

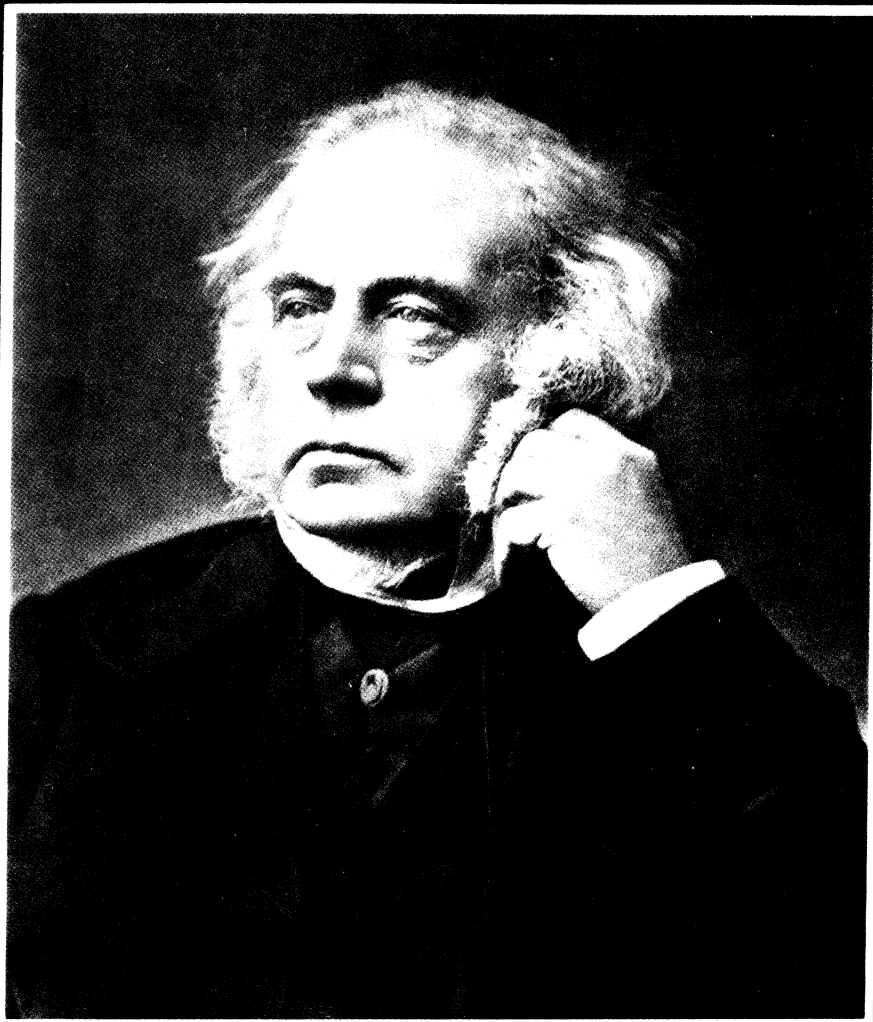
Winter 1980

# LITERATURE *of* LIBERTY

*A Review of Contemporary Liberal Thought*

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*by Ellen Frankel Paul*



*John Bright (1811-1889)*

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## Bibliographical Essay

---

*Ellen Frankel Paul*

Laissez Faire in Nineteenth-Century  
Britain: Fact or Myth?

7

---

## Summaries

---

Legal Philosophy 39

Political Analysis 48

War and the State 66

Political Economy and Theory 75

---

## Index

---

Authors, No. 4 85

Cumulative, Volume III 86

---

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## Editorial

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**E**nglish Liberalism in the nineteenth century had its roots nurtured in several sources. Intellectually, it drew inspiration from eighteenth-century radical Whig traditions and their source in the Commonwealthmen. The Philosophical Radicals from Bentham through John Stuart Mill provided active debaters in liberal periodicals and books, as well as parliamentary commissions and other investigative bodies. The Manchester School of Economics provided liberals with significant experience through the Anti-Corn Law League. Finally, the spirit of nationalism lay not far beneath the surface of liberalism. Indeed, where earlier historians saw support for foreign self-determination (especially for Italian nationalists) as a hallmark of English liberalism, modern historians have noted the paradox that the constituencies for English liberalism were the oppressed peoples of the Celtic Fringe. In parliament Celtic support for liberalism was obvious with the Irish Nationalist members seated with the Whigs and Radicals. Likewise, "English" members sat for other parts of the Celtic Fringe (western England, Wales and Scotland) as well as for the north of England. The Liberal party arose from the heavy mobilization of voters stimulated by party rivalry in the 1830s following the Reform Act of 1832 (an era corresponding to the Jacksonian period in America).

It is impossible to overemphasize the importance to liberalism of the Commonwealthman tradition and its conception of England's seventeenth-century revolutionary history. The English middle class viewed liberalism through the revolutionary filter of the Commonwealth and Protectorate, the Restoration and the Glorious Revolution. John Bright reflected this attitude in reading Hallam's liberal *Constitutional History of England* to his family. Bright also ranked republican John Milton as "the greatest man who ever lived" (to Lady Amberley, Bertrand Russell's mother). Bright's articulation of middle class real values and traditions moved John Stuart Mill to accept Bright's influence rather than his own logical formulations in politics.

Bright's liberalism warmly approved local communities of people and humanity, both of which he considered to be under regular assault by central governments. For Bright, the nation was divided into two classes: "tax-eaters" and "tax-payers." The "tax-eating" class consisted of the bureaucracy and special interest groups that benefited from government intervention. Bright was especially concerned about the "tax-eaters"—the army, navy, foreign office, colonial agencies and those interest groups which profited from belligerency, whether in the form of restrictive laws or military acts directed against other peoples. In either expression of

hostility Bright detected the exploitation of the "tax-payer." The "tax-payers'" work is exploited by the tax paid to the subsidized or protected industry whether the reason given is to protect jobs, profit margins, commercial, or political interests abroad. Bright's arguments on behalf of the Anti-Corn Law League's efforts to repeal subsidies and tariffs mirrored those against imposing on the producers the costs of the government's overseas military and political spending. (On the classical economists' arguments, see Edmund Silberner, *The Problem of War in Nineteenth Century Economic Thought*, Princeton, New Jersey, Princeton University Press, 1946.)

Although he was convinced that a country needed an adequate and modern means of defense, Bright would "repudiate and denounce the expenditure of every shilling, the engagement of every man, the employment of every ship which has no object but intermeddling in the affairs of other countries." Arms and loans to authoritarian governments would not preserve them, while self-governing people would defend themselves better with their own resources. Bright and Richard Cobden, his close associate in the Anti-Corn Law League, braved unpopularity in their spirited opposition to the Crimean War. Their firm stand on principle was the foundation for the popular non-interventionism of the Liberal Party lasting from Gladstone until the early twentieth century when World War I destroyed the nineteenth-century's accumulation of capital and, with it, the Liberal Party.

The nineteenth-century's accumulation of capital and the industrial revolution on which it was based was important to Bright. He noted that the French wars of 1793–1815 had lowered living standards undermining the early advances of the industrial revolution. Increased living standards resulted from increased real income derived from improved productivity. By raising the costs of production, the Factory Acts decreased employment and thus harmed workers.

For Bright, the economic arguments could not be separated from the moral arguments. The right to property in things is an extension to the right to property in one's self. When Sir Robert Peel proposed to introduce an income tax, Bright opposed its intrusion upon his right to privacy. He refused to disclose his income and organized a petition campaign invoking resistance to the invasion of privacy involved in the income tax. "No government," he wrote to Cobden in 1842, "can have the right to make me state the amount of my profits and it is a vile system of slavery to which Englishmen are about to be subjected." Bright's major speeches are collected in: Thorold Rogers, ed., *Speeches on Questions of Public Policy by John Bright, M. P.*, (London: Macmillan and Co., 1869); and *Selected Speeches of John Bright on Public Questions* (London: J. M. Dent and New York, E. P. Dutton, 1907).

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**Bibliographical Essay**

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# Laissez Faire in Nineteenth-Century Britain: Fact or Myth?

by *Ellen Frankel Paul*

*Hoover Institution and University of Colorado, Boulder*

## **Introduction: The Scholarly Debate over British Laissez Faire**

**G**reat Britain in the nineteenth century was a great bastion of individualism where that merciless principle of the political economists—laissez faire—dominated public opinion, and Parliament, under its sway, vanquished the last vestiges of an overweening, Mercantilist state. Captivated by two allied and seemingly indomitable intellectual forces, the radically individualist, antistatist philosophy of the Benthamite Utilitarians and the rigidly free market economics of the Classical School, the Victorian era spurned governmental solutions to acute social problems. In its fanatic embrace of self-interest, self-help, and atomistic individualism, the period can only be characterized as an 'age of laissez faire.'

It is precisely this halcyon or demonic vision (depending upon one's political perspective) of nineteenth century British economics, political philosophy, and governmental policy that has come under withering assault in the last three decades. Particularly in the mid-1960s a debate raged in the professional journals over essentially three interrelated issues. (1) What policy conclusions did Classical Economics dictate, and the Classical economists, as individuals, endorse? (2) Did Britain in the nineteenth century, or in some distinct portion of it, personify the ideal of minimal governmental intervention in the economic and social realm, or rather, was the period the breeding ground for the rampant collectivism that would follow? (3) Finally, what was the essential thrust of Benthamism as a political philosophy, and as a theoretical tool for the analysis of policy; and what effect did Benthamites have upon the course of British politics? These questions ought not merely concern antiquarians, pedants, or those intrigued by semantic quibbles over the

definition of *laissez faire*. If we are to comprehend the nature of the modern Leviathan state, we need to discern the forces which promoted its creation and to examine the arguments advanced in support of its nascent powers.

## I. The Economic Policies of the Classical Economists

. . . the scholarship of the last forty years has proved beyond question that the architects of classical political economy cannot be characterized as upholders of the *laissez-faire* philosophy."<sup>1</sup>

"To identify such doctrines [i.e., *laissez faire*] with the declared and easily accessible views of the Classical Economists is a sure sign of ignorance or malice."<sup>2</sup>

While such ringing declarations of a cleavage between the political economists and *laissez faire* may be a bit hyperbolic when applied to such figures as Adam Smith or David Ricardo, these assertions seem far less controversial when directed at John Stuart Mill, Henry Sidgwick, or J.E. Cairnes. Those critics who take a dynamic rather than a static<sup>3</sup> view of the Classical School of economics agree that as the nineteenth century progressed the allegiance of leading economists to *laissez faire* became more and more attenuated. Whether one focuses upon the death of Ricardo in 1823, or the influence of Bentham's principle of utility, or John Stuart Mill's flirtation with socialism as constituting the definitive turning point toward a more activist, interventionist state, contemporary revisionist scholars concur in their assessment of the Classics as deviationists from doctrinaire *laissez faire*.

One might add, that for practically all of these contemporary authorities the effort to rescue the early political economists from the clutches of extreme noninterventionism is motivated by a desire to rescue their reputations, and, indeed, professional economics in its incipient stage, from scurrilous charges of extremism, callousness, and rigidity that have repeatedly defiled their memories. With few exceptions, the Classical economists' deviations from pure *laissez faire* are praised as examples of their pragmatism, rather than condemned as departures from sound public policy. Also, a Classical School replete with deviations, exceptions, and considerations of expediency is a much more venerable ancestor for modern Keynesianism.

Motivational considerations aside, the revisionists' interpretations of the 'normative' side of Classical economics is essentially accurate. The conventional vision of the followers of Adam Smith as radical antistatists, shunning governmental incursions into private economic relationships on all fronts is, quite simply, indefensible. As in all reigning myths, there is, however, a solid kernel of truth.



While the Classical economists tolerated, and indeed encouraged, repeated governmental interventions to cure perceived social and economic ills, noninterventionism remained, to a greater or lesser extent depending upon the quirks of each particular economist, the regnant principle, and any departures from it required elaborate justification. The general presumption, then, was on the side of *laissez faire*; exceptions arose on an ad hoc, case by case, usually empirical basis; and the burden of proof lay on the interventionists. Of course, over time this *laissez-faire* presumption was attenuated until, in the hands of men like John Stuart Mill, its dim shadow could barely be perceived.

*Robbins's Distinction of Two Individualist Moral Traditions:  
Natural Rights vs. Utilitarian*

If the Classical economists' attitudes towards state intervention into the economy are to be rightly understood, we must delve beneath the surface of their various stands on such salient issues of their time as the poor laws and the factory acts to the more fundamental level of their metaphysical and moral presuppositions. In a seminal work published in 1953, *The Theory of Economic Policy in English Classical Political Economy*, Lionel Robbins attempted such an analysis. Dispensing with such traditionalist views as that of Jacob Viner<sup>4</sup> who perceived Adam Smith (at least) as an adherent of a natural law-natural rights philosophy, Robbins contended that the Classical school took its criterion for economic policy from the utility principle as adumbrated by David Hume. Thus, Robbins draws a rather sharp distinction between two traditions within eighteenth and nineteenth century individualist thought.<sup>5</sup> The first tradition, as personified in such figures as Frédéric Bastiat (1801–1850) and Mercier de la Rivière, founded a system of economic freedom upon natural law or natural rights underpinnings which spontaneously generated a milieu in which state intervention would be not only unnecessary but deleterious. The second individualist tradition, the English Classical school, subscribed to a Utilitarian moral foundation, rejecting all metaphysical ascriptions of natural rights as, in Bentham's pungent phrase, "nonsense upon stilts."<sup>6</sup> For the English economists, who followed this second tradition, the state, consequently, had a more positive function. They refused to lay down any categorical injunction against state intervention, relying instead upon the principle of utility—the greatest happiness of the greatest number—to test the consequences of each particular proposal for state activism.

Robbins's taxonomy of two distinct traditions is undoubtedly perceptive, but it fails in one significant respect. The Classical economists after Smith held nothing but contempt for either a natural law, deistic conception of the universe and man's place in it or for

a moral philosophy buttressed by natural rights. Bentham spared none of his vituperative skills in excoriating such doctrines as mere self-serving myth, undefended and indefensible dogma, and his calumnies banished such Lockean encumbrances from the arena of respectability. But for Adam Smith (1723–1790), Bentham's predecessor, such was not the case.

*Adam Smith: Naturalism and Laissez Faire*

Upon careful scrutiny of both *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) and *The Theory of Moral Sentiments* (1759), Smith emerges as a largely, although not wholly, consistent advocate of naturalism.<sup>7</sup> In his philosophical premises—a belief in a natural, harmonious universe inhabited by men attuned by an innate moral sense to play their part in society, and a natural harmony of interests between non-rights violating individuals—Smith adheres to principles which Robbins classified as belonging exclusively to the Continental individualist tradition. However, it is beyond question that when it came to his discussions of permissible governmental activities, Smith became much more pragmatic and seemingly utilitarian.

There is a higher purpose to this quibble over the identification Smith as either a naturalist or a Utilitarian. If one fails to distinguish between Adam Smith as a philosophical naturalist and the subsequent Utilitarianism of his economic successors, then one can only explain the gradual transition from quasi-laissez faire to quasi-statism as the result of social forces, the press of events, the blistering attacks of their critics, or some other equally weak or partial explanation. It is only when we pierce below the veil of their actual policy pronouncements, and examine this awesome shift from naturalism to utilitarianism that we can adequately comprehend the attitude of members of the English Classical School towards the state.

Adam Smith advocated a truncated state, limited in its functions to defending its citizens against foreign and internal aggression, and creating and maintaining certain necessary public works and institutions "which it can never be in the interest of any small number of individuals to maintain" because the profit would not repay the expense.<sup>8</sup> Of course, the inclusion of this "public works" category of permissible state intrusions nullifies the claim that Smith was a laissez-faire purist, or a consistent advocate of natural harmony of interests. But its inclusion was a harbinger of things to come, and that is its greatest significance. If the "system of natural liberty" broke down in certain cases, says Smith, and then we must be pragmatic instrumentalists in applying governmental remedies, why does it not break down in even more cases, inquired Smith's successors? Admittedly, Smith's own departures from noninterven-

tionism were modest ones by contemporary standards—e.g. the state might intervene to provide such public works as roads, bridges, canals, lighthouses; to protect by tariffs industries necessary to defense and to retaliate against foreign tariffs; to grant temporary monopolies to joint-stock companies in unexplored areas; to regulate the banking industry; to prohibit usury; and to provide state funded education to children of the indigent; and to collect taxes—but they set a striking precedent for advocating interventions in future cases where markets were seen to operate inexpeditiously.

*Ricardo and Malthus: Interventionism vs. Laissez Faire*

For Smith's immediate followers, David Ricardo and Thomas Robert Malthus, the presumption not of market beneficence per se but of state incapacity remained quite strong. Given Malthusian population theory coupled with Ricardo's wages and rent theories, there was relatively little impetus to extend government's purview.<sup>9</sup> Of course, we would be grossly remiss not to mention Malthus's idiosyncrasies, particularly his rejection of Say's law (i.e., that supply creates its own demand, thus denying any pervasive disequilibrium within a general market). This deviation from the position of the Classical School led Malthus to propose government intervention to correct the market during depressions, including the endorsement of government debts and large public works projects for the unemployed.

From the impetus of another peculiar Malthusian doctrine, Malthus also broke the otherwise unanimous ranks of the economists in their efforts to repeal the Corn Laws. In contrast, Malthus's population theory which portended an immutable conflict between population growth and the means of subsistence, led him, as it did Ricardo, to vigorously advocate a gradual termination of the Poor Laws. It is in Malthus's introduction to the *Principles of Political Economy* (1820) that we first hear a refrain that would be repeated by other Classical economists—McCulloch, Sidgwick, Cairnes—that absolute laissez faire was not a doctrine endorsed by Smith and that such a blanket condemnation of all government regulation is nonsensical:

It is obviously, therefore, impossible for a government strictly to let things take their natural course; and to recommend such a line of conduct, without limitations and exceptions, would not fail to bring disgrace upon general principles, as totally inapplicable to practice.<sup>10</sup>

David Ricardo (1772–1823) presents a curious case of an economist whose pure theories could have driven him to embrace interventionism, but who nevertheless endorsed a fairly abstemious and consistent noninterventionism. Ricardo's theory of rent and its projection of antagonistic class interests and his prognostication of

an eventual stationary state did not lead him to abandon *laissez faire*. Why? Perhaps the explanation might lie in his understanding of these economic laws as tantamount to natural laws: hence, if government abridged them abysmal consequences would occur. Despite Ricardo's strong ties to Bentham, there was still a large measure of moralistic individualism and suspicion of government in Ricardo that had seemingly little to do with his pure economic doctrines. When it came to the activist campaigns of his day, Ricardo tended to adhere to noninterventionist tenets: he opposed state provision for the poor, favored the repeal of the Corn Laws, theoretically opposed schemes to tax inheritance, prided himself on never voting for an increase in taxes while a member of Parliament, voted for repeal of a whole host of interventionist taxes, opposed all protectionist measures, argued for the resumption of gold after the Napoleonic War, and favored expeditious payment of the national debt. Ricardo's one momentous aberration was his advocacy of a national bank, which finally came to fruition under Robert Peel's ministry in 1844. Despite this notable exception, Ricardo's adherence to *laissez faire* was more pronounced than any of his fellow Classical economists, with the exception of Adam Smith.

### *Bentham: Utilitarian Erosion of Laissez Faire*

Jeremy Bentham (1748–1832), a melioristic social engineer if there ever was one, laid the theoretical groundwork for the enervation of the "let alone" principle. Colin Holmes may even understate the case when he writes:

It is difficult to maintain that Bentham expounded a negative view of the state's functions, for according to his principle of utility the laws and institutions of government are to be judged and justified merely by their usefulness.<sup>11</sup>

Bentham's explicit avowed allegiance to Smithian economics was not destined to influence posterity. Quite the contrary, the legacy Benthamism would leave to posterity was inspired not by the individualist strands in Bentham's writings, but rather by his collectivist tenets. Bentham, while certainly not the earliest expositor of the utility principle, was undoubtedly its most zealous. If every proposal for governmental activism must be evaluated on its merits according to the utilitarian "felicific calculus," then it is only a matter of time before the *laissez-faire* principle is rendered nugatory in the wake of one enervating, rear-guard battle after another. But we do not need to speculate on mere potentialities for erosion, for Bentham was diligent enough to provide an extensive catalogue of what he termed "agenda" for government. By the time Bentham was finished enumerating various "agenda," his "be quiet" dictum for government lay mortally wounded. The following passage offers a compendium of permissible interference which Bentham endorsed in various of his writings:

... to establish Poor Laws, hospitals for the indigent, workhouses for the unemployed; to levy taxes for redistribution purposes and to decrease the need for direct taxes; to recompense victims of crime when the perpetrator is indigent; to safeguard national security and establish courts and internal police; to disseminate useful information to industry; to label poisonous substances; to guarantee marks for quality and quantity on goods; to set a maximum price for corn; to provide security of subsistence by stock-piling grain or granary bounties to producers; to encourage investment in times of unemployment; to grant patents to inventors; to regulate banks and stockbrokers; to promote government annuities and a voluntary government insurance plan; to establish government banks; to establish and enforce a government monopoly on the issuance of paper currency; to engage in public works to put the unemployed to work; and, finally, to establish institutes, boards, and universities.<sup>12</sup>

A prodigious list, indeed, and one that underscores the interventionist proclivities of a liberalism founded upon Utilitarian principle as opposed to a natural rights based liberalism.

Most assuredly, BBentham in his philosophical, economic, and political writings incessantly urged state activism, but to characterize Bentham himself as a collectivist would be a gross oversimplification. Cohabiting in unholy alliance with his centralizing, social happiness maximizing tendencies was a core of individualism, of insistence that each person must count for one in the social calculus, that governmental remedies require a special justification, and that one must guard one's liberty against an overweening and often corrupt state. Whatever tendency Bentham had towards invoking governmental solutions was held at bay by these individualistic precepts and by his admiration for Smithian economics.<sup>13</sup>

### *Mill and Utilitarian Collectivism*

It was left to Bentham's brilliant, rebellious, and eventually reluctant disciple, John Stuart Mill (1806–1873) to extrude the collectivistic tendencies in Benthamism and drive the principle of utility to its statist denouement. Driven to despair and a mental breakdown in his early twenties by the rigors of his father's aridly rationalistic, Benthamite regimen of education, Mill searched for new meaning for his life. This search led him to Coleridgee, Carlyle, Comte, and even the socialist St. Simonians. The younger Mill's flirtations with socialism began as early as 1830. This attraction to Continental radicalism preceded his scandalous association with the humanitarian, Harriet Taylor. Perhaps Joseph Schumpeter's appraisal of Mill is a bit overstated, but it does capture much of the moral conviction which animated Mill's intellectual life:

Though repeatedly changing his position in details, he was from about his middle twenties on an evolutionary socialist of associationist complexion.<sup>14</sup>

Mill's *Principles of Political Economy* published in 1848 became the leading text on economics for a generation, thereby salvaging Ricardian economics and introducing young economists to an

increasingly (as new editions emerged) sympathetic examination of Continental socialist creeds. For anyone familiar with the debates of the 1820s over the scope and method of political economy, the *Principles* must have appeared anomalous. Both Nassau Senior and J. S. Mill had drawn a seemingly impenetrable barrier between the pure science of economics and the "art" of policy prescriptions. Economists, they had argued, could not, as scientists, give advice to statesmen. Curiously, Mill's *Principles* repaired to a Smithian conception of political economy in which the instructive powers of the discipline were, if not paramount, then of considerable importance. Apparently, Mill's motive for abandoning his "art-science" distinction was to present a political economy as encompassing as Smith's but bereft of his predecessor's natural law affinity and laissez-faire strictures.

*Mill's Interventionism:  
The Split Between Production and Distribution*

One weapon that Mill employed to advance the second objective was a distinction between the laws of production, which were held to be immutable, and the laws of distribution, which could be manipulated at the discretion of legislators. As Mill declared in his *Autobiography* (1873), the purpose behind this distinction was to underscore the flexibility of distributing wealth. Social arrangements regarding distribution, rather than being immutable, as previous economists implied, ought to succumb to redistributive schemes, particularly those concerning private property. It is not surprising, then, that Mill's "agenda" for government, under the aegis of the "general expediency" (utility) principle, exceeded in both magnitude and intrusiveness that of his predecessors. Not only did he endorse land nationalization, aid for the unemployed, the curtailment of inheritance, the granting of a *right* to relief, the enforcement of legal restraints against those among the poor who procreated, compulsory education, regulation of child labor, government housing schemes, but also the regulation or, if necessary, the nationalization of monopolistic or large scale industries. While laissez faire remained a principle to which Mill nodded respectfully, after the enumeration of his list of exceptions, virtually nothing is left of that once mighty barricade against the intrusive state.

*Mill's Socialist Sympathies*

But Mill's fleeting acknowledgment of noninterventionism was even further negated by his sympathetic evaluation of the socialists, St. Simon, Fourier, and Robert Owen. While Mill's views on the particular details of socialistic schemes underwent various modifications through the years,<sup>15</sup> a persistent refrain can be heard

throughout—that a property based free market system is transitory, and that in all likelihood human progress will result in some form of socialism. The seductive appeal for Mill of equality, fraternity, and communalism certainly held little charm for his predecessors. In fact, if men like Malthus, Ricardo, or Senior mentioned socialism at all, it was to cast aspersions upon it. In all fairness, one ought to add a caveat: Mill was never a rabid collectivist, perhaps because he was too much of an intellectual elitist and individualist to trust the sovereignty of the masses, and particularly the stifling conformity of public opinion.

*Cairnes and Sidgwick:  
The Split between Laissez Faire and Economic Science*

Two disciples of John Stuart Mill, Henry Sidgwick (1838–1900) and J.E. Cairnes, (1823–1875) completed in the 1870s and 1880s the Classical School's evolution toward constructing an impenetrable theoretical barrier between their economic science and laissez faire. In 1870, Cairnes delivered a revealing essay at University College, entitled "Political Economy and Laissez-Faire," in which he categorically denied that economics as a science had anything to do with laissez faire. Contending that the maxim had no scientific basis whatever, he dismissed laissez faire as a mere handy rule of praactice, "useful, perhaps, as a reminder to statesmen on which side the presumption lies in questions of industrial legislation, but totally destitute of all scientific authority."<sup>16</sup> Cairnes also leveled a frontal assault upon the Smithian notion of harmony of interests and the "invisible hand" process which led individuals in pursuit of their self-interest to act in ways that prove beneficial to society. Society did not spontaneously organize itself, thought Cairnes, to promote the social good. He maintained that, despite the steady progression of laissez faire in the preceding fifty years, substantial social amelioration had not occurred. Ejected from the pantheon of scientific principle, laissez faire was demoted to a feeble reminder to legislators to move circumspectly in pursuit of social improvement. In a similar vein, Sidgwick promulgated a principle to replace the disgraced laissez-faire "dogma":

To sum up: the general presumption derived from abstract economic reasoning is not in favor of leaving industry altogether to private enterprise, in any community that can usefully be taken as an ideal for the guidance of practical statesmanship; but is on the contrary in favour of supplementing and controlling such enterprise in various ways by the collective action of the community.<sup>17</sup>

Mill and his successor, Henry Sidgwick, when bombarded with socialistic arguments condemning the distributive effects of the free market as inequitable, challenging the private ownership of land as usurpation, and denouncing the capitalists' claim to profit as theft,

conceded the "distributive justice" issue to the socialists. Here we see, most clearly, the effects of Bentham's jettisoning of natural rights moral theory with its theory of commutative rather than distributive justice. The principle of utility proved an unstable buttress for the laissez faire doctrine, as succeeding economists became less enamored of "invisible hand" explanations and more hospitable towards governmentally promulgated "reforms." If each proposed intrusion into the market must be judged upon a cost-benefit, greatest happiness maximizing standard, with all the problems of measuring interpersonal comparisons of utility and unknown or unquantifiable costs that such a standard implies, governmental remedies are likely to be given a sympathetic hearing by economists. No longer would inflexible barriers, rigid principles, doctrinaire injunctions stand between the economist and his enlightened social conscience.

The weight of authority, both from original and critical sources, leads ineluctably to the conclusion that as the Classical School evolved—as Bentham succeeded Smith, and Mill followed Bentham—the connection between economics as a science and laissez faire as a policy became ever more tenuous. Even Adam Smith, the grand mentor of the School, evinced pronounced and precedent setting departures from dogmatic laissez faire.

*The Manchester School and Free Trade:  
Richard Cobden and John Bright*

If the Classical School cannot be viewed as the great bastion and repository of noninterventionism in nineteenth century Britain, were there other forces who did argue for a purist laissez-faire doctrine? Indeed, there were. Theorists of the Manchester School, led by Richard Cobden (1804–1865) and John Bright (1811–1889), who worked tirelessly for the repeal of the Corn Laws, would be one frequently cited example. Their status, however, as a group predominantly motivated by laissez faire has been questioned by the revisionists who view them, rather, as proponents of free trade as the fundamental principle. Cobden's support of the factory acts would appear as an aberration if one viewed the Manchester School as fundamentally noninterventionist, and as further evidence if one held to the revisionist line.<sup>18</sup>

*Pure Laissez Faire: Martineau, the Journals, and Political Economy*

It was the popularizers of political economy, such as Harriet Martineau and Jane Marvet, who dispensed laissez-faire nostrums in their purest form, although in the case of Martineau her general hostility towards the state did not extend to a denunciation of state provision of education. Other purist sources were the non-conformist journals and newspapers, particularly the *Economist* during the



years 1843–1854 under the editorship of James Wilson and the *Leeds Mercury* of Edward Bain. It was the *Economist* which nurtured the budding antistatist, evolutionist, Herbert Spencer.<sup>19</sup> In such journals, one could find consistent and principled arguments that condemned such statist proposals as the sanitary laws, compulsory vaccinations, and state grants to schools.

In the popular mind of the time there certainly was an association between the political economists and the laissez-faire injunction against state interference. While the Classical School undeniably did pay homage to that maxim, the encomiums became less frequent and more qualified as the century unfolded. Finally, in the hands of John Stuart Mill and his successors little was left of noninterventionism but a hollow shell.

## II. The “Age of Laissez Faire” and Benthamism

### *Dicey vs. the Revisionists on the Reality of Nineteenth-Century British Laissez Faire and the Significance of Benthamism*

A. V. Dicey's classic study published in 1905, *Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century*,<sup>19a</sup> serves as the focal point for a reappraisal of the extent of laissez faire in British politics of the period and the causes which led to its decline and fall. Beginning with a somewhat injudicious article by J. Bartlet Brebner, “Laissez Faire and State Intervention in Nineteenth Century Britain,” which appeared in the *Journal of Economic History* in 1948, a body of revisionist historiography emerged which challenged the fundamental assumptions of Dicey's thesis: that Britain in the years 1825 to 1875 enjoyed a respite from interventionism and realized the apotheosis of individualism; and that Benthamism was the primary force inspiring this liberalization. With Brebner's typically hyperbolic pronouncement the issues were joined:

Conceivably, British laissez-faire was a political and economic myth in the sense formulated by George Sorel half a century ago, that is, a slogan or war cry employed by new forces of enterprise in their political-economical war against the landed oligarchy. This seems the more likely when one discovers from their writings that Jeremy Bentham and John Stuart Mill, who have been commonly represented as typical, almost fundamental formulators of *laissez-faire*, were in fact the exact opposite, that is the formulators of state intervention for collectivist ends . . . . In using Bentham as the archetype of British individualism he [Dicey] was conveying the exact opposite of the truth—Jeremy Bentham was the archetype of British collectivism.<sup>20</sup>

The subsequent controversy has focused upon the extent to which laissez faire prevailed in the political arena and—if it did prevail—during which part of the century; and whether Bentham and his followers influenced the course of events in an individualist or collec-

tivist direction. The weight of opinion seems to fall on the side contesting against an "age of laissez faire", while the contending forces seem to be arrayed about equally on the question of the influence of Benthamism upon the political landscape. There is, however, near universal agreement that, at least in theory, Benthamism had a strongly collectivist tinge, as evidenced by the Utilitarian philosopher's penchant for reform schemes necessitating the creation of new administrative bodies with centralized inspectors empowered to oversee compliance. Numerous examples of this proclivity are enshrined in Bentham's *Constitutional Code*.

### *Dicey's Thesis: Benthamism's Role in Laissez Faire*

If the contemporary debate is to be understood, we must first repair to Dicey's *Law and Opinion*. Dicey divided nineteenth century England into three somewhat overlapping periods: (1) 1800 to 1830 marked an epoch characterized as Old Toryism and legislative quietism; (2) 1825 to 1870 saw an England dominated by Benthamism or Individualism; (3) while 1865 to 1900 signalled the ascendancy of collectivism.<sup>21</sup> Dicey's characterization of the middle two quarters of the century as the apogee of laissez faire generated our contemporary controversy as did his assessment of both the nature and influence of Benthamism upon that alleged era of non-interventionism. Upon Dicey's analysis, laissez faire emerges as "in practice the most potent and vital principle of Benthamite reform."<sup>22</sup> Bentham's principle that the individual is the best judge of his own happiness cast a legislative shadow aimed at the removal of encumbering restrictions. But Dicey implicitly acknowledged the malleability of the utility principle when he wrote:

This dogma of *laissez-faire* is not from a logical point of view as essential article of the Utilitarian creed—But though *laissez-faire* is not an essential part of Utilitarianism it was practically the most vital part of Bentham's legislative doctrine, and in England gave to the movement for reform of the law, both its power and its character.<sup>23</sup>

In order to preserve this specter of Benthamite individualism, Dicey performed some fancy footwork, for example, describing the passage of the factory acts (particularly the Ten Hour Act of 1847) as a defeat for the Benthamites that set a precedent for socialistic enactments that would nurture future collectivism. While the latter judgment seems judicious, it is difficult to maintain that such legislation was a defeat for the Benthamites, considering the number of them who were influential figures on the Royal commissions and who tirelessly campaigned for factory legislation.

In chronicling Britain's slide into legislative collectivism in the latter third of the nineteenth century, Dicey displayed a more measured appraisal of the effects of Benthamism upon the creation of

Britain's administrative state. The principle of utility, the thrust for parliamentary sovereignty, and the extension and improvement of the mechanism of government, Dicey views as the enduring legacy of Utilitarianism which undermined (and he thinks this occurred unconsciously) the dominant individualism of the Benthamite creed.

In 1830 the despotic or authoritarian element latent in utilitarianism was not noted by the statesman of any party. The reformers of the day placed, for the most part implicitly, faith in the dogma of *laissez-faire*, and failed to perceive that there is in truth no necessary logical connection between it and the "greatest happiness principle" which may with equal sincerity be adopted by either believers in individual freedom, or by the advocates of paternal government. . . . The Liberals then of 1830 were themselves zealots for individual freedom, but they entertained beliefs which, though the men who held them knew it not, might well under altered social conditions, foster the despotic authority of a democratic State. . . . Somewhere between 1868 and 1900 three changes took place which brought into prominence the authoritative side of Benthamite liberalism. Faith in *laissez-faire* suffered an eclipse; hence the principle of utility became an argument in favour, not of individual freedom, but of the absolutism of the State. Parliament under the progress of democracy became the representative, not of the middle classes, but of the whole body of householders; parliamentary sovereignty, therefore, came to mean, in the last resort, the unrestricted power of the wage-earners. English administrative mechanism was reformed and strengthened. The machinery was thus provided for the practical extension of the activity of the State. . . . Benthamites it was then seen, had forged the arms most needed by socialists.<sup>24</sup>

However unwittingly, the Benthamites forged the tools of socialism by creating an efficient administrative state in place of the corrupt, medieval, nepotistic one which they decried.<sup>25</sup>

Dicey's analysis of the impact of Benthamism is more sophisticated than some of his critics recognize. He does not absolve Benthamism of blame for the collectivism that ensued, but he steadfastly refuses to recognize that they consciously contributed to it. The unceasing efforts of Bentham's disciples in launching a propaganda barrage that altered the climate of opinion and won legislative approval for a large measure of the social engineering legislation of the 1840s escaped Dicey's scrutiny.

### *Brebner's and the Revisionists' Critique of Dicey*

The revisionist assault upon Dicey, initiated by J. Bartlet Brebner, focused upon two features of Dicey's analysis: (1) that there was, indeed, an age of *laissez faire* in nineteenth-century England, and (2) that Benthamism was an essential ingredient in fostering the climate of individualism that characterized the period. Although these two issues are intimately intertwined in the revisionist literature, and also in the counter-revisionist work which that literature inevitably triggered, it will prove expeditious to examine the two arguments separately, as the commentators tended to diverge on the two as the debate wore on.

## A. Was There an "Age of Laissez Faire?"

### *Brebner's Critique of the "Myth" of Laissez Faire*

Brebner categorically denied such an era, branding it as a fallacious "myth." The supposed perpetrators of a laissez-faire ideology, Jeremy Bentham and John Stuart Mill, in Brebner's eyes, turn out to be the very opposite: apostles of state interventionism for collectivist ends. And while the state did remove its regulations from commerce in the early part of the century it simultaneously extended them to industry. Almost year by year a parallel development of laissez faire and state intervention can be documented, as competing political interests vied for power.<sup>26</sup> Occasionally one interest triumphed, but usually the battle terminated in an uneasy compromise. To Brebner, the "engine of change" in the nineteenth century was neither laissez faire nor state interventionism, but rather the basic forces of industrialization. Yet, there was from 1832 on, that is, from the year of the first Reform Act, a snowball effect of one intervention leading to the next.

In the large, power passed from the land to other forms of wealth and from them to the people, but as it did so, and as the three politico-economical elements moved in and out of the possible combinations of two against one, there was an astonishingly consistent inclination to resort to the Benthamite formula for state intervention.<sup>27</sup>

Brebner's sympathizers, the most important of whom include Oliver MacDonagh, David Roberts, H. Scott Gordon, William B. Anydelotte, W. L. Burn, and Colin Holmes,<sup>28</sup> have succeeded in amassing powerful and persuasive documentation of a pervasive interventionism by the British government during Dicey's putative era of laissez faire. Their arguments, and the somewhat more feeble attempts at refutation by their adversaries, deserve a detailed examination.

### *MacDonagh and the Interventionist "Governmental Revolution"*

In his influential article, "The Nineteenth-Century Revolution in Government: A Reappraisal," Oliver MacDonagh attempted to extrapolate from his earlier work on the emigration administration a model that would explain the genesis of what he conceived to be a "governmental revolution" in Britain during the middle portion of the nineteenth century. There were, he argues, powerful forces that contributed to this transformation in the functions of government, a transformation that definitely put to rest any belief that individualist forces could be left free to take their own, unregulated course. Conspicuous among these forces were the social problems generated by steam powered industrialization, the vast increase in the concentration and mobility of the population, the widespread

influence of humanitarian sentiments, an increasing sensitivity of political institutions to the pressure of public opinion which generated a prodigious growth in Parliamentary investigative organs and legislation, and, finally, the possibility of solutions to social problems generated by technological developments in mass production and rapid transportation.

MacDonagh argues that it was these coterminous forces that created a partial collectivism upon which the government could build in the last quarter of the century. Once one understands both the mechanism at work in the earlier period and the momentum it generated, Britain's "very general collapse of political individualism" becomes comprehensible. The model MacDonagh offers for explaining this phenomenon of the growth of Britain's administrative state is compelling; although critics have found fault with its detail, they have by and large displayed little desire to dispute its perception of a profound administrative revolution.

According to MacDonagh's model, the first stage in the process was usually triggered by the exposure of some outrageous social evil (e.g. child labor, accidents in the mines, rampant disease in the cities) followed irresistibly by demands for a remedy:

No wall of either doctrine or interest could permanently withstand that single cry ('intolerable'), all the more so as governments grew more responsive to public sentiment, and public sentiment ever more humane. The demand for remedies was also, in the contemporary context, a demand for prohibitory enactments. Men's instinctive reaction was to legislate the evil out of existence.<sup>29</sup>

Naturally, resistance was encountered from the endangered interests, but the usual result was not inaction; rather, a weak compromise was reached establishing a precedent for future, more comprehensive regulationism.

In MacDonagh's second stage, new revelations were publicized, indicating that the original evils remained untouched by the earlier legislation which lacked an enforcement mechanism and, thus, left compliance in the hands of local officials. These discoveries led to the third stage, the appointment of central administrators who gradually gained expertise in their fields and became a vocal force for agitating additional legislation and greater centralization.

The fourth stage in the growth of the administrative state was characterized by a new sophistication on the part of these centralized bureaucrats who began to view their mission as a protracted one. They substituted a dynamic for a static concept of administration, wherein they would play a leading role in closing loopholes and "tightening the screws." Finally, in the ultimate stage, these bureaucrats became enamored of the idea of scientific expertise and adopted a more or less conscious Fabianism. This process of administrative centralism helps to explain how collectivism "spread like a contagion out of sight" during the century.

*Roberts's Attribution of the Rise of the Administrative State  
to Ad Hoc Responses to Industrialism*

In his fascinating study, *Victorian Origins of the British Welfare State*, David Roberts advances a view of the genesis and motivations behind Britain's erection of the welfare state. Roberts's analysis is compatible with MacDonagh's contention that this statist development was largely unintended. In remedying perceived social evils, but not primarily economic evils, the Victorians laid the foundation for Britain's administrative, centralized, bureaucratic state. And they did so not out of any overarching ideological imperative, but rather from an ad hoc pragmatism which Roberts characterizes as "presumptuous empiricism". That the mid-Victorians were an activist breed cannot be denied once we consider Roberts's prodigious list<sup>30</sup> of new central administrations and commissions established during the period 1833 to 1854:

I. *Permanent Departments for General Administration*

A. Independent Commissions

1. Poor Law Commission (1834)
2. Ecclesiastical Commission (1836)
3. Lunacy Commission (1842)
4. Charity Commission (1854)
5. Registrar of Births, Deaths, and Marriages (1836)

B. Home Office Inspectorates

1. Factory inspectors (1833)
2. Prison inspectors (1835; after 1854 they also inspected reformatories)
3. Anatomy inspectors (1839)
4. Mining inspectors (1842 and 1850)
5. Burial inspectors (1854)
6. Constabulary inspectors (1856)

C. Colonial Office

Colonial Land and Emigration Commission (1839)

D. Privy Council Departments

1. Committee on Education (1839)
2. Board of Trade
  - a. Merchant Marine Department (1850)
  - b. Department of Arts and Sciences (1852)
  - c. Railway Board (1839)
  - d. Commissioners of Patent and Invention (1850)
  - e. Office of Registrar of Joint-Stock Companies (1833)
  - f. Design of Registry Office (1839)

II. *Permanent Departments for the Metropolis*

A. Home Office: Metropolitan Police

1. Inspectors of common lodging houses (1853)

2. Inspectors of noxious trade (1854)
    - B. Office of Woods and Forests and Public Works: expanded powers over Thames embankments, parks, and numerous streets
    - C. Board of Trade
  1. Inspectors of London water sources (1852)
  2. Commissioners to regulate London's coal whippers (1843)
    - D. Metropolitan Sewers Commission (1847)
    - E. Metropolitan Building Commission (1844)
- III. *Temporary Commissions*
- A. Administrative
    1. Oxford University commissioners (1854–58)
    2. Commissioners of Tithes, Enclosures, and Copyhold (1836, Tithes; 1841, Copyhold; 1845, Inclosure; 1851, consolidated)
  - B. Commissioners of Inquiry into:
    1. Statute law
    2. Cambridge University
    3. Fine arts
    4. Newcastle cholera
    5. London Corporation
    6. Charitable donations
    7. Three election disputes
    8. Mercantile law
    9. Registration and conveyance
    10. County courts

Roberts' repeats a refrain that runs through the literature—that "Each reform was passed to meet an observed fact, not to accord with principle," and that the transforming event was not a party platform or political philosophy, but rather the phenomenon of the industrial revolution itself.

Roberts's arguments epitomize a strand of historiography which denigrates the role of ideas and individuals while attributing change to seemingly independent "forces." And so the industrial revolution, with its large factories, mines, railways, steamships, and crowded cities, led to the concentration of abuses and their increased visibility, and these abuses generated governmental restrictions. Other equally dehumanized "forces" operated in a parallel direction, for example, the advance of science, the rapid increase of wealth, a deep humanitarianism, and a growing belief in progress. In Roberts's analysis, these disembodied "forces" account for England's transformation from among the least interventionist government in Europe in 1833, into one of those most involved in

securing the wellbeing of its citizens by 1854. Thus, Britain succeeded, inadvertently, in creating "an administrative state which she didn't want."

Although Roberts evidently overstates his case for mechanism over human agency as an explanatory tool of historical change, he is undoubtedly on firmer ground in his appraisal of the ideological inconsistency of the leading forces in British politics of the day. While both the Conservatives and the Whigs had traditions of opposition to centralism, they both contributed to the creation of the administrative, interventionist state. Only one faction favored a strong, benevolent government, on Roberts's account, and that was the utilitarians, while the Tory Evangelicals, such as Lord Ashley (Earl of Shaftesbury), were also committed to reform, they did not operate from any consistent principle. Given his mechanistic viewpoint, however, Roberts remains reluctant to cede to either of these "active minorities" any conspicuous or controlling role in building the collectivist state.

#### *Gordon's Distinction between Laissez Faire and Free Trade*

The same general theme was sounded by H. Scott Gordon in his essay, "The Ideology of Laissez-Faire," but with a slightly different twist. Gordon denigrates the notion that the Anti-Corn Law crusade was the result of a principled laissez-faire position, citing the absence from the voluminous Parliamentary debate of a single mention of the term "laissez faire," and Sir Robert Peel's declaration that there were no more than half a dozen MPs who believed in applying that maxim to economic questions generally. What Gordon does perceive, instead, was a vigorous free trade ideology: "A widespread development of free trade ideology developed in mid-nineteenth-century England, but a similar *laissez-faire* ideology did not."<sup>31</sup> Thus, a substantial fault in historiography accounts for the fallacious identification of laissez faire and free trade. Once this apparent "high tide" of laissez faire in the successful effort to rescind the Corn Laws has been disposed of, Gordon's case for an ad hoc piecemeal growth of the administrative state concludes on (by now) familiar grounds.<sup>32</sup>

#### *Burn's "Age of Equipoise": Localism vs. Centralization*

Perhaps the most equivocal position of the revisionists was enunciated by W. L. Burn in his study of mid-Victorian England, *The Age of Equipoise*. He characterizes the years between 1852 and 1867 as a particularly "confused period."<sup>33</sup> "It becomes more and more apparent that any hard-and-fast distinction between Individualism and Collectivism is not merely useless but harmful. The most that can be said is that public opinion had a bias toward Individualism."<sup>34</sup>



What seems most pronounced to Burn, as to the other revisionists, is the piecemeal and theoretical approach to solving social problems as they jostled the public conscience. Rather than attempting to investigate the period along the lines of a conflict between individualism versus collectivism, he perceives a bifurcation as between the forces of centralization and localism.

### *Anti-Laissez-Faire Legislation*

Before completing the revisionist case, we would be woefully remiss not to mention some of the key pieces of intrusive legislation that were passed in the period and repeatedly cited to buttress the revisionist case. This anti-laissez-faire legislation included: the Poor Law Reform Act of 1834 which established central inspectors (as did the Prison Act of 1835); the various Educational Acts from the 1830s on, which eventually culminated in 1880 in compulsory education at state expense; the prohibition of women, apprentices, and children under thirteen working in the coal mines in 1841 (and other acts extensively regulating the mines); the various Factory Acts which from 1833 on limited the hours of work for women and children; the inspection of asylums; the extensive regulation of railroads; the creation of the Metropolitan Building Act empowering the Board of Works to set building specifications (all this in the 1840s inspired by the Tory Paternalists); the Public Health Act of 1848; the Mining Inspection Act; Merchant Shipping Act; and Burial Ground Act of 1850; and other acts of the 1850s designed to regulate London's common lodging houses, to suppress smoke in London, to regulate lighthouses, to aid juvenile reformatories, to establish a permanent charity commission, to regulate the merchant marine, and to create a department of science and art in order to promote new technology. The list could go on, and every authority who makes such a compendium adduces somewhat different examples; there are certainly an abundance to choose from.

### **The Counter-Revisionists' Case for an "Age of Laissez Faire"**

#### *Taylor's Case for an Era of Relative Laissez Faire*

Given this overwhelming evidence testifying to the energy and inventiveness of Victorian legislators it is no wonder that the counter-revisionists—i.e., those who contend that there was, indeed, an age of laissez faire—advance a somewhat hesitant and qualified case. Arthur Taylor's "Laissez-Faire and State Interventions in Nineteenth-Century Britain," is typical of this genre. For Taylor, laissez faire set the terms of debate in mid-century, and it acted as a brake against more extreme interventionism, forcing compromises rather than simply vanquishing statism. An example of this ac-

tivity, would be the Factory Acts in which *laissez faire* set limits to the scope of reform; that is, while men like Senior and McCulloch supported the Act of 1833 to regulate the working hours of women and children, they balked at the more intrusive Ten Hour campaign of 1846.

Taylor concedes that the noninterference principle was quite often honored more in the breach than in the observance:

Yet while the claims of the non-interference principle could never be wholly excluded from ministerial calculation, decisions on policy often took an interventionist course. Even when the invalidity of non-interference was conceded in principle, expediency demanded and secured policies which breached both the letter and the spirit of *laissez-faire*.<sup>35</sup>

How, then, does Taylor resolve the question of a supposed "age of *laissez faire*"? Curiously, he concludes that, in essence, such an age lies in the eyes of the beholder. *Laissez faire* certainly cannot be viewed as the "keystone of the arch," yet its effects were important. In fact, when we focus upon the economic realm an "age of *laissez faire*" seems justifiable. But even here, the evidence is not conclusive in the areas of banking, patents, bankruptcy, weights and measures, and joint-stock companies. However, on the larger economic issues—free trade, internal economy of industry, and frugality in government—Taylor sees ample warrant for a verdict of pronounced *laissez faire*. Taylor examines government expenditures between 1820 and 1870 and accounts for the relatively trivial increase (57.5 million pounds to 69 million pounds) as evidence of a fiscal policy of frugality and balanced budgets inspired by *laissez faire*. While government expenditures increased tenfold between 1900 and 1938 they increased at an infinitesimal rate in the nineteenth century; in fact, government expenditures as a percentage of gross national product fell from 11% in 1792 to 8.9 % in 1890. Taylor concludes that the attempt to regulate the economy in the seventeenth and eighteenth century (and, indeed in the twentieth) is as evident as the deliberate abstention from such endeavors in the nineteenth.

Set besides the experiences and policies of an earlier and later age and related to the principles and practices followed by her European contemporaries, nineteenth century England may be said to have come closer to experiencing an age of *laissez-faire* than any other society in the last five hundred years of world history—this, though *laissez-faire* was on more than one occasion honored in the breach in Britain itself and still more clearly subverted in the economic policies applied to Ireland and India, it was until at least 1870, and arguably for a further twenty-five years beyond that, the strongest impulse influencing the shape and character of governmental economic policy.<sup>36</sup>

Given the extent of interventionism that can only be denominated "economic"—the factory acts, railroad and mining regulation, banking, etc.—one must remain somewhat skeptical of Taylor's rather exaggerated conclusion as indeed Taylor himself is in some of his more equivocal pronouncements.

*Crouch on "Refined" Laissez Faire and  
"Enlightened Interventionism"*

Undoubtedly, the most inventive of the counter-revisionists is R. L. Crouch. His "Laissez-Faire in Nineteenth-Century Britain: Myth or Reality?" went to tortuous lengths in redefining laissez faire, thereby emasculating it to such an extent that it is barely recognizable, all in order to resurrect an "age of laissez-faire." Crouch attempts to convince us that what Roberts and Brebner take as evidence of incipient welfarism was, rather, quite consistent with a "refined laissez faire" position of the classical economists. The classical economists, on Crouch's account, embodied this "refined" laissez-faire position, not the "anarchy plus the constable" caricature castigated by Carlyle. Government functions under such a "refined" view of government's role include: (1) to establish and enforce the law and arbitrate disputes, (2) to combat monopoly and promote competition, (3) to make allowances for the existence of externalities (for example, Adam Smith's views on public works, patents, and monopolies), (4) to exercise unavoidable paternalism (as in the case of children), (5) to provide a stable monetary framework, and (6) to protect the indigent. Having redefined the concept of laissez faire to include whatever the Classical economists had to say about government's legitimate powers, Crouch, to no one's great surprise, finds nineteenth-century legislative enactments in conformity with his redefinition. But as we discovered earlier, the Classical School was far from a repository of a consistent noninterventionism. A few examples ought to suffice to illustrate how far Crouch stretched the concept of laissez faire on his procrustean bed in order to make it fit British regulationism. Now, the Factory Act of 1833, the Chimney Sweep Act of 1840, the Miners' Act of 1842, and the Ten Hour acts of 1847-48 are pictured as measures designed to combat firm-individual external diseconomies, or alternatively as acts of unavoidable paternalism. Dicey, according to Crouch, was simply wrong in denouncing state involvement in education or the imposition of minimum safety and sanitary standards as inconsistent with laissez faire and the harbingers of collectivism. Rather, they were the quite natural results of a "refined laissez faire" position which requires a "substantial amount of enlightened interventionism."

Crouch fervently denies that his "refined" principle could justify every policy of modern welfarism. Such salient features of the welfare state as nationalization, import controls, public housing, price controls, minimum wage legislation, and agricultural support programs would remain unjustifiable. Colin Holmes, in his assault upon the counter-revisionists, unveils Crouch's semantic sleight-of-hand:

In seeking to reconcile classical economics with the *laissez-faire* position Crouch begs the question, on the grandest scale possible by offering a compromise redefinition of *laissez-faire* that is so wide as to be devoid of useful meaning. Acts of

government intervention that are justifiable in terms of the resulting external economies include nationalization of key industries and state provision of welfare schemes. Therefore, Crouch's "redefined" version would accommodate most mixed economies and welfare states of the late twentieth century; in this way the last 150 years could be described as an age of *laissez-faire*.<sup>37</sup>

Holmes obviously has the better of the arguments here because Crouch's redefined *laissez faire* could quite easily embrace the welfare state measures which he declares beyond its pale with little more ingenuity required than he employed in justifying the factory acts. Holmes fired one more salvo against the counter-revisionists when he refuted Taylor's claim that a low rate of increase in governmental expenditures during the nineteenth century reflects a prevailing opinion against interventionism. If one compares the decade of the 1820s with that of the 1870s, the categories of civil and educational expenditures have jumped from 1% of the national budget to 20.4%.

### *The Final Judgment on Britain's "Age of Laissez Faire"*

How might we appraise this heated controversy over an "age of *laissez faire*"? The record of interventionist legislation is prodigious, but we ought not to dismiss too lightly the legislative excrescences of the mercantilist age that were jettisoned in the first half of the century; e.g., the combination laws which had prohibited labor unions, the Navigation Acts, the Corn Laws, and myriad other lesser known restraints on trade. And when we consider the whole host of governmental controls over the economy exercised by modern welfare states—an ersatz currency, nationalization, compulsory social security and Medicare, minimum wage laws, massive deficit spending, fine-tuning of business cycles, etc.—the Victorian state appears singularly apathetic. After 1870 of course, the legislative and administrative landscape would be far more recognizable to the modern interventionist. Taylor's position or Burn's may be closer to the mark in assessing England in mid-century as a contested battleground between collectivism and individualism. However, what seems fairly uncontroversial—although even here there are naysayers who view England as simply slipping from one age of interventionism into the next with nary an interregnum—is that, by comparison with the England of earlier and later centuries, the nineteenth century was a "high tide" of *laissez faire*.

### *Spengler: Why Laissez Faire Leaves Few Tracks*

Joseph Spengler raises one important historiographical point which touches upon this question of an "age of *laissez faire*."<sup>38</sup> He cautions that sources of bias may affect recent findings which indicate that state intervention played a much greater role than experts in the nineteenth century had thought. Historians may discover

relatively more evidence of interventionism than was characteristic of the period simply because statist acts are much more likely to "leave tracks" than are events consonant with *laissez faire*. Advocacy of *laissez faire* in written forms would be far less likely in an age where it is the regnant ideology and needs little enunciation, while government reports, pamphlets and books agitating for interventionism would be abundant. Also, bureaucrats and philanthropic organizations prove diligent keepers of their own records, while the evidence of *laissez faire* would tend to disappear since it was composed largely of private agreements and dealings. These factors would be accentuated with the passage of time.

Spengler's cautionary remarks are revealing, and they might account for the fact that the early writers on the question of the extent of noninterventionism in nineteenth century England tended to view the period as the apotheosis of *laissez faire*. After all, revisionism is a rather late phenomenon dating from the late 1940s and it only gathered full momentum in the 1960s.

## **B. What Effect Did the Benthamites Have on the Politics of Their Day?**

### *Brebner's Revisionist Indictment of Benthamite Collectivism*

Once again, it was Brebner's article, "Laissez-Faire and State Intervention in Nineteenth-Century Britain," which launched the revisionist assault upon the traditionalist view of Benthamism as either an innocuous bystander or an unwitting accomplice in the rise of collectivism. Not only was Bentham "the archetype of British collectivism," on the theoretical level, but his disciples are revealed as the prime movers in "every interventionist pie." Edwin Chadwick, Bentham's amanuensis and collaborator on the *Constitutional Code* becomes the "architect of state intervention" as he industriously labors on royal commissions to promote the Benthamite ends of state inspection and regulation. Whether it be the poor laws, the factory acts, the municipal police, or the public health agitation, Chadwick's role and that of fellow Utilitarians was vital. Lest one assume that the influence of the Utilitarians ended with the death of Bentham or the aging of his disciples, Brebner assures us that John Stuart Mill, that "liberal socialist," insured the continuation of Benthamite activism. "Mill, then, throughout his independent life and thought was at bottom the Benthamite interventionist, not the apostle of *laissez-faire*."<sup>39</sup>

### *Roberts and MacDonagh: "A Tory Interpretation" vs. Brebner*

It is rather curious that two of Brebner's most ardent followers among the revisionists on the issue of a supposed "age of *laissez faire*," comprise, on this question of the influence of Benthamism,

the strongest chorus of dissent.<sup>40</sup> MacDonagh and Roberts do not deny the mammoth body of evidence of Benthamites' staffing royal commissions and agitating for compulsory education and state provision, limitations of child labor, and sanitary legislation, etc. Yet they refuse to concede to the Benthamites an indispensable role. MacDonagh goes even farther in his condemnation of Benthamism as irremediably tainted with the onus of individualism. In administrative matters, MacDonagh contends, Benthamism had no influence upon either opinion at large or most public servants:

... nothing is more mistaken than a 'blanket' *prima facie* assumption that 'useful', 'rational', or centralizing changes in the nineteenth century were Benthamite in origin. On the contrary, the *onus probandi* [burden of proof] should rest on Benthamism. The great body of such changes were natural answers to concrete day-to-day problems, pressed eventually to the surface by the sheer exigencies of the case . . . . Generally, we can say, first, that the genuine contribution of Benthamism to modern government must be measured in terms of the particular actions of particular individuals; secondly, that Benthamism, insofar as it took colour from other contemporary ideologies, was an obstacle, after their fashion, to the development of modern government, and thirdly, that the 'administrative' Benthamism, where it was effective, also made a peculiar, idiosyncratic contribution to nineteenth century administration, and one which was extraneous and at points antagonistic to the main line of growth.<sup>41</sup>

### *Roberts's Case against the Importance of Benthamism for Collectivism*

The most elaborate analysis of both Bentham's *Constitutional Code* for the reconstruction of Britain's government, and the machinations of the Benthamites in agitating for political, social, and economic reforms is given by David Roberts in his article, "Jeremy Bentham and the Victorian Administrative State." Consonant with his general aversion to attributing historical changes to the efficacy of ideas or individual men, which we reported earlier, Roberts denies to the Benthamites any pivotal role in building the collectivist state. But the evidence which he adduces of overwhelming Benthamite staffing of key royal commissions, seems to belie Roberts's own conclusion. In his *Constitutional Code*, written in the 1830s and known to his followers (although published only in 1841), Bentham's sweeping reforms were nothing if not centralist. He called for the establishment of thirteen ministries to supervise local authorities in order to secure free public education, an efficient police force, good roads, and expeditious poor relief. Castigating Britain's amateur bureaucracy chosen by favoritism, he called for the establishment of a professional, paid, central administration, chosen by competitive examination. Yet Roberts views this reformation as embracing a belief in *laissez faire* and a balance between localism and centralism. He is ably and decisively taken to task by L. J. Hume on precisely these points. Hume interprets Bentham's reforms as essen-

tially centralizing, as an attempt to reorganize the law to ameliorate social disorders. He consequently views Benthamism as in conformity with the actual reforms that built the collectivist state.<sup>42</sup>

It is in his examination of the great social and economic reform acts of the 1830s through the 1850s that Roberts case against Benthamite influence is most tortured. He meticulously documents the efforts of Bentham's disciples in agitating for these reforms, but in each case he dismisses their importance by either finding some slight departure from orthodox Benthamism in the final product, or a certain inevitability about the outcome that would belie the Benthamites' influence. Thus: (1) Although Nassau Senior and Edwin Chadwick were the leaders of the Poor Law Reform of 1834 by comprising the royal commission which established central administrators, Roberts doubts whether Chadwick was inspired by Benthamism; (2) Although the Utilitarians, Chadwick and Southwood Smith, served on the Factory Commission, the Benthamites did not initiate the reforms nor shape its final form, since it was fomented and shaped by the Evangelical Tories and large manufacturers; (3) Although Chadwick, Smith, and James Kay wrote reports as Poor Law Commissioners in 1838 and 1839 which exposed unhealthy conditions and urged sanitary improvements, the Act which emerged in 1848 was not particularly Benthamite. The same procedure is applied to the dismissal of Benthamite influence in reforms involving education, prisons, insane asylums, private charities, railways, and the merchant marine. All of these reforms were endorsed and agitated for by the same group of Utilitarians.

Roberts appears to have made his adversaries' case, but he adamantly refuses to concede any thing more to Benthamism than being in tune with the times. "The simple calculation of doing the greatest good to the greatest number, and not God's will or natural law, offered Victorian social reformers a strong justification for the establishment of a larger and more active state, one guaranteeing the well-being of the factory worker, the railway passenger, and the tenement dweller."<sup>43</sup> Despite this admission and the tell-tale trail of Benthamites penetrating royal commissions and agitating for state intervention, Roberts declared that had Bentham never written a word Victorian reformers would have continued their poor laws, factory acts, and education schemes, all with central inspectors. It was simply a necessity of the times.<sup>44</sup>

### *Hart's Critique of the MacDonagh-Roberts "Tory Interpretation"*

What should not be surprising, then, in the light of Roberts's own evidence undermining his conclusion, is the vehemence of the counterattacks which sought to salvage the good name of the Benthamites as avid interventionists. Jennifer Hart's "Nineteenth-Century Social Reform—A Tory Interpretation of History,"<sup>45</sup> while

not the first of this genre, certainly warrants our attention for its perceptiveness in designating the MacDonagh-Roberts school as exemplifying a "Tory interpretation" of history. While a "Whig interpretation" requires heroes and villains, a Tory view belittles the role of men, and even more significantly, ideas. What Hart finds most fallacious about this Tory interpretation is its belittling of Benthamite influence; its overemphasis upon humanitarianism and an aroused Christian conscience as tools shaping public opinion in the direction of reform; its contention that evils were dealt with when men felt them to be intolerable; and its belief that reforms were not premeditated or planned but were the result of "the historical process" or blind forces. In Hart's anthropocentric conception of nineteenth-century legislative history, the Benthamites capture center stage. From the Factory Act of 1833, to the Poor Law Reform of 1834, the Public Health Act, and prison reform, Hart asserts the centrality of the Benthamites in agitating for the reforms and formulating their mechanisms.

*Parris's Reassertion of the Link  
between Benthamism and Collectivism*

Henry Parris in an earlier contribution to the debate, "The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised,"<sup>46</sup> emphasized the unconscious influence of ideas on men's minds, so that if not everyone who was instrumental in propagating reforms had read Bentham, his ideas still could have been decisive as they influenced the intellectual climate of the day. It may be perfectly true, as MacDonagh suggested, that public servants in general had not read Bentham, yet one Edwin Chadwick "counted for more than many hundred of public servants."

Furthermore, MacDonagh's model fails to explain either why the transition to centralism occurred when it did, or why it did not occur long before. The missing ingredient is Benthamism. Parris replies to those who devalue the Benthamites' influence with a model of his own, one which underscores the centrality of the Utilitarians. He maintains that the nineteenth-century revolution in government cannot be understood without an examination of the part played by thought, that is, by ideas about political and social organization. Dicey astutely made this very point when he drew the connection between law and public opinion. In this relationship between law and opinion, the nineteenth century separates into two distinct periods with the dividing line falling in 1830. Throughout the second period, the dominant current of opinion was Utilitarian. Prompted by the principle of utility as its central core, the Utilitarians agitated for considerable extensions of both laissez faire and of state intervention simultaneously. And once central administrative officers were appointed to administer the new reforms, a device promoted by the



Utilitarians, these bureaucrats played a leading role in legislation, including the development of their own powers.<sup>47</sup> Now, Benthamism moves with the spirit of the age, but it does so as a prime mover not a disinterested or reluctant bystander. "Bentham was working with the grain. But it does not follow that the same solutions would have been reached had he never lived."<sup>48</sup> A description of Edwin Chadwick, which Parris takes from R. A. Lewis's study, will suffice to demonstrate the nature of the faith that drove the Benthamite who was most instrumental in agitating for the interventionist reforms:

He had great faith in self-interest. He commended it as the spring of individual vigour and efficacy; and it figures prominently in his thought as the most persistent and calculable element in human character. But he saw no evidence at all that social benefits resulted of necessity from its pursuit, and much which persuaded him that without the barriers erected by the law its undirected energies might disrupt society. He put his trust, therefore, not in the rule of some 'invisible hand' blending the interests of the individual and society in a mystic reconciliation, but in the secular authority of the state which, abandoning the superstitions of *laissez-faire*, should intervene to guide the activities of individuals towards the desirable goods of communal welfare.<sup>49</sup>

### *The Final Judgment on the Role of Benthamism*

What conclusions may one draw from this heated controversy over the extent of Benthamite influence in propelling Britain towards the welfare state? The preponderance of evidence indicates that in both Bentham's own writings—whether it be on political administration, economics, or social problems—and in the political activities of the Utilitarians in Parliament, in the bureaucracy, and on the royal commissions, a highly significant, if not indispensable, buttress for state interventionism is apparent. Chadwick and his Utilitarian associates were in the thick of the polemical movement for every piece of interventionist legislation of the second quarter of the nineteenth century. Although it is undeniably true that they were aided and abetted by Evangelical Tory reformers, their efforts were far from inconsiderable or expendable. The history of Britain's movements away from *laissez faire*, if indeed there ever was an archetypal period of *laissez faire*, can only be understood once the Benthamites are awarded their proper and leading role.

### III. Conclusion

Whether Britain in the middle quarter of the nineteenth century epitomized a golden era of *laissez faire*, or whether the Benthamites precipitated a period of collectivism or individualism, both of these disputes pale in significance before an indisputable fact. The final two or three decades of the century, virtually all analysts agree, marked the arrival of the age of collectivism. By any yardstick, this was a triumphal period of legislative interventionism: compulsory

state supported education was enacted by a series of acts in 1870, 1880, and 1891; the Public Health Act of 1875 provided for slum clearance; an all-encompassing factory act passed in 1878, extending the purview of earlier legislation; the Arbitration Acts (1867–1896) established government boards of inquiry to arbitrate labor disputes; and by the Employer's Liability Act (1880) and the Workmen's Compensation Act (1897) employers were compelled by law to insure workers against industrial accidents. In foreign affairs, too, the old liberal doctrine suffered an undignified demise, as new forces arose championing internationalism, militarism, imperialism, and even protectionism.

*Britain's Slide to Statism and Imperialism:  
Collectivism or Liberalism?*

Commentators have long striven to explain this recrudescence of statism and imperialism. Of course, for those who view the period from 1825 to 1870 as incipiently collectivist, the transition allows a felicitous explanation, i.e., it was simply a logical development, a mere gaining of momentum on a foreordained course. Others, who perceive a decisive breach around the years 1865 or 1870, offer complementary explanations of the ascendancy of the corporate state. As Winston Churchill wrote:

The great victories had been won. All sorts of lumbering tyrannies had been toppled over. Authority was everywhere broken, slaves were free. Conscience was free. Trade was free. But hunger and squalor were also free and the people demanded something more than liberty. How to fill the void was the riddle that split the liberal party.<sup>50</sup>

It was not as though liberalism had failed, but in a strange, convoluted way it had succeeded too well. Thus, men began searching for direct remedies to shore up the remaining deficiencies of the social order, deficiencies made all the more conspicuous by the urbanization of the country and the attendant concentrations of deformities in plain view.

*Herbert Spencer's Account of Britain's "Rebarbarization"*

Perhaps the most eloquent and persuasive explanation of Britain's slide into "rebarbarization", was propounded by a philosopher who mourned the death of the "Old Liberalism" more acutely than any of his contemporaries. Herbert Spencer, (1820–1903) in a series of essays published as *The Man Versus the State*, and written in the early 1880s decried the path taken by liberalism.<sup>51</sup> The new Liberals, Spencer charged, forgot the animating heart of their beliefs—that is, individual freedom as opposed to state coercion—

and rather than seeking the popular good by indirect, market means, by relaxing restraints on individual enterprise, they began to search for easy fixes, for direct, governmental means to advance the social good. A curious phenomenon occurred, then; for precisely when social evils decreased, the denunciation of them increased. And the public began demanding the therapeutic intervention of the state. Each piece of meddlesome legislation served as precedent increasing the momentum for further regulation, and Spencer became increasingly pessimistic, convinced that Britain was ineluctably slipping into a new age of feudalistic militarism.

### *Various Factors Contributing to Anti-Laissez Faire*

Reverberating through the explanations offered by the commentators—whether it be Spencer, Dicey, Schumpeter, or Hutchison<sup>52</sup>—are the following causes or factors: (1) the second and third parliamentary reform acts which finally created universal manhood suffrage (1867, 1884)<sup>53</sup>; (2) the cumulative effect of the denigration of laissez faire by influential cultural critics such as Carlyle and Ruskin; novelists such as Dickens, Thackeray, and Flaubert; and romantic poets like Shelley, Wordsworth and Coleridge; (3) the rise of a working class labor movement combined with an intellectual cadre in the form of Fabian socialists (precipitated by a severe depression); and (4) the erosion of belief in noninterventionism and self-help among the business class and, also, among the leading economists. This last factor cannot be denied, for the most influential successors of John Stuart Mill, W. S. Jevons and John Marshall, found not only interventionism alluring but, in the case of Marshall, socialism appealing.

### *Is the Drift from Capitalism to Socialism Inevitable?*

Marxist interpreters, nurtured by V. I. Lenin's *Imperialism*, perceive an inevitability about this genesis of imperialism out of capitalism. According to this interpretation, imperialism is the final stage of capitalism that arises inevitably out of the new conditions of large-scale production as capitalists try to stave off the fall in profits by exporting their surplus products. Joseph Schumpeter, oddly enough, propounds a similar theory, relying again on some inherent, ineluctable feature of capitalism to explain the transition to collectivism: as Schumpeter wrote:

... one need not be a Marxist in order to realize that the private enterprise system tends to develop toward a socialist form of organization. The facts we have been discussing ... however ominous they may have been for the bourgeoisie order of things, were therefore part and parcel of this very order and in this sense perfectly 'natural.'<sup>54</sup>

*The Final Verdict on the Demise of Laissez faire:  
Utilitarianism vs. Natural Rights*

We do not, however, need to repair to arguments from inevitability to explain the tremendous outpouring of interventionist legislation in the last quarter of the nineteenth century. Leading intellectuals, the heirs of the Classical Economists conspicuous among them, diligently labored to demonstrate that economic science most certainly did not lead to the policy principle of laissez faire. Thus, by the close of the century scarcely any voices were heard championing noninterventionism as the solution to perceived social dislocations.

Herbert Spencer stood nearly alone in his advocacy both of laissez faire and of a natural rights moral theory which spurned any taint of Utilitarian pragmatism. Certainly, the Utilitarians played a leading role in removing that sturdy barrier against ad hoc interventionism—natural rights—and for this alone they can claim a great deal of credit for the piecemeal movement towards collectivism. Their efforts were far from insubstantial, as we have seen, in the realm of practical politics, as Edwin Chadwick and his associates labored unstintingly for universal education, the factory acts, sanitary legislation, and a reformed administrative state.

In all likelihood, Britain in the earlier part of the nineteenth century did not embrace a version of laissez faire that would warm the heart of a purist. Perhaps W. T. Hutchison came closest to the mark when he wrote that a “new interventionism” arose in mid-century before the “old interventionism” had been fully expunged.<sup>55</sup> Yet it is undeniable that liberalism and the spirit of governmental quiescence enjoyed greater respectability then at any time before or since. Journals, newspapers, popular novels, and the earlier economists labored to secure respectability for the ideal of limited government. While the defense promulgated by the political economists was flawed, they, nevertheless, succeeded in erecting the principle of laissez faire as a bulwark against state intervention in the market. Admittedly, it was a crumbling bulwark, increasingly so as the century progressed. But what distinguishes that earlier epoch from our own is that the interventionists rather than the free-marketers were the ones constantly on the defensive. For each proposed act of governmental regulation a case had to be made—the general presumption against the meddlesome state was at least that strong. Today the contest would be limited to competing schemes all exhibiting the same interventionist feature of governmental solutions to social problems. It is this influence, more than anything else, that would earn Victorian England her designation as an “age of laissez faire.” □

## FOOTNOTES

Full citations for works listed in the footnotes may be found in the following Bibliography.

1. Colin J. Holmes, "Laissez-Faire in Theory and Practice: Britain, 1800–1875," *Journal of European Economic History* 5(Winter 1970):680.
2. Lionel Robbins, *The Theory of Economic Policy in English Classical Political Economy*, p. 37. For appraisals of the extent of adherence to laissez faire among the classical political economists see: G. J. Stigler, "The Economist and the State," *The American Economic Review* 55(March 1965):1–18; W. D. Grampp, *Economic Liberalism*, and "On the History of Thought and Policy," *Papers and Proceedings of the American Economic Association* 55(May 1965):128–142; Jacob Viner, "Adam Smith and Laissez-Faire," *Journal of Political Economy* 35(1927), reprinted in Viner, *The Long View and the Short*; Joseph A. Schumpeter, *History of Economic Analysis*; Warren A. Samuels, *The Classical Theory of Economic Policy*; Thomas Sowell, *Classical Economics Reconsidered*; T. W. Hutchison, "Positive Economics and Policy Objectives.

3. E.g., Arthur J. Taylor, *Laissez-Faire and State Intervention in Nineteenth-Century Britain*, takes a dynamic view focusing upon both the shift of position by such figures as Senior and McCulloch over a twenty year period and the general movement away from laissez faire among the economists who succeeded Ricardo. Others, Sowell for one, tend to view the Classics in a more static view with their differences on individual issues displayed but without generating a definite trend.

4. Viner, "The Intellectual History of Laissez-Faire," *The Journal of Law and Economics* 3(October 1960):60.

It is clear, moreover, that for Adam Smith *laissez-faire*, beyond its material benefits, had ethical or moral value in that it left to the individual unimpaired that 'natural system of liberty' to which he had a *natural right*. It is quite probable, therefore, that Adam Smith would have rejected an extensive program of state regulation of economic enterprise even if he had believed that the wealth of nations would thereby be augmented.

See: R. Lindgren, *The Social Philosophy of Adam Smith* for an interpretation of Smith as outside the natural rights tradition.

5. Lionel Robbins, *Theory of Economic Policy*, p. 177.
6. Jeremy Bentham, *Anarchical Fallacies, Works*, II, p. 501.
7. See Ellen Frankel Paul, *Moral Revolution and Economic Science*, Chapter I.
8. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, IV, ix, p. 51.
9. Others, now called Ricardian socialists, would employ Ricardo's theory of rent to argue for land nationalization. After all, if landowners enjoy windfall returns as a result of the scarcity of land and the premium paid for more advantageous plots, and not as a result of any merit on their part, why not nationalize the unjust returns. Such, of course, was not Ricardo's opinion; rather, he argued for repeal of the Corn Laws to forestall for a short period the time of reckoning.
10. Thomas Robert Malthus, *An Essay on the Principle of Population as it Affects the Future Improvement of Society*, p. 16.
11. Colin J. Holmes, "Laissez-Faire Theory and Practice," p. 677.
12. Ellen Frankel Paul, *Moral Revolution and Economic Science*.
13. For discussions on the extent of Bentham's adherence to Smithian economics and his place in the Classical School see: J. B. Brebner, "Laissez-Faire and State Intervention in Nineteenth-Century Britain," *Journal of Economic History*, Supplement 8(1948); J. W. Hutchison, "Bentham as an Economist," *Economic Journal* (June 1956), pp. 288–306; A. V. Dicey, *Lectures on the Relationship Between Law and Public Opinion in England During the Nineteenth Century*; Leslie Stephen, *English Utilitarianism*.
14. Joseph Schumpeter, *History of Economic Analysis*, p. 531.
15. For a detailed examination of Mill's various metamorphoses on the question of socialism see: Lionel Robbins, *The Theory of Economic Policy*, Lecture V; and Ellen Frankel Paul, *Moral Revolution and Economic Science*, pp. 167–175.
16. J. E. Carnes, "Political Economy and Laissez-Faire," p. 244.
17. Henry Sidgwick, *The Principles of Political Economy*, p. 417.
18. For a study of the Manchester School of Economics; Bernard Semmel, *The Rise of Free Trade Imperialism, Classical Political Economy and the Empire of Free Trade and Imperialism, 1750–1850*; Norman McCord, *The Anti-Corn Law League, 1838–1846*.
19. A more extensive discussion of such sources can be found in Colin Holmes, "Laissez-Faire in Theory and Practice," pp. 680–682; and Arthur Taylor, *Laissez-Faire and State Intervention*, pp. 27–30.
- 19a. I would like to thank Robert Hesson of the Hoover Institution for his valuable assistance in locating portions of the literature discussed in this section.
20. J. Bartlet Brebner, "Laissez Faire and State Intervention in Nineteenth Century Britain," pp. 59–60, 61.
21. Other early historians who share Dicey's view of the nineteenth century as embodying a protected period of laissez faire include: W. Cunningham, *The Growth of English Industry and Commerce in Modern Times, Part II: Laissez Faire*; C. R. Fay, *Great Britain From Adam Smith to the Present Day and Life and Labour in the Nineteenth Century*; L. C. A. Knowles, *The Industrial and Commercial Revolution in Great Britain During the Nineteenth Century*; E. Lipson, *Planned Economy or Free Enterprise: The Lessons of History*.
22. A. V. Dicey, *Law and Opinion*, p. 144.
23. A. V. Dicey, *Law and Opinion*, pp. 144, 146.

24. A. V. Dicey, *Law and Opinion*, pp. 307, 146.
25. A. V. Dicey, *Law and Opinion*, p. 309. For a more recent appraisal which supports Dicey's view of the Benthamites' contribution to collectivism as an unwitting one see: Arthur J. Taylor, "Laissez-Faire and State Intervention in Nineteenth-Century Britain," pp. 36-37. Taylor contends that there exists a fundamental dichotomy between the views of the Benthamites and the Fabians towards the state: that the Fabians saw the state as a positive tool to promote the greater good, while the Benthamites took it to be a negative institution reluctantly required on occasion to secure the greatest happiness. "To this extent the Utilitarians' contribution to the emergence of the Welfare State, however real, was essentially an unwitting one . . . it may be claimed with no less plausibility that had there been no Bentham the nineteenth century would have had to create one."
26. J. B. Brebner, "Laissez Faire and State Intervention," p. 65.
27. J. B. Brebner, "Laissez Faire and State Intervention," p. 65.
28. Oliver MacDonagh, "The Nineteenth-Century Revolution in Government: A Reappraisal," *The Historical Journal* 2(1958):52-67; David Roberts, *Victorian Origins of the British Welfare State*; H. Scott Gordon, "The Ideology of Laissez-Faire," in A. W. Coats, *The Classical Economists and Economic Policy*; William D. Anydelotte, "The Conservative and Radical Interpretations of Early Victorian Social Legislation," *Victorian Studies*, No. 2(1967-68):225-236; W. L. Burn, *The Age of Equipoise: A Study of the Mid-Victorian Generation*; Colin J. Holmes, "Laissez-Faire in Theory and Practice: Britain, 1800-1875," pp. 671-688.
29. Oliver MacDonagh, "The Nineteenth Century Revolution in Government," p. 58.
30. David Roberts, *Victorian Origins of the British Welfare State*, pp. 93-96.
31. H. Gordon, "The Ideology of Laissez-Faire," p. 202.
32. H. Gordon discovers further ammunition for his case in the work of Anydelotte, "The Conservative and Radical Interpretations of Early Victorian Social Legislation," who examined the division lists in Parliament during 1841 to 1871 on radical proposals regarding political reform, the Corn Laws, and the Ten Hours Bill. He found almost no statistical relationship between how men voted on reform and the Corn Laws, and how they voted on economic regulation in the Ten Hours Bill. The conclusion reached was that there was no underlying ideological consistency that prompted men in their voting behavior. "Radical reform . . . and the regulation of working hours in factories constituted two different attitude dimensions largely unrelated to each other," p. 233.
33. W. L. Burn, *The Age of Equipoise*, p. 217.
34. W. L. Burn, *The Age of Equipoise*, p. 150.
35. Arthur Taylor, "Laissez-Faire and State Intervention," p. 48.
36. Taylor, "Laissez-Faire," p. 64.
37. Colin Holmes, "Laissez-Faire and Interventionism: A Potential Source of Historical Error," *Journal of Political Economy* 57(October 1949):438-441.
39. J. Brebner, "Laissez-Faire and State Intervention," p. 69.
40. For a competent survey article on this topic see: Valerie Cromwell, "Interpretations of Nineteenth-Century Administration: An Analysis," *Victorian Studies* 9, No. 3(March 1966):245-254.
41. Oliver MacDonagh, "The Nineteenth Century Revolution in Government," pp. 65, 66-67.
42. L. J. Hume, "Jeremy Bentham and the Nineteenth-Century Revolution in Government," *The Historical Journal* 10, No. 4(1967):361-375.
43. David Roberts, "Jeremy Bentham and the Victorian Administrative State," *Victorian Studies* (March 1959):207.
44. For other authorities who concur with MacDonagh and Roberts in disparaging the influence of Benthamism upon British collectivism see: Kitson Clark, *The Making of Victorian England*; R. L. Lambert, "A Victorian National Health Service-State Vaccination, 1855-71," *Hist. Fl.* V(1962), pp. 1-18; Robert M. Gutchen, "Local Improvements and Centralization in Nineteenth-Century England," *Hist. Fl.* 4(1961):85-96; W. L. Burn, *Age of Equipoise*.
45. Jennifer Hart, "Nineteenth-Century Social Reform: A Tory Interpretation of History," *Past and Present*, No. 31(July 1965):39.
46. Henry Parris, "The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised," *Historical Journal* II(1960):17-37.
47. Henry Parris, "The Nineteenth-Century Revolution", p. 35.
48. Henry Parris, "The Nineteenth-Century Revolution", p. 36. For other authorities who view the influence of the Benthamites upon the creation of the Victorian administrative state as profoundly significant see: Sidney and Beatrice Webb, *English Poor Law History*, Part II; B. L. Hutchins, *The Public Health Agitation*; Elie Halevy, *The History of the English People in the Nineteenth Century*; Samuel Finer, *The Life and Times of Edwin Chadwick*, pp. 12-37, 74-75.
49. R. A. Lewis, *Edwin Chadwick and the Public Health Movement*, p. 188.
50. W. I. Churchill, *Lord Randolph Churchill*, pp. 268-69, as quoted in Viner, "The Intellectual History of Laissez-Faire," p. 68.
51. Herbert Spencer, *The Man Versus the State*, see particularly "The New Toryism", "The Coming Slavery", and "From Freedom to Bondage."
52. W. Hutchison, *A Review of Economic Doctrine 1870-1929*.
53. Dicey discounts this factor, remarking on the tendency of the rich to either feebly resist or explicitly favor collectivist legislation. Dicey, *Law and Opinion*, p. 218.
54. Schumpeter, *History of Economic Analysis*, p. 763.
55. Hutchison, *A Review of Economic Doctrine*, Ch. I.

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# I

## Legal Philosophy

What is law?

What is justice?

What laws, if any, should we obey, and why should we?

What are the foundations of moral and legal values?

Should there be any legal restrictions on a person's freedom of speech, conscience, or action?

Legal philosophy discusses those broad Socratic questions as well as narrower issues that are equally vital to the creation and continuity of a free society. Historically, rival notions of law, individual rights, justice, property, and equity have played a major role in determining whether the social environment in which we live our daily lives is wretched or tolerable.

The following summaries take up the loftier Socratic questions as well as more specific constitutional questions involving human freedom. The first three summaries pose fundamental questions of legal philosophy. Judith Best's paper examines the neglected Socratic dialogue, the *Minos*, to analyze what is the essential nature of good law, what is the meaning of law as a process, and whether good law involves a process of true knowledge or merely a static, honored tradition. Next, Alan Goldman distinguishes between government officials and citizens concerning "the obligation to obey the law." Roger Pilon's summary then seeks to avoid moral skepticism and establish a rational justification for human rights by developing the arguments of Alan Gewirth. Does the very notion of human action imply the right to act voluntarily?

The next four summaries investigate aspects of human freedom involved in the constitutional law and history of the First Amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Alexis Anderson's and John Lofton's summaries delve into developments in the freedom of speech and press provisions of the First Amendment during the periods of 1870–1915 and post-World War II, respectively. Next, Abraham's summary studies the religion clauses of the First Amendment as it affects private conscience and the separation of Church and State. Stephen Vaughn's summary returns to a historical perspective of the First Amendment's guaranty of freedom of speech and details government censorship during World War I (the Wilson administration's Committee on Public Information).

The concluding Rizzo and Bensel summaries cast interdisciplinary light on legal questions from the fields of economics and political science. Mario Rizzo argues economically as to the preferability of strict liability over negligence approaches in tort law. The concluding Bensel summary reaches disturbing conclusions for democracy on how American Congressional law falls short of Friedrich Hayek's ideal of the "rule of law." Employing the empirical tools of political science, Bensel has studied the actual congressional voting records for their lack of conformity to generalized statutory law.

# The Minos: What is Law?

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"What is Law? The *Minos* Reconsidered." *Interpretation* 8(May 1980):102-113.

Plato's Socratic dialogue, the *Minos* is wrongly neglected in jurisprudence courses despite its theme: the nature of law. Socrates seeks to isolate the one distinguishing trait of law as law. He pursues his inquiry by cross-examining the "Companion's" series of likely answers.

At first, the Companion captures law as binding opinion by defining it as "things loyally accepted." Socrates is dissatisfied and raises questions based on an analogy. If the Companion's definition is correct, then we must identify speech with things spoken and sight with things seen—an obviously erroneous equation. The analogy highlights the relationship between process and product. Law, therefore, is the *process* through which things are loyally accepted (the *product*).

In a renewed attempt to define the process of law, the Companion assures Socrates that law is "a city's resolution," an opinion loyally held by the *polis*. The Companion's answer is morally neutral and tainted with democratic prejudice. A city statute, popularly accepted, is *not* necessarily good. Law, on the other hand, is good opinion, true opinion. True opinion is knowledge or the discovery of reality.

But how can law embody the discovery of reality when statutes differ, often radically, from place to place? The framing of realities in civic decrees, however, is a highly practical art whose artisan is the statesman, characterized by his deep knowledge of the *process* of framing laws rather than by his individual products.

To the consternation of the Companion, Socrates goes on to say that the ideal statesman is the Cretan King Minos, a monarch enjoying a rather unsavory reputation among Athenians. He is a true statesman because "his laws are unshaken." Though they originated centuries before, they are still loyally

accepted in a vital, functioning state—Sparta. Is Socrates contradicting himself here? Is good law the product of true knowledge or is it merely tradition?

The laws of Minos are ancient *only* in point of origin. They are still in the *process* of use in Sparta, and the best of Spartan law originated in Crete. The ultimate test of a process is its product. Lawabidingness and the preservation of cities comprise the essential product of law, and Sparta enjoyed a reputation for the longevity of its regime and the lawabidingness of its citizens. Minos' laws thus fulfilled their function superbly.

Socrates' praise of the longevity of Sparta's laws also corroborates, but at a higher level, the Companion's first statement that law should be defined as "things loyally accepted." The first statement rehabilitated by Socratic wisdom, expresses the coherent unity of the *Minos*.



## Obedience to Law

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"The Obligation to Obey the Law." *Social Theory and Practice* 6(Spring 1980):13-31.

The classic view of legal obligation developed by Hobbes and the positivists held that citizens are under obligation to obey the law, whereas higher representatives of sovereign power have no such obligation. Philosophers from Locke to Rawls have attacked this view, assuming that all have at least *prima facie* duties to obey law. Prof. Goldman's paper defends the positivist distinction between officials and private citizens, but it derives the opposite conclusion, namely that while officials have a specific obligation to obey the law, citizens do not.

Goldman bases his position on a philosophical separation of institutional from moral obligations. Of course, if legal obligations are to exercise normative authority, they must in some sense reduce to moral obligations. Institutional obligations are nevertheless distinct, since the legal requirement to obey laws prevails independently of the law's moral content. A judge, for example, must apply the law consistently and predictably, so that citizens who wish to remain within the bounds of the law may predict how they may do so. If judges were to decide cases on their moral merits rather than on the plain dictates of the law, consistent expectations would not be possible. On the other hand, inconsistency in the actions of private citizens would not produce such widespread negative effects in society.

Officials and private citizens likewise differ in their ability to ascertain morally relevant facts concerning parties who would be affected by their decisions. For a judge to decide a case on its moral merits, he would have to investigate the personal situations of all litigants, situations which would be legally but *not* morally irrelevant. The strict applicability of the law is far more clear-cut. In addition, the economic costs involved in making a thor-



ough moral investigation would be prohibitive. For their part, private citizens do not adjudicate disputes between parties who are total strangers to them. They are thus usually in a better position to know the relevant situations of those toward whom they act.

Lastly, acceptance of government office may legitimately be construed as agreement or voluntary commitment to act officially within the confines of institutional powers and obligations. One such obligation requires obeying and applying law wherever called for. Private citizens are under no such contractual mandate.

The sanctions attached to law naturally make it *prudential* to perform or avoid certain behavior for those who fail to act on moral grounds. Indeed, the stability of society depends in large part upon routine acquiescence to accepted rules. Insistence on the citizen's moral obligations, rather than on his duty to obey the law, is the best insurance that legislators will take cognizance of moral factors as they frame their statutes.

# Moral and Legal Justification

**Roger Pilon**

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"On Moral and Legal Justification." *Southwestern University Law Review* 11(4)1979:1327-1344.

We need to analyze the process of reason-giving on the level of both morality and law. We then should describe the flaws in justificatory approaches currently employed and sketch the kind of argument which would provide rational justification for moral and, in turn, legal conclusions.

Since John Austin's nineteenth-century analysis, a large part of Anglo-American jurisprudential thought has discerned little connection between law and morality. On the whole this separation has been as sound and useful as the more basic distinction between science and ethics. Nevertheless, the distinction is not airtight, considering that law is ordinarily the encoding (with sanctions) of some ethical system.

With their traditional aversion to philosophical issues, lawyers have tended to avoid confronting some of the real difficulties involved in the recess of justification—problems of infinite regress, circularity, the connection between facts and morals, etc. Whether moral judgments can be termed true or false has by itself vexed the best minds of the past two centuries, leading many to a skepticism which sees moral doctrine as having emotional or hortatory value, but lacking the dimension of truth.

Refutations of traditional natural law, utilitarian, or economic approaches which

were surveyed would not necessarily abandon us to the no-man's-land of moral skepticism or to the vagaries of sentiment. On the contrary, we might uphold a rational justification for human rights based on generic features of human action as developed recently by Alan Gewirth. According to this argument, the murderer, rapist, or robber involves his victims against their will in a transaction with himself. He, on the other hand, is acting voluntarily. By acting conatively, the criminal implicitly claims rights to act voluntarily and purposively. Because he necessarily accepts these right-claims for himself (they are rooted in his actions), he must implicitly grant them for every other actor as well. Otherwise, he will contradict his own claims.

In completed form this argument would justify rights to non-interference in terms of the property foundations of our action; rights to voluntary association defined by terms mutually agreed upon; and rights to rectification if involuntarily involved in an association. None of the modern "social and economic" rights can be justified by arguments based on strict reason. "These conclusions, may not always be pleasing to our sentiments, but at least they *can* be justified, against the claims of the skeptic—and indeed, against those who would use this skepticism to violate our rights."



## Early First Amendment Theory

**Alexis J. Anderson**

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"The Formative Period of First Amendment Theory, 1870-1915." *The American Journal of Legal History* 24(January 1980):56-75.

Many commentators assume that development of First Amendment doctrine began more or less with the free speech cases that arose out of World War I. Alexis Anderson, however, argues that First Amendment doctrine in fact underwent significant development between 1870-1915. Interestingly, this growth of First Amendment doctrine occurred not in the federal courts, but in state courts.

These state court cases arose as a result of the breakdown of American social homogeneity brought about by immigration, industrialization, and urbanization. Typically, the cases involved alleged violations of municipal ordinances that were ostensibly exercises of a municipality's police power. In particular, these ordinances were directed against breaches of the peace and unlawful assemblies and parades. The cases Anderson examines are based on incidents ranging from violations of anti-noise ordinances by drum-beating Salvation Army members to infractions of licensing ordinances by socialist street speakers.

Although the Supreme Court avoided

involving itself in these free speech controversies by declining to incorporate the First Amendment into the Fourteenth Amendment, and although the state court decisions were a "mixed bag," important doctrinal elements for protecting free speech emerged from them. Among those elements is the now familiar "speech/conduct" distinction. In addition, the trend of the cases was toward limiting the use of the police power to the regulation of speech, especially with regard to time, place, and manner, rather than permitting the police power to be used to prohibit speech. "Access to the public forum," moreover, emerged during this period as an important First Amendment issue in the course of the litigation.

In sum, when the federal judiciary finally took up the free speech cases generated by World War I, it could draw upon the considerable experience amassed from 1870 to 1915 by the state courts. More importantly, much of that learning ultimately was incorporated into the free speech doctrine developed at the federal level.

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## The First Amendment & Freedom of Expression

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**John Lofton**

"Freedom of Expression Since World War II," *The Press as Guardian of the First Amendment*. Columbia, South Carolina: University of Carolina Press, 1980, pp. 231-278.

Using a classification developed by Professor Franklyn S. Haiman of Northwestern University, Lofton surveys the First Amendment case law decided after World War II. According to Professor Haiman, most major twentieth-century cases fall into one of three categories: (1)

"expression involving provocation to anger and the problem of preserving the peace (fighting words)," (2) "expression involving political heresy and the problem of national survival (national security)," and (3) "artistic expression and the problem of public morality." Lofton, however,

identifies another area in which the courts in recent years have been very active: prosecution of journalists for refusing to divulge their sources in the context of criminal proceedings.

Lofton approaches his subject through research on editorial reaction to important First Amendment cases. For example, Lofton notes that in reviewing editorial responses to a "political heresy" case (*Dennis v. United States.*), of the twenty-three papers from virtually every section of the country, he found that nineteen sup-

ported the Supreme Court's decision upholding the Constitutionality of the Smith Act and the convictions based on it, two papers opposed to the decision, and two papers that had taken ambiguous positions. Strikingly, the liberal *New York Times* and the *Washington Post* were among the papers that gave editorial support both to the Act and to the convictions, whereas the *St. Louis Post Dispatch* and the *Louisville Courier-Journal* were critical.

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## The First Amendment and Religion

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Henry J. Abraham

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"The Status of the First Amendment's Religion Clauses: Some Reflections on Lines and Limits." *Journal of Church and State* 22(Spring 1980):215-232.

Mr. Abraham is convinced that the free exercise of religion guaranty of the Constitution is probably better, in civil libertarian terms, than any other provision of the Bill of Rights. Constitutionally, the First Amendment was drawn, adopted, and understood to be a guarantee against any Congressional action prohibiting the free exercise of religion. It has become nationalized by interpretive extension. The "religion clauses consist of two components: prohibition of the free exercise of religion and prohibition of a federal establishment of religion are declared unconstitutional. Judicial extension of these guarantees was extended beyond its intent to circumscribe federal action only in 1934 in *Hamilton v. Regents of the University of California* with respect to the free exercise guarantee, and in *Everson v. Board of Education of Ewing Township* in 1947 with respect to the establishment clause.

Abraham finds a "commendably ascending commitment to a maximum regard for free exercise," even when that exercise-cum-action does not sit very well with the body politic. The exception is the broadly

controversial issue of conscientious objection to military service. Recent litigation has raised some rather novel, if not specious, claims to first amendment "protection" claims. Such novel claims include the claim by a "fanatically devout" public school teacher that the school's celebration of Halloween constituted a "pagan observance of every evil and wicked thing in the world" and thus violated his religious conscience. Abraham suggests that the mere fact that such challenges would be litigated "is living testimony to the high value the American body politic and its governmental organs bring to bear upon our religious prerogatives."

By contrast, with respect to the separation of church and state clause (which was intended to prevent the federal government from giving preferred position to any religious body) Abraham feels that "once again that omnipresent and omnipotent alliance of lawyers and politicians has done us in." Jefferson's concept of the "wall of separation between Church and State," he asserts, has been demonstrably eroded. Three principle theories have come to be advanced as more or less compatible with

the establishment clause. These are: (1) the "Strict Separation" or "No Aid" theory, which presumably interprets the constitution to require strict separation; (2) the "Governmental Neutrality" theory which requires state neutrality towards religion; and (3) the "Governmental Accommodation Theory," likely the controlling one today. This theory holds that some reconciliation of the clash between church and state over the free exercise clauses can be accommodated under the "child benefit" doctrine (unless the children benefitting happen to attend racially segregated schools). Abraham sees an "alarming development" in the judiciary's "relaxed vigilance" in interdicting support for educational services in nongovernment schools.



## *The First Amendment vs. the CPI*

**Stephen Vaughn**  
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"First Amendment Liberties and the Committee on Public Information." *The American Journal of Legal History* 23(April 1979):95-119.

A threat to the First Amendment's freedom of expression resulted from the creation of a so-called "government publicity department," known as the Committee on Public Information, by Woodrow Wilson's administration during World War I.

The man most responsible for establishing the Committee on Public Information (the CPI) was Arthur Bullard, a muckraking journalist and novelist who described himself as a socialist of the "aggressively revolutionary" variety. Bullard became involved in the issue of wartime censorship during 1916 as a result of the procensorship views expressed by the censor of the War Department, the then major, Douglas MacArthur. Bullard's reaction to MacArthur's position on censorship took the form of a memorandum that he submitted to Wilson's advisor, Colonel Edward M. House. In it Bullard argued that "the best way to stop enemy propaganda was to meet it with unvarnished facts."

As America's entry into the war grew closer, Bullard became interested in the role of the press and of the government in reporting news during wartime. He outlined his thoughts on this matter in a book he published in the spring of 1917, *Mobilising America*. In his book Bullard claimed, as before, that sound public opinion required free discussion and that censoring debate was self-defeating. But at the same time he also stated that dangerous opinion could be best combatted "by constantly giving the man in the street something wholesome to think about." A government publicity department, he maintained, should be established that could requisition space on every news paper front page in order to "feed 'army stories' to the public." The publicity department should also set up a corps of press agents to make the war "understandable" and, thereby, popular.

Colonel House read Bullard's *Mobilising America* and stated on the day that the

CPI was created that he agreed with Bullard's views almost entirely. Through his influence on Wilson and House, Bullard played a significant role in the initial organization of the CPI. Eventually he went to Russia and served in the CPI offices there.

The man appointed chairman of the CPI, George Creel, had an even more decisive influence in shaping government news "management" and censorship policies during World War I than Bullard. Creel was an ardent supporter of Wilson and of "progressive" causes and, like Bullard, was a muckraker. Further resembling Bullard, Creel often stated his opposition to censorship, although he did support censorship of overseas cables. Censorship was objectionable to Creel because it demonstrated a "distrust of democratic common sense."

Even though the CPI technically had no power of censorship, it did censor in a serious way. Creel also soon attempted to use his power to encourage "voluntary" censorship by promulgating regulations for editors to help them prevent the publication of "dangerous" news. He also sought to obtain (for a board on which he served) the jurisdiction and funds to

censor the mails and to repress material he felt presented dangerous ideas or portrayed the United States in an unfavorable light.

Vaughn contends that Creel's ambivalent attitude toward censorship was based on a belief that First Amendment protections are not absolute. Creel, "asked if legislation limiting free speech was compatible with 'free public opinion,' . . . responded that Congress was the voice of the people. 'The right of habeas corpus is a safeguard of free speech, and we have no right to kick against a law after Congress passes it.'" Vaughn believes that this may, in fact, have been the view of most Americans at that time. Prominent men such as Clarence Darrow and William Jennings Bryan, both of whom wrote tracts for the CPI, held similar views, and an intellectual pedigree was provided for this conception of the First Amendment by Constitutional scholar Edward S. Corwin. But whatever the dominant public opinion was at the time, the energies of the CPI were, in part, directed toward publicizing the position that free expression was not an absolute right and that the scope of the First Amendment rested with legislatures.

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## *The Economics of Strict Liability*

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**Mario J. Rizzo**

New York University

"Law Amid Flux: The Economics of Negligence and Strict Liability in Tort." *The Journal of Legal Studies* 9(March 1980):291-318.

**P**rofessor Rizzo examines the efficiency rationale for negligence law and analyzes some of the economic aspects of a system of strict liability. He concludes that, since efficiency is an impossible goal for tort law and since the law cannot and should not aim for the impossible, we must reject both the normative and positive justification for the efficiency approach to tort law. Consequently a system of strict liability is preferable to one of negligence.

In a dynamic, real world the uncertainties of technological change, the ambiguities of foreseeability, and the absence of an objective measure of social cost make the efficiency paradigm an illusion. The strict liability standard introduces certainty in the legal order since courts do not have to grapple with such elusive problems as foreseeability, cheaper-cost avoider, social cost, and second best (all of which Rizzo discusses and illustrates as



components in the dynamics of negligence). A system of strict liability, which holds a defendant tortfeasor liable for damages proximately caused irrespective of the reasonableness of his behavior, is said to be superior to cost benefit analysis or judicial "fine tuning." This is the case because we live in a dynamic world in which the information by the "fine-tuners" is not available.

Rizzo contends that strict liability would not necessarily increase the scope of liability. Since it is based on straightforward, commonsense causal paradigms, it

would minimize the number of issues which must be considered in a given case. It should promote greater certainty about the locus of responsibility in accidents. This greater certainty promotes efficiency in the basic institutional sense because property rights become more clearly defined. By simplifying the grounds on which cases are decided, the parties to a dispute are more likely to agree on the probabilities of the outcome. This would result in less litigation and more out-of-court settlements.

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## *The Rule of Law in American Politics*

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**Richard Bensel**

Texas A & M University


"Creating The Statutory State: The Implications of a Rule of Law Standard in American Politics." *The American Political Science Review* 74(September 1980):734-744.

Bensel defines the practical criteria for examining the implications of a rule of law standard in American politics. Using House of Representative voting records, he explores the major contemporary sources of support for and opposition to the concept.

Two of the stronger indictments of the modern state are those of Friedrich Hayek and Theodore Lowi. Each has argued that only the restoration of a rule of law can ensure the continued survival of democratic societies. For Hayek, the rise of the administrative state is accompanied by the decline of legislative law. He argues that state activity should be restricted to general statutory rules which can, because of their relative predictability and objective application, minimize the loss of individual freedom and economic efficiency threatened by arbitrary, lawless state intervention.

Lowi's discussion, somewhat less concerned with individual freedom and more statist in comparison with Hayek's advocacy of a minimal state, also advocates restoration of the rule of law. His interest-group liberalism critique warns against the increasing reliance on bureaucratic discretion and the decreasing importance

of statutory law. He advocates that a desirable juridical standard is the rule implied in *Schechter Poultry Co. v. U.S.* (1936) which, if followed, would limit the amount of legislative authority that a statute could delegate to an agency.

Bensel measures conformity to the rule of law by voting records on amendments to bills in terms of whether the bill was "more articulate with the amendment than without it" (operationally defined as "relative conformity to a rule of law"). Bensel interpreted his results as suggesting that a parliamentary-type system in which the president and Congress closely cooperate within a relatively strong party organization may be incompatible with the rule of law. Reforms which strengthen such cooperation may ultimately weaken popular support for the "democratic" state. Therefore, supporters of the rule of law position appear to be at odds with advocates of a strong, heavy-handed, two party system. The development and application of the rule of law standard may indicate a basic incompatibility between the imposition of a rule of law and the establishment of a heavy-handed party government system. 

## II

### Political Analysis

The following group of summaries cover a diverse but interrelated set of issues involving political analysis. The topics dealt with include (in order) human rights, toleration, coercion, the apparent conflict between the individual and the common good, obedience, and a survey of various historical theories or regimes that raise the problems of political power and hegemony.

Particularly important for the dialectical commentary they offer on each other are the initial three summaries concerned with human rights (Reichert, Machan, and Schlesinger) and the concluding group of eight summaries (beginning with Helm's and Morelli's study of obedience, authority, and legitimacy in regard to Stanley Milgram's classic obedience experiments) which deal with various ways to analyze or manipulate political and cultural oppression.

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### *Society, State, and Right in Proudhon*

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**William O. Reichert**

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"Natural Right in the Political Philosophy of Pierre-Joseph Proudhon." *Journal of Libertarian Studies* 4(Winter 1980):77-91.

**P**ierre-Joseph Proudhon's (1809-1865) philosophy of law and natural right stands in contrast to the "hopeless confusion of contemporary political theory," whose unclear notions of justice stem either from social contract theorists or advocates of state socialism. For Proudhon justice and law derived from norms which "express the fundamental will of people organized within voluntary relationships which they create in the course of living their lives." Morality and justice related to mutual respect for human dignity.

Proudhon attacked Rousseau because he saw him as "chiefly responsible for advocating 'an infantile dependence upon governmental paternalism.'" Rousseau had little trust for individuals and denied the capacity of people for self-government. The State, which would insure equality, was outside and above society.

Proudhon, on the other hand, saw that the State bureaucracy, and centralization had undercut the family and other voluntary associations. Despite his comment that "property is theft," Proudhon's tolera-

tion and lack of dogmatism is much closer to the spirit of liberal thinkers, such as Adam Smith, than to the state socialism of Karl Marx. For anarchists such as Proudhon, freedom, or liberty resembled its meaning to libertarians such as F. A. Hayek, "a relationship of men to each other that permits the individual the greatest possible room for privacy and initiative in all undertakings."

Since the problem was the State, it was logical that Proudhon advocated natural,

rather than positive law. Economics must be subordinated to ethics and not controlled by political power. His separation of State and Society reflected the use of later scholars such as sociologist Franz Oppenheimer, who taught that the State represents coercion and privilege, and Society a cluster of voluntary and natural relationships. Decentralization was fundamental to such an outlook. Social pressures might exist, but they lacked the coercive mechanism of state power.

## Human Rights and Political Change

**Tibor R. Machan**

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"On Human Rights, Feudalism and Political Change" in Alan S. Rosenbaum, ed., *The Philosophy of Human Rights* Westport, Conn.: Greenwood Press, 1980, Chapter 12.



**M**achan challenges the relativist conception of human rights: that different societies could have different but equally valid ideas as to what rights human individuals have. He provides a brief history of this issue and discusses why even the absence of a clear conception of human rights are universal moral/political principles.

Machan develops the case for human rights very briefly and in plain terms, appropriate to a nontechnical book. Such rights mean that because human beings are moral agents living in this world, others in society should not interfere with their lives, liberty, and property and may be rebuffed when they do so (by the vic-

tim or by his or her agents, possibly governments).

The essay next turns to some of its most novel features, namely, what is to be done where human rights are not respected in law and practice. Machan develops an ethics of striving to have a constitution of human rights established and administered, urging that this ethics must not lose sight of the very principles which are being fought for. Some examples are explored. Feudalism in Hungary is used as the model by which the ethics is tested and developed.

The last portion of the essay examines the foreign policy of a society in which a constitution of human rights is being administered in law. What should such a society's relations be with others which do not respect human rights? Is there cause for hostility or armed conflict? The general point stressed is that a constitution of human rights does not imply that a society should strive to implement it everywhere, especially not if this requires force.

The last section of this essay considers the delicate moves of diplomacy to demonstrate the respect for human rights which serve as principles to respect and protect human individuals in their persons and properties.

## Carter's Human Rights Policy

Arthur Schlesinger, Jr.

Albert Schweitzer Professor in the Humanities, City University of New York

"Human Rights and the American Tradition."  
*Foreign Affairs* 57, 3(1979):503-524.

Despite the confusion caused by the Carter administration's policy on human rights, the campaign has plainly touched exposed nerves throughout the world—from Moscow to Santiago, from Kampala to Peking. American concern for the status of human freedoms in foreign nations may be traced back to the early years of American foreign policy.

The movement for a universal application of natural rights is basically a product of the experience of the last four centuries. Tocqueville has persuasively attributed this new humanistic ethic to the rise of the idea of equality. The perception of a common dignity shared by all human beings inevitably nurtured a mood of compassion for the whole race.

Since their proclamation of the "inalienable" rights of man in 1776, Americans have generally agreed that their country must serve as a beacon of human rights to an unregenerate world. Disagreement has always turned on the question of how America is to execute her mission. Should the United States make an active effort to influence governmental policies in other nations, or should it merely set an example to the rest of the world by improving and refining its institutions at home?

One historical case clarifies American alternatives: the efforts of Sen. Lewis Cass of Michigan to promote a suspension of diplomatic relations with Austria because of the bloody Austrian and Russian suppression of the Hungarian Revolution of 1848. During Congressional debate on this proposal, Sen. John Parker Hale of New Hampshire raised classic objections to an active pursuit of the cause of human rights in other nations.

He declared, first of all, that the Cass proposal was hypocritically selective—singling out Austria for punishment

while omitting Russia with its greater commercial and diplomatic importance to the United States. He also pointed out that, within sight of the nation's Capital, human beings were being openly sold at auction. America must first put her own house in order, he asserted, before launching on a crusade to reform the enfeebled Austrians.

Turning his attention to the Carter human rights policy, Schlesinger traces its immediate roots to a widespread disaffection with *Realpolitik* in foreign policy during the Kissinger years. However, soon after President Carter affirmed that "our commitment to human rights must be absolute," this new emphasis in foreign policy drew numerous criticisms—many recalling those of Senator Hale a century earlier. There were charges of hypocrisy, double standards, messianism, cultural imperialism, racism, as well as accusations that the U.S. was undermining anti-communist allies and scuttling détente.

Despite premature obituaries, the repeated resurrections of the human rights campaign demonstrated both the continuity of the administration's concern, as well as the underlying vitality of the issue. For all its vulnerabilities, the policy encouraged fighters for freedom around the globe and helped secure the release of political prisoners in countries such as South Korea, Brazil, and Cuba. It has also placed the burden within the American government upon those who wish to embrace despots and has significantly altered the world's view of the U.S. as a rampant capitalist power bent on global hegemony.

In Prof. Schlesinger's view, therefore, the Carter human rights policy must stand as a qualified success, but as a success nonetheless.

## Locke's Tolerance: Prudence or Right?

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"John Locke: From Absolutism to Toleration." *The American Political Science Review* 74(March 1980):53-69.

What accounts for Locke's transition from secular absolutism (in which the state imposes an arbitrary uniformity for the sake of civil peace) to liberal toleration (in which the state disestablishes religion altogether and confines itself to protecting civil interests? Contemporary scholars have either denied that Locke's early writings are absolutist or denied that there is any necessary connection between Locke's early authoritarian views and his subsequent appeal for toleration.

But Locke in his *Two Tracts on Government* (1660) was more of an absolutist than Hobbes, and the connection between his early and latter views represent a change in strategy rather than a change in basic principles. Both strategies Locke defended by an appeal to what is required for civil peace. Toleration and absolutism differ only as strategies in the political management of religion.

In Locke's early writings, religious sectarian warfare is seen as the fundamental problem of politics, a problem that can be controlled by either absolutism to be a better strategy, since sectarian warfare occurs either when the state is obligated to uphold a "true religion" or when the state allows total freedom to follow one's own conscience.

But in the *Essay on Toleration* (1667), Locke advocates toleration on prudential grounds. Presumably, he came to believe that the acceptance of an imposed uniformity, even a uniformity that did not claim "truth", would go against Christian conscience. It isn't that people have a *right* to freedom of conscience, it is simply that man's pride in his opinions will cause him to resist all attempts to change his beliefs by forceful means. If it is inevitable that people will believe that their opinions are necessary, and if it is impossible to change necessary beliefs by force, then liberty of conscience must be allowed. This liberty will not upset civil peace because worship

is a private matter and because following one form of worship is not necessary for salvation.

Finally, in the *Letter on Toleration* (1689), toleration is defended as the right principle as well as the better policy. By presenting the disestablishment of religion and the right of conscience as principles, Locke minimizes the possibilities for political intervention. And by raising moral doubts about any authorities who proclaim the "true way", Locke hopes to encourage citizens to leave each other alone. However, sincere belief is not necessarily true belief and Locke gives no principle for judging freedom of conscience to be a right. Instead, we are left with a prudential accommodation to the political turmoil that results from man's pride in his reason. Absolutism and toleration remain justified by the same principle, and liberalism is left resting insecurely on prudence and a general distrust of religious and moral authorities.



## Political Intolerance

**John L. Sullivan, James E. Piereson, and George E. Marcus**

University of Minnesota, University of Pennsylvania, and Williams College

"Political Intolerance: The Illusion of Progress." *Psychology Today* (February 1979):87-91.

Americans have not become more tolerant of dissent and nonconformity. Contrary to recent surveys, a new study by the authors claims that Americans are just as intolerant today as in the early 1950s. Only the targets of intolerance have changed.

Samuel Stouffer's pioneering work in the empirical study of intolerance (1954) revealed that substantial majorities of Americans were unwilling to grant Communists, socialists, or atheists civil and procedural rights (the right to speak in public, be immune from wire tapping, etc.). Has tolerance increased since Stouffer's time? Two studies (that of James Davis in 1975 and that of Nunn, Crockett, and Williams in 1978) purported to track liberalizing trends of American tolerance to the extent that "citizens who are most supportive of civil liberties have emerged as the majority in our society . . ."

Such conclusions, however, go beyond their studies' empirical findings. Intolerance towards Communists, socialists, and atheists may have declined, but this is because people now are as intolerant toward different groups or ideas. These findings of intolerance are supported by two

new surveys conducted in Minneapolis and St. Paul in 1976. The results showed greater tolerance toward allowing Communists and atheists to have their books in libraries. However, when the survey allowed respondents to pick those groups they least liked (e.g. Ku Klux Klan, homosexuals, or Black Panthers) and substitute these for Communists, the levels of intolerance toward the new groups was substantially as large as towards the older targets of hostility. New undesirables have replaced the old undesirables. We need to be more careful in conceiving and measuring intolerance over time.

The authors believe it is impractical to believe that greater tolerance in a democratic society will come as a result of respect for an abstract principle such as allowing for the free competition of ideas. They subscribe to James Madison's belief that the very diversity and "multiplicity of sects" and interests provide the best safeguards against intolerance. The "diversity of targets of intolerance prevent an immediate threat to civil liberties" even though levels of intolerance are alarmingly high in America.

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## Hayek: Reason, Relativism, and Liberty

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**Eugene F. Miller**

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"The Cognitive Basis of Hayek's Political Thought." In Robert L. Cunningham, ed. *Liberty and The Rule of Law* (Texas & London: Texas A & M University Press, 1979):242-267.

The central theme underlying F. A. Hayek's mature writings is the importance for politics and science of our correctly understanding the limits of human reason.

Along with two theories of liberty that emerged in the eighteenth century—the British and the French—came two theories of reason: British "empiricism" and French rationalism. Hayek judges

French rationalism to be incompatible with the proper limits for social planning, but he does not enable us to make a rational choice among conflicting traditions of liberty. Even though he strives to avoid historical relativism, his exclusive reliance on *modern* empiricism may undercut his opposition to relativism and thereby weaken the very principle of liberty he hopes to defend.

Hayek opposes rationalism by minimizing the role that reason plays in human affairs, while affirming that much of the order which we find in society can be understood as the spontaneous and unforeseen result of individual actions rather than the result of deliberate, centralized design. He thus outdistances even Hume or Kant in questioning reason's power to know the nature of things. Reason itself, Hayek thinks, may change and evolve, largely without conscious direction.

Hayek believes that the mind's classification of things is never based on the discovery of "natural kinds" or classes. For Hayek there are no sense data that are simply "given," prior to interpretation or theory. This means that we can never conclusively test any scientific theory. Hayek has shifted from his earlier conviction that the human mind is *invariable* among historical epochs to his present stress on the variability of the mind and its cognitive structure. However, in putting such stringent limitations on human reason, Hayek has joined "the moderns" as opposed to classical writers like Aristotle and Plato. He thereby eliminates the possibility that we can make rational choices among traditions on the basis of what is true or good *by nature*. In doing so, Miller claims, Hayek undercuts his own traditional defense of liberty.

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## Hayek on Coercion and Freedom

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**Murray N. Rothbard**

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"F.A. Hayek and the Concept of Coercion." In *Ordo: Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft* Vol. 31 (Stuttgart, New York: Gustav Fisher Verlag, 1980): pp. 43–50.

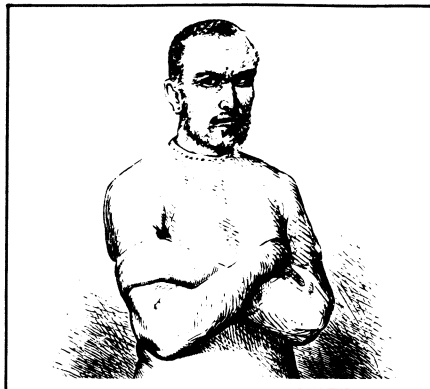
**F**A. Hayek's impressive attempt to define a systematic political philosophy of individual liberty in his book *The Constitution of Liberty* (1960) fails largely because of his flawed concepts of freedom and coercion. Defining freedom as the absence of coercion, Hayek's understanding of the crucial term "coercion" is both fuzzy and self-contradictory. It is fuzzy since for Hayek, coercion loosely includes, in addition to the use or threat of physical violence, also voluntary, nonviolent actions that we are free to avoid. Hayek's notion of coercion is also self-contradictory since it lumps together in the same moral-legal category of coercion not only forced actions and exchanges but also certain types of nonviolent, voluntary refusal to make an exchange. On Hayek's criteria, some innocent nonviolent acts are judged "coercive" (e.g., being invited to a party on

the condition that one wear a suit), whereas some tyrannical, violent acts are judged "noncoercive" (e.g., government imposed taxation and military conscription).

We should either confine the concept of "coercion" strictly to the invasion of another person or property by the use or threat of physical violence or scrap the term "coercion" altogether, and simply define "freedom" not as the "absence of coercion" but as the "absence of aggressive physical violence or its threat." "Economic power," that is, the right to define when one will work or exchange is not coercive. The alternative is to outlaw the refusal to work, which is a form of slavery.

Hayek, by blurring the distinction between aggressive force and justified defensive force, illogically legitimizes the existence of the state which depends on

such aggressive force as taxation and the military draft. Hayek asserts that state coercion is justifiable if its edicts are the "rule of law," that is, general rules knowable in advance. He argues that if we can foresee such edicts we can avoid putting ourselves in such a position. Yet Hayek's avoidability criterion for noncoercion leads to absurd or totalitarian conclusions. For example, one could logically frame a Hayekian general "rule of law," knowable in advance, which would enslave everyone every third year, forbid anyone to criticize the government under pain of death, and oblige everyone to worship in a particular fashion.



## "Advanced Liberalism" as Managed Capitalism

**Robert Eccleshall**

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"The Identity of English Liberalism." *Politics and Society* 9, no. 1(1979):1-32.

The author takes issue with the conventional view of English liberalism: "that during the eighteenth and nineteenth centuries liberalism blossomed from a sectional ideology into a dominant mode of consciousness and that it achieved ascendancy because its separation of the economy from the polity, together with its sanctification of individual property and other private rights coincided with the development of productive forces." The conventional view goes on to attribute the political eclipse of late nineteenth-century liberalism at the polls to its inability to define a program of social reconstruction that would adapt capitalism to "an epoch of state intervention and social welfare."

Eccleshall dissents and accepts the recent British New Left and analysis of Perry Anderson and Tom Nairn. This view maintains that English classical liberalism, constitutionally born in the 1688 Glorious Revolution and favoring men of property, never dislodged the pre-modern conservative ideology of social hierarchy and deference, which prevailed over the liberal ethos of individual rights

and liberties. Yet, paradoxically, late liberalism attained a maturity (in theory and practice) at the close of the nineteenth century at the moment of the Liberal party's electoral collapse. This new, reformulated liberalism then "permitted dominant groups to abandon the aristocratic heritage" of conservative Whiggism for a more authentic "liberal ethos." This late nineteenth-century liberalism promised to secure the rights of individuality to all classes while evolving an ideology of "managed capitalism." Today, this new, socially aware liberalism is the dominant English ideology shared by all major parties. Contrary to conventional views, the new cross-party liberalism did not fail to keep pace with the changing socioeconomic realities.

Classical liberalism contained inherent theoretical ambiguities resolved by post-classical liberalism (in the latter half of the nineteenth century). Classical liberalism's "Achilles heel," maintains Eccleshall, was its overemphasis on individual autonomy or private judgment at the expense of social harmony and public



goods. The free market distributed wealth unequally along class lines and thus prevented social harmony. The state, to correct the political disunity and inequality generated by the market, "was required to exercise a more positively coercive function than the liberal doctrine allowed." The weakness of the older liberalism meant that a conservative Whiggism of the dominant classes ruled. The market was subordinated to the Burkean conservative view of society as a corporate organism controlled by propertied members.

Eventually, however, English liberals became pioneers in purging the conservative Whig ideology from their system. These nineteenth-century liberals created a state-managed capitalism. The policies of this "advanced capitalism" though applied under the auspices of the twentieth-

century Conservative and Labour parties had, in fact, been nurtured by the adaptive liberal ethos.

The author, covering the relevant scholarly bibliography, traces his version of liberalism's historical evolution from the sixteenth-century Levellers to the nineteenth-century liberals Mill, Green, and Hobhouse. In this evolution the older, classical liberalism's tension between individualism and social cooperation or unity, gradually was transformed to the "advanced liberalism." This new liberalism, espoused now by all English parties, is characterized by social consciousness and state intervention to secure "a one class community." Thus the liberal ethos came into its own maturity after electoral liberalism waned.

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## Common Good & Public Interest

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"The Common Good and The Public Interest." *Political Theory* 8(February 1980):103-118.

Douglass attempts to distinguish between the common good and the public interest. The two were originally separate but have now come together.

Traditionally, the common good was the chief political goal of the state. The common good consisted of a number of specific objectives designed to promote human well-being, and government was thought to have a crucial role in promoting such objectives. The common good was common because its benefits obtained for all and because they were shared benefits (not reducible to individual advantage even though all benefitted). The common good was good in the objective sense, not in the subjective sense. Also, the common good was considered above the individual good; however in a well-functioning society, like in an organism, these two goods were in harmony. In times of conflict the common good took precedence over the individual good. Finally, in the traditional view the notion of the common good involves a paternalistic view of political authority: the government defined the common good

and educated the citizenry in its meaning. Rulers could intervene in the society to protect the common good whenever it appeared private initiative was not doing the job.

The notion of the public interest arose with the breakdown of feudalism and the rise of the nation state. Since the common good tended to be identified with the interests of the crown in foreign adventures, the idea fell into disrepute. Opponents of the crown adopted the banner of "interest." Though the idea of the public interest need not be identified with a mere agglomeration of individual interests those who used the concept did tend to have a individualist view of the public interest, as well as a subjectivist view of values (derived from Hobbes.)

Today the concept still reflects its history. "Interest" tends to be identified with people's *choices* or choices they would make if they were informed. Even in the second case, interest is *not* synonymous with objective well-being. "Public" tends to be identified not with all the members of

society, but with the majority or the many. The public interest, then, is today equivalent to the common good. Two types of redefinition would push these concepts together. First, "public" might be redefined, as suggested by Brian Barry, to be equivalent to the common interests of all people in their roles as citizens. Second, a redefinition of "interest" might make it more synonymous with "good." These redefinitions have three problems: a conclusive argument against noncognitivism in values is needed; second, it is unclear

whether the concept of interest can really bear the burden of being redefined in a way that goes radically against conventional usage; and, third, it's not clear whether the redefinition suggests a return to illiberal authoritarianism.

The author ends with a suggestion that a plausible definition of the public interest would be akin to that offered by Walter Lippman: "what men would choose if they saw clearly, thought rationally, and acted disinterestedly and benevolently."

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## Uncrowding the "Commons"

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**Julian J. Edney**

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"The Commons Problem: Alternative Perspectives."  
*American Psychologist* 35(February 1980):131-150.

**T**he dilemma of the commons involves the conflict between individual and group interests over resources held in common. Problems arise when the collective demand of individuals on resources exceeds the supply and the rate of consumption threatens the future functioning of the total resource pool. Examples of commons problems include range land, whales, and oil. An individual who increases his or her rate of consumption may derive a short-term personal gain while others may sustain an immediate loss and all will suffer if the resource pool vanishes.

Prof. Edney reviews a number of psychological perspectives and discusses how these may illuminate the nature of the commons dilemma. Using Platt's reinforcement theory, the commons dilemma is shown to involve problems in the timing of the rewards and costs to consumers. In a commons situation, each individual's cost-benefit analysis leads to an escalation of the problem behavior. Biosocial theories involving territoriality appear to apply to commons problems in animal societies but have little relevance to human communities. Also discussed is Dawkin's "selfish gene" theory which rejects any biological basis to altruism.

Under conditions of scarcity of a resource held in common, we need to limit

consumption. However, this poses hazards both to principles of social equality and to community democratic structures. Although providing all members of the community equal (but limited) allotments to the common resource preserves equality, all may suffer if the allotment is insufficient. Alternatively, access may be limited to a few, but these will have a sufficient allotment. Social psychological rewards may reinforce logical or functional justifications for inequality.

Democracies are not well suited to solving commons problems since the wish of a majority to freely consume will destroy the pool. Also, even where the majority do vote to restrain consumption, the actions of a dissenting minority may destroy the pool if it defies complying with majority wishes. Providing information and incentives is unlikely to be particularly effective in solving usage dilemmas.

Edney offers two potential solutions to the commons dilemma which emphasize voluntary, self-determined action. The first involves territorializing, i.e., conveying resources held in common into private property. The second focuses on the possible benefits of increased trust and mutuality among the members of a community.

# Milgram: Obedience, Authority, & Legitimacy

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"Stanley Milgram and the Obedience Experiment, Authority, Legitimacy, and Human Action." *Political Theory* 7(August 1979):321-345.

The authors analyze the concepts involved in Stanley Milgram's famous "obedience to authority" experiment. Milgram sees obedience as an "agentic state" wherein an individual views himself as a mere instrument of authority, lacking any responsibility for the acts he performs. He sees obedience as having an essence which underlies all the diverse situation where we can speak of obedience—school, psychological lab, home, military, bureaucracy, etc. On this view the concepts of obedience, authority, and legitimacy pose no problem since they are defined operationally. Obedience is pressing the shock lever when the experimenter tells the "teacher" to do so. Authority is identified with the person perceived to be in a position of social control (such as the experimenter). But Milgram does not realize that these concepts must be clarified so that it is possible to evaluate whether a particular act falls under them. The criteria for these concepts cannot be viewed in total isolation from distinctions made in ordinary language.

First, there is the distinction between someone *in* authority (in some office, occupation, role, or status) versus *an* authority—someone who is supposed to have special insight on knowledge which vindicates the layman's accepting the expert's judgment even though the laymen cannot fully understand the authority. These two distinct types of authority imply that Milgram's conception that obedience to authority has single essence (a disposition to obey) is at best a hypothesis. In Milgram's lab the scientist (the "experimenter") was deceiving the "teacher" by pretending to be *an* authority, not *in* authority. For one *in* authority, the criteria of assessment tend to be more public (e.g., did he get elected by a fair process?) while for *an* authority the criteria depend more on trust. This means there is a difference in the types of deception that can occur.

A second distinction is between *de facto* and *de jure* authority. *De facto* authority presuppose some legal conventions or rules to determine who has certain rights to rule, whereas *de jure* authority involves people deferring to someone because of some legal right the authority may have, or because of his personal qualities. Milgram disregards this distinction and on his own view it is impossible to say that the psychologist lacked the authority to order his subjects to shock the victim. But this means Milgram cannot explain how a subject can resist some legitimately enacted law on the grounds that it was morally illegitimate. This implies that obedience to political authority is not the same as obedience to a scientist in a lab.

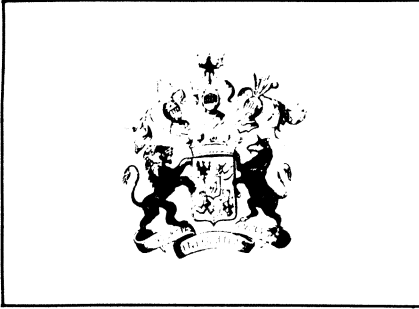
This raises the question: why did the subjects obey? The authors suggest that rather than a mechanism (an agentic state) which is triggered by a certain environment, the psychological lab contains some *unique* social factors which are not transferrable to other realms. The doctor-patient relationship like the parent-child one involves a setting where a wide variety of requests as carried out without little question; this is *not* true in other realms. Since almost any subject is permissible within a lab, odd requests in that context will be taken with more ease than in other contexts. Furthermore, we hear little talk of anyone being killed in a psychological lab, which is again unlike other realms of "authority" which concern Milgram. Finally "the authority" in the lab was of a peculiar sort: it was a face to face situation. Milgram found that subjects gave shocks much more often when the experimenter was physically present and much of this so-called obedient behavior only occurred after much prodding. The closest analogue to this politically is the policeman and the traffic offender. Most adherence to laws in a state does not rest on such personal contact, and certainly it does not rest on personal prodding.

# Syndicalism & "The Servile State"

**R.J. Holton**

Flinders University of South Australia

"Syndicalist Theories of the State." *Sociological Review* 28(February 1980):5-22.



Marxist commentators have frequently criticized revolutionary syndicalism for its supposed reluctance to consider the role of the state in capitalist society. Prof. Holton submits that such assessments grossly distorts syndicalist political reviews. Rather than neglecting the state in favor of an aggressive economism, syndicalists were acutely aware of its functions within the capitalist power structure.

During the late nineteenth and early twentieth century, a period in which the syndicalist movement appeared throughout the Western world, a number of problematic developments forced syndicalists to reassess conventional Marxist political theory and to reconsider their strategic position toward the structures of power. The foremost developments of this kind centered on state monopoly capitalism and the establishment of social welfare programs. Were these to be viewed as positive steps toward socialism or, instead, as a tactic for incorporating a docile proletariat into capitalist society.

In France, syndicalist theorists such as Pataud, Pouget, and Pelloutier regarded the state as an instrument of physical coercion in the service of bourgeois morality and ideology. Stressing moral preparation and working-class self-education for a renewed, revolutionary so-

ciety, Fernand Pelloutier championed the work of the *bourses de travail* (loosely similar to British trades councils). He viewed the *bourses* as a "state within a state," a center of alternative revolutionary purpose through which a new revolutionary man would emerge. This strand of French syndicalist thought provides little support for the old notion of syndicalism as purely economic movement obsessed above all with Direct Action at the point of production.

British syndicalists were less concerned than the French with revolutionary upheaval. Instead, they pursued a vigorous and influential critique of corporate welfare capitalism as introduced by reforming Liberal governments at the beginning of the century. The "Servile State" slogan played a crucial role in popularizing this anti-state stance. The phrase was of course coined by Hilaire Belloc as early as 1908 to describe adopted by syndicalists, guild socialists, and the shop stewards movement.

Setting aside Belloc's vision of peasant proprietorship in a Catholic England, they nonetheless retained his essential critique of the new "enlightened" activities of the capitalist state such as the use of national insurance for social control of workers. The syndicalists also criticized the ideological controls perpetrated by the new capitalism. These fostered a passive acceptance on the part of the workers of the current system, effectively neutralizing any impulses to overthrow their oppression and work out their economic freedom. Thus, despite certain theoretical and practical limitations, syndicalists may be exonerated from the charge of "neglecting" the state. As a result of their critique of the organs of power, syndicalists were able to enter the new phase of revolutionary activity (1917-1926) as revolutionaries worthy of serious, if critical, attention.

## The Parisian League

Elie Bar-Navi

University of Tel Aviv

"La Ligue Parisienne (1585-94): Ancêtre des partis totalitaires modernes?" *French Historical Studies* 11(Spring 1979):29-57.

The latter half of the sixteenth century witnessed a new development in the political history of France and the West. During that period, French Catholics grew increasingly concerned over Henri III's weakness in dealing with the Protestant threat in their country, in particular with the influence of his distant Protestant cousin and probable heir, Henri de Navarre (later Henri IV). To counter this danger, zealous French Catholics led by the Duc de Guise formed the *Sainte Union* (otherwise known as *la Ligue*) for the purpose of restoring undisputed Catholic hegemony in the realm. Established in all major French cities, the League succeeded in capturing control of Paris in 1588, relinquishing its hold on the city with the accession of Henri IV, newly converted to Catholicism.

Regarding the organization, membership, and ideology of the League, it becomes clear that the characteristics of the traditional political faction have been superseded and that something resembling a political party (and a revolutionary one at that) has come to birth. Unlike most factions, for example, the League's existence did not seem to depend on the leadership of a particular individual. Henri III sought to extinguish the threat of radical Catholics by executing the Duc and Cardinal de Guise on Christmas Eve, 1588. To the King's surprise, however, the League survived to struggle against him with renewed vigor.

In addition, the power of the League rested on an extremely broad social base, again unlike traditional factions. It incorporated members of the aristocracy and clergy, to be sure, but also merchants, butchers, tradesmen, and even sailors. In numbers, membership in Paris alone has been variously estimated at between eight and thirty thousand.

The League also incorporated a carefully structured series of deliberative councils which directed the organization's activities and set its policies. As with modern political parties, close-knit organization assured the movement's survival even after the passing of a prominent leader.

Many of the League's characteristics thus link it to the political groupings of our own day. However, its ideology specifically identifies it as a distant ancestor of revolutionary parties, active in the West since the eighteenth century. Like all opposition movements of the time, League members claimed to be struggling for a restoration of ancient French traditions. However, this necessary cloak of tradition grew thin as government persecution pushed the League to ever more radical positions.

In their defense of the Catholic faith and Christian society, League theoreticians completely redefined the notion of nobility. Aristocracy by birth was viewed as mere usurpation of privilege. Religious zeal conferred the mark of true aristocracy. Without devotion to God, the king himself might be considered base-born.

In keeping with this revolutionary spirit, League partisans championed an elective monarchy and the sovereignty of the "people." To stem the march toward tyranny among even elected monarchs, the ideologists of the League espoused the "primacy of the law," as a bulwark against arbitrary government. They even set forth proposals for a "loi fondamentale," a constitution which would empower the Estates-General to act as the highest court and supreme legislative authority of the land.

Finally, the League evidenced revolutionary traits in deed as well as in words. After their takeover of the French capital



in 1588, leaders of the League created the *Conseil des Dix*, a veritable Committee of Public Safety which inflicted a reign of total terror on all suspected enemies of the regime.

The power of the League was to evaporate in the 1590s, when the conversion of Henri de Navarre to Roman Catholicism and his military victories assured the restoration of the traditional Catholic monarchy to France. Despite its eventual demise, however, the organization of the League stands as a new departure in the political experience of the West.

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## Conservatism in Spain

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**R.A.H. Robinson**  
University of Birmingham

"Political Conservatism: The Spanish Case, 1875-1977." *Journal of Contemporary History* 14(October 1979):561-580.

**I**n defining conservatism in modern Spain, Prof. Robinson relies heavily on the insights of such American theorists as Rossiter, Kirk, Viereck, Wilson, and Huntington.

"Conservative" may ambiguously denote "status quo" politics or "rightist" graspings. Along with Clinton Rossiter, Prof. Robinson finally settles for a conservative model deriving from the tradition of the Irish Whigs, liberals, and free-trader Burkeans. The dilemma plaguing conservatives lies in distinguishing the primary, unchangeable elements of a constitutional state from those secondary factors which may change with changing conditions.

Turning to Spanish political history, Prof. Robinson, along with other Anglo-Saxon historians, identifies the "contemporary" period as beginning in the last quarter of the nineteenth century—the era of the "Restoration Monarchy" of Alfonso XII. The great architect of that monarchy was Antonio Cánovas, conservative framer of the Constitution of 1876. The most influential conservative

politician of the modern period, Cánovas embodied a broadly pragmatic position within the framework of liberal constitutionalism. He defined his program more by opposing threats to the "middle way" than by adherence to clear-cut principles. In his views, the lack of sharply defined principles would provide the monarchy with much needed flexibility. Thus, the constitutional system which Cánovas established featured both traditional and liberal elements, so as to include all sectors of opinion which were prepared to compromise and accept the rules of the game.

Like many politicians of this day and our own, Cánovas made strong appeals to "tradition" to legitimize his mixed monarchical and representative institutions. The "nation" was the central feature of his beliefs. He looked upon centuries-old reservoir of experience, not as the ephemeral product of a daily plebiscite. For Cánovas, the experience of the Spanish nation demonstrated incontrovertibly that "the hereditary Monarchy with the Cortes is the essential constitu-

tional form of the country." The same experience required the establishment of the Roman Catholic faith as Spain's official religion, although non-Catholics would be allowed the right to worship in private.

Cánovas's British-inspired system of compromise held together for over forty years. However, it proved difficult to perfect. Electoral corruption and the manipulation upon which it depended created too many vested interests which thwarted internal reforms.

Cánovas' conservative successors, Francisco Silvela, Antonio Maura, and Eduardo Dato, encouraged democratic reforms to

broaden the base of the Canovite system, but were not able to preserve it from overthrow in 1921 by General Primo de Rivera. Thereafter, conservatism continued to make real, though modest contributions to Spanish political life during the Rivera period, the Republic, and the Franco regime. Currently, under the restored parliamentary monarchy, it is represented by two political formations: the *Union de Centro Democratico* and the *Allianza Popular*. Nevertheless, the philosophy has not yet regained sufficient respectability for any Spanish party to use the word "conservative" in its title.

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## Soviet Intellectual Orthodoxy

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John Barber

University of Birmingham

"The Establishment of Intellectual Orthodoxy in the U.S.S.R. 1928–1934." *Past and Present* 83(May 1979):141–164.

At the end of the 1920s and beginning of the 1930s, intellectual life in the Soviet Union underwent a transformation no less sudden and extensive than those which occurred in the economic and political spheres. The launching of the First Five-Year Plan in 1928 inaugurated a period in which the relatively relaxed and pluralist atmosphere of the New Economic Policy gave way to compulsory consensus and dogmatic orthodoxy.

The dramatic change occurring between 1928–1934 has generally been explained by Stalin's "revolution from above." According to this view, Stalin's decisions to accelerate industrialization and agricultural collectivization led quite naturally to efforts at controlling intellectual expression.

Close examination of the period, however, yields little evidence that the leadership pursued a consistent policy of intervention in intellectual affairs. At the same time, considerable evidence may be advanced to show that these were years of real controversy and militancy, albeit within narrower ideological limits.

The Soviet intelligentsia of the period consisted of three generally antagonistic groups: liberal "bourgeois intellectuals," who could work as badly needed teachers, bureaucrats, and technicians as long as they made no overt protest against the new system; older Marxists (also of bourgeois origin) educated before the Revolution; and the ever more numerous products of the new "proletarianized" Soviet educational system. Graduates in the third category acquired majority status by 1931. With their growing numerical strength and the increased centralization effected under the Five-Year Plan, a wave of Purist militancy swept across the Soviet academic world between 1928–1932.

One of the earliest and most widespread forms of this "cultural revolution" involved the total and violent rejection of all non-Marxist scholarship. In addition, all intellectuals (even Marxists) who received their education in Czarist days fell under suspicion and were commonly labeled with charges of "liberalism," "apoliticism," "lack of militancy," "compromise with the bourgeoisie," etc. Now the communist

party commitment of intellectuals was to be gauged by whether their work contributed to the implementation of party policies.

Throughout this militant period, party and government officials played a surprisingly small role. Preoccupied by pressing economic problems, they did not have the opportunity to formulate a clearly defined policy concerning the content of intellectual work. As a result, far from being a revolution from above, the militant movement arose among intellectuals themselves.

By late 1931, however, a turning point occurred. Apparently alarmed by the tumultuous accusations of ideological impurity among scholars, Stalin himself

stepped in to settle a historical controversy then hotly debated. In laying down the party line on a point of scholarly interest, Stalin set the stage for a radical transformation of Soviet intellectual life. Soon, brigades of young graduates were organized to review existing academic literature and to replace works found unacceptable by new collectively written textbooks produced under supervision of the Central Committee.

Intellectuals who had thundered demands for uniformity were now taken at their word and forced to tow the party line. The revolution which had begun at the grassroots was now coopted by top officials.

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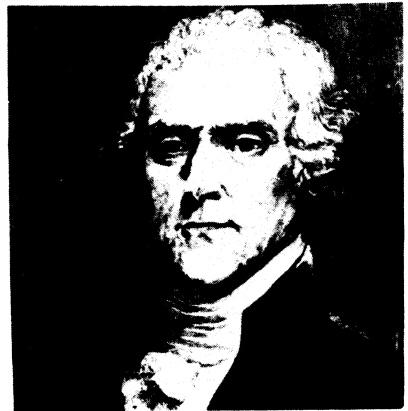
## *The Clergy & The American Revolution*

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**Emory Elliott**  
Princeton University

"The Dove and Serpent: The Clergy in the American Revolution." *American Quarterly* 31(Summer 1979):187-203.

By the spring of 1774, American colonists were realizing the futility of peaceful protests and demonstrations against British injustices and beginning to wonder if the time had come for a permanent solution to the quarrel of government. Aware that events had reached a crisis, the leaders of the colonies faced an urgent problem: how to convince the common American, ignorant of the writings of Locke or the British Whig radicals, to suffer personal hardship for the American common good. Thomas Jefferson proposed using the American Puritan heritage for political advantage by calling for a day of prayer and fasting. "We were under the conviction of the necessity of arousing our people from the lethargy into which they had fallen as to passing events; and thought that the appointment of a day of general fasting and prayer would be most likely to call up and alarm their attention."



Jefferson and his fellow intellectuals realized the depth of the religious undercurrent that flowed throughout the colonies. The clergy enthusiastically responded to the call to fervor, since this



promised to revive their waning political leverage and added fire to the cooling religious spirit. "The awe-inspiring occasion of a day of humiliation and prayer would serve to recall the people to the sacred mission of their forefathers and place the clergy at the forefront of that movement."

The sermons of that year reveal the tension felt by the clergy to evade the question of military conflict while creating a mood of rebellion. They emphasized prayers for peace and reconciliation and finally offered strained rationalizations for the impending war.

Once war was underway, sermons showed a marked decline in the use of inflammatory rhetoric. Some clergymen felt assured of a continued war, but more were uneasy about the alliance between religion and war developing into a 'combative Christianity.'

The emphasis soon shifted to social projections of a post-war America. The clergy anticipated this to be an era "of purest virtue when the American garden would be cleared of the tangles of European corruption and the fruits of moral and spiritual perfection would spring forth."

Sincere as these prophecies were, ministers maintained a measure of self-interest. Should the victory of America not be a stage in America's development toward the fulfilment of the divine plan, it might be reasoned that clergy had used the sacred calling to serve Satan. The clergy had good reason to be concerned: the closer America came to military success, the less the people appeared to be interested in moral and religious progress. "Internal

corruption had already begun to crumble the structures of the new Jerusalem even before they had been completed."

The clergy's other major concern was how the separation of church and state would shape the future of the Church in the United States. The immediate results were a reduction of the status and power of established clergy and a rapid increase of untrained preachers free to teach heresy. "Having counted upon an increase of religious feeling in the nation to result in the people's gratitude to God for their victory, many ministers were faced with a populace more concerned with land, goods, and politics than with saving their souls."

In the 1780s the problem facing the clergy was that of forging a role for themselves in a republican society. The next two decades of sermons reveal a rebuilding of relationship of ministers to leaders of society, redefining a function of the clergy, and enlivening the Puritan ideal with imagery appealing to the post war generation.

As civil reform movements arose the clergy used these benevolent organizations as a new connection to establish Christianity as an essential element of the new republic. "By associating themselves with these societies, the clergy provided an aura of divine approval to such organizations while gaining in return a measure of social status."

These were difficult years for the clergy, but just as their seventeenth century predecessors had done, the ministers adapted the Christian message to new needs and conditions with faith in the fulfillment of the American mission.

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## *Russian & American Defenses of Servitude*

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Peter Kolchin

"In Defense of Servitude: American Pro-Slavery and Russian Pro-Serfdom Arguments, 1760-1860." *The American Historical Review* 85(October 1980):809-827.

Kolchin compares the arguments for slavery offered in the United States with those for serfdom in Russia. Both Russian and American defenders of an unfree labor

system used racial arguments. Even though there was no obvious racial differences, between Russian lords and serfs, arguments about serfs' inherent and na-

tive inferiority occurred, though not as elaborated as arguments about Southern American blacks' inferiority. American slaveowners and Russian lords alike employed paternalistic, class oriented arguments which claimed that the superior class's care of their inferiors made the latter better off than they would be if freed. In the case of the USA, slaveowners contrasted the slaves' lot with the free workers in the North and contended that, racial differences apart, their system was necessary for civilization.

The need to defend unfree labor apparently led to similar arguments occurring in different social climates (though American slaveowners did use religious justifications that Russian lords tended to avoid). Indeed, both slaveowners and lords played the same semantic games, claiming their system was not of bondage, or at least not of severe bondage. Both groups took reactionary views on most social issues. Being opposed to the main intellectual currents of the day (natural rights, democracy, Jeffersonianism, etc.), they were deeply suspicious of change.

The arguments for slavery and serfdom differed in their development over time. Up till 1800, defenses of the institutions were not widespread and the idea of gradual emancipation was raised. After 1800 the cautious antislavery sentiment in certain parts of the South disappeared and was replaced by awkward, hesitant defenses of the institution, usually on racist grounds that it was a necessary evil. Starting in 1830, however, there began a flood of militant, unapologetic defenses of the *virtues* of slavery, often on the "practical" grounds that it was the best way to organize society. In Russia, however, the liberal trend of the eighteenth century continued into the nineteenth. By the 1840s free labor ideas had spread among the nobility. Russia never had a militant proserfdom movement.

Why the differences? The author provides five reasons. (1) Though Russian nobility did employ racial arguments, the fact that slaves in the USA, unlike serfs in Russia, were of an obviously different color than their masters made the idea of freedom more threatening in the USA—it was like the idea of releasing aliens. (2) In a country where the "people" were politi-



cally equal ("all men are created equal"), freeing black slaves was a threat to slaveholders and nonslaveholders alike since they had previously thought of the "people" as white adult males. In Russia, on the other hand, the peasants were the "people"; they were 4/5 of the country. An all white America was a bureaucratic, closed, nondemocratic society, the gentry was not in a position to shape policy. The Czars and many of their close advisors were committed to eventual liberation, and the nobility could not change this. Southern slaveholders, however, could attack abolitionist sentiments in newspapers, magazines, meetings, petitions, etc. (3) Russia lacked a free press. The gentry had no audience which they could appeal; the slaveholders did. (4) The South felt that not just their institution of slavery but their own region was under attack; in Russia serfdom lacked this sectional cast. (5) Because of the first four factors (racial differences, democracy, a free press, the sectional nature of the institution) the Southern slaveholders were more independent and had a strong sectional civilization with which they identified and they were very reluctant to give it up. Russian nobility, on the other hand, had more of an absentee mentality with regard to their institution—they were both literally and figuratively not around enough to supervise their serfs, or identify with a culture of serf holders. Emancipation threatened the slaveowners very way of life; it threatened the Russian nobility only in its pocketbook.

## Croce's Hegemony: How to Win Minds

Edmund E. Jacobitti

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"Hegemony before Gramsci: The Case of Benedetto Croce." *The Journal of Modern History* 52(March 1980):66-84.

The political theory of the Italian Marxist, Antonio Gramsci, centers around the concept of cultural hegemony, the indoctrinated "common sense" or belief system by which a dominant class controls the oppressed. Gramsci sought to understand the techniques of "bourgeois hegemony" in order to replace the cultural hegemony with one that would serve the interests of the proletariat. In the hegemony of the Italian Idealist philosopher Benedetto Croce (1866-1952) over Italian intellectual life Gramsci discovered the techniques of social and political change that would establish a dominant culture in the minds of one's contemporaries. Gramsci appreciated Croce's skillful use of the scholarly journal and press "to saturate the intellectual life of Italy with a single point of view, a particular culture" and thereby bring about ideological and social change.

Croce's aim was the cultural transformation of Italy through conversion to his Idealist philosophy. He sought to annihilate positivism, materialism, and their roots in eighteenth century thought (with its abstract, antihistorical opposition to developmental modes of thought). To install his opposing culture, Croce appealed to writers and intellectuals outside the "official culture" of the Italian universities. In all his techniques to achieve his revolution in cultural values, he had a "determinate" point of view, one that was sectarian and partisan to his Idealist faith, and he opposed as misguided the notions of tolerance practiced by "false liberalism."

One technique of achieving cultural hegemony for Idealism among young minds was Croce's founding in 1903 of the scholarly journal, *La critica*. Together with Giovanni Gentile, Croce's *La critica* dominated the rising generation of Southern Italians in thought and culture, and attracted such luminaries of the Idealist movement as Guido de Ruggiero (author of

the Idealist movement as Guido de Ruggiero (author of the *History of European Liberalism*). Through the decades, *La critica* appeared on schedule, reassuring its readers by its dependability of the sure foundations of its ideology.

Other scholarly techniques by which Croce asserted Idealism's cultural hegemony were the many book series and publications of his friend Giovanni Laterza's press at Bari. Laterza's press was a "serious" and ideological instrument for disseminating Idealist doctrine—through the Library of Modern Culture of which Croce was the director (500 volumes by Croce's death in 1952), which published Croce, Sorel, and de Ruggiero. Other Crocean-dominated book series included Croce's own works and The Classics of Modern Philosophy. This last series introduced Italians, for the first time, to easily available translations of Hegel and Kant. The British Empiricists (Bacon, Locke, and Shaftesbury) did not appear until the 1950s and 1960s; no works appeared devoted to the French *philosophes* of the eighteenth century just as there had been no publication of the Italian Enlightenment thinkers Galvani, Beccaria, or Volta in the Writers of Italy Series (some 600 volumes).

Croce's impact on twentieth century Italian culture was pervasive. Given voice by the publishing house of Laterza and by his journal *La critica*, Croce dominated the educated Southern Italian middle class. The cultural hegemony soon flowed into libraries and the official cultural bastions, the universities. Croce's hegemony served Gramsci as an influential model for far different ends. □



# III

## War and the State

Few requirements are as crucial for mankind's survival and the preservation of individual freedoms and rights as to understand and prevent warfare. The following summaries, accordingly, range from the opening considerations of theories of the just war to case studies of the role of governments in creating the economic incentives and ideological misunderstandings that promote hostility and belligerence. The present urgency of maintaining peace and eliminating undue risks of nuclear warfare make a study of these topics all-too-necessary.

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### *Just War and Rights*

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**David Luban**

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"Just War and Human Rights." *Philosophy and Public Affairs* 9(Winter 1980):160-181.

Theories of the just war have traditionally been elaborated by theologians and jurists. These doctrines originate in a moral understanding of violent conflict. Yet, when adapted for use in the realms of pragmatic politics and diplomacy, their moral content often vanishes. Prof. Luban provides a moral assessment of the justice of war to serve in the actual conduct of international affairs.

A widely respected document of international law, the *Charter of the United Nations*, condemns "the threat or use of force against the territorial integrity or political independence of any State . . ." At the same time, it recognizes the right to "individual or collective self-defense if an armed attack occurs against a member of the United Nations." In this view, therefore, aggressive wars are unjust, whereas defensive wars are just.

International law in general asserts the duty of each state to refrain from intervention in the affairs of other states. At the root of this duty lies the notion of state sovereignty. But how, Prof. Luban asks, is nonintervention to be construed as a *moral* duty? Some have added the concept of legitimacy to add a moral dimension lacking in the usual international definitions. A legitimate state would thus have a right against aggression, because citizens possess a right to a legitimate state, which in turn implies human rights and social contract.

A legitimate state may be recognized by evidence of a political community's longstanding consent to be governed. Michael Walzer has written: "Over a long period of time, shared experiences and cooperative activity of many kinds shape a common life. 'Contract' is a metaphor for a

process of association and mutuality . . .” Yet, according to this standard, many parts of the third world are governed by manifestly illegitimate states. Are the populations of these territories to be exempted from the moral protections of just war theory? Obviously, comprehensive just war theory can not be derived from a governmental base.

Prof. Luban suggests that the moral discernment of a just from an unjust war can only be achieved through a consideration of human rights—“the demands of all humanity on all of humanity.” He first distinguishes a category of *socially basic human rights*. These are required for the enjoyment of any other rights and include security rights (freedom from torture, killing, assault, etc.) and subsistence rights (rights to healthy air and water, adequate food, and shelter).

Such basic rights are worth fighting for—not only by those to whom they are

denied but also by others who take them seriously. Of course, this does not mean that an infringement of socially basic human rights is a *casus belli*. Here as elsewhere in just war theory, the doctrine of proportionality applies. Nonetheless, any proportional struggle for basic rights is justified—even one which involves attacks on the nonbasic rights of others.

Prof. Luban insists on the substantive differences which distinguish his definition of the just war from that of the United Nations. The UN approach would have us measure the rights of states against socially basic human rights, which may well constitute a comparison of incommensurables. Under Luban’s definition, on the other hand, we are only asked to compare the violations of basic human rights likely to result from a war with those violations it is intended to rectify, a much more tractable dilemma.

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## Just Wars vs. No Wars

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Inis L. Claude, Jr.  
University of Virginia

“Just Wars: Doctrines And Institutions.” *Political Science Quarterly* 95 no.1(Spring 1980):83–96.

P revention of war is not the only goal to which organizations are directed. Some organizations such as the League of Nations and the United Nations “have served as instruments for the implementation of the doctrine of just war.”

War has been viewed as either always justified, never justified, or sometimes justified. The pacifist, often religious, has taken the view that war, like murder, is never justified. Pacifism, thus destroys the possibility of deterrences. It was Christianity that first sought to systematically explore the idea of a just war as opposed to an unjust one. The rise of state sovereignty, however, implied that war was simply a right of the states, but governments still sought to legitimate their position among the people.

Much of international law developed as a means of establishing rules of warfare that would keep it within some rational

bounds, and confirming the notion of neutrality. Both the League of Nations and the United Nations meant a return to a revised just war doctrine. These organizations—just as the Pope did earlier—would decide the justice of the case. Collective security divided military actions into three categories (prohibited, permitted, or prescribed) but has not functioned very well in practice.

Revisionists sought to distinguish between self-defense war as just, and aggression as unjust. In an age of anxiety with potential for massive destruction, “the preservation of peace took precedence over the promotion of justice, which had to be achieved by nonviolent methods or not at all.”

Since 1960, however, the world has increasingly returned to the idea of a just war. Aggression is justified in support of what the majority deems a good cause. We

do not seem aware of the extent to which we have accepted war as a legitimate means to achieve approved objectives.

This can be observed in the United Nations General Assembly Resolution 3314 of 1974. Although it proclaimed the old Wilsonian view that no aggression was justified, it also allowed colonialism and racism as grounds for war. Thus, in the Third World much effort is expended to legitimize such actions as just wars. Ideological justification has thereby been intensified. "We are back to the position that it is legitimate for states to resort to war as in instrument of policy, if that policy is just. We should have an interesting time in the years that lie ahead, formulating a global consensus on the meaning of justice."




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## Walzer & Just War

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Hedley Bull

"Recapturing the Just War for Political Theory."  
(Review Article) *World Politics* 31(July 1979):588-599.

**T**he pervasive distrust of absolute values and the concomitant rise of "power politics" as a school of political philosophy have diverted attention from just war theory. The few serious explorations of the doctrine in our era have been written mainly by Catholic theologians, who retain a more traditional attitude toward ethical values.

In his widely praised book, *Just and Unjust Wars*, Michael Walzer seems untroubled by the lack of secure philosophical foundations for modern views on the ethics of war. He confidently argues that the moral dimension is never absent from the decisions that lead to war as well as from the actions of those engaged in combat. In dealing with *just in bello*, for example, Walzer presents a very sympathetic view of the "war convention," a set of rules which apply both to just and unjust participants in a military conflict. The central intent of the convention con-

cerns the protection of the rights of non-combatants. While soldiers are always subject to attack (unless wounded or captured), noncombatants are not to be attacked at any time.

Since, in the twentieth century, whole populations have been mobilized for war, this protective principle would seem to have become null and void. Walzer seeks to save it by reformulating the doctrine of the "double effect." According to this teaching, an act of war which causes injury to civilian bystanders is justified if the effect is not directly intended. By the same token, injury may *not* be done to civilians in order to spare the lives of combatants. In fact, "if saving civilian lives means risking soldiers' lives, the risk must be accepted." Double effect also bars such techniques as sieges, guerilla and counter-guerilla warfare, and terrorism, because they expressly disavow any effort at protecting innocent bystanders.

In Walzer's view, only when collective survival is at stake may political leaders consider the violation of basic human rights. They are not, however, free of guilt when they do so. Walzer upholds the rationale of the Nuremberg trials that statesmen and military leaders may be tried and condemned for crimes committed in the name of a warring nation.

While Prof. Bull finds much to praise in Walzer's approach, he feels nonetheless that Walzer errs by failing to discuss the ethical foundations of his position and by rushing immediately into the realm of practical morality. Walzer's views seem subjective and vulnerable to attacks against which he provides no defense. For example, pacifists would deny that there is

a legitimate distinction between a just and an unjust war. His "exceptions" to the war convention in order to avoid universal cataclysm or the extinction of a collectivity do not take into account the objections of those who uphold the absolute moral imperatives. Furthermore, Walzer's distinction between "practical" and "theoretical" morality ignores the basic unity of the two realms. In fact, it is at the level of foundations that the most important disagreements about the everyday morality of war be resolved or at least clarified.

Prof. Bull contends that Walzer has regrettably provided us only with his unfounded opinions about just and unjust wars.

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## Wartime Propaganda Tactics

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**Michael Stenton**

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"British Propaganda and Raison d'Etat, 1935-40."  
*European Studies Review* 10(January 1980):47-74.

**I**n the years before the Second World War, British officials realized that the nation would require a coordinated "information" or propaganda policy to promote its views during a period of increasing international tension. The groping, tentative measures taken by the Chamberlain government to establish such a policy resulted from the fact that England was a country whose traditions opposed the very notion of official propaganda.

The English government's general inexperience in the field of information resulted in five years during which even the aims of propaganda were a matter of debate. Was government information to strike a high tone of rationality and elite idealism or appeal to the visceral hatreds and stereotyped thinking of the lower classes? Should the government concentrate its information efforts on the home population or on the populations of Britain's potential enemies: Italy and Germany? Who should control the official

campaign: a Ministry of Information? the Foreign Office? the military services? Fleet Street? The period described witnessed every possible combination of these alternatives, resulting in a vacillating and often contradictory approach to the problem.

The process of deciding upon a definitive policy gave rise to furious struggles for power and prestige among politicians, civil servants, and competing government ministries (i.e. Chamberlain vs. Churchill, Reith vs. Vansittart, the military services vs. the newly established Ministry of Information, etc.). Particular attention is focused on the information fiascos arising out of Germany's invasion of Norway in April, 1940. Among a long line of errors, news of the British recapture of Bergen and Trondhjem was issued even before attacks had been launched against the Germans. Statements of English determination to remain in the yet unoccupied parts of Norway preceded a complete evac-

uation of British forces from the country. Official rumors of massive counterattacks against the Nazis never came to fruition.

The Norwegian crisis thus brought disgrace to both official government information and to the leadership of Prime Minister Neville Chamberlain. Summing up the attitude of the British public, a high-level propagandist declared: "People came not to believe in anything."

Chamberlain's dilettantism and plain incompetence in the areas of information and rearmament opened the way for Win-

ston Churchill's ultimate rise to the premiership. Skillfully manipulating the hunger for credibility, success, and "strength" in the face of the German threat, Churchill managed to present himself as the only securely warlike candidate for the office of Prime Minister. The failure of the early British propaganda effort thus helped to effect a decisive change of leadership, bringing to the fore the man who would guide England through the uncertainties of the war years.

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## Iran, Oil, and the Cold War

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Stephen L. McFarland

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"A Peripheral View of the Origins of the Cold War: The Crises in Iran, 1941-47." *Diplomatic History* 4(Fall 1980):333-351.

**T**he American-Russian confrontation in Iran at the close of World War II has been regarded as one of the early clashes in what became known as the Cold War. It did not occur in a historical vacuum, however, and the actions of the Iranians themselves were a factor.

Early in the war the Iranian leadership saw the United States as a possible buffer against the British and the Russians, both of which had posed the greatest threats to Iranian sovereignty. The Iranian rulers sought American intervention, asking them to take over the operation of the main railway, and later (often with considerable exaggeration) informed the United States of every Soviet action in the area.

Internal politics in Iran pitted the Shah and the army against the police and a Parliament made up of a hodgepodge of at least eight factions of left to right persuasions. The Shah proved most adept at utilizing the old strategy of *movanzansh* (equilibrium), playing one side against the other. He secured American support for the army and also other advice and help.

By the end of the War, however, this strategy began to backfire, for all three—Great Britain, Russia and the United States—asked for various oil concessions.

When Iran refused, it was Russia which reacted most firmly and thus insured that the United States would back the Iranians.

Americans often found it difficult to gain information about Russian actions in northern Iran. What was obtained has usually been filtered and distorted to suit the purposes of the Iranians. The Soviet-American confrontation intensified in 1945-46 as separatist forces pressed for autonomy in the face of repression by the Iranian government, whereupon the Russians began to support the insurgents. The Iranians continued to feed the Americans exaggerated reports of large Russian troop movements.

In his struggle with Parliament led by Prime Minister Ahmad Qavam, the American support of the Shah's army was critical. Qavam also opposed the Russians, but he was increasingly seen by American leaders as less anticommunist than the Shah.

When the Russian oil concession was cancelled in 1947, it is interesting that the Soviet analysis of what had occurred did not so much criticize the United States for promoting a policy of confrontation, but recognized the Iranian initiative as an aspect of internal power politics.



# The State and Oil Policy

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"A Statist Interpretation of American Oil Policy toward the Middle East." *Political Science Quarterly* 94(Spring 1979):77-96.

**F**our episodes in American Oil policy toward the Middle East are examined to illustrate "how a state-centric or statist model can be used to analyze problems associated with foreign economic policy in which concentrated benefits are enjoyed by specific groups and costs are diffused throughout the rest of society." Treating the state as an independent actor is judged a more accurate analytical approach than either instrumental Marxist or liberal interest group approaches.

The aims of some American policymakers and the oil industry in the Middle East were in conflict as World War II drew to a close. Harold Ickes was the most radical advocate of plans to involve the government in a future oil concession to insure supplies. This approach was opposed by domestic interests in the oil countries and political conservatives in Congress. The fragmentation of the American political system made it impossible for the central policy makers to pursue their view, but members of the government had advocated policies contrary to ideas of private property, policies hardly compatible with Marxist views of the State as the instrument of the capitalist.

By the 1950s policymakers were concerned to preserve conservative noncommunist regimes in the oil producing areas. It was agreed that higher payments for oil should be made to Saudi Arabia. Since the oil companies naturally opposed such measures, an agreement was worked out giving the oil companies a favorable tax treatment to compensate for these payments, and the American taxpayer thus absorbed the added costs.

A third example concerns the Iranians in the early 1950s. Concerned with the radical Massodegh government, the U.S. government pushed reluctant major oil



companies into the oil consortium, at the cost of downgrading the antitrust suits then pending.

The final example cited involves the oil crisis of the 1970s. It was the oil companies who wanted early on to take a hard line against the oil price increase introduced first by Libya's Qadhafi and later by others such as the Shah of Iran. But government policymakers undercut this approach and accepted the Shah's demands as a part of larger geopolitical considerations.

These cases tend to substantiate the interpretation which sees the state as an independent actor in international discussions.

# San Francisco & the Military Complex

**Roger W. Lotchin**

University of North Carolina (Chapel Hill)

"The City and the Sword: San Francisco and the Rise of the Metropolitan-Military Complex, 1919-1941." *Journal of American History* 65(March 1979):996-1020.

Since the Farewell Address of Dwight D. Eisenhower, Americans have been conscious of a powerful coalition of business, government and the military, ominously called the "military-industrial complex." Analyses of this complex have generally focused on national policy and ignored its urban dimension. They have also concentrated on the period since 1940, emphasizing World War II and Cold War anti-communism as causes. A few historians have noted the formation of a national and metropolitan military-civilian coalition as early as World War I. One of the major centers of its activity was the West Coast, where cities competed fiercely for the favor of the military, particularly of the Navy. Prof. Lotchin demonstrates the reality of the urban-military complex between the world wars, concentrating his attention on its operations in one great urban center, San Francisco.

The Civil, Spanish-American, and First World Wars had already endowed San Francisco with impressive military assets, and city leaders were quick to recognize how military spending stimulated the city's growth. By 1920, however, San Francisco entered upon a critical period of its development. That year's census revealed the loss of the city's West Coast pre-eminence to Los Angeles. Through the thinly disguised rhetoric of "national defense," San Francisco sought to make use of the military to accelerate its faltering pace of development.

Coincidentally, for much of the period, the Navy found itself in a similarly embarrassing position. The Naval Limitation Treaty froze its strength, while government neglect and hostile public opinion kept it below treaty tonnage. This mutual dilemma of relative decline created ideal conditions for enhancing the Bay Area's military end, particularly, maritime development.

At a purely public relations level, civilian San Francisco wooed the military and Washington through a series of civic campaigns and military carnivals. By an overwhelming margin, San Franciscans approved a \$4 million bond issue for a war memorial to honor the ideals of the services. Army Day, Defense Week, Navy Day, receptions for the fleet, Armistice Day, and especially Harbor Day became occasions for extravagant demonstrations of the city's support of the military presence in its midst. The Navy responded to this display by fleet open houses, lavish shipboard receptions, marine sham battles, in addition to the launching of the cruiser *San Francisco* in 1933.

In the military development of the Bay Area, economic rather than strategic considerations took precedence. At both the local and national levels, political leaders looked upon military development primarily as a means of allocating resources and stimulating employment. The Navy itself seemed more preoccupied with the brute expansion of its equipment and personnel than with its efficient deployment. It swamped available facilities with equipment and men. That justified more ample shore facilities which, in turn, required still larger expenditures.

Samuel P. Huntington has argued that, during the interwar period the military services were hampered by a resurgence of "business pacifism." Prof. Lotchin's description of San Francisco's experience justifies the exact reverse of this conclusion. Bay area political and commercial interests provided broad, consistent, though little-noticed support for rearmament as well as valuable public relations for the services. At the same time, the general entanglement of "city and sword" encouraged the unprecedented entrance of the officer corps into the rough-and-tumble of local politics.

# Protectionist Assaults on Developing Countries

G.K. Helleiner  
University of Toronto

"The New Industrial Protectionism and the Developing Countries." *Atlantic Papers* 39(1980:7-28.

The economic problems plaguing industrialized nations during the past decade have revived protectionist policies in international trade. Protectionism has both bolstered the positions of industrial powers under the guise of seeking a more "orderly" economic environment and hurt underdeveloped economies (where alternate employment possibilities are more limited). Prof. Helleiner offers a detailed assessment of the present and future effects of trade barriers on embryonic economies.

The chief sectors in which protectionism thrives are the labor intensive branches of manufacturing in which underdeveloped countries possess a clear advantage. Since traditional primary product exports are quite susceptible to the uncertainties of weather and the business cycle, it is especially galling to developing countries that new man-made uncertainties will further hamper their expansion into the less vulnerable areas of processing and manufacturing.

The present tariff structures of industrialized countries originated in the five GATT tariff bargaining rounds held between 1947 and the early 1960s. Breaking with a tradition of product-centered reciprocity, the Kennedy Round of the 1960s implemented (with some notable exceptions) an across-the-board tariff-cutting formula. Nevertheless, contradicting the spirit of the GATT agreements, industrialized countries have substantially maintained the old pattern of effective discrimination against weaker trading partners by multiplying exceptions to non-tariff barriers (NTBs); this gravely threatens developing countries and free trade.

Even while hampering economic development in poorer nations, the new protectionism so favors the larger international trading companies and transnational corporations that 46% of U.S. imports and exports are "intrafirm." Highly diverse and skilled in information collect-

ing and management of legal and institutional procedures, transnationals are resourceful in the face of bewildering regulations. In contrast, independent exporters in third-world countries, highly specialized and bereft of information, have proven themselves particularly ill-suited to current protectionist developments.

Given this transnational advantage, trade barriers now being erected will divert investments from fledgling third-world industries to those areas dominated by the huge corporations. The costs imposed by these distortions in developing countries will likely (in the short-to-medium run) hinder their ability to repay commercial and official debts.

What then are the possible remedies to the current situation? Prof. Helleiner calls for intergovernmental "management" of world trade, which would replace current *ad hoc* measures with firm, consistent rules. "The politics as well as the economics of . . . trade policy," Helleiner concludes, ". . . must be better understood—and influenced—if any progress on this front is to be achieved."



## Government Military Behavior

William R. Thompson, Robert D. Duval, and  
Ahmed Dia

Florida State University, State Courts Administrator's Office,  
Florida Supreme Court

"Wars, Alliances, and Military Expenditures: Two  
Pendulum Hypotheses." *Journal of Conflict Resolution*: 23(December 1979):629-654.

Social science abounds in explanations of why wars begin. The number of these theories is matched only by the variety of variables they emphasize: alliance structures, polarity patterns, aberrant personalities, atavistic instincts, technological change, even Freud's death-seeking impulses. Even when we are in a position to test some of the ideas found in "war etiology" literature, the empirical results often reveal weak and ambiguous relationships.

A case in point is Alcock's (1972) dynamic two-phase theory of war and his assertion that the theory accounts for the timing of 38 of 39 international wars and 75% of the war variance during the 1946-1971 period. The authors of this article test two fundamental hypotheses of the Alcock theory, using an expanded data base comprising the 1900-1965 war and alliance record of the great powers. This strategy, they assume, provides a better foundation for evaluating the predictive and explanatory capacities of Alcock's theses.

Alcock's two central hypotheses are the following: First of all, wars tend to break out, he asserts, in periods when armament is increasing, though at a steadily *decreasing* rate. At this point, the "military mind" decides that war is expedient because: (a) the state is as strong as it will be for several years and (b) a war might arrest the downward swing in military spending. Secondly, Alcock claims that in periods of *escalating* military spending, leaders will tend to form alliances with compatible allies in order to increase their power still further. At the outset of their analysis, the authors question Alcock's use of the term of "war" to describe the 39 events occurring between 1946 and 1971. The Cuban Missile Crisis and the incidents in Goa, Quemoy-Matsu, and Czechoslovakia could hardly be termed wars in any conventional sense. Nonetheless, they all in-

involved some international use of force. As such, they may be considered pertinent to Alcock's assumption that the military would seek to prevent a downward swing in expenditures.

Correlating spending rates of the great powers with their involvement in international conflicts or alliances, the authors detected no systematic support for either hypothesis. Focus on international uses of force yielded only three cases (Japan, the Soviet Union, and the United States) which confirmed the predicted relationship with declining military spending. Yet none of the three equations was statistically significant or capable of accounting for much more than 5% of the estimated variance.

Test data likewise failed to establish a significant correlation between increasing spending rates and alliance formation among the great powers. In fact, the most prevalent coefficient pattern turned out to be the exact reverse of the hypothesis, i.e. decreased spending correlated with increased formation of alliances.

The authors conclude that Alcock's theory does not represent an advancement of our ability to predict or explain the military behavior of great powers.



# IV

## Political Economy and Theory

The following summaries on political economy raise issues of near-equal importance to human welfare as those raised in the previous section on "War and the State." In fact, as Richard Wagner's article implies, the economic crises we experience are usually connected with the inflationary pressures of war and government deficit spending to finance wars. Other pressing issues of economic theory and analysis are surveyed to shed light on current issues of economic methodology and policy.

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### *Three Kinds of "Capitalism"*

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**Fernand Braudel**

"Will Capitalism Survive?" *The Wilson Quarterly*  
4(Spring 1980):108–116.

**T**hough challenged by crises, modern western "capitalism" is not a "sick man" about to expire. We need, however, to carefully distinguish various meanings of "capitalism."

Capitalism is not a newcomer. We may debate its origins and biography, but its essential spirit—going back to the dawn of history—is its creative entrepreneurship, the ability to discover profitable possibilities in changing conditions. The secret behind capitalism's vitality is the freedom to choose and to be open to adaptive change.

Capitalism is not simply an "economic system" but is immeshed in its total soci-

ety, interacting with government and culture. "State and capital—or at least that of the massive firms, the big companies, and the monopolies—make good bedfellows . . ." Corporate state capitalism "lives shamelessly off the subsidies of the state."

The longevity of capitalism earns its tradition's stamp of approval, despite its inequalities and privileges. Rival systems, such as socialist economies, have failed to do the job better: removing economic hierarchies, socialism has not created a society of equality, liberty, or abundance. It is difficult to see how any

anticapitalist revolution could preserve what needs to be preserved in capitalism: rights, "a truly free market," and a sense of fraternity.

In socio-political terms and in terms of economic management we can discern three markedly distinct kinds of "capitalism." In common usage "capitalism" refers to corporate state capitalism, large monopoly businesses, in working alliances with the state. A second distinct level, under monopoly capitalism, is the "market economy," small or medium-sized business which avoids state subsidies and thrives on competition and innovation. A third, or

basement, tier (amounting to 30–40% of activity in industrial economies) is the "underground economy." Outside the legal market and the control of the state, this underground economy consists of "evasion, smuggling, barter for goods and services, moonlighting 'off the books,' and above all work performed at home." All three levels of "capitalism" interact. The top tier of corporate state capitalism needs the smaller, more competitive units of the real "market economy" to survive. During severe economic crises the market economy provides a "safety net" and innovation for monopoly capitalism.

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## Adam Smith: Economic Utilitarian

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**T.D. Campbell and I.S. Ross**

University of Glasgow and University of British Columbia

"The Utilitarianism of Adam Smith's Policy Advice."

*Journal of the History of Ideas* 42(January-March 1981):73–92.

Was Adam Smith (1723–1790) a utilitarian? In his practical attitudes, his major writings, and his policy recommendations, Smith must be viewed as "a practising and contemplative utilitarian." Although he avoided discussing possible conflicts between justice and utility in justifying and applying trade restraints, it was the criterion of utility (the greatest happiness of the greatest number) that preoccupied him. General utility rather than justice or rights was decisive in his taxing and anti-smuggling actions as a Commissioner of Customs and in his advice to the British government on such topics as the American war for Independence.

Smith may be regarded as a rule-utilitarian by his recourse to the criterion of utility in his evaluations of social, political, or economic systems. When Smith refers to justice, he insists on the utility of justice. Smith's "whole approach to social philosophy is summed up in the thesis that practices whose origins and

supports lie in unreflective human sentiments, molded and harmonized by the socializing effects of life in a community, are admirable well adapted to the divinely planned end of human welfare." Unintended utilitarian consequences flowed from nonutilitarian motivations.

To determine whether Smith's moral criterion was in fact utilitarian, the authors study events from Smith's biography that involve Smith's making value judgments on key moral and political issues. They conclude that Smith's policy advice was utilitarian from considering Smith's evaluations and advice on the following topics: the Union of 1707 of Scotland and England, the secession of the American colonies from Britain, the monopolistic tendencies in trade and in some professions, and, finally, Smith's attitude toward smuggling.

It was on utilitarian grounds of the long-range benefits to both countries rather than on the grounds of Scottish rights that Smith approved of the forcible

incorporation and union of Scotland and England in 1707.

On the issue of American secession from Britain, Smith gave consistently utilitarian advice in his correspondence, in the *Wealth of Nations* (1776), and in his famous 1778 memorandum. His gloomy view of British military intervention was not so much that it was unjust to America but, that it was badly mismanaged and likely to fail. In February 1778, Smith wrote a memorandum to Lord North's government on the American question. In discussing four possible options to resolve the conflict, Smith never raises the question of rights or justice in the rebellion but does emphasize utilitarian considerations. In his *Wealth of Nations* the crux of Smith's argument over retaining or giving up the American colonies is that monopoly control of retaining the colonies benefits only the merchants rather than general utility.

Likewise Smith's defense of economic liberalism was utilitarian and not in favor

of liberty for its own sake. He admitted restrictions of economic liberty for legitimate purposes of government or for the national interest.

In 1778, Smith, the apostle of free trade, accepted the lucrative post of Commissioner of Customs. As a customs officer he was zealous in administering the laws against smuggling. Smith's inconsistency in accepting the post that violated economic freedom is mitigated by the fact that he was never a total advocate of *laissez faire* which he considered a utopian dream. He supported trade barriers which could raise revenues for government and so opposed smuggling for utilitarian reasons. When he discovered that he owned items prohibited by the custom laws, he burnt them to set a utilitarian example or respect for law. In effect he balanced two utilitarian considerations: the economic consequences of customs law and "the serious long term disutility of lack of respect for the law itself."

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## Roepke: *Laissez faire and Social Order*

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James P. O'Leary

Catholic University of America

"Wilhelm Roepke and the Problems of Contemporary International Political Economy." *World Affairs* 14(Spring 1979):307-312.

Since the end of World War II, we have seen a flood of proposals for avoiding another depression. Postwar federalists, functionalists, "neo-functionalists," and other theorists of integration and interdependence have propounded views concerning the most feasible paths to world order.

Recent critics have pointed out the deficiencies of these schools of thought. Their utilitarian tendencies, mechanistic dynamics, naive optimism, and idealistic predelictions have been exposed in numerous studies—some produced by disillusioned exponents of the former optimism. Stressing the consumerist "need-gratification" of atomistic individuals,

much early postwar thought predicted the rise of more rational forms of political organization in the wake of the nation-state's inability to solve urgent economic problems, problems which had already led to chaotic depression and world war.

Diametrically opposed contemporary trends have revived the term "international political economy." The phrase emphasizes the importance of the *political* framework of trading relationships in a more harmonious world order. Wilhelm Roepke has made a key contribution to the effort to rediscover the extra-economic bases of international and national order. He has sought to defend *laissez-faire* liberal ideals, but, in so doing, he has empha-

sized the holistic, social factors without which, he claims, the market economy could not survive.

Laissez-faire capitalism, Roepke writes, "implies the existence of a society in which certain fundamentals are respected and color the whole network of social relationships: Individual effort and responsibility, absolute norms and values, independence based on ownership, prudence and daring, responsibility for planning one's own life, proper coherence with the community, family feeling, a sense of tradition and the succession of generations combined with an open-minded view of the present and future . . . ."

Roepke thus rejects a "social rationalism" which views the market economy as a mechanical technique of an invisible hand, transferable into any spiritual or social setting. It might in fact work harm in an unsuitable context. "Individuals who

compete on the market and there pursue their own advantage stand all the more in need of the social and moral bonds of community without which competition degenerates most grievously."

With his holistic conceptions of political order and social adhesion, Roepke's thought along with that of other conservative thinkers offers a potentially rich source of speculation on the processes of global integration. Besides many standard classics (Polanyi, Pirenne, Rostovtzeff, Roepke), Prof. O'Leary cites a growing literature (Gilpin, Tucker, Keohane and Nye, Calleo, Kindleberger) that discusses whether a truly liberal and harmonious world economy is attainable. Nevertheless, Wilhelm Roepke most clearly articulates the paradoxical tenet that a basically free world economy requires a prior framework of agreed and enforceable codes.

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## Government-Induced Boom & Bust

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**Richard E. Wagner**

Auburn University

"Boom and Bust: The Political Economy of Economic Disorder." *The Journal of Libertarian Studies*, Vol. 4, No. 1 (Winter 1980):1-37.

**K**eynesian economics maintains that governmental macro-economic management is required for prosperity. It assumes that unemployment in market economies is due to insufficient levels of total spending and that appropriate public policies can and will both eliminate the unemployment, and promote economic stability. Both of these assumptions obscure the actual relations between economic conditions and government policy.

Using a holistic approach to focus either on unemployment or price levels in the aggregate obscures the actual sources of prosperity and depression. In addition, the belief that public policy can and will work to promote stability ignores political realities. Politicians, desiring to stay in office, see government expenditure pro-

grams as ways of securing votes and they tend to promote programs financed by borrowing rather than taxation. Consequently, an incumbent government will attempt to use deficit finance to serve its political purposes.

If government borrows from private citizens to finance expenditures in excess of revenues it may raise market rates of interest and "crowd-out" borrowing for private investment purposes. This foments political opposition. It becomes possible to avoid this consequence through creating new money in the amount that government wishes to borrow. This is possible since government has effectively nationalized money and credit. Debt instruments are issued by the Treasury and monetized by the Federal Reserve. It then



becomes possible for politicians "... to buy the support of a favored clientele, who benefit from the money expansion, without having to impose vote-losing taxes in the process stat or crowd-out private investment."

Deficit-financed expenditure programs favored by politicians are intentionally discriminatory since they attempt to alter the distribution of incomes by changing the structure of relative market prices. The same is also true of tax reduction and money expansion programs. In addition, the actual results of such programs can only be understood by focussing on the changes in income distribution and in the structure of relative prices brought about by such political action.

In spending newly created fiat money, a politically favored group obtains control over resources, while at the same time altering the structure of relative prices. As the new money is diffused throughout the economy in additional transactions, one by-product is a rise in the absolute price level—which effectively reduces the control of resources by those more distant in the chain of transactions from the favored group. More importantly, the change in the structure of relative prices becomes a source of economic disorder.

Additional government-caused distortions insue. Deficit spending financed by monetizing treasury debt allows the amount of public and private borrowing to exceed the amount of private saving. The market interest rate is thus pushed below the rate of interest that would ordinarily clear financial markets—the "natural" interest rate. This artificially cheapens private real investment and encourages the expansion of more time- or capital-intensive production processes. Capital goods industries expand at the expense of consumer goods industries.

"With the production of consumer goods decreasing relative to that of producer goods, in conjunction with no greater desire of consumers to save, prices of consumer goods will start to rise in response to shortages of these goods. A self-reversal will set in motion: the capital goods boom will turn into a capital goods bust. The process of expansion that is set in motion



by the money creation will reverse itself automatically, unless the inflation accelerates. Without this acceleration of inflation, much of this increased investment will turn out to be unprofitable. As these investments are scrapped or put to different uses, economic contraction will result. Excess capacity will arise as capital becomes unemployed. But labor will become unemployed as well. Both types of unemployment result from the previous inflation."

Inflation and unemployment are thus directly related to a sequence of cause and effect, and "stagflation" is a direct consequence of government political activities. The cure is an end to the government policies that created the inflation. An inevitable result will be a recession until the economy's structure of production accurately reflects the underlying real data of wants, resources, and knowledge. Recession is an inherent part of the recovery process from politically induced economic instability.

The state monopoly over money is not intended to contribute to economic instability, rather the contrary. Nevertheless, the pursuit of political gain in a setting including that monopoly has that result. "By taking a variety of steps to remove money from the category of a nationalized industry, the ability of the ordinary vicissitudes of politics to promote economic disorder would be lessened."

# Austrian vs. Neoclassical Methodology

**Richard B. McKenzie**

Clemson University

"The Neoclassicalists vs. the Austrians: A Partial Reconciliation of Competing Worldviews." *Southern Economic Journal* (Summer 1980):1-12.



**A**lthough the economists of the neoclassical-Chicago and the Austrian schools share a commitment to market economics and individual freedom, they differ on a number of theoretical issues. The Austrians, such as Nobel laureate Friedrich Hayek, believe that the neoclassicalists have ignored Austrian policy and methodological insights that would have prevented the current inflationary crisis that savages western economies. To advance this debate, Prof. McKenzie explores the representative positions of the two schools, pinpoints the major issues of controversy, and offers some ways to reconcile

their differences. His analysis concentrates on these theoretical issues separating the two schools: (1) the nature of economics as a discipline, (2) the predictability of human action, and (3) the nature and purpose of theory.

In regard to the nature of economics as a discipline, neoclassical economists endorse "Robbinsian" maximizing behavior which presupposes an objective external world existing independently of the subjective values of maximizing individuals. They see the task of economics as the study of how the individual pursues his subjectively determined interests by objective, external, scarce means. Neoclassicalists believe they can objectively measure, predict, and empirically test the behavior of economic man maximizing the use of given scarce means to reach ends. Whereas neoclassicalists downplay the subjective and nonmeasureable, the Austrians place in the center of their theory the subjective, nonmeasureable, and nonpredictable evaluations of individual actors. Smith and Jones may consume apples but they are not the "same" objective goods in each's evaluator's eye. For Austrians it is impossible to measure a country's capital stock since human actor's evaluations possess no constants that remain fixed over time. Austrian economics limits itself to "praxeology," or the logic of choice in human purposive action. This subjectivist or individualist emphasis leads Austrians to seek a free social framework (e.g. Hayek's "Constitution of Liberty") permitting individuals to solve their *own* problems. Neoclassicalists, on the other hand, are pragmatists and seek to deal with maximizing problems within a given social structure.

It follows that Austrians reject the neoclassicalists' central conviction that human behavior is predictable. Neoclassical economists test their hypotheses by the empirical accuracy of predictions. Accordingly, for neoclassicalists, what government (as opposed to the market) should do is an open question to be solved by an empirical cost-benefit analysis. By contrast, Austrians reject quantifiable empirical tests and predictability because, as noted, they see no constants to measure in the subjective evaluations of individual actors. Since individuals learn, change their values, and develop a complex "spontaneous order" past regularities of human action cannot be the same in the future.

What are the two schools' respective

positions on the nature and purpose of theory? As pragmatists, neoclassicalists are not interested in the correspondence of theory to reality. They consider theory as a convenient mental fiction or "tool" to make accurate predictions that can be tested on future behavior.

Austrians, by contrast, use theory not so much to tell what will happen as to explain the *process* by which human action occurs. Austrian theory aims not at prediction but at real "explanation" that makes sense of the world. Austrians limit their patterns to general "patterns of outcome." Methodologically, Austrians believe that social sciences of human action deal with phenomena so complex that they cannot be observed in their entirety even if they could be measured.



## Professor Friedman's Instrumentalism

**Bruce J. Caldwell**

University of North Carolina at Greensboro

"A Critique of Friedman's Instrumentalism." *South-  
ern Economic Journal* 47(October 1980):366-374.

**L**awrence Boland has recently identified Milton Friedman's "positive economics" methodology as a variant of instrumentalism and has asserted that instrumentalism has never been either criticized or refuted. Prof. Boland implies a vindication of Friedman's position.

Prof. Friedman was actually unaware that his position was instrumentalist but accepts Boland's characterization. Unfortunately, Boland's characterization of instrumentalism is incomplete—isolating only the *methodological* implications while ignoring the *ontological* questions. Thus, Friedman should actually be viewed as a "methodological instrumentalist." The core of Friedman's methodological instrumentalism are the beliefs that: (1) the goal of science is to discover hypotheses

that predict well, and (2) the "realism" of assumptions does not matter.

In contrast to Boland's assertion concerning the criticism of instrumentalism, post-1940s philosophers of science unanimously reject the notion that the only goal of science is prediction; they favor the alternative claim that the goal of science is explanation. If explanation is taken as the goal of science, then methodological instrumentalism fails for it is concerned with predictive adequacy, not explanation.

"Perhaps the most damaging claim against Friedman's own particular brand of instrumentalism is not that it is incorrect, or even implausible, but that it must be viewed, in the light of the more recent work, as anachronistic."

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## Milton Friedman's Critics

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**Lawrence A. Boland**

Simon Fraser University

"A Critique of Friedman's Critics." *Journal of  
Economic Literature* 17(June 1979):503-522.

**M**ilton Friedman's essay, "Methodology of Positive Economics" (1953), enjoys authoritative status among textbook writers; however, virtually all journal articles written about this methodological essay have been highly critical. Why, Prof. Boland asks, do honest textbook writers ignore the critics? He argues that the reason for this paradox is quite clear. Every critic of Friedman's essay has been wrong. They have not recognized that his methodological position is both logically sound and unambiguously based on a coherent philosophy of science, namely instrumentalism.

Boland reviews the underlying logical principles of Friedman's methodology:

*modus ponens* vs. *modus tollens*, notions of necessity and sufficiency, conjunctive and disjunctive arguments. He emphasizes that logic itself provides little help in determining the truth of assumptions or conclusions. Logic can only 'pass along' known truths. This limitation of traditional logic leads to a discussion of the so-called *problem of induction*. Unfortunately, no logician has ever solved this problem of how one argues from the truth of particulars to general truths.

Instrumentalists such as Friedman concern themselves only with the usefulness of conclusions drawn from assumptions or general theories. They may allow that theories or assumptions *can* be true, but

they argue that truth or falsity does not matter in so far as the *utility* of the conclusions is concerned.

As a result, Friedman rejects the "testing" of hypotheses in the sense of verification of the truth of propositions. For him successful testing is merely *confirmation* that assumptions have yielded conclusions allowing accurate prediction of future events. Thus, Friedman's view assumes an "as if" theory of explanation. Even false assumptions may be treated as if they were true, as long as observed phenomena follow from them.

Prof. Boland finally analyzes the objections to Friedman's essay raised by prominent economists (Koopmans, Rotwein, Bear, Orr, Melitz, De Alessi, and Samuelson). Their critiques, he judges, uniformly arise from misunderstanding Friedman's instrumentalist methodology. Friedman himself is partly to blame for this confusion by seeming to be concerned with the verifiability or refutability of true scientific theories. What Friedman actually presents is an alternative to that kind of methodological discussion. Unfortunately, most critics miss this point.

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## Entrepreneurship and Justice

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Israel M. Kirzner  
New York University

"Entrepreneurship, Entitlement, and Economic Justice." In *Perception, Opportunity, and Profit* (Chicago: University of Chicago Press, 1979):200-229.

Professor Kirzner seeks to supplement or reformulate Nozick's Entitlement theory of justice and argues that Nozick does not solve all the questions concerning the justice of market processes. He suggests that his version of the "finders-keepers" ethic answers these questions and, moreover, accords with the moral intuition of defenders of the market.

Kirzner reminds us that Nozick's defense of market entitlements is predicated on justice both in acquisition and in transfer. Though he points out that Nozick never specifies the details of justice in transfer, Kirzner suggests that justice results if and only if transactions are *voluntary*. The voluntariness of market transactions is viewed as sufficient to prove their justice only if "serious" error is not an essential part of the transaction. Fraud is theft and hence excluded by definition from the class of voluntary market transactions. Kirzner wishes to highlight, however, another type of error, one endemic to market transactions and one which render them unjust.

Building on his theory of entrepreneurship, Kirzner notes that markets are al-

ways in disequilibrium and thus always offer profit opportunities. Entrepreneurial profit-seeking is the driving force of the market process and this competitive process of profit-seeking would seem to depend on error or a kind of deception. Entrepreneurs buy low from sellers who would not sell if they knew that they could sell at a higher price; in turn, entrepreneurs sell to buyers who would not buy if they knew that they could buy at a lower price. Entrepreneurial activity thus depends on ignorance and error on the part of sellers and buyers. Entrepreneurs trade on this ignorance.

Kirzner notes the relation of this critique of entrepreneurs to the doctrine of the just price. He also observes that modern scholars recognize that the Scholastics concluded that whatever the market price settles at is the just price. Nonetheless he is concerned that modern critics might develop a new critique along the lines that he suggests; he is further convinced that Nozick's theory offers no answer to such a critique.

Kirzner's solution is as follows. A hitherto unknown use for a good in effect

does not exist as far as market participants are concerned. Entrepreneurs who discover these uses are *creating* value. He argues that creators of value are entitled to receive that value. This defense rests crucially on the assumption that all others are free to seek profits (i.e., hitherto unknown uses for resources) and thus equally free to create appropriate value.

It is not entirely clear that the relationship of Kirzner's theory is to Nozick's. Kirzner accepts that already known resources can be acquired justly from nature only along the lines suggested by Nozick.

He even describes Nozick's theory as "a crucial framework" for his own. To the extent that Kirzner's theory differs from Nozick's, questions arise. For one, subjectivist economics concludes that value is created by the evaluating agent, i.e., the *consumer*. It is not clear in what sense the entrepreneur can be said to have created value. Heretofore, Kirzner has only credited the entrepreneur with *discovery* of unnoticed opportunities. If discovery equals creation, then the consumer's importance in subjectivist economics is vastly diminished.

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## Externalities & Government Intervention

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Carl J. Dahlman

University of Wisconsin

"The Problem of Externality." *The Journal of Law and Economics* 23(April 1979):141-162.

The concept of an "externality" has gained increased prominence as modern technology produces an ever-lengthening catalog of unwanted side effects. Dahlman's essay deals with the theoretical analysis of the sources and remedies for externalities. When an externality is present, there are interactions among individuals that ought to be taken into account, but are not. Since it is believed that market forces cannot cope with these interactions, it is supposed that such situations justify government intervention. Dahlman critically examines the underpinnings for the standard analyses of externalities and questions this justification for government action.

Externalities exist because it is too costly for interacting parties to transact on the market. Benefits cannot be fully captured in the market place nor harm fully compensated. Dahlman patiently leads the reader through a typology of transactions costs. He concludes that all transactions costs ultimately are costs due to

incomplete information. Those who assert that markets fail to take account of externalities are implicitly asserting that they know better than markets what to do. They are postulating rather than proving that a "better way" of organizing economic activities exists. Although government is typically alleged to be that better way, this conviction is not a scientific conclusion but a normative judgment.

Standard general equilibrium theory cannot demonstrate that externalities, which should be eliminated, in fact exist. Standard economic analysis can only show that people do the best that they can, given their information. "Whatever is, is optimal."

Dahlman argues that Ronald Coase's alternative tradition to that of general equilibrium economics would allow possible changes in institutional arrangements that would lower transaction costs and make market transactions easier. Such changes might also involve government intervention. □

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INDEX

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## Authors

<b>Abraham, Henry J.</b> "The Status of the First Amendment's Religion Clauses: Some Reflections on Lines and Limits."	44
<b>Anderson, Alexis J.</b> "The Formative Period of First Amendment Theory, 1870–1915."	43
<b>Barber, John.</b> "The Establishment of Intellectual Orthodoxy in the U.S.S.R. 1928–1934."	61
<b>Bar-Navi, Elie.</b> "La Ligue Parisienne (1585–1594): Ancêtre des partis totalitaires modernes?"	59
<b>Bensel, Richard.</b> "Creating The Statutory State: The Implications of a Rule of Law Standard in American Politics."	47
<b>Best, Judith G.</b> "What is Law? The <i>Minos</i> Reconsidered."	40
<b>Boland, Lawrence A.</b> "A Critique of Friedman's Critics."	82
<b>Braudel, Fernand.</b> "Will Capitalism Survive?"	75
<b>Bull, Hedley.</b> "Recapturing the Just War for Political Theory."	68
<b>Caldwell, Bruce J.</b> "A Critique of Friedman's Instrumentalism."	82
<b>Campbell, T.D. &amp; Ross, I.S.</b> "Adam Smith's Utilitarian Policy Advice."	76
<b>Claude Jr., Inis L.</b> "Just Wars: Doctrines and Institutions."	67
<b>Dahlman, Carl J.</b> "The Problem of Externality."	84
<b>Douglass, Bruce.</b> "The Common Good and The Public Interest."	55
<b>Eccleshall, Robert.</b> "The Identity of English Liberalism."	54
<b>Edney, Julian J.</b> "The Commons Problem: Alternative Perspectives."	56
<b>Elliott, Emory.</b> "The Dove and Serpent: The Clergy in the American Revolution."	62
<b>Goldman, Alan.</b> "The Obligation to Obey the Law."	41
<b>Helleiner, G.K.</b> "The New Industrial Protectionism and the Developing Countries."	73
<b>Helm, Charles &amp; Morelli, Mario.</b> "Stanley Milgram and the Obedience Experiment: Authority, Legitimacy, and Human Action."	57
<b>Holton, R.J.</b> "Syndicalist Theories of the State."	58
<b>Jacobitti, Edmund E.</b> "Hegemony before Gramsci: The Case of Benedetto Croce."	65
<b>Kirzner, Israel M.</b> "Entrepreneurship, Entitlement, and Economic Justice."	83
<b>Kirzner, Israel M.</b> "General Equilibrium and Beyond: I, The 'Austrian Perspective' on the Crisis."	80
<b>Kolchin, Peter.</b> "In Defense of Servitude: American Proslavery and Russian ProSerfdom Arguments, 1760–1860."	63
<b>Krasner, Stephen D.</b> "A Statist Interpretation of American Oil Policy toward the Middle East."	71
<b>Kraynak, Robert P.</b> "John Locke: From Absolutism to Toleration."	51
<b>Lofton, John.</b> "Freedom of Expression Since World War II."	43
<b>Lotchin, Rober W.</b> "The City and the Sword: San Francisco and the Rise of the Metropolitan-Military Complex, 1919–1941."	72
<b>Luban, David.</b> "Just War and Human Rights."	66
<b>Machan, Tibor R.</b> "On Human Rights, Feudalism and Political Change."	49
<b>McFarland, Stephen L.</b> "A Peripheral View of the Origins of the Cold War: The Crises in Iran, 1941–47."	70
<b>McKenzie, Richard.</b> "The Neoclassicists vs. the Austrians: A Partial Reconciliation of Competing Worldviews."	80
<b>Miller, Eugene F.</b> "The Cognitive Basis of Hayek's Political Thought."	52

<b>O'Leary, James P.</b> "Wilhelm Roepke and the Problems of Contemporary International Political Economy."	77
<b>Pilon, Roger.</b> "On Moral and Legal Justification."	42
<b>Reichert, William O.</b> "Natural Right in the Political Philosophy of Pierre-Joseph Proudhon."	48
<b>Rizzo, Mario J.</b> "Law and Flux: The Economics of Negligence and Strict Liability in Tort."	46
<b>Robinson, R.A.H.</b> "Political Conservatism: The Spanish Case, 1875–1977."	60
<b>Rothbard, Murray N.</b> "F.A. Hayek and the Concept of Coercion."	53
<b>Schlesinger, Arthur Jr.</b> "Human Rights and the American Tradition."	50
<b>Stenton, Michael.</b> "British Propaganda and Raison d'Etat, 1935–40."	69
<b>Sullivan, John L., Piereson, James E., &amp; Marcus, George E.</b> "Political Intolerance: The Illusion of Progress."	52
<b>Thompson, William R., Duval, Robert D., &amp; Dia, Ahmed.</b> "Wars, Alliances, and Military Expenditures: Two Pendulum Hypotheses."	74
<b>Vaughn, Stephen.</b> "First Amendment Liberties and the Committee on Public Information."	45
<b>Wagner, Richard E.</b> "Boom and Bust: The Political Economy of Economic Disorder."	78

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## CUMULATIVE INDEX, VOLUME III

---

### *Anthropology*

<b>Hirshleifer, Jack.</b> "Privacy: Its Origin, Function, and Future."	3:67
--	------

### *Economics*

<b>Bauer, Peter.</b> "The Market in the Dock."	2:73
<b>Boland, Lawrence A.</b> "A Critique of Friedman's Critics."	4:82
<b>Caldwell, Bruce J.</b> "A Critique of Friedman's Instrumentalism."	4:82
<b>Dahlman, Carl J.</b> "The Problem of Externality."	4:84
<b>Eckalbar, John C.</b> "The Saint-Simonians in Industry and Economic Development."	2:72
<b>Keller, Morton.</b> "Business History and Legal History."	2:69
<b>Kirzner, Israel M.</b> "Entrepreneurship, Entitlement, and Economic Justice."	4:83
———. "General Equilibrium and Beyond: I, The 'Austrian Perspective' on the Crisis."	4:80
———. <i>Perception, Opportunity and Profit: Studies in the Theory of Entrepreneurship.</i>	2:71
<b>Kisch, Herbert.</b> "Joseph Alois Schumpeter."	2:70
<b>McKenzie, Richard.</b> "The Neoclassicists vs. the Austrians: A partial reconciliation of Worldviews."	4:80
<b>Novak, Michael.</b> "Productivity and Social Justice" in <i>Will Capitalism Survive?</i>	2:74
<b>O'Driscoll Jr., Gerald.</b> "Justice, Efficiency, and the Economic Analysis of Law: A Comment on Fried."	2:75
<b>O'Leary, James P.</b> "Wilhelm Roepke and the Problems of Contemporary International Political Economy."	4:77
<b>Tool, Marc R. and Brun, Andre.</b> Two Reviews of A. Allen Schmid's <i>Property, Power and Public Choice: An Inquiry Into Law and Economics.</i>	2:75
<b>Wagner, Richard E.</b> "Boom and Bust: The Political Economy of Economic Disorder."	4:78

### *Education*

<b>Boller Jr., Paul F.</b> "William James as an Educator: Individualism and Democracy."	2:64
<b>Boyd, William Lowe.</b> "The Political Economy of Education in Metropolitan Areas: Dilemmas of Reform and Public Choice."	2:62
<b>Denenberg, Dennis.</b> "The Missing Link: New England Influence on Early National Educational Policies."	2:66



<b>Ehman, Lee H.</b> "The American School in the Political Socialization Process."	2:60
<b>Gideonse, Hendrik D.</b> "Improving the Federal Administration of Educational Programs."	2:63
<b>Greenlee, James G. C.</b> "The ABCs of Imperial Unity."	2:61
<b>Halperin, Samuel.</b> "The Educational Arena."	2:63
<b>Levy, Daniel.</b> "Universities and Government: The Comparative Politics of Higher Education."	2:67
<b>Vandenberg, Donald.</b> "Existential and Phenomenological Influences In Educational Philosophy."	2:65

## History

<b>Andrews, Stuart.</b> "Joseph Priestley and American Independence."	1:60
<b>Barbour, Hugh.</b> "William Penn, Model of Protestant Liberalism."	1:54
<b>Bar-Navi, Elie.</b> "La Ligue Parisienne (1585-1594): Ancêtre des partis totalitaires modernes?"	4:59
<b>Ben-Zui, Abraham.</b> "The Outbreak and Termination of the Pacific War: A Juxtaposition of American Preconceptions."	2:80
<b>Blinkhorn, Martin.</b> "Spain: The Spanish Problem and the Imperial Myth."	3:87
<b>Boyle, T.</b> "The Liberal Imperialists, 1892-1906."	2:58
<b>Brauel, Fernand.</b> "Will Capitalism Survive."	4:75
<b>Bremer, Francis.</b> "In Defense of Regicide: John Cotton."	1:54
<b>Campbell, T. D. &amp; Ross, I. S.</b> "Adam Smith's Utilitarian Policy Advice."	4:76
<b>Cook, Blanche Wiesen.</b> "Women Alone Stir My Imagination: Lesbianism and the Cultural Tradition."	1:73
<b>Cooper, Jr., John Milton.</b> "World War I: European Origins and American Intervention."	3:90
<b>Cotkin, G. B.</b> "The Spencerian and Comtian Nexus in Gompers's Labor Philosophy: The Impact of Non-Marxian Evolutionary Thought."	2:52
<b>Cromwell, William C.</b> "The Marshall Non-Plan, Congress and the Soviet Union."	2:81
<b>Elliott, Emory.</b> "The Dove and Serpent: The Clergy in the American Revolution."	4:62
<b>Fletcher, Roger.</b> "A Revisionist Looks at Imperialism: Eduard Bernstein's Critique of Imperialism and <i>Kolonialpolitik</i> , 1900-14."	2:79
<b>Geerken, John H.</b> "Pocock and Machiavelli: Structuralist Explanations in History."	3:78
<b>Graebner, Norman A.</b> "Lessons of the Mexican War."	3:86
<b>Gura, Philip F.</b> "The Radical Ideology of Samuel Gorton: New Light on the Relation of English and American Puritanism."	1:55
<b>Hay, Carla.</b> "The Making of a Radical: The Case of James Burgh."	1:57
<b>Hunt, Lynn; Lansky, David; and Hanson, Paul.</b> "The Failure of the Liberal Republic in France, 1796-1799: The Road to Brumaire."	2:57
<b>Knox, Thomas R.</b> "Popular Politics and Provincial Radicalism: Newcastle Upon Tyne, 1769-1785."	2:58
<b>Kolchin, Peter.</b> "In Defense of Servitude: American Proslavery and Russian ProSerfdom Arguments, 1760-1860."	4:63
<b>Levy, David.</b> "Libertarian Communists, malthusians, and J.S. Mill Who is Both."	1:62
<b>May, Glenn A.</b> "Filipino Resistance to American Occupation: Batangas, 1899-1902."	3:89
<b>McFarland, Stephen L.</b> "A Peripheral View of the Origins of the Cold War: The Crises in Iran, 1941-47."	4:70
<b>Megill, Allan.</b> "Foucault, Structuralism, and the Ends of History."	3:77
<b>O'Meara, Maureen F.</b> "Towards a Typology of Historical Discourse: The Case of Voltaire."	3:80
<b>Pugh, Evelyn L.</b> "John Stuart Mill, Harriet Taylor, and Women's Rights In America, 1850-1873."	1:68
<b>Schlesinger, Author Jr.</b> "Human Rights and the American Tradition."	4:50
<b>Stenton, Michael.</b> "British Propaganda and Raison d'Etat, 1935-40."	4:69
<b>Strombert, Roland N.</b> "Redemption by War: The Intellectuals and 1914."	2:77
<b>Toohy, Robert E.</b> "A Question of Human Freedom: Richard Price."	1:58
<b>Williams, Walter L.</b> "United States Indian Policy and the Debate over Philippine Annexation: Implications for the Origins of American Imperialism."	3:88

## Humanities

<b>Duerksen, Roland.</b> "Shelley's Prometheus: Destroyer and Preserver."	1:81
<b>Grenander, M.E.</b> "Benito Cereno and Legal Oppression: A Szaszian Interpretation."	1:80
<b>James, David E.</b> "Angels out of the Sun: Art, Religion and Politics In Blake's <i>America</i> ."	1:82

Langlois, Walter. "Anarchism, <i>Action</i> , and Malraux."	1:85
Rogers, Charles. "God, Nature, and Personhood: Thoreau's Alternative to Inanity."	1:83
Rogin, Michael. "Herman Melville: State, Civil Society and the American 1848."	1:80
Rosenschild, Gary. "The Imagination and the 'I' in Zamyatin's <i>We</i> ."	1:84
Schaefer, David. "The Good, the Beautiful, and the Useful: Montaigne's Transvaluation of Value."	1:78

## Law

Abraham, Henry J. "The Status of the First Amendment's Religion Clauses: Some Reflections on Lines and Limits."	4:44
Anderson, Alexis J. "The Formative Period of First Amendment Theory, 1970–1915."	4:43
Bensel, Richard. "Creating The Statutory State: The Implications of a Rule of Law Standard in American Politics."	4:47
Best, Judith G. "What is Law? The <i>Minos</i> Reconsidered."	4:40
Eichbaum, June A. "Towards an Autonomy-Based Theory of Constitutional Privacy: Beyond the Ideology of Familial Privacy."	3:69
Emerson, Thomas I. "The Rights of Privacy and Freedom of the Press."	3:70
Gavison, Ruth. "Privacy and the Limits of Law."	3:67
Kronman, Anthony T. "Contract Law and Distributive Justice."	3:71
Lofton, John. "Freedom of Expression Since World War II."	4:43
Pilon, Roger. "Corporations and Rights: On Treating Corporate People Justly."	3:65
"Ordering Rights Consistently: Or What We do and Do Not Have Rights To."	3:63
"On Moral and Legal Justification."	4:42
Rizzo, Mario J. "Law and Flux: The Economics of Negligence and Strict Liability in Tort."	4:46
Rogers, Tommy W. "Social Science Influence and Its Inter-Relationship With the Criminal Justice System: Law and Constitutional Practice."	3:71
Rothbard, Murray N. "F.A. Hayek and the Concept of Coercion."	4:53
Schaffer, Thomas L. "The Practice of Law as Moral Discourse."	3:74
Vaughn, Stephen. "First Amendment Liberties and the Committee on Public Information."	4:45
Vieira, Jr., Edwin. "Rights and the United States Constitution: The Declension from Natural Law to Legal Positivism."	3:60

## Philosophy

Altman, Elizabeth. "The Philosophical Bases of Feminism: The Feminist Doctrines of the St. Simonians and Charles Fourier."	1:71
Beatty, Joseph. " 'Because It Is Mine': A Critique of Egoism."	3:56
Bereiter, Carl. "The Morality of Moral Education."	1:45
Blackstone, W.T. "Freedom of Women."	1:69
Brandon, Robert. "Freedom and Constraint by Norms."	3:53
Cohen, Stephen. "Gewirth's Rationalism: Who is a Moral Agent?"	1:39
Cord, Stephen B. "Equal Rights: A Provable Moral Standard."	1:44
Doppelt, Gerald. "Walzer's Theory of Morality in International Relations."	2:78
Douglass, Bruce. "The Common Good and The Public Interest."	4:55
Fried, Charles. "Rights and Roles" in <i>Right and Wrong</i>	3:43
Gauthier, David. "Thomas Hobbes: Moral Theorist."	1:41
Gewirth, Alan. "The Basis and Content of Human Rights."	3:61
Goerner, E.A. "On Thomistic Natural Law: The Bad Man's View Of Natural Right."	1:40
Goldman, Alan. "The Obligation to Obey the Law."	4:41
Green, Michael B. and Wikler, Daniel. "Brain Death and Personal Identity."	3:47
Brisez, Germain. "Against Consequentialism."	1:42
Grunebaum, James O. "Two Justifications of Property."	3:58
Gruner, Rolf. "Historicism: Its Rise and Decline."	3:75
Hall, Ronald L. "Wittgenstein and Polanyi: The Problem of Privileged Self-knowledge."	1:44
Harsanyi, John C. "Rule Utilitarianism, Rights, Obligations, and the Theory of Rational Behavior."	3:57
Helm, Paul. "Locke's Theory of Personal Identity."	3:48
Hunt, Lester H. "On Improving Mankind by Political Means."	3:45

Kaufman, Walter. <i>Discovering the Mind: Goethe, Kant, and Hegel</i> .....	2:84
Klemke, E.D. "Karl Popper, Objective Knowledge, and the Third World." .....	3:56
Machan, Tibor R. "On Human Rights, Feudalism and Political Change." .....	4:49
———. "Some Recent Work in Human Rights Theory." .....	3:42
Mattern, Ruth. "Moral Science and the Concept of Persons in Locke." .....	3:49
McCall, D.K. "Simone de Beauvoir, <i>The Second Sex</i> , and Jean-Paul Sartre." .....	1:74
McCloskey, H.J. "Universalized Prescriptivism and Utilitarianism: Hare's Attempted Forced Marriage." .....	1:42
McShea, Robert J. "Human Nature Ethical Theory." .....	1:46
Norton, David. "Liberty, Virtue, and Self-Development: A Eudaimonistic Perspective." .....	3:44
Okin, Susan M. "Rousseau's Natural Women." .....	1:70
Sankowski, Edward. "Freedom, Determinism and Character." .....	3:50
Sen, Amartya. "Utilitarianism and Welfarism." .....	1:43
Thomas, Laurence. "Ethical Egoism and Psychological Dispositions." .....	2:85
Veatch, Henry. "Is Kant the Gray Eminence of Contemporary Ethical Theory?" .....	3:54
———. "Plato, Popper and the Open Society: Reflections on Who May Have the Last Laugh." .....	3:55
———. Review of Alan Gewirth, <i>Reason and Morality</i> .....	1:38
Wexler, Victor G. "Made for Man's Delight: Rousseau as Anti-feminist." .....	1:72

## Political Philosophy

Archer, J. R. "Oakeshott on Politics." .....	2:55
Beneyto, Juan. "La Ideodinamica politica espanola entre Rousseau y Marx." .....	1:63
Bennett, John G. "A Note on Locke's Theory of Tacit Consent." .....	1:51
Bull, Hedley. "Recapturing the Just War for Political Theory." .....	4:68
Claude Jr., Inis L. "Just Wars: Doctrines and Institutions." .....	4:67
Cotton, James. "James Harrington as Aristotelian." .....	1:56
Conly, Craig A. "Alienation, Sociality, and The Division of Labor: Contradiction in Marx's Ideal of 'Social Man.'" .....	3:45
Drengson, Alan R. "Toward A Philosophy of Community." .....	2:49
Feinberg, Joel. "Civil Disobedience in the Modern World." .....	3:73
Gallie, W.B. "Kant's View of Reason in Politics." .....	2:59
Goldsmith, M.M. "Mandeville and the Spirit of Capitalism." .....	1:79
Kennedy, Ellen. "Bergson's Philosophy and French Doctrines: Sorel, Maurras, Péguy, and de Gaulle." .....	2:54
Kraynak, Robert P. "John Locke: From Absolutism to Toleration." .....	4:51
Ladenson, Robert. "In Defense of a Hobbesian Conception of Law." .....	3:72
Luban, David. "Just War and Human Rights." .....	4:66
McCormick, Peter. "The Concept of the Self in Political Thought." .....	2:83
McRae, Kenneth D. "The Plural Society and the Western Political Tradition." .....	3:83
Miller, Eugene F. "The Cognitive Basis of Hayek's Political Thought." .....	4:52
Okin, Susan M. "Philosopher Queens and Private Wives." .....	1:66
Parekh, Bhikhu. "Review Article: The Political Philosophy of Michael Oakeshott." .....	2:55
Reichert, William O. "Natural Right in the Political Philosophy of Pierre-Joseph Proudhon." .....	4:48
Rothbard, Murray. "Society Without A State." .....	1:61
Tuck, Richard. "The Recovery and Repudiation of Grotius." .....	1:49
Warrender, Howard. "Political Theory and Historiography: A Reply to Professor Skinner on Hobbes." .....	3:79
Zuckert, Michael. "An Introduction to Locke's First Treatises." .....	1:52

## Political Science

Arnhart, Larry. "The Godlike Prince: John Locke's Executive Prerogative and the American Presidency." .....	1:53
Barber, John. "The Establishment of Intellectual Orthodoxy in the U.S.S.R. 1928-1934." .....	4:61
Eccleshall, Robert. "The Identity of English Liberalism." .....	4:54
Evans, Judith. "Attitudes to Women in Political Science." .....	1:75
Helleiner, G.K. "The New Industrial Protectionism and the Developing Countries." .....	4:73
Helm, Charles & Morelli, Mario. "Stanley Milgram and the Obedience Experiment: Authority, Legitimacy, and Human Action." .....	4:57
Holton, R. J. "Syndicalist Theories of the State." .....	4:58
Jacobitti, Edmund E. "Hegemony before Gramsci: The Case of Benedetto Croce." .....	4:65

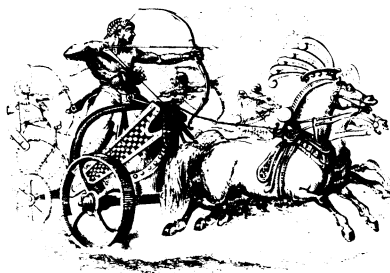
<b>Krasner, Stephen D.</b> "A Statist Interpretation of American Oil Policy toward the Middle East."	4:71
<b>Lotchin, Roger W.</b> "The City and the Sword: San Francisco and the Rise of the Metropolitan-Military Complex, 1919-1941."	4:72
<b>Petras, James.</b> "U.S. Foreign Policy: The Revival of Interventionism."	3:85
<b>Robinson, R.A.H.</b> "Political Conservatism: The Spanish Case, 1875-1977."	4:60
<b>Skjelsbaek, Kjell.</b> "Militarism, its Dimensions and Corollaries: An Attempt Conceptual Clarification."	3:82
<b>Staniszksis, Jadwiga.</b> "On Some Contradictions of Socialist Society: The Case of Poland."	3:84
<b>Thompson, William R., Duval, Robert D., &amp; Dia, Ahmed.</b> "Wars, Alliances, and Military Expenditures: Two Pendulum Hypotheses."	4:74
<b>Tilly, Louise.</b> "The Social Sciences and the Study of Women: A Review Article."	1:76

## Psychology

<b>Breggin, Peter R.</b> "A Libertarian Psychology: Self-ownership—A Condition for Happiness."	2:90
<b>Cartwright, Dorwin.</b> "Contemporary Social Psychology in Historical Perspective."	2:86
<b>Easterbrook, James A.</b> <i>The Determinants of Free Will: A Psychological Analysis of Responsible, Adjustive Behavior</i>	2:88
<b>Edney, Julian J.</b> "The Commons Problem: Alternative Perspectives."	4:56
<b>Mitscherlich, Alexander.</b> "Psychological Research and its Significance for Modern Man."	2:87
<b>Rychlak, Joseph F.</b> <i>Discovering Free Will and Personal Responsibility</i>	2:89
<b>Sullivan, John L., Piereson, James E., &amp; Marcus, George E.</b> "Political Intolerance: The Illusion of Progress."	4:52
<b>Tetlock, Philip E.</b> "Identifying Victims of Group think from Public Statements of Decision Makers."	2:90
<b>Young, Robert.</b> "Autonomy and the 'Inner Self.'"	2:83

## Sociology

<b>Auerbach, Nina.</b> "Women on Women's Destiny: Maturity as Penance."	1:73
<b>Camic, Charles.</b> "Utilitarians Revisited."	2:51
<b>Chapman, R.A.</b> "Leviathan Writ Small: Thomas Hobbes on the Family."	1:66
<b>Connally, William E.</b> Review Essay: "The Critical Theory of Jurgen Habermas' By Thomas McCarthy."	3:81
<b>Hartshorne, Thomas L.</b> "From Catch-22 to Slaughterhouse V: The Decline of the Political Mode."	3:51
<b>Laucks, Eulah C.</b> "The Meaning of Children in America."	1:67
<b>McDaniel, Thomas R.</b> "Weber and Kafka on Bureaucracy: A Question of Perspective."	2:53
<b>Arnhart, Larry.</b> "The Godlike Prince: John Locke's Executive Perogative and the American Presidency."	1:53
<b>Levy, David.</b> "Libertarian Communists, Malthusians, and J.S. Mill Who is Both."	1:62



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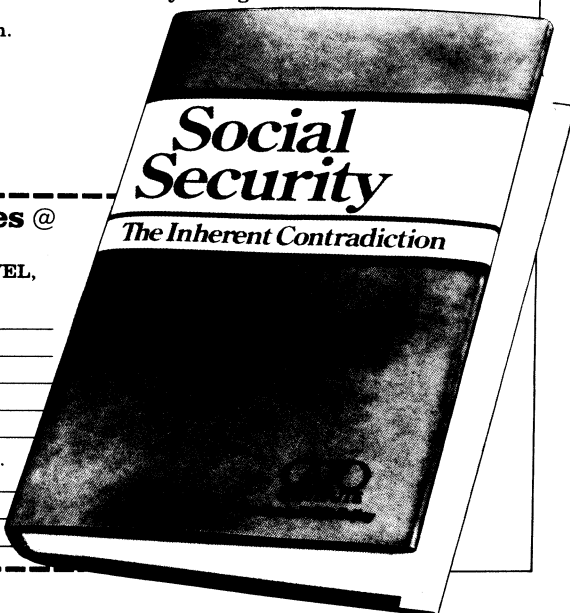
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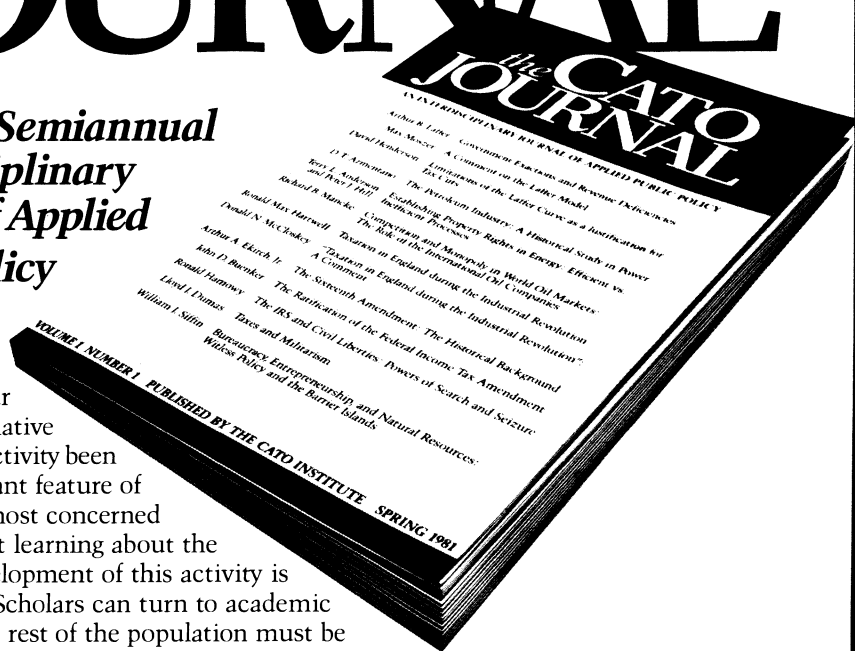
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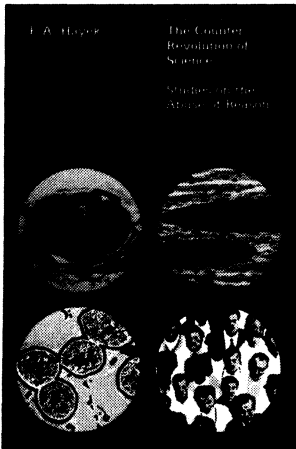
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