

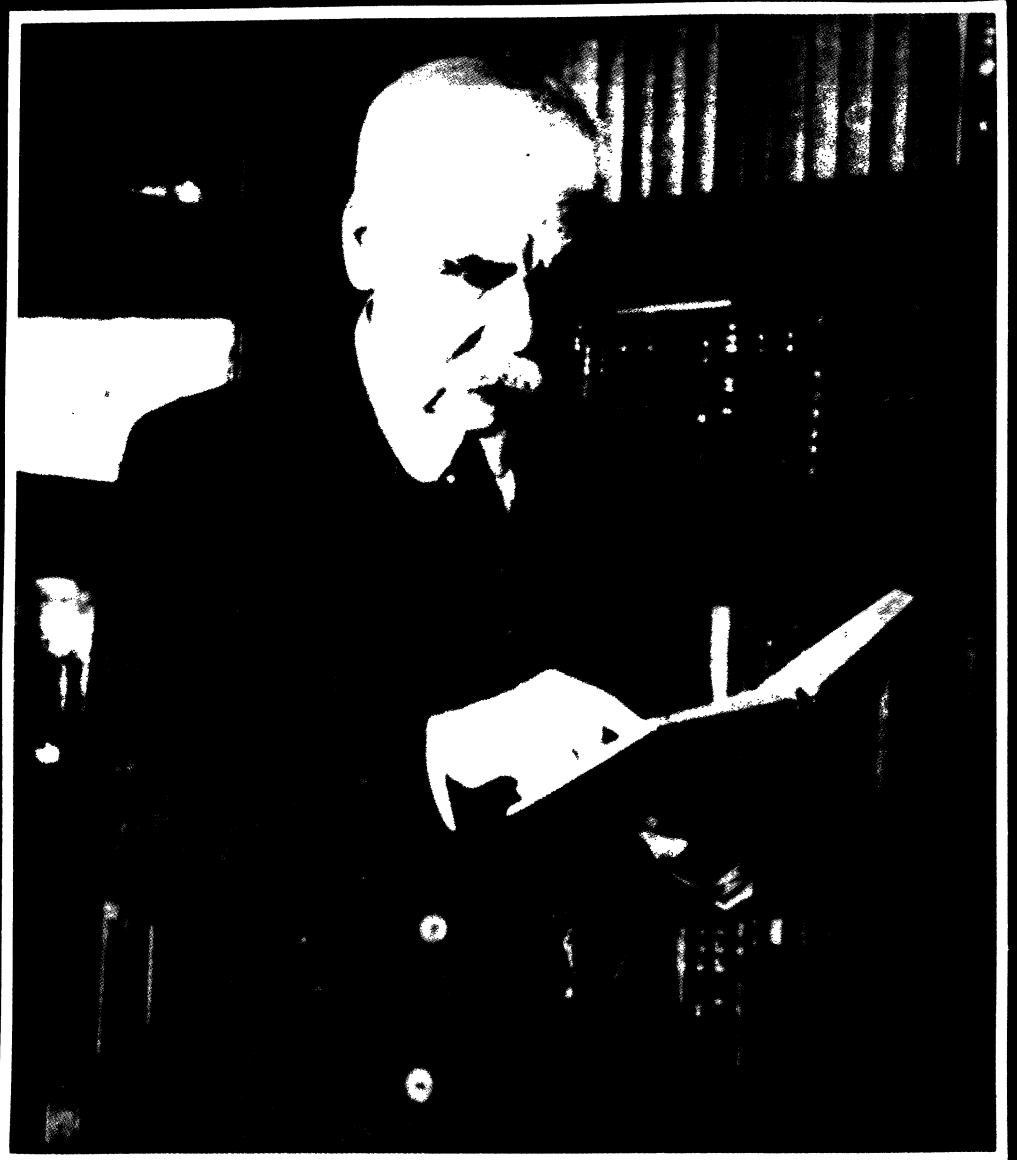
Autumn 1981

LITERATURE *of* LIBERTY

A Review of Contemporary Liberal Thought

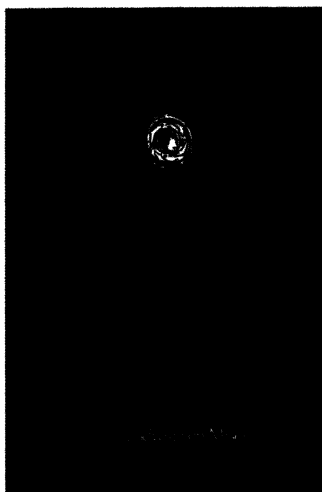
Benjamin Tucker's *Liberty* and Individualism

by Wendy McElroy



Benjamin R. Tucker (1854–1939)

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Volume IV, No. 3 Autumn 1981

Bibliographical Essay

Wendy McElroy

Benjamin Tucker, Individualism, &
Liberty: Not the Daughter but the
Mother of Order

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Courtesy of Sharon Presley.

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Editorial

In commemorating the hundredth anniversary of Benjamin Tucker's journal *Liberty* (1881–1908), Wendy McElroy's following essay, "Benjamin Tucker, Individualism, and *Liberty*," contributes a fascinating chapter to the history of libertarian thought and American individualism. Like all good history, her essay illuminates our understanding of the past, in this instance a significant episode in American intellectual history, but sadly neglected by most academic historians. By awakening our sense of the history of ideas, the essay stimulates us to revise our sense of the present, and thereby to speculate on the possibilities of individual freedom in the future.

As heirs of the authentically American values of Josiah Warren's "sovereignty of the individual," Tucker and his circle of maverick libertarian thinkers are historically significant because they demonstrate how genuinely homegrown and "Yankee" the roots of American radical individualism were. As uncompromising advocates of liberty and opponents of authority in all its forms, Tucker and his tradition also offer us the legacy of a suggestive analysis of how true community is compatible with rugged individualism.

The pedigree of his libertarian philosophy, Tucker insisted, was no "imported article" but rather a vital part of the native American heritage: "So far as priority of time is concerned, the credit seems to belong to Warren, the American. . . . Of the purest revolutionary blood, too, this Warren, for he descends from the Warren who fell at Bunker Hill." (*Liberty* March 10, 1888). Tucker together with his "mentor", Josiah Warren (1798–1874) and Warren's intellectual progeny—Stephen Pearl Andrews, Lysander Spooner, William B. Greene, and Ezra Heywood—were Yankees to the core. All were born in Massachusetts and were steeped in the libertarian traditions of the American Revolution, the "spirit of '76." Ezra Heywood affirmed the same point in the pages of Tucker's *Radical Review* when he claimed that Warren's doctrine of the sovereignty of the individual and anarchism were "only a new assertion of the ideas of self-rule and self-support which Jefferson put into the Declaration of Independence, 1776." Similarly, in "Anarchism and American Traditions," Voltairine de Cleyre rooted the libertarian conception of society in the liberal Jeffersonian traditions of the American Revolution. Tucker himself underlined these American origins of his belief that "all the affairs of men should be managed by individuals or voluntary associations" and boasted: "Anarchists are simply unterrified Jeffersonian Democrats." (*Liberty* March 10, 1888).

Born in South Dartmouth, Massachusetts in 1854 (the same year that Thoreau published *Walden*, his paean to transcendentalist individualism), Benjamin imbibed in his youth the Jeffersonian and Jacksonian democratic spirit of anti-institutional individualism.

[For these individualistic currents, see Eric Foner, "Radical Individualism in America," *Literature of Liberty* 1 (July–September 1978); and George M. Frederickson, *The Inner Civil War: Northern Intellectuals and the Crisis of the Union*. New York: 1965, pp. 7–22.] His family and social environment was a hothouse fostering freedom of thought, religious dissent, and political nonconformity. Tucker's maternal great-grandfather was a follower of the radical free-thinker Tom Paine; his mother was an extreme Unitarian; and his father a rebellious Quaker and Jeffersonian democrat. Little wonder that Tucker cherished the sovereign self, guarded his intellectual independence, and resisted the authority and institutions of religion, education, and politics. He read widely in the classical liberals, and at fourteen attended lectures at the New Bedford lyceum to hear such individualist luminaries of Transcendentalist and abolitionist thought as Ralph Waldo Emerson, William Lloyd Garrison, and Wendell Phillips.

At sixteen, Tucker displayed his fierce independence of mind and distrust of any institution that might compromise his integrity, by balking at his parents' desire to send him to college at Harvard. In 1872, at the age of 18, he finally forged diverse American individualistic currents into a new synthesis after meeting the native American anarchists, Warren, Spooner, Greene, and Heywood. Upon reading Warren's *True Civilization*, an exposition of the sovereignty of the individual and its appropriate economic system, Tucker endorsed individualist anarchism and began his career as publicist and "plumb-line" polemicist for the anti-statist variety of libertarianism. After publishing the short-lived *Radical Review* (1877–1878), he founded *Liberty* in 1881.

Ironically, when Warren relayed to Tucker the torch of the libertarian tradition on the eve of the Centennial celebration of the "spirit of '76", America was experiencing the twilight of that very spirit. Individualism was on the wane and in conflict with the ascendent forces of statist centralization and organization, which were ushered in by war, regulation, and imperialist expansion. George M. Frederickson's *The Inner Civil War*, mentioned above, chronicles the tragedy of how, in the aftermath of the Civil War, American intellectuals abandoned the radical individualism, anti-institutionalism, and anti-statism of the pre-Civil War period. Forgetting the individualist creed of Emerson's "American Scholar" (1837), post-bellum intellectuals were in large part transformed by the passions and discipline of the Civil War into enthusiastic supporters of government, state organization and reform, and bureaucratic centralization in other social institutions such as charity and education.

In the face of mounting culture of collectivism, institutional bureaucratization, and anti-individualist, authoritarian political forces, Tucker and the friends of *Liberty* kept alive the independent-

mindful ideals of Emerson's "American Scholar" and the traditions of creative individual freedom. That such innovators in American political philosophy, social thought, and culture as Tucker's individualists were non-academic intellectuals working outside formal educational institutions is a grave indictment of the conservatism of America's official culture and establishment education. Whereas in arts, letters, and philosophy, the official culture and academy ignored or persecuted unconventional American geniuses such as Whitman, Tucker's *Liberty* welcomed individual creative talent and displayed cosmopolitan and avant-garde tastes. At establishment universities such as Harvard the agenda for philosophical and political speculation was determined by the cultural and political elite. *Liberty's* intellectuals, however, unencumbered by institutional conservatism and anti-Darwinian bias set their own individualist agenda for a radical political, economic, social, and cultural reform. [On the decline of American institutional philosophy under the pressures of professionalization, specialization, and anti-humanistic arcane games of abstract thought, see Bruce Kuklick, *The Rise of American Philosophy: Cambridge, Massachusetts, 1860-1930*, New Haven: Yale Univ. Press, 1977.]

Tucker's *Liberty* and the libertarian traditions that continue to grow today have much to contribute to a reawakening of America's memory of her creative and individualist past. Perhaps even more importantly, these currents of American individualist thought may offer some guidelines to the political and cultural perplexities of the present and future. E



Benjamin R. Tucker, as he looked half a century ago at his desk in Boston, Mass., from a drawing by S. G., published in "The Boston Sunday Globe," 1891.

**LYSANDER SPOONER****EZRA HEYWOOD****EMERSON****JOSIAH WARREN**

Bibliographical Essay

Benjamin Tucker, Individualism, & *Liberty*: Not the Daughter but the Mother of Order

by Wendy McElroy

I. Introduction to *Liberty*

“**F**ormerly the price of *Liberty* was eternal vigilance, but now it can be had for fifty cents a year.” So wrote Benjamin Tucker (1854–1939) on the first page of the first issue of *Liberty*. The American journal *Liberty*, edited and published by Benjamin Ricketson Tucker from August 1881 to April 1908, was arguably the finest libertarian periodical ever published in the English language. During its 27 year life span, issuing first from Boston and then from New York (1892), *Liberty* chronicled the personalities and shifting controversies of radical individualism in America and abroad. It also created them. The list of contributors to *Liberty* reads like an honor roll of nineteenth-century individualism and libertarianism: Lysander Spooner, Auberon Herbert, Joshua K. Ingalls, John Henry Mackay, Victor Yarros, and Wordsworth Donisthorpe are a partial listing. Speaking with a cosmopolitan and avant-garde voice, *Liberty* also published George Bernard Shaw’s first article in America, the first American translation of Nietzsche,¹ and reports from economist Vilfredo Pareto on the political conditions in Italy. Of seminal importance in the history of ideas, Tucker’s journal served

as the main conduit of Stirnerite egoism and radical Spencerian thought in America. *Liberty* was both an innovator in libertarian theory and a mainstay of the libertarian tradition.

Liberty was remarkable for the consistently high quality of its content and for the clarity of its style. It debated sophisticated issues with a contemporary ring, ranging over such topics as children's rights, intellectual property, natural rights, and theories of rent and interest. Contributors to *Liberty* as well as other contemporary individualists often found themselves on the defense against Tucker's demand for "plumb-line" consistency in all things. As a professional journalist,² Tucker also insisted upon a clear, precise style and took great pride in raising *Liberty* far above the journalistic standard for radical periodicals of its day.

Tucker's Background and the Social Context of Liberty

Coming from a Quaker and radical Unitarian family, Tucker grew up in an atmosphere of dissent and free inquiry. At his parents' prompting, he attended Massachusetts Institute of Technology for three years during which time he became involved in labor reform and convinced that economic reform must underlie all other steps toward freedom. He integrated freethought and free love with this conviction to formulate a system of individualist-anarchism which became identified with him as "philosophical" or "Boston Anarchism." Although he was a prolific writer, virtually all of his work appeared as articles in *Liberty*; some of these he subsequently issued as pamphlets. Tucker's one book, *Instead of a Book by a Man Too Busy to Write One* (1893), was a compilation of articles from *Liberty* with the subtitle, *A Fragmentary Exposition of Philosophical Anarchism*. In the late nineteenth century, Tucker and *Liberty* were the vital core around which a libertarian movement formed and grew. It is difficult to overemphasize their importance to the libertarian tradition in America.

In a wider social and cultural context, *Liberty* was one of a flood of radical periodicals published in America near the turn of the nineteenth century (1860–1910). This was a time of growth and change with many voices calling for reform; state socialism, single-tax, temperance, women's suffrage, populism, progressivism, anarchism, unions, land reform, state education—a wide range of movements offered different solutions to societal problems. Few of these movements were individualistic. True to the maxim "War is the Health of the State," the Civil War was nearly the death of individualist libertarianism. The rampant growth of government caused by the War and its aftermath established an environment hostile to individual rights. Internal conflicts and compromises over supporting the War splintered the movement so that libertarianism

thereafter was basically expressed, not as a movement in its own right, but as the radical faction within other movements such as freethought and free love. It was against this broader backdrop that *Liberty* began its career.

II. The Roots of *Liberty*: The Influence of Individuals

In the same vein, *Liberty*, as part of a continuing tradition, did not arise from nor operate within an intellectual vacuum. The purpose of this essay, accordingly, is to trace the roots of Tucker's journal *Liberty* (especially in America), to examine contemporary individualist periodicals which bore some relationship to *Liberty*, and, finally, to assess its impact and influence.

American libertarianism of the nineteenth century was commonly called individualist-anarchism. It revolved around two themes: the sovereignty of the individual, sometimes expressed in terms of self-ownership; and the labor theory of value, often expressed as "cost the limit of price."³ Sovereignty of the individual referred to the absolute moral jurisdiction of each person over the use and disposal of his or her own body. The labor theory of value, which claimed that all wealth was created by labor and usually implied that it therefore belonged to the laborer, was considered to be a direct extension of self-ownership.

Josiah Warren

Josiah Warren (1798–1874) brought together these two themes, the sovereignty of the individual and the labor theory of value. An early Owenite who advocated economic reform through experimental communities, Warren was an original participant in the New Harmony Community of Equity in Indiana (1826–1827). This experience helped to mold his philosophy. However, he became critical of the community's bureaucracy, fearing it would replace voluntary cooperation and the primacy of the individual with a system of authority. Warren insisted that the individual should remain the primary unit of society. As he wrote later:

Society must be so converted as to preserve the SOVEREIGNTY OF EVERY INDIVIDUAL inviolate, . . . it must avoid all combinations and connections of persons and interests and all other arrangements which will not leave every individual at all times at liberty to dispose of his or her own person, and time, and property in any manner in which his or her feelings or judgment may dictate, WITHOUT INVOLVING THE PERSONS OR INTERESTS OF OTHERS.⁴

With the demise of New Harmony, Warren moved to Cincinnati, where he put his economic theories into practice through operating a

Time Store. Warren's Store exchanged commodities such as flour for Labor Notes representing the labor hours of the bearer.

In January 1833, Josiah Warren began the first American anarchist periodical, *The Peaceful Revolutionist*, a two-column weekly offered at thirty-seven cents for a six month subscription.⁵ Here, Warren expounded the individualistic, anti-statist philosophy which so influenced future libertarians. His experience in voluntary communities and his commitment to self-ownership led him to condemn invasive laws. "If the word law has ever meant one thing more than another," Warren declared, "that thing has been the will of those in power."⁶ On political office, he wrote: "We are told that our destinies depend on the election of this or that man to office! Why? This shows that it is men and not laws or principles that govern society."⁷ *The Peaceful Revolutionist* was short-lived, being revived in the eventful year 1848 as the organ of Utopia, a Fourierite community.

In 1841 Warren briefly published and edited another anarchist periodical, *The Herald of Equity*, from Cincinnati. This was followed in 1842 by the *Gazette of Equitable Commerce* which, in a four year period, was reported to have only four subscribers. Warren's *The Periodical Letter on the Principles and Progress of the Equity Movement* (1854-1858) was a monthly issued from Modern Times, Long Island, and then from Boston as a means of explaining the philosophy of the experimental community, Modern Times. Although its circulation was small, it had subscribers throughout America and from as far away as Ireland and England. *The Periodical Letter* was the only one of Warren's periodicals mentioned in *Liberty*. (Since Tucker rarely commented on any but contemporary publications, this reference is significant.)

Josiah Warren's main influence upon Tucker and *Liberty* was personal and inspirational. Tucker, in fact, began his anti-statist career in the spring of 1872 at the age of eighteen, largely as the result of meeting Josiah Warren and William B. Greene at a gathering of the New England Labor Reform League. Tucker greatly admired both men⁸ and quickly joined a cadre of young admirers who met with Warren to discuss economics and philosophy. "Josiah Warren," Tucker subsequently wrote, "was the first man to expound and formulate the doctrine now known as Anarchism; the first man to clearly state the theory of individual sovereignty and equal liberty . . ."⁹ Warren's *Equitable Commerce* (1847)¹⁰ was a pioneering work, standing as the first significant presentation of individualist-anarchism in America. A revised, enlarged edition of Warren's work, renamed *True Civilization*, was reprinted by Tucker and advertised in *Liberty*. Linking himself with the tradition of Warren, Tucker referred to his own *Liberty* as "the foremost organ of Josiah Warren's doctrines . . ."¹¹

Thus, if the roots of *Liberty* can be traced to any one American, that man is Josiah Warren. The dedication in Tucker's first book, *Instead of a Book* (1893), acknowledged this clearly: "To the memory of my old friend and master, Josiah Warren, whose teachings were my first source of light, I gratefully dedicate this volume . . ." ¹²

Pierre Joseph Proudhon

If the roots of *Liberty* can be traced to any one foreign individual, it would be Pierre Joseph Proudhon (1809–1865), the first thinker to adopt the label of anarchist. Tucker esteemed him as the "profoundest political philosopher that has ever lived."¹³ Tucker's homage to Proudhon is evident from his first major accomplishment, at the age of 21, a translation from French to English of Proudhon's *What is Property?* Likewise Tucker devoted part of his first trip to Europe (1874) carefully studying Proudhon's works in both published and manuscript form. *Liberty*, Tucker frankly stated, is "a journal brought into existence almost as a direct consequence of the teachings of Proudhon."¹⁴ The full title of Tucker's journal (*Liberty: Not the Daughter But the Mother of Order*), of course, pays tribute to Proudhon's famous quotation. In addition, one of the most ambitious endeavors of *Liberty* was the "Proudhon Library," a projected series of Proudhon translations sold by subscription. This "Library" featured the "publication in English of the entire works of P.J. Proudhon . . . [E]ach number contains sixty-four elegantly printed octavo pages of translation from one of Proudhon's works."¹⁵

The great similarity between the economic theories of Warren and Proudhon was undoubtedly a common element in Tucker's attraction to both men.

Max Stirner

Only the influence of the German philosopher of egoism, Max Stirner (né Johann Kaspar Schmidt, 1806–1856), as expressed through *The Ego and His Own* (*Der Einzige und sein Eigentum*) compared with that of Proudhon.¹⁶ In adopting Stirnerite egoism (1886), Tucker rejected natural rights which had long been considered the foundation of libertarianism. This rejection galvanized the movement into fierce debates, with the natural rights proponents accusing the egoists of destroying libertarianism itself. So bitter was the conflict that a number of natural rights proponents withdrew from the pages of *Liberty* in protest even though they had hitherto been among its frequent contributors.¹⁷ Thereafter, *Liberty* championed egoism although its general content did not change significantly.¹⁸

III. The Roots of *Liberty*: The Influence of Radical Movements

Abolitionism

The influence radical movements exerted upon *Liberty* as compared to that of individuals is more difficult to trace. The roots of libertarianism in America are firmly within abolitionism, particularly within the radical faction of the anti-slavery movement, which sought an immediate cessation to slavery on the grounds that every man was a self-owner; that is, every human being had moral jurisdiction over his or her own body. The main organ of abolitionism was William Lloyd Garrison's *The Liberator* (1831–1866), which openly condemned the U.S. Constitution as "a covenant with death and an agreement with hell."¹⁹ Tucker's only significant reference to Garrison within *Liberty*, however, was a criticism of his sanctioning the Civil War. Tucker tempered his criticism, however, with the statement, "It was an ugly blot on an otherwise great career."²⁰ The loquacious Tucker remained virtually silent on abolitionism, slavery, and the Civil War; and it is only in passing that Garrison's *Liberator* and the Anti-Slavery Society are mentioned. It was perhaps Tucker's commitment to free enterprise and freethought that distanced him from the compromising economic policies and the religious conviction of Garrison. Unlike Garrison, Tucker did not share the pietistic outlook which led so many abolitionists to engage in temperance work and other attempts to reform personal vice.²¹ Another exception to this pietism was Lysander Spooner (1808–1887), author of *Vices Are Not Crimes*, with whose pamphlets on slavery Tucker was familiar. Tucker particularly praised Spooner's *The Unconstitutionality of Slavery* (1845).

Despite its absence from *Liberty*, there is no question that abolitionism influenced Tucker. As a young man in Massachusetts he frequented the New Bedford Lyceum at which many prominent abolitionists lectured. Moreover, his close association with the abolitionists Ezra Heywood and Lysander Spooner, both of whom opposed the Civil War, must have had an impact. Nevertheless, using the reliable standard of whom and what Tucker explicitly credited in developing his philosophy, abolitionism was not a significant factor.

Land Reform

Another movement which did not seem to influence *Liberty* directly was homesteading. The homesteading movement, most active in the 1840s and 1850s, attracted a number of libertarians including George Henry Evans, editor of the *Working Man's Advocate*, *Young America*, and *The Radical*. Evans' name, however, appears only

twice in passing within *Liberty*. This is in contrast with the land reformer Joshua K. Ingalls with whose theories of land occupation and use Tucker became familiar through Ezra Heywood's *The Word*. Ingalls was one of the first contributors to *Liberty* to write under his own name rather than anonymously or under a pseudonym.²²

Tucker's theories on land were fortified by his fascination with the Irish No-rent movement which demanded radical land reform in Ireland. The main organ of this movement was Patrick Ford's *Irish World*; "*Liberty* is not always satisfied with it," Tucker wrote, "but, all things considered, deems it the most potent agency for good now at work on this planet."²³ Two of *Liberty*'s most frequent contributors—Henry Appleton and Sidney H. Morse—wrote columns for *Irish World* under the pseudonyms of Honorius and Phillip, respectively; Joshua K. Ingalls also contributed. Some early issues of *Liberty* were virtually devoted to the no-rent question, which seems to have had more influence than comparable land reform efforts in America.²⁴

Transcendentalists

Tucker was also impressed by reading the New England Transcendentalists, especially Thoreau and Emerson, whose names appeared often in *Liberty*. In his younger days, Tucker consciously imitated Thoreau's refusal to pay a poll tax. Like Thoreau, he was imprisoned. Much to Tucker's displeasure, however, the fee was paid by a well-intentioned friend, and he was released.²⁵ There is no indication that Tucker was familiar with Transcendentalist periodicals such as *The Dial*.

The radical movements primarily defining the nature of *Liberty* were: freethought, free love, and the labor movement. Although all three were vehicles for nineteenth-century libertarianism, this was particularly true of freethought and free love. Neither movement was explicitly libertarian, but their goals were consistent with libertarianism and libertarians formed a radical faction within them.

Freethought

Freethought in America was an anticlerical, anti-Christian movement which sought to separate the state from all religious matters, leaving them to the conscience and reason of the individual.

There was a history of intersection between libertarianism and freethought. The freethought periodical *The Free Enquirer* (1828–1832), originally the *New Harmony Gazette* (1825–1828), was edited by Robert Dale Owen and Francis Wright, both associates of Josiah Warren. In 1829, when the paper moved to New York, Owen prevailed upon Warren to delay plans to establish a community in

Ohio in order to join with *The Free Enquirer* on a similar, larger venture in New York. Although this did not materialize, Warren continued to publish his labor theories in this periodical. George Henry Evan's *The Working Man's Advocate* coupled labor reform with freethought through the advertising of such freethought classics as Palmer's *Principles of Nature* and Voltaire's *Philosophical Dictionary*. The libertarian Lysander Spooner, whose freethinking deism was unpalatable to the more religious abolitionists, first published *A Deist's Reply* serially (1836) in the *Cleveland Liberalist*. Another pamphlet by Spooner was entitled *The Deist's Immortality*.

Robert Reitzel's *Arme Teufel (Poor Devil)*, launched on December 6, 1884 from Detroit, blended freethought with anarchism. The German-American periodical spoke out against organized religion and religious thought. When an Anglican Bishop in Hong Kong replaced the sacramental wine with tea, Reitzel gleefully and sacrilegiously pointed out that following this geographical logic the Blood of Christ would be beer in Germany, whiskey in Ireland, and water in Kansas. Reitzel considered Tucker to be a fellow-traveller, sharing an enthusiasm for Stirner. In turn, Tucker called *Arme Teufel* "*Liberty's* brave and brilliant Detroit contemporary."^{25a} Like Tucker, Reitzel inspired disciples, and *Arme Teufel* clubs sprang up in cities with large German-speaking populations such as Toledo and Cincinnati.²⁶

Freethought was probably the first radical influence in Tucker's life. Born, as previously mentioned, of a Quaker father and a radical Unitarian mother, he was raised in New Bedford, Massachusetts, then a center of Quakerism and religious dissent. In this atmosphere of religious freedom, Tucker clearly recalled "'sitting steadily under the radical preaching' of the Reverend Mr. Potter, who rejected all dogmatic authority, whether of church organizations, scriptures, or creeds, and asserted individual freedom of belief."²⁷ He received an excellent education from the New Bedford Friends' Academy which was unconventional enough to debate a resolution on banning patriotic speeches as contrary to Quaker principles.

As a young man Tucker began reading two important freethought periodicals: *The Boston Investigator* and *The Index* (formerly the *Free Religious Index*). The first paper, *The Boston Investigator*, was a weekly founded by Abner Kneeland in 1831, and it remained one of the most prominent freethought periodicals until it merged with the *Truth Seeker* in 1904. *The Boston Investigator*, edited by Horace Seaver (1839–1889) and published by J.P. Mendum, impressed Tucker. The second paper, *The Index*, was also a weekly, published from Toledo (1870–1872) and then from Boston (1873–1886), and was edited in turn by Francis Abbot, W.J. Potter, and B.F. Underwood. Tucker published his first defense of the labor theory of value in the pages of *The Index* (1873). During *Liberty's* life

span, Tucker reprinted articles from both papers and reported upon their progress. In turn the freethinking *Boston Investigator* welcomed the first issue of *Liberty* in 1881 with the words:

Liberty is one of the grandest words in the language; and of course it is a grand name for a paper . . . we mean such as Mr. Benj. R. Tucker's *Liberty* . . . As Mr. Tucker has ability and industry, radicalism and independence, he will make an interesting and suggestive paper.²⁸

Of the *Investigator*, Tucker declared: "The paper has a glorious record, and all Liberals should unite in rewarding its valiant struggle against superstition by staunch support in its honorable and still vigorous old age."²⁹ But Tucker later criticized the *Investigator's* relatively conservative editor Seaver for his refusal to extend religious freedom to Mormons on the issue of polygamy. A hostile exchange followed, which ended with Seaver accusing Tucker of advocating polygamy and with Tucker retorting that Seaver was a peevish old man. From his early association with *The Index*, Tucker's opinion of the periodical seemed to decline. On the occasion of Underwood's assuming the editorship of *The Index*, Tucker observed: "The new editor, Mr. Underwood, has reconstructed its anatomy to advantage. If, in addition, he will infuse some blood into its colorless veins, it will become a readable and valuable journal."³⁰ This hope was not realized.

The importance of freethought to Tucker's development can also be gauged by his observation upon the *Radical Review* (1877–1878), his first periodical, of which only four issues appeared. "I once published a magazine called the *Radical Review*," he wrote later, "which many competent judges pronounced . . . the handsomest freethought magazine ever published in America."³¹ Tucker thus considered the *Radical Review* to be, at least partially, a freethought periodical.

The *Truth Seeker* (1873–), the most prominent American freethought paper, was connected with *Liberty* in several ways.³² *Liberty* reprinted its articles and Tucker appraised its editor. When D.M. Bennett of *The Truth Seeker* upbraided Ezra Heywood for his "bad taste" in being arrested under the Comstock obscenity laws, Tucker bristled: "In this connection we must express our indignation at the cowardly conduct of D.M. Bennett . . . who prates about Mr. Heywood's taste and methods . . . It is not a question of taste, but of Liberty, and no man who fails to see this and act accordingly can ever fairly call himself a Liberal again."³³ The third editor of the *Truth Seeker* was George E. Macdonald, an individualist-anarchist and a contributor to *Liberty*. As a personal friend of Tucker, Macdonald referred to him as "my uncle Benjamin"—an allusion to a book published by Tucker entitled *My Uncle Benjamin*. In response,

Tucker called Macdonald "my nephew". Macdonald also co-edited a San Francisco magazine entitled *Freethought* (1888–1890) with Samuel P. Putnam which elicited mixed reviews from Tucker who disliked Putnam. Nevertheless, *Freethought* was quoted fourteen times within *Liberty*.

A small but subsequently significant freethought paper was the *Valley Falls Liberal* (1881), an organ of the National Liberal League. Moses Harman and A.J. Searle informally directed the first issues. In 1882 it became the *Kansas Liberal* under the editorship of Moses Harman. In 1883 its title changed again to *Lucifer the Light Bearer* (1883–1907), and under that name it evolved into the foremost free love periodical in America as well as an important vehicle of libertarian thought.

This link between freethought and Tucker's *Liberty* was further demonstrated by the many freethought works advertised by *Liberty*. A partial list includes: *Church and State* (Tolstoi); *The Deist's Immortality* and *A Deist's Reply* (Spooner); *Dieu et L'Etat* ("Bakounine"); *Freethinkers' Magazine* (H.L. Green, T.B. Wakeman, editors); *The Freethought Directory*; *The Boston Investigator* (Horace Seaver); *Three Dreams in a Desert* (Schreiner); *Kansas Liberal* (Moses Harman, editor); and the *Truth Seeker* (D.M. Bennett, editor).

The crossover of individuals active in both the freethought and libertarian movements was impressive. Lysander Spooner, Moses Harman, E.C. Walker, Benjamin Tucker, Voltairine de Cleyre, George Macdonald, Dyer D. Lum—all played this dual role.

Free Love

Free love was the movement which sought to separate the state from sexual matters such as marriage, birth control, and adultery, insisting that such matters properly concerned only the individuals involved.

The relationship between libertarianism and freethought was similar to that between libertarianism and freethought. Free love advocates, who sometimes traced their roots to Josiah Warren and experimental communities, viewed sexual freedom as a clear, direct expression of an individual's self-ownership. Free love particularly stressed women's rights since most sexual laws discriminated against women.³⁴ Although Tucker agreed with the goals of free love, significant differences of strategy distanced him from the movement as a whole.

The free love periodical with which Tucker was most closely associated was Ezra and Angelina Heywood's *The Word* (1872–1890, 1892–1893), issued from Princeton and then from Cambridge, Massachusetts. After the Civil War, Heywood turned his attention toward the labor movement and eventually free love. The Heywoods'

The Word, subtitled "A Monthly Journal of Reform," was connected to libertarianism through its editors and its contributors, including Josiah Warren, Benjamin Tucker, and J.K. Ingalls. Initially, *The Word* presented free love within a labor reform format but later evolved into an explicitly free love periodical. Its prospectus (1872) exemplified the nineteenth-century libertarian blending of civil liberties with the labor theory of value:

THE WORD favors the abolition of speculative income, of woman's slavery, and war government; regards all claims to property not founded on a labor title as morally void . . .³⁵

Through his association with Ezra Heywood and *The Word*, Tucker acquired much of the background from which *Liberty* sprang. In April 1875, he became an associate editor of *The Word*, but as the paper deemphasized economics to stress free love he grew dissatisfied. Finally, Tucker resigned in December 1876 and established *The Radical Review*, a quarterly that published Pearl Andrews, Heywood, Ingalls, Greene, and Spooner.

It is probable that Tucker's long-term friendship with Lysander Spooner (1808–1887) began during this period. Tucker's admiration for Spooner was immense. One of the most moving articles in *Liberty* was Tucker's eulogy to his deceased friend entitled "Our Nestor Taken From Us." Tucker describes the elderly Spooner on one of his daily visits to the Boston Library:

Had the old man chanced to raise his head for a moment, the visitor would have seen, framed in long and snowy hair and beard, one of the finest, kindest, sweetest, strongest, grandest faces that ever gladdened the eyes of man. But however impressed by the sight, few realized that they had been privileged with a view of one whose towering strength of intellect, whose sincerity and singleness of purpose, and whose frank and loving heart would endear him to generations to come . . .³⁶

In contrast, Tucker's relationship with Heywood grew more distant. When Heywood was imprisoned from August to December 1878 under the Comstock laws Tucker abandoned the *Radical Review* in order to assume editorship of Heywood's *The Word*. After Heywood's release from prison, however, *The Word* became a free love journal; it flouted the law by printing birth control material and openly discussing sexual matters. Tucker's disapproval of this policy stemmed from his conviction that "Liberty, to be effective, must find its first application in the realm of economics, and nowhere has that view been emphasized more continually than in this journal."³⁷ This difference of emphasis did not prevent Heywood from welcoming Tucker's *Liberty* into the libertarian movement. In response to the first issue, he wrote: "Liberty is intelligent and vigorous, has

opinions, character and will command attention from its first issue; a bright, smart, timely journal which live people will find it unsafe not to subscribe."³⁸

Another free love influence was the notorious Victoria Woodhull who edited the *Woodhull and Claflin's Weekly* with her sister Tennie Claflin. Tucker and Woodhull became acquainted when town authorities tried to prevent her from lecturing on "The Principles of Social Freedom" and Tucker, among others, came to her defense. Literally seduced by Woodhull, he joined the circle of male admirers surrounding her. He travelled to Europe with her, but became disillusioned, presumably upon discovering that lectures and articles bearing her name were ghost written, often by Stephen Pearl Andrews.³⁹

The most important American free love journal was *Lucifer the Light Bearer* (1883–1907) edited by Moses Harman first from Valley Falls, Kansas, then from Topeka (1890), and finally from Chicago (1896). Tucker's relationship with *Lucifer* started well. At one point, he exclaimed:

I say, Messrs. Harman and Walker, editors of 'Lucifer,' I wish you wouldn't make absolutely every number of your paper so good and true and live and keen and consistently radical . . . since your advent, you have kept me in a state of perpetual doubt and anxiety lest Liberty's light be dimmed by Lucifer's. In mercy's name, let up a little, and give a toiling torch-bearer an occasional chance to recuperate.⁴⁰

Gradually, however, the relationship between the two periodicals became strained over disagreements which were largely over strategy in advancing liberty.

Tucker became increasingly hostile to civil disobedience as a strategy. Early in *Liberty's* history, Tucker had been so outraged by the post office's refusal to carry Walt Whitman's *Leaves of Grass* due to its alleged obscenity that he published his own edition and flaunted its sale. Addressing the post office and District Attorney Stevens, he wrote: "You are hereby distinctly notified—all of you in general, and you, Oliver Stevens, in particular that I have now in my possession, and do now offer for sale, copies . . . Yours, disrespectfully."⁴¹ Gradually, Tucker's attitude changed and he became firmly committed to the strategy of education rather than civil disobedience, especially when that disobedience was likely to guarantee martyrdom or more stringent and repressive laws. With the Chicago Haymarket incident (May 4, 1886) and the hysterical repression of radicalism which followed it, Tucker observed first-hand the disastrous consequences of a rash act and concluded the cost outweighed any benefit.

In contrast, Harman's *Lucifer* pursued a policy of baiting the law, particularly the Comstock postal obscenity law. Harman established an "open word" rule for *Lucifer* whereby no contributions would be edited because of explicit language. Accordingly, *Lucifer* published the Markland letter which analyzed forced sex within

marriage as rape and graphically described the plight of a woman whose life was imperilled by her husband's refusal to leave her alone after an operation.⁴² For this and two other letters, the staff of *Lucifer* were jointly and separately charged with 270 counts of obscenity; subsequently, the charges were dropped against all but Harman. The rebellious acts of which Tucker disapproved were exemplified by Harman's reprinting of *Genesis* 38 within *Lucifer* while awaiting trial. By reprinting this portion of the Bible depicting Onan's coitus interruptus and adultery, Harman tried unsuccessfully to goad the court into declaring it obscene.⁴³

Moses Harman was imprisoned for the Markland letter, the first of a series of his imprisonments for obscenity; he suffered the last term of one year at hard labor when he was in his seventies.⁴⁴ Many libertarians hurried to support Harman. Most notably, Ezra Heywood republished one of the offending articles from *Lucifer* and was also arrested. Tucker did not feel able to support Harman with enthusiasm. However, he decried the injustice and solicited money for the Harman Defense Fund, originated and advertised in *Liberty*. "Obscene or not," Tucker declared, "it was Mr. Harman's right to print it . . ." However, he continued by observing that "to precipitate a struggle on the issue of liberty to print the most extreme obscenity and suffer defeat on it, would be to lay a foundation for more serious invasions of the liberty of printing that would be likely to interfere with the achievement of economic liberty."⁴⁵ Tucker believed that Harman's rash actions imperilled the freedom of radicals to discuss anarchism and economic reform, two far more important issues.

A number of *Liberty's* contributors were quite critical of Tucker for this stand on strategy. A.H. Simpson wrote an article which concluded: "I shall be sorry and disappointed if I do not hear of your sallying forth to the aid of any comrade, who makes a clear fight for liberty, whether he be rash or timid."⁴⁶ This was one of the few occasions upon which Tucker's position on an important matter was not in the mainstream of the libertarian movement.

An earlier incident had also created distance between the Harman's and Tucker's periodicals. The non-state, non-church wedding of E.C. Walker and Lillian Harman (Moses Harman's sixteen year old daughter) resulted in the couple's imprisonment. Their union had been an explicit test of the marriage laws, and Tucker firmly disagreed with the tactic of requesting the state to recognize their union as a marriage. To his mind, this extended the law rather than restricted it. He later offered Harman an ambiguous apology: "I wish my readers to learn that I have done the 'Lucifer' people great injustice in underrating their intellectual capacities and cleanness of perception and in making out that they fail to understand the absurdity of their position . . ."^{47a} The "apology" was not well received.

The relationship between E.C. Walker and Tucker improved with time, perhaps because Walker also disagreed with Harman's "open word" policy. Walker resigned from *Lucifer* and used his new periodical *Fair Play*, a four page weekly at 75 cents per year, to attack *Lucifer's* determined martyrdom. Although E.C. Walker continued contributing to *Lucifer*, it is significant that when *Fair Play* ceased (1891) he transferred the subscriptions to *Liberty*.⁴⁷

Labor

There is no question but that Tucker identified more with the labor movement than with freethought or free love.

1872 was a pivotal year for the young Benjamin Tucker. While attending M.I.T. in lukewarm pursuit of an engineering degree, he founded a Greeley Brown Club in New Bedford and attended meetings of the New England Labor Reform League at which he had his fateful encounter with Warren and Greene. The League was a broad reform alliance formed in 1869 by a group including Warren, Andrews, Heywood, and Wendell Phillips. It presented an anti-statist, anti-monopoly, anti-corporation philosophy, with a strong emphasis on the labor theory of value. The League's favored strategy was boycott, the strategy of last resort at Warren's *Modern Times*. The League also took a keen interest in monetary theory, viewing the monopoly of money as a primary means by which the privileged rich profited from the laborer.

In November 1872, Tucker wrote to Ezra Heywood. "I hope to do some work for the labor cause," he stated, "but first wish to study the question that I may thoroughly understand it . . ." ⁴⁸ Shortly thereafter he began publishing in *The Word*, then a labor reform paper. Through *The Word*, he became conversant with Warren's labor theory of value and William B. Greene's theory of mutual banking. Of Greene, Tucker wrote: "I am indebted to Col. Greene's *Mutual Banking* more than to any other single publication for such knowledge as I have of the principles of finance . . ." ⁴⁹ In 1873, he defended the Warren-Greene theory of money and interest in the pages of *The Index*, and engaged in a debate with the editor on the issue. Upon resigning from *The Word* Tucker declared: "I wish to give myself first and emphatically to the advocacy of justice to labor."⁵⁰ This statement was the *raison d'être* of the *Radical Review*; it applied equally to *Liberty*.

Tucker's association with Lysander Spooner undoubtedly strengthened this commitment to labor. Three of Spooner's economic works—*Our Financiers: Their Ignorance, Usurpations, and Frauds*; *The Law of Prices: A Demonstration of the Necessity for an Indefinite Increase of Money*; and *Gold and Silver as Standards of Value*—first appeared in Tucker's *Radical Review*. Tucker was also acquainted

with Spooner's *What is a Dollar?* and *Financial Imposters* published in the *New Age*, a weekly edited by J.M.L. Babcock.

Labor reform (under its various manifestations of interest, money, banking, rent, capital, unions, and strikes) was the topic most discussed in *Liberty*. Tucker believed that labor reform lead to anarchism through the honest consideration of the following nine key questions:

Are not the laboring classes deprived of their earnings by usury in its three forms,—interest, rent, and profit?

Is not such deprivation the principal cause of poverty?

Is not poverty, directly or indirectly, the principal cause of illegal crime?

Is not usury dependent upon monopoly, and especially upon the land and money monopolies?

Could these monopolies exist without the State at their back?

Does not by far the larger part of the work of the State consist in establishing and sustaining these monopolies and other results of special legislation?

Would not the abolition of these invasive functions of the State lead gradually to the disappearance of crime?

If so, would not the disappearance of crime render the protective functions of the State superfluous?

In that case, would not the State have been entirely abolished?⁵¹

These labor, economic, and political questions dominated *Liberty*.

As well as providing a forum for such discussion, *Liberty* advertised a wide range of labor reform literature, much of which was published by Tucker. "Liberty's Library" was the most advertised group of titles. They included: *Captain Roland's Purse* (Ruskin), *The Great Strike* (Heywood), *Hard Cash* (Heywood), *International Address* (Greene), *The Labor Dollar* (Andrews), *Mutual Banking* (Greene), *Work and Wealth* (Ingalls), *Yours or Mine* (Heywood). Of the fourteen titles constituting "Liberty's Library" twelve specifically addressed economic reform while the other two, *Anarchism or Anarchy* (Tucker) and the *Radical Review*, had some direct relevance.⁵²

Liberty had connections with several labor periodicals. *The Age of Thought* (1896–98), edited by Edward H. Fulton was directly inspired by *Liberty*. The first two issues of this eight-page weekly discussed land and money from an anarchist perspective. Francis Tandy, William Holmes, and Henry Cohen—referred to by Tucker as the "Denver circle"—were contributors, as was William Trinkhaus. Tucker's announcement of the *Age of Thought* encouraged readers to "send a dollar . . . for a year's subscription." Of Fulton, he wrote approvingly: "He is young and ardent, and, situated as he is in the west, where the financial battle is waging, he will be able to lend more efficient aid to Cohen, Tandy and other comrades."⁵³

The Auditor, a free banking paper, was another labor-economic periodical, published from Chicago (1891) by Alfred Westrup, a contributor to *Liberty* and the corresponding secretary of the

Mutual Bank Propaganda of Chicago. The stated purpose of this organization was "the establishment of an equitable monetary system as an essential factor in economic science."⁵⁴ Westrup quizzed Tucker on money, the central disagreement being whether or not there was "such a thing as a measure or standard of value."⁵⁵ Westrup's works, *Citizens' Money* and *The Financial Problem; or, the Principles of Monetary Science*, were advertised in *Liberty*.

In 1886, the most frequent contributor to the first volumes of *Liberty*, Henry Appleton, became editor of *The Newsman*, the monthly organ of newsdealers published by the Mutual News Company of Boston. Tucker welcomed his editorship, saying: "In it he will wage steady and unrelenting war upon monopolies in general and the American News Company in particular. While in *Liberty* he will continue to do the same incomparable work that he has been doing ever since its start." Although *The Newsman* was not uniquely a labor paper, Tucker emphasized this aspect of it. There was a caveat thrown into Tucker's congratulation of Appleton, however: "Will he pardon me if I add that I look with grave doubts upon his advice to newsdealers to join the Knights of Labor? . . . The seeming magnitude of immediate results should never induce a man of intellect to encourage principles and methods the ultimate evil consequences of which are sure to far outweigh all temporary benefits."⁵⁶ The "principles and methods" referred to were the acceptance and use of the political means of achieving social goals. This disagreement between Tucker and Appleton raged into a bitter conflict within *Liberty*, eventually impelling Appleton to withdraw from its pages.

Tucker did not oppose labor unions per se. He greeted the July 16, 1881 revival of the International Working People's Association, describing it as a "momentous event, which marks an epoch in the progress of the great labor movement." His editorial ended: "We hail its revival with delight and renewed hope . . . Vive L'Association Internationale!"⁵⁷ In response to the 1881 National Socialistic-Revolutionary Congress, he declared: "Nothing is more essential . . . than the mutual understanding and intercommunication of socialists in all parts of the world and no instrumentality was ever so effective in establishing this as the International Working-People's Association."⁵⁸ Tucker's antipathy to unions and labor organizations grew in direct proportion to their participation in politics.

The Kansas City *Sun* (1887) was another labor paper linked to *Liberty* through its editor Charles T. Fowler who with Tucker had attended parlor meetings in Boston, the central figure of which was Josiah Warren who spent most of the evenings answering torrents of questions. Upon Fowler's death, Tucker lamented: "Mr. Fowler's share of this work was a large one, and he had it well mapped out and far . . . the task cannot be completed by his originating hand, and for this we mourn."⁵⁹

Liberty's connection with labor papers was often based upon the editor's being a contributor to *Liberty*. The influential Joseph Labadie (1850–1933), whose articles in *Liberty* charted his gradual conversion to libertarianism was an editor of the *Advance and Labor Leaf*. Similarly, John Beverley Robinson (1853–1923), a major Stirnerite contributor to *Liberty* and a personal friend of Tucker, was earlier a publisher of the *Free Soiler* (1884), an organ of the American Free Soil Society.

Another class of labor periodical, which, however, *Liberty* generally viewed with hostility, was single tax journals. Tucker severely criticized Henry George, the founder of the single-tax movement, and he devoted considerable space in *Liberty* to refuting George, only once quoting him with favor in regard to patents. The two single-tax papers significantly mentioned in *Liberty* were the Philadelphia *Justice* and Henry George's *The Standard*. Another class was the quasi-libertarian periodicals which Tucker considered allies, one example being the weekly *San Franciscan* edited by J. Goodman and A. McEwan.

IV. *Liberty* Appears

Liberty appeared on August 6, 1881 from Boston with an introduction typical of Tucker. "It may be well to state at the outset," he declared, "that this journal will be edited to suit its editor, not its readers."⁶⁰ Despite this caveat, *Liberty* was a relatively open forum for libertarian debate with many of the early unsigned editorials, often ascribed to Tucker, being written by Lysander Spooner and Henry Appleton. The subtitle of *Liberty* was a quotation from Proudhon—"Liberty: not the daughter but the mother of order"—and the journal's primary commitment was to economic reform. It was broad enough in its interests, however, to feature a portrait of Sophie Perovskaya, a Russian nihilist martyr, in the center of its front page. The first page, as in all issues thereafter, was entitled "On Picket Duty" and presented a survey/commentary on contemporary periodicals, events, and personalities. The remainder of the issue dealt with labor, freethought, and anti-statism.

Liberty served as a clearing house for contemporary individualist periodicals, with Tucker ever alert to the appearance of a relevant new journal in America or abroad, ever poised to jump on the deviations of an established journal. He reprinted appropriate articles and often praised or engaged in debate with editors and contributors. Debates were especially common with British individualists such as J. Greevz Fisher, with whom *Liberty* disputed economic theories of interest and children's rights.

Egoism

The first major debate within *Liberty*, however, was among the American anarchists over Stirnerite egoism (1887–); specifically, this debate centered on whether egoism or natural rights formed the proper basis of libertarianism.

One of the notables in the egoist debate was James L. Walker (1845–1904). Walker contributed to *Liberty* under the pseudonym of Tak Kak, published the first twelve chapters of his pioneering work, *Philosophy of Egoism*, in the May 1890 to September 1891 issues of *Egoism*. *Egoism* (1890–1897), edited by Georgia and Henry Replogle from California, was a vehicle of Stirnerite egoism.⁶¹ Even before this series, *Liberty* had introduced egoism through the articles of Walker and George Schumm. The March 6, 1886 issue of *Liberty* printed an article by Walker entitled "What is Justice?" which advanced the egoist perspective.

The furor that raged over egoism in the next volume of *Liberty* revolved around the egoists' rejection of natural rights as unfounded abstractions; Walker referred to such ideas as "right," "wrong," and "justice" as "merely words with vague, chimerical meanings."⁶² The natural rights advocates, most of whom were influenced by Herbert Spencer responded by insisting that egoism destroyed the very foundation of libertarianism and removed all moral objection to the initiation of force. Gertrude Kelly well expressed this position in writing: "My friends, my friends, have you completely lost your heads? Cannot you see that without morality, without the recognition of others' rights, Anarchy, in any other than the vulgar sense, could not last a single day?"⁶³ Although the egoists agreed that there could be no moral objection to force, they maintained that egoism was a more solid foundation for freedom and so would strengthen the movement. This controversy polarized libertarianism prompting many of the natural rights advocates to withdraw from the pages of *Liberty*.

Thereafter, *Liberty* leaned toward egoism though the content changed little as a result. The first English translation of Max Stirner's *Der Einzige und Sein Eigentum* (*The Ego and His Own*) was published by Tucker and given such priority that he omitted the February 1907 issue of *Liberty* in order to concentrate upon it. "Thanks to Mr. Byington, the translator," Tucker wrote, "it is superior to any translation that has appeared in any other language and even to the German original." Tucker's commitment to egoism may be judged by his statement: "I have been engaged for more than 30 years in the propaganda of Anarchism, and have achieved some things of which I am proud; but I feel that I have done nothing for the cause that compares in value with my publication of this illuminating document."⁶⁴

Several periodicals were undoubtedly influenced by *Liberty's* presentation of egoism. They included: *I* published by C.L. Swartz, edited by W.E. Gordak and J.W. Lloyd (all associates of *Liberty*); *The Ego* and *The Egoist*, both of which were edited by Edward H. Fulton. Among the egoist papers that Tucker followed were the German *Der Eigene*, edited by Adolf Brand, and *The Eagle and The Serpent*, issued from London. The latter, the most prominent English-language egoist journal, was published from 1898 to 1900 with the subtitle "A Journal of Egoistic Philosophy and Sociology"; after June 1900 the subtitle read: "A Journal of Emersonian Philosophy and Sociology." This bi-monthly was edited by John Basil Barnhill under the pseudonym of Erwin McCall.

Spencerian Periodicals

Victor S. Yarros was virtually the only Spencerian to remain with *Liberty* after the egoism debate. He defended the radical Spencerian tradition exemplified by Herbert Spencer's *The Right to Ignore the State* (1844, chapter in *Social Statics*). In advancing the radical Spencerian position as the only consistent one, he incurred the displeasure of individualist papers which considered themselves Spencerian not despite their conservative positions, but because of them. Anarchism was the greatest stumbling block. The Denver *Individualist*, formerly the *Arbitrator*, (1889–1890) attacked Tucker on this point. In an article published in the *Individualist* entitled "Why I am An Individualist," its editor, Frank Stuart, challenged anarchism and Tucker. The *Spencerian Today* (formerly *Waterman's Journal*), edited by J. Morrison-Fuller called upon *Liberty* to produce evidence supporting anarchism. On this exchange, the more radical Yarros commented: "*Today* occupies considerable space with an attempt to answer a recent *Liberty* paragraph." He continued by criticizing *Today's* rejection of anarchism without which, he declared, it will "remain a voice crying in the wilderness."⁶⁵ E.L. Youmans' *Popular Science Monthly* was the most prominent vehicle of Spencerian thought in America. Although it did not openly respond to *Liberty*, Tucker reprinted several articles from its pages.

Contemporary Individualist Periodicals

Other periodicals influenced by *Liberty* were not devoted to a specific issue such as labor but to individualism in general terms. E.H. Fulton, mentioned previously as the editor of *The Age of Thought*, *The Ego*, and *The Egoist*, was a Tuckerite who published several individualist-anarchist periodicals: *The Alturian* (1895); *The 1776 American* (1920); *The New Order* (1919), which listed Stephen Byington as a contributing editor; and *The Mutualist* (1925

-1928), to which C.L. Swartz contributed. George and Emma Schumm borrowed the title of Tucker's first periodical, *The Radical Review*, publishing a short-lived version of their own from Chicago. *The Radical Review* was advertised in *Liberty*, as was the individualistic *The Whim*. Published in 1901, *The Whim* fell under the editorship of E.H. Crosby in February 1902. Its advertisement in *Liberty* described its orientation: "*The Whim* is an independent, anti-military, anti-government journal, claiming relationship to Thoreau and Tolstoy, but owning no master."⁶⁶ Georgia and Henry Replogle's *Equity* (1886-1887), a fortnightly journal from Liberal, Missouri stated its purpose to be the "emancipation from sex, wage, monopolistic and custom slavery, and state superstition." Tucker described it as "a tiny sheet, but a brave one."⁶⁷

Another individualist paper, *The Twentieth Century* (N.Y., 1888-1898), elicited mixed reviews from Tucker. Under the editorship of Hugh Pentecost and T.L. M'Cready (associate editor), the *Twentieth Century* became virtually libertarian. Its advertisement in *Liberty* stated: "This Journal advocates Personal Sovereignty in place of State Sovereignty, Voluntary Co-operation as opposed to Compulsory Co-operation."⁶⁸ Although Tucker's opinion of M'Cready was high, he grew increasingly critical of Pentecost, eventually questioning his integrity. Pentecost responded in kind, aiming subtle insults at *Liberty* in the pages of *Twentieth Century*. Tucker reported on one such incident: "This meant, I could not help perceiving, a condemnation of the personnel of Liberty's office. We are fighters, and therefore savages, according to Mr. Pentecost, and this fact stands to our dishonor."⁶⁹

Tucker also had a mixed response to the periodical *Alarm*, raising questions on the proper use of force. Originated by Albert R. Parsons, one of the Haymarket martyrs, the paper's editorship was assumed by Dyer D. Lum (1887) upon Parsons' arrest and subsequent execution; with Lum, the paper acquired individualistic tendencies. Lum was on cordial terms with *Liberty*, having contributed a series entitled "Eighteen Christian Centuries: or, the Evolution of the Gospel of Anarchy," but he became severely critical of Tucker's stand on the Haymarket incident. Tucker, on the one hand, roundly condemned the authorities and maintained the innocence of the arrested men; he excoriated those who sanctioned the hangings. (His pamphlet *Henry George, Traitor* was written to prove "that the leader of the Single Taxers was a hypocrite and coward in his sanctioning of the hanging of the Chicago Communists."⁷⁰ But, nevertheless, he refused to use the incident as a rallying point. Some of the accused men were open advocates of force and Tucker was afraid that rallying around such a violent event might only encourage more force. He considered even purely defensive force to be the last possible solution to any problem and never a desirable one.

Tucker's attitude toward the use of force polarized the anarchist movement. The individualist-anarchists, who generally opposed all but defensive force on moral grounds, were labelled "Boston anarchists" since *Liberty* was issued from Boston. The communist-anarchists, who often accepted the use of force as a strategy, were labelled "Chicago anarchists" since Chicago was the site of the violent Haymarket affair in 1886. Burnette G. Haskell, editor of the San Francisco *Truth*, first applied these polarizing labels; ironically, Haskell later attempted to demonstrate the fundamental similarity between individualist and communist anarchism. Tucker was not sympathetic to this interpretation, nor to Haskell.

Another periodical which became libertarian by virtue of a change in editors, was the *American Idea*. When C.M. Overton left the paper, M.D. Leahy, (a head of the Freethought University in Liberal, Missouri) and W.S. Allison assumed the editorship. In Tucker's words, it became "a stanch and straight advocate of Anarchism," which he requested subscribers to "encourage . . . by generous subscription to his paper."⁷¹

Many contributors to *Liberty* were involved in individualist publishing efforts of their own. Clara Dixon Davidson, whose brilliant article on children's rights illuminated that debate, published the *Enfant Terrible* (1891) from San Francisco. *The Progressive Age* was edited by Voltairine de Cleyre from Grand Rapids, Michigan.

C.L. Swartz, and later J.W. Lloyd, edited *The Free Comrade* (1900–1902, 1910–1912). The *Galveston Daily News* achieved prominence in *Liberty* through the work of its chief editorial writer, James L. Walker, whose articles Tucker frequently reprinted. For a short time, the *Chicago Evening Post* was co-edited by Victor Yarros, an associate editor of *Liberty*. An unusually high percentage of those who contributed to *Liberty* were professional journalists or experienced "amateurs" who, true to the definition of that word, pursued publishing for the love of it.

V. *Liberty* Abroad: International Libertarianism

Tucker and *Liberty* were hybrids. Their roots were imbedded in both the uniquely American tradition of individualist-anarchism and some distinctively foreign traditions. The cosmopolitan Tucker acknowledged no intellectual boundaries and tolerated no political ones; national boundaries were simply the physical manifestation of government, an institution he adamantly rejected. This internationalism was reflected in the articles *Liberty* reprinted from foreign journals and the correspondents who reported on the progress of liberty in their native countries. These correspondents included David Andrade (Australia), Vilfredo Pareto (Italy) and Wordsworth Donisthorpe (England). Distinctly foreign events and

concerns such as the plight of Russian nihilists or Irish tenants often received more attention from *Liberty* than American ones. Tucker was outraged by the imprisonment of the Italian Amilcare Cipriani, the trial of Louise Michel, and the plight of Russian refugees in Paris. His attempt to establish libertarianism as an international movement was best exemplified by *Libertas* (1888), a German-language version of *Liberty*, published by Tucker and edited by George and Emma Schumm. "This will be the only thoroughly Anarchistic German journal ever published in the world . . ." Tucker wrote in announcing *Libertas*. "The paper will be of the same shape and size as the English *Liberty*, and the two will alternate in the order of publication—the English appearing one week and the German the next."⁷² *Libertas* was short-lived.

British Individualists

In terms of contributing articles and engaging in debate, the British individualists were the most active foreign presence in the pages of *Liberty*. The British Individualists differed from their American contemporaries in several ways. For the most part, they advocated limited government and, like their mentor Herbert Spencer, they shied away from anarchism. The labor theory of value, so integral to *Liberty's* philosophy, was not widely accepted among the British Individualists, and one of *Liberty's* lengthiest debates pitted the American Hugo Bilgram against the British J. Greevz Fisher on the justice of interest. Another major debate, children's rights, pointed up a third difference between the two groups. This exchange was, at bottom, the fundamental conflict of egoism versus natural rights. The egoists claimed that rights derived from contract and, thus, were unhappily led to conclude that children were unable to contract any rights whatsoever. The British, however, had not participated in the earlier egoism controversy in *Liberty* and took a straight natural rights stand. To them, children had all the rights that any human being could claim.

In sum, the British differed from the Americans in their rejection of anarchism, the labor theory of value, and egoism.

Auberon Herbert's *Free Life* (1890–1901), quoted nineteen times in *Liberty*, was perhaps the most prominent British libertarian periodicals. Its prospectus, as it appeared in *Liberty*, read: "We shall oppose all hereditary privilege, all religious establishments, all artificial regulations tending to monopoly in land; and we shall equally oppose all attacks upon property of every kind . . ."⁷³ Of *Free Life* and Herbert, Tucker wrote: "In a letter to me, written when he was contemplating the establishment of *The Free Life*, Mr. Herbert proposed that, in case of any friendly discussion between his journal and mine, each should reprint all that the other might say. Mr.

Herbert will observe that I have been prompt to act upon his suggestion, and I have no doubt that he will reciprocate . . .”⁷⁴ The “friendly discussion” referred to involved anarchism, which Herbert rejected.

Wordsworth Donisthorpe, the British correspondent of *Liberty* and its most frequent British contributor, edited *Jus: A Weekly Organ of Individualism* (1885–1888). *Jus* originated as an organ of the Liberty and Property Defense League; it ceased with Donisthorpe’s resignation from the League in protest over its marked tendency to defend privilege rather than liberty. On the demise of *Jus*, Tucker wrote: “There are no more than two papers on *Liberty*’s exchange list which the cause of Liberty could not have better spared . . . it is comforting to think that, as this good ship went down . . . it nailed to its mast-head colors more unmistakable than ever, and thus made its death more glorious than its life.”⁷⁵ This referred to Donisthorpe’s explicit embrace of anarchism in *Jus*’ final issue. Donisthorpe’s association with Tucker undoubtedly moved him in that direction.

Another British journal was the *Personal Rights Journal*, the organ of the English National Association for the Defense of Personal Rights, and was edited by J.H. Levy for over 30 years. Much of *Liberty*’s discussion of the *Personal Rights Journal* revolved around its defense of government. “On the whole,” Victor Yarros observed, “we find plenty of evidence that these are times that try English Individualists’ souls. That the most thoughtful of them will finally frankly accept the anarchist position is a foregone conclusion. Let us watch them now.”⁷⁶ Unfortunately, one of the things Yarros watched the *Personal Rights Journal* subsequently do was to review unfavorably his pamphlet “Anarchism: Its Aims and Methods”; the *Personal Rights Journal* remained an adherent of limited government.

Albert Tarn’s *The Herald of Anarchy* (1890–1892), a London monthly, was an exception to the British Individualists’ rejection of anarchism. In its advertisement in *Liberty*, *The Herald of Anarchy* declared that it “seeks to destroy the authority and prestige of national government as well as to combat all other forms of tyranny; advocates free access to land, the abolition of national monetary laws and restrictions on credit, free contract and free love.”⁷⁷ The debate between Tarn and Herbert on anarchism was followed by *Liberty*.

Henry Seymour was another English anarchist. In his periodical, *The Anarchist*, a four-page monthly beginning in 1885, he published George Bernard Shaw and Henry Appleton, both of whom contributed to *Liberty*. “It is gratifying,” Tucker wrote of *The Anarchist*, “to observe that it is to wage uncompromising war on lines precisely parallel to those of *Liberty*.”⁷⁸ Later, however, Tucker indicated that *The Anarchist* was leaning toward communist-anarchism. After this periodical, Seymour edited the London

Revolutionary Review (1889), a monthly which lasted less than a year.

The Eagle and the Serpent, a bi-monthly from London (1898–1902), an exception to the British insistence upon natural rights as the basis for individualism. Edited by John Basil Barnhill under the pseudonym of Erwin McCall, this periodical presented the egoist ideas of Stirner, Nietzsche, and Ibsen, deriving its title from a passage from Nietzsche—"The proudest animal under the sun [the Eagle] and the wisest animal under the sun [the Serpent] have set out to reconnoitre."⁷⁹ Welcomed by *Liberty*, *The Eagle and the Serpent* was the London agent for Georgia and Henry Replogle's *Egoism*.

John Morley's *Pall Mall Gazette* from London was among those British periodicals which received lukewarm attention from Tucker. He considered the *Pall Mall Gazette* to be "a moderately liberal journal, but prone to eschew that intensity of utterance to which men engaged in vigorous battle for great ideas generally give vent."⁸⁰ The London *Freedom* (1886–1927) received attention, probably due to its editor Pierre Kropotkin, whom Tucker admired. The prospectus of the individualist *The Whirlwind* (1890), edited by Herbert Vivian and Stuart Erskine, was reprinted in *Liberty* under the heading "Welcome the Whirlwind"; it read: "In politics we shall be individualists, instantly protesting against the encroaching tyranny of our grandmother, the state . . ."⁸¹ Although it was generally well received, Yarros criticized *The Whirlwind's* anti-semitism.⁸²

Liberty also maintained ties with British freethought and free love groups. It reprinted articles from G.W. Foote's *Freethinker* and reported the activities of Charles Bradlaugh and Annie Besant. George Bedborough's free love periodical, *The Adult: A Journal for the Advancement of Freedom in Sexual Relationships*, received some mention as the organ of the Legitimation League. *Liberty*, however, had little enthusiasm for this League, critically reviewing a pamphlet entitled "Legitimacy" by J. Greevz Fisher, a vice president of the League. *The Adult* and the Legitimation League were more closely associated with the free love interests of *Lucifer the Light Bearer* and Moses Harman.

French Periodicals

Given the immense influence Proudhon had upon Tucker, *Liberty* naturally felt strong ties to radical movements in France. These ties manifested themselves in two ways: translations and reprints. Tucker, along with several of *Liberty's* associates, was a bilingual Francophile and translated many works from French to English. Some of these were reprinted within *Liberty*; others were offered for sale independently, and were advertised within *Liberty*.⁸³ The

shorter translated pieces were generally articles rendered directly from French periodicals. *The State: Its Nature, Object and Destiny* by Proudhon, for example, was translated directly from *La Voix du Peuple* by Tucker. Since Tucker was an ardent fan and collector of Proudhon's periodicals, one of *Liberty's* greatest expressions of pleasure came as the result of a particular gift from John Henry Mackay. Tucker exclaimed:

Through the thoughtful kindness of my friend, John Henry Mackay, of Germany, I experienced a few days ago one of the pleasantest surprises of my life. For many years it has been my wish to obtain possession of a file of the newspapers which Proudhon edited in Paris during the years 1848, 1849, and 1850. Mackay has gratified this desire . . . I now have on my desk a complete file of 'Le Peuple', and a file of 'Le Représentant du Peuple,' which lacks only the half-dozen numbers that the French government confiscated.⁸⁴

The periodical from which articles were most frequently translated and reprinted in *Liberty* was Henri Rochefort's *L'Intransigeant*. Next in importance was George Clemenceau's *L'Aurore*. *Le Révolté* (subsequently *La Révolté*) edited by Pierre Kropotkin received praise from Tucker as "our ardent and admirable contemporary."⁸⁵ Tucker was especially pleased by *Le Révolté's* condemnation of those American socialists who refused to protest laws against Chinese immigration into America. *Le Temps* and *L'Audace* were also quoted briefly.⁸⁶

Australian Periodicals

David Andrade, *Liberty's* Australian correspondent contributed several excellent articles on the progress of libertarianism in Australia. Part of this progress was Andrade's *Honesty* (1887–1889), an anarchist periodical from Melbourne. This twelve-page monthly was published by the Cooperative Publishing Company at 85 cents per year. *Liberty* was its role model; *Honesty's* advertisement proclaimed: "It is sufficient description of *Honesty's* principles to say that they are substantially the same as those championed by *Liberty* in America."⁸⁷ *Honesty* listed Tucker's name and address for subscriptions.

W.R. Winspear's *Australian Radical* from Hamilton was also associated with *Liberty*. According to Tucker, the *Australian Radical* changed its format in 1888 from state socialism to anarchism. This weekly reprinted articles from *Liberty*.

Other Foreign Connections

Although the German egoist Max Stirner had immense impact upon *Liberty*, German periodicals were not followed with the same interest as British or French ones. Tucker's inability to read German

fluently may have accounted for this. Much of his knowledge of Stirner and other matters requiring translation came from the bilingual George Schumm. Adolf Brand's *Der Eigene* and Johann Otten's *Zeitschrift für den Individualistischen Anarchismus* were commented upon by Tucker. German-American papers monitored by *Liberty* included: Heinzen's *Pionier*, Reitzel's *Arme Teufel*, *Der Wecker*, and *Der Freidenker*.

It is difficult to assess *Liberty*'s connection with Spanish periodicals. *Revista Social* and *La Revolucion Social* were mentioned briefly, and Stephen Byington engaged in debate over individualist-anarchism with the editor of *A Vida*. *A Vida* had printed a Spanish translation of an article Byington had submitted to Tucker.⁸⁸ *A Vida*'s source for the article was a French paper which had translated directly from *Liberty*. Whether foreign periodicals were in the habit of translating and reprinting *Liberty* is speculation.

Although Tucker exhibited great interest in Russian nihilism and the assassination of the Czar (1881), few Russian periodicals were mentioned in *Liberty*. Victor Yarros who had fled Russia to avoid arrest was probably the only associate of *Liberty* with enough background to appreciate and translate the various periodicals. There is, however, no evidence that he did so. *Liberty* did, nevertheless, follow the career of Leo Tolstoi.

VI. *Liberty* and Literature

Literature was a prominent aspect of *Liberty*'s emphasis on internationalism. Tucker kept current on the state of art in France, England, and America. When Max Nordau published his anti-modernist *Degeneration* (*Entartung*), Tucker was discerning enough to solicit a critique from the one man best able to handle it—George Bernard Shaw. This essay, entitled "A Degenerate's View of Nordau," was the first article by Shaw to appear in America. Among the literary works *Liberty* translated and published were: Claude Tillier's *My Uncle Benjamin*, Zola's *Money* and *Modern Marriage*, Octave Mirabeau's *A Chambermaid's Diary*, Felix Pyat's *The Rag Picker of Paris*, and Sophie Kropotkin's *The Wife of Number 4,237*.

This fascination with cosmopolitan literature lead Tucker to publish *The Transatlantic* (1889–1890), a biweekly literary magazine. The advertisement in *Liberty* promised: "Every number has a complete translated novelette, a piece of European Music, a Portrait of a Foreign Celebrity and part of a translated European Serial." *The Transatlantic* consisted of "the cream of the European press translated into English."⁸⁹ predictably, much of the literature which interested Tucker had political implications. When Oscar Wilde's plea for penal reform, *The Ballad of Reading Gaol*, was widely criticized, Tucker enthusiastically endorsed the poem, urging all of

his subscribers to read it. Tucker, in fact, published an American edition. From its early championing of Walt Whitman's *Leaves of Grass* to a series of short stories by Francis du Bosque in its last issues, *Liberty* was a vehicle of controversial, avant-garde literature.

VII. The Demise of *Liberty*

Liberty came to a sudden, tragic end. In January, 1908 Tucker's bookstore was consumed by a fire which he described in what was to be the last issue of *Liberty*: "[T]his composing room, together with the entire wholesale stock of my publications and nearly all my plates, was absolutely wiped out by fire. As I had deliberately refused to insure . . . the loss was total."

He continued: "It is my intention to close up my business next summer, and, before January 1, 1909, go to Europe, there to publish *Liberty* (still mainly for America, of course) and such books and pamphlets as my remaining means may enable me to print."⁹⁰ These plans did not materialize. The April 1908 issue of *Liberty* was the last.

Tucker moved to Europe, settling in Monaco where he died at the age of eighty-five on June 22, 1939. Born seven years before the start of the Civil War, he died the same year that World War II began. In many ways, Tucker exemplified the golden age of libertarianism which faltered in the face of growing statism and militarism. Like other individualists, Tucker watched this growth of the State and became pessimistic. From Europe he wrote: "I hate the age in which I live, but I do not hate myself for living in it."⁹¹ During this advance of statism, his views began to shift. In a postscript to the 1911 London edition of *State Socialism and Anarchism*, he commented that when he wrote the essay twenty-five years before, "The denial of competition had not yet effected the enormous concentration of wealth that so gravely threatens social order."^{91a} It was no longer clear to Tucker that a free market alone could overcome the problems created by government monopoly. His pessimism increased with time. In a letter to his old friend C.L. Schwartz, a despondent Tucker wrote, "[T]he insurmountable obstacle to the realization of anarchy is no longer the power of the trusts, but the indisputable fact that our civilization is in its death throes."^{91b} Perhaps it was this despair coupled with his love of French culture that lead Tucker to support the Allies in World War I. Although he supported Sacco and Vanzetti against persecution by the state, Tucker displayed less and less interest in American affairs. Two days after his death, he was buried in Monaco with a private, civil ceremony; Tucker was survived by his wife and daughter. Other than writing to the editors of various journals, Tucker's last years were unproductive. His death, like that

of Herbert Spencer, marked the end of an era. Libertarianism as an organized movement in America would not appear again for many years.

VIII. *Liberty*: Success or Failure?

The question of whether *Liberty* or nineteenth-century libertarianism in general was successful inevitably arises. Often, the standard of success employed is whether the present society reflects the philosophy and goals of these early libertarians. Since it does not, libertarianism is said to have failed. A more reasonable approach, however, would be to assess the movement's imposed limitations and ascertain how much it achieved in spite of them.

The last decades of the nineteenth century were a golden age for radicalism in America. Anarchists in the United States issued nearly 500 periodicals in a dozen languages ranging from French to Yiddish. Only a minority of these periodicals were individualistic, for individualism was not the dominant philosophy of reform; the dominant philosophy was socialism.

The Civil War dealt such a severe blow to individualism that it never recovered. The War ushered in conscription, suspension of habeas corpus, censorship, military law, political prisoners, legal tender legislation, and soaring taxes and tariffs. The status and functions of government inflated as never before. Equally important, the prevailing view of government changed. With the Declaration of Independence and the cry of "no taxation without representation," government was considered to rule through the consent of the people. When the North refused to permit the South to withdraw its consent through secession and when it imposed an unpopular government upon the South, the consensual view of government was weakened and, with the "One Union under God" motto, mystification of the coercive State was underway.

Schisms within the libertarian movement resulting from the Civil War were equally destructive. Some of the abolitionists welcomed the conflict as a holy war to end slavery. Others considered it an inevitable evil and so supported the North as the lesser of two evils which at least promised the desirable goal of emancipation. Even the staunch pacifist William Lloyd Garrison supported the North much to the horror of Ezra Heywood and Lysander Spooner, who saw the War as a massive violation of life and property, which could not be justified by any goal. By the end of the Civil War, libertarianism had been so compromised and the state had achieved such prominence that individualism in America was no longer a dominant driving force.

After 1865, libertarianism existed as the radical faction within various other reform movements such as freethought, free love, and

the labor movement. Although the basis of a systematic philosophy was present in the writing of such theorists as Josiah Warren and Lysander Spooner, libertarianism lacked cohesion. Not until Tucker and the publication of *Liberty* did libertarianism become a distinct, independent movement functioning in its own name toward its own unique set of goals. Tucker's *Liberty* was important for discussing and interrelating ethics, economics, and politics to build a system of philosophy and, over a period of three decades, it provided a core around which a revitalized movement could sprout and grow.

In the late nineteenth century, libertarianism was not "an idea whose time had come." David De Leon in *The American as Anarchist* observed: "Nineteenth century anarchism failed primarily because it seemed archaic in the twentieth century."⁹² Libertarianism further hindered itself by clinging to the labor theory of value and by refusing to incorporate marginal utility and other rising economic theories.⁹³ Socialism became the dominant philosophy of reform, offering all the appeal of a new, untried idea and of a quick, political solution to social injustice.

In broad terms, the achievements of Benjamin R. Tucker's journal *Liberty* were: its influence upon people,⁹⁴ its role in the creation and sustenance of an autonomous movement; and the preservation of a tradition without which modern libertarianism could not exist. □



BENJAMIN R. TUCKER

FOOTNOTES

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

1. These excerpts were translated by George Schumm at Tucker's request. Tucker wrote: "I believe that my friend George Schumm, to whom I am indebted for the little knowledge of Nietzsche that I have, could either write, or translate from other sources, a much truer account of this new influence in the world of thought. Will he not do so, and thus make *Liberty* the means of introducing to America another great Egoist . . ." *Liberty* IX (October 1, 1892): 3.
2. Tucker was an editorial writer for the *Boston Daily Globe* and the *Engineering Magazine* (N.Y.), refusing to write articles which compromised his anarchist principles. Tucker was especially proud of *Liberty's* typography upon which he expounded at length.
3. This key phrase was the title of the second section of *Science of Society*, Stephen Pearl Andrew's presentation of Warren's philosophy. *Liberty* serialized it, October 30, 1886 to December 31, 1887. Thereafter, it was published by Sarah E. Holmes, an intimate of Tucker, and was advertised by *Liberty*.
4. Josiah Warren, *Practical Details in Equitable Commerce*, p.3.
5. Warren used the word "anarchy" as a synonym for "chaos." James J. Martin's *Men Against the State* is an excellent presentation of Warren's philosophy and influence. William Bailie's *Josiah Warren, the First American Anarchist* is still the best biography.
6. *The Peaceful Revolutionist* as quoted in Martin's *Men Against the State*, p. 32.
7. *The Peaceful Revolutionist* as quoted in Martin's *Men Against the State*, p. 34.
8. Greene's economic works were extensively advertised by *Liberty*.
9. *Liberty* XIV (December, 1900): 1.
10. Despite the 1846 date on the title, this was published in April, 1847.
11. *Liberty* IX (May 27, 1893): 1.
12. *Instead of A Book by a Man Too Busy to Write One*. Tucker published this work through soliciting advance orders. *Liberty* advertised it as "a large, well-printed, and excessively cheap volume of 524 pages . . ." *Liberty* IX (March 18, 1893), 4.
13. *Liberty* I (January, 1882): 4.
14. *Liberty* I (January, 1882): 4.
15. *Liberty* IV (February 12, 1887), 8.
16. *The Ego and His Own*, the English translation of Stirner's *Der Einzige und Sein Eigentum*, was first published by Tucker in 1907. Tucker's familiarity with egoism in the late 1880s came from his association with James L. Walker.
17. John F. Kelly, Gertrude B. Kelly and M.E. Lazarus withdrew entirely. They wrote thereafter for the short-lived anarchist paper, *Nemesis*.
18. Tucker was also influenced by Herbert Spencer and Michael Bakunin (whose name he spelled "Bakounine"). He was, however, extremely critical of Spencer for betraying the ideals expressed in *The Right to Ignore the State*. His admiration of Bakounine was not diluted with comparable ambivalence.
19. This appeared as a subtitle in the right hand corner of *The Liberator* under the heading "No Union with Slaveholders," the periodical's motto.
20. *Liberty* XIV (May, 1903): 6.
21. Paul Kleppner presents the useful liturgical/pietist distinction in *Cross of Culture*. Using this standard, however, ignores a third category of Rationalists into which both Spooner and Tucker fall.
22. Ingalls was associated with the homesteading movement. The bulk of his contributions to *Liberty*, however, revolved around his opposition to the single tax movement. Ingalls' "Henry George Examined. Should Land be Nationalized or Individualized?" was a supplement to *Liberty* I (October 14, 1882), the only such supplement published.
23. *Liberty* I (August 6, 1881): 3.
24. Perhaps Tucker shared the reservations of other anarchists who were skeptical of the Homestead movement's appeal to government. Some did not consider the government regulation of homesteads to be a blow for freedom.
25. A similar incident in 1888 ended with Tucker paying the tax under protest. This is indicative of his shifting view of strategy which eventually lead him to reject civil disobedience altogether.
- 25a. *Liberty* VI (January 19, 1889): 4.
26. See William Reichert, *Partisans of Freedom*, pages 367-370.
27. David De Leon's *The American as Anarchist* contains a fine presentation of the younger Tucker.
28. *Liberty* I (September 3, 1881): 4.
29. *Liberty* I (December 10, 1881): 1.
30. *Liberty* I (December 10, 1881): 1.
31. *Liberty* IV (January 22, 1887): 5.
32. The current *Truth Seeker* has little resemblance to the original periodical and should not be considered an ideological successor to it.
33. *Liberty* II (November 11, 1882): 1.
34. Most mainstream feminists were eager to avoid any association with free love. In 1889, women candidates in Kansas promised to close down *Lucifer* because of its obscene nature. This obscenity consisted largely of promoting birth control and marital reform. Hal D. Sears' *The Sex Radicals* is the best overview of free love in America.
35. *The Word* (May, 1872): 1. This paper was originally a forum for the New England Labor Reform League and the American Labor Reform League.
36. *Liberty* IV (May 28, 1887): 4-5. For *Liberty's* report of the Spooner memorial meeting see *Liberty* IV (June 18, 1887): 8.

37. *Liberty* VI (September 1, 1888): 5.
38. *Liberty* I (September 3, 1881): 4.
39. For Tucker's later attitude toward Woodhull, see *Liberty* VI (January 19, 1889): 4. For a presentation of Woodhull, see "The Terrible Siren," Victoria Woodhull by Emanie L. Sachs.
40. *Liberty* III (November 22, 1884): 1.
41. For one of these advertisements, see *Liberty* I (July 22, 1882): 4.
42. This incident is examined in Sears' *The Sex Radicals*.
43. It was not until 1895 that the Bible was declared obscene and J.B. Wise was arrested for sending a passage (Isaiah 12:36) through the mail.
44. *Lucifer the Light Bearer* (May 24, 1906) provides an excellent account of Harman's last imprisonment. The entire eight-page issue was devoted to the imprisonment. *Lucifer* ran appeals for support throughout Harman's incarceration, emphasizing his age. In the May 24th issue he was reported to be "75 years, 7 months and 12 days old."
45. *Liberty* VII (April 19, 1890): 1. Compare Tucker's rather conservative view of civil disobedience with the younger Tucker's approval of Russian nihilists' use of dynamite and assassination as self-defense. See *Liberty* II (May 12, 1883): 2.
46. *Liberty* IV (January 22, 1887): 5.
47. Martin's *Men Against the State*, an unusually reliable source book, lists *Fair Play* as 1898-1908. *Liberty* VII (April 4, 1891): 4, however, contains a letter from E.C. Walker and Lillian Harman announcing suspension of the periodical.
48. *The Word* I (November 1872): 3.
49. *Liberty* IV (January 5, 1889): 1.
50. *The Word* (December, 1876): 2.
51. *Liberty* II (August 19, 1882): 2.
52. The first listing of "Liberty's Library" was in *Liberty* I (October 15, 1881): 4. The sixteen titles presented there constituted the basic library advertised throughout *Liberty*, although there were periodic additions and deletions.
53. *Liberty* XII (July 11, 1896): 5.
54. *Liberty* VIII (May 16, 1891): 1.
55. *Liberty* VIII (May 16, 1891): 3. The "heresy" of which Tucker accuses the *Auditor* is not evident from this exchange.
56. *Liberty* III (January 9, 1886): 1.
57. *Liberty* I (August 20, 1881): 2.
58. *Liberty* I (October 15, 1881): 2.
59. *Liberty* VI (January 25, 1890): 4. These parlor meetings occurred while Tucker was a student at M.I.T.
60. *Liberty* I (August 6, 1881): 1. During the span of *Liberty*, it showed the imprint of several hands, not the least of which were its two associate editors, A.P. Kelly and Victor Yarros.
61. *Egoism* had considerable influence upon Tucker. When Tucker agreed with the natural rights position of J. Greevz Fisher on children, its editor, Henry Replogle (under the pseudonym of "H") rushed to correct him. "'H' very properly takes me to task," Tucker commented in *Liberty* XI (June 29, 1895): 3. Tucker changes his position to conform with this criticism.
62. *Liberty* III (March 6, 1886): 8. James L. Walker apparently formulated his theory of egoism independently, only later discovering the great similarity to Stirner.
63. *Liberty* V (August 13, 1887): 7.
64. *Liberty* XVI (April, 1907): 1.
65. *Liberty* VII (July 12, 1890): 4.
66. *Liberty* XIV (December, 1903): 7.
67. *Liberty* IV (July 17, 1886): 4.
68. *Liberty* VI (December 28, 1889): 8. In 1892. Pentecost's editorship ceased and the periodical leaned toward state socialism.
69. *Liberty* VII (July 26, 1890): 1. M'Cready (a pseudonym for G.O. Warren) died in 1890, mourned by Tucker with the words, "*Liberty* learns with profound sorrow the fact of the sudden death of T.L. M'Cready." *Liberty* VII (June 28, 1890): 1.
70. *Liberty* XIII (May, 1897): 8.
71. *Liberty* V (March 31, 1888): 1.
72. *Liberty* V (December 31, 1887): 4.
73. *Liberty* VI (March 8, 1890): 2.
74. *Liberty* VII (July 12, 1890): 5.
75. *Liberty* V (March 14, 1888): 7. This appeared almost as a fulfillment of a prophecy by Yarros—"Mr. Donisthorpe cannot be long in reaching anarchy."
76. *Liberty* VII (July 26, 1890): 5.
77. The first advertisement appeared in *Liberty* VII (November 29, 1890): 7.
78. *Liberty* III (April 11, 1885): 1.
79. This was the motto of the periodical, appearing on its masthead. It did not change when the subtitle went from "A Journal of Egoistic Philosophy and Sociology" to "A Journal of Emersonian Philosophy and Sociology" (July, 1900) to "A Journal of Wit, Wisdom and Wickedness" (October, 1900) and finally to "A Journal for Free Spirits and for Spirits Struggling to be Free" (March, 1901).
80. *Liberty* II (January 20, 1883): 1.
81. *Liberty* VII (June 28, 1890): 3.
82. *Liberty* VII (September 13, 1890): 6-7. The controversy revolved around the *Whirlwind's* statement that "the proper way to deal with Jews is a rigorous boycott." Yarros was outraged, claiming that "intelligent individuals will certainly dissent."
83. At 225 Fourth Avenue, New York, Tucker had a large, radical bookstore. See *Liberty* XV (June, 1906): 9-10, and (August, 1906): 1-2 for an account of the establishment.

84. *Liberty* VIII (July 11, 1891): 1. In later life, Tucker condemned Mackay due to the latter's unusual lifestyle.
85. *Liberty* II (June 9, 1883): 1.
86. *Le Révolté* wrote: "And not a single socialist was found in San Francisco to say to these people that they cannot prohibit the admission to America of these poor wretches." Quoted in *Liberty* I (May 13, 1882): 1.
87. The first advertisement appeared in *Liberty* IV (June 18, 1887): 1.
88. *Liberty* XV (August, 1906): 24-34.
89. *Liberty* VI (October 5, 1889): 8. Herbert Gutman, in the introduction to the Greenwood reprint of *Liberty* mentions another literary periodical, *Five Stories A Week*.
90. *Liberty* XVII (April, 1908): 1-3.
91. Letter to Ewing C. Baskette, November 7, 1934.
92. De Leon, *The American as Anarchist*, page 82.
93. It is not until Murray Rothbard that Austrian economics becomes integrated with individualist-anarchism.
94. Tucker's influence extended beyond the political sphere. From Eugene O'Neill who claimed that Tucker had deeply affected "his inner self" to Walt Whitman who exclaimed "I love him: he is plucky to the bone," his influence was considerable.

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I

Liberty vs. Authority

To distinguish dramatically the underlying historical forces that determine either the happiness and progress or the misery and decline of mankind, our cover subject Benjamin Tucker (1854–1936) chose the antagonistic concepts of Liberty and Authority. Tucker discerned in these concepts the conflicting principles which set at loggerheads the two camps of individualistic libertarians and state socialists. These “two extremes,” he asserted:

are more diametrically opposed to each other in their fundamental principles of social action and their methods of reaching the ends aimed at than either is to their common enemy, the existing society. They are based on two principles the history of whose conflict is almost equivalent to the history of the world since man came into it; and all intermediate parties, including that of the upholders of the existing society are based upon a compromise between them. . . . These two principles referred to are AUTHORITY and LIBERTY. . . (*Instead of A Book*, p. 4).

Although liberty must be conceded to be opposed to authority, its precise definition and historical realization have proved somewhat elusive. Nevertheless, libertarian traditions have left their humane mark on man's fitful advance beyond the regressive forces of statism, war, legal privilege, slavery, and monopoly. The following group of summaries trace diverse humanitarian contributions to the liberal conception of man and society. Of direct relevance to Tucker's own intellectual milieu are the Ledbetters and Hall summaries, which clarify the impact of abolitionist thought on Transcendentalism and the significance of Joshua K. Ingalls' economic doctrines.

Inventing the State: the Investiture Conflict

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“The Invention of the State.” from *Essays on Medieval Civilization*. Eds. Karl Lackner and Kenneth Roy Philip. University of Texas Press, 1978. Austin and London.

In his essay, Prof. Cheyette searches, not so much for the origins of the typical European state, as for the *idea* of the state, its laws, and institutions. He particularly hopes to understand how the modern West came to think of the state and human law

as coercive. Certainly, such a notion did not originate with the ancient Greeks. They considered the healthy state and its laws as essential to the good society and the individual. Cheyette traces the genesis of the modern attitude to the Middle Ages.

He contends that, during the early medieval period, little if anything abstract was expressed about the state, law, and authority until the eleventh century. Up to that time, Europe had survived as a society which was based on a largely oral tradition. Ideas expressed orally could not be abstract, because they issued from a specific person—a king such as Clovis or Charlemagne, a doomsman, an official, or a priest. Charters referred to men granting and receiving land but not to feofers, feoffees, vendors, and buyers.

Thinking in more universal terms evolved gradually after the great "medieval awakening" which began around the middle of the eleventh century. The growth of literacy and the concomitant appeal to texts diminished the role of the person and expanded the domain of the general and abstract political thought.

The one specific event which acted as a catalyst for this change was the imperial-papal Investiture Controversy. This struggle concerning the right to install bishops and abbots forced spiritual and secular officers to think about the nature of their function and authority and damaged the theoretical justification of political rule. In the course of debate, individuals such as Pope Gregory VIII (1073–1085) and Henry IV (1050–1106) came to be thought of not so much as persons but as generalized holders of an office.

In his *Dictatus Papae*, Gregory VII argued that the powers and rights of the

papal office were vastly superior to the secular powers inherent in the office of emperor. Secular powers, he argued, originated from men ignorant of God, who secured their authority through pride, plunder, and treachery.

Cheyette contends that, after the *Dictatus*, men began to "see office and property not as having character but as impersonal and abstract because derived from an impersonal and abstract body of rules." By appealing to written rules instead of to what men remembered, the Gregorian reformers initiated a fundamental change in Western thinking.

Those reformers of the eleventh century conceived their divinely ordained task as one of returning the Church to the purity it had in the days of the Fathers. Such an intent could only have arisen within a literate community, for it depended not on oral tradition but on texts. Patristic writings were to mold one's judgement of the world. The insistence that truth was to be found in texts, and not in what people did (custom), proclaimed the atemporal, abstract nature of those writings and of the offices and authority which they sanctioned.

Thus, authority and, by extension, law and the state came to serve as an abstract, impersonal, literate structure of coercive force. For the later Middle Ages, as for the modern man, they became essentially an apparatus, the human embodiment of the Other and the Other's compulsion.

True Whiggism: 1688–1694

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"The Roots of True Whiggism, 1688–94." *History of Political Thought* 1(Summer 1980):195–236.

Early English Whiggism underwent an erratic shift in ideas. The initial party led by Locke's patron, the first Earl of Shaftesbury, (1621–1683) aimed to exclude the Catholic, James, Duke of York from the throne, but was crushed by Charles II.

The Whig party which achieved permanent existence after 1688 was quite different in outlook. Guided by the four lords, known as the Junto, it was oligarchic, commercialist, and favored extensive executive power. The "judiciously conservative"

Constitution of 1689 was a compromise under which, by 1695, the Junto had gained control of William III's government. As the party moved away from its "country" outlook, a number of critics, much studied by historians, sought to restore the principles of "true" Whiggism. The early critics of the Junto have been relatively neglected.

The three leaders of this movement were Major John Wildman, John Hampden, and Samuel Johnson. They had allies among the Lords, such as Mordaunt, Delaware, Macclesfield, Lovelace, Wharton, and Bolton, as well as the well-organized elements in the City of London, including many among the clergy, lawyers, and printers.

These radical, populist critics focused on several basic ideas. Many were advocates of an outright republicanism, but realized that if the monarchy could not be abolished, it was best to seek to limit its power through Parliament. A second enemy, beyond monarchical absolutism, was the tyranny of the established Anglican Church.

While many opponents of James II argued that the constitution was itself sound but that the King had abused it, the Commonwealthmen held that its faults made the abuses possible. A tension existed between those who stressed this historical-legal tradition, and those who argued from principles of reason and nature for a right to exist. The same ambiguity, of course, had been evident in the various factions during the Revolution of the 1640's. In 1688-1689, radicalism was undercut by the priority of getting a new King.

The radicals initiated a host of pamphlets early in 1689 offering advice to the impending Convention: the thrust being that the dissolution of the kingship suspended the constitution and returned political power to the people. The Convention, then, had the power to reconstruct the Constitution. Power ought to rest with the people's elected representatives in Parliament. The King ought to be elected with a universal oath of allegiance. The right to bear arms and join a militia was essential to insure the right to revolution. A political education along "consensual" lines was advocated, while advocates of absolutism would be denied citizenship.



JAMES HARRINGTON

These themes formed the substance of the "true" Whig literature from 1689 to 1693.

With few illusions about William, the radical Commonwealthmen sought to develop a limiting contract before he took office. It was through the efforts of the radicals that the Declaration of Rights, though watered down, was as comprehensive as it was.

The split between court and county Whigs did not take place in 1691 or 1692 as argued by some historians, but is best dated from February, 1689. The moderate court Whigs joined the conservative-minded Tories in offering William the Crown without the contractual stipulations thought necessary by the radicals.

The aftermath was a rearguard action. The country party of the Whigs was shocked at how easily ministers in the old regime returned to power, even though a few were castigated for their role in the earlier suppressions. In the early 1690's several developments undercut the effectiveness of the radicals. The influence of the King was used to either co-opt some, or keep others from office. Some of the older leaders died, and the allure of Jacobitism attracted others.

Locke's Justification of Rebellion

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"Locke's Second Treatise and 'The Best Fence Against Rebellion.'" *The Review of Politics* 42(April 1981):198-217.

Recent commentators on Locke have hotly disputed how radical he truly was. In particular, how extensive was Locke's advocacy of the right of resistance and revolution? The answer to two questions can resolve the larger issue of the extent to which may be considered a radical: (1) Is the state of nature a state of war? and (2) Does the dissolution of government dissolve society?

To answer these questions, we must first understand what Locke means by "society." In his usage "society" does not connote the complete absence of government. Locke usually means by "civil society" a democratic organization of the body of the people which sets up the formal structure of government and to which the formal government is responsible. If, therefore, the formal structure of the legislature and executive dissolves, this does not immediately dissolve society. A time period may exist in which society may be able to form a new government.

Also, the state of nature is not, by definition, a state of war. In the state of nature, there is, by definition, no government. It is an empirical question, whether and to what extent, a state of nature (lacking a government) leads to civil discord. Locke does think that in practice the state of nature will lead to civil war. Also, while it is true that a

period of time may exist after the dissolution of the legislature in which society can reconstitute the formal apparatus of government, in practice this period is likely to be extremely brief.

But these probabilities do not destroy the hope for a successful outcome to revolution. Two ways to appear by which the existing authorities' abuse of power may justify revolution. First, new bodies are substituted for those bodies the people themselves have authorized. This suffices to constitute a dissolution of government in the above mentioned sense. After this has occurred, the time for effective action may have passed and civil war may be the inevitable result.

The existing authorities may, however, abuse their power by attempting to increase the prerogatives of existing institutions. The prognosis is more hopeful for this possibility. Opponents may anticipate their designs and thwart them, thus achieving a successful revolution. By successful anticipation, we can avoid the earlier problem (only a very short time existing after the government dissolves in which society still exists). Such success depends upon the informed public attention to the doctrine of sound political thinkers.

Locke's "Two Treatises" & Revolution

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"The Exclusion Controversy, Pamphleteering, and Locke's *Two Treatises*." *The Historical Journal* 24, no. 1(1981): 49-68.

It has been more than twenty years since Peter Laslett argued that the Exclusion controversy (aimed at keeping the Catholic James, Duke of York from the throne)

and *not* the Revolution of 1688 was the occasion for the writing of John Locke's *Two Treatises*. Nonetheless, scholars still resist viewing the *Two Treatises* as pre-

dominantly activist tracts and persist in characterizing them as something loftier—"political philosophy," "systematic moral apologia," and the like. In his article, Prof. Tarlton analyzes both the Whig pamphlets of the late seventeenth century and Locke's *Two Treatises* as writings intended to effect the monarchy's return to constitutional principles. Tarlton concludes that Locke can indeed be read as part of the pamphlet literature of 1669-83 *without* treating his *Two Treatises* as somehow unworthy of serious study.

The Restoration of Charles II (1660) ended a long period of Civil War troubles and was greeted by Englishmen, including Whigs, with jubilation. By the middle 1670s, however, buoyancy had turned to bitter disappointment. Andrew Marvell (1621-1678) concisely and dramatically expressed basic Whig complaints against Charles' rule. "There has now for divers years a design been carried on to change the lawful Government of England into an absolute tyranny and to convert the established Protestant Religion into downright Popery: than both which nothing can be more destructive or contrary to the interest and happiness, to the constitution and being of the king and kingdom."

In the light of such criticisms, Whig pamphleteers launched a broadside attack against "divine right" (*jure divino*) theories of the monarchy and episcopacy. Divine right was viewed as a justification for tyranny barely disguised by theology. Whig propagandists repeatedly stressed that all tyrannies rested upon illusory foundations. Such warnings were often accompanied by thinly veiled threats that oppression would likely provoke armed resistance among the people. Lastly, almost as a bribe, the writers combined professions of fidelity to the king with appeals to him to halt a dangerous aggrandizement of power.

During the short period between 1675 and 1680, efforts to exclude the Roman Catholic James, Duke of York, from succession to the throne became symbolic of attempts to impose limits on the monarchy. Eliminating the king's own brother from contention would educate the monarch to the inevitable limits of power and, only then, to the subsequent possibili-

ties of his position.

The textual supports for interpreting Locke's *Two Treatises* as Whig Exclusionist tracts are, in Prof. Tarlton's view, quite strong. First of all, his critique of Filmer, of divine right, and paternalism in the *First Treatise* is accompanied, as in many Whig pamphlets, by the condemnation of a supposedly conspiratorial faction which could be blamed for the king's novel ideas of absolute authority.

Like the Whig writings, the *Two Treatises* stress the dependent and precarious position of governors. Their fragile hold on power, Locke asserts, can only be strengthened by their acceptance of consensually-based rule. When subjects consent to a monarch's power, he receives their willing obedience rather than a grudging acquiescence to compulsion.

Locke's discussion of royal prerogative carries this lesson even further. For Locke, a prince who exercises his power visibly in the public interest "cannot have too much Prerogative." However, it is equally clear that the prince who abuses prerogative forces the people to reexamine and to restrict it if necessary.

Ultimately, Locke warns, a dispute over prerogative may have to be resolved by "an appeal to heaven" (his code word for revolution). Locke's theory of revolution appears strategically, as it does in the Whig pamphlets, as an educational tool intended to control and caution rulers.

Finally, Prof. Tarlton concurs with Laslett in finding Locke's chapter "On Conquest" a veiled reference to the Exclusionist controversy. Whig authors saw conquest by French armies as the only expedient left to Roman Catholics should the English exclude James as successor. Such a war of conquest, they warned, would be met with English resistance. Though set in a discussion of the moral consequences of the Norman Conquest, Locke's approval of rebellion against rule by an unwanted conqueror had a much more pressing relevance for readers in the late seventeenth century. Consistent with overall Whig strategy, his justification of rebellion becomes a warning to the king that a tyranny established by force of arms can never be secure.

Property in 17th-Century England

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"The Meaning and Definition of 'Property' in Seventeenth-Century England." *Past & Present* 86(February 1980):87097.



John Wildman

Considering the crucial role which property has played in the history of English Law and its importance in the development of English society, it is surprising that the term was not given a legal definition until quite late. During the sixteenth century, the word "property" certainly appeared in English law books but without any precise delineation of its meaning.

In the 1520s, for example, Christopher S. German's *Doctor and Student* refers to "that generall lawe or generall custome of propertye wherby good's mouable and unmouable be brought in to a certayne propertye/so that euery man may knowe his owne thyng." An interesting historical, but hardly a legal definition. The successive editions of Rastell's book of legal terms includes a definition of "possession" but none of property.

The earliest explicit definition seems to be that of John Cowell in his law dictionary *The Interpreter* (first edition 1607). In a discussion contrasting Roman and English legal positions on *dominium*, Cowell pointed out that, in England, no one except the king has full lordship—both of ownership and of use—over nonmoveables (landed pro-

perty). All other persons and institutions could only have some kind of "fee" (or *feudum*) in real property, not full dominion over it (*plenum dominium* or *allodium*). "Propertie," he wrote, "signifieth the highest right that a man hath or can have to any thing; which is in no way depending upon any other mans courtesie. And this none in our kingdom can be said to have in any lands or tenements, but only the king in the right of his Crowne."

At about the same time that Cowell published his *Interpreter*, Sir Edward Coke, the chief justice of Common Pleas, included in his *Reports* a case concerning a disputed flock of swans. In the course of his description, Coke defined the three types of property as "absolute," "qualified," and "possessory." The 1624 edition of Rastell effects a curious piece of legal syncretism. The "possession" entry previously mentioned remains as before, but there is now a new entry for "propertie" which cites Cowell's definition verbatim and adds to it Coke's division of property into three types.

The first clear statement of absolute ownership of property by individuals as opposed to the king appeared, not surprisingly, under the Cromwell's Protectorate (1653-1659). In the law dictionary produced by William Shephard, Cromwell's legal advisor, Chapter 129, "Of Property," begins: "Property is the Right that a man hath to anything which no way dependeth upon another mans courtesie (echoes of Cowell): And he that hath this is called a Proprietary." Any royalist restriction on absolute (private) property in lands has been dropped.

After the Restoration (1660-1688), royal privilege reappeared but in attenuated form, as in Style's collection of law reports. By the eighteenth century, however, a sweeping statement such as the following could appear in John

Lilly's collection of abridged reports: "An absolute proprietor hath an absolute power to dispose of his Estate as he pleases, subject only to the Law of the Land."

The law dictionary of Giles Jacob (first edition 1729) consolidates this development and gives it legal teeth: "And every Man (if he hath not forfeited it) hath a Property and Right allowed him by the Law to defend his Life,

Liberty, and Estate; and if it be violated, it gives an Action to redress the Injury, and punish the Wrong-doer." Thus, the definitional process which had begun both with Cowell and Coke's report of the swan case resulted in the idea of absolute ownership protected by legal sanctions—a concept which would become fundamental to the then developing industrial economy.

Revolutionary Committees of Safety

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"The New Hampshire Committee of Safety and Revolutionary Republicanism." *Historical New Hampshire* 35(February 1980):241-283.

New Hampshire's Fourth Provisional Congress created a state Committee of Safety on May 26, 1775. The purpose was to provide the Revolutionary movement with the institutional continuity and effective leadership which it lacked.

The Committee represented the emergence of new social forces in the state. Usually new to politics, they came mostly from the inland region. The Committee operated broadly in a wide range of executive, legislative, and judicial functions to the extent it might be called the "real revolutionary government." During these nine years there were nineteen separate Committees, which met over a range of from 66 to 345 days.

The turnover of members was high, and the bulk of the work was done by five men: John Dudley, Mashech Wesare, Josiah Bartlett, Josiah Moulton and John Calfe. The "new" men who had had a local, but not imperial, power base were drawn from the middle-aged, Congregational, economic elite of farmers and merchants. At first selected by counties, the Committee was later based proportionally on representation in the legislature.

Membership reflected the interests of three areas: the Connecticut River Valley, Portsmouth along with its satellite towns,

and the towns in the Merrimack Valley. The first of these areas had been denied participation in colonial policies to such a degree that many of the residents had threatened secession. Portsmouth had dominated in the pre-revolutionary years, but it was from the Merrimack area that a large number of men, previously denied office, came to participate on the Committee.

While the Committee worked with what was often an inefficient Assembly, it was at times reluctant to share power. The Committee in so acting tended to violate the notion of mixed government which formed the core of eighteenth-century political theory.

Beyond the executive functions, or legislative activities, the Committee also acted in a judicial capacity especially in cases of counterfeiting, suspected treason or desertion. At the same time local committees had, by 1779, been set up in every town. The State Committee and the legislature served as ultimate checks on the activities of these numerous groups. While relations were on the whole harmonious, several times the various committees found themselves in jurisdictional conflicts.

The early and widespread committee system was a clear signal to older, conser-

vative leaders of the revolutionary ferment in the state. The Committees kept the peace, and even became active in economic activities during the war.

The judicial activities then and now, however, drew the greatest comment. While not acting as Star Chambers, the committee used considerable power to punish suspected disloyalty. The Committee failed to survive the war and by 1781 attention was turning to the writing of the

new state constitution. In addition to the legislature (led by Speaker John Langdon), the Portsmouth leaders began to challenge the work of the State Committee and call for a constitutional convention. The ratification of the new Constitution late in 1783 signalled the end of the committee system which had taken such an active part in the prosecution of the war.

Hayek's Defense of Liberty

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"F. A. Hayek on Liberty and Tradition." *The Journal of Libertarian Studies* 4:2(Spring 1980):119-37.

Despite the appearance of unity in Hayek's system of thought, certain areas of tension and difficulty exist. At the epistemological and methodological levels, for example, "his neo-Kantian theory of knowledge commits him to a form of skepticism whose radical implications he shows little evidence of acknowledging." Secondly, Hayek's evolutionary view of mind and society does not necessarily support "the belief that a spontaneous order of cosmos in society must conform with the moral and political principles of classical liberalism."

Hayek has argued for a constitutional order which confers a framework of security, but critics such as historian Ronald Hamowy and others have raised some serious questions about the extensive intrusion on individual liberty which might be a part of such *Rechtstaat*. Hayek attempts to steer a middle course between the excessive rationalism of some liberals and the stand-pattism of conservatism. A basic problem has been observed, however, by Jacob Viner, who pointed out that Hayek offers no measure by which we are to assess the utility which he advocates.

This is in turn related to the fact that Hayek does not develop a theory of justice or rights upon which to ground his system. His awareness of this difficulty is evident

in his account of what he considers "true" and "false" individualism. Thus Hayek offers "a foundationless liberalism, suited only to the needs of established liberal orders threatened by collectivist movements, but offering nothing to pre-liberal (or for that matter, postliberal) societies."

His political thought occupies an "unstable middle ground" between skeptical conservatism and classical liberalism. Hayek's relativism, for example, deprives the liberal principles of much of their critical force. Spontaneous order occurs in the market process because of the function of the entrepreneur, but as Lachmann and other Austrian economists have pointed out, in certain circumstances that learning process and coordination may fail even in the marketplace. Further, Hayek does not provide a clear conception of how such an order is formed outside the sphere of market exchanges.

Whatever these failures, there is much value in Hayek's work ranging from his recent critique of current ideas of social justice, to his contributions to the socialist calculation debate, including his work on the early history of capitalism, and his objections to certain aspects of macroeconomics. Nonetheless, his lack of a theory of justice and moral rights undercuts

his effort to bridge individualism and traditionalism. This failure suggests that classical liberals cannot evade the ex-

amination of normative political theory nor ignore questions of epistemology and metaphysics.

Medieval Liberty & Its Evolution

Alan Harding

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"Political Liberty in the Middle Ages." *Speculum*
55 (3) (1980):423-443.

Although some have asserted that the Middle Ages contributed little if anything to the development of political liberty in the West, Prof. Harding points out that the word "liberty" occurs with great frequency in medieval charters and legal records. Harding argues that, in the great majority of cases, the word does refer essentially to political freedom in an embryonic form. Of course, no conception as yet existed concerning the right to vote or the right to express political opinions, which are central to political freedom in a modern context. The liberty which was understood and cherished in the Middle Ages served, nevertheless, as the necessary precondition of these modern freedoms. This medieval liberty encompassed the power to act in community affairs and to exert influence on one's fellows without the interference of government.

In England and France, at least, political liberty was first of all a prerogative of lordship, involving territorial immunities such as exemptions from taxation, noninterference by royal courts, and the right to enforce law and order without the aid of the king's peace officers. For centuries, therefore, liberty was a matter of feudal privilege before it acquired the character of general right. This privilege was attached to the favored lord's land and was exercised there. As a result, the term "liberty" might refer to the land, as well as to the freedom enjoyed on that land. According to Prof. Harding, this peculiarly medieval view of liberty contributed three essential qualities to the idea of political freedom as it subsequently evolved in the West.

First of all, the lord's power of independent action within his domain (or "liberty") imbued the idea of freedom with political force. This lordly power was in fact Hobbes' "natural liberty"—for Hobbes the only genuine form of liberty. The authority of the lord within his domain constituted a practical fact which medieval kings would simply recognize in their charters.

Secondly, rights were subsequently acquired by communities in rural and especially urban territories, giving rise to the notion of individual liberty. This concept may be defined as the collection of separate privileges considered appropriate to a man's sphere of life: for instance, a merchant's *burgage* (land tenure) rights, his freedom of passage, and freedom from prosecution outside his borough. These liberties were more negative than the freedom of action of territorial lords, but they were accessible to a far more numerous population. From these beginnings, the idea of freedom for the man without noble blood slowly acquired form and content. Freedom of passage granted to burgesses along with protection from arbitrary imprisonment accorded in the thirteenth century combined to make up the notion of "individual civil liberty." Individual political liberty in the modern sense evolved quite naturally as boroughs acquired the right to send representatives to parliament.

Lastly, the curbing of the territorial powers of the lords by thirteenth-century kings endowed the concept of freedom with an emotional force and helped create the politics of freedom. From the Florentine legislation against the magnates in the 1290s to the French revolu-

tionaries' attacks on the clergy and nobility, a major element of the European political tradition was the opposition between the liberties of the whole community and the license of the lords.

Despite these developments, the foundation stone of the Western tradition of liberty is to be found in the medieval

concept of territorial immunity. This concept allows us to synthesize the various facets of freedom in a single abstract idea—inviolability. In our own day, however, liberty no longer refers to the inviolability of the great estate, but to that of the individual citizen in his proper sphere.

Isaiah Berlin on Liberty

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"Berlin and the Division of Liberty." *Political Theory*
8(August 1980):365-380.

Liberty seems to have the uncanny property of extinguishing itself. For, if I am free to do whatever I want and so are you, then I have no assurance that I can actually do what I want. You, being as free as I, may interfere with me. On the other hand, if my freedom is not absolute but limited along with that of everyone else, then I have assurance that I *can* do what I *may* do, that no one in other words, will interfere.

In "Two Concepts of Liberty," Sir Isaiah Berlin argues that there are indeed two concepts, not one, whose name is liberty. His analysis has provoked much controversy. Whatever the merits of the critics' responses, they, like Berlin himself, fail to investigate the origins of the division of liberty. The principal defect of Berlin's work is in his assumptions leading to the conclusion that liberty is divided between two irreconcilable concepts, rather than between complementary aspects. Prof. Reed attempts to demonstrate this complementarity.

In political matters, Berlin points out, the term "freedom" is used in two senses: negative and positive. Behind each of these senses lies a question: "In what ways am I free to act?" (negative); and "Who determines what those ways are?" (positive). To have negative liberty is to enjoy rights, liberties, permissions, and freedoms to act. To have positive liberty is to exercise control over what those liberties are to be.

Berlin considers the negative "freedom from" as the fundamental sense of freedom and other senses as derivative. He thus prepares the way to show that positive "freedom to" is an extension of that root sense. For him, the essence of liberty involves "holding off" an intruder, trespasser, or despot. Yet, Reed comments, if this is the essence of liberty, it was not always so.

Historical evidence indicates that "freedom from" is itself an extension by metaphor of a prior understanding of freedom. According to linguistic research, freedom in the primary sense did not signify being "rid of something": the original meaning was that of belonging to an ethnic stock, designated by a metaphor of vegetal growth. This belonging conferred a privilege which a stranger would never know.

A later metaphor introduces the idea of *making* free by treating a person born a stranger *as if* he grown up with the kin. This metaphor enables people to do by choice what at first only nature could do by birth—make a person free. A third metaphor would later turn release from constraint as such into liberation.

In order to participate in the hunt or in combat, the free or freed tribesman had to exercise considerable self-control—resisting fear, despair, hunger, lust for the sake of right; he could display anger, pride, or courage only in the proper ways and at the proper time. Here we have the two

complementary aspects of freedom conjoined: participation and self-control. A free man does as he pleases because what pleases him is right; that is, it accords with the practices or tradition of his people. He is treated as one who belongs, because he acts like one who belongs. He rules himself, curbs his passions in the service of the right.

From this point of view, lawful restriction is not deprivation of liberty. Instead, it involves a comprehensive sharing in a system of right. Liberty does not consist in a set of freedoms (although they accompany it) but in the status of free man and in action which accords with that status. Berlin takes as fundamental the expression "free from," whereas it is actually derived from "free person."

Berlin's conclusion that we must choose between individuality and belonging makes it appear that we are more fully individual and more fully human as we slough off common standards. He thus obscures the connection between self-control, maturity, and the interpretation and application of common standards. Berlin makes freedom appear as isolation rather than sharing. The political consequences of his view are increasing fragmentation and injustice in the name of liberty. He succumbs to the paradox of liberty. However, Reed believes that the paradox can be overcome by the realization that giving up, for the sake of justice, some freedom to act does not diminish liberty.

James Mill's Utilitarian Feminism

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"Utilitarianism, Feminism, and the Franchise: James Mill and His Critics." *History of Political Thought* 1(Spring 1980):91-115.

The conventional view of the utilitarians' position of feminism runs as follows: In his *Essay on Government*, James Mill (1773-1836) asserted the rabidly anti-feminist argument that women should not be given the franchise. By contrast, Jeremy Bentham espouses a position more friendly to women. Next, John Stuart Mill's (1806-1873) enthusiastic pro-feminist stance was influenced by Bentham, as well as by Thomas Macaulay's critical review of James Mill's *Essay on Government*. This conventional picture, Ball argues, is almost completely in error.

It is true that James Mill's *Essay on Government* denies the franchise to women. Mill argues that since women's interests are likely to be identical to those of their husbands, they need not be given an independent vote. But, in his *History of British India* (1818), which he regarded as his chief work, Mill presented a very different view. In his *History*, the elder Mill measured the



James Mill

level of a society by the status of women. By that standard, India ranked low as a society because of the subjection of women. Mill seemed to overlook that this standard would call into question his views on women's franchise in his *History*.

It is also true that at some points Bentham favored the cause of women. Bentham criticized James Mill's identification of women's interests with those of their husbands. Sometimes Bentham even favored giving them at least the same legal rights as men. But in other writings he did not do so and justified limiting women's rights by alleging that

their emotional nature would interfere with carrying out the requirements of the principle of utility. Ironically, some of Bentham's arguments urging caution on issues of women's rights commit what he elsewhere terms the anarchical fallacy.

Neither is it the case that John Stuart Mill was influenced by Macaulay's criticism of his father's *Essay* to take a

pro-feminist position. Macaulay was unsympathetic to women's suffrage and, in his review, was preoccupied with attacking the principle of utility. John Stuart Mill was in fact much more influenced in his position on women by his father's *History of British India* and by the *Appeal* of the Irish utilitarian and radical, William Thompson.

The Idea of Peace: 500-1150

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"The Idea of Peace in the West, 500-1150."
Journal of Medieval History 6(1980):143-167.

Modern scholars of medieval warfare regularly produce studies on the Crusades, the just war, medieval military tactics, war financing, and the aristocracy. Peace, on the other hand, has not fared so well. Its neglect by scholars is all the more curious in view of the numerous allusions to *pax* (peace) in much of the Latin writing of the Middle Ages, both secular and ecclesiastical. A knowledge of the development of the notion of peace could reveal much about medieval attitudes toward Church, society, and political theory.

The peace ideas which evolved in Western Europe from 300 to 1150 faithfully reflect the social and cultural forces active during that period. Peace was frequently discussed because it was so sorely wanting. The memory of the Christian *Pax Romana* only fueled medieval aspirations for peace and for its concomitant, order. Peace during this period always implied more than just a cessation of war. For early medievals, it meant a restoration of the proper harmony of God's creation. In varying degrees, conceptions of peace presumed a moral order mirroring the justice of heaven.

As early as AD 500, the idea of peace began to sink sociological roots. The ascetic view, for example, exerted tremendous influence throughout the Middle Ages partially because it was concentrated in a very visible social

grouping—the monks. The monastic peace stressed inner harmony and holiness either as a precondition for social tranquillity or else as the only peace possible in an evil and chaotic world. Through the centuries, monks and hermits preserved and enshrined the ascetic ideal of peace within a rich literary heritage.

The social importance of monasteries assured that the monastic peace would survive and permeate all other peace theories to some extent. However, when monasticism declined as a major social force after 1150, its view of peace likewise lost influence.

The episcopal peace emerged once bishops became aware of their unique mission in Christian salvation. The episcopate came to understand that salvation could only come from the Word of God and his grace as channeled through the sacraments—areas whose care had been uniquely entrusted to the bishops. As a result, their particular approach to peace stressed the importance of obedience to the teachings and discipline of the Church. In the realm of secular affairs, they laid particular emphasis on bishops' responsibilities to remonstrate with wayward nobles and to mediate in case of war. The much studied "Peace of God" provides an extraordinary example of the strength and resources of the Western episcopacy, despite its partial secularization during

the tenth century. To assure disciplined functioning of the Church, the bishops had to resort to temporal means to fortify Christians and convert the heathen. Personal example, as provided by the monks, would not suffice.

The relative clarity of the monastic and episcopal views of peace was generally lacking in their secular counterparts, primarily because political conditions were diverse and fluctuating. Charlemagne revived the notion of the imperial peace and linked it to the Church's moral order. In so doing, he tended to co-opt the spiritual authority of the Church. This process would accelerate during the eleventh and twelfth centuries, as smaller political units were absorbed into semicentralized principalities. The kings, great princes, and communes gradually transformed ecclesiastical peace concepts (such as the Peace of God) into a secularized

public peace. This occurred because lay authorities had little use for the eschatological and ontological dimensions of the *pax ecclesiae*.

A rapid decline of the Church's influence on peace thought may be observed particularly in the period following the great religious wars of the sixteenth century. The natural law approaches to peace, developed from that time up until the eighteenth century, were normally established on a purely secular foundation.

Early medieval peace theories represent a significant step in the development of the Western mind. With the demise of the Roman Empire, the culture had to grope for fresh solutions to new problems posed by Europe's uprootedness. While never losing contact with its classical and patristic roots, the West realized that it needed more than the peace heritage of the past.

Medieval Monks on War and Peace

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"Monastic Attitudes Toward War, 850-1150."

Michigan Academician 12(Spring 1980):417-421.

Monks comprised the most visible group in medieval society which opposed war. Nonetheless, no single monastic view of war existed during the Middle Ages. Several traditions flourished, often side by side, down to the thirteenth century. Scholars such as R. Bainton, however, have tended somewhat simplistically to stress monastic pacifism, thus ignoring prominent nonpacifist strains in ascetic thought.

During the period extending from 850 to 1150, changes in ascetic notions of *pax* (peace) reflected changes within monasticism itself. During this period, monks gradually removed most of the just war ideas which surrounded their own heritage of spiritual peace. The Gregorian papacy and the Crusades forced monks to clarify their own attitudes toward war and peace. By the early twelfth century, monks no longer had to define their *pax* in the context of war, as they had to in

previous war-torn centuries. By 1150, the monk as the "spouse of Christ" finally replaced the monk as the *miles Christi* or soldier of Christ.

In the three centuries after Constantine, (died 337), the attitude of Western monasticism toward war grew out of the struggle to reconcile the antiwar stance of the early Church with the crucial necessity of repelling the barbarian invaders. Monks harmonized these apparent contradictions by relegating all wars (just or unjust) as worldly and unfit for *anapausis* or rest in God. According to this view, monks were the true *militia Christi* in contrast to secular armies.

By the ninth century, disruptions of monastic life caused by avaricious invaders, nobles, and bishops forced monks to distinguish more clearly between good and bad wars. Good wars were those directed against lawbreakers,

infidel marauders, and exploiters like the nobles and bishops.

With the outbreak of "holy wars" against the Muslims in Spain and the Orient and against the supporters of Henry IV (1050-1106) in Germany, the monastic attitude toward war became increasingly ambiguous. The same monks who staunchly supported aggressions against Muslims and rebellious nobles also acted as arbiters to end disputes. Many monastic writers preferred to ignore the question of war and, instead, to exalt the peace engendered by the ascetic way of life.

By the twelfth century, as order was being reestablished in Europe, new monastic orders, such as the Cistercians, sought less social involvement and a return to literal detachment. Actually, the ever more powerful secular authorities did their best to discourage involvement by the monastic orders in public affairs. Thus, while monkish writers would occasionally "lead the charge" against vices and demons, even such military metaphors appear less frequently in their works. Instead, they dwell on the *quies* which dwells in the monk's heart.

A Cistercian writer such as Bernard of Clairvaux clearly established separate war standards for laymen and monastics.

The lay aristocracy, he advised, should adopt the new holy war as the norm for all their aggression. The Knights Templar evolved as an outgrowth of this attitude. The new monks, on the other hand, should not *do* anything (even intercede for the world); they simply *are*. For such a monk, the essence of the monastic life is the experience of *otium* or tranquility.

At the same time, Bernard applies active military images to his model bishops, such as Malachy. While prelates should not wage war, they, unlike monks, must forcefully act to quell the Church's enemies with the weapons of admonition and anathema.

Bernard's defining of the varying postures toward war that must exist within the Christian community is but one aspect of his complex ecclesiology. He also believed that the spiritualities of laymen, prelates, and monks had become intolerably blurred during previous centuries. He viewed his task as one of defining the function of each group within the total *ecclesia*. Defining licit attitudes toward war, thus, contributed to Bernard's goal of maintaining a distinct separation among the three basic groupings that comprised the Christian community.

Transcendentalists vs. Slavery

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"The Agitator and the Intellectuals: William Lloyd Garrison and the New England Transcendentalists."
Mid-America 62(October 1980):173-185.

When William Lloyd Garrison (1805-1879) arrived in Boston in June 1830, the Transcendentalist movement was developing out of the discussions, writings, and lectures of Emerson, Thoreau, and their associates in nearby Concord. Side by side, Transcendentalism and Garrisonian abolitionism grew in the rocky soil of New England. Despite significant differences, the two groups eventually recognized their mutual philosophical groundings and worked together toward common goals.

The authors examine Garrison's relationship with the Transcendentalist literary leaders of his day, and trace the gradual evolution of their common ties.

Transcendentalists generally accepted the existence of an *a priori* knowledge that transcended the senses. They also agreed on the beneficence of God and the goodness of man. At the core of the movement were the ideals of self-sufficiency, independence, and individualism. Moral laws, they believed, were permanent immutable

laws of the universe which each individual could grasp by heeding his conscience. They opposed slavery as a violation of this higher law, since man was meant to be free. No man-made law or constitution, as they saw it, could make such an institution right.

A common belief that slavery violated a higher spiritual law provided a natural link between Garrison and the Transcendentalists. In the early years, however, their relationship was ambivalent and, at times, rocky.

From 1830 until the outbreak of the Civil War, the Transcendentalists' position on slavery changed significantly. When they first became aware of Garrison, they still hoped that slaveholders' own conscience would reveal the evil of slavery to them. Their belief in the goodness of man gave them grounds to hope for a moral revolution in the South. However, as the power of slavery grew, they came to appreciate Garrison's position, developing a deep respect for his role in the movement to free the slaves.

One of the first Transcendentalists to express conditional support for Garrison was the Unitarian minister William Ellery Channing (1780–1842), whose moral and religious philosophy formed a basis for Transcendentalist thought. Although both men agreed that slavery was evil, Garrison and Channing differed when it came to assessing blame for it and determining a method for its eradication. A mild gentleman who believed in the moral excellence of the human soul, the Rev. Channing could not, at first, condone Garrison's violent rhetoric.

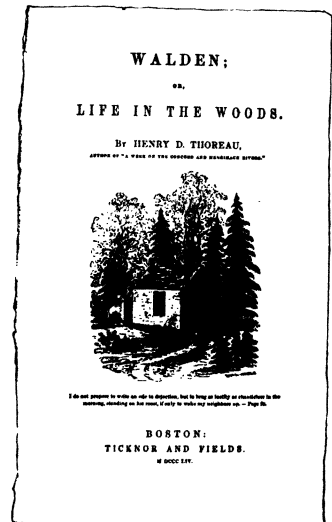
In his 1835 pamphlet, *Slavery*, Channing condemned the practice of slavery but, at the same time, warned that the North should not interfere with Southern institutions. He called for an immediate halt to agitation, which, he said, damaged the cause of the slave. In *The Liberator* of February 27, 1836, Garrison roundly condemned the Channing pamphlet, calling it "contradictory and unsound."

Despite their early differences, Channing and Garrison grew to respect each other. Public events, such as the murder of Elijah Lovejoy, the Creole affair, and agitation for the annexation of Texas,

brought the minister nearer the abolitionist position. In the pamphlet, *Duty of the Free State*, Channing called for a strong anti-slavery commitment from Northern states. In a sequel to that tract, he contended that the North should withdraw from the Union rather than allow Texas to come in as a slave state. This radical proposal foreshadowed the disunionist movement which flourished among abolitionists in the 1840s.

As the Civil War approached, Transcendentalists would become far more radical. Henry David Thoreau (1817–1862), for example, would strongly defend Garrison's burning of the U.S. constitution. Eventually, some Transcendentalists, such as Thomas Wentworth Higginson, went so far as to advocate violence as a means to end slavery. In this, they moved beyond Garrison, who consistently opposed bloodshed.

Garrison cannot be credited with turning the Transcendentalists into abolitionists, since the very essence of their philosophy was antithetical to slavery. However, until Garrison brought slavery to national attention, the philosophers operated largely in the abstract. In Garrison, they came to see a man actually living out the principles they advocated. In the end, the agitator helped bring the intellectuals into public affairs. The philosophical mind would ultimately join the practical movement.



Ingalls: On Land and Liberty

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"Joshua K. Ingalls: Land Reformer, Opponent of Henry George, and Advocate of Land Leasing, Now an Established Mode." *American Journal of Economics and Sociology*. 39 (4) (October 1980): 383-396.

The resurgence of interest in the political philosophy of libertarianism during the last thirty years has lead some historians to investigate the antecedents of the movement. Careful research has revealed that the individualist movement in the nineteenth century (which began with the writings of Josiah Warren) was much more cohesive than previously recognized. In writings and speeches, Warren and his followers developed wide-ranging theories concerning the social implications of economic systems. One such individualist theoretician was Joshua K. Ingalls (1816-1898).

Born in Massachusetts in 1816, Ingalls moved quickly from ideas such as Quakerism, temperance, and dietary reform to economic radicalism, specifically land reform. His ideas on the evils of the current order were reinforced by his experiences as a legitimate member of the "laboring class," a factor conspicuously absent from the careers of so many radicals.

In the *land reform vs. abolition* controversy which raged before the Civil War, Ingalls stressed that, far from being separate priorities, those two questions were indissolubly linked to the social dilemmas of the day. "The right to life," he said, "involves the right to land to live and labor upon. Commercial ownership of land which enables one to exclude another from it, and thus enforces involuntary idleness, is as destructive of human freedom as ownership of the person, enforcing involuntary service." Nonetheless, most abolitionists, Frederick Douglass included, rejected any coupling of the two issues. The relevance of connecting them was not fully realized until after the Civil War, when the plight of impoverished freedmen aroused the concern of re-

formers. In the 1840s and '50s, however, the times were not yet ripe for an appeal to land reform as a prerequisite to the emancipation of slaves.

The growing popularity of Henry George (1839-1897) inspired Ingalls to a detailed analysis and critique of George's economic theories. As Ingalls saw it, Henry George's failure to understand the true nature of capital and capitalism constituted his "greatest weakness." For Ingalls, land and labor were the only factors of production. It followed therefore that, for fullest use of both those factors, there must be freedom from any and all arbitrary control over them. For example, any control over the soil *other than by the cultivating occupant* "can but fetter and cripple labor and retard production." As a result, the landlord (not the capitalist) was the great perpetrator of injustice against labor and the most potent hindrance to the production of material wealth. For Ingalls, exclusive dominion of the land resulted in poorly and partially cultivated soil, as well as in a mass exodus to cities by the thousands who had been dispossessed of their inheritance.

As the best means of redistributing land among its occupants and cultivators, Ingalls urged the simple repeal of old land ownership laws rather than the passage of new ones. He would establish "occupancy and use" as the only title to land, as it was during the early history of mankind.

Under Ingalls' plan, governments would remove legislative sanctions from the concept of private property and would issue land leases to actual occupants and users—a method now used successfully for the allocation of certain resources (mineral and oil exploration,

grazing rights, disposition of numerous urban sites, etc.)

Part of Ingalls' iconoclasm, even with in the radical land reform movement, can be explained by his distrust of government and the political process. Control of land, he said, was the basis of all power. As a result, monarchy and democracy were but variations of the same game. As long as inequitable distribution of land prevailed, equality of citizenship was impossible. Fearing the domination of individuals as much as he feared that of the collectivity, Ingalls was not an anarchist. Nevertheless, he conceived an extremely limited role for government. In Ingalls' system, "there would only be courts of equity as to mat-

ters of personal interest and relations. No laws of masters and slaves, of landowner and tenant, of creditor and debtor, etc. . . . but only of persons equal before the tribunal."

Ingalls, Prof. Halls asserts, is of interest and significance in what Pedro Schwartz has described as the "history of opinions" branch of the history of economic thought. A study of Ingalls re-establishes the sometimes forgotten fact that land reform was long a part of a radical movement in nineteenth-century America and was also part of the beginnings of the progressive movement that was to flourish in the early twentieth century.



*See Cloudelly Shovel, in the Association, with the Eagle, Rummy, and the Firebrand,
Left on the Rocks of Scilly, October, 22, 1797*

II

The Ethics of Liberty

The following summaries confront important issues crucial to the ethical foundations of individual liberty. Are there limits to personal freedom, as the advocates of paternalism claim? Should the individual subordinate his choices and actions to the allegedly more enlightened judgment of others? What are the logical connections among individual rights, liberty, justice, and property? Is equality necessarily hostile to freedom? These are a sampling of the questions debated in the ethics of liberty. In the process of these inquiries, much light is cast on such historical contributors to the doctrines of individual liberty as John Stuart Mill, John Locke, and Jean Gerson. [Those seeking information on how Gerson ingeniously helped to develop natural rights from his theological-philosophical perspective, many consult Richard Tuck, *Natural Rights Theories: Their Origins and Development*, London: Cambridge University Press, 1979, 25–30].

J.S. Mill: Paternalism vs. Autonomy

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"Mill versus Paternalism." *Ethics* 90(July 1980):470–498.

Recent discussions of paternalism, especially those of Gerald Dworkin and Joel Feinberg, have tended toward a considered rejection or hedging of J.S. Mill's classic opinion on the subject. Among Mill's variant formulations of his "one very simple" principle of freedom, the following is typical and reasonably clear: "The only purpose for which power can be rightfully exercised over any

member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant." Prof. Arneson's paper attempts to show that Mill's antipaternalist principle—given the correct interpretation—can meet the objections of recent critics and, at any rate, has more appeal than the substitute proposals of Dworkin and Feinberg.

Considerable confusion has existed now and in the past concerning the exact nature of paternalism. Does taking an unconscious accident victim to a hospital constitute paternalistic behavior? What about laws against dueling or against voluntary slavery? In the latter case, Mill himself seems to give a puzzling answer: "The principle of freedom cannot require that he (the voluntary slave) should be free not to be free. It is not freedom to be allowed to alienate his freedom." Translating this passage into less rhetorical language, Dworkin interprets Mill to be saying: "Paternalism is justified only to preserve a wider range of freedom for the individual in question." In Prof. Arneson's view, Dworkin's interpretation hopelessly waters down Mill's initial bold statement.

Arneson admits that there is an ambiguity in Mill's notion of freedom which may cause substantial confusion in his arguments. The confusion dissipates, he feels, when we distinguish between autonomy and freedom. When Mill uses the word "freedom," Arneson asserts, he really means "autonomy."

Mill says that "freedom consists in doing what one wants." Let us say that a person lives *autonomously* to the extent that he is not forcibly prevented from acting on his voluntary self-regarding choices *except* when his prior commitments bind him to accept such forcible constraints. The root idea of autonomy is that in making a voluntary choice a person takes on responsibility for all foreseeable consequences to himself that flow from his voluntary choice. Thus, deciding to get drunk before climbing a dangerous mountain constitutes an autonomous, foolhardy act which others could not licitly prevent. On the other hand, preventing a man from crossing a street when he does not see a careening truck approaching is licit, since presumably the man has made a "prior commitment" to life and health.

In all of *On Liberty*, Mill never mentions "autonomy" once. Why, Prof. Arneson asks, is it not wanton meddling

to propose autonomy as a possible construal of the value Mill seeks to defend in his essay? The answer is that Mill does at least approach the concept in many crucial passages. Thus, by approving a woman's acceptance of noncoercive Mormon polygamy, Mill is saying in effect that, while a Mormon wife does not live freely, she does live autonomously. She is living out a fate she has chosen for herself without compulsion. This and other texts concerning liberty lend themselves more easily to the interpretation that autonomy, rather than freedom, is the value held up for admiration.

Prof. Arneson goes on to show that Mill's implicit valuation autonomy suits his explicit valuation of human individuality, one of prime elements of his argument against paternalism. In essence, the capacity for individuality elevates humans into the class of creatures which ought to be treated as autonomous. However, autonomous living does not cease to be good for human beings even if they live autonomously in ways that diminish their individuality.



The Limits of Paternalism

Donald VanDeVeer

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"Autonomy Respecting Paternalism." *Social Theory and Practice* 6(Summer 1980):187-207.

Gerald Dworkin and Joel Feinberg have recently clarified the nature of paternalism and the conditions which justify interference with the behavior of sane adults. Prof. VanDeVeer seeks to defend a principle that limits the range of paternalistic interference somewhat more sharply than either Dworkin or Feinberg. Nonetheless, in basing his views on a foundation not strictly utilitarian, he shares much common ground with both of them.

VanDeVeer distills the usual argument for paternalistic behavior into the following syllogism: (1) Whatever facilitates another person's own interest is permissible; (2) X behavior facilitates another person's interest; therefore, (3) X behavior is permissible. On this basis, a whole range of public interferences with private lives has been justified—from blood transfusions for Jehovah's Witnesses, to required waiting periods before divorce, to mandatory Social Security payments.

Dworkin suggests that, in cases where compulsion is not used to override an individual's judgments but to give effect to it, we have a case of *non-paternalistic* interference with liberty. So, if a motorcyclist recognizes the wisdom of wearing a helmet while on the road, coercively requiring him to wear one would constitute non-paternalistic interference. However, VanDeVeer replies, I might recognize the greater safety involved in wearing a helmet and still prefer not to wear one. Forcing me to don a helmet would certainly constitute paternalism, especially since I pose no danger to anyone else.

Dworkin's attempt to justify limited paternalism stems from J.S. Mill's prohibition against the voluntary selling of oneself into slavery. As he sees it, an important thread found implicitly in Mill's discussion of that subject is the desirability of preserving an individual's liberty to make future choices. Dworkin takes this to be a "narrow principle" to justify paternalistic interference, provided

it helps maintain a subject's ability to consider and carry out his own decisions rationally.

Dworkin's view is complicated by another, possibly non-equivalent claim in his discussion. He asserts that he wishes to ascertain what restrictions on liberty would be acceptable to a fully rational individual. This latter position makes an appeal to the notion of hypothetical consent.

VanDeVeer dismisses the hypothetical consent position by suggesting an analogy. Imagine a P-machine (P for paternalism) which, with a person's consent, would prevent him from making any move that was not fully rational. As socially desirable as such an arrangement might be, it would be humanly intolerable. A human being's goal in living life is not just to win the game but to *play* it—with all the risks of failure which that entails.

As for preserving another's right to future choices, this practice also overrides autonomy. Individuals frequently choose (more or less reasonably) to engage in acts involving risks to their own well-being. A person choosing suicide forgoes all future rational decision-making. However, his decision may be, if not fully rational, at least reasonable. He may, for example, suffer from a painful and incurable disease.

Joel Feinberg's weak paternalism forbids interference with fully voluntary acts, but allows interventions, proportionally, as acts grow more involuntary. Here, VanDeVeer worries that Feinberg's strict standards for "fully voluntary" behavior might allow for numerous oppressive interventions into actions where humans act partly out of neurotic compulsion, lack of complete information, misunderstanding, etc.

For his part, Prof. VanDeVeer proposes a principle of "autonomy respecting paternalism." According to this principle, paternalistic interference with generally competent adults is permissible if, and

only if, it respects the *substantially* rational (not necessarily *fully* rational) choices of such persons. VanDeVeer regards his autonomy-respecting position as a suitably weakened version of Feinberg's weak paternalism, allowing generally competent adults to "play their own hand." Even viewed from John Rawls' "original position," this principle is desir-

able. Seen from Rawls' hypothetical standpoint of statusless objectivity, autonomy respecting paternalism can be observed to provide salutary protection against freedom-destroying irrationality, while amply preserving our rights to take risks and act with imprudence, which supply substantial motivation for living.

The Psychology of Selfishness

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"The Social Psychology of Selfishness." *Canadian Review of Sociology and Anthropology* 18 (1) 1981:82-92.

The undesirability of selfishness is one of the most commonly held judgments of ordinary morality. Generally speaking, the term "selfish" is an invective hurled at perceived self-seekers by their supposed victims. The accustion occurs whenever the self-seekers seem to pursue their own welfare at the expense of or in disregard for those victims. While Prof. Stebbins admits the existence of more subtle philosophical views on the pursuit of self-interest (as in the work of Ayn Rand), he chooses to concentrate in this article on the popular connotation of "exploitative unfairness." With this sense of the term in mind, he seeks to arrive at a more precise understanding of the characteristics that comprise adult selfishness, as well as to examine its manifestations in social interaction.

In social interaction, a conscious, goal-oriented act of selfishness communicates to the potential victim the selfish person's image of him as powerless, inferior, blind to exploitation, or unworthy of fair treatment. The resulting resentment on the part of the victim arises quite naturally from this assumed estimation of his character on the part of the self-seeker.

In "justifiable selfishness" the self-seeker is aware that his present or future actions may be unfavorably re-

garded. To neutralize any unfavorable impression, he prepares a defense of his activities. He may claim, for instance, that anyone would act in the same way if given the opportunity.

After deciding that one is the object of unfair behavior, a victim is motivated to confront the exploiter in order to redress the injustice or prevent its recurrence. Confrontation, however, can be a risky process, possibly endangering a relationship the victim may consider important. At the same time, *not* confronting the self-seeker may also threaten the stability and even the existence of a relationship. At the very least, loss of respect for the self-seeker will jeopardize warmth and trust for that person.

Acts of selfishness may be understood as an expression of the power that self-seekers believe they have over their victims, since they are arrogating scarce values to themselves at the expense of others. Such power-motivated behavior abounds in both primary and secondary relationships. The person who has the least interest in continuing the relationship normally possesses the greater power and is most liable to resort to exploitative behavior.

As to the origins of consistently selfish behavior, Prof. Stebbins finds the Marxist-Christian hypothesis most com-

patible with modern social psychological theory. According to this view, selfishness is learned in childhood with the development of the self and then is gradually unlearned to a greater or lesser degree with socialization and approaching maturity. In a tiny minority of people, learning unselfishness continues to an exceptional degree. In Lawrence Kohlberg's moral development framework, they have reached "stage

six." Here they are oriented by such abstract and universal moral principles as justice, reciprocity and equality of human rights, and respect for the dignity of human beings as individual persons. These few who outgrow their initial selfishness to an uncommon degree are counterbalanced, on the other end of the spectrum, by the few who fail conspicuously to lose this childhood orientation.

Self-Awareness: Freud vs. Jung & Adler

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Discovering the Mind, Volume III: Freud versus Adler and Jung. New York: McGraw Hill, 1980, 494 pp.

In this final volume of his last work, the late Professor Kaufmann argues that Freud (1856-1939) stands in the great German humanistic and extra-academic tradition of Goethe and Nietzsche as one who has significantly advanced the discovery of the mind, whereas Jung (1875-1961) and Adler (1870-1937) did more to actually obstruct that process of discovery.

Whereas Freud was able to develop the Goethian ideal of a "poetic science" (that is, an interpretation of man's mind that does justice to both myth and rationality), Adler and Jung, contends Kaufmann, were insufficiently scientific and incapable of understanding the myths that controlled them. Contrary to Popper, Freud was quite able to revise his theories in the face of objections, and was always willing to consider alternative explanations when Adler or Jung were unwilling to do so. The "split" between these three men was not primarily over theoretical differences, but owed much more to the personal problems of Adler and Jung. These personal problems found their way into the Adlerian and Jungian theories and made it easier for others to avoid self-discovery.

Besides his evolution of a poetic science, Freud made major contributions through his discovery of the importance of childhood experiences, the importance of sex,

the interpretation of dreams, the psychopathology of everyday life, the interpretation of mental illness, the development of therapy, the interpretation of jokes, literature, art, and religion—not to mention the contribution of his own personality. Both Adler and Jung believed that Freud had overemphasized sex, but both men had yet to deal adequately with their own incest-wishes and family rivalries. Thus, Adler seemed obsessed with being "number one" and Jung's *Answer to Job* is filled with hostility towards God as the "father." In failing to work through their own personal problems, these men projected onto Freud what they disliked about themselves, thereby failing to understand Freud or his theories.

Still, Adler's notion of the "inferiority" complex may have liberated humans, if only by helping us to recognize it as a common problem. At the same time, Adler did not account for why some men *fail* to feel inadequate and proceed to develop the talents that they have. Freud would explain inadequacy in terms of the sex drive and what happens when an individual feels insufficiently appreciated by his mother.

Jung's notions of the "collective unconscious" and the "archetypes" appear to be major contributions insofar as whatever we do seems to have parallels in myth and

history, as well as in literature. But, Kaufmann argues, the observation that certain symbols are found almost everywhere can be accounted for by the diffusion of ideas, and most of the analysis of archetypes explains nothing because it fails to consider objections and alternative interpretations. In his own interpretations of art and literature, Freud was far less dogmatic. By encouraging us to look even further back in the past to understand ourselves, Jung may have obstructed the discovery of the mind.

What seems to be required to advance the discovery of the mind is to emulate Freud's *honesty* and to recognize that what is important for us to understand is right "up front," if only we learn to *see* properly. We need to further overcome the dualism that suggests that there is a "hidden self" behind a mask, and realize that we all wear many faces which are evident in our deeds and works. In this way, we can actualize our potential for Goethian "autonomy."

Business Ethics as Casuistry

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"What is 'Business Ethics'?" *Public Interest*
63(Spring 1981):18-36.

Business ethics has rapidly become a fashionable subject in American intellectual circles, effectively replacing yesterday's package of "social responsibilities." There have been numerous seminars on the subject, speeches, articles, conferences, and books—not to mention the many earnest attempts to write "business ethics" into the law. But what precisely is business ethics? Is it nothing more than a revivalist preacher's call to repent or is it a field worthy of serious philosophical consideration?

In one sense, the term "business ethics" has little real meaning for a moralist in the Western tradition. Whatever their divergences, ethical authorities from the Old Testament prophets to F. H. Bradley or Edmond Cahn agree on one point: There is only one ethics—that of *individual* behavior—which applies to everyone alike. In other words, the same laws of conduct apply to king, priest, merchant, and peasant.

By and large, the only "hedging" concerning right and wrong allowed by traditional moralists involves differences grounded in social or cultural mores—and then only with respect to "venial offences."

For example, even in the most licentious society, fidelity to the marriage vow is considered virtuous. However, the sexual license of an extremely "permissive" society (17th century England or late 20th century America) might constitute an "extenuating circumstance" for the sexual transgressor.

Viewed from this perspective, "business ethics" is not ethics at all. Business ethics frequently asserts that acts which are not immoral or illegal when done by ordinary folk suddenly become immoral or illegal when done by "business." No one, for example, would characterize as immoral a pedestrian in New York's Central Park who hands over his wallet to a mugger. Yet, a company paying money to union goons who threaten serious harassment is quickly labeled "unethical."

The new business ethics also denies to business the traditional right of adaptation to cultural mores. It is now considered "grossly unethical" for an American business in Japan to retain as a "counselor" a distinguished civil servant who has retired from government service. Yet, in Japan, a company which did *not* follow that practice would be considered im-

moral, because Japanese civil servants must retire soon after the age of 45 and find some means of livelihood in private industry.

If business ethics is not ethics, than what is it? 'It is casuistry,' Prof. Drucker replies. Casuistry in the 17th century asserted that rulers, by virtue of their office, had to strike a balance between the ordinary demands of individual ethics and their "social responsibility" to their subjects and kingdom. Today, we might say "their stockholders and company."

A special ethics of "power", whether in the 17th century or the 20th, inevitably becomes politicized, since it raises social responsibility to the level of an ethical absolute. In giving primacy to political values and goals, casuistry subordinates ethics to politics.

Equally important, the casuist, no matter how he starts, inevitably becomes an apologist for the powerful. Catholic ethicists of the Counter-Reformation (like today's proponents of business ethics) began by making moral demands on rulers. However, if a ruler's ethics are sub-

ordinate to his social responsibility, ordinary rules do not apply to him. The door then opens to justifications for all manner of moral laxities. Thus, the disciples of Bellarmine and Borromeo could demonstrate that almost any behavior of a ruler was licit.

The supporters of business ethics could easily perform the same service for executives today. For example, the "electrical apparatus conspiracy" of the late 1950s could be seen as an attempt by General Electric, Westinghouse, and Allis Chalmers to preserve competition and save jobs. As a matter of fact, after the cartel was broken up, Allis Chalmers had to go out of the turbine business, thereby diminishing competition and causing the loss of several thousand jobs.

Prof. Drucker is confident that, as with casuistry, the special pleading inherent in business ethics will go full circle, making it eventually a tool of the business executive. He is also confident that, like the casuistry of old, business ethics will come to be despised as the moral sham it really is.

Liberty, Rational Choice & Public Affairs

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"Rational Choice and Public Affairs." *Theory and Decision* (Dec. 1980):229-258.

Rational choice in the area of public affairs is an ancient topic, going back at least as far as Plato's *Republic*. This field concerns the problem of how we may evaluate the actions taken by political representatives or by others whose work is intended to secure the community's best interests. Prof. Machan argues for the genuine possibility of arriving at a rational determination of public policy.

Prof. Machan first defines the chief concepts involved by sifting through the numerous connotations attached to the terms "rational" and "choice", and arriving at a contextualist view of these notions. For him, rational choice connotes the "initiation of a course of con-

duct or selection from alternatives or both in accordance with a common standard appropriate to the context."

Next, Machan proceeds to specify requirements which must be met by a public choice theory. A *bona fide* theoretical framework, he asserts, would require an understanding of what public affairs are—a move, in other words, into the field of political theory. Some years ago, Leo Strauss argued for the necessity of such an inquiry in the modern era. The "social ideal" (or public interest), he stated, serves as the guiding standard for distinguishing the political from the nonpolitical areas of human concern. The notion of the public interest encompasses all the tradi-

tional concerns of political life: the national purpose, the common good, justice, etc.

According to Machan, the difficulties encountered in defining the public interest may be attributed to efforts at imposing on the study of community a model of research appropriate to other fields, such as physics, biology, and even economics. At times, the lure of mysticism has been powerful enough to convince some thinkers that human affairs will defy all attempts at merely rational understanding.

Machan's own approach is fusionist—a combination of both scientific and humanistic methods—but it is nonhistoricist and consistent with the secular neo-Aristotelianism which he has outlined in previous papers. His rational public-choice theory would logically presuppose a rational private-choice theory, which does not separate individual goals from the public good. Thus, ethics become crucial to analysis of public policy. The classical egoism which Machan espouses prescribes that all men and women pursue their success or happiness as human beings. The fulfillment of this imperative requires liberty, a condition which is best safeguarded in community life. From Machan's ethical viewpoint, liberty is the necessary condition in society for the pursuit of the

moral life.

Since the goal of public policy is to protect individual liberty from incursions by others, the natural rights of human beings are precisely those that secure this liberty. These include rights to life, voluntary action, and property, with the right to life at the basis of all others. The standard for judging the validity of public policy will thus turn on the question of whether a particular measure defends and fosters this basic right and its derivatives or whether it wanders outside this legitimate purview.

The thorny process of distinguishing between rational from illegitimate programs must occur within the context of actual public affairs of the particular society. Not taking stock of the context would inevitably call forth the dogmatic judgments of "pure reason." A properly contextual evaluation of public policies would require all the scientific, technical, market, legal, and moral information relevant to the task. In its essentials, the process would not differ from that of judging the rationality of personal conduct. Guided by the basic principles outlined by Prof. Machan, the evaluation of public affairs would enjoy the needed fixedness of rational judgment as well as the dynamism of a world in which both our knowledge and reality itself are subject to change.

Jean Gerson and Ockhamism

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"Ockhamism in Jean Gerson." *Michigan Academician* 12(Winter 1980):365-374.

During the fourteenth century, Ockhamism spread through Western European universities, where philosophers and theologians accepted it as enthusiastically as they had the rediscovered Aristotle two centuries earlier. However, the limitations of certitude in the system soon became apparent. If philosophy and theology furnished only scant

knowledge of God and the divine, other avenues to ultimate certitude had to be discovered. Thus it is understandable that, along with a new emphasis on experience and natural science, an interest in mysticism should develop as a way of filling the gap of certainty.

Within the context of mysticism and religious thought, the manner in which Jean

Gerson adopted Okhamism is of interest in other fields also, particularly since Gerson was to develop an early form of individual rights theory against this religious background in such works as *De Vita Spiritualis Animae* (1402) and *Definitiones Terminorum Theologiae Moralis* (1400–1415).

William of Ockham (1285–1350) had taught that knowledge of God was possible through an abstract, composite concept based on the properties and perfections of worldly things. Nevertheless, since it was impossible for a mere creature to intuit the Divine Essence, this concept was a simple supposition. For good or ill, it *had* to serve as the object of our knowledge of the Divinity. Thus, our concept of God stands as quite distinct from God himself. Furthermore, since our concept of God has been abstracted from a finite order of experience, it only describes the way God has freely chosen to work with the world and man. It tells nothing of what he is like in himself.

Jean Gerson (1363–1429), chancellor of the University of Paris, ecclesiastic, formulator of an early version of property rights, and mystical theologian, provides a noteworthy example of Ockhamistic influence. In his best known work, *De Mistica Theologica*, Gerson uses an Ockhamistic

epistemology to justify his positions.

Mysticism had always been recognized in the Christian Church as a valid approach to God. But Gerson's reliance on Ockham's notion of our knowledge of God creates a dilemma for him. If he allows no real knowledge of God but only a conceptual supposition taken from things, what sort of knowledge has Gerson the mystic achieved? And, more practically, what does he love and what does he serve?

Dismissing the disputatious logic chopping of the Scholastics, Gerson praises mystical theology as the most certain of all. *Theologia mystica* can claim such certainty because it is grounded immediately in internal experience, and, for him, there is nothing more certain than this. Gerson advises the aspiring mystic to acquire his spiritual insight through affective penance rather than by intellectual investigation. Since love is superior to knowledge as the will is to intellect and charity to faith, mystical theology may justly claim a position of pre-eminence. Along with the Pseudo-Dionysus, Gerson acclaims mystical theology as "irrational and delirious; it is stupid wisdom exceeding all praise."

Thus, Gerson energetically asserts the certainty of mystical knowledge. Practically, however, Gerson downplays the role of knowledge in mystical theology.

The Varieties of Equality

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"Four Kinds of Equality." *The Politics of Procrustes*. Prometheus Books: Buffalo, New York, 1981, pp. 20-64.

Equality, although a most influential political term, is confusing and suggests different meanings to different people. The prominence of equality as a powerful motivation is evident through many examples. Thus, in his *Political Violence* Ted Honderich regards it as distressing that some people die earlier than others. Sociologists such as James Coleman assume without argument that the detection of inequality in a social

program is automatic grounds for doing something about it.

We can distinguish four different meanings of equality; the first meaning describes a fact, whereas the others advocate an ideal. In its first meaning, equality suggests that no important biological differences exist among people and races. Advocates of this view have demanded the suppression of psychologists such as H.J. Eysenck who ques-

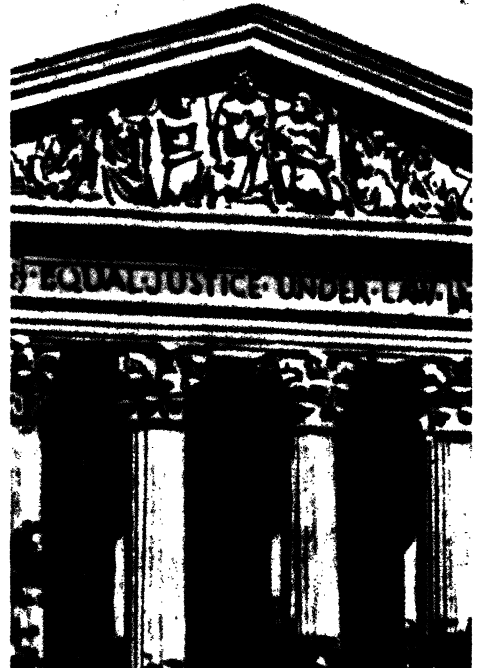
their equalitarian contention. We err, however, believing that claims to rights depend upon the truth of a premise about the extent to which people are factually equal in ability. Moral rights are the rights people *ought* to have and do not depend upon their physical characteristics. It is true, however, that when someone claims to possess a moral right, he must also recognize the similar rights of all other persons, unless he can show a relevant difference between other persons and himself. Also, even if claims about different races being biologically unequal turn out to be true, individuals of any race might be equally intelligent. Ethically, people should be treated as individuals rather than as a member of a race or caste.

The second meaning of equality involves equality of concern or respect. This meaning is virtually a restatement of the second version of Kant's categorical imperative: Act to treat everyone not solely as a means but at the same time as an end. This ideal does not lead to the imposition of socialism. On the contrary, respect for everyone's autonomy requires that people ought to be able to pursue their own goals without coercive interference. It is a mistake to claim that everything people may want is a right which must be provided for them by the state; thus, the United Nations Declaration on Human Rights errs in claiming that everyone deserves a paid vacation as a right. By contrast, a conception of rights in accord with equality of respect is the Lockean approach that allows individuals to own property not at the disposal of the state.

The third meaning of equality is a narrower but still legitimate concept of opportunity. In this view, jobs and educational chances should depend on ability and be open to all through competition. In order not to conflict with equality of respect, this type of equality concerns only governmental institutions. Civil service positions, for example, should be made available to those scoring highest on impartial tests. Although in the given circumstances this meaning of equality is morally permissible, it does presuppose an inequality of results.

Why compete for posts at all if, no matter what the results, one will still come out the same as one's rivals? Further, equality of opportunity applies at a specific time. If as in England, children are tested at age eleven to determine what kind of school they will go to, the fact that they all have a chance to go to a top-level school does not mean that they were equal in opportunity before the test. Some persons obviously had better chances than others because of family backgrounds. This does not negate equality of opportunity.

The final meaning of equality refers to equality of result. To be equal in this sense, people's lives must be subjected to total control, in a way entirely at odds with equality of respect. In spite of the totalitarian implications of equality of result, it is very influential. The demand that people be made equal leads to elitism since its advocates claim that they must exercise this awesome equalizing power. Equality of results leads in practice to a self-contradiction. Everybody is to be equal except the "leaders."



Rights, Liberty, and Priorities

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"Peace and Critical Knowledge as Human Rights."
Political Theory 8(August 1980):293-318.

The Liberal-Democratic and the Marxist-socialist traditions in political thought concur in ranking human liberty or freedom as the ultimate ideal. Prof. Bay contends, however, that "human rights" is a more useful abstraction than "freedom" for guiding our priorities among various political aims and strategies. It is more feasible, he asserts, to construct an authoritative, universal hierarchy among human rights than among freedoms. He also holds that a metapolitical theory based on rights, rather than on goals or duties, is best suited to the Kantian humanist principle that each human being is an end in him- or herself.

Bay discusses the question of whether we can rationally select priorities among basic rights. He believes that basic rights must be defined and justified by categories of basic human needs as opposed to mere wants or interests. Human need refers to any and all requirements for a person's survival, health, and essential freedoms for individual growth and self-expression.

As a humanist, Bay holds that, in principle, whenever we can be sure that some people are in dire need, these needs *must* take precedence over other persons' wants or interests. Comparing political systems, so-called democracies tend to pay attention to wants and to ignore many needs. So-called socialist countries limit debates concerning wants, but they commendably stress universal health and education needs.

In Bay's hierarchy, survival needs come first, followed by the need for protection of health, followed in turn by the freedom needs, including the needs for social solidarity, free choice, and self-development. Beyond these fundamentals, however, there is no easy answer to the problem of devising law and policy principles which respond to human needs priorities and still take proper account of want-claims as well. This is especially true, since our knowledge of the range of human needs remains relatively limited.

Bay does argue, however, that, for prac-

tical policy purposes, the first universal human right must be the right to peace. Compared to "freedom from war," a human right to peace is a much more fruitful formulation, since it protects not only against the horrors of modern technological warfare but also against mass destruction of human lives and health by such negligence-caused disruption as a nuclear core meltdown. Peace, if properly understood, focuses public policy on the protection of everyone's life and limb.

While the right to peace assures the freedom from want and fear, the right to "critical political knowledge," once established, will enable every individual to claim and advance the whole range of justifiable freedoms. The acquisition of critical political knowledge is a dialectical process which Paulo Freire has described in his *Pedagogy of the Oppressed*. Conventional schooling emphasizes the harnessing of young minds as a vital resource for society *as it is*. Not surprisingly, establishment schools, fearful of social change, usually neglect the dialectical acts. Through dialectic, students would be free to take part in discussions of political issues and be exposed to a broad range of relevant facts and opinions. Such an education would provide young people with an access to a critical perspective of their social environment.

More widespread in liberal democracies than in socialist societies, critical political knowledge can exercise considerable restraint on abuses of power. The questioning and dissent concerning America's involvement in the Vietnam war represents just one example of this salutary process. From the example of the Vietnam war protests, one can see the crucial importance of political knowledge in securing the primary right of social and international peace. As J.B. Priestly has succinctly stated: "You may believe, as I do, that if the citizens of the Great Powers were more sharply militant, less like sheep, then States would soon be less like wolves."

Locke and Natural Law

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"John Locke: Natural Law and Innate Ideas."
Dialogue (Canadian Phil. Review) 19(December
 1980): 531-545.

Legal and moral theorists of the seventeenth century linked the concept of natural law with that of "innate ideas." According to their view, Nature or God had implanted in men's minds certain natural laws which formed the very foundation of religion and morality. John Locke (1632-1704) attacked the tradition of innate ideas in his *Essay Concerning Human Understanding*. Nonetheless, in the *Two Treatises of Government*, he supported the notion of natural law. Some modern critics have found these two positions contradictory. Prof. Drury seeks to demonstrate that Locke is entirely consistent. In fact, Locke's attack on innate ideas illuminates considerably his conception of the natural law.

Locke denied that the laws of nature are innate in the primary sense of being self-evident principles of reason to which human nature is inclined. They are actually in need, he says, of "intermediate ideas to make them fully comprehensible." For example, the proposition 'It is the duty of parents to preserve their children' does not carry its own evidence with it. Thus, it is possible for someone who understands the injunction to ask *why* it is true.

The natural principle of child care invokes the idea of duty, which is not a simple idea. It is rather a complex construct involving several simple ideas, namely, the ideas of law, of a lawmaker, and of reward and punishment. Those "simple" concepts lead Locke to the conclusion that, while the laws of nature can be discovered partially by reason, they have their foundation in God. God's wisdom accounts for their intrinsic rightness and His power assures that men motivated by less than the rightness of a law will still be motivated to act upon it.

Locke acknowledges that the laws of nature promote public happiness. Nonethe-



less, he rejects the notion that they are simply practical conclusions drawn from everyday life leading to maximum public contentment. If that were the case, the laws of nature would be little more than rules of thumb—to be disregarded when they prove inconvenient to the public happiness. On the contrary, as part of divine law, the law of nature is in principle good and rational, even when not perceived as such by man.

Next, Locke goes on to consider a second sense of the term "innate." Some thinkers had affirmed that laws of nature were innate since they were universally acknowledged by all men. Leaving aside the fact that universal agreement has never been achieved, Locke asserts that consensus provides absolutely no basis for inferring law.

Finally, Locke dismisses the idea that the laws of nature are innate in the sense of being embedded in human inclinations. As Locke sees it, man is not naturally inclined to good according to reason, but to

good and evil understood as pleasure and pain. He thus succeeds in making natural law compatible with the Christian belief in the fallen nature of man. For Locke, man's fallenness does not imply the depravity of reason, since reason can actually come to know God and His Law. It does imply, however, that the rationality and moral goodness of the law alone are not sufficient to move men to action.

Prof. Drury believes that Locke has a rightful place in the tradition of natural law. Although this tradition is by no means homogeneous, it is nevertheless united by an enduring core of ideas. The most important of these are: (1) a univer-

sal and objective justice transcends the particular expressions of justice in any set of positive laws; (2) even if the universal principles of justice cannot be fully known, they are nevertheless accessible to reason and not simply a matter of appetite or arbitrary human preferences; (3) a positive law which is contrary to the law of nature is not properly speaking a law since it lacks the moral content necessary to put us under obligation. These concepts form the irreducible minimum of natural law tradition. "If this minimal characterization of natural law be accepted," Prof. Drury concludes, "Locke cannot be denied a place within that tradition."

Grounding Natural Rights in Needs

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"Natural Rights: A Reappraisal." *Journal of Value Inquiry* 15, 1(1981): 3-18.

Are there rights that we cannot deny? The natural law tradition says so, but it is unclear how we can verify the notion of a "prescriptive end" to which mankind should strive. Hobbes also asserts such rights, but it is unclear how a basic need creates a right. Also a utilitarian may assert such rights, by connecting rights to the needs of a community rather than to particular individuals. Then, even though the nature of social utility might change in conception, the relationship of rights to utility would remain a constant. But the real *content* of rights would still be relative to each society and we couldn't justifiably interfere with societies which had different concepts or social utility.

However, the revulsion that we feel for certain practices in other societies, which we cannot restrain, shows that we have unshakable beliefs about certain basic 'natural' needs (i.e., that it is a presupposition of our conceptual view of the world that certain practices which we believe to be unnatural *are* unnatural). Certain

rights cannot be denied, therefore, because we take certain facts about human nature for granted, and to question basic rights is to question these facts about human nature that can't be rationally questioned. Rights arise because behaving appropriately as a human being means behaving *as if* certain rights existed. It means behaving as if basic human needs create a *prima facie* right to have those needs fulfilled.

Since some physical needs exist independently of any social arrangements, it might seem as if *any* need creates an absolute right to have it satisfied. However, rights arise from needs within society and it is the purpose of a *society* to fulfill *human* needs, not just physical needs and not the needs of animals.

Given the structure and function of a society, claims are to be considered full-scale "rights" when they serve the well-being of a society and when this "well-being" is defined in terms of how well the needs of individual human beings are being served.

Individual vs. Social Rights

David Braybrooke

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"Our Natural Bodies, Our Social Rights; Comments on Wheeler." *Nous* 14(1980):195-202.

"**S**amuel Wheeler's amusing paper demonstrates wittingly or unwittingly, that it is as feasible in philosophy as in modern art to produce an undetectable spoof." Thus David Braybrooke begins his generally negative assessment of Prof. Wheeler's philosophical justification of property rights. For Braybrooke, the assimilation of every possible item of property to parts of the body constitutes a *reductio* scarcely meriting serious analysis; nonetheless, he harnesses himself to the task.

First of all, Braybrooke states, Wheeler's theory of "incorporation" will not stand up in the face of the most minor complications of civilized life. Wheeler concentrates, for example, on the classic case of a single producer, working without collaboration on, say, a canoe, thereby incorporating that mode of locomotion into his body. Imagine, however, some primitive form of cooperation—2 men working together to make the dug-out canoe. Would not each have a claim to the craft as a new body part? But where does the claim of the one stop and that of the other begin? If no line can, in fact, be drawn, will not the completed canoe become part of both their bodies? When full account is taken of collaborative production, original and derived body rights may turn out to be much less individualistic than Wheeler anticipates.

Near the end of his paper, in a supplementary argument, Wheeler goes to great lengths to separate rights from life in the community, thus establishing in his own mind the universal applicability of rights despite the differences that exist among human societies. Braybrooke challenges this and insists that rights always involve other people—in addition to the person enjoying the rights. One person's right implies obligations that fall selectively upon others—obligations to refrain from impairing the right, obligations to assist in gaining

Wheeler also holds that "person *qua* person' is a notion which is metaphysically independent of society." By this, does he have in mind mere animated human bodies capable of learning? Little effort is required to see that the capacities of such beings atrophy if they are not stimulated in a social setting. Persons are beings with socially established characters imbued with learning which results from interactions with others in various modal systems (one at home another or several at work, another at worship, etc.) Socially evolved systems of behavior apply also to rights—with sets of rules concerning status, exercise, assistance, non-interference, and redress.

Moreover, the very notion of *rights* evolved by means of a long social process which was based on a long series of precedents. At every stage, a consensus concerning the nature of rights grew out of particular institutional developments. This process of evolving consensus continues today.

The developing, open texture of rights may be one of their most useful characteristic features. At times when a certain amount of stability has been achieved, philosophers may ponder which rights are most valuable, considering the nature of man. The right to move and use one's body may number among the most valuable of these. Prof. Braybrooke, however, doubts whether the right to own and dispose of other items figures among these crucial rights; or, if it does, whether it embraces the right to own oil refineries. But whether it does or not, are not the rights to body and property, like all other rights, plainly *social* in character?

redress when the right has been violated, obligations sometimes to carry out certain actions when exercising the right. (If it is my dugout and I ask for it, you must get off and give it to me.)

Property Rights and Body Rights

Samuel C. Wheeler III
University of Connecticut

"Natural Property Rights as Body Rights." *Noûs*
14(1980):171-193.

All property rights, Samuel Wheeler argues, derive from the natural rights of human beings to move and use their bodies. Following Alan Gibbard, Wheeler defines a natural right as a "right one has independently of institutional arrangements." Thus, if a person has a right to body use, it is morally illicit for another to force him to move and utilize his body in any way, as long as that person is not infringing upon the bodies of others.

The right to free use of our bodies is essential, Wheeler asserts, to our right to exist as agents in the world. The right to agenthood must be considered *absolute* (not subject to degrees of violation). Otherwise, we become enmeshed in the problem of deciding how much of one's body may be interfered with before a substantive violation of body rights occurs. Since artificial body parts (pacemakers, man-made limbs, etc.) may be just as important to our agenthood as "natural" parts, no distinction can be made between natural and artificial parts of the body.

Extrapolating from the inviolability of artificial body parts, Wheeler argues that any property may be considered as *incorporated* into the body's agenthood function and, therefore, as inviolable. To begin with the most obvious example, if a person has eaten some unappropriated (therefore, *no one's*) food and converted it to protein, he now has exclusive right to use of that protein. This kind of incorporation is one way of changing non-property into a private possession, of turning what everyone has a right to use into something only one person has a right to use—if we have exclusive rights to move and use our bodies.

Continuing the same mode of argument, Wheeler establishes the body- and thus property-status of clothing, which serves in human beings as the equivalent of protective fur or feathers in animals. Houses play the same body role as shells in turtles and snails, and therefore have property status. Diamonds and sequined dresses may count for moral purposes as artificial plumage. Owning oil fields may be justi-

fied as an aid to the body's agent function of locomotion. Wheeler's argument thus asserts that there is no distinction between what is part of a person's body and what is his property. Things *seem* to group themselves into body parts and non-body parts. This represents, however, a purely accidental grouping and does not reflect any real difference in moral or metaphysical kind.

Wheeler stresses that the terms "rights" and "good" are logically distinct from each other. When a right has been violated, a wrong has been done. However, the wrong perhaps *should* have been perpetrated, because it was a good and necessary thing. Thus, the uncharitable owner of the world's total food supply could legitimately be coerced into parting with some of his provisions. Nonetheless, in Wheeler's view, such a violation of property rights would be on a par with taking the flesh of the only robust person against his will to feed the starving. In this article, at least, Wheeler avoids any attempt to draw a definite line distinguishing legitimate from illegitimate violations of rights.

Trade and transfer rights may also be justified within this theory, and, through transfer rights, the accumulation of great wealth. If a person enjoys exclusive rights to use of his body, he can legitimately trade parts of that body to obtain values significant to him. Theoretically, one could trade an arm for a kiss, thus exchanging a body part for pleasure.

If the rights we possess with respect to our natural bodies also apply to artificial body parts, we can trade or give away houses, clothes, money, diamonds, or whatever is rightfully ours. Nevertheless, a thing incorporated into a person's body becomes his property *only* if its incorporation has violated no one else's rights. Much actual "property" may well be the result of illegitimate incorporation. As a result, Wheeler admits, his theory may say very little about who owns what in the real world.

Property and the Right to Liberty

Anthony Fressola

University of Wisconsin, Madison

"Liberty and Property: Reflections on the Right of Appropriation in the State of Nature." *American Philosophical Quarterly* 18 (October 1981): 315-322.

If consent and the "mixing" of labor with things are inadequate explanations of how property rights are acquired, how might we properly ground a right of appropriation?

One possibility is to work out the implications of what it could mean to have an equal natural right to liberty. On the assumption that humans are not just agents but *rational planners*, to respect humans would have to involve recognizing that they have a right to act upon their plans and projects across time. And since human action is always a kind of interaction between humans and the physical world, a person has a right to act upon his plans and projects only if no one else has a right to make use of those physical components of his action that are necessary to his plan. Thus, a right to liberty would have to concern the distribution of rights with respect to material things.

Now if all are *equally* entitled to liberty, none may have at the outset any right to non-produced resources that goes beyond the rights of others. How, then, should the equal title of all persons to non-produced resources be interpreted? Fressola denies that all persons have, collectively, a joint right to the whole body of naturally occurring substances. His argument is that the necessity of obtaining the consent of all co-owners before using anything could then be used to deny individuals the privilege of acting on their own plans

—plans that might not be acceptable to everyone else. Everyone cannot have an initially equal share in the stock of naturally occurring substances, for there is, typically, no way to say when one person's share is equal to another's. The things to be shared are just not commensurable without market prices, which already presuppose property titles.

But it could be the case that in the absence of a *right* of appropriation, everyone has the natural (Hohfeldian) *privilege* of using whatever unproduced resources which no one else is using. The right to *liberty* could then be construed as the right to carry on with the use of whatever it is that one is using, provided that one was at liberty to use the thing in the first place. "Using a thing" could be broadly construed as incorporating it as a physical component of ongoing activities, projects, and programs of action. The boundaries of the right would then be a function of the nature of the use (for example, a person who cultivates may acquire by that activity a right to the surface of the land but not to the minerals which lie beneath).

Four conditions for initial appropriation seem consistent with an equal right to liberty: (1) the entity must be unowned; (2) the appropriator must physically take possession; (3) the entity must be put to some use; and (4) the intention to appropriate and use the entity must be made public.

Is Justice Prior to Property?

David Miller

Nuffield College, Oxford

"Justice and Property." *Ratio* 22 (June 1980): 1-14.

Theories describing the relationship between justice and property have usually stressed the primacy of one concept over the other. One view takes property as the

more fundamental notion and analyzes justice in terms of it. This "proprietary theory" has recently been defended with considerable verve by Robert Nozick in his

book *Anarchy, State and Utopia*."

What is perhaps most remarkable about Nozick's version of proprietary theory is that it defends a position approximating classical liberalism. However, when liberalism first developed as an ideology, it actually rested upon the second view of justice and property. On this second view, justice is the more fundamental notion, and conceptions of property are defended in terms of it. In the case of liberalism, justice was understood to mean the reward of *desert*. The institutions of liberal society were thus justified as the best means to achieve justice understood as desert.

At the outset of his article, Prof. Miller points out the cultural relativity of the liberal concept of property, namely absolute ownership. Historically, he asserts, limited rights over property have been the norm and full ownership, the exception. However, such theorists as Nozick and Rothbard posit without discussion the liberal paradigm as their absolute standard of ownership. Why do they not consider possible alternatives such as the feudal notion of tenancy or the African Barotse tribe's idea of simultaneous ownership?

Furthermore, the proprietary model inverts the historic relationship between justice and property. Historically, the community first establishes, in general terms, what claim a man has on those around him. Then, this claim is made concrete by an assignment of rights and obligations towards material things. Notions of property are thus derived from ideas of justice, not *vice versa*.

In addition, the traditional liberal insistence upon desert as the standard for the original acquisition of property is in itself rooted in a concept of justice. Yet, liberal theorists do not explain why desert applies

only to original acquisition and *not* to subsequent transfers. Once desert has been admitted as a criterion of justice, it is difficult to avoid assessing overall distributive patterns by means of it.

Applying the principle of desert across the board, Prof. Miller asks the question: "Is capitalism itself incompatible with a conception of justice as the reward of desert?" Miller believes that it is incompatible. He argues that private ownership of capital gives those who achieve it a market advantage over those who do not. The advantage can then be translated into inequalities of reward out of proportion to differences in desert.

Once an entrepreneur is able to hire employees the advantage becomes cumulative. For example, it is more difficult to set out as a capitalist once someone else has already established a position in a particular market. This in turn, weakens the bargaining position of those who have remained employees, and induces them to accept a division of wealth tilted in the capitalist's favor.

In view of these considerations, Miller concludes that a property system satisfying the demands of justice requires a distinction between the ownership of personal goods and the ownership of capital goods. The case for private ownership in personal goods does not extend to capital goods. Even in the case of personal goods, ownership must be circumscribed in justice by the claims of need and limited by rules governing gifts and bequests. Thus, dismissing the liberal concept of absolute ownership, Prof. Miller asserts that a property system satisfying commonly recognized principles of justice would vest both rights to capital *and* to exhaustible resources in the community.



III

The Political Economy of Liberty

In Benjamin Tucker's terms, a political economy which relies upon authority or fears liberty can only engender personal oppression and economic stagnation. The following summaries chiefly concern historical episodes either of state intervention in the economy or responses to such intervention. The Waltman, Bruno, Topik, and Berkowitz-McQuaid articles allow us to appreciate the confused motivations and perverse consequence of government economic regulation and protectionism in the areas of taxation, protectionism, and bureaucratic welfare.

Mason's article on the British anti-socialist response to the growth of government direction of the economy reveals one trend of the individualist opposition to political collectivism. Individualists, such as the British liberals and Benjamin Tucker's libertarians, had faith that the free and voluntary energies of men and women are capable of creating a healthy economy and humane community without paternalistic central planning. Recently, Tucker's faith in the compatibility of individual freedom and a humane community, has been well articulated by Richard P. Hiskes ["Community in the Anarcho-Individualist Society: The Legacy of Benjamin Tucker," *Social Anarchism* 1(October 1980):41-52:

At a time when citizens are clearly weary of big government and its grasping and seemingly insatiable demands, it is at least worth considering that there is a tradition in America which insists that such need not be the case, and that an alternative is available which values community and fellowship as well as freedom from the coercion of the state. The end of the welfare state need not mean the end of welfare, but only the demise of a particular, and increasingly unpopular, form of it. Individualism can embrace a communal concern for others, and because it can, it is time to stop expressing the same tired objections to it efficacy as a model for political organization.

British Anti-socialism: 1870–1914

John W. Mason

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"Political Economy and the Response to Socialism in Britain, 1870–1914." *The Historical Journal* 23(September 1980):565–587.

Political economy suffered a sharp decline in prestige and influence in Great Britain after 1870. Eager to respond to the sudden appearance of the "social problem" in politics, a young generation of economists including Jevons, Cairnes, Sidgwick, Toynbee, and Marshall led an assault on the methods, doctrines, and policies of the classical school. Unfortunately, the very success of their attack has conditioned historians to assume that they spoke for their whole generation. This was not the case. Prof. Mason shows that there was a strong anti-socialist current of opinion during the period, even though academic economists and liberal social reformers rejected it.

The myth of a golden age of *laissez faire* in the mid-nineteenth century exercised a powerful influence on anti-socialists later in the century. The battle against socialism was seen as a reenactment of the earlier fight against protectionist policies. Despite the general disrepute of political economy among academics and reformers, the arguments of the orthodox school held a prominent place in the works of numerous anti-socialist writers of the 1880s and 90s. Authors such as Goschen, J.S. Nicholson, J.H. Levy, and the publicists of the Liberty and Property Defence League all drew their inspiration from this tradition.

Most prominent anti-socialists at the end of the nineteenth century were born before 1850. They had been able, therefore, to imbibe the teachings of the classical school before its period of crisis after 1870. This accounts for their limited use of Social Darwinian arguments to defend *laissez faire*. Self-interest, competition, and the right to private property were rarely presented as the economic form of the struggle for existence. Herbert Spencer was an exception in this respect, but he was a relatively isolated figure whose greatest influence was in America.

The passage of time, however, brought its inevitable changes, and the late nineteenth century anti-socialists presented a reconstructed version of political economy, singularly different from the school of the early 1800s. The orthodox school was pessimistic, emphasizing the iron laws of economics. Later anti-socialists, on the other hand, were optimistic and stressed the voluntarist aspects of economic behavior.

Similarly, the late 1800s was an era when socialists were leaving utopias behind. They even went so far as to adopt some of the traditional materialist arguments of political economy as "scientific" justification for their moral ideals. At the very same time, anti-socialists like the Duke of Argyll were beginning to stress the *non-materialist* origins of wealth and progress. Against the claims of "labor" as the sole wealth producing agent, they emphasized the significance of the "right" to property and highlighted the "mind" and "ability" of the entrepreneur in the creation of wealth.

The late nineteenth-century anti-socialists never achieved the practical political success of the free traders in the 1840s. They were a fringe group far from the corridors of power and alienated from the mainstream of contemporary economic thought. Their frequent defense of the Malthusian theory of population and the Ricardian theories of wages, rent, and value were a reflection of their relatively isolated position. In their quest for the ideal antidote to socialism, the anti-socialists vacated the middle ground and were ignored by the academic establishment. Nonetheless, through journals such as the *Liberal Unionist*, the *Spectator*, and the *Quarterly Review*, their views were widely disseminated among the public. These views doubtless played a larger role in the British debate on socialism than has yet been recognized.

Income Tax Laws and Contingency

Jerold Waltman

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"Origins of the Federal Income Tax." *Mid-America*
62(October 1980):147-160.

On three separate occasions, in 1861, 1894, and 1913, the Congress of the United States enacted a national income tax. Studying the motives and maneuvers which brought these laws into being, Prof. Waltman finds material which, he believes, elucidates the general process of policy formation. In his search for patterns in the development of policy, Waltman seeks to answer two basic questions: (1) What factors put the income tax on the national political agenda? and (2) What were the sources of the specific details incorporated in these three pieces of legislation?

An examination of each law reveals quite clearly that the income tax as a policy alternative emerged from quite different agenda items. In 1861, the dominant problem was public finance. The outbreak of the Civil War made it imperative that Congress devise new means for raising revenue. From deliberations on this question, the income tax emerged.

In 1894 and 1913, on the other hand, the dominant question was not revenue but social justice. The Populist Movement of the late 1800s and the Progressive Movement in the early part of our century both championed a tax on incomes as a way to achieve "the redistribution of wealth and the equalization of burdens." George Tunell wrote concerning the 1894 law: "The income tax was not regarded primarily as a fiscal measure. Little was known as to how much it would yield and apparently no one cared very much to know."

The varying motivations leading up to the three income tax laws demonstrate that the *same* policy may be adopted in order to solve quite different problems. In Prof. Waltman's view, therefore, students of public policy would be wise to avoid creating policy categories around such government department clusters as finance, housing, transportation, and the like.



The three income tax laws also illustrate the powerful role that precedent plays in the selection of specific policies. Regardless of the functional problems they had been designed to attack, the 1861, 1894, and 1913 bills are virtual carbon copies of each other. In the case of public policy at least, new wine seems to store quite well in old bottles.

The same laws also serve to inject caution into attributing too much weight to environmental variables in the process of policy formation. For example, if, in 1861, the Ways and Means bill for a national property tax had been even slightly more palatable, it is doubtful that an income tax would have emerged from that congressional session. Likewise, in the latter two cases, one could not say that Populism or Progressivism "caused" or, more weakly, "led to" the adoption of the income tax. Without the prominence of tariff reform as an issue, the item would have stayed on the fringe of serious political activity. All three income tax laws grew out of the old-fashioned pull-and-tug of politics, with a large degree of happenstance.

Prof. Waltman explicitly denies that his argument implies that all is happenstance or that each instance of policy making is unique. That would lead to the destructive conclusion that no generalizations can be

made about policy formation. Instead, he is suggesting that any model which purports to "explain" public policy must not ignore the complex and often tortured processes whereby decisions are reached.

Government Subsidies in France

Nicolas Brimo

"Un Secret d'etat: l'aide publique a l'industrie."
Les Temps Modernes 416(March 1981):1578-1588.

French democracy, Nicolas Brimo observes, has a special fondness for secrecy, and nowhere is secrecy guarded more jealously than when questions are raised concerning government subsidies to private industry. No one, for example, is quite certain how much direct and indirect state aid entrepreneur Marcel Dassault has received to equip the French air force and to export his Mirages jets around the globe.

Government in France has, according to Brimo, ingeniously organized itself to foil the curiosity of journalists and parliamentarians concerning industrial subsidies. As part of this organizational smokescreen, aid to private industry may take 7 specific forms, be channeled through any of 24 budgetary tracks, and be distributed by no less than 23 separate committees. The Ministry of the Budget does issue an annual report disclosing subsidies to nationalized enterprises, but no such report exists for aid to companies in the private sector. Even within the economic agencies of the French government, ignorance and confusion reign. The task force on Public Expenditures, a branch of the General Commissariat of the Economic Plan, grudgingly admits "its inability to measure the effectiveness of these interventions (subsidies)" because of the diverse character of the aid." In addition, "the beneficiary of such interventions is not always identifiable with certainty . . . or lack of information."

Brimo contends that a more detailed knowledge of public aid to the private sector would be particularly instructive at a time marked by a resurgence of classical liberal ideology—often raucously supported by prime recipients of state subsidies. Taking the pulse of the time, former President Valéry Giscard d'Estaing loudly publicized his liberal philosophy, while downplaying the embarrassing fact that whole industries in France (metals, weaponry, ship building) and entire regions (the North, Lorraine) survive only through massive state aid.

A classic case of government obfuscation in the area of industrial aid centers around a report issued in 1978 by Herve Hannoun, a state financial inspector. Hannoun's report represents the only attempt by a government official of the Fifth Republic to arrive at some estimate of what the state was expending directly or indirectly on private industry. Only five typed copies of the 70 page report were produced in January, 1979. The Elysee Palace quickly placed the document under top secrecy. Nonetheless, by September 1979, a leak revealed the principal conclusions of the "*rapport hannoun*"—complete with figures and names.

In brief, the document reports that six industrial groups which account for less than 10% of the increased value of French industry receive 50% of government subsidies. These six groups employ only 10% of the industrial work force, ac-

count for only 11% of exports, and but 2% of the total investments in industry. Four of these six groups are privately owned.

The report further demonstrated that, without public assistance, none of these groups could have registered profits. Ignoring the government policy objective of employment stimulation through subsidy, the six groups have not expanded their manpower and, in some cases, have actually reduced it. Despite increased state aid, private industry increased its investments in the French economy by a mere 17% from 1970-1979,

while during the same period state enterprises more than doubled theirs.

All in the name of "liberalisme," the leaders of the Fifth Republic have poured mounting sums into private industry, increasing its profits while producing stagnating investments and declining employment for the nation. An unsuccessful policy based on false premises, the subsidy program to industry nonetheless received the staunch support of Valéry Giscard D'Estaing, often described by his supporter as "one of the

Brazilian "Liberalism" & State Protectionism

Steven Topik

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"State Interventionism in a Liberal Regime, 1889-1930." *Hispanic American Historical Review* 60, no. 4 (November 1980): 593-616.

One of the strange paradoxes in Latin America's history is the influence that liberalism enjoyed in that area of the world between independence and the Great Depression. Historians have very frequently assumed that, while liberal ideas had their noble aspects, they were ill-suited to Latin America's hierarchical, tradition-bound social structure and, thus, probably destined for failure. Few historians, however, have examined liberalism's economic performance.

Prof. Topik's article examines the economic policies of one of the most long-lived liberal regimes in Latin America, Brazil's First Republic (1889-1930). The article studies the actual activities of the government in the economic sector and then poses two questions: 1) Did the economic policies themselves conform to the essence of liberalism? and 2) If so, were they adequately suited to the Brazilian context?

Prevailing historiography has characterized the regime established in 1889 as noninterventionist, decentralized, and favorable to foreign investment. Supposedly, the activist, developmentalist

state emerged only after the 1930 revolution and the rise to power of Getulio Vargas.

Prof. Topik contends that the federal government in the 1889 to 1930 period was considerably stronger and more economically active than has generally been recognized. Its activities, which gradually increased in intensity, may be grouped roughly into four categories: centralization, regulation, incentives to private enterprise, and direct state ownership. These interventions were generally pursued with the aim of *preserving* the liberal superstructure of the economy. They usually represented accommodations to the severely underdeveloped economy of the country (e.g., an acute credit shortage) or to substantial changes in the world market such as the shortages of strategic materials during World War I.

In the area of regulation, the federal government of Brazil acquired the right to control most of the railroads in the country. Concession agreements ceded to the government the right to set rates, determine routes, and decide the type of

equipment to be used—all matters of vital national interest. As a result, the Ministry of Transportation and Public Works maintained low rail rates and established routes in unprofitable areas over the loud objections of railway companies. Similar controls prevailed in the area of shipping. The Constitution of 1891, for example, enjoined foreign freighters from participating in the coastal trade. Domestic shipping became the monopoly of Brazilian lines. An 1897 law also forbade foreign ships from fishing in Brazilian waters, though this only came to be enforced in the 1920s. Also of public importance, utilities eventually came under state regulation.

In addition to controls on the "public" sector of the economy, the government effectively encouraged private enterprise through grants of incentives and concessions. The state was particularly energetic in expanding the transportation infrastructure and encouraging agriculture. At its height in 1898, fully one-third of all federal spending went to railway subsidies. Subsidies to maritime companies cost the treasury an average of more than US \$1,500,000 a year between 1880 and

1930, reaching almost US \$4,000,000 by the end of the period. A series of ad hoc measures to drive up the price of coffee absorbed about US \$133,000,000 of federal funds (mostly borrowed from abroad), while the state of São Paulo spent \$136,000,000 to protect the crop.

The republican framers of the 1891 constitution sincerely intended to remove the impediments to development which, they believed, the imperial state had erected. However, they were not dogmatically bound to a foreign model of liberalism and reluctantly allowed concessions to the necessities of an underdeveloped country and an increasingly complex world economy. Nonetheless, Brazil's ruling class maintained what it believed was the essence of liberalism, sacrificing some of its form to preserve its basic content. Relatively limited state interference and the inviolability of private property encouraged foreign investment in Brazil. At the same time, Brazilian "liberals" mobilized national capital to build the export infrastructure and to finance international commerce.

Herbert Hoover & Federal Welfare

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"Bureaucrats as 'Social Engineers': Federal Welfare Programs in Herbert Hoover's America." *American Journal of Economics and Sociology* 39(October 1980): 321–335.

Herbert Hoover's career in the 1920s exemplified the cooperative aspects of federal welfare efforts during that period. Paradoxically, Hoover saw himself as both a "planner" and as an anti-statist. He believed that the federal government should "serve as a midwife to a new, non-statist commonwealth" composed of private interest groups. The private parties involved in the process (corporations, trade associations, etc.) would create new organizations and techniques to spread enlightened ideas. The "socially responsible" standards they developed would serve as

the key element in defining an American social welfare system.

The federal welfare structure of the 1920s rested upon three basic programs: vocational education, vocational rehabilitation, and infant/maternal hygiene. The American military mobilization in World War I gave impetus to the first two programs, because the nation required an effectively trained work force to wage the war. The growing political power of women in the early 1920s helped to promote the third.

The three welfare programs undertaken

by federal administrators were all modest in scope. In 1924, for example, four physicians, a nurse, an accountant, a secretary, and a stenographer composed the entire staff of the Washington office for the infant and maternal health program. As late as 1928, 96 percent of total federal welfare expenditures went to war veterans.

Barriers to the expansion of direct federal welfare activities were strong. All the welfare programs created during the 1920s operated on the principle of federal grants-in-aid to the states. Each program involved *state* provision of services to welfare recipients. Such people received advice or training from a professional counsellor or teacher, *not* money from the federal government.

An even more important barrier to federal welfare expansion was the struggle to meet the decade's standard of efficiency. The well-run public program was supposed to resemble the well-conducted business. It was to perform its operations at the least possible cost and create products which society valued. The desire for program efficiency through business-like administration was the characteristic which most clearly defined the 1920s style of public welfare.

In the vocational education and rehabilitation programs, the drive to get the greatest return for the dollar led to a policy of preferential treatment for those most likely to find a place in the work force. As a result, women, blacks, and the severely injured often did not receive as-

sistance from welfare officials, since these categories of clients would encounter significant obstacles to finding jobs.

The efficiency standard was in large part responsible for the fact that, of the 207 people who managed to see the State of Georgia's two rehabilitation counsellors in fiscal 1921, only 12 received some form of vocational training.

Despite such statistics, the efficiency standard could make the rehabilitation programs seem like a smashing success. Government statisticians, for example, had calculated that in 20 years, those helped by rehabilitation programs would collectively earn \$147,004,000. In order to generate that impressive sum, federal and state governments had spent only \$1,124,500. Thus, the nation would have reaped returns of over 10,000 percent on investment—impressive even by 1920s standards.

The Great Depression wiped out the ideological rationale for the social welfare system of the 1920s. By 1937, New Deal officials had created a distinctively public approach to social welfare problems, and regarded themselves as administrators of welfare programs which provided federal services directly to the people. After 1937, federal bureaucrats would no longer confine themselves to providing demonstration projects to interested observers in corporations, trade associations, localities, and states. They would, with increasing success, create a world of their own. In this world, equation of welfare and efficiency occupied but a modest place.

Neoconservatism and Capitalism

Norman Podhoretz

"The New Defenders of Capitalism." *Harvard Business Review* 1(March–April 1981):96–106.

The lack of attention businessmen have paid to defending their beliefs has proven costly. Hostile intellectuals have developed a powerful case against capitalism that largely went unanswered—until it eventually bore its fruit in the

form of regulatory and other government policies that literally forced the businessman to pay attention.

Yet despite the intellectuals' traditional hostility to capitalism, there are signs that this attitude is reversing. Most intellec-

tuals have always looked upon capitalism as an evil: a system unsound in itself and the cause of moral and spiritual depredations throughout society as a whole. To some extent, this attitude has been a response to the supposed record of capitalism—to periodic depressions, to the sorry lot of workers, to the rewarding of the rapacious and the greedy.

However, the past decade has been a time when many intellectuals have gradually shifted their ideas to neoconservatism. Formerly those thinkers trusted in the government's ability to solve a whole range of social and economic problems but, in response to the failure of so many of the social programs of the 1960s, these same intellectuals have become skeptical of government intervention. It is not so much that intellectuals have become unqualified partisans of capitalism, as that they are more disillusioned with the evils of socialism than those of capitalism.

The new defenders of capitalism have discovered that socialism coexists more comfortably with tyranny and totalitarianism than with liberty and democracy. Irving Kristol capsulizes the empirical argument against socialism in his book *Two Cheers for Capitalism*: "Never in human history has one seen a society of political liberty that was not based on a free economic system—i.e., a system based on private property, where normal economic activity consisted of commercial transactions between consenting adults. Never, never, never. No exceptions."

If the main indictment these intellectuals direct against socialism is that it jeopardizes liberty and democracy, the main virtue they find in capitalism is, conversely, that it nurtures liberty and democracy. This is so, they argue, because the economic freedom on which capitalism rests is itself a form of liberty. Even in achieving the value of equality—the central value of the political culture of socialism—capitalism does a better job. Where the argument still rages is over unequal distribution of wealth. However, although . . . "Western society does not claim to be egalitarian, it is intellectually and socially free. The grosser forms of ine-

quality and abuse in earning power, social benefits, and the like are at least kept under public scrutiny so that injustices can be identified and kept within limits. The end result is that Western capitalism is far more socially just than any other socialist society, and income in Western society is incomparably more fairly distributed than under socialist societies."

Neoconservatives agree that while a market system cannot function properly without equality of opportunity, neither can it function without inequality of result. Unless all individuals are given a chance to compete, the economy is deprived of initiative and energy, yet if those who succeed in competition are not given a chance to reap extraordinary rewards, the economy will also be deprived of that same initiative and energy. This does not mean that those who fail need to be penalized by starvation. A safety net in the form of social insurance is, in this view, entirely compatible with a healthy market system (the only qualification being that the insurance should not be so generous as to destroy the individual's incentive to work).

Thus the main emphasis in the case for capitalism is not that it reduces inequality—although under certain political conditions it certainly does—rather that capitalism improves the lot of everyone. Rich and poor alike grow richer under capitalism. In capitalist societies the very idea of what constitutes poverty undergoes a change from absolute to relative deprivation. It is socialism that has turned out to be a system of increasing pauperization.

A reservation about capitalism is that it may fail to satisfy the spiritual hunger for something larger, more heroic, more exalted than "bettering one's condition." In an ironic way, the very successes of democratic capitalism make it vulnerable to the charge of spiritual poverty. Yet this spiritual sickness cannot be cured by any set of economic or political arrangements, and perhaps it is a great virtue of capitalism that it refuses even to try. It is thus a bulwark against totalitarians, not only because it allows liberty but also because its claims are limited: "we are not required to worship it." ▢

IV

Law, Liberty, and Political Thought

Literature of Liberty has repeatedly emphasized the necessity of sound legal and political philosophy in establishing a free society. In past issues, our journal has devoted numerous summaries to the interconnections of law, legislation, liberty, and rights [see for example *Literature of Liberty* 3(Autumn 1980), for both the editorial on Lon L. Fuller and the summary section on "Legal Theory and Rights"]. The topics treated in this section cover judicial interpretation of the First Amendment, the tort-crime distinction, the law and economics approach, the juristic notion of corporations, London's "first charter of liberties," and historian J.G.A. Pocock's clarification of the distinction between the liberal tradition's notion of rights and liberty and the more politicized notions of virtue and manners.

To supplement the first summary of Thomas I. Emerson's article on the First Amendment, the reader may wish to consult two earlier summaries on First Amendment issues by the same author, appearing in *Literature of Liberty* 2(January–March 1979):64–65, and 3(Autumn 1980):70.

The First Amendment & The Court

Thomas I. Emerson

Lines Professor of Law Emeritus, Yale University

"First Amendment Doctrine and the Burger Court." *California Law Review* 68(May 1980):422–481.

In the period since the Burger Supreme Court has taken over from the Warren Court, there have been a few major changes in the position of free speech in the American constitutional system. Nevertheless, the Burger Court failure to adequately define a coherent position concerning the scope of freedom of expression has allowed the government to abridge individual liberty. Attempts by theorists such as Tribe and Baker to establish acceptable standards in this area are inadequate to the role of the system of freedom of expression in our

national life. A more promising approach includes as a key constituent reliance on the expression–action dichotomy.

Freedom of speech is important because it is essential to several underlying values. These include (1) individual self-fulfillment; (2) the advance of knowledge and discovery; (3) participation in political decision making by all members of society; and (4) the proper balance between stability and change. While there is a broad consensus in society on the value of free speech in promoting these values, there are many disputes

on how the doctrine of free speech should be implemented.

In particular, the Supreme Court must answer two questions: what conduct comes under the protection which the First Amendment accords to free speech; and how extensive is the protection which the Amendment provides for free speech? The Warren Court's answers to these questions can be criticized on some points. For example, the "clear and present danger" limit is unacceptably restrictive. Also, the Court's stress upon balancing free speech protection against other constitutional requirements fails to take adequate account of how essential freedom of speech is to our system of government. The Warren Court did, however, display sensitivity in some areas, e.g., the development of a "right to know," to the problems posed by attempting to implement the system of freedom of expression.

The Burger Court is more open to criticism than the Warren Court. It has been intent even more than its predecessor in "balancing." This has advanced to such an extent that the key

doctrine of the "preferred position" of freedom of speech is in danger of being undermined. The rule in question provides that because of the fundamental importance of civil liberties, attempts by the government at restricting First Amendment freedoms must be judged with the strictest scrutiny. The Burger Court's *ad hoc* approach manifests in insensitivity to this doctrine.

Attempts by recent legal theorists to provide an acceptable rationale for a detailed policy on free speech have not been fully successful. Tribe's distinction between regulations aiming at curbing free speech and those ("track-two") rules which aim to limit the non-speech effects of free speech allows for too much interference. Baker's stress upon the values free speech promotes is on the right path and his category of "coercive speech" is a valuable contribution. An even better analysis, however, would rest greater weight on the distinction between action and expression. Common objections to this approach (e.g. vagueness of the two terms definitions) can be overcome.

Is the Tort/Crime Distinction Valid?

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University of California at Berkeley

"On Moral Justifications for the Tort/Crime Distinction." *California Law Review* 68(March 1980):398-421.

The reasons for the common distinction between torts and crimes have received surprisingly little attention in the legal or philosophical literature. The problem specifically is the following: certain actions, called "crimes" are usually held to be subject to more severe penalties than the compensation to the victim required in order to rectify actions called "torts". Why does this dichotomy between torts and crimes exist? That is to say, why ever go beyond compensation?

Any acceptable answer to the problem posed above must meet three require-

ments. First, we must set forth an adequate moral theory which can deal with this question. Second, we must explicitly state the interests which benefit from imposing prohibition rather than mere compensation. Third, we must state the means, consistent with the moral theory postulated in the first step, to secure the interests identified in the second step. In addition to these formal constraints, an acceptable theory must also meet substantive requirements. Specifically, the theory advanced must satisfy our moral intuitions.

Four theories giving reasons for the crime-tort distinction fail to meet these requirements fully; but one of them, Robert Nozick's, does meet the formal requirements and perhaps can be modified to meet the substantive ones as well. The other three theories fail the formal requirements completely.

The first of these theories rests the crime-tort distinction on distinction between public and private interests. What a public interest is has never been adequately specified, nor has a reason been given why all violation of public interests ought to be prohibited. Similarly, attempts to rest the distinction on how much harm the crime or tort causes fails because harm has never been defined adequately. More generally, all utilitarian approaches to the problem, e.g. the economic efficiency standpoint, suffer from problems of definitional inadequacy.

Nozick's theory rests upon the fact

that some actions, such as those which impose a risk of bodily harm, impose as a concomitant a general fear which cannot be adequately remedied by compensation. While Nozick's approach can be shown to satisfy the formal requirements presented above, the assumption of a right to be free from fear seems inconsistent with the libertarian moral theory Nozick advocates.

Nozick's argument can be reconstructed to provide a more acceptable theory. In this version, the individual, rather than the state, would be the one to decide when compensation was inadequate as a response to an act invasive of rights. The desire to be free from fear can certainly play a role in an acceptable moral theory, as can the satisfaction of other emotions, such as anger. All of this satisfaction of emotions, however, must take place within the framework of the individual's Lockean rights.

The Economic Approach to Law

Jules L. Coleman

University of Wisconsin at Milwaukee

"Efficiency, Exchange, and Auction: Philosophic Aspects of the Economic Approach to Law."
California Law Review 68(March 1980):221:249.

The approach termed "law and economics" is widely influential in American law schools today. "Law and economics" applies the techniques of modern welfare economics to legal problems. This approach can be either descriptive or normative: by using economic techniques, we can explain legal institutions, or we can assert that economic criteria ought to be used to reform existing practices.

Probably the most important proposition of law and economics now is "Coase's Theorem." Suppose that a farmer and a rancher are neighbors. The rancher wants to add an additional cow to his stock. This will impose some cost on the farmer, since a roaming cow will damage his crops. One might at

first think that whether a cow will be added to the rancher's stock will depend on what property rights the two parties have. Perhaps surprisingly, R.H. Coase has been able to show that, under certain assumptions, the maximum productive use of resources does *not* depend on the initial assignment of rights. The two parties will bargain until the one who values the disputed claim more obtains it. Initial assignment of rights can affect the relative wealth of the competing parties, however.

George Fletcher has argued that Coase's Theorem does not insure that a "Pareto Optimal" outcome will result from negotiations. (A Pareto Optimal outcome is one in which resources cannot be shifted from one person to an-

other without making at least one person worse off. A Pareto superior position is one in which one can make at least one person better off without making anyone else worse off.) Fletcher argues that Coase's Theorem will insure position. Allocative efficiency is achieved because it is assumed by the theorem that the parties want to maximize wealth.

Coase's Theorem leads to a different approach to externalities from that advocated by A.C. Pigou, the founder of classical welfare economics. An externality is an effect of one's production on someone else that leads to a welfare loss. Suppose, for example, that smoke from a factory pollutes the air of the surrounding neighborhood. Pigou's solution was to tax the factory, thus making it absorb the cost of the pollution. Coase's solution is to let the affected parties bargain. Although Coase's Theorem uses a confused notion of causation, this does not affect the practical value of his results. In some cases, Pigou's approach leads to an inefficient outcome.

If the market cannot assign property rights, how should they be allocated? One of the most important proponents of the law and economics approach, Richard Posner, favors an auction rule. According to this rule, one assigns the

property right to the party who would have obtained it if there had been a market transaction. In other words, we should mimic the market. It is argued that Posner's rule derives from the Kaldor-Hicks concept of efficiency. According to it, a distribution in which some gain at the expense of others is efficient if the winners could compensate the losers. Note that they are not required to *actually* do so; the Kaldor-Hicks requirements are satisfied if they *could* do so.

Why is Posner's auction rule desirable? In actual market transactions, the winners actually have to buy out the losers. Why should property be awarded to those who would have won out in a market, without requiring that they pay compensation? Posner's rule guarantees neither a Pareto optimal nor a Pareto superior result. On the other hand, it is not clear that one always should compensate the losers.

The complexities discussed above suggest that the law and economics approach does not have a simple solution to the intractable problems of legal theory. Considerations other than economics are important and must be taken into account. Nevertheless, the law and economics school should be taken seriously.

Corporations, the People, and Italian Jurists

J. P. Canning

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"The Corporation in the Political Thought of the Italian Jurists of the Thirteenth and Fourteenth Centuries." *History of Political Thought* 1(Spring 1980):9-32.

The Italian jurists—civilian and canonist—made a major contribution to the development of corporation theory in political thought. One of the major forms of political corporation which the jurists considered was the independent city-republic which was founded at the time in north and central Italy. To account for this devel-

opment there emerged a juristic theory of government by the people. Two of the most important theorists of the idea were Baldus of Ubaldis and his teacher, Bartolus of Sassoferrato.

The *populus*, or citizenry, as Baldus saw it was both a unity and a plurality of human beings. As a corporation it became

a distinct legal entity. In joining together into a unity the individuals become a *corpus mysticum*. The *populus* can act because, while it is an abstract entity, it is also a body of real men.

Medieval jurists took these basic concepts further by maintaining that the corporation, being a unitary entity, is equated thereby with a single individual; thus they arrived at the definition of a legal person. Out of this grew the discussions of "fiction" and "realist" theories carried forward by scholars such as Otto Gierke. Those who argued the fiction theory did so because they disagreed with the conceptual jump of equating the corporation to an individual person.

But the medievalists do not readily breakdown into Gierke's dualism. They were more concerned with the structure of the corporation than with its legal personality. Medievalists did not, for example, use the concept of fiction in a perjorative sense. Jurisdiction lay with the whole corporation, and not just its head.

For Baldus, especially, membership in the corporation transformed a person from

being an isolated individual into the role of citizen. This self-governing entity is a natural development rather than a grant from any superior in a theocratic system. The citizen thus has autonomous rights within the *populus*.

The *populus* as a corporation is distinguished from the individual in that it is ongoing and thus perpetual, or immortal. Secondly, the *populus* is a territorial entity comprised of those individuals within a given area.

Recently, Walter Ullmann has stressed the idea of the corporation as a minor, ultimately under a higher authority. This motion is in conflict with the popular sovereignty ideas of Bartolus or Baldus in the larger sense. Structurally, the latter saw the corporation as embodying original governmental power exercised through general assemblies and councils of the people, and elected officials ultimately responsible to the people. Such officials may function somewhat as tutors, or leaders of the community, but it does not follow that the corporation is thus a minor.

London's Charter of Self-Government

C. Warren Hollister

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"London's First Charter of Liberties: Is It Genuine?"
Journal of Medieval History 6 (September 1980):
 289-306

Henry I's (1100-1135) charter for London, one of the most celebrated of English medieval documents, has been the subject of numerous scholarly studies over the past century. Historians' interest in the charter derives from the fact that it represents, in James Tait's words, "the first great landmark in the development of self-government in the English boroughs." London's self-government made possible independent agitation for more liberties in later history.

Nonetheless, the charter's authenticity has been questioned in recent years. In 1973, Christopher Brooke, Gillian Keir,

and Susan Reynolds concluded, in a closely reasoned article, that it was probably a forgery from Stephen's reign (1135-1154) or a genuine charter of Stephen's misattributed to Henry I. Their views have influenced subsequent literature on medieval English urban history which has called the document into question. Contrary to this current of opinion, Prof. Hollister holds that the charter is, in all likelihood, genuine—that the history of London's autonomy does indeed begin in the reign of Henry I and by his mandate.

Hollister's article follows more or less the organization of Brooke, Keir, and

Reynolds who examined (1) the manuscript tradition, (2) the protocol, (3) the witness list, and (4) the historical context.

The manuscript tradition of the London charter is complex, especially since the original is no longer extant. Hollister, however, concentrates his attention on one particular copy, which was included as part of the early fourteenth-century *Liber Horn*. This manuscript bears a series of marginal and interlineated emendations. The emendations create a more plausible text and protocol that reflects Anglo-Norman chancery practice much more closely than any fourteenth-century scribe could have produced. Accordingly, they can only have resulted from an emendor who had the original charter before him, or an early and quite accurate copy no longer extant. Therefore, at least some existing copies show evidence of being based on documents originating in Henry I's time.

Scrutiny of the "witness list" reveals that seven or eight of them were active in Henry's court or administration. Several were linked by bonds of kinship or service. Significantly, the list includes men who were in all probability the lords or keepers of London's three major fortifications in the latter years of Henry I's reign. The relative obscurity of some of the other witnesses (Alfred fitz Joel, Robert fitz Siward, John Belet, etc.) combined with their singular appropriateness to a London charter of liberties of about 1131-33, clearly bespeaks the document's authenticity. Although plausible for 1130-33, the witness list raises the most serious difficulties if one argues that the charter was a product

of King Stephen's reign.

It is above all on the grounds of the London charter's historical context that Brooke, Keir, and Reynolds contest its authenticity. They find it difficult to believe, for example, that the powerful, tightfisted Henry I would have granted such generous privileges as local election of sheriffs and the lowering of the land tax (*ferm*) from .525 to 300 pounds.

Hollister, however, places the concessions of the charter within the economic context of the early 1130s. Concerning the election of sheriffs, one can reason analogously from records concerning the city of Lincoln that London paid dearly for this measure of self-government. The concession of such a privilege profited the crown substantially. Thus, it is not at all surprising that the money-conscious Henry should grant election rights to the city.

The reduction of the *ferm* may be traced first of all to the growing number of arrears, as Londoners found it increasingly difficult to pay the onerous tax. The situation was aggravated by a great fire in mid-May 1133. The fire destroyed most of London, including St. Paul's Cathedral. In all probability, therefore, Henry reduced the *ferm* after a realistic evaluation of the reduced revenue potential of his London subjects.

Evidence from existing manuscripts as well as historical circumstances, thus, point to the authenticity of Henry's charter. Those same circumstances also strongly indicate that the document was issued either in June or July of 1133.

Liberalism, Virtue, Rights & Manners

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"Virtues, Rights, and Manners: A Model for Historians of Political Thought." *Political Theory* 9 (August 1981): 353-368.

We seriously distort history in assuming that political theory became "liberal" about the time of Hobbes and Locke and has simply remained "liberal" ever since.

To reveal this distortion we need to see how the concept of republican "virtue" evolved alongside the concept of "rights" as used by Hobbes and Locke, and how the

concept of "manners" came to evolve from the meaning of the republican concept of "virtue."

Hobbes and Locke may be understood in relation to the tradition of natural law and jurisprudence, but the origins of "liberalism" itself owes something to the development of a discontinuous paradigm of republican virtue.

In the natural law paradigm, liberty under law has nothing to do with people having a direct voice in the government. Liberty, in this paradigm, is basically "negative" and involves having immunity from arbitrary action by the ruling authorities, be they kings or princes.

In the republican paradigm, human nature requires the practice of active self-rule. Liberty is viewed as basically "positive" in that it involves the cultivation of a politicized "civic virtue" in ruling and being ruled. This notion of republican virtue cannot be assimilated to the status of a "right" that is *distributable* with other things, because an unequal distribution of public authority can lower the level of participation in government and thereby deny that all men are, by nature, political animals.

Given that the language of "rights" and "virtues" are incommensurate, it becomes

possible to see Locke's politics of "rights" as marking the close of an age rather than the beginning of another. After the seventeenth century, the central issue in political theory is not whether the people have a right of resistance against rulers who have engaged in misconduct, but whether regimes founded on patronage, public debt, and a professional army don't, in fact, corrupt both rulers and the ruled; and *corruption*, then, is a problem of "virtue" rather than of "right."

However, since the notion of citizenship was to be defended in terms of "virtue," the "virtue" emphasized in the eighteenth century came to be that of "manners" rather than the classical notion of civic virtue (the activity and equality of ruling and being ruled). "Manners" meant the enrichment of personality, brought about by specialization, division of labor, and the expansion of "commerce and the arts." Representative government was justified, and the individual compensated for the loss of "antique" virtue in ruling by the refinement of *manners* that an expanding commerce and arts made possible.

Thus, liberalism was not a simple development from "natural rights," but depended on the evolution of a commercial humanism and a new concept of "virtue." □



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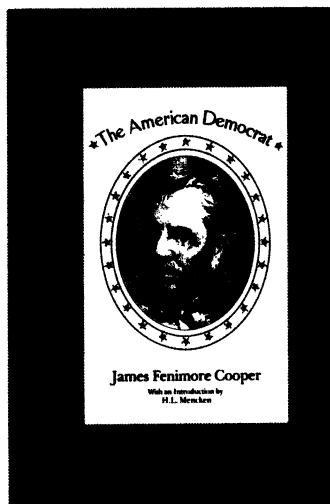
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