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AUSTRIAN MONOPOLY THEORY — A CRITIQUE*

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There are two views of monopoly within what might be called the broad Austrian camp. According to the Mises–Kirzner view,[1,2] monopoly price can exist on the free market, and a necessary part of its definition is a purposeful withholding of resources on the part of the monopolist. Rothbard,[3] however, defines monopoly as an exclusive government grant of trading privileges, and, as such, finds it incompatible with market freedom.

In this paper I shall criticize the former view, (1) by considering alternative interpretations to monopolistic withholding, and (2) by considering several inconsistencies on the part of its proponents.

I. ALTERNATIVE EXPLANATIONS

The case against the monopolistic withholding thesis is complete, and in my opinion, overwhelming. The first nail in the coffin is that there is simply no scientific way of establishing whether any given price that exists on the market is a monopolistic price, or not. Asks Professor Rothbard, "Is the market price, OP, a 'competitive price' or a 'monopoly price'? The answer is that *there is no way of knowing*. Contrary to the assumptions of the theory, there is no 'competitive price' which is clearly established somewhere, and which we may compare OP with."[4] Nor is it just a matter of our *practical* inability to separate the two kinds of prices, in the way that we cannot, in practice, distinguish between originary interest and the risk and inflation premium factors which are also part of the market rate of interest. As Rothbard puts it: "These [interest rate] concepts are each definable in terms independent of one another, and of the complex reality being investigated . . . Each of these components is definable independently of the complex market-interest rate and moreover, is independently deducible from the axioms of praxeology."[5] "Competitive price" and "monopoly price," in contrast, are each tied closely, and even incestuously together, and both are completely unconnected to the main corpus of economic thought. It will not do to define the monopoly price as "higher than the competitive price," to cite the most usual definition. For the compettitive price is higher than subcompetitive prices,[6] and therefore, by this definition, must be considered a monopoly price. But this would mean that a competitive price would *be* a monopoly price, a patent absurdity.

But let us grant, for the sake of argument, that it is somehow conceptually possible to distinguish between a lower price, where more product is sold, and a higher price, where less is sold. It by no means follows, however, that the former price is "competitive" and that the latter is "monopolistic". Even if we concede, in addition, that such behavior is "purposeful" and "deliberate," we cannot reach this conclusion. For there are several other plausible explanations for "withholding" part of the product, and thereby increasing its price.

Goods may be "withheld" from the market for speculative purposes. If the owner of merchandise expects that the price of his commodity will be higher in the next period than in the present, he will hold off sales, in the hope of gaining greater profit, but this will imply fewer sales right now.

It is sometimes stated, by proponents of the

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Mises–Kirzner view, that "*only* a monopolist resource owner may possibly be able to obtain greater monetary revenue from exchange by selling less than by selling more." But the case of the speculator is clearly a counter-example. For surely *any* investor, whether monopolist or not, who correctly foresees a rise in the price of a commodity he holds, and sells less of it in the present than he would otherwise have sold, gains revenue from exchanging goods for money in this manner. Suspending judgment, for the moment, on the question of whether the monopolist can increase his revenue by selling less, it cannot be denied that the speculator who sees the price rise coming can gain, through exchange, by selling less now and more later.

Time preference is another phenomenon that can account for a resource owner's refusal to sell off as much of his property, and as quickly, as the Mises–Kirzner view might desire. Based on their subjective time preferences, *all* economic actors determine their optimal pattern of sales. A person with high time preference will want to sell the commodities he owns at a relatively rapid pace. No problem here, for the highly impatient, high time preference individual will do anything *but* "withhold" from the market in the present. But the case of low time preference presents difficulties. An entrepreneur with low time preference is likely to "bide his time", and not allow himself to be rushed into premature sales; his optimal pattern of sales will call for "withholding" goods from the market now, and selling more and more as time goes on. He, too, benefits financially from his "withholding" pattern of exchange, for his subsequent sales are worth relatively more to him than to the high time preference person, since he discounts the future less heavily.

Conservation is yet another reason for selling less of a natural resource than might otherwise be sold. The owner who is motivated to conserve his resource will refuse to sell it all in the present period. He will "hold back" some of it. But he acts in this way not from any monopolistic motive; he "withholds" his assets from present sale in order to conserve their future use. Were he not to act in this way, the resource would simply vanish from the economy after it was sold. Or if it did not vanish, it would mean that some of the buyers subsequently withheld the resource from use after their purchase. But then they, in turn, would be accused of "vicious" monopolistic withholding.

The owner of the natural resource does not try to maximize his sales in the present period; rather, he tries to maximize his return over the whole period during which the good is sold. He will only sell it all right away if he calculates that this is the best method of maximizing his profit.

What is the optimal time pattern of the sale (and use) of natural resources? Although this is impossible to determine in advance, for any specific case, the general answer would be: In accordance with the time preference rate prevailing in the community. Thus, in an extremely high time preference economy, more profit could be earned by selling far more of the resource in the present and early future, since sales in the distant future would be heavily discounted. There would be little conservation in this case. Obversely, if the economic actors had a lower time preference, it would be profitable to engage in more conservation, holding off the bulk of the sale (and use) until later periods. The pattern, here, would indicate a more balanced or steady rate of utilization.

But the important thing to note is that *it is impossible to distinguish the conservationist motivation for withholding the sale of resources from the monopolistic one* (we are still assuming that it makes sense even to talk of a "monopolistic" motivation for withholding resources.) And not just for an outside observer. It is impossible for the very entrepreneur in question to make such a distinction! All that the resource owner (and the economist) can know is that profits can be maximized from a time pattern which includes fewer present sales of the good than is desired by the antimonopolist. The owner calculates that he can earn more, ultimately, if he sells less right now. Is he doing this as a monopolist or a conservationist? It is impossible for us to tell, and it is impossible even for *him* to know. All that can be known is that more profits may be earned from this time pattern of sales, than from that one. But this much can be said for *all* business choices: One path is better than another.

A desire for leisure can bring about a similar result. Muhammad Ali may choose to fight only three times per year even though he would certainly be able to contract for 52 bouts in a year, or even more, were he so disposed. Now one reason for this behaviour might be a vicious attempt on Ali's part to "defy the orders of the consumers for his own advantage",[7] to "infringe (upon) the supremacy of the consumers and the democracy of the market",[8] and to "defy the supremacy of the consumers and substitute the private interests of the monopolist for those of the public".[9] But another explanation, much more plausible, is that Ali won't fight 52 times a year because he would start to get very tired, and would probably begin to *lose*. Another possibility, a very strong one, indeed, is that Ali has a taste for leisure, and, earning so much money from his ringside exploits, he can afford to give in to this taste.

Still another alternative explanation for "monopolistic withholding" is that producers are also *consumers*, and may derive pleasure from *less* production. An owner of forests may refuse to cut them down, not out of a desire to balk the "use of a scarce resource to the fullest extent compatible with the pattern of [other] consumer's tastes [for wood] *in the market",*[10] but because he enjoys the vista of a virgin forest. Now of course, the problems of monopoly do not arise, for Mises and Kirzner, if there are other forests which are indistinguishable, in the eyes of the wood consumers, from the first. But in the eyes of *some* consumers, the particular wood from the forest of the owner who enjoys the beautiful view may be *special*, and different from all other wood. In that case, the Mises–Kirzner interpretation of monopolistic withholding would run contrary to the aesthetic explanation.

Other alternatives: a farmer may refuse to harvest his entire crop out of charitable impulses. He may want to have a portion unharvested so that gleaners may be helped. Alternatively, he may do this for religious purposes, or to placate Mother Nature, or in order to better fertilize the land.

Professor Kirzner, I think, misunderstands the importance of the alternative interpretation of consumption on the part of the "withholding" monopolist. He states:

> Where, however, all the available endowment of a particular resource happens to be owned by a single individual, a different state of affairs *may* (not must, or will) result. It is just possible that the owner may find his revenue from selling the resource to be able to be increased by his withholding a portion of it from *productive use*. He withholds the resource, in this case, not because his valuation of it as a consumer is such as to make it worthwhile to forego the high price it can bring; *in fact he may even destroy the resource.* He withholds it only to secure the higher revenue obtainable given the inelasticity of demand for the resource.[11]

First, why does Professor Kirzner *assume* that the monopolist cannot hold back a part of his product for his own enjoyment? It would seem to be an unsupported value judgment on Professor Kirzner's part to imply that any unsold merchandise cannot be for "productive use". Surely consumption, the whole point of production in the first place, *is* a productive use ("productive" in the normative sense of the word as Kirzner uses it); we know, from our study of praxeology, that, at least in the eyes of the manufacturer, this unsold, "withheld" portion of the product is *more* productive as his own consumption than it would have been had it been sold — otherwise the entrepreneur would have *sold* it.

Secondly, Professor Kirzner seems to assume that *if* the resource owner "destroys the resource" this is proof positive, or at least a very strong indication, that he is a seeker after monopoly prices, and not a *bona fide* consumer. The truth is almost the exact opposite. Take oranges, for example, a fruit Professor Kirzner seems inordinately fond of. Is it not true, that Professor Kirzner himself, when he sits down to breakfast, and consumes oranges, *destroys* them? Certainly, by cutting them up, and then devouring their innards, he is ruining their economic value for others. But even in the most literal sense, his malicious breakfasting upon oranges cannot be described in any other way but that he is *destroying* those oranges.

How then is Professor Kirzner, ravager of defenseless oranges, in a moral (economic) position to complain that *other people* (the supposed monopolists) destroy oranges? He might complain of ill use here, and reply that while he *eats* them, the orange monopolist would *burn* them. But to do this would be to confess to the charge of provincialism, intolerance and parochialism. Surely Professor Kirzner would not be outraged and accuse someone of non-consumerism, if he ate oranges with chopsticks, with a spoon, or salted them first. Why, then, cannot Professor Kirzner find it in his heart to allow for the possibility of consumption through *burning*? People *consume* wood, coal, oil, etc., by burning them, after all. Of course, it is a bit *unusual* to consume oranges in this manner, and Amy Vanderbilt might be outraged, and have any number of harsh comments to make; but as a praxeologist, Professor Kirzner, I fear, is *compelled* not to disallow esoteric orange burning as a consumption activity. As an *economist* Professor Kirzner cannot reason from "he may even destroy the resources" to "he withholds it only to secure the higher revenues obtainable . . . ". For there are several *alternatives*: among them, consumption.

Thirdly, what are we to make of Professor Kirzner's emphasis on the non-necessity of monopoly (it is "just possible", it "*may*" result)? We can interpret this in two ways. One, although an owner of an entire resource withholds some of it, he may not achieve a monopoly price, presumably because consumer demand is too elastic, or two, *even if* consumer demand is as inelastic as the single owner of the resource could wish, *he still* might not be able to attain a monopoly price. In the former case, there is little to be said. This interpretation is entirely consistent with the neoclassical view of monopoly, and needs no discussion here.

But, if the second interpretation is correct, Professor Kirzner has a curious view of monopoly indeed. Curious, because inconsistent with Occam's Razor: the law of parsimony. It leaves unanswered the question, "If not, why not?" If the sole ownership of a resource *plus* an inelastic demand cannot guarantee a monopoly, why not? One answer Professor Kirzner gives is: "Speculation". In other words, given sole ownership, and the proper inelasticities, *and* "withholding", we still do not arrive at monopoly; we still have the alternative explanation of speculation. The sole resource owner "withholds", but *not* in order to achieve a monopoly price; rather, because of expected price increases for the resource.

The quandary is, how can the praxeologist tell the difference? The human *actions*, as we have seen, will be identical. Even ignoring consumption and other alternative explanations to "withholding", we still have one too many explanations. Occam's Razor would suggest that one of them be abandoned. I suggest we abandon the myth of monopoly pricing.

Perhaps the strongest antidote to the monopolistic withholding view is the realization that ALL businessmen "lower" production in order to raise profits. Consider any amount, Q, that is presently being produced by any company. This manufacturer chose Q, but he could have chosen $Q + \Delta Q$ instead. He could have chosen to produce a little bit more. The presumption is that he chose Q and not $Q + \Delta Q$ because he determined that Q and not $Q + \Delta Q$ would earn the greatest profits. But this, as we have seen, applies to all firms without exception. (The only way to deny this point would be to embrace the orthodox view of monopoly and competition. This is a static model, where the important determination is market concentration. In this paper, I ignore concentration phenomena, since I am concerned only with Austrian views on monopoly, and all Austrians see the market as a process, not as an equilibrium model.)

As Professor Dominic Armentano states, in reporting on the views of Professor Rothbard: "All we know is that *all* firms attempt to produce a stock of goods that maximizes their net income given their *estimation* of demand. They attempt to price such that the range of demand above the asking price is elastic. If they discover that they can increase their monetary income by producing less — or even destroying existing stock in the next selling period, then they do so."[12]

The point that I think must be drawn from the foregoing discussion is that there are no unique human actions, available for all to see, that logically imply the existence of monopoly price (we are still assuming, for the sake of argument, that it makes sense to even speak of a difference between the "monopoly price" and the "competitive price".) There is no behavior, on the part of the businessman, that can establish him as an attainer of a monopoly price. No outsider can approach a person, and say, "You, sir, are a monopolist!" But, if there is no actual behavior that can unquestionably establish the fact of monopoly price, and it is true that all businessmen "withhold" in the sense that they could have produced more but refused to do so, out of a concern for their profit position, then we as praxeologists are compelled to renounce the concept of free market monopoly price as meaningless, or at least as nonpraxeological and arbitrary.

To support this contention, I quote no less an authority on praxeology than Ludwig Von Mises:

> One must not forget that the scale of values or wants manifests itself only in the reality of action. These scales have no independent existence apart from the actual behavior of individuals. The only source from which our knowledge concerning these scales is derived is the observation of a man's actions. Every action is always in perfect agreement with the scale of values or wants because these scales are nothing but an instrument for the interpretation of a man's acting.[13]

Although Mises was speaking here of values, and not explicitly of the choices made by profit-maximizing businessmen, I think we can interpret him as opposing the creation of, and loving attention given to, motives that may or may not be truly descriptive of an acting businessman. In other words, it is the *actual behavior of individuals* that is the grist for the praxeologist's mill, and not any number of motives, all of which are consistent with the same objective behavior.

If my interpretation is correct, then we can view Mises in this way when he says

> This is not the attitude of praxeology and economics. They are fully aware of the fact that the ultimate ends of human action [motives] are not open to examination from any absolute standard. Ultimate ends are ultimately given, they are purely subjective, they differ with various people and with the same people at various moments in their lives. Praxeology and economics deal with the means for the attainment of ends chosen by the acting individuals. They do not express any opinion with regard to such problems as [which of several motives, all compatible with the same action, are truly descriptive of that action.][14]

And again, if we can continue to put words into Mises' mouth, and interpret what he has to say of values, in terms of motives:

> In the frame of a theoretical science of human action, there is no room for such a distinction. Any examination of ultimate ends [motives] turns out to be purely subjective and therefore arbitrary.[15]

We cannot leave this section without remarking on the *reductioad absurdum*, according to which the Mises–Kirzner view implies that all businessmen are monopolists: they all *could* have produced more, did not, and therefore are guilty of "withholding" from their masters, the consumers.

Professor Kirzner, in attempting to show that market monopoly implies exclusive control over a resource, states, "Without access to oranges, entry into the production of orange juice *is* blocked".[16] But, in the real world, consumers distinguish between biologically and chemically identical things: Chiquita bananas and Perdue chickens being the most famous cases in point. Now, the Chiquita banana company by no means controls *all* bananas, but it is the complete and full monopolist of the resource known as "Chiquita bananas". Is the company a monopolist in the Mises–Kirzner view (assuming the demand elasticities necessary for monopoly price)? If yes, then there is an awful lot of monopoly running loose on the free market. Consumers' sovereign desires are being balked at almost every turn, and perhaps we will soon be faced with the spectre of an Austrian-supported government anti-trust policy. If not, it can only be because the non-Chiquita bananas are substitutes for Chiquita's bananas. But if this is so, then how can mere ownership of all the oranges confer a monopoly? For are not grapefruits, watermelons, tangerines and other fruits substitutes for oranges?

Another concept which threatens to multiply, without definite limit, the amount of "monopoly" pricing on the free market, is that of geographical monopoly. By the very nature of reality, each good, commodity or service must exist, or occur, at or in a definite, and different, geographical place or location. Each kernel of wheat, piece of wood, and drop of water must be found at one, and only one, place. If monopoly is defined as ownership of the complete supply of a good, and each different location confers the status of "different commodity" on a good, then every owner of any resource is a monopolistic owner. The grocer at the northeast corner of Elm Street and

King Avenue is a monopolist grocer because, by definition, he is the *only* grocer on that particular corner. There may be other groceries nearby, but they sell goods which differ in at least one respect: they are located at a different place.

II. INCONSISTENCIES

In this section, I explore the works of Kirzner and von Mises other than those cited above on "withholding," in order to show that they are at variance with their own views on monopoly. The first example concerns Kirzner's critique of Benedetto Croce's analysis of economic error.[17]

According to Croce, error consists of a failure of will, an inability to keep one's goal firmly in mind, and to stick to it. The erroneous person allows a whole host of fleeting temptations to divert himself from his own true goals.

And what has Professor Kirzner to say of this?

> It seems impossible, from the point of view of pure science, to distinguish between true goals, and erroneous, transient ones. Once we have accepted the possibility that man can discard yesterday's goals and adopt new ones towards which he will direct today's purposeful actions — we have surrendered the possibility of labelling the pursuit of any end . . . as, on scientific grounds, an erroneous one. Croce's economic error, it then turns out, emerges only as a result of involving (unspecified) judgements of value in terms of which to classify, from a man's *own* point of view, those goals of his which it is "correct" to pursue, and those the pursuit of which he must consider an error.[18]

At the outset, let me register my agreement with Professor Kirzner on Croce's views of error. Once we accept the view that the scale of values finds manifestation *only* in action, it seems impossible, indeed, as scientists or praxeologists, to allow that the original goal was the "true one" while the present goal is only a "fleeting temptation".

But what happens if we insist that Kirzner's monopoly analysis remain true to his quite correct views on Croce? Then, it seems, that Kirzner must relinquish his insistence that the monopolist "has withheld the use of some of his stock from the market, forcing up the price the market must pay for the smaller remaining quantity".[19] For this insistence "emerges only as a result of involving (unspecified) judgments of value", to wit, that actions which can well be explained in terms of a desire for leisure, speculation, consumption, profits, etc., are nevertheless to be understood in terms of a monopolistic withholding, in order to raise prices. We know, however, that ALL businessmen, without exception, attempt to maximize profits (monetary or psychic) by producing less than they *could* have; what, then, can be the justification for insisting that there are any cases in the real world which conform to the idea of the free market monopoly?

Certainly, no such leap of faith can be made "from the point of view of *pure science*", for (to re-interpret Kirzner's words on Croce's views of error), "it seems impossible, from the point of view of pure science, to distinguish between monopolistic motivations for producing less than it is physically possible to produce, in order to charge higher prices, and other motivations (leisure, speculation, consumption, the ordinary, non-monopolistic desire to raise prices to that level that maximizes profits)". *Kirzner's* error, it then turns out, "emerges only as a result of involving (unspecified) judgments of value".

Let us try to make this point in another way. In his attack on Croce, Kirzner seems to be saying that since goals can only be manifested by human action, it is unscientific to deduce one particular goal from an action that might be based on another. Why *else* would it be "improper" and "unscientific" to distinguish between "true" goals, and erroneous, transient ones? Surely, if a "true" goal could have only one reflection in human action, and a frivolous or transient purpose must necessarily have a different counterpart, then it *would* be scientific to distinguish between them, based on their differing manifestations.

What I do, in my criticism of Kirzner, is to insist that the above analysis applies equally as well to motives for "withholding" production. That here, too, different internal states of affairs may equally well result in the same "restrictionist" behavior. How, then, can it be scientific to insist that the "true" explanation is monopolistic pricing? Based on this argument, I conclude that it is unscientific to conclude that *any* particular case of pricing in the real world is an instance of monopolistic action.

But I go further. I ask, what scientific or praxeological sense does it make to even *speculate* about a motive for pricing that has no independent manifestation in human action? One that does not even have an independent *definition*, but which is rather tied symbiotically to competitive pricing, and the latter to it, in a never ending series of infinite regress. And I answer that it makes precious little sense.

In this criticism of Kirzner I seem to be supported by no less an authority on praxeology than Professor Ludwig Lachmann, who states: "We are not entitled to abstract from the springs of human action, the purposes sought by individuals and the plans in which they find their expression, by assuming their *modus operandi* to be known and therefore predictable."[20] If I understand this correctly, it means that the motives behind action, the motives that determine action, and are manifested in action, are unknowable to the praxeologist, an outside observer. Only *human action* can be known.

We can perhaps see this more clearly when we consider the logical status of envy.[21] Now envy, in the praxeological view, lacking a market manifestation, is completely without standing. It cannot be established by any human action on the market. Nor can it be disproven in any such manner. In *some* non-economical sense, it may be truly said to exist, but as far as praxeology is concerned, it must remain non-existent. I contend that the phenomenon of monopoly pricing occupies a similar logical category.

Kirzner also shows himself as incisive and discerning, and hence inconsistent with the stand he has taken on monopoly, on the issue of advertising. In a positively brilliant display of insight, Professor Kirzner demolishes the position of those who would distinguish between motivational and informational advertising in all cases. Instead, "there is an aspect of advertising which, although clearly aimed at making the consumer 'better informed' about the advertised product, does *not* lend itself to an analytical treatment in which it is handled as a separate service which for one reason or another reason happens to be provided by the producer of the advertised product."[22]

In the terminology of the present argument, Professor Kirzner is asserting that informational and motivational advertising are (sometimes) bound up so closely together in *human action* that it makes little sense even to distinguish between them.[23] For Kirzner, except for the "polar cases of pure persuasion on the one hand and of the pure provision of information on the other,"[24] it is extremely difficult to draw the dividing line. No other explanation for his refusal to treat them in markedly different ways seems plausible — other than that insofar as *human action* is concerned, they are indistinguishable. But if this view of Kirzner's analysis is correct, one must wonder that he did not choose to apply it in the case of monopoly.

Now let us consider a rather long passage taken from *Planning for Freedom*[25] by Ludwig Von Mises, and compare it with his previously quoted views on monopoly:

> A popular chain of reasoning runs this way: The entrepreneur earns profit not only on account of the fact that other people were less successful than he in anticipating correctly the future state of the market. He himself contributed to the emergence of profit by not producing more of the article concerned; but for intentional restriction of output on his part, the supply of this article would have been so ample that the price would have dropped to a point at which no surplus of proceeds over costs of production expended would have emerged. This reasoning is at the bottom of the spurious doctrines of imperfect and monopolistic competition. It was resorted to a short time ago by the American Administration when it blamed the enterprises of the steel industry for the fact that the steel production capacity of the United States was not greater than it really was.
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> Certainly those engaged in the production of steel are not responsible for the fact that other people did not likewise enter this field of production. The reproach on the part of the authorities would have been sensible if they had conferred on the existing steel corporations the monopoly of steel production. But in the absence of such a privilege, the reprimand given to the operating mills is not more justified than it would be to censure the nation's poets and musicians for the fact that there are not more and better poets and musicians. If somebody is to blame for the fact that the number of people who joined the voluntary civilian defense organization is not larger, then it is not those who have already joined but only those who have not.
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> That the production of a commodity p is not larger than it really is, is due to the fact that the complementary factors of production required for an expansion were employed for the production of other commodities. To speak of an insufficiency of the supply of p is empty rhetoric if it does not indicate the various products m which were produced in too large

quantities with the effect that their production appears now, i.e. after the event, as a waste of scarce factors of production. We may assume that the entrepreneurs who instead of producing additional quantities of *p* turned to the production of excessive amounts of *m* and consequently suffered losses, did not intentionally make their mistake.

Neither did the producers of *p* intentionally restrict the production of *p*. Every entrepreneur's capital is limited; he employs it for those projects which, he expects, will, by filling the most urgent demand of the public, yield the highest profit.

An entrepreneur at whose disposal are 100 units of capital employs, for instance, 50 units for the production of *p* and 50 units for the production of *q*. If both lines are profitable, it is odd to blame him for not having employed more, e.g. 75 units, for the production of *p*. He could increase the production of *p* only by curtailing correspondingly the production of *q*. But with regard to *q* the same fault could be found by the grumblers. If one blames the entrepreneur for not having produced more *p*, one must blame him also for not having produced more *q*. This means: one blames the entrepreneur for the facts that there is a scarcity of the factors of production and that the earth is not a land of Cockaigne.

Perhaps the grumbler will object on the ground that he considers *p* a vital commodity, much more important than *q*, and that therefore the production of *p* should be expanded and that of *q* restricted. If this is really the meaning of his criticism, he is at variance with the valuations of the consumers. He throws off his mask and shows his dictatorial aspirations. Production should not be directed by the wishes of the public but by his own despotic discretion.[25]

Now contrast this with the writings of a person who can only be called a "grumbler", who wrote the monopoly section of *Human Action*. To the Mises who wrote *Human Action*, and said that monopolistic restrictions are an infringement on the rights of the consumer, the Mises of *Planning for Freedom* might have replied that the *last* person to be blamed should be the so-called monopolist, who is at least producing *something*.

Is there any possibility of reconciling these two views in Mises? One might argue that in *HA* there is no specific *blame*, as such, laid at the door of the "monopolist," while in *PF*[26] Mises argues against blaming those who are at least producing something, for the so-called shortfall; and that, therefore, the former statement belongs to positive economics, while the latter is a part of the normative realm. The two statements would thus *not* be inconsistent, for if no "is" can imply an "ought" (the naturalistic fallacy *is* a fallacy), then no member of one universe of discourse can be inconsistent with any member of the other.

And this, it must be admitted, is true, as far as it goes, but it does not go far enough. It may be true that the moralistic parts of *PF* (don't blame the large manufacturer) cannot contradict the positive economics of *HA* (monopoly prices come about as a result of deliberate restrictions of trade), but it is quite incorrect to interpret *PF* as consisting *only* of ethical elements. Actually, *PF* is composed of the positive as well as the normative, and it is the former part of *PF* which goes against the grain of *HA*.

The *PF* argument that contraverts the positive aspect of *HA* is that the demand that the manufacturer *not* cut back production in one of his plants is tantamount to a demand for a non-scarcity economy. As long as the earth is not "a land of Cockaigne", a demand that a manufacturer *not* cut back on production, i.e. that he produce more than he chooses to, is equivalent to a demand that he produce *less* of something else. This demand of HA, then, in calling for more of the so-called monopolized product, and *therefore* less of some other, "is at variance with the valuations of the consumers", and based on "dictatorial aspirations". *HA*'s advice, that more of *p* (and less of *q*) be produced, is contrary to the evaluations of the consumers because the free market price (the one the free market monopolist is charging) is the *only possible* independent criterion of market desires. As has been shown above, there is no other independently conceived "competitive" price.

Let me say, in closing, that I regard Ludwig von Mises as one of the most creative minds in the history of economic thought. And perhaps, were he still with us today, he might be able to reconcile his seemingly inconsistent statements on monopoly. But, in his absence, it falls upon those of us with lesser talents to carry on. Let us interpret these remarks, then, not as a criticism of a genius, but as a humble attempt to follow along the path that he blazed.

NOTES

1. Ludwig Von Mises, *Human Action* (New Haven: Yale University Press, 1963) p. 359: "Monopoly prices are only prices at which it is more advantageous for the monopolist to *restrict* the total amount to be sold than to expand his sales to the limit which a competitive market would allow. They are the result of a deliberate design tending toward a restriction of trade." And again: "The only question relevant in the study of the determination of prices is whether these [product] differences can be used by the seller for a scheme of deliberate restriction of supply for the sake of increasing his total net proceeds."

   On p. 357, in describing competitive prices, in contrast to monopoly prices: "No part of a supply available is permanently withheld from the market."
2. Israel M. Kirzner, *Competition and Entrepreneurship* (Chicago: University of Chicago Press, 1973), p. 110: "The owner of the monopolized resource has withheld the use of some of his stock from the market, forcing up the price the market must pay for the smaller remaining quantity."

   There are some marginal differences in definition between Mises and Kirzner, but I shall concern myself only with what they hold in common: that withholding resources in order to raise prices is a necessary characteristic of the monopolist.
3. Murray N. Rothbard, *Man, Economy, and State*, Vol. II (Princeton: Van Nostrand, 1962), p. 591: "Monopoly is a grant of special privilege by the State, reserving a certain area of production to one particular individual or group."
4. *Man, Economy and State*, p. 606.
5. *Ibid.*, p. 613
6. *Ibid.*, p. 607
7. *Human Action*, p. 360.
8. *Ibid.*, p. 358.
9. *Ibid.*, p. 371.
10. *Competition and Entrepreneurship*, p. 111.
11. My italics in the latter two cases in this quote. Israel Krizner, "Discussion of Professor D. T. Armentano, 'A critique of neo-classical and Austrian monopoly theory'" (unpublished manuscript), p. 3.

    Consider also, in this regard, Professor Kirzner's statement on p. 9 of this manuscript: "Of course, *given the monopoly ownership of the resource*, the consumer who buys has declared himself better off buying at the 'high' monopoly price than he would be were he prevented from being able to buy at all. But there is nonetheless, an important sense in which the monopoly price is too high. The price is not sufficiently low to permit all the available stock of the resource to be put into consumer use. ["Available stock", incidentally, is a term which, in the present context, means the stock remaining after the sellers have put aside any quantities they choose to hold for purely speculative purposes.] This would tend *not* to happen in the absence of monopoly ownership."

    So Professor Kirzner does see a scope for another explanation for "withholding" besides "monopolizing": speculation. But he holds fast in his determination to deny a scope for consumption.
12. D. T. Armentano, "Competition and monopoly theory: some Austrian perspectives" (Unpublished manuscript, prepared for the Symposium on Austrian Economics at the University of Hartford, June 1975), pp. 18–19.
13. *Human Action*, p. 95. See also Ludwig von Mises, *Grundprobleme der Nationalokonomie* (Vienna, 1933), p. 140, on the question of inferring values from behavior, and from behavior alone: "People forgot that we can only know the need from the behavior, and that consequently the concept of behavior which does not correspond to the needs is nonsensical." (Cited in Alan R. Sweezy, "Review of the Collected Works of Carl Menger," *Quarterly Journal of Economics* (August, 1936), p. 726).
14. *Human Action*, p. 95. The present author has added all the material within parentheses to this quote.
15. *Ibid.*, p. 96. The present author has added "(motives)" to the quote.
16. *Competition and Entrepreneurship*, p. 103.
17. Israel M. Kirzner, "Economics and error" (Unpublished manuscript, prepared for Symposium on Austrian Economics, Windsor Castle, August 1976).
18. *Ibid.*, p. 5.
19. See Ref. 2 in the present paper.
20. Ludwig M. Lachmann, *Macro-economic Thinking and the Market Economy* (London: the Institute of Economic Affairs, 1973), p. 14.
21. Murray N. Rothbard, *Power and Market* (Menlo Park, California: Institute for Humane Studies, 1970), pp. 14–15.
22. *Competition and Entrepreneurship*, pp. 155–156.
23. For an even more extreme statement of this view, but one which was inspired by Kirzner's own treatment, see Walter Block, *Defending the Undefendable* (New York: Fleet Press, 1976), pp. 68–79: "Is it *possible* to ban motivational advertising while allowing informational advertising? No. Information can be presented well or badly, but it must be 'packaged' or 'presented' in some way . . . (but) . . . clearly there is no way to separate the 'package' from what it contains. There is no way to present 'pure' information" (pp. 75–76).
24. *Competition and Entrepreneurship*, p. 160.
25. Ludwig von Mises, *Planning for Freedom* (South Holland, Illinois: Libertarian Press, 1969), pp. 114–115.
26. "*PF*" and "*HA*" refer only to the relevant statements on monopoly I have quoted from these works, *"Planning for Freedom"* and *"Human Action"*.

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BANKRUPTCY AS AN ECONOMIC INTERVENTION*

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Bankruptcy law is a system of interventionary legislation which interferes with the ability of individuals freely to establish the terms of loan contracts. It benefits the less prudent and less scrupulous borrowers — indeed may encourage their conduct — while making loans costlier for the honest and conscientious. Bankruptcy is defined as "that system of laws by which an insolvent debtor surrenders his property to a court which distributes the proceeds proportionately among his creditors and usually declares the debts discharged".[1] It is a system which provides, in other words, for the coercive elimination of contractual obligations. There is no common law bankruptcy procedure; it is entirely statutory.[2]

The earliest historical evidence of a bankruptcy law is in the Code of Hammurabi, the jurist-king of Babylonia who reigned in the 18th century B.C. Hammurabi provided for liquidation of the assets of the insolvent debtor and their distribution among creditors on a *pro rata* basis, very much like contemporary law.[3]

In ancient Athens, the harsh criminal code of Draco in 623 B.C. considered default on debt a capital crime. The death penalty was usually waived, however, in favor of the sale of the debtor and his family as slaves, the proceeds to be distributed among the creditors. The alternative for the insolvent debtor was to flee the country, and this became a common practice. The Draconian Code was revised in 594 B.C. by Solon, who abolished servitude and the pledging of the person of the debtor as security. In exchange for the legal discharge of his debts, the bankrupt was to forfeit Greek citizenship for himself and his heirs.[4]

Under the Roman Law of the Twelve Tables, drawn up in 451 B.C., the borrower again pledged himself as collateral. The creditors were not only empowered to sell or take the debtor into slavery, but as a final resort to divide the debtor's body into proportionate shares. The laws were mollified in 326 B.C. to make imprisonment for debt the rule. Under the *Cessio Bonorum* of Caesar's era citizens were exempted from imprisonment, but their debt was not discharged nor future earnings exempted from attachment. The discharge of debts upon the testimony of the debtor that he was insolvent was introduced by Justinian in 533 A.D. and immediately led to widespread fraud and perjury and total disruption of the credit market.[5]

In medieval Italy, the law called for imprisonment of a merchant who failed to pay his creditors, and the sale of his property to cover the debt. If the sale failed to raise enough, and the creditors were unwilling to forgive the remainder of the debt, the merchant stayed in jail for a term and was usually expelled from the guild. In practice, however, the insolvent merchant would usually leave town. If he never returned, he was declared bankrupt *in absentia*, his property sold and distributed among his creditors. More commonly, friends of the bankrupt would contact his creditors and receive a temporary "safe-conduct", a grace period during which the bankrupt would return and negotiate settlement with his debtors.[6] This was a system which depended upon private arbitration of claims, but it proceeded under threat of violation of contract by the debtor.

In England imprisonment for debt was instituted during the reign of Henry III, not to be repealed by Parliament until the 19th century. The debtor was regarded as a thief. The

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first specific bankruptcy statute was established in 1542 under Henry VIII. This act dealt only with "involuntary" bankruptcy (in which creditors initiate legal action against the debtor) and applied only to traders and merchants. The delinquent debtor was incarcerated and remained behind bars until he had settled his obligations. It was the practice in England to distinguish bankruptcy law, which was only commercial, from insolvency law, which dealt with non-commercial debtors.[7] This distinction was originally continued in America, as evidenced by the placement of the bankruptcy clause in the commerce section of the U.S. Constitution.[8]

By the early 19th century English bankruptcy procedure was in shambles. Bankruptcy courts were largely bypassed in important cases, which were settled by private arrangements.[9] Under the common law of private adjudication, creditors instituted attachment proceedings, and received compensation according to the priority with which they lodged their claims — i.e. according to whether they beat other creditors to the punch. Several historians have commented that anxious creditors thus may have occasionally forced liquidation where patience might have allowed repayment, in time, of the entire debt.[10]

The law regarding insolvency varied widely from place to place in colonial America and the early United States, as each colony had developed its own independent legal system. Most colonial bankruptcy laws were "voluntary" (allowing the insolvent debtor to initiate legal action to forestall debt collection by his creditors) but few provided for the complete legal discharge of debts.[11]

The current U.S. bankruptcy statute has been in effect since 1898, and has been amended more than 90 times during those years. The most extensive revisions were contained in the Chandler Act in 1938. Prior to the passage of the Bankruptcy Act of 1898 there had been three congressional attempts to establish a bankruptcy system, all three short-lived. A bill passed in the financial doldrums of 1800 was repealed in 1803. Much of the support for the bill had come from Federalists and northeastern commercial interests, much of the opposition from Jeffersonian Anti-federalists and southern agrarian interests. The depression of 1837 prompted passage of the Whig-backed Bankruptcy Act of 1841, which was repealed in 1843. The financial crises brought on by Confederate debt repudiation inspired the Act of 1867. This act, even more disruptive and chaotic than the previous two, was finally repealed in 1878. The current law, drafted in 1890 and sponsored by national commercial organizations, was spurred by pressure arising out of the Panic of 1893. The last serious attempts to repeal it were made more than 50 years ago.[12]

The major function of contemporary bankruptcy is to liquidate the debtor's assets, pay his court costs and creditors, and discharge the debtor from all remaining obligations. This is the "straight bankruptcy" procedure used in 85% of the more than 200,000 cases filed annually. Any person or corporation, except a municipal, railroad, or banking corporation, or a savings and loan association, may declare voluntary bankruptcy. There is no minimum debt requirement, and a person may declare as often as once every six years. All those eligible for voluntary bankruptcy, except for low-wage earners, farmers, and non-profit corporations, may be declared involuntarily bankrupt upon petition of a sufficient number of creditors, whose claims together must exceed $1000.[13] Until the modern era all bankruptcy proceedings were involuntary; today involuntary bankruptcies constitute fewer than 1% of all straight bankruptcy cases.[14]

In practice, creditors rarely receive even partial payment from the bankrupt. No-asset cases, in which no property is available for administrative expenses let alone for creditors, each year comprise approximately 73% of all straight bankruptcies. Nominal-asset cases, in which any property available is consumed entirely by the considerable administrative expenses involved, make up approximately 12%. Only the remaining 15% are asset cases — cases in which creditors receive any payment at all.[15]

In asset cases the average return to the creditor varies with the status of his claim. Secured creditors (ones who hold or can repossess collateral property), whose claims accounted for 11% of all creditor's claims in asset bankruptcy cases during fiscal years 1965–1968, received an average of 66¢ per dollar of debt due. Priority creditors, whose claims made up 9%, averaged 35.5¢ on the dollar. Those paid last, the unsecured creditors whose claims constituted 80% of the total, received only 7¢ on the dollar. In no-asset and nominal-asset cases, of course, all creditors received zero. Estimates by a Brookings Institute study put the average return to all creditors in all straight bankruptcy cases at about 6c on the dollar of outstanding debt.

These figures unfortunately aggregate personal with business bankruptcy statistics. While the number of business bankruptcies is but one-twelfth that of personal bankruptcies, it is estimated by the Brookings study that some two-thirds of the total dollar-volume of creditors' claims were registered in business bankruptcy cases. There is no estimate of the fraction of all payments to creditors which took place in business bankruptcies, but the study speculates that it was greater than two-thirds.[16] That is, the creditors in business bankruptcy cases likely receive more cents-on-the-dollar than do creditors in personal bankruptcies.

The Brookings study points out that the volume of debt repaid in bankruptcy settlements is inconsequential compared to the volume of normal debt repayment. From this relationship, the authors conclude that: "The effect of bankruptcy on the general economy is not substantial or detrimental."[17] Such a conclusion is a blatant *non sequitur*. Not only would the volume of debt discharged, rather than repaid, provide a better clue to the magnitude of bankruptcy's effect, but one must consider much more than numbers in assessing the impact of an interventionary measure on the economy. There is too much that the hints provided by statistics do not and cannot disclose, that requires the elucidation of economic reasoning.[18]

In order to focus our attention on bankruptcy *qua* intervention, we must first develop our understanding of the working of the hypothetical unhampered market economy. We confront the difficult question of how a laissez-faire society would handle the inevitable problem with which bankruptcy attempts to deal, namely, the inability to repay contracted debts. The alternatives to bankruptcy are many, as the historical account of insolvency laws above should make clear. In evaluating the alternatives, we must for our purposes examine their consistency with an entitlement theory of property rights and a title-transfer theory of contracts, which are the fundamental principles upon which the concept of a pure market system must rest.[19]

According to the title-transfer view of a loan contract, the creditor first transfers title to his money (in the amount of the loan) to the debtor. At a contractually agreed-upon later date (or dates, if repayment is in installments), the creditor gains title to the debtor's money in the agreed amount (loan plus interest and other charges). The debtor who fails to honor fully the creditor's claim is at that point in illegitimate possession of the creditor's property. The creditor's claim is part of his property and is not, unless the loan contract so stipulates, contingent upon the ability of debtor to pay at that time. The creditor has a right to payment which is not eliminated by any fact of adverse circumstances surrounding the debtor. Only forgiveness of the debt can eliminate the creditor's unsettled claim by transferring title to the debtor.[20]

There is therefore no warrant for the legal discharge of debtors from the payment of their debts for as long as they continue to live or their estates continue to exist. To put it another way, the debtor is not entitled to the legal elimination of his debt. On the contrary, the creditor is entitled to (properly has a lien against) the future earnings of the insolvent debtor. Thus the feature of contemporary bankruptcy law which most differentiates it from the rule of law which would prevail in an unhampered market system is its provision for the extra-contractual dissolution of debts.[21]

Of course the parties to a loan contract on the free market need not adopt a rule of strict liability; they may agree to almost any sort of arrangement concerning the burden of loss in case of insolvency. Loans could be made on the basis of a "gentleman's agreement", with no obligation for repayment incurred if the debtor goes broke. Or a rule akin to current bankruptcy provisions could be adopted, with the debtor's obligation recognized as extending only to his assets at the time the debt falls due. Arbitration could be employed to settle the particulars in such cases. These two possibilities are less binding than the attachment of future earnings by the creditor, the provisions of which could also be spelled out in the loan contract rather than left to the court. More severe are such possibilities as indentured servitude.[22]

It is difficult to say much *a priori* about which sorts of arrangements would be most popular in the unhampered market. It does not seem unlikely, however, that the riskier personal borrowers would tend toward the more binding provisions to mitigate high gross interest charges. Corporate borrowing arrangements would likely tend to be more along the lines of bankruptcy, with debts terminating upon the failure and dissolution of the borrowing corporation.

The magnitude of the economic impact of contemporary bankruptcy law, particularly its provision for the discharge of debts, depends on the degree to which arrangements in the free market would be otherwise. Thus it seems their impact is greater in the area of personal loans than in that of business loans, if we assume that creditors making personal loans will not agree to elimination of the debt in case of insolvency (though they might well provide for the extension of repayment). Creditors should not be insensitive to the fact that provision in the law for the discharge of debts has throughout history encouraged dishonesty and fraud, and continues to do so today.[23] Some debtors, while not fraudulent under the law, will resort to bankruptcy rather than tighten their belts to meet obligations, as long as a discharge is offered.

Studies of personal bankrupts have indicated that up to one-half of personal bankrupts could pay off their obligations in a small number of years.[24] The typical bankrupt owes less than 9 months' salary, and only in 27% of personal bankruptcies does the debt exceed a year's salary.[25] Moreover, these studies take the volume of debt contracted by bankrupts as given, when in fact it is likely to be bloated by the knowledge on the part of the debtors that in bankruptcy court all their debts will be discharged. Highly suggestive of this effect is the striking discovery that shortly before filing, at which point the decision to go bankrupt seems already to have been made, the typical bankrupt will have gone on huge credit-buying sprees. Between the fourth and second month before filing, credit purchases more than triple. Purchases of non-critical medical services (e.g. cosmetic dentistry) climb to five times normal.[26]

The returns of creditors are further diminished by the fact that an abnormally high proportion of the bankrupt's spending in this period is on goods which cannot be liquidated by the bankruptcy court: personal services (such as medical care) and exempt assets (assets which are legally immune from liquidation, such as homes, life insurance, clothes, furniture, and tools of trade). Wealth in non-exempt assets is frequently converted into exempt assets, if not hidden. This is why so few cases are asset cases, and why the worth of declared assets so frequently coincides with the exempt limit. It is not exemption alone, which itself would presumably be part of insolvency law in a pure market system,[27] but its combination with the discharge provision that accounts for this phenomenon. Without discharge — with the knowledge that he must eventually repay his debts — the debtor would gain no advantage in switching his wealth about. It is the knowledge that he will not be held any longer liable for any part of his debts that prompts the prospective bankrupt to consume, or to hide, or to convert to exempt form his non-exempt wealth.

By these influences, bankruptcy increases the probability of default on debts and diminishes the return which the creditor can expect on personal loans. An element of risk will always be present in granting credit, with or without bankruptcy laws. There will always be the possibility that a debtor may default on a loan, out of fraudulent intentions or out of sheer inability to pay.[28] In what manner the availability of recourse to bankruptcy for the debtor alters or exacerbates this situation is the question at hand.[29]

It is important to distinguish actuarial risk from uncertainty. Some forms of uncertainty are measurable or estimable; that is, they concern events belonging to a class within which the distribution of outcomes is more or less regular and predictable. In business such uncertainties constitute actuarial risk, which can be converted into a cost of production. A firm may know from experience, for example, that a certain percentage of the light bulbs it produces will be defective. The random occurrence of defects in the bulbs is not part of the uncertainty faced by the entrepreneur, but an actuarial risk which can be accounted for in his calculations of cost. Another hazard (such as fire) may be too rare and irregular for a single firm to handle for itself, but over a large number of firms be of regular enough frequency that the risks of the individual firms may be pooled. This pooling is done by an insurance company which serves the many firms. An insurance premium takes the place of a spoilage allowance or contingency reserve on the bill of costs.[30]

The creditor or lender always faces uncertainty of repayment on each loan he grants. He can only reap interest when his loans are actually repaid; some will not be. This fact prompts the lender to add to the pure rate of interest a premium which varies with the degree of risk he perceives. Consequently there exists on the market a whole family of interest rates. Uniformity of market interest rates would require the disappearance of this risk component in the gross market rates of interest and would only be possible in a world without risk. This risk component has been called "the entrepreneurial component" in the gross market rates of interest[31], but in many cases it is an insurance component covering risk which is actuarial in nature.

In at least one group of instances, the uncertainty in granting credit is clearly actuarial risk and can be insured against. Trade credit (credit extended by one non-financial firm to another) is insured by financial institutions known as factors. Factoring is defined as the discounting or purchasing of accounts receivable on a non-recourse basis.[32] The factor is essentially a service firm that guarantees credit for a fee. The factor also relieves its client of the expense of running a credit department, screening prospective customers itself.[33] Responsibility for payment by approved customers is assumed by the factor: the client is paid even if the customer does not remit payment to the factor. Commissions for this bookkeeping and insurance service range from 0.5 to 2% of the sales volume factored, varying with the probability of default in the industry involved.[34] Factors "insulate a client from the big bad debt losses that might well spell doom for some firms, but otherwise the client pays for bad debts through the commissions."[35]

While the granting of trade credit clearly involves actuarial risk against which the factor gives insurance, it is instructive that the factor assumes control over the granting of credit. The factor must provide that each debtor is one of a general group of instances (namely, good credit risks) among which the frequency of adverse outcomes is more or less known. Such a condition must be met for the group as a whole to be insurable.

The critical difference between instances of actuarial risk and of genuine uncertainty is that in the case of uncertainty no such general group can be formed: each instance to be dealt with is highly unique.[36] This uniqueness is to some degree present in most credit and moneylending operations. It prevails most especially in capitalist advances to entrepreneurs. It is precisely this uniqueness that requires lenders to be in part entrepreneurs.

Every loan, including every grant of trade credit, is to some degree unique. The factoring firm must screen each case due to this fact. Degrees of uniqueness, and with them the proportions between actuarial risk and genuine uncertainty, come in a wide range and vary with each group of cases. Each individual case is to a varying degree a member of a more general class. As knowledge about the regularity of outcomes within a class becomes more certain (it is always imperfect), the decision to bear its risks becomes correspondingly one more of insurance and less of speculation. Conceptually, the risk component in the gross market rate of interest demanded by the lender[37] becomes more an insurance component than a speculative component.

This analysis of the nature of the risk involved in lending explains why credit institutions tend to pigeonhole borrowers according to discernible characteristics. The institutions are attempting to evaluate individual borrowers with regard to their likelihood of default on the basis of the relevant sub-group of borrowers to which they evidently belong. The height of the rate of interest charged reflects the appraised degree of actuarial risk (based on knowledge of the general group).[38] The lender in effect insures himself against losses by adding an insurance premium to the pure interest charge.

Because bankruptcy diminishes the return the creditor can expect on personal loans, the insurance element of the risk component in the gross market rate of interest (the insurance element predominates over the speculative element in personal loans and trade credit) must increase to cover the added actuarial risk. The cost of credit must rise. To the extent that those who bankrupt come from an identifiable class of high-risk borrowers, conscientious members of this group bear the burden of higher credit costs. Otherwise, all responsibility users of credit will have to pay more for credit.[39]

The lender can insure himself — by pooling risks as described above — only where he can deal with many members of a general group. It follows that the lender faces genuine uncertainty insofar as he deals with cases which admit of membership in no general group, cases which for all practical purposes are *sui generis*. In such cases, which are the rule in the venture capital market, the capitalist must judge the risk involved on the basis of his knowledge of the individual case. Where he deals with an entrepreneur, and the repayment of the loan depends entirely on the success or failure of the project, the capitalist becomes an entrepreneurial actor.

The capitalist and the entrepreneur must in effect form a partnership. Where a would-be entrepreneur envisions an opportunity for profit, but fails to act on that vision, there is no entrepreneurship.[40] Where he lacks the means to finance a productive process which spans time (between purchases of complementary factors of production and receipts from sale of product), he must convince a lender in the capital market of the existence of that opportunity. The forms of their partnership, and the division of decision-making between the two actors, can vary. The would-be entrepreneur in the limiting case is in effect hired by the capitalist to direct the chosen enterprise and becomes merely a profit-maximizer pursuing a given end.

Even in such a case, the creditor's success or failure rides with that of the debtor. To the extent that the debtor lacks the means to finance the project himself, he is in a position to repay the debt only so far as the enterprise succeeds. The creditor is less exposed to loss only insofar as legal institutions allow him to enforce his claims (which may be limited by the loan contract as discussed above) on the debtor. If the creditor is entitled to repayment even in case of default then his position is less insecure than that of the debtor–entrepreneur.[41] In such a case bankruptcy occasions a shifting of uncertainty-bearing, and undoubtedly with it responsibility for ultimate decision-making, from entrepreneur to creditor. Though it is not clear that venture capital would be loaned on such a basis in the absence of bankruptcy law, that is something which the market should be left free to decide.

NOTES

1. Reginald Parker, *Creditor Rights and Bankruptcy* (Woodland Hills, Ca: Forrest Cool Publications, 1951), p. 19.
2. Admirers of the common law may regard this fact as already a fair indication that interventionism is afoot. For a discussion of the common law, see Murray N. Rothbard, *For A New Liberty* (New York: Macmillan, 1973), pp. 236–239.
3. David R. Earl, *The Bankruptians* (New York: Exposition Press, 1966), pp. 49–51.
4. F. Regis Noel, *A History of the Bankruptcy Clause of the Constitution of the United States of America* (Washington: Catholic University of America, 1920), pp. 15 *et seq.*; Sidney Rutberg, *Ten Cents on the Dollar: the Bankruptcy Game* (New York: Simon & Schuster, 1973), pp. 121–122.
5. Noel, *op. cit.*; Rutberg, *op. cit.*
6. Robert S. Lopez and Irving W. Raymond, *Medieval Trade in the Mediterranean World* (New York: W. W. Norton), p. 290.
7. Noel, *op. cit.*; Peter J. Coleman, *Debtors and Creditors in America* (Madison: The State Historical Society of Wisconsin, 1974), pp. 3–5.
8. John C. Calhoun, "Speech of Mr. Calhoun of South Carolina on the Bankrupt Bill," United States Senate, June 2, 1840. Delivered during debate over passage of the Bankruptcy Act of 1841, this address contains an early and trenchant critique of state capitalism,

especially its privileged banking system.

The Bankruptcy clause was inserted in the Constitution at the behest of banking and creditor interests who desired national uniformity of law, namely Robert Morris and his followers. See Merrill Jensen, *The New Nation* (New York: Vintage Books, 1950), p. 228. Interestingly enough, Morris took advantage of the first American bankruptcy statute based upon the constitutional clause to discharge the millions of dollars worth of debts which he had accumulated through speculation in land and government securities in the 1790s. See Coleman, *op. cit*, p. 28.

9. A. C. Dicey, *Lectures on the Relation Between Law & Public Opinion in England During the Nineteenth Century* (London: Macmillan, 1963), pp. 122–123.
10. For example Noel, *op. cit.*, and Coleman, *op. cit.*, pp. 9–10.
11. *Ibid.*, pp. 9–11.
12. Charles Warren, *Bankruptcy in United States History* (Cambridge: Harvard University Press, 1935); Noel, *op. cit.*, pp. 124–158; Earl, *op. cit.*, pp. 54–60; Coleman, *op. cit.*, pp. 16–30.
13. Parker, *op. cit.*, p. 23.
14. David T. Stanley and Marjorie Girth with others, *Bankruptcy: Problem, Process, Reform* (Washington: The Brookings Institution, 1971), p. 12.
15. *Ibid.*, p. 20. In order to hold down administrative costs, a Rand Corporation report has recommended that the processing of bankruptcy cases be "streamlined" and automated, with no courtroom questioning allowed: "An Application of Automation to Bankruptcy Administration and Processes" (prepared for the Commission on the Bankruptcy Laws of the United States) by M. R. Fiorello and A. B. MacInnes (Santa Monica, Ca: The Rand Corporation, 1973). The report fails to consider the potential impact of making bankruptcy fast and easy upon the volume of cases filed and thereby upon the credit market.
16. Stanley and Girth, *op. cit.*, p. 23.
17. *Ibid.*, p. 3.
18. See Ludwig von Mises, *Human Action* (Chicago: Henry Regnery, 1966), pp. 350–357.
19. Mises argues (*ibid.*, pp. 720–722) that the problem of the delimitation of the proper and just sphere of coercion (governmental activity) is irrelevant to the problem of interventionism. Yet without some conception of that sphere or the principles which limit it, it is impossible to speak of "interventionism." Mises himself presumes the "desired" role of government to be "safeguarding the social order". Arguments for a free market (as opposed to its conceptualization) need not rest on principles of right and justice; they may be based purely on expediency.

    Proper and just bankruptcy law in particular is immediately a question involving principles of justice in holdings, as even an admitted utilitarian must recognize; see Philip Shuchman, "An Attempt at a 'Philosophy of Bankruptcy'," *UCLA Law Review*, Vol. 21, No. 2 (December, 1973), p. 439. For an outline of an entitlement theory of justice in holdings see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 149–182.
20. Williamson M. Evers, "Toward a Reformulation of the Law of Contracts," *Journal of Libertarian Studies*, Vol. 1, No. 1 (January, 1977); Murray N. Rothbard, *Man, Economy and State* (Los Angeles: Nash Publishing, 1970), pp. 152–155. See also Noel, *op. cit.*, pp. 187–192, for a discussion of the features of an insolvency law based solely on principles of individual property rights (which he opposes), though his account is expectations-oriented and theologically based.
21. It is interesting to note that the "debts" which are *not* dischargeable under U.S. bankruptcy law are non-contractual. Foremost among these are federal tax liabilities. Others are alimony and child-support payments. Failure to meet the latter two legal obligations results not in attachment of earnings but in imprisonment. Attachment of earnings is the rule in the case of federal personal income tax liabilities even before the liability has fallen due.
22. I am indebted to Professor Gerald P. O'Driscoll and especially to Professor J. Huston McCulloch for their helpful suggestions here and elsewhere.

    Professor Robert Nozick has raised the question of whether permission by the debtor for his leg to be broken (for example) in the event of default (in order to lower risk and thereby the loan rate of interest) should be an enforceable part of a loan contract.
23. See Earl, *op. cit.*, and Rutberg, *op. cit.*, for all the scandal surrounding personal and business bankruptcies, respectively.
24. Earl, *op. cit.*, p. 136; Stanley and Girth, *op. cit.*, p. 38. Stanley and Girth remark, "Probably a substantial part of these debts would have gone unpaid until they were written off as uncollectable," but such an attitude on the part of creditors is undoubtedly the result of the easy availability of debt discharge in bankruptcy.
25. Earl, *op. cit.*, p. 128.
26. *Ibid.*, pp. 131–132.
27. This is an extremely difficult question to answer *a priori;* indeed it begs the whole question of the extent to which we can specify a legal code *a priori* and the extent to which it must be the result of historical evolution. Does an entitlement theory of justice in holding recognize limits on a creditor's right to reclaim property from a delinquent debtor, or does the creditor have *carte blanche* to snatch from the debtor his home, clothing, food, even his limbs (as under Roman law) to satisfy the debt? It is clearly not in the creditor's interest to establish a general reputation for undue severity, nor in the individual case to impair the future earning ability of the debtor. But such considerations do not answer the question concerning the creditor's rights. Perhaps some distinction among the debtor's assets in terms of alienability can be made according to a standard of subsistence, though this obviously creates further problems of definition. I do not think this whole question is the same as the question of whether a starving man has any right to steal food (he does not) for the existence of a prior contract between creditor and debtor and the debtor's prior entitlement to his own holdings make default different in important respects from theft.
28. Mises, *op. cit.*, p. 539.
29. This question was raised in an early draft of a paper by Walter E. Grinder and John Hagel III, "Towards a Theory of State Capitalism: Ultimate Decision-Making and Class Structure," *Journal of Libertarian Studies*, Vol. 1, No. 1 (January, 1977), p. 76,n.7.
30. Frank H. Knight, *Risk, Uncertainty, and Profit* (Boston: Houghton Mifflin, 1921), pp. 213, 233–234; Mises, *op. cit.*, pp. 107–110, 291–292.

31. *Ibid.*, p. 539.
32. Frederick K. Garyantes, *Concepts and Acquisition in the Commercial Finance and Factoring Industry* (New Brunswick, NJ: Stonier Graduate School of Banking, 1973), p. 15.
33. Rutberg, *op. cit.*, pp. 61–70.
34. Garyantes, *op. cit.*, p. 20.
35. *Ibid.*, p. 23.
36. Knight, *op. cit.*, p. 233.
37. We are justified in focusing on the supply side of the loan market to the exclusion of the demand side to the extent that no independently-established, uniform market price for credit, against which the borrower can gauge the offer of the lender, exists. This is more true of the capital market than of the consumer credit market. See Grinder and Hagel, *op. cit.*
38. Cf. Rothbard, *Man, Economy and State*, pp. 497–501.
39. Stanley and Girth, *op. cit.*, include these among their many offhand speculations as to who might bear the costs of bankruptcy.
40. I have dealt elsewhere with the nature of entrepreneurship ("Entrepreneurship, imagination, and the question of equilibration," unpublished MS.). What I wish to emphasize here is that entrepreneurship involves action and not just thought.
41. Mises, *op. cit.*, p. 540.

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ADAM SMITH: A REAPPRAISAL

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In his monumental work, *An Inquiry into the Nature and Causes of the Wealth of Nations,* Adam Smith captured the spirit of the new industrial and commercial system and presented its theoretical defense in a form which dominated the thought of the most influential writers of political economy for the greater part of the next century. In fact, the principles which Smith formulated retained their hegemony until the Jevonian, marginalist revolution of the 1870s.

Smith's thinking on "pure" economics, moral theory, and the role of the government in the economy ought to be of direct concern to contemporary theorists because he set the stage upon which so much thought of an individualistic and minimal state orientation would be played out. A reappraisal of the works of this seminal theorist is in order, I will maintain, primarily for two reasons: (1) many critics have alleged that there is a discontinuity between the Smith of the *Moral Sentiments* and the Smith of the *Wealth of Nations,* with the former advocating an altruistic moral system and the latter exemplifying a system of rampant egoism; and (2) it has often been claimed that Smith, as a political economist and political theorist, is a Utilitarian rather than a natural rights advocate. It will be the contention of the ensuing argument that, upon a close examination of the critical works of Smith's, both contentions will be brought into doubt, and, ultimately, found wanting.

I. THE MORAL UNIVERSE OF SMITH'S ECONOMIC MAN

Before embarking upon our investigation of Adam Smith as Political Economist, it will prove salutary to pause for a moment and examine both the moral system and teleological position which Smith brought to the study of economics, for in these areas he differed markedly from the Utilitarian moral code in which Bentham was soon to entwine British thought on politics and economics. The Smith of *The Theory of Moral Sentiments* has often been perceived by critics as a different species of moralist from the Smith who penned the *Wealth of Nations*; the one promulgating a system based upon moral sentiments and the sympathetic feelings among men, and the other advocating an extreme individualism in which men are motivated solely by self-interest. Upon a close examination of these two works, it will become apparent that there is but one Smith, and that the *Wealth of Nations* fits rather nicely into the moral framework of the *Theory of Moral Sentiments*. The former exhibited that by merely employing one aspect of man's nature, and that the most selfish and anti-social, men can function quite adequately and, indeed, socially, in both the economic sphere and the political sphere. But men are more than their self-regarding sentiments; they are desirous of pleasing others, of gaining the approval of others, of both being and seeming to be honorable and virtuous. And so there is more to life than economics and politics, there is the life afforded in a society based upon friendship and mutual observance of the higher virtues. However, such considerations fall outside the domain of political economy which is concerned strictly with the maximization of wealth. It is the singular beauty of the economic realm, Smith believed, that it permits men to function on the lowest level of virtue, that of self-interest, which is still a virtue in its proper place, and yet secure the greatest benefit for the whole society. There are no passages extolling self-love or the selfish pursuit of men's own interests to the detriment of others in the *Wealth of Nations*, but there is an examination of this part of man's nature as it performs its proper function.

If men are to a certain degree self-regarding, it is for a definite purpose that they are so constituted. In Smith we are far, indeed, from a Benthamite world-view. Nature, for Smith, is harmonious and economical,[1] and, thus, men's selfish desires are implanted in their breasts for a positive and useful purpose. Smith accepts the natural law conception of nature and of man and, whether he is dealing with the subjects of morality, justice, government or economics, he is constantly striving to determine the natural principles which govern men's conduct in such pursuits.

> In every part of the universe we observe means adjusted with the nicest artifice to the ends which they are intended to produce; and in the mechanism of a plant or animal body, admire how everything is contrived for advancing the two great purposes of nature; the support of the individual and the propagation of the species.[2]

In addition to these selfish instincts, nature has provided man with "principles of his nature" which interest him in the welfare of others and make their happiness necessary to him. Through imagination only can we identify with the feelings of others and share a fellow-feeling with them. Thus, man can, through sympathy, pity, and compassion, enlarge his feelings beyond himself to engage those of his family, neighbors, countrymen, and even all mankind, though in diminishing degrees as the connection to himself becomes more and more attenuated.[3] In addition to this capacity for empathy with the feelings, motives, and sentiments of others, nature endowed man with other attributes which make him fit for society; i.e. a natural desire to be the proper object of love and a concomitant dread of being the deserved object of hatred, an original desire to please and an aversion to offending his fellows, and a desire to actually be virtuous and not simply to be thought of as virtuous.[4]

The mechanism by which men emerge from the isolation of their own sentiments and judgments, is a combination of this capacity for sympathy with others' feelings through the use of our imagination, and the natural need to love and be loved, to garner the praise of our neighbors. But the socialization process, Smith hints, is never complete and must be constantly regenerated, and the instinct for raw self-advancement neutralized, by a realization that such avarice will endanger our need for approval and the empathetic understanding of others.

The socialization process, then, is an ongoing one, but the self-regarding sentiments of men are implanted within them by nature for a definite, and socially necessary purpose. Every man, Smith the individualist maintains, is by nature principally recommended to his own care. He is fitter to take care of himself than is any other person.[5] "Every man, therefore, is much more deeply interested in whatever immediately concerns himself than in what concerns any other man."[6] This natural propensity of mankind for self-preference would induce him to prefer a large hurt to someone else to a small injury to himself. Fortunately, the social attributes of men intervene at this point to warn them that they cannot pursue their own interests by injuring others or they will forfeit the good opinion and praise of others. But it is not simply from an enlightened self-interest that men avoid injuring others (as it would be, for example, on a Benthamite calculus), for Smithian man naturally desires the sympathy of others . . . . "We must here, as in all other cases, view ourselves not so much according to that light in which we may naturally appear to ourselves, as according to that in which we appear to others."[7] Thus, the individual must "humble the arrogance of his self-love"; for it seems absurd to the multitude because to them he is but one, and bring it down to the level at which other men can go along with it. Reason, conscience, and principle intervene to prevent us from pursuing an insignificant advantage to ourselves at the cost of the greater interest of mankind. Reason tells us that we will be the fitting object of ridicule if we so act. It is not love for our neighbor which prevents us from injuring him for our own benefit, Smith argues, but a stronger love, the love of what is honorable and noble, of the grandeur, dignity and superiority of our own character. Thus, a higher selfishness comes to replace a lower, as we come to naturally prefer an image of ourselves as being just and virtuous to one of being a crass and mendacious self-seeker. Smith goes even further than this when he claims that we have a natural aversion to inflicting injury upon others unless they have committed a prior injustice.

Justice, according to Smith, is the necessary ingredient of society without which it could not survive, and, thus, the observance of its dictates can be extorted by force. Unlike beneficence, which is always free and cannot be properly commanded, justice is necessary to the existence of society and its observance requires no reward, while its breach incurs punishment.[8] "Mere justice is, upon most occasions, but a negative virtue and only hinders us from hurting our neighbors."[9] From the nature of man, his self-regarding motivation and his need to live in society in order to survive and function as a man (Aristotle's social animal), the "most sacred laws of justice" emerge. They are in order of priority: (1) those laws which guard the life and person of our neighbors, (2) those which guard his property and possessions, and, lastly, (3) those which protect his personal (i.e. contractual) rights.[10] Without justice the "immense fabric" of human society would crumble into "atoms"[11]; so, to enforce the observation of justice, nature, according to Smith, has not relied on men's reason but has implanted in each human breast a consciousness of ill desert and a terror of merited punishment, as the twin safeguards of human association. Thus, while men are naturally sympathetic to a certain degree, the feeling is greatly attenuated when the personal connection is not great, and, consequently, this principle of justice is necessary to curb our own interest when it would injure others. The principles of justice are implanted in the human heart to conserve society and curb harmful selfishness, and reason intervenes to make us choose the greater interest of mankind to our own trifling interest.

But how do men first come to recognize the requirements of justice and, indeed, to make all different kinds of moral distinctions, to approve and disapprove of their own actions and those of others? It is not by reason, which cannot make the original perception of what is right and wrong. Nor is it by a "moral sense" in the way in which such was conceived by Hume and Hutcheson, Smith's mentors. Rather, it is by an original experience which each individual has of how the actions of others and of his own feelings and actions affect him directly; that is, whether they please or displease him directly. From these primary experiences and the reactions of other men to his actions, the individual forms general rules of conduct.[12] The mechanism is, then, one of induction from experience.

> They (the general rules) are ultimately founded upon experience of what, in particular instances, our moral faculties, our natural sense of merit and propriety, approve or disapprove of.[13]

These general rules serve as a corrective for the partiality which men have in their own cases. Smith suggests, as a further corrective, the hypostatization of an "impartial spectator" to whom we can appeal in our minds to judge whether we are about to act in a way which will garner the sympathy of other men.

This "impartial spectator" is not the standard of what is moral, as it may appear to be on a cursory reading, but rather a mental construct by which the individual can be guided in his moral judgments when his own interest is so intimately involved in the case that his objectivity might be severely undermined. The "impartial spectator" prevents Smithian man from being prejudiced in his own case, while Smith's ethics as a whole are prevented from being solipsistic or different for each man by the assumption that all men have the same natural sentiments implanted in them by nature or God, which dictate the same moral judgments to all men once partiality is excluded. While these sentiments can be perverted in some men, they cannot be wholly expunged. Hence, Smith claims, the general rules, while drawn from experience and induction by each individual, are Laws of the Deity,[14] although impressed by nature.

The most virtuous man for Smith is not the man of a merely commercial spirit, the man whom he describes in his *Lectures of Justice, Police, Revenue and Arms*, but is rather more of an Aristotelian man. He governs himself by self-command, thus reining in his selfish or unruly impulses and regulating his conduct by the strict demands of the three primary virtues of: prudence — to properly regulate his own happiness; justice — to exhibit the minimum of concern for others' happiness, and beneficence — to positively act for the happiness; of others.[15] He joins the most perfect command of his own original and selfish feelings to a most "exquisite sensibility" to both the original and sympathetic feelings of others; he possesses both the gentle virtues and the great, awful, and respectable virtues.[16]

> And hence it is that to feel much for others and little for ourselves, that to restrain our selfish and to indulge our benevolent affections, constitutes the perfection of human nature, and can alone produce among mankind that harmony of sentiment and passion in which consists their whole grace and propriety.[17]

Smith even goes so far as to say that it is a precept of nature that we must love ourselves only as we love our neighbor.[18] But this is an ideal standard; a more suitable one to judge our actions by, he suggests, might be the approximation to this standard which is commonly attained in the world.[19] Perhaps, Smith set the ideal so high because he realized that it went so strongly against the grain of man's original, selfish sentiments. If men were so stongly pulled in one direction it could only help in reinforcing the weaker, sympathetic feelings, to state the case so emphatically for acting virtuously towards our fellows; few men would go overboard in trying to exceed the limits of beneficence. But Smith, always the realist, finally drew back from the excesses of his own rhetoric, by cautioning that while the virtuous man, like the good soldier, must be willing to sacrifice his own interest to society, and his society's interest to the greater interest of the state or sovereignty, and that in turn to the interest of mankind, such self-sacrifice is usually unnecessary, because the Divine Being conducts the universe to produce the greatest possible quantity of happiness, and, hence, the job of caring for all mankind is best left to Him. Men perform their proper functions when they attend to their own happiness and that of their families, friends, and country; such mundane duties, he admonishes, must not be neglected for the contemplation of the sublime.

In summation, then, we can say of Smithian man that he is (1) a being who inhabits his proper place in a natural order which is efficient and harmonious, (2) a moral being who can attain his true nature and potentialities only in society, (3) a social creature who acquires a moral code by experience and induction, although it is founded upon and judged by his innate moral sentiments which are given to him by nature, (4) a composite of original, selfish sentiments which are, in their way, necessary to his survival and that of society, but also endowed with sympathetic feelings for other men, and finally, (5) a being who requires for his happiness the praise and approval of his compatriots in addition to his own estimation of himself as a virtuous man worthy of such accolades. It is interesting to reflect, in passing, that Smithian man desires wealth not for the ease and comfort which it will afford him, but for the approval it will garner for his actions in the estimation of other men, for it is a universal peculiarity of men, Smith observes, that render them more sympathetic to the actions of the rich man than the poor.[20] "Upon this disposition of mankind to go along with all the passions of the rich and powerful is founded the distinction of rank and the order of society."[21] This disposition to admire and accept the actions of the rich and despise those of the poor is, also, the "most universal cause of the corruption of our moral sentiments".[22]

The commercial man of the *Wealth of Nations* is the same man as this one, he inhabits the same natural universe of natural laws, efficiency, and harmony. But the commercial man is the virtuous man in only one of his aspects. He does not go beyond the private virtue of prudence or the limited social virtue of justice (i.e. refraining from injuring others) into the positive virtue of beneficence, but he need not, for such is not the proper concern of men in their strictly economic function which is to secure the well-being of themselves and their dependents. Beneficence cannot be compelled or purchased, it must be a free gift. So while the commercial man may be beneficent in his private capacity, such considerations are not properly entertained in a discussion of economics. Smith, in his lecture *Of Police*,[23] speaks of the introduction of commerce into a country as serving to foster probity and punctuality, such being attributable to self-interest and the realization that one has more to lose in a reputation for cheating than he has to gain by a particular fraud. But the commercial spirit is, also, confining, because the necessary division of labor in industrialized society limits men's perspectives. In this respect, Smith yearns for the virtues of the past, honor, glory, and the martial spirit, which have passed on with the arrival of commercial man. And so the tone of the *Theory of Moral Sentiments*, which first came to print in 1759, and the *Lectures*, of 1763, are less accepting of this new man than is the *Wealth of Nations* of 1776. The commercial man is a part of the virtuous man — he is not complete — but it is the genius of nature that he need not be the wholly virtuous man for society to function or for the economic system to operate for the maximization of wealth. For simply by pursuing his own private interests, the original and selfish sentiments of the *Theory of Moral Sentiments*, he will, in the economic realm, choose those endeavors which will best serve society. Herein lies the connection between the two great works which make them the work of a single and largely consistent theorist. With this key, Smith's political economy fits rather neatly into his moral system and his conception of the universe.

II. THE FOUNDATION OF CLASSICAL ECONOMICS

During the course of the *Theory of Moral Sentiments*, Smith projects the need for a comprehensive study of the general principles which ought to be the foundation for the laws of all nations. *An Inquiry into the Nature and Causes of the Wealth of Nations* is Smith's attempt to discover and formulate these general principles of legislation in the economic realm. Political economy as a discipline had, for Smith, the specific purpose of discovering the nature of wealth and the means by which wealth can be maximized for a nation. As a science, then, it is valued for its practical instructions concerning how an economic system ought to be operated, and not simply for its theoretical analysis of abstract laws, or its observations concerning existent systems. As a branch of the science of a statesman or legislator, political economy has a heuristic and meliorative function, i.e. it must instruct the statesman on how best to secure its two great objectives: (1) to supply a plentiful revenue or subsistence for the people, or, more fittingly, once one grasps the true system of political economy, to enable the people to provide such an abundance for themselves, and (2) to provide the state with a revenue sufficient to perform its proper public services.[24]

Thus, the study of the science of political economy should provide concrete principles by which the legislator can establish a system whereby both the people and the sovereign shall be enriched.

Smith did not draw the distinction between "positive" and "normative" economics which was later made by Senior and Mill for the purpose of restricting economics as a discipline to the sole practical function of predicting the outcome of various policies (the "positive" aspect), and leaving all questions of competing value systems or objectives to be adjudicated by citizens or their representatives (the "normative" aspect).[25] In fact, the rationale behind such a circumscription of the science would have been very nearly incomprehensible to him, since he thought the objectives were implicit in the way the discipline was defined; i.e. as an instrument for maximizing the wealth of the nation, and that the means for attaining this end would be discovered in the study and should be applied in the real world by the political powers. The kind of "normative" questions that so troubled later economists; e.g. should wealth be distributed equally to all, were not problems for him because of the moral framework of natural law and a quasi natural rights position which he brought to economics. Smithian economics would instruct the sovereign on the laws that should be enacted and those that should be repealed in order to maximize national wealth within a moral framework of individualism and self-reliance; it would provide the best system for the production of wealth, which is assumed to be the sole "normative" purpose to be pursued by the sovereign. Hence, disputes about values and collective objectives do not arise in a political economy so conceived.

The men who inhabit the world of the *Wealth of Nations* are Greek men in the same sense that they were so in the *Theory of Moral Sentiments*, if we mean by "Greek" that they are, in Aristotle's term, "social animals". Just as the man of the *Moral Sentiments* was dependent for the formulation of a moral code upon others to mirror his acts by proffering their approbation or disapprobation, so the man of the *Inquiry* is dependent upon a great multitude of other men for his material survival as a result of the advancement of the principle of the division of labor. It is remarkable, Smith writes, how the support of the most humble workman in his customary life style involves the assistance and cooperation of thousands of workmen. Thanks to this system of cooperation brought about by the division of labor,

> it may be true, perhaps, that the accommodations of a European Prince does not always so much exceed that of an industrious and frugal peasant, as the accommodations of the latter exceeds that of many an African King, the absolute master of the lives and liberties of ten thousand naked savages.[26]

The division of labor, which accounts for the great improvement in the productive powers of labor, was originally brought about not by any conscious, reasoned, or willed act of men, but rather, resulted from the realization of the advantages which arise from the specialization of trades. In the early stage of civilization it was soon apparent that all men could be better off if each pursued a trade in which he had a natural propensity and, subsequently, engaged in exchange with others of his surplus in order to acquire the balance of his needs. The system of exchange and, eventually, the replacement of barter by a monetary system were natural developments from the division of labor, which itself was a natural outgrowth not of human wisdom and design, but of a human propensity:

> it is the necessary, though very slow and gradual consequence of a certain propensity in human nature which has in view no such extensive utility; the propensity to truck, barter, and exchange one thing for another.[27]

This "propensity" may be an original principle of human nature. However, Smith thinks it more likely that it was a necessary consequence of the faculties of reason and speech. This attribute is common to all men, and only to men. We owe to this drive the specialization which greatly multiplies the productiveness of man's labor and diffuses through all of society a "universal opulence" which extends even to the lowest ranks of the people.[28]

Men in society, then, require the continual assistance of other men, few of whom they actually know, and fewer still could they call upon as friends. It is vain, warns Smith, to expect help from others by appealing to their vanity. "It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard for their own interests."[29] One gains another's willing assistance by appealing to his "self-love", by showing him that it is actually to his own advantage to do what one wishes of him. And so, a bargain is struck. "We address ourselves, not to their humanity, but to their self-love; and never talk to them of our own necessities, but of their advantage."[30] In the *Moral Sentiments* we were told that men have but little regard for people who have no immediate connection with them; and, here, we are instructed in the natural way in which such indifference and self-preference is overcome in the economic realm where men are dependent for their survival and comfort upon the willing cooperation of other men. The mechanism of exchange accomplishes this without coercion by making each man serve his own self-interest and his own needs by producing goods for the immediate satisfaction of others. The disposition to exchange enables us to get from people who are totally indifferent to our welfare the means for our happiness, "by treaty, by barter, by prudence".[31]

Smith accepts the Lockeian-Liberal notion of men as naturally equal, attributing the differences apparent in men more to the specializations which they pursued in life, rather than to any great natural disparities in ability. These differences are more the effect than the cause of the division of labor. "The difference between the most dissimilar characters," Smith remarks in a light vein, "between a philosopher and a common street porter, for example, seems to arise not so much from nature as from habit, custom, and education."[32]

Smithian man, then, is roughly equal by natural abilities, and equipped with a "propensity" to exchange; he is, also, motivated principally by self-interest in his economic dealings, and he is provided by nature, slowly and spontaneously, with a system which perfectly suits him, and one which naturally makes his inherent self-seeking fit him for society. And from this desire of every man to seek his own advantage and to improve his condition, arises all public and private wealth. In fact, the drive is so strong that it is often able to overcome the extravagances of bad governments and the imposition of improper laws of political economy.[33]

The extent to which Smith remained in the natural law–natural rights tradition has been hotly disputed, with some interpreters, such as Lord Robbins,[34] viewing him as being much closer to a pragmatic utilitarianism, and with others, for example, T. W. Hutchison,[35] maintaining that he was still fairly well infused with a natural law perspective. On balance, the latter view of Smith appears to be the more credible when one considers the consistency in outlook evidenced in the *Moral Sentiments*, the *Lectures*, and the *Wealth of Nations*. In the two former works he continually speaks of the need to discover the natural rules of justice which underlie the positive laws of different states;[36] while in the latter, it will be argued, the same philosophical position is maintained.

In his *Lecture on Justice*, Smith argues for natural rights, but in a way that differed from Locke in that he drew a distinction between the rights to life and liberty, declaring them to be natural rights, and the right to property, which he considered an acquired right dependent upon the sufferance of society. "The rights which a man has to the preservation of his body and reputation from injury are called natural . . . ."[37] This distinction between the natural rights of life and liberty (*iura hominum naturalis*) and the acquired property rights (*iura adventitia*) was a critical alteration of the Lockeian formulation in which he portrayed all these rights as having force before the creation of civil government. Smith's distinction between natural rights and property rights is articulated in the following passage:

> The origin of natural rights is quite evident, that a person has a right to have his body free from injury and his liberty free from infringement unless there be a proper cause, nobody doubts. But acquired rights such as property require more explanation. Property and civil government very much depend on one another. The preservation of property and the inequality of possession first formed it, and the state of property must always vary with the form of government.[38]

In the *Wealth of Nations* the same philosophical assumptions are made concerning the existence of natural rights and natural laws of justice, although, not being a disquisition on justice, the distinction between civil and property rights is not discussed. If anything, the impression one draws from this work is even more Lockeian than that which emerges from the *Lecture on Justice*. Here, in point of fact, Smith unambiguously declares that the property which every man has in his own labor is the foundation of all property and is sacred and inviolable.[39] Consequently, Smith condemns all legislation which interferes with the free bargaining between workmen and employers. To hinder a man from employing his labor in whatever manner he wishes without injuring his neighbor is a violation of this "most sacred property"; it is a violation of the just liberty of both the workmen and their potential employers. In a similar vein, Smith condemns legislation on apprenticeships as a violation of property in one's own person. This is most definitely Locke, and not Hume or Bentham.

In addition, then, to the pragmatic, utilitarian arguments for a free economy which are displayed throughout the *Inquiry* — arguments to the effect that the maximization of national wealth can best be achieved by leaving men free in their economic choices, and that all other systems which aim at this end by other means are self-defeating — there is running through the volume a "natural rights" defense of economic freedom which cannot be ignored. The law should let people judge of their own interests, Smith repeatedly intones: laws which are violations of natural liberty are unjust.[40] In discussing the prohibition by governments on the exportation of corn, for example, he speaks of such acts as tantamount to sacrificing the "ordinary laws of justice to an idea of public utility, to a social reason of state; an art of legislation which ought to be excused only, which can be *pardoned* only, in cases of the most urgent necessity."[41]

Free trade is pragmatically desirable, Smithian economics contends, and, therefore, it should be practiced by every enlightened state, but it also argues that any violation of the maxims of free trade is a violation of natural liberty and justice, and should be condemned for that reason alone. Furthermore, Smith employs the same natural rights argument when he anathematizes all acts which prohibit people from trading freely as "a violation of the most sacred rights of mankind".[42] The evidence shows clearly, then, that a "natural rights" defense of the free market was an integral part of Smith's orchestration.

How was Smith able to consummate this marriage of natural rights with a utility defense of economic freedom? It was accomplished through the economic argument that self-interest will prompt men to enter those trades in which the profit will be greatest and that these trades are the most profitable precisely because they fill the most urgently felt needs of society. The argument proceeds as follows: (1) every individual continually exerts himself to find the most advantageous use for his capital — this is a deduction from the principle of self-interest, and, consequently, (2) that in looking out only for his own interest he is naturally and necessarily led to prefer that employment which is most advantageous for society as a whole. The individual, then, is the best judge of the most efficacious investment for his industry, much more so than the statesman or the lawgiver, because his interest is more immediate than theirs, it is he who stands to gain or lose by the transaction, not the legislator.[43] Without the intervention of any laws, private interest disposes men to distribute their stock among employments in the proportion most agreeable to the welfare of society.[44]

Therefore, all regulatory systems, such as the Mercantile System, derange this natural mechanism, and thus can only be injurious to society. Profit serves as a natural criterion by which to judge the efficacy of one's investments; if too much capital is drawn into one employment then profit goes down and funds are withdrawn to other lines of endeavor. The system is self-correcting. By artificial, legislative regulations one only succeeds in diverting capital to less profitable products (i.e. those less desired by the ultimate consumers), thus, curtailing consumer satisfaction. A "natural rights" argument would lead to a system of economic freedom by the following steps: (1) all men have the natural rights of life, liberty and property, and, therefore, (2) they must be free to transfer, exchange, sell or will their property as they wish. The argument from self-interest to division of labor and a system of exchange simply illustrates how the naturally right and just leads of necessity to what would be considered most beneficial on a purely pragmatic, utilitarian calculation. For this is the same Smith of the *Moral Sentiments*, who maintained that nature was both harmonious and economical. What is just and right, consequently, *must* be what leads to the happiness and material welfare of mankind, for man is a natural part of a natural *telos* and he is fitted with those attributes, namely self-interest for the economic realm, which will enable him to play his part successfully. And so, Smith can write that the establishment of perfect justice, liberty, and equality will secure the greatest prosperity to all classes;[45] i.e. there is a natural harmony of interest between the different classes of society. Men have a natural right to do precisely those things which upon examination will prove to be most beneficial for themselves and for their fellows — a harmonious and efficient nature insures this outcome. It could not be otherwise. The extent to which Smith was a consistent advocate of this his dominant view will be discussed subsequently.

Now, as we come to examine Adam Smith's contributions to what would later be considered "pure" economics, the following tenets will be considered both because of the centrality of their role in Smith's own system and for the influence which they were to have upon the future course of economic theory: his theory of value and price; his analysis of the origins and nature of profit, wages, and rent; his treatment of the way in which classes were delineated and their interests distinguished; and his projections as to the effects of improvement in the economic sphere.

The labor theory of value which Smith propounded remained *the* theory of value until the development of the marginal utility theory in the 1870s, and as such it influenced the economic and social thinking of such diverse theoreticians as Karl Marx and Jeremy Bentham. To elicit a clear view of this theory, however, is not a simple task, as Smith's formulation contains elements of at least two types of labor theories which were muddled together by him, and only later distinguished by Ricardo.[46] Smith combines both (1) a "labor-cost" theory of value; i.e. that a commodity's value is what it has cost the laborer in time to produce the object, and (2) a "labor-purchase" (or "labor-command") theory of value; i.e. that the value of an item produced by labor is determined by what it will exchange for, or, how much of the products of other men's labor it will purchase. What Smith seems to be saying, although it is never quite in focus, is that "labor-cost" is the real, original, and underlying measure of value, and that "labor-purchase" is the rough measure employed once civilization advances and appropriation has made some men capitalists and others their employees.

To backtrack for a moment, let us examine certain other features of Smith's value theory which are explicitly stated and of equal importance. Smith, in attempting to define value, draws the distinction between (1) value in use, i.e. the utility of a certain object in satisfying human wants, and (2) value in exchange, the power of purchasing other goods which the possession of that object conveys.[47] What the economist is concerned with, Smith contends, is exchange value, and, thus, he rejects utility as the standard of value. He made such a move largely because his conception of utility was of "total" utility and not of the later notion of "marginal" utility. He was driven to this conclusion by the consideration of such examples as the diamond–water paradox (a paradox, one might add, only on (1) an objective theory of value, one which does not consider the subjective evaluations of individual consumers, or (2) a theory which neglects to consider the role played by scarcity in the formulation of value) in which water, a good of inestimable value in use is worth little or nothing in exchange, while diamonds, a commodity of scarcely any value in use, are worth a great deal in exchange value. From this objective definition of value — value in exchange being defined as the power of purchasing other goods — Smith moves on to the "cost" theory of value, of which we spoke previously. "The real price of everything (Smith treats the "real price" and "exchangeable value" as equivalent terms), what everything really costs to the man who wants to acquire it, is the toil and trouble of acquiring it."[48] "What everything is really worth to the man who has acquired it; and who wants to dispose of it or exchange it for something else is the toil and trouble which it can save himself . . . ."[49] The implication being that, once a good is destined for sale, the regnant principle of exchange value is the "labor-purchase" theory of value, i.e. the value of a good destined for exchange is equal to the quantity of labor which it will purchase. Labor — whether it be the original labor that went into the production of a commodity, or the labor which that good when exchanged will enable the producer to command, is not clear — is the real measure of the exchangeable value of all commodities. All the wealth of the world was originally purchased by labor. Labor, then, is both the cause and measure of value.

Labor, however, is not the medium in which value is commonly estimated because it is difficult to equate the hardship entailed in different occupations or the varying amounts of ingenuity which they require. Consequently, the equation is never precise and the adjustment is left to "the higgling and the bargaining of the market".[50] Furthermore, goods are most frequently exchanged for each other, and with the advancement of society, for money, and these commodities or money become thought of as the measure of value. But it is Smith's contention that while these commodities and money (gold and silver) vary in value through time, labor (in the sense of sacrifice of ease on the part of the laborer) never varies in value, although it may purchase larger or smaller quantities of goods — it is the real price of all goods. While labor may appear to the employer to cost more at some times than at others, it is actually the goods which he uses to purchase labor that are cheaper or dearer. Labor is the unchanging real price of all commodities; money is the nominal price because it fluctuates in value.

When it came to the actual exchange of goods in the marketplace, Smith drew a distinction, one which was later adopted by both Ricardo and J. S. Mill, between natural price and market price, the former being the long-range price around which the market or actual price would tend to gravitate. Natural price, as determined by labor cost, rent, and profits (or what it really cost the manufacturer to bring it to market), would not be affected by factors of supply and demand, while the variation in the market price from this natural price would be solely attributable to that source. There are problems with this two-tier price system, as Malthus for one realized, the principal one being that it artificially excluded all questions of consumer preference from the establishment of the long-range or natural price. The natural price notion seems to be a holdover from the medieval notion of a "just price".

In moving from "labor-cost" to "labor-purchase", Smith offers an inadequate explanation of profit which was to haunt the Classical Economists and provide ammunition for socialists such as Marx to undermine the capitalist system to the extent that it was defended by this kind of an argument. Profit, on this account proffered by Smith, seems as though it were merely slapped on as men emerged from the "labor-cost" governed primitive society. It was all too easy for Marx to come along and denounce this as an act of expropriation by the capitalist, and demand the full product for the laborers. What Smith fails to see is that even in a relatively primitive society in which, say, Albert exchanges boots he produced for the coats Bert produced, each man has gained a profit, even though money is not exchanged. If it took Albert four hours to produce the boots and Bert four hours to produce the coats, it might have taken Albert many hours more to produce a coat for himself if he attempted to go beyond his own trade and provide for his own needs himself; and the same is true for Bert, the coatmaker, if he attempted to produce his own boots, an occupation foreign to his expertise. It might take each six hours to produce the goods for which they were formerly able to trade. Consequently, each enjoys a profit of two hours in the exchange. While Smith recognizes such advantages when he discusses the benefits of the division of labor, he does not understand that in this he has found the true source of profit. Instead, he draws a false distinction between (1) an early trading state of society which precedes the appropriation of land and the accumulation of stock, in which the proportion between the quantities of labor necessary for acquiring different objects appears to afford the only rule for determining their exchange value, and (2) an advanced stage of society in which men have accumulated stock and in which they employ laborers; here, profit arises as the worker produces his salary plus a part for the profit of the employer as payment for hazarding his stock in the venture. These profits are — and here is where Smith gets into even deeper trouble — regulated by the value of the stock employed and are not the wages of the labor of inspection and direction.[51] Thus, whenever Smith speaks of profit it is as if the capitalist were entitled to his 5% or 10% or whatever the customary, "natural" rate of profit might be, and his share would be governed solely by the quantity of stock which he originally invested. From the commodities which a capitalist's laborers produced, he would receive *x*% on his capital, and, hence, the laborers would not be entitled to the whole product of their labor.[52] The problem with this theory is that it makes profit appear to be arbitrarily determined, as though each venturer of stock would automatically receive profit on his investment regardless of whether the business was managed efficiently, or whether there was any demand for the good.

Similar problems are to be found with Smith's account of the determinants of price, in which he isolated labor, rent, and profit as discrete components of price. Though all were ultimately measured by labor, each was considered as a separable entity with both profit and rent tacked on with the advent of an advanced society based on accumulation of stock and land appropriation. From the produce of labor, chunks were to be deducted for both profit and rent. Smith himself was not unaware of the apparent arbitrariness of this arrangement, as he disparages landlords as those who desire to reap where they have not sowed,[53] and he describes rent on land as naturally a monopoly price.[54] In point of fact, as Professor Paul Douglas observed,[55] Smith offers four different accounts of how the landlord is able to collect rent: (1) because he demands it, (2) because he holds a monopoly, (3) because of differential advantage, and (4) because of the bounty of nature. His account of profit was similarly confused. Smith's account hardly provides an adequate description of, let alone a justification for, profit or rent.

By isolating wages, profit, and rent as separate components of price, Smith was led to the separation of men into discrete, and even hostile classes, of rent collectors, wage earners, and profit seekers, thus undermining the very notion of the harmony of interests which was the dominant thrust of his political economy. His approach was adopted by his followers, and much of their effort was wasted down a blind alley as they attempted to discover the proper distribution between these three factors of production. This class analysis, when driven to its limit, led to a Marxian class hatred analysis of the workings of the capitalist economic system.

Let us ponder the question of class a bit further, and examine what has happened to the "harmony of interests" claim discussed above. For, it will be recalled, Smith's conception of nature led him to conceive of the economic order as an essentially harmonious one. However, in the course of the *Inquiry*, certain discordant notes are struck. While the landlord's interest is inseparably connected with the general interest of society, as is that of the wage earners, the interest of the merchant or manufacturer is not so intimately connected. This state of affairs is the result of the fact that the rate of profit does not, like rent or wages, rise with the prosperity and fall with the declension of society; rather, it is naturally low in wealthy countries and high in poor ones, and highest in countries going fastest to ruin. A political problem emanates from this economic source in that those classes, the landlords and laborers, which are most in harmony with the interest of the whole society are precisely those least equipped to project their interest into political action, while the class which is least intrinsically interested in the general good, the merchants and manufacturers, is best equipped to influence legislation. The proprietors of land can never mislead their fellows in deliberations concerning commerce or police, if only they know their own true interest, but they are, thanks to their occupation, indolent and unfit for public office; likewise, the wage earners are incapable of comprehending their own interests and its relationship to the remainder of society. The profit seekers, on the contrary, have a much better understanding of their own interest, which is to widen the market and narrow the competition. Consequently, those best situated by inclination, experience, and position to influence legislation are precisely those whose interest does not coincide most nearly with the public interest and who may even have an interest in oppressing society.[56]

Smith does not abandon the "harmony of interests" generalization entirely in the case of merchants and manufacturers, as evidenced by his discussion of the role of the inland corn dealers; at which point he notes that by pursuing their own interests in times of shortage — i.e. by holding out part of the supply until the price rises — the corn trader actually serves the society's interest by acting as an automatic, self-governing allocation system, thus stretching the insufficient supply over a longer period of time.[57] Government interference, Smith cautions, would only turn a dearth into a famine.[58]

A partial reconciliation may be affected between Smith's "harmony of interest" position and his contention that class interests may diverge and even run counter to the general interest. It can, perhaps, be argued that Smith can be made more consistent by interpreting his cautions against conflicting class interests, and conflicting class and general interests, as warnings against exacerbating existing differences by permitting classes to influence legislation. While Smith does decry class inspired legislation it seems to be condemned more on a "natural rights" or "violation of justice" basis than on an empirical argument based on class interests; e.g. his contention that to hurt one class of citizens in order to help another is contrary to the justice and equality of treatment which the sovereign owes to all the different orders of his subjects;[59] and that laws should let people judge their own interests because to do otherwise would be a violation of natural liberty and, as such, unjust.[60] What we can say, then, is that Smith had three separate arguments for limiting the use of state power by classes for their own interests: (1) the "harmony of interest" contention, in which the interests of all classes are seen as compatible, hence, state intervention could serve only to unbalance the natural mechanism; (2) the "disharmony of interest" argument, wherein the class of manufacturers and merchants are seen as having interests which can in some cases run counter to the interest of society, thus leading us to conclude that the state should be limited in its economic intervention so as to avoid making matters worse by fostering class legislation by the profit seekers, the most politically active and economically aware class; and, finally, (3) the "natural rights" and "violation of justice" type of position which would dictate a limitation of legislation in the economic sphere because such laws would necessarily violate certain people's rights or nullify their claims to equal justice under the law.

Arguments (1) and (2) are obviously inconsistent in their basic assumptions, although all three arguments, as employed by Smith, lead to the same conclusion. It is only possible to reconcile (1) and (2) if we take the "harmony of interests" among classes to mean that they all enjoy greater prosperity, and, thus, have an interest, in the establishment of perfect justice, liberty, and equality. While Smith says this,[61] it is a minimal claim, and he seems to be maintaining much more when he repeatedly claims that by pursuing one's own interest one benefits society. All we can conclude, then, is that Smith interweaves several incompatible foundations as justification for minimal state intervention in the economy, and that he was apparently unaware or untroubled by these inconsistencies because they all led to the same conclusion; i.e. that of minimal state intervention in the economy.

Smith's arguments for general *laissez-faire* are further buttressed by the orientation of his economics; i.e. it is consumer orientated. Consumption is, according to Smith's conception, the sole end and purpose of all production. Consequently, the interest of the producers ought to be attended to only in so far as it may be necessary for promoting that of the consumer.[62] Smith considers that a self-evident maxim. It is on these grounds that he condemns the Mercantilist system which sacrificed consumers to producers by legislating bounties and restraints on importation.

III. SMITH'S THEORY OF GOVERNMENT

As we turn, now, to Smith's theory of government, the importance of his "harmony of interest" analysis will become apparent, as it led him to promulgate a "minimal state" theory of government which, while not the much maligned "night watchman state", argued for the circumscription of state interference in the economy. In the *Lectures*, Smith follows Hume in denying the validity of a Lockeian type of contractual basis both for the foundation of government and for the source of our obligation to obey its dictates.[63] Rather, he maintains, there are only two principles which can induce men to enter civil society: (1) authority; or (2) utility. The former is constituted primarily by superior wealth, but encompasses, also, all other facets in which some men may excel their fellows; e.g. superior ability, age, strength, mental capacity, long possession of power, ancient family, etc.; while the latter principle dictates that men ought to submit to governmental decisions for the good of the whole, for public more than private utility, and in order to prevent the greater evil of anarchy. Government came about only with the appropriation of herds and flocks which introduced inequality of fortunes: "Till there be property there can be no government, the very end of which is to secure wealth and to defend the rich from the poor."[64] The genesis of government, then, is through a natural process as men emerge from their primitive state, into a herding phase, and eventually culminating in a commercial society. This development occurs without the intervention of human planning in a Lockeian or Hobbesian sense, and this is certainly not surprising considering Smith's general conception of nature and man's place in it. Just as individual economic relationships proceed in a manner most amenable to progress without such effects being consciously intended by the actors, government develops spontaneously to insure an orderly and non-violent nexus in which men can pursue their objectives.

If the operations of the market combined with the natural propensity of men to truck and barter in the pursuit of their own self-interest and advancement will insure the maximum output of wealth for the nation as a whole, and no other system, such as a Mercantilist system of intervention in favor of the producers, or an Agricultural system which views manufacturers as unproductive, will do anything but thwart this system of natural liberty, as Smithian economics contends, then government must not interfere with this natural mechanism so as to cause its derangement. What role remains, then, for government to play? Clearly, it has no need to propound positive policy objectives such as furthering full employment, maximizing output, encouraging a high rate of growth, or stimulating an advantageous balance of trade, because such ends are best secured by the free play of the marketplace. Positive intervention by government on behalf of any of these goals would only serve to divert investment from its naturally most profitable course, profitable precisely because it served the most urgent wants of the people. But the "simple system of natural liberty" does require for its efficient operation the restriction of force, because only then can men pursue their interests with the assurance that they can retain the fruits of their labor. Freedom and security, Smith constantly reiterates, are the two requisites for the maximization of national wealth.[65]

Dugald Stewart, in his introduction to the *Wealth of Nations*, quotes from a manuscript of Smith's from the year 1755 (over 20 years before the publication of Smith's political economy, interestingly enough) in which Smith succinctly summarized his leading principles on government in the process of enumerating what he considered to be his original contribution to the subject. It will be helpful to cite this passage here, for it captures the essence of Smith's conception of both the natural workings of the economic system and of the state, which is itself a natural outgrowth:

> Man is generally considered by statesmen and projectors as the material of a sort of political mechanics. Projectors disturb nature in the course of her operations in human affairs; and it requires no more than to let her alone, and give her fair play in the pursuit of her ends, that she may establish her own designs . . . . Little else is requisite to carry a state to the highest degree of opulence from the lowest barbarism, but peace, easy taxes, and a tolerable administration of justice; all the rest being brought about by the natural course of things. All governments which thwart this natural course, which force things into another channel, or which endeavour to arrest the progress of society at a particular point, are unnatural, and to support themselves are obliged to be oppressive and tyrannical.[66]

Both Mercantilism and the Agricultural system of favoritism fail because they subvert the very purpose they were meant to promote; i.e. they hinder the progress of society by restricting the production of wealth. Therefore, argues Smith, the system of "natural liberty is proved", since all systems based on principles of state intervention in the economy would be susceptible to the same criticism of being self-defeating. Neither by encouragements for capital to seek investments which it would not naturally pursue, nor by restraints against certain categories of investment, can the government accelerate the progress of society towards greater wealth and greatness.[67] "All systems of preference or of restraint, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord."[68] Every man must be left free to pursue his own interests and to compete with all other men, so long as he does not violate the laws of justice. Consequently, the sovereign is released from the intolerable burden, which he cannot perform advantageously or even adequately, in any case, of intervening in the economic order where no human wisdom or knowledge can ever be efficacious. He no longer is responsible for superintending the industry of private individuals or directing their efforts to the interest of society, because this is already accomplished without his intervention.

Thus, the sovereign, according to this system of "natural liberty" has only three duties: (I) the duty of protecting the society from the violence and invasion of other independent societies, (II) the duty of protecting as far as possible, every member of society from the injustice and oppression of every other member, i.e. the duty of establishing an exact administration of justice; and (III) the duty of erecting and maintaining certain necessary public works and certain public institutions which it can never be in the interest of any small number of individuals to maintain because the profit would not repay the expense.[69] Naturally, to support these projects, the government requires revenue to be raised by taxation. Smith offers as an illustration of how government can correctly perform its functions the following case — of a landlord and a farmer for whom the government can provide assistance (a) negatively — by allowing both to pursue their own interests in their own way, (b) positively — by providing to them the most perfect security to ensure that they shall enjoy the full recompense of their own enterprise, and (c) positively — by procuring to them the most extensive market possible for their products through the establishment of easy and safe communications by land and water within the country, as well as the most unrestricted freedom of exportation to foreign countries.[70]

There is, quite obviously, a problem with Smith's analysis of the duties of government, and the problem lies precisely in his third injunction (III), to the effect that the government has a duty to engage in public works and institutions when private incentive is insufficient to secure the desired good. Why does the mechanism of "natural liberty" break down in these cases — or does it? What Smith does, here, is to smuggle in a utilitarian standard to cover these cases in which the market purportedly will not provide adequate services; examples of which being: the construction of streets, canals, harbors, embassies and fortifications for the encouragement of trade and commerce; the education of youth and the general population; and the maintenance of the Church. He had been arguing all along that the system of "natural liberty" will accomplish all the utilitarian kinds of objectives (the principal one being the maximization of the wealth of society as a whole), and that these goods can be achieved, and can only be achieved effectively, by adhering to this system of individual freedom and non-violation of the claims of others to justice; i.e. their equal claim to enjoy the fruits of their own industry without threat or violence. If the free play of the market, which Smith wholeheartedly endorses, fails to provide roads or schools (which is extremely doubtful as evidenced historically by the existence of private railroads and private schools), by what justification can the government step in to build the roads and schools, when in the process they cannot help but commit the economic sin of diverting capital from its most profitable avenue of employment (that which satisfies the most pressing wants), and the political and moral sin of coercing men through taxation to pursue ends other than their own? It is only because Smith is confused about his ultimate principles that he can make such an argument. That he combines and obfuscates the distinction between a "natural rights" defense of the system of "natural liberty" and a "utilitarian" defense is apparent. This confusion led Smith to make what is in effect a tyrannical claim; i.e. that when the market fails to provide the canals, roads, and schools which he, Smith, deems desirable, then he is justified in using the coercive force of the state to compel all individuals to contribute to these projects.

On a consistent rendition of the "natural liberty" system, one would argue that the fact that these projects were not undertaken would be sufficient evidence to prove that they were not desired enough by the consumers to make their production possible on a profitable basis; and, consequently, no case could be made for the government engaging in such enterprises. To argue, as Smith does, that these socially advantageous projects (socially advantageous by what standard and in whose judgment, is never specified) should be undertaken when the market fails to provide them, is to undermine the whole edifice, based on private interests leading naturally to social advantage, which he attempted to construct. If it is once conceded that some higher force, the government, may legitimately intervene when some putative social good is not being produced by the marketplace, then it is but a logical step to say that the market is not producing some other desired effect, say the equal distribution of incomes, or full employment, etc, which I consider socially desirable and, therefore, the government must intervene to accomplish this.

This is precisely the kind of claim that Smith considered totally illegitimate. And it is ironic that he himself sowed the seeds for just such claims by future proponents of a utilitarian based defense of the free market. On a theoretical level, Smith understood perfectly well that you cannot have it both ways, that you must, in order to secure men's purposes, either defer to the market and the infinite array of individual choices which it encompasses, or you must establish some other ultimate authority, the government, to make men's choices for them. He opted for the former solution because it cohered with the "natural" workings of the world, thus providing the only security for individual well-being and social wealth. But when it came to describing the role of the government in safeguarding this system, Smith fell into contradiction by proposing a positive role for government which went beyond upholding justice, and thus he succeeded only in undermining his defense of the "natural" system. While governmental duties (I) and (II) are defensible on "natural justice" grounds principally, and only incidentally on grounds of utility, duty (III) can only be justified, and not even correctly so, on Utilitarian grounds.

It was from this third duty of government — which we have criticized as being (1) inconsistent with Smith's system of "natural liberty" and justice for all, and (2) indefensible on even utilitarian grounds because Smithian economics teaches that the happiness of the whole can best be achieved through the interplay of individual, free choice — that Smith drew the justification for certain instances of governmental interference which he deemed acceptable in certain clearly delineated cases. Hence, he allows for several circumstances in which it may be advantageous to restrict foreign in favor of domestic industry: (1) when a certain industry is necessary for the defense of the nation; e.g. the Navigation Acts are permissible, (2) when a tax is imposed on a domestic industry it should also be levied on foreign industry, and (3) when a foreign country imposes taxes on your exports you may do likewise but only in hopes of getting the imposition removed.[71] Similarly, there were other exceptional cases in which the government may properly intervene: monopolies may be legitimately granted to joint stock companies in unexplored areas on a temporary basis; in the case of banking where the liberty of a few endangers the liberty of the whole society, the few ought to be restrained by law; the rate of interest should be determined by the state (a position which he later recanted under Bentham's prodding); and education should be provided for those who can't afford it. It should be noted, once again, that all these governmental incursions are justified by Smith on either the grounds that they are desirable and necessary, or that the market will fail to provide these services. Both claims are subject to serious dispute, even on utilitarian grounds.

Smith's discussion of taxation suffers from similar difficulties. Taxation is necessary not for the maintenance of justice, which Smith says can be sufficiently supplied by court fees levied on the users, but for the defense of the society and the dignity of the sovereign, and for the public institutions and public works (III); activities, we have argued, of questionable legitimacy on Smith's own terms. Nevertheless, Smith argues that those institutions or public works which are beneficial to the whole society may without injustice by defrayed by the general contributions of the whole society.[72] He cites the expense of maintaining roads and communication, educating children, and instructing in religion. The preferred method of payment would be by those who directly receive the benefit or by voluntary contributions, but the national treasury can be utilized if these sources fail to provide all the requisite funds. It is a peculiarity of early liberal theory that taxation for social projects was not considered to be a violation of anyone's claim to equal justice or a transgression of the right to one's own property. Smith thought that the citizen was bound to contribute taxes to the sovereign, [73] and, in fact, he goes much further than this when he remarks that every tax is a badge of liberty not of slavery, because it shows that the taxpayer has no master,[74] a view of taxation subsequently rejected, and with good reason, by Jeremy Bentham.

Smith offers the following guidelines for the least oppressive manner in which taxes can be imposed: (1) subjects should contribute taxes in proportion to their respective abilities; i.e. in proportion to the revenue which they enjoy under the protection of the state; (2) a tax should be certain and not arbitrary; (3) a tax should be levied at a convenient time for the contributor to pay it; and (4) a tax should not take from people much more than it gives into the public treasury; i.e. the expense of collection should be kept down.[75] These strictures appear reasonable enough — and, indeed, they were influential, appearing intact in the works of Smith's followers, Ricardo and Mill — once one grants the justice of taxation itself and the justifiability of the public works for which the taxes were raised, both dubious claims. But Smith strays even further from a "night-watchman" conception of the state when he suggests that a tax on homes and luxuries could be justified in order to discourage opulence and induce people to invest their money in other, more productive avenues.[76] This is most definitely a "utility" based approach, which attempts to direct men's efforts into channels approved by some higher authority who knows better than the natural workings of the market what will benefit society. Smith's contention that rent provides the best base for taxation, because taxes on profits or wages would be ultimately borne by the consumer anyway, and would be difficult to assess or collect, is open to the objection that such governmental interference is discriminatory and even redistributive in effect. It should be noted, in passing, that Smith objected to inheritance taxes, not as violations of property rights, but because they would be difficult to assess or collect.

Smith's discussion of legitimate governmental practices was most consistent with his "pure" economic theory when he came to discuss the questions of freedom of trade and colonial policies. It is here that his "let alone" philosophy achieves full play. To prohibit people from trading freely is a "violation of the most sacred rights of mankind",[77] and it is also an utterly feckless policy because no conceivable regulations can increase the quantity of industry in any country beyond what its capital will maintain, rather it can only be redirected without any guarantee of producing a more advantageous result.[78] Wealth, Smith lectures the Mercantilists, does not consist in gold and silver but in the commodities which they purchase.[79] Freedom of trade without governmental intervention will supply us with all the requisites of existence, as well as gold and silver, these latter being regulated by the effective demand for them in each country. Gold and silver are the most effortlessly self-regulating commodities. "Upon every account, therefore, the attention of government never was so unnecessarily employed, as when directed to watch over the preservation or increase of the quantity of money in any country."[80] Foreign trade free from governmental interference is to be heartily approved for its beneficial effects, including (1) the exchange of superfluities for things in demand which are not produced in one's own country, (2) the incentive it offers to improvements in productive powers, and (3) the stimulus it provides to progress in the division of labor.[81] In regard to the colonial question, Smith considered the policies of his day as injurious both to the colonies themselves and to the mother countries, and he remarks that Britain's colonies fared somewhat better than Spain's only because of the greater security and freedom permitted in the former, but that nevertheless Britain's trading policies were largely monopolistic in intent. This viewpoint carried through the entire Classical School; imperialism was anathema to all of them. It is, then, in his discussion of free trade and the errors in the Mercantilist system, and colonial policies, that Smith remains most consistent with both his philosophical formulations and his "pure" economic principles.

IV. CONCLUSION

In the preceding discussion of Smith's economic moral, and political works, we have seen that Smith can hardly be accused of erring on the side of consistency, although a general compatibility was perceived between his world view as propounded in the *Theory of Moral Sentiments* and in the *Wealth of Nations*. It is in the latter work that Smith's ambivalence as regards ultimate principles is most apparent, appealing at times to a "natural rights–natural law" foundation and on other occasions to a utility standard. There is, then, a marked disjunction between his philosophical premises (i.e. individualism and the natural harmony of interests between non-rights-violating men) and his discussion of governmental activities, in which he becomes much more of a common sense, pragmatic utilitarian (e.g. his assertion that the government has as one of its legitimate functions the undertaking of public works and institutions).

Another disjunction was found to exist between Smith's moral Aristotelianism and his decidedly un-Aristotelian attitude towards politics. Where Aristotle stressed man's nature as being principally political, the result of his status in a particular society and the moral view implanted in him by that society, Smith emphasized man's individuality and his natural independence from government as a rights bearing entity even before government was instituted. Smith, then, was an heir of Locke in politics, and Aristotle in morals. Aristotle's man was not truly human unless he was a member of a *polis*, while Smith's man of the political economy was bound to his fellows as a result of the division of labor and his own realization that, consequently, self-interest necessitated such an association. Aristotle's political entity embraced a teleological purpose and Smith's did not. Thus, Aristotle's view of politics was far more interventionist because his men had to be fitted into a society in order to achieve their communal moral end. Smith's man could be left much more liberty by government because his moral ends were private only. Politics was a positive good for Aristotle, whereas for Smith it was merely a necessary construct without which there could be no guarantee that the play of individual interests would be restricted to peaceful means. Aristotelian man could not be truly man without the state. Smith's man could be properly such with or without government.

Smith's conception of the purpose of political economy as being the instruction of legislators in the best means of maximizing national wealth, held the seeds of future problems. While in Smith's own economics the conclusion was that the politician desirous of achieving this maximization of wealth should leave the economic sphere alone in most instances, he did, however, acknowledge cases in which private interest would not accomplish desirable social goods and then government action would be acceptable. But when future economists came to question the efficacy of private initiatives in achieving social goals over much wider areas than Smith acknowledged as deficient, and they, furthermore, questioned the sanctity of wealth maximization as the sole national objective (they considered other factors, such as the distribution of wealth, as equally worthy national goals), then Smith's conception of political economy as the handmaiden of the legislator was to have far different effects than Smith intended.

The confusion engendered by Smith's labor theory of value and his mistaken notions about the origin of profits caused a great deal of trouble for classical economists and, in addition, provided ammunition for future socialist writers in their attempts to discredit the free market economy. One can find little to disagree with Professor Douglas' assertion (except to deny the "inevitability") that Smith's formulation of the problems of exchange value and the distribution of the national product among the factors of production "was such as almost inevitably gave rise to the doctrines of the post-Ricardian socialists and to the labor theory of value and the exploitation theory of Karl Marx."[82] Smith's claim that in the early stages of society the laborer would receive the whole of his product led quite naturally to the socialists' clamor that the laborer in an industrialized society should once again receive all that he produces.

We can conclude this investigation into the origins of Classical Economics by reiterating the point that Smith failed to provide a theory of legitimate governmental action in the economic realm consistent with his economic principles of individual self-interest leading to a "harmony of interests" when men were left free to pursue their own ends. His conception of political economy was far more intimately connected with a "natural law", "harmony of nature" viewpoint than would be the works of his followers.

NOTES

1. Adam Smith, *The Theory of Moral Sentiments*, (6th ed., 1759) in Herbert W. Schneider, *Adam Smith's Moral and Political Philosophy* (New York: Harper Torchbooks, 1948), Part II, Section I, pp. 114–115.
2. *Ibid.*, Part II, Section II, Ch. III, p. 125.
3. *Ibid.*, Part I, Section I, p. 73.
4. *Ibid.*, Part III, Ch. II, p. 144.
5. *Ibid.*, Part II, Section II, Ch. II, p. 120.
6. *Ibid.*, Part II, Section II, Ch. II, pp. 120–121.
7. *Ibid.*, Part II, Section II, Ch. II, p. 121.
8. *Ibid.*, Part II, Section II, Ch. I, pp. 116–119.
9. *Ibid.*, Part II, Section II, Ch. I, p. 119.
10. *Ibid.*, Part II, Section II, Ch. II, p. 122.
11. *Ibid.*, Part II, Section II, Ch. III, p. 125.
12. *Ibid.*, Part III, Ch. IV, pp. 185–186.
13. *Ibid.*, Part III, Ch. IV, p. 186.
14. *Ibid.*, Part III, Ch. II, p. 191.
15. *Ibid.*, Part IV, Section III, p. 251; Conclusion, p. 274.
16. *Ibid.*, Part III, Ch. III, p. 178.
17. *Ibid.*, Part I, Section I, Ch. IV, p. 88.
18. *Ibid.*, p. 89.
19. *Ibid.*, Part VI, Section III, p. 261.
20. *Ibid.*, Part VI, Section III, p. 250.
21. *Ibid.*, Part I, Section III, pp. 91–102.
22. *Ibid.*, Part I, Section III, Ch. I, p. 94.
23. Adam Smith, *Lectures in Justice, Police, Revenue and Arms* (from a student's notes of the year. 1763, first published by Edwin Cannan, Oxford, 1896), in Herbert W. Schneider, *Adam Smith's Moral and Political Philosophy* (New York: Harper Torchbooks, 1948, p. 317.
24. Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations* (1776, rpt. London, Routledge, 1908), Bk, IV, Introduction, p. 323.
25. T. W. Hutchison, *"Positive" Economics and Policy Objectives*, (Cambridge, Mass., Harvard University Press, 1964), Ch. I, p. 16; see also: J. S. Mill, "On the Definition of Political Economy and on the Method of Investigation Proper to it"; and Nassau Senior, *Outline of Political Economy*.
26. Smith, *Wealth of Nations*, Bk. I, Ch. I, p. 10.
27. *Ibid.*, Bk. I, Ch. II, p. 10.
28. *Ibid.*, Bk. I, Ch. I, p. 8.
29. *Ibid.*, Bk. I, Ch. I, p. 11.
30. *Ibid.*, p. 11.
31. *Ibid.*, p. 11.
32. *Ibid.*, Bk. I, Ch. II, p. 12.
33. *Ibid.*, Bk. II, Ch. III, p. 264.
34. Lionel Robbins, *The Theory of Economic Policy in English Classical Political Economy* (London, MacMillan, 1952).
35. T. W. Hutchison, *"Positive" Economics and Policy Objectives*.
36. Smith, *The Theory of Moral Sentiments*, pp. 67–69.
37. Smith, *Lectures on Justice, Police, Revenue and Arms*, p. 285.
38. *Ibid.*, p. 286.
39. Smith, *The Wealth of Nations*, Bk. I, Ch. X, p. 96.
40. *Ibid.*, Bk. IV, Ch. V, p. 407.
41. *Ibid.*, Bk. IV, Ch. V, p. 414.
42. *Ibid.*, Bk. IV, Ch. VII, p. 451.
43. *Ibid.*, Bk. IV, Ch. II, pp. 343–345.
44. *Ibid.*, Bk. IV, Ch. VII, pp. 491–494.
45. *Ibid.*, Bk. IV, Ch. VII, p. 525.
46. Paul H. Douglas, "Smith's Theory of Value and Distribution" *Adam Smith, 1776–1926* (Chicago, The University of Chicago Press, 1928) rpt. in *The Development of Economic Thought*, ed. H. W. Spiegel (New York: Wiley, 1964), "Douglas on Smith", p. 71–102, p. 82.
47. Smith, *The Wealth of Nations*, Bk. I, Ch. IV, p. 21.
48. *Ibid.*, Bk. I, Ch. V, p. 22.
49. *Ibid.*, p. 22.
50. *Ibid.*, p. 23.
51. *Ibid.*, Bk. I, Ch. VI, p. 37.
52. *Ibid.*, p. 38.
53. *Ibid.*, p. 38.
54. *Ibid.*, Bk. I, Ch. XI, p. 115.
55. Douglas, "Smith's Theory of Value and Distribution".
56. Smith, *The Wealth of Nations*, Bk. I, Conclusion, pp. 201–203.
57. *Ibid.*, Bk. IV, Ch. V, p. 401.
58. *Ibid.*, pp. 403-404.
59. *Ibid.*, Bk. IV, Ch. VIII, p. 512.
60. *Ibid.*, Bk. IV, Ch. V, p. 407.
61. *Ibid.*, Bk. IV, Ch. IX, p. 525.
62. *Ibid.*, p. 517.
63. Smith, *Lectures on Justice, Police Revenue and Arms*, Division I, "Of Public Jurisprudence".
64. *Ibid.*, p. 291; see also, Smith, *Wealth of Nations*, p. 560, for an expression of the same sentiment.
65. Smith, *The Wealth of Nations*, Bk. IV, Ch. V, p. 415, and Bk. IV, Ch. VII, pp. 457, 459.
66. Ibid., pp. XI-XII.
67. *Ibid.*, Bk. IV, Ch. IX, pp. 539–540.
68. *Ibid.*, p. 540.
69. *Ibid.*, p. 540.
70. *Ibid.*, Bk. V, Ch. II, p. 658.
71. *Ibid.*, Bk. IV, Ch. II.
72. *Ibid.*, p. 644.
73. *Ibid.*, Bk. IV, Ch. VIII, p. 512.
74. *Ibid.*, Bk. V, Ch. II, p. 679.
75. *Ibid.*, pp. 651–652.
76. *Ibid.*, p. 667.
77. *Ibid.*, Bk. IV, Ch. VII, p. 451.
78. *Ibid.*, Bk. IV, Ch. II, p. 343.
79. *Ibid.*, Bk, IV, Ch. I, pp. 330–331.
80. *Ibid.*, p. 330.
81. *Ibid.*, p. 338.
82. Douglas, p. 73.

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BENJAMIN TUCKER AND HIS PERIODICAL, *LIBERTY*

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In a letter to the New York *Tribune* on December 4, 1898, Benjamin Tucker (1854–1939) described himself as an Anarchist. "I was the first American — I may say the first Anglo-Saxon — to start (in 1881) an avowedly Anarchistic newspaper printed in the English language. I am still the editor, publisher, and proprietor of that paper. It is everywhere regarded as the pioneer and principal organ of modern individualist Anarchism. I either am, or have been, the publisher of the chief Anarchistic works in the English language. I am the author of the most widely-accepted English text-book of Anarchism. I have enjoyed the friendship, had the benefit of the instruction, and have carefully studied the works, of those Americans from whom the Anarchists have largely derived their beliefs — Josiah Warren, Stephen Pearl Andrews, Lysander Spooner, and Colonel William B. Greene. I am the translator into English of some of the principal works of P. J. Proudhon, who was the first writer in any language to declare himself an Anarchist. I am acquainted, perhaps better than any other man, with the English-speaking Anarchists of the United States. It will be admitted then, I hope, that I speak by the card." (359–3)*

Tucker's Anarchist credentials were impeccable as he plainly stated. In August 1881, he started a "little fortnightly journal called *Liberty*. Its purpose was to contribute to the solution of the social problems by carrying to a logical conclusion the battle against authority . . . "[1]. This journal appeared more or less continuously under the guidance of Tucker, first in Boston, and then in New York, until 1908 when Tucker's bookstore and composing room were destroyed by fire. In the words of Paul Avrich, *Liberty* was simply "the best Anarchist paper in the English language".

The 403 issues of *Liberty* which appeared have been reprinted and made available by the Greenwood Reprint Corporation. They are a great source of information both to the historian and the philosopher. Here we can analyze the history of the individualist Anarchist movement, its reaction to contemporary events of the late 19th and early 20th Centuries, as well as view the actual ideological content and doctrinal changes occurring in the movement. To study *Liberty* is to touch practically every social question. (132–5) " . . . *Liberty* carried translations and articles from many of the most seminal thinkers of both Europe and America."[2] While its subscription list probably never exceeded 1000, it had a world-wide circulation and impact, considering that it sparked individualist Anarchist movements in Russia and Australia, among other places.

Tucker made it clear in his first issue that his "journal will be edited to suit its editor, not its readers. He hopes that what suits him will suit them; but, if not, it will make no difference. No subscriber, or body of subscribers, will be allowed to govern his course, dictate his policy, or prescribe his methods. *Liberty* is published for the very definite purpose of spreading certain ideas, and no claim will be admitted, on any pretext of freedom of speech, to waste its limited space in hindering the attainment of that object. We are not afraid of discussion, and shall do what we can to make room for short, serious, and well-considered objection to our views." (1–1) "The purpose of *Liberty*, boiled down to its ultimate essence, is the abolition of authority . . . . *Liberty* denies the authority of anybody's god to bind those who do not accept it through persuasion and natural selection.

*All parenthetical footnotes refer to *Liberty* by Whole Number (issue number) and then page number.

Liberty denies the authority of anybody's State to bind those who do not lend voluntary allegiance to it. *Liberty* denies the anthority of anybody's 'public opinion', 'social custom', 'consensus of the competent', and every other fashionable or scholarly despot, to step between the individual and his free option in all things." (2–2)

As the proprietor and editor of *Liberty*, Tucker was responsible for its opinions and editorial content. While realizing that he was never the sole owner of Anarchism, Tucker did dominate his paper, and accordingly came to influence the Anarchist movement. However, he well realized that anarchism existed before he did and would continue to exist after he passed away. "I can interpret it only for myself", he wrote. (327–3) Although gentlemanly and shy in his personal relations, Tucker was the "plumb-line of plumb liners" in his editorial role. He tolerated no deviation from the straight and true path of Anarchy as he understood it. His intention as editor was to "win first the attention, and then the admiration and assent, of the most thoughtful thousand people in the world, though at the same time it may for the moment shock, horrify, prejudice, madden, and alienate all others . . . . " (367–1) E. O. Brown elaborated this point: "I have seen much in *Liberty* that I agreed with, and much that I disagreed with, but I never saw any cant, hypocrisy, or insincerity in it, which makes it an almost unique publication." (370–7)

Tucker's outlook and optimism are illustrated by relating one item which he saw fit to include in his first issue. Headlined, "The Penalty of Treason to Liberty," it related the story told by Ariosto, in which a fairy, by some mysterious law of her nature, was condemned to appear at certain seasons in the form of a foul and poisonous snake. Those who injured her in the period of her disguise were forever excluded from the blessings which she bestowed when in her power. To those who befriended her, in spite of her loathsome aspect, she afterwards granted all their wishes and made them happy in every way. "Such a spirit is liberty", concluded Tucker. "At times, she takes the form of a hateful reptile. She 'grovels', she hisses, she stings. But woe to those who in disgust shall venture to crush her. And happy are those who, having dared to receive her in her degraded and frightful shape, shall at length be rewarded by her in the time of her beauty and glory." (1–4)

In order to fully appreciate Tucker and *Liberty*, one must have an understanding of how he and his readers understood the word Anarchism. "Anarchism means no government, but it does not mean no laws and no coercion. This may seem paradoxical, but the paradox vanishes when the Anarchist definition of government is kept in view. Anarchists oppose government, not because they disbelieve in punishment of crime and resistance to aggression, but because they disbelieve in compulsory protection. Protection and taxation without consent is itself invasion; hence Anarchism favors a system of voluntary taxation and protection." (212–2) Tucker was one of the very first individuals in the world to advocate the idea "that defense is a service, like any other service", and that such a service could and should be provided by private agencies supported by voluntary patronage. (104–4)

This advocacy was in turn based on a certain definition of government, namely "government has been defined . . . as the subjection of the 'non-invasive' individual to a will not his own." (156–4) The State (or government) is in its very nature a compulsory institution to which all are forced to belong to and which all are compelled to support. (26–2) *Liberty's* supporters were the sternest enemies of invasion of person and property. "We make war upon the State as the chief invader of person and property, as the cause of substantially all the crime and misery that exist, as itself the most gigantic criminal extant." (25–2)

The starting point of the entire Anarchistic philosophy was the absolute sovereignty of every individual. (28–2) The only way to respect the sovereignty of the individual would be to refrain from invasion of every person's body and justly acquired property. Tucker realized that criminals and invaders of person and property would remain, even in the absence of formal governments, but "*Liberty's* position [was] that, of the really serious and important acts of invasion of individual sovereignty, at least nine-tenths are committed by organized

State governments or through privileges granted by them, and that the governmental idea, with the State as its principal embodiment, is the efficient cause of almost all of our social evils." (86–4) Thus Anarchism was not only a protest against every form of human invasion (94–5), but in particular against the aggression of organized government.

Liberty's advocacy of Anarchism had both a positive and negative side. The negative side was simply the call for the abolition of politics. (25-2) *Liberty* proposed to abolish government and substitute in its place voluntary arrangements. "We offer every possible method of voluntary social union by which men and women may act together for the furtherance of well-being." (27–2) Tucker carried this doctrine to its fullest extent, as he was not bound by political or cultural or social mores. Tucker and his supporters differed from all other 19th Century radicals in their conception of cooperation. These Anarchists distinguished themselves even from the Individualists, who believed that "cooperation for defense and protection should be compulsory, whereas the Anarchist believe[d] that cooperation should never be compulsory, and that no compulsion should ever be exercised upon the non-invasive individual." (260–2) Although Tucker was likely at times to call himself a socialist, he always emphasized the voluntary aspect of socialism. His disagreement with the communists and socialists of other schools revolved around their economics as well as their conception of cooperation. " . . . [T]heir Communism is another State, while my voluntary cooperation is not a State at all. It is a very easy matter to tell who is an Anarchist and who is not. Do you believe in any form of imposition upon the human will by force?" (94–4)

From the beginning of *Liberty*, Tucker placed emphasis on the rights of the individual and individual sovereignty. This natural rights approach may have been influenced by Lysander Spooner who at the commencement of *Liberty* was still living and contributing articles to it. Reminiscent of Spooner's outlook, was the statement in an 1882 issue that "there is but one single kind of 'legal' freedom; and that is simply the 'natural' freedom of each individual to do whatever he will with himself and his property, for his body here, and his soul hereafter, so long as he does not trespass upon the equal freedom of any other person." (24–2) In still an earlier issue was enunciated the cardinal right of all individuals to do anything and everything which they may chose voluntarily to do so long as it is done at their own cost. (7–2)

"Th[e] question of rights and obligations was thoroughly threshed out in Liberty in the year 1887." (198–2) Although Tucker maintained that he had not changed his fundamental opinions since he had begun *Liberty*, it is obvious that by the late 1880s his defense of Anarchism had changed from one asserting a natural rights justification to one asserting the Stirnerite version of egoism. (201–4) By early 1888, Tucker was no longer defending property as a right, but rather claimed it to be only a social convention. (117–5) Having abandoned natural right as the basis of Anarchism, Tucker replaced it with the concept of equal liberty as the touchstone of his Anarchism. "It is true . . . that Anarchism does not recognize the principle of human rights. But it recognizes human equality as a necessity of stable society." (126–4) " . . . [T]he only compulsion of individuals the propriety of which Anarchism recognizes is that which compels invasive individuals to refrain from overstepping the principle of equal liberty. Now, equal liberty itself being a social convention (for there are no natural rights), it is obvious that Anarchism recognizes the propriety of compelling individuals to regard 'one' social convention. . . . Anarchism protects equal liberty . . . , not because it is a social convention, but because it is equal liberty, — that is, because it is Anarchism itself." (123–5)

Tucker expressed his changed attitude as follows: "From the start [of *Liberty*] I have known that self-interest is the mainspring of conduct and that the ego is supreme. I had not, however, carefully thought out or even considered the bearing of this philosophy upon the question of obligation. I took society for granted and assumed the desire of man for society, and it was from this standpoint that I had loosely talked of natural rights. But Stirner's book [*The Ego and His Own*] caused me to ask myself: If the individual does not wish society, is he under any obligation to act socially? And I no sooner asked it than I answered it in the negative. *At no time have I answered it in the affirmative*. . . . I have since [1886] seen that my use of the word right in those days was entirely improper, and this, coupled with a steadily-clearing perception of the logic of egoism, is the only change my ethical opinions have undergone since I started *Liberty*." (201–4)

In later years, Tucker exemplified his position by questioning the moralists (those asserting the natural rights philosophy and opposing his egoistical justification of Anarchism): "Why is one man bound to refrain from injuring another? That is the question which the moralists must answer. I know plenty of reasons why it is expedient for one man to refrain from injuring another. Therefore I advise him to refrain. But if my reasons do not commend themselves to his judgement; if my view of expediency does not coincide with his, — what obligation is there upon him to refrain? . . . I see no reason, as far as moral obligation is concerned, why one [man] should not subordinate or destroy the other. But if each of these men can be made to see that the other's free life is helpful to him, then they will agree not to invade each other; in other words, they will equalize their existences, or rights to existence by contract . . . Before contract is the right of might. Contract is the voluntary suspension of the right to might. The power secured by such suspension we may call the right of contract. These two rights — the right of might and the right of contract — are the only rights that ever have been or ever can be. So-called moral rights have no existence." (261–3) Tucker demanded to know what obligation, apart from expediency, there is upon man to refrain from aggressing against another. (265–1) His point was that the obligation to refrain from aggression was universal, without exception, or it was nothing. The problem as he saw it was to justify the imposition of this obligation upon the man who chose to forsake human society or enjoyed social unrest and insecurity. Thus Tucker concluded that there are no rights except mights. (194–1) "Rights begin only with convention. They are not the liberties that exist through natural power, but the liberties that are created by mutual guarantee." (328–4)

Fearless logician that he was, Tucker was never afraid to endorse his reasoning, regardless of where it led him. It was only on egoistic and utilitarian grounds — i.e. grounds of expediency — that he believed in equal liberty. (320–4) On several occasions during the later years of *Liberty* Tucker was forced to concur in certain deviations from his earlier Anarchistic position based on non-invasion and respect for individual sovereignty. Thus he claimed that a woman who threw her baby into the fire was acting non-invasively, (321–1) and that in certain instances coercion of the non-invader was justified. Reasoning from his egoistic framework, Tucker denied that the thing fundamentally desirable was the minimum of invasion. For him, "the ultimate end of human endeavor [was] the minimum of pain. We aim to decrease invasion only because, as a rule, invasion increases the total of pain (meaning, of course, pain suffered by the ego, whether directly or through sympathy with others). But it is precisely my contention that this rule, despite the immense importance which I place upon it, is not absolute; that, on the contrary, there are exceptional cases where invasion — that is, coercion of the non-invasive lessens the aggregate pain. Therefore coercion of the non-invasive, when justifiable at all, is to be justified on the ground that it secures, not a minimum of invasion, but a minimum of pain. . . . [T]o me [it is] axiomatic — that the ultimate end is the minimum of pain." (324–4) Thus Tucker asserted that coercion and invasion were justifiable in the case of a burning city, which can only be saved by blowing up the houses on a strip of territory inhabited by non-invasive persons who refuse to consent to such disposition of their property. (324–4) (310–5) According to Tucker, necessity and only necessity may excuse the coercion of the innocent, (308–4) and he readily admitted that there were relations between men and the land and of men to each other, where he would for the moment trample ruthlessly upon all the principles by which successful society must as a general rule be guided. (304–3)

Tucker held "that emergencies are liable to arise in the lives of men and of societies when all principles except that of self-preservation must be thrown to the winds; that there are moments when the continuance of individual life and social relations depends on the promptness with which we violate the very rules of conduct that in ordinary and normal times contribute most vitally to our well-being." (339–4) In defending his position, Tucker declared that a critic's answer amounted "in its conclusion to a statement that no evil can be as disastrous as an act of invasion; that justice should be done though the heavens fall, for a precedent of injustice would lead to a worse disaster than the falling of the heavens; . . . " and that further discussion was hopeless. (341–4)

One final example will suffice to show that for Tucker, there were occasions when justice was not the supreme consideration. (341–4) Another of his critics propounded the situation of a drowning man agreeing to forego all his worldly goods in return for being saved from drowning. The critic demanded to know if under Anarchistic ethics such an agreement was enforceable. Tucker's position was that such a contract was not enforceable, even though its non-enforcement was a violation of Anarchistic principle. Tucker's conclusion was that "there is no obligation upon outsiders to enforce any contract, even though it be just, and that, when individuals associate themselves for defensive purposes, they will decide at the start what classes of just contracts it is advisable to enforce." (341–4) Such men will decline to enforce the just contract of a drowning man.

Turning from Tucker's ethics and philosophy of Anarchism, which were always and obviously a central part of *Liberty*, let us examine a few other themes which were taken up in his journal. During his early editorial years, Tucker expressed great interest in the activities of the social revolutionaries, both abroad and in the United States. The Russian and European Anarchist movement received both support and publicity from *Liberty*.[3] Tucker wrote at the time of the Anarchist trial in Lyons, France in early 1883, "Anarchy knows no frontiers; it is a gospel of human brotherhood that spans oceans." (33–2) During the first three years of *Liberty*, Tucker was a follower of many Anarchists of international fame, such as Elisee Reclus, Peter Kropotkin, Michael Bakunin, and others of lesser note. As time wore on, particularly after the Haymarket affair in 1886, Tucker came to restrict his support of these revolutionaries who practiced "propaganda by deed". His objection was not only to their violent methods but also to their support of authoritarianism.

Tucker illustrated this discrimination in his eulogy on Karl Marx which appeared in 1883, after Marx's death: "For Karl Marx, the 'egalitaire', we feel the profoundest respect; as for Karl Marx, the 'authoritaire', we must consider him an enemy. . . . Proudhon was years before Marx [in discussing the struggle of the classes and the privileges and monopolies of capital]. . . . The vital difference between Proudhon and Marx [was] to be found in their respective remedies which they proposed. Marx would nationalize the productive and distributive forces; Proudhon would individualize and associate them. Marx would make the laborers political masters; Proudhon would abolish political mastership entirely. . . . Marx believed in compulsory majority rule; Proudhon believed in the voluntary principle. In short, Marx was an 'authoritaire'; Proudhon was a champion of Liberty." (35–2)

Tucker displayed basically the same attitude towards the Haymarket martyrs. Nearly all the contemporary violence of the Anarchists was commented on in *Liberty*. This included the assassination of President Garfield by Guiteau, the attempted killing of Carnegie's associate, Frick, by Alexander Berkman, as well as the deeds of the revolutionaries abroad, especially in France and Russia. Tucker was not opposed to the use of force, but it was foolish in his opinion to "resort to it before necessity compels, . . . as a general thing, when force becomes necessary, the wiser way is to use as much as possible as promptly as possible; and, until it becomes necessary, there cannot be too little force." (85-1) He generally considered violence to be inexpedient and an inappropriate way of achieving his goals. He realized that the downfall of one government, unless accompanied by a corresponding change in the ideas among the populace, would only result in the substitution of another government in its place. His goal was the destruction of the governmental idea, which could only be accomplished through the use of persuasion and reason. In the opinion of Victor Yarros, another writer for *Liberty*, "The practical abolition of the State would be a very easy matter, if the State 'idea' were once abolished in the 'minds' of a considerable number of people." (113–8)

Regardless of the poor publicity generated by the revolutionaries, Tucker refused to compromise on his use of the word Anarchism or on his overall philosophy. He wrote, that "we believe that the most manly and effectual method of dealing with the State is to demand its immediate and unconditional surrender as a usurper, and to flatly and openly challenge its assumed right to forestall and crush out the voluntary associative government and regulation of individuals by themselves in all things." (16–2) Tucker believed that the Land League Movement in Ireland had been a glorious and significant social force, arising from the fact that it developed as the result of spontaneous, voluntary actions. (20–2) Furthermore, the "No Rent Manifesto" could have been a stepping stone towards to "No Tax Manifesto". Had the mass of Irishmen not swallowed the idea that society is impossible without a State, they might have been successful. Passive resistance (ignoring the laws without causing direct harm to anyone) and resistance to taxation were Tucker's two main methods of achieving Liberty in his own time. Although the distance (the eventual triumph of Liberty) might be great, the point for Tucker was that the journey had begun. (51–7)

Tucker could not be considered a utopian, even though he envisioned a stateless, nonmonopolistic society. He clearly understood that Anarchism would not solve all of mankind's troubles. "[T]here are some troubles from which mankind can never escape. . . . [The Anarchists] never have claimed that liberty will bring perfection; they simply say that its results are vastly preferable to those that follow authority. . . . As a choice of blessings, liberty is the greater; as a choice of evils, liberty is the smaller. Then liberty always, say the Anarchists. No use of force except against the invader; . . . . " (154–4)

Children are probably always a problem in any society, and that was no less true of *Liberty's* time and audience than for ours. The subject of children under Anarchy, and of parental-child responsibility aroused no serious controversy in *Liberty* until 1895. In 1890, Tucker had chosen to reprint a short, pithy article taken from *Freethought*, which apparently echoed his own sentiments at the time: that parents have a certain lien upon their children, at least as long as the children lean on them. (160–3) Later pronouncements emphasized that the child, like the adult, has no right to life at all, only the immunity from assault or invasion which all human beings are due. (235–2) In May 1895, Tucker reprinted the letter of an English Individualist, J. Greevz Fisher, which dealt with the question of parental responsibility for the support of the children. The conclusion of both Fisher and Tucker was that, "we must not interfere to prevent neglect, but only to repress positive invasion," and that "no person, parent or not, may be rightfully compelled to support any helpless being, of whatever age or circumstance, unless he has made that being helpless by some invasive act." (312–5&8)

Some months later, Tucker reconsidered his position and came to the conclusion that since the mother owns her children, parental invasion is not to be prohibited. Thus, as we have seen, a mother who throws her baby into the fire is not committing an aggression, since she is only handling her property in a way that she sees fit. Tucker maintained that the change which his opinion underwent consisted "simply in the substitution of certainty for doubt as to the non-invasive character of parental cruelty, — a substitution which involves the conclusion that parental cruelty is not to be prohibited, since third parties have not to consider the danger to organisms that are outside the limits of social protection." (320–4&5)

The debate about this issue continued for many numbers of *Liberty* and ended ultimately by Tucker converting all of his critics but one. J. William Lloyd broke with Tucker and *Liberty* over this issue and refused to associate any longer with those calling themselves Anarchists. Lloyd disputed Tucker's contention that children were property, while he (Lloyd) maintained that "Each human being owns himself" and that "no human being owns another". (325–7) According to Tucker, the mother who uses force upon her child invades no body at all. Tucker's editorial point of view was not clouded by any preconceived notions or any sentimentality. He was quite willing to follow the consequence of his reasoning so long as he could find no flaws in his chain of logic. (322–5) As harsh or heartless as his doctrine may seem, he cautioned that he had the best interest of babies and children at heart as he believed that the observance of his principles would secure to children on the whole greater happiness than they can ever enjoy in any society neglectful of these principles. (320–5)

Another lively topic of interest, which resulted in lengthy discussion, concerned the Anarchistic acceptance of copyright and patents. In the early years of *Liberty*, when Tucker reviewed Spooner's "A Letter to Scientists and Inventors, on the Science of Justice, and their Right of Perpetual Property in their Discoveries and Inventions," Tucker had expressed his disapproval of Spooner's thesis. He could conceive of nothing more unreasonable than granting to any one the right to monopolize a fact of nature. (47–1) Four years later, in 1888, Tucker commented on the position that Henry George had taken regarding patents and copyright. The two agreed that patents had no validity but parted company over the legitimacy of copyright; George defending them and Tucker denying them on the basis that discovery can give no right of ownership. (128–4) Later when international copyright agreements became prominent political discussion, *Liberty* picked up this theme again. Tucker's opinion was that copyright, in any form and under any limitation, was an injustice. According to Tucker, "there [was] no more justification for the claim of the discoverer of an idea to exclusive use of it than there would have been for a claim on the part of the man who first 'struck oil' to ownership of the entire oil region or petroleum product. . . . The central injustice of copyright and patent law is that it compels the race to pay an individual through a long term of years a monopoly price for knowledge that he has discovered today, although some other man or men might, and in many cases very probably would, have discovered it tomorrow." (173–4) "[F]rom the justice and social necessity of property in concrete things we have erroneously assumed the justice and social necessity of property in abstract things, — that is, — of property in ideas, — with the result of nullifying to a large and lamentable extent that fortunate element in the nature of things, in this case not hypothetical, but real, — namely, the immeasurably fruitful possibility of the use of abstract things by any number of individuals in any number of places at precisely the same time, without in the slightest degree impairing the use thereof by any single individual." (366–3) "The '*raison d'être*' of property is found in the very fact that there is no such possibility, — in the fact that it is impossible in the nature of things for concrete objects to be used in different places at the same time." (366–3)

Perhaps the most interesting part of this copyright–patent controversy was that one of *Liberty's* subscribers offered a quotation from Spooner's *Law of Intellectual Property*, which resulted in a great outburst from Tucker. The correspondent, A. H. Simpson, rightfully claimed that Spooner had linked together the argument for property in ideas to the justification for property in material objects and land. Tucker called Spooner's work on *Intellectual Property* "positively foolish because it is fundamentally foolish, — because, that is to say, its discussion of the acquisition of the right of property starts with a basic proposition that must be looked upon by all consistent Anarchists as obvious nonsense. I quote this basic proposition. 'The natural wealth of the world belongs to those who first take possession of it. . . . So much natural wealth, remaining unpossessed, as any one can take possession of first, becomes absolutely his property.' In interpretation of this, Mr. Spooner defines taking possession of a thing as the bestowing of valuable labor upon it, such, for instance, in the case of land, as cutting down the trees or building a fence around it. What follows from this? Evidently that a man may go to a piece of vacant land and fence it off; that he may then go to a second piece and fence that off; then to a third, and fence that off; then to a fourth, a fifth, a hundredth, a thousandth, fencing them all off; that, unable to fence off himself as many as he wishes, he may hire other men to do the fencing for him; and that then he may stand back and bar all other men from using these lands, or admit them as tenants at such rental as he may choose to extract. Now, if this be true, what becomes of the Anarchistic doctrine of occupancy and use as the basis and limit of land ownership?" (180–4)

Tucker was alert enough to understand the implications of Spooner's argument, and was quite independent enough to reject them. In fact, Tucker claimed that he had taken issue with Spooner on this very point, after he had read Spooner's pamphlet on the Irish and English landlord question. "In that pamphlet [*Revolution, a Reply to Lord Dunraven*] Mr. Spooner bases his opposition to Irish and English landlords on the 'sole' ground that they or their ancestors took their lands 'by the sword' from the original holders. This is plainly stated, — so plainly that I took issue with Mr. Spooner on this point when he had asked me to read the manuscript before its publication. I then asked him whether if Dunraven or his ancestors had found unoccupied the very lands that he now holds, and had fenced them off, he would have any objection to raise against Dunraven's title to and leasing of these lands. He declared emphatically that he would not. Whereupon I protested that his pamphlet, powerful as it was within its scope, did not go to the bottom of the land question." (182–6)

As the foregoing comments indicate, Tucker solved the 'land question' with the doctrine of occupancy and use as the sole basis and limit of land ownership. This doctrine was based upon the teachings of Josiah Warren who advocated that natural wealth is not property at all and that neither the State nor the individual can set a price upon it without violating the first principle of commercial justice, that cost is the equitable limit of price. (28–2) The Anarchists of this school were definitely against the payment of rent by tenants (the actual occupiers of a given piece of land) to a landlord. Their case was intertwined with their advocacy of removing the restrictions from the business of banking as well as depriving property in land of legal sanction and title. (39–1) The doctrine of occupancy and use evolved from the mid-19th Century theories of land reformer George Henry Evans, who enunciated the principle that each man shall possess the ground he can use and no more. (126–5)

The basis of all the controversy among the Anarchists (and with other social reformers of their time, especially Henry George and the Single-Taxers) was essentially about determining the justness of land holding. Auberon Herbert, the English voluntary taxationist and a contributor to *Liberty*, insisted on treating the land question as if it were simply a problem of buying and selling, and loaning and borrowing. Tucker cited another English critic of Herbert, who noted, "When we come to the question of the ethical basis of property, Mr. Herbert refers us to 'the open market'. But this is an evasion. The question is not whether we should be able to sell or acquire 'in the open market' anything which we rightfully possess, but how we come into rightful possession." (172–7)

Mr. Tucker's most relentless critic (although eventually a convert to the cause) of the occupancy and use doctrine was Stephen Byington. The Anarchistic doctrine of occupancy and use was always expounded in a general sort of way and never really dealt with serious details. The Anarchist doctrine consisted basically of the following provisions as outlined by Tucker: "Occupancy and use is the only title to land in which we will protect you; if you attempt to use land which another is occupying and using, we will protect him against you; if another attempts to use land to which you lay claim, but which you are not occupying and using, we will not interfere with him; but of such land as you occupy and use you are the sole master, and we will not ourselves take from you, or allow anyone else to take from you, whatever you may get out of such land." (252–3) Tucker further informed Byington that "A man cannot be allowed, merely by putting labor, to the limit of his capacity and beyond the limit of his personal use, into material of which there is a limited supply and the use of which is essential to the existence of other men, to withhold that material from other men's use; and any contract based upon or involving such withholding is lacking in sanctity or legitimacy as a contract to deliver stolen goods." (331–4) Byington pushed Tucker to answer what would happen to people desirous of renting a room or a building for only a short time, or what would happen to the ownership of buildings when occupiers and users of the land upon which they were built changed, or how vacationers would secure their premises while away? Tucker considered these questions matters of administrative detail, unworthy of discussion unless the attempt be to show that the theory of occupancy and use was unworkable. (331–4)

According to Tucker, the last user and occupier of a given piece of land would have to remove all of his personal property (unless specifically sold to the next occupier-user), otherwise he would lose control of it. "The man who persists in storing his property on another's premises is an invader, and it 'is' his 'crime' that alienates control of his property. He is 'fined one house,' not 'for building a house and then letting another man live in it,' but for invading the premises of another." (331–4)

For Tucker and his band of 19th Century Anarchists there were four fundamental monopolies, i.e. four modes by which governments granted legal privileges to the few at the great expense to the many. These four monopolies were the land monopoly, the tariff monopoly, the banking monopoly, and the patent and copyright monopoly. All but the tariff question received prominent coverage in *Liberty*. The tariff question was very clear cut and there was little controversy among Anarchists on this point. They all believed in free trade without restriction. The question of the banking monopoly was not so simple, as the Anarchists differed among themselves, as well as with their opponents, on economic theory. Discussions were carried on about economic problems relating to money and banking, namely, the nature of capital and interest, the basis of the standard of value for money, and the significance of free banking theory to Anarchist doctrine.

In order to understand the Anarchist objection to government money, it is first necessary to distinguish between their political objections and their economic objections. Politically, they were against government compulsion and therefore were against governmental prohibition of any voluntary currency or arrangements that the people might make for and among themselves. The Anarchists rejected the Greenback movement primarily for this reason: "It is green-back'ism' that Liberty objects to, for its first and fundamental principle . . . is that it shall be a criminal offense for any individual or association to issue currency for circulation, and that there shall be no money except that issued by the government. . . . Greenbackism is money monopoly in its most extreme form. Free money, on the other hand, means free trade carried into finance, unlimited competition in the business of 'making money', and as a result, the utter rout of inferior and usurious currencies by the virtues of the cheapest and the best." (37–1) Again, politically speaking, the Anarchists objected to laws relating to interest or usury legislation. They continuously opposed "the claim that one has a moral right to take usury, but advocate no method of abolishing it save the removal of all restrictions preventing the free action of natural principles. To attempt to suppress usury by statute is outrageous because tyrannical, and foolish because ineffectual." (6–1)

Most of *Liberty's* adherents believed that the governmental limitations placed on the amount of currency issued and on the choice of media of exchange (generally being restricted to gold and silver) were the cause of financial depressions as well as the cause that interest was charged on loans of money. In a criticism of William Graham Sumner, a *Liberty* correspondent put forth the proposition that "Interest has no existence in Nature, but is solely due to monopoly, whose parent the State alone is." (78–4) There were many other discussions in *Liberty* relating to the value of money and the nature of capital and interest, which generally reduced themselves to the claim that any increase in the supply of money (which would be the result of a regime of free banking) would confer a social benefit and would lead to the disappearance of interest.[4]

Although their economic arguments have not stood the test of time, the political objections to government money were and still are quite valid. Free banking and free money meant the utter absence of restriction upon the issue of all money not fraudulent (80–4) and this was considered to be a cardinal doctrine of Anarchism. (314–5) Tucker was a supporter of the concept of mutual banking, as outlined both by P. J. Proudhon, and his own friend and mentor, Colonel William B. Greene (author of *Mutual Banking*), by which the monetization of all marketable wealth was made possible. Tucker's position was that free banking would lead to mutual banking, and that this could only come about through absolute free competition in banking. (314–5 and 69–4) It was Tucker's belief that mutual banking would be the single greatest step that could possibly be taken in the direction of emancipating labor from poverty. No single liberty was as necessary as the liberty of banking. (314-5)

Liberty's concern with social unrest and labor was evinced by its discussion of boycotts, unions and the strike. As early as 1886,Tucker elaborated that "any individual may place any condition he chooses, provided the condition be not in itself invasive, upon the doing or not doing of anything which he has a right to do or not do; but no individual can rightfully be a party to any bargain which makes a necessarily invasive condition incumbent upon any of the contracting parties. From which it follows that an individual may rightfully 'extort' money from another by 'threatening' him with certain consequences, provided those consequences are of such a nature that he can cause them without infringing upon anybody's rights." (85–1) On December 3, 1887, *Liberty* declared; "A man has a right to threaten what he has a right to execute. The boundary-line of justifiable boycott is fixed by the nature of the threat used." (113–4) Tucker boasted that "prior to these declarations, so far as [he knew], the true foundation and limitation of the right to boycott had never been laid down." (369–2) In this connection it is also interesting to note that *Liberty* not only questioned the law against blackmail, but also the laws against libel and slander. Victor Yarros, a close Tucker associate during many of the *Liberty* years, was "inclined to take the position that all speech ought to be free, and that there can be no invasive quality in mere speech." (312–2) As a person does not own his own reputation, it merely being a measure of the view held of him by others, then, regardless of the truth or falsity of an alleged libel or slander, no speech, in and of itself, can be invasive. Therefore all libel and slander laws ought to be abolished. (312–2)

Liberty truly touched on nearly all of the pressing social questions of its era. Space was devoted to articles about free love, marriage and divorce, and sexual relations among men and women. Even the woman suffrage movement came under attack: "Women are human beings, and consequently have all the natural rights that any human beings can have. They have just as good a right to 'make laws' as men have, and no better; AND THAT IS JUST NO RIGHT AT ALL." (22–4) Mormon polygamy, pornography and postal censorship were also discussed. The Chinese immigration issue was mentioned at times. Freethought was always advocated and the tyranny and cultism of religion nearly always denounced. Tucker proudly reprinted in *Liberty* and his private press the English Anarchist classics, such as Spooner's *Natural Law, Letter to Thomas Bayard,* and *A Letter to Grover Cleveland,* Auberon Herbert's *A Politician in Sight of Haven*, Edmund Burke's *Vindication of Natural Society*, Stephen Pearl Andrews' *Science of Society* and his discussion of *Love, Marriage, and Divorce*, as well as quoting excerpts from such writers as Nietzsche, Proudhon, and Stirner. Tucker also made *Liberty* serve as a forum for publishing and publicizing what he called "advanced literature", by which he meant "the literature which, in religion and morals, leads away from superstition, which, in politics, leads away from government, and which, in art, leads away from tradition". (391–4)

Tucker was ambitious and promoted many literary ventures alongside his Anarchist journalism. He had agents in different parts of the world selling *Liberty* and his other literary wares. He had occasional foreign correspondents, such as Vilfredo Pareto, George Bernard Shaw, and John Henry Mackay, submit their evaluations of Anarchist developments to *Liberty's* readers. He maintained especially close contact with the English Individualist-Anarchist movement and carried on extensive correspondence with the main English figures, such as Auberon Herbert, Wordsworth Donisthorpe, John Badcock, J. H. Levy, and J. Greevz Fisher. Other American associates and correspondents of *Liberty*, such as Henry Appleton, James L. Walker, Joseph Labadie, Victor Yarros, Stephen Byington, Alan and Florence Kelly, John Kelly, Gertrude Kelly, George and Emma Schumm, Francis Tandy, Henry Cohen, and J. Wm. Lloyd formed the often changing nuclei of Tucker's circle.

Among Tucker's other notable projects were the publication of *Instead of a Book* in 1893 and the publication of *Liberty* in German for a short time. He promoted the formation of an Anarchist Letter Writing Corps under the auspices of Byington and sold and printed sheets filled with Anarchist slogans. He published such books as Zola's *Modern Marriage,* Eltzbacher's *Anarchism*, and not coincidentally Stirner's *The Ego and His Own*. The appearance of this later book was, in Tucker's opinion, the most notable contribution on behalf of Anarchism that he had made in his 30 year career. (397–1) Stirner was one of the three great Anarchists in 19th century literature, according to Tucker; the other two being Proudhon and Ibsen. He constantly strived to call attention to all three both in *Liberty* and wider literary circles. (393–11) His New York bookstore eventually came to house a large collection of literature that made for "Egoism in Philosophy, Anarchism in Politics, and Iconoclasm in Art." (399–2)

Yet for all his boldness and greatness, Tucker and *Liberty* still leave something to be desired. Did Tucker and his editorial columns in *Liberty* present a true and consistent version of Anarchy? Of course it is easy to criticize doctrine nearly a century old, but there is much in Tucker that is still valid, as well as much that is still as wrong as the day it was published. In spite of Tucker's eventual deviations, his life-long emphasis on individual sovereignty and the non-invasive individual is well-founded.

As Libertarians and Anarchists today we might accept the philosophy of egoism that Tucker came to espouse (namely, that might makes right in the absence of mutual agreement). Tucker, himself, recognized the law of equal liberty as being the essence of Anarchism; but his own defense of this social convention seems circular, for it amounts to the statement that we are Anarchists because we are Anarchists. (123–5) Or else we might adopt an alternative defense of Anarchism, such as one which has been outlined by Murray Rothbard in his writings and which hinges on the twin axioms of self-ownership (the absolute right of each person to own his or her own mind and body) and homesteading (the absolute right of each person to own previously unused natural resources which they have in some way occupied or transformed). Tucker's main challenge to the moralists was to demand to know why one is bound not to injure or invade another. What obligation exists, in the absence of any mutual agreement, to refrain from initiating violence? I think the answer is primarily logical and epistemological in nature. Invasion violates the axioms of self-ownership and homesteading. The invader clearly acts on the axiom that he controls his own life, yet in coercing others he plainly denies it. The resort to violence is a confession of imbecility. Invasion is anti-life and the invader, under the moralist's theory, loses his own rights (to life and property) to the extent that he has committed an aggression. Thus to answer Tucker, the obligation to refrain from initiating violence is found in the real world around us. Anyone who acts so as to deny the validity of these axioms must sooner or later fail and suffer disaster. As Tucker himself wrote, early in his career, "It is better to suffer great inconveniences than the evils engendered by the violation of individual rights." (37–4)

Of course, Tucker came to disagree with this position. He called that person who would enforce the drowning man's contract a person "with justice on the brain, a man who would do justice though the heavens fall." (344–4) We can only speculate as to whether his rule of expediency would succeed or not, but as applied to individual lives we can make a comparison, which however may be an unfair one. Tucker retired to Europe soon after the fire of 1908 and spent the next 30 years of his life mostly apart from the Anarchist movement. In fact we might say that while *Liberty* existed Anarchism blazed in glory, but when Tucker retired the flames soon returned to embers. By contrast, Lysander Spooner, definitely a moralist and natural right defender of Anarchism and therefore an opponent of Tucker's, became steadily more radical and libertarian as he grew older. Each person must be left to judge the effect of historical circumstances on these two individuals, but their differing philosophies of Anarchism must also be taken into consideration when viewing the outcome of their lives.

To evaluate Tucker in terms of current day libertarian thinking, we would have to say this: We concur with Tucker that no living person owes any other living person any thing in the absence of voluntary agreement; but the obligation to refrain from initiating violence is not a positive duty. It is a negative one. It is something which we should not do, not something we should do. We can stand by and see a man murdered or a woman raped (170–4); but we cannot claim that there are times when it is necessary for the Anarchist to become Archist, and to abandon the guiding rule of his life and to coerce the noninvasive individual. (307–3)

NOTES

1. Benjamin R. Tucker, *Instead of a Book* (New York: Haskell House, 1969), p.ix.
2. William O. Reichert, *Partisans of Freedom* (Bowling Green, Oh.: Bowling Green University Popular Press, 1976), p.146.
3. James J. Martin, *Men Against the State* (Colorado Springs, Col.: Ralph Myles, 1970), p.220.
4. Murray N. Rothbard, "The Spooner-Tucker Doctrine: An Economist's View," in *Egalitarianism as a Revolt Against Nature, and Other Essays* (Washington, D.C.: Libertarian Review Press, 1974), pp.129–33.

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DEMOCRACY AND LAISSEZ FAIRE: THE NEW YORK STATE CONSTITUTION OF 1846

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New York's current financial woes have a precedent, and perhaps a solution, in the pages of the distant past. Well back in its history, in the late 1830s, New York State was spending and lending money lavishly. By the early 1840s, the rapidly mounting debt had occasioned a severe financial crisis. To avert the imminent possibility of bankruptcy and default, the state legislature in 1842 passed what was known as "the stop and tax law", a levy of one mill on each dollar of taxable property. The new revenue helped the state meet its most pressing obligations. But, even more importantly in terms of the future, New York decided to take steps to prevent another such fiscal disaster. Ambitious projects for internal improvements — mostly canal construction and loans for railroad building — were cut back or abandoned unless there was a reasonable expectation that they could be funded from tolls or taxation. And the legislature also issued a call for a constitutional convention. The new Constitution adopted in 1846 placed strict limits on the state's ability to borrow money. Thus the people of New York, facing problems similar to the state's later predicament, found the answer in an old-fashioned program of reduced spending and new taxes. What is surprising, however, is that such policies had the popular support of the most democratic and liberal elements in the state.

To understand the unusual sequence of events which culminated in the New York State Constitution of 1846, one must go back in history to the Jacksonian era and the political struggles between the Democrats and the Whigs. In New York the Jacksonian Democrats included a wide-ranging constituency of radical workingmen, Irish immigrants, farmers, intellectuals, and representatives of the new rising business or small capitalist class. The preponderance of the older landed aristocracy and wealthier classes, together with the most English or Anglo-Saxon elements in the population, gravitated toward the Whig Party. The Whigs, united nationally by their opposition to Andrew Jackson's Presidency, were the ideological heirs in New York State of DeWitt Clinton, five times governor and father of the Erie Canal. Like Clinton, the Whigs supported the generous use of state funds for internal improvements as well as for various cultural, humanitarian, and educational endeavors. The Whigs' belief in positive government and social reform reflected their paternalistic conception of politics and economics.[1]

Quite different were the ideas of the Democrats who, in contrast to their Whig opponents, stood for a strict construction of the United States Constitution, limiting the governing power to its least essentials. Both nationally and in New York State, the Jacksonian Democrats adhered to the Jeffersonian agrarian maxim that the least government it the best government. In New York the leader of the Democratic Party was Martin Van Buren, head of the famed Albany Regency which controlled the state governmental machinery through most of the 1830s and '40s. The most radical Democrats, known as Locofocos, were somewhat to the left of Van Buren and the Regency. They included an interesting collection of intellectuals and politicians who espoused a negative, anti-statist democracy. As against the paternalistic philosophy of the Whigs, the Locofoco Democrats stressed complete laissez faire in government–business relations. For example, the introduction in 1837 to the first issue of the *United States Magazine and Democratic Review*, organ of the more radical Democrats, defined the party's belief in democratic republicanism and majority rule. But the editors added:

> The best government is that which governs least. No human depositories can, with safety, be trusted with the power of legislation upon the general interests of society so as to operate directly or indirectly on the industry and property of the community. Such power must be perpetually liable to the most pernicious abuse, from the natural imperfection, both in wisdom of judgment and purity of purpose, of all human legislation, exposed constantly to the pressure of partial interests; interests which, at the same time that they are essentially selfish and tyrannical, are ever vigilant, persevering, and subtle in all the arts of deception and corruption.[2]

Most forthright of the radical Democrats was William Leggett, a Locofoco colleague in the 1830s of such New York Democratic writers as James Fenimore Cooper, William Cullen Bryant, Theodore Sedgwick, and Parke Godwin. Leggett coupled adherence to the Jeffersonian natural rights philosophy with demands for the equal right to property, not its abolition. Governments had no warrant to interfere with individual pursuits by offering financial advantages to any particular class or industry. Specially chartered banks, including the Bank of the United States, were a favorite target of Leggett's scorn. "Let the banks perish," he wrote. "Now is the time for the complete emancipation of trade from legislative thralldom."[3]

As a part of their general laissez-faire philosophy and opposition to Whig paternalism, the Democrats were also dubious of those social and humanitarian reform movements which infringed upon individual liberty and private property. Thus they were hostile to the abolitionists even though this meant ignoring the question of freedom for the black slave. Imprisonment for debt attracted little attention from either Democrats or workingmen until public interest in the matter became too strong to be ignored. The workingmen's parties were, however, in a peculiar position because wage earners wanted preferential creditor status through a mechanics' lien law. Even public schools had difficulty winning Democratic support because their expense involved heavier taxation. Charity schools and use of the Lancastrian system of pupil tutors instead won Democratic favor. A system of statewide public education would also interfere with parents' control over their children and might undermine religious freedom.[4]

In Washington, Andrew Jackson, the Democrats' hero, enjoyed an uneasy and controversial Presidency. His years in office from 1829 to 1837 formed an era in which easy credit, cheap land, and internal improvements all contributed to an inflationary prosperity. At the same time, Jackson's own inclinations tended toward the limitations on federal spending favored by his friend and political adviser Van Buren. As governor of New York in 1828, Van Buren had secured passage of the Safety Fund System to safeguard the banks and assure the state of a source of credit and wealth to go along with the Erie Canal. The state-chartered New York banks cast doubt on the need for the federal United States Bank, while the state-constructed Erie Canal rebuked the western states' clamor for federal aid for their own internal improvements. Moreover, the Jeffersonian principle of states' rights and opposition to federal centralized power, espoused by Van Buren and the New York Locofoco Democrats, was also able to gain national success by Jackson's Bank of the United States and Maysville Road vetoes.[5]

In 1836 the United States for the only time in its history was without a national debt; a year later the federal government was briefly in a position to distribute its surplus revenues to the states. But the Jacksonians, despite the President's efforts to moderate or level out the economic boom, were unable to ward off its financial aftermath in the Panic of 1837. Van Buren, Jackson's successor in the White House, fell a political victim to the Panic, and in New York in 1838 the Democrats were overturned by the Whigs who elected William H. Seward as governor.

Governor Seward, it should be noted, was an admirer of DeWitt Clinton who had earlier helped inaugurate the transportation revolution in New York. Upon completion of the Erie Canal in 1825, he had urged further state expenditures for new canals, turnpikes, and eventually railroads, as well as a generous policy of chartering banks and insurance companies. Now, in 1840, the Whigs under Governor Seward called for the appropriation of four million dollars for ten years to build additional canals and railroads. Henceforth dubbed "the forty million dollar party", the Whigs to their misfortune had ignored the adverse effects of the Panic of 1837 on the state's declining credit. Alarmed critics warned that the cost of public works would soon increase the state debt to as much as 75 million dollars with annual interest charges of 4.5 million. Already by 1842, when the Democrats regained control of the legislature and passed the stop and tax law, the state debt which five years earlier amounted to 7 million dollars had grown to 27 million dollars, and state bonds were unmarketable even at a discount of 20%. Instead of continuing to spend money for internal improvements, the Democrats, at a cost of 40 million dollars in principal and interest, proposed to extinguish the state debt in twenty years. As a result of such conservative fiscal policies, within two months of the stop and tax law the state's 7% bonds sold at par, while 5% bonds reached that level in 15 months.[6]

By the 1840s national opinion in regard to state aid for internal improvements was undergoing a change. The former public enthusiasm for heavy state expenditures had run its course. Some of the new states in the West were in default on their bonds. State initiative and responsibility had been necessary earlier for such ambitious undertakings as the Erie Canal, but after the return of prosperity in the 1840s private capital, just beginning to be accumulated by American manufacturing and industry, was available for investment. Railroads were now becoming the most important means of transportation, but railroads with their special rolling stock could not be considered public in the same sense as a canal, a river, or a turnpike. Although railroad builders frequently turned to the states to help raise the large amounts of capital they required, most of their funds in New York came from individual savings and from credit extended by American banks. Accordingly, while there was little foreign investment in, or municipal aid for, New York State railroads until after the Civil War, the New York Central by 1853 had 2331 stockholders.[7]

The decline of public aid and intervention in economic enterprise was most marked in some of the eastern states where the old colonial concept of the commonwealth fell victim to a surge of anti-government feeling. Although various economic and social groups continued to desire political intervention in behalf of their own self-interests, the fear of more state taxes and increasing state indebtedness blocked heavy public expenditures throughout the 1840s. Instead of continuing to take a positive, direct role in the economy, the state granted its economic powers to private banks and stock companies. For example, the Free Banking Act passed by New York in 1838 abolished the old system requiring special legislation for each bank charter and in effect introduced competition into banking. Under general incorporation laws, state charters were now granted to all manner of enterprises which, in pursuing their own private ends, were largely freed of the public responsibility associated with governmental agencies and the earlier semiprivate corporation. Democratic reluctance to continue the specially chartered corporation for a favored few had dispersed the privilege of incorporation among many stockholders and had separated it from responsibility to the state.[8]

Legislation for free banking and general incorporation laws accordingly had the support not only of the business community but also of those opposed to all governmental aid and protection for selected enterprises. Locofoco Democrats and workingmen united in the crusade against economic monopoly and special privilege, although labor sometimes identified its own true interest with that of the whole community. In any case, the state was usually too weak in an administrative sense to enforce either its own definition of the public interest, or to give its full support to various private or special interest groups. Thus laissez faire and the cry of equal rights for all and special privileges for none was a more appealing political philosophy in the 1830s and '40s than any Whiggish notions of a paternalistic and expensive government.[9]

It was in response to these views that the Democrats pushed ahead with their plans for drafting a new state constitution. William C. Bouck, the conservative or Hunker Democratic successor to Seward as governor in 1843 and 1844, favored a moderate course on internal improvements despite the Democrats' stop and tax law of 1842. But when Silas Wright, a close friend of Van Buren and the staunchest disciple of Jeffersonian agrarian democracy in New York State, was put forward for the nomination of governor, Bouck and the conservative Hunker faction had to retreat. Wright in his first annual governor's message in January 1845 praised the stop and tax law for restoring the state's credit. Three fifths of the state's debt charged to the General Fund, he pointed out, had been incurred by unwise loans to railroads that had proved unable to pay their obligations. Wright also announced that he favored calling a constitutional convention.[10]

In a series of articles analyzing the progress of constitutional reform, which appeared at this time in the *Democratic Review*, John Bigelow, one of the party's intellectuals, listed some of the changes which he believed New York and other states should adopt. These included a provision that "The state should have no power to contract debts, or loan its credit, except in case of war, invasion, or insurrection." In the matter of a general incorporation law, Bigelow urged: "The members of such Corporations, (not excepting those established for education or charity) should be individually liable for the debts, liabilities, and acts of such Corporation, and for the consequences resulting therefrom." Furthermore: "All laws or regulations interfering with the liberty of trade or industry (such as license and inspection laws) should be abolished, and their enactment for the future prohibited." Bigelow added as miscellaneous proposals the abolishment of the death penalty and permission for women to control their own property after marriage.[11]

The New York Constitutional Convention, which met in the summer of 1846, completed its labors in time for the voters to approve its handiwork that same year. Although the anti-statist views of such Jeffersonian Democrats as Bigelow and Wright were subject to some modification and compromise, the New York Constitution of 1846 embodied the laissez-faire position better than any document in the state's history. Only after all debts were paid through a sinking fund could the state appropriate any surplus for canal improvements and extensions not already mandated by law. Corporations including banks were to be chartered under general laws rather than by special act. Stockholders were made liable to the amount of their shares for all debts and liabilities contracted by their banks. As an epitaph to the anti-rent wars which had reached a climax in 1846, the Constitution abolished all feudal tenures and perpetual leases. Male suffrage was made universal except for Negroes who had to possess an estate of the value of $250, unless the people in a referendum on the question voted otherwise[12]. This curious and illiberal provision, which was approved by the voters, retained the clause in the 1821 Constitution in which the property qualification was removed for whites but not for blacks. The Negro vote, traditionally cast in favor of the old Federalist slaveowning class, had continued to be exercised in behalf of Clinton and then the Whigs. Though never a large vote, it was opposed by the Democrats chiefly because of labor's influence.[13]

In a retrospective article on constitutional government in the *Democratic Review*, Bigelow reiterated his libertarian views with the warning that "A great source of inequality in the conditions of men in respect of wealth and comfort arises from the action of law. Too much government has a direct tendency to aid one man or one set of men in the 'pursuit of happiness', and in the 'acquiring, possessing, and protecting property', if not at the expense of the rest, at least without rendering them the like assistance."[14] Unfortunately the Jacksonians, despite their defeat of the Bank of the United States, had not been able to slow the growth of wealth and inequality in New York and some of the larger cities in the East in the era before the Civil War. But their more radical laissez-faire views, as embodied in the stop and tax law and 1846 Constitution, disenchanted the wealthier business class which moved more than ever into the Whig Party. Work on the Erie Canal, which the Democrats had stopped in 1842, was resumed in 1847. Moreover, until 1850 railroads had to pay canal tolls to protect the state's vested interested in "Clinton's ditch". After that, canal tolls were reduced to provide competition to the growing volume of traffic carried by the railroads.[15]

Historians of a later generation have grown accustomed to interpreting democracy and liberalism in terms of the modern welfare state. The negative democracy of the New York Democrats of the 1840s accordingly wins little contemporary approval. Democracy in the eyes of its later adherents has become synonymous with power, preferably such power as may be exercised by a strong executive in the name of people. Some historians even question whether the negative state can be democratic and reason that laissez faire must automatically favor an aristocracy of wealth.[16] But what passes for the welfare state today rewards most of all its largest investors in the military-industrial complex. Beneficiaries of the welfare-warfare state's largesse would be horrified by a return to the spirit of the 1840s or to any consistent across-the-board application of laissez faire. Meanwhile New York's Constitution of 1846 remains an interesting, though passing, example of the enactment of Jeffersonian anti-statism into the fundamental law.

NOTES

1. Useful general interpretations include: Dixon Ryan Fox, *The Decline of Aristocracy in the Politics of New York, 1801–1840*, ed. Robert V. Remini (1st pub. 1919; New York: Harper Torchbooks, 1965); Edward Pessen, *Jacksonian America: Society, Personality, and Politics* (Homewood, Ill.: Dorsey Press, 1968); Glyndon G. Van Deusen, "Aspects of Whig Thought in the Jacksonian Period," *American Historical Review*, Vol. 63 (January, 1958), pp. 305–322.
2. "Introduction," *United States Magazine and Democratic Review*, Vol. I (October, 1837), p. 6.
3. On Leggett, see his *A Collection of the Political Writings*, ed. Theodore Sedgwick, Jr. (2 vols.; New York: Taylor & Dodd, 1840); and the studies by Richard Hofstadter, "William Leggett: Spokesman of Jacksonian Democracy," *Political Science Quarterly*, Vol. 58 (December, 1943), pp. 581–594; Marvin Meyers, *The Jacksonian Persuasion: Politics and Belief* (Stanford, Calif.: Stanford University Press, 1957), chap. 9; Edward K. Spann, *Ideals & Politics: New York Intellectuals and Liberal Democracy, 1820–1880* (Albany: State University of New York Press, 1972).
4. Herbert Ershkowitz and William G. Shade, "Consensus or Conflict? Political Behavior in the State Legislatures during the Jacksonian Era," *Journal of American History*, Vol. 58 (December, 1971), pp. 591–621, reinforces the view of the age of Jackson as essentially one of laissez faire. See also Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607–1900* (Madison: State Historical Society of Wisconsin, 1974).
5. New York and Van Buren's influence on Washington and Jackson is discussed in Bray Hammond, *Banks and Politics in America from the Revolution to the Civil War* (Princeton, N. J.: Princeton University Press, 1957), p. 352.
6. Charles Z. Lincoln, *The Constitutional History of New York* (5 vols.; Rochester, N.Y.: Lawyers Co-Operative, 1906), Vol. 2, pp. 76, 81–84, 91ff., 165; Stewart Mitchell, *Horatio Seymour of New York* (Cambridge, Mass.; Harvard University Press, 1938), p. 53.
7. Fox, *Decline of Aristocracy*, pp. 405–408; Carter Goodrich, "The Revulsion Against Internal Improvements," *Journal of Economic History*, Vol. 10 (November, 1950), pp. 145–169; Harry H. Pierce, *Railroads of New York: A Study of Government Aid, 1826–1875* (Cambridge, Mass.; Harvard University Press, 1953), pp. 8, 16.
8. Oscar and Mary Flug Handlin, *Commonwealth: A Study of the Role of Government in the American Economy* (1st pub. 1947; rev. ed. Cambridge, Mass.: Belknap-Harvard University Press, 1969), pp. 106ff., 160–161, 191.
9. Compare Walter Hugins, *Jacksonian Democracy and the Working Class: A Study of the New York Workingmen's Movement, 1829–1837* (Stanford, Calif: Stanford University Press, 1960) and Douglas T. Miller, *Jacksonian Aristocracy: Class and Democracy in New York* (New York: Oxford University Press, 1967).
10. John A. Garraty, *Silas Wright* (New York: Columbia University Press, 1949), pp. 292, 335.
11. "The Progress of Constitutional Reform in the United States," *United States Magazine and Democratic Review*, Vol. 18 (June, 1846), pp. 408–412, 420.
12. New York State Constitution of 1846, Article I, Section 12; II, 1; VII, 1, 2, 3,; VIII, 1, 4, 7.
13. Fox, *Decline of Aristocracy*, p. 269.
14. "Constitutional Governments," *United States Magazine and Democratic Review*, Vol. 20 (March, 1847), p. 202.
15. Edward Pessen, *Riches, Class, and Power before the Civil War* (Lexington, Mass.: D. C. Heath, 1973); Frank Otto Gatell, "Money and Party in Jacksonian America: A Quantitative Look at New York City's Men of Quality," *Political Science Quarterly*, Vol. 82 (January, 1967), pp. 235–252; Don. C. Sowers, *The Financial History of New York State from 1789 to 1912* (New York: Columbia University Studies, 1914), pp. 75, 85, 87.
16. See, for example, Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little-Brown, 1945), pp. 512–514, 519–521; Lee Benson, *The Concept of Jacksonian Democracy: New York as a Test Case* (Princeton, M. J.: Princeton University Press, 1961), pp. 220ff.

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FROM HOLLIS AND NELL TO HOLLIS AND MISES*

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Establishment economics is in a much deserved state of disarray. While the natural sciences have made remarkable progress in the 20th century, the mainstream social sciences remain impotent to solve the real and worsening political/economic problems of our time. Emphasis on fundamental methodological issues has been conspicuously missing from the economic journals for a generation and the cost of this neglect has become clear. Economists in the 1970s continue to ground their analysis on the philosophy of science of logical positivism, a doctrine from which most modern philosophers have long ago retreated in embarrassment.

To the devastating critiques of positivism by such philosophers as Brand Blanshard, W. V. Quine, S. Toulmin, A. R. Lousch and Karl Popper, can now be added that of Professors Hollis and Nell.[1] The reason for the impotence of modern economics, these authors show, lies in its method. The rejuvenation of economics necessitates developing a different methodology, one which pays attention to the aspects of social sciences which distinguish them from natural sciences. We need a method which recognizes that people are not atoms and that society is not a laboratory.

Hollis and Nell demonstrate that economics must be a deductive science, analogous to geometry, and founded upon necessary truths. In making this claim Hollis and Nell align themselves with a point of view that has been completely neglected by the economic Establishment: the praxeological approach of Ludwig von Mises and the Austrian school. Praxeology, the science of human action, is that particular deductive approach which takes human action or choice as its axiomatic foundation.

The first part of our review, then, will cover the argument of the book with which we agree, that economics must be deductive, the second part will offer a critique of the particular starting point chosen by Nell as the foundation of economics, and the third part will offer a different foundation of deductive economics.

I. HOLLIS AND NELL'S CRITIQUE OF NEOCLASSICAL ECONOMICS

The book *Rational Economic Man* is an intriguing combination of philosophical argument and economic analysis, of sound criticism of mainstream economics interwoven with weak arguments against capitalism. One author, Martin Hollis, is a rationalist philosopher who admits to ignorance of economics, while the other, Edward Nell, is an orthodox Marxian economist who does *not* admit to ignorance of economics. When the two work together on the first seven chapters of the book the result is an excellent philosophical critique of positivist economics. When the Marxian Nell sets out on his own in the last two chapters to offer a starting point for economics, we have, as we shall see, less reason for praise.

Much of mainstream economics today is founded on positivism. Hollis and Nell describe positivism as a philosophy of science springing from logical positivism, which is itself an epistemology in the empiricist tradition. They describe these three categories with the following ten tenets.[2]

empiricism: (i) claims to knowledge of the world can be justified only by experience;

(ii) whatever is known by experience could have been otherwise;

*A review-essay of Martin Hollis and Edward J. Nell, *Rational Economic Man: A Philosophical Critique of Neo-Classical Economics* (London: Cambridge University Press, 1975).

logical positivism:	(iii)	all cognitively meaningful statements are either analytic or synthetic but not both;
	(iv)	synthetic statements, being refutable, cannot be known as true *a priori*;
	(v)	analytic statements have no factual content;
	(vi)	analytic truths are true by convention;
the philosophy of science of Neoclassical Economics:	(vii)	a known causal law is a well enough confirmed empirical hypothesis;
	(viii)	the test of a theory is the the success of its predictions;
	(ix)	judgments of value have no place in science;
	(x)	sciences are distinguished by their subject-matter and not by their methodology.

The authors devote the first five chapters to a devastating broadside against almost all of these tenets. Positivism isn't being rejected as an alternative philosophy of science which is less fruitful than rationalism. Rather, positivism is rejected for its own internal incoherence. Hollis and Nell first show that while many economists claim to believe in positivism, their practice is far different from what one would expect. Positivists are committed to holding that *the* test of their models is simply whether their predictions fit the facts. Now one cannot reject models that are inapplicable to the situation characterized by the facts, so we must first establish whether the model is *supposed* to apply to the facts. This can only be ascertained by checking whether the *ceteris paribus* conditions hold.

However, Hollis and Nell point out, the only way that economists can verify their *ceteris paribus* conditions is "to measure the degree to which the facts fail to fit the model".[3] The *ceteris paribus* condition amounts to a synthetic statement about the world, according to the positivists' own logic, i.e. the empirical condition that no exogenous changes occur to disrupt the theoretical conclusions.

Virtually any American doctoral dissertation in economics is an example of this problem. "*Ceteris paribus*" is a positivist escape hatch for any test.

Another escape hatch of positivist economics is the fact that the observed values of economic variables are not always, or even usually, identical to the theoretical variables in the "hypothesis". Thus the data can be rejected or more likely adjusted on the grounds that, for example, when the theory said "unemployment rate" it meant "of those intent upon working", whereas the raw data included many slackers. Many data manipulations can also be effectively achieved at the econometric level by means of corrections of alleged heteroscedasticity or autocorrelation, or even more fundamentally, by the very curve fitting procedure employed. Given virtually *any* set of data, an accomplished econometrician could eventually fit any theoretical model to it. Of course such extreme data-bending would be scorned by the profession, yet there is only a degree of difference between this and the economist's ordinary procedure. The principle is the same. The point is that this is no more the *testing* of hypotheses than it is a "testing" of democratic safeguards to have the CIA investigate itself. The conclusions can be manufactured at will, and the method is incapable of distinguishing scientific discovery from idle speculation.

In other words, the positivist, when his test fails, cannot tell whether to blame the assumptions, the theory, or the facts. In practice the theory is rarely rejected, simply because there are always enough ways to manipulate the data and the assumptions to "verify" any theory proposed.

The answer is not to stop using *ceteris paribus* conditions, but to recognize that "other-things-being-equal" is a useful abstraction only in *deductive* economics, in the analytic process called mental experiments. One can meaningfully abstract from other changes in order to imagine "what would happen if", but one *cannot* meaningfully formulate falsifiable predictions applicable to the economic world which *assume* that no external changes will happen. That assumption, in the real kaleidic world of change, will simply never be true.

Hollis and Nell find a number of confusions stemming from the analytic/synthetic distinction. Indeed, Economics has itself come to characterize that distinction in its own content. Half of modern economics, dealing with various unrealizable "models" from perfect competition to Arrow–Debreu equilibrium, is "analytic", with no possible reference to the real world; while the other half, econometrics, dealing with the compilation and manipulation of seemingly raw facts, is "synthetic", with no possible reference to genuine theory. We have, as the fruit of positivism, a body of theory with no applicability to the real economic problems of society, and a mountain of incomprehensible unanalyzed data.

An objective of positivism seems to be to leave the data untainted by *a priori* theory, and to formulate the theory on the basis of observed facts. Yet, as Mises wrote, "(t)here is no such thing as a mere recording of unadulterated facts apart from any reference to theories. As soon as two events are recorded together or integrated into a class of events, a theory is operative."[4]

To the positivist, causal laws are "inductive generalisations of observed correlations".[5] The theory is not allowed to ask *why* economic variables are related because theory has no empirical content. Theory is to the positivist an arbitrary choice of assumptions, logical and manipulative conventions, etc. This leads the positivists to a difficult dilemma.

> Either theory and hypothesis differ in kind or they do not. If they do not, then theoretical statements are synthetic; if they do, then theoretical statements are analytic. If theoretical statements are analytic, then, by Positivist canon, they are optional and empty and contribute nothing to the validation of hypotheses. If theoretical statements are synthetic, then they *are* . . . hypotheses and cannot play the explanatory role assigned them by received opinion.[6]

Theory can only be helpful in analyzing the real world to the extent that it is fact-laden, and likewise, facts can only be comprehensible to the extent that they are theory-laden. Hollis and Nell point out that even the theory of statistics is a *theory*, and certainly any *use* of statistics requires a theory. The "fact" of the rising price of coffee is rendered meaningful by a theory that discusses the concept "price" and its causal and not merely correlative interaction with other phenomena. Expensive coffee means that coffee has grown scarce relative to the demand, and that meaning can only be ascertained and further elucidated by means of fact-laden theory.

By "fact-laden theory" we do not wish to imply that the theory must make explicit reference to particular facts, but rather that the theory must apply to and render those facts more comprehensible. Abstraction makes possible the direction of our attention to the essential aspects of general cases and away from irrelevant specifics. Thus the comprehension of reality *expands* with the increasing abstraction of rationalist theory. The more aspects of the economic system are subsumable under a particular concept, the greater is the generality of that concept, and thus the more extensive is its applicability.

Theory is the means of comprehending facts, i.e. it is the *connection* between a conscious mind and the real world. The analytic/synthetic distinction attempts to put theory entirely in the mind, and facts entirely in the external world, with the result that any *understanding* of the facts is impossible at the outset.

The culmination of Hollis and Nell's dissection of positivist methodology is the conclusion elaborated in Chapter 4 that the analytic/synthetic distinction must be dropped. The "theory-free, brute, atomic facts" of the positivist are as meaningless as the theory-free brute colors of a man's vision. The facts must be coordinated, analyzed, related to others by reference to prior causes and subsequent effects. They must, in short, be interpreted. Any methodology that disdains deductive theory in effect rejects the comprehension of facts.

Chapter 5, entitled "Behavior and Prediction", is particularly interesting from the perspective of Austrian economics. "Economic actions", the authors perceptively argue, "are to be explained in terms of inner preferences . . . ".[7] This renders absurd the doctrine of behaviorism, the attempt to predict action, since inner preferences are not data accessible to statisticians. Revealed preference theory is at the same time shown to fail as a substitute for the actual inner preferences of actors.

Optimizing models such as those found in standard microeconomics courses are not necessarily predictive; they merely state what alternatives are best in the face of given resources and constraints. Positive economics has tried to tie such models to behaviorism by saying that *if* the actor is rational, *then* he will set his marginal cost equal to his marginal revenue. Hollis and Nell reject this as a profoundly useless prediction. Men are *not* perfectly rational; all their resources, never mind their constraints, are not typically known. Thus optimizing models are permitted their limited role in aiding the economic actor in choosing optimal alternatives, but as a description or forecast of actual economic events these models must be pronounced a failure.

In Chapter 6 the authors take up conceptual pragmatism, essentially the philosophy of science of W. V. Quine. This issue is raised more to tighten the philosophical case than to criticize Neoclassical economics, for there is little justification for holding that any prominent economist grounds his method on conceptual pragmatism. Quine rejects the analytic/synthetic distinction by making *all* theory subject to revision, although some statements (such as the law of identity in logic) are more "costly" to give up than others (say, the Keynesian consumption function). There is some truth in this of course, but it understates the matter to say that giving up logic is "costly". It could be better characterized as an epistemological catastrophe. We must finally face the fact that there are some necessary truths, that some things *must* be true, and that to deny them requires assuming their validity. Knowledge is not the amorphous blob suggested by pragmatism, nor is it divisible into the clearcut categories "analytic" and "synthetic". Knowledge is an intricate, hierarchical network of distinction, integration and deduction, referring throughout to reality but with varying degrees of abstraction, and it is founded necessarily on axioms which cannot be denied.

Having swept the field of the major contenders, Hollis and Nell make the case for an *a priori* economics.[8] Interestingly they choose Lionel Robbins (*An Essay on the Nature and Significance of Economic Science*) and Milton Friedman (Part I of *Essays in Positive Economics*) as representing the two poles of thought respectively, rationalism to positivism, and conclude strongly for the kind of economics defended by Robbins. "Economics consists of the logical consequences of conceptual definitions".[9] The authors even go so far as to quote Robbins' methodological mentor, Mises, to the effect that "in the concept of money all the theorems of monetary theory are already implied".[10]

Our disagreements with Hollis and Nell up to this point are slight and relatively insignificant. But it is with Chapter 8 that Nell takes up his positive case for what economics ought to be, i.e. orthodox Marxism, and in these last two chapters we find a great many issues of disagreement.

II. NELL'S POSITIVE THEORY

Professor Nell argues that the fundamental concept in economics upon which the whole edifice of deductive economics must be built is the conditions of the reproduction of the economic system. How, one might ask, did he decide upon that peculiar basic concept? He simply asks what is the essence of an economy. "A thing's essence", he explains, "is those properties without which the thing could not be the thing it is; or, to anticipate our discussion of production, what it must have, if it is to continue to exist."[11] Therefore, Nell continues, the essence of the economy must be the conditions necessary for the reproduction of the means of production, physical and human, i.e. what is necessary for the economy to continue to exist.

First of all, the "properties without which the thing could not be the thing it is" is not the same as "what it must have, if it is to continue to exist".[12] The former are the essential definitional attributes of the concept under consideration and are therefore, for example, abstracted from time and place. The latter, on the other hand, is a list of conditions necessary for the thing's survival as the thing it is. What makes a car a car is given by a list of its essential attributes, but what conditions are necessary for the car to remain a car is given by a list referring to the proper use of the car through time, its maintenance, its driver's avoidance of collisions, etc. We will suggest a list of essential attributes of an economy in Part III of this essay, but for the moment suffice it to say that what is needed by their own criteria, definitional attributes, is not supplied by Professor Nell's economic maintenance manual.

Secondly, Nell's starting place is with a set of conditions which can only be specified by the use of such advanced concepts of economics as wages, production, prices, etc. At the *very* beginning of an analysis one should always start with how the phenomenon interacts with one's senses; the first thing we know about something is what we see, hear, touch, etc. For example, in Physics one would not start with an elaborate theoretical model of an atom, rather one would start with what one sees to be the characteristic interaction of the atom with other atoms and other phenomena from what we can learn from our senses (enhanced by technical instruments). One could then proceed from such observation to the construction of greater and greater levels of abstraction and finally, if possible, to an elaborate theoretical model. We cannot begin with the attributes of the thing if those attributes are themselves abstractions, for how are we to know whether the process of abstraction necessary to take us from our sensory observations to these attributes was correct? The conditions of an economy's reproduction are themselves abstractions from the interaction of thousands of people, capital goods, etc. We do not see economies reproducing themselves. If the method of economics is, as Hollis and Nell have ably argued, to proceed by spinning out the logical consequences of conceptual definitions, we must begin with *known* concepts and proceed to higher levels of abstraction. It would presumably be Nell's response that we know that the economy has to reproduce itself *a priori*. This will not do. We cannot pick *a priori* knowledge out of the blue. We need a firm criterion for axioms, for example that an axiom must be necessary for an attempt at its own denial. This is certainly *not* the case with the reproduction of an economy as it *is*, say, with the law of noncontradiction. Indeed, one can easily imagine economies which do not reproduce their capital or working force, but rather continually entirely revise their production schemes from period to period. That this would likely be a very poor economy is only something we can learn from an investigation of different economies. In any case it does not seem to be self-evident that the economy must reproduce itself.

Thirdly, the selection of the basic concept of a deductive science ought to refer to the explanatory power of the concept. The method will consist of deducing the implications and applications of this central concept for the field of economics. Therefore the concept chosen ought to have the widest possible application to economics, for the wider the basic concept, the more aspects of economics can be explained by it. If too narrow a concept, say exchange, were chosen, then only a subset of economic phenomena (those which involve exchange but not the isolated actions of individuals) would be explainable in terms of that concept. Furthermore, if this overly narrow concept can itself be explained only in terms of a wider and more fundamental concept (say, choice) it would remain unexplained. In geometry if one defines a triangle *in terms of* lines, then the concept "line" is wider, i.e. has more explanatory power, than the concept "triangle". "Triangle" can be explained in terms of "line", but "line" cannot be explained in terms of "triangle". Similarly, "the conditions of the reproduction of the economic system" can be explained in terms of more fundamental concepts, such as "choice", whereas "choice" cannot be explained in terms of the conditions of the reproduction of the economy.

We must reject Professor Nell's starting point on these three grounds: (1) one must say what an economy *is* before one can say what an economy requires through time to remain an economy: (2) one must begin with known concepts and deduce to previously unknown concepts. To start with conditions of reproduction is essentially to start in the middle; and (3) one should choose the widest concept applicable to the subject-matter. That our central concept is to be "choice" should come as no surprise by this time, and we will develop a case for the choice of "choice" in part III of this essay. At this point we will consider Nell's specific attempt to reject "choice" as the basic concept of deductive economics.

> (C)hoice depends on the context and activities of the choosers. We do not want things in a vacuum, we want something "under some aspect" as philosophers would put it. If we want a good or service, i.e. if we want it *regularly* on a continuing repeatable basis, not as a once for all whim, then we want it *for* something *in order to do* something with it, because it fits into a project or activity of ours. So some aspect or other of the thing must relate to the reason for wanting it.[13]

So far Professor Nell has apparently told us that people have purposes. "Some very important conclusions follow", we are told, and on both counts praxeologists are in complete agreement. An analysis of choice cannot proceed without paying very close attention to the context and purposes of the choosers. But unfortunately Nell draws some rather different conclusions.

> First, the formation of relative preferences among goods and services, *if it is to be rational* [why limit our investigation to rational action?] *must* involve solving typical *production* problems. [Indeed, which also must be subject to human choices.] Preferences for goods and services, what economists normally call "tastes", cannot be among the fundamental raw data of economics. Preferences for commodities must be calculated and the calculation will be based, as in the linear programming example, on the way the characteristics of different goods contribute to the objectives of the choosing agent.[14]

Nell seems to be saying that the economist must go beyond the choices of the actor and figure out *why* he wants this or that. All that we can say to him is good luck. Psychologists spend years trying to answer one or two such questions for their clients. If the economist has to do this for all goods and for all participants he will find himself doing little else. In any case, nothing Nell has said precludes taking "choice" as the primary concept. No praxeologist denies that people usually have extensive reasons for their choices, that in buying food they may be optimizing nutrition or some other aspect of food consumption. The point is that we cannot scientifically discover such reasons, they are beyond our reach because they reside in the minds of millions of actors who have every right to tell any economist that it's none of his business why they buy the things they buy.

One of the dangers of attempting this impossible task of going beneath the preferences of actors to examine their internal optimizing calculations is that the examiner might perceive as irrational choices which in fact are entirely rational but conform to a different set of subjective preferences. The economist, in other words, cannot tell when an apparently foolish choice is the result of miscalculated internal optimizing and when the choice is the result of the actor's having a different goal in mind.

As if to illustrate this danger, Nell succumbs to it when he draws his second conclusion. "Secondly, what one wants and what is good for one can, and frequently do, conflict. One may like cigarettes but one's doctor may know better. To function properly and effectively in his appointed [!] roles, a person must maintain both his health and his levels of training and competence: and in either or both of these areas personal preference may be at variance with rational choice."[15]

Of course the question is *who* decides what is good for one. The doctor may know the danger of smoking to human health better than the smoker, but he most assuredly does *not* know better than the smoker whether the pleasure is worth the risk. Nell has not shown the smoker to have been irrational in his optimizing calculations; he has shown that the smoker values the pleasure of smoking differently from the doctor. Nell displays some of the worst totalitarian aspects of Marxism when he speaks of the "functioning" of a person in his "appointed roles", as if a person were like a gear in a machine that has to be maintained properly. The Professor is looking at "his" economic participants the way a General looks at his soldiers, as a means toward some "social" purpose (be it war or material production). However, unlike gears in a machine, people often decide that they don't *want* to perform effectively in roles allotted to them by Marxist central planners. People have their *own* preferences, a fact which will forever frustrate manipulators from molding people for "higher purposes". In the smoking example Nell has arrogated his subjective risk aversion to a position higher than that of the actor he is studying. We cannot resist chiding Professor Nell that such elitism is unbecoming to an egalitarian, and should be contrasted with the position of praxeologists on this issue. Thus, Mises writes:

> There is no yardstick that a scientific investigation can apply to human action other than that of the ultimate goals the acting individual wants to realize in embarking upon a definite action. [In our example, the pleasure of smoking must be considered one goal of the actor.] The ultimate goals themselves are beyond and above any criticism. Nobody is called upon to establish what could make another man happy.[16]

Nell goes on to summarize his two points. "Both . . . imply that choosing is a concrete activity taking place in specific circumstances. We choose what we do because the context we are in provides us with certain options, certain resources and certain goals. Apart from the context neither 'choice', nor any of its synonyms amongst economists (preferences, wants, etc.) have significance. But once we allow that the chooser *must* exist in a specific social context, then the characteristics of the chooser we can assume are limited by the requirements for the maintenance of the context. The conditions of reproduction are prior to, because determining, those of choice."[17]

The social context in which the actor chooses was itself the result of previous choices, but there is no point in historically tracing back these contexts to an original state of nature, where the *first* choice was presumably made. The praxeological analysis of "choice" has explicitly taken the contexts of choices into account at the outset, and in a more comprehensive way than Nell's "reproduction" scheme can supply. All choice is *specific*, and always involves limited alternatives. The limitations are the resources at hand at the time of the choice, not the "conditions of reproduction", whatever that may mean. An economic system which is failing to properly maintain its capital goods, i.e. presumably, one that is failing to reproduce itself, is subject to praxeological, but not to Nell's Marxian inquiry. The only limit to human action is the scarcity of resources (including time) at the disposal of the actor. This limitation is by no means ignored by praxeology, indeed it is one of its major themes. The limitation is more precisely stated by the more general exposition of praxeology than by the narrow viewpoint of "reproducing" an economic system, since the latter assumes an essentially evenly rotating system where parts replace themselves, whereas the former is a conceptual apparatus that can be applied to progressing or regressing economies, to economies in constant flux, to systems whose means of production are constantly being revised for new purposes rather than being merely reproduced.

The concluding sentence of Nell's argument reads "(t)he conditions of reproduction are prior to because determining, those of choice." This consists of two statements: (1) that the conditions of reproduction determine the conditions of choice, and (2) that this fact implies that the concept "the conditions of reproduction" is *prior to* the concept "the conditions of choice".

It is of interest to note in statement (1) that Nell is trying to establish that one set of conditions (for an economy's survival) determine another (for its participants' survival — the conditions of choice). It can, with equal force, be argued in reverse, that the minimum conditions for the individual choosers' survival determine those of the economy. In other words, to have an economy one must have surviving choosers, and to have choosers one must have a surviving economy. So where does one go from here?

To engage in fruitless chicken-and-egg debates on whether the "conditions of reproduction" determine the conditions of choice, or vice versa, is not the issue. In statement (2) Nell is confusing a metaphysical question (what determines what?) with an epistemological question (what explains what?). We are trying to select a concept from which economic theory is to be deduced. We are seeking *epistemological* priority, i.e. priority in the hierarchical network of deductive thought, not metaphysical priority, i.e. priority in the causal stream of events.

Therefore it is not "conditions" of either reproduction *or* choice which is relevant to this epistemological priority; it is rather the analytical framework supplied by different fundamental concepts. The choice, the purposefulness, the plans, the limited resources and information of the actor, the ends/means categories, the conditions for the actor's choosing, the context of the choice, etc. are all part of the praxeological framework. The issue is whether this "choice" or "ends/means" analytic framework can be used to *explain* economic phenomena better than some other framework.

The idea of the "conditions of reproduction" must itself be explained in terms of concepts such as "exchange", "production", "means of production", "price", and so forth, and each of *these*, and therefore the "conditions" themselves, can be explained in terms of choice. How to maintain an economy is a "how-to" question, i.e. it is an attempt to discover the best *means* available for attaining the *ends* sought, in this case a properly continuing economy. In the spirit of Professor Nell we could conclude: The choice framework is prior to, because *explaining* that of the conditions of reproduction.

In attempting to anticipate a likely argument from proponents of "choice" as the basic concept of economics, Nell argues "(b)ut what of the argument that we choose the methods of production, that choice determines [metaphysics again] the system of production, and so the basic context itself?" He says that he answers the Neoclassicals by "pointing out that durable capital goods are among the determinants of choice".[18] He may answer the Neoclassicals with that comment, but he certainly does not *touch* the praxeologists who take full cognizance of the role of capital goods in limiting choice.

Again quoting from Mises, "All material wealth is a residuum of past activities and is embodied in concrete capital goods of limited convertibility. The capital goods accumulated direct the actions of the living into lines which they would not have chosen if their discretion had not been restricted by binding action accomplished in the past. The choice of ends and of the means for the attainment of these ends is influenced by the past."[19]

Professor Nell suggests that we don't choose our methods of production but that, if I'm permitted to paraphrase his argument, the social means of production are the spontaneous result of society and are not consciously chosen by anyone. Again, he is not telling praxeologists anything we didn't already know. We do not claim that everything in society is consciously chosen but that everything in society is a *result of* conscious choices. The followers of Hayek require no instruction from Marxians on the difference between the spontaneous order that results from choice on the one hand, and human design on the other. Nell rejoices in the fact that "in our time the area of conscious control over economic activity has widened and that *we* are moving toward a time when perhaps *we* may be able to control and determine the *shape* and *form* of what exists in society."[20] The "we" he is talking about is presumably the government, and what he is hoping to control and determine is not some vague "shape" or "form", but the *choices* of the rest of us. The unconscious advocacy of totalitarianism is perhaps one of the risks of failing to pay adequate attention to the role of choice in society.

Partly to defend the market against such Marxist charges, and partly to try to illustrate the explanatory power of an economic theory which takes choice as its central focus, we will next take up a specific issue raised by Nell in criticism of the free market.

In Chapter 8 Nell argues that the doctrine of consumer sovereignty is mistaken because, as he tries to prove, there can be a situation where producers profit by reducing the quality of their product, and by spending more money on advertising. "If a sales campaign will bring in more sales than are lost by the quality reduction, the firm should reduce quality and begin intensive marketing; quality should be reduced, in theory, up to the point where the loss in sales from an additional drop in quality just equals the gain in sales from the extra marketing effort made possible with the funds transferred from production to marketing."[21] This is supposed to indicate how market forces can generate inefficiency.

But this situation is only considered inefficient because Nell is ignoring the evident preferences of a whole group of consumers. The entrepreneur is active in the economy finding opportunities for mutually benefitting trades. Consumers exist who lack things which they would prefer and can afford, but these things are not currently being produced and distributed in adequate quantity relative to the demand. One way for the entrepreneur to find such a discrepancy is by improving perceived product quality[22], meaning that he is anticipating that many current consumers demand higher quality products, or that many potential buyers can be impressed by product improvement. Another direction in the satisfaction of consumer desires, the one Nell doesn't see, is for the entrepreneur to invest in advertising, anticipating that many people who are now unaware of the product would prefer to buy it if they knew of its existence, than to spend their money in other ways. Unsatisfied consumer desires can be the result of *either* inadequate product quality *or* inadequate information: therefore, both entrepreneurial directions tend to satisfy consumer demand. The tendencies of the profit motive strike a rough balance among such possible directions as entrepreneurs discover where the greatest consumer desires lie. In this manner the profit motive encourages those choices on the market which are reflected in an "optimal" proportion of spending between sales and product departments.

Failing to pay close attention to the choices and purposes of the relevant actors, Nell considers one type of consumer dissatisfaction (lacking high enough quality goods) worthy of removing, while the other (lacking information about this product) is not. From the point of view of praxeologists consumers can demand whatever they want. But once again we find our elitist Marxian professor arrogating his value scale above those of the masses.

III. THE PRAXEOLOGICAL POSITIVE THEORY

We begin in this section at the point where we believe Hollis and (especially) Nell went astray. First we must define the object of our investigation, the economy, but must keep in mind our criticisms of Nell's attempted definition: (1) we must properly specify those "properties without which the thing could not be the thing it is", (2) we must start with known and proceed to unknown concepts, i.e. we cannot choose as attributes defining the economy abstractions which can only be understood *after* we have developed the economic theory itself, since this would be circular reasoning, and (3) we must keep in mind the explanatory power, or wideness, of the fundamental concept (and its cognitive framework), i.e. we are looking for the epistemological foundation of deductive economic science.

Starting from the beginning, we must step back from the collection of phenomena labeled "the economy" and ask, in the manner of Hollis and Nell, what are its *essential* attributes. What makes an economy different from other things? If, for example, we landed on Mars and saw something happening amongst the inhabitants, what essential features would we have to find to legitimately refer to the "Martian economy"?

At the very beginning of epistemology, as the human mind begins to advance beyond the level of simple perceptions, these percepts are categorized under a few extremely fundamental concepts. Quoting from Peter Coffey's work on epistemology:

> Sense alone does not give us knowledge, but only the raw materials of knowledge. Our first spontaneous and scarcely conscious judgment is the judgment of *existence*, the judgment that "something is", the judgment which involves the concept of *actual being, actually existing reality*.
>
> According as sense perception and consciousness furnish their real data the intellect is, however, not only conceiving the actual existence of these data and judging *that* they "are" or "exist". It is also conceiving *what* they are, or that in which their reality consists, viz. "substance", "body", "extension", "number", "space", "time", "life", "mind", "action", "change", "cause", "effect", "possibility", "actuality", "quality", "relation", etc., etc.: and is judging or interpreting *what* those *data* are, by means of these thought-objects derived from these data.[23]

Our intention is to select one of these thought-objects which applies specifically to economics and not particularly to other fields of inquiry, but one which is extremely *general* in its applicability to economics. Thus, for example, "life" refers to biology and not exclusively to economics, "time" refers to physics as well as to economics, "cause" is too general, and so forth. The concept listed which is at the same time generally applicable to the economy and yet largely inapplicable to other fields seems to be "action".

Our Martians would have to be "acting", they would have to be *doing* something, so what distinguishes economic action from the action of molecules, chemicals, or amoebae?

Our first criterion, then, might be that the Martians be living things. "Economy" does not refer to purely physical phenomena. Secondly, the Martians ought to have the capacity to reason. An ant colony is sufficiently different from an economy to warrant making this distinction.

But to *have* reason is not enough. Our third condition is that the Martian *use* his reason, that he *apply* his understanding of the physical world to his own existence. This means that he must be capable not only of *seeing* causal connections (wood burns) but also of *doing* something about it (burn wood). The Martian must consciously insert himself into causal chains of events for the purpose of modifying those chains. In short, he must act with reason. If he acted without reason we would choose the bee hive or ant colony as the closest earthly analogue to Martian society, rather than a human economy. If the Martian reasoned without acting we would have been unlikely to have noticed him in the first place, for he's not *doing* anything. In any case nothing like an economy, where there is certainly a great deal of activity, could be going on. Only if he *purposefully* acts, only if he *uses* reason to accomplish goals, would we term him part of an economy.

Our third condition then, which includes the first two, is that the Martians act purposefully. To act with a purpose is to guide one's own actions with one's reasoning, i.e. to select the most reasonable actions and avoid those which are deemed unreasonable. Selection of actions on the basis of reasoning about the different causal effects of each is what praxeologists mean by "choice". This in the most general sense is the object of investigation of the social sciences, causation within human (or Martian?) society. People's actions have an effect on the course of history. What *kind* of effect? We first perceive things around us as being means towards primitive ends (berries for taste) and gradually toward more complex goals (wheels for transport). People employ resources, they apply means for the attainment of ends.

This we believe to be the central concept of economics, choice, from which one may begin to deduce some of the basic insights of economics. The resources which men employ are in limited supply (even more so, presumably, on Mars), i.e. there is scarcity; the actors interact not only with their environment, but also with each other, in other words there is exchange: the resources are more appropriate for some purposes than others, and entirely inappropriate for some, i.e. there are varying degrees of specificity of means; time is scarce; the future is uncertain; and so forth. It is not my purpose here to develop the whole deductive science of economics (fortunately much of this has already been done far better than we could presume to attempt, mainly by Ludwig Mises and Murray Rothbard)[24] but rather it is to establish choice as the most appropriate starting place.

The French Marxist Ernest Mandel uses a similar argument to the praxeological one to establish the concept "labour" as the foundation of his deductive economics. He begins his magnum opus, *Marxist Economic Theory*: "Man alone, of all species, is unable to survive by adapting himself to the natural environment, but has instead to try to bend this environment to his own needs. Labour, an activity at once conscious and social, born of the possibility of communication and of spontaneous mutual aid between the members of this species, is the means whereby man acts upon his natural environment."[25]

Now this is very close to our starting point, and in fact it makes a better case for *our* starting point than it does for *his*. To "bend this environment to his own needs" is to insert his action into the causal stream of history in order to attain his goals.

But firstly, "human labour" only appropriately characterizes *some* of the possible "means whereby man acts upon his natural environment". Some actions, for example, involve waiting for wine to mature, or directly consuming berries, neither of which is generally called "labour", while both of these *are* choices involving the employment of scarce resources for some purpose. Or as Mises put it, "(f)rom no point of view whatever can artifacts be considered as the products of mere labor. They are the yield of a purposive combination of labor and of material factors of production".[26]

Secondly, man requires means not only to act upon his natural environment, but also to act with other men. Such actions as management (coordinating other men's activities toward a complex goal) and speculation (anticipating other men's future goals and preparing for their satisfaction) are also an integral part of an economy.[27] All of these activities commonly found in economies are subsumable under the general category of action, of the means/ends distinction. Not all can be subsumed under the subcategory "labour". Therefore, according to the very criteria given us by Hollis and Nell, human action or choice is the fundamental conceptual starting point for a deductive science of economics.

Before concluding this investigation we should explain, in at least a broad outline, what aspects of choice are within the purview of economics. There are a few basic kinds of questions we can ask about human action, so we must consider which of these are economic questions and which would better be classified as psychological, historical or other questions.

In the social sciences, we have said, we are interested in human causation: what people have done, are doing, and will do; in other words, we are interested in "doing"; what things people do, how they do them, why they do them, when they do them, where they do them, etc. Of these, "what", "when", and "where", people do things are questions for the historian (if the "when" refers to the past) or the speculator (if the "doing" has not yet occurred). To answer the question "why" people do what they do is the task of psychology. "How" things are done seems to apply to economics, but we should distinguish different kinds of "how" questions. The question "how something could be done if all known means were available" is an engineering question. But, as we have noted, all means are *not* available, they must be procured and at different costs. So the question relevant to understanding an economy must be *how* to achieve given ends with limited resources. Hollis and Nell quote a significant passage from Robbins in this regard: "In pure Mechanics we explore the implication of the existence of certain given properties of bodies. In pure Economics we examine the implication of the existence of scarce means with alternative uses."[28]

The economic "how" question gets to the root of our subject-matter. The actors are faced with alternative means of attaining given ends. The question can be answered by imagining the causal sequence of consequences which would result from each alternative means, and selecting the means whose anticipated results most conform to the purposes of the actors. In order to best answer the question "how", the actor surveys the expected advantages (psychic profit) and costs (the psychic profit of possible alternatives) of each choice. The primacy of "choice" as the basic concept of economics should be clear. In asking how people do what they do when they interact in an economy we are investigating human choice. The economy is a complex network of individual choosers and can thus be best explained by praxeology, the science of human choice.

NOTES

1. I owe a debt of gratitude to Professor Ludwig Lachmann of New York University for bringing this book to my attention.
2. These attributes accurately describe the crude positivism implicit in most contemporary economics rather than its more sophisticated versions in philosophical circles. Hollis and Nell, *Rational Economic Man*, p. 10.
3. *Ibid.*, p. 42.
4. Ludwig von Mises, *Human Action* (3rd Ed., Chicago: Henry Regnery, 1966), p. 647.
5. Hollis and Nell, *Rational Economic Man*, p. 71.
6. *Ibid.*, p. 72.
7. *Ibid.*, p. 114. Also see Richard Taylor, *Action and Purpose*, Arthur Koestler, *The Ghost in the Machine*, and Brand Blanshard, *The Nature of Thought*, Vol. I.
8. While Hollis and Nell refer to "*a priori*" economics, what we believe they have proven is that economics must be deductive rather than inductive. The primary concepts from which economics is to be deduced may be considered *a priori* truths analogous to logic, as appears to be Mises' position, or they may be considered as derived from simple observations, as is Rothbard's (and this writer's) contention.
9. Hollis and Nell, *Rational Economic Man*, p. 204.
10. *Ibid.*, quoted on p. 201, from *Human Action*, p. 38.
11. *Ibid.*, p. 178.
12. *Ibid.*, p. 243.
13. This is not necessarily the case; rather, our subjective attribution to it of some quality or meaning must relate to the reasons for wanting it.
14. *Ibid.*
15. *Ibid.*
16. Mises, *Human Action*, p. 651.
17. Hollis and Nell, *Rational Economic Man*, pp. 243–44.
18. *Ibid.*, p. 244.
19. Mises, *Human Action*, p. 506.
20. Hollis and Nell, *Rational Economic Man*, p. 244; emphasis mine.
21. *Ibid.*, p. 219.
22. We assume for the sake of this example that "product quality" is similarly perceived by the consumers.
23. Peter Coffey, *Epistemology* (2 vols., London: Longmans Green, 1917), I, 252.
24. Mises, *Human Action*, and Murray N. Rothbard,

Man, Economy, and State (Los Angeles: Nash, 1970.)
25. Ernest Mandel, *Marxist Economic Theory* (New York: Monthly Review Press, 1962), p. 23.
26. Mises, *Human Action*, p. 625.
27. We are not here discussing whether these actions are morally justifiable, but only whether they can be comprehended by use of the praxeological and the Marxian axiomatic frameworks.
28. Hollis and Nell, *Rational Economic Man*, p. 201, from Lionel Robbins, *An Essay on the Nature and Significance of Economic Science* (London: Macmillan, 1932), p. 83.

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NOZICK, ANARCHISM AND PROCEDURAL RIGHTS

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One of the more striking features of Robert Nozick's *Anarchy, State and Utopia* to libertarians is the unusual argument which it contains in behalf of the state. This argument has been perceptively dissected by Mr. Barnett[1] and while I wish here to expand upon some of his criticisms, a preliminary explanation of what I take to be unique about the Nozickian argument will help to familiarize the reader with my own perspective.

While many minimal state theorists, such as Ayn Rand, have found in anarchism an unacceptable vehicle for the conveyance of natural rights libertarianism, Nozick, with Locke, does not dispute the logical compatibility of anarchism and natural rights theory. Instead, having conceded to the anarchists that advocacy of no government is not inconsistent with the espousal of natural rights libertarianism, Nozick purports to have demonstrated that (a) a state-like entity will emerge naturally from anarchy, and (b) that its emergence is both morally necessary and proper. The anarchist, he says, finds morally objectionable the monopoly of force which allows the state to punish the "private exacter of justice" who "violated no one's rights." Also, the anarchist will protest the process by which the minimal state in its attempt to protect the rights of all must overcharge those willing to pay for protective services in order to provide these services to those reluctant to finance the state. This overpayment will, according to Nozick, appear to the anarchist to be an instance of collectivist redistribution and, consequently, will draw his condemnation.

And yet, voluntary and rights-preserving mechanisms will inevitably transform the natural social order into a state-governed society. Thus, the libertarian purity of the state of nature will find its moral counterpart in the "minimal state".

Now, this approach of Nozick's, I repeat, is unique; for, as Mr. Barnett has correctly discerned, it assumes that the burden of proof lies with the pro-governmentalist and that the libertarian governmentalist must defend the state, not attack anarchy. Many, myself included, would argue, contrastingly, that there is a logical inconsistency between a conception of libertarian rights which construes them as imperatives of human behavior and a conception of the state of nature which systematically allows the uses of physical force to be a matter of individual choice. If, as I would argue, it is imperative that no human being coerce another — then why allow physical force to be applied according to the subjective inclinations of buyers in the marketplace? The uses of force according to natural rights theory ought not to be left to human choice. The restriction of physical violence to its defensive applications is ethically imperative, not simply morally normative for human behavior. Even if a libertarian legal code were written for a particular geographic area, the extent of its employment is to be left, according to the individualist anarchist, to the marketplace; i.e. to human discretion. If the anarchist will not explicitly acknowledge that his position entails a commitment to such politico-ethical subjectivism it certainly appears to me that this view is a logical implication of anarchist theory and that anarchism, having formally enthroned human discretion, is equally compatible with either "coercivism" or libertarianism.

Nozick, as I say, refrains from this (or any other) kind of attack upon the libertarian propriety of anarchism and, instead, begins with an examination of anarchism's criticisms of the state, claiming that there are certain subtle empirical, political, and epistemological considerations which nullify these criticisms.

What are these considerations? The crucial one, I believe, is the notion of procedural rights. In identifying his conception of procedural rights as the linchpin of Nozick's argument I differ with Mr. Barnett's analysis, for on his view the *sine qua non* of *Anarchy, State and Utopia* is the compensation principle. In point of fact, Professor Nozick's argument cannot survive without either — but, as Barnett points out, it is Professor Nozick's contention that the compensation principle can be combined with either procedural rights or epistemic fallibility to yield the conclusion that the libertarian government is as moral as anarcho-capitalism.

In what follows I hope to demonstrate two things — that Nozick's argument will not go through if it is deprived of the notion of procedural rights and that procedural rights cannot possibly have the status which Nozick's argument must require of them.

Nozick's two arguments for the moral propriety of the minimal state are as follows: (i) All individuals have a right to property defense which they may delegate to others. Each individual, in addition, has a right to be judged according to procedures which will minimize the likelihood of his property rights being infringed. If in the defense of his procedural rights he deprives another of the means of protecting his property rights he must compensate him sufficiently to enable the re-acquisition of those means. Such deprivation is never immoral since it leaves the latter with his property and procedural rights still intact. Therefore, a dominant protection agency which deprives independent agencies of the means of defending their clients against the actions of the dominant agency's clients has committed no injustice so long as it compensates the independent's members sufficiently enough to enable them to purchase protection from it without incurring additional costs. A dominant agency which does so neither violates the property nor procedural rights of its alleged victims. It is merely safeguarding the rights, property and procedural, of its membership while replacing the original means which its "victims" employed in defending their property rights with more adequate means.

It is rather easy to appreciate the strength of this argument — for if procedural propriety is a right of men, then it may be robustly defended. Moreover, if there is an analytical principle enabling us to determine when the costs of aggression are fully compensated — then we retain the epistemic ability to fully restore for our victim the means of defending his property rights at no additional cost to him. Further, if *we* must bear certain costs in order to have our procedural rights safeguarded — then, in spite of the fact that we are paying for the additional costs of providing protection for independents and thereby giving them a free ride — the cost to us is borne as a result of *our* perception that our rights were endangered. This is a cost incurred in return for our increased safety. Our purpose in incurring it is not to redistribute our wealth but rather to safeguard our procedural rights. That is, our agency, in compensating others through our increased payments, has not redistributed our incomes. Such, I believe, is Nozick's first argument.

It depends for its strength upon an implied similarity between the natural rights of property and the right to adequate procedures for the enforcement of these rights. That is, just as property rights are taken to be pre-legal rights which can be stated, enforced, codified, but are not human creations or devices, so procedural propriety must also lay claim to pre-legal, non-created origins. If it does not, then its contingent status reduces it to a mere instrument, to a right assigned *in* particular legal codes — a right not *binding upon* all legal codes. However, in order that one agency may claim this as a right against the membership of other agencies, procedural propriety cannot be merely accidental to its legal code. It must possess the same status as self defense; i.e. it must be a right which is prior to, regulative of, and, therefore, required to be embodied in *all* legal codes. If Professor Nozick wishes to accord such an equal status to procedural rights some argument must be produced by him to justify that alleged equality.

What we can say is that any agency may defend its clients against enforcement or adjudication procedures in which their property rights are either threatened or violated. That is, while we all have rights of property which may neither be threatened nor violated with impunity, we do not have similar pre-existing rights to have a specific set of enforcement procedures followed. Our only rights are *to* property and, therefore, *against* any particular application of a procedure which threatens or violates our property rights.

Furthermore, if there is a pre-existing right to a procedure to judge alleged violations of property rights, is there another pre-existing right to a procedure whereby alleged violations of procedural rights are to be judged? And is there a further right to a procedure to judge that procedure? Professor Nozick's original procedural right seems to have fathered an infinite sequential set of like offsprings — each a right of procedure necessary to the regulation of its immediate ancestor. If there is an infinite regression here, no "dominant" agency will ever be able to complete the elimination of its competitors.

(ii) Nozick's second argument, so far as I can tell, is not, as Barnett alleges, distinct from the first. His second argument requires that persons be *known* to be guilty (in addition to actually being guilty) in order that they be punished. Hence, procedures which do not tend to lead to such knowledge may be prohibited. That is, this argument does not and, indeed, cannot abandon the notion of procedural rights — it only expands it. Here, Professor Nozick seems to be saying that everyone has *not only* the right to have procedures X, Y, or Z followed but one also has the right to be *known* to be guilty or remain unpunished. Here, the guilty party's procedural rights supersede the violated property rights of his victim. The same arguments which we made against the first version of procedural rights would apply here.

Now, Nozick's contention that a dominant protection agency which eliminates its competitors after it alleges that these did not efficiently guarantee procedural rights does so without violating natural rights, is false. By forcibly prohibiting the clients of its competitors from using their wealth in order to purchase protection at the agency of their choice, the dominant agency has violated their property rights. All that Nozick has demonstrated is that a dominant agency which infringes upon the property rights of its competitors' clients does so in the *belief* that in so doing it is eliminating a threat to the rights of its own clients. However, suppose that it is wrong in its belief. Does its ability to eliminate competition, plus the sincerity of its erroneous convictions, sanction its invasions of the rights of others? It is difficult to see, on libertarian grounds, how it could.

Finally, a word about the specific complaints that Professor Nozick believes the anarchist has against the minimal state position. Nozick suggests that these are twofold: that, first, the state punishes others for safeguarding rights, i.e. for what it does itself; and, second, that the minimal state by charging some for services that it provides to others is thereby redistributing the wealth of the former. In the case of this latter complaint, Nozick asserts that the justifiability of the claim that illicit redistribution is indeed taking place will not depend exclusively upon whether these alleged overcharges are exacted by physical coercion but rather upon the reasons given for the overcharge. However, he fails to limit those reasons to ones which libertarian theory commonly treats as justifying forcible transfers — namely, that all forcible transfers be made only as restitution for previous violations of property rights. Later, Nozick tries to introduce via the principle of compensation an alleged third category of reason — namely, compensation for the forcible prevention of risk. But either this forcible prevention was undertaken to defend one's manifestly threatened rights or not. If it was so undertaken it was an instance of responsive force; if not, it was an example of initiated and, therefore, illicit force. The systematically aggressive redistribution of taxation that proceeds without reference to particular infractions can never be justified by reasons which do not refer to their restitutive function. Further, overcharges which are voluntarily paid in order to subsidize free riders can *never* be properly characterized as redistributive. (Consider the company which gives away free samples, or cuts its prices for some customers while holding them firm for others.)

Now, what of the alleged injustices of monopoly imposed by the minimal state? I believe that this issue has to a large extent been overblown and is something of a red herring for the following reasons. Surely the libertarian anarchist does not contend that there ought to be a market in force *per se*. What he is really saying is that their ought to be a market in defensive and retaliatory force. His position would seem to suggest minimally, therefore, that only force which is employed in accordance with rules which restrict it to defensive uses is politically permissible. How to ensure such restriction? In the first place we cannot let the creation of rules be a market function — i.e. certain rules which might be desired by Fabians, for example, must be excluded. But in order to assure their exclusion an ultimate set of rules or, if you like, a framework for rules must be drawn up. And, in order to assure that no other anti-libertarian rules could be applied with impunity within a specific territory some instrument of physical defense must be employed the exclusive function of which will be to prevent anti-libertarian rules from being employed against its clientele. Thus, it would seem that libertarians of the anarchist persuasion must, by their adherence to libertarian principle, provide a vehicle by which the market in force will be strictly limited to libertarian uses. This vehicle must have a monopoly over the ultimate or last use of violence only so long as it conducts its business in conformity with the libertarian legal framework or constitution. Such a monopoly would not in the least exclude private police forces or courts or prisons — its presence would only be required in order to insure that ultimate or final adjudication and enforcement would proceed according to libertarian criteria.

Thus, while Professor Nozick's defense of the libertarian state may well succumb to the kind of criticisms presented here, the anarchist position still has other minimal state arguments with which it must contend.

NOTE

1. Randy E. Barnett, "Whither Anarchy? Has Robert Nozick Justified the State?", *J. Libertarian Studies* **1**, (No. 1), pp. 15-21.

Journal of Libertarian Studies, Vol. 1, No. 4, pp. 341-348. Pergamon Press 1977. Printed in Great Britain.

NOTE ON *ANARCY, STATE, AND UTOPIA*

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I. INTRODUCTION

Robert Nozick's widely hailed *Anarchy, State, and Utopia* has been analyzed primarily in terms of the arguments he engages in with his fellow "public philosopher", John Rawls. Yet perhaps the most unusual line of thinking introduced by Nozick is his "invisible hand" explanation for the origin of the state (pp. 78 ff.). This is not meant to be a genuinely historical account. It is clear that no state ever emerged in the way described by Professor Nozick. Yet he finds this satisfying because it attempts to explain the single most important step in the political evolution of mankind in terms largely divorced from the political realm. He feels that he has been able to demonstrate that it is possible for the state to emerge from the Lockean state of nature without violating anyone's rights and without anyone having planned to create a state (p. 113).

Nozick tries to shield his "invisible hand" argument by conceding that it may be "fact defective", "law defective", and/or "process defective", yet still remain a "fundamental explanation" packing "explanatory punch and illumination, even if incorrect" (p. 8). It is the purpose of this paper to demonstrate that the "invisible hand" explanation posited by Professor Nozick is incoherent, and fails to be a "fundamental" explanation of the emergence of the state. It does not present an underlying mechanism capable of yielding that result. (Further, it will be suggested that owing to faulty concepts of prohibition and compensation, Nozick's model of the minimal state contradicts his moral dicta posited elsewhere in the book.)

II. MICROECONOMICS IN THE STATE OF NATURE

Nozick provides an imaginative and subtle account of economic activity in the state of nature. Rather than merely positing that the state of nature would provide an insufficient setting for human action, Nozick attempts to demonstrate this point. In the process however, he comes to the curious conclusion that the state of nature and the state of civil government may be "one and the same thing" (p. 133).

This fallacy is the product of a number of errors in a long and convoluted argument. Oversights, contradictions, importations of aspects of civic government into the anarchistic economy, and a faulty admixture of moral and economic analysis propel his proof in wrong directions.

(a) *Gratis provision of services by protective agencies*

(i) *Monopolistic behavior in the state of nature.* At certain stages in his analysis, Nozick discusses the way men *ought* to act in order to remain in conformity with moral principles. In other stages of his analysis, he attempts to describe the way men *would* act in the state of nature. It should be obvious that only the latter components of his argument can properly bear upon the operation of an "invisible hand process". Thus, his crucial contention that a "dominant protective agency" would provide service to non-customers is unsupported. He fails to adduce any plausible reason to expect that such an agency would so act. He says that the dominant agency, having acquired a *de facto* monopoly, would be "morally required to do so''. But this presupposes behavior totally unlike that customary to monopolies.

(ii) *Consequences of competition.* The view that protective agencies would *not* donate their services to non-customers is encouraged if we consider the case of multiple protection agencies co-operating together. Nozick enumerates the possibility that economies of scale among protective agencies could evolve so that distinct agencies would operate through a federated appeals procedure. Having admitted this, he fails to treat adequately the resulting possibilities. Apparently the stipulated cooperation suffices in his mind to allow the federated agencies to be treated as a *de facto* monopoly, with no need of consideration separate from the case of the single dominant agency discussed above. This assumption is unsupportable on several counts:

(a) It is unclear that a federation of distinct agencies could be correctly considered a monopoly. The stipulated fact that their appeals procedures were integrated would not put any of the individual firms in a position to charge a monopoly price. Each firm would still be competing for customers with all the other firms, and potential customers would remain in Nozick's terms ''independent''. The situation would be similar to that of competing telephone companies servicing the same geographical areas. (There remain some instances of this in the United States at present, so the analogy need not be dismissed as far-fetched.) If there were three or four or X firms competing in rates, services, and technology, in what sense would they be a ''monopoly'' simply because they might agree to employ interconnecting equipment which enabled a customer of one to call a customer of any? How would the situation of analogous competition between ''protective agencies'' differ? Given that each protective agency in a similar circumstance would retain its proprietary incentive to maximize income, none would be expected to extend service gratuitously to non-clients unless it had been organized as a charity for that purpose.

(b) The possibility that several protective agencies could remain in cooperative competition within a certain area would increase the prospect that their areas of service might not fully coincide. Thus a complex map of overlapping service boundaries, typical of inter-firm competition, might arise. In addition to the normal influences of happenstance, and the divergence of entrepreneurial judgment in forming distinct service areas, each firm would have an additional incentive to disperse its business as widely as possible so as to minimize the risk of loss from the sudden emergence of an ''outlaw agency'' in any given locale. This would further obviate any minimal incentive that might exist for firms to provide service to non-clients, since those unaffiliated with any given firm would comprise the large majority of a population dispersed over a wide area.

(c) In the contract theory of the emergence of the state there is no crucial need to specify why states have boundaries. The incidence of boundaries is merely posited as reflecting, perfectly or imperfectly, the area delimited in the past when citizens were presumed to have joined together in executing a given social contract. Similarly, those theorists who hold that the state originated coercively, such as Gumplowicz, Ratzenhofer, and Oppenheimer can explain the boundaries of states as having evolved from the vagaries of raw power and the fortunes of war. Anthropological concepts, such as the ''circumscription'' theory of Carneiro, incorporate certain demographic, cultural, and ecological conditions for the emergence of the state which themselves presuppose boundaries. But the ''invisible hand'' argument contemplates no boundaries in its dynamic. They are merely posited as existing. This may seem unimportant. But the problem of boundaries is not simply a minor detail. We need to know how and why proximity delimits the moral responsibilities of the dominant protective agency in a state of nature. This bears directly both upon Nozick's claim that ''maximal competing protective agencies cannot coexist,'' and upon his dictum that the dominant protective agency would be ''morally required to extend protection to non-clients''.

Since conflicts between clients and non-clients in a state of nature could take place over any distance, what would allow procedural uncertainties to be resolved without resort to force-monopoly at a distance of X miles, but not at a distance of $X - 1$? What is the distance required to counter the presumed economies of scale? It does not suffice to stipulate that at a certain point other protective agencies would predominate "with some gradient being established". How could a distinction be entertained between conditions in the "gradient" and the overlapping patterns of competition by other firms (which Nozick denies could exist?). Customers within the gradient would still be able to shift business from one firm to another. Who would stop them? Certainly not the firm to which business was being shifted. And what would prevent agencies whose main power resided in one area from establishing a branch within the space subsumed by the presumed "dominant agency" of Nozick's argument? Could not a newly competitive agency secure a foothold merely by purchase of a strip of property? How could this be morally prevented? To forbid owners to execute land sales would violate rights.

Nozick posits a state like a Swiss cheese, with internal and external boundaries. He notes that geography alone is insufficient to isolate on internal boundaries non-clients of the dominant agency, A, who might employ helicopters in their misenforcement of rights. In what respect would geography suffice to isolate non-clients of A who were capable of striking across the presumed external boundaries? Why would not *the* dominant agency be morally obliged to absorb non-clients on its periphery until it was protecting the earth? Assuming as Nozick does, that the dominant agency would necessarily prohibit non-clients from protecting themselves directly, or through other voluntarily chosen agents, on what basis could it allow any boundaries to its monopoly? Must we assume, then, that the minimal state would be universal? Clearly, the "invisible hand process" is defective in analogizing the evolution of the state in the political realm, since its concept of distinct states must be imported by observation of existing states. The process itself contemplates no mechanism whereby *several* states could morally arise.

(d) Nozick's argument appears to incorporate the unacceptable assumption that the provision of protection is an indivisible service. But without the existence of a state to adumbrate boundaries between protective alternatives which are monopolized or forbidden, and those which may be sold on the market, even the necessarily vague distinctions we know today would disappear. Exactly which firms are to be classified as protective agencies? Would hardware stores selling locks, fences, and other presently banned protective devices be protective agencies? What if they promised to pursue and capture anyone who successfully penetrated a fence or picked a lock? Would karate schools be considered protective agencies? Suppose they guaranteed to provide a gang of roughnecks to hunt down and punish anyone who successfully attacked one of their customers? That firms would be free to offer such guarantees in the state of nature is obvious. Who would there be to stop them? It does no good to assert here that the "dominant protective agency" would prevent such a multiplication of protective alternatives. For at the point in the postulated "invisible hand process" where these possibilities are contemplated, there is yet no dominant agency. Thus, instead of only a few firms, there might be fifty or a thousand, many of which would be expected to concentrate upon offering protection to highly specified areas of the market. Firms could arise offering protection only to persons of Italian ancestry, or only to Negroes, prospects which coincide with the anthropologically observed fact that defense is normally first organized along clannish lines. There could be firms selling protection services only to long-haul truckers, or only of valuable gems, or only to Communists. For various reasons, all of the respective agencies could be affiliated in a single dominant appeals unit (a Better Business Bureau), thus satisfying Professor Nozick's stipulations about patterns of competition. Given these prospects of elaborate market division, the plausibility of expecting any given firm to step outside its specialty and gratuitously protect non-clients is nil.

Accordingly, we must conclude that neither of Professor Nozick's conditions for emergence of a minimal state has been fulfilled by his argument. He has not demonstrated that a *de* *facto* monopoly need arise from the state of nature of economic causes. Nor has he shown that any "general distribution" of protective service would arise from "an invisible hand process" (p. 52).

(b) *Sale of the state and other problems*

Many other crucial points which bear on the plausibility of the Nozick argument are not explained. At what point, for example, would the evolving state (assuming that the argument can be extended that far), cease to be a business? If its stock were freely trading, or its ownership saleable, might not the minimal state, once in existence dissolve? Suppose the cost of providing gratis service to independents so depleted the profit of the owners that a management change brought new policy. If the gratis service were terminated, would the state cease to be a state? Could not, under certain circumstances, managers of the state control decisions about extension of coverage which would affect the profitability of the agency, and thus manipulate its value? Could they "short sell" the state, and expand coverage, gaining from inside knowledge of the resulting decline in profits? If stock of the putative "state" were to remain on sale, why could not a controlling interest be purchased so that the "state" would be merged with a cookie company? Could presumed enemies or criminals from far or near conquer the state by purchasing it?

Possible objections to the conclusions which Nozick draws from his line of microeconomic analysis are legion. If he is to assume that economic behavior propels persons in the state of nature, he must answer to consequences of similar economic motivation which would deflect from his conclusion.

III. COMPENSATION, RISK AND PROHIBITION

Nozick's treatment of the issues of compensation, risk, and prohibition rests upon assumptions which contradict his moral dicta. He posits a compensation theory which excludes and minimizes the compensable damages from border crossings, thus tautologically "dividing the benefit of the exchange" in favor of the transgressor. By focusing the search for compensation upon the victim's valuations prior to the act of transgression, Nozick places no value upon the experience itself and excludes from consideration the subjective consequences which bear directly upon its cost to the victim. Paradoxically, he insists instead that there is a requirement to compensate fear, a subjective emotional state, which need not arise from the specific border crossing, nor indeed from any border crossing. The ramifications of this faulty view of compensation include a theorem of prohibition which so punctures Nozick's "hyper-plane surrounding an individual in moral space" that it could be elaborated into a justification for a slave state.

(a) *Full compensation*

Nozick posits that "something fully compensates a person for a loss if and only if it makes him no worse off than he otherwise would have been; it compensates person X for person Y's action A if X is no worse off receiving it, Y having done A, than X would have been without receiving it if Y had not done A." In clarification of this view, Nozick modifies it further in the direction of reducing compensable damages by requiring "reasonable precautions and adjusting activities by X" to "respond adaptively and so limit losses". Although applications are most easily imagined in terms of direct material loss, the principle, as Nozick makes clear, applies to all border crossings.

But does not this doctrine require that the victim cease to define his own ends and become a means for the transgressor? Within the limits of an individual's epistic resources, he will always act to minimize his losses in terms of his overall ends. But this does not necessarily entail acting to minimize losses from any specific border crossing. That may be conceived as "non-coping" as Professor Nozick labels it. But why must one be forced to cope? May one individual, through acts of moral trespass, throw obstacles in the path of another with which the victim must then be obliged to "cope?" Why must the victim be diverted from his own most valued ends merely to minimize the compensation due from a transgressor? And if the victim fails voluntarily to reduce losses, thus increasing the amount of retribution, so what? Why is that less preferred than allowing the transgressor to shirk the costs of his acts?

Imagine rancher A driving along a highway adjacent to his grazing lands. As he travels he sees that an automobile driven by B has crossed the ditch and damaged a fence. If the fence were to be immediately repaired, the damage might be limited. If not, two hundred cattle might escape, and later have to be re-captured at considerable expense and the likely loss of several of the herd. Must the rancher stop on the spot and repair his fence? That is suggested. If he does not, is B spared the liability of compensating for any lost cattle? Suppose that A knew that one of his friends had just been gouged by a bull, and was rushing to the doctor for help. Would B *then* be obliged to compensate for the loss of cattle? If humanitarian endeavor on A's part would alter the circumstances requiring him to "adapt", would other ends also suffice? Suppose rancher A to be intent upon nothing other than making money. Suppose he were rushing to the airport to catch the only plane which could deliver him to an important business meeting. At that meeting he might either consummate a large sale of cattle, making $50,000, or he might fail to win the agreement and thus make nothing. Would A then be obliged to halt his car and "cope" with the broken fence? If he did not, would the errant driver B remain responsible for all the consequences of the broken fence? Would B be responsible only if the deal were consummated? Only if it fell through?

Suppose further that the damage to the fence had not resulted accidentally. Driver B might have been hired by one of A's competitors X to damage the fence and thus divert A from the important meeting, thereby gaining business for X. Would A be obliged to choose between making the meeting, where he might not be successful, as against the certain loss of several thousand dollars, knowing that losses from his herd would not be compensable since he might have acted to avoid them? Imagine further that as B waits to have his car towed after having intentionally demolished A's fence, A's daughter, C, happens by directly from a meeting of some mystic religious order. Seeing the accident, she stops to inquire of B's condition. Unrepentent, B then rapes C and leaves the scene in her car. Is it to be imagined that because C's exotic beliefs exclude the use of medication and forbid abortion, that B would be exonerated from child support should C conceive? Would "full compensation" as stipulated by Nozick encompass little more than replacing the broken fence posts and returning the car with a full tank of gas?

The qualification that the victim must "respond adaptively" under Professor Nozick's compensation theory requires that the victim choose between altering his own ends and facing incompensable losses at the hands of an aggressor.

Yet even if the caveat that the victim must limit his losses were removed, the compensation theory employed by Nozick would still underestimate compensable damages. It fails to consider the full costs to the victim which arise from the inconstancy of valuations over time.

Because valuations are inconstant, to be compensated they must be focussed upon as they are *after* the act of trespass, not before. By way of illustration, suppose person F to be the owner of an old automobile which had long sat is his driveway and which he intended to junk as soon as he obtained $50 to pay a wrecking crew to remove it. Before this could happen, Y comes along and recognizes the old car as a valuable Studebaker Dictator which could command a considerable price when restored. Knowledgeable Mr. Y then proceeds to steal the car. If, one year, later, F recognizes his car in restored condition, would his compensation be to pay the thief $50, thus bringing his "indifference curve" to its former position? Or would he be entitled to compensation based upon the valuation he would certainly place upon the car *at the present time*?

To assert that the victim is compensated by being left "no worse off" is to place the degree of compensation so low as to favor the trespasser over the victim. It provides the violators of rights with a *carte blanche* to act without risking compensable damages, provided that they select victims who are sufficiently depressed or ignorant.

Another example will reiterate the important point that compensation must be based upon valuations in present time rather than at the time of the transgression. Imagine that individual E is terribly morose. He scarcely cares whether he lives or dies. He has apparently been jilted in a love relationship, so he has drawn out his savings — the equivalent of $5000 — and is wandering the street contemplating suicide. He is then accosted and robbed by individual X. In the depths of despair, he encounters his lover, who makes up and they resume their lives together. Sometime thereafter, a business associate Y makes him aware of an opportunity of which he had previously been unaware to invest $5000. E is emphatically convinced that the price of world cocoa will quadruple within one year. If he had the $5000 he could invest at a margin of 20:1, matching the investment of his business associate Y. But because of the theft he lacks the means to pursue his ends. The price of cocoa quadruples. The associate employs the resulting $40,000 in a project (in which E might have participated with his equal yield). This project is successful also, making Y a millionaire. He retires. The thief X is then captured, who turns out to be a very wealthy individual, capable of paying "full compensation" whatever that might be.

To hold that payment of $5000, plus some interest consideration is sufficient, would clearly leave E very much the worse for the transgression, according to his valuations in the *present*. Yet if X had attempted to borrow $5000 from E on the night of the theft, he might have been able to negotiate the deal at a negative interest rate because E was so depressed.

(b) *Full compensation and market compensation*

When full compensation is calculated on the more accurate basis of valuations in the present rather than at the time prior to the transgression, it is clear that full compensation would be market compensation.

If the home of person A were burgled by person B who stole a can of vichyssoise what would the damage be? (Imagine B as too lazy to go to the store one night, so sneaking into his neighbor's house, he helped himself.) In the absence of an exchange transaction to establish an upper limit on A's valuation of the vichyssoise, determination of damages to assure "full compensation" would be impossible. The vichyssoise could have been a highly valued possession. Suppose that A's mother, knowing her son appreciated vichyssoise, had purchased a can as a favor to him on a trip to a distant locale, and forwarded it as a present before her return trip. If A's mother were subsequently killed in an accident returning home, the valuation he placed upon the otherwise ordinary can of soup might be intensely high. Whether he received word of his mother's death after the theft, or before, would make no difference.

In a free exchange, both parties, subject to caveats of the contract, forego future claims which might arise from the essential inconstancy of human valuations. The exchange establishes relative valuations placed upon an item of exchange at the moment of trade. It can never tell us the precise upward valuation which any individual places upon the consideration which he *receives* in trade, it can only set a relative (to the other item) limit on the item which he *expends*. Part of the owner's right to ownership is his right to refrain from exchange, while assessing the valuations which he imputes to items. A transgressor has no right to force an exchange at any point X, and thus force the victim who would seek full compensation to settle upon the basis of his valuations at point X.

Of course, determination of "full compensation" for theft of the vichyssoise, or for any other alienated value is a judicial task which would tax any formulation of retributive justice. In the absence of an exchange equation we can never know the upward limit of A's valuation of the soup can. But while we lack the epistic tools to assess precisely the magnitude of "full compensation" we can say authoritatively what "full compensation" is *not*. It is not less than any amount which a wronged individual would refuse to accept in exchange for dropping his right to recover the lost or alienated value. In the example of the soup, A cannot be fully compensated if he would not sell his right to recover the can for the amount of proferred compensation. In the example of the stolen auto considered earlier, person F cannot be fully compensated, regardless of any evidence as to his previously low valuations of the Studebaker, if he would not willingly exchange his compensation for the right to recover his property. Thus, the concept of "full compensation", contrary to the argument stipulated by Professor Nozick, can never encompass the forced alienation of values.

(c) *Preventive restraint*

Nozick's concept of preventive restraint culminates the arguments arising from his fallacious concept of compensation. There are no principles which give exact guidance as to who may prove a threat, and under what circumstances. Thus all decisions limiting threats are arbitrary. In a society with civil government, the state makes decisions which apply everywhere because the state has dominion over all property. In the state of nature, numerous individuals would make the decisions (no less arbitrarily), the sum of which would amount to "preventive restraint". These decisions would be made by the criterion of ownership. Thus, the owner of an ice cream parlour might refuse entry to any potential customer carrying weapons. A proprietary community or housing development might stipulate, as a matter of contract, that no residents keep dogs, or lurk around the grounds after certain hours. This "preventive restraint" could morally take any form whatever, including denying access to any property by person A for any reason whatever — in the absence of previous contractual arrangements to the contrary. Permissible precautions, which would not violate the rights of anyone, would include ostracism, with or without cause. But they would not encompass preventive detention which would be imprisonment without cause.

No compensation for the consequences of ostracism would be called for. No one is entitled to cross any land or space, nor conclude any agreement, trade, nor interaction with any other individual under Nozick's formulation of rights. Clearly, one may not sue a potential lover because he or she refuses to accept a proferred relationship. That is incompensable because no one is entitled to a lover's affection. By the same token, one could not sue the potential lover because she was disinclined to purchase an encyclopedia offered for sale at her door. One could not sue if she prohibited salesmen from her step altogether, nor if she denied them free passage over her property. In none of the cases is one entitled to anything, thus no compensation is in order for denying it.

Social prohibitions in the state of nature would arise from an invisible hand process. Persons who hoped to travel freely and obtain access to interaction with others would be prudentially constrained to conform to a standard which filtered out alarming or dangerous behavior. Thus, while one would have the right to arm oneself to the teeth, one would have no right to go armed on anyone else's property. There would be few or no common thoroughfares where anyone could congregate without meeting the contractual tests of an owner.

Those threat-limiting decisions made without prudence would prove anti-social, and thus penalize the decision-makers by reducing their desired contact with others. If owner A opened a restaurant where potential customers (to limit robbery possibilities) could wear no clothes, the result might be to reduce concealed weapons. But it might also eliminate customers. A balance would be struck commercially. There would be other restaurants, perhaps more dangerous, but offering other conditions of entry. In the state of nature, there would be no "public" decisions to occlude dangerous behavior. There would only be market decisions to filter out behavior which the consensus of owners found to be risky.

To presume that preventive detention would be permissible, providing "full compensation" were paid, betrays a fundamental misconception. If it were truly "full compensation", those staying would be doing so voluntarily. If not, their refusal to stay would demonstrate the compensation to be insufficient. Contrary to Professor Nozick's claim, it is precisely the "monopoly pricing" of compensation to the individual which makes slavery impossible. Because the detained could raise his price infinitely by demonstrating a preference to depart, it would be impossible to morally enslave anyone in the state of nature. That reflects Locke's description of the state of nature as a place where men enjoy "perfect freedom to order their actions and dispose of their possessions as they think fit, within the bounds of the law of nature, without asking leave or dependency upon the will of any man''. That suggests nothing if not the monopoly of each individual over himself, and hence the ability to monopoly-price his freedom.

Otherwise, the Hatfields, depending upon Professor Nozick's formulation of preventive detention and ''full compensation'', might legitimately imprison any McCoy at birth. They would have reason to ''predict of him that the probability is significantly higher than normal'' that he would either commit a crime or attempt to exact independent retribution for a crime, either of which would in Nozick's terms justify preventive detention. And as Baby McCoy would have all alternative uses of his time foreclosed, would the compensation required then be minimal?

Because the child, and later the adult, would have been forbidden to exercise any entrepreneurial skills, and thus earn his ''entitlement'', which Nozick's theory elsewhere supposes for him, would it be permissible to compensate the detained McCoy only according to the average productivity of an individual in the state of nature? And if this is admitted, would not a Communist dictator, acting in the high probability that individuals in the future may commit more crimes than those in the present, impress everyone into preventive detention on a communard basis, seeing that this would conform to conditions of compensation by Nozick for an *impoverished* society, so long as the ''position of those restrained and those unrestrained are made equivalent''?

While one may doubt that Nozick formulated his concepts of compensation and restraint with an eye to justifying a slightly more fanatical version of present-day Albanian society, there is also reason to doubt that it points the way toward the sort of complex social order which he imagines as ''Utopia''. Such a society could only be realized as the consequence of a system of justice less inimical to individual freedom. That means, in particular, that there could be no articulated formula of preventive restraint.

IV. CONCLUSION

That there are some appreciable defects and contradictions in the thrust of Nozick's argument, does not mean that his work is of less than the highest value, both for its brilliant demolition of many of the moral claims of advocates of distributive justice and for its generally provocative effect upon the evolution of libertarian thought.