The Lost Promise of Progressivism

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CONCLUSION

Only recently has twentieth-century American liberalism come to understand that there is no necessary relationship between the expansion of the federal government and the extension of justice and freedom. Even the earlier move in liberal institutional identity away from executive and administrative power and toward the federal courts did not make this clear because the extension of rights was also their nationalization, and thus an expansion of the federal government. Although no reexamination of political and social theory written one hundred years ago will solve our present perplexities, I suggest that we can take some steps toward their clarification by reflecting on three separate and contradictory ways in which the Progressive vision did appear victorious. But because each of these apparent successes was at odds with itself and with one another, each success was also a subversion. The most obvious proof of this is the fact that we now have so many plausible but contradictory understandings of Progressivism. The more poignant proof is an intellectual legacy of liberalism that now perplexes more than it guides.

WILSONIAN PROGRESSIVISM

The first success-subversion was the victory of Wilson and the Democratic party under the auspices of a national legislative program bearing many Progressive marks. This populist-peripheral appropriation created a radical asymmetry between the production and use of political ideas—and worse, used ideas intended to be transformative largely to serve an ad hoc coalition of separate standing interests. Northern urban middle-class academics and intellectuals authored new public doctrines that undermined rights-based and laissez-faire values and laid the basis for more active governmental intervention. But many of the practical fruits of this theoretical victory at the national level were harvested by the South and the economic and cultural periphery. They did
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this by using the newly legitimated and expanded resources of the federal government to subsidize and preserve the values and ways of life that federalism and other rights-based constitutional values had previously protected. Until the business recession of 1913 and the beginning of war preparedness the national government under Wilson might well have itself become the equivalent of an ever-expanding patronage political party, using the productive resources of the industrial core to subsidize its peripheral clientele. This same contradiction can be put in party-political terms. The theoretical battles were fought and won by nationally oriented northern intellectuals and their urban, professional, middle-class followers, all with strong historic ties to the Republican party; most of the congressional support for what is considered a progressive agenda came from congressional Democrats in the South and Republicans from the Great Plains. This was true during both the Theodore Roosevelt and the Wilson presidencies [Buenker, 1978; Sanders, 1990; Sarasohn, 1989].

This party-political contradiction between "theory" and "practice" holds also in ethnocultural terms. Both the critique of the old regime and the legitimation of the emerging one was the product of the spiritual descendants of Puritanism and New England; many of the governmental policies and practices subsequently instituted were a creation of the South and other peripheral regions increasingly in alliance with immigrant and urban labor in the northern industrial cities. With the partial exception of some sectors of labor, no member of this coalition either represented or embodied new values, new ideas, new science, or new institutions. All were reactive against the new; all were seeking to defend older ways of life against the economic and cultural intrusions of the dynamic core. That the means necessary to protect sectional, local, and peripheral values (for example, the income tax, the federal reserve system) would themselves become engines of centralization and modernization was an open secret to Progressives but not known by the localized and disparate constituents of the legislators who voted for those reforms. They were told that their "rights" were being restored. The New Deal was an expanded version of this same story, albeit with sizable cosmopolitan, urban, and intellectual adjuncts, especially from the elite law schools.

MANAGERIAL PROGRESSIVISM

A second success-subversion of the Progressive vision was in the managerial and organizational revolution that was completed between World War I and the Great Depression. Its legitimacy derived not from
the Constitution or political democracy and electoral victory, but from market success and the authority of expertise and professionalism. Although the institutional basis for this revolution was laid much earlier (national universities, professional associations, the modern business corporation, national retailing and advertising, government bureaucracy), the new institutions flourished as never before during this period even as the party-political system was being demobilized and as voter participation was falling to pre-Jacksonian-era levels. Whether one looks at university growth and the professionalization of academic disciplines, the rationalization of trade policy and business regulation, the reorganization of the federal bureaucracy, the growth of "welfare capitalism," or the position of women, the life-world of the urban professional middle class and the modern business corporation increasingly dominated the society and its culture in the 1920s. With the exception of large and powerful industrial unions—a legislative product of the New Deal—almost the entire apparatus of what later came to be called "the liberal establishment" was solidly in place by the beginning of the Great Depression. This establishment included those parts of the national government with greatly enhanced administrative capacity and a growing corps of talented people whose ends in life were inseparable from those of the state. With the exception of some firmly established labor unions (for example, railroads), however, this 1920s proto-establishment comprised a very different universe of people from those who constituted either Wilson's electoral coalition earlier or Franklin Roosevelt's, later.

This second success-subversion of Progressivism differed from the Wilsonian one in other important ways as well. Most important, it existed almost entirely outside the Constitution as that document was traditionally understood. *This is precisely what guaranteed its symmetry between theory and practice.* Now seen as the victory of Progressivism in the ideal of "corporate liberalism," its success seems firmly anchored on a single foundation uniting theory and practice, supporters and beneficiaries, culture and power. Organizationally and culturally, it represented the future. Constitutionally, however, it was a highly suspect world of illegitimate "private governments." But this did not matter, so this political culture held, because the Constitution, like its expression in the rights language of the courts, was archaic and largely irrelevant anyway.

Firmly anchored in the explanatory world of the Progressive political economists and sociologists, the success of the managerial and organizational revolution points to the ways in which the whole matrix of "modernizing" institutions and practices created in the three decades preceding World War I came to achieve dominance and legitimacy in
the decades following. And such was the depth of this dominance that even the New Deal read as the "revenge of the periphery" left all of these institutions as strong at the end of its wave of reforms as they were at the beginning. Put differently, the "populist" or electoral side of national reform was resource-dependent on the productivity, wealth, and talents of the organizational-managerial side of national Progressivism. In Croly's prophetic terms, Jeffersonian ends were hostage to Hamiltonian means, both materially and intellectually. The problem was that constitutional legitimacy (that is, ideas of individual rights) belonged to the former while effective national resources were controlled by the latter. This explains, perhaps, the obsessive concern of the early Progressives with public opinion, with national consensus and community, with the need for a pervasive and nationalizing "Religion of America." Without that link, Progressivism would lack coherence; neither the Wilsonian nor the corporate-liberal side retained that link. Standing alone, neither was both democratic and national.

MODERN LIBERALISM AS
CONSTITUTIONAL PROGRESSIVISM

Modern liberalism can be read as the conflicted child of this Progressive couple, this marriage of two success-subversions. But if this is so, the first question to ask is whether the parents were ever legally married. The second is how they were able to produce such a viable offspring. The identity of each parent is constituted by the difference from the "other," making of their marriage some postmodernist parody, an internecine struggle for power. Wilsonian Progressivism in its party-legislative and sectionalist successes was rigidly constitutional in the old and juridical-rights sense. But so, too, was the legalism and rights-obsessions of the federal courts, which often subverted the governmental means required to restore what were putatively lost rights. Wilson, the Democratic party, and the Supreme Court spoke the same nineteenth-century political language.

In contrast, the managerial or "corporate liberal" parent consisted of large and national aggregations of power quite outside the accepted boundaries of the Constitution—thus the term "private governments" that came into use in the 1930s. Insofar as these institutions were powerful, governing de facto in crucial areas of American life, they could hardly justify this power under the rubric of the Constitution and Bill of Rights—the very ideas they so mercilessly attacked. This was and is also true in the case of academics and universities, journalists and the national media, and nationally organized professionals generally. Moreover, these people and institutions tend to be interrelated and interdependent, both in terms of professional values and specialized knowledge and in terms of national or
cosmopolitan orientations. In a mirror image of the Wilsonian parent, their very success is also a subversion: so long as they are seen as willing agents and servitors to the older values of localism and democratic individualism (that is, social mobility, self-esteem, and economic growth) and appear willing to be used for those ends, they are accepted as constitutionally legitimate. When deep conflicts of value and interest arise, however, they immediately become "elitist" or "private governments." In older Jeffersonian terms, they are branded "monopolists" or "privileged orders." Their Jeffersonian tormentors, in turn, become dangerous populists led by demagogues who would destroy the fabric of modern society. Given this fate of Progressive public doctrine split in two, no matter its original and coherent vision, what philosophical integrity could its product—liberalism—possibly claim?

When intellectual and historical conundrums of this magnitude confront us our safest response is to repair to the many blessings of American uniqueness and American luck. I suggest, however, that there is a third success of the Progressive vision, one of sufficient power and persuasiveness to constitute some basis for this strange marriage and its offspring-legacy of liberalism. And, unlike those of the parents, each of whose philosophical and intellectual integrity subverted that of the other, the philosophical contradictions of this success were well hidden. Indeed, only recently has this third success been critically (philosophically) examined at all. I refer to the victory of the Progressive vision in the law schools and the elite bar in the 1920s and thereafter.

It is commonly said, and repeated here, that from World War I to the recent past there has been a dearth of interesting and sophisticated social and political theory produced in America. Indeed, to read the Progressive academics and intellectuals from the mid-1880s onward and to see the fruitful migration of their ideas into the wider public domain is to envy them their creativity, energy, and popular success. No matter the contradictory ways in which their ideas eventually played out, no group who came after was able to address public life in the language of social and political theory with comparable originality, force, and efficacy. Among the academics highlighted in this study, only Dewey was able to remain somewhat innovative during the period of intellectual drought of the 1920s and 1930s. But his energy was increasingly that of the outsider—one who even doubted that an American public existed, let alone one prepared to listen to an emancipatory and democratic message.  

1. Although Walter Lippmann might also be thought an exception, read in the light of earlier Progressives, most of his 1920s writings were modernist translations, especially emphasizing what I have termed the managerial or corporate-liberal side. See especially Public Opinion, published in 1922.
There is, however, a major exception to this familiar narrative. Fore­shadowed by the legal writings of Oliver Wendell Holmes, Jr., and James Bradley Thayer at the turn of the century, by the 1920s (and in marked contrast to the universities) the elite law schools were sud­denly vibrant centers of social and political theory. That the framework for that theory was thoroughly Progressive and closely dependent upon social evolutionary theory, political economy, and sociology should not detract from the scale and scope of their intellectual achievement. The "constitutional" side of this story is familiar: a powerful attack on judi­cial activism and abstract rights was launched from within the law schools. Whether informed by the sociological jurisprudence of Roscoe Pound, by the developing field of administrative law defended by James Landis (both deans of Harvard Law School in the 1920s and 1930s), or by the treatise literature on corporations, property, and contracts, the doctrinal grounds for declaring legislative and administrative decisions unconstitutional on the basis of violations of individual rights were being systematically subverted in the major law schools. In the process of destruction legal theorists paradoxically constitutionalized and legal­ized Progressive public doctrine and public policies.

What is surprising when reading the legal literature of the 1920s and early 1930s is the belated but powerful effect the Progressive academic literature written at the turn of the century had on legal scholarship. To some extent, this new orientation was a natural by-product of the fact that law students in the national law schools increasingly had under­graduate degrees and that Progressive scholarship dominated collegiate instruction from the 1890s onward (Stevens, 1983, 73–111 and 172–204). But this orientation, though available, would not have been so en­thusiastically employed without deep and fundamental problems within the law itself, problems caused by the nationalization of the economy and culture. In any event, the combined force of sociological jurisprudence and legal realism disconnected the authority of law from the rhetoric of constitutional rights in two senses: first, they sought to remove the courts from large areas of decision making in economic matters in favor of legislative delegations to administrators and there­fore to the realm of administrative law. Second, the more technical doc­trines that the courts and treatise writers shaped regarding corpora­tions, contracts, and property had the effect of reading out older

2. Holmes's "Privilege, Malice and Intent" (1894) and "Path of Law" (1897) and Thayer's "The Origin and Scope of the American Doctrine of Constitutional Law" (1893) are the defining documents. See Horwitz, 1992, 33–167, for discus­sion of the relationship of these ideas to Progressivism.
individualistic and rights understandings\textsuperscript{3} in favor of more impersonal and functional or "realist" understandings. The incorporation of these new understandings within a larger legitimating framework pointed naturally to Progressive academic writings. In this paradoxical way, then, Progressive academic and intellectual hostility to courts and lawyers received its ultimate vindication—but from within the legal profession itself and by the transformation of American constitutional and legal doctrine. Thus it was that New Deal liberalism, quite unlike Progressivism, was articulated and legitimated largely by lawyers.

This suggested explanation of the relationship of modern liberalism to older Progressivism is less a "solution" to the problem of philosophical coherence than a relocation and a call for further study. Symbolically stated, New Deal liberalism, as represented on the Supreme Court, embraced Justices Douglas and Black as well as Justices Stone and Frankfurter. Both sets were Progressive and liberal. Both were products and even producers of the new legal scholarship and served as agents of transition between Progressivism and the New Deal. Their agreement, both philosophically and in decision—on the role of government in the economy, on the importance of administrative autonomy and administrative law, and on the constitutionality of wide delegation of powers by legislators—was far reaching and substantial. Soon, however, deep disagreements surfaced with ironic results for the philosophical coherence of liberalism. It was as if the two Progressive parents cursed their juridical offspring with some massive genetic defect that surfaced only when coherent thought about rights and the rule of law was desperately required (Horwitz, 1992, 213–72).

It should appear obvious by now that it was the fate of both Progressive parents and their liberal child to be lacking an adequate national identity and therefore a sense of national democratic citizenship. It was precisely this feature that Progressivism had originally built into the foundations of its thought. The very features we now find repellant or dangerous—the stress on one people, a "Religion of America," a community of equals bound by mutual duties one to another—was lacking in both appropriations and its product. Wilsonian Progressivism was built on the Democratic party as a coalition of marginals whose unity was only defensive and reactive. They could act in common only on the illusion that their separate demands for privileges and subsidies were common rights against some single foe. Corporate or managerial liberalism implicitly saw national unity in what political scientists later

\textsuperscript{3} These developments are thoroughly summarized in Horwitz, 1992, 33–107 and 145–67.
termed a democracy of "elite consensus" or "the liberal establishment." The emerging liberal legal culture of the 1920s also studiously read out any lingering traces of national citizenship or of America as a democratic faith community, opting instead for the virtues of "value-free" social science or, more dangerously, flirting with a sort of nihilistic deconstruction of all foundations. And since post-Progressive social science forfeited most of its credit and all of its claims to be a normative source of national cohesion, it is no wonder that "taking rights seriously" made such a dramatic comeback in the 1960s. But this revival of rights comes in so many different guises and represents so many different substantive agendas that sorting out the new rights talk has itself become a major intellectual enterprise. More important, and here this study comes full circle, with the revival of rights talk came a revival of communitarian and civic republican history and theory. It is this latter body of writing that needs to be examined critically against the lost promise of Progressivism.

4. In Reagan-era retrospect, C. Wright Mills and William Domhoff can as easily be read as reactionaries as radicals. Such is the liberal legacy of Progressivism that, when populist winds blow, we can never be sure whether they come from the right or the left.

5. It is interesting to read legal realists like Jerome Frank (Law and the Modern Mind, 1930), Thurman Arnold (Folklore of Capitalism, 1937), and Robert Lee Hale ("Economics and Law," 1925) in light of the critical legal studies movement today. Both the legal realist and the critical legal studies writings are criticized as nihilistic in their attempt to delegitimate prevailing legal doctrines and practices. While there is some merit in this charge—Nietzsche seems to be appearing everywhere today—what is missed is the barely disguised faith, then and now, that when deconstruction ends, American virtue and innocence begin. Indeed, American "nihilism" often wears a friendlier face than its parent, the American jeremiad, and both are grounded in the assurance of a happy ending.