform to the redistribution of wealth and direct democracy (Rodgers 1998, 34–70; Kloppenberg 1986, 3–6; for definitions of progressivism see Rodgers 1998; Maddox 2005; Stromquist 2006; McGerr 2005). While recognizing that there were diverse influences on progressivism—such as grassroots progressive reformers, labor progressives, muckrakers, and conservationists—this article focuses on two overlapping streams of progressivism: German-educated academics and Social Gospel theorists. Their positions in universities and churches afforded these theorists the chance to make these new, complex ideas digestible for the broader population, though they tended to reverberate most prominently among moral reformers (Fink 1997, 4, 10–12).

The first stream of progressivism comprised American graduate students who trained in German universities, where they opened up a transatlantic connection that tied American social politics to developments in Germany and Great Britain (Leonard 2016, 17; Stears 2002, 26). By the turn of the twentieth century, colleges and universities in the United States had become places of meaningful institutional power, with broad social acceptance of the importance of the education and expertise that gestated within them. Influenced by the German academics, many progressive theorists viewed their institutions as loci for championing social change (Palmadessa 2017, 93; Rury 2016, 125). This belief manifested in the Wisconsin Idea, which originated in the University of Wisconsin and posited that universities should utilize academic expertise (including in the social sciences) to help government make informed decisions about the problems confronting modern society and to help democracy function more productively (Rudolph 1990, 357–58; Hutcheson 2020, 78). Scholars should engage in outreach through public lectures and advocacy in order to make universities, in the words of historian Daniel Rodgers (1998, 94) something of “an institutional nexus” between experts and public officials and between “academic learning and practical policy making” (on progressivism and expertise, see Leonard 2016; Rury 2016; Jasanoff 2016; Recchiuti 2007).

As American graduate students returned from Europe, new fields of inquiry and methodologies associated with political science, sociology, economics, and the German historical school of political economy emerged in American higher education, and the civic-minded academics believed these new fields should be “responsive to the needs” of an industrial society. Across several decades, this transnational intellectual network and philosophical discourse came to dominate American academia as social science became increasingly professionalized after 1880 (Furner 2011, xx–xxiv, 6–8). Americans who received their PhDs in Germany adapted their own graduate programs with new methodologies that challenged existing conceptions of understanding political orders. New universities, including Johns Hopkins University in 1876 and the University of Chicago in 1892, cultivated their faculties to concentrate on these disciplines and bring German education in social sciences and political economy to the United States (Rodgers 1998, 111; Sheat 2010, 186; Eisenach 1994, 12; Watson 2017, 147–51). In the words of progressive intellectual Walter Weyl (1913, 2), “Europe does not learn at our feet the facile lessons of democracy, but in some respects has become our teacher.”

Some of the better-known progressive intellectuals who had advanced degrees or faculty appointments included Charles Cooley, Walter Weyl, Woodrow Wilson, and John Dewey (Leonard 2016, x). Yet it is perhaps the more overlooked theorists of the era that boasted more impressive resumes and more substantial institutional power. These “scholar-activists” (in the words of Thomas Leonard) were critical in the theoretical redefinition of liberty in

higher education. Theodore Woolsey, who was critical in disseminating new ideas on political science to other American academics, studied in Leipzig, Bonn, and Berlin before becoming the president of Yale College from 1846 to 1871.¹ Westel Woodbury Willoughby was a principal founder of the American Political Science Association in 1903 and was widely regarded as the “dean” of American political scientists by his colleagues (Garner 1968, 3; Hart 1945, 552). George L. Scherger studied in Leipzig and Berlin before becoming the president of Columbia College Chicago. John Burgess, who gained a wide reputation as “the most influential political scientist” of his time, attended the universities of Göttingen, Leipzig, and Berlin before returning to the United States to found the School of Political Science at Columbia University in 1880 (Columbia College Chicago 2021; McGreevy 2003; Reagan 1999, 57).² Edwin R. A. Seligman, a professor of political economy at Columbia who had studied in Heidelberg and Berlin, was among the most ardent advocates for a progressive income tax and the Federal Reserve System (Mehrotra 2013, 41, 103–4).³ Charles Merriam served as president of the American Political Science Association and went on to wield considerable influence under President Franklin D. Roosevelt during the Great Depression (Reagan 1999, 57).

But perhaps no academic better exemplifies this new theoretical impulse and its implications than Frank J. Goodnow, who studied in Paris and Berlin. Influential as a mentor of Merriam, he served as administrator of Columbia’s School of Political Science, the first president of the American Political Science Association, and president of Johns Hopkins University (Furner 2011, 288). Most significantly, Goodnow (1916, 30–31) was cognizant of the institutional clout he and others at the university level exercised. When calling for a reimagining of “the American conception of liberty” and constitutional governance in 1916, the then-president of Johns Hopkins ended a speech by entrusting those in “great education institutions” with “a very solemn obligation.” He wanted scholars to pierce through the normative beliefs of the American public, charging that it was “the duty of the University to call the attention of the student” to the fact that “greater emphasis should be laid on social duties and less on individual rights.” In turn, Goodnow wanted the pupil to fulfill “the duty of the student” by “bring[ing] this truth home to his fellows.” It was a clarion call for universities to influence change in American political culture in favor of what Goodnow and others considered proper, progressive governance.

1 *Dictionary of American Biography* (1936), s.v. “Woolsey, Theodore Dwight.”

2 See also *Columbia Encyclopedia*, 6th ed., s.v. “Burgess, John William,” accessed April 8, 2021, Credo Reference.

3 *Historical Dictionary of the Progressive Era*, ed. Catherine Cocks, Peter C. Holloran, and Alan Lessoff (Lanham, MD: Scarecrow Press, 2009), s.v. “Seligman, Edwin Robert Anderson.”

The second influential stream of progressivism with regards to redefining liberty was the Social Gospel, a Protestant social movement that infused Christianity with the “modern [and scientific] spirit” of the Progressive Era in pursuit of social and economic reform. Its most defining quality was its emphasis on the redemption that was socially constituted (what Social Gospelers Washington Gladden referred to as “social salvation”) rather than focused on the individual (Gamble 2003, 5, 29, 61; Evans 2017, 29–35; Leonard 2016, 12; Fine 1956, 170). Many Social Gospelers blended their religious vision with modern and secular ideas, being in the fields of economics, social science, and political science. Several held influential positions of institutional power (both inside and outside of higher education), and their concept of socially focused redemption brought them into conflict with the theoretical underpinnings of laissez-faire and limited governance.

In reality, these two streams were not completely distinct, and the Social Gospel movement had considerable overlap with the more secular German-educated academics, because many of the Social Gospelers themselves carried advanced degrees and were academics. Shailer Mathews, who spent a sabbatical studying under social scientists in Germany, acted as dean of the divinity school at the University of Chicago, where these new methodologies and ideas gestated (Smith 2021). Many more—such as Richard T. Ely (who studied in Heidelberg), John Commons, Edward Ross (who studied in Berlin), or John Marshall Barker—also carried PhDs or other advanced degrees. The membership of the American Economic Association, an organization founded in 1885 by progressive academics, including Ely and political economist Edwin Seligman, further demonstrated the cross-pollination in these two streams of progressive thought. In addition, Ely also created a “pathbreaking graduate seminar” in political science at Johns Hopkins University. Albion Small, who studied in Leipzig and Berlin, founded the first sociology department in the United States at the University of Chicago and served as president of Colby College (Leonard 2016, 12–14; Mehrotra 2013, 275; Dorrien 2001, 323).

Challenging American Political Culture

For the intellectuals in these two progressive streams, the challenges of modern society were too tall for an eighteenth-century political philosophy to handle. In the founding era and early republic, the philosophical conception of governance and jurisprudence rested on the notion of a “night watchman” state in which the legal system entrenched power in industry and was meant to act as a neutral arbiter that avoided taking sides between social classes or interest groups. This theory of limited governance, also called laissez-faire, restricted the functions of government to its “narrowest possible limits.” Throughout the nineteenth century, the most ardent proponents of laissez-faire were the Jeffersonian Republicans, the Jacksonian Democrats, and the Bourbon Democrats (Gish and Klinghard 2017, 186; Kohl 1991, 115–16;

Fawcett 2020, 196–97). In practice, the level to which the United States government intervened in the economic sphere ebbed and flowed. The expansion- and growth-minded government often went beyond the bounds advocated by the most ardent supporters of *laissez-faire* and promoted numerous private economic enterprises (Horwitz 1992, 15–63, 145–67; Fine 1956, vii, 4–19).

After the middle of the nineteenth century, American society increasingly industrialized and urbanized. Massive, seemingly inhuman forces had left many Americans feeling disoriented and dislocated, and the United States appeared to be, in the words of historian Robert Wiebe (1967, 12), “a society without a core.” Previously provincial towns like Denver and Kansas City were subjected to a relentless rush of people as a result of industrialization, and cities quickly became sites of intense competition for employment and precious little living space (Hofstadter 1955, 174; Boyer 1995, 189). Policies of *laissez-faire* and industrial capitalism had wrought inconceivable change over the course of the nineteenth century, leading to what Walter Weyl (1913, 1–2) called “boss-ridden cities,” “wretched slums,” “vice, crime, insanity, and degeneration,” and the accumulation of capital in the hands of a few.

In the face of these and other social and economic ills, a new philosophical conception challenged the older arrangements of law and the economy. “Scholar-activists” in higher education and churches conceived of a more active, responsive government to meet the challenges of modern, industrial society. Drawing on the late nineteenth century’s proclivity toward scientific advancement, these theorists assumed a Darwinist view of political life. Social phenomena and institutions, like biological species, were governed by evolutionary law, and reformers argued that the state was an organic, evolutionary, and historical process whose sphere of authority and responsibility grew along with its society. Whereas natural rights disciples maintained that individual rights were timeless and preexisted organized government, Progressive Era theorists instead characterized rights as historically contingent and only made possible by society. Among the state’s primary responsibilities were granting rights and liberties to its members.

In particular, progressive legal theorists sought to transform legal precedents surrounding the freedom of contract and the conception of private property. While the prominence of individual liberties, including private property, may have been important to the first groups of men to reach North America and its “uncivilized” peoples, as a society grows and matures through its industrialization phase, so too must the size and responsibilities of the state grow in order to meet the challenges of new circumstances (Ritchie 1895, 250, 286; Watson 2017, 75–77). As a society evolved, individual liberties would cede to social, economic, and civil liberties for the purposes of social expediency and progress.

Though the US government did not consistently adhere itself in practice to being a “natural rights republic” throughout the nineteenth century, the concept of negative liberty in an economic and social sense remained dominant in American political culture. In the face of the progressive challenges, limited governance received a robust defense from the court system, which remained remarkably “in the grip of laissez-faire” with respect to property rights and liberty of contract. Judges were a consistent “stumbling block” to social legislation through the end of the century (Fine 1956, 161–64). Such a fact was recognized by many progressives, who worried over how the American public venerated the theory of natural rights in constitutional doctrine. Even at the dawn of the new century, theorists lamented that natural rights and negative liberty were a “part of the national creed” in the United States (and at least “capable of mischief” in the United Kingdom) (Ritchie 1895, ix).

For these nineteenth- and early twentieth-century “scholar-activists,” the primary challenge to establishing a democracy based on socially constituted rights was overcoming the US Constitution. The eighteenth-century document tied American political culture to the philosophically fixed theories of limited governance and predated a modern American society that had been “metamorphosed by steam, electricity, and telegraph.” It was “the political wisdom of dead America” whose “greatest defect . . . [was] that it has survived.” These theorists protested that the Constitution’s structure and amendment process was deliberately slow, which made it an anachronistic impediment to the social and moral progress of modern society (Weyl 1913, 8–15). Though the Constitution recognized individual rights as its general principle, many scholars asserted these were not the same rights that America “should properly possess at the beginning of the twentieth century.” Private rights could not be brought “into conformity with modern conditions” under the Constitution’s “static” (rather than evolutionary) view of society (Goodnow 1911, 4–5; Strong 1914a, 215).

Exacerbating the “stationary” nature of the Constitution was the veneration that Americans had for the document. Progressive Era academics begrudgingly acknowledged that American political culture and the general populace still normatively associated the concepts of liberty and freedom with individual rights rather than social duties and that the Constitution’s eighteenth-century essence impeded their push toward social freedom (Goodnow 1916, 20; J. W. Burgess 1893, 88; Ritchie 1895, ix; Merriam 1915, 332–33). Progressives often described Americans’ attachment to the Constitution in religious or cultish terms. Herbert Croly (1915, 22, 45–51, 122) protested that there was a “superstitious worship of the Constitution” and a “systematic and insidious attempt . . . to possess American public opinion with a feeling of its peculiar sacred character.” This “rigid and

dogmatic element in the American political system," which included the "deification" of the "Fathers of the Republic" and the Constitution, needed to be broken in the name of progress.

Walter Lippmann (1913, 35, 162–63; 1914, 50) used similar imagery when he condemned the "pale god" of natural rights and called for "some necessary iconoclasm" to overturn the reverence to the outmoded philosophy of the Constitution. The exasperated progressive recoiled at the "grotesque career" that the word "liberty" had had. He smoldered at a report from the vice commission of Chicago, which recommended that addressing prostitution in the city adhere to constitutional remedies. Lippmann fired back: "To tell you at the top of the page that absolute annihilation of prostitution is the ultimate ideal and twenty lines further on that the method must be constitutional, is nothing less than an insult to the intelligence. Calf-worship was never more idolatrous than this." It was symptomatic of how other social (and economic) problems could not be mitigated by the community: Americans preferred the "coddling" of natural rights to facing social problems and were little more than "pilgrim[s] to an empty shrine" as they clung to a belief in the natural right to private property. Reconstituting liberty around the community rather than the individual required breaking the deeply rooted normative assumptions of the broader American population.

To replace the "natural rights republic," these theorists broadly conceived of a new "socialized democracy," in the words of Walter Weyl. Taken collectively, they saw it as a means to move from a "static" republic to a "dynamic or progressive" form of democracy that emphasized social aims rather than the individual, "anarchic" ones of the early nineteenth century. They proposed an active government that could act on behalf of "collective purposes" and emancipate Americans from "continued allegiance" to any written constitution or "permanent political principles." Many of the aims of this "socialized democracy" were economic in nature, but it held implications for social and moral ends as well. Through new progressive democracy, these theorists hoped to overturn the "monarchy of the Word" and "mythical social contract" and furnish it with powers reflective of evolving economic and social situations, including improving the health of its citizens as well as promoting the "general welfare" and common good (Goodnow 1911, 11; Croly 1915, 44–46, 153–54; Weyl 1913, 21–22, 153–65). A major obstacle to be overcome, of course, was the adherence of Americans to an individually focused conception of liberty. The ends of progressive, or socialized, democracy were dependent on reconceptualizing the word "liberty" in American political culture as something social and communitarian.

Positive Liberty

The American theorists owed a tremendous intellectual debt to British idealist Thomas Hill Green. Over the course of his career as a philosopher and lecturer, T. H. Green (1886, 350) dismissed the notion of “natural rights” as an impossibility by arguing that man was inherently a social creature with no prepolitical aspect. Because there was no prepolitical, atomistic individual, there were no rights or liberties that preexisted society, and man could not enter into a “social contract” to create a polity or protect these liberties in the first place. Society itself granted and safeguarded the rights of the members of its community. Green plainly stated, “No one . . . can have a right except (1) as a member of a society, and (2) of a society in which some common good is recognised by the members.” This argumentation became a core thrust of Progressive Era theorists, who argued that, since man was a social creature, there were “no artificial means for bringing him into a society.” This line of thinking rendered the “social contract” an untenable theory (Merriam 1915, 307). John J. W. Burgess (1893, 175–77) succinctly captured this sentiment when he argued that “the state is the source of individual liberty.”

In addition to influencing progressive jurisprudence on property and freedom of contract, one of Green’s chief intellectual legacies for the progressives was the concept of positive liberty as differentiated from natural (or negative) liberty. For T. H. Green (1888, 367–84), liberty did not mean “freedom from restraint or compulsion” but “a positive power or capacity of doing or enjoying something worth doing or enjoying.” In an advanced society, Green asserted, “the ideal of true freedom” was the “maximum of power for all members . . . to make the best of themselves.” Liberty, then, was not about autonomy and self-direction but viewing individuals as akin to units of political economy whose potential for the “common good” must be maximized. Another British idealist, Scotsman David George Ritchie, echoed Green’s reformulation of freedom in a treatise that was widely considered the definitive critique of “the alleged natural right of liberty” for the Progressive Era (Strong, Tolman, and Bliss 1906, 276; E. R. A. Seligman 1895, 70). “Real liberty,” Ritchie (1895, ix, 138–39) wrote, was “positive freedom” or the “opportunity for self-development” and “doing something which [is] worth doing.”

Yet this redefinition was not simply a critique of laissez-faire economics. T. H. Green (1888, 373–84) also presaged the arguments made by progressives in favor of moral laws to protect “positive freedom” and the good of the community: “Every injury to the health of the individual is . . . a public injury. It is an impediment to the general freedom . . . [and] our power . . . to make the best of ourselves.” Green targeted the alcohol trade, but his assertion that individual vice was “a wide-spreading social evil, of which society may . . . rid itself, to the infinite enhancement of the positive freedom enjoyed by its members” was applicable to more than the drink. Ultimately, nothing could rightly be considered a liberty if it was “an impediment to

social good.” One merely had to argue a private, individual action was “evil” or deleterious to the community to believe it warranted government intervention.

Green’s rejection of “social contract” and delineating of positive and individual rights found “an enormously receptive audience” among American academics and became the standard rhetoric of public discourse among American academics (Ritchie 1902, 130; Fried 1998, 41). By the early 1900s, Americans enthusiastically credited him with a pivotal role in justifying a future state that prioritized the rights of society over that of the individual (Follett 1918, 162–64). In John Dewey and James Tufts’s (1908, 6, 152–54) *Ethics*, for example, the authors build off the idealist’s challenge to the “social contract” and natural rights by maintaining that man could only exist “when in intrinsic relations to men” rather than being “non-social atoms.” Because individuals are inherently social, rights that existed in nature before an organized polity could not exist anywhere but “in the kingdom of mythological social zoology.” The logical assumption that flowed from this was that “there are no rights morally except such as express the will of a good *member of society*.” The same sentiment was echoed elsewhere. Charles H. Cooley (1902, 393) defined freedom as the “*opportunity for right development . . . in accordance with the progressive ideal*.” Walter Weyl (1913, 353) saw no conflict between a democracy and liberty, because in a “socialized democracy,” liberty meant “the right to do things which one should have the right to do.”

In his treatise the *Principles of Economics*, Columbia political economist Edwin E. R. Seligman (1905, 155, 163, 171–72, 628) reiterated Green’s theories and their implications for American economic and political liberty. Civilization and “social effort” were the “creators of liberty,” and therefore, society had the capacity to reject the “negative conception of liberty . . . [that had been] adopted by the average man” and instead view it from a social point of view, not an individual one. The excesses of the nineteenth century demonstrated that laissez-faire and the theory of natural rights were more of a detriment than a benefit. Now that modern society began to approach the concept of liberty with “fresh analysis,” Seligman argued, thinkers like Green had properly redefined it for the profit of democracy. True liberty was “compatible with social progress” and involved “the readiness of the individual to work for a common end,” whether that readiness came voluntarily or was “developed by persuasion or by force.” Individual actions that ignored “the best interests of the majority” were destructive to “real liberty” and “incompatible with the highest ideal of liberty, in the positive and social sense.”

Thus, the theory of natural rights fell out of favor among the most prominent public intellectuals in the country, who argued that social expedience and welfare were more important than philosophical principles. Then-president of Princeton University Woodrow Wilson considered the concept of

inalienable individual rights to be “nonsense,” and the editors of the *New Republic* (Croly, Weyl, and Lippmann) claimed that there could be no individual rights “against the community that made [the individual] and supports him” (Leonard 2016, 24–25). Charles Edward Merriam (1915, 307–13; 1920, 310–11) protested that the “Fathers” [of the Constitution] were only interested in the “philosophy of isolation” that had been “discredited and repudiated” by advances in political science. Because the state was the result of historical development rather than a social contract, Merriam reasoned, the state “makes liberty possible [and] determines what its limits shall be.” In his doctoral dissertation, a future president of Columbia College Chicago, George L. Scherger (1899, vii, 8–11, 267–68), considered the doctrine of natural rights “an exploded theory, no longer believed in by any scholar of note.” Instead, “public expediency determine[d] the measure of individual rights.” When liberty was “rightly understood” as positive liberty, there could be “no hostility between personal liberty and public expediency.”

Frank J. Goodnow (1914, 9–11, 21, 62–63) similarly assailed the “somewhat nebulous theory” of natural rights. The then-President of Johns Hopkins University argued that the social contract had “no historical justification” and, as shown by European thinkers and experiences, that “social expediency, rather than natural right, [should] determine the sphere of individual freedom of action,” as was recognized in Europe. Goodnow called for the “demands of social efficiency” to reshape American understandings of liberty. The message for his faculty and students was clear: “The American conception of government like the American conception of liberty has . . . to submit to modifications in the interest of social efficiency.” The accordance of “social expediency” dovetailed with the belief in a “socialized democracy,” in which the state would grow and adapt as an organism to the social and economic circumstances of its society. It was in this speech that Goodnow called on those with institutional power to shape the public opinion of Americans in favor of progressive ideals and public expediency over the tyranny of the Constitution.

Green’s conception of positive liberty was crucial for progressives in a nation where liberty had a long tradition associated with natural and individual rights. In higher education and in publications, academics sought aggressively to translate Green’s theoretical musings into language and rhetoric that might appeal to ordinary Americans. By repackaging socially constituted rights as freedoms or liberties, they were able to promote their theories in language that had long been prominent in American folkways. This “new idea of liberty,” cultivated in American universities, reached (partial) realization among social reformers on the ground and in various levels of government (Merriam 1915, 311). Across their publications, the sentiments carried striking similarities as they used their institutional positions to theorize, internalize, and disseminate these new conceptions of liberty.

A crucial aspect of this reformulation of liberty, and of the reformulation of the individual's relationship with society, was the understanding that the state's reach may extend as far as necessary to ensure positive, social liberty. As a part of historical development, the state's needs grew as the needs of society grew. A chief goal of a progressive or socialized democracy was to unmoor the state from a written constitution in order to more effectively promote the common social good. They sought to empower the state with a broad range of responsibilities and authority that included intervening in the private sphere and limiting “uncontrolled liberties” (Woolsey 1886, 1:1, 1:24, 1:195–98). Westel Woodbury Willoughby (1896, 126–27, 309; 1900, 222–28) similarly demonstrated the strong influences of Green and Ritchie by reinterpreting the state as an “omnipotent” force to protect “positive freedom,” because the state was the creator of rights. The state, further, has no responsibility to justify its infringements on the “natural freedom of the individual,” because such a freedom is “a myth and an impossibility.” John J. W. Burgess (1893, 175–77) described the “ultimate end” of the state as “the perfection of humanity . . . [and] universal command over individualism; the apotheosis of man.” The state, as the “ultimate sovereign,” marked out the limits of individual liberty and could “limit its scope” for the “highest welfare of society.”

As they made such arguments, even some prominent academics theorized that the state could legislate morality. Theodore Woolsey (1886, 422–37) argued influentially that government “may prohibit and punish acts regarded by the community as immoral, the evil of which extends beyond the individual,” including the sale of alcohol, prostitution, gambling, the “sale of obscene books and pictures,” and even unrestrained “luxury.” Walter Weyl (1913, 44–48) blamed “untrammelled individualism” on the frontier for creating the American appetite for gambling. “Every general increase of freedom,” according to Charles Cooley (1902, 403), was “accompanied by some degeneracy” and within the realm of state action. While moral control of communities was not unfamiliar terrain in the first half of the nineteenth century, this new wave differed in one crucial aspect. The theoretical justification of moral reform in the late nineteenth and early twentieth centuries relied on a scientific understanding of the historical development of society, not of purely religious motivations (though, to be sure, a significant swath of the reformers themselves maintained religious motives for challenging personal liberty). It was chiefly a social and economic argument rather than a spiritual one, even if some reformers then blended them together (Volk 2014, 37–39).

The attack on individualism was not limited to secular academics (though many were religious) but also reverberated among adherents of the Social Gospel inside and outside of higher education. These clergymen hailed the coming of a “social age” to supplant the “individualistic age” of eighteenth-century philosophers (Strong 1911, 171). Richard T. Ely (1894, 257–58,

269–70), a professor at the University of Wisconsin who studied in Heidelberg, rejected natural rights as “dogmatism in disguise,” instead asserting that the only “true rights” were those that could “justify their existence on the grounds that they promote human welfare.” Personal liberty, rather than being something absolute and innate to each human, was slowly granted by society, dependent on the state, and subject to limitations as the common welfare dictated. A 1910 article in *Christian Advocate* was indistinguishable from the arguments being made by progressive academics or T. H. Green when it argued that “true freedom means freedom to do right” (Fitzgerald 1906, 15).

Like their more secular counterparts, Social Gospellers were increasingly worried about the challenges of American industrialization and urbanization. While their motivations for social reform and ushering in a “social age” were grounded in Christian theology, they were also heavily influenced by secular sources: contemporary intellectual currents, social science, and scientific ideas. Their writings often echoed the secular rhetoric on the historical development of the state and socially constituted liberties, and many welcomed the use of secular institutions, including government, in order to improve the moral and social lives of Americans and make the world ready for the Kingdom of God (Quandt 1973, 391–407; Evans 2017, 29–35; Fine 1956, 181–88). Josiah Strong (1914b, 2–8), perhaps the most well-known leader of the Social Gospel movement, believed that the state could do good if it were made “our servant,” and he chided any who “refuse to invoke the power of government for reform.”

Drawing on the works of Walter Weyl and Woodrow Wilson, Boston University professor and Social Gospel advocate John Marshall Barker (1919, 206) asserted that, though the function of church and state may differ, their central purpose “should be one and the same” on moral and social issues. Moral law and “the rights and welfare of society” dictate that the rights of individuals be circumscribed, and when moral principle is involved, there should be “no limit to the functions of the State.” Shailer Mathews (1910, 133–35), dean of the divinity school at the University of Chicago, wished to see “the Christian spirit . . . allowed to express itself in preventative and punitive legislation.” James H. Ecob (1914, 97), writing in *The Gospel of the Kingdom*, congratulated his fellow reformers for no longer being “frightened by that ancient bogy—‘paternalism in government.’” He anticipated that the plea for liberty would no longer be a sufficient defense for those seeking to prevent prohibition, because individual liberty was “at last an uncrowned, dethroned king, with no one to do him reverence.”

Positive Liberty and Progressive Moral Reformers

Armed with this new rhetoric and philosophy, reformers depicted moral vices as deleterious to the community because freedom, rightly understood, meant being the best member of society. Their arguments discarded the “old

fetish” of liberty, individually considered (Crooker 1914, 190). When the notion of public and national health merged with the new conception of liberty as doing good for the community, the end result was a more broadly construed understanding of community welfare that cast personal vice as a public health hazard on par with an infectious disease. It was the legacy of reducing the population to units of political economy whose potential should be maximized rather than left to self-direction. The effect of a moral failing was not only ruinous to the physical health of the individual but also damaged the economic production of society and ruined national (and racial) vitality. As a result, these reformers frequently highlighted the economic consequences of moral vices. The vices of “social traitors” that sapped the capacity of the individual—such as alcohol, cigarettes, or sex work—were deleterious to national strength, blocked social progress, and therefore could not be tolerated (Gilman 1903, 312).

Many progressives linked the same individualistic impulse of laissez-faire and capitalist excesses to fraying the social fabric through atomistic behaviors and personal licentiousness such as drunkenness or divorce. Money could be gambled away. The capacity to work and be a productive citizen could be lost to drugs or drink. Energy might be sapped by a disease caught from partaking in the “social evil” of prostitution. It was not simply big businesses and corporate bosses that were disrupting the lives of their workers, but the moral vices of individuals themselves had negative economic effects. Thus, these socially deleterious actions warranted the attention of a government tasked to defend the common welfare. The end result of this philosophic shift and its adoption by reformers was to vastly expand police powers to bring government into the private lives of countless ordinary Americans for the purposes of regulating their moral lives.

Alcohol prohibition was by far the most concerted effort of activists of the Progressive Era. They considered alcohol and the saloon as particularly evil due to “all the licentiousness that follows in its train,” such as gambling and prostitution (Paulsson 1994, 72). Prohibition had found a home among activists since the early nineteenth century, though permanent enactment was elusive. Maine was the first state to outlaw alcohol in 1851, though the law was repealed just five years later (Okrent 2010, 10–12). But the redefinition of liberty as a social concept, which rejected the personal liberty to enjoy vice, was a crucial tool that separated antebellum and turn-of-the-century prohibitionists. Someone who partook in alcohol could not adhere to true freedom, reformers reasoned, because alcohol incapacitated the drinker and rendered him unable to “discharge his duties to . . . society” and violated the “inalienable rights of society” (Thompson 1914, 12).

The notion that intemperance was a violation of one’s duty to society, regularly framed in economic terms, was a powerful argument that was often repeated before congressional committees and other halls of government

(Beman 1917, 25, 31–92). Henry William Blair (1888, 338–49), a temperance senator from New Hampshire, argued forcefully over several decades for prohibition, believing that a vice that “injures the bodies and souls of its members” could be banished because it “unfits the man for the performance of the duties which he owes to society at large.” When the Minnesota Supreme Court addressed the constitutionality of prohibition in *Leavitt v. City of Morris* in 1908, it favorably compared the state’s power to reclaim submerged land to make it “fruitful” with doing the same with the drunkard to “save . . . society from the dire consequences of his pernicious habit.” By directing him toward liberty, properly conceived, a man could be reclaimed and made “fruitful” for society by the state (105 Minn. 175–76 (1909)).

Reformers who addressed “the drink question” often dispensed with the notion that partaking in alcohol was within the purview of individual liberty. Drinking violated “*true liberty*, where one person is free to do what he ought to do” for social and public welfare—a clear echo of the rhetorical shift happening among German-influenced academics and Social Gospellers. Hence, it was essential for individual liberty, or “*the false liberty*” that had been “misunderstood, misapplied, and misused,” to yield to community welfare (Nordquist 1917, 52–55). The liquor industry and personal liberty was “an interference with the liberty of society,” and once the liquor business was brought to heel, “true liberty” would greatly expand (*American Issue* 1912, 7). When the editors of *Liberty: A Magazine of Religious Freedom* maintained that prohibition did not invade upon “proper” liberty, it was because the state had the right to protect its community members (*Liberty* 1918, 39). As one prohibition crusader put it, “the only true realization and complete consummation of human freedom” was total abstinence, because “we are at our best [for the community] only when sober” (Crooker 1914, 188–89). No man had the liberty to “make himself an unfit member of society,” because that would interfere with the freedom and “*welfare of society as a whole*” (Stelzle 1918, 72–84).

The welfare of the community naturally extended into the realm of physical public health. It was not just alcohol that had deleterious effects on society and threatened the individual’s capacity to contribute to the nation. Reformers also targeted prostitution, which was blamed for the spread of venereal disease and moral corruption of society, and argued in favor of total prohibition of “the social evil” (prostitution) and rejected the “liberty to wrong” against society (W. Burgess 1914, 8–9). In his extensive report to the US Senate on “national vitality,” Irving Fisher (1910, 625) wrote that “social diseases” were “one of the gravest of the menaces to national efficiency.” When he later argued in favor of compulsory health insurance in the early twentieth century, Fisher (1917, 8) condemned the “slogan of liberty as a subterfuge” and pushed for the “compelling hand of the law” to help society secure its liberty from “the evils of crime, vice . . . and disease.”

In similarly assailing “the social evil,” Jane Addams (1912, 206) lamented that “the great principle of liberty has been translated not only into the unlovely doctrine of commercial competition” but also was a “high-sounding justification” to excuse immoralities such as prostitution, which debased the community as a whole. She hailed the recent intellectual trends away from individual liberty and toward social control as promising on both the economic as well as the moral front. “For our moral progress,” Addams cheered, “the specious and illegitimate theories of freedom are being challenged, and a new form of social control is slowly establishing itself on the principle . . . that the state has a responsibility for . . . the health and welfare of its own members.” As a reformer, Addams envisioned a democracy that reflected a new social and moral conscience governed by communal need and public opinion, where individual notions of self were “restrained by the demonstrable needs of society” even (or perhaps especially) in the moral sphere.

Similarly, reformers concluded that citizens could have no genuine “moral . . . or personal liberty” when using tobacco. It not only poisoned the air of public spaces but instilled habits ruinous to “body and soul”—socially as well as individually. The “wheel of Progress” and advancement of society could be slowed or blunted from the use of narcotics and other enslaving vices. Only through state coercion and prohibition of anything deleterious to community health, argued Dr. Charles Elihu Slocum (1909, 58–70), could society ensure that it made “proper citizens” who were “not blighted in body or mind by any narcotic.” Irving Fisher (1910, 627–28), who hoped that the “compelling hand of the law” could secure socially constituted liberty against vice and disease, also condemned the “undue fatigue” from alcohol and tobacco that was harming national vitality (“in the struggle for race supremacy”).

But some reformers went even further in identifying threats posed to the social liberty of the community. “American individualism” had fostered the proliferation of gambling, obscene films, and divorce that weakened the community (Hagar 1905, 168). Appearing before a committee in the House of Representatives about the creation of a federal motion picture commission to censor films, William Sheafe Chase (president of the New York Civic League) built on progressive intellectuals when he testified that crimes (including offensive films) were not justifiable under the “mistaken conception of liberty.” Rather, liberty was “the power to do what is for the best welfare of the whole community, and to work out God’s will in the world.”⁴ Many Progressives wanted to treat indecency as a literal public health crisis. One reformer compared the spread of the “indelicacies of the average motion picture” to a pestilence, while Josiah Strong compared

⁴ *Motion Picture Commission: Hearings before the Committee on Education, House of Representatives, Sixty-Third Congress, Second Session, on Bills to Establish a Federal Motion Picture Commission*, 63rd Cong. 21 (1914) (statement of William Sheafe Chase, Rector, Christ Church, Bedford Avenue, Brooklyn, N.Y.).

obscene materials in need of censorship to “vermin of an Egyptian plague.” The Chicago Motion Picture Commission concluded that materials that affected the health and morals of the community “must be controlled through the police power of the State” (Chase 1922, 18–19; Strong 1911, 106–7).

Similarly, reformers blamed anxiety over rising divorce rates among Americans on “growing appreciation of individual rights” (Carson 1915, 160–61; Lichtenberger 1909, 181–89). While some theorists, such as Cooley and Weyl, recognized that the increase of women’s freedom was a crucial part of a socialized democracy, Cooley (1902, 403) also worried that this “rapid increase of freedom” among women was accompanied by “degeneracy,” including “the increase of divorce and spoiled children.” Divorce appeared to be one of the ultimate examples of the “extreme individualism of the age,” because the freer practice of love and divorce directly challenged the family, which was elevated as a core building block of society. It was the love of self “above social welfare and social duties” (Mills and Ruebush 1900, 44–45). Several reformers suggested remedies from the state and that conditioning citizens “to work for a common interest” was within the sphere of government—like roads, bridges, and public buildings. It was critical, in their view, that people be made to “understand and act” for the welfare, which would involve national divorce laws (Hagar 1905, 168–74, 186; Mills and Ruebush 1900, 44–46). A key purpose of legislation, in the words of a reformer and professor at the University of Missouri, was to “set moral standards,” reduce the grounds for a divorce, and even prohibit remarriage after a divorce “for a reasonable time” to best protect society rather than respect selfish freedom (*Fortieth Annual Report of the Missouri State Board of Agriculture: A Record of the Work for the Year 1907* 1908, 449–51).

Conclusion

More than anything else, this concept of “true freedom” as something socially constituted rather than atomistic legitimized the barrage of moral reform and legislative measures that were unleashed nationwide in the early twentieth century. Intellectuals and reformers tied an individual’s moral life to the economic vitality of the community and nation and treated any threat, real or imagined, with hostility. This framework of governance was hostile to the theories of individual rights and armed itself with the cudgel of an energetic, expanded federal government in order to help the members of its society become self-actualized. Despite the mixed success of progressives in overcoming political and judicial challenges, the theoretical shift away from natural rights toward the state, with the power to intervene in the private moral lives of individuals on behalf of community welfare, has left a lasting legacy in the American political landscape and become one of the primary fault lines of American politics.

This fault line remains a part of American politics today. In late 2020 and early 2021, a virtual meeting of “progressive citizens,” primarily scholars, gathered virtually in order to consider the question of constitutional reform for the journal *Democracy: A Journal of Ideas*. To announce the purpose of this project, the committee also released a “Second Declaration,” maintaining that American society had been subjected to “a long train of abuses . . . grounded in veneration of Parchment Barriers.” The current Constitution of the United States, “proven to be virtually unamendable,” had “stifled reform” and carried all of the “hallmarks of a failed state.” The committee wanted to draft a new, progressive constitution, the “Democracy Constitution,” to ensure a government that truly represented its people and promote “human, political, social, and environmental rights.”

After a brief preamble, the Democracy Constitution begins with a bill of rights akin to “a Bernie Sanders party platform.” It declares that “all human beings are social and political beings,” and puts forth eleven “sections” (rather than amendments). The Democracy Constitution’s bill of rights explicitly allowed for sections 2 through 11, which include “privacy and family life,” “freedom of religion, press, [and] assembly,” “due process,” and a writ of habeas corpus, to be “subject . . . to reasonable limitations . . . necessary in a democratic society and compelled by the public interest.” The 1791 Bill of Rights, which the 2021 delegates maintained was little more “than a natural rights manifesto,” made no such provisions to allow for the limitations of rights for the ambiguous “public interest” (*Democracy* 2021b; Levinson 2021; Tomasky 2021; Aron et al. 2021; *Democracy* 2021a).

The Democracy Constitution inherited a philosophical and intellectual tradition that stretches back to Progressive Era theorists. Sanford Levinson’s 2021 assertion that the Constitution was a “relic of the eighteenth century” that prevented any meaningful reform carried echoes of Walter Weyl’s (1913, 12–14) screech that the Constitution “is the political wisdom of dead America,” whose frustrating amendment process came “with almost insuperable difficulties.” The Second Declaration’s excoriation of the “veneration of Parchment Barriers” was not entirely unlike when, in 1909, Herbert Croly (1915, 46–51, 122) denounced the American public’s “superstitious worship” and “deification” of the Constitution and its framers. The Democracy Constitution is a stark reminder that the modern contest between individual rights and social obligations, rooted in the Progressive Era contest over what liberty was, remains a crucial fault line of American political culture.

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