SYMPOSIUM ON EUGENICS DURING THE AMERICAN PROGRESSIVE ERA

Protecting Family and Race

The Progressive Case for Regulating Women's Work

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ABSTRACT. American economics came of age during the Progressive Era, a time when biological approaches to economic reform were at their high-water mark. Reform-minded economists argued that the labor force should be rid of unfit workers—whom they labeled "unemployables," "parasites," and the "industrial residuum"—so as to uplift superior, deserving workers. Women were also frequently classified as unemployable. Leading progressives, including women at the forefront of labor reform, justified exclusionary labor legislation for women on grounds that it would (1) protect the biologically weaker sex from the hazards of market work; (2) protect working women from the temptation of prostitution; (3) protect male heads of household from the economic competition of women; and (4) ensure that women could better carry out their eugenic duties as "mothers of the race." What united these heterogeneous rationales was the reformers' aim of discouraging women's labor-force participation.

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I

Introduction

AMERICAN ECONOMICS BECAME a professional, expert policy discipline during the Progressive Era (roughly 1890–1920), a period that marked, not coincidentally, the beginning of a vastly more expansive state relationship to the economy. By World War I, the U.S. government created the Federal Reserve, amended the Constitution to institute a personal income tax, established the Federal Trade Commission, applied antitrust laws to industrial combinations and to labor unions, and restricted immigration, while state governments regulated working conditions, banned child labor, instituted "mothers' pensions," capped working hours, and set minimum wages.[1] Professional economists, especially the progressives among them, played a leading role in the Progressive Era transformation of the state's relationship to the American economy.

What is less well known is that eugenic thought deeply influenced the Progressive Era transformation of the state's relationship to the American economy. Progressive Era economics, like the regulatory state it helped found, came of age at a time when biological approaches to social and economic reform were at their high-water mark. Reform-minded economists (and other social scientists) argued that the labor force should be rid of unfit workers—whom they labeled "unemployables," "parasites," and the "industrial residuum"—so as to uplift superior, deserving workers. Immigrants, blacks, and those deemed defective in character or intellect were regarded by leading labor legislation activists less as victims of industrial capitalism than as threats to the health and well-being of deserving workers and of society more generally. Mostly neglected by historians of American economics, these invidious distinctions crucially informed the labor and immigration reform that is the hallmark of the Progressive Era (Leonard 2003a).[2]

This crude, eugenically informed sorting of workers into deserving and undeserving classes was applied to women as well. Many reformers classified women among the "unemployable." In the United States, where nearly all Progressive Era labor legislation applied to women

exclusively, laws regulating women's work were promoted for the benefits thought to obtain when women were removed from paid employment. Leading progressives, among them women at the forefront of labor reform, advocated excluding women from the labor force on the grounds that (1) work outside the home threatened women's health and morals; (2) working women usurped jobs that rightly belonged to male heads of household entitled to a "family wage"; and (3) women in the labor force improperly abandoned their eugenic duties as "mothers of the race."[3]

The progressive justifications for women's labor legislation were diverse. Paternalists invoked women's health; moralists invoked women's virtue; "family wagers" sought to protect fathers from the economic competition of women; "maternalists" promoted the virtues of motherhood; and eugenicists advocated for the eugenic health of the race.[4] But all of these different justifications for women's labor laws shared two common characteristics: all were founded upon invidious distinctions between the sexes, and all argued that society is better off when women are excluded from work for wages.

II

The Influence of Eugenic Thought

Biology informed Progressive Era social science enough that one cannot fully understand the economic ideas that underwrote labor and immigration reform without also understanding the biological thought that influenced them. The relationship between American economic reform and the biology of human inheritance remains relatively unexplored because, new scholarship notwithstanding, the influence of eugenics is poorly understood. Eugenics is still widely regarded as an aberrant, pseudoscientific, laissez-faire doctrine, a 20th-century version of Gilded Age social Darwinism that was wholly abandoned after the eugenic atrocities of German National Socialism. In short, eugenics is seen to represent everything that Progressive Era reformers opposed.

But the progressives were not that progressive and eugenics was, in actual fact, the broadest of churches. Eugenics was mainstream; it was pervasive to the point of faddishness; it was supported by leading

figures in the emerging science of genetics;[5] it appealed to an extraordinary range of political ideologies, not least to the progressives; it was, as state control of human breeding, a program that no advocate of laissez-faire could consistently endorse;[6] it opposed natural selection (Leonard 2004); and it also survived the Nazis.[7]

Historians of eugenics, traditionally focused upon movements in the United States, the United Kingdom, and in Germany, have more recently shown that eugenic thought was commonplace elsewhere, influencing intellectuals, scientists, and public figures in virtually all non-Catholic Western countries, and in many others besides. There are scholarly treatments of the eugenics movements in Canada, France, Japan, Russia, Denmark, Sweden, Norway, Finland, Romania, China, Latin America, and elsewhere.[8] By 1933, American demographer and eugenicist Paul Popenoe could boast that eugenic sterilization laws obtained in jurisdictions comprising 150 million people (Kevles 1995: 115).[9]

Eugenic thought crossed national borders, and it also traversed an extraordinary range of political views. Ideologically, the eugenics movement attracted reactionaries, such as Madison Grant, author *The Passing of the Great Race*, and key movement figures, such as Francis Galton, founder of modern eugenics, and Charles Davenport, head of the Eugenics Record Office at the Cold Spring Harbor Laboratory, who can be described as social conservatives. But eugenics also won advocates of very different politics, such as Margaret Sanger, the birth-control advocate who began intellectual life as a radical anarchist (a protégé of Emma Goldman), Fabian socialists such as Karl Pearson, Sidney Webb, and George Bernard Shaw, and the sui generis feminist, economist Charlotte Perkins Gilman.

Biological justifications for social and economic reform naturally appealed to those such as Irving Fisher, founder of the American Eugenics Society, who served as officers in eugenic organizations. One is not surprised to find leading eugenicists proselytizing, as when Karl Pearson suggested that "[s]ocialists have to inculcate that spirit which would give offenders against the State short shift and the nearest lamp-post" (Pearson [1887] 1901: 307–308), or when Sidney Webb devised the novel term "adverse selection" to describe what he

saw as English "race suicide," a Progressive Era term of art for the process by which the unfit outbreed their biological betters:

> Twenty-five percent of our parents, as Professor Karl Pearson keeps warning us, is producing 50 percent of the next generation. This can hardly result in anything but national deterioration; or, as an alternative, in this country gradually falling to the Irish and the Jews. (1907: 17)

But the influence of eugenic ideas extended well beyond the organizations dedicated to eugenic research and proselytizing.[10]

Justices Louis Brandeis and William Howard Taft joined the infamous *Buck v. Bell* Supreme Court decision, where Oliver Wendell Holmes, a proponent of eugenics, opined, "[t]he principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes." "Three generations of imbeciles," they agreed, "is enough."[11] President Theodore Roosevelt called race suicide—"the elimination instead of the survival of the fittest"—the "greatest problem of civilization," and he regularly returned to the theme (1907: 550).[12] President Calvin Coolidge, in 1921, warned of the perils of race mixing: "Biological laws tell us that certain divergent people will not mix or blend. The Nordics propagate themselves successfully. With other races, the outcome shows deterioration on both sides. Quality of mind and body suggests that observance of ethnic law is as great a necessity to a nation as immigration law" (1921: 14). Coolidge said, "America must remain American" when he signed the Immigration Restriction Act of 1924, which imposed racial quotas advocated by Irving Fisher and that effectively ended immigration from eastern and southern Europe.

Progressive Era eugenic thought influenced intellectuals as well.[13] Virginia Woolf confided to her diary that "imbeciles" "should certainly be killed." T. S. Eliot favorably reviewed eugenic articles from journals such as *Eugenics Review*. In 1908, D. H. Lawrence indulged in a eugenic extermination fantasy:

> If I had my way, I would build a lethal chamber as big as the Crystal Palace, with a military band playing softly, and a Cinematograph working brightly, and then I'd go out in back streets and main streets and bring them all in, all the sick, the halt, and the maimed; I would lead them gently, and they would smile at me. (quoted in Childs 2001: 10)

Not all eugenic proposals were as extreme as the lethal chambers Lawrence imagined. But the eugenicists' diagnosis—that immigrants from southern and eastern Europe, blacks, the "feeble-minded," and others deemed unfit were the root cause of social and economic problems—was publicly opposed by very few. And an equally small number publicly opposed the eugenic prescription that the state can and should plan human breeding so as to reduce the proportion of the unfit.

So, when writing a monograph-length survey of eugenics for the *Quarterly Journal of Economics*, James A. Field offered an opinion that was shared by many of his contemporaries: "Eugenics is [one of the most] hopeful application[s] of science in social reform" (1911: 1–2).[14] New scholarship in eugenics historiography has rediscovered this important variant of eugenic thought, one that saw eugenics as "a biologically based movement for social reform" (Schneider 1990: 4), "a branch of the drive for social perfection that many reformers of the day thought might be achieved through the deployment of science to good social ends" (Kevles 1998: 211). We now understand that eugenic explanations would have appealed readily and naturally to the progressive economists and their allies in the labor- and immigration-reform movements.

III

Who Were the Progressives?

PROGRESSIVE ERA HISTORIOGRAPHY employs a sometimes bewildering variety of labels to describe the left-liberal social theorists and reformers who promoted the idea of using an activist state, as carefully guided by social-scientific expertise, to reform markets in the name of advancing a social welfarist vision of the common good (Fried 1998: ix). The diversity of terminology among historians reflects, in part, the heterogeneity of the groups that populated American Progressive Era reform: nativists, Social Gospelers, temperance advocates, muckrakers, birth-control advocates, eugenicists, social surveyors, charity reformers, settlement house workers, pacifists, city-beautiful advocates, and conservationists.

I adopt the old-fashioned term "progressive" in recognition of the

reformers' (rare) agreement on the cause of labor reform through protective legislation and their shared belief in what Linda Gordon (1992: 36) calls the "progressive traditions of statism and . . . expertise." Labor reform was the very heart of the progressive agenda, as was their belief in the virtues of an expert technocratic vanguard to justify and to promote the reform agenda.

Perhaps no group better embodied the progressive ethos than the American reform economists. The reform economists' impulse to set the world to rights was powered by a potent combination—the German academic social activism they had admired as Ph.D. students and the Protestant Social Gospel's evangelical will to remake society.

Soon after its founding in 1885, the reformist American Economic Association (AEA) transformed itself from an agency of Christian social reform into a more scholarly and scientific professional organization (Coats 1960). But Richard T. Ely and his confreres did not abandon their progressive creed of activism through expertise, what Mary Furner (1975) calls "advocacy." They relocated. Wiser after the academic-freedom trials at the end of the 19th century, the progressive economists founded organizations outside universities to conduct research on the labor problem and to lobby, advocate, and rake muck. As Daniel Rodgers puts it: "[E]xpert policy counsel, in fact, turned out to be the ground on which laissez-faire's professional critics regrouped and refashioned a position of influence . . . [they] established new forms of authority by colonizing the social space between university professorships and expert government service" (Rodgers 1998: 108). In the United States, Progressive Era reform economists essentially invented a role we today take for granted: the academic expert who advises policy-making bodies.

Two of the most influential reform organizations were the American Association for Labor Legislation (AALL) and the National Consumers League (NCL). Ann Shola Orloff and Theda Skocpol (1984: 726) call the AALL the "leading association of U.S. social reform advocates in the Progressive Era." Mostly forgotten today, the AALL was a key labor-reform advocacy group, influential in effecting Progressive Era legislation regulating workplace safety, minimum wages, and maximum hours.

The AALL was founded in December 1905 at the Baltimore AEA

meetings, principally by two of Gustav Schmoller's students, Henry Farnam of Yale and Adna F. Weber of the New York Bureau of Labor Statistics (Rodgers 1998: 236).[15] The first group meeting was in early 1906. Richard T. Ely was the AALL's first president, and John R. Commons was its first executive secretary. The latter position was soon taken over by Commons's protégé John B. Andrews, who led the organization for many years. Irene Osgood (who became Irene Osgood Andrews), another Commons student, served as the AALL's assistant secretary.

Henry Rogers Seager was involved from the very beginning, serving as its third and fifth president (Commons was the second to hold the AALL presidency). Princeton's William F. Willoughby was the fourth president, and Irving Fisher served as the sixth. The AALL masthead practically mapped the interlocking directorates of American progressivism: Jane Addams of Hull House; Charles Richmond Henderson, the University of Chicago sociologist and the head of Charities and Corrections; Paul Kellogg, editor of the *Survey*, an influential progressive organ; Louis Brandeis, AALL legal counsel until appointed to the Supreme Court by Woodrow Wilson; and Wilson himself, even after he became President of the United States.[16]

The NCL was less academic, was run by women, and was more skillful politically (Rogers 1998: 236). It was led, beginning in 1899, by the charismatic Florence Kelley, a lifelong socialist who can be regarded as the most influential of labor-reform advocates. Josephine Goldmark, sister-in-law to Brandeis, was active in the NCL leadership and supervised the production of the famous *Brandeis Brief*, an annotated compilation of social science reports defending maximum-hours (and in later versions, minimum-wage) legislation for women. The NCL assembled local consumer leagues that, before embracing legislation, raised the consciousness of genteel consumers of ladies' garments produced under sweatshop conditions by using NCL labels (rival to the union label) that certified satisfactory work conditions. Alice Goldmark Brandeis was an active member of the Consumer's League and secretly paid the expenses of the Washington NCL office (Bary 1972).

The NCL tapped progressive economists for advisors and board

members. Commons served as NCL president from 1923 to 1935. Seager, A. B. Wolfe of Oberlin College, and Arthur Holcombe of Harvard University were members of the NCL minimum-wage committee as early as 1909 (Hart 1994: 209, n. 94). Ely and Father John Ryan of Catholic University were also active NCL advisors.

No single entity can stand in for the heterogeneous and fractious reform groups that have, at one time or another, earned the label of "progressive." But, given their impeccable reform credentials, their preference for bureaucratic, statutory approaches over democratic, collective bargaining, and their faith in social science, the state, and their own disinterested expertise as reliable guides to the social good, the AALL economists and their NCL colleagues make for an excellent synecdoche.

IV

What Did the Progressives Believe about Eugenics and Wage Determination?

NO HISTORIAN OF ECONOMICS will be surprised to find the great reformers of Progressive Era economics, many of them leaders of the AALL, at the forefront of American labor reform. The surprise would be if Richard T. Ely, John R. Commons, Henry R. Seager, Sidney and Beatrice Webb, and John B. Andrews somehow opposed the minimum-wage, maximum-hours, and working-conditions legislation that they dedicated so much time to promoting and enacting.

What is more surprising is that these leading progressives campaigned for labor reform while also maintaining that restrictive labor laws, such as legal minimum wages, would disemploy poor workers. Moreover, these progressives argued that minimum-wage-induced disemployment was a social benefit. Legal minimum wages and other statutory means of inducing undesirable groups to leave the labor force were, in the progressive view, a eugenic benefit. A legal minimum helped the deserving poor by removing from employment the undeserving poor, who, by virtue of their hereditary infirmities, were wrongly dragging down the wages of the better class of worker (Leonard 2003a). Sidney and Beatrice Webb put it plainly: "With

regard to certain sections of the population [the 'unemployables'], this unemployment is not a mark of social disease, but actually of social health" (Webb and Webb [1897] 1920: 785).

So it is doubly wrong to suggest that "many" Progressive Era economists believed that binding minimum wages "would have a marginal, if any, discernible effect on the total quantity of employment" (Prasch 1998: 164). Leading progressives not only maintained that binding minimum wages would disemploy workers; they also believed that this minimum-wage-induced disemployment was a social benefit, as it performed the eugenic service of raising wages by ridding the labor force of "unemployables."[17] Felix Frankfurter, then the AALL's legal counsel, supported a legal minimum wage in Oregon on grounds that "the state . . . may use means, like the present statute, of sorting the normal self-supporting workers from the unemployables and then deal with the latter appropriately as a special class" (Powell 1917: 310).

The progressive view that removing undeserving workers from the labor force was socially beneficial distinguishes its proponents from today's minimum-wage advocates, whose defense rests on a view that minimum wages do *not* disemploy workers (Card and Krueger 1995). The notion that minimum-wage-induced disemployment is a social benefit also distinguishes its progressive proponents from their marginalist contemporaries, such as Alfred Marshall (1897), Philip Wicksteed (1913), A. C. Pigou (1913), and John Bates Clark (1913). These influential Anglo-American economists argued—consistent with the late Classical view that preceded them and the modern neoclassical view that succeeded them—that legally-induced disemployment should be seen as a social cost of minimum wages, not as a putative social benefit (Leonard 2000).

Which groups did the progressives deem "unemployable"? At one time or another, progressives placed nearly all groups—male, Anglo-Saxon heads of household excepted—in the category of unemployable. Sidney and Beatrice Webb ([1897] 1920: 785), to pick an influential example, classified as unemployable:

> children, the aged, and the child-bearing women . . . the sick and the crippled, the idiots and lunatics, the epileptic, the blind and the deaf and dumb, the criminals and the incorrigibly idle, and all those who are actu-

> ally "morally deficient" . . . and [those] incapable of steady or continuous application, or who are so deficient in strength, speed or skill that they are incapable . . . of producing their maintenance at any occupation whatsoever.

The unemployables were thus those workers who, generally owing to hereditary infirmity, earned less than some measure of an adequate standard of living, a standard the British called a "decent maintenance" and Americans referred to as a "living wage." Sidney Webb called these workers "parasites" because he and other reformers understood the difference between actual wages and living wages as entailing a consumption deficit—a shortfall that must be met by charity, by the state, or by other members of the worker's household. Firms that paid workers less than the living wage they were entitled to were deemed parasitic, as were the workers who accepted such wages.[18]

But this formulation made for mischief. First, reformers tended to regard actual wages as determined not by worker productivity but by a worker's innate consumption standard, where, for example, workers belonging to "low-wage races" were predisposed to accept low wages and thereby "under-live" workers from more deserving races. Second, reformers treated men and women differently when determining to what living wage a worker was entitled.

V

Productivity or Living Standard as Determinants of Wages?

ARE WORKERS ENTITLED TO what they are actually paid or to what they produce, as measured by the value of their marginal product, or are workers entitled to wages sufficient to meet the expenses required by a certain standard of living, as measured by a "living wage"? These questions, as much as any other, divided Progressive Era economists considering the labor question.

Proponents of laissez-faire argued that whatever labor got, it deserved. The economists who pioneered the marginal productivity theory of factor pricing, such as John Bates Clark and Philip Wicksteed, argued in a more neoclassical vein.[19] Clark believed that workers paid their marginal products got what they deserved, an ethical position for which he was widely criticized. Employers, Clark

said plainly, owe workers their contribution to output, not "the radical policy of . . . a life of modest comfort" (1913: 293).[20] Wages equal to marginal product were fair wages and less was unfair for Clark, as for A. C. Pigou (1920).

Wicksteed pointed out that when value of a worker's marginal product fell short of a living wage, legislation that set the minimum wage equal to a living wage would disemploy these workers. "We can neither assume nor enact," Wicksteed cautioned, "an equation between what a man is industrially worth to some actual or potential employer (his wage) and what he needs in order to live a full human life (a decent maintenance)." "To enact a living wage, then, as a legal minimum," Wicksteed continued, "is to enact that every man's services . . . are . . . as shall enable him to live a full human life—or if not that he shall receive no wage at all" (1913: 78).

Reformers endorsed different wage theories in this era of eclectic political economy. But most American progressives belonged to an intellectual tradition that preferred to see wages determined by workers' needs rather than by their productivity. On the progressive account, consumption needs, not the value of output, rightly determined a worker's wages.

The progressive view of wage determination, with its emphasis on consumption, drew upon the labor-union theory of the 1880s.[21] Frank Foster of the American Federation of Labor, for example, argued that "it is not commonly the value of what is produced which chiefly determines the wage rate, but the nature and degree of the wants of the workers, as embodied in their customary mode of living" (Mussey 1927: 236). Likewise did the influential and pioneering labor reformer Carroll Wright, one of the first Americans to call for a legal minimum wage, assert that "[t]he labor question" is a matter of the "wants of the wage-laborer" (1882: 4–5).

Progressives agreed that wages should be determined by consumption needs, not by productivity, and that the cost of this entitlement should fall upon firms.[22] But how should a living wage be determined?[23] Did the "necessary comforts of life" include, for example, piano lessons? More importantly, were workers with more dependents, and thus higher living expenses, thereby entitled to

higher wages, and *which* workers were entitled to wages sufficient to support dependents?[24]

The built-in indeterminacy of a living wage had important consequences for the progressive view of women's employment. Arguing that wages should be a matter of consumption opened the door, in this era of eugenics, to accounts that explained consumption, or standard of living, as something that was determined by women's biological nature, or by their "natural" roles as mothers and helpmeets.

Influential progressives already had in place theories of wage determination that were grounded in biology, arguing that certain "low-wage" races were biologically predisposed to low wages, or "under-living." Economist-turned-sociologist Edward A. Ross volunteered that "the Coolie cannot outdo the American, but he can underlive him" (1936: 70). "Native" workers have higher productivity, claimed Ross, but because Chinese immigrants are racially disposed to work for lower wages, they displace the native workers. (Ross does not say why ostensibly more productive workers cannot command relatively higher wages.) In *Races and Immigrants*, John R. Commons volunteered that "the Jewish sweat-shop is the tragic penalty paid by that ambitious race" (1907: 148). Like Ross's coolie, Commons's Jew is industrious but less productive than native workers.

The tragedy Commons referred to is the process by which the Jewish predisposition to underlive led to destructive wage competition. Wage competition not only lowers wages, it also, for Commons, selects for the unfit races. "The competition has no respect for the superior races," said Commons, "the race with lowest necessities displaces others" (1907: 151). Labor leader (and Socialist Party presidential candidate) Eugene Debs said of Italian immigrant workers: "The Dago . . . lives more like a savage or a wild beast than the Chinese," and therefore can "underbid the American working man" (1891, quoted in Glickman 1997: 89). Wharton School reformer Scott Nearing volunteered that if "an employer has a Scotchman working for him at $3 a day [and] an equally efficient Lithuanian offers to the same work for $2 . . . the work is given to the low bidder" (1915: 22). For these progressives, race determined the standard of living, and

the standard of living determined the wage, with adverse consequences for the superior, "high-wage races" (see Leonard 2003a).

Women's wages, in like fashion, were often explained by progressives as the product of a "female" standard of living. Some progressive texts were blandly explicit about the notion that there existed sex- (and race-) determined hierarchies of consumption preferences. Theresa McMahon's (1925) *Social and Economic Standards of Living*, for example, contrasted the "American Standard of living" with the "immigrant," and the "feminine" standards of living.

The putative female predisposition to accept low wages was commonly explained by reference to women's "natural" subordinate family role. Women, Henry R. Seager proclaimed, "have no definite, independent standard of living and consequently are contented to accept wages that lighten more of the burdens of their support for their fathers, brothers and husbands, but are pitifully inadequate for those who do not live at home or whose home conditions are such that they must contribute" (1913: 4).

Seager's explanation—that women accept low wages because they are already adequately supported by male members of their households—embodies several interlocking progressive commitments: that wages are determined by consumption, not productivity; that those whose consumption needs are low threaten other workers; and that women do not support dependents but *are* dependents, their labor subordinate to the family.

There were exceptions, of course. Mary Van Kleeck, for example, argued that women need legal protection, not because they are women with inborn weaknesses or family obligations that preclude market work, but because women's wages were even lower than those of low-wage male workers (Hart 1994: 95). Sophonisba Breckenridge (1923), the first woman to earn a Chicago Ph.D. in political science, saw clearly how family-wage arguments disadvantaged working women. But Van Kleeck's and Breckenridge's arguments were atypical among reformers. As historian Linda Gordon has argued, "[a]lmost all [Progressive Era] welfare activists, male and female, endorsed the family-wage principle and considered that women's employment was a misfortune or a temporary occupation before marriage" (Gordon 1992: 47).

The progressive emphasis on consumption needs rather than productivity as the determinant of wages served to lead reformers away from the idea that wages should rightly reflect the value of workers' labor—the idea that neoclassical economists like Clark and Wicksteed emphasized—and toward explanations that could justify different living standards, explanations that in this era were often found in the biology of race or sex. The tendency among reformers to regard women as mothers and helpmeets rather than workers had several consequences for American labor reform.

VI

"Because They Are Women": Why Labor Legislation for Women Only?

U.S. LABOR LEGISLATION of the Progressive Era applied almost exclusively to women.[25] With the exception of especially hazardous work environments, labor statutes were written and promoted on grounds that only women's work should be regulated. What's more, the most influential and most active progressives advocated labor legislation "for women and for women only." Why?

The canonical answer says that the progressives really wanted labor legislation for workers of both sexes but feared that only sex-specific legislation would pass muster with a conservative Supreme Court famously unwilling to allow regulation of male labor contracts.[26] American progressives, goes this account, believed they could not argue that women's wages were unfairly low (or hours unfairly long), as this claim would also apply to many male workers and thereby be judged unconstitutional. Thus does constitutional necessity explain why progressives argued that women should be treated differently, as a special class in need of paternalistic legal protection.

The canonical answer is consistent with much historical evidence. In Britain, where no constitutional constraints bound, labor laws applied to both sexes. The progressives also enjoyed world-class advice on matters of constitutional law. The AALL's legal counsel, Louis Brandeis, was succeeded by Felix Frankfurter when Wilson appointed Brandeis to U.S. Supreme Court. And, the Court of this era, the *Lochner* Court, was ordinarily unwilling to paternalistically protect male workers from their own risky choices.[27] In *Lochner v. New York*

(1905), which struck down a New York statute mandating a 10-hour maximum day for bakers, the Court overturned the law on grounds that tired bakers did not present a publicly compelling hazard to others. In short, goes the canonical narrative, the Court made the progressives argue what they did not believe, that women should be treated differently.

But the canonical narrative is incomplete. The progressive advocacy of sex-specific labor legislation was more than a legal gambit designed to avoid a confrontation with the *Lochner*-era Court. It was also the product of reformers' ambivalence, sometimes even hostility, toward women's labor-force participation. The progressive case for women's labor legislation more commonly invoked working women's obligation to society than it did society's obligation to working women. In particular, many progressives argued for women's labor legislation on the grounds that it would protect *men* from the economic competition of women, and that it would also protect the *race* from the eugenic harm thought to result from women's labor-force participation.

VII

Whom Does Labor Legislation for Women Protect?

THE REFORM ARGUMENTS FOR Progressive Era labor legislation were various. Women-only labor legislation was seen to (1) protect the biologically weaker sex from the hazards of market work (if not from those of domestic labor); (2) protect working women from the temptation of prostitution (if not women working in the home); (3) protect male heads of household from the economic competition of women (i.e., protect the "family wage"); and (4) ensure that women, returned to the home, could better carry out their eugenic duties as mothers of the race. Thus did progressive arguments for sex-specific labor legislation appeal to paternalism, moralism, maternalism, and eugenics. What united these heterogenous rationales was the aim of discouraging women's labor-force participation.

So while progressives appealed to labor legislation on paternalistic grounds—protecting women's health and virtue when women could not be trusted to do so on their own—they also argued for

labor legislation on the grounds that the exclusion of women from the labor force would protect the family wage, that is, would protect men from the economic competition of women, and would also promote the eugenic health of the race. It is a peculiar sort of paternalism that advocates for women on grounds that protective legislation benefits men or a particular race. Indeed, it is not paternalism at all, which illustrates how the labor legislation agenda defended ideas that opposed rather than supported the economic well-being of working women. A landmark labor legislation case, *Muller v. Oregon* (1908), provides an example.

In *Muller*, the U.S. Supreme Court upheld hours laws for women, having struck them down for men in *Lochner*. The majority agreed with the progressive case for restricting women's hours, which began with the familiar claim that women need protection because they are biologically weaker than men. Josephine Goldmark's *Fatigue and Efficiency*, which derived from the AALL's famous Brandeis brief, first filed in this case, referred to women's "special susceptibility to fatigue and disease which distinguished the female sex, *qua* female" (1912: 39).[28] Florence Kelley, perhaps the most influential American labor reformer, argued that women are more susceptible "to poisons characteristic of certain industries, and to the universal poison of fatigue" and that the differences between the sexes are "permanent" and "so obvious, so far reaching, so fundamental that it is grotesque to ignore them" (Kelley 1923: 277). Just as male coal miners need protection from hazardous work conditions, argued Kelley, so do female dressmakers need protection from their own natures, "because they are women" (1923: 282).

But *Muller* also drifted from putative biological differences to social differences between the sexes, including the obligations of family and motherhood. Justice Brewer's opinion, borrowing liberally from the Brandeis brief, argued that long hours of labor for women are also harmful to family life and to women's reproductive health. Brewer emphasized the traditional subordination of women, arguing that "history discloses the fact that woman has always been dependent upon man" and that the sexes differ in "the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence."

The *Muller* majority also invoked the mothers-of-the-race argument, which restrains women not for their own benefit but for the eugenic benefit of the race. Justice Brewer argued that "the physical well being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race," and that "the limitations which this statute places upon her contractual powers . . . are not imposed solely for her benefit, but also largely for the benefit of all. Many words cannot make this plainer."[29]

The *Muller* decision, a great victory for progressives, was thus justified on the grounds of protecting the integrity of the home and the race by preventing female wage labor. Motherhood, women's true vocation, and the race were what justified labor legislation. A working woman was depicted not as a worker in need of protection from long hours but as a mother who should be encouraged to leave the labor force.

Reformers also advocated subsidies for motherhood: "family allowances" and "mothers' pensions" were payments designed to encourage mothers to stay at home. The Fabians, for example, promoted family allowances for their eugenic virtues. Other progressives offered a more feminist justification. Eleanor Rathbone, founder of the English Family Endowment Society, argued that women's nonmarket services—domestic labor and child rearing—were socially undervalued because, unlike market work, they were uncompensated. Family allowances would provide compensation. But even Rathbone's more feminist framing—that mothers at home were also working and deserved recognition for this vital labor in the form of pay—offered a restricted, maternalist vision of women's work.

Rathbone, for example, rejected the obvious alternative, which was to advocate for women to work outside the home, to develop their skills beyond those required by housekeeping and child rearing.[30] Women in the workplace, in her characterization, "were birds of passage . . . marriage and the bearing and rearing of children are their permanent occupations" (1917: 65). Rathbone argued that motherhood was socially valuable and thus compensable, entitled to the respect due such an important profession. But Rathbone's vision restricted women to the profession of motherhood. The goal of the

family-endowment movement was to keep women in the home by the device of increasing the status and compensation of motherhood. The professionalization of motherhood was designed to prevent mothers from entering professions other than motherhood.

Even scholars prepared to dispense with traditional family arrangements made a virtue of motherhood, as suggested by the extraordinary example of economist Charlotte Perkins Gilman and her sui generis feminist eugenics. In *Women and Economics*, Gilman aims to "urge upon [thinking women] a new sense, not only of their social responsibility as individuals, but of their measureless racial importance as makers of men" (1898: vii). Gilman's feminist eugenics, what she called "Humaniculture," envisioned women as the enlightened society's eugenic agents. Women have a twofold role: They select fitter men for marriage, and and they collectively supervise the raising of fitter children. Women select fitter mates with the help of state certification of men's biological fitness; men are required to be eugenically certified, so that women have good information when selecting a mate and are less likely to make a dysgenic match. Gilman also envisioned that all parenting would be given over to a cadre of professionally trained women, what she called "social parentage."[31]

As radical as was Gilman's conception of parentage, she too viewed women as mothers first and workers second. Though Gilman's account radically reconceives traditional notions of family, it still frames women primarily as mothers, albeit as professional ones, for it is mothers on whom should fall the "racial duty of right selection" (1898: 201).

The progressive, "maternalist" case for motherhood was thus, in its essentials, a case against the employment of women (unless women were to be employed as mothers). The desire to rid the labor force of working mothers even led the National Consumers' League to oppose state provision of daycare and other reforms that would lower women's cost of employment and thus entice women to leave the home (Kessler-Harris 2001: 33). Guarding the home by ensuring that women of child-bearing age did not work for wages dovetailed well with the complementary progressive goal of promoting the "family wage."[32]

VIII

The Family Wage

FAMILY WAGERS ARGUED that women should not work for wages, on the grounds that female labor-force participation lowered wages for men and thereby undermined what they saw as the right family structure—a household headed by a male breadwinner. Florence Kelley (1914: 16) put the family-wage case plainly: "Family life in the home is sapped in its foundations when mothers of young children work for wages." Kelley (1912: 1003) worried in the *Journal of Political Economy* that "the man [is] no longer the breadwinner" and asserted, with an eye to immigrant husbands, that "[t]he American tradition is that men support their families."

The family-wage theory is ordinarily regarded as holding up the family, not the individual, as the appropriate economic unit of account. The exaltation of family is consistent with the maternalist tendency to conceive of women as mothers, defined by their roles in a family structure. Even so, when it came to determining what living wages labor legislation entitled women to, reformers refused to consider women as part of a family income unit and instead calculated living wages for women living independently.

Even though 80 percent of working women did not live independently in the Progressive Era, progressives estimated living wages for women as a wage sufficient for a woman living alone (Persons 1915). Why? Because family-wage reformers conceived of wages as payment sufficient to meet a "natural" consumption standard, not as payment for the value of the worker's marginal product. Nature places women (mothers) in the home and men at the head of the family. On this premise, men deserve more because they support dependents, and women deserve less because women do not support dependents. A working woman thus supports only herself and, even then, only until marriage can end the misfortune of her employment.

If family-wage reformers conceived of women as integral to family life, they opposed women contributing to family income. Women, in the family-wage view, properly contributed to family and race as mothers; they did not contribute as income providers. Women were so identified with motherhood and dependency that the architects of

labor legislation could not imagine women usefully contributing to household income, still less serving as a breadwinning head of household (though many were just that). Indeed, a women whose wages contributed to her family's income was ordinarily scorned as a parasite and as a usurper of wages that rightfully belonged to the male head of household.

Father John Ryan, a reformer active in NCL and AALL circles, provides a good example of the reformer's tendency to define living wages differently for men and women. In *A Living Wage* (1906: 119), Ryan asserted, "[t]he right to the conditions of being the [male] head of a family, which is obvious, implies the right to a family Living Wage because nature and reason have decreed that the family should be supported by its [male] head."

Ryan was even prepared to extend the same entitlement to men without dependents. "The right to a family Living Wage belongs to every adult male laborer" (1906: 120), he argued, on the grounds that working men without dependents "perform as much labor as their less fortunate fellows" (1906: 107). Ryan was so keen to promote the family wage that, when defending a family wage for male workers without families, he lapsed into the very productivity rationale opposed by his own progressive view that wages should be determined by standard of living.

He did not extend the same generosity to women. "Women's physical wants are simpler," Ryan declared, "the living wage for a women is lower than the living wage for a man because it is possible for her as a result of her traditional drudgery and forced tolerance of pain and suffering to keep alive upon less" (1906: 107)—again, the lower female standard. "The woman employee," Ryan proposed flatly, "not being the head of a family, in order to have a living wage should receive an amount sufficient for her own decent living and reasonable support" (1920: 65).

IX

The Social Vice

THE PROGRESSIVE CASE for sex-specific labor legislation took different forms, and not all the arguments were consistent economically. An example is provided by a potent weapon in the progressives'

rhetorical arsenal—the claim that women's morals were uniquely threatened by work for wages. Reformers argued that women paid low wages were tempted to augment their earnings by recourse to prostitution. Among all the Progressive Era social maladies, prostitution was widely regarded as an especially immoral enterprise. In the jargon of the day, prostitution was called the "social evil," no further elaboration required.[33]

Reformers cannily exploited public revulsion toward prostitution and portrayed minimum wages as a means of raising the wages of young women so as to better protect their virtue. Henry R. Seager (1913: 11), for example, argued that minimum wages would lessen "the greatest disgrace of our civilization, prostitution in aid of inadequate wages. . . . The $8-a-week girl . . . has more power to resist the temptations which our cities constantly present than the $5-a-week-girl."

John Bates Clark's reply reminded Seager of his own logic regarding the disemployment effects of minimum wages: "If five dollars a week forces persons into vice, no wages at all would do it more surely and quickly, and here is a further claim on the state which no one can for a moment dispute" (1913: 294). And, if Seager were correct—that is, if higher income better protected a woman's virtue—what could one say about the effects upon morals of progressive proposals, such as hours restrictions, that lowered women's income? Analytical inconsistency proved a small price for progressives to pay given the rhetorical power of their argument that labor legislation would protect young working women from temptation and moral turpitude.

If the progressive case for sex-specific labor legislation was sometimes internally inconsistent, its different arguments all advanced the same claim: that society is better off when women are excluded from work for wages. The moralists concerned with protecting female virtue, the maternalists concerned with promoting motherhood, the eugenicists concerned with women's affirmative duties to the race, and the family-wagers keen to protect male prerogative as head of household all proposed to protect women workers by restricting or eliminating their employment.

Progressive advocacy of for-women-only labor laws was more than

a legal dodge designed to exploit the police-power loophole in the Constitution. Sex-specific labor legislation went well beyond mere paternalism, the idea that work (outside the home) was bad for women. Indeed, sex-specific legislation was most commonly justified on grounds that it would protect men, the family, and the race from the harm thought to result from women's labor-force participation. Thus, even when in 1923 the Supreme Court essentially removed all tactical reasons for promoting differences between the sexes, labor legislation activists continued to argue for female difference.

X

How Best to Promote the Interests of Women: Special-Class Protection or Equal Rights?

THE AMERICAN PROGRESSIVES' legal strategy of justifying labor legislation upon differences between the sexes collapsed calamitously with the *Adkins v. Children's Hospital* (1923) decision. In *Adkins*, the U.S. Supreme Court ruled unconstitutional the District of Columbia's minimum-wage law for women, largely on the grounds that women's newly won suffrage rights elevated their constitutional status from paternalized wards of the state to freely contracting citizens.[34] Justice Sutherland wrote for the Court:

> in view of the great—not to say revolutionary—changes which have taken place since that utterance [of *Muller* (1908)], in the contractual, political and civil status of women, culminating in the Nineteenth Amendment, it is not unreasonable to say that these differences have now come almost, if not quite, to the vanishing point.[35]

The *Adkins* majority advanced a neoclassical view of wage determination, adopting Wicksteed's position that an entitlement to a living wage does not, by itself, justify a minimum wage. Agreeing that "the ethical right of every worker, man or woman, to a living wage may be conceded," Sutherland argued that "the fallacy of the proposed method [read: the minimum wage] of attaining it is that it assumes that every employer is bound in all events to furnish it." Sutherland allowed that statutes could insist that workers be paid "the value of services rendered" but said that a statute insisting that wages be determined by a worker's "necessities" referred to "circumstances apart

from the contract of employment" and thus was unconstitutional. Arguing that there is no difference between "selling labor" and "selling goods," Sutherland said:

> if one goes to the butcher, the baker or grocer to buy food, he is morally entitled to obtain the worth of his money, but he is not entitled to more. If what he gets is worth what he pays, he is not justified in demanding more simply because he needs more, and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities.[36]

In dissent, William Howard Taft allowed that "it is a disputable question in the field of political economy . . . whether . . . maximum hours or minimum wages . . . make the case of the oppressed employee worse than it was before," but he insisted that the Court lacked the standing to pronounce on questions of political economy. Taft was nonetheless prepared to endorse the *Muller* Court's social-scientific view of women, arguing that "the Nineteenth Amendment did not change the physical strength or limitations of women upon which the decision of *Muller v. Oregon* rests."

Oliver Wendell Holmes's dissent also argued for the social-scientific fact of sex differences, though Holmes was less demure with respect to economic theory. Holmes conceded that "women will not be employed at even the lowest wages [legally] allowed unless they earn them," alluding to the eugenic benefits of minimum wages, which he said worked to "remove conditions leading to ill health, immorality and the deterioration of the race."[37]

Adkins struck a devastating blow to the progressive legal strategy of promoting the interests of women via sex-specific, special-class protection. Henry R. Seager called it "the most severe blow which progressive American Labor Legislation has yet received at the hands of the Supreme Court."[38] Presaging Franklin Roosevelt's court-packing scheme that just preceded passage of the Federal Labor Standards Act of 1938, Seager called for a constitutional amendment to require super-majorities (two-thirds or even three-fourths) of Supreme Court votes to overturn labor legislation.

The *Adkins* decision essentially ended the prospects for using sex differences to justify U.S. labor legislation for women. With it died any tactical justification for sex-specific legislation. But, tellingly, the

progressives active in labor legislation continued to argue for female difference. Thus does the aftermath of *Adkins* reveal the shortcomings of the historiography that explains progressive advocacy of sex-specific legislation as the product of constitutional tactics alone. Labor legislation reformers advocated for female difference long after sex differences could offer any constitutional advantage.

The labor reformers' post-*Adkins* insistence on sex differences reflected, rather, a longstanding disagreement over how best to promote the interests of women. Were women's interests best promoted by greater freedom, which full legal equality with men would provide, or by less freedom, which paternalism and protection offered? A longstanding strain of liberal reform, one with origins quite removed from American constitutional politics, preferred equality to protection as a means of promoting the interests of women.

Richard T. Ely, reacting to the *Muller* decision, chose John Stuart Mill as the avatar of the liberal view. Mill argued that women's interests would best be promoted by full legal equality, particularly suffrage and property rights. Mill argued, "[i]f women had absolute control as men have, over their own persons and their own patrimony or acquisitions, there would be no plea for limiting the hours of labouring for themselves" (quoted in Ely 1908: 142). In short, for Mill, women's disadvantages derive not from biological inferiority but from unequal legal treatment.

Ely's rejoinder to Mill appealed to biological differences: "A scientific examination of the facts of the case fails altogether to bear out Mill's position. The suffrage and the fullest measure of right over property and persons have failed to place woman on a footing of economic equality with men." "The reason for her economic disabilities," continued Ely, "are as profound as her sex differences and must be reckoned with in any realistic legislation. This is the verdict of the world's civilization" (1908: 143).

Karl Pearson, eugenicist and socialist, shared Ely's view. Pearson regarded equal rights for women as incompatible with their special eugenic responsibilities to the race, preferring protection. Said Pearson: "The demand for the franchise is not a first stage to equality of opportunity, but to legislative protection of women and to State

regulation of her labor" (1894: 575). "How," he asked, can woman "do freely what she alone can do for society. . . . The answer . . . does not lie in 'equality of opportunity,' it lies in special protection, in the socialization of the State" (1894: 569).

Another English socialist of a very different temper, Alfred Russel Wallace, co-founder of the theory of natural selection, took a different tack. The humane Wallace was a reformer but also a stout defender of Darwinian inheritance. So, although he believed that English society was increasingly dysgenic, Wallace rejected compulsory eugenics as elitist and barbarous. Wallace proposed that eugenic ends could be realized by an expansion of women's education and their political and economic freedom. Like Mill, he believed that the law could reduce women's economic dependency, which, he argued, would work to reduce the incentive for women to make dysgenic marriages.

"Progress is still possible, nay, is certain," said Wallace, "by . . . that mode of selection which will inevitably come into action through the ever-increasing freedom, joined with the higher education of women" (1892: 156). He envisioned selection as "effected through the agency of female choice in marriage" (1890: 335). In leaving "the improvement of the race to the cultivated minds and pure instincts of the Woman of the Future" (1890: 337), the idealistic Wallace partly anticipates the eugenic feminism of Charlotte Perkins Gilman.

The contested matter of whether women are helped more by an expansion of liberty or by a restriction of it was highlighted in the aftermath of *Adkins*. The progressive AALL economists and their NCL colleagues had staked their reputations on sex-specific labor laws, on protection over legal equality. Even when sex differences no longer cut any constitutional ice, these progressives continued to argue for female difference.

Events would force progressive labor reformers to publicly choose between protection and equality. There already existed a constituency of women with a grievance against protective legislation. New York's prohibition of night work by women, for example, had disemployed thousands of women workers, leading to the 1915 founding of the Women's League for Equal Opportunity (Baker 1925: 425–26). But the decisive moment arrived with the first Equal Rights Amendment

(ERA), proposed by Alice Paul, Maud Younger, and the other equal-rights feminists of the National Woman's Party (NWP).

The NWP had come to see sex-specific labor legislation as another form of sex discrimination, ultimately inimical to women's interests. The AALL and NCL progressives and many others on the left strenuously opposed the ERA, believing that the full-legal-equality vision of the equal-rights feminists would destroy the labor reformers' creation of special-class protection of women based upon sex differences. Wrote Florence Kelley: "[T]he cry Equality, Equality, where Nature has created Inequality is as stupid and as deadly as the cry Peace Peace where there is no Peace" (Kelley 1921, quoted in Lipshultz 2002: 200).

Unable to bridge this irreconcilable difference, Florence Kelly and other labor legislation activists were forced out of the NWP. When John R. Commons became president of the NCL in the crucial year of 1923, his top priority was to oppose the Equal Rights Amendment. When constitutional tactics could no longer explain their advocacy of sex-specific labor legislation, the progressive American economists and their labor legislation allies chose protection over equality for women. Leading progressives chose protection not solely as a legal dodge, but also because they viewed women as different from men and believed that female difference justified their aim of discouraging women's work for wages.

Notes

1. Mothers' pensions, precursors to the Aid to Families with Dependent Children program, were transfer payments, not pensions. The term *pension* was adopted as an honorific, meant to frame motherhood as a kind of socially vital employment. In the United States, eligibility was ordinarily limited to widowed or deserted mothers, thus excluding mothers who were single due to divorce (Rogers 1998: 240).

2. The influence of eugenic thought upon Progressive Era economics has gone largely unremarked, a silence that makes for a historiographic puzzle. I take up this puzzle in Leonard (2005). Levy and Peart (2003: 141) make a similar observation with respect to the Victorian Era.

3. In the Progressive Era, the term *race* most commonly referred to nationality or ethnicity, as in the "Irish race." But *race* could also denote the human race or the modern sense of the term. The ambiguity of the term was

sometimes exploited, so that arguments "for the good of the race" could simultaneously refer to the good of humanity and to the interests of a particular racial group.

4. Historians use the term *maternalist* to refer to the reformers who reflexively viewed women as mothers, who believed that the production of good Americans required good mothering, and who believed that good mothering was incompatible with paid work.

5. Paul and Spencer (1995: 302) argue that, before the 1930s, Thomas Hunt Morgan was the only Mendelian geneticist to reject the eugenic idea that social and economic problems were the product of bad heredity.

6. Sidney Webb, an enthusiastic eugenicist, understood this: "No consistent eugenicist can be a 'Laisser Faire' individualist unless he throws up the game in despair. He must interfere, interfere, interfere!" (Webb 1910–1911: 237).

7. Sweden, for example, greatly expanded its coercive sterilization laws during World War II. More than 60,000 Swedes, over 90 percent of them women, were sterilized from 1941 to 1975 (Broberg and Tydén 1996: 109–110). The other Scandanavian countries also greatly expanded their eugenic practices after World War II, as part of what historian Daniel Kevles (1999: 437) calls "the scientifically oriented planning of the new welfare state."

8. On Canada, see McLaren (1990). On France, see Schneider (1990). On Japan, see Suzuki (1975). On Russia, see Adams (1990). On the Scandanavian countries, see Broberg and Roll-Hansen (1996). On Romania, see Bucur (2002). On Latin America, see Stepan (1991). On China, see Dikötter (1992).

9. Eugenic sentiments can even be found among scholars from traditionally black colleges. Miller (1917) worried about the lower fertility of the Howard University faculty—"the higher element of the negro"—compared to that of the average African American.

10. I owe to Dan Rodgers this distinction between the professional eugenicists, who founded and staffed the eugenics organizations, and the vastly larger number of scientists, intellectuals, and public figures influenced by eugenic ideas.

11. *Buck v. Bell*, 274 U.S. 200, 208 (1927).

12. For the leading role of economists in promoting race-suicide arguments in the context of immigration, see Leonard (2003a: 714–721).

13. I owe the following examples to Donald Childs's (2001) fascinating volume, *Modernism and Eugenics*.

14. The crucial question, which biologists have mostly failed to comprehend, Field said, is: "What eugenic policy promises the maximum increase of human welfare?" For "aid in answering that question," Field maintained, "the economist is needed" (1911: 66–67).

15. Henry Farnam, the Yale economist who cofounded and personally funded the AALL, was an early adopter of eugenic ideas. He argued in 1888

that: "Every effort . . . to remove what Malthus called the 'positive checks' to populations, without at the same time increasing the preventative checks, must result in an increase of the very classes which are least able to take care of themselves, and render more and more imperative the solution of that exceedingly difficult problem which Mr. Arnold White calls 'sterilization of the unfit'" (Farnam 1888: 295). "We are," said Farnam, "by means of our very improvements, setting forces in operation which tend to multiply the unfit" (1888: 295).

16. Other progressive economists active in the AALL leadership include Father John Ryan, author of *A Living Wage*, Matthew B. Hammond, and Princeton's Royal Meeker, whom Woodrow Wilson appointed to be U.S. Commissioner of Labor. The AALL also boasted Harvard's Frank Taussig, who, while not ordinarily regarded as progressive, was interested in labor reform. In later years, institutionalists such as Wesley Clair Mitchell, Leo Wolman, and Walton Hamilton were members of the AALL General Administrative Council.

17. The eclectic nature of Progressive Era political economy is important here. AALL-style progressives, like their marginalist interlocutors, generally believed that (put anachronistically) labor demand curves sloped downward. The virtue of a binding minimum wage for progressives was that it would disemploy undeserving workers. But progressives (again, put anachronistically) did not conceive of labor demand curves as value-of-marginal-product curves.

18. "Of all ways of dealing with these unfortunate parasites," Sidney Webb (1912: 992) argued, "the most ruinous to the community is to allow them unrestrainedly to compete as wage earners."

19. Progressive Era American economics was slow to adopt marginal analysis; it remained only partially integrated into the disciplinary fabric well into the 1920s. The term *marginalism*, an epithet to describe the views of economists who endorse both marginal utility and marginal productivity theories, was coined by John A. Hobson in 1914 (Howey 1972).

20. Clark did not believe that factory workers were always paid their marginal products in practice, and he even cautiously endorsed legal minimum wages for those occasions where workers were demonstrably paid less than the value of their marginal products (Leonard 2003b).

21. This paragraph is indebted to Lawrence Glickman (1997), especially pages 85–91.

22. Wicksteed disagreed, advancing the neoclassical argument that wage or income subsidies were preferable to wage floors: "[E]ven if we collectively . . . declare that every man has a right to a decent maintenance . . . it is ourselves collectively against whom that right is to be asserted" (1913: 78).

23. A large "family-budgets" literature represents progressive efforts not only to document the inadequate wages of the working poor but also to

scientifically estimate a living wage by determining the expenditures required by a decent maintenance.

24. Some progressives, such as Scott Nearing (1915), thought it unfair when single men earned the same wage as men with dependents; others, such as Father John Ryan, did not (see below).

25. American progressives achieved many legislative victories with the "for-women-and-for-women-only" line of legal argument. Fourteen states, along with Puerto Rico and the District of Columbia, passed minimum-wage statutes between 1913 and 1923. From 1911 to 1919, mothers' pensions laws passed in all states but nine (Rodgers 1998: 240). The Court recognized the reformer's argument that sex differences provided a legal basis, on police power grounds, for regarding women as a special protected class, thereby making legislative restraint of freely made wage contracts constitutional.

26. The troublesome language resides in the Fifth and Fourteenth Amendments, which require that the states not restrict life, liberty, or property without due process of law. The *Lochner* Court read "liberty" as including liberty of contract. The term *liberty of contract* nowhere appears in the Constitution, and neither does *police power*, the foundation of the progressives' case for regulating women's work. The police power refers to the power of the states to enact laws that override constitutional rights to person and property, in the name of a compelling public interest in health, welfare, or morals.

27. The Supreme Court was willing to permit regulation of hazardous working conditions. In *Holden v. Hardy* (1898), the Court upheld an eight-hour law for male coal miners, on grounds that tired miners could present a danger to other miners.

28. Richard T. Ely, commenting in the *AER*, denied any infringement of liberty at all: "A ten-hour day for women . . . does not deprive 'Mary Holmes' of liberty—it affords her liberty. It does not restrict her right to work; it enlarges that right; for it conserves her health and strength and lengthens out the period of profitable work" (Ely 1908: 141). When legislation restricts contractual liberty, "it is only the form of freedom which has been violated. The purpose has always been a larger freedom; a true constructive freedom as an opportunity for the expression of powers and a sphere of activity" (Ely 1908: 140).

29. *Muller v. Oregon*, 208 U.S. 412, 422 (1908).

30. Rathbone (1924) also, in describing the process by which men subjugated women, appealed to crude racial stereotypes, calling male domination the "Turk complex."

31. These ideas are expressed most compactly in Gilman (1900). "Humaniculture" echoes earlier terminology for eugenics, such as "stirpiculture" and "viriculture." Gilman was a Lamarckian eugenicist; she believed that environmental factors could influence hereditary. Thus could better (social) parenting improve the genetic prospects of children born to the unfit.

32. The National Women's Trade Union League, an influential force in protective labor legislation, adopted the motto: "The Eight hour Day/A Living Wage/To Guard the Home" (Glickman 1997: 40).

33. See, for example, the volume edited by economist E. R. A. Seligman, entitled *The Social Evil* (1912).

34. The 19th Amendment was ratified on August 18, 1920.

35. *Adkins v. Children's Hospital*, 261 U.S. 525, 553 (1923).

36. *Adkins v. Children's Hospital*, 261 U.S. 525, 558–599 (1923).

37. *Adkins v. Children's Hospital*, 261 U.S. 525, 562, 567, 570, (1923).

38. In the introduction to "Minimum Wage: What Next?" *Survey* 50(4) May 15, 1923.

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