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# Natural Rights Individualism and Progressivism in American Political Philosophy

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*EDITED BY*

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POLITICAL PHILOSOPHY

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## INTRODUCTION

In 1776, the American Declaration of Independence appealed to "the Laws of Nature and of Nature's God" and affirmed "these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness . . . ." In 1935, John Dewey, professor emeritus of philosophy at Columbia University, declared, "Natural rights and natural liberties exist only in the kingdom of mythological social zoology."<sup>1</sup> These opposing pronouncements on natural rights represent two separate and antithetical American political traditions: natural rights individualism, the original Lockean tradition of the Founding; and Progressivism, the collectivist reaction to individualism which arose initially in the newly established universities in the decades following the Civil War. The tensions between these two manifestly disparate traditions in the country's political and legal philosophy have set the stage for most of the principal disputes in its political, constitutional, and economic history over the past century and a quarter.

The essays in this collection investigate in turn these two political traditions and their critical interactions. The first series of essays deals with the development of natural rights individualism, some examining its origins in the thought of the seminal political theorist, John Locke, and the influential constitutional theorist, Montesquieu, others the impact of their theories on intellectual leaders during the American Revolution and the Founding era, and still others the culmination of this tradition in the writings of nineteenth-century individualists such as Lysander Spooner. The second series of essays focuses on the Progressive repudiation of natural rights individualism and its far-reaching effect on American politics and public policy. Two essays explain why theorists such as Dewey objected to natural rights and consider how Progressivism led to a new view of the nature and role of government. Other essays consider the import of Progressivism for policy issues such as race relations and property rights. The concluding two essays offer contrasting assessments of the relationship of Progressivism to the Lockean tradition of the Founding in the course of exploring the pivotal role of Theodore Roosevelt and Woodrow Wilson—who were Progressive theorists as well as United States Presidents—in the transformation of American politics and jurisprudence during the twentieth century.

The collection opens with Thomas G. West's essay "The Ground of Locke's Law of Nature." According to West, while it is clear that the

<sup>1</sup> John Dewey, *Liberalism and Social Action* (New York: G. P. Putnam's Sons, 1935), 15.

natural law political philosophy of John Locke was the original basis of America's constitutional democracy, it is unclear what the precise character of that foundation is; furthermore, it is widely thought that whatever the nature of the foundation, it is in any event inadequate. West responds to the prevalent critical stance toward Locke among scholars by arguing that, when properly understood in the context of multiple Lockean written works and with an appreciation of Locke's unique methodology, Locke's foundation is more plausible than is commonly believed. As a matter of methodology, Locke weaves different strands of argument on the law of nature through his different books to create a complex and complete argument; also, West contends, Locke deploys implausible arguments intentionally in order to capture the minds of readers who might be disposed toward such arguments. One important element in the larger argument of Locke's political philosophy concerns the equality of human beings. A correct understanding of Locke's position on the equality of individuals does not take him to claim that all individuals are equal in the sense that they have equal talents or equal ability in the state of nature to comprehend the law of nature that they are under, but rather affirms the more limited interpretation that individuals are equally able to access the law of nature and act in accordance with it when they are in civil society where the rule of law provides for the promulgation and enforcement of such law. West concludes that Locke's views on the law of nature are not based on divine revelation, a juridical doctrine of individual rights, self-ownership, or self-preservation, or on reasoning from premises that are not rooted in the empirical world. He argues that the true ground of Locke's view resides in his understanding of the conditions of human happiness.

In "Montesquieu's Natural Rights Constitutionalism," Paul A. Rahe considers the role of the political thought of Montesquieu in the Founding principles and documents of the United States. Rahe suggests ways in which Montesquieu's philosophy of natural law compares with the natural law philosophies of John Locke and Thomas Hobbes and explores Montesquieu's criteria of good government. Laws are to be assessed in part, Montesquieu argues, in terms of their goodness of fit with the dispositions and nature of the people subject to them as well as the nature of the world such people live in and their reasons for establishing government in the first place. Furthermore, those governments which offend natural rights, for example by failing to allow for the exercise of self-defense or by allowing slavery—both of which Montesquieu condemns as an affront to principles of equality and self-preservation—are assessed negatively by Montesquieu. Rahe describes Montesquieu as a thinker whose views of natural right are motivated by an aversion to despotism and a love of liberty akin to the thought of John Locke and embraced by the American Founders.

The third essay in the volume, "The Idea of Rights in the Imperial Crisis" by Craig Yirush, examines the idea of rights advanced by the Amer-

ican colonists in the imperial crisis from 1763–1776. Yirush argues that the colonists viewed all English subjects as having the same fundamental rights as individuals everywhere in the British empire. These individual rights to life, liberty, and property were in turn guaranteed by the colonists' right to consent to their taxation. The American colonists insisted that these rights could only be protected by colonial legislatures because they were not represented in the British Parliament. This in turn meant that the colonists required the ability to govern themselves in all internal matters, a claim which ultimately led to the idea that each colony should be a "free state," independent of king and parliament. While the colonists began by defending these rights on the basis of their legal inheritance as Englishmen, they gradually moved toward a more radical claim: that these rights were theirs based on the law of nature, and thus open to all men in principle. This move to natural rights was based in part on the colonists' claim that they had migrated to America, a place inhabited by indigenous peoples whom they viewed as "savages" and thus outside of the jurisdiction of the English common law. Yirush further explains, however, that the radical move to natural rights was in tension with the loose confederation which emerged in the years after 1776 in which each colony was a quasi-independent republican state and in which the rights of minorities—Native Americans, African Americans, religious dissenters, and Loyalists—could not be effectively protected by the federal government.

The nature of the moral theory of the American Revolutionary and Founding periods is also the theme of C. Bradley Thompson's contribution to the collection. "On Declaring the Moral Laws and Rights of Nature" examines this moral theory by focusing on two key concepts: moral laws and moral rights of nature. In order to illuminate these concepts, Thompson considers a series of questions important from the perspective of America's Revolutionary generation: What are the moral laws and rights of nature? What is the difference between a law and a right of nature? Are nature's moral laws and rights descriptive, prescriptive, or both? What are the attributes and sanctions of nature's laws and rights? And finally, how did America's Founding Fathers use the laws and rights of nature to establish their political institutions? In order to answer these questions, Thompson focuses on the American Declaration of Independence, the core text universally recognized as a symbol of America's revolutionary mind and moral theory.

In the fifth essay in the volume, "Lysander Spooner: Nineteenth-Century America's Last Natural Rights Theorist," Eric Mack articulates the ideas of Lysander Spooner, a thinker he identifies as the last powerful advocate of rights in nineteenth-century America. According to Mack, in addition to Spooner's compelling antebellum attacks on slavery, he developed forceful arguments on behalf of a strongly individualistic conception of natural law and private property rights and against coercive moralism, coercive paternalism, and state authority and legis-

lation. The essay focuses on the theoretical core of Spooner's position which is his doctrine of natural rights. Mack situates Spooner within the libertarian tradition in political thought by examining the theories of Thomas Hodgskin and the early Herbert Spencer. Mack offers support for the contention that Spooner's views are robustly Lockean by showing that they are significantly more Lockean than the views of either Hodgskin or the early Spencer.

Natural rights had been attacked before the Progressive era by the racial science of ethnology, advocates of philosophy of history, and followers of Charles Darwin, but the Progressives launched the most thoroughgoing and systematic critique in American history. In the sixth essay of the volume, "Progressivism and the Doctrine of Natural Rights," James W. Ceaser discusses the Progressives' critique of the Founders' doctrine of natural right. The leading thinker conducting the critique of natural rights was American philosopher John Dewey. Dewey deployed five primary criticisms. Ceaser examines these criticisms in turn. First, he explains, Dewey argued that America had entered an entirely new age of social and economic organization requiring a political theory different from what may have been required at the time of the American Founding. This fact provided reason to abandon thinking in terms of natural rights in favor of more progressive thinking. According to Dewey's second argument, all theoretical claims of truth, such as claims about natural rights, are merely relative to the age in which they emerge and thrive. Third, Dewey, in a Marxian move, argued that theoretical ideas serve the aims of different classes, with different rights, problematically representing the political and economic interests of the emerging bourgeoisie. Dewey also, in his fourth primary argument, criticized the natural rights tradition on the grounds that natural rights encouraged diminished goals for human beings, emphasizing the fulfillment of individual self-interest rather than a higher ideal of human development and social cooperation. Lastly, Dewey charged that any metaphysical claim in politics, such as those made in the natural rights tradition, is undemocratic by virtue of ascribing a standard of right that is prior to and that overrules a decision of a democratic majority. Ceaser concludes his essay by considering the influence of Dewey's Progressive critique on the modern liberal heirs of the Progressives.

The collection continues with an essay by Eldon J. Eisenach, titled "Some Second Thoughts on Progressivism and Rights." Eisenach describes the ways in which Progressive intellectuals attacked individualist understandings of rights and mechanistic understandings of constitutional government during the Progressive movement. He examines the ways in which Progressivism differed from New Deal liberalism, especially regarding "big government." Progressive understandings of politics rest both on a distinction between "governments" and "states," derived from Alexis de Tocqueville, and on Abraham Lincoln's understandings of popular sovereignty. The distinction between governments and states is reinforced

by Progressives' stress on an articulate and coherent public opinion that would provide democratic legitimacy to all forms of governing institutions, both public and private, that serve the common good. The civil war experience was the Progressives' model, one which they first thought would be reincarnated in the preparation for World War I. Eisenach explains that given both public and private assaults on free speech, Progressives in the 1920s often led the movement for protections of civil liberties and for new respect paid to the First Amendment. The essay concludes by examining the continuities and discontinuities of Progressive political thought in contemporary political discourse.

In her contribution to the collection, Tiffany Jones Miller explains that scholarly discussions of the turn-of-the-century Progressive movement frequently ignore or give only cursory attention to the Progressives' racial views and policies. In "Freedom, History, and Race in Progressive Thought," Miller suggests that those scholars who do pay greater attention to these features of Progressive thought nonetheless tend to dismiss them as being somehow paradoxical or inconsistent with what they regard as the movement's core, "democratic" principles. Miller, consequently, aims to explain the origin and nature of the movement's core principles, and to show that the reformers' racial views and policies, far from being inconsistent with these principles, were in fact their natural outgrowth. The Progressives' support for the colonial subjugation of the Filipinos, Miller argues, as well as the disfranchisement and segregation of American blacks, reflects a critical transformation in the character or content of public policy. This transformation was necessitated by the Progressives' rejection of the individualism of the American Founding in favor of a new conception of "individualism" chiefly inspired by early-nineteenth-century German idealism.

The collection continues with "The Progressive Era Assault on Individualism and Property Rights," by James W. Ely, Jr. Ely's essay takes up the examination, also undertaken in the previous three essays, of the far-reaching attack on individualism and property rights which characterized the Progressive era of the early twentieth century. Scholars and political figures associated with Progressivism, Ely explains, not only criticized the individualist values of classical liberalism, but also rejected the traditional notion of limited government espoused by the Framers of the Constitution. They expressed great confidence in regulatory agencies, staffed by experts, to effectuate policy. Such Progressives paved the way for the later triumph of statist ideology with the New Deal in the 1930s. Ely traces the source of the Progressives antipathy to individual rights and explains that leading Progressive intellectuals stressed the perceived need for increased governmental power and governance by an educated elite. Furthermore, Ely argues, Progressivism had an impact on constitutional law giving rise to "sociological jurisprudence" and its concomitant skepticism about courts and emphasis on judicial deference to legislative

judgments. According to Ely, the Progressives looked with disfavor on any constitutional doctrine which curtailed government authority. Ely concludes that the Progressive movement left a lasting legacy of diminished regard for individualism and a jurisprudence which stripped property of strong constitutional protection.

In his essay, "Saving Locke from Marx: The Labor Theory of Value in Intellectual Property Theory," Adam Mossoff notes that while the labor theory of value is fundamental to John Locke's justification of property rights, critics have charged that it fails to justify intellectual property rights. The source of the difficulty, these critics contend, is that the labor theory of value cannot justify a right to the full economic value in an invention or book because the creator's physical labor contributes only partly to the market value of these products since market value is, at least in part, socially created. Mossoff charges that philosophers Robert Nozick and G. A. Cohen, among others, illicitly dismiss the labor theory of value as illogical or incoherent because these philosophers redefine Locke's concepts of labor and value in strictly physical and economic terms—terms which are more akin to Karl Marx's labor theory of economic value. Yet the principle of interpretive charity, Mossoff argues, demands reconsideration of Locke's theory in its own terms and in the full context of his natural law ethical theory, especially in considering how Locke himself justifies intellectual property rights. Mossoff thus examines Locke's theory of property, adopting an approach that integrates Locke's arguments about labor and natural law from throughout his various works. Locke's concept of labor, in this context, means "production," which has intellectual as well as physical characteristics, Mossoff contends, and his concept of value denotes that which is useful in the flourishing life of a rational being, which is a conception of the good that is more robust than mere physical status or economic wealth. This interpretation, Mossoff concludes, explains why he says that inventions exemplify his labor-based property theory and why he argues for property rights in written work.

In "Roosevelt, Wilson, and the Democratic Theory of National Progressivism," Ronald J. Pestritto explains that the American Progressive movement argued both for a democratization of the political process and for deference to expert administrators. Relying on the work of Theodore Roosevelt and Woodrow Wilson, Pestritto explores the evident tension in simultaneously advocating democratization and deference to expertise, and makes some preliminary suggestions regarding how the tension might be reconciled—at least in the eyes of the adherents of Progressivism—into a single democratic theory. Pestritto notes that both Roosevelt and Wilson criticize the principles of the original Constitution for being insufficiently democratic and overly suspicious of the popular will and both want to make public opinion a more direct force in national politics. At the same time, however, both are also suspicious of politics and its potential for corruption by "special interests," and thus both look for ways of empow-

ering expert administrative agencies and insulating them from political influence. Pestritto argues that Wilson seems to understand the potential conflict between these two aims more than Roosevelt does, but both Roosevelt and Wilson, Pestritto relates, look to a popularized presidency as a means of attempting to reconcile consent and expertise.

The collection concludes with "On the Separation of Powers: Liberal and Progressive Constitutionalism," by Michael Zuckert. In this essay, Zuckert identifies one of the primary targets of Progressive constitutional criticism as the system of separation of powers. The American Founders, motivated by a concern to avoid the concentration of political power and abuses that might ensue from such concentration, advocated separation of legislative, executive, and judicial functions and accompanying powers. Woodrow Wilson, Zuckert notes, was especially critical of this feature of American constitutionalism, and wanted to replace the separation of powers with the conceptual and institutional distinction, informed by foreign administrative techniques, between politics and administration. Wilson argued that the separation of powers failed, in fact, truly to disperse power and claimed that there would always be a center of power, and in the American case this center was Congress. While Wilson rejected the notion of the separation of powers and disagreed otherwise with the Founding principles, he did hold some principles in common with the Founding philosophy, notably a commitment to individualism. Zuckert argues that an examination of the doctrine of separation of powers in the work of John Locke demonstrates that Wilson had an extremely truncated and generally inaccurate view of the point and intended operation of the separation of powers, and that it was this fact, not principled rejection of the philosophy of the American Founding, that motivated his criticisms of the separation of powers.

Natural rights individualism and Progressivism represent a fundamental dichotomy in American political ideology. The essays in this volume offer valuable insights concerning the leading advocates of these two traditions and concerning the profound and far-reaching impact of their ideas on political theory and practice.

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# THE GROUND OF LOCKE'S LAW OF NATURE

BY THOMAS G. WEST

## I. INTRODUCTION

What is the foundation of John Locke's political philosophy? This question is controversial among scholars, to be sure, but it is also relevant for political life today. America's constitutional democracy was originally based on Locke's political teaching, but few would say that his teaching is sufficient to sustain a sound constitutional democracy. Conservatives such as Daniel Mahoney argue that the "principle" of American democracy is "the [Lockean] liberty and equality of human beings," a principle that has become in our time "an unreflective dogma eroding the traditions, authoritative institutions, and spiritual presuppositions that allow human beings to live free, civilized, and decent lives."<sup>1</sup> Liberals follow the claim of Progressive-Era intellectuals such as Herbert Croly, who asserts that the "Jeffersonian principle" of individual rights has caused "the inequalities of power generated in the American economic and political system."<sup>2</sup> Scholars and public intellectuals of all persuasions are therefore constantly on the lookout for some non-Lockean doctrine as an adequate ground for political life in the twenty-first century. My essay is meant to revive a willingness to examine Locke as if he might be right. I do not commit the absurdity of claiming to have demonstrated the truth of Locke's teaching. But I will show that his theory is much more plausible than we have been led to believe.

My contention here is that the foundation of Locke's moral and political theory has long been misunderstood. It provides a far more satisfactory basis for political and moral life than has been acknowledged. Before we can consider the question of whether Lockean political thought is worthy of being revived, however, we need to understand what his view is. The present essay is meant to show that Locke's teaching on the law of nature is not based on divine revelation,<sup>3</sup> or a juridical doctrine of individual

<sup>1</sup> Daniel J. Mahoney, *The Conservative Foundations of the Liberal Order: Defending Democracy against Its Modern Enemies and Immoderate Friends* (Wilmington, DE: ISI Books, 2010), xiii, 36.

<sup>2</sup> Herbert Croly, *The Promise of American Life* (1909) (Boston: Northeastern University Press, 1989), 190.

<sup>3</sup> This is the position of Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (Cambridge: Cambridge University Press, 2002), 13. Waldron doubts that "one can even make sense of a position like Locke's . . . [on] basic equality . . . apart from the specifically biblical and Christian teaching that he associated with it." Later in the chapter I will show that Waldron is partly correct, although not because of Locke's Christian commitments.