

THE AMERICAN CONCEPTION OF LIBERTY

FRANK GOODNOW (1859–1939)

Progressive political science was based on the assumption that society could be organized in such a way that social ills would disappear. Goodnow, president of Johns Hopkins University and the first president of the American Political Science Association, helped pioneer the idea that separating politics from administration was the key to progress. In this speech, given at Brown University, he addresses the need to move beyond the ideas of the Founders.

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The end of the eighteenth century was marked by the formulation and general acceptance by thinking men in Europe of a political philosophy which laid great emphasis on individual private rights. Man was by this philosophy conceived of as endowed at the time of his birth with certain inalienable rights. Thus, Rousseau in his “Social Contract” treated man as primarily an individual and only secondarily as a member of human society. Society itself was regarded as based upon a contract made between the individuals by whose union it was formed. At the time of making this contract these individuals were deemed to have reserved certain rights spoken of as “natural” rights. These rights could neither be taken away nor be limited without the consent of the individual affected.

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Such a theory, of course, had no historical justification. There was no record of the making of any such contract as was postulated. It was impossible to assert, as a matter of fact even, that man existed first as an individual and that later he became, as the result of any act of volition on his part, a member of human society. But at a time when truth was sought usually through speculation rather than observation, the absence of proof of the facts which lay at the basis of the theory did not seriously trouble those by whom it was formulated or accepted.

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Frank Goodnow, *The American Conception of Liberty* (Providence, RI: Standard Printing Company, 1916), 9–13, 19–21, 29–31.

While there was no justification in fact for this social contract theory and this doctrine of natural rights, their acceptance by thinking men did nevertheless have an important influence upon the development of thought and in that way upon the actual conditions of human life. For these theories were not only a philosophical explanation of the organization of society; they were at the same time the result of the then existing social conditions, and like most such theories were also an attempt to justify a course of conduct which was believed to be expedient.

At the end of the eighteenth century a great change was beginning in Western Europe. The enlargement of the field of commercial transactions, due to the discovery and colonization of America and to the contact of Europe with Asia, particularly with India, had opened new spheres of activity to those minded for adventure. The invention of the steam engine and its application to manufacturing were rapidly changing industrial conditions. The factory system was in process of establishment and had already begun to displace domestic industry.

The new possibilities of reward for individual endeavor made men impatient of the restrictions on private initiative incident to an industrial and commercial system which was fast passing away. They therefore welcomed with eagerness a political philosophy which, owing to the emphasis it placed upon private rights, would if acted upon have the effect of freeing them from what they regarded as hampering limitations on individual initiative.

This political philosophy was incorporated into the celebrated Declaration of the Rights of Man and of the Citizen promulgated in France on the eve of the Revolution. A perusal of this remarkable document reveals the fact, however, that the reformers of France had not altogether emancipated themselves from the influences of their historical development. For almost every clause of the Declaration refers to rights under the law rather than to rights which were natural to and inherent in man.

The subsequent development in Europe of this private rights philosophy is along the lines thus marked out by the Declaration. The rights which men have been recognized as possessing have not been considered to be inherent rights, attaching to man at the time of his birth, so much as rights which find their origin in the law as adopted by that organ of government regarded as representative of the society of which the individual man is a member.

In a word, man is regarded now throughout Europe, contrary to the view expressed by Rousseau, as primarily a member of society and secondarily as an individual. The rights which he possesses are, it is believed, conferred upon

him, not by his Creator, but rather by the society to which he belongs. What they are is to be determined by the legislative authority in view of the needs of that society. Social expediency, rather than natural right, is thus to determine the sphere of individual freedom of action.

The development of this private rights philosophy has been, however, somewhat different in the United States. The philosophy of Rousseau was accepted in this country probably with even greater enthusiasm than was the case in Europe. The social and economic conditions of the Western World were, in the first place, more favorable than in Europe for its acceptance. There was at the time no well-developed social organization in this country. America was the land of the pioneer, who had to rely for most of his success upon his strong right arm. Such communities as did exist were loosely organized and separated one from another. Roads worthy of the name hardly existed and communication was possible only by rivers which were imperfectly navigable or over a sea which, when account is taken of the vessels then in use, was tempestuous in character.

Furthermore, the religious and moral influences in this country, which owed much to the Protestant Reformation, all favored the development of an extreme individualism. They emphasized personal responsibility and the salvation of the individual soul. It was the fate of the individual rather than that of the social group which appealed to the preacher or aroused the anxiety of the theologian. It was individual rather than social morality which was emphasized by the ethical teacher and received attention in moral codes. Everything, in a word, favored the acceptance of the theory of individual natural rights.

The result was the adoption in this country of a doctrine of unadulterated individualism. Every one had rights. Social duties were hardly recognized, or if recognized little emphasis was laid upon them. It was apparently thought that every one was able and willing to protect his rights, and that as a result of the struggle between men for their rights and of the compromise of what appeared to be conflicting rights would arise an effective social organization.

The rights with which it was believed that man was endowed by his Creator were, as was the case in France, set forth in bills of rights which formed an important part of American constitutions. The form in which they were stated in American bills of rights was subject to fewer qualifications than was the case in France. Their origin was found in nature rather than in the law. The development of these rights, further, has been quite different from the European development which has been noted. American courts, early in the history of the country, claimed and secured the general recognition of a power to declare

unconstitutional and therefore void acts of legislation which, in their opinion, were not in conformity with these bills of rights. In their determination of these questions, American courts appear to have been largely influenced by the private rights conception of the prevalent political philosophy. The result

5 has been that the private individual rights of American citizens have come to be formulated and defined, not by representative legislative bodies, as is now the rule in Europe, but by courts which have in the past been much under the influence of the political philosophy of the eighteenth century....

This general attitude towards private rights is, it seems to me, at the present time

10 in process of modification. Whatever may have been formerly the advantages attaching to a private rights political philosophy—and that they were many I should be the last person to deny—this question of private rights has been reexamined with the idea of ascertaining whether, under the conditions of modern life, our traditional political philosophy should be retained.

15 The political philosophy of the eighteenth century was formulated before the announcement and acceptance of the theory of evolutionary development. The natural rights doctrine presupposed almost that society was static or stationary rather than dynamic or progressive in character. It was generally believed at the end of the eighteenth century that there was a social state which under

20 all conditions and at all times would be absolutely ideal. The rights which man had were believed to come from his Creator. These rights consequently were the same then as they once had been and would always remain the same. Natural rights were in theory thus permanent and immutable. Natural rights being conceived of as eternal and immutable, the theory of natural rights did

25 not permit of their amendment in view of a change in conditions.

The actual rights which at the close of the eighteenth century were recognized were, however, as a matter of fact influenced in large measure by the social and economic conditions of the time when the recognition was made. Those conditions have certainly been subjected to great modifications. The pioneer

30 can no longer rely upon himself alone. Indeed with the increase of population and the conquest of the wilderness the pioneer has almost disappeared. The improvement in the means of communication, which has been one of the most marked changes that have occurred, has placed in close contact and relationship once separated and unrelated communities. The canal and the

35 railway, the steamship and the locomotive, the telegraph and the telephone, we might add the motor car and the aeroplane, have all contributed to the formation of a social organization such as our forefathers never saw in their wildest dreams. The accumulation of capital, the concentration of industry with the accompanying increase in the size of the industrial unit and the loss

of personal relations between employer and employed, have all brought about a constitution of society very different from that which was to be found a century and a quarter ago. Changed conditions, it has been thought, must bring in their train different conceptions of private rights if society is to be advantageously carried on. In other words, while insistence on individual rights may have been of great advantage at a time when the social organization was not highly developed, it may become a menace when social rather than individual efficiency is the necessary prerequisite of progress. For social efficiency probably owes more to the common realization of social duties than to the general insistence on privileges based on individual private rights. As our conditions have changed, as the importance of the social group has been realized, as it has been perceived that social efficiency must be secured if we are to attain and retain our place in the field of national competition which is practically coterminous with the world, the attitude of our courts on the one hand towards private rights and on the other hand towards social duties has gradually been changing. The general theory remains the same. Man is still said to be possessed of inherent natural rights of which he may not be deprived without his consent. The courts still now and then hold unconstitutional acts of legislature which appear to encroach upon those rights. At the same time the sphere of governmental action is continually widening and the actual content of individual private rights is being increasingly narrowed....

We no longer believe as we once believed that a good social organization can be secured merely through stressing our rights. The emphasis is being laid more and more on social duties. The efficiency of the social group is taking on in our eyes a greater importance that it once had. We are not, it is true, taking the view that the individual man lives for the state of which he is a member and that state efficiency is in some mysterious way an admirable end in and of itself.

But we have come to the conclusion that man under modern conditions is primarily a member of society and that only as he recognizes his duties as a member of society can he secure the greatest opportunities as an individual. While we do not regard society as an end in itself we do consider it as one of the most important means through which man may come into his own.

You are probably asking yourselves: What is the purpose of saying these things in this place? What connection have they with a great educational institution? My answer to these questions is this. Those who are in charge of such an institution are under a very solemn obligation. They are in some measure at any rate responsible for the beliefs of the coming generation of thinkers and of molders of public opinion. We teachers perhaps take ourselves too seriously

at times. That I am willing to admit. We may not have nearly the influence which we think we have. Changes in economic conditions for which we are in no way responsible bring in their train regardless of what we teach changes in beliefs and opinions. But if we are unable to exercise great influence in
5 the institution of positive changes, we can by acquainting ourselves with the changes in conditions and by endeavoring to accommodate our teaching to those changes, certainly refrain from impeding progress. This may be an over-modest estimate of the function of a teacher. At the same time it is an ideal the realization of which is not to be despised. For many universities have in the
10 past been the homes of conservatism. New ideas have often knocked for a long time on the gates of learning before they have been permitted to enter. Even after they have passed the portal they are sometimes the object of a suspicion which it has taken years to allay.

So I repeat we teachers are in a measure responsible for the thoughts of the coming generation. This being the case, if under the conditions of modern
15 life it is the social group rather than the individual which is increasing in importance, if it is true that greater emphasis should be laid on social duties and less on individual rights, it is the duty of the University to call the attention of the student to this fact and it is the duty of the student when he goes out
20 into the world to do what in him lies to bring this truth home to his fellows.