

Tulsa Law Review

Volume 53 | Issue 2

Article 25

Winter 2018

Pilgrims' Progressivism

David Brian Robertson
daverobertson@umsl.edu

Follow this and additional works at: <https://digitalcommons.law.utulsa.edu/tlr>



Part of the [Law Commons](#)

Recommended Citation

David B. Robertson, *Pilgrims' Progressivism*, 53 Tulsa L. Rev. 343 (2018).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol53/iss2/25>

This Book Review is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Law Review by an authorized editor of TU Law Digital Commons. For more information, please contact megan-donald@utulsa.edu.

PILGRIMS' PROGRESSIVISM

David Brian Robertson

THE PROGRESSIVES' CENTURY: POLITICAL REFORM, CONSTITUTIONAL GOVERNMENT, AND THE MODERN AMERICAN STATE, STEPHEN SKOWRONEK, STEPHEN M. ENGEL, AND BRUCE ACKERMAN, EDs. (YALE UNIVERSITY PRESS 2016). Pp. 544. HARDCOVER \$100.00. PAPERBACK \$35.00.

This thought-provoking volume features leading scholars in social science, law, and history on an intellectual journey from the Progressive Era to the present.¹ The authors seek a deeper understanding of Progressivism's legacy and lessons for American political development. As editors Stephen Skowronek and Stephen M. Engel put it in their introduction, "what has happened to the essential elements of the reconstructive vision?"² What has been lost and gained as Progressive ideas and reforms radiated in American politics through the New Deal and the Great Society and into Barack Obama's 2011 speech in Osawatomie, Kansas?³ How have Progressive reforms fallen short, created unanticipated consequences, and motivated some conservatives to blame liberal malignancies on the Progressives?

Chapters by two dozen top scholars scrutinize the Progressives' impulse to mount a "multi-front assault on the ties binding American government to the politics of the past."⁴ The book, drawn from a conference at Yale University in 2013, focuses on Progressive assaults on accepted views of the Constitution, of rights, and of political parties. The Progressives advanced three kinds of change, aiming to expand the role of expertise, increase economic regulation, and build a national community. In the first essay, Eldon Eisenach exposes the problems that riddled the nationalist government imagined by the Progressives, who did not want to entirely discard existing institutions.⁵ These reformers

1. THE PROGRESSIVES' CENTURY: POLITICAL REFORM, CONSTITUTIONAL GOVERNMENT, AND THE MODERN AMERICAN STATE (Stephen Skowronek et al. eds., 2016) [hereinafter THE PROGRESSIVES' CENTURY].

2. Stephen Skowronek & Stephen M. Engel, *Introduction: The Progressives' Century*, in THE PROGRESSIVES' CENTURY, *supra* note 1, at 1, 2.

3. See President Barack Obama, Remarks by the President on the Economy in Osawatomie, Kansas (Dec. 6, 2011), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2011/12/06/remarks-president-economy-osawatomie-kansas>.

4. *Id.* at 5.

5. Eldon Eisenach, *A Progressive Conundrum: Federal Constitution, National State, and Popular Sovereignty*, in THE PROGRESSIVES' CENTURY, *supra* note 1, at 16, 16–32.

saw a Constitution with nationalist potential, but whose institutions resisted Progressive change. They imagined a democracy that unified the nation, but that required enlightenment of the people by settlement house workers, muckrakers, social scientists, and others with specialized knowledge.

The Constitution, as interpreted in the nineteenth century, impaired efforts to use the federal government to solve unprecedented national problems driven by industrialization, urbanization, and new population diversity. Ambitious and self-confident Progressives sought to reinterpret and reform the Constitution, the root framework of the old order, to activate truly national change. Aziz Rana offers penetrating insight into the way Charles Beard's realism aimed to cut away complacency about the myths of demigod framers and a rigidly fixed Constitution.⁶ This realistic view of the founding turned the Constitution into an evolving framework amenable to limitless change. Brian Tamanaha points out the difficulty of the reformers' hope to achieve substantive justice within the legal framework.⁷ Conservative opponents could simply use blunt originalism as a fortification to hold off the more nuanced legal interpretations needed to ensure these just results.

Some of the strongest Progressive impacts involved their battles against received interpretations of property and states' rights that inhibited active national government. These struggles have echoed through subsequent claims of civil rights against states' rights, and environmental protection against property rights. Karen Orren observes that Progressives used legal realism to battle for a much broader range of rights beyond freedom of contract.⁸ In the process, the reformers created more bargaining chips for achieving these goals in subsequent rights conflicts. Sonu Bedi shows that Progressives, skeptical about the courts, strengthened legislatures and other institutions that could establish more reasonable legal tests for providing rights.⁹ Ken I. Kersch incisively shows that today's conservatives have written their antipathy to the Progressives' "living constitution" into a conservative counter-history to "prosecute the Progressives as quislings" and lay the alleged malfeasance of liberalism at the Progressive door.¹⁰

While the Progressives undercut some of the foundations of patronage-based politics, their reforms sometimes worked at cross-purposes and produced ironic consequences for the nationalist agenda. Sidney M. Milkis emphasizes that executive leadership became the enduring focus of the new reform spirit.¹¹ Today, with polarized partisans focused more on the president than on the parties, Barack Obama's experience showed how hard it is for a reform president to overcome the deep and bitter polarized

6. Aziz Rana, *Progressivism and the Disenchanted Constitution*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 41, 41–60.

7. Brian Z. Tamanaha, *The Progressive Struggle with the Courts: A Problematic Asymmetry*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 65, 65–81.

8. Karen Orren, *Rights as Process: A View from the Progressives' Century*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 87, 87–103.

9. Sonu Bedi, *Reclaiming the Conceptual Legacy of the Progressives' Critique of Rights: Equal Protection Without Higher Scrutiny*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 108, 108–24.

10. Ken I. Kersch, *Constitutional Conservatives Remember the Progressive Era*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 130, 130–48.

11. Sidney M. Milkis, *The Progressive Party and the Rise of Executive-Centered Partisanship*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 174, 174–93.

partisanship of our time. Nicole Mellow insightfully shows that the Progressives' yearning to build a national community of interest forced them to confront, and sometimes embrace, repugnant tools for homogenizing the populace such as eugenics, racial exclusion, and immigration restriction.¹² For Carol Nackenoff, female reformers tried to drive universal reforms through a diverse system that, in practice, locked in "traditional gender roles, traditional notions of proper family life, and reliance on expertise and administration to achieve political ends."¹³ John Milton Cooper describes how the embrace of stronger government drew Progressives toward the Democrats, laying the path toward the national activism later in the century,¹⁴ while Michael McGerr charts the way Progressive battles on great wealth and the rich evaporated as liberalism turned pragmatic during the Cold War.¹⁵

In an especially thoughtful chapter, Rogers Smith identifies three sorts of Progressive visions of the American political community: the widely shared vision of a more democratic community of paternalistic, white Social Gospel adherents; the cultural pluralists such as W.E.B. Du Bois; and the advocates of a broad consumer-producer alliance championed by Florence Kelley (and later embodied in Franklin D. Roosevelt's "Four Freedoms").¹⁶ These Progressive visions exist today, but the Obama presidency showed how difficult it is to reconcile these visions. Those who seek more democracy *and* more cultural pluralism often wish away the contradictions that require democracy itself "to explain more fully what sorts of political communities and what forms of civic equality are appropriate today."¹⁷

Another group of chapters analyzes the rising power of experts in American governance. The battle to grow government in the decentralized U.S. logically turned on centralizing policy coordination through experts and professionals using shared specialized information. Joanna Grisinger very effectively shows that Progressives, then and since, refuse to confront the contradiction between the separation of powers and the elevation of centralized and professionalized policy management.¹⁸ American governance in the past century has been "marked by these two systems of governance often working at cross-purposes, each compromising the integrity of the other."¹⁹ Daniel Carpenter describes how state officials helped build regulatory mechanisms in the Gilded Age, and how their efforts to span governmental boundaries influenced the construction of national

12. Nicole Mellow, *The Democratic Fit: Party Reform and the Eugenics Tool*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 197, 197–212.

13. Carol Nackenoff, *Toward a More Inclusive Community: The Legacy of Female Reformers in the Progressive State*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 219, 220.

14. John Milton Cooper, *From Promoting to Ending Big Government: 1912 and the Progressives' Century*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 157, 157–72.

15. Michael McGerr, *Progressivism, Liberalism, and the Rich*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 243, 243–60.

16. Rogers M. Smith, *The Progressive Seedbed: Claims of American Political Community in the Twentieth and Twenty-First Centuries*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 264, 264; President Franklin D. Roosevelt, State of the Union Address (Jan. 6, 1941), available at <https://fdrlibrary.org/four-freedoms>.

17. Smith, *supra* note 16, at 285.

18. Joanna Grisinger, *The (Long) Administrative Century: Progressive Models of Governance*, in *THE PROGRESSIVES' CENTURY*, *supra* note 1, at 360, 360–77.

19. *Id.* at 362.

regulatory institutions.²⁰ While racial bigotry limited Progressive reform in federal labor agencies, Paul Frymer argues that these agencies teach us that rights and favorable regulation are not mutually exclusive, and their combination is essential for progress.²¹ Richard A. Epstein contends that the Progressives continually supported cartelization over market competition, making for an ultimately inefficient and destabilizing force in the U.S. economy.²² Sheila Jasanoff points out that the difficulty of reconciling science with politics has contributed to the loss of faith in expertise in the last half century.²³ John Skrentny and Natalie Novick conclude that the political *utility* of science and expertise itself “pushed the Progressives’ limited and specific use of scientific expertise into greatly expanded and mostly unjustified directions.”²⁴

The concluding insights of the volume highlight that *The Progressives’ Century* holds up a distant mirror to America’s troubled present. James T. Kloppenberg astutely reveals how much Barack Obama’s viewpoint owed to the Progressives and their legacy.²⁵ The Social Gospel, the progressive income tax, and the national regulation of the economy were all alive and well in the Obama administration. But these years also illustrate the impediments to Progressivism, some old (such as Americans’ distrust of government) and some new (such as partisan polarization and social media). Moreover, as Steven M. Teles reminds us, conservatives also learned from Progressivism.²⁶ Glenn Beck and other conservatives helped make the Progressive Era a mortal enemy of the Tea Party.²⁷ Bruce Ackerman reflects on problems that require reform today, including money in politics, citizen information, internet fraud, and checks on the president within the executive branch.²⁸

Every chapter in this ambitious volume deepens our appreciation of the impact of Progressivism then and now. Together, they provide powerful lessons about reform ideas, incomplete frameworks, and unanticipated consequences. Progressives closeted racial issues until demands for racial inclusion corroded the coherence of paternalistic Progressivism. Today’s Progressives advocate active government but ignore government inefficiencies. This blind spot can produce Progressive policy that is very vulnerable to attack, especially during implementation. Progressives then and now instinctively

20. Daniel Carpenter, *Completing the Constitution: Progressive-Era Economic Regulation and the Political Perfection of Article I, Section 8*, in THE PROGRESSIVES’ CENTURY, *supra* note 1, at 291, 291–310.

21. Paul Frymer, *Rights Through Knowledge and Reason: Civil Rights Aspirations in the Progressive-Era Department of Labor*, in THE PROGRESSIVES’ CENTURY, *supra* note 1, at 316, 316–32.

22. Richard A. Epstein, *The Progressives’ Deadly Embrace of Cartels: A Close Look at Labor and Agricultural Markets, 1890–1940*, in THE PROGRESSIVES’ CENTURY, *supra* note 1, at 339, 339–54.

23. Sheila Jasanoff, *A Century of Reason: Experts and Citizens in the Administrative State*, in THE PROGRESSIVES’ CENTURY, *supra* note 1, at 382, 382–401.

24. John D. Skrentny & Natalie Novick, *From Science to Alchemy: The Progressives’ Deployment of Expertise and the Contemporary Faith in Science to Grow the Economy and Create Jobs*, in THE PROGRESSIVES’ CENTURY, *supra* note 1, at 405, 408.

25. James T. Kloppenberg, *Barack Obama and the Traditions of Progressive Reform*, in THE PROGRESSIVES’ CENTURY, *supra* note 1, at 431, 431–49.

26. Steven M. Teles, *How the Progressives Became the Tea Party’s Mortal Enemy: Networks, Movements, and the Political Currency of Ideas*, in THE PROGRESSIVES’ CENTURY, *supra* note 1, at 453, 453.

27. *Id.* at 453–54.

28. Bruce Ackerman, *What Is to Be Done? A New Progressivism for a New Century*, in THE PROGRESSIVES’ CENTURY, *supra* note 1, at 478, 478–93.

advocate national unity, but even without political polarization, that instinct becomes harder to achieve as the enlarging nation includes ever widening differences between people and their problems, ideas, and knowledge.

The stated and implicit comparisons between the Progressive Era and the present will force readers to think much harder about reform today. First, as several authors point out, while most of the Progressives omitted racial equality in their vision for America, race is a foremost challenge for today's Progressives. Second, there is not an overarching *diagnostic* impulse today, in the way that corruption and privilege helped the Progressives crystallize their reform agendas. The 2016 campaign exposed a restless left-wing populism unsatisfied by Hillary Clinton. Third, the enormous faith of the original Progressives in expertise and policy engineering has dissolved. It seemed relatively easy to wish away any friction between democracy and the power of experts a hundred years ago. The corporatism that Epstein disdains offered Progressives like John R. Commons a solution to this friction. But the loss of faith in government is now two generations old. The best and the brightest have failed to employ military expertise to extinguish threats or even to unify the nation. Financial elites, including the Federal Reserve, left unfulfilled a hunger for fairness. Ambitions for social engineering seem to have shrunk to "Freakonomics."

The book also will stimulate ideas about reform today. They remind us of intense conflicts over the meaning of the Constitution that seem muted among reformers now. Rana reminds us that Beard's challenge to the origins of the Constitution may have been a necessary part of shaking up those older, orthodox beliefs about American government.²⁹ Conservatives today invest considerable time and effort to enshrine cherry-picked interpretations of the document as "originalism." Where is a new, realistic interpretation of the Constitution today that reformers can use to challenge this originalism?

Inevitably, a volume so ambitious will have limitations that leave some readers asking for more. The book gives ideas a powerful role in Progressivism, but is light on the way these ideas were shaped by the politics and economics of the time. Several authors hint that politics – more than internal contradictions or omissions in ideas themselves – profoundly shaped Progressive thought. "Inevitably," writes Jasanoff, "the balance between reliance on science and reliance on politics is itself a product of social accommodation and power plays."³⁰ Skrentny and Novick observe that politics drove science to "shed its progressive realism to become the government's fantasy elixir" with general and abstract remedies for economic problems.³¹ Teles suggests that reasonable conservative critiques of Progressivism evolved into expedient political weapons meant to convert the Progressive Era into a straw man.³² If politics really drives the ideas that fill this book, we need another collection that systematically explores the connection of politics and ideas.

Progressive ideas were heavily indebted to powerful economic forces that were reshaping the nation in ways the reformers themselves could only partially understand. The Progressive Era was driven by a new industrial, urbanized economy, and its far-

29. Rana, *supra* note 6, at 41–60.

30. Jasanoff, *supra* note 23, at 383.

31. Skrentny & Novick, *supra* note 24, at 408.

32. Teles, *supra* note 26, at 453–75.

reaching consequences could no longer be denied. Today, our economy again is changing in ways we do not fully understand. That economy is electronic, global, service-driven, diverse, and unequal. Distributional issues are front and center now. To those who are victims, the triumph of expert authority does not seem like a big improvement over traditional authority. To those who feel cultural threats, expert authority looks inferior to traditional authority and autocracy. These forces will change the path of American political development because American government does not fully suit our political and economic needs. But, just like the Progressives a century ago, we will not change that path just as we please.