

## An Essay on Capitalism, the State of Nature, Laissez-Faire and the Classical Origins of the Welfare State: A Critical Reappraisal and Challenge

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### Abstract

*This study explores the works of St. Thomas Aquinas relating to natural and human law, the theories of the “social contractarians” relating to the “State of Nature,” the contributions of Adam Smith concerning the theory of “laissez-faire” in the realm of social economics, and the writings of the Belgian philosopher Jean Dabin and the American philosopher John Rawls who provide a bridge from classical philosophy to modern economic realities. The context of the study is the Progressive Era in the United States, the Great Depression, and the New Deal which brought about the “welfare state.”*

**Key Words:** social contract, laissez-faire, welfare state, New Deal, Progressivism

### 1. Introduction

The life of St. Thomas Aquinas (Aquinas or St. Thomas) spanned a forty-eight year period (1226-1274) and included the authorship of seventy works on philosophy and theology. It is ironic that St. Thomas did not think of himself primarily as a philosopher. Rather, Aquinas self-image was steeped in the classical notion that he preeminently was a theologian, devoted to “reconciling Aristotle with Christianity” (see Westberg, 2017). As Younkins (2006) has noted: “Thomas Aquinas (1225-1274), the dominant thinker of the middle ages, combined the science and philosophy of Aristotle with the revealed truths of Christianity. Holding that Aristotelianism is true but is not the whole truth, he reconciled the philosophy of Aristotle with the truth of Christian revelation. Aquinas was a committed disciple of Aristotle but was an even more sincere disciple of the Church. He reconceived Aristotle's ideas to a new context, was able to make distinctions that Aristotle did not formulate, and never hesitated to go beyond Aristotle. The 13th century rediscovery and revival of the corpus of Aristotle's teaching and Aquinas' synthesis of it with the tenets of Christian faith effected a dramatic change in medieval political thought. Through his writings, Aquinas provided a solid bridge from the ancients.”

Much of Aquinas' writings were devoted to the topics of politics and government (Catto, 1976). St. Thomas's views on these topics may be found in two works: *De Regno* (On Kingship) (dealing with relations between Church and State) (McCormick 2012; McCormick, 2022) and *Summa Theologica* (The Sum of Theology), the former of which is considered by many to be the preeminent work of Christian philosophy (see Brind'Amour, 2007).

Aquinas traces the necessity for government and political organization on man's inherent social nature, writing “Man is naturally a social being and so in the state of innocence he would have led a social life” (see Fieser, 2022). Aquinas bases the organization of government on the superior wisdom and morality of the ruler acting for the benefit of the ruled—providing an interesting insight into the nature of sovereignty and the relationship of the sovereign to its subjects (Coopersmith, 2013; McLaverty-Robinson, 2015; Humblesmith, 2017).

In postulating his views on government, Aquinas' kinship with Aristotle and classical philosophy is quite evident (Westberg, 2017). However, Aquinas breaks with an important classical notion and is not satisfied with the earthly community as the ultimate point of reference or the “*summum bonum*” (a term coined by Cicero, perhaps Rome's greatest orator) for man—the highest and greatest good or value in society—where philosophy and ethics were decidedly humanistic and “this world” oriented (see, e.g., Dopico, 2021). Rather, Aquinas sees the “*summum bonum*” in values that exist extrinsic of man, “the final beatitude which is looked for after death in the enjoyment of God.”

In rejecting what has today become known as *secular humanism*—“an outlook or system of thought attaching prime importance to human rather than divine or supernatural matters”—Aquinas joins many contemporary theologians who see humanism as the greatest single modern heresy and danger to traditional Catholic values and teachings (see Kurtz, 1983; Manne, 2016). Interestingly, Aquinas stated a preference for monarchy as the optimal or ideal form of government (Hassan, 2009; Christ the King Law Center, 2018).

Aquinas believed that it was unlikely that superior moral and intellectual qualities could be found in any more than one man. "The best government of a multitude is rule by one, and this is clear from the purpose of government, which is peace; for the peace and unity of his subjects are the purpose of the one who rules, and one is a better constituted cause of unity than many" (Aquinas, *Summa Contra Gentiles*). Aquinas noted that in political society, the practical task or "end" for government lies in the goal of achieving the "unity of peace" among the ruled. As such, Aquinas is led to the conclusion that one ruler (the monarch) is most likely to maintain the peace, where a democratic or plural government made up of several individuals, political parties, or interest groups might in fact endanger social peace, stability, and political unity through internal disagreement and political rivalries (see Cain, 2007).

## 2. *St. Thomas and the Law*

Aquinas describes law as "a certain rule and measure of acts whereby man is induced to act or is restrained from acting" (Question 90) (see Budziszewski, 2014). Garrett (2022) notes that "Because the rule and measure of human actions is reason, law has an essential relation to reason; in the first place to divine reason; in the second place to human reason, when it acts correctly, i.e., in accordance with the purpose or final cause implanted in it by God." In his treatise, *Summa Theologica*, Aquinas distinguished between four forms of law: eternal law or the divine reason that immutably governs the universe; natural law; divine law, as prophetically revealed; and finally, human law (Jacobs, 2015; Schall, 2018).

Writing on the topic of natural law, Aquinas notes that of all creatures in the universe, only man is a creature of reason; as such, man participates both in divine providence and in divine reason in a unique way (Goyette, Latkovic, & Meyers, 2004). Natural law, therefore, is man's active participation in the eternal law through reason (Dimmock & Fisher, 2017; Garrett, 2022). Fieser (1992) notes "Concerning natural law, Aquinas argues that there is one highest principle from which all others are derived: 'Good is to be done and evil is to be avoided.'"

Cvek (2011) adds:

"At the heart of the natural law tradition in ethics is the belief that moral principles, precepts, or basic human goods are rooted in nature, or more precisely, that these principles can be discovered by rational reflection on natural inclinations, those inclinations which constitute the core of human nature. Every natural law theory therefore assumes that there is a significant connection between nature and reason."

According to Aquinas, the natural law relates to three goals, or what he terms as "inclinations":

- ... "The goal of self-preservation, which man shares with all beings on earth;
- ... The inclination of man towards certain forms of conduct that man shares with other animals in the human species, namely: the desire to preserve the species through sexual intercourse; the desire to become educated and to educate our offspring; rationality; and the desire for basic physical comfort through living in society (see Fieser, 2021);
- ... An inclination that relates to certain characteristics that are uniquely human—characteristics which Aquinas describes as "the desire to know God, to live in society and to avoid offending those with whom one lives" (see Cvek, 2011).

The last inclination, which St. Thomas postulates as one of the core components of the natural law, may be seen as the basis of contemporary *social responsibility theory* in the larger political and economic context. This uniquely human characteristic of the natural law serves concretely as the basis for human society, economic equality, just government, social organization, and civic responsibility.

Human law, the vehicle by which all other types of law takes on concrete form, and the society created through human intervention, will therefore be judged on the basis of three criteria:

- All human law must conform to the rule of reason;
- All human law must be just and in harmony with the common good; and
- All human law must be legitimate; that is, law must derive from the will of the people or from someone who has been entrusted by the people with the responsibility of representing them in creating human law (see Heath, 2019).

## 3. *The Contribution of the "Social Contractarians"—Locke, Hobbes, and Rousseau—to the Topic*

The Stanford Encyclopedia of Philosophy (2021) defines the theory of the "social contract" as:

"Contractarianism' names both a political theory of the legitimacy of political authority and a moral theory about the origin or legitimate content of moral norms. The political theory of authority claims that legitimate authority of government must derive from the consent of the governed, where the form and content of this consent derives from the idea of contract or mutual agreement. The moral theory of contractarianism claims that moral norms derive their normative force from the idea of contract or mutual agreement."

### 3.1. Thomas Hobbes

Thomas Hobbes (1588-1679), the author of *Leviathan*, is credited with creating the first general theory on government in the English language (see Hamilton, 2014). For Hobbes, political association and the foundation of government is based on a simple principle: the basic equality of man. Because of this fundamental principle of equality, all men “cherish like hopes and desires.” Hobbes is perhaps most well known for his conception of the “state of nature” (Sadler, 2010; Olsthoorn, 2020). Hobbes writes: “If two men desire the same thing, which they cannot both obtain, they become enemies and seek to destroy each other.” In this state, men find themselves in a “perpetual condition of war,” where all men, out of necessity, live in “continual fear and danger of violent death, and the life of man is solitary, poor, brutish, and short” (Chapter 13) (see Mouritz, 2010).

Hobbes explains that such an existence can be attributed to three psychological causes: competition, diffidence, and glory (see Piirimae, 2006; Abizadeh, 2011). This inclines a rational man towards “peace, security and a commodious existence.” Writes Mouritz, 2010, p. 125): “Humanity’s self-interest in turn obliges him to seek a path out of this violent state towards peace and freedom from pain and anxiety, where he can pursue pleasure. This leads to the first step in Hobbes’ social contract. To avoid war, all individuals must enter into a covenant with every other person, agreeing not to harm one another.”

Hobbes comments that the social contract, as the foundation of government, is entered into between both the subjects and the ruler, and subject and subject alike. It is in this theory of the social contract that Hobbes’ view of the function of government assumes a critical position (Hampton, 2010).

For Hobbes, government is instituted through a covenant or contract that transfers the powers of governance from the citizenry at-large to the sovereign. The state is charged with maintaining order, peace, and security for the benefit of its citizens (Wolfenden, 2010). The state must be authoritarian but *not* totalitarian. “This agreement alone, however, is not sufficient to maintain peace. Compliance with this social contract requires the coercive power which Hobbes believed only a powerful sovereign could provide” (Mouritz, 2010, p. 125). Wolfenden continues: “... Hobbes decides that the most powerful government is best, and so he concludes that a monarch with unlimited rights should rule.” Hobbes, however, argues for the absolute equality of all subjects before the law so that the rich, powerful and mighty have no systemic legal advantage of the “poor and obscure” person (see Hayes, 1998).

In the main, however, despite certain practical limitations, Hobbes provides the basis for a political equality that would be essential to the later establishment of economic equality within the context of politics, as the discussion of the “state of nature” and “natural rights” moves to a more practical level during the nineteenth and twentieth centuries.

### 3.2. John Locke

John Locke (1632-1704), author of *Two Treatises on Government*, takes a different approach to the concept of natural law, the social contract, and the state of nature than that taken by his contemporary Thomas Hobbes (Sasan, 2021). It may be argued that Locke’s conception of man is inherently more optimistic (Schouls, 2008).

According to Locke’s conception of the social contract, government is treated as a “sacred trust” and the governed retain *individual rights* which predate government and upon which any government must be established. Locke stresses the right of property as one of the rights which in fact precede government (Snyder, 1986). As a result, the principle purpose of government—the impetus why men give up the state of nature for what Locke terms “civil society” (Coletti, 2020)—is the mutual preservation of their “lives, liberties, and estates, which I call by the general name property.” Vaughn (1980) writes: “... the ownership of private property is one of the major causes of the existence of the state. Once men form states, the government is expected to rule in the public good and not for its own good, and one of the ways it fulfills this charge is by regulating property so as to make it secure. Should the government fail to meet its obligations, for instance by arbitrarily confiscating property, the citizens have the right to change the government.”

The Lockean notion of the nature of the social contract is reflected in the bold words found both in the American Declaration of Independence and later in the Constitution of the United States (see House, 2008). Both documents speak of a people voluntarily ordaining a new conception of government, established to preserve basic rights such as “life, liberty and the pursuit of happiness.” Likewise, the peculiar notion of Locke that individual rights predate the establishment of government had a strong influence on the inclusion of a specific Bill of Rights in the Constitution—most especially the Ninth Amendment to the Constitution: “The enumeration in the Constitution, of certain of rights, shall not be construed to deny or disparage others retained by the people”—and of the theory of a limited government, where citizens retain significant individual and personal rights against infringement by the state (see Head, 2019).

In addition to Locke's "profound influence" on the American constitutional system, Przetacznik (2009) noted Locke's influence on "The French Declaration on the Rights of Man and of the Citizen of 26 August 1789; The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948; and The International Covenants on Human Rights adopted by the General Assembly of the United Nations on 16 December 1966. The reflection of many ideas contained in the *Two Treatises of Government* in these Instruments on human rights is so obvious that it would be no exaggeration to say that Locke is their spiritual father, although so far this credit is not yet given to him explicitly."

### 3.2.1. Labor as Property

Locke also provides an important insight into the nature of labor and property, which may provide a glimpse into the topic of social responsibility, as the argument shifts from a purely philosophical realm to that of economics and the role of government in the economic sphere.

Locke begins with a simple premise: because every man has a property interest in his own person, "labor of his body and the work of his hands we may say are properly his." Thus, it is the Lockean notion that labor creates property and the same labor determines the value of property (see Vaughn, 1978; Vaughn, 1980). Locke posits: "It is labor indeed that puts the difference of value on everything."

In fact, Locke stresses the proportion of labor in a value high enough to write: "... of the products of the earth useful to the life of man, nine-tenths are the effects of labor." Interestingly, this concept of the creation of property squares with a later Marxist analysis of the theory of "surplus value" and "alienation of labor"—the foundation of Marx's critique of modern industrial society (Dahrendorf, 2001)—where men have been stripped of their dignity through being forced to sell their labor at slave or bare subsistence levels (see Gronow, 2011; Glawson, 2018) and to risk their lives in wars devised by capitalist-imperialist powers to further their insatiable quest for new markets (Campbell, 2014). Engle (2011) writes:

"Marx supposedly represents a radical break from liberal individualist property oriented thinking. In fact however, Marx integrates the best points of a variety of liberal individualists, notably Locke and Rousseau, but also to a lesser extent Aristotle and even Plato. Marx is an extension of, not a break from, mainstream thinkers in Western thought: all Marx's main ideas can be traced to one canonical Western scholar or another. Understanding analytical tools common to both Liberalism and Marxism contextualizes their divergences and allows one to better understand both the successes and failures of Marxism as a critique in practice of liberal state theory."

### 3.3. Jean-Jacques Rousseau

The third of the social contractarians was the French philosopher and author of *The Social Contract*, Jean-Jacques Rousseau (1712-1778). Rousseau, like Locke and Hobbes, provides an important insight into the nature of the social contract (Bishop, 2019). Rousseau states that the social contract comes into existence as the "total alienation of each associate together with all his rights, to the whole community," implying a voluntary association of man with the institution of their government based on an immersion of individual rights for the "common good." Morejon (2020) writes: "For Rousseau, the social contract is the keystone of civil society," and quotes Rousseau, "At once, in place of the individual personality of each contracting party, this act of association creates a corporate and collective body... receiving from that act its unity, its common identity, its life, and its will" (*The Social Contract*, 1.6).

Rousseau notes that man in the 'state of nature' is guided by instinct; whereas in civil society, man is inspired by the virtues of justice and equality in an atmosphere of civic responsibility (Bennett, 2019). In terms of economic implications, Hurtado (2010) offers this insight:

"Jean-Jacques Rousseau criticizes modern society because of its injustice. A society, whose members are motivated by self-love and relate to each other through market exchanges, implies a loss of equality and ever-increasing artificial inequalities. A social and political philosophy built upon such a society and mirroring its characteristics leads to a naturalization of the type of relationships and abuses this social organization implies. Such a social and political philosophy will focus on efficiency rather than justice. Rousseau's alternative to such a society and to the political and social philosophy associated with it, is based upon an economy of abundance and sharing like the one he describes in *Julie, or the New Heloise*. In this economy, moral, economic, and affective bonds become one and give way to relationships that are just and non-jealous. Each member takes part in the production of social wealth through labor and each one receives a share of this wealth that provides each member a place in society that such person neither wishes to leave or change. It is not an egalitarian organization but it is just, meaning, free of envy. This economy is only the starting point because justice can only be attained in the political sphere."

The writings of Locke, Hobbes, and Rousseau lead to a conclusion that society, formed through the aegis of a social contract, will bring man from a state of nature where life is a constant struggle to overcome base instincts of greed, self-preservation, and indolence at the expense of comity and conscience, to one formed on concepts of justice and equity that reaches into the political (Hobbes and Rousseau) and economic (Locke) spheres.

#### **4. The Theories and Challenges of Adam Smith**

Adam Smith (1723-1790), the noted Scottish economist and author of *The Wealth of Nations* (1776) and *The Invisible Hand* (1815), is often viewed as the father of modern capitalism and a forceful defender of *laissez-faire* (Biernat, 2010). As Cooney (2012) writes: “To Smith the three main underlying concepts of capitalism were the ‘invisible hand’; that individuals pursuing their own best self-interest would result in the greatest overall good to society; and that levels and kinds of goods and services in the market should be determined by the free market alone.”

As Matson (2020) argues, Smith is essentially making a case for liberty, and by implication, limiting the role of government. This case is based on Smith’s “presumption” that “central authorities, however well-intended, normally lack the knowledge needed to beneficially intervene in the market. Government officials do not know enough to effectively direct individual choices... But he believes that, by and large, liberty is conducive to the interest of society more effectively than sovereign command because sovereigns lack the God-like knowledge that would be necessary to beneficially intervene into people’s daily lives and businesses.”

#### **5. The Bridge from the Contractarians to Economic Justice**

The Belgian legal philosopher, Jean Dabin (1889-1971), provides an insight into a peculiar notion of justice as the touchstone of modern society and may provide a bridge from classical social contract philosophy to contemporary thinking relating to the proper role of government in providing for the “common welfare” (Milhollin, 1970).

According to Dabin, justice, in the broadest sense, merges with morality itself. The notion of justice corresponds to the fulfillment of all duties “prescribed by honesty” in the private life of an individual, in the broader concept of family, and also in social life—the public and political life—of society (Tammalo, 1959, p. 330). In addition, justice may be viewed as “relational,” that is, justice must be seen in the context of the relationships that exist among men at the “filial and familiar levels, and then among men more generally bound by the social contract, to conduct themselves in a commodious fashion, each with another and each with the government created through the social contract”—based on the fundamental principle of “*honesty*”—the core component of justice.

In this sense, the concept of justice is closely associated with a proper understanding of the concept of “the welfare state” in which society takes on the responsibility to provide for economic and well as political justice for its citizens (see Juarez, 2021). Kenton (2020) describes the welfare state as follows:

“The term “welfare state” refers to a type of governing in which the national government plays a key role in the protection and promotion of the economic and social well-being of its citizens. A welfare state is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions of a good life. [Social Security](#), federally mandated unemployment insurance programs, and [welfare payments](#) to people unable to work are all examples of the welfare state.”

##### **5.1. A Further Bridge: John Rawls**

Later, the American philosopher John Rawls (1921-2002) would provide insights on social contract theory and to broader principles of justice. In 1999, in recognition of the importance of this effort, American President Bill Clinton presented Rawls with the [National Humanities Medal](#) citing Rawls's work having “revived the disciplines of political and ethical philosophy with his argument that a society in which the most fortunate help the least fortunate is not only a moral society but a logical one.”

*A Theory of Justice* (1971) provide an alternative to the philosophy of [utilitarianism](#) (the doctrine that an action is right insofar as it promotes happiness, and that the greatest happiness of the greatest number should be the guiding principle of conduct) that addresses the problem of [distributive justice](#) (the [socially just](#) distribution of goods in a society) (see Martin, 1994).

Rawl’s original thoughts were published in the 1985 essay and subsequent book, “*Justice as Fairness*,” in which Rawls further developed his two central principles concerning justice: First, society should be structured so that the greatest possible amount of liberty is given to its members, limited only by the notion that the liberty of any one member shall not infringe upon that of any other member. Secondly, inequalities – either social or economic – are only to be allowed if the worst off will be better off than they might be under an equal distribution.

Alvi and Rafique (2021, p. 38) write: “He was of the opinion that an institution is just and fair only when its principles and rules are prepared to benefit all the members of the society equally and if there is an unequal distribution then it must advantage all of them especially the ones who are least i.e. needy.”

In *A Theory of Justice*, Rawls offers a model of choice in which individuals would *hypothetically* choose mutually acceptable principles of justice. Under such circumstances, Rawls believes that parties would find justice to be especially attractive. Rawls identifies these principles:

1. "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."
2. "Social and economic inequalities are to be arranged so that they are both:
  - (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
  - (b) attached to offices and positions open to all under conditions of fair equality of opportunity," winning out over varied alternatives, including [utilitarian](#) and ['right wing' libertarian](#) accounts.

While Rawls can be identified in the [social contract](#) tradition, he takes a different view from Locke, Hobbes, and Rousseau, but tacks on the same lines as does Dabin. Rawls develops his principles of justice through the use of an artificial device he calls the “*Original Position*” in which individuals make choices from behind a [veil of ignorance](#) (Davies, 2019)—some may posit from a position of neutrality. This "veil" is one that essentially blinds people to all facts about themselves so they cannot tailor principles to their own advantage. Rawls explains: "... no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance." Acting from this perspective will lead an individual to embrace principles that are fair to all. Further, in applying this theory to the realm of economics, Rawls claims that those in the *Original Position* would all adopt a strategy which would *maximize the prospects of the least well-off*:

"They are the principles that rational and free persons concerned to further their own interests would accept in an initial position of equality as defining the fundamentals of the terms of their association."

Rawls argues that the adoption of the original position would then govern the assignment of rights and duties and would regulate the distribution of social and economic advantages across society. The principle, based on the view that each member of society has an equal claim on society's goods, permits inequalities in the distribution of goods, but *only if those inequalities benefit the worst-off members of society*. He notes: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all."

## 5.2. A Reconciliation?

Is there any possibility of reconciling the views of the social contractarians and Adam Smith with those of Dabin and Rawls relating to the role of government in the economic sphere? Is the principle of *laissez-faire* indeed the most important guiding principle for government? The answer to these questions may surprisingly lie with Smith himself. According to Smith, there must be a certain “justice of government”: Capitalism must also be *rational* (Tafarella, 2012.):

“... that is, it discovers ‘employments most suitable to the interest of society’ through distributed, local, and self-interested decision-making. If capitalism is the answer to expanding the wealth of nations, what is government’s role in society? Smith sees a number of strictly circumscribed jobs: (1) “protecting the society from the violence and invasion of other independent societies”; (2) protecting “every member of society from the injustice or oppression of every other members of it”; (3) maintaining a predictable court system for “exact administration of justice”; (4) maintaining public institutions and public works, such as public roads; (5) “supporting institutions for education and religious instruction”; (6) predictable and non-onerous taxation, affecting “the pockets of people as little as possible”; and (7) temperance in deficit spending (“Nations, like private men, have generally begun to borrow upon what may be called personal credit” and the result is “enormous debts which . . . will in the long-run probably ruin, all the great nations of Europe”). But wherever governments fail in these minimal duties, the wealth of a nation suffers.

“Commerce and manufacturers can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay. Commerce and manufactures, in short, can seldom flourish in any state in which there is not a certain degree of confidence in the justice of government.”

## 6. Might the Excesses and Failures—the *Irrationality*—of Laissez-Faire Signal Such a Reappraisal?

In the late nineteenth and early twentieth century, the principle of laissez-faire and the relationship of the government to its citizens would be severely tested. Developments in the legal sphere relating to employee rights, and the fierce criticism lodged against judicial decisions through the 1930s provided such an opportunity. Had capitalism lost its essential rationality?

The epitome of the philosophy of laissez-fair may be seen in a case that reached the United States Supreme Court in 1915. In *Coppage v. Kansas* (1915), the United States Supreme Court stated explicitly that *labor is a commodity* to be bought and sold, bartered, or traded like any other commodity in the marketplace, relegated the status of labor and the workingman to that of inanimate possessions of the “robber barons” of the era. The Court wrote: “Included in the right of personal liberty and the right of private property... is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or for other forms of property” (page 236).

Lofaso (2017, p. 579) writes; “Accordingly, in *Coppage v. Kansas*, the Court resolved in the employer's favor the tension between the worker's interest in banding together for mutual aid or protection in the form of union membership and the employer's interest in running its business free from union interference, that is, the interference of workers' collective voice.”

The Progressive Era would serve as a stark counter-narrative to *Coppage*.

6.1. The Progressive Era Critique of Adam Smith and by Implication of the Founding Fathers May Hold the Key  
Schambra and West (2007) provide an interesting reappraisal of the role of government and the views of the Founding Fathers in the sphere of *social economics* which arose as a result of the Progressive Era in the United States (see also Weinstein, 2006). They argue that the Founders of the “American Experience,” influenced strongly by Locke, Hobbes, and Rousseau, accepted the core notion that “all men are created equal and that they have certain inalienable rights.” As such, men were also obliged to obey the natural law, under which men not only have rights but duties, and according to Thomas Jefferson, also obligated “to respect those rights in others which we value in ourselves.”

The main rights acknowledged by the Founders were “life and liberty, including the liberty to organize one's own church, to associate at work or at home with whomever one pleases, and to use one's talents to acquire and keep property.” Not unlike the social contractarians, the Founders believed that there was a natural moral order—“rules discovered by human reason that promote human well-being, rules that can and should guide human life and politics” (Schambra & West, 2007). The Founders argued that political society is “formed by a voluntary association of individuals: It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good,” as found, for example, in the Massachusetts Constitution of 1780.

As Madison wrote in *Federalist 51*: “If men were angels, no government would be necessary.” But since men are not angels, without government, human beings would live in “a state of nature, where the weaker individual is not secured against the violence of the stronger.”

Schambra and West (2007) summarized this proposition well:

“For the Founders, then, the individual's existence and freedom in this crucial respect are not a gift of government. They are a gift of God and nature. Government is therefore always and fundamentally in the service of the individual, not the other way around. The purpose of government, then, is to enforce the natural law for the members of the political community by securing the people's natural rights. It does so by preserving their lives and liberties against the violence of others. In the founding, the liberty to be secured by government is not freedom from necessity or poverty. It is freedom from the despotic and predatory domination of some human beings over others.”

For the Founders, however, the purpose of government was to protect the private sphere from intrusions by the state. Noted Schambra and West (2007) “The requirements of liberty, they thought, meant that self-interested private associations had to be permitted, not because they are good in themselves, but because depriving individuals of freedom of association would deny the liberty that is necessary for the health of society and the flourishing of the individual.”

As a counterpoint to this limited view of the role of government, the critique offered by the Progressive Movement (1890s through 1920) may provide an insight. Paul (2022) writes:

“The foundation of modern America was born during the progressive era. Progressivism refers to the different responses to the economic and social evolutions that occurred as a result of America's rapid urbanization and industrialization at the end of the 19th century.

In the late 1800s, millions of Americans migrated west and into urban areas, and hundreds of thousands of African Americans moved to northern cities. Moreover, the United States experienced unprecedented levels of immigration at this time.”

“Rapid advances in technology and industrialization took its toll on Americans. While urban areas benefited from electricity and running water, rural farmers struggled to maintain their farms as they battled increased competition, costly machinery, and falling prices. Thus, progressivism began as a social movement to cope with the various social needs of the time and ultimately evolved into a reform movement.”

The Progressive Movement regarded the Founders' focus on individual freedom and the creation of government though the “social compact” as essentially “defective because it took too benign a view of nature.” Progressives argued against the Founders' insistence on limited government. For Progressives, freedom should be redefined as the “fulfillment of human capacities, which becomes the primary task of the state” (Schambra & West, 2007), and not on limiting the potential for achieving economic justice.

John Dewey (1859-1952) may be cited as a leading exponent of this view see (Kelleher & Leonall, 2011). Dewey writes: “the state has the responsibility for creating institutions under which individuals can effectively realize the potentialities that are theirs” (quoted in Weinberger, 2011). Progressives no longer looked upon the private sphere as that which was to be protected by government. Instead, the realm of the private was seen as the realm of selfishness and oppression. Private property was especially singled out for criticism” (Schambra & West, 2007).

Woodrow Wilson rejected the view that “the ideal of government was for every man to be left alone and not interfered with, except when he interfered with somebody else; and that the best government was the government that did as little governing as possible.” Wilson argued as an academician and later as politician (Governor of New Jersey, President of the United States) that a government so constituted is fundamentally *unjust* because it leaves men at the mercy of predatory corporations, driven by greed and the accumulation of both political and economic power. Without government oversight of corporations, Wilson believed that the poor would be destined to indefinite victimization by the wealthy (see Pestritto, 2005). Accordingly, political scientist Theodore Woolsey wrote, “The sphere of the state may reach as far as the nature and needs of man and of men reach, including intellectual and aesthetic wants of the individual, and the religious and moral nature of its citizens” (quoted in Schambra & West, 2007). The cause of Progressivism was underscored in stark reality by the writings of leading “muckrakers” of the era such as Upton Sinclair, Lincoln Steffens, and Ida Tarbell who “tried to expose the problems that existed in American society as a result of the rise of big business, urbanization, and immigration” (Fleming, 2019).

There were many accomplishments of the Progressive era, most notably:

- ... The prohibition of labor for young children;
- ... Rules guaranteeing “safe and fair working conditions” for laborers of all ages;
- ... Passage of the 19<sup>th</sup> Amendment, which granted women the right to vote;
- ... Government regulation of “robber baron” capitalism;
- ... Awareness of the “horrific conditions” of America’s working poor; and
  - ... Regulation of industries like railroads and pharmaceuticals (see Staff Writer, 2020; Paul 2022).

However, despite its many successes, the Progressive Movement ended with the decade of the 1920’s, as American shrunk back to a period on “normalcy” and a return to an era where “the business of government is business” (Link, 1959; Filene, 2007). Two cases decided by the United States Supreme Court are instructive. In *Truax v. Corrigan* (1921), the majority of the Supreme Court held that an Arizona statute which granted employees the right to seek an injunction against an employer deprived the employer of the “business and premises of his property” without due process of law. In 1925, the Court had also decided that a state law compelling employers and employees to submit their controversies over wages and hours to a state arbitration panel was unconstitutional on grounds that such a provision violated the “freedom of contract” of the parties (*Chas. Wolff Packing Co. v. Industrial Court*, 1925).

As the decade of the 1920’s came to an end, however, the core critique of the Progressive Era—indeed that capitalism had lost its rationality—would be brought into sharp focus once again as America plunged into the depths of the Great Depression, seemingly paralyzed under the weight of *laissez-faire* and non-intervention by the government. Interestingly, more than forty years after *Coppage v. Kansas* had been decided, Associate Justice Felix Frankfurter wrote critically:

“... laws encountered the shibboleths of a premachine age and these were reflected in judicial assumptions that survived the facts on which they were based. Adam Smith was treated as though his generalizations had been imparted to him on Sinai and not as a thinker who addressed himself to the elimination of restrictions which had become fetters upon initiative and enterprise in his day. Basic human rights expressed by the constitutional conception of ‘liberty’ were equated with theories of laissez faire. The result was that economic views of confined validity were treated by lawyers and judged as though the Framers had enshrined them in the Constitution.... The attitude... regarded any legislative encroachment upon the existing economic order as infected with unconstitutionality...” (*AFL v. American Sash & Door Co.*, 1949).

### **7. America and the World Plunge into Depression and a New “Call to Arms” for a Reappraisal of Laissez-Faire**

Following on the decade of the 1920’s, a worldwide Great Depression resulted in a massive collapse of western capitalist economies and a retreat from democracy exacerbated about by the reluctance of governments to take decisive actions to stem the tide of misery that befell the great bulk of their citizenry, creating in very human terms a brutish and cruel “state of nature” for millions throughout the world. In the United States, images abounded of cardboard “Hooverilles,” dust bowls, six story plunges from Wall Street skyscrapers former scions of American capitalism literally peddling apples, potatoes, and chestnuts from nearby street corners. Had capitalism lost its essential rationality?

Out of the miasma of the Great Depression, a fundamental reappraisal of the role of the federal government saw its personification in the policies and programs of Franklin D. Roosevelt (Fusfeld, 1956). In creating the “New Deal,” Roosevelt and his cadre of advisors, called the “Brain Trust” (Rosen, 1972), formulated mechanisms, established programs, and created new institutions (the SEC, the Tennessee Valley Authority, the WPA, and others) to deal with economic insecurity and systemic economic injustice. In defending the New Deal from critics that claimed a lack of constitutional authority or deviation from core principles of capitalism, Roosevelt would frequently lash out against the “Economic Royalists” who had led the nation to the doorstep of economic ruin (see Kaufman, 2018). Roosevelt would often frame his arguments in striking terms of economic justice. During his second inaugural in January of 1937, the President spoke forcefully and eloquently of the conditions that had befallen millions of Americans:

“In this nation I see tens of millions of its citizens—a substantial part of its whole population—who at this very moment are denied the greater part of what the very lowest standards of today call the necessities of life.”

“I see millions of families trying to live on incomes so meager that the pall of family disaster hangs over them day by day.”

“I see millions whose daily lives in cities and on farms continue under conditions labeled indecent by a so-called polite society half a century ago.”

“I see millions denied education, recreation, and the opportunity to better their lot and the lot of their children.”

“I see millions lacking the means to buy the products of farm and factory and by their poverty denying work and productiveness to many other millions.”

“I see one-third of a nation ill-housed, ill-clad, ill-nourished.”

And then Roosevelt moves to assure the American people that they were not without hope:

“It is not in despair that I paint you that picture. I paint it for you in hope—because the Nation, seeing and understanding the injustice in it, proposes to paint it out.”

The prominent American journalist and political commentator Joseph Alsop (1910-1989) noted that the picture which Roosevelt had painted was indeed a stark reality—a primitive state of nature—in the darkest years of the Depression—a picture of depressing company housing in the coal town of Kempton, West Virginia; a sharecropper’s wife and daughter in Arkansas; a baby clad in a burlap bag in North Carolina. Alsop had recorded Roosevelt’s extemporaneous words at a press conference in 1935 where the President had outlined the philosophy underlying his administration: “... to try to increase the security and the happiness of a larger number of people in all occupations of life and in all parts of the country; to give them more of the good things of life...”; to give them assurance that they are not going to starve in their old age....” (quoted in the *Rockland County Journal News*, 1935).

Yet, perhaps the most forceful reference to the “law of nature” in an economic sense may be found in an address entitled the “Four Freedoms,” which Roosevelt delivered on January 6, 1941 at a time when the United States had not yet officially entered the war (Peng, 2011; Bouchard, 2012; Engel, 2015). In this address, Roosevelt looked to the creation of a post-war world founded upon “four essential human freedoms”: freedom of speech and expression; freedom of religion; freedom from fear; and freedom from want—focusing on the ideas of the social contractarians in concrete terms on fundamental political, religious and economic rights.

Roosevelt provided a cogent statement of the philosophy which would underpin these and other New Deal measures and their progeny, as America experienced a fundamental restructuring of society based on a new “social contract” between the government and its citizens: “... the development of an economic declaration of rights, an American constitutional order” where the concentration of economic power would be severely limited ... and where the true ‘mettle of government’ would be forged to the task of distributing wealth and products more equitably; where every individual has the right to a comfortable and sustainable standard of living, guaranteed not by a government ‘handout’ or the commonly criticized ‘dole,’ but by the fundamental right to productive work” (quoted in Hunter, 1987).

### 8. Translation into the “Welfare State”

The underlying principles of what has been termed by both adherents and detractors as the “welfare state” may be summarized as follows:

- First, every member of society and of the political community is entitled to a *minimum standard of living*, guaranteed by the full force of governmental authority, solely because he or she is a human being;
- Second, the “welfare state” is committed to a policy of *economic stability and progress*, seeking to eliminate the violent cycles of “boom and bust” in the economy that resulted in political and social aberrations such as fascism, Nazism, and Stalinism;
- Third, and perhaps most critical to our discussion, the “welfare state” is founded upon the recognition of the *fundamental right of economic security* established on the Lockean notion of the “fruits of man’s labors,” dedicated to full employment as the top priority of public policy.

The “Great Depression” demonstrated not only the near collapse of capitalism in the United States, but also the ravages of unemployment, falling wages, unsold goods and wasted resources evidenced in human degradation and a loss of hope that was inflicted upon those who through no appreciable fault of their own, and although able and anxious to find work, could not find productive work. The words of President Roosevelt in his second inaugural again provide an apt summary: “I see one-third of a nation ill-clad, ill nourished, ill-housed.”

Based upon the three imperatives described above, Roosevelt articulated that the role of government is to forcefully enter the marketplace to assure economic justice and security to Americans. Such programs as Social Security, equity payments to farmers, guarantees of collective bargaining rights to workers, and regulation of the excesses of Wall Street became the cornerstones of this view of the dynamic possibilities of the expansive role of government. Two quotations from President Roosevelt underscore this view. Speaking about the Social Security Act of 1935, Roosevelt said:

“We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.”

Commenting on the Agricultural Adjustment Act of 1933, Roosevelt stated:

“Something had to be done in an unprecedented fashion to meet the unprecedented plight of agriculture.”

Ramirez (2003, pp. 569-571) writes: “After the New Deal, it is clear that maximum macroeconomic performance is a function of free markets and optimal legal infrastructure. Beyond this, the New Deal teaches much more.”

These and other key pieces of legislation that formed the basis of the new social compact with Americans would be supplemented over time with legislation providing for full employment (Humphrey-Hawkins Act of 1978), protections for the unemployed (1935), a host of laws providing aid to the disabled and children, aid to education through the creation of the Department of Education in 1978, Medicare (1965), and most recently, the Affordable Care Act (2010).

### 9. Concluding Commentary

In sharp reaction to this reappraisal, the Austrian economist, Friedrich Hayek wrote the *Road to Serfdom* in 1944 as a critique of the institutionalized ‘welfare state’ (Meyer, 2014). Hayek “[warns] of the danger of [tyranny](#) that inevitably results from government control of economic [decision-making](#) through [central planning](#).” He further argues that the abandonment of [individualism](#) and [classical liberalism](#)—presumably also of the doctrine of *laissez-faire*—inevitably leads to a “loss of [freedom](#), the creation of an oppressive society, the tyranny of a [dictator](#), and the [serfdom](#) of the individual” (see Ebeling, 1999).

Hayek criticisms seem to have taken root. Sacks and Hartmann (2012) recount that:

“For more than thirty years, Republicans have used the existence of this “Welfare Queen” to justify their attacks on public spending and prove that the “welfare state” has run amok. Yet, her identity has never been revealed. After decades of searching, the best and brightest minds in the field of journalism were never able to discover who’s behind the wheel of the “Welfare Queen’s” Cadillac, or if she even existed.”

“She has eighty names, thirty addresses,” Reagan warned during his 1976 run for President about a nameless, Cadillac-driving woman who’s conning the social safety net. He added: “She’s got Medicaid, getting food stamps, and she is collecting welfare under each of her names.” In total, Reagan said, “Her tax-free cash income is over \$150,000.” This metaphor helped to shape public perceptions on government programs designed to aid the poor and disadvantaged in society.

Despite the negative characterizations of the welfare state, most especially after the 1980s, it is important to emphasize that the social contract in its economic emanations is in fact associated with key concepts of justice as posited by St. Thomas and emphasized in the theories underpinning the creation of the social contract itself. Indeed, by applying the insights offered by Dabin and later Rawls, and referencing the responses of the Progressive Era through the creation of the “New Deal” under Franklin Roosevelt, it can be argued that the creation of the welfare state in which the government would assume a leading and perhaps decisive role in providing for our fellow citizens who were “ill-housed, ill-clad, ill-nourished,” in the main has little to do with the narrative of its conservative critique, often raised as a point of ideological or partisan divide.

While it may be argued that Adam Smith certainly would have been in agreement with the views expressed by Hayek (O’Driscoll, 2010), there may be another side. At the same time as he espoused his theory of freedom, Smith also believed that one of the most important duties of government was to protect each member of society against the injustice and oppression of every other member of society. Biernat (2022) amplifies on this notion, quoting Smith, and writes:

“Three main roles of government in Adam Smith:

*Protect the country from foreign invasion:*

The first duty of the sovereign, that of protecting the society from the violence and invasion of other independent societies, can be performed only by means of a military force. But the expense both of preparing this military force in time of peace, and of employing it in time of war, is very different in the different states of society, in the different periods of improvement. *The Wealth of Nations*, Book V, Chapter 1, Part 1).

*Protect people from injustice from within the country:*

The second duty of the sovereign, that of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice, requires two very different degrees of expense in the different periods of society. (*Wealth of Nations*, Book V, Chapter 1, Part 2).

*Provide culturally positive efforts from public works to schools:*

The third and last duty of the sovereign or commonwealth, is that of erecting and maintaining those public institutions and those public works, which though they may be in the highest degree advantageous to a great society, are, however, of such a nature, that the profit could never repay the expense to any individual, or small number of individuals; and which it, therefore, cannot be expected that any individual, or small number of individuals, should erect or maintain. The performance of this duty requires, too, very different degrees of expense in the different periods of society (*Wealth of Nations*, Book V, Chapter 1, Part 3).”

In laying out the second and third duty of government, Smith notes that there can be no security in a community that has been deprived of basic law and justice. Society must be based upon both fairness and equity. Smith states emphatically that it is the duty of the state to provide legal security and impartiality (in both the political and economic spheres) to all of its citizens. In practical terms, Smith concedes that the third duty of government, that of maintaining “public institutions” and “public works” such as schools, hospitals, roads, etc., is beneficial to both individuals and to society at large, but which no individual or small number of individuals would or could erect or maintain if motivated by private profit (see Lipford & Slice, 2007).

Is there room in a reappraisal of Adam Smith’s views on the requirement of a rationality of capitalism that would serve as a repudiation of Hayek’s sharp criticism and condemnation of the “welfare state”? Cheng (2021) seems to think there is, as he writes: “Even a cursory reading of *The Wealth of Nations* tells us that Smith was chiefly concerned with the well-being of the less fortunate and cites the following written by Smith himself:

*“Is this improvement in the circumstances of the lower ranks of the people to be regarded as an advantage, or as an inconveniency, to the society? The answer seems at first abundantly plain. Servants, labourers, and workmen of different kinds, make up the far greater part of every great political society. But what improves the circumstances of the greater part, can never be regarded as any inconveniency to the whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable.”*

Rasmussen (2016) was even more direct and stated “Given his reputation, however, it is striking that Smith had more profound and original things to say in opposition to inequality than in its defense.”

Had the failures of unbridled capitalism, under the guise of laissez-faire, provided an opportunity for a reinterpretation of the role of government and the concept of “economic liberty”?

Interestingly, in 2019, in a speech at Catholic University, Senator Marco Rubio of Florida elaborated on what he termed as a program of “common good capitalism” (reported by Matson, 2010). Drawing on the encyclicals of Pope Leo XIII and John Paul II, Rubio presented a vision of “a system of free enterprise in which workers fulfill their obligation to work and enjoy the benefits of their work, and where businesses enjoy their right to make a profit and reinvest enough of those profits to create dignified work for Americans.” Rubio’s analysis once again raises an important question: What is the proper relationship between capitalism and the common good?

Matson (2020) too would have us focus on the aspect of Adam Smith that stresses what he termed as “the liberal plan” or the “system of natural liberty” in which “every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men.” Matson (2020) continues: “It is liberty, in Smith’s view, that is at the heart of capitalism, and at the heart of liberty lies commitment to the good of humankind. Considering Smith’s position reminds us of a long-standing, but increasingly endangered, American moral sensibility: liberty and the economic freedom it entails serve the common good.” Citing *The Wealth of Nations* in the cause of personal liberty, Matson underscores Senator Rubio’s viewpoint that “the wealth created by the market ‘extends itself to the lowest ranks of people.’” The choice does seem to be clear—or clear enough at this point.

The excesses of capitalism, the rearing of its ugly head in the sweat shops of New York, or the grossly unsanitary meat packing plants of Chicago, the work camps encountered by the "Oakies" trying to reach the “Land of Milk and Honey” of California in the 1930, and that fact that millions of our fellow citizens are still without health insurance today, should point to the deficiencies of modern capitalism and the reality of the existence of an intolerable “state of nature” described by the social contractarians which resulted in near economic collapse and catastrophe as the decade of the 1920’s came to a crashing end. Given the choice between a supposed fidelity to an amorphous concepts of “economic liberty” and laissez-faire capitalism that resulted in “one third of a nation ill-housed, ill-clad, ill-nourished,” and the clarion call to action, underscored through the proper application of Catholic social thought and teachings—what Senator Rubio describes as “common good capitalism”—capitalism without rationality had failed to provide for the basic needs of a large segment of the American population.

There is one final question: Is the “welfare state,” properly considered, the “new” social contract?

A proper understanding of the principles underlying the social contract impels us to make the essential connection between a call to equality and as recognition of the proper role of citizens *and* their government in assuring economic justice. Society need not parse the views of philosophers or theologians of bygone eras. Society is impelled to step up to the realities of economics and politics of our era and assure both liberty and equality.

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