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## The Progressive Critique of Free Markets: A Response

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### Abstract

*The American economy today is mixed: It is partly free, vibrant, prosperous, and entrepreneurial—and partly unfree, obstructed, and lethargic. The free part is governed by the principles of our Founding and the U.S. Constitution. This legal structure has produced the most prosperous and innovative economy in human history. The unfree part of our economy, by contrast, is caused by changes—many of which are still in place today—brought about by Progressive thinkers and activists beginning in the late 19th century. In order to revive our economic health, we must begin to understand the significant moral differences between the free-market political economy of the Founders and the interventionist political economy of the Progressives.*

The American economy today is mixed: It is partly free, vibrant, prosperous, and entrepreneurial—and partly unfree, obstructed, and lethargic. The free part is governed by the principles of our Founding and the U.S. Constitution, which safeguard private property and contract rights that permit us to gain, hold, use, and dispose of property. This legal structure has produced the most prosperous and innovative economy in human history. The unfree part of our economy, by contrast, is caused by changes—many of which are still in place today—brought about by Progressive thinkers and activists beginning in the late 19th century. To grasp what has happened, what may come, and how to revive our

economic health, we must grasp the significant moral differences between the free-market political economy of the Founders and the interventionist political economy of the Progressives.

For free-market proponents, including America's Founders, morality demands a respect for private property and contract rights. The economic system must therefore be subordinated to and consistent with property and contract rights. Men must be free to use their talents and improve their material circumstances in voluntary agreements with other men, provided they do not directly violate the right to life, liberty, and property of other people. The goals of such economic activity are individual and national prosperity. Though leery of government intervention, America's Founders were not opposed to economic regulations. Their political economy is compatible with and requires a degree of regulation with a view to health, safety, and morals so as to prevent uses of property harmful to the rights of others and to maintain the conditions of freedom.<sup>1</sup> In consequence, free-market political economy permits

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and even requires economic regulations to restrain commercial activity that is harmful to our moral health, such as drug trafficking and prostitution.

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## Above all, progressives wanted a broad moral reorientation away from competition and self-interest and toward cooperation and central planning.

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This approach is distinct from and should not be confused with *laissez-faire* economics.<sup>2</sup> While *laissez-faire* economics is also based on private property and contract rights, it often prohibits salutary government regulations. For example, natural rights free-market economics allows state and local governments to regulate food safety and prohibit the sale of unsafe drugs, whereas many *laissez-faire* advocates improperly see such regulations as unjust intrusions on an individual right to voluntary exchange. *Laissez-faire* advocates typically argue for the complete or near-complete separation of state and economics.<sup>3</sup>

The progressive reaction against free-market economics originated during the Progressive Era, a period that lasted from about 1880 to 1920. At that time, reform-minded political economists rejected the free market and the limited government bequeathed to us by the Founding Fathers. Progressive Era political economists such as Richard T. Ely, John R. Commons, and Simon Patten believed that limited government was based on a false theory of natural rights, and that private property and contract rights were therefore purely a creation of the government and not ours by nature. While they rejected natural rights and limited government on theoretical grounds, they also thought that the Founders' political economy led to a damaging selfishness that harmed ordinary citizens. They thought the free market immoral because it harmed

workers by underpaying and overworking them and, in general, by permitting the economically powerful to dictate harsh terms of employment to the economically weak. They subordinated the discipline of economics to a moral ideal of redistributive social obligation and cooperation, with the goals of more widely distributed economic benefits, the maximum flourishing of each individual, and a workplace that does not compel men to choose between being unemployed and submitting to harsh terms of employment. Like the free-market proponents they sought to replace, Progressives wanted individual and national prosperity, but believed that the free market could secure neither.

The progressive rejection of natural rights permitted them to propose a massive increase in the scope, size, and power of the federal government. They wanted intrusive and elaborate economic regulations aimed at reducing the power of businessmen, managing the economy, and improving the wages and working conditions of ordinary workers. They wanted much greater assistance for and relief from conditions harmful to the poor. They wanted government staffed by a permanent administrative bureaucracy of supposedly impartial, scientific experts. They wanted social and economic problems analyzed and resolved by elites professionally trained in the new discipline of social science. Above all, progressives wanted a broad moral reorientation away from competition and self-interest and toward cooperation and central planning.

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These Progressive Era political economists were joined by progressive academics, politicians, journalists, and social justice activists. They called their

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1. Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Chicago: Callaghan & Co., 1904), pp. 5–6.

2. This term is of uncertain origin. Its use was popularized by 18th-century proponents of the free market. See Henry Higgs, *The Physiocrats* (New York: Macmillan, 1897), p. 67.

3. For example, Ayn Rand writes: "When I say 'capitalism,' I mean a full, pure, uncontrolled, unregulated *laissez-faire* capitalism—with a separation of state and economics, in the same way and for the same reasons as the separation of state and church." Ayn Rand, "The Objectivist Ethics," in *The Virtue of Selfishness* (New York: Signet, 1964), p. 33.

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movement “Progressivism” because they believed that Americans were on the cusp of a new era of progress whose goals and methods would make obsolete the political and economic thought of the past and propel us toward transformative and redemptive social, economic, and political reforms. Over time, they gradually altered America’s legal system and politics to make it more tolerant of interventionism and less accepting of natural rights and economic liberty. Their gradualism permitted them to present themselves as prudent—and thereby deflect charges of radicalism. They were careful not to devastate the economy by totally repudiating private property and contract rights. They favored a mixed economy and not a thoroughgoing socialism. In the many decades since the Progressive Era, one generation after another has been inspired by progressive visionary idealism to take up and advance the cause of progressive reform. In our day, self-described liberals and progressives in academia, think tanks, the media, and government are the heirs of these early Progressives.

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Today’s interventionists are opposed by defenders of economic liberty, largely professional economists and economics professors, who regularly deploy very technical, pro-free-market economic theories to argue against intervention—often to little or no effect. Progressives have placed their economic views in the service of moral concerns and are unimpressed by pro-free-market technical refutations. If we are to recover our economic liberty, we must return to and confront the original moral arguments for progressivism made during the Progressive Era, and in particular, the belief that ordinary people cannot properly secure their interests by means of the free market. The critique of free markets as impractical

and immoral was not as sound as the early Progressives imagined. As the heir to that early progressive critique, today’s progressive economics is no sounder in its rejection of free markets.

**The Attack on Natural Rights and Limited Government**

The progressive attack on free markets went beyond the practical and moral attack on the visible effects of the free market to an attack on its underlying principles. Progressives rejected the theoretical foundations of classical economics and the regime of natural rights upon which it rested. These attacks took the same form in both cases. They charged that both systems were rigidly theoretical, outdated, and disconnected from real world, contemporary, practical effects. They considered contemporaneous defenders of the Founding and of the free market to be ideologues for preferring their theory despite what Progressives claimed were its real-world failings in economics and politics.

To understand the progressive attack on natural rights, we must first understand natural rights. Natural rights are “inalienable,” as the Declaration of Independence states. Our rights are natural insofar as we are born with them. These natural rights include our rights to life, liberty, and property. It is the task of government to “secure these rights,” as the Declaration says. Rights are not gifts or endowments of the government. Government is an artificial creation established by and subordinate to the “consent of the governed.” Accordingly, ordinary citizens hold sovereignty over their government. Government is, so to speak, a tool of self-governing people by which they protect their rights. As such, the structure of government described in the Constitution of 1787 is aimed at setting up a limited government that secures our natural rights and little else.

In the economic realm, this especially means a vigorous and effective protection in law for our natural right to property and contract. That we have a natural right to contract is seen quite clearly in the Declaration of Independence, where our right to contract expresses itself in a social contract between sovereign individuals that establishes the government.<sup>4</sup> These property and contract rights are centrally important to the economy. Private

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4. For a more complete discussion, see Thomas G. West and Douglas A. Jeffrey, *The Rise and Fall of Constitutional Government in America*, 2nd ed. (Claremont, CA: Claremont Institute, 2011).

property rights protect private capital investments and profits. Without private property rights, there can be no secure holdings of property over time, which makes economic activity nearly impossible. Contract rights permit mutually beneficial, voluntary exchanges of goods and services between individuals. Without contracts rights, such exchanges might not occur, to the disadvantage of the individuals and the nation.

America's founding philosophy, Constitution, and legal system were based on and in turn defended and promoted natural rights. The political and economic liberty created by the protection of natural rights made it easy for the United States to adopt the new discipline of what we now call classical economics. Political economists such as Adam Smith and David Ricardo proposed a system of free-market economics based on a right to private property, a right to contract freely, and a system of prices determined by supply and demand. For the first time in human history, self-interest in economics was lauded and, especially in America, openly institutionalized.

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The economically coordinated self-interest of individuals, with willing buyers and sellers engaged in voluntary and mutually beneficial exchange, would secure the common good understood as individual and national prosperity. This economic system fit very easily into and was a logical outcome of the political framework provided by the Founders. The free market was seen as a moral system because it was based on a respect for our natural rights. And it worked very well. In the decades after the Civil War, America industrialized, entered the Gilded Age, and became the wealthiest country in human history.

The early Progressives, however, rejected both the Founding principles and the economic system of classical economics that it protected. They rejected

the Founders' belief in natural rights—in particular a natural right to property and contract. According to the influential progressive political economist Richard T. Ely, the doctrine of natural rights was part of “an unscientific eighteenth century social philosophy” that “has long ago been totally discredited by science.”<sup>5</sup> There was never an actual historical state of nature in which men formed a government based on a social contract. Instead, Progressives argued, government is natural to man and not an artificial creation of man. It pre-exists the individual, and the individual cannot be understood outside government. Rights are not natural. Rather, they come from government, which pre-exists and forms the individual. As Ely wrote: “Rights are acquired in and through society,” not belonging to individuals by nature.<sup>6</sup> In consequence, the government should be free to prevent allegedly exploitative contracts, regulate wages and prices, and tax the wealthy to support the social development of others as the government deems fit. Doing so violates no natural right to property because there is no natural right to property.

In addition to rejecting the doctrine of natural rights and the principles on which classical economics is based, Progressives also rejected the Founders' conception of limited government. The Founders and their 19th-century successors believed that (to pick one example) economic intervention aimed at supporting workers' incomes by means of a minimum wage was not only imprudent, but also an unjust, immoral, and unconstitutional violation of property and contract rights. They believed that legislating in this area would take us beyond the proper limits of government power.

It is true that many Founders departed from strict free-market theory by supporting, for example, tariffs or a national bank. But these departures were intended as a means of encouraging domestic enterprise, not inhibiting the private property and contract rights that lay at the core of the free market. The Founders wanted to secure the freedom of individuals to use and profit from their talents and hard work. They wanted productivity and national prosperity. And so, while many supported tariffs, they also supported free enterprise and *not* domestic economic

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5. Richard T. Ely, *Property and Contract in Their Relations to the Distribution of Wealth*, 2 vols. (New York: Macmillan, 1914), Vol. 1, p. 107.

6. *Ibid.*, Vol. 2, p. 504. Compare Henry Carter Adams, *Outline of Lectures Upon Political Economy*, 2nd ed. (Ann Arbor: Register Publishing House, 1886), p. 6: “Property is the right granted by law, of ownership in, and hence control over anything” [emphasis added].

intervention and guidance.<sup>7</sup> In consequence, the regime that the Founders put in place leaned heavily in the direction of limited government.

In general, the early Progressives attacked limited government as an obsolete holdover from the 18th century. For Ely, the Founders understood liberty “in its negative aspects. Restrictions and restraints are found upon liberty, and it is thought that once we clear these away, liberty will assert itself as a benign force.”<sup>8</sup> Negative liberty, which confined government to protecting only our natural rights, was based on the belief that citizens would be capable of living free lives so long as they were not impeded from doing so. By contrast, Progressives argued for a more positive liberty that aimed at moving citizens toward allegedly more enhanced and fulfilled lives.

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The doctrine of positive liberty served as the permission for a range of economic interventions and programs that would have been seen as violations of property and contract rights by the Founders and their 19th-century successors. Today, to pick just a handful of examples among many, we have programs such as community-development grants, new homebuyer subsidies, and alternative-energy programs. These programs are defended on the grounds that they enhance the lives—the positive liberty—of Americans. There is no theoretical upper limit to positive liberty and therefore no limit in principle to how large the government might grow in efforts to promote it. The doctrine of positive liberty therefore threatens limited government.

During the Progressive Era, judges tended to oppose Progressivism and support robust

free-market legal principles. And so a range of progressive interventionist measures aimed at allegedly “protecting” workers from what Progressives imagined was exploitation were seen by the courts as illegitimate violations of limited government and property and contract rights (including the contract rights of workers), a legal impediment that deeply upset Progressives.

To be sure, economic regulations were permitted in free-market America, under the long-established “police power” of state legislatures. The police power is the authority of the legislature to regulate private and economic life with a view to protecting health, safety, and morals. The police power permitted the government to regulate or outlaw uses of one’s property if such uses would violate the rights of others. Under the police power, states could, if they wished, legislate against, for example, the spread of disease (“health”) or unsafe working conditions (“safety”) or public vulgarity (“morals”), among other offenses.<sup>9</sup> Morals legislation was justified on the grounds that licentiousness is incompatible with the moral conditions of a free society. Such legislation could extend to any behavior that threatened the moral order of society or the individual self-control necessary to free government. In other words, morality understood as one of the conditions of freedom took precedence over economic gain. The police power could not, however, be used for specifically progressive ends. For example, it could not be used to prevent alleged wage exploitation or to redistribute wealth—because doing so would violate one’s natural right to property and contract, and it would not intrude on the moral conditions of freedom.

The early Progressives were deeply upset that so many of the interventionist measures for which they called were rejected as falling outside the police power. One case in particular drew their strong protests. In the landmark case of *Lochner v. New York*, the Supreme Court overturned a New York law that limited, on health and therefore police power grounds, the number of hours per week that bakers could work in bakeries. The majority argued that while the law was presented as a health measure, it was in fact a surreptitious attempt by New York

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7. See Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (Cambridge: Cambridge University Press, 2017), chapters 14–18.

8. Richard T. Ely, “Industrial Liberty,” *Publications of the American Economic Association*, 3rd ser., Vol. 3, No. 1 (February 1902), p. 60.

9. Freund, *Police Power*, pp. 5–6. The police power has its distant origins in common law.

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to “protect” workers from purported exploitation by employers who wanted them to work excessive hours. The Court argued that bakers were mature adults capable of looking after their own economic interests and forming contracts and did not need to be protected from alleged “exploitation.” The Court struck a blow for limited government and free markets, but earned the opposition of Progressives, who were anxious to expand greatly the government’s regulation of the economy.

Despite progressive opposition, legal support for a robust right to property and contract continued until the 1930s. But under pressure from Franklin Roosevelt, the Supreme Court eventually succumbed to economic interventionism in *NLRB v. Jones & Laughlin Steel Corp.*, ending the so-called Lochner Era of relatively unrestrained free markets in America.<sup>10</sup> Ever since, the Supreme Court has permitted an extremely broad range of economic interventions by both the federal and state governments—interventions that go well beyond the traditional understanding of and limits to police power. It took decades of steady intellectual, political, and legal efforts for Progressives to win their battle over limited government.

In our day, the result is most apparent in tens of thousands of pages of regulations governing nearly every aspect of the economy, promulgated by unelected bureaucrats and often qualifying free-market arrangements.

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Legislation aimed at abating alleged worker exploitation now includes the minimum wage, limits on hours worked, and mandatory vacation and family leave time. These laws fall outside permitted

police power legislation because they touch on contractual arrangements that violate no one’s natural rights. Moreover, the federal government routinely passes workplace and product safety laws in violation of federalism and the traditional understanding that only the states are permitted to exercise a general police power.

### **The Attack on Classical Economics**

The early progressive attack on natural rights and limited government amounted to a charge of dogmatism, that is, a zealous attachment to the false idea of natural rights, the social contract, and government as an artificial creation aimed at securing natural rights. Progressives argued instead that government pre-exists men and is not an artificial creation of men. They levelled that same charge of dogmatism at classical economics, which is the economic expression of natural rights and limited government. Progressives claimed that classical economics is a rigidly deductive economic system premised on one central ideal: that self-interest can be harnessed as a reliable impetus to economic prosperity. From that one premise, Ely argued, classical economists then blindly deduced a range of dogmatic economic commandments and prohibitions.<sup>11</sup> For example, they insisted that wages and prices must be governed by the law of supply and demand, that no impediments be raised to privately arrived at contracts, and that private property gained by the use of this system must be respected and defended as justly and properly acquired. The free market was presented as necessary and natural because it respects everyone’s right to self-seeking actions, and because self-seeking actions were seen as reliable and productive guides to economic activity.

Progressives instead argued against both the premise that self-interest is a proper starting point for an economic system and the rigidly deductive method that, in their view, propagates this erroneous premise in the face of damaging economic consequences. As Henry Adams put it: “It is not true that, when a man advances his own interests or what he believes to be his own interests, he thereby necessarily advances the interests of society.”<sup>12</sup> In other

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10. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

11. Richard T. Ely, *An Introduction to Political Economy* (New York: Chautauqua Press, 1889), pp. 117-118.

12. Henry C. Adams, *Relation of State to Industrial Action* (Baltimore: American Economic Association, 1887), p. 18.

words, self-interest is not consistent with the common good. In his more progressive years, the political economist John Bates Clark argued that the conception of the self-interested man that forms the unit of analysis of classical economics is a mistake: “The assumed man is too mechanical and too selfish to correspond with the reality; he is actuated altogether too little by higher psychological forces.”<sup>13</sup> Clark warned that the free market call of “[e]very man for himself” is the principle of disorganization and chaos.”<sup>14</sup>

With respect to free-market prescriptions, Progressives held that economic systems must be judged on the basis of their results, particularly the results for the most vulnerable members of society. And on that count, they argued that the free market was a failure. They wanted a more flexible economic system that would proceed empirically and which could be adjusted and planned by the government so as to produce more widely distributed benefits. Ely called this approach to economics the “look and see” method.<sup>15</sup> Progressives argued for an economic system based, not on self-interest and competition, but rather on social obligation and cooperation. In their economic decisions, men should consciously seek the good of all and not just their self-interest. Progressives seized on one of the most powerful arguments against the free market: that the self-interest at the root of the free market has too strong a tendency to degenerate into selfishness. In short, Progressives argued that the moral core of the free market was deeply immoral.

In our day, Ely’s particular approach to economics continues to comprise a part of the progressive understanding of economics. As such, Progressives embrace government planning (for example, in health care) and continue to be skeptical of attempts by economists to harness self-interest in the service of individual and national prosperity. They work toward social obligation and cooperation by, in general, compelling distribution of income at the cost of voluntary, free-market methods of increasing wealth and economic security.

As an alternative to limited government, natural rights, and free markets, the early Progressives

proposed their own systematic approach: social science, a discipline that includes economics,<sup>16</sup> and which would replace the individual self-interest of the free market with an explicit orientation on the part of economic planners toward their vision of the common good, which they understood as the greatest possible flourishing of each individual. Progressives promised that social science would yield genuine knowledge of human affairs along the lines of the more traditional and very successful “hard” sciences. That knowledge would be gained empirically, following the scientific method, and not assumed dogmatically, as was allegedly the case with natural rights and classical economics.

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Rather than following abstract principles or being guided by experience built up over centuries, Progressives sought to make the world anew. Just as with the natural sciences, the practitioners and leaders of social science would be scientific experts. These experts would replace the allegedly chaotic, unplanned, and unjust workings of the free market with rational, scientific, neutral, impartial, and just management of the economy. Such experts could be established in bureaucracies that in their very mission would be aimed at public-spiritedness and the common good of society. They could correct alleged abuses, such as worker exploitation and an unjust distribution of wealth. These experts would free us from the distractions, injustices, incompetence, partisanship, and paralysis of traditional democratic politics.

There would still be some room for democratic politics within this new system. Elected leaders would identify problems, authorize and fund

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13. John Bates Clark, *The Philosophy of Wealth* (Boston: Ginn & Company, 1894), p. 35.

14. *Ibid.*, p. 48.

15. Ely, *Introduction to Political Economy*, p. 118.

16. The term economics is here understood as the science of wealth creation.

bureaucratic solutions, and hold bureaucrats accountable. But the implementation of economic policy would be carried out by bureaucrats. The prominent progressive intellectual Herbert Croly made an especially powerful case for this reform. He outlined the basic structure of the new government:

In order to understand the function which the administration ought to perform in a social democracy a sharp distinction must be drawn between the administration and the executive.... [The executive's] primary business is organizing a temporary majority of the electorate, and of carrying its will into legal effect.<sup>17</sup>

By contrast, administrative “officials do not in theory exert any influence upon the policy of the government. These are professional servants, whose business it is to contrive the means necessary to execute existing laws and to carry out any policy which has been decided upon by a departmental chief or by the cabinet.”<sup>18</sup> No human problem would be beyond the bailiwick of these expert administrators. In particular, the economy stood to be regulated in detail by such experts, initially by modest intrusions such as Progressive Era industrial commissions, later by an array of federal and state agencies spawned by the New Deal and the Great Society.

In our day, progressivism and the apparatus it created to govern America informs much of the nation’s political agenda, often in opposition to proponents of limited government. Inspired by progressivism and unconstrained by a belief in natural rights, Congress today routinely passes laws without regard to any constitutional grounding in its limited Article I, Section 8 enumerated powers. It has also delegated a portion of its legislative authority to administrative state agencies. Congress permits these bureaucracies to pass binding regulations, each of which has the power of the law. Though they are subject to congressional oversight, bureaucrats are free from direct democratic accountability. Moreover, their

powers often encompass two or more of the branches of government, in apparent violation of the separation of powers.<sup>19</sup> Though the early Progressives are rarely cited by contemporary progressives, in their departures from the Founders’ constitutional norms, both Congress (in delegating its power) and the administrative state (in its rule without democratic control) have helped to fulfill the political intention of the early Progressives.

Despite some important political victories, today’s progressives have prematurely claimed intellectual victory. Though contemporary progressives believe that the theory of natural rights has been refuted, a small-but-vigorous intellectual cohort has argued for its return.<sup>20</sup> Contemporary defenders of natural rights make the philosophic and moral argument that property belongs by nature to the person who creates it—and not to the government that merely protects it. And they also argue that a larger, progressive government crowds out the free market by competing for resources, because government is funded by wealth extracted from free-market producers. Moreover, they point out that administrative state lawmaking qualifies and harms self-government because bureaucrats are not directly answerable to the voters.

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Critics of progressivism also call for a more nuanced understanding of the morality of

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17. Herbert Croly, *The Promise of American Life* (New York: Macmillan, 1914), pp. 354–355.

18. *Ibid.*, p. 356.

19. See John A. Marini, *The Politics of Budget Control: Congress, the Presidency and the Growth of the Administrative State* (New York: Taylor & Francis, 1992); Philip Hamburger, *Is Administrative Law Unlawful?* (Chicago: University of Chicago Press, 2014); and Joseph Postell, *Bureaucracy in America: The Administrative State’s Challenge to Constitutional Government* (Columbia: University of Missouri Press, 2017).

20. See, for example, Thomas G. West and Douglas A. Jeffrey, *Rise and Fall of Constitutional Government in America* (Claremont, CA: The Claremont Institute, 2011); and Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, MD: Rowman & Littlefield, 2000).

self-interest in economics. Progressives have routinely blurred the difference between rational self-interest and selfishness. The former is compatible with justice to oneself and one's loved ones—and it is also compatible with justice to others. Besides not necessarily being of any harm to others, self-interest is the source from which citizens generate the wealth needed for generosity to others, without which charity is little more than a good intention. Perhaps most importantly, rational self-interest leads to a great deal of voluntary and peaceful cooperation with others, which causes otherwise self-seeking men to become habituated to serving others in the course of serving themselves.<sup>21</sup> By contrast with rational self-interest, selfishness is narrow, cramped, and asocial. It is either indifferent to others or understands itself as serving the self specifically to the exclusion of or in opposition to others. Rational self-interest need not degenerate into selfishness, although any thoughtful person would readily acknowledge that that is a perpetual risk of rational self-interest.

With respect to narrow considerations of economic efficacy, rational self-interest has been the source of the greatest outpouring of wealth in human history. Not the immiseration of the poor—but rather their elevation to unheard of wealth—has been the main story of American rational self-interest in economics. This impressive practical outcome is simultaneously a great moral victory for the free market in the struggle against poverty.

### **The Charge of Worker Exploitation: Labor Unions and the Minimum Wage**

In the late 19th-century, America's free-market economy featured strong protections for private property and contract rights, prices of goods and services determined by supply and demand, and very little government intervention. Wages and prices were unregulated, as were most business operations. Government intervention was largely confined to stopping uses of property deemed harmful

to others, under the long-standing *sic utere* doctrine, according to which people were forbidden from using their property in ways that injured the rights of others.<sup>22</sup> As a result, the economy grew very rapidly during this time, and standards of living improved for everyone.<sup>23</sup> However, economic gains were very unevenly distributed, prompting progressive critics to seek changes.

Progressive political economists made a number of arguments against free markets that gained increasing support among politicians, journalists, academics, clerics, and ordinary people, and eventually led to economic and political reforms of the free-market economy. These critics believed that workers were being exploited by businessmen on the grounds that they could force workers to accept low wages. Rather than free markets being a matter of voluntary association, progressives argued that they are in effect characterized by exploitation of the weak and poor by the strong and wealthy.

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The political circumstances of the time seemed to confirm Progressives' assertions. Because there were so many industrial workers available for hire—some coming from Europe in wave after wave of immigration in the decades before World War I, others moving from farms to urban areas—employers were provided with an abundance (and even an overabundance) of workers.<sup>24</sup> In consequence, workers were forced to compete against each other for an occasionally scarce supply of industrial jobs.

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21. Montesquieu, *The Spirit of the Laws*, Anne M. Cohler, Basia C. Miller, and Harold S. Stone, trans. and eds. (Cambridge: Cambridge University Press, 1989 [1748]), book 20, chapters 1–2.

22. The full quote is *Sic utere tuo, ut alienum non laedas*. (Use your own property in such a manner as not to injure that of another.) Henry Campbell Black, *A Dictionary of Law* (St. Paul, MN: West Publishing Co., 1891), p. 1095.

23. For example, one academic study shows a 30 percent increase in manufacturing wages from 1906 to 1914. Robert J. Gordon, *The Rise and Fall of American Growth: The U.S. Standard of Living since the Civil War* (Princeton: Princeton University Press, 2014), pp. 279 and 281.

24. *Ibid.*, p. 281. Immigration exacerbated labor problems during the Progressive Era, but it did not, on its own, account for the rise of progressivism. Indeed, interventionist economics made great inroads in America during the 1930s, when an immigration pause was in place.

This had the effect of driving down some wages. Progressives complained that because wages were determined strictly by the free-market law of supply and demand, there was no necessary connection between wages and the cost of living. As the progressive economist John R. Commons put it:

The product of labour in all enterprises, like the product of the other factors of production, is subject to the law of diminishing returns. The larger the supply, the lower will be the value of the marginal product compared with the labour of producing it. Hence, whatever controls the supply of labour of a given class controls the marginal value of its product, and thereby the wages of the producers. The rate of wages is not determined by the cost of living.<sup>25</sup>

Because workers could be paid less than what it cost them to live, the free market was accused of failing them in the most palpable and self-contradictory way possible: It was an economic system that failed to meet their most basic economic need for survival.

Progressives proposed an end to wage competition by means of labor unions. Unionized collective bargaining would prevent businessmen from playing workers against of each other and pushing down wages. The progressive political economist Simon Patten expressed the view that unions should be used “to secure the rewards of his work to the common laborer.”<sup>26</sup> Put plainly, unions were needed to prevent workers from being cheated. Underlying this view of labor relations was the belief that workers and businessmen approached each other with unequal economic and, therefore, unequal bargaining power. Because workers were poorer than businessmen, they could not hold out for higher wages for very long without starving. This made them powerless and prisoners of their elemental fear of suffering and death. Such men could not be said to

be truly free; they were more properly described as coerced by their fear. As the progressive legal reformer Roscoe Pound wrote, favorably quoting Lord Northington: “Necessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose upon them.”<sup>27</sup> Commons described their condition as one of “wage-slavery,” or “the dependence of one man upon the arbitrary will of another for the opportunity to earn a living.”<sup>28</sup> By contrast, prosperous businessmen could use their greater wealth to outwait recalcitrant workers. Because workers were exploited by businessmen operating within the rules of the economic system, they were coerced by the system itself, that is, by free-market economics. What to free-market defenders seemed like an equal right to private property and voluntary contracts was to Progressives an immoral, systemic regime of coercion that indicted free-market economics to the core.

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Today’s critics of free markets continue to echo the early progressive moral arguments against worker exploitation. They argue that lower-end workers must unionize if they are to prosper. Where unionization is difficult, they advocate for a substitute—the \$15 per hour minimum wage. This proposal (already adopted by some cities and states) is meant to raise low-end wages in the face of economic stagnation and wage competition.

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25. John R. Commons, *The Distribution of Wealth* (New York: Macmillan, 1893), pp. 176–177.

26. Simon N. Patten, *The New Basis of Civilization* (New York: Macmillan, 1907), p. 103. In an earlier work, Patten complained that businessmen could easily substitute lower-skilled workers for higher-skilled ones, thereby driving down wages and marginalizing higher-skilled workers. He counseled the exclusion of lower-skilled workers from the workplace as a means of preserving higher-skilled workers and encouraging lower-skilled workers to increase their skills. See Simon N. Patten, *The Premises of Political Economy* (Philadelphia: J. B. Lippincott Co., 1885), esp. chapters 5 and 8.

27. Roscoe Pound, “Liberty of Contract,” in *Trade Unionism and Labor Problems*, 2nd ser., John R. Commons, ed., (Boston: Ginn and Company, 1921), p. 597.

28. John R. Commons, *Social Reform and the Church* (New York & Boston: Thomas Y. Crowell, 1894), p. 34.

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Progressive Era proponents of unionization did not understand that unionization intended to increase wages above the free-market rate had the effect of decreasing employment. They believed that employers could simply set wages higher if they wished. And yet, the same economic principles that caused Progressives to reject wage competition could be used to show that, in the absence of productivity increases, unions increase the cost of employment to the employer, thereby reducing employment. Workers then and now left unemployed by unionization are the hidden victims of this progressive reform.

Since the dawn of the industrial age, the path to prosperity for ordinary workers has been by way of increased productivity (that is, increased output per unit of input), not unionization.<sup>29</sup> The same economic and moral logic that argues against unions can be applied to increases in the minimum wage. The hidden cost of a minimum wage is higher unemployment among some of the most vulnerable Americans—those without the work experience or training to warrant that wage. The economic cost of unionization and the minimum wage is simultaneously a moral mark against these forms of intervention.

Despite (or perhaps because of) the economic arguments against efforts to boost wages through unions and the minimum wage, the early Progressives (and many Americans since) were seen to have properly indicted the morality of the free market for sometimes not paying workers a living wage. It is certainly true that many workers at that time were not paid enough to get by. But here the progressive critique was exaggerated because it measured individual instead of household income combined with support from other sources, such as family members and neighbors. Furthermore, over time workers could gain experience and skill or benefit from productivity increases—and then earn higher wages. These were voluntary and therefore morally untainted methods of advancement.

Progressives were aware of some of these responses and rejected them. For example, Patten

countered that “[d]ifficulties in towns are too massive to be surmounted by the altruism of such service as can be rendered by the mutual aid of family members and of neighbors.”<sup>30</sup> Patten was at least partly correct. Urbanization led to an excess supply of labor and had in some respects made life more difficult for workers. As Ely pointed out, in early America, “independent farmers who tilled their own soil” could support themselves and thereby avoid being at the economic mercy of others. Moreover, “an abundance of unoccupied land furnished [a ‘hired man’] a frequent escape from his subordinate position.”<sup>31</sup> Poverty was in some respects easier to bear in the agricultural economy that preceded the industrial economy. As Patten put it, the “poverty men of the country had some options in nature during the seasonal periods of plenty.”<sup>32</sup> In that sense, they were more autarkic than urban dwellers, who had only their wages and who were therefore more vulnerable to unemployment.

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## The economic vulnerability brought about by industrialization and urbanization was only part of the story.

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But the economic vulnerability brought about by industrialization and urbanization was only part of the story. As even Patten acknowledged, pre-Industrial Era farmers were poor. As America industrialized, such men voluntarily urbanized in order to improve their material condition. Industrialization produced unquestionable benefits for millions of ordinary Americans, and so it was a great moral victory in the age-old struggle against poverty. All the same, urbanization then and now reveals a clear need for some way to ensure that the most vulnerable Americans do not starve in the event that their family and friends cannot help them during hard times. But unionization and the minimum wage were problematic solutions because of their harmful effects on vulnerable workers seeking employment.

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29. Patten failed to take proper account of the effects of increased productivity on wages in *The Premises of Political Economy*, especially chapter 5. Productivity has increased greatly since his time, and it has not had the effect on wages that he predicted.

30. Patten, *The New Basis of Civilization*, p. 51.

31. Richard T. Ely, *The Labor Movement in America*, 3rd ed. (New York: Thomas Y. Crowell & Co., 1890), p. 36.

32. Patten, *The New Basis of Civilization*, 51.

Ideally, free-market defenders would have provided a persuasive alternative to Progressivism at the time. Had they done so, they might have halted the progressive intellectual advance and directed the political system toward free-market solutions to the problems of industrialization. But the absence of powerful defenders of the Founders' regime in that generation, especially in the academy, meant that the Supreme Court remained the only bulwark capable of arguing against progressivism.

In the period during and just after the Progressive Era—until it was broken by President Franklin Roosevelt and the New Deal—the judiciary harbored some of the most principled and thoughtful defenders of the Founders' vision of economics. Regrettably, the judiciary had a limited intellectual visibility and influence. All the same, in a particularly important case, the Supreme Court turned away an attempt by progressives in Congress to institute a minimum wage for women in Washington, DC, by way of the Minimum Wage Act of 1918. That act was ruled unconstitutional in *Adkins v. Children's Hospital*. Writing for the majority, Justice George Sutherland acknowledged that some women need income support. But as a means to achieving this, he deemed the minimum wage unjust:

To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility, and therefore, in effect, arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole.<sup>33</sup>

He continued: "Certainly the employer, by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays, he has relieved it."<sup>34</sup> In other words, it is not the employer's fault that the employee is poor. Her wages, however low they might be, are just because they represent the value

of her labor. And yet the employer is unjustly made to bear the full burden of rescuing her from poverty—beyond the wages that he is already paying her and that take her part of the way to solvency. The responsibility for raising her income should instead fall to society, because the moral obligation to prevent her from starving does not rest solely with her employer.

Sutherland's moral analysis indicates that some form of minimal public welfare, and not the minimum wage, is a more appropriate and just response to the presence of degrading poverty. In his decision, Sutherland argued that unions are a constitutionally permissible way to increase wages.<sup>35</sup> He presumably had in mind purely voluntary unions that do not seek coercive methods to prevent non-union laborers from taking their jobs. Coercive unions are an unjust imposition on the employer because they forcibly prevent employers from firing unionized workers at will and substituting willing, non-union workers. If workers cannot earn a living wage by means of individual employment or voluntary unions, a more just and moral alternative remains direct income support, if necessary, in the form of minimal public welfare.

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### **Free Markets, Social Darwinism, and Christianity**

The early Progressives leveled two additional and particularly sharp criticisms against the free market that sought to place it beyond any moral defense. First, they argued that it amounted to *laissez-faire*, a thoroughgoing form of free-market economics that permits very few, if any, economic regulations. This criticism was potentially devastating because it claimed that free markets amounted to a form of

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33. *Adkins v. Children's Hospital*, 261 U.S. 525, 557–558 (1923).

34. *Adkins*, at 558.

35. *Ibid.*

anarchy that refused to countenance many salutary regulations. The charge appeared to be credible in large part because there were indeed some very prominent and influential advocates of *laissez-faire* in the 19th century. These included such intellectuals as Herbert Spencer and William Graham Sumner. Henry Carter Adams, the influential progressive political economist, attacked Spencer's call for "unregulated workings of the law of supply and demand."<sup>36</sup> The progressive Supreme Court Justice Oliver Wendell Holmes Jr. also famously attacked *laissez-faire* in his dissent in the *Lochner* decision, writing, "The Fourteenth Amendment does not enact Mr. Herbert Spencer's *Social Statics*."<sup>37</sup>

*Laissez-faire* advocates were in some cases tainted by their support for Social Darwinism, a system of ethics that advocates leaving poor and suffering people to their own devices.<sup>38</sup> This morally callous philosophy has done great harm ever since to the cause of economic liberty. Even in our day, the charge of Social Darwinism is leveled by some critics of the free market, who allege that the free market means that "you are on your own," and that no one need be concerned for the most vulnerable people. At times, such rhetoric is clearly exaggerated. For example, a congressional proposal for modest tax-and-spending cuts that left core welfare state benefits in place was described by President Barack Obama as "thinly veiled social Darwinism."<sup>39</sup>

The second sharp progressive criticism against free markets—one that we continue to hear in our day from progressive Christians—is that it is unchristian. Progressive Christians are joined in their religious attack on free markets by the secular left, which offers a post-Christian, quasi-religious vision of secular economic redemption. These contemporary religious and quasi-religious criticisms originated in the Progressive Era. Like the charge that the free market amounts to *laissez-faire*, the progressive religious critique was also potentially devastating because it claimed that the free market stood outside the sacred moral framework of Western civilization.

The early progressive Christian alternative to the free market took the form of the Social Gospel. The Social Gospel was a 19th- and 20th-century protestant reform movement, especially prominent during the Progressive Era, that sought the fulfillment of one's full Christian duty by means of progressive social, political, and economic reform. Ely and the protestant theologian Walter Rauschenbusch were the two most prominent Social Gospel advocates. Ely's position as a political economist gave him special influence in the Social Gospel movement because he could bring to his Social Gospel reform advocacy his scholarly authority as an expert in economics. Ely argued that, properly understood, Christianity requires us to aim first and foremost for the secular redemption of the earth rather than entrance into Heaven in the afterlife. In opposition to two millennia of Christian thought, Ely wrote that "Christianity is primarily concerned with this world." He rejected as an "unfortunate error" the traditional Christian view "that Christianity is concerned primarily with a future state of existence."<sup>40</sup>

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**The Social Gospel's grand secular goals were hugely ambitious, yet they stood within reach because every significant human problem could be solved in principle by means of the new, modern discipline of social science.**

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Progressive earthly reforms would be our best way of practicing the second commandment of Christ, "love thy neighbor." The Social Gospel's grand secular goals were hugely ambitious, yet they stood within reach because every significant human problem could be solved in principle by means of the new, modern discipline of social science. Social science was the great and efficacious instrument for analyzing and solving human problems, thereby fulfilling Christ's second commandment. And so,

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36. Henry C. Adams, *Relation of the State to Industrial Action* (Baltimore, MD: American Economic Association, 1887), p. 9.

37. *Lochner v. New York*, 198 U.S. 45, 75 (1905).

38. William Graham Sumner, *What Social Classes Owe to Each Other* (Caldwell, ID: Caxton Printers, 1974 [1883]), p. 114.

39. Mark Landler, "Obama, in Talk, Calls G.O.P. Budget the Work of Rightist Radicals," *New York Times*, April 4, 2012, A13.

40. Richard T. Ely, *Social Aspects of Christianity and Other Essays*, new & enl. ed. (New York: Thomas Y. Crowell, 1889), p. 53.

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in Ely's words, "the second commandment...in its elaboration, becomes social science or sociology."<sup>41</sup> Ely was joined in his call for Christian reform by his fellow progressive technocrats, and especially by his former student John Commons.<sup>42</sup>

The free market stood in the way of Social Gospel reforms. For Progressives, its unchristian selfishness and dogmatic resistance to social science-based reforms rendered it morally illegitimate for a Christian people. The free market prevented individuals from fulfilling their full Christian duty to others, and every good Christian was required to reject the free market and support social science and progressive reforms. While in our day the Social Gospel is not expressly mentioned, its echoes remain in progressive Christianity, which argues that interventionist economics is needed if we are to fulfill our Christian duty to others. Both Social Gospellers and progressive Christians can thus pose as exponents of moral views closer to the West's Christian heritage.

These two charges—that the free market amounts to *laissez-faire* anarchy and that it is unchristian—are both false. *Laissez-faire* economics is not identical to the natural rights free-market economics that comes to us from the American Founding. Natural rights free-market economics *is* consistent with the founding principles of the United States because free-market economics rests on a political framework that includes the belief that all men are created equal and that government exists to protect our pre-existing natural right to life, liberty, and property. In consequence, the economy under natural rights free-market economics must be subordinate to politics, meaning that the economy cannot be permitted to subvert the free political order upon which it rests.

To be consistent with the principles of the American Founding, political economy must incorporate the moral goal of the maintenance of a free society. This means, among other things, that economic relations can be regulated *if* they subvert the moral conditions of freedom, because if the moral conditions of freedom are harmed, then the free political order that grounds free markets will also be harmed. In other words, the political economy of the Founders aims at *both* political freedom *and* economic

prosperity as moral goals—and therefore efforts at increasing prosperity must not be permitted to harm efforts at preserving and advancing political freedom. For this reason, for example, the government can outlaw prostitution or regulate the sale of liquor. Moreover, the government can regulate the economy to prevent force, fraud, and physical harm, including harm to oneself by way of self-destructive contracts. Natural rights free-market economics therefore permits police power regulations intended to prevent moral, economic, and physical harms. It elevates morality above unqualified economic gain. *Laissez-faire* advocates either deny the police power or gravely restrict it, and in that sense they fall outside of the boundaries of natural rights free-market economics.

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**Natural rights free-market economics therefore permits police power regulations intended to prevent moral, economic, and physical harms. It elevates morality above unqualified economic gain.**

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Another major difference between *laissez-faire* economics and natural rights free-market economics concerns the government's treatment of the poor. Natural rights free-market economics permits some basic welfare programs on the grounds that we are morally obliged to preserve those too poor to help themselves. As the great natural rights theorist John Locke put it, "Every one...when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind."<sup>43</sup> And indeed, the early republic did make provision for some welfare. Thomas Jefferson favorably described assistance to the poor by Virginia: "The poor, unable to support themselves, are maintained by an assessment on the titheable persons in their parish." The goals of such public support were the preservation of the person's life and, if possible, his self-sufficiency. Jefferson described an early form of workfare: "Vagabonds, without visible property or

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41. Ibid., p. 9.

42. John R. Commons, *Social Reform and the Church* (New York: Thomas Y. Crowell, 1894).

43. John Locke, "Second Treatise," in John Locke, *Two Treatises of Government*, 2nd ed., Peter Laslett, ed. (Cambridge: Cambridge University Press, 1970 [1689]), § 6.

vocation, are placed in workhouses, where they are well clothed, fed, lodged, and made to labour.” This arrangement was apparently used quite extensively in early America: “Nearly the same method of providing for the poor prevails through all our states,” Jefferson wrote.<sup>44</sup> By contrast with this minimal, natural rights welfare, *laissez-faire* proponents typically argue against all welfare programs. To be sure, *laissez-faire* economics is compatible with voluntary charity. And in our day, *laissez-faire* advocates (a group including many libertarians) frequently display admirable personal generosity toward the poor.<sup>45</sup>

The Progressive Era charge that natural rights free-market economics is unchristian rested on a flawed understanding of Christianity. Social Gospel Christianity, one may argue, was not genuinely Christian because it denied the key Christian belief in the primacy of the afterlife over life on earth. It also implicitly denied original sin and so sought a secular, earthly redemption that, to an orthodox Christian, is unattainable.

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**To this day, the American political system takes its bearings from the fundamental criticisms of the free market made over a century ago by Progressives, expressed through various interventions such as minimum wage laws, agricultural and industrial subsidies, and efforts to “correct” an allegedly unjust gap between rich and poor by way of income redistribution.**

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The central error of the Social Gospel was its subordination of religion to politics and economics.

By understanding Christianity as being fulfilled through politics and economics, it *reduced* Christianity to politics and economics. Today’s progressive Christianity retains the eschatology of traditional Christianity, and so it avoids the worst theological error of the Social Gospel. But like their Social Gospel predecessors, progressive Christians continue to insist on economic interventionism and income redistribution, while providing no persuasive argument for the theological necessity of such policies. In fact, Americans can be good Christians if they support minimal public welfare and are privately generous to the less fortunate.

### **The Way Ahead**

The early Progressives noticed and addressed many legitimate problems of industrial society—but arrived at erroneous conclusions and solutions, many of which are being implemented to this day. The poor have always been with us, but they became much more visible as they crowded into our growing urban centers. Their problems could have been addressed by a combination of the free market, police power regulations at the state level, private charity, and minimal public welfare.

Instead, the early Progressives captured the moral imagination of countless economic reformers. Though Progressivism went into abeyance after World War I, it resurfaced in the 1930s with Roosevelt’s New Deal, which echoed many progressive arguments and carried out many of their policies. The next great surge in progressive economics occurred as a result of the Great Society. Since the 1960s, we have seen the federal government steadily increase its role in the economy, with only a moderate claw-back during the Reagan years. To this day, the American political system takes its bearings from the fundamental criticisms of the free market made over a century ago by Progressives, expressed through various interventions such as minimum

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44. Thomas Jefferson, *Notes on the State of Virginia* (1787), query 14, in Thomas Jefferson, *Writings*, Merrill D. Peterson, ed. (New York: Library of America, 1984), p. 259. See also Thomas G. West, “Poverty and Welfare in the American Founding,” Heritage Foundation *First Principles* No. 53, May 15, 2015, <https://www.heritage.org/poverty-and-inequality/report/poverty-and-welfare-the-american-founding>.

45. Moreover, private—not public—charity must always be the first choice of advocates of economic liberty. But no system of charity can be perfect, and public, though locally administered welfare is needed as a final (if also imperfect) measure in the event that private charity fails. By contrast with *laissez-faire*, natural rights free-market economics qualifies our voluntary economic relations and our right to private property in light of the political insight that if we are to be bound together as one people and one nation, we must as a matter of public policy rescue our fellow citizens from life-threatening emergencies. The degree of minimal public welfare here permitted and required indicates a clear and principled difference between natural rights free-market economics and *laissez-faire*. And it also quite obviously places natural rights free-market economics at a great moral distance from Social Darwinism.

wage laws, agricultural and industrial subsidies, and efforts to “correct” an allegedly unjust gap between rich and poor by way of income redistribution.

Yet despite a century of political success, interventionists have steadily failed to confront the strongest moral, theoretical, and practical arguments for free markets and against interventionism. Their failure provides an opening to advocates of economic liberty. A responsible, natural rights free-market economy (and not an austere system of *laissez-faire*) can and should capture the moral imagination of a new cohort of reformers. We *can* recover the natural rights regime of the Founders and their successors. But that recovery will mean returning to the Progressive Era confrontation between free markets and interventionism, seeing the natural rights regime and natural rights free-market economics as real, living, moral options, and reversing the choice the nation made to depart from its Founding. Advocates of economic liberty might reflect on and promote the Supreme Court’s opinion in *Lochner*. In delivering the opinion of the Court, Justice Rufus Peckham wrote:

There is no reasonable ground for interfering with the liberty of person or the right of free contract by determining the hours of labor in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State, interfering with their independence of judgment and of action. They are in no sense wards of the State.<sup>46</sup>

When most Americans return to the belief that adults can be presumed to be able to take care of themselves, we will have taken a large step toward recovering our economic liberty. The rest of the journey may take as long as the progressive march through our government and economy. We can copy their formula for long-term success: A principled critique of the existing order, combined with a clearly articulated vision of the new order.

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46. *Lochner v. New York*, at 57.