

Natural Rights and the Rule of Law: The Key to Real Progress

Winter has arrived. The days are shorter, and the nights successively longer. One gloomy afternoon, when you dispel the encroaching darkness with an easy flick of a switch, pause for a moment to reflect gratefully on the genius of Thomas Edison, who invented the first long-lasting practical electric light bulb in 1879 – when Madison Square Gardens opened the first artificial ice skating rink, Rutherford Hayes was President, and two years before the guns of Wyatt Earp and Doc Holiday rang out in the gunfight at the OK Corral in Tombstone, Arizona.

Before Edison, people had struggled for millennia, setting fire to one noxious substance after another, to hold back the darkness that descended with each setting sun. While his first light bulb burnt out after only 13 hours, Edison's remarkable invention changed everything. Clean, dependable electric lighting radically improved our productivity, prosperity, public safety and physical well-being.

The electric light was only one remarkable example of Edison's practical genius. He was a prolific inventor, holding over 1,000 U.S. patents, and was a highly successful entrepreneur. His numerous inventions and wide-ranging business ventures launched, or helped to advance, several industries that became central to the American economy: electric power, telecommunications, audio recording... and motion pictures. He founded over a dozen corporations, including General Electric in 1892. Today GE employs 305,000 globally, with sales of \$140 billion. From humble beginnings in a small Ohio town, Edison's skills and abilities propelled him to fame and fortune. He died a wealthy man, respected around the world.

What a great American story! We love progress and practical improvement. We love to think of ourselves as a 'can-do' people, always pushing forward, unrestrained by existing conditions and un-phased by any notion of the "impossible." Americans love to fix problems, fill needs, and produce useful things. And, we love to be financially rewarded for our successful efforts.

What, then, is the key to the progress and prosperity we love so much? What can we best do to support the efforts of all the aspiring Thomas Edisons among us today? Should we fund more STEM programs in the public schools? Distribute more government subsidies to the backers of unproven technologies?

An increasing body of scholarship shows that *the rule of law*, with a firm commitment to individual liberty and natural rights - including property rights - is the key to achieving sustained

progress and prosperity. This should not be surprising. The individual, after all, is the source of creative activity. “Capital” is Latin for head, and from man’s mind springs the ideas we call “innovation” today. When human capital is combined with private property, we have the foundational factors of production and wealth creation.

That said, “capital is a coward.” Uncertainly can and does chill risk investment. The rule of law, through fixed and clearly written codes, restrains the unpredictable exercise of *arbitrary* power. This restraint provides a predictable and clearly bounded open space within which individuals can freely manage their affairs, utilize their property, and pursue happiness in part through innovation and investment.

The American idea of the rule of law has as its philosophical and moral base the idea of natural rights as examined by John Locke, Thomas Jefferson... and James Wilson – among others. Initially, natural law or natural rights found its fullest expression in classical English liberalism and, most exceptionally, in our Declaration of Independence and Constitution of 1789. Because of this strong commitment to the rule of law and individual liberty based on natural rights, the industrial revolution was successfully launched in America and other Western nations – allowing them to enjoy unparalleled progress and prosperity in the nineteenth and twentieth centuries. Indeed, Western populations more than doubled during this unique historic period.

However, as the twentieth century unfolded, some Americans began to question the principles and institutions of our Founding in light of the serious challenges that confronted the country: large scale, concentrated industrialization, urbanization, mass immigration, labor unrest... and the realized threat of world war and revolution.

Certain politicians and intellectuals - Woodrow Wilson the embodiment of both - thought that the principles of individualism, natural rights, and limited government embodied in the Declaration and US Constitution were outdated relics of a pre-industrial past that dangerously undercut the ability of the government to deal with the modern challenges that confronted it. Wilson and others advanced “progressive” ideas to reform the government in ways that America urgently needed.

Wilson and the other Progressives turned away from English liberalism as a source of political inspiration. They turned instead to Germany. Impressed by the regimenting efficiency of German bureaucracy, its use of the Napoleonic Code inspired by the French Revolution, the pacifying effect of Bismarck’s social welfare system (1890s), and the exhilarating implications

for state power contained in German philosophy, the American Progressives sought to create nothing less than a “new republic” to meet the new challenges of the modern era.

In their new republic, the Progressives sought to replace our Founding concept of inalienable, individual natural rights with the concept of *malleable rights* that are created, distributed, and then redistributed by the central government according to its evolving policies and political constituencies. Power over principle, or the state first, seem to be the watchwords. The Progressives replaced our Founding concept that individuals utilize their property as a matter of natural right with the concept that property may be utilized only after and to the extent permitted by government. Both political and property rights in their view, begin with the state – the opposite of natural rights theory.

And the Progressives sought to replace our Founding concept that individuals should be protected by the rule of law and largely left alone by the government to freely manage their affairs. In place of a government whose powers were enumerated in the Constitution, divided among its branches, and generally limited by fixed and clearly written rules, Progressives advanced the idea of what we speak of today as “the administrative state” – an unrestrained executive bureaucracy, freely wielding consolidated power to manage every aspect of American life. Tocqueville warned of this as a possible form of soft tyranny in his *Democracy in America* (1840).

The Progressives believed that this new form of administrative government was necessary and proper because Americans, who might have been able to manage their affairs in the simple agrarian society of the Founders, could not possibly be expected to do so in the complex, interdependent and industrialized urban society that America was fast becoming.

Experts were needed to manage things; disinterested experts schooled in the social sciences and public administration; experts in the bureaucracy operating above the realm of politics; government experts empowered by “a living Constitution” and broadly written statutes to exercise their professional discretion on a case-by-case basis. By permitting and prohibiting, rewarding and punishing, allocating and reallocating the resources of society, Progressives believed their experts could efficiently manage the subject matter and citizens under their care to ensure steady progress and widespread, equalized prosperity.

Thus, the Progressives replaced the rule of law with “the rule of the regulator”. They replaced a government committed to traditional liberty at the expense of efficiency with a

government committed to ‘efficiency’ at the expense of traditional liberty. They replaced a reliance on individual invention to achieve progress and prosperity with a reliance on officially certified experts and centralized administration.

Within all this Progressive desire to “control” society and man through centralized government lay a central philosophical idea. Progressives came to see the imperfections in both markets and society as not engendered by the imperfect nature of man himself, but by the imperfect nature of current American society. Energized by the “Age of Science”, and as foretold by Tocqueville, in the Age of Equality, society and its perfection became a government project, the central goal of governmental policy. Where the American Founders’ once sought to limit government due to man’s personal, permanent imperfections and tendencies towards tyranny, the Progressives rushed in with dreams perfecting society by perfecting man. As Ronald Reagan once said, “A people should have a government, a government should not have a people.” Progressives sought to turn Reagan’s moral logic on its head. Men were basically good, it was an imperfect society that drove man to error, and worse. Society must be changed by government, to allow man’s true nature to come though... The results of the most recent incarnation of Progressivism are now in...

Our modern regulatory state is not, of course, a creator of either progress or prosperity. Just the opposite. We are all too familiar with the alarming statistics and recurring reports concerning the national debt, cheap money and asset bubbles, the past 8 years of weak recovery, declining participation in the labor market, falling rates of new business formation, endlessly delayed project permits, and the widespread pessimism about our economic future that has weighed on us during recent years.

Progressives, however good their intention’s, tragically miscalculated when they dismissed the timeless value of our Founding principles and commitment to natural rights, individual liberty and the rule of law. As Madison reminded us in Federalist #51, “If men were angels there would be no... need [for] government. Mankind is not perfect, and government is a reflection of mankind. Government [power then] must be balanced and checked...”

The 2016 US election results have opened many opportunities for new thinking, and new governmental policy. Perhaps chief among them is the opportunity for us to understand and correct the fundamental flaw in the Progressive concept of government. The ultimate lesson of the American Revolution and the counterrevolution launched by the Progressives is simply this:

If a nation wants progress and prosperity, it must first strive to be free more than perfect. If the American people and their elected representatives can again grasp this self-evident truth, *that would be* progress!