



PAPER ABSTRACTS

Panel 1: The Progressive Critique of the Constitution

Eldon Eisenach, University of Tulsa

A Progressive Conundrum: Federal Constitution, National State, and Popular Sovereignty

In their quest for sources of political authority to underwrite national programs of moral, social, economic, and political reforms, Progressive intellectuals drew variously on three sources: 1) an expansive understanding of delegated and implied federal powers, having its source in Federalist Party readings of the U.S. Constitution; 2) an ideal of a national “state” or “union,” with its origins in Northern ideological underpinnings in the Civil War; and 3) under the right social and institutional conditions, an understanding of popular sovereignty as a coherent and authoritative expression of democratic consent and will. By drawing upon the historical precedents and current rhetorical resources from all three sources of governing authority, Progressives undermined exclusive claims of U.S. Constitutional authority and opened up the possibility of governing authority that neither traces its immediate sources to public jurisdictional bodies nor expresses itself in law and courts. Together, the ideal of a national state or “union” from above and the appeal of popular sovereignty or “public opinion” from below undermined U.S. Constitutional claims and, paradoxically, drew on the claims of democratic authority offered by the one institution they had hoped to overturn: the political party. The relationship of American nationality or “peoplehood” to the Constitution, however, was not resolved then and is not resolved now.

Ken I. Kersch, Boston College

Constitutional Conservatives Remember the Progressive Era

A considerable amount of postwar conservative antagonism against constitutional modernity was directed against the alleged transgressions of FDR, his New Deal and the liberal Warren Court. In later years, this critique coincided with the forging of an “Old Originalism” opposing liberal judicial activism. Recently, however, there has been a shift of the center of gravity of the conservative critique backwards in time to The Progressive Era and its distinctive constitutional ambivalences and understandings. The Right’s turn to the Progressive Era has coincided with the forging of a “New Originalism” focused on the substance of getting the Constitution right. This paper will detail the development of the memory of Progressive Constitutionalism in the modern

conservative movement, charting its trajectory, assessing its relationship to conservative originalisms old and new, and assessing its intellectual and political power in relation to efforts by contemporary liberal/progressives to forge an effective constitutional counter-vision.

Aziz Rana, Cornell University Law School

Progressivism and the Disenchanted Constitution

In contemporary American politics both liberals and conservatives overwhelmingly embrace visions of the Federal Constitution that find within the text aspirational narratives of national purpose. Yet a century ago, such claims were much more contested in the public arena. A key strain of Progressive thought was openly hostile to exceptionalist rhetoric and held that the linkage between the Constitution and claims about special American destiny was far more likely to sustain structures of inequality than to challenge them. Rather than defending a politics of constitutional attachment, reformers often argued that the best way to galvanize social change was to break the emotional bond citizens felt toward the Constitution and particularly its 1787 founding. This essay explores the debates and disagreements among Progressives about how best to generate within Americans an instrumental orientation to the Constitution and to the great symbols of nationhood generally. In the process, it also highlights the downside of today's prevailing political visions of the Constitution, particularly the extent to which these visions deemphasize the unavoidably troubled nature of the national project.

Panel 2: The Progressive Critique of Party

Michael McGerr, Indiana University

Progressivism, Liberalism, and the Rich

Scholars typically dismiss progressivism, and twentieth-century liberalism generally, for failing to undermine the rich by truly limiting corporate power and redistributing wealth. While reasonable, this critique misses the focus of progressives and New Dealers on the dynastic ambitions of the wealthy. Fearing the emergence of a self-perpetuating, hereditary ruling class, Theodore Roosevelt and other progressive-leaning politicians and activists roundly condemned so-called “Anglomaniacs,” would-be American nobility, such as the Astors, Goelets, and Vanderbilts. In turn, Franklin Roosevelt and New Deal liberals effectively employed the progressive strategy of rhetorical attacks and income, estate, and inheritance taxes to thwart “economic Royalists” and their “dynasties.” As we have understood for some time, progressives and their liberal heirs did not break fundamentally with capitalism and the rights of property. But these groups did achieve a critical democratic goal by blunting the dynastic aspirations of the first generations of the industrial rich.

Nicole Mellow, Williams College

The Wrong Fit: Eugenics and the Limits of the Progressive Party Idea

Progressive reformers re-imagined parties as the ligaments of the democratic community, providing principles that would instruct and unite people and their government. This required subverting traditional party organizations, but to what extent did it also require creating the right citizenry for the project? I explore the American eugenics campaign as a manifestation of the Yankee Protestant citizen ideal that was a constitutive element of the progressive reformulation of party. To the extent that the restrictive cast of this campaign sat uncomfortably with the unifying, collective capacities of the party imagined by progressive reformers, they bequeathed to modern

parties the legacies of unresolved tensions in their democratic visions and flawed tools for managing those tensions.

Sidney Milkis, University of Virginia

The Progressive Party and the Rise an Executive-Centered Partisanship

This paper will reflect on how the Progressive movement both transformed parties, indeed gave rise to a new party system, and subjected them to a form of plebiscitary democracy that subordinates partisanship to the need of presidential candidates and presidents to forge direct ties with an elusive public. Committed to nurturing “pure democracy,” many reformers were committed to sweeping away intermediary organizations like political parties. The history of the American party system added fuel to this assault. Rather than launching a national democracy, however, the assault on parties appeared to expose Progressivism’s malaise. In fact, there was a Progressive Party, whose standard bearer – the celebrated ex-president Theodore Roosevelt – won a larger percentage of the electorate in his 1912 Bull Moose campaign than has any third party presidential candidate in American history. And yet, its brief existence (from 1912 to 1916) underscores the powerful centrifugal forces of progressive democracy. The Progressive Party was a party to end party; its program of political reform, calling for the universal use of the direct primary, as well as initiatives, recall of public officials and referenda, including popular referenda on court decisions, exalted a direct form of democracy that would free national leadership, especially the president, from the provincial and corrupting influence of political parties. Nevertheless, the Progressive Party championed causes that animated and would be embraced by the Democratic Party during the New Deal and Great Society, arousing conservative Republican opposition that has made party politics and conflict central to progressivism’s wayward path over the course of the twentieth and twenty-first century. For all the important differences between the 2012 presidential candidates – Democrat President Barack Obama and Republican Governor Mitt Romney – both championed leadership in the progressive mold. Both viewed the modern presidency as the “steward of the public welfare,” to use Theodore Roosevelt’s beguiling phrase; and both claimed that executive power should be deployed in the service of the “whole people.” Thus, the Progressive idea of democracy, rooted in the mythic idea of “We the People,” has given rise to a chronic and partisan battle for the services of the modern state.

Panel 3: The Progressive Critique of Rights

Paul Frymer, Princeton University

Rights at the Closing of the Frontier

This paper examines the importance of the 'closing of the frontier' for Progressive thought and reform. Although a widely discussed theme of Progressive thinkers at the time—there was a common belief that the closing of the American frontier necessitated either a re-thinking of traditional American democratic values or a venture into a new frontier in lands across the Atlantic and Pacific oceans—I argue that the moment was widely misunderstood. The frontier was a longstanding political process with the federal government acting fairly consistently to an equally consistent set of variables and actors. In turn, the political process and its outcomes reflect a longstanding commitment by the United States to enforce a white racial hierarchy at the expense of rights, and as such, too much emphasis is placed on the Progressive Era's own denials of rights, particularly on the basis of race. The Progressive Era's dominant views on race should be seen as a continuation of previous eras, not something specific to its historical moment, ideology, and methods.

Karen Orren, University of California-Los Angeles

Rights—Whatever “Rights” Means

This paper proposes a way to investigate rights empirically and in different historical periods, including in the Progressive Century and era. Banking off Ronald Dworkin’s idea of “rights as trumps,” the paper expands the definition of rights to include the dimension of their anticipated enforcement. This move supports the required variance over time. From there, the paper situates the Progressive era against the structural-institutional background of common-law rights-holding in Anglo-American history; employing the definition proposed, it also reviews a series of rights disputes in American courts, beginning in 1908. The paper concludes with some brief thoughts on the implications of the discussion for understanding how rights “occur,” and for their future study.

Brian Tamanaha, University of Washington-St. Louis, School of Law

The Progressive Struggle with Courts: A Problematic Assymetry

A century ago progressives charged courts with class bias for favoring corporations and the rich. Progressive critics of courts advocated a variety of reforms, from abolishing judicial review to setting term limits on judges. Today, progressives raise the same criticisms against courts and propose some of the same reforms. I explore why progressives have been at odds with courts for most of the past century, and how this conflict puts progressives in a difficult position.

Panel 4: The Progressive Faith in Expertise

Sheila Jasanaoff, Harvard University Kennedy School of Government

A Century of Reason: How Expertise Won and Democracy Lost

Over the past 100 years, American society has made tremendous gains in ameliorating public problems through technical and technological means. Health and aging are at the forefront, but noteworthy too are agricultural productivity, environmental quality, transportation, workplace safety, and, perhaps most consequential, the control of human fertility. Expert knowledge is accepted as indispensable in virtually all sectors of public management—from banking and markets to national security, food and energy production, education, and public health. In this respect the Progressive vision of a rationally governed society has been achieved. There is, however, a dark side, reflected in the polarization of opinion on such issues as biotechnology, climate change, stem cell research, and public funding of innovation. I argue that this is not the result of growing scientific illiteracy, as scientists often proclaim, but of a failed democratic vision—one that has lost sight of how to construct public reason in environments of uncertainty, distrust, and unequal expertise.

John Skrentny, University of California-San Diego

The Alchemy of Employment: The Bipartisan Faith in Science and Engineering to Innovate, Create Jobs, Grow the Economy and Make Everything Better

In the Progressive Era, policymakers deployed science and engineering (S&E) workers to manage and provide rational control in very limited areas. In the contemporary period, policymakers have a broad, arguably blind, faith in scientists and engineers in unspecified numbers and representing unspecified fields to provide jobs creation and economic growth. We argue that the move to this non-rational reliance on S&E came about in four stages: 1) World War II institutionalized a federal role in S&E; 2) the Cold War in the 1950s began a period of counting and benchmarking

U.S. S&E workers vs. Soviet Union S&E workers as a measure of national security; 3) the 1980s began a period of similar period of counting and benchmarking S&E workers, this time against Japan, with a greater focus on engineers, and toward the goal of economic competitiveness; and 4) the contemporary period, where policymakers have no clear opponents or benchmarks, seek to grow the number of S&E workers through education and immigration to unspecified fields, in unspecified numbers, toward goals of job creation and economic growth that are not well understood. The paper concludes with a brief discussion of internal, governmental critics of this process, who have noted that the whole process has for decades lacked data and other specifications necessary for a scientific approach.

Steven Teles, Johns Hopkins University

How the Progressives Became the Tea Party's Bete Noir

Conservatism always and everywhere is a reaction to movements and ideas on the left. For much of the 20th century, it was anti-communism that provided conservatism its most intellectual counter-inspiration and its most vivid enemies. Throughout this period, however, opposition to the ideas and movements that began in the progressive era was a kind of minor theme, one that has become dominant in the years after the fall of the Berlin Wall. Suddenly, and most strikingly in Jonah Goldberg's best-selling *Liberal Fascism*, conservatism has looked to the first quarter of the 20th century for the source of the Republic's most deep-seated problems. In particular, conservatives across a variety of domains have focused on neutral expertise, professionalism, an insulated civil service, legal realism, cooperative federalism and economic corporatism--all key innovations of the progressive era--as deviations from the Founder's vision of liberal democracy. With that new focus, populist conservatives like Glenn Beck have brought to a broad audience criticisms of Presidents Wilson and Roosevelt that were once the province of a small clique of conservative political scientists. While this renewed focus on progressivism is often shrill and extreme, conservatives have identified genuine weaknesses in progressivism, some of which still live on in contemporary liberal practice.

Panel 5: The Progressive Faith in a Managed Economy

Daniel Carpenter, Harvard University

Completing the Constitution: How Progressive-Era Economic Regulation Perfected Article I, Section 8

The emergence of a new, nationalized and industrial economy in the late 19th century confronted the commonwealth tradition of regulation of the early republic with its most severe limits. The most important moments of economic regulation in the Progressive period, I argue, can be interpreted as the application of republican principles of regulation to a nationalizing economy in which the agents of economic production increasingly spanned state boundaries in both their markets and in their politics. As not only production and marketing but also political economy became national, an earlier mode of economic regulation became less efficient and less republican. In reconsidering the Meat Inspection Act, the Interstate Commerce Act, the Pure Food and Drugs Act, and the Federal Reserve Act, as well as their New Deal legacies, I point in this essay to the "Interstate Commerce" clause and the theory of party and faction as the critical links between Progressive Era economic regulation and the Federalists' and republicans' ideas a century earlier. The critical difference between these new laws and the commonwealth tradition, in this reading, lay in the geographic scope of the new regulation and in the separation of governance from faction (party). Such an approach not only explains the timing and institutional form of regulation, it also helps to explain the critical and heretofore unexplained participation of state government officials themselves in the expansion of national administration capacities.

While the Progressive Era marked a departure from republican principles in other areas (most notably initiative and referendum institutions), in the area of economic regulation it marked a furthering, and in some cases a perfection, of those principles.

Richard A. Epstein, New York University School of Law, the Hoover Institution, and the University of Chicago School of Law.

The Progressive's Deadly Embrace of Cartels: A Close Look at Labor and Agricultural Markets 1890-1940

It is agreed on all sides that the industrial transformation of the United States in the decades after the Civil War were unprecedented in their scope and scale. The rise of the railroad, and the increasing pace of invention and industrialization brought forth new firm structures that required new responses. In this paper, I will examine one aspect of this transformation, which compares the attitudes of the progressive relative to their classical liberal opponents on the key issue of the support and opposition to the creation and defense of monopolies cartels. In dealing with the rate regulation of public utilities, the classical liberals walked the fine line between the control of monopoly profits and the prevention of confiscation by setting low rates. With otherwise competitive industries, the classical liberals took a position of a uniform hostility to cartels across corporations, labor, agriculture, which the progressives rejected first by exempting agriculture and labor from the antitrust laws. That decision was followed in turn by extensive regulation that was designed at the federal and state level to cartelize both these industries. This Article thus follows the legislative arc through state cartelization efforts, such as those sustained in *Nebbia v. New York* (1934) and *Parker v. Brown* (1943) through the extensive federal regulatory efforts that adopted the quota systems under the Agricultural Adjustment Acts, and the cartelization of the labor movement under the National Industrial Recovery Act, the National Labor Relations Act, and the Fair Labor Standards Act. The paper places all of these developments in both constitutional and economic perspective and defends the traditional system of rate regulation for public utilities, and attacks on standard welfarist ground the decision to protect and promote the creation of cartels in labor and agricultural markets. It also explores and rejects the extensive progressive efforts to justify the creation by these cartel-like actions by introducing democratic processes that took into account the preferences of cartel members while ignoring all other activities.

Panel 6: The Progressive Faith in a National Community

John Milton Cooper, University of Wisconsin

1912 and All That: From Promoting to Ending Big Government

In the 1912 presidential campaign, Theodore Roosevelt and Woodrow Wilson vied for the title of truer friend and sincerer champion of strong, centralized, activist, interventionist government. Yet far from being a pair of me-tooers, they had fundamentally different visions to justify their advocacy of what has come to be called and often scorned as “big government.” At heart, one wanted to serve conservative ends through transcendent nationalism, while the other wanted to serve liberal ends through fostering mobility. Wilson won the election, and his vision of government promoting interests and aspirations of disadvantaged people, as individuals or groups, went on by fits and starts to become the dominant strain of pro-government thinking, whereas Roosevelt’s big-government conservatism both withered away on his side of the political spectrum and got eclipsed by broker-state ideas. The path from their debate in 1912 to Ronald Reagan’s 1981 proclamation that government was the problem, not the solution, and Bill

Clinton's 1995 declaration that the era of big government was over was a tortured and often ironic one, blazed by both the friends and foes of big government.

Carol Nackenoff, Swarthmore College

Toward a More Inclusive Community? The Legacy of Female Reformers in the Progressive Era

Progressive era women led a number of reform movements that pressed government to expand into new policy arenas to address social problems. Their policy goals were part of an agenda to integrate new urban dwellers into the social fabric, to create good citizens, and build a more inclusive democratic community. Drawing on familial images and the authority of women borne of experience, these reformers worked in collaboration with new social scientific researchers, conducting studies and marshaling data in support of their policy goals. This heady combination helped push the state at a particular historical moment, contributing to progressive era statebuilding. But the changes they helped institute were not always more democratic. What were some of the consequences—for good or ill—of their achievements? And what became of the goals for achieving a more inclusive democracy?

Rogers Smith, University of Pennsylvania

Progressivism and the Claims of American Political Community in the 20th and 21st Centuries

Though progressives shared common values including democracy, scientific rationality, and concern for the disadvantaged, their visions of American national community varied significantly. Croly wed democracy with white Christian moralism, Weyl with consumerism, Kallen with cultural pluralism, Du Bois with race pluralism, Bourne with transnationalism. The New Deal largely featured Weyl's "consumer democracy," the Great Society added racial democracy, but this vision faltered in the 1970s, giving way to the Reagan coalition's embrace of more traditional forms of Americanism. Obama has sought to wed democratic pragmatism more fully with cultural pluralism, in ways that have proven to have significant limits. Nonetheless, something like this modern progressive view of American community may come to prevail more fully in the years ahead.