The Five Conceptions of American Liberty

Carl Eric Scott

In American civic and political life, nearly everyone is a champion of liberty, but not everyone means the same thing by that term. We hold several conflicting ideas about liberty, though we are usually unaware of that fact. This lack of awareness means that, whenever a conflict between these conceptions leads to a political dispute, people on all sides of the dispute are apt to be shocked and to regard their opponents either as enemies of liberty or as lacking any understanding of what it really means.

This adds to both the bitterness and the confusion of our most prominent political and cultural battles. To better understand our common life, therefore, we need to step back and examine the different meanings of liberty and how they have played out in our history and continue to shape our contemporary debates.

When we carefully consider the idea of liberty through the lens of the American political tradition, we find that Americans have held, and continue to hold, five interlocking but distinct understandings of the term. First and foremost, liberty has been regarded as the protection of natural rights—a notion of liberty we might simply call “natural-rights liberty.” Second, we have taken liberty to refer to the self-governance of a local community or group, a conception we might call “classical-communitarian liberty.” Third, we have taken the term to refer to economic individualism, or what we might call “economic-autonomy
liberty.” Fourth, we have understood it to refer to the social justice of the national community, or what might be called “progressive liberty.” And fifth, we have understood liberty to refer to moral individualism, which we can call “personal-autonomy liberty.”

Each of these has a claim to being the correct conception of political liberty, as well as the most genuinely American one. Over the course of America’s political history, these conceptions have been posed against one another in various ways, and several have also cooperated with or been combined with one another. But they are theoretically distinct and fundamentally in tension in ways that have shaped our history and will certainly shape our future as well.

**CONCEIVED IN LIBERTY**

The first two conceptions of liberty can be plainly discerned in the political thought and action of the founding era and the early republic. The core *principles* of natural-rights liberty are those expressed in the opening of the Declaration of Independence, and they are correctly regarded as reflecting the teachings of John Locke, as well as other early-modern liberal thinkers. The core *practice* of classical-communitarian liberty, meanwhile, is given most vivid display by Alexis de Tocqueville in his descriptions of the participatory townships he observed in 1830s New England. That the principles and practice of early-American politics tended to answer to two different understandings of liberty is one key reason why the political teaching of the American founding is no simple matter.

In contending with some political questions, such as breaking away from Britain, these two conceptions complemented one another. But regarding other questions, such as the ratification of the Constitution, they tended to oppose one another. Many of the Anti-Federalists — the writers and activists who opposed ratification — insisted that the key political unit for the fostering of liberty would have to remain the small *polis*-like republic, whereas the authors of the Federalist Papers famously made a case for the superior ability of the extended republic to secure natural rights.

Of course, certain Lockean understandings of politics permeated the thought of many of the Anti-Federalists as well. Their most eloquent 20th-century scholarly champion, Wilson Carey McWilliams, stressed that, although they seldom spoke about “private rights,” they
“characteristically spoke of a state of nature.” Similarly, aspects of the classical-communitarian conception permeated the thinking of the founders most consistently associated with the natural-rights tradition. Thomas Jefferson had an appreciation for the wisdom of communitarian republicanism—he urged Virginia to imitate New England’s township pattern of local government and encouraged all Americans to maintain an agrarian way of life. James Madison and Alexander Hamilton not only adopted the Roman republican pen name “Publius” when writing the essays that composed the Federalist Papers but made examinations of ancient confederacies, founders, and constitutions key parts of their argument. Still, it is easy to show that Jefferson was more Lockean than classical republican when it came to the fundamentals of politics, and it is easy to recall several famous passages from the Federalist Papers that warn that small republics foster, among other rights-endangering maladies, majority faction and continual war-making.

Natural-rights doctrine did a great deal to light the fire of American independence: We can trace its influence upon key figures like James Otis, John Dickinson, John Adams, Thomas Paine, and others, and we can work out the way it supplied key doctrines of the revolution. (It is visible, for instance, in the maxim “no taxation without representation.”) What is not as widely understood is that the classical-communitarian conception of liberty was at least as critical to American political life in that era.

This point is well illustrated by an anecdote from the 1840s about a conversation between an elderly veteran of the Battle of Concord, Levi Preston, and a young historian, Mellon Chamberlain. When Chamberlain asked Preston whether he and his fellows had been influenced by James Harrington, Algernon Sidney, and Locke, Preston said he had “never heard of ’em. We only read the Bible, the Catechism, Watts’s Psalms and Hymns, and the Almanack.” When asked why he and his fellows had fought the British, he said, “[W]e had always governed ourselves, and we always meant to. They didn’t mean we should.” As Tocqueville and many historians have suggested, the experience of a comparatively high degree of community self-rule which had developed among the Americans, colony by colony and town by town, was a primary cause of their vigorous resistance to Britain’s effort to increase its control of colonial affairs after 1763. That experience had significant influence in key respects prior to their widespread adoption of natural-rights doctrine.
Over time, the hold that the classical-communitarian conception of liberty had exercised over our thought and sentiment ebbed, particularly as the prominence of the town in American life diminished. Still, it has remained an important, albeit lesser, part of the American political tradition, providing sustenance to groups like the Populists and the Southern agrarian writers, and to all sorts of theorists wanting to promote fraternity or “participatory democracy.” Its common identification with the practice of Christian brotherly love extends back to its colonial Puritan and Quaker articulations, and, while that identification is not emphasized by all of its contemporary proponents, it remains important.

The natural-rights doctrine, of course, retained a central place in American political thought and most notably was re-emphasized by Abraham Lincoln's statesmanship. The embarrassing fact of America's initial toleration of slavery reminds us, however, of an important self-limiting aspect of natural-rights liberty. The Declaration's third sentence begins with the word “prudence,” and goes on to explain that revolutions for the sake of securing natural rights should occur only when a pattern of serious violations against them has become evident and indicates a trend toward tyranny. A similar spirit of prudence pervades the Federalist Papers, which is one long reflection about what kind of union and government is necessary to preserve liberty given what experience teaches us about human nature, political dynamics, and geostrategic realities. Though the leading founders regarded slavery as a basic violation of natural rights, they evidently made the judgment that they could not get the Constitution ratified if they were to first insist upon slavery's dismantling; this was another instance of prudence at work, as they understood it.

The founders were not for a come-what-may insistence upon perfectly securing all natural rights, nor were they for following out every implication of natural-rights thought. Such radicalism would likely result in the inability to establish or maintain effective government, and thus in the inability to secure any rights at all. Instead, the founders (and perhaps adherents of natural-rights liberty in America more generally) understood liberty as the prudential protection of natural rights.

**Free Markets and Free People**

The third American conception of liberty — economic-autonomy liberty — grew directly out of natural-rights liberty. But it took on a life of
its own by the late 19th century, supporting the needs of those industrializing the economy and demanding the Constitution’s protection not simply for private property but for arguably newer rights such as the liberty-of-contract right made famous by cases like *Allgeyer v. Louisiana* and *Lochner v. New York*.

The *Lochner* era of American jurisprudence, which ran roughly from 1890 to 1937, saw state courts and the Supreme Court strike down laws that, for instance, regulated wages and work hours because such laws violated a right to contract as one chose. This right to contract was not only held to be philosophically central to liberty in this conception, but was purportedly protected by the Constitution itself under the Fifth and Fourteenth Amendments’ guarantee that no American government could deprive any person of liberty without due process of law. Many, in that time and ours, have said this was a novel and illegitimate interpretation of the terms “due process” and “liberty.” Most of today’s originalist constitutional-law scholars are among such critics.

But regardless of how one comes down on the question of constitutional interpretation, one might still find the overall conception of liberty here compelling. It holds that in protecting natural rights, government’s main aim is to get out of the way of the individual’s own shaping of his economic well-being. This will occur through whatever property he obtains by the sweat of his own brow, to use one of Lincoln’s favorite Biblical (and Locke-evocative) images, and through his buying, selling, and contracting with others. Such economic self-reliance does not necessarily translate into social atomization. Tocqueville, ever attuned to the general danger of individualism, observed that the focus upon commercial success often made the typical American solicitous of his community’s needs and careful to cultivate a reputation for fair dealing.

Still, the basic idea here can be captured by a rather individualistic image: To metaphorically expand the meaning of the old legal maxim that “a man’s home is his castle,” we should think of the main “castle” of the individual’s right to liberty as including his property and contracts. This is the primary content of liberty, and what its defense mainly requires, once the two necessary conditions of liberty — law-bound government and the removal of the threat of enslavement — have been achieved. Likewise, while the free individual’s basic liberties of movement, association, free-speech, religion, marrying, and raising children are important aspects of liberty, in this conception they are not seen as
potential weak-points always in need of vigilant protection in the way the economic liberties of property and contract are. Moreover, it is the successful use of these economic liberties that is seen as the key to giving the other aspects of liberty their vigor.

We still commonly hear libertarians and conservatives say that we can know whether liberty is increasing or diminishing simply by gauging whether there is increasing or diminishing freedom for the operation of private enterprise. The goal is a market system made as free as is practicable, so as to allow the individual to achieve real self-reliance. Good politics protects the free operation of the economic arena by discouraging, through regular legislative politics and through constitutional restrictions of government powers, the temptation of poorer majorities to take from the more prosperous.

Good politics also protects such liberty by resisting the operation of monopolies in business or labor markets and by generally opposing laws that grant subsidies, protect collective-bargaining agreements, set up market-entry barriers, fix prices, and the like. The claim underlying this understanding of liberty is that it is not just a prudent theory of political economy that opposes such laws but the demands of liberty itself, and thus of the Constitution as well.

**Liberty as Social Justice**

The fourth conception, progressive liberty, was formulated in the late 19th and early 20th centuries in response to the ascendance of economic-autonomy liberty. But as the term “progressive” suggests, it also reflected a new confidence in the constructive possibilities of modern civilization. The early Progressives believed that, as advances in the natural sciences (and economics) were transforming people’s lives, advances in the social sciences, if applied by political leaders, could progressively improve society. This hope was coupled, however, with a fear that if political advances did not keep up with and regulate the advances in other fields, democracy would suffer severe degradation, including a loss of effectual individual liberty. For a correct understanding of liberty would see that the very possibility of the free individual, namely a person free to speak and believe as he would and free to develop his unique set of talents, depended on the collective development of that person’s society.

If society did not provide protections against individuals’ impoverishment by industrial contractual arrangements, individual freedom
might eventually cease to exist in any effectual way, even if it might exist “formally” in the legal guarantee of natural rights. Yes, for the industrial wage-laborer, this formal liberty would mean he could not be made a slave, but how would this really matter if his family was likely to suffer life-threatening penury the moment he left or lost his job? Not only would he live a life shorn of opportunities for self-development, but he would probably be pressured to conform to the behavior, perhaps even the political and religious behavior, approved of by his employer. “Necessitous men,” Franklin Roosevelt liked to say, “are not free men.” This was both a description of their condition and a warning about its ultimate political implication. Such men would be drawn to creeds dedicated to the overthrow of liberal-democratic government.

So the proper goal of society, according to this view, is “social justice,” which would not permit such necessitous straights but would seek the most broadly equal opportunity possible for self-development. Liberty is not separable from such justice, nor can it be understood by focusing on the individual alone, since it is only the socially just society that makes truly free individuals possible.

What the Progressives and the New Deal liberals feared, however, was that older American dogmas would keep the nation’s democracy from directing its own social development as they envisioned. They found two dogmas particularly regrettable. The first was what they broadly denounced as “individualism,” by which they basically meant economic-autonomy liberty. Progressives traced the roots of this individualism to the founding itself, but many of them put more of the blame upon economic theories of later origin. Either way, while such individualism had been a useful creed for pioneer farmers and small-town merchants to hold, the modern economy was increasingly coming to be divided into corporations and wage-earners. There was no longer a frontier where one could carve out property by mixing one’s labor into the land in the manner extolled by Lockean theory. Thus, belief in inviolable individual rights, and particularly the rights to contract and use property freely, actually served to further entrench the power of corporations against that of individuals.

The second dogma was that of old-fashioned American federalism, which held that the power granted the national government by the Constitution to regulate interstate commerce mainly applied to commercial exchanges between the states. The regulation of an economic
activity occurring within one state could only be undertaken by that state, even if the product of it affected the entire nation. This dogma was in denial about the truly national nature of the American economy, the Progressives asserted. At their best, the ties earlier Americans had to their towns and localities fostered patterns of fraternal care for their fellow citizens; but now such instincts had to be given means of being exercised through the emerging national community if they were to exist at all. The old interpretation of federalism had become an artificial barrier to the exercise of the real political community’s responsibility.

In sum, justice could not be limited to the honoring of individual rights; it had to be social justice, and the proper political arena for its pursuit was the nation. Correctly understood, liberty was nothing but another way of speaking about the mutual enjoyment of such justice.

**Liberty as Autonomy**

The fifth conception of liberty has been in the American air for a long time, as evident in certain pronouncements from Thomas Jefferson, Ralph Waldo Emerson, and Walt Whitman. Aspects of it had been affirmed by the Supreme Court in a number of landmark First Amendment decisions since the 1920s regarding political expression, the regulation of obscenity, and the non-establishment and free-exercise of religion. But it awaited the cultural (and sexual) revolution of the 1960s and ’70s for its full practical implications to become evident and for it to become jurisprudentially enshrined in the Constitution, initially as the “right to privacy,” by decisions like *Griswold v. Connecticut*, *Roe v. Wade*, and *Lawrence v. Texas*.

The core idea of personal-autonomy liberty is the notion that the individual should be allowed to do whatever he wishes, so long as he does not harm others or violate their rights. The French Revolution’s “Declaration of the Rights of Man and Citizen” came close to capturing the idea when it said that “Liberty consists in the ability to do whatever does not harm another; hence the exercise of the natural rights of each man has no other limits than those which assure to other members of society the enjoyment of the same rights.” This formulation is nearly identical to ones stated by Thomas Paine and Thomas Jefferson.

The French declaration did go on to say that “[t]hese limits can only be determined by the law,” and that “[t]he law only has the right to prohibit those actions which are injurious to society,” whereby it logically opened up a wide scope of human activities to democratic regulation,
including those involving health, education, morals, and religion. Indeed, all modern democratic nations have witnessed, and will continue to see, some majorities becoming convinced that society will be harmed by permitting certain lifestyles—such as those of the over-weight or uncleanly, the uneducated, the drug-addicted or otherwise vice-besotted, the sexually deviant or promiscuous, or those publicly adhering to a false religion or atheism.

Personal-autonomy liberty pushes against societal regulation of all these aspects of life and flatly rejects it with respect to consensual sex and religious opinion. Of course, the natural-rights understanding of liberty always fought for a similar policy with respect to the latter, at the state level best represented by Jefferson’s Virginia Bill for Establishing Religious Freedom, and at the federal level by the First Amendment. But this understanding was not embraced by all or even most of the founders. In the Virginia debates about whether to fund religious instruction, for example, Jefferson and Madison’s main opponent was none other than Patrick Henry. In Massachusetts, John and Abigail Adams spoke approvingly of laws that penalized a failure to attend church regularly, and the 1780 Massachusetts constitution directed the legislature to force towns to make provision for “public Protestant teachers of piety, religion, and morality.”

Many states went on enacting laws, or even constitutional provisions, that expressly promoted Christianity well into the late 19th century. And with respect to sexuality, the record of state legislation was even more repugnant to the personal-autonomy idea of liberty. Thus, however prominent names like Emerson’s and Whitman’s may be, we have to recognize that the overt advocacy and practice of personal-autonomy liberty remained a minority bohemian phenomenon in America prior to the cultural revolution of the 1960s and ’70s.

We could turn to various political theorists to more fully understand personal-autonomy liberty, but simpler articulations of it may be found in the public declarations of two of our Supreme Court justices: the liberal justice William Brennan and the swing-vote justice Anthony Kennedy. The former, in a 1985 address at Georgetown University that stands as one of one the most important defenses of a “living constitutionalist” interpretation, said this:

The Constitution on its face is…a blueprint for government…. When one reflects upon the text’s preoccupation with the scope
of government as well as its shape, however, one comes to understand that what this text is about is the relationship of the individual and the state. The text marks the metes and bounds of official authority and individual autonomy. When one studies the boundary... one gets a sense of the vision of the individual embodied in the Constitution... a sparkling vision of the supremacy of the human dignity of every individual.

The main teaching of the Constitution, Brennan suggests, is this vision of personal autonomy, which he also calls one of “libertarian dignity.”

Justice Anthony Kennedy, in his majority opinion in Planned Parenthood of Southeastern Pennsylvania v. Casey, the decision that reaffirmed the core holding of Roe v. Wade, spoke of the same vision:

Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.... These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.

It is now clear that, so long as the Court remains dedicated to this understanding, it will eventually overturn laws that prohibit same-sex marriage. What is more controversial is the argument that, if it is to be consistent on this point, it will also have to overturn laws that prohibit polygamy and polyamory, and really all laws grounded in what Justice Scalia, in his dissent in Lawrence, called a “promotion of majoritarian sexual morality.”

It has also become clear that many Americans now regard this individual-autonomy notion of liberty as the central feature of our democratic heritage. This fifth conception of liberty is clearly ascendant in our time. On the right, this has meant the rise of a libertarian social ethic rather than a communitarian conservatism. And on the left, it has meant a de-emphasis of the progressive ideal of liberty even as progressivism has appeared resurgent in the Obama years. As recently as the
In the 1980s, there were large numbers of pro-life Democrats who, like the social-gospel Progressives or New Deal Catholics of old, mainly cleaved to the progressive notion of liberty and certainly did not accept the overall personal-autonomy conception. But they are a dying breed now, and typically in those instances when the progressive ideal of liberty comes into conflict with personal autonomy on the left, it is the progressive ideal that must make way.

The classical-communitarian conception of liberty, meanwhile, is the least championed one today in American politics. Certain liberals who remain attracted to slogans such as “small is beautiful” and certain conservatives who are particularly focused on federalism give partial voice to it, but its praises are today are only whole-heartedly sung by what is best called the “new agrarianism,” a loose movement associated with the promotion of local foods, the author Wendell Berry, and the website Front Porch Republic. It tends to oppose itself to both the Democratic and Republican coalitions, and thus far its political impact has been negligible.

The Complexity of Liberty

While each of these five conceptions of liberty has had its specific historical origin and heyday, all of them are alive in our time. Liberals today emphasize and to some degree combine conceptions four and five, conservatives one and three, and libertarians three and five, although all tend to assume they hold only a single and straightforward conception of liberty. In fact, one benefit of the five-fold framework offered here is that it leads us away from the dichotomous frameworks typically used to analyze liberty, and it allows us to see not only that liberty means different things to different people, but that it can mean multiple things to each of us.

Conservatives and libertarians have been particularly susceptible to Manichean descriptions of battles over liberty, sometimes presenting the founders’ vision of liberty as a completely unified one while ignoring the tensions and outright divisions between the natural-rights and classical-communitarian conceptions. They then pit their unified version of the “founders’ liberty” against the progressives’ vision, which they consider essentially statist and implicitly directed to liberty’s very opposite, tyranny. Many on the right also tend to blend this already-simplified view of the founders’ understanding of liberty with the economic-individualist
view that had its heyday in the late 19th century. The same people similarly make no distinction between the progressive and personal-autonomy conceptions of liberty. Everything is reduced to two opposing sides.

The typical liberal view of the matter is also dichotomous, if in a somewhat more complicated (or confused) way, pitting the progressive social-justice understanding of liberty against the economic-autonomy one in one arena, and personal-autonomy liberty against what amounts to a theocratic and “authoritarian personality” bogeyman in another. All of these dichotomies are too simplistic for making fair judgments or adequate accounts of history.

The five-fold framework offered here avoids such reduction. It thus allows the examination of liberty to become dialogic and dynamic, shedding light on American history and on our misunderstandings or misrepresentations of it. In fact, both liberals and conservatives form their ideas of liberty through the lens of their understanding of history—and the ways they do so are instructive.

Why did our conceptions of liberty develop as they did? American liberals or progressives would suggest that through a kind of trial and error process we were led to today’s proper stance, in which progressive liberty and personal-autonomy liberty are combined. By this account, our journey from the founding to the present has involved two key corrective steps. First, the progressive conception was formulated in response to the way the natural-rights conception developed over time into an economic-autonomy ideal of liberty. This response involved something of an overreaction, however, for the progressive conception was too negligent of civil liberties, as these were associated with the natural-rights tradition, and too complacent about the potential for government expansion into all areas of life. So a second corrective step was taken, involving both a re-appreciation of inviolable individual liberties tied to the Bill of Rights and a further carving out, particularly through the right-to-privacy cases, of a much larger sphere of personal autonomy in non-economic matters.

Legal historian David Rabban has demonstrated that the cavalier attitude toward freedom of speech displayed by Wilson-era governance, especially during World War I, “transformed many progressives into civil libertarians.” It is no accident that the ACLU was founded in 1920. And regarding the trend illustrated by the right-to-privacy cases, the following from Justice Brennan is similarly revealing:
Until the end of the nineteenth century, freedom and dignity in our country found meaningful protection in the institution of real property. . . . [A] piece of land provided men not just with sustenance but with the means of economic independence, a necessary precondition of political independence and expression. . . . But [those] days . . . are past. To a growing extent economic existence now depends on less certain relationships with government . . . the possibilities for collision between government activity and individual rights will increase as the power and authority of government itself expands, and this growth, in turn, heightens the need for constant vigilance at the collision points.

In the old days, the dignified sphere of individual liberty was economic, but now, given the growing power that progressives had given (and think they ought to continue to give) to government, a new approach was needed. Originalist constitutional scholars harp on the inconsistency of a liberal court that, after emphatically rejecting economic substantive due process in the late 1930s, turned to what was essentially non-economic substantive due process from the 1960s forward. But if it was not a move that made perfect sense as an interpretation of the 14th Amendment, it is easily understood as being motivated by a need to guarantee the individual some arena for autonomous action. And it also helps explain the mix of progressive liberty and autonomous-individual liberty that now defines the left.

This development of American progressivism and liberalism is certainly an important part of the story of our conceptions of liberty. But two alternative conservative explanations give us reason to think it is not the whole story. The first, which in its popularized mode is essentially the liberty/statism dichotomy discussed above, was in some respects only recently articulated by conservatives. It derives from the teaching of some “West Coast Straussian” scholars, such as Harry Jaffa, Thomas West, Ronald Pestritto, and Charles Kesler, and particularly from their trenchant critique of the original Progressives.

Up to the time of the Progressives, these scholars hold, America largely maintained the key elements of the founders’ vision of politics—the separation of the fundamental powers of government, the enumeration of national legislative powers, robust federalism, rejection of direct democracy, and, finally, a conviction that certain rights were natural
and that it was the primary end of government to secure them. The Progressives rejected these elements and began to shape the government in a manner, later taken much further by New Deal and Great Society liberals, which undermined each of them.

It is crucial to understand how novel this interpretation of Progressivism has been. Prior to the work of these scholars, the dominant academic understanding was that Progressivism had been an obviously necessary response to growing corporate power in America, and that, in comparison with more fundamental critiques of capitalism, it was in many ways quite tepid. But the newer scholarship has called that account into question and most importantly has shown that the Progressive departure really was a radical one. It was deeply influenced by historicist ideas propounded by German philosophers like Hegel, and these ideas prove to be incompatible with natural rights. Key Progressive thinkers openly declared that there was no fundamental truth to those rights, and mocked the supposed wisdom of key features of American constitutionalism. Woodrow Wilson, for example, advised Americans not to study the opening paragraphs of the Declaration of Independence.

Americans of all ideological stripes can benefit from this advancement in our understanding of the original Progressives, and it is appropriate to demand of contemporary liberals a candid discussion of whether that sort of philosophical rejection of natural rights and that kind of hostility toward reverence for the Constitution are parts of their heritage they still endorse. The problem is that the framing of these newer findings, especially by conservative pundits (as opposed to scholars) has over-emphasized the idea of betrayal. This makes the case for American liberty, as it is generally understood on the right, as one of staying true to the natural-rights scriptures: Southern leaders directed an abandonment of our original principles that had to be rebuked and repented of, and Progressives, over a longer period of time and in a less overt way, have also fallen away from the founding ideals, and it remains to be seen if conservatism can bring the nation to repent. By such an account, natural-rights philosophy and its understanding of liberty are regarded as fully adequate, and the Progressive reaction against them has nothing to teach us about their limitations.

The fuller account of America’s five conceptions of liberty suggests instead that, as natural-rights thinking about liberty became more divorced over time from classical and Christian inheritances and more
subject to rigid judicial articulation and elaboration, it became less moderated by prudence and gradually morphed into the economic-autonomy conception and later on into the personal-autonomy conception. Additionally, as Americans found the local community and its exercise of liberty less meaningful and relevant, they were prepared to embrace a progressive vision of collective liberty practiced mainly at the national level.

Progressivism became attractive because it seemed as if it might fill the gap left by an ebbing tradition of classical-communitarian liberty, a gap more felt than understood. Progressivism’s appeal to those eager for a theory in harmony with the purported 19th-century advances in philosophy and social thought was vital to its success, but easily as important was its appeal to the more typical Americans who did not grasp its departure from the founding or its skepticism toward any non-historicist grounding of political principle. In sum, the turning of so many Americans to progressive politics would seem to be both a story of their being led by innovators into foolishly abandoning their tradition and one of their being provoked into doing so by that tradition’s own deficiencies.

The second sort of conservative explanation of the story of American liberty takes these deficiencies seriously. It is, compared to the first, strikingly critical of natural-rights thinking. This view is more common among some conservative-leaning political theorists than among activists or the rank and file. It suggests that the main path of American development has been toward greater and greater liberation of the individual, that this is not a good thing, and that it all goes back to natural-rights thinking itself. As the social-conservative theorist Peter Lawler put it in his 2005 essay “Putting Locke in the Locke Box”:

The real goal of Locke and the other old liberals was aggressive and comprehensively transformational, to change all of human life with the abstract or autonomous individual in mind. . . . The contemporary Supreme Court interprets the Constitution as progressively and thoroughly Lockean.

Lawler explains this mainly in terms of Justice Kennedy’s statements in Lawrence about our conception of personal liberty expanding over time, but he eventually notes that contemporary libertarian
constitutional-law scholars such as Randy Barnett basically agree with Kennedy. These scholars want the Court to be consistent by endorsing both kinds of autonomy-securing substantive due-process interpretations.

By this account, the respective developments of the economic-autonomy and personal-autonomy conceptions of liberty out of the natural-rights doctrine make perfect sense. These conceptions will always be with us as long as there is an America, for their advocates are correct that they are simply following through the logic of Locke—or we might say, simply purifying natural-rights liberty of its founding-era cultural incidentals. Despite the way the founders moderated natural-rights liberty, especially by assuming the continued validity and practice of certain classical-communitarian inheritances, its radical core was inevitably going to make itself felt and attempt to remake society in its own image.

It is true that one cannot understand the liberationist revolution of the 1960s without considering the peculiar influences that Progressives, Marxists, Freudians, and existentialists had upon it, but those influences are not the heart of the story. For what the revolution really did was further entrench the psycho-sociological condition referred to as “individualism” by Alexis de Tocqueville, and this condition has its most vital root in modern philosophical talk about a state of nature. It is no accident that our social conditions and habits of the heart make us more and more like the unbelievably isolated individuals posited by the state of nature.

Lawler is hardly the only conservative theorist who understands the story of our liberty in this way. Those who share his view are usually influenced by Catholic thought, Edmund Burke, Alexis de Tocqueville, Leo Strauss, or some combination thereof. They often suggest that Lockeanism can be held partially responsible for the progressivism that later attacked it because, particularly if they follow Strauss, they regard the historicist “second wave” of modern political philosophy as inevitably following from the state-of-nature focused “first wave.”

Many of these theorists do hold that we still can moderate modernity or, to use Lawler’s phrase, “keep Locke in the Locke box” the way the founders unknowingly did. It is difficult but not impossible, they assert, and Biblical religion, along with a grateful but not idolatrous reverence for the founders and their Constitution, are the key resources for such moderation. But there are also two important variants of this second conservative explanation of American liberty that are far more pessimistic.
The first, which can be described as a so-called “East Coast Straussian” position, holds that what Tocqueville called “democratic despotism” is the inevitable destiny of modern liberal democracy. He was correct about democracy’s tendency toward such despotism but incorrect to hope that it could be indefinitely resisted. A decisive majority of modern Americans, led by many of our elites, have put their faith in the ideas described above as the progressive and personal-autonomy notions of liberty, and they will grant more and more power to a centralized government apparatus to guarantee the maximum calculable realization of both, heedless of all signs of the system’s despotic drift. Resistance is futile, these theorists insist, since the call to “return to first principles” would simply return us to the Lockean beginning point. The only thing to be hoped for is the preservation of genuine philosophy in the face of the coming disaster.

The other variant, developed by Wilson Carey McWilliams and pushed a good deal further in an agrarian direction by his student Patrick Deneen (a professor of government at the University of Notre Dame), holds that we must return to the classical-communitarian notion of liberty. The only truly good aspects of the American heritage are those that have tried to resist the nationalizing and individualistic imperatives. An America largely purged of its Lockean inheritance and repentant about its technological hubris is our only real hope, but, as that hardly seems in the offing, the best we can realistically strive for is a countercultural preservation of agrarianism by scattered communities.

TOWARD A RICHER DEBATE

Carefully considered, the five-fold framework laid out above suggests that the somewhat more optimistic conservative critics of Locke are correct, and that they may offer the best prescription for averting the ruin of American democracy.

While natural-rights thinking bears a good deal of responsibility for what has gone wrong with America, most of all by having a role in fostering the development of the progressive and personal-autonomy notions of liberty, these semi-optimistic conservatives accept three things about natural-rights thinking: There is a very great deal of good that we owe to it, and it merits our patriotic gratitude; moreover, there is no plausible way of getting Americans to abandon it even if we wanted to; and, most important, there is much about it that is simply true. Classical thinking
must be used to correct or fill in the blind spots of Locke, but Locke can do the same for classical thinking, most of all by articulating certain aspects of the initially Christian insight into the primacy of the person against the claims of the community. (On this last point, it is again the writings of Peter Lawler that are the most instructive.)

Thus, we must continue to dedicate ourselves to the natural-rights propositions, albeit with a greater understanding of the way the founders in fact balanced Lockean thought with pre-modern inheritances. The inheritance that directly concerns liberty is the classical-communitarian understanding of it. This is the most important insight that the five-fold framework can offer contemporary conservatism. It is not enough to moderate Locke with religion and constitutional reverence; Americans have to advocate understandings and policies that seek to rebuild the power of local communities and the benefits of citizen participation in them, no matter how quixotic this may initially seem.

If Aristotle was to any significant degree correct that we are naturally political (or polis-focused) animals, and if Tocqueville was to any significant degree correct that township and associational participation were the most important schools of American liberty, then every step toward re-invigorating classical-communitarian liberty is precious and necessary in our time, no matter how small. If we resign ourselves to a world in which the collective practice of self-rule is no longer experienced in any tangible way, we will find the innate human desire for it expressing itself in debased and perhaps dangerous ways, including in wild crusades for amorphous “change.”

Contemporary conservatism combines economic-autonomy liberty with natural-rights liberty; it would be healthier for it to combine classical-communitarian liberty with natural-rights liberty. What that ought to look like in terms of the ongoing necessity to maintain a coalitional alliance with economy-focused libertarians is of course a legitimate matter of debate. Such a conservatism would continue to take many of its economic-policy bearings from economists who favor economic-autonomy liberty, and it would certainly refuse to entertain the new agrarian suggestion that America can or should “get beyond” Lockean notions of property rights. But it would expect ongoing conflict between individual economic liberty and collective efforts to foster socioeconomic health, especially when these are conducted at the local level, to be a perennial and ultimately salutary feature of republican liberty.
Today’s liberals and libertarians will of course have little inclination to embrace such an approach, and perhaps little more to accept the story about American liberty’s development upon which it rests. But they would do well to consider that framework at least as a way of clarifying our national disagreements. Americans disagree about the very principles that make up the American creed, and we must bring ourselves to face this. We will only exacerbate the fratricidal tendencies gathering strength in our polity if we continue to speak about liberty in a manner that denies the seriousness of our disagreements.

To continue to speak of liberty simply in our various disputes is really to assume in advance that there is only one way to talk about it. All sides will only exasperate one another by assuming this, and worse, when constitutional disputes arise, the parties to them will assume and talk as if their conception of liberty must be protected by our founding documents. What purports to unite them, therefore, will turn out to divide them all the more.

The good news is that five is a much more promising number than two. It makes it less likely than either the liberal or the conservative party in our politics will completely carry the day, as a series of electoral victories by either coalition would expose it to the prospect of its own division along deep and serious fissures. Moreover, it makes the possibility of dialogic learning more likely. If liberty’s future definition is not simply a matter of two sides, one of which is destined to lose, then the two main coalitions in our politics can each hope for various kinds of healthy reconsiderations by the other.

Conservatives can hope that some serious liberals will reconnect with elements of the political philosophy of the founders that are crucial to their own worldview, dial back their dogmatic and Constitution-altering insistence upon most every aspect of personal autonomy, and make more room for the cultivation of fraternity and active liberty at the local level. Liberals can hope that some serious conservatives can become far less dogmatic about questions of political economy by being more skeptical about the claims, especially the constitutional claims, of economic-autonomy liberty, and less inclined to associate calls for legislative amelioration of economic distress with Marxist socialism or Hegelian statism.

If such hopes seem extravagant at present, it is not too much to hope that admitting our divisions about liberty will allow us to conduct
a more thorough civic education in common, for the sake of better cultivating in future generations an appreciation of the riches of the American political tradition and, of course, for the sake of their perpetuation of “government of the people, by the people, and for the people.”